

DOCKETED

In the Matter of the Applica-)
tion of UTAH POWER & LIGHT)
COMPANY and PC/UP&L MERGING)
CORP. (to be renamed Pacifi-)
corp) 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 Cert-)
ificates of Public Convenience)
and Necessity and Authorities)
in Connection Therewith.)

CASE NO. 87-035-27

ORDER RE STANDARD OF

APPROVAL FOR MERGER

ISSUED: November 20, 1987

SYNOPSIS

By this Order the Commission establishes the "positive benefits" test as the standard for adjudging the merits of the proposed merger and assigns the burden for showing positive benefits or negative impacts.

BY THE COMMISSION:

Pursuant to motion filed by Applicants, the parties in the above-entitled matter appeared before the Commission on Tuesday, November 10, 1987, to argue the issue of the appropriate standard by which the proposed merger of Utah Power & Light Company and PacifiCorp should be adjudged by this Commission. The simplest statement of the issue is whether the Applicants must show only the absence of adverse impacts from the proposed merger ("no harm" standard) or whether they must demonstrate that on balance the merger as proposed will result in benefits not otherwise enjoyed ("positive benefits" standard).

Here, as in Re CP National Corp., 43 PUR 4th 315 (Utah PSC 1981) Case No. 80-023-01, we are of the view that the necessary predicate for a determination that the proposed merger is "in the public interest" is some net positive benefit to the public in this State. Applicants seek strict adherence to the Utah decision, Collett v. Public Service Commission, 116 Utah 413, 211 P.2d 185 (1949) which they cite in favor of the "no harm" standard. We rejected this argument in CP National as we do now. Such a standard is too narrow for use in a fixed-utility situation such as that before us. Also, we believe Applicants acknowledged this fact in their oral arguments and application wherein they have voluntarily offered to accept the burden of showing a positive benefit.

We do not think it reasonable to assume that the result of the merger will be entirely positive or entirely negative. In all likelihood there will be some positive benefits and some negative impacts. Our task is to consider them all, giving each its proper weight, and determine whether on balance the merger is beneficial or detrimental to the public.

With respect to considerations outside our normal regulatory jurisdiction and enforcement powers, for example the health of the coal mining industry, antitrust effects, et cetera, which nonetheless bear on the public interest, Applicants bear no affirmative burden to demonstrate benefits or even an absence of harm. In those areas other parties will carry the burden of demonstrating either some benefit or some substantial harm by reason of the merger.

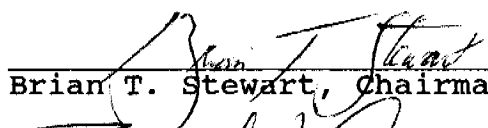
However, Applicants do carry the burden in all areas subject to our jurisdiction to show that on balance the merger will be beneficial and those areas will be our primary focus in the case.

We anticipate publishing shortly an order setting forth in more detail the sub-issues that we would expect to be addressed in this case.

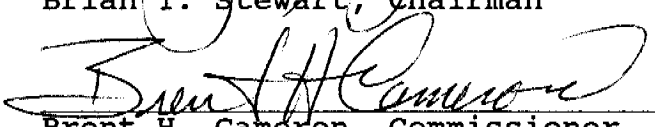
ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, That the "positive benefits" standard is hereby established for approval of the Applicants merger proposal in this case as above discussed.

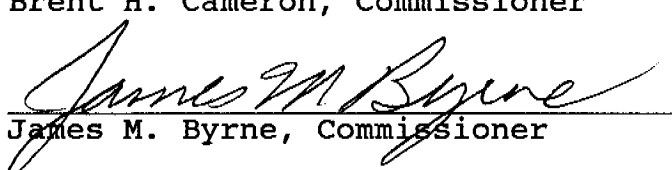
DATED in Salt Lake City, Utah this 20th day of November, 1987.



Brian T. Stewart, Chairman



Brent H. Cameron, Commissioner



James M. Byrne, Commissioner

Attest:



Stephen C. Hewlett, Commission Secretary

AFFIDAVIT OF MAILING

DOCKETED

In the Matter of the Application)
of UTAH POWER & LIGHT COMPANY,)
PC/UP&L MERGING CORP. (to be renam-)
ed Pacificorp) for an Order Author-)
izing the Merger of Utah Power &)
Light Company and Pacificorp into)
PC/UP&L Merging Corp. and Author-)
izing the Issuance of Securities,)
Adoption of Tariffs, and Transfer)
of Certificates of Public Conve-)
nience and Necessity and Author-)
ities in Connection Therewith.)

CASE NO. 87-035-27

ORDER RE STANDARD OF APPROVAL FOR MERGER

ORDER ALLOWING INTERVENTION OF UTAH MUNICIPAL POWER AGENCY

ORDER ON MOTION TO MODIFY HEARING SCHEDULE

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

Brenda Warner, 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 160 East 300 South, Fourth Floor, Heber M. Wells State Office Building, 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 23rd day of November, 1987, affiant served a true copy of the hereto attached ORDER ON MOTION TO MODIFY HEARING SCHEDULE, ORDER ALLOWING INTERVENTION OF UTAH MUNICIPAL POWER AGENCY, and ORDER RE STANDARD OF APPROVAL FOR MERGER 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:

See attached mailing list

Subscribed and sworn to before me
this 23rd day of November, 1987.

Brenda Warner
Secretary

Stephen C. Hewlett
Notary Public

My Commission Expires

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RECEIVED

GARY A. DODGE

87 NOV 12 A9:37

UTAH PUBLIC
SERVICE COMMISSION

November 11, 1987

HAND-DELIVERED

Brian T. Stewart, Chairman
Utah Public Service Commission
160 East 300 South
Salt Lake City, Utah 84111

RE: Proposed Order Allowing Intervention of UMPA

Dear Commissioner Stewart:

At your request, I have prepared and enclosed herein
a proposed Order Allowing the Intervention of UMPA. If I can be
of any further assistance, please contact me.

Sincerely,


Gary A. Dodge

GAD:pls

Enclosure