

Proposed Order

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- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application)	<u>DOCKET NO. 98-2035-04</u>
of PacifiCorp and Scottish Power)	
plc for an Order Approving the)	<u>PROTECTIVE ORDER</u>
Issuance of PacifiCorp Common)	
Stock)	

ISSUED: _____, 1999

By the Commission:

On January 15, 1999, PacifiCorp and Scottish Power plc (the "Applicants") submitted a proposed protective order in the above entitled proceeding. The Applicants stated that the entry of the proposed protective order would expedite the production of documents and other information and that said protective order would afford necessary protection to trade secret and confidential commercial, financial and competitive information. The Commission finds that sufficient grounds exist for entry of the following Protective Order:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, That:

1. (a) Confidential Information. The documents, data, information, studies and other materials furnished, or made available pursuant to any interrogatories, or requests for information, subpoenas, depositions, or other modes of discovery that are claimed by the Applicants or other parties to this proceeding to be of a trade secret, or a confidential commercial, financial, or competitive nature shall be furnished pursuant to the terms of this Order, and shall be treated by all persons accorded access thereto pursuant to this Order as constituting trade secret, or confidential commercial, financial or competitive information (hereinafter referred to as "Confidential Information"), and shall neither be used, nor disclosed except for the purpose of this proceeding and solely in accordance with this Order. All material claimed to be Confidential Information shall be so marked by the party or its affiliates by stamping the same with the designation "Confidential Information" or such other designation as indicates its confidential nature. For purposes hereof, notes made pertaining to, or as the result of a review of

Confidential Information shall be considered Confidential Information and subject to the terms of this Order.

Only actual information for which confidentiality is claimed shall be marked as noted above, and not entire documents, where they also contain information which is not confidential. If a document or record contains both confidential and nonconfidential information, the party asserting confidentiality shall to the extent possible segregate information which is confidential from that which is not.

- (b) Use of Confidential Information and Persons Entitled to Review. All Confidential Information made available pursuant to this Order shall be given solely to counsel for the parties, after counsel has executed a nondisclosure agreement in the form attached hereto as Exhibit "A", and shall not be used or disclosed except for the purpose of this proceeding; provided, however, that counsel for a party may authorize access to Confidential Information, solely for the purpose of this proceeding, to those persons who have been designated by counsel as that party's experts in this matter, but only after those persons have executed a nondisclosure agreement in accordance

with paragraph 1(c) below. Any member of the Public Service Commission, or its staff, may have access to any Confidential Information made available pursuant to this Order and shall be bound by the terms of this Order.

- (c) Nondisclosure Agreement. Prior to giving access to Confidential Information, as contemplated in paragraph 1(b) above, to any expert, counsel for the party seeking review of the Confidential Information shall deliver a copy of this Order to such person and, prior to disclosure, such person shall agree in writing to comply with and be bound by this Order. In connection therewith, Confidential Information shall not be disclosed to any person who has not signed a nondisclosure agreement in the form which is attached hereto as Exhibit A. The nondisclosure agreement shall require the person to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that he or she has reviewed the same and has consented to be bound by its terms. The nondisclosure agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such agreement shall be

delivered to counsel for the providing party and the Commission.

- (d) Availability of Documentation. As to highly sensitive Confidential Information, the party from whom information is requested shall have the right, at its option, to refuse to provide copies of that Confidential Information to counsel, or experts, for other parties. Should a producing party refuse to provide copies of Confidential Information, such Confidential Information shall be made available for inspection and review by counsel or experts for the parties at a mutually agreed upon place and time. Where copies are not provided, counsel and experts reviewing the Confidential Information may make notes regarding the Confidential Information for reference purposes only. Such notes shall not consist of a verbatim, or substantive transcript of the Confidential Information. Experts and counsel for the DPU or CCS shall not remove the notes from the place of inspection until the DPU or CCS, as applicable, has delivered to the producing party an executed letter, in the form attached as Exhibit "B", classifying the notes as Protected Records under Utah Code Ann. § 63-2-304.

2. (a) Challenge to Confidentiality. This Order establishes a procedure for the expeditious handling of information that a party claims is confidential; it shall not be construed as an agreement, or ruling on the confidentiality of any such document.
- (b) In the event that the parties hereto are unable to agree that certain documents, data, information, studies, or other matters constitute trade secret, or confidential commercial, financial or competitive information, the party objecting to the confidentiality claim shall forthwith submit the said matters to the Commission for its review pursuant to this Order. When the Commission rules on the question of whether any documents, data, information, studies, or other matters submitted to them for review and determination are Confidential Information, the Commission will enter an order resolving the issue.
- (c) Any party at any time upon 10 days prior written notice may seek by appropriate pleading to have documents that have been designated as Confidential Information, or which were accepted into the sealed record in accordance with this Order removed from the protective requirements of this Order, or from the sealed record and placed

in the public record. If the confidential, or proprietary nature of this information is challenged, resolution of the issue shall be made by the Commission after proceedings in camera which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential matter shall be present. The record of such in camera hearings shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN CASE NO. 98-2035-04." It shall be transcribed only upon agreement by the parties, or order of the Commission, and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order, unless and until released from the restrictions of this Order either through agreement of the parties, or after notice to the parties and hearing, pursuant to an order of the Commission. In the event that the Commission should rule in response to such a pleading that any information should be removed from the protective requirements of this Order, or from the protection of the sealed record, the parties, at the request of the providing party and to enable the providing party to seek a stay, or other relief, shall not disclose such information,

or use it in the public record for 10 business days.

3. (a) Receipt into Evidence. Provision is hereby made for receipt of evidence in this proceeding under seal. Prior to the use of, or substantive reference to any Confidential Information as evidence, the party intending to use such Confidential Information shall provide written notice of that intention to the counsel for the providing party. The party intending to use such Information shall use its best efforts to provide said notice 10 days prior to the use of such Information, but, in any event, shall provide such notice at least three (3) days prior to the use of such Information. The requesting party and the providing party shall make a good faith effort to reach an agreement so that the Information can be used in a manner which will not reveal its confidential nature. If such efforts fail, the providing party shall separately designate which portions, if any, of the documents to be offered, or referenced on the record contain Confidential Information. At least one (1) day prior to the use of the Information, the providing party shall provide the Commission and counsel for the other parties with a written description of the portions

of the documents so designated. The portions of the documents so designated shall be placed in the sealed record. Only one (1) copy of documents designated by the providing party to be placed in the sealed record shall be made and only for that purpose. Otherwise, parties shall make only general references to Confidential Information in these proceedings.

(b) Seal. While in the custody of the Commission, these materials shall be marked "CONFIDENTIAL-- SUBJECT TO PROTECTIVE ORDER IN CASE NO. 98-2035-04" and, due to their confidential nature, these materials shall not be considered as records received, or retained by, or in the possession of the Commission within the meaning of the open meetings, or government records access and management statutes.

(c) In Camera Hearing. Any confidential Information which must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the Confidential Information under this Order. Similarly, cross-examination on, or substantive references to Confidential Information, as well as that portion

of the record containing references thereto, shall be marked and treated as provided herein.

- (d) Appeal. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations, but under seal as designated herein, for the information and use of the court.
- (e) Return. Unless otherwise ordered, Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall be returned to counsel for the providing party within 30 days after final settlement, or conclusion of this matter, including administrative, or judicial review thereof. In order to facilitate their ongoing regulatory responsibility, the Commission, the DPU, and the CCS may retain Confidential Information obtained under this Order subject to the other terms of this Order. At least six (6) days prior to the use of any of the retained Confidential Information in any subsequent case, the state regulatory agency which intends to use the retained Confidential Information shall

provide written notice to counsel for the party providing the information.

4. Use in Pleadings. Where reference to Confidential Information in the sealed record is required in pleadings, cross-examinations, briefs, argument, or motions, it shall be by citation of title, or exhibit number, or by some other nonconfidential description. Any further use of, or substantive references to Confidential Information shall be placed in a separate section of the pleading, or brief and submitted to the Commission under seal. This sealed section shall be served only on counsel of record (one copy each), who have signed an Exhibit "A." All the protections afforded in this order apply to materials prepared and distributed under this paragraph.
5. (a) Use in Decisions and Orders. The Commission will attempt to refer to Confidential Information in only a general, or conclusionary form and will avoid reproduction in any decision of Confidential Information to the greatest possible extent. If it is necessary for a determination in this proceeding to discuss Confidential Information in other than a general, or conclusionary form, it shall be placed in a separate section of the order, or decision, under seal. This sealed section shall be served only on counsel of record

(one copy each) who have signed an Exhibit "A." Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed an Exhibit "A."

(b) Summary for Record. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the decision, or order, to be placed on the public record.

6. Segregation of Files. Those parts of any writing, depositions reduced to writing, written examination, interrogatories and answers thereto, or other written references to Confidential Information in the course of discovery, if filed with the Commission, will be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order, unless such Confidential Information is released from the restrictions of this Order, either through agreement of the parties, or after notice to the parties and hearing, pursuant to the order of the Commission and/or final order of a court having jurisdiction.

7. Preservation of Confidentiality. All persons who may be entitled to receive, or who are afforded access to any Confidential Information by reason of this Order

shall neither use, nor disclose the Confidential Information for purposes of business, or competition, or any other purpose other than the purposes of preparation for and conduct of this proceeding, and then solely as contemplated herein, and shall take reasonable precautions to keep the Confidential Information secure in accordance with the purposes and intent of this Order.

8. Reservation of Rights. The parties hereto affected by the terms of this Protective Order further retain the right to question, challenge, and object on any legal ground to the admissibility of any and all data, information, studies and other matters furnished under the terms of this Protective Order in response to interrogatories, requests for information, other modes of discovery, or cross-examination.

This Order shall in no way constitute any waiver of the rights of any party herein to contest any assertion, or finding of trade secret, confidentiality, or privilege, and to appeal any such determination of the Commission, or such assertion by a party.

9. The provisions of this order are specifically intended to apply to data, or information supplied by or from any party to this proceeding, and any non-party that

supplies documents pursuant to process issued by this
Commission.

DATED at Salt Lake City, Utah, this ____ day of
_____, 1999.

Stephen F. Mecham, Chairman

Constance B. White, Commissioner

Clark D. Jones, Commissioner

Attest:

Julie Orchard
Commission Secretary

EXHIBIT "A"

I have reviewed the Protective Order approved by the Public Service Commission of Utah on the _____ day of _____, 1999, in Docket No. 98-2035-04, and agree to be bound by the terms and conditions of such Order.

Signature

Name (Type or Print)

Residence Address

Employer or Firm

Business Address

Party

Date

"EXHIBIT B"

[Date]

[Producing Party and Address]

Dear _____:

The [Division of Public Utilities or Committee of Consumer Services] has reviewed certain documents which were provided under the terms of paragraph 1.d. of the Protective Order issued by the Utah Public Service Commission on _____, 1999 , in Docket No. 98-2035-04. As part of its review, the [Division of Public Utilities or Committee of Consumer Services] hereby determines that these records, including any handwritten notes, are Protected Records, as defined in Utah Code Ann. § 63-2-103(16) and Utah Code Ann. § 63-2-304, which are subject to protection as specified in the Governmental Records Access and Management Act.

In the event any party other than the producing party makes a request for these records, including any handwritten notes, the [Division of Public Utilities or Committee of Consumer Services] will notify the producing party in accordance with Utah Code Ann. § 63-2-308 before releasing these records.

Sincerely,

[Division of Public Utilities or
Committee of Consumer Services]

By:_____

Title:_____