

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

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In the matter of the Application of  
PacifiCorp and Scottish Power plc for an  
Order Approving the Issuance of  
PacifiCorp Common Stock

Docket No. 98-2035-04

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DIRECT TESTIMONY

OF

TOM DOLAN

ON BEHALF OF UTAH LEAGUE OF CITIES AND TOWNS

June 17, 1999

## **INTRODUCTION**

Q. Please state your name and address.

A. Tom Dolan, 10000 Centennial Parkway, Sandy, Utah 84070

Q. What is your present elected position?

A. I am currently the mayor of Sandy, Utah. I was initially elected in 1993 and am serving my second term.

Q. What is your role with the Utah League of Cities and Towns.

A. I am the 1<sup>st</sup> Vice President. In that capacity I will become President of the ULCT next year. I am also Co-Chair of the League's Task Force on Electrical Utility Issues.

Q. Briefly explain the purpose and organization of the Utah League of Cities and Towns?

A. The ULCT is an association of 232 cities and towns in the State of Utah that represents the governmental, financial and political interests of its members. The leadership of the organization are all elected officials. The ULCT Board of Trustees has approved the actions the ULCT has taken during these proceedings.

Q. Why has the Utah League of Cities and Towns chosen to participate in these proceedings?

A. Because of municipalities unique status and ability to enter into franchise agreement, we have not historically involved ourselves in Commission matters. However, we believe that there are several significant matters facing our residents that may well be more economically and efficiently addressed in this forum. We believe that, by placing certain conditions upon the merger, the merger becomes a benefit to the residents of the State. Without those conditions, the proposed merger offers little incentive for our support. Those conditions will be more fully explored in the remainder of my testimony.

## **TESTIMONY OUTLINE**

Q. What is the purpose of your direct testimony?

A. I will outline why electrical utility issues are critical to Utah's cities and

towns and why municipal leaders are so concerned about the proposed merger. In addition, I will explain that, pursuant to the Utah Constitution, cities and towns are granted the power to furnish public utilities to their residents. Lastly, I will outline why the ULCT is making its specific proposal for PSC action.

## **MUNICIPAL CONCERNS AND PROPOSALS**

Q. Aside from matters of obvious convenience and quality of life for municipal residents, why is important to Utah's cities and towns that the delivery of electrical power be done in a manner that meets the unique needs of each community?

A. Let's start with economic development. Every city wants to promote economic development in their community and, by doing so, provide a significant economic benefit to the entire State. That economic development may take many different forms depending upon the location, climate, workforce and a variety of other factors. However, to attract and, importantly, retain any type of commercial activity depends upon the availability of adequate electrical power. It is essential to these goals that municipalities not only have electric power but that they have electric power that is reliable. With modern technology and manufacturing that is heavily dependent upon uninterrupted electric service, the existing electric infrastructure appears to not meet many of those demands. This failing makes it difficult to attract and retain those electricity-dependent businesses. In addition, many areas of the existing system needs to be expeditiously upgraded to correct deferred improvements that are currently having adverse impacts upon our economic development efforts.

Q. Are there any other areas of concern?

A. People may feel that these discussions are really more about rates than merger and past history may prove them right. However, cities and towns see the issue much more broadly. The adequacy and delivery of electrical power is a critical element in the entire growth management and the physical planning of municipalities. These matters include zoning, aesthetics, safety, residential and commercial construction and an array of related matters.

Municipalities need to have adequate power supplies delivered that are consistent with the needs of those particular areas. While large transmission towers may be quite acceptable in industrial areas, the same are no longer acceptable in many residential or retail areas. Similarly, while overhead lines may be warranted in rural areas with small concentrations of population and development, those same lines, with the advent of the 21<sup>st</sup> century, are an anachronism that are contrary to sound planning and aesthetics in the more developed communities of our state. It is my view that Scottish Power's corporate and engineering philosophy is more attuned to the modernization of

the system than we have experienced with PacifiCorp.

As our older communities engage in the necessary rebuilding of their crumbling infrastructure, it makes sound municipal and state strategy to promote flexibility in dealing with the vastly different problems and solutions within our municipalities. The population of this State does not expect, nor should it, that all communities look alike. Rather, they want the flexibility to reflect their cultural, economic, aesthetic and political diversity. These demands require the ability to work locally with the merged company to meet those local needs.

Q. Does the League have a proposal that would facilitate this flexibility?

A. Yes. One approach would be a local option tariff that would allow local government to implement that optional tariff either for broad-based electrical infrastructure and planning needs or for project-specific electrical infrastructure and planning needs. However, we would emphasize that any such tariff should only facilitate enhancements to the power system that are not considered part of the basic system.

Q. Scottish Power and PacifiCorp have highlighted improved performance as a primary objective. In fact, they have included such things as a payment for outages over 24 hrs. Will this help with economic development?

A. Obviously any focus on improved performance is good. I have no reason to doubt that these companies are sincerely interested in improving reliability. I have to say that it is my experience that 24 hr. outages are very rare. Even so, this is a residential solution to a residential problem.

Long, extended outages may not be the problem of businesses. It is often the mini-outages, often mere seconds that causes problems. While these outages may last for very short periods, they have the capacity to completely shut down computerized manufacturing processes and do, in fact, result in costly interruptions. The proposed service standards would have no impact in this very important area. To date, I have not been made aware that Scottish Power has proposed any specific solution to this significant problem.

Q. What do you propose?

A. First, we believe the merged company should be required to demonstrate its financial and technical commitment to resolving these recurrent outages. Further we believe the company should demonstrate its willingness and ability to work with new and existing businesses to provide review and comment upon the electrical services and infrastructure necessary to provide reliable service to these businesses.

Second, a major condition of the merger will be the determination of true

performance standards. An initial decision will be the establishment of some type of performance baseline. In addition, there will be a need to decide which party or parties will bear the costs of remedial work to the current system, maintenance of that system, and enhancements to the system. Clearly, we think that Utah's cities and towns should be part of the process. In fact, there should probably be two separate investigations and hearings undertaken - one to conditionally approve the merger and a subsequent one to establish performance standards.

Q. Are there other concerns regarding the merger?

A. The essence of the proposed merger is that of a stock transfer. Utah cities and towns see this as more than a simple paper transaction with significant operating changes. We hope that there are changes and that they are positive. Without demonstrable and material changes, we believe that the applicants would have failed to meet their burden in these merger proceedings. In our discussions with Scottish Power there are a number of items which Utah cities view as very positive. However, it is simply naïve to approach this process as anything other than the creation of a new company. Hopefully it will be a better company – but nonetheless a different one.

The dynamics of the last merger are precisely the reason why Utah's municipalities are involved this time around. In the UP&L merger there was concern about whether Utah would lose its power company; not just in terms of economics, but such things as local control, loss of jobs, etc. In other words, would the new PacifiCorp be an Oregon company with simply a Utah presence. It is my understanding that a number of statements were made that Utah would see no change in the operating style and commitment to Utah.

However, I know of very few people who would argue that today's PacifiCorp is anything like the former UP&L. Most of my constituents and others I speak with feel that PacifiCorp is an out-of-state corporation which increasingly operates and functions with a diminished sensitivity to Utah concerns. There has been a gradual transfer of all operating and managerial responsibility to Portland. There has been diminished involvement with Utah communities. If the result of that merger could have been predicted, the Commission would have seen a much stronger municipal response to that merger without certain conditions. We should all learn from the problems associated with that merger.

Q. Do you have a proposal to mitigate that loss of local sensitivity?

A. Yes. We believe it is essential that some of the high level management be resident in Utah. That management needs to be well integrated into and knowledgeable about Utah. We believe that only in that way can the merged company have a comprehensive view of the economic, cultural and political dynamics that surround the relationship between the company and its customers

and municipalities.

Q. Explain how you see Utah cities reacting to the merger in terms of current franchise agreements?

A. Utah cities have always held the position that under the Utah Constitution they are granted the authority to provide public utilities. This position has been further reinforced by Utah Supreme Court interpretations. Now, how cities choose to discharge this responsibility may vary from community to community.

Q. Do cities discharge that responsibility in different ways?

A. Some cities may choose to actually own and operate their own power systems. Other communities choose not to actually own their own system, but rather to provide for the public utility by granting a franchise to another entity to provide power. A majority of Utah cities now have a franchise agreement with Utah Power & Light/PacifiCorp. However, in each case that decision is, ultimately, the city's to make.

Q. Are these franchise agreements the same for every community?

A. The short answer is no. However, it is important to remember several important points. First, until fairly recently (the past 15 years) the primary concern of cities was to ensure a stable supply of electricity. There was really only one alternative to building your own system and that was to have Utah Power and Light provide electricity. As a result, many cities entered into long-term franchise arrangements with UP&L. Many of these agreements were almost copied from community to community and do not reflect the current state of the industry. In some larger cities, extensive negotiations resulted in substantial rights to the benefit of the residents in those cities. Lastly, there are some places where there has never been a written agreement. In other words, while there are similarities, these agreements vary greatly among Utah's municipalities.

Most franchises were entered into with Utah Power & Light. If the Scottish Power merger is approved that means Utah cities will now be dealing with a corporate entity that is now two times removed from the original agreement. We have gone from dealing with a Utah company managed by our friends and neighbors to the possibility of dealing with a company of international proportions. We have seen no reason why the new managers cannot become new friends and neighbors and we hope they do. However, we think that our residents expect us to engage in good business practices. Those practices dictate reviewing the current state of affairs and, when appropriate, modifying those relationships.

Q. Do you see the possibility that Utah cities would reopen current franchise

agreements?

A. We not only see it as a possibility, we believe it is required. We are advised that applicants may have a different view. Accordingly, we believe that it would be an appropriate condition of approving the merger that Scottish Power be required to demonstrate that they are prepared to acquire municipal consent, franchise or permit to operate in the municipal rights-of way. Without that condition, I believe there is a very substantial likelihood that extensive, time-consuming and expensive litigation will follow.

Some cities have agreements that are due to expire, others require municipal consent as an express condition, and it can reasonably be argued that the remaining agreements are so changed from their original premise that they are no longer valid. What we are really offering by agreeing to submit to some PSC involvement is an orderly process. It is not in the applicants' interest nor those of the municipalities and their residents to engage in such conduct when it could easily be resolved as a condition of merger.

It is certainly possible that many, if not most municipalities will simply allow an assignment of Utah Power & Light/PacifiCorp's franchise, but that option must remain one solely within the province of an individual municipality.

Q. It has been suggested that there may be some alternative motivation for such action. For example, is there a concerted effort to have cities own and operate their own systems?

A. I know of no organized plan for municipalization of electrical systems. I do know that cities are interested in having reliable electrical power that is delivered in a manner that is consistent with their particular needs. To the extent that the merged company can provide those services, there is little impetus for municipalities to undertake the substantial economic burden associated with creating their own system. On the other hand, if the new company is not responsive to those needs, certainly, municipalities will be tempted, either singularly or in concert with other, to create municipal systems that reflect the needs of local residents and businesses.

The Commission should not be confused that our position is part of the debate between public and private power. Rather, we are here because we want an electrical supplier that will be responsive to our needs. If Scottish Power will do so, we endorse their application. However, we believe that it is essential that their willingness and ability be documented before the merger is approved rather than grant approval upon the hope that they will do so after the merger.

We do not want to face the same failing that resulted from the undocumented conditions of the last merger.

## REACTION TO APPLICANT'S PROPOSAL

Q. Does the ULCT have a general reaction to the proposed merger?

A. My response is not that of an engineer or a public utility expert. Rather, it is the response of a community leader concerned about the future of his city and state. It is apparent that with or without this merger that there will be dramatic change in how PacifiCorp will operate in the future. It also appears likely that if this merger is not approved that eventually some other company will propose acquisition of PacifiCorp.

All indication to date show that Scottish Power is a credible company with an international reputation for performance. They have made considerable efforts to meet with representatives of municipal government and respond to our concerns. Based upon these efforts, ULCT believes that there is the real likelihood of a significant and positive shift in corporate attitude. This change will, I believe foster a better relationship between the merged company, municipalities and their residents. Early on, leaders of the ULCT indicated preliminary support for the merger and I would indicate that this position has not changed. At the same time, we have also stated that there are important conditions that need to be attached to the merger.

First, we are concerned that municipal rights and authorities not be negatively impacted. We have outlined an approach to protect these critical interests and at the same time ensure that there is an orderly process. Second, the ULCT lends its voice along with many others seeking performance and reliable standards to govern the activities of the new company.

Q. Would you comment further on the need for these standards?

I mentioned earlier that Scottish Power and PacifiCorp had attempted to develop performance standards, or better stated penalties for non-performance. I also indicated that while interesting they were really not too applicable to the type of matters that often cause us our main concerns. Another intervenor, the Utah Associated Municipal Power Systems (UAMPS) has also presented testimony which comments more directly on this issue. I should note that most of UAMPS members are also members of our organization as well. Their expert testimony outlines some performance conditions that we also believe are important. As such, I would refer you to their testimony for some details.

However, it is important to emphasize that I am neither an electrical engineer nor an expert in electrical power issues. Nor are most political and community leaders. As such, it is important that the PSC take adequate time and receive the necessary input to determine both the future standards of performance and the appropriate baseline for measuring that performance. Candidly, I believe that development of the performance standard requires a

second set of hearings and investigations independent of the validity of the merger. I believe that the ULCT would support that additional effort to develop the performance baseline and future standards.

### **SUMMARY OF PROPOSAL**

Q. Can you summarize the League's proposals?

A. If the following conditions are accepted by Scottish Power, the League supports the application:

1. adoption of a local option tariff for electric infrastructure and planning;
2. demonstration of the Company commitment to solve reliability issues and the creation of universal and meaningful service standards;
3. Utah-resident management; and
4. agreement of Scottish Power to obtain consent or franchises from municipalities.

Q. Does this conclude your testimony?

A. Yes

Dated this 17<sup>th</sup> day of June, 1999

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Tom Dolan