DOCKETED

\- 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.)	DOCKET NO. 87-035-27 **REPORT AND ORDER**

SHORT TITLE: PacifiCorp/UP&L Merger ISSUED: September 28, 1988

SYNOPSIS

By this Order, the Commission approves the merger of Utah Power & Light Company ("Utah Power") and PacifiCorp into PC/UP&L Merging Corp. (the "Merged Company") in accordance with the terms and conditions of the Agreement and Plan of Reorganization and Merger dated August 12, 1987. The Commission also grants authority for the Merged Company to issue securities, adopt the tariffs of Utah Power on file with the Commission and receive the certificates of public convenience and necessity previously issued to Utah Power. The Commission also orders that the Merged Company file, within 60 days of the merger, revised tariffs reducing Utah firm retail rates of the Utah Power Division by two percent, file a plan indicating how and when it will implement its total targeted price reductions within the next four years, file revised tariffs reducing Utah firm retail rates of the Utah Power Division by at least an additional three percent within the next four years, comply with various reporting and record-keeping requirements, and imposes certain additional conditions.

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APPEARANCES:

Sidney G. Baucom Thomas W. Forsgren Edward A. Hunter, Jr.	For	Utah Power & Light Company
Robert S. Campbell, Jr. Gregory B. Monson George M. Galloway	"	PC/UP&L Merging Corp.
Michael L. Ginsberg Assistant Attorney General	"	Division of Public Utilities Department of Business Regulation

Sandy Mooy Assistant Attorney General	"	Committee of Consumer Services
Calvin L. Rampton Donald R. Holbrook L. R. Curtis, Jr. Gregg I. Alvord	"	Utility Shareholder Association of Utah
A. Wally Sandack	"	United Mineworkers of America, District 22
Charles M. Darling, IV J. Patrick Berry Gerald M. Conder	"	AMAX Magnesium Corporation
Gary A. Dodge Richard D. Clayton Jill A. Niederhauser	"	Basic Manufacturing and Technologies of Utah, Inc.
Peter J. P. Brickfield Kenneth G. Hurwitz Andrew W. Buffmire William P. Schwartz	"	Nucor Steel, a Division of Nucor Corporation
James A. Holtkamp	"	Utah Association of Municipal Power Systems
Michael S. Gilmore Lori Mann Deputy Attorneys General	"	Idaho Public Utilities Commission
F. Robert Reeder Val R. Antczak	"	Kennecott Corporation, et al.
Raymond W. Gee	"	Utah Farm Bureau
Stephen R. Randle Roger Cutler	"	Salt Lake City Corporation
Lynn W. Mitton	"	Deseret Generation & Transmission
Paul T. Morris	"	West Valley City
Alice Ritter Burns	"	Cedar City Attorney
Chris L. Engstrom	"	Washington City
Richard W. Giauque Gregory P. Williams Gary F. Bendinger	"	Independent Coal Companies

BY THE COMMISSION:

I.

PROCEDURAL HISTORY

Utah Power & Light Company ("Utah Power"), PC/UP&L Merging Corp. (the "Merged Company") and PacifiCorp ("PacifiCorp Maine") (collectively "Applicants") entered into an Agreement and Plan of Reorganization and Merger ("Merger Agreement") on August 12, 1987. The Merger Agreement provides for the merger of Utah Power and PacifiCorp Maine into the Merged Company, a new Oregon corporation to be renamed PacifiCorp contemporaneously with the merger. Under the terms of the Merger Agreement, Utah Power and PacifiCorp Maine will cease to exist on the effective date of the merger, and the Merged Company will succeed to all their rights and properties and will be responsible for all their debts, liabilities and obligations.

Given the import of the proposed merger to the State of Utah, the Commission immediately directed its Staff to consider the matter and to prepare a memorandum outlining the issues that the Commission would need to consider in determining whether the merger would be in the public interest. The Staff prepared a memorandum dated September 15, 1987, and submitted it to the Commission. The Staff identified numerous issues under eight general subject matter headings that it believed the Commission should consider with regard to the proposed merger and indicated that a detailed, comprehensive economic analysis comparing Utah Power with and without the merger should be required. By letter dated September 15, 1987, the Commission sent a copy of the memorandum to Utah Power. Copies were also provided to the

Division of Public Utilities, Department of Business Regulation, State of Utah ("Division") and the Committee of Consumer Services, State of Utah ("Committee") and to all other parties that had expressed an interest in the matter.

On September 17, 1987, Applicants filed their application in this case seeking an order of the Commission authorizing the merger, authorizing the transfer to the Merged Company of all certificates of public convenience and necessity of Utah Power, authorizing the issuance by the Merged Company of its common and preferred stock upon the conversion of all outstanding shares of common and preferred stock of Utah Power and PacifiCorp Maine in accordance with the terms of the Merger Agreement, authorizing the assumption by the Merged Company of all outstanding debt obligations of Utah Power and PacifiCorp Maine and the continuation or creation of liens in connection therewith, authorizing the adoption by the Merged Company of all tariff schedules on file with the Commission at the time of the merger for service within all territories served by Utah Power prior to the merger, directing that, upon the merger, the Merged Company shall succeed to all of the rights and responsibilities of Utah Power under the public utility laws of the State of Utah and the orders of the Commission and granting such other permission and authority as may appear proper. Similar applications were filed with the public utility regulatory commissions in the states of California, Idaho, Montana, Oregon, Washington and Wyoming and with the Federal Energy Regulatory Commission ("FERC"), each of which regulates Utah Power, PacifiCorp Maine or both.

A Prehearing Conference was held pursuant to notice on September 29, 1987. At that hearing, the Applicants advised the Commission that they would be filing testimony in support of the Application later that same day and requested that the matter be set on an expedited schedule. The Commission set a tentative schedule in the matter, established standards for intervention and made it clear that the Application presented very significant issues for the State of Utah. Interested parties were given until October 13, 1987, to seek intervention and until October 15, 1987, to file a general statement of position. A further Prehearing Conference to consider interventions and potential grouping of parties, to review the issues to be considered and to schedule discovery and hearings in the matter was set for October 19, 1987. These matters were all set forth in the Commission's Prehearing Conference Order of October 6, 1987.

Applicants prefiled testimony on September 29, 1987. On October 5, 1987, the Commission's Staff issued a memorandum concluding that the testimony was inadequate in that it did not provide the type of detailed, comprehensive, quantitative analysis anticipated in the Staff memorandum of September 15, 1987. By letter dated October 6, 1987, the Commission forwarded a copy of the second Staff memorandum to Utah Power and requested that Applicants advise the Commission of how they proposed to rectify the deficiencies. Copies of that letter and memorandum were sent to the Division, Committee and all parties that appeared at the September 29, 1987, Prehearing Conference.

Motions to intervene or notices of intervention were timely filed by the Idaho Public Utilities Commission; Salt Lake City

Corporation and Sandy City Corporation; West Valley City; Cedar City Corporation; Utah Associated Municipal Power Systems ("UAMPS") and Washington City; Deseret Generation & Transmission Co-operative ("DG&T"); Colorado River Energy Distributors Association ("CREDA"); the Utah Farm Bureau Federation ("Farm Bureau"); Kennecott Copper Corporation, Union Carbide Corporation, National Semiconductor Corporation, Sorenson Research, Ideal Basic Industries, Amoco Oil Company, Westinghouse Electric, Western Zirconium Division, Kimberly-Clark Corporation and Chemstar, Inc. (collectively the "Kennecott Industrial Customers"); Coastal States Energy Company, Beaver Creek Coal Company, Cyprus Coal Company and Andalex Resources, Inc. (collectively the "Utah Independent Coal Companies"); United Mineworkers of America, District # 22 ("UMWA"); and the Utility Shareholder Association of Utah ("Shareholders"). Prior to the October 19, 1987 Prehearing Conference, AMAX Magnesium Corporation ("AMAX"), Nucor Steel, a Division of Nucor Corporation ("Nucor") and SUPERA filed late Motions to Intervene. At the hearing, the Utah Energy Office (the "UEO") orally moved to intervene. Most of the foregoing potential intervenors, as well as Applicants, the Division and the Committee filed statements of position on the issues to be considered. Applicants objected to the intervention of CREDA on the ground that CREDA's members, except those belonging to the Utah Municipal Power Agency ("UMPA"), either had no direct and substantial interest in the matter or were already represented by UAMPS or DG&T.

At the Prehearing Conference on October 19, 1987, the Commission heard argument on the interventions, on grouping of parties, on the issues to be heard and on the legal standard to be applied in determining approval of the merger. SUPERA, though notified, did not appear to pursue its Motion for Intervention, and the Commission ruled from the bench that its Motion was denied. Argument on late intervention motions was heard. Applicants advised the Commission, in response to its letter of October 6, 1987 regarding the prefiled testimony, that supplemental testimony and information would be filed in three filings; with the last filing, containing a quantification of power cost savings resulting from the merger, to be filed by November 23, 1987. On the basis of this information, Applicants requested that discovery proceed as to other matters and that the hearing be scheduled as soon as possible. The Commission established a schedule requiring that discovery requests be served by December 21, 1987, that discovery responses be completed by January 11, 1988, that all parties other than Applicants prefile their testimony by January 25, 1988, that Applicants file rebuttal testimony by February 8, 1988, that other parties file surrebuttal testimony by February 15, 1988, and that hearings commence on February 29, 1988, with Public Witness Day on March 7, 1988. This schedule was set forth in the Commission's Scheduling Order issued November 10, 1987. The Commission also scheduled a technical conference to allow the parties' experts to familiarize themselves with PacifiCorp Maine's load forecasting and power planning techniques and models and an attorneys conference for the purpose of scheduling discovery and discussing treatment of confidential information and other matters. The Commission took the remaining issues under advisement.

Following the filing of Applicants' first supplemental testimony, a technical conference was held on October 28, 1987, and an attorneys conference was held on October 30, 1987.

In its Order on Intervention of October 30, 1987, the Commission denied the Motions to Intervene of CREDA, AMAX, Nucor and the UEO. The Utah members of CREDA were given two weeks from the date of the Order to intervene. AMAX, Nucor and the UEO's motions were denied without prejudice, and they were granted limited intervention for the purpose of receiving pleadings and orders and the right to seek further participation should circumstances warrant. The Order also grouped the intervenors and required each group to designate lead counsel for purposes of discovery, presentation of evidence and cross examination. The Order stated that groupings could be reviewed upon a showing of prejudice. Commissioner Cameron concurred in the Order generally, but dissented with respect to the denial of full intervention of CREDA, AMAX, Nucor and the UEO.

On October 23, 1987, Applicants sought leave to file a brief on the issue of the legal standard to be applied in considering the Application. By its Order Granting Motion to File Post-Hearing Brief and Notice of Oral Argument dated October 30, 1987, the Commission granted leave for the filing of Applicants' brief, granted all other parties until November 6, 1987, to file responsive briefs and scheduled oral argument on November 10, 1987. Several parties submitted briefs on the issue presented.

On October 29, 1987, UMPA filed notice of its intervention and its statement of position. On November 6, 1987, Applicants filed a Motion for Entry of a Protective Order pursuant to the attorneys conference. These matters were also scheduled for hearing on November 10, 1987. On November 3, 1987, Local 125, International Brotherhood of Electrical Workers, AFL-CIO ("Local 125") representing certain PacifiCorp Maine employees sought leave to intervene. Upon being contacted by the Commission Secretary, Local 125 determined not to pursue its Motion. On November 19, 1987, CREDA and AMAX filed motions seeking reconsideration or rehearing of the Commission's decision denying their Motions to Intervene. These motions were granted by the Commission's Order Granting Intervention issued December 21, 1987. Chairman Stewart concurred in the granting of AMAX's intervention, but dissented from the decision with respect to CREDA.

At the hearing on November 10, 1987, following argument, the Commission granted UMPA's Motion to Intervene and Applicants' Motion for Entry of a Protective Order. The Commission's Protective Order was issued on November 10, 1987, and its Order Allowing Intervention of UMPA was issued on November 23, 1987. Extensive argument was also presented on the legal standard to be applied by the Commission in judging the Application at the hearing on November 10, 1987, and the Commission took the matter under advisement at the conclusion of the hearing.

On November 20, 1987, the Commission issued its Order Re Standard of Approval for Merger. In the Order, the Commission concluded that Applicants had the burden, with respect to matters within the Commission's normal regulatory jurisdiction, to establish that, on balance, the merger would produce net positive benefits to the public in the State of Utah. With regard to matters outside the Commission's normal regulatory jurisdiction (such as the health of the coal mining industry, antitrust effects, etc.), the Commission concluded that Applicants had no affirmative burden, but that other parties had the burden to demonstrate either some substantial benefit or harm as a result of the merger. The Commission supplemented this Order with its Order Identifying General Issues dated November 30, 1987. In that Order, the Commission referred to its Staff memorandum of September 15, 1987, for an identification of issues, but grouped the issues to be considered generally as follows:

I. Structure of the Merged Company;

II. Basic Qualification Issue;

III. The Benefits of the Merger; and

IV. The Costs of the Merger.

Applicants filed their second supplemental testimony on November 10, 1987. On that same day, the Committee filed a Motion to Modify the Schedule in the case to allow more time for discovery and to continue the hearing date. The Committee's Motion was heard on November 17, 1987. At that hearing, the Motion was continued pending the filing of Applicants' third supplemental testimony and a second technical conference with respect to that testimony was scheduled for December 3, 1987. The Commission confirmed that ruling in its Order on Motion to Modify Hearing Schedule issued on November 23, 1987.

On November 23, 1987, Applicants filed their third supplemental testimony. In its November 30, 1987 Order Identifying General Issues, the Commission reiterated its concern that Applicants' testimony, including the supplemental testimony, was not adequately footnoted and documented as required by Commission rule. Applicants were given until December 7, 1987, to supply footnotes and documentation. Applicants filed substituted testimony for their initial filing and for each of the three supplemental filings containing footnotes and extensive backup materials on December 7, 1987.

A hearing was held on December 8, 1987 on the Committee's Motion to Modify the Schedule in the case. During that hearing, the Division and several intervenors joined in the motion, although they did not necessarily join in the request of the Committee for a three-month continuance of the hearing date. In the case of the Division, the need for a continuance resulted from the need to retain outside consultants because of a health problem of a key Division expert. In light of the Division's circumstance and the Committee's problems with discovery, the Commission ordered a 60-day continuance in the hearing date and extended discovery and testimony deadlines even further. Following extensive argument the Commission ruled that the discovery cutoff would be extended until February 22, 1988, that discovery responses would be due by March 7, 1988, that parties other than Applicants would file their testimony by March 28, 1988, that rebuttal testimony would be filed by April 11, 1988, that surrebuttal testimony would be filed by April 25, 1988, that the hearings would commence on May 2, 1988, and that Public Witness Day would be held on May 9, 1988. The Commission issued its Order dated December 15, 1987, setting forth the revised schedule.

A third technical conference was held on December 14 and 15, 1988, at the offices of Utah Power. At that conference, Applicants demonstrated the use of their computer model for power planning and assisted parties in running sensitivity analyses with regard to the Utah Power and PacifiCorp Maine stand-alone models and the Merged Company model.

On January 14, 1988, Basic Manufacturing and Technologies of Utah, Inc., dba Geneva Steel ("Geneva"), filed a Motion for Late Intervention. That Motion was heard on February 2, 1988. On February 8, 1988, Nucor petitioned the Commission for reconsideration of its intervention in the case. By its Order Granting Motion to Intervene dated February 19, 1988, the Commission granted intervention to Geneva and Nucor and grouped them with AMAX in the AMAX Industrial Customer group. On February 18, 1988, Cedar City filed a motion requesting that it be allowed to file discovery requests independent of its group, and on February 22, 1988, filed a motion seeking to be regrouped with wholesale customers rather than retail municipal customers. On March 9, 1988, the Commission issued its Order Granting Motion for Review of Groupings in which it granted Cedar City's Motion.

On February 17, 1988, the Shareholders petitioned the Commission for an order requiring the Applicants to prepare a proposed list of stipulated facts and facts in dispute and requiring the parties to thereafter reach agreement as to the stipulated and disputed facts by not later than April 25, 1988. On February 26, 1988, the Commission issued its Order for Stipulation of Agreed and Disputed Facts granting the Shareholders' Motion except that the Shareholders were ordered to compile the initial list of stipulated and disputed facts. On March 10, 1988, the Shareholders submitted a proposed list of stipulated and disputed facts covering 51 pages. Several parties responded to the submittal indicating that many of the proposed stipulated facts were disputed and that many additional facts not set forth in the document were disputed. Applicants moved the Commission to continue the filing date for responses until after the testimony of other parties was filed. In response to that Motion and the responses received, the Commission issued its Order dated March 31, 1988, allowing the Shareholders to withdraw their original proposed list and to file a new proposed list. The other parties were given until April 15, 1988, to respond, and all parties were ordered to attempt to reach agreement by April 29, 1988. The Shareholders submitted a new proposed list to all parties, and several parties filed responses to the new submission.

Additional motions to modify the schedule were filed and on March 31, 1988, the Commission issued its Order extending the filing date for testimony for all parties other than Applicants to April 6, 1988, for rebuttal testimony to April 27, 1988, and for surrebuttal testimony to May 2, 1988. On April 14, 1988, the Commission issued its Order Setting Revised Procedural Schedule as a result of problems experienced by experts for the Committee in using the computer model of Applicants. All parties except the Committee were given until April 11, 1988, to file their testimony. The Committee was given until April 18, 1988. Rebuttal testimony to the testimony filed on April 11, 1988, was ordered filed by April 26, 1988, and rebuttal testimony to the Committee's testimony was ordered filed by April 29, 1988. Surrebuttal testimony was ordered filed by May 9, 1988. The parties were ordered to hold an attorneys conference on April 25, 1988, to consider the stipulated facts and the scheduling and order of presentation of witnesses. A further Prehearing Conference was scheduled for April 26, 1988.

On February 18, 1988, Cyprus Coal Company, one of the Utah Independent Coal Companies, gave notice of its withdrawal from the case. On March 28, 1988, Beaver Creek Coal Company, another of the Utah Independent Coal Companies, gave notice of its withdrawal. On April 1, 1988, CREDA gave notice of its withdrawal. On May 2, 1988, UMPA withdrew from the case.

At the attorneys conference on April 25, 1988, the parties generally resolved issues regarding conduct of the hearings, but were unable to reach agreement on all issues. The parties also spent several hours reviewing the proposed list of stipulated and disputed facts, but were unable to reach agreement on the effect of the stipulation and its relationship to the hearings. The final prehearing conference, originally scheduled for April 26, 1988, was held on the afternoon of April 25, 1988, following the attorneys conference, pursuant to stipulation. At that hearing, the Commission received a report of the attorneys conference, considered other issues and established procedures for the conduct of the evidentiary hearings. On April 29, 1988, the Commission issued its Prehearing Order setting forth these procedures.

Hearings commenced on May 2, 1988. Following brief opening statements, Applicants presented the testimony of ten witnesses: Frank N. Davis, President and Chief Executive Officer of Utah Power; David F. Bolender, President and Chief Executive Officer of Pacific Power & Light Company ("Pacific"), a Division of Pacifi-Corp Maine; Orrin T. Colby, Vice President and Controller of Utah Power; Fredric D. Reed, Senior Vice President of Pacific; Bruce N.

Hutchinson, Manager of Market and Energy Research of Utah Power; Shelley R. Faigle, Assistant Vice President of Marketing of Utah Power; Dennis P. Steinberg, Director of Power Planning of Pacific; Verl R. Topham, Senior Vice President, Chief Financial Officer and Commercial Manager of Utah Power; Rodney M. Boucher, Vice President and Assistant to the President of Pacific; and Joseph W. Comish, Manager of Power Operations of Utah Power.

The Division presented the testimony of seven witnesses: Kevin C. Higgins, Assistant Director of the UEO; Wesley D. Huntsman, Manager of the Utility Management Analysis Section of the Division; Nile W. Eatmon, Senior Economist of the Division; Ronald L. Burrup, Senior Auditor of the Division; Rodger Weaver, Senior Economist of the Division; Brad T. Barber, Director of Data Resources Section of the Utah Office of Planning and Budget; and Kenneth B. Powell, Manager of the Electric Utility Section of the Division.

The Committee presented the testimony of four witnesses: Robert K. Weatherwax, President of Sierra Energy and Risk Assessment, Inc.; Neil H. Talbot, Vice President and Senior Economist with Energy Systems Research Group; Dr. Stephen Bernow, Senior Research Scientist and Vice President of Energy Systems Research Group; and Jeffrey T. Williams, Economist for the Committee.

The intervenors presented the testimony of eight witnesses. Geneva presented the testimony of Joseph A. Cannon, President of Geneva; Robert J. Grow, Vice President and General Counsel of Geneva; Randall P. Goff, Supervising Engineer with R. W. Beck and Associates; David T. Helsby, Partner and Assistant Manager, R. W. Beck and Associates; and Curtis K. Winterfeld, Executive Engineer,

R. W. Beck and Associates. AMAX presented the testimony of John J. Reed, Vice President and Director of R. J. Rudden Associates, Inc. Nucor presented the testimony of Robert M. Spann, Senior Vice President of ICF Consulting Associates. The Shareholders presented the testimony of James R. Schlesinger, Counselor and member of the Board of Trustees of the Center for Strategic and International Studies, Senior Advisor of Shearson Lehman Hutton, Inc., and Chairman of the Board of Trustees of the MITRE Corporation.

The Utah Independent Coal Companies prefiled the testimony of James L. Van Lanen. The UMWA moved to strike substantial portions of that testimony on April 14, 1988, on the ground that the testimony addressed issues that were reserved for Case No. 86-035-20, dealing with least cost methods of providing energy to Utah Power's customers. At a hearing on the UMWA's Motion on April 19, 1988, the Commission indicated from the bench that it would not strike any of Mr. Van Lanen's testimony, but that it would also not consider substantial portions of that testimony in this case. In response to that ruling, the remaining Utah Independent Coal Companies, Coastal States Energy Company and Andalex Resources Inc., withdrew from the case on April 26, 1988. UAMPS filed the testimony of Anton Tonc prior to the hearing, but withdrew his testimony on April 27, 1988, because, among other things, Section VIII of Applicants' proposed Wheeling Policy incorporated the most important elements of the conditions proposed in Mr. Tonc's testimony. During the course of the evidentiary hearings, Applicants and the Kennecott Industrial Customers filed a Stipulation dated May 12, 1988, which provided that the Kennecott

Industrial Customers would not oppose the merger on the basis of certain representations of Applicants regarding rate reductions which would be placed into effect if the merger were approved.

Twenty-four public witnesses appeared and offered sworn or unsworn statements. In addition, the file contains letters from citizens and employees pertaining to the Application.

Evidentiary hearings in the case concluded on May 19, 1988. Briefs were subsequently submitted and oral argument was heard on June 8, 1988. An initial order approving the merger, without Findings, Conclusions and Conditions was issued on July 11, 1988. This is the final order.

II.

POSITIONS OF THE PARTIES

A. Applicants

The Applicants state that the proposed merger is necessary in order to respond to the increasingly competitive environment in which they operate. Additionally, Applicants state that increased efficiency and other savings attributable to the merger will assure lower rates to customers of both companies, and that the merger is in the best interest of shareholders, ratepayers, and employees.

Applicants produced studies showing that merger savings in the areas of manpower efficiencies and administrative combinations would approximate $254 million during the first five years after the merger. Applicants project additional benefits of $37 million in economic development and $28 million in reduced construction during the first five years after the merger. In addition, Applicants project that there will be net power cost savings arising from more efficient dispatch of generating resources, displacement of higher cost purchased power and the ability to make additional wholesale sales at enhanced margins. These net power cost savings are estimated by the Applicants to be $18 million the first year of the merger, increasing to $43 million by the fifth year after the merger. This represents an overall reduction in net power costs of between four and eight percent.

A summary of the Applicants' five-year economic analysis is as follows:

ANNUAL VALUE OF FIRST FIVE YEARS OF MERGER BENEFITS
($ million)

	Yr.1	Yr.2	Yr.3	Yr.4	Yr.5	Totals
Manpower Efficiencies	10	20	30	42	53	155
Administrative Combinations	19	20	20	20	20	99
Reduced Construction	1	3	5	8	11	28
Economic Development	1	2	6	11	17	37
Net Power Cost	18	23	36	42	43	162
Total Benefits	$ 49	$ 68	$ 97	$123	$144	$481

In the area of resource acquisition, Applicants' studies reflect 19-year present value savings, discounted at 11.24 percent, of approximately $352 million arising from the use of Northwest resources and the deferral of new Utah coal-fired generating capacity.

The Applicants state that they are committed to finding methods of allocating the substantial benefits associated with the merger which are fair and consistent with sound economic and regulatory principles. The Applicants also state they are committed to establishing and maintaining the records and auditing and accounting systems that will permit the Commission to evaluate the merger costs and benefits for allocation and other regulatory purposes. The Applicants propose to initiate a joint committee comprised of representatives of the FERC and the seven state commissions to discuss and resolve the issues surrounding the allocation of merger benefits.

Applicants assert that the proposed merger will not adversely impact this Commission's authority to regulate Utah Power's utility operations. They acknowledge that this Commission will continue to have the same authority over the utility operations of the Utah Power Division that it currently enjoys with regard to Utah Power.

Applicants state that Utah Power will be a division of the Merged Company with the same standing that Pacific now enjoys. The current Utah Power Officers and Directors will continue to serve as Officers and Directors of the Utah Power Division with three members of the Utah Power Board becoming members of the Merged Company's Board of Directors. The Utah Power Board, like the Pacific Board, will function as a Committee of the Merged Company's Board with delegated authority to manage and operate the Utah Power Division's business. The offices of the Utah Power Division will remain in Salt Lake City, Utah. Applicants assert that, in light of these factors, and in view of the substantial investment that the Merged Company will have in the State of Utah, it is unrealistic to believe that the Merged Company would be unresponsive to the needs of the State of Utah.

Applicants have committed that Utah Power's customers' rates will be reduced by five to ten percent over the four years following the merger. Within 60 days of the effective date of the merger, Applicants have committed to filing revised tariffs in Utah proposing an overall reduction in prices to Utah Power regular firm customers of two percent. A minimum five percent rate reduction to regular firm customers will be guaranteed within four years of the merger even if not cost-based. Applicants have also committed that Utah customer supported revenue requirements of the Utah Power Division will not ever be raised as a result of the merger.

Applicants believe that Utah Power's industrial customers will receive benefits from the merger. Those industrial customers who take firm service will receive immediate rate reductions and those industrial customers who take non-firm service will receive, in accordance with their contracts, benefits associated with the lower power costs and increased reliability characteristics of the merged system. The Applicants have also agreed that interruptible customers on the merged system will continue to have dispatch priority over off-system non-firm sales. The Applicants have also executed a stipulation, which is included in the record in this proceeding, with the Kennecott Industrial Customers which provides in part:

(a) If the merger proposed in the present application is consummated, the Applicants will, subject to appropriate regulatory approvals, reduce rates two percent to firm retail Utah customers within 60 days of consummation of the merger and an additional three to eight percent within five years of the date of the merger. Those rate reductions will occur, subject to appropriate regulatory approvals, regardless of whether the estimated savings set out in Applicants' testimony are realized, and even if those rate reductions must be provided through reductions in shareholder earnings of the merged entity.

(b) The merged entity will continue to have its Utah operations headquartered in Salt Lake City, Utah, and the officers and employees responsible for customer service for the Utah operations will continue to be located within the State of Utah. As a consequence, Utah customers will continue to have local access to those responsible for customer service decisions concerning the Utah operations of the merged entity on the same basis as Oregon customers have access to responsible personnel for the existing Pacific Power Division of PacifiCorp.

(c) The merged entity will not restructure its Utah or other operations in a manner which results in the jurisdiction and control of the Utah Public Service Commission over the Utah operations of the merged entity being less than the Utah Public Service Commission's current jurisdiction and control over the Utah operations of Utah Power & Light Company, except with the approval of the Utah Public Service Commission and/or other appropriate regulatory agencies which may have jurisdiction thereof. Without limiting the generality of the foregoing, the merged entity will make no arrangement which will have the effect of divesting the Utah Public Service Commission of its jurisdiction to review the prudency of investments and expenses used and useful in providing service to Utah ratepayers and to determine rate of return of the Utah Division of the merged entity as it currently exists, absent approval of the Utah Public Service Commission and/or other appropriate regulatory agencies which may have jurisdiction thereof.

B. Division

The Division presented evidence on all aspects of the merger, including an analysis of the sensitivity of the benefits of the merger to alternative assumptions. The Division testimony included an analysis of the impact of the merger on taxes, coal usage, employment and economic development. A summary of the Division's five-year economic analysis is as follows:

PRESENT VALUE OF FIRST FIVE YEARS OF MERGER BENEFITS
($ million discounted at 9.2%)

	Worst Case	Applicants'[1] Case	Best Case
Administrative Combinations	48	76	76
Manpower Efficiencies	56	113	113
Reduced Construction	5	20	20
Economic Development	0	26	26
Net Power Cost	68	121	194
Total Benefits	$177	$356	$429

In addition, the Division conducted an independent analysis of the potential savings in long-run resource additions due to the merger. The base case projection of such savings indicates a present value, discounted at 11.24 percent, of $346 million over the next 19 years. Various sensitivity scenarios produced present value of savings estimates ranging from $157 million to $447 million. These long-run resource savings may be the most impor-

[1] Present value of Applicants' projections, presented in the Table on page 19, discounted at the DPU's 9.2%.

tant benefits of the merger, according to the Division. The Division also testified that these cost reductions are unlikely to be achieved through any contractual, pooling and/or other cooperative arrangements.

Based on their analysis, the Division reached the following conclusions:

> 1. Even under the worst case assumptions, positive, significant benefits accrue to the merged system. These benefits support both the two percent and five percent rate reductions promised by the Applicant to the Utah Division, assuming a reasonable allocation method is used.
>
> 2. The merger has no material impact on coal usage in the Utah Power Utah plants. Although there is an impact on Utah taxes and employment, such impact is minimal and could be offset if the Applicants' economic development program is successful.
>
> 3. The additional regulatory burdens associated with the merger do not present insurmountable problems and do not justify denial of the merger.
>
> 4. PacifiCorp has significantly more affiliated relationships than does Utah Power, and as a result, the Division has proposed reporting requirements and other conditions designed to reduce the impact of those affiliates and permit continued meaningful regulation of the new corporation.
>
> 5. As a result of a financial analysis of the five-year financial forecast of each company and the Merged Company, the Division concluded that the Merged Company will be financially viable and should suffer no long-term detrimental credit rating impacts. In addition, the Division concluded that any dilution in earnings per share of Pacific as a result of the premium paid for Utah Power stock should not result in a deteriorated financial viability of the Merged Company.
>
> 6. The merger provides net positive benefits to Utah's ratepayers and should be approved subject to a variety of conditions.

The Division testified to a variety of reporting requirements and conditions designed to provide regulators with adequate data to regulate the Merged Company. The Division testified that the reporting requirements and conditions should be a part of the order in this case.

The Division testified that Utah Division ratepayers have a claim on the assets of Utah Power's captive insurance companies. The Applicants in rebuttal testimony agreed that ratepayers have a claim on the assets which they have contributed to the insurance companies, and except for liquidation, the only way to distribute surpluses is to lower rates.

The Division proposed no specific allocation method during the hearing. They asserted that inter-divisional allocations need not be adopted prior to merger approval. The Division proposed the following approach to allocations:

> 1. Within six weeks of the merger, a multi-state task force will be convened to discuss cost allocations.
>
> 2. Within the first quarter of 1989, Pacific will file a jurisdictional revenue requirement and a cost of service study, including a proposal to allocate costs between divisions.
>
> 3. Sufficient data will be maintained by the Merged Company to allocate costs in any manner.
>
> 4. The utility will be capable of calculating the Energy Balancing Account (EBA) on both a stand-alone and Merged Company basis. Once allocation methods are established, the EBA may be a mechanism to flow through costs and benefits to ratepayers.
>
> 5. The shareholders assume the full risk of less than full cost recovery as a result of inter-divisional and inter-state allocations.
>
> 6. The Utah Commission has the authority to adopt an inter-divisional allocation method in the case to be held the first quarter of 1989.

The Division argued that any allocation process must recognize the unique attributes of both Utah Power and Pacific Power, and especially the availability of hydro power to Pacific and Utah Power's north-south transmission system. The Division agrees with the four goals of allocation suggested by the Committee. These are:

1. Clarity of regulatory signal;
2. Cost causation language;
3. Equity and fairness; and
4. Ease of implementation.

The Division proposed a variety of conditions to the merger designed to ensure that Utah ratepayers will be benefited, not harmed, by the merger. These conditions include:

> 1. File revised tariffs reducing Utah firm retail rates of the Utah Division by two percent within 60 days of the merger.
>
> 2. File revised tariffs reducing Utah firm retail rates of the Utah Power Division by five to ten percent (including the two percent initial reduction) within the next four years.
>
> 3. Certify that firm retail revenue requirements of the Utah Power Division will not ever be raised as a result of the merger.
>
> 4. File a plan with the commission to implement the five percent to ten percent rate reduction by the end of 1988.
>
> 5. File a jurisdictional revenue requirement and cost of service filing within the first quarter of 1989 and each year thereafter, including interstate and inter-divisional allocated costs and revenues.

The Division testified in rebuttal in opposition to a number of the conditions proposed by industrial customers. These included an opposition to:

1. Retail wheeling;

2. Dispatch priority over new firm off system sales;

3. Industrial customer purchase of surplus energy on the same terms as a utility;

4. Developing procedures to guarantee that interruptible customers' rates and service will not be impacted negatively by the merger.

The Division testified that these conditions should not be approved because they are not merger related or are guarantees not being made to firm customers. The Division testified that when the utility performs a cost of service study in the first quarter of 1989, it should perform one for the interruptible and special contract customers. They argued that any rate reductions should be subject to a Commission decision on cost of service, rate design and rate consolidation.

C. **Committee**

The Committee presented an analysis of the possible benefits associated with power supply operation, firm sales, construction programs, economic development, transmission interconnections, toxic waste disposal, resource plans and financial condition of the Merged Company, compared with the stand-alone scenarios. The Committee also presented testimony and evidence relating to its evaluation of inter-divisional allocations of the Merged Company and the operation of the EBA subsequent to the merger.

The Committee testified that merger benefits claimed by Applicants were overstated and that procedures to allocate benefits should be, but were not, addressed in this proceeding. The Committee did indicate that it would not oppose the merger if certain conditions were imposed, including a full ten percent rate reduction for firm customers, which would tend to reduce the risks to Utah ratepayers and ensure that benefits resulting from the merger would flow to Utah ratepayers.

The testimony and evidence presented by Committee witness Talbot dealt with operation of the EBA and the financial impact of the merger upon Utah Power and its capital costs. Witness Talbot's opinion was that the merger would not have an adverse result upon the cost of capital of the electric utility or the financial aspects of the utility providing electric service to Utah ratepayers. He testified that calculation of capital costs and consideration of financial operations of the Merged Company would be different, and perhaps more complicated, if the merger occurred. Talbot also testified that the EBA should continue, on a merged system basis, for some period after the merger until data on the operation of the Merged Company could be considered by the Commission in determining whether to continue or end operation of the EBA. Talbot further testified that the expenses associated with obtaining approval of the merger should be allocated proportionately between the Merged Company's ratepayers and shareholders based on the expected benefits accruing to each interest.

Committee witness Weatherwax presented the Committee's analysis of the areas of net power cost, construction, long-run resource acquisitions, and economic development. Witness Weatherwax's calculations of the benefits to be expected from the merger differed substantially from the calculations presented by the Applicants. A joint exhibit filed by the Committee and the Applicants identified the variances in net power cost benefits calculated by these parties based upon the different assumptions and modeling utilized by them; differences in the other areas were identified in testimony and exhibits of Mr. Weatherwax. The net difference in these parties' calculations of the net present value of benefits resulting from the merger in these four areas alone, discounted at 11.24 percent, ranged from $107 million to $156 million, depending on the assumptions used.

Committee witness Bernow presented testimony and evidence on allocation methods. Witness Bernow utilized both the Applicants' and the Committee's calculations of merger benefits in various allocation applications to illustrate the impact of the Merged Company's operations upon the Utah Power Division of the Merged Company and its ratepayers. Utilization of the Applicants' calculated merger benefits supported the Applicants' representation of ten percent rate reductions in the 1988 to 1992 time period analyzed. Utilization of the Committee's calculations, depending upon the assumptions incorporated, would support no or some rate reductions; the rate reductions, however, were less than those possible under the Applicants' calculations. Mr. Bernow advocated careful consideration of the allocation problem and suggested the guiding principles noted previously.

Committee witness Williams testified on the policy implications to be considered in approving the merger and the need to impose conditions with merger approval to further such policy considerations. Witness Williams testified that the conditions presented by the Committee were necessary to protect Utah ratepayers from potential adverse results that attend the operations of the Merged Company, to ensure that Utah ratepayers benefit from the merger and to permit the Merged Company to deal with what he characterized as non-merger related 'global factors.'

D. **Shareholders**

The Shareholders Association testified in favor of the merger as proposed by Applicants. The Shareholders Association stated that the evidence presented at the hearing of this matter met the net positive benefits standard set by the Commission in its November 20, 1987 Order re Standard of Approval for Merger.

It is the position of the Shareholders Association that the Commission should not burden merger approval with unnecessary or unwise conditions. Only the conditions proposed by Mr. Powell for the Division, as modified, should be adopted.

The Shareholders Association suggests that the Commission's Report and Order approving the merger should include findings detailing the benefits the merger would produce for shareholders of Utah Power and for the general economic welfare of the state of Utah.

E. **UMWA**

UMWA asserts that the Applicants have not demonstrated that the merger will produce the benefits claimed for it, particularly in the areas of economic development, manpower efficiencies and administrative combinations. Nor have applicants adequately accounted for such merger costs as loss of state tax revenues, increased regulatory burden, and as their counsel stated it, loss of the "home court advantage."

UMWA contends that the Merged Company must be required, as a condition of merger approval, to assume all obligations and duties under the UPL/UMWA Wage Agreement of 1988 even though Applicants testified that the Wage Agreement of 1988 would be honored, and that the merger will not adversely affect union relations.

The new Wage Agreement runs through February 1, 1993. Its terms define employees' and employers' rights and duties in producing nearly 5 million tons of coal annually. Among other things, the agreement establishes Employer obligations in Trusteed Pension, Retirement, Health and Welfare, and Dental Programs, which mandate that an Employer who pays funds into these trusts, becomes a signatory to the agreement creating the trusts.

F. AMAX Industrial Customers

AMAX has not opposed the merger but testified that conditions must be imposed to assure that existing large, interruptible customers of Utah Power are not detrimentally affected by the merger. They contended that the Commission's November 20, 1987 Order, imposes on the Applicants the burden of demonstrating, with specific evidence, merger benefits and costs. AMAX asserts that Applicants have not met this burden because, among other things, they have failed to study the impact of the merger on industrial customers such as AMAX, relying instead on intuitive conjecture.

AMAX asserts it would suffer substantial economic detriment should the merger permit the Applicants to realize their goal to increase the volume of off-system sales. If Applicants are successful in achieving this goal, AMAX asserts that Applicants' witnesses have conceded that AMAX would have less access to the baseload generating capacity of the merged system, forcing AMAX to rely increasingly upon higher cost purchased power.

AMAX also argues that whereas Utah Power has interruptible customers, none of Pacific's customers are served under contracts denominated as "interruptible." Rather, all customers are served as firm customers, with the degree of "firmness," and the order of interruptibility being defined by contract. AMAX submits that as a result of this approach Applicants may, if the merger is approved, make "firm" sales at prices lower than those to be charged AMAX under its interruptible contract. The effect would be to displace AMAX in the dispatch queue, as the Merged Company exported the energy that would otherwise have been used to serve AMAX, to the detriment of AMAX specifically and the economy of Utah generally.

AMAX argues that the Commission has the statutory right and duty to condition the merger to assure that the existing large, interruptible industrial customers of Utah Power are not adversely affected by the merger. AMAX's preferred condition, although alternatives have been presented, is that the existing interruptible load on the Utah Power system be dispatched--dispatching encompassing both energy and price basis--prior to the dispatch of any new off-system sales that the Merged Company may make. AMAX argues that this condition does not render its service firm but simply protects it against being displaced by new off-system sales that can only be made as a result of the merger.

AMAX advocates two other conditions that it claims Applicants have agreed to. First, no new interruptible off-system sales will be dispatched prior to existing on-system interruptible sales.

And second, power transfers between divisions will be done at cost, without any market-based mark-up.

G. **Basic Manufacturing and Technologies of Utah, Inc. (Geneva).**

Intervenor Geneva questioned whether the proposed merger would be in the public interest. Geneva argued that, at the very least, any approval of the proposed merger should be substantially conditioned in order to protect Utah ratepayers.

Geneva testified that the merger benefits claimed by Applicants are overstated, not adequately substantiated, and in part achievable absent the merger through contract. Geneva's witnesses presented testimony that many of these claimed benefits are, in fact, based on mistaken assumptions.

Geneva expressed concern over Applicants' failure to provide comprehensive rate forecasts or to specify even a general allocation method prior to approval of the merger. Applicants' proposal to use the Utah Power stand-alone model in determining the existence and allocation of merger benefits fails to answer the difficult allocation questions presented by the merger, Geneva asserted. The lack of consensus among experts as to the assumptions used in the model, the sensitivity of model results to the assumptions used, and the absence of an allocation method, make it impossible to determine, Geneva asserts, whether the merger would result in a net positive benefit to Utah.

Geneva maintained that Applicants' refusal to combine the Utah Power and Pacific Power rate bases amounts to an attempt to isolate from Utah ratepayers the benefits of Pacific's access to inexpensive hydroelectric power from the Northwest. This, combined with Applicants' refusal to guarantee for Utah ratepayers the benefits to be derived from Utah Power's transmission system, raise serious questions about the fair treatment of Utah ratepayers.

The short-term five percent rate reduction promised by Applicants is not sufficient to insure fair treatment of Utah ratepayers. Geneva pointed out that Utah Power recently has achieved much success in cutting costs and streamlining operations. There is no reason to believe this would not continue absent the merger. Therefore, it is possible that a five percent or greater rate reduction could be achieved absent the merger. Moreover, the unanswered allocation questions that accompany the merger will increase the complexity of regulation and make cost-based ratemaking difficult to achieve.

In order to ameliorate these concerns, Geneva proposed a number of conditions. Geneva urged that Applicants be required to combine the rate bases of the Pacific and Utah Power Divisions expeditiously, while, in the interim, allocation procedures should be adopted that will insure that Utah ratepayers receive the full benefit and value of the Utah Power transmission system and other Utah Power assets.

Geneva argued that the merger would result in the loss of local ownership and control of Utah's largest utility because there is no assurance that Utah Power would be adequately represented on the Merged Company Board of Directors, and more importantly, the Merged Company will be forced to assess its activities in light of the interests of a seven-state, rather than a Utah Power only, service territory. The result would be a utility with less commitment to Utah concerns and a more difficult one for local entities to deal with.

Finally, Geneva argued that there are significant costs associated with the merger. The most significant of these is the premium that the shareholders of the Merged Company will pay for Utah Power stock and the resulting dilution in the value of Pacific stock. As evidenced by the Applicants' internal documents and the analysis of several investment bankers, the need to offset this dilution may drive the Merged Company shareholders to push for a substantial allocation of merger benefits, thus further dividing merger benefits and increasing the difficulty of allocation decisions. If, however, shareholders do not seek such an allocation, or if regulators refuse to divert merger benefits to shareholders, the dilution may result in an adverse impact on the financial stability of the Merged Company, lower bond ratings and a higher cost of capital. In order to alleviate this concern, Geneva proposed that the authorized rate of return for the Merged Company be set without regard to the merger premium and that the risk of any adverse impact on the financial stability of the Merged Company be borne solely by the shareholders.

H. Nucor Steel

Nucor contends that the Applicants should be ordered to file a definitive inter-divisional allocation plan for consideration by the Commission prior to its decision on the proposed merger, or, alternatively, the Commission should deem all Utah Power retail rates interim and subject to refund until such a plan is approved.

The Commission will be unable to determine whether the merger will create "some net positive benefit to the public in this State," according to Nucor, without knowing how costs and revenues will be allocated after the merger.

Nucor further argues that certain allocation methods could make Utah ratepayers worse off even if the merger yields overall savings. Utah Power's net power costs could increase if its share of merger benefits is too small to offset beneficial off-system purchases and sales that it could have made absent the merger. Utah Power's non-power supply costs could also increase if the Utah Power Division incurs costs for the benefit of Pacific and a situs allocation rule is employed. Moreover, the allocation principles suggested by the Applicants will inherently deprive Utah ratepayers of the benefits of Utah Power's strategically located transmission system without compensating benefits. While Utah ratepayers have paid and will pay for the costs of the Utah Power transmission system, off-system sales revenues would be apportioned between the Utah Power and Pacific Divisions under the Applicants' suggested allocation method.

Nucor contends that the Applicants' proposal to use stand-alone modeling to set rates poses new and intractable regulatory problems for the Commission. Stand-alone modeling would be utilized to perform inter-divisional allocations of net power supply costs, to set the level of Utah Power's energy balancing account and to substantiate the Applicants' commitment that rates will not increase as a result of the merger. There is substantial evidence of record that stand-alone modeling is highly speculative and unverifiable. Rates established on this basis would be unjust and unreasonable.

Nucor's second condition would require the Merged Company to offer power to contract demand customers for incremental loads at the same price and under similar conditions as it offers power for resale. This condition must be considered in this proceeding as opposed to later proceedings relating to individual industrial customer contracts because it is inextricably intertwined with the Applicants' declared policy to maximize off-system sales via the merger. The proposed condition, according to Nucor, is designed to counterbalance the Applicants' policy with one that would maximize the benefits to Utah ratepayers. The record in this proceeding establishes that the sale of surplus energy to incremental industrial loads, like off-system surplus sales, would yield similar margin-sharing benefits to retail customers. Off-system sales, however, would export economic development while incremental sales to industrial customers under Nucor's proposal will foster economic development within Utah. There is substantial evidence that the availability of surplus power is reasonably predictable and moreover that industrial customers could adapt production processes to make use of such power on short notice.

Nucor's third recommended condition would ensure that economic interruptions not increase and the quality of service to industrial customers not deteriorate as a result of the merger. A potential decline in the quality of service to industrial customers, Nucor contends, must be weighed heavily against the asserted benefits of the merger unless a protective condition is adopted. Nucor's testimony establishes that the Applicants' plans to dramatically increase off-system sales after the merger will increase the incremental cost of service to interruptible customers and, hence, heighten the risk of economic interruption. To counteract this phenomenon, Nucor recommends that incremental cost calculations for the purpose of economic interruptions should be performed prior to any off-system sale in excess of current levels. Alternatively, a condition should be adopted which requires that (1) incremental costs for purposes of economic interruption should be calculated before any non-firm off-system, but after firm off-system sales; (2) Utah Power not interrupt interruptible customers for capacity reasons except under short-term emergency system conditions; and (3) Utah Power not make an economic interruption when it can sell non-firm energy at a higher rate off-system.

Finally, Nucor has proposed two distinct conditions requiring retail wheeling. The first wheeling condition would explicitly state that nothing in the Commission's Order precludes retail customers connected at the transmission or subtransmission level from seeking wheeling of power from other suppliers under the same general terms and conditions as any wheeling for wholesale customers required by the FERC. Nucor contends that, if the FERC orders wholesale wheeling to remedy the anti-competitive impacts of the merger, this Commission should not foreclose Nucor and other industrial customers from seeking similar relief. Nucor's second wheeling condition would require Utah Power to offer contract demand customers wheeling of power from other suppliers under the same general terms and conditions as any wheeling for wholesale customers required by the FERC. Nucor believes that this condition is warranted to afford industrial customers a competitive remedy if the Commission does not adopt the above regulatory conditions, all of which are designed to ensure that industrial customers are not harmed as a direct result of the merger.

III.

DISCUSSION AND FINDINGS

Applicants and PacifiCorp Maine entered into the Merger Agreement which they contend will result in a more efficient company, better able to offer lower rates to customers than could the stand-alone companies. They assert the merger is in the best interest of the Company's shareholders, ratepayers, and employees. They contend the new company will be more responsive to the increasingly competitive environment in the electric utility industry. According to the Applicants, in order to succeed in such an environment it is necessary to be price competitive, and to increase efficiency, customer service options and quality without sacrificing the basic responsibility to provide safe and reliable service.

The question before the various regulatory commissions is to determine if the merger will enable Applicants to meet these challenges more effectively, while at the same time providing substantial benefits to the customers, employees and shareholders of both utilities, as well as to the states and communities in which they serve. The question to be answered by this Commission, as we have stated previously, is the extent to which merger benefits will accrue to the ratepayers, shareholders, employees and generally to the state of Utah: Is there a net positive benefit?

The nature, level, timing and allocation of purported benefits from the merger have been hotly contested by several parties in this proceeding. While all parties have agreed that the merger should produce benefits over time, considerable uncertainty has emerged as to the level of the purported benefits, how benefits should be determined and measured, and to whom benefits would accrue.

While the absolute level of benefits is material to our decision, so is the issue of how such benefits will be allocated between Divisions and among jurisdictions. Furthermore, this Commission will not be allocating benefits per se but costs and revenues, including those unrelated to the merger, and cost and revenue changes made possible by the merger.

The subject of the allocation of revenues and costs between the Utah Power and Pacific Divisions post-merger has not been adequately addressed on the record before us in this proceeding. In our November 20, 1987 Order establishing the standard of proof for evaluation of the merger, we concluded that the Applicants bear the burden of proving that the merger will result in "net positive benefit to the public in this state." The phrase "to the public in this state" was not employed ritualistically, but is a direct recognition of our responsibility to safeguard the public interest of Utah and its citizens.

Ideally, the record before us would contain testimony and evidence with respect to an inter-divisional allocation method because, as in the past, we pursue cost-based retail rates.

Lacking an allocation study, the Commission must rely on evidence as to the magnitude of total merger benefits, relative to costs, to suggest that the merger will lower the cost of service to Utah customers. It was our decided preference, as indicated in our letter to Utah Power President Frank N. Davis, with accompanying staff memorandum, of September 15, 1987, to have addressed the allocation issues before rendering a final decision on the proposed merger. Time pressures due to the Applicants' August 12, 1988, merger approval deadline, however, prevented us from adopting an allocation method during the proceeding.

Applicants have stipulated on the record that they will provide reports and keep records adequate to support an effective regulatory process, including regulatory decisions on inter-divisional allocations. The approval of the merger Application should be based upon what is in the public interest. To the extent that conditions proposed by parties are necessary to assure that utility operations following the merger remain in the public interest, such conditions should be approved. The Commission expects adequate records to document utility operations and in addition to respond to all reasonable requests for reports on PacifiCorp operations following merger approval.

Based upon the record, the Commission makes and enters the following Discussion and Findings:

A. Qualifications and Organization

1. Utah Power is a Utah corporation qualified to transact business and operate as an electric utility in Utah, Idaho and

Wyoming. Utah Power is subject to the jurisdiction of the FERC and the regulatory commissions of these states.

2. PacifiCorp Maine is a Maine corporation qualified to transact business and operate as an electric utility in California, Idaho, Oregon, Montana, Washington and Wyoming. PacifiCorp Maine is subject to the jurisdiction of the FERC and the regulatory commissions of these states.

3. In addition to its electric utility business, PacifiCorp owns approximately 90 percent of NERCO, Inc., which is engaged in coal mining and other mineral exploration and development, and 87 percent of Pacific Telecom, Inc., which provides local and long-distance communications services in Alaska and local service and access to the long-distance network in seven other Western states and Wisconsin, and 100 percent of PacifiCorp Credit, Inc. and PacifiCorp Finance, which are engaged in financial enterprises.

4. Utah Power has the financial capability, the management expertise, the technical proficiency and the necessary plant and equipment to provide safe, reliable and reasonably priced electric service within the State of Utah. It has provided such service for several decades.

5. Pacific is a division of PacifiCorp Maine. It has the financial capability, the management expertise and the technical proficiency to provide safe, reliable and reasonably priced electric service. It has the necessary plant and equipment to provide such service in the territories it serves in the states of California, Idaho, Montana, Oregon, Washington and Wyoming and has provided such service in such territories for several decades.

6. The Merged Company is an Oregon corporation whose name will be changed to PacifiCorp on the effective date of the merger.

7. Utah Power, PacifiCorp Maine and the Merged Company have entered into the Merger Agreement. Pursuant to the terms of the Merger Agreement, on the effective date of the merger, the separate corporate existence of Utah Power and PacifiCorp Maine will cease, and the Merged Company will succeed to all the rights and properties (including all operating public utility properties) and will assume all of the debts, liabilities and obligations of Utah Power and PacifiCorp Maine, including all notes and first mortgage bonds. The Merged Company will issue shares of common and preferred stock upon conversion of outstanding shares of common and preferred stock of Utah Power and PacifiCorp Maine. Utah Power's common shareholders will receive between .909 and .957 shares of the common stock of the Merged Company for each share of their Utah Power common stock based upon a formula derived from PacifiCorp's closing price during a ten-day computation period following final regulatory approval.

8. The Merged Company will continue to do business in all territories previously served by Utah Power and Pacific. Service to the territories served by Utah Power will be provided by a division of the Merged Company doing business under the assumed name of "Utah Power & Light Company." Service to the territories served by Pacific will be provided by a division of the Merged Company doing business under the assumed name of "Pacific Power & Light Company." Both of the divisions of the Merged Company will enjoy the same corporate standing and privileges.

9. The Directors and Officers of Utah Power on the effective date of the merger will become Directors and Officers of the Utah Power Division of the Merged Company. The Board of Directors of the Utah Power Division, like the Board of Directors of the Pacific Division, will function as a committee of the Board of Directors of the Merged Company. Three members of the Utah Power Division Board will become members of the Merged Company Board. The president of each division will serve on the other division's Board to assure coordination between the divisions. The Pacific Division Board has been delegated authority over all management functions with respect to the day-to-day operation of the Pacific Division. A similar delegation of authority will be made to the Utah Power Division Board following the merger. The Merged Company's Board will make the ultimate decisions involving the issuance of securities, the conduct of audits and approval of extraordinary capital expenditures, subject to the lawful authority of this Commission.

10. Each division will be responsible for customer services within its service area. Certain duplicative, and as yet unidentified, administrative functions will be consolidated between the divisions with an equitable and proportionate balance between those functions principally located in and reporting to the Utah Power Division and those principally located in and reporting to the Pacific Division. The power systems of the two divisions will be operated and planned as a single system, and the headquarters for power supply operations will be in the Utah Power Division in Salt Lake City, Utah. Major changes in the operations of the

divisions will be reported to the Commission prior to implementation.

11. The Merged Company is fully qualified to own and operate Utah Power's electric utility operations in the State of Utah.

B. Non-Power Supply Savings Resulting from the Merger

1. Applicants presented evidence that non-power supply benefits would be achieved as a result of the merger which neither company could achieve on a stand-alone basis. These benefits were estimated as ranging from approximately $31 million in the year immediately following the merger to approximately $101 million per year by the fifth year following the merger. The benefits are broken down among the following categories: manpower efficiencies, administrative combinations, savings in carrying costs associated with reduced construction, and net additional revenues from economic development.

2. With respect to manpower efficiencies, Applicants' evidence was that, principally through the consolidation of duplicative administrative functions, the Merged Company would be able to eliminate approximately 940 employees over the next five years for a savings of approximately $155 million. These reductions were projected to come entirely through attrition. Attrition rates of 1.7 percent and 3.0 percent were assumed for the Utah Power and Pacific Divisions, respectively. It was uncontroverted that these rates are lower than the attrition rates of the separate companies in recent years.

The Division utilized Applicants' estimate for its best case and one-half of their estimate for its worst case. Geneva recommended that all manpower efficiency benefits be disallowed because it claimed the evidence did not demonstrate that the workforce reductions could not be achieved absent the merger.

Applicants offered rebuttal testimony that it was obvious that there would be some manpower reductions and that Geneva's total disallowance of them was unreasonable. Applicants also presented persuasive evidence that through the current cost cutting programs of Utah Power and Pacific, manpower levels have already been cut substantially, and that it is unlikely that significant additional reductions could be achieved absent the merger.

We find that, while the savings to be achieved through manpower reductions is subject to reasonable debate, it is clear that some reductions will occur, though the question of magnitude remains.

3. With respect to administrative savings, Applicants presented evidence that approximately $20 million per year in savings could be achieved through reductions in insurance premiums, computer hardware and software license fees and maintenance costs, legal expenses, administrative costs associated with Pacific's group welfare plan, financial services, environmental services and power plant maintenance expenses. Approximately $10 million annually was attributed to insurance alone.

The Division analyzed these savings and found them supportable and, in the case of insurance premium savings, conservative. Geneva recommended disallowance of all insurance savings on the basis that a complete risk management analysis was not performed and because some of the savings might be achieved absent the merger. Similarly, Geneva recommended disallowance of or reduction in other areas of administrative combination savings, asserting that the claimed savings simply reflected a different management approach that could have been adopted absent the merger. Geneva contended that only $3.2 to $3.8 million of savings would result from administrative combinations made possible by the merger.

Applicants submitted rebuttal testimony supporting their projected savings in the areas of insurance, computers and group welfare benefits. Additionally, Applicants pointed out that it was unlikely that new management approaches would have been adopted absent the merger.

We find that while Geneva's testimony regarding Applicants' projected administrative combination savings has some merit, on balance the evidence supports a finding that savings will result from the merger greater than Geneva contends, but less than Applicants and the Division contend. The question of magnitude remains.

4. Applicants projected reduced construction savings of $28 million in the first five years following the merger. These savings were based upon the deferral of specific budgeted construction projects for the Pacific Division and upon more general estimates of reduced construction requirements for the Utah Division. Added construction costs for transmission interconnection upgrades required by the merger were netted against these savings to get the net benefits projected. The Division's analysis adopted Applicants' estimate for its best case and one-fourth of Applicants' estimate for its worst case. The Commit-

tee's evidence on reduced construction was that many of Pacific's deferred projects could be, or already were, deferred absent the merger, that Utah Power's distribution system deferrals were unspecified and speculative, and that the costs of additional transmission upgrades would more than offset the remaining savings. The Committee also concluded that there was double counting between Utah Power's overhead savings associated with manpower efficiencies and its share of the reduced construction benefits. The Committee contended that the merger would result in additional construction related costs of $18 million over the five-year period in its High Case and $36 million in its Low Case. Geneva's analysis concluded that the merger would result in net construction costs of $8 million over the first five years.

Applicants offered rebuttal evidence on some of these points. The offsets to reduced construction benefits resulting from transmission upgrades are discussed in more detail under our findings on resource acquisition savings below. We find that the Committee's and Geneva's analyses raise valid questions regarding the costs necessary to effect merger benefits. The benefits of construction deferral are not substantiated and may, to an extent, be offset by the costs of additional transmission interconnection construction. Therefore we find there is insufficient evidence to establish a measurable benefit.

5. With respect to economic development, Applicants' have projected a five-year operating benefit of $37 million through net revenues received from new load attributable to the introduction of Pacific's established economic development program in Utah Power's service area. Applicants asserted that Pacific's economic

development program has unique features and has enjoyed some success.

The Division submitted evidence that Applicants' projection of benefits from economic development was overly optimistic and was not causally related to the merger. It assumed Applicants' estimate in its best case, but eliminated all economic development benefits in its worst case analyses. The Committee concluded that no benefits could be shown for economic development because of a failure to substantiate the value and success of Pacific's economic development program, failure to demonstrate that the claimed benefits were merger related, failure to demonstrate that the application of Pacific's program to Utah Power's service territory would achieve any incremental benefits, and because there was no analysis of the potential detriments that could result from economic development. With regard to the latter factor, the Committee argued that Applicants had implicitly assumed a significant reduction in rates to industrial customers as part of the economic development program and that this was inappropriate because the Commission has yet to formally consider incentive rates.

Geneva challenged economic development benefits on the grounds that they could be achieved absent the merger and that it did not believe the claimed benefits were substantiated.

Applicants offered in rebuttal that there was specific evidence of the success of Pacific's program and that Utah Power could avoid substantial start-up costs and delays in getting its economic development program up to speed as a result of the merger. It is difficult, if not impossible, to prove that economic development is or will be the result of PacifiCorp's programs and not that of other government or Utah Power's current programs. We therefore find that there is no specifically measurable benefit shown on this record as a result of the industrial development program. We recognize, however, that logic, intuition and general experience lead to the conclusion that such programs are cumulatively beneficial to other efforts and we encourage them.

6. Under its worst case scenario, the Division calculated the present value, discounted at 9.2 percent, of non-power supply merger benefits to be $109 million over five years. We do not believe the evidence justifies such optimistic numbers. Nor can we find that Applicants' evidence supports its claim that substantial savings will result in non-power supply areas as a result of the merger. We specifically have difficulty in accepting Applicants' projected benefits from economic development. The record on its claims of reduced construction benefits is confusing. The consolidation of duplicative functions between Utah Power and Pacific as the basis for substantial savings during the first five years following the merger has intuitive appeal, though Applicants' analysis was both flawed and incomplete. On balance, therefore, we find that merger benefits in non-power supply areas could well result, but that they have not been quantified adequately.

C. Long-Run Resource Acquisition Savings Resulting from the Merger

1. Utah Power's system is a summer-peaking system, and Pacific's is a winter-peaking system. There is no dispute in the record that substantial and significant diversities exist between the two systems amounting to approximately 400 megawatts ("MW").

2. Applicants' evidence was that as a result of this diversity, plus Pacific's access to Bonneville Power Administration ("BPA") capacity and firm energy, the Merged Company could defer the construction of costly new generating plants as compared to either company operating on a stand-alone basis. The present value, discounted at 11.24 percent, of these projected deferrals over a 19-year period was estimated by Applicants at $352 million.

3. The Division's independent analysis indicated that the 19-year savings in resource additions would have a present value, discounted at 11.24 percent, of $346 million. The Division further showed that various reasonable sensitivity scenarios produced savings ranging between $157 million and $447 million in present value. The Division also showed that the resource acquisition revenue requirement imposed by the Utah Division of the Merged Company would be, on a present value basis, over $300 million lower than continued stand-alone operation. The Division concluded that savings in resource acquisition represents the greatest single source of long-run merger benefits.

4. The Committee's evidence was that the 20-year capacity savings would only reach from $65 to $124 million.

5. Geneva's evidence was that the merger would result in a net increase in 20-year present value capacity costs of $186

million. Geneva acknowledged, however, that if the Merged Company, as Geneva expects, does not make an additional long-term firm sale or expand loads through economic development, then there would be a 20-year present value saving in resource additions of $286 million.

6. The essential differences between the Committee, Geneva, the Division and the Applicants involved seven issues: whether the capacity savings could be achieved without the merger, whether more transmission interconnections are necessary to realize diversity and other power supply benefits, whether the Merged Company could reduce its reserve margins by 200 MW as a result of the merger, whether it is feasible and cost-effective for the Merged Company to use power purchased from BPA as a substitute for coal generating plants, whether it should be assumed that capacity planning would be done on a "critical" water basis, whether the available capacity of Pacific's Mid-Columbia resource could be increased by 40 MW in light of the availability of Automatic Generation Control ("AGC") equipment on Utah Power's plants and whether it is appropriate to include the costs, but not the revenues, associated with a projected long-term firm sale and economic development load increases.

a. With regard to the issue whether the capacity savings could be achieved absent the merger, Applicants contended that the benefits could not be achieved through contracts. Applicants and the Division asserted that there are substantial difficulties inherent in attempting to contract for capacity saving resulting from system diversity. The Division concluded that the merger is a bird in the hand, while contractual possibilities are a bird in the bush. We agree with the Division. We find that while it is conceivable that some of the capacity savings projected by Applicants might be achieved through contractual arrangements, such savings can be achieved by the merger.

b. All parties agree that the merger will require the construction of additional transmission interconnections between the two divisions in order to achieve capacity and net power cost savings. Applicants have proposed a detailed plan that they believe will at least marginally satisfy these transmission requirements. The Committee's evidence is that the proposed interconnections are inadequate to effectuate joint utility operations and that the costs of the augmentation have not been properly included in the analysis of reduced construction. Rebuttal evidence of both the Division and Applicants and cross examination of the Committee were insufficient to remove doubts that additional transmission capacity would be needed to support merger benefits during the first five years. This issue is one requiring expert judgment and is subject to reasonable differences of opinion. Moreover, Applicants have not claimed that their transmission analysis is beyond question. On balance, therefore, we find the evidence inconclusive as to the transmission cost offsets to capacity savings projected by the Applicants and adopted by the Division.

c. With regard to the Merged Company's ability to reduce its reserve margin by 200 MW, the dispute between Applicants' and the Division's evidence and that of the Committee was resolved by cross-examination which convinced us the Applicants' and Division's position was correct. Therefore, the Commission finds that it is reasonable to assume that the Merged Company will have 200 MW of capacity available which would not be available to the stand-alone companies if the merger does not occur.

d. With regard to the BPA power issues, Applicants' evidence is that the Merged Company will be able to acquire BPA power in the future to meet its load growth, including load growth in the Utah Power Division, and that BPA power will be cheaper than new coal plants would be. The Division agrees with Applicants' assumptions. The Committee provided evidence showing that BPA power will not be cheaper and that transmission constraints will limit its availability. Geneva questions its availability, agreeing that it will be cheaper. Inasmuch as the BPA rate is a melded rate with costs based on embedded resources, we agree with the Applicants and the Division that it is likely that BPA power will be less expensive than new Utah Power rate-based coal resources. Accordingly, we find that the power will be available and that the Merged Company will realize capacity cost savings of an unquantified amount as a result of its access to BPA power not available to Utah Power on a stand-alone basis.

e. It is Applicants position, with which the Division concurs, that long-run resource planning should be done on a "critical" water year basis. Savings, therefore, must reflect critical water planning. The Committee utilized "average" water planning, contending that critical planning overstated the savings. Geneva's evidence was that critical water planning is appropriate. The evidence is uncontroverted that critical water planning is currently used by all signatories to the Pacific Northwest Coordination Agreement and the BPA. Accordingly, we find that Applicants' and the Division's use of critical water planning was appropriate and more accurately estimates the benefits of the merger.

f. With regard to the Mid-Columbia resource, Applicants' evidence was that an additional 40 MW of capacity would be available from Pacific's Mid-Columbia resource because it would no longer be necessary to use this resource for load control due to the availability of load-following capabilities of Utah Power's AGC equipped plants. The Division and Committee agreed with this evidence. Geneva challenged it. We find that the Merged Company will enjoy 40 MW of additional capacity on a planning basis as a result of its ability to increase the rated capacity of the Mid-Columbia resource based upon the shift of load-following responsibility from Pacific's mid-Columbia resource to Utah Power's AGC equipped plants.

g. The significant difference between the power cost savings projected by Applicants and the Division, and those projected by Geneva (approximately $535 million), results principally from Geneva's inclusion of the costs, but not the revenues, associated with resource additions necessary to make an additional off-system, long-term firm sale and to serve new loads brought on by the Merged Company's economic development program. Geneva is the only party that has taken this position. We believe that Applicants' and the Division's rebuttal testimony demonstrates the flaw in Geneva's analysis, and we find that it is inappropriate to utilize costs, but not revenues, in projecting savings in resource acquisition.

7. On the basis of the foregoing, we find that the merger will result in approximately $300 million of savings in resource additions, in present value terms, over the 19-year time period examined, and that these long-run savings are the most important benefit of the merger.

D. Net Power Cost Savings Resulting from the Merger

1. Pacific's Net Power Cost Model determines and economically disposes monthly non-firm energy balances given firm loads, resource availabilities, and off-system transaction opportunities. It measures the sum of fuel expenses, power purchases, and wheeling expenses less the revenue from sales for resale. Merger benefits are defined as the difference between the net power costs of Pacific and Utah Power managed independently and managed jointly, i.e., merger benefits are identified as the reduction in the net cost of power supply due to the merger. In order to measure the net cost reductions due to the merger it is necessary to describe by assumption not only the future economic opportunities facing the Merged Company, but also those opportunities that would face Pacific and Utah Power absent the merger. The magnitude of measured benefits is highly sensitive to the assumptions employed.

2. The Applicants and the Committee were able to replicate each other's results of the Net Power Cost model thereby verifying each party's use of the model. The model itself was never bench marked against actual data. The only evidence regarding the accuracy of the Net Power Cost model was the statement by the

Applicants that the model had been accepted and employed in proceedings before Pacific's regulatory agencies.

3. No party disputed that power cost savings would be achieved as a result of the merger. Applicants presented evidence that $161.6 million in benefits will be achieved by the Merged Company in power costs over the five years following the merger as compared to operation of the systems of Utah Power and Pacific on a stand-alone basis. The Division analyzed these savings and found that Applicants' case fairly approximated realizable net benefits. Based upon sensitivity analyses, the Division found net power cost benefits would likely be between $92 million in its worst case and $263 million in its best case over the same time period.

The Committee criticized many aspects of the Applicants' evidence, but found that net power cost savings would vary between $48.5 million in its Low Case and $89.9 million in its High Case. Geneva acknowledged that $106 million of net power cost savings could be achieved over the five-year period following the merger, but contended that $97 million of these savings could be achieved without the merger.

4. The Applicants, the Division and the Committee used Applicants' production cost model to estimate the savings, with the Committee substituting its own model in part to modify UP&L's budget inputs to the PP&L model. Geneva did not use the model directly, but rather made adjustments to Applicants' projection. The differences among the parties resulted from the use of different assumptions regarding whether the savings could be achieved without the merger. These differences in assumptions are grouped

into the following areas: modeling approach, purchased power, thermal availability, coal prices and the projected off-system sale.

a. Differences in modeling assumptions account for $1.9 million of the difference between Applicants' and the Committee's estimates of net power cost savings. We find that this difference is not significant in order of magnitude with respect to this issue.

b. Differences in purchased power assumptions account for $10.0 million of the difference between Applicants and the Committee. Applicants' evidence was based on Utah Power budget estimates of Block 4 purchases and purchases from Pacific for the Nevada Power sale in the Utah Power stand-alone case. Utah Power's budget was prepared prior to and independent of the merger case. Applicants also assumed that the Merged Company could buy Block 4 energy for about five mills/kilowatt hour ("kWh") less than Utah Power could buy it on a stand-alone basis. The Committee testified that quantities of Block 4 power purchased in the Utah Power stand-alone case would be greater than Utah Power had projected and that Utah Power would purchase less power from Pacific for the Nevada sale than had been projected. The Committee agreed that the Merged Company could buy Block 4 energy at a lower price, but at only about one-half of the five mills/kWh price decrease projected by Applicants. We do not find clear error in either party's analysis of this issue. On the basis of our overall finding with respect to power cost savings, which is set forth below, we do not believe it is necessary for us to resolve the difference between Applicants and the Committee on this issue.

c. Applicants and the Committee differ regarding the assumed availability of thermal plants in the stand-alone and merged cases. This accounts for $23.4 million of the difference in their estimates of net power cost savings. The dispute centers on the assumed performance and availability of Utah Power's thermal plants. The differences in assumptions were not explained or explored to any great extent in the record. We find that it is not necessary to resolve this difference to reach a satisfactory finding with regard to merger-related power cost savings.

d. Different assumptions regarding coal prices account for $7.3 million of the difference between Applicants and the Committee. Applicants used adjusted average costs for coal in determining dispatch of thermal units, and the Committee used marginal costs for some, but not all units. Considering the evidence on this record, we make no determination on the issue.

e. The largest difference between Applicants' and the Committee's estimates of net power cost savings concerns a projected off-system sale. In this respect, the Committee's High Case differs from Applicants' estimate by $29.1 million; its Low Case, by $70.5 million. The record shows that one-half of Applicants' net power cost savings would result from its projected 100 MW firm off-system sale. No new off-system sale is assumed to occur in the Committee's Low Case; in its High Case, the sale occurs, but the Committee also assumes that Pacific could make a similar sale on a stand-alone basis. The record shows that this latter assumption may be incorrect. However, even assuming it were correct, because of the position Applicants have taken in this case, if the sale is made, it will necessarily be regarded by this Commission as a merger benefit. Therefore, it seems reasonable to regard it as a merger benefit for our purposes.

5. We find unpersuasive Geneva's assertions that the majority of net power cost savings are not merger related. We further find that substantial savings in net power costs will result from the merger. Even in the Committee's low estimates, these benefits will approximate $50 million during the five-year period immediately following the merger. The Commission finds that the more optimistic assumptions, which project these benefits to be in the range of $90 to $160 million, are reasonable.

E. Allocations

1. Significant time during the hearing was spent on the issue of whether it is necessary to establish allocations prior to approving the merger or to condition approval of the merger on certain allocation concepts or methods. At least as early as our September 15, 1987, letter to Utah Power President Frank N. Davis, we stated our expectation that allocation information would be required in order to determine the merger's impacts on Utah Power's Utah ratepayers. Applicants' argued that it is not only unnecessary to establish allocation procedures prior to merger approval, it would be ill-advised to do so. The basis of Applicants' opinion was that if each of the seven regulatory jurisdictions reviewing the merger were to adopt allocation procedures as part of their order of approval, there would undoubtedly be inconsistencies between them which might be incapable of resolu-

tion and could, therefore, delay the merger beyond the Applicants' August 12, 1988, deadline for obtaining regulatory approvals. Applicants acknowledged that inter-divisional allocation questions would be complex and challenging, but stated that the questions were not different in concept than allocation issues that had successfully been resolved in the past.

2. The Division essentially agreed with Applicants on this issue. The Division testified that it was premature to attempt to resolve allocation issues prior to the merger and expressed confidence that the issues could be dealt with and resolved following the merger.

3. The Committee initially took the position, consistent with the staff memorandum of September 15, that in order to determine the public interest benefits of the merger to the Utah jurisdiction it was necessary to analyze the Utah-specific cost-basis of the Applicants' proposed rate guarantees. Therefore, allocation issues were central to the case. Accordingly, the Committee filed extensive testimony regarding the appropriate allocation method to be adopted prior to merger approval. In fact, the Committee is the only party to this proceeding to present any evidence on possible allocation methods to be applied to the Merged Company. While the Applicants and the Division questioned the adequacy of the methods put forth by the Committee, they shed no additional light on the subject other than to say it need not be done now. Based upon rebuttal testimony of Applicants and the Division, the Committee modified its position, holding that its testimony regarding allocation illustrates the complexities and uncertainties involved in determining cost-based rates

for the Utah Division. It concluded by stating that if the Committee's rate guarantee proposal was accepted rather than that of the Applicants, then the merger could proceed in the absence of a specific allocation methodology and without a consequent determination of cost-based rates for the Utah division of the Merged Company.

4. The AMAX Industrial Customers presented evidence demonstrating that allocation issues are difficult and incapable of resolution before the merger is approved. They initially took the position that the merger should not be approved without adopting allocation methods that would protect Utah customers, particularly Utah industrial customers, and assure that they would not be made worse off by the merger. Nucor advocated that the Commission either require the Applicants to file a definitive allocation plan for Commission consideration or deem all Utah Power rates interim until the allocation questions are satisfactorily resolved.

5. Applicants assert that developing detailed allocations prior to the merger is not essential because the Merged Company's shareholders will assume the risk that differing allocation methods employed by the various jurisdictions could result in less than full cost recovery. The Division testified that this risk of dollars "falling through the cracks" exists currently within the present inter-state allocation process, wherein Applicants' shareholders fully assume the risk of less than full cost recovery. But should there be less than full cost recovery, the Merged Company will earn less than that allowed by regulators. In such a case, we expect the Merged Company would request additional revenues to increase earnings, or its cost of capital will in-

crease. Neither the Applicants nor the Division state how this risk of less than full cost recovery due to jurisdictional allocation methods can be identified, quantified and assigned to shareholders. It is clear that in the short term it will be the shareholder who bears this risk, but ultimately in the longer term the ratepayer shares in this risk.

6. We are concerned that without an acceptable allocation method, no quantification of expected revenues and costs for the Utah jurisdiction of the Merged Company can be fully determined. Nor can any final quantitative conclusion be drawn concerning the cost-of-service basis of future Utah Division rates. Nevertheless, we are convinced that on balance there are benefits which outweigh our concern that the allocation issue should have been resolved prior to this Order. We will, however, discuss additional concerns in the sections that follow.

7. Applicants propose to convene an allocation task force consisting of representatives of the states in which the Merged Company operates and of the FERC within six weeks following the merger's consummation. This task force is to serve as a forum for the Merged Company and each regulatory jurisdiction to analyze and discuss allocation methods. Such a forum may or may not provide an allocation method to be commonly adopted by all jurisdictions, nor would any decision reached by this task force be binding on regulatory commissions. Regardless of the outcome of the task force, we direct Applicants, within six months of the merger's consummation, to file a jurisdictional revenue requirement and a cost-of-service study, including a proposed method to allocate

revenues and costs. The Company will maintain sufficient data to permit any reasonable allocation method to be formulated.

8. Under Applicants' merger proposal, many significant aspects of Utah Power and Pacific operations will be combined. The Applicants intend to conduct Merged Company planning and operations under common corporate management for the benefit of a single group of shareholders. At the same time, Applicants have insisted that rates must be established on the basis of costs separately allocated or assigned to the Utah Power and Pacific Divisions. We are concerned that just as the diversity of Utah Power and Pacific systems provides the benefits of merged system planning and operation, so too does this diversity present difficult and complex questions in costing and pricing separately the divisions of the Merged Company.

9. Applicants state that their preference is to employ Pacific's Net Power Cost Model to allocate fuel expenses, power purchases, wheeling expenses, and non-tariff sales between the Pacific and Utah Divisions. The net costs of power supply would be determined for Pacific and Utah as if they were independent stand-alone companies, as well as for the Merged Company. Each division would be assigned its respective stand-alone net power costs. As an offset to the stand-alone costs, each division would then be allocated a share of the net power cost reductions, i.e., a share of the difference between the sum of the stand-alone net costs and the Merged Company net costs.

10. Applicants propose to maintain separate divisional rate bases contending that to combine rate bases would lead to unac-

ceptable rate increases in the Pacific Division or lower earnings available for shareholders.

11. Geneva asserted that the Applicants' proposal to use the Utah Power stand-alone model in determining the existence and allocation of merger benefits fails to answer the difficult allocations questions presented by the merger. Because of substantial gaps in the record regarding the impact of the merger on Utah ratepayers, the Industrial customers have contended that this Commission cannot determine whether the merger would result in a net positive benefit to Utah. While we disagree and find a net positive benefit, we recognize the magnitude of merger benefits and the consequent allocation of revenues and costs are highly sensitive to the assumptions as to what Pacific Power and Utah Power could have done absent the merger. This underscores the need for an understandable and workable allocation method.

12. We are concerned that the Applicants' preferred method of allocating net power cost is speculative and potentially unverifiable because of its reliance on hypothetical stand-alone power costs and off-system sales and purchases. Moreover, stand-alone modeling of non-power costs may pose even greater difficulties. The process of modeling what Pacific Power and Utah Power would have done absent the merger will become increasingly difficult as time passes and the operations of the two utilities become more integrated.

13. As an alternative to the measurement and allocation of merger benefits of power supply and the consequent need to model the hypothetical behavior of entities which will no longer exist, Applicants assert that sufficient information will be maintained

to allocate actual revenues and costs between the Pacific and Utah Divisions. This approach requires information on all transactions which occur between divisions. The Applicants provide conflicting testimony regarding the practicality of this approach. On the one hand, Applicants stated that all inter-divisional power supply transactions will be maintained in each division's dispatch logs. On the other hand, Applicants also stated that an analysis is difficult because of the extremely large number of such transactions. Moreover, the value of a given power supply transaction between divisions is dependent upon all transactions undertaken by the Merged Company. No testimony was presented which indicates how the Merged Company would price inter-divisional power transfers.

14. On the basis of the foregoing, we find that allocation issues need not be resolved prior to approval of the merger. We will require Applicants to convene multi-jurisdictional allocation meetings and to maintain records and data necessary to support any reasonable allocation method. We will require Applicants to file the financial information and cost-of-service studies necessary to determine appropriate rate levels for Utah Power as an independent entity for 1988 based on actual data. We will also require the Applicants to file a definitive allocation method and to file all the financial information and cost of service studies necessary to determine expected cost-based rate levels for the Utah Division for the years 1989 through 1993. We urge the Applicants to seek an allocation method which does not involve inter-divisional allocation but allocates system revenues and costs directly to state jurisdictions and FERC. Applicants should be guided by

three general principles: First, the proposed allocation methods should avoid total reliance on stand-alone modeling. Second, the proposed methods should embody a consistent and equitable method of allocating the benefits derived from the uniquely valuable assets of each division, in particular, the strategically located Utah Power transmission system and the low-cost power production of Pacific Power. Third, an allocation model should be verifiable against actual data.

15. In summary, we find that net positive benefits will result from the merger and that a reasonable allocation plan can be worked out after the merger to assure that Utah ratepayers receive their appropriate share of these benefits.

F. Regulatory Burdens Associated with the Merger

1. The Applicants asserted that despite unresolved allocation issues, the day-to-day regulation of the Merged Company would not be significantly affected by the merger, and that merger-related benefits significantly outweigh any possible impairment of regulation. The Division argued that the Commission's regulatory burdens will not be affected by the merger except to the extent that the merger changes or complicates existing regulatory duties, principally in the areas of inter-divisional allocations and affiliated interests. The Division maintained that the merger will increase the regulatory burden at least initially, but that such an increase is no basis for denying merger benefits to Utah Power's customers.

The Committee argued that the proposed divisional structure of the Merged Company and the inter-divisional allocation approaches briefly pursued on the record would impair effective regulation. Nucor's position was similar. Nucor asserted that the Applicants' proposed divisional setup and allocation scheme will so burden rate cases as to compromise the Utah Commission's future rate-making ability. AMAX elicited evidence through cross-examination that regulatory burdens would be substantially increased, becoming more difficult but not impossible. Geneva argued that the regulatory burden will be unmanageable.

2. The evidence indicates that the regulatory burden will be increased as a consequence of this merger. While the direction is clear, the magnitude and scope of the increase is not. The relevant issue is whether the additional regulatory burdens imposed by the merger would substantially impair regulation or otherwise be contrary to the public interest. We find that the increased regulatory burdens will not be of this magnitude.

G. Local Control Issues

1. Applicants testified that they chose the divisional organization form in part because it would maintain local control and autonomy while permitting coordination and cooperation between the divisions. The record shows that the Utah Power Division will maintain its headquarters in Salt Lake City, Utah. Applicants assert that, while it is clear there will be some loss of local autonomy, it is unlikely that the day-to-day management and operation of Utah Power will be affected in any significant way by the merger. The Merged Company will derive about 70 percent of its revenues from electric operations and approximately 40 percent of those revenues will come from the Utah Power Division. The

Merged Company's Board of Directors must contain members representing its constituencies and other areas of expertise in addition to its electric utility operations. The Merged Company will seek additional representation from Utah Power's service territory (initially Applicants plan for four of the Board members to represent Utah Power service territory) as vacancies occur on the Board. Utah will be the single largest jurisdiction served by the Merged Company.

2. Geneva asserted that the decision-making authority for the Utah Power Division on most important issues will rest with the Merged Company's Board. This suggests a potential loss of local control of Utah Power's transmission system, a loss, according to Geneva, of strategic significance. Major decisions, such as those concerning investment, dividend policy and financing, will be made by the Merged Company Board. Geneva is, therefore, concerned that Utah Power will not be in a position to be as responsive to local concerns after the merger as before it. The UMWA also raised issues concerning the "home-court advantage."

3. The Commission finds that the loss of local autonomy, given the circumstances of this merger as heretofore described, naturally lead to loss of local control. We are concerned about this because of the importance of issues bearing on it, such as the extent of our regulatory jurisdiction, the treatment of the Utah Power transmission system, the Merged Company's goal of increasing off-system activities, the Energy Balancing Account, the local purchasing, employment and location of personnel and local community commitments. Additionally, we are concerned about the transfer of authority over investment, construction, financing,

and dividend policy from a local electric utility to a much larger, diversified corporation. These and related issues are central, not peripheral to our determination of the public interest, and to an important extent are not resolved in this proceeding. We are cognizant of Applicants' assurances, but there is no denying that the proposed merger heightens the risk of loss of localized emphasis and to this extent at least, undermines the tendency on our part to accept without reservation forecasts of merger benefits for Utahns. This, of course, is one of the primary reasons why our approval of this merger must be conditional.

4. The Division testified about the effects on regulation of the potential affiliate relationships between Utah Power, as a division in the Merged Company, and that company's subsidiaries. Applicants have presented evidence in response regarding the policies and regulatory requirements that are currently imposed on PacifiCorp Maine in other jurisdictions as a result of affiliate relationships between its regulated and unregulated entities. According to Applicants, similar policies and regulatory requirements will continue to apply after the merger.

5. Applicants must provide adequate regulatory access to records and to the officials of all affiliated entities which may transact business with or have financial impact on either the Utah Power or the Pacific Power Divisions. The Merged Company must also implement adequate systems to support allocation or assignment of costs and revenues to the utility divisions, to maintain records necessary to document allocations and affiliate transactions, and to file any necessary reports with the Commission and

Division necessary to permit regulatory oversight of affiliate transactions with the utility divisions. We therefore accept and will impose conditions to assure that affiliate transactions are not detrimental to utility ratepayers. We find that with the conditions imposed relating to regulatory jurisdiction, local control, and affiliate relationships the concerns expressed are not a significant deterrent to approval of the merger.

H. Effect of Merger on Retail Prices

1. Currently Pacific Power's retail rates are based upon expected normal conditions during a test period with imputed revenues and costs. Utah Power's current rates consist of general rates plus an Energy Balancing Account (EBA) collection rate. Revenues collected through the EBA are designed to reflect actual power costs.

General Rates

2. The last general rate case for Utah Power was in 1984 in Docket No. 84-035-01. Despite lower capital costs, lower federal income tax rates, and cutbacks in manpower and construction, general rates remain unchanged and their current cost basis is unknown to the Commission. Utah Power has asserted that despite cost reductions in the above areas, there are off-setting cost increases in other areas such that the outcome of a general rate proceeding is uncertain.

3. In 1987, Utah Power showed record profits of $139 million, resulting in large part from current cost reduction programs, including cost reductions of $31 million in 1987 alone.

This improvement in company earnings is continuing. In the first quarter of 1988, Utah Power showed an increase of $13 million in earnings available for common stock as compared to the first quarter of 1987.

4. Applicant testified that in 1987, Utah Power earned a 13.5 percent return on equity in its Utah jurisdiction, less than seven percent in its Idaho jurisdiction, 10.5-11 percent in Wyoming, and more than 12 percent in its FERC jurisdiction. In 1987, Pacific Power earned a 12 percent return on equity in its Oregon jurisdiction, eight percent in Wyoming, 13 percent in Washington, eight percent in California and Montana, and zero percent in Idaho.

5. Applicants maintain that there are no further cost reductions expected absent a merger and are silent regarding the appropriate level of current rates. Geneva maintains that there is no reason to doubt that Utah Power's success in cutting costs and streamlining operations would continue absent the merger, so rate reductions absent the merger would not be unlikely.

6. The lack of any current revenue requirement or cost-of-service analysis for Utah Power as it is, unmerged, prevents a measurement of the cost reductions realized prior to the merger that should be distinguished from the short run post-merger cost reductions anticipated by the Merged Company.

7. Applicants presented evidence that, as a result of the substantial benefits of the merger projected over the first five years, it would be possible to reduce firm retail rates of Utah Power's regular firm customers by five to ten percent over the next four years. Applicants have guaranteed the following:

a. The Merged Company will file revised tariffs within 60 days of merger approval to reduce the general rates of Utah Power's regular firm customers by an initial two percent.

b. The initial two percent reduction will be spread evenly, on a percentage basis, among all Utah firm retail rate schedules.

c. The current EBA collection rate in Schedule 35 will be frozen at its existing level as of the date of this order.

d. At a minimum, an additional three percent reduction in the general rates of Utah Power's regular firm customers will occur at some time within four years following the merger--even if it is not cost-justified.

e. The spread of the additional three percent or more general rate reduction will be based on cost-of-service.

f. Within six weeks of the merger's consummation, Applicants will convene a meeting to discuss the issues involved in inter-divisional and inter-jurisdictional revenue and cost allocation. Representatives from FERC and from each of the seven states in which the Merged Company will operate as an electric utility will be invited.

8. The Division found that the total of a five percent reduction over four years following the merger was cost-justified even under the Division's worst case analysis, and, therefore, concluded that the minimum rate reduction guarantee of five percent was reasonable.

9. The Committee initially testified that its analysis and allocation of merger benefits did not justify on a cost-basis a five to ten percent rate decrease and therefore opposed the merger

as put forth by the Applicants. However, the Applicants' projection of merger benefits, using the Committee's allocation approach, did support on a cost-basis a ten percent rate decrease. Therefore the Committee indicated it would not oppose the merger if, for ratepayers to receive their full share of Applicants' andticipated merger benefits, approval was conditioned upon a guaranteed ten percent rate reduction over four years.

The Applicants and the Division challenged the Committee for relying on the Applicants' benefit calculations to develop its rate decrease conditions when the Committee's own analysis did not justify the rate decreases promised by the Applicants. The Applicants and the Division also criticized the Committee's condition because it did not take into account the effect of factors outside of the control of the Applicants, i.e. "global factors" such as inflation, tax law changes, etc., which may affect the benefit calculations.

The Committee modified its position in its surrebuttal testimony stating it would not oppose the merger if approval was conditioned upon acceptance of the Applicants' guaranteed five percent rate reduction plus a guarantee from the Applicants, contingent upon "global factors," of an additional five percent rate reduction by 1992. The Committee argued that insofar as merger approval is based upon acceptance of the Applicants' projection of merger benefits, the burden of proof to provide those benefits to the ratepayer should lie with the Applicants, not regulators.

10. Geneva testified that the merger would result in little, if any, positive benefits and that the guaranteed rate reductions

were, therefore, not cost-justified, but a "regulatory bribe." The industrial customers generally argued that such concessions were not an adequate substitute for the submission by Applicants of a definitive cost allocation method showing the impact of the merger on Utah Power customers prior to merger approval.

11. The record shows considerable disagreement as to the likely level of savings generated by the merger, and little evidence with respect to the total costs to be incurred by the Merged Company. Given this uncertainty and the lack of allocation information on the record, we find that it is reasonable to hold the Applicants to their minimum commitment of a five percent decrease in firm retail rates over the next four years. We find this rate reduction to be fair and reasonable and in the public interest. Applicants shall file a plan, within four months after the merger is consummated, describing how and when its total targeted price reductions shall be implemented. Applicants will file annual revenue requirement and cost-of-service studies, including cost-of-service analyses of interruptible service, within six months of the merger's consummation. We find that Applicants' plan to have the initial two percent reduction spread evenly is fair and reasonable and in the public interest. Further, we find that the additional three to eight percent rate reduction should be spread across customer classes as determined by this Commission.

Energy Balancing Account (EBA)

12. Since the initial two percent rate reduction is to be passed through general rates, Applicants propose to make no change

in Schedule 35 as a result of approval of the merger. The EBA collection rate is proposed to remain at four mills per kilowatt hour or at the amount actually in place at the date of merger.

13. Additionally, Applicants propose to continue to calculate on a stand-alone basis the Utah Power EBA, which includes fuel expenses, purchased power and interchanges, and non-tariff sales, for an interim period until one of the following cases is heard by the Commission:

(a) the next general rate case to be filed within six months following consummation of the merger, or,

(b) the "Least Cost Coal Case" (Docket No. 86-035-20), or,

(c) the Utah Commission determines an allocation method.

14. Since non-tariff sales are a direct offset to fuel expenses and the cost of purchased power and interchanges, Applicants' claim there is less incentive for management to undertake profitable sales because there is no benefit for shareholders. Although Applicants anticipate recommending discontinuance of the EBA in a future proceeding, their merger proposal is not contingent on the elimination of the EBA. Applicants state that the present merger proceeding is not the proper case to decide the future of the EBA. We agree and make no final determination as to the use of the EBA for the Merged Company. Some of our concerns are expressed below.

15. Applicants maintain that, after merger, calculation of the average net energy cost on a total system basis in order to determine the balances in the Utah EBA will not be acceptable. Only the net energy costs of the Utah Division, not those of the integrated system, can be used in determining the balances in the

Utah EBA. The preference of the Applicants, if the EBA is continued, is to employ Pacific Power's Net Power Cost model to simulate and allocate those components of the EBA which are attributable to the Utah division. Average net energy costs, not of the integrated system, but of the Utah Division on a stand-alone basis, are to enter the EBA. The Utah division is to be treated on a stand-alone basis without incorporation of merger benefits since such benefits are passed through general rates.

16. Again, a post-merger stand-alone characterization of the hypothetical behavior of a non-existent entity would be required under the Applicants' proposal. Currently, the EBA requires historical costs incurred under actual conditions. By contrast, Pacific Power's Net Power Cost model provides estimated or imputed revenues and costs under expected normal conditions. However appropriate this model is in identifying and measuring anticipated merger benefits, it may not be the appropriate tool for determination of EBA balances for pricing purposes. The current method shall be used until and unless the EBA is formally altered.

17. The information required for the current EBA includes the aggregate value of all revenues from non-tariff sales and all costs of power purchases and interchanges. In order to maintain a divisional structure of the Merged Company for pricing purposes, it will be necessary to obtain information regarding all inter-divisional power transfers. But each inter-divisional transfer is related to the economic activity of the entire merged system as well as that of a given division. Applicants have provided no information as to the manner in which inter-divisional power transfers will be priced, how off-system transactions will be

shared or attributed to respective divisions, or how compensation for the use of transmission facilities will be determined. Applicants have agreed, however, to maintain an audit trail of inter-divisional transactions that affect the EBA to ensure that the benefits of the merger can be identified and properly allocated.

18. Whereas the EBA allows adjustments of the expenses, revenues, and balance in the account to the time of the last Commission audit, general rates cannot be based on such adjustments. By embedding the initial two percent rate reduction in general rates, the Applicants' proposal is designed to control and limit rate reductions to two percent until a future rate case or an explicit change in rates occurs.

19. Applicants have agreed that cost reductions due to the merger may, in the future, flow through the EBA to the extent that:

(a) no double counting of benefits occurs through both the EBA and general rates, and

(b) that the merger and the subsequent accounting of the EBA does not affect the ability of regulators to review EBA issues.

20. We find that it is in the public interest for the Commission to approve Applicants proposal to pass the initial two percent rate reduction through general rates, and thus to freeze Schedule 35 at its level as of the date of the merger, i.e., the EBA collection rate will not change as a result of the merger until the Commission specifically alters it. Further, there is no need in this present proceeding for us to decide how the interim

balances in the EBA are to be determined. Issues regarding the treatment of both pre-merger and post-merger balances, as well as issues regarding the future existence of the EBA, will be addressed in either the "Least Cost Coal Case," Docket No. 86-035-20, or in the first general rate case following the merger.

21. This Commission, in accepting Applicants' proposal, does not accept Applicants' characterization of the incentive consequences of an EBA. Nor do we regard some EBA issues, such as the basis upon which balances are calculated, to be pre-determined by the Applicants.

I. Effect of Merger on Major Industrial Customers

1. Industrial customers, AMAX, NUCOR and Geneva, presented evidence that they could be negatively affected by the merger and, therefore proposed that merger approval should be conditioned to protect them from potential harm. They contend the potential damage arises from the fact that the Merged Company intends to make increased off-system sales. If these sales are made, the excess capacity which would otherwise be available to serve these interruptible customers, and upon which their rates are based, will be diminished, subjecting them to greater likelihood of economic interruption. The conditions recommended by these customers relate to dispatch priority over new firm off-system sales, retail wheeling, purchase of surplus energy on the same terms it is offered to other utilities and procedures to guarantee that their rates and service quality will not be lowered as a result of the merger.

2. Applicants assert that Utah Power's major industrial customers will receive benefits from the merger. Those taking firm service will receive immediate rate reductions. Interruptible service will benefit from the lower power cost and increased system reliability characteristics of the Merged Company. Applicants testified that the merger will result in increased firm resources available to serve interruptible loads. Applicants assured interruptible customers that the merger will reduce the frequency of system operating interruptions because of the greater size and diversity of the Merged Company. Applicants agreed that Utah Power's current dispatch policy for interruptible customers will be adopted by the Merged Company. Applicants further contend their industrial development program is intended to aid existing, as well as new customers. Applicants opposed all of the industrial customers' proposed conditions as either unrelated to the merger or because acceptance of the conditions would expand the rights of these customers, rights which are otherwise established by tariff or contract. Applicants pointed out that these customers will have an opportunity to pursue these issues in the Commission's forthcoming, and as yet unscheduled, incentive rate proceeding, or in future contract negotiations.

3. The Division testified that the conditions proposed by the industrial customers should be rejected because they are either unrelated to the merger or give undue advantage to this class of customers.

4. The Applicants will provide in all future cost-of-service studies specific assessments of interruptible service costs.

5. We have carefully considered the concerns of the interruptible customers raised in this case. Applicants have agreed that new off-system interruptible load would be dispatched after interruptible customers served by the pre-merger Utah Power system. The Commission recognizes the importance of these customers and that electricity sold in State results in economic benefits to the State that do not exist for off-system sales. We will monitor the operation of the Merged Company to be sure that customers of PP&L with varying firm conditions or off-system customers are not treated preferentially at the expense of Utah interruptible customers.

6. The interruptible customers have asked that the merger be conditioned on the provision of a higher priority for these customers over off-system firm sales. The Commission will not alter the contracts for interruptible customers, as a condition of the merger by providing a higher priority than was originally negotiated, signed by the parties, and approved by the Commission. We will provide the opportunity for this issue to be addressed in future proceedings, including any proceeding resulting from the cost-of-service filing in this case. We note, as a general observation, that in this era of increased competition and low energy prices the industrial customers have other options for power supply such as co- and self-generation which they have been able to use to some advantage in negotiating power contracts with the Company. It is therefore unlikely that these customers will be left "holding the bag" after the merger is consummated. In addition, the Commission has another proceeding in which a task force has been looking at the general issue of incentive rates.

Whether or not the merger is consummated, the Commission intends to press forward with this proceeding and the interruptible industrial customers will be given full opportunity to present their case as to the value of incentive rates to Utah and Utah customers. The Commission further acknowledges the responsibility to determine just, reasonable, fair and equitable rates for and among the industrial and all customers. One customer should not get preferential treatment over others.

J. Coal Issues Related to the Merger

1. The Division presented evidence regarding the impact of the merger on the Utah coal industry. It concluded that if the future market conditions assumed by the Applicants come to pass, then the merger would have a slight, positive impact on the Utah coal industry. Sensitivity analyses were conducted by the Division to determine the risk to the coal industry from the merger. Assumptions tested included hydro availability, relative coal prices, market penetration for firm off-system sales, and relative pricing in secondary sales markets. The Division concluded that under reasonable assumptions the merger would not have a significant negative affect on the Utah coal industry.

2. The UMWA did not present any direct evidence in this proceeding and, although they questioned the impact of the merger on the existing miners and mining contract, did not demonstrate that the Utah Coal industry or the UMWA members would be harmed as a result of the merger. Applicants have stated that the Merged Company will honor the recently renegotiated UMWA Agreement.

3. Counsel for the UMWA has requested that approval of the merger be subject to two conditions to ensure that the Merged Company complies with the successor obligations of the newly renegotiated agreement between Utah Power and the UMWA, including all obligations of Utah Power as employer under the Agreement, and that the Merged Company not transfer management or ownership of the Utah Power coal properties to NERCO, Inc. or any other entity without the permission of the Commission and without first securing NERCO's or such other entity's agreement to assume Utah Power's obligations under the agreement. Applicants assert that the proposed conditions are unnecessary and could inappropriately place the Commission in the position of labor relations enforcement agency. Applicants maintain that the Agreement is a contract like any other to which Utah Power is a party, and that it is not entitled to special treatment.

4. We find that it is unnecessary to condition approval of the merger on the Merged Company's compliance with the Agreement because the Merged Company has agreed to assume all of the rights and obligations of Utah Power under the recently renegotiated UMWA Agreement. We find, however, that the Company shall notify this Commission of any change in ownership or control of the mines prior to implementation of such change and at such time we will determine if hearings are necessary.

K. Merger Costs

1. Applicants estimate that $18.5 million will be incurred in costs associated with effecting the merger. Comprising the $18.5 million total are approximately $14 million in shareholder

feasibility studies done by Kidder-Peabody and First Boston and approximately $4.5 million in legal fees, travelling expenses and other miscellaneous items. The Applicants initially recommended that the Commission issue an accounting order allowing such costs to be amortized over 40 years and be accorded full ratebase treatment during that period. They testified that failure to enter such an accounting order would result in the shareholders having to bear the costs associated with a $14 million write-off in the year the merger is consummated.

2. The Division generally agreed with Applicants' analysis except that it recommended that the unamortized portion of the costs be allowed to earn a rate of return equal only to the incremental cost of debt. Treatment of the merger costs in this fashion results in an estimated 70/30 split of total merger costs between ratepayers and shareholders. The Applicants submitted rebuttal testimony accepting the Division's proposal as a reasonable alternative.

3. The Committee submitted testimony proposing that the Merged Company be permitted to amortize only the difference (approximately $4.5 million) between the approximately $14 million in incurred costs for the "fairness reports" prepared for shareholders and the total merger-related costs of approximately $18.5 million over a period of 40 years. They contend that the remaining unamortized portion of costs should not be allowed to earn a return. Both the Division and Applicants testified on rebuttal that the Committee's proposal would require a write-off of approximately $14 million of the costs in 1988. Both argued that this would require shareholders to bear too large a portion of the

costs in the first year, whereas the recommendation of the Division passes approximately one-third of the costs to shareholders over several years.

4. The Applicants have stated that the allocation of direct merger costs between the Pacific and Utah Divisions will be discussed and analyzed in the inter-divisional allocation meetings. The Commission finds this acceptable and will make a final determination of the Utah Division's share of direct merger costs in our allocation hearings.

5. While it is anticipated that both ratepayers and shareholders will benefit from the merger, the evidence on the record does not clearly suggest the proportionate share of ratepayer and shareholder benefits that could be used to derive a proportionate sharing of merger costs. On its face, it is unreasonable to assert that ratepayers should bear a greater share of merger costs than benefits. The Commission finds that the Utah Division's portion of the $18.5 million in direct merger costs, if this figure withstands later Commission scrutiny, should be shared equally by ratepayers and shareholders, as equal beneficiaries of the merger. Any merger costs to be treated in this manner must first be subjected to Commission review and approval. The Division shall propose a method of treating the direct merger costs to reach such an outcome as soon as possible after the order is issued, but no later than 30 days from issuance of the order.

6. Geneva presented evidence that the Merged Company will pay a substantial premium for the shares of Utah Power. The premium is expected to be in the range of $412 - $750 million, depending on the market price at the time the merger is effected.

Geneva contends that the Merged Company will attempt to divert benefits of the merger away from ratepayers to shareholders in order to neutralize the dilutive effects of the premium. Moreover, they suggested that the dilution resulting from the merger premium could decrease the Merged Company's bond rating and increase its cost of capital. They argued that this potential increase in cost of capital should be explicitly recognized as an additional cost of the merger.

7. The Applicants testified that they did not expect to be allowed to earn in excess of their authorized rate of return as a result of merger savings and that, if any premium were paid for Utah Power stock it would have no impact on rates. The Shareholders Association generally concurred with the Applicants' position. Furthermore, the Applicants presented evidence in the form of a five-year financial forecast which shows improvements in all of Utah Power's financial indicators. They maintained that there would not likely be any long-term risk of an increased cost of capital due to the merger, and consequently no impact on rates.

8. The Division testified that the only germane issue with regard to the premium was the dilution that the merger caused and whether the Merged Company would have sufficient earnings and cash flow to cover that dilution so not to impair its financial integrity. The Division's analysis of this issue indicated that the Merged Company would realize sufficient earnings to offset the dilution resulting from the merger and that the Merged Company would be financially sound. The Division asserted that the Merged Company's expected financial performance would justify a long-term bond rating consistent with Utah Power's current rating.

9. We find that all consequences resulting from the premium payment constitute risks which will be assumed entirely by the shareholders of the Merged Company. No adversities resulting from the premium payment will be considered by this Commission in setting the rate of return for the Utah Power Division of a Merged Company. We accept the position of Applicants that the Merged Company will have sufficient earnings and cash flow to overcome the dilutive effects of the merger and to emerge as a financially stronger company than either of its pre-merger parts.

L. Other Proposed Conditions

1. The parties proposed a total of 62 potential conditions to our approval of the merger. Applicants have responded specifically to each of these proposed conditions in testimony, by way of their Response to Proposed Merger Conditions dated May 19, 1988 or in argument. It is Applicants' position that, with only a few exceptions, the proposed conditions are either not related to the merger or are unacceptable because they impose unnecessary obligations on the Applicants. Each party proposing a condition has insisted that it is essential to the merger and that, in many cases, it is simply a specification of something Applicant has agreed or should agree to do anyway. Certain of the conditions have been discussed in prior portions of our findings of fact. We will discuss remaining conditions here in general categories.

2. Applicants have taken the position that the Division's recommended conditions are unnecessary but that only one condition is totally unacceptable, that being the condition dealing with five-year financial plans. Prior to this case, neither Utah Power

nor Pacific had filed five-year financial plans with regulators. The plans are prepared for internal use and for the confidential information of securities rating agencies. They contend there is potential insider information contained in the plans, the disclosure of which could subject the Merged Company and the recipients to exposure for securities law violations.

3. It is the Division's position, however, that the annual filing of five-year financial plans must occur in order for regulators to be able to adequately monitor the financial progress of the Merged Company. The Division believes that its obligation to uphold the public interest cannot be fulfilled absent a complete assessment of the financial performance of the Merged Company. In the Division's assessment, the five-year financial plans provide the most complete and concise set of data with which to perform this task.

4. The Applicants plead that no such regulatory requirements have ever been placed upon either Utah Power or Pacific prior to the merger. The nature of this transaction, however, cannot be easily reconciled with any previously regulated actions. No historical precedent should, therefore, be controlling or appropriate in the extant case. Applicants' concern over possible security law violations must also be dismissed. Utah regulators have regularly and conscientiously handled all categories of sensitive and confidential information. The Commission is confident that any such information contained in the Applicants' five-year financial plans will continue to be handled in a similar manner. If protective orders are deemed necessary, the Commission

can require them. We accept, therefore, the Division's position in this matter.

5. With respect to other conditions and reports, it is Applicants' position that rather than making a long list of reports and records the subject of an order, the Division and the Merged Company ought to meet periodically and over time develop a list of records to be kept and reports to be filed which are essential to regulation of the Merged Company in light of allocation methods adopted. It is the Applicant's position that the Commission always has the authority to adopt rules or to enter a specific order that certain records be kept or reports filed if the Merged Company does not comply with reasonable requests. It is the Division's position, however, that the reports detailed in Section 8 below should be explicit requisites of merger approval. The Division believes that the reporting obligations of the Applicants should be specifically delineated at the outset.

6. With regard to reports and record keeping, we find that the Merged Company must file all information specifically delineated in Section 8 below. These reports and records will be of sufficient detail to enable Utah jurisdictional and class revenue requirements to be determined annually. We also find that the first such report should be filed within six months of the consummation of the merger. We expect the Merged Company to keep sufficient records to enable implementation of any allocation method that we adopt to deal with the allocation of Merged Company revenues and costs. We agree with Applicants that they and the Division should meet periodically to review these reporting requirements and report back to the Commission.

7. The Division has proposed a series of conditions dealing with affiliate relationships. Applicants have said that the conditions are unrelated to the merger and are unnecessary. The Commission finds that the conditions, as stated in Section 8 below are appropriate, however, and establishes them as requisites of merger approval. In so doing, the Commission relies in part on Applicants' testimony that (1) the Merged Company will not finance its businesses from the proceeds of the issuance of Merged Company securities without providing prior notice to the Commission; (2) that ratepayers will not be harmed as the result of transactions of or with affiliates, and that Utah regulators will have access to employees and records of affiliates as necessary to verify this; (3) that the Commission will be provided information regarding plans for affiliates that deal with the electric divisions; and (4) that the Merged Company will comply with all valid rules and regulations of this Commission.

8. Of the conditions suggested, we agree generally with those the Division has proposed dealing with record keeping and reporting requirements, with some modifications. We note again, however, that these are minimum requirements imposed on the Merged Company and do not alleviate or abrogate any other condition imposed by law, rule or further order. Upon formal completion of the merger the Commission will convene a proceeding to establish the timetable, method and implementation of these, and potentially other, reports which must be made. In addition to the conditions dealing with record keeping and reporting requirements, we find the additional conditions set forth in (b) below, conditions proposed by various parties and as modified by the Commission, to

be in the public interest and are imposed as conditions of the merger:

a. **The Merged Company shall submit the necessary information/data to comply with the following reporting requirements:**

General

1) FERC Form 1, Annual Report: total company, Pacific Division, Utah Division and Utah jurisdiction.

2) Biannual reports documenting and summarizing realized merger-related benefits (i.e., cost savings and revenue increases) in the following areas:

(i) Administrative Savings

(ii) Manpower Efficiencies

(iii) Reduced Construction

(iv) Economic Development

(v) Production Cost Savings

(vi) Long-run Resource Acquisition Savings

(vii) Other.

Financial Reports and Forecasts

3) Monthly regulatory financial and operating report: total company, Pacific Division, Utah Division and Utah jurisdiction.

4) Monthly financial summaries for the total company, Pacific Division and Utah Division.

5) Five-year financial plan and forecast of financial condition: filed annually for the total company, Pacific Division and Utah Division.

6) Annual and quarterly report to shareholders.

7) Security and Exchange Commission Reports 10-Q and 10-K.

Revenue Requirements/Cost-of-Service Filings

8) Monthly Energy Information Administration Form EIA-826, and operating revenue by rate schedule for the Pacific Division and the Utah Division.

9) Annual report of gross revenues for the total company, Pacific Division, and Utah Division.

10) Revenue requirement filing for the Merged Company and its divisions within six months of the consummation of the merger, including cost-of-service data necessary to determine the appropriate rate levels in Utah.

11) Annual revenue requirement filing for the Merged Company and its divisions containing sufficient cost-of-service data to determine appropriate rate levels in Utah.

Demand/Load Forecasts

12) Annual reporting of realized energy and summer and winter peak loads for the Merged Company

total, for the Utah and Pacific divisions, and for the jurisdictions served by the Utah division.

13) Annual reporting of realized diversity benefits.

14) Annual reporting of 20 year, year by year forecasts of the information categories discussed in 12 and 13 above.

Resource Planning--Generation and Transmission

15) Annual reporting of merged system resource expansion plans based on then-current load forecasts including specific planned resource additions, their costs, and associated revenues if any, and a discussion of the reasons for their selection/inclusion in the plan.

16) Annual reporting of realized new generation and transmission additions to the merged system with discussion of variations of such additions from the then-current resource expansion plans.

17) Annual comparison of realized resource additions to the merged system and then-current resource expansion plans with what such additions and plans would probably have been in light of then-current conditions and expecta-

tions if the merger had not occurred and the companies continued on a stand-alone basis.

Production Cost Model--Reports/Filings

18) Annual reporting of merged system and divisional projected operating statistics and net production costs in at least the level of detail produced by the PP&L Production Cost Model based on then-current load forecasts and resource endowments.

19) Annual reporting of merged system and divisional realized operating statistics and net production costs in at least the level of detail produced by the PP&L Production Cost Model with discussion/explanation of deviation of realized values from then-current projections.

20) Annual filings of comparisons of realized and projected operation statistics and net production costs with what would have been optimal in light of the then-current conditions and expectations if the merger had not occurred and the companies continued on a stand-alone basis.

b. **The Merged Company shall also comply with the following conditions:**

General

1) The Merged Company shall agree that all employees, officers, directors, and agents will voluntarily testify before the Commission.

2) The Merged Company shall provide adequate regulatory access to records and officials of all PacifiCorp entities. In addition, PacifiCorp shall pay for the expense incurred by Utah regulatory personnel in accessing corporate records and personnel located outside of the state of Utah.

Rates

3) The Merged Company shall file revised tariffs reducing firm retail rates of the Utah Division by two percent within 60 days of the merger. The initial two percent reduction in firm retail rates shall be spread evenly across customer classes.

4) The Merged Company shall file a plan with this Commission within four months of consummation of the merger setting forth its method for implementing the five to ten percent reduction in firm retail rates of the Utah Division.

5) The Merged Company shall file revised tariffs reducing firm retail rates of the Utah Division by at least five to ten percent within

the next four years (including the two percent previously listed). The additional three percent to eight percent reduction will be spread across customer classes as determined by this Commission.

6) The Merged Company shall certify that firm retail rates will never be raised as a result of the merger.

Allocation

7) The Merged Company shall convene multi-jurisdictional meetings within six weeks of the merger to discuss allocation issues.

8) The Merged Company shall implement timekeeping and project management systems adequate to support the allocation of costs to the utility.

9) The Merged Company shall allocate initial power cost and revenue changes on an equitable basis that is consistent with principles currently utilized in allocating net power costs to the Utah Energy Balancing Account.

10) The Merged Company shall allocate other cost and revenue changes due to the merger using equitable allocation methods that embody the principle that incurred costs and revenues should follow or correspond to the cause of such costs and revenues.

11) The Merged Company shall agree that PacifiCorp shareholders shall assume all risks that may result from less than full system cost recovery if inter-divisional allocations methods differ among the Merged Company's various jurisdictions.

12) The Merged Company shall document and justify allocations to the Utah division in a manner basically consistent with the agreement between PacifiCorp and the Oregon Commission Staff.

Affiliated Interests[2]

13) The Commission will investigate and make appropriate orders, after hearing, regarding transactions between the electric utility divisions of PacifiCorp and their affiliates.

14) The Merged Company shall implement a standardized planning process, which includes prior notification to this Commission, for making decisions (1) to form an affiliate entity for the purpose of transacting business with the electric utility divisions of PacifiCorp, (2) to commence new business transac-

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[2] The purpose of these requirements is to assure, among other things, this Commission's ability to conduct regulatory analysis of conflicting demands on capital and credit which may or may not affect the financial viability of utility operations.

tions between an existing affiliate and the electric utility divisions of PacifiCorp, (3) to dissolve an affiliate which has transacted any substantial business with such divisions, (4) to enter into new business ventures or expand existing ones, or (5) to merge, combine, transfer stock or assets of any part or all of the Merged Company.

15) The Merged Company shall notify the Commission, and provide sufficient information and documentation to the Commission, prior to the implementation of plans (1) to form an affiliate entity for the purpose of transacting business with the electric utility divisions of PacifiCorp, (2) to commence new business transactions between an existing affiliate and the electric utility divisions of PacifiCorp, (3) to dissolve an affiliate which has transacted any substantial business with such divisions, (4) to enter into new business ventures or expand existing ones, or (5) to merge, combine, transfer stock or assets of any part or all of the Merged Company.

16) The Merged Company shall provide a copy of the affiliated interest report prepared for the Oregon Commission to the Utah Commission.

17) The Merged Company shall adopt a transfer pricing policy regarding the pricing of goods

and services and the transfer of assets and submit an application for the Commission's review and approval of such pricing policy.

18) The Merged Company shall provide notification of all asset transfers to or from PacificCorp, its affiliates, and the Utah Division in accordance with current PSC rules (see in particular PSC R750-4-1).

Procurement Policy

19) The Merged Company shall adopt and implement the procurement policies and procedures developed by UP&L, or as modified by Pacifi-Corp and approved by the Commission, for all procurement in the Utah division or associated with costs allocated to the Utah division. Where reasonable, the use of local businesses to supply goods and services is expected.

20) The Merged Company shall comply with the competitive bidding policy and purchasing requirements as established by this Commission.

Utility Restructuring

21) The Merged Company shall document and submit an application indicating the analysis performed to determine that divestiture of an integral utility function is a cost effective

management decision and obtain approval of the Commission prior to any such action. Such an application should depict what job classifications are being eliminated or shifted to the Pacific Division. Further, it should indicate the number of employees affected by any restructuring.

22) PacifiCorp shall not enter into a new merger, change its corporate structure to form a holding company, or make any other major change in corporate structure without prior notice to this Commission.

Financial

23) For ratemaking purposes, the capital costs and structure of the PacifiCorp Corporation shall be adjusted to reasonable levels to assure that the cost of capital is appropriate for the utility operations.

24) PacifiCorp shall not finance its businesses from the proceeds of the issuance of PacifiCorp securities including common and preferred stock and debt, without providing prior notice to the Commission.

9. The Applicants and the Kennecott Industrial Customers filed a Stipulation which provided, in part, the conditions listed in Section II-A of this Order. The Commission finds these condi-

tions reasonable, in the public interest, and to the extent they do not conflict with this Order, they are incorporated as conditions of the merger approval.

10. Geneva proposed four "fairness conditions" which they testified were necessary to ensure fair treatment of Utah ratepayers after the merger. Applicants have responded that all four conditions are unacceptable. These conditions express an intent (1) that division ratebases be merged expeditiously, (2) that the full benefit of the Utah Power transmission system should inure to Utah ratepayers, (3) that the premium paid for Utah Power shares or adverse impacts on bond ratings should not influence rate of return allowed, and (4) that the stand-alone case for Utah Power must reflect what it reasonably could have accomplished as a separate company. We find that to the extent not included in our specifically required conditions, it is not necessary to condition approval of the merger on them, though as a general expression of intent we are in agreement.

11. The Committee has proposed certain conditions imposing additional rate decreases, rate caps to insure rate stability, requiring reports to be made, requiring reimbursement of Committee travel expenses under certain circumstances, requiring Committee representation at inter-divisional and inter-jurisdictional meetings and dealing with application of the EBA to the Merged Company. Applicants have responded that to the extent these conditions go beyond those they have agreed to they are unacceptable. We note that Applicants have testified that rates will never be increased as a consequence of the merger, an important commitment with regard to rate stability and we have found that

adherence to such commitment is a condition of our approval of the merger. We support Committee representation at the allocation meetings. We have found that the Merged Company should file EBA reports as Utah Power currently does, and that the requested filing of cost-of-service and revenue requirement information is reasonable.

As to the Merged Company paying the expenses of the Committee when, for its purposes the Committee must, as a result of the merger, travel out of state, we reserve the issue for determination on a case-by-case basis. We have previously stated our concerns with stand-alone modeling, either for rate-setting purposes or for determination of EBA costs and revenues. The Applicants and the Division have proposed that the Merged Company continue to calculate the Utah EBA on a stand-alone basis for an interim period. They have also agreed that merger benefits can flow through the EBA to the extent no double counting of benefits occurs in the EBA and in general rates, and that the merger and the subsequent accounting of the EBA does not affect the retroactive review ability of regulators in regard to EBA issues. Applicants have agreed to maintain an audit trail of interdivisional transactions that affect the EBA to ensure that the benefits of the merger can be identified and properly allocated. Applicants have agreed to this resolution of the EBA issue. Therefore, we find that many of the Committee's conditions have already been agreed to or imposed and additional conditions on this matter are not required.

12. The Commission's approval of the merger is based on our present understanding of the operation of the Merged Company in

the future. Should the Federal Energy Regulatory Commission approve the merger, but attach conditions thereto which have not been heretofore agreed to by the Applicants in that proceeding and explained to this Commission on the record, we will have to reconsider our analysis and approval in light of those conditions.

13. We agree with the testimony of the Division and Applicants that the Utah Division ratepayers have an interest in the assets of the Utah Power & Light Company captive insurance companies. We find that this issue should be addressed in a general rate proceeding.

14. Both Applicants have made many public statements and their officers have testified in this record that the merger is in the best interest of shareholders, ratepayers and employees of both companies. Based on these assertions, the Commission has made findings and set conditions relative to ratepayers. It is also appropriate that conditions be imposed in the interest of employees (management, non-management, bargaining unit and non-bargaining unit personnel).

We find that the merger, which is in the public interest and a benefit to Utah, is made possible in part because of its employees. The lifeblood of all business and industry is the work force that dedicates its time and talent to providing the product and service to the public. It is appropriate therefore to add the following conditions relating to employees:

a) No employee shall lose his or her job as a result of the merger.

b) Work force reductions shall be a result of attrition.

c) Efforts shall be made to retain employees in their present positions or equivalent positions at equal level and equal pay.

d) Promotions shall occur with reasonable proportionality between the Utah and Pacific Divisions so that employees of both systems may equally have reasonable expectation of upward mobility.

e) Reductions in the total number of employees shall not impair quality of service, maintenance, and safety.

15. The Commission further expects the Merged Company to operate in such a way as to benefit the state of Utah, its citizens and its general economy. Specifically:

a) We expect the Merged Company to maintain the currently existing, proportionate levels of employment between the Utah Division and the Pacific Division. That is, it is required that as the transition of the merged entities occurs, neither the Utah Division nor the Pacific Division shall be assigned a greater number of utility, management or corporate functions, or employees, than currently exists in such Division vis a vis the other Division. It is intended by this expectation that after the anticipated merger of administrative and operational functions takes place, and subject to the expected reduction in work force via attrition, that the respective Divisions will find themselves at approximately the same level of functional importance in the total corporate structure as currently exists between the two.

b) Further, the Commission relies upon the testimony of President Bolander and President Davis with respect to the compassion and reasonableness that will be shown to employees as new assignments are made. We expect that if the transfer of a certain function out-of-state is required, that every effort will be made to insure alternate, equivalent employment in-state for those employees who do not wish to relocate.

c) We further expect that the Merged Company will be reasonable in its relocation policies, i.e. assistance for home sales, moving allowances, etc. for those employees who are forced to relocate.

d) Further, the Commission expects proportionate use of local businesses where appropriate and finds that Applicant's commitment to promote economic development in Utah includes the assumption that the Company will support the industries and businesses of this state.

e) Further, as testified to in the hearing, the Commission expects support of the local community by the Merged Company, and that the Company will be as good a corporate citizen under the merger as it has been in the past. Again, the Commission expects proportionate community-type responsiveness in the Utah areas as to those other areas in PacifiCorp.

f) Further, the Commission expects that Utah will be represented on the PacifiCorp board in rough percentages to the area of business which it provides to the overall company.

g) Finally, the Commission expects notification by the Company of any action which is contrary to these expectations prior, and with sufficient time for Commission action if necessary, to their implementation.

16. Based upon all of the foregoing Discussion and Findings, we find that the merger will result in substantial net positive benefits to the stockholders, ratepayers and employees of the newly merged system. Further, we find that we are capable of passing a reasonable share of such benefits to the state of Utah and, therefore, find that the merger is in the public interest and should be approved.

IV.

CONCLUSIONS OF LAW

Based upon the foregoing Discussion and Findings, the Commission makes the following conclusions of law:

1. All hearings held in this case were properly noticed and were conducted in accordance with the Commission's hearing procedures. All persons with a valid interest in the case, who desired to intervene, were allowed to do so. All parties were given adequate opportunity to conduct discovery, present evidence, cross examine evidence introduced by others and to make argument on relevant issues properly before the Commission.

2. Utah Power is an electrical corporation as defined in Utah Code Ann. § 54-2-1(10) (1953) and a public utility as defined in Utah Code Ann. § 54-2-1(20) (1981 Supp). The Commission has authority to regulate Utah Power in the State of Utah and to supervise all of the public utility business of Utah Power in the State of Utah pursuant to Utah Code Ann § 54-4-1 (1953).

3. In this proceeding Utah Power and PC/UP&L Merging Corporation have applied for an order granting Utah Power's certificates of public convenience and necessity to PC/UP&L Merging Corporation, among other things. Utah Code Ann. 54-4-25(3) (1981 Supp) provides that the Commission hold a hearing on a certificate application and authorizes the Commission to grant or deny certificates on such terms and conditions as in the Commission's judgment public convenience and necessity require. We conclude that it is in the public interest that the conditions imposed on approval of the merger are also conditions of the Commission's grant of transfer of the certificates of public convenience and necessity to the Merged Company.

4. As a result of the merger, the Merged Company will become an electrical corporation as defined in Utah Code Ann. § 54-2- 1(10) (1953) and a public utility as defined in Utah Code Ann. § 54-2-1(20) (1987 Supp). Therefore, the Commission will have authority to regulate the Merged Company in the State of Utah, and to supervise all of the public utility business of the Merged Company in the State of Utah pursuant to Utah Code Ann. § 54-4-1 (1953).

5. Pursuant to the many applicable provisions of Title 54, of the Utah Code, the Commission has full jurisdiction and authority to enter orders requiring the Merged Company to allocate its property, costs and revenues between its divisions in any way that will result in just and reasonable rates to the Utah ratepayers of the Merged Company, and to otherwise condition its approval of the merger such that the merger will be in the public interest. Pursuant to these same sections, among others, the Commission has

full jurisdiction and authority to require the Merged Company to keep such records and accounts and to file such reports as the Commission may reasonably determine are necessary or helpful in its regulation of the Merged Company. Finally, pursuant to these same sections, among others, the Commission has full jurisdiction and authority to determine appropriate rates and charges.

6. The Commission concludes that all conditions voluntarily entered into on this record by the Applicants and accepted by the Commission are reasonable conditions of approval of transfer of the certificates. In addition, the contested and/or additional conditions imposed by the Commission are reasonable and in the public interest.

7. The Commission concludes on the basis of its Discussion and Findings set forth above that the proposed merger, subject to the conditions we herein impose, is in the public interest because the expected benefits of the merger to the Utah jurisdiction outweigh the costs and potential detriments associated with it. Accordingly, the merger should be approved and the accompanying authorizations should be granted.

V.

ORDER

NOW, THEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED THAT:

1. The Application of Utah Power & Light Company ("Utah Power") and PC/UP&L Merging Corp. (to be renamed PacifiCorp (the "Merged Company") for an order authorizing the merger of Utah Power and PacifiCorp, a Maine corporation ("PacifiCorp Maine")

into the Merged Company is granted and the merger as set forth in the Agreement and Plan of Reorganization and Merger dated August 12, 1987, among Utah Power, PacifiCorp Maine and the Merged Company ("Merger Agreement") is authorized and approved subject to those conditions stated herein.

2. Utah Power is authorized to transfer to the Merged Company, doing business as Utah Power & Light Company, and the Merged Company is authorized to receive from Utah Power and to utilize all certificates of convenience and necessity as conditioned herein issued to Utah Power by the Commission.

3. The Merged Company is authorized to issue not more than 128,000,000 shares of its $3.25 par value Common Stock, not more than 126,533 shares of its five percent Preferred Stock, not more than 754,802 shares of its Serial Preferred Stock and not more than 3,183,815 shares of its No Par Serial Preferred Stock upon the conversation of all outstanding shares of common and preferred stock of Utah Power and PacifiCorp Maine in accordance with the terms of the Merger Agreement.

4. The Merged Company is authorized to assume all debt obligations of PacifiCorp Maine and Utah Power outstanding as of the merger and is authorized to continue or create liens in connection therewith.

5. The Merged Company, doing business as Utah Power & Light Company, is authorized to adopt all tariff schedules and special service contracts of Utah Power on file with the Commission and in effect as of the merger for service within all territories served prior to the merger by Utah Power.

6. Upon the merger, the Merged Company shall succeed to all of the rights and responsibilities of Utah Power under the public utility laws of Utah and the orders and regulation of the Commission.

7. The Merged Company shall file revised tariffs within 60 days of the merger reducing Utah firm retail rates of the Utah Power Division by two percent (as adjusted for EBA).

8. The Merged Company shall file a plan within four months following consummation of the merger describing how its total targeted five to ten percent retail rate reductions over the next four years will be implemented.

9. The Merged Company shall file revised tariffs within four years of the merger reducing Utah firm retail rates of the Utah Power Division by five to ten percent (including the two percent initial reduction).

10. The Merged Company shall certify that Utah customer supported revenue requirements of the Utah Power Division will not ever be raised as a consequence of the merger.

11. The Merged Company shall initiate multi-jurisdictional meetings within six weeks of the merger to discuss and analyze interdivisional allocation issues. The Commission will set allocation hearings as soon as possible.

12. The Merged Company shall file, within six months of the consummation of the merger, merged system and divisional revenue requirement and cost-of-service studies necessary to determine the appropriate rate levels in Utah.

13. The Merged Company shall make annual filings of sufficient merged system and divisional revenue requirement and cost-of-service studies to determine appropriate rate levels in Utah.

14. The Merged Company shall keep an adequate audit trail pending the determination by this Commission of an appropriate interdivisional allocation method to support implementation of any method we might reasonably adopt.

15. The Merged Company shall satisfy all requirements set forth in the Discussion and Findings, and the Conclusions of Law.

16. The Merged Company shall calculate the Utah EBA both on a stand-alone basis and on a merged basis for comparative purposes from the date of the merger until the Commission orders otherwise. The Merged Company shall keep records of inter-divisional transactions, off-system sales, purchases, and opportunities, clearly defined and accounted for in a manner that will provide an audit trail.

17. The Division shall file a proposed method of treating direct merger costs meeting the requirements of this Order within 30 days of issuance of the Order.

DATED at Salt Lake City, Utah, this 28th day of September, 1988.

Brian T. Stewart

Brian T. Stewart, Chairman

Brent H. Cameron

Brent H. Cameron, Commissioner

James M. Byrne

James M. Byrne, Commissioner

ATTEST:

Stephen C. Hewlett

Stephen C. Hewlett
Commission Secretary

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

AFFIDAVIT OF MAILING

In the Matter of the Application of UTAH POWER & LIGHT COMPANY, 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. and Authorizing the Issuance of Securities, Adoption of Tariffs, and Transfer of Certificates of Public Convenience and Necessity and Authorities in Connection Therewith.	)	DOCKET NO. 87-035-27 REPORT AND ORDER

County of Salt Lake)
) ss.
State of Utah)

Barbara Stroud, being duly sworn, deposes and says that she is a secretary regularly employed in the office of the Public Service Commission of Utah, whose office is located at the Heber M. Wells Building, Fourth Floor, 160 East 300 South, Salt Lake City, Utah.

That there is a United States Post Office at Salt Lake City, and at the place of residence or place of business of the persons whose names are set forth below; and between Salt Lake City and residence or places of business, there is a regular communication by mail.

That on the 13th day of April, 1988, affiant served a true copy of the hereto attached REPORT AND ORDER on the said persons by mailing such copy on said date in a post office in Salt Lake City, Utah properly enclosed in a sealed envelope with postage prepaid thereon, legibly addressed to the following persons, at the addresses shown:

* Thomas W. Forsgren, Esq.
UP&L
P.O. Box 899
SLC, UT 84110

9/29/88

* Fredric D. Reed
Senior Vice President
Pacific Power & Light
902 SW Sixth Avenue
Portland, OR 97204

SEE ATTACHED MAILING LIST

Subscribed and sworn to before me this 28th day of September, 1988.

Barbara Stroud
Secretary

Stephen C. Hewlett
Notary Public
Residing at Salt Lake City, Utah

My Commission Expires
July 15, 1990

Utah Power & Light Company
1407 West North Temple
Salt Lake City, Utah 84140
(801) 220-4242

F. N. DAVIS
President and
Chief Executive Officer

August 29, 1988

Governor Norman H. Bangerter
State of Utah
Office of the Governor
Salt Lake City, UT 84114

Dear Governor:

We are pleased to respond to your letter of August 24, 1988, regarding questions about the merger of our Company with PacifiCorp. We are excited about the prospects the merger offers, especially in allowing us to reduce costs and, correspondingly, rates to our customers and allowing our Company to be more competitive.

With regard to your specific questions:

1. The corporate headquarters of PacifiCorp will remain in Portland, Oregon. The Pacific Power & Light Division will be headquartered in Portland; also, the Utah Power & Light Division will retain its name and remain in Salt Lake City. Each Division will have its own president, board of directors and executive officers.

   Some consolidated functions will be based in Portland and some in Salt Lake City. The only consolidation decided to date is that the power supply function (operation of power plants) will be headquartered in Salt Lake City.

2. At year end 1986 UP&LCo work force was 5649 including the mining division. At year end 1987 our work force was 5097 and the end of July 1988 the work force was 4920. Thus <u>without the merger</u> manpower has been reduced by 729 in 19 months. This work force reduction is much larger than the estimated reduction allowed by the merger. Manpower reduction estimates resulting from the merger are based on our experience with attrition rates in the past. The promise has been made to all employees that no one will be terminated because of the merger. PP&L's estimated attrition rate is 3 percent. UP&LCo's attrition rate

5. As indicated in Item 2. above, there will be no terminations due to the merger. We believe this is a stronger commitment to employees than has been made by any other company headquartered or doing business in Utah. As always we will take into consideration the desires of an employee with respect to his or her work location, but a particular location cannot be guaranteed. There will be enhanced employment opportunities throughout the entire PacifiCorp system. When certain positions are eliminated as consolidation of functions occur, employees will be offered comparable positions at UP&LCo, PP&LCo or other PacifiCorp divisions. Some employees will wish to take advantage of retraining options remaining at UP&LCo; others have expressed interest in relocating.

6. The customers of the Company will probably never notice any impacts of the merger except lower rates. Reliability and quality of service will receive the same concern and care it always has. In fact, the additional power resources available will improve reliability.

Again, we welcome your inquiry and appreciate your interest in the proposed merger of UP&LCo and PacifiCorp. We believe that the evidence submitted to the Public Service Commission of Utah establishes that the merger of UP&LCo and PacifiCorp will provide substantial benefits to the customers and employees of UP&LCo as well as to the State of Utah as a whole. We believe the majority of UP&LCo employees (95 percent of whom are also shareholders) are grateful that the Company is taking actions to allow us to meet competitive pressures and remain a viable Company. UP&LCo shareholders are obviously grateful as exhibited by their overwhelming approval. We look forward to becoming a more cost-effective supplier of energy in this State and, in partnership with State and local government, working toward increased economic development in Utah.

Very truly yours,

Frank

A:Bangerter