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BEFORE THE
PUBLIC SERVICE COMMISSION OF UTAH

UTAH PUBLIC
SERVICE COMMISSION

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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 Pacific-)
Corp into PC/UP&L Merging Corpora-)
tion and Authorizing the Issuance)
of Securities, Adoption of Tariffs,)
and Transfer of Certificates of)
Public Convenience and Necessity)
and Authorities in Connection)
Therewith)

Case No. 87-035-27

AMAX MAGNESIUM CORPORATION'S (1) OPPOSITION TO
APPLICANTS' "NOTICE OF OBJECTION TO RESPONSES
OF GENEVA, NUCOR, AMAX AND THE COMMITTEE
REGARDING PROPOSED COMMISSION REPORT AND ORDER"
AND (2) SUPPORT OF NUCOR'S MOTION TO TAKE NOTICE
OF MERGER COMMITMENTS

By Motion dated July 5, 1988, the Applicants requested leave of the Commission to file what they styled as a "Notice of Objection to Responses of Geneva, Nucor, AMAX and the Committee Regarding Proposed Commission Report and Order." By motion dated July 22, Nucor Steel, a Division of Nucor Corporation ("Nucor") requested the Commission to take administrative notice of the merger commitments made by the Applicants in other jurisdictions. For the reasons set forth below, AMAX Magnesium Corporation ("AMAX") hereby opposes the Applicants' objection and supports Nucor's motion.

I.

In its November 30, 1987 Order, this Commission imposed on the Applicants the burden of proving that there would be a "net positive benefit" to the public of Utah resulting from the merger. While projections of total merger benefits are scattered throughout the record in this proceeding and the Report and Order proposed by the Applicants, the Applicants failed to quantify the detriments that may occur. For example, Applicants never even attempted to quantify the potential adverse effects on interruptible customers, despite prima facie showings that such effects could occur. Absent a quantification of such adverse effects, it is impossible on the record established in this proceeding for the Applicants to meet the net positive benefit test. Applicants' difficulty is exacerbated by their failure to propose an allocation methodology for this Commission's consideration. Even if all the total merger benefits are realized, and even if the overall effect of the merger on all the Applicants' customers is positive, the allocation methodology will determine whether Utah ratepayers ultimately receive a net positive benefit.

With these difficulties in mind, AMAX struggled to respond to the Report and Order submitted by Applicants. On its face, the Applicants' draft ignored both the record and the Commission's legal standard for approving the merger. Thus, Applicants presented the Commission with an order

vulnerable to attack on appeal. It was for this reason that AMAX sought to fashion a draft order that was supported by the record and also provided a justifiable basis for the Commission's approval of the merger that could withstand judicial review.

The solution proposed by AMAX in its draft Report and Order involves the imposition of appropriate conditions to guard against the potentially adverse effects that may occur as a result of the merger. As long as adverse effects can be precluded outright--or at least substantially mitigated--by such conditioning, one can argue that the merger benefits need not be netted out at all. In addition, although AMAX's draft requires the prompt development of an appropriate allocation methodology, it does not make that a precondition to approval of the merger. In this regard, AMAX would point out that despite their steadfast refusal to consider allocation issues in the proceeding before this Commission, Applicants have apparently agreed to pre-merger allocation schemes before other commissions.

Thus, it was in a spirit of cooperation and assistance that AMAX prepared its draft Report and Order for consideration by the Commission. If it had been possible to adequately formulate its own findings and conclusions by merely changing around a few words in the draft proposed by Applicants, the Commission can rest assured that AMAX would have done so. However, the more it reviewed the Applicants'

proposal, the more convinced AMAX became that the Applicants' draft had to be completely rewritten.

II.

In criticizing the Draft Report and Order submitted by AMAX, Applicants asserted that:

AMAX has not submitted to the Commission that which was requested--viz., precise objections to those parts of Applicants' report and order in which an intervenor has a demonstrated interest along with a counter-proposal allegedly in the public interest. What AMAX has done is to submit from pages 56-116 its own report and order containing a self-styled narrative that is unlike anything proposed by Applicants. Applicants' Notice of Objection at 3.

This description of what the Commission ordered the parties to prepare and file can be found nowhere in the transcript of the June 8 proceeding. In contrast to Applicants' contention, Chairman Stewart made it clear that any party was free to submit its own proposed findings and conclusions for the Commission's consideration. Thus, at page 2441 of the transcript, Chairman Stewart stated, "We would also encourage the parties to start looking toward what specific findings they would like to see included, but we will not ask you for copies of those findings at this time."

(Emphasis added). While the burden of preparing the initial Report and Order was placed on the Applicants, the Commission did not foreclose Intervenors from drafting and proposing their own findings and conclusions. Indeed, they were "encouraged" to do so.

The real reason Applicants objected to AMAX's filing was not because of its style, but because of its

content. Applicants' bottom line in this proceeding is that they have carried the burden of proof in demonstrating a net positive benefit and therefore no conditions--except those voluntarily accepted by Applicants--can be imposed. See Ordering Paragraph No. 9 at p. 94 of Applicants' Proposed Report and Order. AMAX's bottom line, on the other hand, is that Applicants have not carried their burden of proof as to demonstrating the net positive benefit of the merger to Utah ratepayers, and that conditions are therefore essential for the Commission to find the merger consistent with the public interest. Instead of drafting an order that would give the Commission the option of picking and choosing between these various positions, Applicants submitted a blatantly one-sided order that is structured to tie the Commission to Applicants' point of view. Audaciously, they then turn around and cry "foul" when AMAX and others attempt to present their positions. This transparent ploy to deny others due process should be rejected.

Upon careful review of Applicants' Report and Order, the Commission will see innumerable examples of overreaching on their part. For example, Applicants would have this Commission state on the record that "[i]t has been virtually conceded by all parties that the merger will result in substantial benefits and savings when compared with operation of the companies on a stand-alone basis." Applicants' Proposed Report and Order at 46. In fact, the existence and size of the benefits to result from the merger

was one of the more hotly contested issues in this proceeding. With respect to the fundamental issue of allocation, Applicants would have this Commission glibly state that "[t]he issue of how the substantial benefits flowing from the merger will be allocated between the Utah Power and Pacific divisions of the Merged Company is a happy and unusual problem for regulators to have to resolve." Applicants' Report and Order at 47. Applicants would even have this Commission give them an official pat on the back. In their proposed Finding Nos. 6 and 7, Applicants would have this Commission state that both Applicants have provided reasonably priced electric service in their service areas "for several decades." Surely, that statement, even if established in the record, offers little evidence to support the merger. 1/

Applicants also asserted that AMAX's filing should be disregarded because it "objects to language and raises issues which it did not address in the evidence." Applicants' Report and Order at 4. This assertion is

1/ In their Notice of Objection, Applicants stated that Nucor had made "the remarkable suggestion that this Commission attach as an appendix to its report and order of denial, the entire 245 page single-spaced ALJ decision." Applicants' Notice of Objection at 4. It is obvious that Nucor simply attached the ALJ's Decision as an appendix to Nucor's own proposed Report and Order for the convenience of the Commission and the parties. Nucor never requested the Commission to attach it as an appendix to the Commission's Report and Order.

unfounded for three reasons. First, nowhere in the June 8 transcript does the Commission state that a party will be allowed to present only selected findings and conclusions for consideration and that a party cannot address issues on which it did not present evidence. Second, every issue raised by AMAX in its proposed Report and Order was addressed by one or more members of the AMAX Industrial Customer Group.

Third, AMAX submits that acceptance of Applicants' Order simply could not be sustained on the evidence. Applicants would have this Commission equate total benefits of the merger with the benefits to be realized by the Utah ratepayer. But no predicate for any such equation exists, in large part because there is no allocation methodology. In short, Applicants' Order provides no basis for determining the net positive benefit to Utah ratepayers. In this situation, to allow questionable total benefits to be compared to specific, adverse impacts in Utah that have been fully demonstrated on this record is to seek to have this Commission depart from the Utah-specific analysis required under the net positive benefit test to be applied in this proceeding.

AMAX's proposed Order deals directly with this evidentiary failure as it demonstrates to the Commission how through the adoption of specific conditions, this evidentiary failure can be overcome. But to do so, AMAX had to address the entirety of the Applicants' Order to

demonstrate the inherent validity, and resulting lawfulness of AMAX's approach as compared to the inherent unlawfulness of and lack of evidentiary support for, Applicants' approach. Thus, at bottom, Applicants' complaint is that AMAX's order unravels the sleight of hand they attempted in their proposed Order. It is for this reason that Applicants are so eager to keep their proposed Report and Order intact.

III.

As AMAX explained in its Proposed Report and Order at 56-62, the Applicants' failure to propose an allocation methodology before the merger is approved raises serious questions about the ultimate effect of the merger on the public interest of the State of Utah. It was for this reason that AMAX requested the Commission to condition its approval in a manner that would satisfy the legal test it established for approval in the first place: a net positive benefit for Utah ratepayers. AMAX noted at page 62 that commissions in other jurisdictions have not hesitated to impose conditions on their approval of the merger to protect their public interests and urged this Commission to do the same.

In its motion, Nucor requested the Commission to take administrative notice of those commitments. AMAX supports Nucor's motion. It is critical for this Commission to know exactly what promises and assurances the Applicants have made to obtain other jurisdictions' approvals of the merger. For example, in the July 15, 1988 Order of the

Public Utility Commission of Oregon, the Oregon Commission assumed that 58% of the merger benefits will be allocated to the Pacific Division. 2/ The Commission further assumed that 50% of the benefits, or approximately \$17 million, will be allocated to Oregon ratepayers which the Commission then translated into a rate reduction of nearly 2.8%. The Washington Commission made comparable assumptions regarding the allocation of merger benefits, after noting in its First Supplemental Order that it "was reluctant to approve the merger absent a more definite showing that all of Pacific's Washington ratepayers will receive an equitable share of the benefits." First Supplemental Order Requesting Additional Information, May 27, 1988, at 8. The Applicants' commitments to file rate cases reflecting the Oregon and Washington Commissions' assumptions regarding the allocation of merger benefits stand in sharp contrast to the Applicants' strident refusals to even consider in this proceeding the pre-merger allocation of benefits.

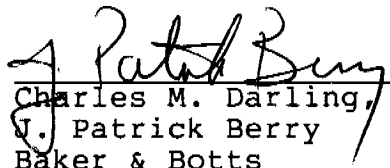
IV.

In summary, the Notice of Objection filed by Applicants should be denied and the motion of Nucor should be granted. AMAX has supplied the Commission with an

2/ In contrast, the Utah Division of Public Utilities assumed that benefits will be allocated 50-50. See Prefiled Testimony of Kenneth B. Powell at 13.

alternative Report and Order that is based on a careful balancing of the needs of the Applicants and the needs of Utah customers. In view of the record established in this proceeding, the Applicants have failed to meet the very standard of proof established by this Commission for demonstrating that the merger should be approved without any terms and conditions attached thereto. It is for this reason that the Commission should carefully consider and then adopt AMAX's proposed Report and Order.

Respectfully submitted,


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Dated: July 29, 1988

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UTAH PUBLIC
SERVICE COMMISSION

July 29, 1988

VIA FEDERAL EXPRESS

Mr. Steve Hewlett
Public Service Commission of Utah
160 East 300 South
Fourth Floor
Salt Lake City, Utah 84111

RE: Application of Utah Power & Light Company
and PC/UP&L Merging Corporation,
Case No. 87-035-27

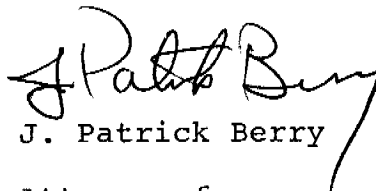
Dear Steve:

Enclosed for filing on behalf of AMAX Magnesium Corporation in the above-referenced proceeding are an original and nineteen (19) copies of (1) AMAX's Opposition to Applicants' "Notice of Objection of Responses of Geneva, Nucor, AMAX and the Committee Regarding Proposed Commission Report and Order" and Support of Nucor's Motion to Take Notice of Merger Commitments; and (2) AMAX's Application for Review and/or Rehearing of the Commission's July 11, Initial Order.

Also enclosed are two (2) additional copies of each document to be time stamped and returned in the enclosed self-addressed envelope. Service on all parties will be made on August 1, 1988

Thank you for your attention to this matter.

Very truly yours,


J. Patrick Berry

Attorney for
AMAX Magnesium Corporation