

BILL THOMAS PETERS - 2574  
DAVID W. SCOFIELD - 4140  
**PARSONS, DAVIES, KINGHORN & PETERS**  
185 South State Street, Suite 700  
Salt Lake City, Utah 84111  
Telephone: (801) 363-4300

Attorneys for Petitioner Emery County

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

---

	:	<b>INTERVENOR EMERY</b>
In the Matter of the Application of	:	<b>COUNTY'S RESPONSE TO</b>
PacifiCorp and Scottish Power plc for an :	:	<b>APPLICANT'S ISSUES</b>
Order approving the Issuance of	:	<b>MEMORANDUM</b>
PacifiCorp Common Stock	:	Docket No. 98-2035-04

---

In their joint April 12, 1999 Issues Memorandum, Applicants PacifiCorp and Scottish Power plc (the "Applicants"), submitted a memorandum identifying the issues which Applicants assert are beyond the scope of this proceeding and the issues for which Applicants claim other parties have the burden of proof. Pursuant to the direction of the Commission, Intervenor Emery County submits the following response to those portions of Applicants' Memorandum that deal with Emery County.

Utah Code Ann. § 544-1-3(2) provides in part as follows:

"The following proceedings shall be heard by at least a majority of the Commissioners:

(b) Any proceeding which the Commission determines involves an issue of **significant public interest.**" (Emphasis provided.)

. **Public Interest and Financial Agency Issues**

- . The Public Service Commission statute clearly states that the PSC should act in the public interest.

Utah Code Ann. § 54-4-28 provides as follows:

"No public utility shall combine, merge nor consolidate with another public utility engaged in the same general line of business in this state, without the consent **and approval of the Public Utilities Commission, which shall be granted only after investigating and hearing and finding that such proposed merger, consolidation or combination is in the public interest.**" (Emphasis provided.)

While numerous parties have intervened in this proceeding, it is clear that the following four sets of stakeholders are components of the public interest: ratepayers, shareholders, bondholders and government bodies such as counties. (Emery County has sponsored \$121,940,000.00 in pollution control bonds for PacifiCorp.) The PSC should consider the interests of each of these four groups.

- . Ratepayers, shareholders, bondholders and counties have a clear interest in making sure that the proposed common stock equity transfer is based on a reasonable estimate of fair market value of PacifiCorp.
- . In a strict financial sense, PacifiCorp officers are financial agents for PacifiCorp shareholders and bondholders. In a broader financial sense,

PacifiCorp officers are financial agents for ratepayers and governmental bodies, such as counties, where generation, transmission, or distribution assets are located.

4. The burden of proof should clearly be on PacifiCorp management, not on Emery County, to demonstrate that the proposed acquisition of PacifiCorp assets and related issuances of securities is based on a reasonable and fair market value. Specifically, the Applicants (PacifiCorp and Scottish Power) need to show and explain the valuation methods and associated valuation numbers concerning this financial transaction.

Without knowing and understanding the valuation methods and associated valuation numbers, there exists a serious uncertainty if PacifiCorp management appropriately and reasonably executed their duties as financial agents. The decision by PacifiCorp management to accept the offer was made at a time when PacifiCorp had experienced significant failures in previous transactions such as the proposed acquisition of the Big Rivers Co-op and The Energy Group, PLC. PacifiCorp experienced a change in its Chief Executive Officer position. In addition, PacifiCorp had received consistently poor ratings from Wall Street analysts during the time period leading up to the acceptance of the Scottish Power proposal. These circumstances could have created an environment where there was a

potential for management to overreact, and possibly accept an offer for less than market value, i.e. a financial agency problem.

The fact that Emery County is responding with this brief increases concern about the transaction and potential financial agency problems. The Applicants' claim that Emery County should bear the burden to demonstrate the relevance of fair market value as an issue to be considered in a proposed acquisition of a regulated utility speaks for itself. PacifiCorp management, not Emery County, is the financial agent in this proposed transaction.

6. If the proposed acquisition represents an undervaluation of PacifiCorp, then costs and harm (negative benefits) arise for the public interest.

Shareholders and bondholders who have invested in PacifiCorp will not receive adequate compensation for their investments. Ratepayers who have funded the construction and operation of PacifiCorp assets will not receive a fair value. Counties who receive property tax payments will not receive fair value.

7. If the proposed acquisition represents an overvaluation of PacifiCorp, questions should then be raised about the distribution of the acquisition premium associated with the overvaluation. Shareholders and ratepayers

could both make legitimate claims to receiving some of the value of the premium.

Utah shareholders will rely, to some extent, on the Utah Public Service Commission to conduct a prudence review of the proposed transaction to evaluate the reasonableness of the valuation of the transaction. Again, to the extent that shareholder interests are part of the public interest this proceeding is the relevant point to review the valuation assumptions associated with the transaction.

### **Jurisdictional Issues**

As of 1996, PacifiCorp was the largest centrally assessed property tax payer in the state of Utah. PacifiCorp is the largest property taxpayer in nine Utah Counties, including Emery County. (Exhibits 1, 2 & 3.) While Utah property tax assessments are determined by the Utah State Tax Commission, the market sale price that will result from the proposed transaction will not be subjected to any type of prudence review by the Utah State Tax Commission. The only jurisdiction in the state of Utah where a prudence review of the value of the proposed transaction can take place is before the Utah Public Service Commission. To the extent that Utah counties' interests are part of the public interest, this proceeding is the relevant point to review the valuation assumptions associated with the

transaction. It is clear that a reasonable prudence review of the valuation of this transaction by the Utah Public Service Commission will be beneficial and relied upon by the Utah State Property Tax Division and the Utah State Tax Commission in future centrally assessed valuations of this business enterprise.

. If PacifiCorp were proposing to sell a single asset, such as a generation plant in a particular state, or the distribution system in one state, the Public Service Commission in that state would conduct a prudence review of the transaction to determine if the asset sale represents a reasonable transaction based on the fair market value of the asset. In the case of the Scottish Power proposal, all PacifiCorp assets are being sold, and PSC review of the valuation of the assets is an appropriate step in acting in the public interest.

. **Procedural Issue**

. Regarding the claim that Emery County's original issues list was in the form of discovery, the issue list submitted by Emery County was in no way intended to be a discovery document. The document included some questions that were intended to illustrate the issues of interest. Emery County has filed separate discovery requests to which the Applicants have responded with less than adequate information. Emery County will file additional discovery requests in an attempt to obtain reasonable data.

DATED this \_\_\_\_ day of April, 1999.

PARSONS DAVIES KINGHORN & PETERS

---

Bill Thomas Peters  
David W. Scofield  
Attorneys for Emery County

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of INTERVENOR EMERY COUNTY'S RESPONSE TO APPLICANTS' ISSUES MEMORANDUM, to the following this \_\_\_\_ day of April, 1999.

Michael Ginsberg  
Assistant Attorney General  
160 East 300 South  
Salt Lake City, Utah 84111

F. Robert Reeder  
William J. Evans  
Parsons Behle & Latimer  
201 South Main Street, Suite 1800  
P.O. Box 45898  
Salt Lake City, Utah 84145-0898

Doug Tingey  
Assistant Attorney General  
160 East 300 South  
Salt Lake City, Utah 84111

Peter J. Mattheis  
Brickfield Burchette & Ritts  
1025 Thomas Jefferson St. N.W.  
800 West Tower  
Washington, D.C. 20007

Stephen R. Randle  
Randle Deamer Zarr Romell & Lee  
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 & Water Fund of the Rockies  
2260 Baseline, Suite 200  
Boulder, CO 80302

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

Brian W. Burnett  
Callister Nebeker & McCullough  
10 East South Temple, #8000  
Salt Lake City, Utah 84133

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

Lee R. Brown  
V.P. Contracts, Human Resources  
Public & Government Affairs  
238 North 2200 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

Matthew F. McNulty, III  
VanCott Bagley Cornwall & McCarthy  
50 South Main Street, Suite 1600  
P.O. BOX 45340  
Salt Lake City, Utah 84145

David F. Crabtree  
Deseret Generation & Transmission Co.  
5295 South 300 West, Suite 500  
Murray, Utah 84107

Steven Allred  
Salt Lake City Corporation, Law Dept.  
451 South State Street, Suite 505  
Salt Lake City, Utah 844102

Roger O. Tew  
60 South 600 East, Suite 200  
Salt Lake City, Utah 84102

Paul T. Morris  
3600 Constitution Boulevard  
West Valley City, Utah 84119

---

Bill Thomas Peters