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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Application of)	DOCKET NO. 98-2035-04
PACIFICORP and SCOTTISH POWER)	
PLC for an Order Approving the Issuance of)	RESPONSE OF UIEC TO
PACIFICORP Common Stock)	APPLICANTS' MOTION TO
)	STRIKE PORTIONS OF THE
)	PREFILED DIRECT TESTIMONY
)	OF MAURICE BRUBAKER
)	

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The Utah Industrial Energy Consumers (“UIEC”), by and through their attorneys, hereby respond to the Applicants’ Motion to Strike Portions of the Prefiled Direct Testimony of Maurice Brubaker.

PacifiCorp and Scottish Power plc (“Applicants”), on July 16, 1999, filed a motion to strike portions of Maurice Brubaker’s direct testimony in which Mr. Brubaker recommended that the Commission hear testimony and consider two restructuring issues in connection with this merger application. Mr. Brubaker’s first recommendation is that, as a condition to the merger, the Public Service Commission (“Commission”) require the participation of the merged company in the

formation and operation of a Regional Transmission Organization (“RTO”). His second recommendation was that the Commission require Scottish Power waive any claim for stranded costs in connection with restructuring as a result of the premium paid by Scottish Power to PacifiCorp shareholders. For the reasons stated below, Applications’ Motion to Strike should be denied.

STANDARD

In its Interim Order dated May 10, 1999, the Commission stated that, in order for an issue to be considered in this docket, the parties must present “testimony as to the impact the merger could have on any issues raised.”

ARGUMENT

Applicants advance several arguments for excluding Mr. Brubaker’s testimony. None of them has merit. Applicants argue that the Commission does not have a legislative directive to review competitive issues, and that it may not have authority to directly order participation in an RTO. Applicants apparently believe the 1999 Utah Legislative Task Force addressing electric deregulation should preempt the Commission’s consideration of RTO and stranded cost issues in this docket. (Applicants’ Motion at 3). While it is true that there has been no legislative directive for the Commission to implement deregulation, neither is there any legislative prohibition. Had the Legislature intended that the Commission not address restructuring issues or impose measures on PacifiCorp intended to advance the transition to competition, it could have clearly stated so, just as it did when it directed the Commission by statute to freeze PacifiCorp’s rates. It has not constrained in any way the Commission’s authority to consider restructuring issues.

For the same reasons, the Legislative Task Force should not be viewed as precluding Commission action. There has been no directive to the Commission to refrain from considering these issues at the same time they are under consideration by the Legislative Task Force. In addition,

the issues under consideration there are far broader than the few restructuring issues raised by the industrial intervenors in this docket. Applicants have not offered any reason why the Commission should not proceed with its consideration of competitive issues at the same time as the Task Force.

For the same reasons, the Commission should reject Applicants' argument that the FERC's notice of proposed rulemaking on regional transmission organizations precludes the Commission's consideration of that issue in this docket. Other states, including Oregon, have required electric utilities to take steps toward separation of transmission assets in advance of any rule promulgated by the FERC. The existence of the FERC proceeding has no impact on the Utah Commission's authority to impose conditions on the proposed merger.

The Commission has broad authority to consider whether the merger is in the public interest and may, under that public interest standard, consider the nature and magnitude of the impact the merger may have on the development of a competitive market in this state. See Utah Code Ann. § 54-4-1,-28; in Re Utah Power and Light Company, 90 PUR 4th 555, 556 (Utah PSC 1987). It should hear evidence both on the desirability of conditioning the merger on a promise to participate in an RTO and on the issue of stranded costs.

Maurice Brubaker has explained in his direct testimony, and in his rebuttal testimony, the reasons the Commission should consider issues regarding an RTO and stranded costs in this proceeding.

RTO: The merger will have an impact on the Commission ability to require the Company to participate in the formation and operation of a regional transmission organization ("RTO"). Maurice Brubaker has explained that ScottishPower's policies and intentions regarding separating transmission appear to be inimical to the policies stated by the FERC and resistant to the development of regional transmission rates. See Direct Testimony of Morris Brubaker at 42. This

represents a significant impact that the merger will have on the development of an RTO.

In addition, the merger clearly has an impact on transmission assets in the western United States because PacifiCorp will thereafter be unable to merge with, acquire or be acquired by another geographically proximate electric utility. (Brubaker Direct at 44-45). The Special Share gives the Scottish Government power to veto any acquisition of PacifiCorp's transmission assets.

Applicants argue that the Commission may “not have authority to directly order a utility to create or join” an RTO. (Applicants' Motion at 4 (quoting Mr. Brubaker's testimony))¹.

Assuming that is the case, then the only opportunity the Commission will have to address the merged company's resistance to the separation of its transmission will be this merger proceeding. The UIEC are not asking the Commission to directly order participation, but only to hear evidence on whether it would be in the public interest to condition approval of the merger on a promise from the utility to participate in an RTO in the future. The willingness of ScottishPower to accept the directives of the FERC in that regard or to accept other reasonable steps in moving toward a competitive power market in the West is clearly a matter of public interest and within the purview of the Commission's authority in this docket. The Commission should hear evidence on whether, under the circumstances, the merger should be conditioned upon an agreement to join a RTO.

Stranded Costs. ScottishPower is asking the Commission to approve a transaction in which it is paying an amount substantially above book value for PacifiCorp's generation assets. Mr. Brubaker pointed out in his testimony that such a premium “is a clear indication of an

¹ Applicants have misinterpreted a statement from the UIEC's petition at the FERC and suggested it implies that the may not review competitive issues in connection with the merger application. (See Applicants' Motion at 3). The UIEC's statement was intended to mean that the Commission may not choose to review competitive issues, not that it is forbidden to do so.

expectation that the market value of PacifiCorp's generation assets exceeds their book value." (Brubaker Rebuttal at 19). Before the Commission approves such a transaction, it should consider the implications of this inflated value. Mr. Brubaker testified:

ScottishPower is not naïve, and is well aware of the trend toward competition in the U.S. retail electric markets. If the Commission does not require PacifiCorp/ScottishPower to relinquish any claim for stranded cost recovery, then it could subsequently request compensation for stranded costs, while at the same time argue that it should be allowed to keep part or all of the benefit of the cost reductions because they are necessary to compensate for the merger premium, which it voluntarily paid for these inflated assets.

Brubaker Rebuttal at 19, lines 6-10.

The issue of stranded costs is not merely convenient to decide in this docket. It has arisen precisely because ScottishPower has offered to pay PacifiCorp's shareholders more than the book value of the assets. The Commission, in considering whether the transaction is in the public interest, cannot simply ignore that inflated value. Under ScottishPower's proposed plan, the shareholders will realize the premium while the rate payers are left to face the prospect of a claim for stranded costs in a later case. Before it approves the merger, the Commission should hear evidence on how the assets have been valued in this transaction. It may be the only opportunity the Commission will ever have to make a fair comparison between the book value and market value of PacifiCorp's generation assets.

The issue of stranded costs is not only directly related to an important potential effect of the merger, it is also one infused with a public interest. The Commission should take evidence on how this transaction will impact rate payers and, if it appears that a stranded cost claim would work to the detriment of the rate payers while enriching the shareholders, the Commission should condition approval of the merger on ScottishPower's waiver of that claim. The Commission should not allow any expectation to be created that the premium paid in this transaction will ripen into a claim for

stranded costs.

CONCLUSION

The issues of participation in a RTO and of ScottishPower's claim for stranded costs are not irrelevant to this proceeding. They are, instead, issues directly raised by the proposed merger plan. Moreover, the determination of these issues is essential to the Commission's ultimate conclusion of whether the proposed merger is in the public interest. The UIEC has developed evidence in connection with these issues that may not have been heard by the commissions in other states affected by the proposed merger. For the reasons stated above, the UIEC respectfully request that the Commission deny Applicants' Motion to Strike and allow the evidence to be presented.

DATED this ____ day of July, 1999.

PARSONS BEHLE & LATIMER

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CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of July, 1999, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **RESPONSE OF UIEC TO APPLICANTS' MOTION TO STRIKE PORTIONS OF THE PREFILED DIRECT TESTIMONY OF MAURICE BRUBAKER, to:**

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