BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Investigation Into the Reasonableness of the Rates and Charges of PACIFICORP, dba UTAH POWER & LIGHT COMPANY	))))	POST HEARING BRIEF Docket No. 99-035-10

The Utah Industrial Energy Consumers ("UIEC") submits the following Post Hearing Brief in response to the invitation of the Commission.

INTRODUCTION

The test year 1998 was an extraordinary year for PacifiCorp. In the early part of the year, PacifiCorp tried to globalize by acquiring The Energy Company in the United Kingdom. Its efforts were not rewarding. PacifiCorp ended the year by being taken over by Scottish Power in a transaction approved by this Commission. The results of the takeover are yet to be seen in a transition plan to be filed in May.

In 1998 PacifiCorp grew its wholesale business to new highs. Its transactions in both physical and financial products involving electricity were global, its volumes substantial. For the first time, PacifiCorp affiliates competed against each other for margins in the Western United States. In late summer and early fall, 1998, in spite of trading huge volumes in financial and physical products, PacifiCorp found itself short in the electricity market and had to pay some very high prices for electricity. Escalating prices during that time had thwarted its hedging strategy.

In late 1998, PacifiCorp retreated to what it believes is its core business. Either in preparation for a merger or to cut losses and re-focus its business plan, or both, PacifiCorp shed its telecommunication businesses, gas distribution businesses and substantially reduced its marketing activities.

PacifiCorp now seeks from this Commission a rate increase of $55 million to recover items written off before it was taken over by Scottish Power, costs relating to initiatives undertaken before its re-focus, and cost increases arising from market transactions, even though behavior in the market during 1998 was found by its

own board to be excessively risky.

Under these circumstances, the UIEC suggest the Commission be very circumspect of PacifiCorp's claims that an increase in prices is necessary. Its transition plan will be filed at or near the time the rates in this matter become effective. The impact of this transition plan on the employees of PacifiCorp is still unknown. The Commission should be vigilant to assure that it does not share the blame for the adverse impact of actions planned in the transition plan to improve PacifiCorp/Scottish Power's earnings. Further, this Commission needs be wary of increasing the earnings of an indirect subsidiary of Scottish Power which, through a tax advantageous structure, can supply superior earnings to the parent. It would be most unfortunate to have prices increase in Utah, while employees are laid off, tax revenues decline, and Scottish Power investors enjoy superior returns.

In the remainder of this brief, the UIEC will address topic by topic some of the central issues in this rate case.

POWER COSTS

The electricity product market is comprised of financial products and physical products. The financial products are all electricity products that are not transactions in real time. These are all positions for future delivery. The physical market is the market which is in fact limited to the trading of energy imbalances. PacifiCorp and its affiliates, in their regulated and unregulated business, engage in both financial and physical transactions. Dalley, Tr. at 138 (referring to Cross Ex. 12); D. Larson, Tr. at 1112. PacifiCorp attempted in the present case to distinguish between physical and financial transactions, contending that the regulated portion of PacifiCorp's businesses dealt in physical transactions while the unregulated portion dealt only in financial transactions. See, Widmer, Tr. at 696-97, 705, 708-09 ; D. Larson, Tr. at 1112 . In reality, PacifiCorp's regulated business as well as its unregulated businesses dealt in financial transactions. D. Larson, Tr. at 1109-1112.

In 1998, PacifiCorp and its affiliates were in both the physical and the financial markets in a substantial way:

Pacific Power Marketing enjoyed $2.730 billion in revenue from transactions in

electricity. Cross Exh. 57; D. Larson, Tr. at 1107-1108.
PacifiCorp unregulated enjoyed $1.367 billion in revenue from transactions in electricity. Cross Exh. 12.

PacifiCorp regulated engaged in "book-out" transactions of $335.2 million, representing 3,559,429 MWh. Cross Exh. 14; Widmer, Tr. at 698, 708.

PacifiCorp regulated engaged in sale for resale (wholesale) transactions of $1.257 billion. Cross Exh. 12 at ln. 11.

PacifiCorp retail sold $2.222 billion in electricity to end users. Cross Exh. 12 at ln. 10.

In 1998, both PacifiCorp Power Marketing ("PPM"), an unregulated entity, and PacifiCorp, a partially regulated entity, engaged in substantially identical types of trading transactions chasing margins on similar transactions, possibly involving the same customers at the same time in the same part of the country. See, Steinberg, Tr. at 568-69; Widmer, Tr. at 707; D. Larson, Tr. at 1109-112. The effects of these competitive transactions on the regulated company is difficult to discern. Gains enjoyed by PPM from transactions in the West were blended with losses in the East so it is uncertain how much PPM profited from competing with the regulated enterprise. See, Widmer, Tr. at 712 . In light of the method used in the last rate case, and proposed by most parties in this rate case, in which wholesale revenues are credited against power costs to develop a net power cost, inter-company and intra-company competition along with PacifiCorp's high-risk strategies are of concern.

PacifiCorp's 1998 Annual Report to shareholders indicates a significant decrease in margins from short-term firm and spot market (hourly) sales and purchases in 1998, as compared to 1996 and 1997. See, Steinberg, Tr. at 526 ; Widmer, Tr. at 712. When comparing the average purchase price to the average sales price, margins were $1.63/MWh in 1996, $1.31/MWh in 1997 and zero in 1998, despite the fact that volumes in 1998 almost doubled. PacifiCorp 1998 Annual Report at 26. See also, Dalley, Tr. at 34 (volumes increased).

The evidence shows that PacifiCorp was short in the electric market in late summer and fall of 1998 when power costs began to escalate. See, Steinberg, Tr. at 523 and 571 ; Widmer, Tr. at 676 . PacifiCorp's board, recognizing the significant risk of the company's position and the potential consequences of

that risk, changed the risk profile of PacifiCorp in the fall of 1998. Steinberg, Tr. at 532-34 and 540. In light of this acknowledged high-risk behavior, the Commission should critically evaluate PacifiCorp's net power costs to determine whether or not the adventures of PacifiCorp adversely affect the regulated ratepayers. See, Dalley, Tr. at 127-128 . Where necessary, the Commission must impute revenue from wholesale transactions to avoid the subsidization of unregulated high risk activity by PacifiCorp's regulated entities, recognizing the fact that ratepayers do not choose to participate in risky wholesale activities.

In particular, it is clear from the record that the volume of short-term and hourly sales and the price enjoyed for those sales needs to be adjusted to avoid an inappropriate increase in costs to ratepayers. See, Steinberg, Tr. at 518 ; Wilson, Tr. at 1161 ; Falkenberg, Tr. at 1579-80 ; McCullough, Tr. at 1601-1603 . The company should not be allowed to credit high margin transactions to shareholders while booking low margin transactions. Ratepayers should not have to shoulder the burden of PacifiCorp's tactical choices in booking these transactions.

PacifiCorp's corporate behavior in 1998 requires an adjustment to its net power costs. The UIEC recommend that at a minimum, the Commission make the adjustments recommended by Mr. McCullough with respect to short-term firm and secondary sales, or at least, those recommended by Mr. Falkenburg. We will leave the arithmetic of those adjustments to their sponsors.

PENSION ADJUSTMENT

In 1997, PacifiCorp wrote off $87 million in pension-related costs recognizing changing market conditions. Dalley, Tr. at 19-20. That write-off was reported to regulators in FERC Form 1, Page 123.7, and reported to shareholders in the 1998 Annual Report. Peel, Tr. at 1475-76. With a change in management, PacifiCorp evidently has decided to attempt to claw back some of the pension costs previously written off. Dalley, Tr. at 19-20. This adjustment should be disallowed in light of Scottish Power's stipulation in the merger docket in Utah. Stipulation, Scottish Power/PacifiCorp Merger, Doc. No. 98-2035-04, at Condition 44.

When the Scottish Power merger was consummated, the shareholders of PacifiCorp were paid

handsomely for their investment in PacifiCorp. The premium to book and premium to market received by shareholders as a result of the transaction with Scottish Power neutralized any consequence of the costs associated with writing off these pension adjustments in 1997. The value of PacifiCorp's shares at the time of the merger reflected those write offs. Allowing the new shareholders to recover costs written off after they have struck a value for their shares would result in a windfall to Scottish Power. Consequently, if PacifiCorp is allowed to recover pension costs in the present rate case, current shareholders would gain a benefit from shifting those costs to ratepayers. Old shareholders have already been handsomely paid, and to allow such an adjustment would create a windfall to the new shareholders.

It is entirely unclear whether PacifiCorp can recover the written-off portion of these pension costs in other states. On this account, PacifiCorp admitted it would not seek to recover these costs in Montana. Dalley, Tr. at 147. Then, inexplicably, PacifiCorp claimed that as a result of the settlement in Montana where the gain above book on the same distribution assets was shared, PacifiCorp somehow recovered the pension costs allocable to Montana. D. Larson, Tr. at 1017. It is also unclear whether the recovery of Montana pension costs is strictly an internal bookkeeping entry by PacifiCorp on increased earnings, or whether it reflects some regulatory order. On the record in Utah at least, there is no evidence that any regulatory authority has allowed PacifiCorp to claw back the pension costs written off in 1997. Dalley, Tr. at 147.

Scottish Power stipulated, as a condition to secure the Commission's approval of the merger, that it would not seek an increase in rates as a result of the merger. Stipulation, Scottish Power/PacifiCorp Merger, Doc. No. 98-2035-04, at Condition 44. One of the benefits heralded of the merger was the change to new management for PacifiCorp. Id., Report and Order, Doc. No. 98-2035-04, at 10-19. Yet, one of the first actions of the new management was to sponsor this rate increase case and to seek recovery of costs written off by prior management. This behavior directly violates the Stipulation and should not be tolerated. The Commission should reject the claim for these pension costs.

SAP COSTS

PacifiCorp has graciously consented to stand an audit of the prudence of its investment in the SAP R/3 software package (the "SAP"), and for a determination of the correct allocation of SAP associated costs among its regulated and non-regulated entities. Meier, Tr. at 423. Of course, the question remains whether any SAP costs at all should be allowed in the test year. The UIEC believe that the SAP related costs reflect that there were no or minimal benefits realized in the regulated industry from SAP in the 1998 test year and that the Company, therefore, should be allowed no recovery in the present case. Nevertheless, if any costs are to be allowed, it is reasonable to expect the audit to reveal that some SAP related costs should be allocated to the unregulated side of the system. D. Larson, Tr. at 1017-18.

On this record, it appears that at the time PacifiCorp investigated and made its decisions about the acquisition of the SAP system, it was seeking a global, enterprise-wide system. Dalley, Tr. at 114; Meier, Tr. at 419-20; Cross Exh. 33; Brubaker Direct at 9-10. One of the advantages and reasons for selecting the SAP system was its global capability in providing an enterprise-wide solution for PacifiCorp. Meier, Tr. at 403, 417 and 420; Brubaker Direct at 9. After making the decision to acquire the SAP system, PacifiCorp shed itself of much of its global business for which the system was acquired. It disposed of its operations in the Philippines and in Turkey and shed its gas and telephone operations. Steinberg, Tr. at 564-565. It also retreated from its attempted acquisition of an energy company in the United Kingdom. Steinberg, Tr. at 566. It is reasonable to believe therefore that a portion of these numerous global enterprises, owned and controlled by PacifiCorp during 1998, would have borne some of the costs associated with SAP had they continued to be a part of the PacifiCorp family. D. Larson, Tr. at 1101-02. The audit should be able to determine what portion of the SAP-related costs should be allocated to those now-defunct enterprises.

The UIEC suggest that if the Commission is inclined to allow any of the SAP costs into the test year, recognizing that little, if any, benefits arose from the pilot program at Naughton, then the most that should be allowed are the costs allocated on the revenues that PacifiCorp enjoyed during the test year. The Naughton plant was the only portion of PacifiCorp to use SAP, and the pilot program starting in September 1998 included only

171 employees. Meier, Tr. at 372-73, 382-84 and 389-90. PacifiCorp allocated 98.5 percent of its SAP associated costs to the regulated industry, based on a work station count. D. Larson, Tr. at 1103; Response to UIEC Data Request No. 2.9. The allocation of SAP costs on work stations is unreasonable given the "global market" and "enterprise-wide" justification for SAP, and the subsequent action by PacifiCorp to reduce its global presence. At the same time, PacifiCorp reported that only 59% of its 1997 revenue came from regulated activities. Brubaker Direct at 10 (referring to PacifiCorp's 1997 10-K filing). Although an allocation based on revenue may be somewhat arbitrary, such an allocation more closely considers the proportional benefit between regulated and unregulated industries served by SAP, than does a work station basis. The UIEC believe an audit would reveal that significantly less than 59% of the cost of SAP was incurred for the company's regulated operations. Nevertheless, the UIEC recommend that the Commission use the 59% as a temporary allocation factor for the SAP expenses, subject to true up when the audit is completed and there is a more reliable basis for assigning these costs. Brubaker, Direct at 11.

Although PacifiCorp likely will retort that if the costs of SAP are not to be allowed or only some portion of them are to be allowed, then the benefits to the regulated business likewise should be reduced. Such an argument is specious. The benefits from SAP are the same whether or not the costs are properly allocated to other activities of the company. Moreover, it should be borne in mind that it is still an unanswered question whether the SAP investments were prudent, and prudently applied during the 1998 test year. The audit will shed much-needed light on the SAP costs and benefits associated with PacifiCorp's 1998 global-enterprise vision. Ratepayers should be protected until the audit is complete.

BILLING COSTS

The Division of Public Utilities proposes to allocate a portion of the billing costs to unregulated PacifiCorp entities. Billing is a significant expense, but it is not a monopoly service. Peterson, Tr. at 1361. The Commission should consider whether PacifiCorp's billing system is the most cost effective method for achieving the billing results for ratepayers. PacifiCorp provided no information supporting PacifiCorp billing

practices as being most cost-efficient given the open market for billing services. Peterson, Tr. at 1360-68; DeRonne, Tr. at 1381.

Assigning a moderate amount of the costs of the billing to PacifiCorp's affiliates is the most conservative approach the Commission can take on the issue while exploring the larger question about whether ratepayers should be exposed to the company's billing costs at all, when billing by a third party may be substantially less costly. The UIEC believe the adjustment proposed by the Division is modest at best and should be adopted until it can be determined whether there are more cost effective billing practices that could be implemented by the company.

RETURN ON EQUITY

On this record, PacifiCorp has asked the Commission to choose, from within a range, the company's allowed rate of return. The range was selected using 1999 data looking forward to the period of time when the rates set in the present case will be in effect. Hadaway, Tr. at 299. During that period of time, PacifiCorp will be owned by a Nevada partnership which is wholly owned by two UK corporations. See, Hadaway, Tr. at 300-304. The purpose of that structure is to allow Scottish Power to avoid a substantial amount of United States tax. See, Id. In selecting a rate of return, the Commission should consider the benefit this tax-advantageous corporate structure bestows on the company's shareholders, and should be wary of allowing Scottish Power to earn a super-rate of return based on this structure.

COST OF SERVICE STUDY

Traditionally, this Commission has followed the practice of allocating the revenue requirement of its regulated utilities among the classes of service on some analytical basis, usually the cost of service. PacifiCorp has performed a fully functionalized cost of service study allocating its proposed revenue requirement among the various classes. Taylor, Tr. at 963. Although it would appear that certain allocation decisions reflected in the cost of service study should have been made differently, the UIEC do not strenuously advance those arguments here. Brubaker, Direct at 3. Rather, it recommends the Commission follow the cost of service study advanced by

PacifiCorp as a guide to allocating revenue requirement.

RATE SPREAD - MITIGATION

PacifiCorp has proposed two strategies to mitigate the impact of the rate increase on the various classes of service. Those mitigation strategies are a three-year average of the class cost of service study, and a cap on the increase of 1.5 times the system average increase to any class. Griffith, Tr. at 1251. While mitigation strategies ameliorate a disproportionate impact on a single class, they simply defer a potential rate increase if cost of service remains consistent in future years. Id. The magnitude of the rate increase proposed by PacifiCorp would result in a disproportionate impact on the residential class. The UIEC therefore recognize that the proposed mitigation measures may be appropriate. In this case, the deferred rate increase to the residential class could be as much as $12 million based on 1998 results alone. Griffith, Tr. at 1252. While such an increase may be deferred, it will nevertheless shock the class when it is implemented. Any mitigation plan adopted by the Commission should be deployed to avoid disproportionate impacts today, and must be used judiciously so that rate shock is not simply postponed for another day. If the Commission reduces the amount of PacifiCorp's requested increase, mitigation strategies may not be necessary. Brubaker, Direct at 6-7.

SPECIAL CONTRACT CRITERIA

The Division of Public Utilities has urged the Commission to adopt the criteria developed in a 1999 report by the Economic Incentive Contracts Task Force (the "Report") containing guidelines for the approval of special contracts. K. Powell, Direct at 24; Exh. DPU 4.9 (Report). It is important to note in the beginning that these criteria do not relate to, and are not intended for the approval of interruptible contracts, which include most of the special contracts in this jurisdiction. Id. The criteria therefore are of limited, if any, relevance in this jurisdiction.

Nevertheless, the UIEC call to the Commission's attention its objections to the Report. See UIEC Comments attached to Report, Exh. DPU 4.9. While the Report was a considerable achievement in understanding special contracts and the reasons for which they should be approved, the Report's use of the terms

"incremental cost," "marginal cost" and other terms were not clearly defined or understood, undermining the value of the analysis. More importantly, the proposed measures to be used for determining such costs and the appropriateness of a special contract are unreliable in today's market. When a utility acquires its electric power on the market, either in physicals or financials, "avoided costs" and "marginal costs" do not seem to provide a useful guide for evaluating whether a special contract would unreasonably burden the utility or other ratepayers.

As the UIEC stated in their comments to the Report, each special contract is unique and should be evaluated on its own merits. No single set of criteria, no "cookie cutter" approach is appropriate for evaluating all special contracts. The proposed Report guidelines provide a beginning, but can and will be arbitrary, particularly the proposed rule that contract terms cannot exceed five years. The UIEC urge the Commission to recognize the limitations of the Report and use the information in it as a supplement and not a replacement for an evaluation based on market prices.

LIFELINE RATE

Inadequate income is undeniably a problem for a number of Utah residents. It affects those who reside both in and outside of PacifiCorp's service territory. The inability to afford electric utility service is just one example of the lack of access to goods and services experienced by low income residents. Because regulators are ill equipped to solve these problems, rate-making based upon income distribution has never been the policy of the State.

Utah law provides:

> No public utility shall, as to rates, charges, service, facilities or in any other respect, make or grant *any preference or advantage* to any person, or subject any person to any prejudice or disadvantage. No public utility shall establish or maintain *any unreasonable difference* as to rates, charges, service or facilities, or in any other respect, either as between localities *or as between classes of service*.
>
> Utah Code Ann. § 54-3-8 (1999)(emphasis added).

The UIEC acknowledge that the impact of utility rates on customers is one of the criteria the Commission may consider in determining whether a rate is just and reasonable. Section 54-3-1 states:

> The scope of the definition of "just and reasonable" may include … the cost of providing service *to each category of customer*, economic impact of charges on *each category of customer*, and on

the well being of the State of Utah.

Utah Code Ann. § 54-3-1 (emphasis added). However, while this Section may provide authority for the Commission to consider a *class* of customers' ability to pay for utility services, it does not allow the Commission to set different rates with respect to individuals within the same class based on some class members' ability to pay. To make a distinction based on income among members of the residential class violates the prohibition against preferences in Section 54-3-8, and in UIEC's view, disregards the holding in Mountain States Legal Foundation. Moreover, although the statute has been recently amended to allow the Commission to consider the "economic impact" of a rate in determining whether the rate is "just and reasonable," such language must not be interpreted to allow discrimination within a class. Article XII of the Utah Constitution provides that "[a]ll common carriers shall provide services without discrimination." An interpretation of Section 54-3-1 that would allow discrimination within a class based on income would be inconsistent with the plain language of Utah's Constitution.

The Lifeline Proposal (the "Proposal") presented to the Commission in this Docket is not to create a separate class of low-income customers, but to create benefits to some subset of the class of residential customers. Johnson, Tr. at 1799. In that respect, it is fundamentally different from the special contract rate offered to industrial customers whose load and consumption characteristics are sufficiently different from other customers that the utility's cost to serve them must be analyzed on a case-by case basis. Each special contract is a one-customer rate class in itself and not a subset of any particular class.

The proponents of the Lifeline Proposal in this proceeding have not advanced any justification that would allow for discrimination in the delivery of utility services among persons in the same residential class. There was no evidence, for example, that low income customers contribute less to system demand than other residential customers or that the cost to serve low income customers is any different from the cost to serve other residential customers. Low income, without more, is simply not a rational basis on which to grant a rate preference. See, Mountain States Legal Foundation, 636 P.2d at 1057 .

The UIEC agree with the Division of Public Utilities that the question of rate relief for low income

customers should be resolved by the Legislature, not the Commission. Low income utility customers in Utah are not limited to residents of the PacifiCorp service territory. Murray City, Price, Brigham City and St. George, as well the electric cooperatives, all serve low-income customers who are disadvantaged in access to services. It is not prudent public policy to address the problem for some sub-set of Utah residents based upon which entity provides their electric service. The Proposal does not consider the plight of low income customers throughout the state, nor is there any information of how many of such customers will be excluded from the rate relief proposed for PacifiCorp customers. Johnson, Tr. at 1796-97.

Even assuming the Proposal from a policy standpoint, were a good idea, which is it is not, it may be ineffective to achieve low income relief. The Proposal has not been adequately evaluated to assure its efficiency. The proposed surcharge revenue for example, apparently will be subject to a gauntlet of taxes including not only federal income taxes and state franchise taxes, but state sales tax, where appropriate, and local franchise taxes. Thus, the contributions extracted from ratepayers for the benefit of low-income customers will be mercilessly whittled away. This scheme could easily result in the collection of $1.00 from PacifiCorp ratepayers and the availability of $.50 for low-income relief due to its ill-designed tax considerations alone.

The cost of this Proposal according to advocates is nominal. But while the funding mechanism may keep price increase modest, there is no assurance that once the program has begun, that prices will not rise. Griffith, Tr. at 1233-34. In addition, there has been no study of the Proposal's effect on competition, Johnson, Tr. at 1798, of the discriminatory impact on customers not in PacifiCorp's territory, Mecham, Tr. at 1812, of how the program's success will be measured or evaluated, id., or whether there is any benefit to non-participants in assessing this charge, Mecham, Tr. at 1809. The Commission cannot reasonably conclude that such a proposal would result in "just and reasonable" rates or that it would advance the public interest.

The Lifeline Proposal should be rejected because it is the wrong approach to achieve relief for low income customers. The Commission should not imagine that it can do the wrong thing in the right way. The UIEC urge the Commission to recognize that the Legislature is a more appropriate forum for such proposals.

CONCLUSION

This is Scottish Power's first rate case in Utah. The facts and circumstances justifying this rate case arise from a most extraordinary year. Because the year was extraordinary, evaluation of the costs must be carefully considered. This is especially important because of the pendency of a transition plan that could have significant effects on PacifiCorp Utah employees. The Commission faces the challenge of avoiding apparent responsibility for the potential layoffs that may occur as a consequence of the transition plan.

If, after carefully evaluating the costs in the test year, this Commission concludes that some rate increase is appropriate, then the rate increase should be spread among the classes based on the cost of service study. Rates should be designed in a way to avoid rate shock on any class of customers.

As outlined above, there are a number of appropriate adjustments that should to be made in this case. PacifiCorp's failure to consider the least costly method for providing potentially competitive billing services is of concern. There are also a number of serious concerns that have arisen because of the mixed business nature of this company including inter- and intra-company competition over the same margins, and the prudence of SAP expenses. The Commission should carefully scrutinize the allocation of costs as between regulated and unregulated operations and bear in mind the tax-advantageous structure of the post-merger PacifiCorp could cause a windfall to PacifiCorp's shareholders. The Commission must be doubly vigilant to assure that the earnings enjoyed by Scottish Power from Utah ratepayers do not result in spectacular earnings for shareholders while simultaneously diminishing revenue to the coffers of the State of Utah through avoided income taxes.

Respectfully submitted this 28th day of April, 2000.

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F. ROBERT REEDER
WILLIAM J. EVANS
Parsons Behle & Latimer
Attorneys for UIEC

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of April, 2000, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing POST HEARING BRIEF, to:

Michael Ginsberg
Assistant Attorney General
Utah Division of Public Utilities
160 East 300-South
Salt Lake City, Utah 84111

Lee R. Brown
Vice President, Contracts, Human Resources,
Public & Government Affairs
Magnesium Corporation of America
238 North 2200 West
Salt Lake City, Utah 84116

Doug Tingey
Assistant Attorney General
Committee of Consumer Services
160 East 300 South
Salt Lake City, Utah 84111

Peter J. Mattheis
Matthew J. Jones
Brickfield, Burchette & Ritts, P.C.
1025 Thomas Jefferson Street, N.W.
800 West Tower
Washington, DC 20007

Glen E. Davies
Parsons Davies Kinghorn & Peters
185 South State Street, Suite 700
Salt Lake City, Utah 84111

Jeff Burks
Office of Energy & Resource Planning
Utah Department of Natural Resources
1594 West North Temple, Suite 3610
Salt Lake City, Utah 84114

Rick Anderson
Energy Strategies, Inc.
39 Market Street, Suite 200
Salt Lake City, Utah 84101

Edward A. Hunter
Stoel Rives Boley Jones & Grey
201 S. Main St., #1100
Salt Lake City, Utah 84111

Brian W. Burnett
Callister, Nebeker & McCullough
10 East South Temple, #800
Salt Lake City, Utah 84133

Eric Blank
Land and Water Fund of the Rockies
2260 Baseline, Suite 200
Boulder, Colorado 80302

Gary Dodge
Parr, Waddoups, Brown, Gee & Loveless
185 South State Street, Suite 1300
Salt Lake City, Utah 84111-1536

Stephen R. Randle
Randle, Deamer, Zarr, Romrell & Lee, P.C.
139 East South Temple, Suite 330
Salt Lake City, Utah 84111-1004

Elizabeth A. Wolf
SLCAP/CUC
764 South 200 West
Salt Lake City, Utah 84101

Jeffrey V. Fox
Crossroads Urban Center
347 South 400 East
Salt Lake City, Utah 84111

Charles E. Johnson
1338 Foothill Boulevard #261
Salt Lake City, Utah 84105

Curtis Broadbent
Controller
Nucor Steel
P.O. Box 100
Plymouth, Utah 84330

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