

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF UTAH**

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In the Matter of the Application of PacifiCorp)
and Scottish Power plc for an Order Approving) Docket No. 98-2035-04
the Issuance of PacifiCorp Common Stock)

**RESPONSE OF THE LAND AND WATER FUND OF THE ROCKIES
TO THE APPLICANTS' ISSUES MEMORANDUM**

The Land and Water Fund of the Rockies ("LAW Fund") hereby responds to the Applicants' Issues Memorandum ("Memorandum"). We believe that it is premature for the Utah Public Service Commission ("Commission" or "PSC") to make categorical decisions about the appropriate scope of issues and burdens of proof in this case as there is an inadequate factual record before it. In support thereof, the LAW Fund states as follows:

1. On April 2, 1999, the Commission issued a Supplemental Scheduling Order that required PacifiCorp and Scottish Power (collectively "the Applicants") to file a Memorandum identifying both relevant and irrelevant issues. The Order also asked the Applicants to identify situations in which the Applicants contend that other parties have the burden of proof.
2. On April 12, 1999, the Applicants filed a Memorandum that identified several issues that they believed were beyond the scope of this proceeding including industry restructuring, annexation, municipalization, and competition. The Memorandum also described a number of additional issues where (in the Applicants' view) other parties, besides the Applicants, had the burden of proof involving Hunter plant costs, fair market value determinations, a host of local concerns, environmental issues, and under grounding of transmission and distribution facilities. Based on this presentation, the Applicants asked the Commission to categorically exclude or shift the burden of proof for these respective sets of issues.

3. The LAW Fund believes that it is premature for the Commission to categorically exclude issues or shift the burden of proof at this stage of the proceeding as the factual record is insufficient to support this result. Instead, issues of relevancy are best dealt with in the context of an Applicant Motion to Strike Direct or Rebuttal Testimony. Once Direct Testimony has been filed by a party on an issue, the Commission has before it specific language, sponsored by a specific witness, in the context of proposed recommendations. At that point, a relevancy determination is possible. Likewise, the burden of proof surrounding individual issues is best made at the briefing stage after all the evidence has been presented and specific recommendations developed. This provides the factual record the Commission will need to appropriately allocate burdens of proof on a specific issue.

4. In summary, the LAW Fund believes that it is not appropriate to develop categorical issue determinations about either relevancy or burden of proof until specific evidence and recommendations are before the Commission. A determination about relevancy and appropriate burden of proof depends on the specific nature of the evidence, how it is being used, and the recommendations it is intended to support. There is simply not enough information to reach sensible categorical conclusions at this point in the case.

WHEREFORE, the LAW Fund requests the Commission wait until an adequate factual record is developed to make determinations about relevancy and burdens or proof.

DATED this 28th day of April 1999.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the original and fifteen (15) copies of the RESPONSE OF THE LAND AND WATER FUND OF THE ROCKIES TO THE APPLICANTS' ISSUES MEMORANDUM was sent via Federal Express to Stephen F. Mecham, Chairman, Public Service Commission of Utah, 160 East 300 South, Salt Lake City, Utah 84145, on this 28th day of April, 1999, and a true and correct copy was sent by U.S. mail, first-class and postage prepaid, to the following persons:

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