

Peter J. Mattheis
Matthew J. Jones
BRICKFIELD, BURCHETTE & RITTS, P.C.
1025 Thomas Jefferson Street, N.W.
800 West Tower
Washington, D.C. 20007
Telephone: (202) 342-0800

Glen E. Davies
PARSONS, DAVIES, KINGHORN & PETERS, P.C.
185 South State Street
Suite 700
Salt Lake City, UT 84111
Telephone: (801) 363-4300

ATTORNEYS FOR NUCOR STEEL, A DIVISION OF NUCOR CORPORATION
BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of) Docket No. 98-2035-04
PACIFICORP and SCOTTISH POWER PLC)
for an Order Approving the Issuance of) NUCOR STEEL'S RESPONSE
PACIFICORP Common Stock) TO APPLICANTS'
) ISSUES MEMORANDUM

Pursuant to the Public Service Commission of Utah's (the "Commission") April 2, 1999 Order issued in this docket (the "Order"), Nucor Steel, a Division of Nucor Corporation ("Nucor") hereby submits this response to *Applicants' Issues Memorandum*, filed on April 12, 1999. In support of this Response, Nucor states as follows:

I. General Concerns

The lists of issues submitted by parties to this proceeding for consideration by the Commission are, by their very nature, general and non-specific. The issues in this proceeding are only just now being developed, and will be further formed and refined as we move towards the hearing. At this stage in the process, issues lists represent little more than areas in which various participants have concern, and items they believe they may want to address at hearing. This is particularly true with issues as general as "competition" - a very general concern, some portion of

which falls within the purview of federal regulatory agencies, some of which falls within the purview of state regulatory agencies. As the parties move forward, the issues each party will pursue naturally shrinks. In this context, Nucor urges the Commission to take an expansive view as it considers appropriate potential issues for this proceeding.

Moreover, Nucor is concerned that Applicants' suggestions as to a number of "issues" (*e.g.*, industry restructuring, divestiture) represent an attempt to limit potential conditions that may be applied by the Commission to remedy problems caused by the acquisition. For example, there are numerous concepts contained within the rubric of "industry restructuring," such as unbundling of tariffs, functional unbundling, corporate/affiliate reorganization, transmission system reorganization, and transmission access, that may be suggested as appropriate conditions on the merger. Nucor asks the Commission to decline to take potential remedies off the table at this stage in the process. Clear development of the issues is lacking at this time, and the identification of appropriate remedies as to any problems identified lags further behind. While Nucor did not submit an issues list in this proceeding, Nucor intends to participate, and is concerned with any attempt by the Applicants to unnecessarily limit the issues to be heard, or the remedies/conditions that may be imposed.

II. Special Contract Issues

The Commission ordered the Applicants to provide a memorandum "in which the Applicants shall identify all issues, which have previously been identified in any of the parties' Issue list submissions, that the Applicants contend are irrelevant to the considerations which the Commission must make in determining whether to grant or deny the Applicants' Joint Application," as well as identify issues as to which the Applicants contend that "other parties, rather than the Applicants, have the burden of proof." Order at pp. 1-2. The Applicants', in their Issues Memorandum, argue

that, “the parties have raised, in relatively cursory fashion, some issues which require speculation regarding future events, including potential changes in the existing statutory framework. Applicants’ submit that the parties who raised those issues should have the burden to show that the transaction has either a beneficial or harmful impact on those issues.” *Applicants’ Issues Memorandum*, at p. 8. This response to the issues lists is likewise cursory in nature, oversimplifies issues to suit their purposes, and, in characterizing certain issues as speculative, attempts to use the very nature of issues in a forward-looking proceeding as the basis for excluding issues.

Of particular concern to Nucor is Applicants’ designation of special contract issues as “speculative,” and therefore subject to a shift in the burden of proof. In their *Statement of Additional Issues*, the Large Customer Group and the Utah Industrial Energy Consumers listed as issues for the proceeding, among others, “the impacts of the merger on special contract customers,” and the “merger conditions . . . necessary or appropriate to protect special contract customers, as well as all Utah ratepayers, from potential risks or adverse consequences of the merger.” *LGC and UIEC Statement of Additional Issues*, at p. 2. Similarly, the DPU questioned whether Scottish Power will assume PacifiCorp’s existing obligations, including special contracts, and if so for how long. *Division of Public Utilities Statement of Issues*, at ¶4.e. The Committee of Consumer Services likewise identifies “ScottishPower’s corporate policy on special contracts” as an issue. *Committee of Consumer Services Statement of Issues*, at p. 4. In a similar vein, the Committee identifies the following issue to be considered:

Cost-benefit analysis detailing the impact of the merger on Utah. Such analysis should include: economic development; low income programs; environmental stewardship; energy conservation initiatives; community presence; etc.

Committee of Consumer Services Statement of Issues, at p. 4. As economic development is one of the reasons for entering into and perpetuating special contracts, the impact of the merger on economic development necessarily implicates special contracts.

The Applicants dismiss the relevance of issues related to special contract customers by (1) noting the Applicants' statement that it "will honor all existing contractual obligations" and (2) noting the existence of the task force considering special contracts, which process, the Applicants assert, "will determine the offer, renewal, availability and terms for future special contracts in Utah." *Applicants' Issues Memorandum*, at p. 9. As a result of these conclusions, as well as the speculative nature of the concern, the Applicants conclude that as to special contracts the burden of proof should shift to other parties to show that special contracts are harmed by the acquisition. *Id.* It is unclear to Nucor what "burden of proof" the Applicants believe they are proposing to shift, but Nucor does not know of any reason why special contract customers should be singled out for disparate treatment. The Applicants seem to suggest that the burden on them is to show that the acquisition would provide net positive benefits to customers, except that they do not need to consider the impact on special contract customers in making their case. Nucor suggests that the Applicants' view is unfairly limiting. The Applicants have done nothing to demonstrate why special contract customers, as a class, should be singled out for treatment different from other classes of ratepayers.

Examined in isolation, the impact of the acquisition on any class of PacifiCorp customers is speculative. But it is the impact on customers that is of importance to the Commission in determining whether the proposed transaction provides a net positive benefit. Special contract customers should be viewed no differently from the tariffed ratepayers in terms of the potential impacts of the proposed transaction, and should be considered along with all of PacifiCorp's

ratepayers in evaluating the net positive benefits of the acquisition on customers. To this end, the Commission, in language set forth in the Applicant's pleading, stated:

However, Applicants do carry the burden in all areas subject to our jurisdiction to show that on balance the merger will be beneficial and those areas will be our primary focus in this case.

Commission Report and Order, Docket No. 87-035-27 (the *Utah Power/PacifiCorp* merger).

Nothing in the Applicants' Memorandum details why the burden of proof should shift with respect to the impact of the acquisition on special contract customers. The impact of the acquisition on special contracts (including the economic development aspects of those types of contracts) is as relevant to the net positive benefits analysis as the impact on any class, and it would be inappropriate at this stage of the process to shift the burden of proof away from the Applicants as to how the acquisition impacts any ratepayer class.

WHEREFORE, for the reasons set forth above, Nucor requests that the Commission take an expansive view of the issues to be considered in this proceeding and the remedies and conditions available, and that specifically the Commission decline to single out special contract customers and shift the Applicants' burden of proof with respect to special contract issues as requested by Applicants.

DATED this 29th day of April, 1999.

Respectfully submitted,

Glen E. Davies
PARSONS, DAVIES, KINGHORN & PETERS, P.C.
185 South State Street, Suite 700
Salt Lake City, UT 84111
(801) 363-4300

Peter J. Mattheis
Matthew J. Jones
BRICKFIELD, BURCHETTE & RITTS, P.C.
1025 Thomas Jefferson Street, N.W.
800 West Tower
Washington, D.C. 20007
(202) 342-0800
(202) 342-0807 -- Telefax

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of April, 1999, I caused to be mailed, first class, postage prepaid, a true and correct copy of NUCOR STEEL'S RESPONSE TO APPLICANTS' ISSUES MEMORANDUM to:

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

2260 Baseline, Suite 200
Boulder, CO 80302

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

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

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

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

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

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

Eric Blank
Land and Water Fund of the Rockies

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

Salt Lake City, UT 84116

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

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

Matthew F. McNulty, III
Van Cott, Bagley, Cornwall & McCarthy
50 South Main Street, Suite 1600
P.O. Box 45340
Salt Lake City, UT 84145

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

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

Brian L. Farr
Assistant Attorney General
160 East 300 South
P.O. Box 140857
Salt Lake City, UT 84114-0857

Steven Allred
Salt Lake City Corp. Law Dept.
451 South State Street, Suite 505
Salt Lake City, UT 84111

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

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

Glen E. Davies