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UTAH PUBLIC
SERVICE COMMISSION

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

* * * * *

In the Matter of the)	
Application of UTAH POWER)	
& LIGHT COMPANY and PC/UP&L)	
MERGING CORP. (to be renamed)	
PACIFICORP) for an Order)	BRIEF OF UMWA,
Authorizing the Merger of)	DISTRICT 22
UTAH POWER & LIGHT COMPANY)	
and PACIFICORP into PC/UP&L)	
MERGING CORP. Authorizing the)	Case No. 87-035-27
Issuance of Securities, Adoption)	
of Tariffs and Transfer of)	
Certificates of Public Conven-)	
ience and Necessity and)	
Authorities in Connection)	
Therewith.)	

* * * * *

OPENING STATEMENT

UMWA will briefly argue seven of the ten matters outlined by the Commission. Failure to discuss all subjects is not a concession that Applicants met the burden of proof on all merger issues.

ARGUMENT

I. Non-Power Savings.

(a) The so-called benefits from PPL economic development programs.

Applicants did not demonstrate that PPL's experience with, or plans for, economic development programs would produce benefits claimed.

DPU witness B. T. Barber (PFT-Ex #4.0, p 24, L 9-15) concludes "Even with extensive investments in economic development, non/defense/aerospace manufacturing employment is lower today in Utah than in 1980. Given these facts it seems unlikely that the new UPL/PPL power economic development program can by itself create 6,400 new manufacturing jobs by 1992," claimed by D. F. Bolender (PFT Ex # 5.2). Tr. 2212, 2213, 2214.

Barber, senior economist for Utah Office of Planning and Budget, testified, Utah ranks 29th among 50 states (in 1985) when ranking lowest average cost per kilowatt/hr. - 4.99 cents. (PFT Ex #4.0, p 27, L 1-11) A 10% reduction to industrial users amounts to a minimal, placing Utah still 6th in the 8 mountain states. Barber stated ". . .a reduction in electricity rates of 10% would not alter Utah's regional or national attractiveness as a manufacturing location to any substantial degree. (PFT Ex #4.0, p 27, L 13-16)

Tr. refers to transcript.
PFT refers to Pre-filed testimony, (direct/rebuttal/surrebuttal).

Utah has been involved in economic development programs since 1953. It's 1988 budget is \$13 million, with a full time staff of 70. On cross examination Barber "did not think" that Utah's national 'parochial' image could be changed by broader programs. Tr. 2209, 2210, 2212, 2223, 2224.

(b) Tax loss to the state is significant.

As a result of job losses Utah will lose \$558,000, annually in state taxes - \$2,792,000 in 5 years. Given Utah's fiscal shortages this is a substantial item. DPU witness R. L. Burrup, auditor prepared this information. Burrup (PFT p 23, L 20) Tr. 2209, 2210.

(c) Further manpower losses.

To achieve the proposed \$500 million savings in 5 years, UPL will cut back 374 positions for benefits of \$19.5 million; but "only by attrition." Tr. 711. By early 1988 UPL had already reduced the Company's work force 550 positions. Topham, UPL vice-president, assured "there will be no reductions in employment or layoffs as a result of the merger." But there were no documents, exhibits, or forecasts to show how this would be accomplished. Mr. Reed, PPL vice-president explained the cuts would come in "administrative type functions." Tr. 711, 713. PPL would eliminate 566 positions by 1992. The proposed savings exceeds 10% of the alleged \$500 million in benefits. Tr. 712. A lot of

vice-presidents may be looking for new jobs. How cutbacks would affect Utah coal mining employment was never explained.

Without any merger, UPL through improved efficiencies and austerity measures reduced its 1987 operating expenses by some \$31 million below the level of 1986. (UPL 1987 Annual Report p. 3)

(d) Rate reductions, "a regulatory bribe?"

2% in 60 days after merger approval. 5% to 10% additional reductions in the next five to ten years.

Applicants testimony supporting these worthwhile aims still leave many questions.

- If 2% is paid, will it be permanent?
- Will the remaining 3% become effective within 5 years?
- How and when do industrial users receive reductions?
- How and when do customers in PPL's service area receive comparable treatment?
- Why was the 2% reduction for Utah service area retail customers established without a cost based reduction, allocations study or other specific economic methodology?

Verl Topham testified: "It was a policy decision". Tr. 1230.

II. CAPACITY SAVINGS

(a) Impact of merger on Utah Coal Industry, Given Wet Hydro Conditions.

Keven C. Higgins, DPU witness, Assistant Director, Utah Energy Office, explained (PFT DPU Ex 9.0) Tr. 1401-1405:

(P.8, Lines 18-21) "Pacific Power is rich in hydropower. However, it is apparent that under merger conditions anticipated by the applicants Pacific Power's hydro resource generally would not be used to displace energy production at UPL's coal fired plants." (Underlines not supplied.)

(P.9, Lines 12-18) "It is my understanding that Utah coal fired generation has been displaced by hydropower in the past, and such will likely occur in the future, with or without the merger. Nonetheless, based on the output of the production cost model, there appears to be nothing unique to the merger which would cause hydropower to displace Utah coal-fired generation to any extent significantly greater than would otherwise occur."

(P.14, Lines 19-25) "Starting around the year 2000, the merger would likely cause Utah coal production to be lower than it would otherwise be, as the construction of AFBC units are avoided. Over the full 1988-2006 period, the positive and negative impacts of the merger on Utah's coal industry tend to cancel each other out, leaving either a

slightly positive or slightly negative overall impact, depending upon which combination of assumptions are used." **

Asked to explain differences in his testimony and applicant's witness Steinberg, on PPL's hydro resource, Tr. 1062 Higgins answered.

"I'd be interested in hearing it from Mr. Steinberg myself. When you look at the printouts that come from Pacific Power & Light's PD/Mac model, the net impact of a merger does not seem to be resulting in a flow of hydro power, if you will, to Utah and a backing down of Utah coal-fired production. In fact, when the -- even if you take away the off-system firm sale that the Applicants assume will occur as a result of the merger, the merger still leads to an increase in the combined output at Hunter and Huntington, and that leads me to the conclusion that we are not seeing any significant displacement of energy production at Utah coal plants for hydro power coming from the Northwest. There may be some other explanation of that that Mr. Steinberg could make, but that is what I see when I look at the numbers.

** Higgins assumptions were: No merger induced increase in firm sales; 10% reduction in marginal energy costs of secondary sales customers; wet hydro conditions; a 20% relative price change between Naughton and Huntington/Hunter. (DPU Ex. 3.8)

COM. BYRNE: Mr. Higgins, is the underlining of the work "energy" on Page 8 in your testimony, is that your underlining or is that something of Mr. Steinberg's?

THE WITNESS: No. That's my underlining. It may very well be the case that hydro power in the Northwest will substitute as a -- will substitute for capacity here on the Utah Power and Light system in the future. That is, the large amount of hydro capacity that exists in the Northwest may be partly responsible for deferring of canceling coal units to be built in the future in Utah, so there can very well be a substitution of hydro capacity for coal capacity in the future.

COM. BYRNE: Do you suspect that that's the greatest economic value of hydro, is its use as a capacity resource rather than energy resource?

THE WITNESS: I don't know if I could answer that question.

MR. SANDACK: Q. But that is your best judgment still, that it would not generally be used to displace energy production at UP&L's coal-fired plants, right?

A. Not over the next five years, which is the period that the Pacific Power & Light production cost model covers. Tr. 1403-1404.

IV. Allocations/Regulatory Burden

(a) The need to continue Utah's Energy Balancing Account.

In summary, witness Burrup warned "The proposed merger has an impact on how the EBA is calculated. It may create an incentive for manipulation and creates uncertainty regarding allocation of merger benefits, because interstate allocations of benefits has not been established." (R.L.B. PFT Summary p. iv)

Described as a complicated, complex, long time and costly regulatory headache, Commission members expressed concern with this merger impacted burden.

Without annual rate cases, PPL shareholders could retain the profits from surplus sales revenue expected from the merger. Indeed, Drexel, Burnham Lambert commented: ". . . it is also worth emphasizing that elimination of an energy purchase power and fuel adjustment (EBA) clause would allow PPL shareholders to take the risk and the potential reward of realizing incremental profits or losses from fuel and purchase power transactions - would position shareholders to benefit through materially improved long-term earnings prospects for Pacificorp." (p. 6 of 34, Rating Agency Reports On Proposed Merger, Colby Ex. 4.3)

Dr. Bernow, a consumer committee witness sees, the averaging of power costs formula as an important

accompaniment to the merger, a sine qua non. Tr. 1785-1786.

V. Local Control.

(a) UPL corporate existence ceases on merger approval. UPL becomes a Division of Merged Corp, with 3 to 4 directors on a Board of 21.

UPL passes title to every asset it owns, coal mines, generating plants, transmission lines etc. Yet PPL's best asset, Northwest hydro power, will not be shared. Hydro will be controlled by and kept for the benefit of PPL. Tr. 1551-1553. So long as hydro power is separate according to witness Grow there is not a true marriage. "If there is a commitment to share the hydro power, it needs to be explained in a way which says how those benefits will be shared over time, and that's what we don't have, an allocation system or any commitment. In fact, they have made statements in other commissions that suggest the hydro power will not be shared over time." Tr. 1553-1554.

Merged corporation promises to be a good corporate citizen, when reminded by UMWA counsel that no pre-filed exhibit or testimony was offered to show readiness to help finance worthy community causes, i.e., Utah Symphony, Ballet West, Utah Opera, Choir transportation, high school bands, university projects, etc. etc. Later, on cross and in rebuttal Ms. Faigle, Topham and CEO Bolender assured that PPL is generous with Northwest needs and is prepared to do so

in Utah service area. Tr. 1142, 1226.

Why must a successful pioneer electric utility liquidate? Not because of its financial condition. "Utah Power's present financial stability, as measured in cash generation, is strong and would be expected to become stronger regardless of the merger consideration." Colby Tr. 511, "And earnings per share during that time frame (since 1986) have risen by maybe 20% increment from a very low and depressed level that we were at. Colby Tr. 512. UPL has always been able to attract capital in financial markets even though significant earnings growth in the past several years has not been achieved." Colby Tr. 513.

Auditor Colby also agreed, the Commission's refusal to remove the EBA would not be a fatal condition to this merger. Colby Tr. 516. Loss of local control was clearly pointed out by Geneva witness Cannon as equivalent to loss of bargaining power for lower rates. Tr. 1495.

VIII. COAL ISSUES. The major concern of Mine-Workers.

Central Utah coal miners, organized by UMWA in 1933 are also energy conscious ratepayers, good citizens and share many concerns of Utah consumers. UMWA people worry about the health and efficiency of Utah's coal industry, record unemployment in Carbon and Emery counties. Like every marriage UMWA's relations with UPL hasn't always been blissful, but they have never been divorced and are not now

looking for any estrangement. UMWA labor agreements emphasize mine safety and training, assurance of long range coal supplies and providing experienced coal miners, who can never forget tragedies like Wilberg.

(a) UMWA and UPL have now negotiated and signed a new five-year coal agreement, renewing the contract which expired February 1, 1988, covering UPL's Utah coal mines. The agreement, received in evidence is marked UMWA Ex. 1.1 (cross-Davis)

Article I - Enabling Clause, provides:

"This Agreement shall be binding upon all signatories hereto and their successors and assigns. In consideration of the Union's execution of this Agreement, the Employer promises that its operations covered by this Agreement shall not be sold, conveyed, or otherwise transferred or assigned to any successor without first securing the agreement of the successor to assume the Employer's obligations under this Agreement.

Immediately upon the conclusion of such sale, conveyance, assignment or transfer of its operations, the Employer shall notify the Union of the transaction. Such notification shall be by certified mail to the Secretary-Treasurer of the International Union and shall be accompanied by

documentation that the successor obligation has been satisfied. Provided that the Employer shall not be a guarantor or be held liable for any breach by the successor or assignee for compliance with the terms of this Agreement." (Underline added)

The integrity of this agreement is a major concern.

UPL is committed to honor the agreement. Tr. 136. PPL President Bolender made the same pledge during his testimony. Tr. 269, 270, 271. Merged Corporation, the surviving entity must also honor the contract. Those commitments must become pre-conditions to this merger, and specifically performed, as Merged Corporation has agreed to assume all outstanding debt obligations of UPLand PPL. (Application at 2)

(b) UPL and PPL officers assurances that "No plans have been made to burn NERCO coal at any UPL generating facility or transfer ownership or management of UPL coal properties to NERCO" (Tr. 1223, 1224) seems to allay earlier UMWA concerns raised by Goldman-Sach report predicting "improvements in operations of Emery's significant coal reserves, through expertise of Pacificorps NERCO division.: (Agency Research p. 22 of 34 Colby PFT)

Nerco is 90% owned by PPL (DFB at 2). Both have common directors on the other Boards Tr. 273, 276.

Since October 1, 1987 NERCO and UMWA have been engaged in a work stoppage at Decker, Montana mine, owned 1/2 by NERCO and 1/2 by P. Kiewit Tr. 285.

UPL Vice-President Topham testified: "I've had some general conversation both with the senior management of Pacific Power & Light Company and Mr. Drummond, who is president of NERCO. I think that we all recognize that that event is so unlikely that it has not even precipitated any lengthy discussion or certainly any kind of study or documentation. The plants were designed to burn Emery County coal. Emery County coal is available to those plants at almost no transportation. One is served by conveyor belt, the other by a short truck haul. There is no railroad within 30 or 40 miles of either plant, and Wyoming coal, both transporting it there, using it from both a technical and cost standpoint is highly unlikely. Tr. 1224. Accord, Bolender Tr. 272, 273.

(c) UPL's Utah Coal Mines have dramatically improved coal production and costs per man ton.

Deer Creek and Wilberg-Cottonwood coal mines are the "jewels" PPL acquires, with sufficient reserves for 35 to 40 years, the life of Hunter/Huntington generators, Davis Tr. 141.

President F. N. Davis in public statements to stockholders (1987 UPL Annual Report) wrote tons of coal per

man day jumped from 23 tons in 1986 to 40 tons in 1987 and Emery division coal costs dropped to a nine year low. This is confirmed by Steinberg Tr. 1052, 1053, Boucher Tr. 1370, 1371, and Brett Harvey's Wyoming Public Service Commission testimony, data response, acknowledged by Boucher Tr. 1373, 1374.

(d) UPL's future share of Bonneville Power is disputed.

A significant issue that separates witness Weatherwax (CCS) and Applicants is the assumption that Utah coal plants can be deferred (displaced) because of availability of Bonneville NR power. Weatherwax believes that BPA forecast rates will be slightly higher than applicants views. Tr. 1631, 1632. On cross, Weatherwax explained: ". . . a merger benefit attributable to foregoing UPL coal plants for the new resources rate may not be a particularly economic thing to do." Tr. 1701. Witness Winterfield agrees: ". . . it would be questionable whether PPL can achieve it . . . this displacement activity, to the degree they are expecting in the future, that is, that the current surplus of Bonneville is no longer expected to be available . . ." Tr. 2194.

IX. MERGER COSTS

(a) Apportionment of \$18.5 million merger costs.

Consumer witness Neil Talbot proposes that \$13 million be charged to shareholders.

"The reasoning behind that proposal was that the primary motivation for the merger appeared to me to be in relation to off-system sales, bulk power market, and to be a reorganization of a financial and corporate nature rather than something really required or necessary from the standpoint of either sets of retail customers. The number currently given is 18.5 million, and in cross-examination, Mr. Colby stated that the stockholder studies undertaken, the so-called fairness studies, indicated that \$13 or \$14 million out of the total of 18.5 was used up for that purpose as opposed to the studies more directly involved here, for example, on the effect of the merger, so that that indicates that the proposal that I made, which was an amortization of the cost over 40 years without a return on them during the interim, which the Company again has calculated would be a present value to them of 4.5 million, allowing for the time value of money, would correspond roughly with the allocation of those costs between those that were undertaken for retail customers and with respect to the operation of the merged system and for stockholders to pacify them or stimulate them over this issue." Tr. 1734, 1735.

The premium paid UPL shareholders, between \$6 and \$7 per share, totaling \$400 + million above book, will dilute PPL according to witness Helsby. That is a risk associated with this acquisition. Helsby testified:

"Q. How are the shareholders of Pacific Power going to recover that amount of dilution? In the asset value of the company they get?

A. That is -- that is an unanswered question in my mind which is of concern and a question that should be answered before any approval of the merger is given, and I think that I point out in my testimony that's one of my concerns that those kinds of questions have not been addressed. Presumably the stockholders would expect, on the basis of the information provided them, that over time they would receive benefits through increased earnings which would more than offset that dilution. In other words, there's risk associated with this acquisition by PacifiCorp and the stockholders I believe would expect to be paid a return for taking that risk and, therefore, they would not only have to recover the cost of the dilution but they would have to realize some increased earnings over time to compensate them for taking that risk. Tr. 2138.

CLOSING STATEMENT

Intervenor UMWA has demonstrated the need to require Merged Corporation to assume all obligations under the UPL/UMWA collective bargaining agreement (WAGE AGREEMENT of 1988). Both applicants testified they would "honor the agreements" and that the merger will not adversely affect union relations between the parties.

Conditions 1 and 2 attached, carry out these "good" intentions and must be pre-conditions of any merger approval. By reason of adverse relations now existing between UMWA and NERCO Inc. and common directorship with its affiliate PPL condition 2 is necessary.

Intervenor UMWA summarizes its position according to standards announced in Commission Order of November 20, 1987:

1. Applicants have not demonstrated the merger will produce the economic developments claimed by them.
2. Tax losses caused by the merger are significant to the State and will have an adverse impact.
3. Manpower losses have not been documented with certainty or fairness to employees who face "attrition". This may raise potential Age Discrimination problems.
4. Allocations of cost and benefits may become unmanageable for Regulators, in Utah and six other states, and are costly, complicated and could continue, as one witness stated, "for ten years".

5. Merged Corporation should provide a contractual commitment, within a reasonable time after merger, demonstrating that UPL Division will be entitled to share firm BPA hydro resources, as available.

6. The Neil Talbot proposal for apportionment of merger costs (\$18 million) be adopted by the Commission.

CONDITIONS TO THE MERGER

Proposed by UMWA District

CONDITION 1. That on the effective date of the merger, Merged Corporation (PC/UPL) shall comply with the successor obligations of the WAGE AGREEMENT of 1988, (effective February 1, 1988) by and between International Union, United Mine Workers of America and Utah Power & Light Company, (ARTICLE I, Enabling Clause), and agree to assume all of the obligations of Utah Power & Light Company, the Employer, under said Agreement, covering all of the bituminous coal mines described in ARTICLE IA, Section (f) owned or operated by Utah Power & Light Company.

CONDITION 2: That on and after the effective date of the merger, Merged Corporation (PC/UPL) shall not transfer the management or ownership of the Utah Power and Light Company coal properties to NERCO Inc., without notice to and

permission of the Utah Public Service Commission and without first securing agreement of NERCO Inc., to assume Employer's obligations under the Wage Agreement of 1988, or any extension or renewal thereof.

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Utah Coal miners intervened in these proceedings because they have a large stake in the outcome. This Commission has the power and right, under law, to adopt Intervenor's two proposed conditions. UMWA's members need appropriate protection in this merger of ratepayers and stockholders. When Congress enacted the National Labor Relations Act its purpose was to define and protect the rights of employees and employers, to encourage collective bargaining and to eliminate certain practices on the part of labor and management that are harmful to the general welfare.

UMWA recognizes these purposes.

Our employer, whomever, UPL . . . PPL . . . PC/UPL . . . should do the same.

That would be in the public interest.



A. Wally Sandack
Attorney for Intervenor
UMWA, District 22
June 3, 1988

ADDENDUM

In his prefiled testimony before Federal Energy Regulatory Commission Docket # EC88-2-000, on behalf of Utah Power and Light Company, Pacificorp, and, PC/UP&L Merging Corp, Fredric D. Reed discussing Coal Issues is asked:

"Q. Subsequent to the merger, will the ownership or operation of Utah Power's coal mines be transferred to NERCO, Inc.?"

A. No such plans have been made. NERCO, Inc. is one of the largest coal companies in the United States with substantial expertise and a record of low-cost production. However, the bulk of its experience is with open-pit mining. We will explore the issue of whether there is an appropriate role for NERCO, Inc. in regard to Utah Power's mines. We would only involve NERCO, Inc. in Utah Power's mining operations if doing so appears to be the best and lowest-cost alternative. Any material change would, of course, be subject to regulatory review." Please take Administrative Notice, see pages 22, 23, lines 20-26 and lines 1-7, Exhibit No. 3. filed with FERC, January 8, 1988. Fredric D. Reed Prefiled Testimony.

Above testimony is submitted in support of Intervenor UMWA's request for inclusion of CONDITION II, as a condition to merger approval.

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* * * * *

I hereby certify that I have this day served the foregoing document upon the persons shown on Exhibit A by mailing a copy thereof, properly addressed and postage prepaid.

DATED at Salt Lake City, Utah, this 3rd day of June, 1988.



EXHIBIT A

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