

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter Of The Application of)
PacifiCorp and Scottish Power plc) Docket No. 98-2035-004
for an Order Approving the Issuance)
of PacifiCorp Common Stock)

UTAH DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

DIRECT TESTIMONY OF DAVID B. WINDER

JULY 2, 1999

1 Q. Please state your name and business address.

2 A. My name is David B. Winder and my business address is 324 S. State Street, Fifth Floor,
3 Salt Lake City, UT 84111.

4 Q. By whom are you employed and in what capacity?

5 A. I am the Executive Director of Department of Community and Economic Development of
6 the State of Utah.

7 Q. What are the responsibilities of your Department?

8 A. As pertains to this proceeding, the Department is responsible for community and
9 economic development within the State and for performing economic development
10 planning for the State. The Department's Division of Business and Economic
11 Development is the industrial promotion authority for the State and is responsible to
12 promote and encourage the economic, commercial, financial, industrial, agricultural, and
13 civic welfare of the State and is responsible to do all lawful acts to create, develop,
14 attract, and retain business, industry, and commerce within the State of Utah.

15 Q. Why are you providing testimony in this matter?

16 A. One of my statutory duties is to become generally informed of significant proceedings
17 before the Public Service Commission and to monitor and study the potential economic
18 development impact of these proceedings. The statute also authorizes me to appear in
19 any proceeding before the Public Service Commission to testify, advise, or present
20 argument regarding the economic development impact of any matter that is the subject of
21 the proceeding. As our Department has monitored these proceedings, a couple of

1 concerns have arisen about which we believe the Public Service Commission should be
2 advised.

3 Q. Please summarize your education and business experience.

4 A. I am a Certified Public Accountant and was a Managing Partner with KPMG Peat
5 Marwick for 34 years in the Seattle, Washington DC and Salt Lake City offices. I have
6 been a business and tax advisor to many businesses and industries. I graduated with
7 highest honors from Stanford University. I am currently a member of the Governor's
8 Cabinet, of the Executive Committee of the Utah Partnership for Business and Education,
9 of the Utah Sports Authority, of the Sundance Institute Advisory Board, of the Executive
10 Committee of the Salt Lake Convention & Visitors Bureau and of various other boards. I
11 am Committee Chair of the Workforce Services Council, Chairman of the Utah Housing
12 Finance Agency, Chairman of the Board of the Utah Symphony and an ex-officio member
13 of the Executive Committee of the Economic Development Corporation of Utah.

14 Q. What are the concerns you spoke of?

15 A. Our two main concerns are that after the merger PacifiCorp must have a strong Utah
16 presence and there must be fairness in the allocation of community and economic
17 development funds.

18 Q. Would you explain what you mean by a strong Utah presence?

19 A. At a minimum, the Utah division of PacifiCorp should be presided over by an executive
20 with extensive Utah background who resides in Utah and who has authority to approve
21 corporate involvement in economic development and corporate citizenship activities.

22 With respect to all matters concerning customer relations, community and governmental

1 relations in Utah, and corporate citizenship, that executive should report directly to the
2 top officer for all of Scottish Power's operations in the United States; that is, the position
3 presently expected to be occupied by Alan Richardson. A strong Utah presence also
4 includes a commitment to promote economic development in Utah, to support Utah
5 industries and businesses, location of personnel and such other issues of local control as
6 are cited in the Utah Public Service Commission's Order of September 28, 1988
7 regarding the Utah Power & Light Company merger ("the 1988 Order").

8 Q. How important is it to have a strong Utah presence?

9 A. We think it's critical and the Public Service Commission has previously recognized the
10 importance of local control. In its' order of November 30, 1987 in the Utah Power
11 merger, the Commission identified "the loss of 'Utah control' of its major electric utility"
12 as a "key potential detriment" that the parties could raise as an issue. In the 1988 Order at
13 page 109 the Commission recognized the importance of the local control issues stating
14 that they were "central, not peripheral" to their determination of the public interest and
15 that those concerns were one of the primary reasons why the Commission's approval of
16 the Utah Power & Light merger was based on conditions.

17 Q. Have the Commission's requirements regarding those local control issues been
18 adequately fulfilled by PacifiCorp?

19 A. As more fully explained in the testimony of Frank Davis, many of those conditions have
20 not been fulfilled and there seems to be a definite shift away from Utah. There is no
21 longer a president of the Utah division and accounting, human resource and some other
22 functions have been move to Portland. The proportionality between the Utah and Pacific

1 Division that was required by the 1988 Order has not been maintained.

2 Q. Are you suggesting that those conditions should be fulfilled?

3 A. Well, perhaps not all of them but it seems that whoever takes control of PacifiCorp, takes
4 subject to those unfulfilled conditions. The conditions imposed on PacifiCorp by the
5 Commission should be reviewed and any unfulfilled conditions that still make sense
6 should be renewed as conditions of approval of the current application. We are
7 particularly interested in the conditions referenced in Section III G, Section L paragraph
8 8b subparagraphs 19 through 24, Section L paragraph 14 (except a-c) and Section L
9 paragraph 15 of the Commission's 1988 Order. A copy of those sections is attached as
10 Exhibit 1.

11 Q. Does it appear that Scottish Power can fulfill those conditions?

12 A. I am encouraged by Mr. Richardson's direct testimony wherein he indicates that at
13 PacifiCorp, appropriate decision making authority will be delegated to managerial staff so
14 that decisions can be made locally and as close to the customer as possible and his
15 commitments regarding corporate citizenship and commitment to the communities in
16 which they work, but I still believe the conditions spoken of should be required.

17 Q. Do you have any other concerns regarding local presence?

18 A. Yes, I believe that PacifiCorp should keep its main offices within its service area and it
19 seems that, considering PacifiCorp's recent sale of assets, Utah becomes all the more
20 centrally located in that service area and should be strongly considered for increased
21 corporate presence in any future expansion or reorganization. I recommend that there be
22 a prohibition on moving the corporate offices outside of the service area. PacifiCorp's

1 economic development staff members that are located in Utah should be maintained but
2 should report directly to the Utah executive and not to Portland or elsewhere, as we
3 understand is presently the case.

4 Q. What are your concerns regarding fairness in distribution of community and economic
5 development funds?

6 A. I was pleased to note that on pages 8 and 9 of Mr. Richardson's Supplemental Testimony
7 that Scottish Power will contribute \$5,000,000 to the PacifiCorp Foundation, will
8 maintain the existing level of PacifiCorp's other community related contributions, will
9 maintain regional advisory boards, and will commit an additional 1.5 million per year to
10 programs that encourage economic well-being of communities including programs that
11 benefit low income customers. However, those funds may not be fairly distributed
12 among the jurisdictions served by PacifiCorp. We have heard reports that Foundation
13 monies spent in Portland may be many times greater than the funds spent in Utah. We
14 have requested information from PacifiCorp to verify whether that is true but have not yet
15 received a complete response.

16 Q. Do you have a recommendation?

17 A. Yes. At a minimum Scottish Power should commit to a more equitable distribution of
18 those funds should the application be approved. That ought also to be a condition of the
19 approval. Perhaps Scottish Power would be willing to create a Utah Foundation for the
20 benefit of Utah communities and causes and fund that foundation with an equitably
21 proportionate share of PacifiCorp's foundation contributions. We would like documented
22 binding commitments that Scottish Power's resources and attentions given to Utah in the

1 following areas should not be left less than proportional to that given to the most favored
2 of any other area or jurisdiction which Scottish Power operates:

- 3 • Foundation gifts
- 4 • Training
- 5 • Representation on boards and committees
- 6 • Economic Development
- 7 • Reporting lines of executives

8 Q. Do you have any other concerns?

9 A. Yes. As I understand the transaction, a Nevada partnership will be created and will hold
10 all of the common stock of PacifiCorp and as partial consideration for the PacifiCorp
11 stock will transfer the stock of its corporate partners to Scottish Powers' holding
12 company. It would seem that the value of the stock received by the partnership would be
13 equal in value to the stock the partnership transfers to the holding company, yet the
14 merger agreement requires the partnership to also give the holding company a loan note
15 in an amount to be agreed upon by the holding company and the partnership. That loan
16 note highlights another of our concerns and that is that the merger should not be approved
17 unless there are adequate assurances that the assets of PacifiCorp will not be allowed to
18 be transferred to other companies held by Scottish Power if such transfer would be
19 detrimental to PacifiCorp. More specifically such transfers should not be allowed absent
20 assurance that the plant, equipment and infrastructure of the Utah Division of PacifiCorp
21 is adequately repaired and maintained and that adequate provision has been made for
22 replacement of worn out equipment and facilities in the future and for appropriate

1 upgrades.

2 Any transfer of money or other assets from PacifiCorp to the proposed holding company
3 or any affiliates should be monitored, whether the transfer be in the form of an allocation
4 of central office expense, a purchase from an affiliate, a loan, or whatever. Most of those
5 transfers would seem to be adequately monitored as part of a routine rate case, but
6 potentially larger transfers, such as the loan note specified in the application for merger,
7 should be subject to the advance approval of the Commission and should only be
8 approved if the Commission is convinced that adequate provision has been made for
9 maintenance and replacement of Utah plant, equipment and infrastructure and that the
10 transfer would not otherwise be detrimental to PacifiCorp. Additionally, approval of the
11 application for merger without knowing the amount of the loan note would seem to be
12 similar to signing a blank check. If the amount is not specified prior to approval of the
13 application, then there should be a requirement that the amount, when set, is subject to
14 the approval of the Commission.

15 If maintenance and repair or investment in new facilities is found to be lacking at the time
16 any required approval is requested, approval should be conditioned upon establishment
17 and funding of an escrow account to secure the funds necessary for adequate
18 maintenance, repair, and replacement.

19 Q. Do you have any other recommendations.

20 A. Yes. If the application is approved, a benchmark should be established for all of the
21 conditions that are part of the final order, where a benchmark would seem appropriate,
22 and reasonable reporting regarding those benchmarks should be required so that any gains

1 or losses could easily be measured.

2 Q. Do you oppose the merger?

3 A. No, but any loss of local control, of Utah jobs, or of well-maintained infrastructure and
4 equipment would be a key detriment that must be considered in determining whether
5 there is a net positive benefit to the public in this State. If the conditions mentioned
6 above are required for merger approval, they would seem to at least balance the
7 detriments listed and perhaps even result in a net positive benefit for the State regarding
8 the issues addressed in my testimony.

9 Q. Does this conclude your testimony?

10 A. Yes.

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of June, 1999, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing DIRECT TESTIMONY OF DAVID B.

WINDER to:

Edward Hunter
Stoels Rives LLP
One Utah Center
201 South Main Street #1100
Salt Lake City, Utah 84111

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

Mike Ginsberg
Assistant Attorney General
Utah Division of Public Utilities
160 East 300 South, 5th Floor
Salt Lake City, Utah 84114-0857

Doug Tingey
Assistant Attorney General
Utah Division of Public Utilities
160 East 300 South, 5th Floor
Salt Lake City, Utah 84114-0857

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

Brian W Burnett
Callister Nebeker & McCullough
10 East South Temple #900
Salt Lake City, Utah 84133
Peter J. Mattheis
Dean S. Brockbank

Brickfield Burchette & Ritts PC
1026 Thomas Jefferson Street NW
800 West Tower
Washington, D.C. 20007

Glen E. Davies
Parsons Davies Kinghorn & Peters PC
185 South State Street #700
Salt Lake City, Utah 84111

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

Lee R. Brown
Vice President, Contracts, Human Resources
Public & Government Affairs
238 North 2200 West
Salt Lake City, Utah 84116

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

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

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

EXHIBIT 1

TESTIMONY OF DAVID B. WINDER