

VAN COTT, BAGLEY, CORNWALL & McCARTHY  
Matthew F. McNulty, III (3828)  
50 South Main Street, Suite 1600  
P. O. Box 45340  
Salt Lake City, Utah 84145  
Telephone: (801) 532-3333

**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 PacificCorp Common Stock | DOCKET NO. 98-2035-04 |
|---|-----------------------|

**UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS' AMENDED PETITION FOR INTERVENTION AND STATEMENT REGARDING ISSUES RAISED BY THE APPLICATION OF PACIFICORP AND SCOTTISH POWER**

In light of the comments of PacifiCorp's representative at the January 26<sup>th</sup> scheduling conference in this matter, Utah Associated Municipal Power Systems ("UAMPS"), by and through its attorneys of record, and on behalf of its members, respectfully submits this Amended Petition for Intervention of UAMPS to the Public Service Commission of Utah (the "PSC"), pursuant to Utah Code Annotated § 63-46b-9 and Utah Admin. Code R. 746-100-7 for leave to intervene in the above captioned matter. UAMPS also submits the following statement regarding its views and positions as to several issues raised by the PacifiCorp and Scottish Power Application for merger (the "Application").

**INTRODUCTION**

UAMPS believes and asserts that the Application that provides the genesis for these proceedings is woefully lacking in substantive detail. As a result, a reasoned review of the

Application is difficult, if not impossible. When little or no detail is provided vis-a-vis a transaction involving multi-jurisdictional entities, multi-jurisdictional customers and multi-jurisdictional regulators, the PSC's ability to make a meaningful determination as to what is, or is not, in the "public interest" is threatened. The PSC, provided with piecemeal information as to a global Application, must necessarily struggle to insure that the Application will, not only not hurt Utah's citizens, but provide tangible benefits to those same citizens. The PSC cannot and should not reasonably rely on other state or federal regulators to provide broad protection to Utah's ratepayers and citizens.

1. **Identity of Petitioner.** UAMPS is a political subdivision of the State of Utah, and is comprised of thirty-one (31) Utah municipalities, two Arizona municipalities, one Idaho municipality, one Utah electric service district, one Utah interlocal agency and one Utah water conservancy district (hereinafter "UAMPS members").<sup>1</sup> UAMPS was established in 1980 pursuant to the applicable provisions of the Interlocal Cooperative Act, Title 11, Chapter 13, Utah Code Annotated (1953), as amended and supplemented from time to time (the "Act"). UAMPS' purposes include planning, financing, development, acquisition, construction, improvement, betterment, operation, and maintenance of projects for the generation, transmission, and distribution of electric energy, for the benefit of its members. UAMPS members, through their very existence, provide "yardstick competition" and "yardstick performance" against which PacifiCorp's rates, service performance and general reliability can be assessed.

---

<sup>1</sup> A list of UAMPS' members is provided as Exhibit "A" to this Amended Petition.

2. **Statement of Interest / Statement of Issues.** PacifiCorp is currently providing electric service to customers located within the municipal boundaries of some UAMPS members. PacifiCorp is additionally providing electric service to customers located in areas scheduled to be, or anticipated to be, annexed into the municipal boundaries of some UAMPS members. PacifiCorp service to customers within the boundaries of UAMPS members is not anticipated to continue. In order to serve these customers, it may be necessary for UAMPS members to condemn and/or purchase the PacifiCorp distribution facilities, and in some limited cases the generation facilities, that serve these customers. The PSC, with the filing of this Application, is now uniquely positioned to resolve pricing, timing and other related issues vis-a-vis PacifiCorp facilities that serve these customers.

It is unlikely that PacifiCorp's distribution assets will be transferred to Scottish Power at a discounted value. Ironically, despite the fact that maintenance of the distribution system in Utah has gone wanting for some time, it is anticipated this acquisition/merger will act to "bump" or increase the book value of the distribution system. Approval of the Application should not create an "acquisition premium" that will be borne by UAMPS' members that are negotiating to purchase, or condemning, degraded distribution facilities within their boundaries. In addition, the PSC should not allow an "acquisition premium" to be passed through to any Utah rate payer; if Scottish Power's shareholders believe PacifiCorp's assets are worth more than book value, those shareholders should bear the risk of being wrong.

UAMPS is one of the joint owners of the Hunter II Generation Facility with PacifiCorp. If a "acquisition premium" is paid for both the coal operations that serve this plant and the plant itself, UAMPS' members should not be expected to help "cover" increased operation and ownership costs of this facility. The question then becomes, if UAMPS does not

cover the increased costs, then who will; the rate payers of the merging entities? Questions must be addressed and answered as to how a “acquisition premium” paid by Scottish Power for PacifiCorp’s coal operations, distribution, generation and transmission facilities should be treated vis-a-vis rates for Utah customers.

UAMPS and its members, as a result of serving their customers, provide “yardstick competition” and “yardstick performance” as to electric service issues in the State of Utah. UAMPS and its members are deeply concerned about the quality of transmission and distribution service within PacifiCorp’s service area. UAMPS and its members have experienced significant reliability problems with PacifiCorp’s transmission system over the past several years and believe that PacifiCorp’s transmission service is noticeably less reliable than it was before the merger of Utah Power & Light and PacifiCorp. Since the same lines that serve UAMPS in most cases also serve PacifiCorp’s own customers, UAMPS suspects that transmission reliability is a state-wide issue. It is entirely possible , if not likely, that PacifiCorp’s pattern of aggressive cost cutting measures, when coupled with the loss of control to out-of-state utility executives, contributed to declining transmission and distribution reliability for the citizens of the State of Utah. As a result of the merger, Utah Power & Light is now a local Utah utility in name only.

PacifiCorp now proposes to merge with an entity that will make decisions and control operations from another continent. The proposed merger requires close scrutiny prior to approval of the transaction. A number of issues must be examined:

1. Is the work force that service Utah customers to be further reduced?
2. If reduced, how will the work force assure reliable service?
3. What degree of budgetary and other types of control will the PSC retain over the merged entity?

4. What plans have been made to modernize and repair the now degraded PacifiCorp transmission and distribution facilities?

Frankly, Utah was misled, and as a result, guessed wrong on similar questions with the Utah Power & Light and PacifiCorp merger. “Caution” should be the watchword during these new merger proceedings. Simply because the Federal Energy Regulatory Commission (“FERC”) sets the rates and terms of transmission service, the PSC should not rely upon FERC to protect Utah’s citizens from unreliable operation and maintenance of transmission facilities. The PSC has the duty and the necessary jurisdiction to protect Utah’s citizens as to issues such as unreliable service. Acting so as to protect the public interest, the PSC can, and should, as part of these proceedings, mandate and regulate the protection of, and supplementation of, transmission and distribution facilities, no matter where located, that are relied upon by Utah’s citizens.

UAMPS asserts that one of the unfortunate “benefits” of the Utah Power & Light and PacifiCorp merger is a lack of local control and information vis-a-vis reliability issues. As part of any approval of this Application, the PSC should mandate creation of a reliability database that would include, at a minimum, outage information and voltage fluctuation data. This would allow future reliability compliance proceedings designed to punish and/or reward the joint Applicants as to reliability performance in Utah.

PacifiCorp is a fully vertically integrated public utility. As a result the PSC now has the broad authority and ability to enter orders concerning operations well beyond Utah’s geographic boundaries. As is noted above, there is precious little in the subject application that identifies whether the merged entities will divest, some or all, of the generation and/or transmission facilities that are currently part of PacifiCorp’s system. If divestiture of certain assets, or groups of assets, is necessary, now, or in the future, it is likely that the PSC’s ability to

make demands that protect Utah's citizen will be severely curtailed. The PSC must prior to approval of this Application create a process designed to protect against divestiture policies that will leave Utah's citizens at the mercy of wholly unregulated business entities.

Finally, the PSC should take advantage of the lessons learned during, and after, the Utah Power & Light and PacifiCorp merger. Because of that merger there is no shortage of information as to the pitfalls of losing control of a state resource that is relied upon by so many of Utah's citizens. The PSC should consider doing two things:

- (1) Review all the promises made during the Utah Power & Light and PacifiCorp application for merger process as to rates, reliability, staffing and local control issues; and,
- (2) Compare those promises with current performance.

As part of this review and comparison process the PSC should seek the testimony of the then-sitting PSC commissioners, longtime Utah Power & Light customers and long-time Utah Power & Light employees. It should determine if these groups believe Utah's citizens benefited from control policies provided by a Portland based entity. It should then ask whether Utah citizens will benefit from control by an entity a half a world away.

3. **Interest of Justice Not Impaired.** The interests of justice and the orderly and prompt conduct of this proceeding will not be materially impaired by allowing the intervention of UAMPS. UAMPS' intervention will not prejudice any party nor will intervention in this proceeding unduly broaden its nature or scope. Allowing this timely intervention of UAMPS will not delay this proceeding.

4. **Notice.** If intervention is granted, copies of all notices and filings should be served on the following:

Matthew F. McNulty, III  
Van Cott, Bagley, Cornwall & McCarthy  
Attorneys for UAMPS  
50 South Main Street, Suite 1600  
P. O. Box 45340  
Salt Lake City, Utah 84145  
Telephone: (801) 532-3333

Douglas O. Hunter  
General Manager  
Utah Associated Municipal Power Systems  
2825 East Cottonwood Parkway, Suite 200  
Salt Lake City, Utah 84121

NOW THEREFORE, UAMPS respectfully requests that the PSC issue an Order authorizing UAMPS to intervene and fully participate in the above captioned proceeding. A proposed form of Order is submitted herewith.

RESPECTFULLY SUBMITTED this            day of February, 1999.

VAN COTT, BAGLEY, CORNWALL & McCARTHY

By:

Matthew F. McNulty, III  
Attorneys for UAMPS

**MAILING CERTIFICATE**

I hereby certify that I caused a copy of the foregoing **UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS' AMENDED PETITION FOR INTERVENTION AND STATEMENT REGARDING ISSUES RAISED BY THE APPLICATION OF PACIFICORP AND SCOTTISH POWER** regarding Docket No. 98-2035-04, to be mailed by first class mail, postage prepaid, this \_\_\_\_\_ day of February, 1999 to the following:

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

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

Peter J. Mattheis  
Dean S. Brockbank  
Brickfield Burchette & Ritts, P.C.  
1025 Thomas Jefferson Street, N.W.  
800 West Tower  
Washington, D.C. 20007

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

Daniel Moquin  
Assistant Attorney General  
1594 West North Temple, Suite 300  
Salt Lake City, Utah 84116

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

Edward A. Hunter  
Stoel Rives Boley Jones & Grey  
201 South Main Street, Suite 1100  
Salt Lake City, Utah 84111

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

Glen F. Davies  
Bill Thomas Peters  
Parsons Davies Kinghorn & Peters, P.C.  
185 South State Street, Suite 700  
Salt Lake City, Utah 84111

Dr. Charles E. Johnson  
The Three Parties  
1338 Foothill Boulevard, Suite 134  
Salt Lake City, Utah 84108

Lee R. Brown  
V.P. Contracts, Human Resources  
Public & Government Affairs  
238 North 200 West  
Salt Lake City, Utah 84116

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



F. Robert Reeder  
William J. Evans  
Parsons Behle & Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, Utah 84145

Robert Green  
Scottish Power plc  
121 SW Morrison, Suite 1800  
Portland, Oregon 97204

Lawrence H. Reichman  
Perkins Coie LLP  
1211 SW Fifth Avenue, Suite 1500  
Portland, Oregon 97204-3715

Anne E. Eakin  
PacifiCorp  
825 NE Multnomah Street  
Portland, Oregon 97332

D. Douglas Larson  
PacifiCorp  
One Utah Center, Suite 2200  
201 South Main  
Salt Lake City, Utah 84140-2000

Roger O. Tew  
Utah League of Cities and Towns  
50 South 600 East  
Salt Lake City, Utah 84102