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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

)	Docket No. 98-2035-04
In the Matter of the Application of PacifiCorp)	
and Scottish Power plc for an Order)	UTAH LEAGUE OF CITIES AND
Approving the Issuance of PacifiCorp)	TOWNS' OBJECTION TO APPLICANTS'
Common Stock)	MOTION TO STRIKE PORTIONS OF
)	PREFILED DIRECT TESTIMONY
)	OF TOM DOLAN

INTRODUCTION

Applicants have moved to strike portions of the prefiled direct testimony of Tom Dolan. The portion of the testimony Applicants seek to strike relates to the renegotiation of current franchise agreements with either Utah Power & Light or PacifiCorp. The Utah League of Cities and Towns (ULCT) object to Applicants' Motion to Strike and submit that ULCT's position is not only relevant to these merger proceedings but mandated. Even assuming, *arguendo*, that such issue is not mandated it is within the Commission's jurisdiction to condition approval of the Application upon matters that will create a net positive benefit.

ARGUMENT

Applicants argue that the subject testimony is both irrelevant and beyond the Commission's jurisdiction. They err on both issues.

While ULCT recognizes that the Commission does not have the jurisdiction to compel the terms and conditions of franchises, it is, nevertheless, mandated to take such matters into account. The Commission's attention is directed to Utah Code Ann. § 54-4-25(4) which provides:

(4) (a) Each applicant for a certificate [of convenience and necessity] shall file in the office of the commission evidence as required by the commission to show that the applicant has received the required consent, franchise or permit of the proper county, city, municipal, or other public authority.

It is self-evident that, if the Application is granted, Scottish Power will be unable to demonstrate that it has received the requisite consent or franchise. Rather, existing franchises are in the name of Utah Power & Light or PacifiCorp. ULCT members will, in their individual dealings with Scottish Power, take the position that the change of control as well as the change in situs of the operation of that control are material modifications to existing agreements. In addition all contract and property rights are subject to the fair exercise of the police power. *State Road Comm. v. Utah Power & Light Co.*, 353 P.2d 171, 177 (Utah 1960). Franchises are subject to such police power. *Id.* Franchise, as an exercise of the police power cannot be irrepealable. *Utah Manufacturer's Assn. v. Stewart*, 23 P.2d 229, 232 (Utah 1933). *See also*, Constitution of Utah, Art. I, Sec. 23.

Accordingly, existing franchises do not possess the "untouchable characteristics" attributed to them by Applicants. They can be and will be modified as appropriate by the cities and towns. The Commission's role is to facilitate that role in a manner calculated to best serve the public's interest. In doing so, the Commission has broad authority to impose conditions:

Utah Code Ann. § 54-4-25(4)(d) provides:

(d) The commission may attach to the exercise of the rights granted by the certificate the terms and conditions as in its judgment public convenience and necessity may require.

Additionally, § 54-4-25(4)(e) details that, while a public utility may make application prior to obtaining a franchise, the certificate shall not issue prior to obtaining such franchise.

Read as a whole, it is unequivocal that, under their police powers, ULCT members may require a new entity to obtain a new franchise prior to operating within their respective jurisdictions. Such a conclusion is in keeping with the fundamental policy behind the police power, i.e. protection of the general welfare of the residents. In *Central Vermont Public Service Corp.*, 84 PUR 4th 213 (FERC 1987), FERC indicated that it “focus[es] on the substance rather than the form of corporate transactions and relationships,” and emphasized that such corporate reorganizations “may present the potential for abuses adverse to the public interest.”

This Commission should be similarly sensitive to the change in control that is presented to the Commission for approval.¹ Utah’s municipalities are justifiably concerned about further erosion of the local control as well as the various other issues presented in Mayor Dolan’s testimony. That concern can, and will, result in potentially divisive, prolonged and expensive litigation, all to the detriment of ULCT member’s taxpayers and Applicants’ ratepayers.

The Commission, through a simple and appropriate condition, can resolve the underlying disagreement about authority to renegotiate franchises and focus the parties, instead, on the real

¹ ULCT submits that the former change of control from UP&L to PacifiCorp had materially adverse effects upon the relationship between the utility and the municipalities.

issues pertaining to the issuance of franchises to Scottish Power.²

² ULCT proffers to the Commission that if such a condition is imposed, it will use its best efforts to prepare and recommend a standard franchise agreement for consideration of its members.

Common sense dictates that approval of the Application means little if Scottish Power does not have the necessary franchises to operate within Utah's cities and towns. Imposing the suggested condition provides for an expeditious, efficient and cost-savings alternative to the prolonged, diverse and expensive process that will result from the Commission's failure to impose such condition.

Applicants' Motion to Strike should be denied and the Commission should act in the best interest of the State's municipal residents by imposing a condition that will facilitate the inevitable but will do so in a manner that reflects good government and common sense.

DATED this _____ day of July, 1999.

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CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed, postage prepaid this _____ day of July, 1999, true and correct copies of Utah League of Cities and Towns Objection to Applicants' Motion to Strike Portions of Prefiled Direct Testimony of Tom Dolan to the following:

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