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- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -  
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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 )  
PacifiCorp into PC/UP&L Merging )  
Corp., Authorizing the Issuance )  
of Securities, Adoption of )  
Tariffs and Transfer of )  
Certificates of Public Conven- )  
ience and Necessity and )  
Authorities in Connection )  
Therewith. )

Case No. 87-035-27

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**APPLICANTS' RESPONSE TO NUCOR'S MOTION FOR  
ADMINISTRATIVE NOTICE**

Applicants Utah Power & Light Company ("Utah Power") and  
PC/UP&L Merging Corp. ("PacifiCorp") (collectively "Applicants")  
hereby respond to the July 22, 1988 Motion of Nucor Steel

"Requesting that the Commission Take Administrative Notice of Merger Commitments Made by Applicants in Other Jurisdictions."

The purported purpose of Nucor's Motion is simply to ask the Commission to take administrative notice of the orders of the Public Utility Commission of Oregon ("OPUC") and the Washington Utilities and Transportation Commission ("WUTC") approving the merger of Utah Power and PacifiCorp, a Maine corporation, into PacifiCorp. In fact, that had already been accomplished by Applicants who had previously filed copies of those orders with the Commission, with all parties, including Nucor, having been served with duplicate copies.

What Nucor's counsel has actually done, under the guise of an administrative notice request, is to submit a vitriolic argument charging that Applicants have misled and misrepresented to this Commission positions taken before the Oregon and Washington utility commissions. Such a submission of additional argument is not contemplated under the Commission's procedural orders in this matter. Moreover, the fact is that the argument of Nucor's counsel is a mischaracterization, not only of the commission orders in Oregon and Washington, but also of Applicants' representations and positions in the Oregon and Washington proceedings, as well as a misstatement of the evidence and representations heretofore made by Applicants to this Commission regarding the other state proceedings.

This response to Nucor's motion does not anticipate or request a hearing or further argument, the matter being presently under advisement. Applicants respond herein solely to correct the inaccuracies in Nucor's Motion.

I.

**APPLICANTS HAVE NOT MISREPRESENTED THEIR  
COMMITMENTS OR TAKEN INCONSISTENT POSITIONS  
IN OTHER JURISDICTIONS.**

Nucor alleges that "unbeknownst to this Commission, the Applicants made commitments in [Oregon and Washington] to flow-through an allocated portion of projected merger benefits for 1988 and 1989" (*Motion* at 2), and that "not once in this entire sequence of events [the proceedings before the Utah Commission] did Applicants reveal that discrete rate reduction commitments embodying specific allocation factors were being made or considered in the Pacific jurisdictions." *Motion* at 3. Regarding allocation factors, Nucor alleges that "[h]aving raised the hue and cry of inter-jurisdictional conflict in Utah, Applicants nonetheless stepped forward in two jurisdictions [Oregon and Washington] with discrete interdivisional allocation factors of 58 percent." *Motion* at 3 [emphasis added].

The plain purpose of the argument of Nucor's counsel is not to be mistaken; it is an improper attempt to obtain reconsideration of the Commission's Initial Order dated July 11, 1988 and to argue other issues under advisement, on the ground

that Applicants have misrepresented to this Commission the commitments made in the Oregon and Washington jurisdictions relative to rate case filings and allocation methods.

**A. Oregon**

On April 22, 1988, in response to a request of this Commission, Applicants filed a copy of the Stipulation dated March 3, 1988, entered into between PacifiCorp and the OPUC Staff. *Applicants Ex. 27.1*. Copies of the Stipulation had previously been supplied to the Division of Public Utilities ("Division") and all other parties requesting a copy of the same.<sup>1</sup> Section D.2 of Article IV of the Stipulation provides in part:

By the end of the second quarter of calendar year 1989, Pacific shall file with the Commission a general rate case using a fully normalized test period based upon Pacific's December 1988 semi-annual report. This filing will include pro forma adjustments to reflect estimated merger benefits shown on Exhibit 1 as allocated to the State of Oregon.

*Applicants' Ex. 27.1, Stipulation* at 14 [emphasis added]. Exhibit 1 attached to the Stipulation is a copy of Applicants Ex. 11.1 (Reed) in the Utah case which shows projected merger benefits. See *Applicants' Ex. 27.1, Stipulation* at 20.

With regard to Applicants' commitments on allocation method, Section C of Article IV of the Oregon Stipulation states:

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<sup>1</sup>The Division and Basic Manufacturing and Technologies of Utah, Inc. ("Geneva") filed copies of the Stipulation as exhibits to their prefiled testimony in mid-April, 1988. See *DPU Ex. 2.3 (Huntsman)* and *Geneva Ex. 4.12 (Grow)*.

Pacific agrees to initiate an allocation committee consisting of representatives from all appropriate regulatory jurisdictions of the merged company within six weeks after the merger has been approved by all authorities. The function of this committee will be to develop just and reasonable methods for the allocation of joint costs and benefits of the merger. The Staff and Pacific agree to participate in the committee in good faith, although neither shall be bound by this Stipulation to accept the recommendations of such committee. Until the Staff and Pacific agree on final methods for the allocation of joint costs and benefits of the merger, the Parties agree that the general guidelines for allocating merger costs and benefits specified below shall be adhered to in Pacific's general rate applications or Commission show cause actions. These guidelines are general in nature and are intended only to be used for determining the share of merger costs and benefits allocable to Pacific's Oregon customers. These guidelines do not take into consideration factors that may be significant to Pacific's other jurisdictions, to Utah Power's jurisdictions, or to the development of consensus among all jurisdictions.<sup>2</sup>

*Applicants' Ex. 27.1, Stipulation at 9 [emphasis added].*

Contrary to Nucor's misrepresentation, it was clearly understood on the record in this case that Applicants intended to make a rate case filing in 1989 in Oregon incorporating merger savings. *Tr.* at 2061. Further, contrary to Nucor's misstatement of fact, the OPUC Order is entirely consistent with the Stipulation and with representations to the Commission in the Utah proceeding. It provides:

Pacific further agrees that, by the end of the second quarter of calendar year 1989, it will file a general rate case incorporating the estimated merger benefits shown on Exhibit 1 of the stipulation. The

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<sup>2</sup>The general guidelines that follow the quoted language in the Stipulation do not include the 58 percent factor used by the OPUC in its Order for illustrative purposes or any other interdivisional percentage allocation factor. See *Applicants' Ex. 27.1, Stipulation at 9-13.*

filing will include Oregon's allocated share of estimated system merger benefits totaling \$59 million. Assuming that final allocation methods attribute approximately 58 percent of system merger benefits to the Pacific division, and 50 percent of the Pacific division merger benefits to Oregon, the general rate filing will include \$17 million in cost savings due to the merger.

*OPUC Order No. 88-767 at 6 [emphasis added].* It is thus patently clear that the allocation discussion in the Oregon Order is simply an estimation of the amount of cost savings that may be shown in the filing and not any sort of commitment by Applicants. Applicants never proposed any specific allocation method in Oregon or any other state and do not intend to do so until the merger is consummated and they have convened multi-jurisdictional allocation meetings to consider the allocation method.

#### **B. Washington**

As noted above, Applicants have consistently represented that they would make rate filings in 1989 reflecting merger benefits. However, no specific commitment was made in that regard in Washington until June 7, 1988, when PacifiCorp filed its supplemental brief in response to the WUTC's First Supplemental Order dated May 27, 1988. In the First Supplemental Order, the WUTC expressed concern about Washington customers sharing in merger benefits. In response, PacifiCorp committed to make a rate filing in April 1989 affording Washington customers their allocated share of projected merger benefits. No commitment regarding an allocation method was made. As is clearly set forth in the WUTC order, an illustrative allocation was proposed by the

WUTC's Staff, not by the Applicants. See, WUTC Second Supplemental Order Approving Merger with Requirements at 10.

Applicants appeared before this Commission only once since PacifiCorp's supplemental brief was filed in Washington. The question of Applicants' commitments in other jurisdictions was not before the Commission. Nonetheless, with regard to the WUTC's First Supplemental Order, Applicants' counsel, Mr. Galloway, stated at that time:

We don't perceive of that order as reopening the case as much as responding to a request for some additional information by way of briefs. I don't know if you have had an opportunity to review their order but it — about the first 90% of it reads like an approval order and then it says they want to know more about what's in it for Washington customers of the Pacific Power & Light and they wanted to be brought up to date on what's been done on the Company's transmission policy and what the FERC staff responds to it.

Tr. at 2337 [emphasis added].

It is plain that there was no misrepresentation to this Commission or a proposal for specific allocation methodology submitted to the WUTC.

## II.

### **APPLICANTS HAVE NOT COMMITTED TO RATE REDUCTIONS IN OREGON OR WASHINGTON.**

Nucor disingenuously claims in its motion that Applicants have made commitments to "effect certain retail rate reductions" in Oregon and argues that these alleged commitments are contrary to Applicants' position in Utah that Pacific customers "had been promised only rate stability for some period of time, not rate reductions." *Motion* at 1-3. Nucor's allocations either reflect

a misunderstanding of the OPUC and WUTC orders or constitute a reckless misrepresentation to this Commission.

Both the OPUC and WUTC Orders make it clear that the rate case filings by PacifiCorp in the second quarter of 1989 will include not only their customers' share of merger benefits determined on the basis of allocation methods agreed upon in the multi-jurisdictional meetings, but other offsetting factors. For example, the WUTC Order specifically acknowledges that the merger benefit filing will be a "tracker" filing to reflect offsetting adjustments to rates resulting from other matters and that the only commitment is not to increase rates. *WUTC Order* at 8. The OPUC Order also acknowledges the possibility of offsets because in discussing the future rate case it notes that "the stipulation provides that Pacific shall not 'effect any overall increase in electric rates in Oregon prior to the end of calendar year 1992.'" *OPUC Order* at 7.<sup>3</sup> This language would be unnecessary if it were clear that the rate filing would result in a rate reduction.

Applicants have made the commitment in Oregon and Washington that, in an initial post-merger rate filing, they will give customers credit for their allocable share of projected, as opposed to actual, merger savings. That commitment is not unusual in light of the fact that rates are typically based on projections

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<sup>3</sup>The Stipulation is more specific providing in Article IV. D.2 that the 1989 general rate case filing will include, in addition to merger benefits and costs, "all known major costs and revenue changes." *Applicants' Ex. 27.1, Stipulation* at 14.




of future revenues and expenses rather than historical actuals.

The only commitment Applicants have made regarding a "discrete rate reduction" in any state proceedings is the commitment that certain Utah Power division customers will receive a 2 percent reduction within 60 days of consummation of the merger and that the rates of such customers will be reduced an additional 3 to 8 percent within the next four years. That commitment, unlike the Oregon and Washington commitments for a rate case filing, is made regardless of offsets that may arise.


#### CONCLUSION

No objection is made to Nucor's request, albeit redundant, that the Commission take administrative notice of the commission orders in Oregon and Washington. But Nucor's attempt to submit further argument at this stage of the proceedings through misstatements of fact as to the Oregon and Washington proceedings, as well as mischaracterization of the record in Utah, should be rejected out of hand by this Commission.

Respectfully submitted this 29th day of July, 1988.

  
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the within and foregoing APPLICANTS' RESPONSE TO NUCOR'S MOTION FOR ADMINISTRATIVE NOTICE to be mailed, postage prepaid thereon this 29th day of July, 1988 to the following:

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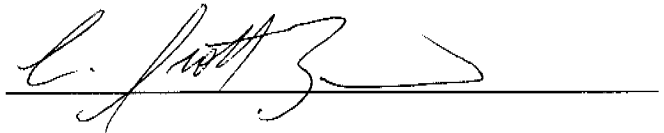
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A handwritten signature in cursive script, appearing to read "C. P. Ritts", is written over a horizontal line.