

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of the Application of Utah Power & Light Company and PC/UP&L Merging Corp. (to be renamed Pacificorp) for an Order Authorizing the Merger of Utah Power & Light and Pacificorp into PC/UP&L Merging Corp. Authorizing the Issuance fo Securties, Adoption of Tariffs and Transfer of Certificates of Public Convenience and necessity and Authorities in Connection Therewith

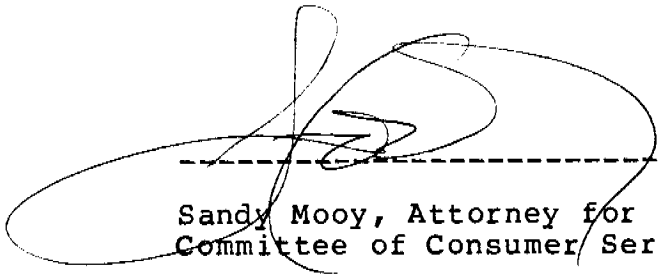
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Notice of Hearing on Motion to Enter Order Compelling Discovery

Case No. 87-035-27

Notice is hereby given that the Motion to Enter Order Compelling Discovery, file by the Committee of Consumer Services herein, will be heard by the Public Service Commission of Utah the 12th day of January, 1988, at 9:00 a.m. in the Public Service Hearing Room, Room 426, Heber Well Building, 160 East 4th South, Salt Lake City, Utah.

Dated this 5<sup>th</sup> day of January, 1988.



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Sandy Mooy, Attorney for the  
Committee of Consumer Services

CERTIFICATION OF DELIVERY

I hereby certifuy that on this 5<sup>th</sup> day of January, 1988, I hand delivered a true and correct copy of the foregoing Motion to Enter Order Compelling Discovery and Notice of Hearing to:

Robert S. Campbell Jr.  
Gregory B. Monson  
Watkiss & Campbell  
310 South Main, Suite 1200  
Salt Lake City, Utah  
84101

Sidney G. Baucom  
Thomas Forsgren  
Edward A. Hunter  
Utah Power and Light Company  
1407 West North Temple  
Salt Lake City, Utah  
84110

and further certify that copies of the same were mailed to the individuals/entities listed on the attached list.

Dated this 5<sup>th</sup> day of January, 1988.

*José Hurtado*-----

Dale A. Kimball, Esq.  
Gary A. Dodge, Esq.  
Kimball, Parr, Crockett & Waddoups  
P.O. Box 11019  
SLC, UT 84147

Calvin L. Rampton, Esq.  
Jones, Waldo, Holbrook & McDonough  
1500 First Interstate Plaza  
SLC, UT 84101

Raymond W. Gee, Esq.  
Kirton, McConkie & Bushnell  
330 South 3rd East  
SLC, UT 84111

George M. Galloway  
Steel Rives Boley Jones & Grey  
Suite 2300  
900 S.W. Fifth Avenue  
Portland, Oregon 97204

James A. Holkamp  
Van Cott, Bagley, Cornwall & McCarthy  
P.O. Box 45340  
SLC, UT 84145

Idaho Public Utilities Commission  
Micheal S. Gilmore  
Deputy Attorney General  
Statehouse Mail  
Boise, Idaho 83720

Roger Cutler  
Salt Lake City Attorney  
324 South State  
SLC, Ut. 84111

Richard W. Giaugue  
Gregory P. Williams  
Gary F. Bendinger  
Giaugue, Williams, Wilcox & Bendinger  
500 Kearns Bldg.  
SLC, Ut. 84101

F. Robert Reeder, Esq.  
Val R. Antczak, Esq.  
185 South State, Ste 1300  
Parsons, Behle & Latimer  
185 South State, Suite 700  
P.O. Box 11898  
SLC, UT 84147-0898

John Morris  
LeBoeuf, Lamb, Leiby & MacRae  
136 South Main, Suite 1000  
SLC, UT 84101

F. Elgin Ward  
Lynn W. Mitton  
D G & T  
8722 South 300 West  
Sandy, UT 84070

Micheal Ginsberg  
Office of Attorney General  
236 State Capitol  
SLC, UT 84111

A. Wally Sandack  
370 East Fifth South  
SLC, UT 84111

Stephen R. Randle  
Ungricht, Randle & Dremer  
520 Boston Bldg.  
SLC. Ut. 84111

Alice Ritter Burns  
Cedar City Corporation  
P. O. Box 249  
Cedar City, Ut. 84720

Paul T. Morris  
I. Robert Wall  
West Valley City  
2470 South Redwood Rd.  
West Valley City, Ut. 84119

Kathryn T. Whalen  
Bennett, Harman, Tauman & Reynolds  
One S. W. Columbia, Suite 1150  
Portland, Oregon 97258

Donald R. Allen  
John P. Williams  
Duncan, Allen & Mitchell  
1575 Eye Street  
Washington, D. C. 20005

Chris L. Engstrom  
Snow, Nuffer, Engstrom & Drake  
P.O. Box 400  
St. George, Utah 84770

*Josia Hurtado*

fmh

LAW OFFICES OF

KIMBALL, PARR, CROCKETT & WADDOUPS

'88 JAN -6 AM 11:00  
A PROFESSIONAL CORPORATION  
SUITE 1300  
185 SOUTH STATE STREET  
POST OFFICE BOX 11019  
SALT LAKE CITY, UTAH 84147  
TELEPHONE (801) 532-7840

UTAH PUBLIC  
SERVICE COMMISSION

JILL A. NIEDERHAUSER

January 5, 1988

HAND DELIVERED

Utah Public Service Commission  
160 East 300 South  
Salt Lake City, Utah

Re: Protective Order: Case No. 87-035-27

Dear Commission:

Pursuant to paragraph 1(c) of the Commission's Protective Order issued November 10, 1987, I am enclosing three copies of the Protective Order executed by each of the experts for the Colorado River Energy Distributors Association, Inc. (CREDA) in the above-referenced matter. Copies of these documents have also been provided to the Applicants and their counsel.

Sincerely,

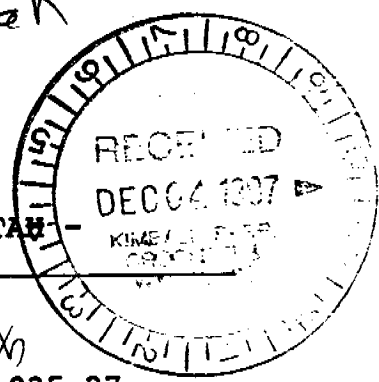


Jill A. Niederhauser  
Counsel for Colorado River  
Energy Distributors  
Association, Inc.

JAN/ji  
Enclosures

Utah

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- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

UTILITY DIVISION  
SERVICE DIVISION

In the Matter of the Application :  
of Utah Power & Light Company :  
and PC/UP&L Merging Corp. (to be : CASE NO. 87-035-27  
renamed PacifiCorp) for an Order :  
authorizing the Merger of Utah :  
Power & Light Company and Pacifi- :  
Corp into PC/UP&L Merging Corp. :  
and Authorizing the Issuance of :  
Securities, Adoption of Tariffs, : PROTECTIVE ORDER  
and Transfer of Certificate of :  
Public Convenience and Necessity :  
and Authorities in Connection :  
Therewith :

ISSUED: November 10, 1987

BY THE COMMISSION:

On November 10, 1987, a hearing was held on the motion of Utah Power & Light Company ("UP&L") and PC/UP&L Merging Corp. ("PacifiCorp") (jointly "Applicants"), for entry of a protective order. Applicants represented that certain information requested by the Commission and the Division of Public Utilities ("Division") from them and PacifiCorp, a Maine corporation ("PacifiCorp Maine"), was of a confidential nature and that disclosure of such information would be damaging to them. Other parties represented that they might be required to produce information of a confidential nature in this case, the disclosure of which might likewise damage them. All parties agreed that a protective order ought to be entered to expedite and facilitate discovery.

The Commission heard the argument of all counsel present and good cause being shown, the Commission herewith makes, the following

### FINDINGS OF FACT

1. Certain types of documents, materials and papers of which discovery will be sought in this case may be of a confidential nature.

2. Disclosure of confidential information could damage the provider of such information.

3. Entry of this protective order will facilitate and expedite discovery and will afford the necessary protection to the confidential information while allowing challenges to claims of confidentiality.

4. Entry of this protective order is in the public interest.

### CONCLUSIONS OF LAW

1. The Commission is authorized to enter this protective order pursuant to Rule 26(c) of the Utah Rules of Civil Procedure and Rules R750-100-7(B) and R750-100-7(C)(3) of the Commission.

2. This protective order is entered in the public interest pursuant to Utah Code Ann. § 54-7-4.5 (1986) and shall be subject to such further order of the Commission as is deemed just and reasonable in this matter.

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. (a) Confidential Information. The term Confidential Information as used herein shall mean all

documents, data, information, studies and other materials furnished or made available pursuant to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery that are claimed by the party providing the same to be of a trade secret, proprietary, confidential nature, or of such a nature that divulging of the contents thereof to competitors, customers, suppliers or others would put a party at a disadvantage (hereinafter referred to as "Confidential Information"). Confidential Information shall be produced pursuant to the terms of this Order and shall be treated by all persons accorded access thereto pursuant to this Order as constituting trade secret, proprietary or confidential information. Any party wishing to designate any information as Confidential Information shall prepare an Appendix to this Order identifying the categories of information for which a claim of confidentiality is made, which shall be circulated to all parties in this case and filed with the Commission. Any party wishing to challenge the Appendix of any other party shall do so in accordance with the provisions of Section 2 of this Order. All material claimed to be Confidential Information shall be stamped with a designation indicating its confidential



nature. For purposes hereof, notes made pertaining to or as the result of a review of Confidential Information shall be considered Confidential Information and shall be subject to the terms of this Order.

(b) Use of Confidential Information and Persons Entitled to Review. All Confidential Information made available pursuant to this Order shall be given solely to counsel for the parties and to persons designated by the parties as their experts in this matter and who have executed a nondisclosure agreement pursuant to paragraph 1(c) below. If such expert is an officer, director or employee of any person that is a competitor, customer, supplier or other party, that could use Confidential Information to the detriment of the providing party, such expert may not use the Confidential Information for any purpose other than for the preparation of his or her testimony. Furthermore, such expert shall not disclose to any other officer, director or employee of such party any Confidential Information. Any member of the Public Service Commission may have access to any Confidential Information made available pursuant to this Order, and shall be

bound by the terms of this Order. Staff members of the Commission may also have access to such Confidential Information, but only after execution of a nondisclosure agreement. Any Confidential Information provided to any person shall not be used or disclosed except for purposes of this case, provided that the requesting party may use Confidential Information produced pursuant to the terms of this Order in proceedings to approve the merger of Utah Power & Light and PacifiCorp Maine in other regulatory proceedings outside of this jurisdiction with the written consent of the providing party, which consent shall not be withheld if a protective order substantially identical to this protective order has been entered in such jurisdictions; and further provided that the Division and Committee may use Confidential Information produced in this case in future proceedings before the Commission involving Utah Power & Light and/or PacifiCorp, subject to the provisions of this Order.

(c) Nondisclosure Agreement. Prior to giving access to Confidential Information as contemplated in paragraph 1(b) above to any expert, counsel for the party seeking review of the Confidential

Information shall deliver a copy of this Order to such person, and, prior to disclosure, such person shall agree in writing to comply with and be bound by this Order. In connection therewith, Confidential Information shall not be disclosed to any person, except counsel of record who shall nonetheless be governed by the terms of this Order, who has not signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A." Court reporters shall also sign an Exhibit "A." The nondisclosure agreement (Exhibit "A") shall require the person to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that he has reviewed the same and has consented to be bound by its terms. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the providing party and to the Commission.

(d) Availability of Documentation. As to particularly highly sensitive documents and information, the providing party shall have the right, at

its option, to refuse to provide copies to counsel for other parties or to their experts. Should the providing party refuse to provide copies, such documents shall be made available for inspection and review by counsel or experts at a place and time mutually agreed upon by the parties. Where copies are not provided, the counsel or expert reviewing the Confidential Information may make limited notes regarding the Confidential Information for reference purposes only. Such notes shall constitute Confidential Information pursuant to paragraph 1(a) and shall not constitute a verbatim or substantive transcript of the Confidential Information. This provision shall be rarely invoked.

(e) Return. Unless otherwise ordered, Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall continue to be subject to the protective requirements of this Order, and shall be returned to counsel for the providing party within 30 days after final settlement or conclusion of this matter, or any other matter in which the requesting party has received written permission to use the Confidential Information pursuant to

paragraph 1(b) of this Order. Notes made by counsel may be retained as work product, but shall continue to be governed by the terms of this Order. This paragraph shall not apply to the Division or Committee which may retain Confidential Information obtained under this Order subject to the other terms of this Order.

2. (a) Challenge to Confidentiality. This Order establishes a procedure for the expeditious handling of information that a party claims is confidential; it shall not be construed as an agreement or ruling on the confidentiality of any such information.

(b) Objection to Designation of Information. In the event any party disagrees with the designation of any document, data, information, study or other matter as Confidential Information, or Confidential Information subject to paragraph 1(d), and it and the providing party cannot reach agreement on the matter, the party objecting shall submit the matter to the Commission for its review pursuant to 2(c) of this Order. The party claiming confidentiality, or that Confidential Information is subject to paragraph 1(d), shall have the burden of proving the confidential nature of the information sought by the objecting party. Pending a resolution of the issue, the information shall be treated as

Confidential Information pursuant to the terms of this Order.

(c) Procedure Upon Objection. Any party at any time upon five (5) days prior notice may seek to have documents that have been designated as Confidential Information or which were accepted into the sealed record in accordance with this Order removed from the requirements of this Order or from the sealed record and placed in the public record. Resolution of the issue shall be made by the Commission (or by a court with jurisdiction to review any Commission decision) after proceedings in camera which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such Confidential Information shall be present. The record of such in camera hearings shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN CASE NO. 87-035-27." The record shall be transcribed only upon agreement by the parties or order of the Commission, and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order, unless and until released from the restrictions of this Order either through agreement of the parties, or after

notice to the parties and hearing, pursuant to an order of the Commission. In the event that the Commission should rule in response to such a pleading that any information should be removed from the protective requirements of this Order or from the protection of the sealed record, the parties shall, at the request of the party providing the Confidential Information and to enable the providing party to seek a stay or other relief, not disclose such information or use it in the public record for five (5) business days.

3. (a) Receipt into Evidence. At least five (5) business days prior to the use of or substantive reference to any Confidential Information as evidence, the party intending to use such Confidential Information shall make that intention known to the providing party. The requesting party and the providing party shall make a good faith effort to reach an agreement so the Confidential Information can be used in a manner that will not reveal its confidential nature. If such effort fails, the providing party shall separately identify, within three (3) business days, which portions, if any, of the documents to be offered or referenced on the record containing Confidential Information shall be

placed in the sealed record. Only one (1) copy of documents designated by the providing party to be placed in the sealed record shall be made and only for that purpose. Otherwise, parties shall make only general references to Confidential Information in these proceedings.

(b) Seal. While in the custody of the Commission, Confidential Information shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN CASE NO. 87-035-27," and, because of its confidential nature, Confidential Information shall not be considered as a part of records in the possession of or retained by the Commission within the meaning of the open meetings or public records statutes.

(c) In Camera Hearing. Any Confidential Information which is to be received orally by the Commission to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the Confidential Information under this Order. Similarly, cross-examination on or substantive reference to Confidential Information as well as that portion of the record containing references thereto shall be treated as provided herein.



(d) Appeal. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations, but under seal, as provided herein, for the information and use of the court.

4. Use in Filings. Where reference to Confidential Information in the sealed record is required in pleadings, cross-examinations, briefs, argument or motions, it shall be by citation of title or exhibit number or by some other nonconfidential description. Any further use of or substantive references to Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Commission under seal. This sealed section shall be served only on counsel of record (one copy each) and may be reviewed by such counsel only with persons who have signed oaths of confidentiality. All the protections afforded in this Order apply to materials prepared and distributed under this paragraph.

5. (a) Use in Decisions and Orders. The Commission will attempt to refer to Confidential Information in only a general or conclusory form and will avoid reproduction in any decision of Confidential Information to the greatest possible extent. If it is necessary for a determination in this case

to discuss Confidential Information other than in a general or conclusory form, it shall be placed in a separate section of the order or decision under seal. This sealed section shall be served only on counsel of record.

(b) Summary for Record. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the decision or order to be placed on the public record.

6. Segregation of Files. Those parts of any writing, depositions reduced to writing, written examination, interrogatories and answers thereto, or other written references to Confidential Information in the course of discovery, if filed with the Commission, will be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties or, after notice to the parties and hearing, pursuant to the Order of the Commission or final order of a court having jurisdiction.

7. Preservation of Confidentiality. All persons who may be entitled to receive, or who are afforded access

to any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of this case, or with permission in related cases or for Division or Commission personnel in future matters involving UP&L and/or PacifiCorp, and then solely as contemplated herein, and shall take reasonable precautions to keep the Confidential Information secure and confidential in accordance with the purposes and intent of this Order.

8. Reservation of Rights. The parties affected by the terms of this Protective Order shall have the right to question, challenge, and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this Protective Order in response to discovery or cross-examination on the grounds of relevancy or materiality. This Order shall in no way constitute any waiver of the rights of any party herein to contest any assertion or finding of trade secret, confidentiality or privilege, and to appeal any such determination of the Commission or such assertion by a party.

9. Coverage of Order. The provisions of this Order are specifically intended to apply to data or infor-

mation supplied by any party to this case, and by any nonparty that supplies documents to any party in this case, for use in this case.

Dated at Salt Lake City, Utah, this 10th day of  
November, 1987.

/s/ Brian T. Stewart, Chairman

(SEAL)

/s/ Brent H. Cameron, Commissioner

/s/ James M. Byrne, Commissioner

Attest:

STEPHEN C. HEWLETT, Secretary

EXHIBIT "A"

I hereby certify under penalty of perjury that I have reviewed the foregoing Protective Order dated November 10, 1987, in Case No. 87-035-27 and agree to be bound by the terms and conditions of such Order. I recognize that my failure to comply with the terms and conditions of the Protective Order may subject me to being held in contempt and to such sanctions and/or fines as may be imposed by the Commission or a court of competent jurisdiction and to such damages resulting from my failure to comply as may be awarded by a court of competent jurisdiction.

Curtis K. Winterfeld  
Name - Typed or Printed

13809 174th Place N.E.  
Redmond, WA 98052  
Residence Address

R. W. Beck and Associates  
Employer of Firm

2121 Fourth Avenue  
Seattle, WA 98121  
Business Address

Colorado River Energy Distributors Assoc.  
Party

December 30, 1987  
Date

  
Signature

merger / ut

Appendix 1  
Protective Order  
PSCU Case No. 87-035-27

Categories of Confidential Information  
OF  
PC/UP&L Merging Corp. and PacifiCorp Maine

1. The financial planning model being developed for this case.
2. The power production model being developed for this case.
3. Intracompany information prepared prior to the merger agreement dealing with the merger.
4. Information exchanged with Utah Power & Light Company in connection with the merger prior to the merger agreement.
5. Information not available in the public domain regarding affiliates of PacifiCorp.

EXHIBIT "A"

I hereby certify under penalty of perjury that I have reviewed the foregoing Protective Order dated November 10, 1987, in Case No. 87-035-27 and agree to be bound by the terms and conditions of such Order. I recognize that my failure to comply with the terms and conditions of the Protective Order may subject me to being held in contempt and to such sanctions and/or fines as may be imposed by the Commission or a court of competent jurisdiction and to such damages resulting from my failure to comply as may be awarded by a court of competent jurisdiction.

Randall P. Goff

**Name - Typed or Printed**

175 Madison Avenue N.  
Bainbridge Island, WA 98110

**Residence Address**

R. W. Beck and Associates

**Employer of Firm**

2121 Fourth Avenue  
Seattle, WA 98121

**Business Address**

Colorado River Energy Distributors Assoc.  
**Party**

December 30, 1987  
**Date**

  
**Signature**

merger / Ut

**Appendix 1  
Protective Order  
PSCU Case No. 87-035-27**

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OF  
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EXHIBIT "A"

I hereby certify under penalty of perjury that I have reviewed the foregoing Protective Order dated November 10, 1987, in Case No. 87-035-27 and agree to be bound by the terms and conditions of such Order. I recognize that my failure to comply with the terms and conditions of the Protective Order may subject me to being held in contempt and to such sanctions and/or fines as may be imposed by the Commission or a court of competent jurisdiction and to such damages resulting from my failure to comply as may be awarded by a court of competent jurisdiction.

David T. Helsby

**Name - Typed or Printed**

7635 S.E. 72nd Place  
Mercer Island, WA 98040

**Residence Address**

R. W. Beck and Associates

**Employer of Firm**

2121 Fourth Avenue  
Seattle, WA 98121

**Business Address**

Colorado River Energy Distributors Assoc.  
**Party**

December 31, 1987

**Date**

*David T. Helsby*  
**Signature**

merger / ut

Appendix 1  
Protective Order  
PSCU Case No. 87-035-27

Categories of Confidential Information  
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