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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of PACIFICORP for an Increase in its Rates and Charges.	POST-HEARING BRIEF OF THE UAE INTERVENTION GROUP
	[Revenue Requirement Issues]
	Docket No. 01-035-01

The Utah Association of Energy Users Intervention Group (“UAE”) hereby submits its Post-Hearing Brief on Revenue Requirement Issues.

TABLE OF CONTENTS

INTRODUCTION 3

I. THE UAE’S PROPOSED ALLOCATION OF WHOLESALE MARKET RISKS BETWEEN SHAREHOLDERS AND RATEPAYERS IS JUST AND REASONABLE. 3

A. PacifiCorp Pursued a Deliberate Course of Action in Taking an Active Role in the Emerging Competitive Wholesale Markets. 4

B. Having Failed to Comply with Commission Policies, or even with Alternative Requirements with which it Agreed, PacifiCorp Cannot Now Demand Revenue-Credit Treatment for All of its Wholesale Contracts. 8

C. Sound Public Policy Dictates that the Risks Inherent in PacifiCorp’s Deliberate Wholesale Ventures Should be Allocated, at Least in Part, to PacifiCorp. 10

D. The Benefits Alleged by PacifiCorp of its Wholesale Strategy are Illusory and, in Any Event, Do Not Justify Allocation of All of the Wholesale Risks and Losses to Ratepayers. 13

E. The Company cannot Properly Blame the Commission for its Wholesale Market Losses Because of the Centralia Order. 14

II. PACIFICORP’S ACTUAL TEST PERIOD SHORT TERM VALUES SHOULD BE USED FOR PURPOSES OF SETTING RATES IN THIS CASE. 15

A. PacifiCorp’s “Annualization” Adjustment for Short-Term Market Prices Violates the Commission’s Annualization Rule. 16

B. Post-Test-Period Purchase Commitments Cannot Properly be Relied upon to Support PacifiCorp’s Projected Market Prices. 17

III. PACIFICORP’S CLAIMED FINANCIAL CRISIS DOES NOT JUSTIFY HIGHER RATES. 18

IV. THE COMMISSION SHOULD DIRECT THE COMPANY TO PURSUE COST-EFFECTIVE DSM PROGRAMS. 21

CONCLUSION 21

INTRODUCTION

The parties to this proceeding have proposed a number of adjustments to actual test period net power cost values. The UAE urges the Commission to accept UAE/Nucor witness Dr. Richard Anderson's proposed allocation of risk between PacifiCorp shareholders and ratepayers with respect to the company's wholesale marketing activities and losses. Dr. Anderson's proposal would result in an allocation of \$64,208,149 in long-term wholesale contract losses to PacifiCorp shareholders on a Utah jurisdictional basis (\$28,086,879 in conjunction with actual test year short term market values) – less than 45% of the test year losses associated with long-term wholesale contracts. The UAE also urges the Commission to reject PacifiCorp's adjusted (allegedly "annualized") short term firm and secondary market prices, and to utilize actual test period values as proposed by DPU/CCS witness Randall J. Falkenberg and UIEC witness Alan Chalfant. That adjustment would reduce PacifiCorp's Utah revenue requirement by \$46,870,172.

The UAE has not taken specific positions on net power cost adjustments proposed by other witnesses. This silence should not be interpreted as opposition to any proposed adjustments, but rather as a reflection of the fact that UAE witnesses did not analyze the proposed adjustments in detail, and that the proponents of the adjustments are best suited to advocate the same.

I. UAE'S PROPOSED ALLOCATION OF WHOLESALE MARKET RISKS BETWEEN SHAREHOLDERS AND RATEPAYERS IS JUST AND REASONABLE.

The UAE respectfully submits that this Commission should adopt the approach advocated by UAE/Nucor witness Dr. Richard Anderson in allocating risks associated with PacifiCorp's expanded and aggressive wholesale market activities over the later part of the 1990s. Dr. Anderson's risk-allocation approach effects a fair and reasonable balance and sharing between utility shareholders

and utility customers with respect to the Company's efforts to become a major national player in the wholesale market arena.

A. PacifiCorp Pursued a Deliberate Course of Action in Taking an Active Role in the Emerging Competitive Wholesale Markets.

Perhaps understandably, PacifiCorp has made remarkable efforts in this proceeding to distance itself from, and to deny the reality of, its recent past. However, the record confirms beyond any doubt that PacifiCorp made a deliberate choice, and consciously accepted known risks, in attempting to become a major player in the emerging competitive wholesale marketplace. Those choices were not dictated by the needs of its retail ratepayers – PacifiCorp's retail load growth did not require significant increases in wholesale activity, and the company anticipated deregulation in its jurisdictions. Rather, PacifiCorp's choices were driven by its desire to become a major national and international player in the electric marketplace.

The record evidence of PacifiCorp's deliberate change in focus and wholesale strategy is widespread and incontestable:

- PacifiCorp announced, both before and during the period of its new activities and focus, that it intended to become a major wholesale player:
 - In the past, wholesale sales were a minor part of PacifiCorp's total revenues.... The wholesale part of the business is growing rapidly and the company is looking at wholesale sales as a major business with its own strategies, rewards and risks." [RAMPP-4 Report, November 1995; CCS Exhibit 8, page 22].
 - "Through 1995, PacifiCorp expects to emerge as a national presence in marketing, brokering and trading. The company will sell both commodities

and services, and will aggressively pursue new markets. [1994 PacifiCorp Annual Report; UAE/Nucor Exhibit 1, page 11].

- “As the leading bulk-power trader in the West, PacifiCorp continues to experience double-digit growth in the wholesale part of the business.” [1996 PacifiCorp Annual Report; UAE/Nucor Exhibit 1, page 11].
- “Through our western wholesale power marketing business we have a significant presence in the western U.S., where we are the leading bulk trader among investor-owned utilities.” [1997 PacifiCorp Annual Report; UAE/Nucor Exhibit 1, page 12].
- The Company’s Marketing Plans (marked confidential) clearly announce the company’s intent to increase its wholesale sales beyond levels covered by owned assets. [CCS Exhibit 7SR, page 3 line 23 – page 4 line 17 (A. Yankel)].
- Statistics also demonstrate beyond question that PacifiCorp moved, in an aggressive and remarkable way, into the wholesale arena, in a manner disconnected from its retail service obligations:
 - Purchased power as a percentage of total system sales increased from 14 - 18% of total system energy in the early 1990s, to over 50% in 1997 [UAE/Nucor Exhibit 1.3].
 - Wholesale sales increased from 26% of system sales in 1993 to 56% in 1997 [UAE/Nucor Exhibit 1.5].
 - Purchased power increased by over 465% from 1993 to 1997, while retail sales increased by under 9% [UAE/Nucor Exhibit 1.6].

- Wholesale sales increased by 71% from 1992 to 1999, while retail sales increased by only 12% [UAE/Nucor Exhibit 1 at 19].
- Over the past five years, there has been a shortfall of as much as 2000 MW between peak firm load and long-term resources [DPU Exhibit 13SR, page 3 lines 21 – 27 (G. Compton)].
- In 1998, PacifiCorp planned a shortfall (excluding the loss of Centralia) of about 500 MW in 2000, requiring it to rely upon the short-term market [DPU Exhibit 13SR, page 4 line 18 – page 5 line 6 (G. Compton)].
- Abandoning the wholesale market strategy to which it had previously adhered, PacifiCorp management elected to make significant long-term wholesale commitments that were not backed up by exiting resources, electing to rely on short-term market purchases:
 - PacifiCorp’s trading activities “increased to take advantage of market liquidity and maintain a market presence; Sales were system sales backed by the overall portfolio of resources including market purchases.” [Stan Watters; UAE/Nucor Exhibit 1.7, page 13].
 - The RAMPP-5 strategy included the notion of fully supporting wholesale activities “with purchases in the marketplace.” [Carrie Plemons; UAE/Nucor Exhibit 1.8].
 - “The company’s goal is to match wholesale sales with sufficient megawatts of wholesale purchases over the next few years. Planning should recognize this planned balancing of wholesale sales with wholesale purchases.” [Nancy Esteb; UAE/Nucor Exhibit 1.9].

- The “extent of PacifiCorp’s focus on its core business influenced the level of wholesale purchases and sales over time.” [Stan Watters, Tr., page 303 lines 22-25].
- PacifiCorp clearly understood that its new wholesale strategies involved smaller margins and greater risks:
 - “[M]argins are so much thinner in the wholesale market that it’s not what it used to be. We can see ways that might make the business more profitable to counteract the tremendous thinning down of wholesale margins, but there’s a lot of risk associated with that.” [Gordon McDonald; UAE/Nucor Exhibit 1.10, page 11].
 - “Changing conditions in the wholesale markets mean the company must take on greater risk to achieve the same level of wholesale contributions.” [RAMPP-4 Report, November 1995; CCS Exhibit 8, page 22].

Now, rather than acknowledging its deliberate shift in strategy and focus, PacifiCorp seeks to deny its past. For example, PacifiCorp provides deceptive statistics in a fruitless effort to claim that it was not significantly exposed to the wholesale market in the test period. PacifiCorp witness Stan Watters, in UP&L Exhibit 3.9R, claims that PacifiCorp was exposed to the wholesale short-term market on a “net” basis by only 1.9% on average over the past several years. This testimony is extremely misleading and should be disregarded. For example, the analysis compares gross figures to net figures, double-counts the effects of short-term sales, and implicitly assumes that all short-term sales are met by short-term purchases [Tr., page 299 line 9 - page 303 line 16; page 331 line 3 – page 337 line 8 (S. Watters)]. Moreover, the analysis is simply not meaningful, as illustrated by the dramatic increase in net power costs from the prior rate case. In fact, PacifiCorp’s wholesale

purchases in the test year represented more than 25% of its total sales, and the company was exposed to short-term market prices for about 15% of its total energy requirements during the test year. [Tr., page 301 line 10 – page 303 line 16].

B. Having Failed to Comply with Commission Policies, or Even with Alternative Requirements with which it Agreed, PacifiCorp Cannot Now Demand Revenue-Credit Treatment for All of its Wholesale Contracts.

In 1990, this Commission imposed certain requirements on PacifiCorp to the extent it desired revenue requirement treatment of its long-term wholesale contracts. Among the requirements of the 1990 Order is that the wholesale contract must cover fully-embedded costs “after a short time.” [Report and Order, UPSC Docket No. 90-035-06, December 7, 1990 [see Cross-Exhibit 5], pages 16-17; incorporating pages 11-13 of the Supplemental Testimony of DPU witness Kenneth Powell, Cross-Exhibit 4, page 12].

In the Wholesale Contracts Task Force Report dated April 12, 1993, PacifiCorp and other task force participants agreed that the referenced criteria for revenue credit treatment of wholesale contracts should be modified as follows:

“Pricing shall be structured such that over the life of the contract retail revenue requirement will be protected from increases resulting from resource acquisitions needed to serve the wholesale contract.” [Report of the Wholesale Contracts Task Force, April 13, 1993, Cross-Exhibit 6, page 3].

PacifiCorp clearly failed to comply with the requirements of the Commission Order. Nor did the company comply with the revised requirement recommended by the task force, and with which it agreed. Had it met either requirement, there would be no long-term wholesale losses to contend with in this proceeding. Instead, the company attempts to shift the blame for its own failure to follow Commission policy by claiming that the Division and other parties also ignored the Commission

order, and by arguing that the Commission is essentially estopped from considering this issue as a result of its ruling in the last rate case. PacifiCorp's arguments are not meritorious.

PacifiCorp cannot excuse its failure to comply with Commission policy by pointing out that parties to the last rate case failed to raise the issue of its non-compliance in that case. The Commission order applied only to PacifiCorp; it required PacifiCorp, if it desired revenue credit treatment for certain long-term wholesale contracts, to satisfy the specified requirements. Having failed to satisfy those requirements, or the alternative requirement of the task force recommendation which PacifiCorp supported, PacifiCorp cannot now demand revenue credit treatment for the losses it suffered on long-term wholesale contracts entered into in violation of Commission policy.

PacifiCorp likewise cannot use the last Commission Order to avoid the effects of the referenced Commission policy in this case. This Commission has made it very clear that changes in commission regulatory policies must be changed directly and deliberately after due consideration on a full evidentiary record:

We reject the argument that a Commission regulatory policy can be changed in [an] indirect way. ... [T]he Company is obligated, if it seeks to change existing regulatory policy, to bring to our attention any new considerations it believes may warrant the change. This is to be done in any open, public proceeding, where the sworn, cross-examined testimony and evidence, not just of the Company but of all parties, forms an evidentiary record. [Report and Order, UPSC Docket No. 99-035-10, page 25].

In any event, even more important than *whether* the 1990 Commission order is still binding on PacifiCorp, is consideration of the public policy issues implicated by that order. The order clearly reflects a concern that long-term wholesale contracts entered into by PacifiCorp under a revenue credit approach can shift significant risks away from the Company – the only entity with the power to manage the risk – and to captive ratepayers. To avoid that result, wholesale contracts must cover fully-embedded cost of service or incorporate pricing mechanisms or other provisions to protect

retail ratepayers against market risks associated with serving the contracts. The challenged contracts do neither. PacifiCorp cannot now properly demand revenue credit treatment for its money-losing contracts. Rather, the consequences of the risks against which the Commission Order and task force recommendation were designed to protect ratepayers should be assigned, to a large degree, to the company.

C. Sound Public Policy Dictates that the Risks Inherent in PacifiCorp’s Deliberate Wholesale Ventures Should be Allocated, at Least in Large Part, to PacifiCorp.

Sound public policy requires that the risk inherent in the company’s wholesale choices and strategies should be placed, at least in significant part, on PacifiCorp - the only entity in a position to manage and mitigate the risks. The Commission was not asked to, and did not, approve the challenged wholesale contracts. Ratepayers were certainly in no position to protect themselves against the significant risks that the Company now claims it assumed on their behalf. The only entity in a position to manage the risks was the company itself.

It would be difficult to coin more concise statements of this sound public policy than those offered by the President and the Power Planning Regulatory and Agency Affairs Manager for the Company at a time it was requesting significant changes in the regulatory treatment of net power costs, and soon before it embarked on its aggressive wholesale ventures:

- “The Company believes in placing the risk of management practices on those that make the business decisions – management – not customers.” [Prefiled Direct Testimony of Verl R. Topham; UPSC Docket No. 90-035-06; UP&L Exhibit 7.3R, page 13]
- “The use of a reasonable estimate of net power costs ... places the risks and responsibility of managing energy costs, over which the customer has no control, on

the Company.” [Prefiled Direct Testimony of Gregory N. Duvall, UPSC Docket No. 90-035-06; UP&L Exhibit 7.3R, pages 5-6]]

The Commission has also articulated the same public policy as to the proper allocation of risks associated with net power costs:

- “If the risks can be effectively managed by the Company then there is a strong argument for the Company accepting such risks.” [UPSC Memorandum, January 25, 1993; UAE/Nucor Exhibit 1.2, page 2]

PacifiCorp now goes to great lengths to distance itself from the sound public policy statements articulated by its officers. PacifiCorp thus creates and attempts to strike down a strawman by arguing that the cited comments were offered primarily in the context of elimination of the energy balancing account. PacifiCorp’s argument entirely misses the point. What cannot reasonably be disputed is that PacifiCorp alone made the decision to embark on a new, aggressive wholesale market strategy and only PacifiCorp was in a position to manage or mitigate the inherent risks. PacifiCorp cannot now be heard to insist that it should be fully shielded from the effects of its own deliberate strategies and choices.

All of the parties other than PacifiCorp implicitly concede that ratepayers will bear a significant portion of the consequences of the wholesale strategies and decisions of PacifiCorp management. Only PacifiCorp refuses to share in the consequences of its wholesale ventures; PacifiCorp vigorously defends its actions and accepts absolutely no responsibility for its wholesale losses.

Dr. Anderson’s approach assigns to PacifiCorp only the cost consequences of six particularly troublesome wholesale contracts. Under those contracts, entered into between 1996 and 1998, the company obligated itself to sell 1.9 million megawatt hours during the test period at an average price

of \$18.98 per MWh [UAE/Nucor Exhibit 1.13]. The cost to serve those six contracts with market purchases was \$108.89 per MWh, using PacifiCorp's proposed short-term purchase prices, or \$58.27 per MWh using actual test-period purchased power costs [UAE/Nucor Exhibit 1R.1]. Dr. Anderson's approach assigns to PacifiCorp only about 45% of the losses incurred on ten wholesale contracts; ratepayers would pay the remaining 55% of the test year losses associated with these ten contracts, as well as all losses on other contracts not included in his analysis. [UAE/Nucor Exhibit 1, page 29 line 10 – page 30 line 2 (R. Anderson)].

Rebecca Wilson of the Division of Public Utilities utilized a similar approach. She selected 14 long-term contracts that are at least half-way through their terms with prices below embedded costs. Ms. Wilson assigned to PacifiCorp only the difference between actual revenues and fully-embedded costs. Under her approach, ratepayers would bear approximately 59% of the increase in net power costs from the last rate case. [DPU Exhibit 8SR, page 2 line 20 – page 3 line 3 (R. Wilson)].

CCS witness Anthony Yankel followed an approach similar to Ms. Wilson's, but he proposed a different floor price and he imputed revenue to different contracts. Mr. Yankel's approach result in a slightly larger percentage of the overall wholesale losses being allocated to PacifiCorp, but it still leaves a significant percentage to be paid by retail ratepayers. [CCS Exhibit 8R, page 3 line 3 – page 11 line 5 (A. Yankel)].

Had PacifiCorp elected to reserve its owned generation and just 50% of its long-term purchased power for its retail ratepayers, PacifiCorp could have earned over \$1 billion in sales of excess generation during the test period (using PacifiCorp's "annualized" purchase and sale prices) [UAE/Nucor Exhibit 1, page 32 lines 9 – 21 (R. Anderson)]. Sadly, this could have been a time of great pride and achievement for PacifiCorp, and of reduced prices for ratepayers. Unfortunately,

PacifiCorp sold the retail ratepayers' birthright to stoke the ambition of its management. Instead of arguing over how to divide up Utah's share of hundreds of millions of dollars in wholesale profits, we are left to argue how to divide up hundreds of millions of dollars in wholesale losses.

PacifiCorp claims that its shareholders have already suffered consequences from the Company's wholesale ventures as a result of regulatory lag. Its argument, however, is unavailing. PacifiCorp can file a rate case at any time that it believes it is under-earning. PacifiCorp and its customers are always either the beneficiaries or the victims of regulatory lag. Regulatory lag can work for or against a utility, and that risk is inherent in all regulated Utah utilities. Shareholders should also bear some of the forward-looking consequences of PacifiCorp's deliberate wholesale ventures.

D. The Benefits Alleged by PacifiCorp of its Wholesale Strategy are Illusory and, in Any Event, Do Not Justify Allocation of All of the Wholesale Risks and Losses to Ratepayers.

PacifiCorp argues that its wholesale strategies have benefited ratepayers over time and that the Commission should thus ignore the extreme consequences of its failed wholesale strategy during the test period. This argument should be rejected for a number of reasons. First, as was clearly established during the hearing, PacifiCorp's \$1.3 billion calculation of claimed "benefits" is irrelevant and meaningless. The company's calculations are compared to a base case that would have admittedly been imprudent. [Tr., page 292 line 16 - page 296, line 10 (S. Walton)]. Second, and more importantly, this Commission has clearly rejected similar arguments by PacifiCorp in the recent past:

"We reject the Company's argument that we should not judge specific contracts but only look at the overall impact of wholesale sales on retail customers." Report and Order, UPSC Docket 99-035-10, May 24, 2000, at 25].

In any event, prior prudent conduct by a utility is expected – even demanded – and does not justify the allocation to ratepayers of costs that were not properly incurred to serve them in the current test year. Prudence is the baseline expectation. Even if the company’s historical wholesale activities have created some level of benefits for retail ratepayers over time – as they should have - these benefits of past prudent conduct are not available to offset losses stemming from risky or imprudent behavior during the test year.

E. The Company cannot Properly Blame the Commission for its Wholesale Market Losses Because of the Centralia Order.

The company’s effort to shift blame to the Commission for the company’s wholesale losses as a result of the Centralia approval is unpersuasive. The Company cannot absolve itself of responsibility for resource acquisitions, resource balancing and wholesale strategies through a Commission approval of a sale of facilities. If that were the intended consequence of such an approval, the Commission would need to undertake a much more invasive investigation of any such proposal – rising to the level of a due diligence review. It was the company’s proposal, not the Commission’s, to sell Centralia. The Commission gave the company approval to proceed with the requested sale, but it clearly did not put itself into the shoes of company officers in an effort to second-guess management. In any event, the Commission was not asked to, and did not, approve the Company’s plans for replacing the power and energy lost as a result of the Centralia sale.

Finally, and equally important, the adverse consequences of the Centralia sale would not have been so significant if PacifiCorp had not put itself at such risk through its foray into wholesale electric markets. As demonstrated by Dr. Anderson, even in light of the Centralia sale, PacifiCorp had adequate owned or long-term purchased resources to meet all of its retail loads for all but 7.9% of the hours during the test year. [UAE/Nucor Exhibit 1.11] The company spent approximately \$1.8

billion for short-term firm power during the test period that was not needed to serve its retail load. [UAE/Nucor Exhibit 1, page 21 lines 1 – 7 (R. Anderson)].

II. PACIFICORP’S ACTUAL TEST PERIOD SHORT TERM VALUES SHOULD BE USED FOR PURPOSES OF SETTING RATES IN THIS CASE.

The UAE supports the proposals of DPU/CCS witness Falkenberg and UIEC witness Chalfant to reject the company’s proposed adjusted or “annualized” short-term market prices and to use actual test year values, consistent with the Commission’s order in the last rate case. The UAE also supports Mr. Falkenberg’s alternative proposal that, if actual values are rejected in favor of the Company’s adjusted numbers, the known and measurable changes associated with the wholesale sales contracts that terminate before or during the rate-effective period should also be considered.

The Company’s actual net power costs for the test period total approximately \$620 million. This figure is dramatically higher than the \$415 million in net power costs from the last rate case. PacifiCorp seeks to inflate this figure even higher, to \$806 million,¹ by adjusting (PacifiCorp claims it is “annualizing”) the short term purchase values to reflect PacifiCorp’s conjecture as to future market prices. PacifiCorp’s adjusted and inflated net power cost values are inappropriate and should not be used for purposes of setting Utah rates.

A. PacifiCorp’s “Annualization” Adjustment for Short-Term Market Prices Violates the Commission’s Annualization Rules.

PacifiCorp attempts to disguise its non-firm market price projection by calling it “annualization.” PacifiCorp conveniently rejects, as a post-period adjustment, Mr. Falkenberg’s alternative proposal to also consider the effects of known and measurable changes stemming from expiring wholesale contracts. The Company then attempts to defend its market price projections, despite the radical decrease in market prices at the time of the hearing, by citing to claimed post-test-

¹ In contrast, PacifiCorp’s proposed net power costs in Oregon are only about \$615 million. [DPU Exhibit 8SR.12]

period wholesale commitments that it allegedly has entered into. PacifiCorp's extreme and self-serving resort to projections and out-of-period adjustments should be firmly rejected.

PacifiCorp's so-called "annualization" adjustments clearly do not comply with the Commission's Annualization Rule. PacifiCorp's after-the-fact attempt to comply with Rule R746-407-3 is unavailing for a number of independent reasons.

First, the annualization rule applies to "an item of test-year data." [R746-407-3] No such "item" is involved. Rather, PacifiCorp is projecting short term market prices over an entire year.

Second, the alleged "change" in short-term market prices is not and cannot be "known to occur at a specific moment or moments in time" as required by Rule R746-407-3(D). To the contrary, non-firm market prices change constantly and are not capable of identification to a specific point or points in time as required by the rule.

Third, the company's projected market prices fail the requirement that the "effects of the change must be measurable." [R746-407-3 (E)] The effects of projected market price changes are not "measurable." Being capable of "measurement" is quite different than being capable of projection. Any values can be projected. If projections were sufficient to satisfy the annualization rule, the historic test year convention would be wholly subsumed by projections. PacifiCorp has not even attempted to offer a "measurement" of future market prices. Rather, it offers vague claims about market prices and then attempts to bolster its failed projections (which were already erroneous by the time of the hearing) by offering unsupported and non-normalized values for post-test-period short term firm commitments.

Fourth, the alleged "change" in market prices had not occurred "on or before the effective date of a final Commission order setting rates." [R746-407-3 (F)] By definition, changes in market prices for the rate-effective period have not yet occurred.

Finally, the change must be “expected to be ongoing after final rates become effective.” [R746-407-3 (G)] While market prices will surely change during the rate effective period, any specific change (tied to a specific moment or contract) will not necessarily continue.

For all of these reasons, PacifiCorp’s projected or “annualized” short-term market prices should be rejected. Actual test year data should be utilized.

B. Post-Test-Period Purchase Commitments Cannot Properly be Relied Upon to Support PacifiCorp’s Projected Market Prices.

PacifiCorp attempts to bolster its failed market price projections by littering the record with allegations of post-test-period wholesale purchase commitments. These future power costs may not properly be considered for any purpose in this case. They are wholly unsupported and have not been subjected to analysis or consideration by any party. Moreover, the values have not been normalized. In all events, they stem from post-test-period contracts.

The historical test year concept is based on carefully-reasoned Commission determinations that an historical test year without out-of-period adjustments is as likely or more likely to produce a reasonable estimate of costs and revenues for the rate-effective period as a forecasted test year or an historical test year incorporating known and measurable changes. Perhaps a reasonable argument could be made for abandoning Utah’s historic approach in favor of a projected test year or known and measurable changes. However, PacifiCorp has not advanced such an argument in this case and it has not presented the data that would need to be analyzed and adjusted if any such change in approach were to be considered by the Commission. Rather, PacifiCorp asks the Commission to use an historical test year without considering known and measurable changes in the rate effective period (such as the effects of terminating wholesale sales contracts, decreased market prices, the lower long-

term Trans-Alta contract prices, etc.), but with the inclusion of PacifiCorp's projection as to one significant known, but unmeasurable, change – the volatility of the short term wholesale market.

Unless and until the Commission deliberately chooses to abandon its historic test year approach, the Commission should reject the company's attempt to rely on post-test-period wholesale market prices and contracts and should utilize actual test period values. If the Commission nevertheless elects to accept the Company's known but unmeasurable wholesale market adjustment, it should also accept Mr. Falkenberg's alternative adjustment for known and measurable changes relating to terminating wholesale contracts.

III. PACIFICORP'S CLAIMED FINANCIAL CRISIS DOES NOT JUSTIFY HIGHER RATES.

Ultimately, PacifiCorp resorts to a claimed financial crisis in appealing for higher rates. The UAE submits that PacifiCorp's alleged financial crisis is unsubstantiated, and that it does not outweigh the financial impact of increased rates on thousands of Utah customers.

PacifiCorp's testimony as to alleged financial hardship has not been substantiated. Rather than present an accurate financial picture, the Company continues to offer a contrived analysis that assumes phantom debt and other adjustments designed to make the financial ratios look worse than they are. [Tr., page 692 line 7 – page 697 line 22 (J. Johnson); page 711 line 12 – page 712 line 4 (M. Gorman)] Moreover, the company offers only a company-wide analysis, attempting to place the burden of maintaining the company's desired financial strength on the State of Utah.

Utah cannot protect PacifiCorp's financial health. It can, and should, focus on Utah's reasonable contribution to PacifiCorp's financial health. As was demonstrated by UIEC witness Gorman, Utah is providing its reasonable share of contribution to the company. [Tr., page 710 lines 7 – 15 (M. Gorman)]. Utah has already bailed PacifiCorp out of its claimed interim financial crisis;

other states did not. Utah should not be expected to continue to shoulder more than its fair share of the burden going forward. Moreover, the revenue requirement numbers proposed by the Division and other parties are sufficient to maintain the financial health of the utility. [Tr., page 691 lines 2 – 9 (J. Johnson); page 709 lines 4-25 (M. Gorman)]. They also effect a reasonable balance between concern over the utility’s financial health and the need to hold management properly accountable for its actions and inactions. [Tr., page 700 line 19 – page 702 line 22 (J. Johnson)].

The reasonable level of Utah’s contribution to the financial health of the Company cannot be divorced from reasonable levels of costs and revenues associated with serving Utah retail load. PacifiCorp seems to believe that it has a right to recover all of its costs absent a specific finding of imprudence as to specific costs. PacifiCorp also seems to believe that it is entitled to earn a certain level of profits from Utah ratepayers regardless of consequences or losses resulting from management actions. In fact, PacifiCorp has a constitutional right only to earn “a fair return” on the value of its investments “employ[ed] for public convenience” for Utah customers, assuming “efficient and economical management” conditions. Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm’n of W. Va. 262 U.S. 679, 690, 693 (1923). PacifiCorp is entitled to recover from Utah only those costs and investments prudently utilized for the public convenience of Utah retail ratepayers. The Commission obviously can, and routinely must, allocate costs and revenues among states and between different sets of customers – including retail and wholesale customers. The only Constitutional prohibition is against the setting of rates at a “confiscatory level” Duquesne Light Co. v. Barasch, 488 U.S. 299, 310 (1989).

Any alleged financial crisis of PacifiCorp is the direct result of the Company’s management directives and decisions over the past several years, including the decision to enter into an array of low-cost, below-market sales for resale without escalation clauses or other protections.

The UAE recognizes the complexity of balancing competing interests in this case. The UAE submits, however, that PacifiCorp's financial needs must also be balanced against the equally-important financial needs of PacifiCorp's Utah customers. Those customers need and deserve to pay only prices that are just and reasonable. The UAE also submits that the Commission should soundly reject the company's implicit "threats" that infrastructure maintenance, construction and improvements will not be performed unless an acceptable rate increase is granted.² PacifiCorp is the certified electric utility provider for most of the State of Utah and it has not asked to abandon its certificate. It should be made very clear to PacifiCorp that it must make all appropriate investments and improvements to ensure reliable, safe and reasonably priced electric services for Utah ratepayers.

IV. THE COMMISSION SHOULD DIRECT THE COMPANY TO PURSUE COST-EFFECTIVE DSM PROGRAMS.

UAE submits that the Commission should encourage an active and aggressive DSM program by PacifiCorp. UAE, like several other parties, opposed what was erroneously perceived to be a proposal of the Utah Energy Office to add \$35 million to PacifiCorp's Utah revenue requirement in this case for purposes of funding DSM programs.

During the hearings, the Utah Energy Office clarified that it is not asking the Commission to add any amount to the Utah revenue requirement determined in this case, or to order any particular action on the part of PacifiCorp with respect to DSM. Rather, the Utah Energy Office clarified that it wants the Commission to encourage PacifiCorp to explore all cost-effective DSM opportunities, to act quickly in considering DSM tariff filings, and to remind PacifiCorp that the prudence of its

² The Company's implicit threats were clearly reflected in the testimony of several public witnesses who appeared as witnesses for PacifiCorp to plead for higher rates. The unsworn testimony offered by these public witnesses, blissfully unburdened by the weight of views or concerns of any party other than the Company, added nothing of value to the record.

actions will be evaluated in the context of both completed and missed DSM opportunities. [Tr., page 591 line 21 – page 592 line 12 (J. Burks); page 603 lines 7-16 (D. Nichols)].

The UAE concurs with the Utah Energy Office in this regard. PacifiCorp should be expected to explore all cost-effective DSM opportunities and to bring before the Commission those programs that should be considered for adoption in Utah.

CONCLUSION

The proposal of Dr. Richard Anderson to allocate risks and losses of the company's wholesale marketing activities between shareholders and ratepayers is fair and reasonable and should be adopted by the Commission. That adjustment removes \$64,208,149 in long-term wholesale contract losses from the Utah revenue requirement (\$28,08,879 from actual test year values).

PacifiCorp's proposed adjustments to actual short term prices should be rejected in favor of actual test year values. PacifiCorp's proposed adjustment clearly violates the Commission's annualization rules. The company's attempt to incorporate its future market price projections, while rejecting other known and measurable changes, also violates the Commission's test year rules. Rejection of PacifiCorp's adjustment reduces PacifiCorp's Utah revenue requirement by \$46,870,172.

PacifiCorp's request for a \$118 million Utah revenue requirement increase should be rejected. The requested revenue requirement should be reduced by \$75 million for the combined effect of the adjustments supported by the UAE, along with any other adjustments supported by other parties that the Commission determines to be appropriate.

DATED this ____ day of _____, 2001.

HATCH, JAMES & DODGE

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this ____ day of _____, 2001, to the following:

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