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'87 NOV -6 P4:22

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION)
OF UTAH POWER & LIGHT COMPANY,)
PACIFICORP dba PACIFIC POWER &)
LIGHT COMPANY, AND PC/UP&L)
MERCING CORP. (TO BE RENAMED)
PACIFICORP) FOR AN ORDER)
AUTHORIZING THE MERGER OF UTAH)
POWER & LIGHT COMPANY AND)
PACIFICORP INTO PC/UP&L MERCING)
CORP. AND AUTHORIZING THE)
ISSUANCE OF SECURITIES, ADOPTION)
OF TARIFFS, AND TRANSFER OF)
CERTIFICATES OF PUBLIC)
CONVENIENCE AND NECESSITY AND)
AUTHORITIES IN CONNECTION)
THEREWITH.)

POST-HEARING BRIEF OF
THE UTAH ASSOCIATED
MUNICIPAL POWER SYSTEMS
AND WASHINGTON CITY
ON THE ISSUE OF
"PUBLIC INTEREST"

Case No. 87-035-27

The Utah Associated Municipal Power Systems and Washington City (hereinafter collectively "UAMPS") hereby submit this post-hearing brief on the issue of "public interest" in response to the Commission's October 30, 1987 Order Granting Motion to File Post-Hearing Brief and Notice of Oral Argument.

UAMPS supports a "positive net benefit" standard under which the applicants for approval of the merger are required not only to show that the merged corporation is fit, willing and able to provide safe and adequate service at reasonable rates but also that there will be demonstrable benefits to the citizens of the State of Utah generally.

I. UTAH POWER & LIGHT COMPANY'S INFLUENCE ON THE STATE OF UTAH AS A WHOLE IS SIGNIFICANT.

Utah Power & Light Company is a regulated public utility which, in exchange for monopoly control within its service territory, is required to submit to regulation by the Utah Public Service Commission. The fundamental rationale for regulation of a public utility is that without such regulation, the inherent monopolistic nature of public utility service would result in abuses inimical to the interests of the society at large. The abuses include not only inflated prices, but also restrictions on the ability of individuals, businesses and other electric systems to utilize most effectively available economic and energy resources available to them.

The courts and legislatures in the United States have imposed certain obligations on public utilities and have granted them certain rights. The obligations include the requirement to serve any customer within the utility's service area who is willing and able to pay, to provide safe and reliable service, to serve all on equal terms, and to charge just and reasonable rates. The rights of public utilities granted by the courts and legislatures include the right to charge reasonable prices in order to enjoy a fair rate of return on investment and the right to be protected from competition within its authorized service area., See Phillips, The Regulation of Public Utilities, at 106-107 (1985).

The obligations and rights of a public utility do not, however, insulate other electric systems, their ratepayers, and other sectors of the economy from the influence of a public utility. This is particularly true in the case of a utility such as Utah Power & Light Company ("UP&L"), which is the only investor-owned utility providing electric service within the state of Utah and which provides service to approximately three-fourths of the electric consumers of the state. UP&L has a direct influence on adjacent electric utility systems through control of transmission. UP&L also exerts enormous economic influence in the state because of its sheer size relative to other Utah businesses and the volume of economic activity generated through its employment of a large number of Utah citizens, its construction of facilities on an ongoing basis, and its coal operations. The application of a narrow "no adverse impact" standard would ignore the substantial impact UP&L has on the state as a whole.

II. UTAH LAW REQUIRES A "NET POSITIVE BENEFIT" STANDARD.

In their Post-Hearing Brief dated October 23, 1987, the applicants have cited a number of cases which stand for the proposition that the standard to which they should be held in this proceeding is only the "no adverse impact" standard. Significantly, the applicant's brief ignores both the Utah Public Utilities Act and the Commission's thorough review of the public interest standard in the CP National case.

The Utah Public Utilities Act provides, in Utah Code Ann. § 54-3-1, that:

Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient, just and reasonable. All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable. The scope of definition "just and reasonable" may include, but shall not be limited to, the cost of providing service to each category of customer, economic impact to charges on each category of customer, and on the well-being of the state of Utah; methods of reducing wide periodic variations that demand of such products, commodities or services, and means of encouraging conservation of resources in energy.

The statute's definition of "just and reasonable" to include the "well-being of the State of Utah" clearly indicates that the Commission is to consider more than merely the impact on UP&L ratepayers and shareholders of the merger.

Notwithstanding the authority cited by the applicants in their Post-Hearing Brief, of most importance to the Commission in determining the scope of the public interest standard should be those decisions by Utah adjudicative bodies interpreting the standard. In the only recent Utah case involving facts at all similar to the proposed merger, the Commission dealt at length with the scope of the "public interest" standard. In the Matter of the Application of CP

National Corporation and Utah Power & Light Company for the Sale and Purchase of Public Utility Electric Business of CP National for Service in Washington, Iron and Kane Counties, Case Nos. 80-623-01 and 80-035-02 (" CP National").

In its June 4, 1981 Report and Order in CP National, UP&L and CP National argued that the public interest test is satisfied "by proof that the purchaser is ready, willing and able to perform, and that the sale will have no material adverse affect on the public interest." Report and Order at 13. However, the Commission held that "the Commission should consider any evidence bearing upon the affect of the transaction upon the utilities, the consumers of the utilities, and the state as a whole, including any long-range effects produced by the expansion of UP&L's regulated monopoly positions in this state." Id.

The Commission distinguished Collett v. PSC, 211 P.2d 185 (Utah 1949) on the basis that it did not apply to the peculiar circumstances of a fixed utility. The Commission specifically noted that there is no Utah authority establishing the narrow "no adverse impact" standard for fixed utilities such as UP&L. Report and Order at 16.

In sum, it does little good to guide the Commission through cases from other jurisdictions where the Commission has already examined the issue at great length and the context of

the acquisition by one Utah utility of the assets of another. In addition, the legislature has clearly spoken on the subject and has mandated that the interests of the state of Utah as a whole be taken into consideration in determining whether the service and charges of a utility are "just and reasonable."

For the foregoing reasons, UAMPS respectfully requests the Commission impose the "net positive benefit" test upon the applicants in the instant proceeding.

DATED this 6th day of November, 1987.

VAN COTT, BAGLEY, CORNWALL & McCARTHY
James A. Holtkamp
David Deisley
50 South Main, Suite 1600
P. O. Box 45340
Salt Lake City, Utah 84145
Telephone: (801) 532-3333

By James Holtkamp
Attorneys for Utah Association
Municipal Power Systems

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the within and foregoing Post-Hearing Brief on the Issue of "Public Interest" to be hand delivered this 6th day of November, 1987 to the following:

Sidney G. Baucom, Esq.
Thomas W. Forsgren, Esq.
Edward A. Hunter, Jr., Esq.
Utah Power & Light Company
1407 West North Temple
Salt Lake City, Utah 84116

Robert S. Campbell, Jr., Esq.
Watkiss & Campbell
310 South Main Street, Suite 1200
Salt Lake City, Utah 84101

Michael Ginsberg, Esq.
Assistant Attorney General
130 State Capitol Building
Salt Lake City, Utah 84114

Sandy Mooy, Esq.
Assistant Attorney General
State Capitol Building
Salt Lake City, Utah 84114

Calvin L. Rampton, Esq.
L.R. Curtis, Jr., Esq.
Jones, Waldo, Holbrook & McDonough
1500 First Interstate Plaza
Salt Lake City, Utah 84101

F. Robert Reeder, Esq.
Val R. Antczak, Esq.
Parsons, Behle & Latimer
P.O. Box 11898
Salt Lake City, Utah 84147

Raymond W. Gee, Esq.
Kirton, McConkie & Bushnell
330 South 300 East
Salt Lake City, Utah 84111

Gary A. Dodge, Esq.
Jill Neiderhauser, Esq.
Kimball, Parr, Crockett & Waddoups
185 South State Street, Suite 1300
Salt Lake City, Utah 84111

and mailed, postage prepaid, this 6th day of November, 1987 to
the following:

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

Alice Ritter Burns, Esq.
Cedar City Attorney
110 North Main Street
P. O. Box 249
Cedar City, Utah 84720

Charles F. McDevitt, Esq.
Suite 200, Park Place
277 North 6th Street
Boise, Idaho 83702

Chris L. Engstrom, Esq.
Snow, Nuffer, Engstrom & Drake
90 East 200 North
P.O. Box 400
St. George, Utah 84770

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

Lynn W. Mitton, Esq.
F. Elgin Ward, Esq.
Deseret Generation & Transmission Cooperative
8722 South 300 West
Sandy, Utah 84070

Robert Wall, Esq.
2470 South Redwood Road
West Valley City, Utah 84119

Stephen R. Randle, Esq.
Ungricht, Randle and Deamer
520 Boston Building
Salt Lake City, Utah 84111

Roger Cutler, Esq.
Salt Lake City Attorney
324 South State Street
Salt Lake City, Utah 84111

A. Wally Sandack, Esq.
370 East 5th South
Salt Lake City, Utah 84111

James H. Hays

8896H