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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

UTAH PUBLIC SERVICE COMMISSION

In the Matter of the Application)
of UTAH POWER & LIGHT COMPANY)
and PC/UP&L MERGING CORP. (to)
be renamed PacifiCorp) for an)
Order Authorizing the Merger of)
Utah Power & Light Company and)
PacifiCorp into PC/UP&L Merging)
Corp. Authorizing the Issuance)
of Securities, Adoption of)
Tariffs and Transfer of Certi-)
ficates of Public Convenience)
and Necessity and Authorities in)
Connection Therewith.)

CASE NO. 87-035-27

MEMORANDUM OF UTILITY
SHAREHOLDERS ASSOCIATION
OF UTAH IN SUPPORT
OF NOTICE OF INTERVENTION

Utility Shareholders Association of Utah on September 29, 1987, filed a Notice of Intervention in this case. On October 6, 1987, the Commission issued an order entitled Prehearing Conference Order. This memorandum is filed pursuant to that order.

Although there are many subissues in this case, the principal issues are: (1) Is the merger in the interest of the customers of Utah Power & Light Company; and (2) is the merger in the interest of the shareholders of Utah Power & Light Company. Counsel for Shareholders will be prepared at the hearing on October 19, 1987, to address subissues raised during the proceedings and to indicate the present position of the Shareholders Association as to such issues.

In its order, the Commission prescribes five screening standards to determine whether or not intervention will be permitted. The Shareholders Association will address those

standards in the order in which listed.

1. It is the position of Utility Shareholders Association of Utah that it does have a statutory right to intervene. Section 57-7-15, Utah Code Ann. provides in pertinent part as follows:

Before any party, stockholder, bondholder, or other person pecuniarily interested in the public utility who is dissatisfied with an order or decision of the Commission may commence legal action, the aggrieved party or person shall first proceed as provided in this section.

(1) After any order or decision has been made by the Commission any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for review or rehearing in respect to any matters determined in said action or proceeding specified in the application.

This explicit right to appeal creates an implicit right to intervene. In Fort Pierce Utilities Authority v. Department of Energy, 503 F.Supp. 1014 (D.D.C. 1980), the federal district court of the District of Columbia declared: "a person has a right to intervene in agency proceedings if he would have standing in court to challenge or enforce a final action resulting from such proceedings." Id. at 1018. Likewise, in American Communications Association v. United States, 298 F.2d 648 (2d Cir. 1962), the Second Circuit stated: "We think that fairness requires that one with such a recognized interest in the outcome of the Agency proceeding must be permitted to participate in it from the outset." Id. at 650.

Even if the right to seek rehearing does not as a matter of law confer the right to intervene, it certainly argues persuasively in favor of liberal allowance of intervention by parties having a direct interest in the case. If a party having a direct interest in the case were to come in only after the initial hearing on a petition for rehearing, a second hearing of issues might be required. This would certainly not be in the interest of conservation of the Commission's time nor in the interest of speedy resolution of a difficult case.

2. Utility Shareholders Association of Utah as a representative of the shareholders of Utah Power & Light Company has a direct interest in the outcome of this proceeding in that this proceeding is a major step in a determination of whether or not shareholders will have their shares exchanged for shares of PacifiCorp, or in the alternative, to have them purchased for cash. The Commission's decision will have a direct and vital impact upon the Association's members' rights as shareholders.

3. The interest of Utility Shareholders Association of Utah and the shareholders which it represents in this case is substantial. The market value of the common stock of Utah Power & Light Company held by the public as of the date of this memorandum is approximately \$1,740,000,000.

4. The shareholders of Utah Power & Light Company have a unique interest in this matter not adequately represented by any other party. While the Shareholders Association at this juncture supports the merger, as does management of Utah Power &

Light Company, it does so because it has no viable alternative. Utah Power & Light Company has not earned or barely earned its dividend for two years. The value of its stock dropped from \$37 in August, 1986, to \$22 in June, 1987. While the stock rose to about \$30 on the news of this proposed merger, if the merger were rejected, it would undoubtedly have a precipitous decline. Sophisticated investors are aware that a company which is not earning its dividend cannot continue to pay the dividend. Therefore, stock prices would undoubtedly fall to a point far below the recent low-water mark of June, 1987, if this merger were rejected.

In a case such as this, the issues are fluid and alternatives to the merger might arise. Utility Shareholders Association of Utah would have a different perspective in examining these alternatives than would management and may well take a different position than management. Management has the responsibility of considering both the interests of shareholders and ratepayers and employees. The Commission itself, the Commission's staff, and the Division all have a like diffused responsibility. While the welfare of shareholders is not the sole criteria affecting this merger, it is an important factor. Each party with a unique interest in these proceedings should be permitted to aggressively pursue its interest before the Commission and not have that interest represented solely by a party having a tempering obligation to consider the interests of all parties. Furthermore, most members of management have

rather modest holdings of stock in the company while some of the directors of the Utility Shareholders Association represent sizable blocks.

5. The presence of the Utility Shareholders Association of Utah in the case will not broaden the issue. The interests of the shareholders are already an issue which must be considered by the Commission. Having the Association a party may well conserve the time of the Commission. Technically, each shareholder would have a right to intervene pursuant to the provisions of 57-7-15, Utah Code Ann. and shareholders of large blocks of stock might have felt that necessary were it not for the presence of the Association. To permit the intervention of the Association, therefore, might well reduce rather than expand the number of parties in the proceeding.

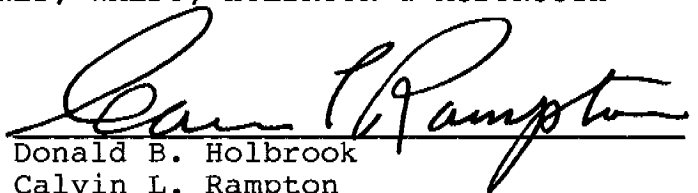
WHEREFORE, Utility Shareholders Association of Utah urges the Commission to permit intervention in this case.

DATED this 15th day of October, 1987.

Respectfully submitted,

JONES, WALDO, HOLBROOK & McDONOUGH

By



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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 1987, I caused to be mailed, postage prepaid, a true and correct copy of the foregoing Memorandum of Utility Shareholders Association of Utah in Support of Notice of Intervention to the following:

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A handwritten signature in cursive script, reading "Karin Rampton", is written over a horizontal line.