

1 August 6, 1999

2:00 p.m.

2

3 PROCEEDINGS

4

5 CHAIRMAN MECHAM: Let's go back on the  
6 record. We've actually had three people who would  
7 like to say something for Public Witness Day. We'll  
8 allow them to speak, but I'm going to limit you to no  
9 more than five minutes. And we've also received four  
10 letters from legislators to which I'll refer later.

11 The first one to sign up for this afternoon  
12 is Lee Brown. Then Lew Pilkington, then Richard  
13 Laramer.

14 MR. LARAMEE: Laramer.

15 CHAIRMAN MECHAM: Laramer. If you can keep  
16 your remarks to five minutes or less, we'd appreciate  
17 it. Mr. Brown. Would you like to make a sworn  
18 statement?

19 THE WITNESS: Yes, sir.

20 CHAIRMAN MECHAM: I should note for the  
21 three witnesses, you're free to make a sworn  
22 statement, which means that the Commission can make  
23 Findings of Fact on the statements that you make in  
24 our order, but you do subject yourself to the  
25 possibility of cross examination. Thus far, cross

1 examination has not been a factor. If you don't want  
2 to make a sworn statement, you can just do so, and  
3 we'll use that for -- I didn't mean that blanket.

4 MR. DODGE: Just period?

5 CHAIRMAN MECHAM: Yeah. If you want to  
6 make an unsworn statement, you can do so for  
7 informational purposes. Mr. Brown, stand, and we'll  
8 swear you in.

9

10 LEE R. BROWN,

11

12 A public witness, having been duly  
13 sworn, was examined and testified as  
14 follows:

15 CHAIRMAN MECHAM: Thank you. Mr. Tingey.

16

17 DIRECT EXAMINATION

18

19 BY MR. TINGEY:

20 Q Would you please state your name and

21 address.

22 A My name is Lee R. Brown.

23 CHAIRMAN MECHAM: Could you turn that mike

24 on, please? Push the button.

25 THE WITNESS: My name is Lee R. Brown. I'm

1 vice president with Magnesium Corporation of America.

2 Q (BY MR. TINGEY) Are you here representing  
3 MagCorp?

4 A I am. I have requested in appearing as a  
5 public witness, who happens to represent MagCorp, I  
6 have -- can I read my statement?

7 CHAIRMAN MECHAM: Go ahead.

8 THE WITNESS: Good morning, Mr. Chairman  
9 and Commissioners. I have previously entered an  
10 appearance on behalf of MagCorp as a pro se  
11 intervenor in these proceedings.

12 As you may know, MagCorp is a large  
13 industrial customer employing over 500 citizens of  
14 Utah in well-paying jobs with a facility worth over  
15 \$500 million and contributing over \$100 million  
16 annually to the economy of this state.

17 We are currently investing tens of millions  
18 of dollars in new equipment with a goal of becoming  
19 the cleanest, most efficient, lowest cost producer of

20 magnesium in the world. In order to meet the  
21 challenge of foreign manufacturers.

22 But as a large power consumer, with all that,  
23 we cannot remain competitively viable without an  
24 economically priced power supply.

25 Yesterday, we filed comments on the proposed

1 settlement stipulation between ScottishPower,  
2 PacifiCorp, the DPU and the Committee of Consumer  
3 Services. We were neither consulted on nor involved  
4 in the negotiation of the settlement agreement, nor  
5 are we a signatory for it. We get no benefits from  
6 the settlement agreement, nor, apparently, from the  
7 merger. But our comments do not seek a rejection of  
8 the settlement, only a conditioning of its approval.

9       What is that condition? That upon expiration  
10 of MagCorp's special contract with PacifiCorp,  
11 MagCorp will be decertified from PacifiCorp's retail  
12 service area, and that it will be allowed to form  
13 such entities or entity, enter into such affiliations  
14 as it deems necessary to access economically priced  
15 supplies of power after our contract with PacifiCorp  
16 terminates. Such a condition is the only avenue to  
17 survival that MagCorp has.

18       As Mr. Lowell Alt has testified, the DPU  
19 considers all special contracts to be subsidized

20 contracts and a burden on ratepayers. Although  
21 MagCorp believes his assertion to be totally untrue  
22 and based upon flawed premises, we are not here to  
23 fight him.

24 Similarly, PacifiCorp has refused to enter  
25 into negotiations with us on a new special contract

1 or to extend our existing special contract.

2 As Mr. Alan Richardson of ScottishPower  
3 testified before you, all customers will be treated  
4 the same in the future by ScottishPower. Although  
5 this effectively condemns Utah as a site for future  
6 investment by large industrial customers, MagCorp is  
7 not here to fight him and/or the subsequent misguided  
8 business plans.

9 Rather, what MagCorp seeks is a right to make  
10 its own power arrangements in the marketplace. If we  
11 are a burden on the system, as the DPU claims, let us  
12 go.

13 If Mr. Richardson doesn't want to negotiate a  
14 future agreement with us that allows us to remain in  
15 business, let us go.

16 We had -- what have you lost? According to  
17 them, nothing. In fact, MagCorp and the other large  
18 industrials probably should be given traveling money  
19 and asked to go to another power producer, based on

20 their claims.

21 We are not asking for any handouts, but we

22 are requesting that you remove the restraints that

23 allow the DPU and ScottishPower to determine

24 unilaterally whether we are to be allowed to survive.

25 Whether a plant worth in excess of \$500 million will

1 be forced to close, whether more than 500 Utah  
2 citizens will be put out of work, and whether a  
3 \$123 million contribution to the Utah economy will be  
4 erased.

5 By their testimony, by their settlement  
6 agreement, and by PacifiCorp's actions, it is clear  
7 that the DPU and ScottishPower have abandoned us once  
8 our existing contract expires, since we are a large  
9 industrial customer served under special contract.

10 We are not here to fight that decision. We  
11 are simply asking you, the Commission, to implement  
12 that decision by allowing us to seek out alternative  
13 suppliers for the period after contract termination.

14 If you decertify us from PacifiCorp's retail  
15 service area after expiration of our special  
16 contract, you will allow the DPU and ScottishPower  
17 the abandonment of us that they seek. And you will  
18 allow us the means to seek our own survival in the  
19 future on market terms rather than monopoly dictated

20 terms.

21 I hope you will take a few minutes to read

22 our comments once you have a moment. Thank you for

23 your time and attention.

24 CHAIRMAN MECHAM: Thank you. Mr. Hunter,

25 are there questions from Mr. Brown?

1           MR. HUNTER: No questions, but I would like  
2 to state that we have gotten a copy of the document  
3 that was filed this morning. We'll address it in our  
4 brief.

5           And I also point to the record where I don't  
6 think it's the fact that Mr. Richardson said he won't  
7 negotiate with special contract customers. But Mr.  
8 Brown wasn't here, so maybe we can discuss that  
9 afterwards.

10          CHAIRMAN MECHAM: Okay. Is there anything  
11 further for Mr. Brown? All right, thank you, Mr.  
12 Brown.

13          THE WITNESS: Thank you.

14          CHAIRMAN MECHAM: Mr. Pilkington. Would  
15 you like to give a sworn statement?

16          THE WITNESS: Okay.

17

18                   LEW PILKINGTON,

19

20 A public witness, having been duly  
21 sworn, was examined and testified as  
22 follows:  
23  
24 THE WITNESS: My name is Lew Pilkington.  
25 The last name is P-I-L-K-I-N-G-T-O-N.

1 DIRECT EXAMINATION

2

3 BY MR. TINGEY:

4 Q Could we get an address?

5 A Our plant is -- 1074 East 75 South in  
6 Bountiful is my home, and our plant is 4088 West 1820  
7 South just off of Bangerter Highway. Small  
8 manufacturer. We are Pilkington Anodizing and  
9 Graphics manufacturing plant.

10 I suppose I'm here mainly -- I was here this  
11 morning. And what I heard wasn't really what I  
12 wanted to hear. It was mostly a public relations  
13 that I heard concerning how generous ScottishPower is  
14 going to be with the handicapped and the aid programs  
15 and so forth.

16 That isn't what I wanted to hear. I wanted  
17 to hear this: Is ScottishPower a supplier of energy?  
18 Are they a distribution company of energy? What is  
19 the role of the State to ensure proper distribution

20 and adequate and efficient distribution of energy?

21 Let me give you a few facts of our own small  
22 company. We're not large like MagCorp. We have  
23 about \$4 million invested.

24 We use somewhere around \$72,000 a year in  
25 power, and our power factor has been about 67

1 percent. Which means that you pay on the average;  
2 that means as your quality goes down, the problem  
3 arises.

4 In this case, we have ruined quite a number  
5 of pieces of equipment because of this fluctuation in  
6 power. And this I think we feel it has been the  
7 growth of power usage in the area versus the lack of  
8 deliverability. They haven't kept up deliverability  
9 versus the growth. It's tremendous in our area down  
10 there.

11 This is my question: What is ScottishPower's  
12 plan to meet these demands that PacifiCorp didn't do  
13 themselves? And if you're dealing with the United  
14 Kingdom company, and we force them or entice them to  
15 increase their quality of deliverability, and when we  
16 can't seem to do the same with our present company,  
17 which is PacifiCorp.

18 So our measurements -- these are facts; I'm  
19 not talking off the top of our head. These are

20 facts. The harmonics, three phase power delivery,  
21 has been inconsistent. That means that the lathe  
22 goes down to 40 percent. Then you've got to pick up  
23 the power from another source. What this does is  
24 burns out one of our units.

25       The company has been fairly good. Utah Power

1 has reimbursed us several times because of this  
2 problem, but we don't want to have that happen. What  
3 happens is every hour we're down represents about  
4 \$1,000 in production time.

5 For instance, to clean up our problem, we've  
6 hired an electrician who does nothing but filter the  
7 incoming electricity to improve it for our use. We  
8 recently invested another \$3,500 for cleaning up  
9 power that comes in from Utah Power. That should be  
10 done by the power company, not by us.

11 So my question is this: And following up,  
12 the facts are that the power factor is just not  
13 adequate. It just isn't consistent. And we simply  
14 can't live with this. It isn't good for us. And I  
15 don't know if any other small firms have this  
16 problem. We have it because we use a number of  
17 rectifiers in our business.

18 So my question goes back to this: Will  
19 ScottishPower improve that situation? Or I

20 understand from the Wall Street Journal that they're

21 more invested -- interested in possibly a little

22 better dividend for those investors.

23       And also, they sell blocks of power. I don't

24 know -- I don't understand blocks of power as much as

25 I'd like. But I understand that they sell blocks of

1 power to those who would like to buy it. And then  
2 who buy the blocks of power could redistribute that  
3 power, but they also assume the responsibility of  
4 that.

5 I'd like to hear a comment on that.

6 CHAIRMAN MECHAM: Is there anyone here who  
7 wants to respond to that?

8 MR. RICHARDSON: Could I just comment?

9 CHAIRMAN MECHAM: This is Mr. Richardson.

10 MR. RICHARDSON: Sorry, I didn't catch the  
11 gentleman's name.

12 CHAIRMAN MECHAM: Use a microphone, Mr.  
13 Richardson.

14 MR. RICHARDSON: Could I just say that I  
15 recognize the problems you've described as power  
16 quality. And I've just spoken to one of our  
17 ScottishPower engineers here. And he would get your  
18 address details and speak with you about your  
19 business and understand just what your problem is.

20       It seems to me as though your problems are  
21 not very different from those experienced from time  
22 to time by some of our own customers in Britain. We  
23 understand them well. And we invest to repair those  
24 problems. It sometimes takes time to build a  
25 substation or build a new connection. And I hope

1 you'll take that as a positive gesture of our  
2 response in addressing your problems.

3 The other thing you raised is about  
4 ScottishPower's interest in dividends. We're also  
5 interested in investing. I said earlier this week,  
6 we're here for the long-term. That involves  
7 investing in the network, in the business, to make  
8 sure we've got a long-term good business. That's  
9 very much what we want.

10 The last point about trading power in blocks  
11 is a bit of a technical term. Some power in Britain  
12 is traded in what we call blocks over large  
13 interconnections. But it's a bit special, I think,  
14 to the British market at this time.

15 So basically, I appreciate your comments. We  
16 understand them well. We're experienced utility  
17 people, and I would guess we would be encouraging you  
18 hopefully in months to come to address your problems  
19 directly.

20 THE WITNESS: Thank you.

21 CHAIRMAN MECHAM: Maybe before Mr.

22 Pilkington leaves you can visit with that engineer,

23 and someone from PacifiCorp, to discuss the current

24 problem. Future problem and current problem.

25 THE WITNESS: Okay. Well, I appreciate

1 this time. And I just want to bring those facts out,  
2 that there are problems in the delivering of the  
3 power to us. Thank you very much.

4 CHAIRMAN MECHAM: Thank you for coming.  
5 Mr. Laramee. Would you like to make a sworn  
6 statement?

7 THE WITNESS: Yes, I would.

8

9 RICHARD LARAMEE,

10

11 A public witness, having been duly  
12 sworn, was examined and testified as  
13 follows:

14

15 CHAIRMAN MECHAM: Thank you. Mr. Tingey.

16

17 DIRECT EXAMINATION

18

19 BY MR. TINGEY:

20 Q Would you please state and spell your name.

21 A Richard Laramée, L-A-R-A-M-E-E, Brigham

22 City. We receive 95 percent of our power from Utah

23 Power.

24 Q Are you representing anyone here?

25 A No. I just represent myself.

1 Q Go ahead.

2 A I'm a residential customer. I pay roughly  
3 \$1,200 a year for our power. And I'm opposed to  
4 PacifiCorp and the ScottishPower merger. Because,  
5 one, I think the management levels create bureaucracy  
6 and with very little local knowledge for long-term  
7 capital investment for generating distribution  
8 plants, pricing, customer service.

9 I think, two, that much of PacifiCorp's  
10 profits would be used to modernize ScottishPower.  
11 And as much as they have 16,000 employees for a  
12 revenue of \$5 billion and PacifiCorp has only 9,000  
13 employees for \$5 billion worth of revenues.

14 And I do not see any economies of scale that  
15 would result if we were to combine PacifiCorp with  
16 Arizona or New Mexico utility companies where they  
17 would share such things as generation and  
18 distribution systems, would be able to share  
19 maintenance and repair facilities, would provide

20 emergency power where needed for brownouts, and could

21 have some economies of scale and marketing and

22 revenue management.

23 Long-term, I see that for me as a residential

24 customer, that there would be less response to U.S.A.

25 customers with less knowledge of our personal

1 situations here in the west. There would be less  
2 modernization of facilities, lower efficiencies of  
3 operation, and a higher kilowatt cost long-term.

4       You have to have economies of scale between  
5 corporations, like you would with an Arizona or New  
6 Mexico utility, to be able to have a permanent cost  
7 reduction to all of us. Not just a 67 cents per  
8 month cost reduction maybe for this year or next  
9 year, but long-term quality stabilization and  
10 economies to our customers here in Utah and the  
11 Pacific Northwest.

12       CHAIRMAN MECHAM: Thank you. Are there  
13 questions for Mr. Laramie?

14       MR. HUNTER: Just one to clarify for me.

15

16                   CROSS EXAMINATION

17

18 BY MR. HUNTER:

19    Q   Did you say you were from Brigham City?

20 A Yes.

21 Q Brigham City is a municipal utility?

22 A Brigham City is a municipal facility. But

23 95 percent of the power that goes through the Brigham

24 City Corporation comes from Utah Power and

25 PacifiCorp. So it conflicts what PacifiCorp policies

1 are to our costs there in Brigham City.

2 Q So PacifiCorp is your wholesale power  
3 supplier?

4 A Yeah.

5 MR. HUNTER: Thank you, that's all.

6 CHAIRMAN MECHAM: Anything further for Mr.  
7 Laramee? Thank you, Mr. Laramee, for coming.

8 THE WITNESS: Thank you.

9 COMMISSIONER WHITE: I did have a question  
10 from Mr. Brown's testimony, and I think I'm asking it  
11 of some lawyer or other. He indicated that he would  
12 like to have his company decertified from the retail  
13 service area.

14 What statutory provisions cover that? Is my  
15 first question. My second one is, Mr. Dodge, do you  
16 represent his company?

17 MR. DODGE: I do not.

18 COMMISSIONER WHITE: I'm sorry. Mr.  
19 Reeder?

20 MR. REEDER: No, ma'am.

21 MR. BROWN: I'm right here.

22 COMMISSIONER WHITE: I don't know why I

23 assumed one of those was your lawyer.

24 MR. BROWN: I'm here pro se without an

25 attorney.

1           COMMISSIONER WHITE: I understand that.

2           MR. BROWN: Do you want me to answer the  
3 question?

4           COMMISSIONER WHITE: Let me ask a couple of  
5 questions. I'm sorry I didn't really think of these  
6 questions in time before.

7           What I'm getting at is this: I'm trying to  
8 figure out if this is an appropriate case to decide  
9 the issues you raise in the context of the merger, or  
10 is it more appropriate for you to petition the  
11 Commission to get what you want? And also, if you  
12 could point me to my provisions of law that govern  
13 that, that would be helpful too.

14          MR. BROWN: With regard to the effects of  
15 the merger and the discussions that we've previously  
16 had with executives of PacifiCorp concerning this  
17 merger, concerning the renewal of our contract, we  
18 felt that this was an appropriate place to bring this  
19 issue before the Commission.

20        We have, since being told that they would not  
21 renegotiate our agreement in any form at this time,  
22 have sought other alternatives and are looking to  
23 file perhaps an administrative action before the  
24 Commission that would enable the Commission to decide  
25 that issue.

1           COMMISSIONER WHITE: I'm sorry, you said  
2 you're considering doing that?

3           MR. BROWN: Yes, ma'am. In fact, we feel  
4 that because when our plant was built and the  
5 contract was approved by this Commission in April of  
6 1968, it was approved -- basically, my review of the  
7 record at that time was that one of the reasons  
8 MagCorp's predecessor, NL Industries, which given  
9 this agreement was that it would bring 600 jobs to  
10 the state of Utah and an enormous economic benefit.  
11 And therefore, the Commission approved a special rate  
12 for that company.

13          That contract is now set to expire in a  
14 little over two years. A load of this magnitude and  
15 the administrative procedures that we must go through  
16 to pursue alternative power supplies requires that we  
17 make a decision now, that we begin now.

18          We can't wait until the very last year of the  
19 agreement to do that. That's why we began

20 discussions with PacifiCorp some six months ago.

21           COMMISSIONER WHITE: I understand. I was

22 just trying to figure out the best way to deal with

23 your concerns. If it's in this case or in another

24 one.

25           MR. BROWN: Well, they were given a

1 certificate of necessity and public convenience to  
2 serve us in 1968. What you can give, we feel you can  
3 take away and allow us to go to yet another utility  
4 or power arrangement.

5 CHAIRMAN MECHAM: The only reason I'm  
6 laughing is because Mr. Reeder told us the same thing  
7 yesterday.

8 MR. BROWN: I've been accused of being very  
9 similar to Mr. Reeder.

10 (Laughter.)

11 MR. BROWN: I'm sure he does a better job  
12 of it.

13 COMMISSIONER WHITE: Thank you.

14 MR. REEDER: Just so we have the same boot  
15 shop, Lee.

16 CHAIRMAN MECHAM: Okay. We've also this  
17 morning received four letters from four legislators,  
18 and it appears that at least one of them would like  
19 to be -- would like me to read it into the record.

20 They will be on our file for your review.

21 This one is from Senator Millie Peterson, who

22 is the Assistant Minority Whip in the Utah State

23 Senate. She says, Dear Commissioner Mecham. Last

24 legislative session, I brought a bill to require the

25 state Legislature -- excuse me. I brought a bill to

1 require the state Legislature be the final approval  
2 on the sale of PacifiCorp to ScottishPower. I wasn't  
3 opposed to the purchase; I just felt that as an  
4 elected official, I represented constituents who are  
5 very concerned about their power costs. Also having  
6 served for two years on the electrical deregulation  
7 task force, I believed it was not a simple issue.

8       Certainly I recognized that we would want the  
9 recommendation from the Public Service Commission,  
10 but I felt the buck should stop with the elected  
11 Legislature and the Governor for a foreign buyout.

12       The newspaper coverage has reported the  
13 concerns of the large industrial users of power with  
14 the proposed acquisition. They have certainly been  
15 able to negotiate a better rate than small business  
16 and individual power users. They are a necessary  
17 portion of the equation that must be considered  
18 before this acquisition is allowed to be finalized.

19       Utah economy is built on all segments being

20 able to profitably maintain their business and employ  
21 our citizens. Our committee concluded that  
22 deregulating power at the present time was not in the  
23 best interest of all parties. Please recognize that  
24 your decision should reflect that same standard.  
25 If this acquisition is not in the best

1 interests of all parties, is it in the best interests  
2 of Utah as a whole, not just some segments? Forcing  
3 large businesses to go out of business is not in the  
4 best interests of Utah.

5 Please recognize the fine balance that all  
6 companies experience. The steel industry in Utah  
7 County is in jeopardy based on their recent  
8 bankruptcy. The copper industry has been laying off  
9 thousands of employees in Arizona and New Mexico.  
10 And all companies are trying to balance their bottom  
11 line to stay open.

12 Thank you for taking the time to read my  
13 remarks. Sincerely, Millie Peterson.

14 We received another letter. I won't read all  
15 the rest of them, but I'll give you an idea of what  
16 they say. This one is to the Commission from  
17 Representative Sheryl Allen, who is the chair of the  
18 House Public Utilities and Technology Standing and  
19 Interim Committee.

20 She notes that she's been contacted by large  
21 industrial users of electrical service expressing  
22 concern about the proposed acquisition. She asks  
23 that we consider the following:

24 For businesses to survive in competitive  
25 markets, reasonable energy prices are absolutely

1 necessary. Energy represents a significant portion  
2 of the production cost of many Utah industries.

3 Second thing is that authorization of the  
4 merger should include adequate assurances of  
5 protection of the large energy industrial contract  
6 customer group.

7 Now, this should include assurances that  
8 contracts currently in existence will be honored, and  
9 PacifiCorp and ScottishPower will negotiate new ones  
10 promptly, in good faith, and with recognition of the  
11 significant contributions these businesses make to  
12 the economic well-being in the state of Utah.

13 The third letter comes from Representative  
14 Tom Hatch, who is also a member of the Public  
15 Utilities and Technology Interim and Standing  
16 Committees in the House of Representatives.

17 He notes that he had been comparing notes  
18 with his legislative colleagues in Idaho and thought  
19 perhaps there were similarities between what's

20 happening in Idaho and here.

21       And then at the end he says, Utahans have

22 enjoyed electric rates that have been very

23 competitive for many years. I am sure this has

24 contributed to the great economy we have enjoyed in

25 recent times. I would hope that as you deliberate

1 the acquisition you will take necessary steps to  
2 ensure that current customers are protected.  
3 Particularly, I would hope that you would consider  
4 the concerns of Utah businesses as they relate to  
5 remaining competitive in a world market.

6 And the fourth letter we received is from  
7 Representative Eli Anderson. He says that over the  
8 past several months, I have been in discussions with  
9 many Utah businesses regarding their concerns about  
10 the proposed acquisition of PacifiCorp by  
11 ScottishPower.

12 While you are reviewing this proposal, I  
13 would hope you take into account several factors to  
14 assure Utah businesses will remain competitive in the  
15 world market.

16 Utah businesses currently hold special  
17 contracts with PacifiCorp which allow them to  
18 purchase electricity in huge quantities at reduced  
19 rates. For Utah businesses to remain competitive in

20 the world market, they require reasonable energy  
21 prices. The proposed acquisition puts in question  
22 whether these contracts will continue in the future.  
23 I would hope that when deliberating this  
24 proposal, the importance of large businesses to  
25 Utah's economic well-being is considered. Then he

1 urges us to be sensitive to those needs.

2 Those, again, will all be available on our  
3 file if they aren't already.

4 Off the record.

5 (Whereupon a discussion was held off the  
6 record.)

7 CHAIRMAN MECHAM: Back on the record. Mr.  
8 Sandack.

9 MR. SANDACK: Thank you, Commissioner. You  
10 know I represent intervenor IBEW Local 57. After  
11 having opportunity to review the record, prior  
12 rulings of the Commission, the stipulation and  
13 commitments of the parties, their arguments and  
14 positions, and having the ability to participate in  
15 the proceedings thus far, intervenor IBEW 57 is  
16 satisfied that the issues have been fully and fairly  
17 presented to the Commission such as to permit  
18 resolution of the application in the public interest.

19 Accordingly, intervenor is withdrawing its

20 testimony. We will continue to be a party in this

21 matter as our interests may appear.

22 CHAIRMAN MECHAM: Okay.

23 MR. SANDACK: Thank you.

24 COMMISSIONER WHITE: I'm sorry, you said

25 the issues have been resolved to your client's

1 satisfaction?

2 MR. SANDACK: No, I didn't say that. What  
3 I said was we felt that the issues have been briefed  
4 and submitted fully and fairly for your  
5 consideration.

6 COMMISSIONER WHITE: Thanks.

7 CHAIRMAN MECHAM: And you don't want to  
8 submit your witnesses' testimony?

9 MR. SANDACK: That's correct.

10 CHAIRMAN MECHAM: All right. Off the  
11 record just a minute.

12 (Whereupon a discussion was held off the  
13 record.)

14 CHAIRMAN MECHAM: Let's go back on the  
15 record. Mr. Brubaker. Shall we swear you in first?

16

17 MAURICE BRUBAKER,

18

19 Called as a witness, having been duly

20 sworn, was examined and testified as

21 follows:

22

23 CHAIRMAN MECHAM: Thank you. Before we get

24 started with Mr. Brubaker, we thought we'd address

25 the motions to strike that were argued yesterday. We

1 are going to deny the motions to strike. We'll hear  
2 the evidence. That doesn't necessarily mean that  
3 we've concluded that all of these issues are ripe for  
4 this proceeding, and we'll say so in the order that  
5 issues following this proceeding at some point.  
6 We're just not going to preclude it from being heard  
7 now.

8 MR. BURNETT: Thank you.

9 MR. HUNTER: Thank you.

10 CHAIRMAN MECHAM: Mr. Reeder.

11 MR. REEDER: Thank you, Chairman.

12

13 DIRECT EXAMINATION

14

15 BY MR. REEDER:

16 Q Mr. Brubaker, would you state your name,  
17 address and by whom you're employed?

18 A Maurice Brubaker. My business address is  
19 1215 Fern Ridge Parkway, St. Louis, Missouri. I'm

20 associated with the firm of Brubaker and Associates.

21 Q Mr. Brubaker, have you and your firm been

22 engaged to prepare and file testimony and rebuttal

23 testimony in this case on behalf of a group of

24 industrial consumers in Utah?

25 A Yes, we have.

1 MR. REEDER: May we have marked as the next  
2 exhibit in order the prefiled testimony and the  
3 rebuttal testimony of the witness Maurice Brubaker?

4 CHAIRMAN MECHAM: Yes. We shall mark his  
5 prefiled direct as UIEC 1. Are there attachments to  
6 that? Okay.

7 THE WITNESS: There's an Appendix A that's  
8 the qualifications but no formal exhibits.

9 CHAIRMAN MECHAM: Why don't we mark the  
10 qualifications as 1.1, UIEC 1.1.

11 (Whereupon Exhibits UIEC 1, 1.1 and 1R  
12 were marked for identification.)

13 CHAIRMAN MECHAM: We've marked UIEC 1 and  
14 1.1, which are his qualifications, and the rebuttal  
15 testimony as UIEC 1R.

16 Q (BY MR. REEDER) Are there any changes or  
17 corrections you'd desire to make to your exhibits  
18 marked, your testimony and rebuttal testimony in this  
19 case?

20 A I have none.

21 Q Would you adopt the testimony in these  
22 exhibits and your testimony in this case as the -- as  
23 if the questions were asked and the answers given?

24 A Yes.

25 Q Mr. Brubaker, at this time would you

1 summarize your testimony, and comment if you would  
2 briefly on the stipulation that has been reached  
3 among some of the parties in this case?

4 A Yes. My direct testimony addressed the  
5 file proposal, of course, and my rebuttal testimony  
6 addressed mainly the DPU testimony which contains  
7 some suggested merger conditions. I recommended that  
8 the merger not be approved without still further  
9 conditions.

10 Subsequent to that filing, of course, there  
11 has been a stipulation filed among the utility  
12 applicants, the DPU and the CCS. That stipulation  
13 improves the deal and includes some of the  
14 conditions, in fact, that I have recommended in my  
15 direct and rebuttal testimonies.

16 However, I think that there's a need for  
17 further clarification and additional conditions  
18 before I would be able to endorse the proposal.

19 Q Mr. Brubaker, what are your recommendations

20 with respect to rates in this matter?

21 A My recommendation is this: That I think

22 it's reasonable to conduct a rate review based on a

23 '98 test year, which I understand the company is

24 preparing. And hopefully that would be as limited as

25 possible to deal with items that were put forward

1 from the last case. But the objectives would be to  
2 get a clean starting point for pre-merger PacifiCorp  
3 that would set a platform for comparisons on a going  
4 forward basis.

5 After that, it's my recommendation that the  
6 rates be capped through 2003 and that the merger  
7 credits of \$12 million a year, per the stipulation,  
8 also be applied during that period of time.

9 Q You're recommending both a rate cap and the  
10 rate credit?

11 A Yes, I am.

12 Q Why is a rate cap necessary?

13 A Rate cap does several things. First of  
14 all, it gives a proper incentive to ScottishPower to  
15 make beneficial changes in the operations of  
16 PacifiCorp that will reduce its cost.

17 Second, it limits the extent of debate that  
18 you'd have to have in reviewing subsequent test years  
19 about what is and is not a merger cost and a

20 transition cost and what costs could or could not

21 have been achieved absent the merger.

22       And third, it protects the customers from

23 additional rate increases in the event ScottishPower

24 is not as successful as it wants to be in reducing

25 PacifiCorp's costs.

1 Q Mr. Brubaker, in your testimony, you  
2 recommended that this merger be -- the consummation  
3 of this merger be conditioned upon the approval by  
4 this Commission of a transition plan. Do you still  
5 argue for that precondition?

6 A I still think that's the preferable way to  
7 proceed, but it appears that that's not possible the  
8 way that the applicants have structured their deal.

9 Fortunately, the conditions in the  
10 stipulation to some extent substitute for and provide  
11 some of the comfort and assurances that I had in mind  
12 when I recommended that applicants be required to  
13 file and process their transition plan before being  
14 allowed to consummate the merger.

15 However, my willingness to accept that  
16 depends critically on there being a rate cap to  
17 protect customers. If there is no rate cap, then I  
18 would think it would -- still think it would be  
19 important to file a transition plan before merger

20 consummation so we know what the exposure of  
21 customers might be in the absence of a rate cap.  
22       But if there's a rate cap and a merger credit  
23 that the parties have negotiated is in place, then we  
24 would be willing to go with a post-consummation  
25 filing of the plan.

1 Q You've been present in this hearing room  
2 when there's been considerable discussion concerning  
3 an income tax benefit that will accrue to the  
4 ScottishPower group as a result of the structure of  
5 this transaction. What is your recommendation with  
6 respect to that?

7 A It's been acknowledged, first of all, that  
8 income tax savings are a merger benefit. I believe I  
9 also heard yesterday, if I understood it correctly,  
10 ScottishPower indicating that they would willingly  
11 provide the information necessary to assess the  
12 magnitude of the savings and to allow the Commission  
13 to make a decision on what the savings are and how  
14 they should be shared.

15 Given those economic parameters of what I  
16 understand the agreement to be, I'm comfortable with  
17 that. To the extent that there are any legal issues  
18 about whether the Commission is foreclosed from  
19 considering it or not, I have no comment but would

20 hope that there would not be.

21 Q Is your position, then, sir, that there

22 should be a merger condition clearing those legal

23 issues so they're out of the way?

24 A Yes.

25 Q Mr. Brubaker, you've been present in the

1 room when there's been considerable discussion  
2 concerning stranded costs, and even present when  
3 there's been extensive argument on that topic, as we  
4 sometimes are given to do. What's your position on  
5 that topic?

6 A I've noted in my testimony that because of  
7 the premium being given to PacifiCorp stockholders,  
8 and that premium relative both to book value and to  
9 market value, that in my view, the consummation of  
10 the merger should essentially end the debate about  
11 whether there's any stranded cost associated with  
12 generation assets.

13 Stranded cost claims typically are based on a  
14 circumstance where generation assets are not worth as  
15 much in a competitive market as they are in a  
16 regulated market. Which means that they're worth  
17 less than book value.

18 If generation units were to be sold on the  
19 market and indeed fetched a price in excess of book

20 value, that would be the same results as getting a  
21 premium over book value for the stock, except you get  
22 to keep the generating units.  
23       The valuation range discussed yesterday  
24 confirms -- I think this was in the proxy  
25 prospectus -- also an appraisal of 1.4 to 1.8 times

1 book value for the generation assets.

2 I understand that PacifiCorp and  
3 ScottishPower have agreed not to argue that the  
4 premium or transition costs calculate or contribute  
5 to stranded costs.

6 In my view, given all the facts and  
7 circumstances surrounding this transaction, I think  
8 the issue should be settled and there should not be  
9 any claim for stranded cost given the compensation to  
10 stockholders that's taken place.

11 Q Mr. Brubaker, you've been present in the  
12 hearing room when there's been evidence and argument  
13 made about RTOs. What's your position with respect  
14 to that issue?

15 A As indicated in my testimony, the markets  
16 are opening, clearly moving toward area-wide  
17 transmission organizations or RTOs that handle  
18 operations, maintenance, planning, financing,  
19 engineering, and are designed to ensure independent

20 operation of the system, non-discriminatory access,

21 and cost-based rates.

22 I would like to see as a merger condition a

23 commitment on the part of ScottishPower, PacifiCorp,

24 to place the transmission assets into an RTO, an

25 acceptable RTO, within 24 months of merger

1 consummation, or if there's not an acceptable RTO  
2 that's available, to file with this Commission within  
3 18 months a plan outlining how the company will  
4 ensure that its transmission system is operated in a  
5 manner consistent with this independent operation.

6 This is a way, I think, for the Commission to  
7 have meaningful impact on what the RTO might look  
8 like, to have some ability to shape that structure of  
9 that organization.

10 I understand the state of Nevada did a  
11 similar condition with respect to the merger of the  
12 Sierra Pacific Power and Nevada Power Company. This  
13 would give this Commission an ability to have a role  
14 in that process. If that is not done, the Commission  
15 may not have an ability to participate in that in the  
16 future.

17 And I would note that there was testimony  
18 yesterday that kind of made that point, that the  
19 regulators in the U.K. imposed conditions that they

20 wanted because they could do it in the context of  
21 what they were approving in the way of a merger. And  
22 this Commission I think can take -- certainly  
23 understands that approach.

24 Q Mr. Brubaker, you've been present in the  
25 hearing room while there's been considerable

1 discussion concerning the financial conditions, and  
2 in particular the intercompany loan agreement. Do  
3 you have any continuing concerns in that regard?

4 A A lot of the details and concerns, they  
5 have been nailed down through the stipulation and  
6 also from the oral testimony that explained in  
7 somewhat more detail what those documents and  
8 agreements actually meant.

9 But I have a general concern that we're  
10 sitting here trying to think about what might happen  
11 in the future under circumstances that we can't  
12 foresee.

13 So I would just urge that the Commission be  
14 very broad in the statements in its order, if it  
15 chooses to approve the merger, to be sure that there  
16 are no loopholes, if I may, that would allow for some  
17 of the things that we fear to happen.

18 Just because we're not particular in what we  
19 say can't happen, I want to be sure we don't leave

20 that open for everything else that's not specifically

21 excluded to occur.

22 So if the loans upward from PacifiCorp to the

23 other ScottishPower corporations are either

24 prohibited or limited by the \$200 million aggregate

25 cap is one; two, if all dividends have to get

1 Commission approval; and three, if any other cash  
2 that goes out of PacifiCorp has to have Commission  
3 approval, we're okay with that.

4 I don't know if that's exactly the way to  
5 state it, but it concerns there may be a lot of  
6 opportunities to do things with the transactions that  
7 maybe we can't afford to see. So we should be very  
8 careful in what is done to make sure that the  
9 Commission doesn't lose any control.

10 Q Mr. Brubaker, last night and this morning  
11 in particular, there's been considerable discussion  
12 concerning how the Commission should deal with  
13 special contracts that expire during what we've come  
14 to call the transition period. What's your position  
15 with respect to that?

16 A There's been plenty of testimony about the  
17 concerns arising from the change of ownership and  
18 control of PacifiCorp and the risks that that imposes  
19 on customers who have existing special contracts.

20 My recommendation is that special contracts  
21 be extended to the end of the rate credit period  
22 2003. There's some conditions in the comments that  
23 were gone over this morning. I won't go back and  
24 recite all of those.

25 But essentially, there were two primary

1 economic factors. One is that the extensions occur  
2 subject to the prices being compensatory at that  
3 point in time. And that's a condition to help  
4 protect the other customers. And second -- as well  
5 as ratepayers -- or stockholders.

6 And second, if the Commission makes any  
7 material change in how it treats the revenues  
8 associated with the contracts and the cost -- in  
9 other words, how it handles them in setting the  
10 rates -- that is materially adverse to the utility,  
11 that they not be required to extend the contracts on  
12 the same terms and conditions.

13 Q Mr. Brubaker, what are the risks or  
14 concerns that caused you to make that recommendation?

15 A One of the risks clearly is that  
16 ScottishPower may not be as successful in containing  
17 cost as it has represented that it will be or that it  
18 wants to be. And if that's the case, there could be  
19 pressure to try to extract more revenues from the

20 special contract customers.

21       Second, it's simply this is a change in

22 control, a change in business, maybe a change in

23 philosophy. And I think it makes sense for it to

24 have a short period of time here where we don't

25 change things any more than we have to to allow the

1 new owners of the company and the customers to  
2 understand their own -- understand each other's  
3 business processes and needs.

4 Q If savings are to occur as a result of this  
5 merger, when has ScottishPower, in the information  
6 you've seen, forecasted those savings to occur?

7 A They increase over time and occur more in  
8 the later years than the early years.

9 Q Is the recognition of those savings in the  
10 out years one reason for recommending an extension of  
11 the special contracts?

12 A Yes.

13 MR. REEDER: I hate to do this, but next  
14 comes the pink documents. These pink documents are a  
15 bit different than the pink documents you've seen  
16 before in that they combine both ScottishPower  
17 information and PacifiCorp information. So both sets  
18 of my friends have got to leave the room.

19 CHAIRMAN MECHAM: Off the record just a

20 minute.

21 (Whereupon a recess was taken.)

22

23 (In camera portion of the transcript

24 is sealed and segregated from the

25 main transcript.)

1 (In camera session begins.)

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18 (In camera session ends.)

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1 (Whereupon Exhibit Cross Examination 24  
2 was marked for identification.)

3 CHAIRMAN MECHAM: Let's go back on the  
4 record. While off the record, Mr. Van Nostrand  
5 distributed among parties and the Commission an  
6 exhibit that we've marked as Cross Examination  
7 Exhibit 24. It's entitled Response of Utah  
8 Industrial Energy Consumers to the First Set of Data  
9 Requests of PacifiCorp and ScottishPower Plc. It's a  
10 multipage document, and on the front it is the  
11 Request Number 3 and the response to it. Mr. Van  
12 Nostrand.

13 MR. VAN NOSTRAND: Thank you, Mr. Chairman.

14

15 CROSS EXAMINATION

16

17 BY MR. VAN NOSTRAND:

18 Q Good afternoon, Mr. Brubaker.

19 A Good afternoon.

20 Q I wanted to start off by reviewing some of  
21 the conditions of the stipulation which I think you  
22 might agree came from your original testimony and  
23 maybe gave some credit that your ideas were  
24 incorporated.

25 It seems to me as though condition 3-e that

1 you have on page 4 of your testimony has been

2 incorporated as condition 48 of the stipulation?

3 Would you confirm that?

4 A Just a moment. I think it's essentially

5 the same condition.

6 Q And do you accept that 3-f seems to be

7 incorporated as condition 49? Word for word, in

8 fact?

9 A Yes.

10 Q And looks as though 3-b and 3-d have pretty

11 much been incorporated into condition 15? Regarding

12 the paying of dividends and officers of PacifiCorp

13 having to certify that PacifiCorp has adequate

14 capital to meet all the outstanding commitments?

15 A Yes. I would agree with that.

16 Q And your condition 2 regarding not

17 recovering any transition costs, transaction costs,

18 or acquisition costs, I believe was incorporated as

19 conditions 4 and 28 with the exception of transition

20 costs? Does it appear as though we've accommodated

21 your interest at least --

22 A In terms of not including as an expense

23 adjustment, yes. I don't know the stip addresses

24 what might happen with enhanced rate of return or the

25 like. As far as a specific expense, I would agree it

1 addresses that.

2 Q Okay. Thank you. Turn to page 7 of your  
3 testimony, I just wanted to cover briefly, you had a  
4 discussion in there about the merger guidelines from  
5 the Department of Justice and Federal Trade  
6 Commission. I believe you said those guidelines were  
7 instructive. Is that right?

8 A That's correct.

9 Q And you're not suggesting that the  
10 Commission is required to apply the guidelines; is  
11 that correct?

12 A That is correct.

13 Q Nor have you previously made a  
14 recommendation to a state commission that it use the  
15 guidelines in its analysis of a merger?

16 A Correct. And as I indicate in my data  
17 response, my testimony does not address the -- in  
18 other cases did not address the concentration issue,  
19 but to the extent that I have made recommendations

20 about cost savings and being able to identify cost  
21 savings attributable to the merger, I think my  
22 testimony is consistent with that part of the  
23 guidelines.

24 Q Is it a fair summary of the guidelines that  
25 they consider whether the transaction would

1 potentially create increases in market power and  
2 whether or not there are benefits which offset these  
3 potential increases in market power?

4 A Yes.

5 Q And have you had a chance to read the FERC  
6 order in this case which has been identified as Cross  
7 Examination Exhibit 20?

8 A I have seen the FERC order, yes.

9 Q Do you have a copy of it available to you?

10 A I don't know where it's at. If you've got  
11 one handy, that's probably quicker than my trying to  
12 find it.

13 Q Let me point out in your testimony, the  
14 FERC merger policy statement indicates FERC would  
15 adopt the horizontal merger guidelines in analyzing  
16 the effect of competition on a proposed horizontal  
17 merger?

18 A I'm sorry, maybe my ears are plugged up,  
19 but I did not clearly hear your question.

20 Q FERC has made it clear that in examining a  
21 merger in the merger policy statement of FERC that it  
22 will use the horizontal merger guidelines of the  
23 Federal Trade Commission --  
24 A Switching out -- to the FERC merger policy  
25 statement?

1 Q Right.

2 A That is correct.

3 Q When FERC applied the guideline as to which  
4 transaction, it found, did it not, because  
5 ScottishPower and PacifiCorp do not compete in common  
6 geographic markets, there's no change in the  
7 concentration of the market and therefore no  
8 transaction related effect on competition?

9 A That's correct.

10 Q Now, your client, the Utah Industrial  
11 Energy Consumers, argued before FERC that the  
12 transaction did have adverse impacts on competition?  
13 If you look at the bottom of page 7 of Cross  
14 Examination Exhibit 20.

15 A That's correct. Well, it says --

16 CHAIRMAN MECHAM: I think your microphone  
17 must have gone off, Mr. Brubaker.

18 THE WITNESS: Thank you. I think it says  
19 that Utah consumers argue that transactions may

20 adversely impact the ability of the Commission to

21 advance the opportunities for competition. So yes,

22 if that's what you're referring to.

23 Q (BY MR. VAN NOSTRAND) And then basically,

24 FERC found that there was no competitive harm

25 resulting from the transaction and rejected that

1 argument?

2 A Correct.

3 Q And the relief that was sought by the  
4 Industrial Energy Customers was also rejected?

5 A Correct.

6 Q If we apply the -- back to the horizontal  
7 merger guidelines, applying that to this transaction,  
8 wouldn't that suggest that we don't even get to the  
9 second prong of the analysis? In other words,  
10 because there are no adverse impacts on competition,  
11 you don't necessarily need to see whether we are  
12 offsetting benefits?

13 A That would be true, yes. My point was  
14 simply if you're going to look at a transaction for  
15 the point of trying to determine what are benefits,  
16 this is an analytical approach that makes sense.

17 Q You indicate in response to Request Number  
18 3 that in this case the merger did not meet the  
19 concentration thresholds, and accordingly, no further

20 analysis was warranted?

21 A That's correct.

22 Q Now, the testimony notes there are a number

23 of factors that the horizontal merger guidelines look

24 at to determine whether or not there are benefits

25 which offset potential increases in market power?

1 A Yes.

2 Q And the first factor, according to your  
3 testimony, is whether or not there are deficiencies  
4 that are generated as a result of the merger, that's  
5 5 and 6?

6 A On page?

7 Q Page 7 of your testimony.

8 A Yes.

9 Q And this point is discussed in Section 4 of  
10 the horizontal merger guidelines. Do you have a copy  
11 of that available to you?

12 A I think so, yes.

13 Q Now, if we could turn to how the guidelines  
14 define efficiencies, would you agree with the  
15 following statement, appears in Section 4 -- I'm  
16 looking at the second paragraph of the copy I have,  
17 Section 4 -- efficiencies generated through merger  
18 can enhance the merged firm's ability and incentive  
19 to compete, which may result in lower prices,

20 improved quality, enhanced service, or new products?

21 A Yes.

22 Q And further down in that paragraph, the

23 efficiencies may result in benefits even when price

24 is not immediately and directly affected?

25 A That's correct.

1 Q So is it fair to say that under the  
2 guidelines, efficiencies may take the form of  
3 improved quality and enhanced service in addition to  
4 the efficiencies which may appear through lower  
5 prices?

6 A That's correct.

7 Q You go on in your testimony describing  
8 these guidelines and point out that under these  
9 guidelines, efficiency claims will not be considered  
10 if they are vague or speculative or otherwise cannot  
11 be verified by reasonable means?

12 A Yes.

13 Q Is it your position that the service  
14 quality measures that are proposed to be implemented  
15 by ScottishPower in this proceeding are vague or  
16 speculative?

17 A They certainly were as initially presented  
18 by applicants. There's been some sharpening up of  
19 those conditions and commitments through the

20 stipulation process. And frankly, with the press of  
21 time, I've not paid as much attention to that aspect  
22 of the stipulation as to the other aspects.

23 Q Is your position now that they were vague  
24 and speculative?

25 A I think they're -- I hesitate to really

1 give a definitive answer on that, because as I said,  
2 I've concentrated much more on the financial and  
3 other aspects of this and the cost savings than on  
4 those -- the enhancements that were made to those  
5 particular terms and conditions.

6 Q If we look at applying the horizontal  
7 merger guidelines, which you acknowledge are  
8 instructive, to the extent efficiencies under those  
9 guidelines are defined to include both improved  
10 quality and enhanced service, would you agree that  
11 the service quality improvements that ScottishPower  
12 is proposing to implement would count as efficiencies  
13 under these guidelines?

14 A As a general concept, yes.

15 Q I'd like to move on to the part of your  
16 testimony where you discuss the regional transmission  
17 organization or RTO. In part of your testimony, you  
18 refer to the FERC Notice of Proposed Rulemaking on  
19 RTOs; is that correct?

20 A Yes.

21 Q As issued on May 13th of this year?

22 A That sounds about right, yes.

23 Q And in fact, FERC has been promoting  
24 regional transmission organizations of one sort or  
25 another for several years, haven't they?

1 A They've been what?

2 Q Promoting regional transmission  
3 organizations of some sort or another for several  
4 years?

5 A That is correct.

6 Q Your testimony points to some of the  
7 benefits from RTOs, including around pages 40 and 41  
8 of your testimony?

9 A Yes.

10 Q And referring back to the FERC order in  
11 this proceeding, your clients, the Utah Industrial  
12 Energy Consumers, requested that FERC condition this  
13 transaction on the applicants participating in the  
14 formation of and joining an RTO; is that right?

15 A I believe that's correct, yes.

16 Q And based on the discussion of FERC's  
17 authority and NOPR, you would agree FERC has the  
18 authority to condition the approval of this  
19 transaction on an RTO? The formation of an RTO?

20 A Yes, I believe it does.

21 Q And if we look at your responses to the  
22 data requests, Cross Examination Exhibit 24, Number  
23 19, you indicate a number of cases where FERC has  
24 imposed such a requirement; is that right?

25 A Well, not just FERC. I think most of these

1 are state commission actions.

2 Q Okay. The FERC order in this case, given  
3 their finding that there was no showing whatsoever  
4 that the transaction would adversely affect  
5 competition, didn't FERC conclude there was no basis  
6 for conditioning the transaction on the transmission  
7 related requirements that your clients proposed?

8 A I'd have to go back and read the FERC order  
9 in more detail to give you a specific answer to that.  
10 They clearly did not make that a merger condition.

11 Q If you could look at the bottom paragraph  
12 on page 8, under the Commission's standard of review,  
13 intervenors have not demonstrated how the issues they  
14 raised would be created or exacerbated by the  
15 proposed transaction, and consequently, how the  
16 transaction could adversely affect competition.

17 As a result, it would be inappropriate to set  
18 the transaction for hearing or condition the proposed  
19 transaction on various transmission related

20 requirements designed largely to address PacifiCorp's

21 alleged pre-existing ability to use transmission to

22 adversely affect competition in electricity markets.

23 Such issues are not relevant to this proceeding.

24 Is that a correct reading of the FERC order?

25 A Yes.

1 Q And I also take it from your testimony as  
2 to the formation of an RTO, you do not believe that  
3 this Commission has the authority to directly order  
4 PacifiCorp to participate in an RTO?

5 A That's my understanding, yes.

6 Q So in effect, you're recommending that even  
7 though the agency which does have clear jurisdiction  
8 to impose a requirement of an RTO, this Commission,  
9 which you say does not have the authority, should do  
10 so in the context of this merger application?

11 A Yes. Because I think they could do it by  
12 making it as a condition of the merger. For the  
13 reasons that I discussed earlier, I think it's  
14 important that that process move forward and that  
15 this Commission have an opportunity to participate in  
16 the formation of an RTO.

17 Q If we could look at the cases that you cite  
18 in your testimony in support of the requirement of an  
19 RTO, one of the decisions you cite is page 43 of the

20 FERC decision in the PacifiCorp/Utah transaction; is

21 that correct? The merger from 1988?

22 A Yes, I mention that.

23 Q Is it fair to say that the requirement that

24 FERC impose in that case to provide firm transmission

25 service at cost based rates was in light of the

1 market power issues present in that proceeding?

2 A Market power I think were some specific  
3 factual claims that were made on the record in that  
4 case.

5 Q More specifically, if we look at page 25 of  
6 the FERC order, the Commission makes the following  
7 statement: We affirm the judge with respect to his  
8 finding that the proposed merger is likely to result  
9 in a substantial lessening of competition in the  
10 relevant product and geographic markets.

11 And later on in that paragraph, Thus, we  
12 conclude the potential adverse effect on competition  
13 that would likely result from the merger is  
14 inconsistent with the policies underlying anti-trust  
15 statutes.

16 Do you accept subject to check that that  
17 quote appears from the FERC order in the  
18 Utah/PacifiCorp merger?

19 A Sure.

20 Q And so based on those market conditions,  
21 there was a need to impose a requirement that  
22 PacifiCorp make available certain transmission  
23 services?

24 A That's what FERC found, yes.

25 Q If we turn to some of the other cases which

1 you cite there in your response to Request Number 19,  
2 again, that's Cross Examination Exhibit 24, the first  
3 case you cite is a Missouri Public Service Commission  
4 case when it approved the merger of Union Electric  
5 and Central Illinois Public Service Company?

6 A Correct.

7 Q And wasn't it the finding of the Commission  
8 in that case, there would be a potential increase in  
9 market power from the transaction?

10 A Not at the present time, no. They had a  
11 concern about the increase in market power if and  
12 when they moved to retail competition. But they  
13 didn't find that there was an increase in market  
14 power at the time.

15 Q Let me look at the language in the order at  
16 the bottom of page 15 of the Commission order which  
17 you provided. Indicates the Commission finds there  
18 are sufficient facts and evidence to be concerned  
19 about the potential increase in market power from the

20 proposed merger.

21       The merger could have a significant adverse

22 impact on the degree of competition within UE's

23 Missouri service territory due to limited transfer

24 capability for imported power as well as the

25 disincentives caused by pancaked transmission rates.

1 Does that sound familiar?

2 A Yes. That was all in the context of a  
3 circumstance when retail competition would be  
4 available. It was not a finding that that existed at  
5 the present time.

6 Q But it was that context that caused the  
7 Commission to impose the requirement that UE shall  
8 participate in a regional independent system  
9 operator?

10 A Precisely.

11 Q If you go to the next case you cite, which  
12 is the Wisconsin Public Service Commission decision  
13 involving WPL Holdings and Interstate Power, was that  
14 also not a situation where the Commission found a  
15 concern about generation market power?

16 A Yes, it was.

17 Q If we could go back to the Missouri case  
18 for just a second, you testified in that case, didn't  
19 you?

20 A Yes, I did.

21 Q It was not your recommendation in that case  
22 to require participation in an ISO or RTO, was it?

23 A No. I didn't address that area of issues  
24 in the case.

25 Q The next decision you cite in Request 19 is

1 the FERC decision involving the Wisconsin -- WPL  
2 Interstate Power. Would you agree that the  
3 imposition of an RTO requirement there was in the  
4 context of a competition stipulation agreed to by the  
5 company and staff?

6 A Which FERC case again? I'm sorry.

7 Q This is the FERC case referred to in your  
8 response to Request Number 19. It's the IES  
9 Industries, Interstate Power case.

10 A Okay. And your question again, please?

11 Q The requirement there of the commitment to  
12 participate in an ISO. Again, that was in the  
13 context of a finding by the FERC trial staff that the  
14 transaction would have adverse impact on competition,  
15 isn't it?

16 A It may have been part of it. It may have  
17 been other aspects as well. But effectively, the  
18 applicants agreed to the commitment, for whatever  
19 reasons.

20 Q Following a finding by the FERC trial staff  
21 that there were -- an impact of the merger was the  
22 substantial control of the transfer capability into  
23 the Wisconsin Upper Michigan Transmission System?  
24 A That sounds familiar, yes.  
25 Q Next case you cite, Nevada Public Service

1 Commission on Sierra Pacific Power where you point  
2 out that the condition of approval was the formation  
3 of an independent scheduling administrator?

4 A Correct.

5 Q Isn't it true that in that proceeding, it  
6 was based on the Nevada Commission's finding that  
7 there be a potential loss of competition by the  
8 merger?

9 A I believe that's correct, yes.

10 Q And then similarly, the FERC case which you  
11 cite approving that transaction made note of the fact  
12 that the applicants committed to form -- either join  
13 a regional ISO or form an independent transco; isn't  
14 that right? That's what you say in your response --

15 A That's what I said, yes.

16 Q It's true, isn't it, that it appears from  
17 the FERC order the basis for FERC approving the  
18 transaction was based on -- was the applicant's  
19 commitment to divest generation resources? And FERC

20 specifically said they were not conditioning merger

21 approval on an ISO or RTO?

22 A They did say the latter on their, I think,

23 Petition for Clarification.

24 Q As well as the Motion for --

25 A Yes, correct.

1 Q Finally, we get to the Ohio Edison case,  
2 which is the last one citing a response to Exhibit  
3 19, or Data Request 19. In that case, wasn't there  
4 also a finding that that transaction failed the  
5 Appendix A analysis and showed that the merger  
6 exceeded the thresholds for market concentration?

7 A Yes. I think that's correct.

8 Q It was in that context that there was a  
9 requirement that ISO membership --

10 A Yes.

11 Q After reviewing all these orders cited in  
12 the Utah/PacifiCorp FERC merger order, is it fair to  
13 say that in every one of these situations, the  
14 requirement on participating in a regional  
15 transmission organization or an independent system  
16 operator or similar such arrangements is all based on  
17 dealing with market concerns, market power concerns,  
18 concentration -- or concentration concerns?

19 A Essentially, yes.

20 Q And you haven't provided any citation of  
21 any circumstance under which a transmission related  
22 requirement, such as joining an RTO, has been imposed  
23 in the context of a proceeding where there's been no  
24 adverse impacts of competition shown?

25 A That's correct.

1 Q Just turning back to the specific condition  
2 which you're proposing, I take it you would require  
3 the transmission assets be placed in an RTO within 24  
4 months after a merger approval?

5 A After a merger consummation I believe is  
6 what I said.

7 Q Okay. Well, a merger approval it says in  
8 your condition 9 on page 5.

9 A Yeah. I think...

10 Q If we look at some of the excerpts from the  
11 FERC NOPR on RTOs, is it fair to say FERC contends a  
12 participation in an RTO be voluntary?

13 A They talk around that. I think that's  
14 probably what they say in the NOPR. I think it's  
15 clear that they want utilities to be in RTOs.

16 Q I think I understand the gist of your  
17 statements in that regard. And I guess -- on page 8,  
18 they indicate that We are not proposing to mandate  
19 that utilities participate in a regional transmission

20 institution by a date certain? Do you recall that

21 from the NOPR?

22 A That's correct.

23 Q And then on 7, they say We believe it is

24 preferable to meet these responsibilities in the

25 first instance through an open and collaborative

1 process that allows for regional flexibility and  
2 induces voluntary behavior?

3 A Yes, I recall that.

4 Q If you look at this condition that you  
5 would impose in connection with this transaction,  
6 have you identified the RTO that you would require  
7 PacifiCorp to join?

8 A No. That would evolve over time. There is  
9 no specific RTO structure at the moment. The purpose  
10 is to encourage PacifiCorp to continue the efforts  
11 it's made in the past to form regional type  
12 transmission organizations and let the Commission and  
13 other parties participate in that formation. And if  
14 there is not an acceptable RTO available, then you  
15 don't have to join it.

16 Q Then they what?

17 A Then PacifiCorp would not have to join it.

18 Q And you are talking specifically then about  
19 the second prong of your condition, that the

20 follow-up plan detailing how it will be arranged with

21 other entities?

22 A Yes.

23 Q As of now, there are five regional

24 transmission institutions in place, at least

25 according to the FERC NOPR?

1 A I think that's correct, yes.

2 Q And I believe the NOPR goes on to  
3 acknowledge that after more than two years of effort,  
4 the proponents of the IndeGO, I-N-D-E capital G-O,  
5 ISO in the Pacific Northwest and Rocky Mountain  
6 regions ended their efforts to create an ISO? Does  
7 that sound correct?

8 A Yes.

9 Q In fact, wasn't it PacifiCorp that was the  
10 primary component behind trying to create the IndeGO  
11 ISO in the Northwest?

12 A Yes, it was.

13 Q And any knowledge that it was PacifiCorp's  
14 role with respect to that proposal that caused it to  
15 fail?

16 A I assume it was disagreement among the  
17 potential participants that -- at some point in time  
18 that caused that to happen. I don't know the  
19 particulars of that.

20 Q Was there any reason to believe that  
21 PacifiCorp would be more successful in assembling an  
22 RTO application now?

23 A If it's a requirement of the merger, I  
24 think it may be in with the FERC NOPR and the  
25 increased attention on RTOs, other utilities may be

1 more receptive. We have a movement in California, we  
2 have a movement in Nevada, we have a California ISO.  
3 There's a lot of things that have changed.

4 Q The NOPR indicates for a successful RTO  
5 application, there must be a region of appropriate  
6 scope and configuration identified and that the  
7 proponents represent a significant portion of the  
8 transmission facilities within the identified region.  
9 Does that sound --

10 A Yes.

11 Q How is it that PacifiCorp can be required  
12 to secure the participation of others in the order to  
13 put forth a successful RTO application?

14 A I don't understand your question.

15 Q If FERC is saying that in order to have a  
16 successful RTO application you have to have a  
17 sufficient proportion of the transmission facilities  
18 representing the application, doesn't that require  
19 PacifiCorp to actually secure the participation of

20 others?

21 A Yes, it does.

22 Q If it's unsuccessful, then an RTO

23 application that assess this criteria would not be

24 approved by the FERC?

25 A I presume that's correct, yes. Wouldn't

1 happen.

2 Q Another related point in the testimony is  
3 you state that the requirement that you are proposing  
4 here -- let me find the exact language. That this  
5 requirement as far as requiring PacifiCorp to join  
6 the RTO is no different than proposed -- than imposed  
7 on ScottishPower in the U.K. Is that a correct  
8 reading of your testimony?

9 A Yes.

10 Q That's your rebuttal testimony, I think on  
11 page 18. And I take it from that, you're referring  
12 to these ring fence conditions which have been  
13 included in Cross Examination Exhibit 6?

14 A Let me find the right passage here so we're  
15 on the same page.

16 Q Are you looking at your testimony?

17 A I am.

18 Q Page 18 lines 12 to 14.

19 A Yes. They are related to the ring fence

20 conditions.

21 Q Cross Examination Exhibit 6 is the one that

22 you're referring to?

23 A I think so. There were a couple of

24 documents that address that.

25 Q That's the condition 7 which requires that

1 ScottishPower accept a financial ring fence around  
2 the public electricity supply and transmission  
3 businesses? I suppose you're also looking at  
4 condition 6?

5 A Yes.

6 Q And that requires that generation be placed  
7 in one or more separate group companies which would  
8 be affiliates but not subsidiaries or parent  
9 companies of the remaining electricity activities?

10 A Yes.

11 Q Now, is it your understanding that the  
12 placing of a financial ring fence around transmission  
13 is the same as what is required with the placing of  
14 transmission assets under the operational control as  
15 would be done in the case of an RTO?

16 A No. I would agree with you it's a little  
17 bit different circumstance.

18 Q In fact, in order for -- to meet the  
19 requirements of an RTO under FERC, the RTO must have

20 operational responsibility for all the transmission

21 facilities under its control; is that correct?

22 A That's correct.

23 Q And that goes far beyond the financial ring

24 fencing that is contemplated by Cross Examination

25 Exhibit 6?

1 A It is beyond.

2 Q I'd like to turn to the discussion, your  
3 proposed condition on stranded costs.

4 MR. VAN NOSTRAND: If I could approach the  
5 witness, Mr. Chairman?

6 CHAIRMAN MECHAM: That's fine, go ahead.

7 (Whereupon Exhibit Cross Examination 25  
8 was marked for identification.)

9 Q (BY MR. VAN NOSTRAND) What I've  
10 distributed is an investment report from Goldman  
11 Sachs Investment Research which in Table A2 lists the  
12 valuation parameters of pending electric utility  
13 mergers. In the last page of the document, Table A3  
14 discusses valuation parameters of completed electric  
15 utility mergers.

16 Looking in terms of the pending mergers,  
17 looking in particular in the seventh column over from  
18 the right-hand side labeled Premium, is it fair to  
19 say, at least based on this document, there's no

20 situation where there was an acquisition of an  
21 electric utility where an acquisition premium was not  
22 paid?

23 A That's correct. Yes.

24 Q I guess a couple of them that particularly  
25 stand out are the 35.8 percent premium paid by

1 CalEnergy for MidAmerican Energy. Do you see that?

2 A I saw it a second ago. Hold on. Yes.

3 Q And the 38.5 percent premium paid by

4 ConEdison for Orange and Rockland?

5 A Yes.

6 Q And the U.K. counterpart, National Grid

7 Group, is paying a 25 percent premium to acquire the

8 New England Electric System; is that right?

9 A Yes.

10 Q Is it fair to say it's not unusual that --

11 it's real common, in fact, that in electric utility

12 acquisitions, a premium over the market value is

13 paid?

14 A That's correct, yes.

15 Q If we look at Table A3 of this exhibit, in

16 terms of the transactions that were completed, just

17 looking at the ones I've got circled on there -- and

18 we'll acknowledge those marks are mine. The Enron

19 Corporation's acquisition of Portland General in the

20 final column indicates there was a market to book

21 upon closing of that transaction of 2.24 times?

22 A Yeah. I see that number.

23 Q Now, are you aware, did Enron in that case

24 have to waive its right to recovery of stranded costs

25 as a condition of the merger with PG&E?

1           MR. REEDER: If they hadn't already,  
2 counsel? Is it your position that Enron made a claim  
3 for stranded costs in that case?

4           MR. VAN NOSTRAND: No. Stranded costs  
5 don't belong in merger cases, Mr. Reeder.

6           MR. REEDER: Don't misrepresent the record  
7 on what the claim was for stranded costs, please.

8           MR. VAN NOSTRAND: There's no discussion of  
9 stranded costs in the merger.

10          MR. REEDER: And one was claimed, isn't it?

11          MR. VAN NOSTRAND: If I'm allowed to cover  
12 it with the witness, if you'll allow the witness to  
13 testify --

14          MR. REEDER: Please do.

15          Q (BY MR. VAN NOSTRAND) Are you aware  
16 whether or not there was a waiver by Enron in its  
17 right to recover stranded costs in connection with  
18 the acquisition?

19          A I don't know if there was or wasn't.

20 Q Are you aware of a subsequent Oregon Public  
21 Utility Commission proceeding, Docket UE 102, where  
22 PG&E was allowed to cover a percentage of its  
23 stranded generation costs?

24 A I don't recall seeing that order.

25 Q If that is an accurate portrayal of that

1 order, wouldn't that suggest that PGE -- Enron had  
2 not waived its right to recover stranded costs of  
3 PGE?

4 A Without understanding the order and the  
5 transaction, I really can't give you a definitive  
6 answer as to what that means.

7 Q Look at the next one down, the New Century  
8 Energies merger. That indicates a 2.34 market to  
9 book ratio of Public Service Company of Colorado's  
10 acquisition of Southwestern Public Service Company?

11 A That's correct.

12 Q And in that case, was New -- does New  
13 Century Energies have to waive its right of the  
14 Public Service Company's stranded costs?

15 MR. REEDER: Is it your contention such a  
16 claim was made there?

17 MR. VAN NOSTRAND: It's my contention  
18 stranded costs aren't dealt with in these  
19 proceedings.

20 MR. REEDER: It was not an issue in that

21 case?

22 MR. VAN NOSTRAND: Was it a condition

23 imposed on the merger that stranded costs be waived?

24 MR. REEDER: Are you asking the question

25 whether or not there was an issue in the case that

1 was resolved adversely, or are you asking the  
2 question whether it was an issue in the case at all?

3 MR. VAN NOSTRAND: I'm asking whether a  
4 condition was imposed in connection with merger  
5 approval.

6 MR. REEDER: Is your question was the issue  
7 in the case, or is your question was the issue ruled  
8 adversely? I don't understand your question.

9 MR. VAN NOSTRAND: I'm just asking whether  
10 or not there was a condition imposed in connection  
11 with merger approval that required the waiver of  
12 stranded costs. That's the question.

13 CHAIRMAN MECHAM: It's not an unfair  
14 question. If you know the answer, Mr. Brubaker,  
15 speak up.

16 THE WITNESS: I don't. I don't know if  
17 there was or wasn't.

18 Q (BY MR. VAN NOSTRAND) How about the  
19 KeySpan Energy Corporation's acquisition of Long

20 Island Lighting Company which suggested a market to  
21 book ratio of 1.42 upon conclusion of that  
22 transaction? Is Long Island Lighting Company  
23 precluded from recovering its stranded costs now?  
24 MR. REEDER: Same objection. Is it your  
25 representation the issue was raised?

1 MR. VAN NOSTRAND: I want to know if  
2 they've been precluded by any condition in that  
3 transaction.

4 MR. REEDER: If the issue wasn't an issue  
5 in the case, I think it's unfair to ask how it was  
6 resolved and to contend --

7 MR. VAN NOSTRAND: It's easy to look at a  
8 merger order and see whether there's any provision in  
9 the order which precludes stranded cost recovery.  
10 That's all I'm asking the witness.

11 CHAIRMAN MECHAM: All right. My guess is  
12 he doesn't know.

13 Q (BY MR. VAN NOSTRAND) You don't?

14 A The Chairman is correct. I do not know.

15 Q In fact, if we refer back to your response  
16 to data requests included in Cross Examination 24, in  
17 response to Request Number 21, you indicated you're  
18 not aware of any decision where a merger approval was  
19 conditioned upon the merged company agreeing not to

20 make a claim for stranded cost recovery; is that

21 right?

22 A That's correct.

23 CHAIRMAN MECHAM: Are you getting pretty

24 close there, Mr. Van Nostrand?

25 MR. VAN NOSTRAND: Am I at my 45 minutes?

1 CHAIRMAN MECHAM: Just checking.

2 MR. VAN NOSTRAND: Just a few more  
3 questions. This all could have been obviated had the  
4 motion to strike been granted.

5 CHAIRMAN MECHAM: Don't rub it in.

6 (Laughter.)

7 MR. REEDER: Or order the merger condition  
8 accepted.

9 Q (BY MR. VAN NOSTRAND) In your rebuttal  
10 testimony, I take in on this stranded cost, looking  
11 at page 19, you say that the wiliness to pay  
12 substantially above book value is a clear indication  
13 of an expectation that the market value of PacifiCorp  
14 generation assets exceeds their book value. Is that  
15 right?

16 A Yes.

17 Q I take it from that statement, you would  
18 assign all the excess of market value over book value  
19 to generation assets?

20 A I would think so. Because essentially,  
21 everything else will remain regulated.

22 Q What about the distribution system, the  
23 lines already in place? Wouldn't you say the  
24 replacement value, the costs of replicating that  
25 would be substantially greater than the historical

1 depreciated costs that appear on the utility's

2 balance sheet?

3 A Probably would be. But I've never even

4 heard anybody suggest that in a deregulated

5 environment that the transmission and distribution

6 system would be deregulated and subjected to market.

7 All models that I'm aware of retail competition would

8 continue to subject the T and D system to cost of

9 service regulation.

10 Q You would say that the rights-of-way a

11 utility has accumulated to provide service does not

12 represent a valuable asset that could be used to

13 provide any number of services to households?

14 A They may also do that, yes.

15 Q Wouldn't that suggest that the value of

16 that system in place has a value far greater than the

17 book value shown on the financial statements?

18 A Well, it could. But I think most times

19 when utilities utilize facilities that have been

20 supported through the rates, the revenues received  
21 from those extra services get credited back to rates.  
22 I wouldn't see that as being a net benefit to the  
23 stockholder.  
24 Q But you haven't done any analysis in this  
25 case in terms of the various assets on PacifiCorp's

1 balance sheets as to where any payment above book  
2 value should be assigned?

3 A I did. I looked at that. I thought there  
4 were some places besides generation, and I couldn't  
5 think of any.

6 Q How about unregulated operations? Did you  
7 do any effort to separate the regulated from  
8 unregulated and assign some of the above book to  
9 unregulated operations?

10 A It's in the testimony. The company itself  
11 assigned 80 percent of the value to the regulated  
12 electric operations and 20 percent to the other. So  
13 I said 80 percent of that premium is still a  
14 positive.

15 Q If we look at just the fact of a stock  
16 price, a market price being above book, that's fairly  
17 common in the industry now, isn't it?

18 A Yes.

19 Q In a logical extension to your argument to

20 use utility stocks being purchased every day, can't  
21 you say when a buyer pays more than book value for  
22 that stock, the buyer should be precluded from  
23 recovering stranded costs?  
24 A I think there's a general market trend for  
25 stocks to trade above book value. In some cases, it

1 may be because the utilities are earning well in  
2 their excess of cost of capital. When you combine  
3 what we have here, the premium along with the  
4 transaction, a sophisticated purchaser of the company  
5 and the independent appraisal of the investment  
6 bankers as to the value of the assets, I think  
7 that -- those together would indicate to me that  
8 there is no potential for stranded costs.

9 Q This premium is, in fact, fairly  
10 conservative, isn't it, compared to some of the other  
11 premiums being paid as shown on table A2?

12 A Of what, the Goldman Sachs?

13 Q Yes. Would suggest a premium of only 15.3  
14 percent in this transaction.

15 A Yeah, that's correct.

16 MR. VAN NOSTRAND: I have no further  
17 questions, Mr. Chairman. I would like to move for  
18 the admission of 24 and 25.

19 MR. REEDER: No objection.

20 CHAIRMAN MECHAM: Thank you. We'll admit

21 Cross Examination Exhibits 24 and 25.

22 (Whereupon Exhibits Cross Examination 24

23 and 25 were admitted into evidence.)

24 CHAIRMAN MECHAM: Mr. Hunter?

25 MR. HUNTER: In light of the hour, I've got

1 one.

2

3 CROSS EXAMINATION

4

5 BY MR. HUNTER:

6 Q Just for the purposes of the record, would  
7 you confirm that you're representing two special  
8 contract customers, and the rest of your clients are  
9 Schedule 9 customers?

10 A Yes.

11 MR. HUNTER: Thank you, that's all I have.

12 CHAIRMAN MECHAM: Thank you. Mr. Ginsberg?

13

14 CROSS EXAMINATION

15

16 BY MR. GINSBERG:

17 Q Which are the two?

18 A Kennecott Corporation and Praxair.

19 Q Do those of both customers' contracts

20 expire during the term of this -- what you are

21 requesting? Or do you know --

22 A I assume Mr. Reeder will object if you're

23 asking me anything confidential.

24 MR. REEDER: Maybe for the record, we need

25 to make something clear. The contracts are under

1 protective order, and the contents are confidential.

2 As Mr. Hunter pointed out this morning, the orders  
3 approving them are not confidential. The orders in  
4 some instances refer to when they expire. I think  
5 some of them make reference to a five year from date  
6 of approval.

7 To the extent that that's a part of the  
8 order, I would concede and stipulate that they do,  
9 Mr. Ginsberg. But terms and contents of those  
10 contracts themselves are themselves, I think, under  
11 confidential cover.

12 Secondly, during the recess, earlier recess,  
13 Mr. Hunter and I reached an accommodation where we  
14 would, rather than try to open those protective  
15 orders, agree that some but not all of the special  
16 contracts have automatic extensions. They vary  
17 contract to contract.

18 Some but not all of the contracts have market  
19 opening provisions allowing the contract to terminate

20 on 12 months. And some but not all of the contracts  
21 have provisions in the contracts that change with  
22 various price indicators. To say that more clearly,  
23 the escalators on prices in each of the contracts is  
24 different.

25 I haven't seen them all. Only Mr. Hunter

1 has. But they're not all the same. Fair statement?

2 MR. HUNTER: It's a fair statement. With  
3 the exception Mr. Hunter hasn't seen them all. But  
4 Mr. Powell has seen them all. And Mr. Powell can  
5 give us sort of a generic idea when he gets on the  
6 stand of which fits in which category by number.

7 MR. REEDER: I'll stipulate with you they  
8 do expire in 2001, 2002, to the best of our  
9 knowledge.

10 Q (BY MR. GINSBERG) Just to make it clear,  
11 what you are requesting is similar to what was stated  
12 earlier, that you're not -- that those contracts, if  
13 extended, would be submitted for approval to the  
14 Commission and be subject to meeting whatever test  
15 exists at that time?

16 A Certainly they would be subject to the  
17 Commission's ruling, and the Commission would have to  
18 apply whatever tests that it was using at that point  
19 in time. So I think that's a yes to your question.

20 Q You're not suggesting that if these  
21 contracts are extended that they be extended under  
22 the same terms and conditions if those terms and  
23 conditions no longer apply?

24 A Well, let me back up a little bit and try  
25 to be clear about this. We're suggesting that they

1 be renewed for the balance of this rate protection  
2 period, provided if they're compensatory. And  
3 provided that the Commission hasn't materially  
4 changed how it treats the revenues and the costs from  
5 those contracts in a way that's adverse to the  
6 utility.

7 Now, if something happens in the meantime and  
8 the Commission adopts a new set of guidelines, I  
9 assume the Commission is going to want to look at the  
10 contracts under those new guidelines. If they  
11 haven't, then we would suggest if the contracts are  
12 compensatory that they simply be renewed for the  
13 balance of the term.

14 Q I understand that there are changes in  
15 interpretation of interruptible contracts occurring  
16 at the WSCC level? Are you aware of that?

17 A I am not.

18 Q Would you agree that over time since these  
19 contracts have been entered into, external changes

20 that have occurred that may or may not affect the  
21 value that should be given to the terms that existed  
22 when they were originally negotiated today?  
23 A Well, circumstances may change, of course.  
24 And we're saying that one of the tests is the  
25 contracts have to continue to be compensatory.

1 Q Looking at all terms and conditions that  
2 exist today?

3 A Yes.

4 Q Now, in your testimony on page 20 of your  
5 rebuttal testimony, you say to the extent that a rate  
6 freeze or rate cap --

7 CHAIRMAN MECHAM: Excuse me, Mr. Ginsberg.  
8 What happened to your microphone? You must have  
9 touched it.

10 THE WITNESS: The same gremlin, I think.

11 MR. GINSBERG: Maybe something wants to  
12 shut us off.

13 CHAIRMAN MECHAM: I can think of three  
14 things.

15 (Laughter.)

16 THE WITNESS: I'll be ready to go whenever  
17 you are.

18 Q (BY MR. GINSBERG) I'm on page 20 on line  
19 6. You tie the relationship between special

20 treatment for special contracts to your proposed rate

21 cap, do you not?

22 A Yes, because that's part of my overall

23 recommendation, that there be that cap plus the

24 renewal rights on the special contracts.

25 Q But if there is no rate cap, you still

1 think that special contracts should be somehow

2 capped?

3 A Not capped; renewed. On similar terms and

4 conditions, as long as they're compensatory.

5 Q So is that different than what you were

6 suggesting there? You've now changed it to just

7 renewed under current terms and conditions as opposed

8 to capped at prior terms and conditions?

9 A If you read my testimony to say that the

10 special contracts should be capped, I was not clear

11 in my testimony. That was not the right foundation

12 for special contracts.

13 Q I have a question about RTOs. You're

14 suggesting that they have to join an RTO within 24

15 months? Is that right?

16 A Yes.

17 Q How is that giving the Commission any --

18 isn't that sort of predetermining that an RTO is in

19 the best interests of Utah customers?

20 A I think it probably is, yes.

21 Q How do you make that determination? Or did

22 we do that here?

23 A I don't think -- I don't know that we did

24 it on this record. I think it's clear that that's

25 the direction that the industry is moving and that

1 the free flow of power in a competitive market  
2 depends upon having something like an RTO that has  
3 independent operation.

4 Q You'd agree your condition is not trying to  
5 give the Commission discretion but to take it away?

6 A If the Commission were to find the merger  
7 condition appropriate, they have the right to do  
8 that. And they can have whatever input into it they  
9 choose.

10 Q You'd agree this proceeding hasn't delved  
11 into whether an RTO is a good idea or what it should  
12 look like or anything else with respect to it?

13 A I would agree it's not been gone into in  
14 depth.

15 MR. GINSBERG: Thank you.

16 CHAIRMAN MECHAM: Thank you. Mr. Tingey?

17 MR. TINGEY: I'll be brief.

18 CHAIRMAN MECHAM: Thank you.

19 MR. TINGEY: You're welcome.

20

21                   CROSS EXAMINATION

22

23 BY MR. TINGEY:

24     Q   In your discussion with Mr. Ginsberg, and

25 earlier, dealing with special contracts, you used the

1 word compensatory. What do you mean?

2 A By that I mean that the remedies exceed the  
3 incremental cost that you would associate with them.

4 Q Incremental costs being?

5 A Whatever the incremental costs are that  
6 were used to determine that those contracts were  
7 compensatory in the first instance.

8 Q And you said that these contracts should be  
9 renewed on similar terms and conditions if they're  
10 compensatory. So what if? What if similar terms and  
11 conditions aren't compensatory? What happens?

12 A Then they wouldn't expect the company to  
13 agree to renew them on those terms and conditions but  
14 to propose different prices.

15 Q And if you can't agree or don't want to  
16 agree?

17 A Well, we suggested that the Commission be a  
18 forum for resolution of that. If there's a dispute  
19 among the parties.

20 Q And the company should be required to

21 submit to that?

22 A Yes.

23 Q And this cap that you've talked about, rate

24 cap, that is in addition to the \$48 million credit

25 we've been talking about here?

1 A That's correct.

2 Q You talked about stranded costs at length.

3 Wanting to -- I can't remember your exact words. Put

4 the issue to rest, something along those lines, in

5 this case. You didn't mean to preclude any items of

6 negative stranded costs, did you?

7 A No, certainly not.

8 MR. TINGEY: Thank you.

9 CHAIRMAN MECHAM: Thank you, Mr. Tingey.

10 COMMISSIONER WHITE: Dr. Brubaker, you're

11 familiar with the Notice of Proposed Rulemaking at

12 the FERC regarding RTOs.

13 THE WITNESS: Yes. Thank you for the Dr.,

14 but it's not appropriate.

15 COMMISSIONER WHITE: I'm sorry. Is it your

16 opinion that that might resolve the RTO issues for

17 this Commission?

18 THE WITNESS: It may be resolved in a way

19 that FERC would resolve it. But may not be resolved

20 in a way that you would like to see it happen.

21 COMMISSIONER WHITE: Well, so in other

22 words, you still think that this docket is an

23 appropriate place for this Commission to say

24 something about those issues?

25 THE WITNESS: I do. And obviously, you

1 have to have a feeling about whether you think an RTO  
2 makes sense. I happen to believe that. I happen to  
3 think this is an excellent opportunity to move that  
4 process forward.

5 COMMISSIONER WHITE: If we do something  
6 inconsistent with what FERC later turns out to do,  
7 will that be an issue?

8 THE WITNESS: I think, to be clear here,  
9 the FERC will decide what the structure ultimately  
10 looks like. But I think you as a state commission  
11 can have a lot of influence on the utility, on what  
12 they come forward with.

13 And if you make that a condition here, I  
14 think they will have to have that conversation. And  
15 you will be able to have input into that, which you  
16 may not be able to have if you don't do something as  
17 part of this order.

18 CHAIRMAN MECHAM: Mr. Brubaker, you really  
19 don't think we could anyway? I know Mr. Reeder

20 doesn't. But it just seems to me that given the  
21 jurisdiction we do have, whether or not we have  
22 technical jurisdiction, it sure seems to me like  
23 given the jurisdiction we do have and given the work  
24 that we do and given our jobs, seems like we could  
25 have some influence.

1 THE WITNESS: You know better than I,  
2 Commissioner, what influence you can exert. But it's  
3 better to have a commitment and a condition to  
4 cooperate than to rely on that and take a risk that  
5 somebody might disagree.

6 CHAIRMAN MECHAM: Okay. Is there any  
7 redirect?

8 MR. GINSBERG: May I ask one question now?

9

10 CROSS EXAMINATION CONTINUED

11

12 BY MR. GINSBERG:

13 Q Do you look at condition number 9 as  
14 requiring some action by the company that they create  
15 an RTO?

16 A I'm sorry, condition number 9 of?

17 Q Of the stipulation. Wouldn't transmission,  
18 in your mind, be an integral utility function?

19 A This says divestiture, spinoff or sale.

20 Placing transmission assets into an RTO structure

21 wouldn't necessarily be any of those.

22 Q What is it?

23 A I think in the Midwest ISO, for example,

24 it's by lease. There's a leasing of the transmission

25 assets for certain purposes, under certain

1 conditions. So that wouldn't be a divestiture,  
2 spinoff or a sale.

3 CHAIRMAN MECHAM: Is that it?

4 MR. GINSBERG: Yes.

5 CHAIRMAN MECHAM: Mr. Brubaker, if the  
6 merger -- if we disapprove the merger, is it your  
7 position that we can't influence what PacifiCorp does  
8 when it comes to RTO creation time?

9 THE WITNESS: You may have other levers.  
10 I'm saying this is an opportunity to take a big  
11 lever.

12 MR. HUNTER: I'm sorry.

13 CHAIRMAN MECHAM: Mr. Hunter.

14

15 CROSS EXAMINATION CONTINUED

16

17 BY MR. HUNTER:

18 Q Do you know whether or not PacifiCorp had  
19 extensive discussions with the Division, the

20 Committee, and Commission staff during the  
21 discussions at IndeGO seeking their views on what  
22 IndeGO should look like and whether or not it was an  
23 appropriate approach for that utility?  
24 A I would imagine that PacifiCorp did have  
25 discussions.

1 Q There was no lever, was there?

2 A There is no more PacifiCorp, either.

3 Q At the time that they had those  
4 discussions, though, they had them voluntarily, and  
5 there was not a merger or additional Commission  
6 jurisdiction that wouldn't be there after the merger?

7 A I don't know if that's the case or not.

8 MR. HUNTER: Thank you.

9 CHAIRMAN MECHAM: Is there any redirect,  
10 Mr. Reeder?

11 MR. REEDER: Thanks to my colleagues for  
12 shortening cross examination. In that spirit, I'll  
13 forego redirect.

14 (Whereupon a discussion was held off the  
15 record.)

16 CHAIRMAN MECHAM: Okay. Are the Division  
17 witnesses ready?

18 MR. GINSBERG: They certainly are.

19 CHAIRMAN MECHAM: That's --

20 MR. GINSBERG: They'll be here if you're

21 here. I think the ones that need to testify are --

22 CHAIRMAN MECHAM: That's fine.

23 MR. GINSBERG: You don't want to do it,

24 huh?

25 CHAIRMAN MECHAM: Let's adjourn for the

1 evening and come back at 9:00 --

2 MR. GINSBERG: We're ready and willing. I  
3 think I lost the bet, though.

4 CHAIRMAN MECHAM: Let's come back at 9:00  
5 Monday and go off the record.

6 (Whereupon the proceedings were  
7 adjourned at 5:00 p.m.)

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1 STATE OF UTAH )  
 ) SS.  
2 COUNTY OF SALT LAKE )

3

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My Commission Expires 1/5/2002

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