

# DOCKETED

- 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 : 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 :

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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 10, 1987.

  
BRIAN T. STEWART, Chairman

  
BRENT H. CAMERON, Commissioner

  
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 \_\_\_\_\_, 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.

\_\_\_\_\_  
Name - Typed or Printed

\_\_\_\_\_  
Residence Address

\_\_\_\_\_  
Employer of Firm

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Party

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature



AFFIDAVIT OF MAILING

In the Matter of the Application )  
of UTAH POWER & LIGHT COMPANY, )  
PC/UP&L MERGING CORP. (To be re- )  
named 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. )

CASE NO. 87-035-27

PROTECTIVE 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 10th day of November, 1987, affiant served a true copy of the hereto attached PROTECTIVE 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:

- |   |  |
|---|--|
| <p>* Thomas W. Forsgren, Esq.<br/>Sidney G. Baucom<br/>Edward A. Hunter<br/>UP&amp;L<br/>P.O. Box 899<br/>SLC, UT 84110</p> | <p>* Fredric D. Reed<br/>Pacific Power &amp; Light Co.<br/>920 Southwest 6th Ave.<br/>Portland, OR 97204</p> |
|---|--|

ALSO ATTACHED MAILING LIST

Subscribed and sworn to before me this 10th day of November, 1987.

Barbara Stroud  
Secretary

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

My Commission Expires  
July 15, 1990

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Elder News & Journal  
Attn: Bruce Keyes  
Brigham City, UT 84302

Matt Brown  
Deseret News  
P.O. Box 1257  
SLC, UT 84110

Attention: Newsroom  
The Enterprise  
P.O. Box 11778  
Pioneer Station  
SLC, UT 84147-0778

KUTV, INC.  
2185 South 3600 West  
SLC, UT 84119

Ogden Standard Examiner  
Attn: Suzanne Carter  
455 - 23rd Street  
P.O. Box 951  
Ogden, UT 84402

City Desk  
Salt Lake Tribune  
143 South Main  
SLC, UT 84111

United Press International  
P.O. Box 11327  
SLC, UT 84147-0327

Leland Weeks  
The Utah Mining & Oil Gazette  
Box 15805  
SLC, UT 84115

KALL Radio News  
Ted Robins  
312 East South Temple  
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UTAH PUBLIC  
SERVICE COMMISSION

November 9, 1987

Mr. Stephen C. Hewlett  
Commission Secretary  
Public Service Commission of Utah  
PO Box 45585  
Salt Lake City, UT 84145

Dear Mr. Hewlett:

Re: Case No. 87-035-27  
Application of Utah Power & Light Company  
and PC/UP&L Merging Corp.

Enclosed are 21 copies of Exhibit U (the Form S-4, Registration Statement of PC/UP&L Merging Corp. which has now been filed with the Securities and Exchange Commission) to the Application filed in this docket.

Very truly yours,

*George M. Galloway*  
George M. Galloway

GMG:dc  
Enclosures  
cc w/encl: Parties of Record