

NOV -7 1984

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- 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)
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 Convenience and Necessity)
and Authorities in Connection)
Therewith.)

Case No. 87-035-27

**APPLICANTS' RULE 9-7 MOTION FOR LEAVE
TO PREFILE TESTIMONY**

Applicants Utah Power & Light Company ("Utah Power") and
PC/UP&L Merging Corp. (the "Merged Company") (jointly "Applicants")
hereby move the Commission for leave to prefile, less than ten days

prior to hearing, testimony regarding the impact of the conditions imposed by the Federal Energy Regulatory Commission ("FERC") on the merger benefits that were the basis for the Commission's approval of the merger of Utah Power and PacifiCorp. The prefiled testimony, the subject of this petition, is that of Frank N. Davis, Verl R. Topham, Orrin T. Colby and Dennis P. Steinberg.

The basis for this motion is as follows:

1. On September 28, 1988, the Commission issued its Report and Order ("Approval Order") approving the merger subject to certain conditions.

2. On October 26, 1988 in Docket No. EC88-2-000, the FERC issued its Opinion and Order Affirming in Part, Modifying in Part, and Reversing in Part Initial Decision and Conditionally Approving Merger ("FERC Order") approving the merger subject to certain conditions.

3. On October 26, 1988, the Commission issued its Order Suspending Report and Order Dated September 28, 1988 and Establishing Further Proceedings ("Suspending Order") suspending the Commission's Approval Order pending a hearing on November 8, 1988. The Commission stated that:

Applicants have the burden of demonstrating to [the Commission's] satisfaction that the conditions imposed by the FERC do not effectively eliminate the merger benefits that are the basis for [the Commission's] September 28, 1988 approval of the merger.

Suspending Order at 2.

4. Prior to the issuance of any of the foregoing orders, the

boards of directors of Utah Power, PacifiCorp and the Merged Company had extended the date prior to which no party could unilaterally terminate the Agreement and Plan of Reorganization and Merger dated August 12, 1987 from August 12, 1988 to October 31, 1988. Even absent the Suspending Order, the merger could not have closed by October 31, 1988 given the issuance of the FERC Order on October 26, 1988. Therefore, the boards of directors had to consider whether the date would be extended further on the basis of the foregoing orders. The boards of directors of both companies met on November 1, 1988 and extended the unilateral termination date to December 15, 1988.

5. The Suspending Order does not require the prefiling of testimony and contemplates that the argument and evidence to be presented by Applicants and any other party at the November 8, 1988 hearing will be presented live.

6. To assist the Commission and the parties to prepare for the November 8, 1988 hearing, Applicants have prepared written testimony on the issues raised by the Suspending Order. However, because of the shortness of time between the issuance of the FERC Order and the Suspending Order and the hearing date and because the boards of directors could not meet until November 1, 1988, Applicants have not been able to prepare and file such testimony prior to the date hereof.

7. Rule R750-100-9-7 of this Commission provides that prefiled testimony ordinarily should be submitted not later than

ten days before the date of hearing, except upon the showing of good cause. Utah Admin. Code R750-100-9-7 (1987-88). Applicants submit that under the exigencies and the time frame of the FERC Order, this Commission's Suspending Order and the hearing date, and in order to apprise the Commission and parties at the earliest possible date of their position, good cause is made out for leave by the Commission to prefile the attached testimony herein in advance of the November 8, 1988 hearing date. The prefiling of testimony by Applicants is not intended to preclude live presentation of that testimony on November 8 or, for that matter, other testimony which the Commission may, on that date, request.

8. Because the Commission's Suspending Order places the burden of proof upon Applicants to demonstrate that the conditions to the FERC Order did not effectively eliminate the merger benefits that are the basis of this Commission's September 28, 1988 Approval Order, there is no basis upon which any other party may claim that it needs additional time to prepare for or respond to the Commission's Suspending Order. Furthermore, no party will be prejudiced by allowing Applicants to prefile the testimony attached hereto less than ten days prior to the hearing because there was no requirement that testimony be prefiled in any event. The prefiling will benefit the parties because it will give them additional time to review applicants' testimony and to prepare for the hearing that they would not have were no prefiling to occur.

9. A proposed form of order granting Applicants leave to

prefile the testimony attached hereto, is also lodged with the Commission simultaneous to and as a part of this filing.

DATED this 4th day of November, 1988.

Respectfully submitted,

E.A. Hunter

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I hereby delivered the
attached documents and filed
same this date, November
14, 1988 at 5:30 p.m.

By: WATKISS + CAMPBELL

George Waddouy
