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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter Of The Application of PacifiCorp and Scottish Power plc for an Order Approving the Issuance of PacifiCorp Common Stock	))))	Docket No. 98-2035-004

UTAH DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

DIRECT TESTIMONY OF DAVID B. WINDER

JULY 2, 1999

Q. Please state your name and business address.

A. My name is David B. Winder and my business address is 324 S. State Street, Fifth Floor, Salt Lake City, UT 84111.

Q. By whom are you employed and in what capacity?

A. I am the Executive Director of Department of Community and Economic Development of the State of Utah.

Q. What are the responsibilities of your Department?

A. As pertains to this proceeding, the Department is responsible for community and economic development within the State and for performing economic development planning for the State. The Department's Division of Business and Economic Development is the industrial promotion authority for the State and is responsible to promote and encourage the economic, commercial, financial, industrial, agricultural, and civic welfare of the State and is responsible to do all lawful acts to create, develop, attract, and retain business, industry, and commerce within the State of Utah.

Q. Why are you providing testimony in this matter?

A. One of my statutory duties is to become generally informed of significant proceedings before the Public Service Commission and to monitor and study the potential economic development impact of these proceedings. The statute also authorizes me to appear in any proceeding before the Public Service Commission to testify, advise, or present argument regarding the economic development impact of any matter that is the subject of

the proceeding. As our Department has monitored these proceedings, a couple of concerns have arisen about which we believe the Public Service Commission should be advised.

Q. Please summarize your education and business experience.

A. I am a Certified Public Accountant and was a Managing Partner with KPMG Peat Marwick for 34 years in the Seattle, Washington DC and Salt Lake City offices. I have been a business and tax advisor to many businesses and industries. I graduated with highest honors from Stanford University. I am currently a member of the Governor's Cabinet, of the Executive Committee of the Utah Partnership for Business and Education, of the Utah Sports Authority, of the Sundance Institute Advisory Board, of the Executive Committee of the Salt Lake Convention & Visitors Bureau and of various other boards. I am Committee Chair of the Workforce Services Council, Chairman of the Utah Housing Finance Agency, Chairman of the Board of the Utah Symphony and an ex-officio member of the Executive Committee of the Economic Development Corporation of Utah.

Q. What are the concerns you spoke of?

A. Our two main concerns are that after the merger PacifiCorp must have a strong Utah presence and there must be fairness in the allocation of community and economic development funds.

Q. Would you explain what you mean by a strong Utah presence?

A. At a minimum, the Utah division of PacifiCorp should be presided over by an executive with extensive Utah background who resides in Utah and who has authority to approve corporate involvement in economic development and corporate citizenship activities.

With respect to all matters concerning customer relations, community and governmental relations in Utah, and corporate citizenship, that executive should report directly to the top officer for all of Scottish Power's operations in the United States; that is, the position presently expected to be occupied by Alan Richardson. A strong Utah presence also includes a commitment to promote economic development in Utah, to support Utah industries and businesses, location of personnel and such other issues of local control as are cited in the Utah Public Service Commission's Order of September 28, 1988 regarding the Utah Power & Light Company merger ("the 1988 Order").

Q. How important is it to have a strong Utah presence?

A. We think it's critical and the Public Service Commission has previously recognized the importance of local control. In its' order of November 30, 1987 in the Utah Power merger, the Commission identified "the loss of 'Utah control' of its major electric utility" as a "key potential detriment" that the parties could raise as an issue. In the 1988 Order at page 109 the Commission recognized the importance of the local control issues stating that they were "central, not peripheral" to their determination of the public interest and that those concerns were one of the primary reasons why the Commission's approval of the Utah Power & Light merger was based on conditions.

Q. Have the Commission's requirements regarding those local control issues been adequately fulfilled by PacifiCorp?

A. As more fully explained in the testimony of Frank Davis, many of those conditions have not been fulfilled and there seems to be a definite shift away from Utah. There is no longer a president of the Utah division and accounting, human resource and some other

functions have been move to Portland. The proportionality between the Utah and Pacific Division that was required by the 1988 Order has not been maintained.

Q. Are you suggesting that those conditions should be fulfilled?

A. Well, perhaps not all of them but it seems that whoever takes control of PacifiCorp, takes subject to those unfulfilled conditions. The conditions imposed on PacifiCorp by the Commission should be reviewed and any unfulfilled conditions that still make sense should be renewed as conditions of approval of the current application. We are particularly interested in the conditions referenced in Section III G, Section L paragraph 8b subparagraphs 19 through 24, Section L paragraph 14 (except a-c) and Section L paragraph 15 of the Commission's 1988 Order. A copy of those sections is attached as Exhibit 1.

Q. Does it appear that Scottish Power can fulfill those conditions?

A. I am encouraged by Mr. Richardson's direct testimony wherein he indicates that at PacifiCorp, appropriate decision making authority will be delegated to managerial staff so that decisions can be made locally and as close to the customer as possible and his commitments regarding corporate citizenship and commitment to the communities in which they work, but I still believe the conditions spoken of should be required.

Q. Do you have any other concerns regarding local presence?

A. Yes, I believe that PacifiCorp should keep its main offices within its service area and it seems that, considering PacifiCorp's recent sale of assets, Utah becomes all the more centrally located in that service area and should be strongly considered for increased corporate presence in any future expansion or reorganization. I recommend that there be

a prohibition on moving the corporate offices outside of the service area. PacifiCorp's economic development staff members that are located in Utah should be maintained but should report directly to the Utah executive and not to Portland or elsewhere, as we understand is presently the case.

Q. What are your concerns regarding fairness in distribution of community and economic development funds?

A. I was pleased to note that on pages 8 and 9 of Mr. Richardson's Supplemental Testimony that Scottish Power will contribute $5,000,000 to the PacifiCorp Foundation, will maintain the existing level of PacifiCorp's other community related contributions, will maintain regional advisory boards, and will commit an additional 1.5 million per year to programs that encourage economic well-being of communities including programs that benefit low income customers. However, those funds may not be fairly distributed among the jurisdictions served by PacifiCorp. We have heard reports that Foundation monies spent in Portland may be many times greater than the funds spent in Utah. We have requested information from PacifiCorp to verify whether that is true but have not yet received a complete response.

Q. Do you have a recommendation?

A. Yes. At a minimum Scottish Power should commit to a more equitable distribution of those funds should the application be approved. That ought also to be a condition of the approval. Perhaps Scottish Power would be willing to create a Utah Foundation for the benefit of Utah communities and causes and fund that foundation with an equitably proportionate share of PacifiCorp's foundation contributions. We would like documented

binding commitments that Scottish Power's resources and attentions given to Utah in the following areas should not be left less than proportional to that given to the most favored of any other area or jurisdiction which Scottish Power operates:

- Foundation gifts
- Training
- Representation on boards and committees
- Economic Development
- Reporting lines of executives

Q. Do you have any other concerns?

A. Yes. As I understand the transaction, a Nevada partnership will be created and will hold all of the common stock of PacifiCorp and as partial consideration for the PacifiCorp stock will transfer the stock of its corporate partners to Scottish Powers' holding company. It would seem that the value of the stock received by the partnership would be equal in value to the stock the partnership transfers to the holding company, yet the merger agreement requires the partnership to also give the holding company a loan note in an amount to be agreed upon by the holding company and the partnership. That loan note highlights another of our concerns and that is that the merger should not be approved unless there are adequate assurances that the assets of PacifiCorp will not be allowed to be transferred to other companies held by Scottish Power if such transfer would be detrimental to PacifiCorp. More specifically such transfers should not be allowed absent assurance that the plant, equipment and infrastructure of the Utah Division of PacifiCorp is adequately repaired and maintained and that adequate provision has been made for

replacement of worn out equipment and facilities in the future and for appropriate upgrades.

Any transfer of money or other assets from PacifiCorp to the proposed holding company or any affiliates should be monitored, whether the transfer be in the form of an allocation of central office expense, a purchase from an affiliate, a loan, or whatever. Most of those transfers would seem to be adequately monitored as part of a routine rate case, but potentially larger transfers, such as the loan note specified in the application for merger, should be subject to the advance approval of the Commission and should only be approved if the Commission is convinced that adequate provision has been made for maintenance and replacement of Utah plant, equipment and infrastructure and that the transfer would not otherwise be detrimental to PacifiCorp. Additionally, approval of the application for merger without knowing the amount of the loan note would seem to be similar to signing a blank check. If the amount is not specified prior to approval of the application, then there should be a requirement that the amount, when set, is subject to the approval of the Commission.

If maintenance and repair or investment in new facilities is found to be lacking at the time any required approval is requested, approval should be conditioned upon establishment and funding of an escrow account to secure the funds necessary for adequate maintenance, repair, and replacement.

Q. Do you have any other recommendations.

A. Yes. If the application is approved, a benchmark should be established for all of the conditions that are part of the final order, where a benchmark would seem appropriate,

and reasonable reporting regarding those benchmarks should be required so that any gains or losses could easily be measured.

Q. Do you oppose the merger?

A. No, but any loss of local control, of Utah jobs, or of well-maintained infrastructure and equipment would be a key detriment that must be considered in determining whether there is a net positive benefit to the public in this State. If the conditions mentioned above are required for merger approval, they would seem to at least balance the detriments listed and perhaps even result in a net positive benefit for the State regarding the issues addressed in my testimony.

Q. Does this conclude you testimony?

A. Yes.

EXHIBIT 1

TESTIMONY OF DAVID B. WINDER

supply and the consequent need to model the hypothetical behavior of entities which will no longer exist, Applicants assert that sufficient information will be maintained to allocate actual revenues and costs between the Pacific and Utah Divisions. This approach requires information on all transactions which occur between divisions. The Applicants provide conflicting testimony regarding the practicality of this approach. On the one hand, Applicants stated that all inter-divisional power supply transactions will be maintained in each division's dispatch logs. On the other hand, Applicants also stated that an analysis is difficult because of the extremely large number of such transactions. Moreover, the value of a given power supply transaction between divisions is dependent upon all transactions undertaken by the Merged Company. No testimony was presented which indicates how the Merged Company would price inter-divisional power transfers.

14. On the basis of the foregoing, we find that allocation issues need not be resolved prior to approval of the merger. We will require Applicants to convene multi-jurisdictional allocation meetings and to maintain records and data necessary to support any reasonable allocation method. We will require Applicants to file the financial information and cost-of-service studies necessary to determine appropriate rate levels for Utah Power as an independent entity for 1988 based on actual data. We will also require the Applicants to file a definitive allocation method and to file all the financial information and cost of service studies necessary to determine expected cost-based rate levels for the Utah Division for the years 1989 through 1993. We urge the Applicants to seek an allocation method which does not involve inter-divisional allocation but allocates system revenues and costs directly to state jurisdictions and FERC. Applicants should be guided by three general principles: First, the proposed allocation methods should avoid total reliance on stand-alone modeling. Second, the proposed methods should embody a consistent and equitable method of allocating the benefits derived from the uniquely valuable assets of each division, in particular, the strategically located Utah Power transmission system and the low-cost power production of Pacific Power. Third, an allocation model should be verifiable against actual data.

15. In summary, we find that net positive benefits will result from the merger and that a reasonable allocation plan can be worked out after the merger to assure that Utah ratepayers receive their appropriate share of these benefits.

F. Regulatory Burdens Associated with the Merger

The Applicants asserted that despite unresolved allocation issues, the day-to-day regulation of the Merged Company would not be significantly affected by the merger, and that merger-related benefits significantly outweigh any possible impairment of regulation. The Division argued that the Commission's regulatory burdens will not be affected by the merger except to the extent that the merger changes or complicates existing regulatory duties, principally in the areas of inter-divisional allocations and affiliated interests. The Division maintained that the merger will increase the regulatory burden at least initially, but that such an increase is no basis for denying merger benefits to Utah Power's customers.

The Committee argued that the proposed divisional structure of the Merged Company and the inter-divisional allocation approaches briefly pursued on the record would impair effective regulation. Nucor's position was similar. Nucor asserted that the Applicants' proposed divisional setup and allocation scheme will so burden rate cases as to compromise the Utah Commission's future rate-making ability. AMAX elicited evidence through cross-examination that regulatory burdens would be substantially increased, becoming more difficult but not impossible. Geneva argued that the regulatory burden will be unmanageable.

2. The evidence indicates that the regulatory burden will be increased as a consequence of this merger. While the direction is clear, the magnitude and scope of the increase is not. The relevant issue is whether the additional regulatory burdens imposed by the merger would substantially impair regulation or otherwise be contrary to the public interest. We find that the increased regulatory burdens will not be of this magnitude.

G. Local Control Issues

[5] 1. Applicants testified that they chose the divisional organization form in part because it would maintain local control and autonomy while permitting coordination and cooperation between the divisions. The record shows that the Utah Power Division will maintain its headquarters in Salt Lake City, Utah. Applicants assert that, while it is clear there will be some loss of local autonomy, it is unlikely that the day-to-day management and operation of Utah Power will be affected in any significant way by the merger. The Merged Company will derive about 70 percent of its revenues from electric operations and approximately 40 percent of those revenues will come from the Utah Power Division. The Merged Company's Board of Directors must contain members representing its constituencies and other areas of expertise in addition to its electric utility operations. The Merged Company will seek additional representation from Utah Power's service territory (initially Applicants plan for four of the Board members to represent Utah Power service territory) as vacancies occur on the Board. Utah will be the single largest jurisdiction served by the Merged Company.

2. Geneva asserted that the decision-making authority for the Utah Power Division on most important issues will rest with the Merged Company's Board. This suggests a potential loss of local control of Utah Power's transmission system, a loss, according to Geneva, of strategic significance. Major decisions, such as those concerning investment, dividend policy and financing, will be made by the Merged Company Board. Geneva is, therefore, concerned tha Utah Power will not be in a position to b as responsive to local concerns after th merger as before it. The UMWA also raise issues concerning the "home-court advan tage."

3. The Commission finds that the loss o local autonomy, given the circumstances o this merger as heretofore described, natu rally lead to loss of local control. We are concerned about this because of the importance of issues bearing on it, such as the extent of our regulatory jurisdiction, the treatment of the Utah Power transmission system, the Merged Company's goal of increasing off-system activities, the Energy Balancing Account, the local purchasing, employment and location of personnel and local community commitments. Additionally, we are concerned about the transfer of authority over investment, construction, financing, and dividend policy from a local electric utility to a much larger, diversified corporation. These and related issues are central, not peripheral to our determination of the public interest, and to an important extent are not resolved in this proceeding. We are cognizant of Applicants' assurances, but there is no denying that the proposed merger heightens the risk of loss of localized emphasis and to this extent at least, undermines the tendency on our part to accept without reservation forecasts of merger benefits for Utahns. This, of course, is one of the primary reasons why our approval of this merger must be conditional.

4. The Division testified about the effects on regulation of the potential affiliate relationships between Utah Power, as a division in the Merged Company, and that company's subsidiaries. Applicants have presented evidence in response regarding the policies and regulatory requirements that are currently imposed on PacifiCorp Maine in other jurisdictions as a result of affiliate relationships between its regulated and unregulated entities. According to Applicants, similar policies and regulatory requirements will continue to apply after the merger.

5. Applicants must provide adequate regulatory access to records and to the offi-

cials of all affiliated entities which may transact business with or have financial impact on either the Utah Power or the Pacific Power Divisions. The Merged Company must also implement adequate systems to support allocation or assignment of costs and revenues to the utility divisions, to maintain records necessary to document allocations and affiliate transactions, and to file any necessary reports with the Commission and Division necessary to permit regulatory oversight of affiliate transactions with the utility divisions. We therefore accept and will impose conditions to assure that affiliate transactions are not detrimental to utility ratepayers. We find that with the conditions imposed relating to regulatory jurisdiction, local control, and affiliate relationships the concerns expressed are not a significant deterrent to approval of the merger.

H. Effect of Merger on Retail Prices

1. Currently Pacific Power's retail rates are based upon expected normal conditions during a test period with imputed revenues and costs. Utah Power's current rates consist of general rates plus an Energy Balancing Account (EBA) collection rate. Revenues collected through the EBA are designed to reflect actual power costs.

General Rates

2. The last general rate case for Utah Power was in 1984 in Docket No. 84-035-01. Despite lower capital costs, lower federal income tax rates, and cutbacks in manpower and construction, general rates remain unchanged and their current cost basis is unknown to the Commission. Utah Power has asserted that despite cost reductions in the above areas, there are off-setting cost increases in other areas such that the outcome of a general rate proceeding is uncertain.

3. In 1987, Utah Power showed record profits of $139 million, resulting in large part from current cost reduction programs, including cost reductions of $31 million in 1987 alone. This improvement in company earnings is continuing. In the first quarter of 1988, Utah Power showed an increase of $13 million in earnings available for common stock as compared to the first quarter of 1987.

4. Applicant testified that in 1987, Utah Power earned a 13.5 percent return on equity in its Utah jurisdiction, less than seven percent in its Idaho jurisdiction, 10.5-11 percent in Wyoming, and more than 12 percent in its FERC jurisdiction. In 1987, Pacific Power earned a 12 percent return on equity in its Oregon jurisdiction, eight percent in Wyoming, 13 percent in Washington, eight percent in California and Montana, and zero percent in Idaho.

5. Applicants maintain that there are no further cost reductions expected absent a merger and are silent regarding the appropriate level of current rates. Geneva maintains that there is no reason to doubt that Utah Power's success in cutting costs and streamlining operations would continue absent the merger, so rate reductions absent the merger would not be unlikely.

6. The lack of any current revenue requirement or cost-of-service analysis for Utah Power as it is, unmerged, prevents a measurement of the cost reductions realized prior to the merger that should be distinguished from the short run post-merger cost reductions anticipated by the Merged Company.

[6] 7. Applicants presented evidence that, as a result of the substantial benefits of the merger projected over the first five years, it would be possible to reduce firm retail rates of Utah Power's regular firm customers by five to ten percent over the next four years. Applicants have guaranteed the following:

a. The Merged Company will file revised tariffs within 60 days of merger approval to reduce the general rates of Utah Power's regular firm customers by an initial two percent.

b. The initial two percent reduction will be spread evenly, on a percentage basis, among all Utah firm retail rate schedules.

c. The current EBA collection rate in Schedule 35 will be frozen at its existing level as of the date of this order.

d. At a minimum, an additional three percent reduction in the general rates of Utah Power's regular firm customers will occur at some time within four years following the merger — even if it is not cost-justified.

e. The spread of the additional three percent or more general rate reduction will be based on cost-of-service.

f. Within six weeks of the merger's consummation, Applicants will convene a meeting to discuss the issues involved in inter-divisional and inter-jurisdictional revenue and cost allocation. Representatives from FERC and from each of the seven states in which the Merged Company will operate as an electric utility will be invited.

8. The Division found that the total of a five percent reduction over four years following the merger was cost-justified even under the Division's worst case analysis, and, therefore, concluded that the minimum rate reduction guarantee of five percent was reasonable.

9. The Committee initially testified that its analysis and allocation of merger benefits did not justify on a cost-basis a five to ten percent rate decrease and therefore opposed the merger as put forth by the Applicants. However, the Applicants' projection of merger benefits, using the Committee's allocation approach, did support on a cost-basis a ten percent rate decrease. Therefore the Committee indicated it would not oppose the merger if, for ratepayers to receive their full share of Applicants' anticipated merger benefits, approval was conditioned upon a guaranteed ten percent rate reduction over four years.

The Applicants and the Division challenged the Committee for relying on the Applicants' benefit calculations to develop its rate decrease conditions when the Committee's own analysis did not justify the rate decreases promised by the Applicants. The Applicants and the Division also criticized the Committee's condition because it did not take into account the effect of factors outside of the control of the Applicants, i.e. "global factors" such as inflation, tax law changes, etc., which may affect the benefit calculations.

The Committee modified its position in its surrebuttal testimony stating it would not oppose the merger if approval was conditioned upon acceptance of the Applicants' guaranteed five percent rate reduction plus a guarantee from the Applicants, contingent upon "global factors," of an additional five percent rate reduction by 1992. The Committee argued that insofar as merger approval is based upon acceptance of the Applicants' projection of merger benefits, the burden of proof to provide those benefits to the ratepayer should lie with the Applicants, not regulators.

10. Geneva testified that the merger would result in little, if any, positive benefits and that the guaranteed rate reductions were, therefore, not cost-justified, but a "regulatory bribe." The industrial customers generally argued that such concessions were not an adequate substitute for the submission by Applicants of a definitive cost allocation method showing the impact of the merger on Utah Power customers prior to merger approval.

11. The record shows considerable disagreement as to the likely level of savings generated by the merger, and little evidence with respect to the total costs to be incurred by the Merged Company. Given this uncertainty and the lack of allocation information on the record, we find that it is reasonable to hold the Applicants to their minimum commitment of a five percent decrease in firm retail rates over the next four years. We find this rate reduction to be fair and reasonable and in the public interest. Applicants shall file a plan, within four months after the merger is consummated, describing how and when its total targeted price reductions shall be implemented. Applicants will file annual revenue requirement and cost-of-service studies, including cost-of-service analyses of interruptible service, within six months of the merger's consummation. We find that Applicants' plan to have the initial two percent reduction spread evenly is fair and reasonable and in

conditions, as stated in Section 8 below are appropriate, however, and establishes them as requisites of merger approval. In so doing, the Commission relies in part on Applicants' testimony that (1) the Merged Company will not finance its businesses from the proceeds of the issuance of Merged Company securities without providing prior notice to the Commission; (2) that ratepayers will not be harmed as the result of transactions of or with affiliates, and that Utah regulators will have access to employees and records of affiliates as necessary to verify this; (3) that the Commission will be provided information regarding plans for affiliates that deal with the electric divisions; and (4) that the Merged Company will comply with all valid rules and regulations of this Commission.

8. Of the conditions suggested, we agree generally with those the Division has proposed dealing with record keeping and reporting requirements, with some modifications. We note again, however, that these are minimum requirements imposed on the Merged Company and do not alleviate or abrogate any other condition imposed by law, rule or further order. Upon formal completion of the merger the Commission will convene a proceeding to establish the timetable, method and implementation of these, and potentially other, reports which must be made. In addition to the conditions dealing with record keeping and reporting requirements, we find the additional conditions set forth in (b) below, conditions proposed by various parties and as modified by the Commission, to be in the public interest and are imposed as conditions of the merger:

a. The Merged Company shall submit the necessary information/data to comply with the following reporting requirements:

General

1) FERC Form Annual Report: total company, Pacific Division, Utah Division and Utah jurisdiction.

2) Biannual reports documenting and summarizing realized merger-related benefits (i.e., cost savings and revenue increases) in the following areas:

(i) Administrative Savings

(ii) Manpower Efficiencies

(iii) Reduced Construction

(iv) Economic Development

(v) Production Cost Savings

(vi) Long-run Resource Acquisition Savings

(vii) Other

Financial Reports and Forecasts

3) Monthly regulatory financial and operating report: total company, Pacific Division, Utah Division and Utah jurisdiction.

4) Monthly financial summaries for the total company, Pacific Division and Utah Division.

5) Five-year financial plan and forecast of financial condition: filed annually for the total company, Pacific Division and Utah Division.

6) Annual and quarterly report to shareholders.

7) Security and Exchange Commission Reports 10-Q and 10-K.

Revenue Requirements/Cost-of-Service Filings

8) Monthly Energy Information Administration Form EIA-826, and operating revenue by rate schedule for the Pacific Division and the Utah Division.

9) Annual report of gross revenues for the total company, Pacific Division, and Utah Division.

10) Revenue requirement filing for the Merged Company and its divisions within six months of the consummation of the merger, including cost-of-service data necessary to determine the appropriate rate levels in Utah.

11) Annual revenue requirement filing for the Merged Company and its divisions containing sufficient cost-of-service data to determine appropriate rate levels in Utah.

Demand/Load Forecasts

12) Annual reporting of realized energy and summer and winter peak loads for the Merged Company total, for the Utah and Pacific divisions, and for the jurisdictions served by the Utah division.

13) Annual reporting of realized diversity benefits.

14) Annual reporting of 20 year, year by year forecasts of the information categories discussed in 12 and 13 above.

Resource Planning — Generation and Transmission

15) Annual reporting of merged system resource expansion plans based on then-current load forecasts including specific planned resource additions, their costs, and associated revenues if any, and a discussion of the reasons for their selection/inclusion in the plan.

16) Annual reporting of realized new generation and transmission additions to the merged system with discussion of variations of such additions from the then-current resource expansion plans.

17) Annual comparison of realized resource additions to the merged system and then-current resource expansion plans with what such additions and plans would probably have been in light of then-current conditions and expectations if the merger had not occurred and the companies continued on a stand-alone basis.

Production Cost Model — Reports/Filings

18) Annual reporting of merged system and divisional projected operating statistics and net production costs in at least the level of detail produced by the PP&L Production Cost Model based on then-current load forecasts and resource endowments.

19) Annual reporting of merged system and divisional realized operating statistics and net production costs in at least the level of detail produced by the PP&L Production Cost Model with discussion/explanation of deviation of realized values from then-current projections.

20) Annual filings of comparisons of realized and projected operation statistics and net production costs with what would have been optimal in light of the then-current conditions and expectations if the merger had not occurred and the companies continued on a stand-alone basis.

b. The Merged Company shall also comply with the following conditions:

General

1) The Merged Company shall agree that all employees, officers, directors, and agents will voluntarily testify before the Commission.

2) The Merged Company shall provide adequate regulatory access to records

and officials of all PacifiCorp entities. In addition, PacifiCorp shall pay for the expense incurred by Utah regulatory personnel in accessing corporate records and personnel located outside of the state of Utah.

Rates

3) The Merged Company shall file revised tariffs reducing firm retail rates of the Utah Division by two percent within 60 days of the merger. The initial two percent reduction in firm retail rates shall be spread evenly across customer classes.

4) The Merged Company shall file a plan with this Commission within four months of consummation of the merger setting forth its method for implementing the five to ten percent reduction in firm retail rates of the Utah Division.

5) The Merged Company shall file revised tariffs reducing firm retail rates of the Utah Division by at least five to ten percent within the next four years (including the two percent previously listed). The additional three percent to eight percent reduction will be spread across customer classes as determined by this Commission.

6) The Merged Company shall certify that firm retail rates will never be raised as a result of the merger.

Allocation

7) The Merged Company shall convene multi-jurisdictional meetings within six weeks of the merger to discuss allocation issues.

8) The Merged Company shall implement timekeeping and project management systems adequate to support the allocation of costs to the utility.

9) The Merged Company shall allocate initial power cost and revenue changes on an equitable basis that is consistent with principles currently utilized in allocating net power costs to the Utah Energy Balancing Account.

10) The Merged Company shall allocate other cost and revenue changes due to the merger using equitable allocation methods that embody the principle that incurred costs and revenues should follow or correspond to the cause of such costs and revenues.

11) The Merged Company shall agree that PacifiCorp shareholders shall assume allrisks that may result from less than full system cost recovery if interdivisional allocations methods differ among the Merged Company's various jurisdictions.

12) The Merged Company shall document and justify allocations to the Utah division in a manner basically consistent with the agreement between PacifiCorp and the Oregon Commission Staff.

Affiliated Interests[2]

13) The Commission will investigate and make appropriate orders, after hearing, regarding transactions between the electric utility divisions of PacifiCorp and their affiliates.

14) The Merged Company shall implement a standardized planning process, which includes prior notification to this Commission, for making decisions (1) to form an affiliate entity for the purpose of transacting business with the electric utility divisions of PacifiCorp, (2) to commence new business transactions between an existing affiliate and the electric utility divisions of PacifiCorp, (3) to dissolve an affiliate which has transacted any substantial business with

such divisions, (4) to enter into new business ventures or expand existing ones, or (5) to merge, combine, transfer stock or assets of any part or all of the Merged Company.

15) The Merged Company shall notify the Commission, and provide sufficient information and documentation to the Commission, prior to the implementation of plans (1) to form an affiliate entity for the purpose of transacting business with the electric utility divisions of PacifiCorp, (2) to commence new business transactions between an existing affiliate and the electric utility divisions of PacifiCorp, (3) to dissolve an affiliate which has transacted any substantial business with such divisions, (4) to enter into new business ventures or expand existing ones, or (5) to merge, combine, transfer stock or assets of any part or all of the Merged Company.

16) The Merged Company shall provide a copy of the affiliated interest report prepared for the Oregon Commission to the Utah Commission.

17) The Merged Company shall adopt a transfer pricing policy regarding the pricing of goods and services and the transfer of assets and submit an application for the Commission's review and approval of such pricing policy.

18) The Merged Company shall provide notification of all asset transfers to or from PacifiCorp, its affiliates, and the Utah Division in accordance with current PSC rules (see in particular PSC R750-4-1).

Procurement Policy

19) The Merged Company shall adopt and implement the procurement policies and procedures developed by UP&L, or as modified by PacifiCorp and approved by the Commission, for all procurement in the Utah division or associated with costs allocated to the Utah division. Where reasonable, the use of local businesses to supply goods and services is expected.

20) The Merged Company shall comply with the competitive bidding policy and purchasing requirements as established by this Commission.

Utility Restructuring

21) The Merged Company shall document and submit an application indicating the analysis performed to determine that divestiture of an integral utility function is a cost effective management decision and obtain approval of the Commission prior to any such action. Such an application should depict what job classifications are being eliminated or shifted to the Pacific Division. Further, it should indicate the number of employees affected by any restructuring.

22) PacifiCorp shall not enter into a new merger, change its corporate structure to form a holding company, or make any other major change in corporate structure without prior notice to this Commission.

Financial

23) For ratemaking purposes, the capital costs and structure of the PacifiCorp Corporation shall be adjusted to reasonable levels to assure that the cost of capital is appropriate for the utility operations.

24) PacifiCorp shall not finance its businesses from the proceeds of the issuance of Pacifi-Corp securities including common and preferred stock and debt, without providing prior notice to the Commission.

9. The Applicants and the Kennecott Industrial Customers filed a Stipulation which provided, in part, the conditions listed in Section II-A of this Order. The Commission finds these conditions reasonable, in the public interest, and to the extent they do not conflict with this Order, they are incorporated as conditions of the merger approval.

10. Geneva proposed four "fairness conditions" which they testified were necessary to ensure fair treatment of Utah ratepayers after the merger. Applicants have responded that all four conditions are unacceptable. These conditions express an intent (1) that division ratebases be merged expeditiously, (2) that the full benefit of the Utah Power transmission system should inure to Utah ratepayers, (3) that the premium paid for Utah Power shares or adverse impacts on bond ratings should not influence rate of return allowed, and (4) that the stand-alone case for Utah Power must reflect what it reasonably could have accomplished as a separate company. We find that to the extent not included in our specifically required conditions, it is not necessary to condition approval of the merger on them, though as a general expression of intent we are in agreement.

11. The Committee has proposed certain conditions imposing additional rate decreases, rate caps to insure rate stability, requiring reports to be made, requiring reimbursement of Committee travel expenses under certain circumstances, requiring Committee representation at inter-divisional and inter-jurisdictional meetings and dealing with application of the EBA to the Merged Company. Applicants have responded that to the extent these conditions go beyond those they have agreed to they are unacceptable. We note that Applicants have testified that rates will never be increased as a consequence of the merger, an important commitment with regard to rate stability and we have found that adherence to such commitment is a condition of our approval of the merger. We support Committee representation at the allocation meetings. We have found that the Merged Company should file EBA reports as Utah Power currently does, and that the requested filing of cost-of-service and revenue requirement information is reasonable.

As to the Merged Company paying the expenses of the Committee when, for its purposes the Committee must, as a result of the merger, travel out of state, we reserve the issue for determination on a case-by-case basis. We have previously stated our concerns with stand-alone modeling, either for rate-setting purposes or for determination of EBA costs and revenues. The Applicants and the Division have proposed that the Merged Company continue to calculate the Utah EBA on a stand-alone basis for an interim period. They have also agreed that merger benefits can flow through the EBA to the extent no double counting of benefits occurs in the EBA and in general rates, and that the merger and the subsequent accounting of the EBA does not affect the retroactive review ability of regulators in regard to EBA issues. Applicants have agreed to maintain an audit trail of interdivisional transactions that affect the EBA to ensure that the benefits of the merger can be identified and properly allocated. Applicants have agreed to this resolution of the EBA issue. Therefore, we find that many of the Committee's conditions have already been agreed to or imposed and additional conditions on this matter are not required.

12. The Commission's approval of the merger is based on our present understanding of the operation of the Merged Company in the future. Should the Federal Energy Regulatory Commission approve the merger, but attach conditions thereto which have not been heretofore agreed to by the Applicants in that proceeding and explained to this Commission on the record, we will have to reconsider our analysis and approval in light of those conditions.

13. We agree with the testimony of the Division and Applicants that the Utah Division ratepayers have an interest in the assets of the Utah Power & Light Company captive insurance companies. We find that this issue should be addressed in a general rate proceeding.

[8] 14. Both Applicants have made many public statements and their officers have testified in this record that the merger is in the best interest of shareholders, ratepayers and employees of both companies. Based on these assertions, the Commission has made findings and set conditions relative to ratepayers. It is also appropriate that conditions be imposed in the interest of employees (management, non-management, bargaining unit and non-bargaining unit personnel).

We find that the merger, which is in the public interest and a benefit to Utah, is made possible in part because of its employees. The lifeblood of all business and industry is the work force that dedicates its time and talent to providing the product and service to the public. It is appropriate therefore to add the following conditions relating to employees:

a) No employee shall lose his or her job as a result of the merger.

b) Work force reductions shall be a result of attrition.

c) Efforts shall be made to retain employees in their present positions or equivalent positions at equal level and equal pay.

d) Promotions shall occur with reasonable proportionality between the Utah and Pacific Divisions so that employees of both systems may equally have reasonable expectation of upward mobility.

e) Reductions in the total number of employees shall not impair quality of service, maintenance, and safety.

15) The Commission further expects the Merged Company to operate in such a way as to benefit the state of Utah, its citizens and its general economy. Specifically:

a) We expect the Merged Company to maintain the currently existing, proportionate levels of employment between the Utah Division and the Pacific Division. That is, it is required that as the transition of the merged entities occurs, neither the Utah Division nor the Pacific Division shall be assigned a greater number of utility, management or corporate functions, or employees, than currently exists in such Division vis a vis the other Division. It is intended by this expectation that after the anticipated merger of administrative and operational functions takes place, and subject to the expected reduction in work force via attrition, that the respective Divisions will find themselves at approximately the same level of functional importance in the total corporate structure as currently exists between the two.

b) Further, the Commission relies upon the testimony of President Bolander and President Davis with respect to the compassion and reasonableness that will be shown to employees as new assignments are made. We expect that if the transfer of a certain function out-of-state is required, that every effort will be made to insure alternate equivalent employment in-state for those employees who do not wish to relocate.

c) We further expect that the Merged Company will be reasonable in its relocation policies, i.e. assistance for home sales moving allowances, etc. for those employees who are forced to relocate.

d) Further, the Commission expects proportionate use of local businesses where appropriate and finds that Applicant's commitment to promote economic development in Utah includes the assumption that the Company will support the industries and businesses of this state.

e) Further, as testified to in the hearing the Commission expects support of the local community by the Merged Company and that the Company will be as good a corporate citizen under the merger as it has been in the past. Again, the Commission expects proportionate community-type responsiveness in the Utah areas as to those other areas in PacifiCorp.

f) Further, the Commission expects that Utah will be represented on the PacifiCorp board in rough percentages to the area of business which it provides to the overall company.

g) Finally, the Commission expects notification by the Company of any action which is contrary to these expectations prior, and with sufficient time for Com

mission action if necessary, to their implementation.

16. Based upon all of the foregoing Discussion and Findings, we find that the merger will result in substantial net positive benefits to the stockholders, ratepayers and employees of the newly merged system. Further, we find that we are capable of passing a reasonable share of such benefits to the state of Utah and, therefore, find that the merger is in the public interest and should be approved.

IV.

CONCLUSIONS OF LAW

Based upon the foregoing Discussion and Findings, the Commission makes the following conclusions of law:

1. All hearings held in this case were properly noticed and were conducted in accordance with the Commission's hearing procedures. All persons with a valid interest in the case, who desired to intervene, were allowed to do so. All parties were given adequate opportunity to conduct discovery, present evidence, cross examine evidence introduced by others and to make argument on relevant issues properly before the Commission.

2. Utah Power is an electrical corporation as defined in Utah Code Ann. § 54-2-1(10) (1953) and a public utility as defined in Utah Code Ann. § 54-2-1(20) (1981 Supp). The Commission has authority to regulate Utah Power in the State of Utah and to supervise all of the public utility business of Utah Power in the State of Utah pursuant to Utah Code Ann § 54-4-1 (1953).

3. In this proceeding Utah Power and PC/UP&L Merging Corporation have applied for an order granting Utah Power's certificates of public convenience and necessity to PC/UP&L Merging Corporation, among other things. Utah Code Ann. 54-4-25(3) (1981 Supp) provides that the Commission hold a hearing on a certificate application and authorizes the Commission to grant or deny certificates on such terms and conditions as in the Commission's judgment public convenience and necessity require. We conclude that it is in the public interest that the conditions imposed on approval of the merger are also conditions of the Commission's grant of transfer of the certificates of public convenience and necessity to the Merged Company.

4. As a result of the merger, the Merged Company will become an electrical corporation as defined in Utah Code Ann. § 54-2-1(10) (1953) and a public utility as defined in Utah Code Ann. 54-2-1(20) (1987 Supp). Therefore, the Commission will have authority to regulate the Merged Company in the State of Utah, and to supervise all of the public utility business of the Merged Company in the State of Utah pursuant to Utah Code Ann. § 54-4-1 (1953).

5. Pursuant to the many applicable provisions of Title 54, of the Utah Code, the Commission has full jurisdiction and authority to enter orders requiring the Merged Company to allocate its property, costs and revenues between its divisions in any way that will result in just and reasonable rates to the Utah ratepayers of the Merged Company, and to otherwise condition its approval of the merger such that the merger will be in the public interest. Pursuant to these same sections, among others, the Commission has full jurisdiction and authority to require the Merged Company to keep such records and accounts and to file such reports as the Commission may reasonably determine are necessary or helpful in its regulation of the Merged Company. Finally, pursuant to these same sections, among others, the Commission has full jurisdiction and authority to determine appropriate rates and charges.

6. The Commission concludes that all conditions voluntarily entered into on this record by the Applicants and accepted by the Commission are reasonable conditions of approval of transfer of the certificates. In addition, the contested and/or additional conditions imposed by the Commission are reasonable and in the public interest.

7. The Commission concludes on the basis of its Discussion and Findings set forth above that the proposed merger, subject to the conditions we herein impose, is in the public interest because the expected benefits of the merger to the Utah jurisdiction outweigh the costs and potential detriments associated with it. Accordingly, the merger should be approved and the accompanying authorizations should be granted.

V.

ORDER

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED THAT:

1. The Application of Utah Power & Light Company ("Utah Power") and PC/UP&L Merging Corp. (to be renamed PacifiCorp (the "Merged Company")) for an order authorizing the merger of Utah Power and PacifiCorp, a Maine corporation ("PacifiCorp Maine") into the Merged Company is granted and the merger as set forth in the Agreement and Plan of Reorganization and Merger dated August 12, 1987, among Utah Power, PacifiCorp Maine and the Merged Company ("Merger Agreement") is authorized and approved subject to those conditions stated herein.

2. Utah Power is authorized to transfer to the Merged Company, doing business as Utah Power & Light Company, and the Merged Company is authorized to receive from Utah Power and to utilize all certificates of convenience and necessity as conditioned herein issued to Utah Power by the Commission.

3. The Merged Company is authorized to issue not more than 128,000,000 shares of its $3.25 par value Common Stock, not more than 126,533 shares of its five percent Preferred Stock, not more than 754,802 shares of its Serial Preferred Stock and not more than 3,183,815 shares of its No Par Serial Preferred Stock upon the conversation of all outstanding shares of common and preferred stock of Utah Power and PacifiCorp Maine in accordance with terms of the Merger Agreement.

4. The Merged Company is authorized assume all debt obligations of PacifiC Maine and Utah Power outstanding as the merger and is authorized to contir or create liens in connection therewith.

5. The Merged Company, doing busin as Utah Power & Light Company, is thorized to adopt all tariff schedules a special service contracts of Utah Power file with the Commission and in effect of the merger for service within all terri ries served prior to the merger by Ut Power.

6. Upon the merger, the Merged Co pany shall succeed to all of the rights a responsibilities of Utah Power under t public utility laws of Utah and the orde and regulation of the Commission.

7. The Merged Company shall file vised tariffs within 60 days of the merg reducing Utah firm retail rates of the Ut Power Division by two percent (as adjust for EBA).

8. The Merged Company shall file a pl within four months following consumm tion of the merger describing how its to targeted five to ten percent retail rate r ductions over the next four years will l implemented.

9. The Merged Company shall file vised tariffs within four years of the merg reducing Utah firm retail rates of the Uta Power Division by five to ten percent (i cluding the two percent initial reduction

10. The Merged Company shall certi that Utah customer supported revenue r quirements of the Utah Power Division wi not ever be raised as a consequence of th merger.

11. The Merged Company shall initiat multi-jurisdictional meetings within si weeks of the merger to discuss and analyz interdivisional allocation issues. The Com mission will set allocation hearings as soo as possible.

12. The Merged Company shall file within six months of the consummation o the merger, merged system and divisiona revenue requirement and cost-of-servic

studies ne[redacted]ry to determine the appropriate rate levels in Utah.

13. The Merged Company shall make annual filings of sufficient merged system and divisional revenue requirement and cost-of-service studies to determine appropriate rate levels in Utah.

14. The Merged Company shall keep an adequate audit trail pending the determination by this Commission of an appropriate interdivisional allocation method to support implementation of any method we might reasonably adopt.

15. The Merged Company shall satisfy all requirements set forth in the Discussion and Findings, and the Conclusions of Law.

16. The Merged Company shall calculate the Utah EBA both on a stand-alone basis and on a merged basis for comparative purposes from the date of the merger until the Commission orders otherwise. The Merged Company shall keep records of inter-divisional transactions, off-system sales, purchases, and opportunities, clearly defined and accounted for in a manner that will provide an audit trail.

17. The Division shall file a proposed method of treating direct merger costs meeting the requirements of this Order within 30 days of issuance of the Order.

FOOTNOTES

[1]Present value of Applicants' projections, presented in the Table on page 88, discounted at the DPU's 9.2%.

[2]The purpose of these requirements is to assure, among other things, this Commission's ability to conduct regulatory analysis of conflicting demands on capital and credit which may or may not affect the financial viability of utility operations.

Pennsylvania Public Utility Commission et al.
v.
UGI Corporation

R-880953 et al.

Pennsylvania Public Utility Commission
September 29, 1988; entered September 30, 1988

OPINION and order conditionally accepting a stipulation of partial settlement of a proceeding to determine the purchased gas costs of a natural gas distribution company.

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1. AUTOMATIC ADJUSTMENT CLAUSES, § 28 — Purchased gas costs — Rate credit — Natural gas distribution company.

[PA.] No adjustment was made to a credit mechanism designed to reimburse firm sales customers of a natural gas distribution company for purchased gas demand costs incurred on behalf of other firm customers who had switched to transportation service; the commission concurred with a finding by an administrative law judge that a proposed credit adjustment should be considered together with other rate and revenue issues in the context of a base rate proceeding.
p. 128.

2. AUTOMATIC ADJUSTMENT CLAUSES, § 32 — Energy cost adjustment clauses — Procurement practices — Spot gas purchases — Natural gas distribution company.

[PA.] The commission, in a purchased gas cost proceeding, upheld the decision of an administrative law judge to permit a natural gas distribution company to continue its practice of using spot gas purchases for interruptible customers notwithstanding the claim that such practice violated least cost fuel procurement standards and represented a withholding of gas from the core customer market; the commission concurred with the ALJ's finding that the question of the legitimacy of the use of spot gas for interruptible customers should be considered in a base rate proceeding.
p. 128.

3. AUTOMATIC ADJUSTMENT CLAUSES, § 32 — Energy cost adjustment clauses — Procurement practices — Propane gas purchases — Natural gas distribution company.

[PA.] The commission rejected a proposal to disallow allegedly excessive purchased gas costs incurred by a natural gas distribution company in connection with its gas beyond the mains program; it was found that the costs incurred, while higher per decatherm than the costs incurred for propane used for peak shaving, were in fact reasonable given the small size of the gas beyond the mains program.
p. 129.

4. AUTOMATIC ADJUSTMENT CLAUSES, § 25 — Purchased gas costs — Take-or-pay costs — Natural gas distribution company.

[PA.] A natural gas distribution company was directed to remove all take-or-pay costs included in its claimed purchased gas costs; it was found that the matter of take-or-pay cost recovery was so complex that it could not be resolved until after the completion of a pending generic investigation of the take-or-pay issue.
p. 130.

5. AUTOMATIC ADJUSTMENT CLAUSES, § 11 — Purchased gas costs — Stipulated settlement — Natural gas distribution company.

[PA.] A stipulation of partial settlement filed by a natural gas distribution company and the commission staff in a purchased gas cost proceeding was accepted subject to the following conditions: (1) contract reformation cost updates will not be permitted, except for those updates already made part of the record, and (2) the company must file detailed calculations demonstrating that all take-or-pay costs have been removed from its claim for recovery of purchased gas costs.
p. 131.

Before Shane, chairman, Smith, vice chairman, and Taliaferro, Rhodes, and Fischl, commissioners.

By the COMMISSION:

OPINION AND ORDER

I. *INTRODUCTION*

Before the Commis[redacted]for consideration is the Recommended Decision of Administrative Law Judge ("ALJ") Robert A. Christianson, served to the parties August 4 1988 which, *inter alia*, recommended (i) approval, with modification, of a Stipulation of Partial Settlement entered into between the Office of Trial Staff ("OTS") of the Pennsylvania Public Utility Commission ("Commission") and UGI Corporation — Gas Utility Division ("UGI"), and (ii) resolution o the Office of Consumer Advocate's ("OCA" issues. The ALJ also made certain specifi findings regarding UGI's gas purchases a required under Section 1317 and 1318 o the Public Utility Code, 66 Pa. C.S. §§131 and 1318.[1] UGI responded to eleven issue as requested by the Commission when th matter was assigned to the Office of Administrative Law Judge.

A Formal Complaint concerning this matter was filed by the OCA against UGI. A Petition to Intervene was filed by The Hospital Council of Central Pennsylvania whic was made a party but was not active in th proceeding. The only other party to thi proceeding was the Commission's Office o Trial Staff ("OTS").

A prehearing conference concerning thi matter was held on April 18, 1988. Hearings were held in Harrisburg on May 11 1988, May 26, 1988 and June 20, 1988 UGI presented five witnesses and OCA presented one witness. Meanwhile, UGI anc OTS worked to arrive at a settlement of th case. On June 24, 1988, UGI and OTS presented a Stipulation of Partial Settlement along with supporting statements. A copy of this stipulation is attached to this Opinion and Order.

OCA did not oppose the UGI-OTS stipulation but did preserve its own issues. The OTS neither supported nor opposed the OCA alternatives, as indicated by a one page OTS letter dated July 25, 1988.

The OCA and UGI filed Exceptions on August 15, 1988 and Reply Exceptions on August 22, 1988.

BEFORE THE PUBLIC SERVICE ORIGINAL

In the Matter Of The Application of PacifiCorp and Scottish Power plc for an Order Approving the Issuance of PacifiCorp Common Stock	))))	Docket No. 98-2035-004

UTAH DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

CERTIFICATE OF MAILING

I hereby certify that on this 2nd day of July, 1999, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing DIRECT TESTIMONY OF DAVID B. WINDER and the DIRECT TESTIMONY OF FRANK DAVIS to:

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