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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 TO
PACIFICORP Common Stock	)	APPLICANTS' MOTION TO STRIKE
	)	PORTIONS OF THE PREFILED
	)	DIRECT TESTIMONY OF DENNIS W.
	)	GOINS

Pursuant to Utah Code Ann. ' 63-46b-6 (1992) and the Commission ' s Rules of Practice R746-100-3, Nucor Steel, a Division of Nucor Corporation (ANucor@), hereby submits this Response to Applicants ' Motion to Strike Portions of the Prefiled Direct Testimony of Dennis W. Goins (AResponse@).<sup>1</sup> In support of this Response, Nucor states as follows:

**I. INTRODUCTION**

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<sup>1</sup> Applicants ' Motion to Strike Portions of the Prefiled Direct Testimony of Dennis W. Goins is hereinafter AApplicants Motion@.

Applicants' Motion mischaracterizes the portions of Dr. Goins' testimony it moves to strike. The Commission stated in its May 10, 1999 Interim Order that it did not believe it would be useful to dissect each issue to reflect each party's definition of terms to exclude issues.<sup>2</sup> Yet Applicants now seek to dissect the broader issues addressed by Dr. Goins to remove the specific remedies he has suggested. The Commission has broad authority to impose conditions on the approval of a merger, and Intervenor's should not be barred from endorsing any remedies within the authority of the Commission that relate to issues in this proceeding. Nucor agrees that testimony must show how the issues are affected by the merger. Applicants confuse this requirement, however, and argue that remedies directly addressing the established issues in this proceeding are not relevant to the merger.<sup>2</sup> Thus, Applicants' Motion should be denied.

## II. ARGUMENT

Applicants move to strike testimony related to three of Dr. Goins' recommended conditions.

1. If the Commission elects not to freeze special contract customers' rates for five years, then [special contracts customers] should be allowed to choose their electricity supplier when their contracts expire subject to rules and guidelines set by the Commission.

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<sup>2</sup> See footnote 8, *infra*. Under Applicants' logic, many of the conditions imposed in the Utah Power and Light merger would not have been available for Intervenor's to support in testimony.

2. Require ScottishPower to forego any generation- and transmission-related stranded cost recovery on existing domestic plant equipment.

3. Require ScottishPower to file a plan for immediate retail access in Utah if it initiates sales of existing PacifiCorp domestic generation and/or transmission assets (excluding assets currently planned for divestiture) to a third party.<sup>3</sup>

As grounds for their claim, Applicants assert that these Aissues@ are irrelevant to the proceeding, and further that these Aissues@ are part of the Aindustry restructuring@ debate being undertaken at the Utah Legislature, and therefore completely off limits in this proceeding.<sup>4</sup>

What Applicants refer to as the Aissues@ are, in fact, only certain of the conditions to approving the transaction that Dr. Goins has suggested. The overarching issue Dr. Goins addresses is protection of Utah ratepayers from potentially inauspicious consequences of the merger. Dr. Goins addresses stranded costs and retail access merely in the context of what measures need to be taken to cure the large amount of risk that has been assigned to ratepayers in this proposal. Applicants attempt with semantics to remove Dr. Goins ' suggested remedies to the problems posed by the acquisition. Nucor does not suggest that the Commission in this docket should litigate the broad issues of industry restructuring and stranded costs; however, Nucor maintains that the Commission should consider all factors that could mitigate the risks to the public associated with this acquisition.

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<sup>3</sup> Direct Testimony of Dr. Goins at 5, lines 12-20.

<sup>4</sup> Applicants ' Motion at 2-3.

**a. The Specific Remedies Applicants Move to Strike are Directly Related the Issues Affected by the Merger**

The first remedy suggests an alternative for special contracts customers, if they are not provided with protection from merger risks through a contract extension (akin to a rate freeze for other ratepayers). This is a narrowly tailored remedy, directly related to the potential impacts of the merger, and within the jurisdictional authority of the Commission.

The second remedy is also narrowly tailored to ScottishPower's position in acquiring significant new domestic assets in the face of imminent competition. It is directly related to the merger, because absent the transaction PacifiCorp would not be facing the recoupment of the premium to be paid by ScottishPower. Dr. Goins, in the testimony Applicants pray to strike, states exactly how the merger implicates stranded costs:

Because ScottishPower's bid price compensates current PacifiCorp investors and reflects the risk of less-than-total stranded cost recovery, the Commission's future review of potential stranded costs associated with existing generation and transmission assets is unnecessary.<sup>5</sup>

Similarly, Dr. Goins illustrates how the third remedy, availability of retail access, will protect current PacifiCorp customers from earnings pressure exerted on the combined company as a result of the acquisition:

[T]he merger's large acquisition premium and uncertain cost savings could pressure ScottishPower to take steps to increase earnings. Such steps including selling generation and/or transmission assets could lead to reductions in service quality and reliability. To ensure that Scottish Power does not succumb to this pressure by selling strategic and high-value generation and/or transmission assets, the Commission should impose the retail access condition on the merger.<sup>6</sup>

The remedies suggested by Dr. Goins are all clearly and narrowly tailored to correct specific risks to ratepayers associated with the transaction identified by Dr. Goins, and for that reason are entirely relevant to this proceeding.

**b. The Commission Has Broad Authority in Determining Whether a Merger Is in**

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<sup>5</sup> Direct Testimony of Dr. Goins at 18, lines 19-22.

<sup>6</sup> Direct Testimony of Dr. Goins at 18, lines 12-17.

## **the Public Interest, and What Conditions to Impose to Insure It is in the Public Interest**

The Utah Commission has exercised its authority broadly to determine whether a merger is in the public interest. The Commission has acknowledged that it may evaluate Aconsiderations outside [its] normal regulatory jurisdiction and enforcement powerYwhich nonetheless bear on the public interest.@<sup>7</sup> The Utah Commission previously has imposed a wide spectrum of conditions to the approval of a merger.<sup>8</sup>

The concurrent or potential consideration of various remedies in a legislative context should not act to bar Commission consideration of those remedies in the context of a merger proceeding. The Aindustry restructuring@ debate is extremely broad, and covers virtually every aspect of the provision of electric service in Utah. Any attempt to limit the issues and remedies in this proceeding to those areas not included in the restructuring debate would unnecessarily and unreasonably stifle the Commission ' s authority. Extension of the Applicants ' logic would bar from consideration in this case any issue or remedy that might also be considered (much less acted upon) by the Legislature in the restructuring debate. This would be far too broad and illogical a restriction. The Commission is entitled to consider and impose conditions upon a merger to the extent necessary to insure that the merger is in the public interest.

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<sup>7</sup> *Re Utah Power and Light Company*, 90 PUR4th 555, 556 (1987).

<sup>8</sup> In *Re Utah Power and Light Company* , the Commission established myriad conditions to the transaction including but not limited to the following: comply with enhanced information and data reporting requirements; file revised tariffs initially reducing firm retail rates; certify that firm retail rates would never be raised as a result of the merger; develop a plan to allocate power costs and revenue changes; adopt procurement policies; submit an application indicating the analysis performed to determine that divestiture of an integral utility function is a cost effective management decision; take steps to protect the jobs of its employees; and generally support local businesses and promote economic development in the state of Utah. 90 PUR4th at pp. 118-23.

Applicants' motion should be denied because it would not allow intervenors to ask the Commission to exercise its authority with the discretion it has used in the past. Dr. Goins' testimony addresses only issues and remedies squarely within the normal regulatory jurisdiction and enforcement power of the Utah Commission.

**c. The Commission Has Already Considered this Issue**

Nucor previously raised concerns that Applicants would attempt to remove issues in this proceeding as a pretext to limit potential conditions that may be applied by the Commission to remedy problems caused by the proposed acquisition.<sup>9</sup> Nucor specifically identified industry restructuring and divestiture as remedies that it felt should not be removed from consideration in this proceeding. The Commission specifically rejected Applicants' attempt to remove various issues from the proceeding in its May 10, 1999 Interim Order. The only restriction the Commission declared for the parties was that clear testimony be presented as to the impact the merger could have on any issue raised.<sup>10</sup>

Dr. Goins clearly stated in his testimony how the merger impacts the issues he raised, and how the conditions he recommended ameliorate the problems and risks created by the merger. The Applicants' attempt to limit the availability of conditions sought by intervenors and within the discretion of the Commission should be denied. Because the issues in this matter will not be fully developed until after the hearing, it would be inappropriate at this time to take potential remedies off the table.

**III. CONCLUSION**

WHEREFORE, for the reasons set forth above, Nucor requests that the Commission deny Applicants' Motion.

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<sup>9</sup> Nucor Steel's Response to Applicants' Issues Memorandum at 2.

<sup>10</sup> Interim Order at 1.



DATED this 26<sup>th</sup> day of July, 1999.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of July, 1999, I caused via federal express or mail, first class, postage prepaid, a true and correct copy of the foregoing **NUCOR STEEL 'S RESPONSE TO APPLICANTS' MOTION TO STRIKE PORTIONS OF THE PREFILED DIRECT TESTIMONY OF DENNIS W. GOINS** to:

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