

RECEIVED

'87 OCT 19 A8:52

Sidney G. Baucom  
Thomas W. Forsgren  
Edward A. Hunter, Jr.  
UTAH POWER & LIGHT  
COMPANY  
1407 West North Temple  
Salt Lake City, Utah 84140  
Telephone: (801) 220-4250

Attorneys for Utah  
Power & Light Company

Robert S. Campbell, Jr.  
Gregory B. Monson  
WATKISS & CAMPBELL  
310 South Main Street  
Twelfth Floor  
Salt Lake City, Utah 84101  
Telephone: (801) 363-3300

George M. Galloway  
STOEL, RIVES, BOLEY,  
JONES & GREY  
Suite 2300  
900 S.W. Fifth Avenue  
Portland, Oregon 97204  
Telephone: (503) 224-3380

Attorneys for PC/UP&L Merging  
Corp. ("PacifiCorp")

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. AND AUTHORIZING THE : Docket No. 87-035-27  
ISSUANCE OF SECURITIES, ADOPTION :  
OF TARIFFS, AND TRANSFER OF :  
CERTIFICATES OF PUBLIC CONVENIENCE :  
AND NECESSITY AND AUTHORITIES IN :  
CONNECTION THEREWITH. :

APPLICANTS' STATEMENT OF THE ISSUES

By letter dated September 15, 1987, the Commission provided Utah Power & Light Company ("Utah Power") and PC/UP&L Merging

Corp. ("PacifiCorp"), jointly "Applicants", with a Memorandum of its Staff setting forth issues to be addressed in connection with the proposed Application in this case. In addition, the Commission's Prehearing Conference Order of October 6, 1987 required each party wishing to intervene in this case to file a written statement of general position on the Application, identifying major issues raised by the Application and stating its position on such issues by October 15, 1987. Several proposed intervenors have served such statements upon Applicants to date.

Applicants have reviewed the foregoing and believe it is in the substantial interests of fairness and administrative efficiency that the essential issues to be addressed in this case be framed concisely at the outset. Accordingly, upon review of the Memorandum of Commission Staff and the potential issues raised by the Division of Public Utilities ("Division") and petitioning intervenors, Applicants hereby set forth their statement of the essential issues. As well, Applicants also set forth their general position on other potential issues raised that, for one or more reasons, are not appropriately before the Commission.

#### **ISSUES RAISED BY THE APPLICATION**

Applicants respectfully submit that the overriding issue under the Application is:

Is the merger consistent with the public interest in achieving and maintaining efficient, reliable and adequate electric public utility service at reasonable rates in the State of Utah?

This overriding issue encompasses the following sub-issues:

- (1) Is PacifiCorp ready, willing and able to provide the public utility service currently provided by Utah Power in the State of Utah?
  - (a) Is PacifiCorp qualified to do business in the State of Utah?
  - (b) Does PacifiCorp have competent and sound managerial expertise to manage and operate Utah Powers' public utility system in a safe, reliable and efficient manner?
  - (c) Will PacifiCorp have the financial capability to own and operate Utah Power's public utility system devoted to public utility service in the State of Utah?
  - (d) Will PacifiCorp have adequate facilities and resources to serve Utah Power's public utility customers in the State of Utah?
- (2) Will the merger have a substantial and material adverse impact on rates to Utah Power's public

- utility customers in the State of Utah?
- (3) Will the merger have a substantial and material adverse impact on service to Utah Power's public utility customers in the State of Utah?
- (4) Will the merger result in a loss or impairment of the Commission's regulatory jurisdiction over the activities of Utah Power's public utility operations devoted to Utah public utility service?

#### **STAFF MEMORANDUM**

The Staff Memorandum raises over 60 questions to be addressed by the Commission in considering the Application. The Memorandum acknowledges that many of these questions overlap or are repetitive of other questions raised in the Memorandum. Applicants believe that the questions raised by the Staff are fairly within the scope of and subsumed by the issues identified above.

The essence of the Staff Memorandum is the suggestion that there be a complete economic analysis of the benefits and costs of the merger based upon a comparison of a with-merger model and a without-merger model. Applicants believe that a hypothetical analysis is appropriate so long as it is based upon actual operating history and existing budgets, plans and policies of Utah Power, PacifiCorp and PacifiCorp, a Maine corporation.

## DIVISION STATEMENT OF ISSUES

The Division of Public Utilities ("Division") filed its General Statement of Issues on October 15, 1987. Applicants generally agree with the issues identified in that statement and believe they are fairly incorporated within the scope of the issues identified above.

### OTHER ISSUES

Many of the issues raised by potential intervenors in the case are objectionable on one or more grounds. Without addressing specific issues raised by each intervenor in this filing, it is clear that some potential intervenors seek to expand the issues beyond the limits of this Commission's jurisdiction. Applicants respectfully request that those efforts be rejected and specifically, that the following issues be declared as not within the scope of this proceeding.

1. Transmission and Wheeling.

Several parties, including the Utah Associated Municipal Power Systems ("UAMPS") and the Colorado River Energy Distributors Association ("CREDA") seek to include transmission access and wheeling issues in this proceeding. Those are questions which, we submit, lie within the jurisdiction of the Federal Energy Regulatory Commission. FERC has the responsibility and authority to regulate the terms, conditions and rates of wheeling transactions, and arguments thereon should be made

before it. Florida Power & Light Company, FERC Docket No. EL 87-19000 (issued July 20, 1987); Florida Power & Light Company, 29 FERC §61,140; FPC v. Southern California Edison, 276 US 205 (1964); State of Utah v. Federal Energy Regulatory Commission; 691 F.2d 444 (10th Cir. 1982).

Indeed, UAMPS reached that conclusion in its Post Hearing Brief filed with this Commission in Cases No. 85-2001-01 and 85-999-08. At page 44 of that Brief, UAMPS discusses the State of Utah v. FERC and FPC v. Southern California Ed. cases and concludes:

[T]hese are but two of many decisions standing for the general proposition that the movement of energy in interstate commerce is subject to exclusive federal jurisdiction. These cases, combined with the Public Utilities Regulatory Policy Act provisions giving FERC authority to order wheeling under certain circumstances, raise substantial doubts as to whether the Commission has the legal authority to force wheeling.

Applicants respectfully submit that wheeling access and wheeling rates have no legitimate place in this proceeding. Applicants also submit that any issues regarding the construction of new transmission facilities, including who will participate in those facilities, should be addressed in the cases where the authority to construct those hypothetical facilities is requested.

2. Potential Rates to Wholesale Customers.

One intervenor identifies the impact of the proposed merger on electric wholesale rates as an issue in this case. Such overlooks the established doctrine that the Federal Energy Regulatory Commission ("FERC") has exclusive jurisdiction over the rates for wholesale power transactions. Natahala Power & Light v. Thornbury, 90 L.Ed.2d 943 (1986). Thus, it is irrelevant, in law, to address wholesale rate issues in this proceeding.

3. Coal Operations.

The Independent Coal Companies have identified the future fuel procurement policies of the merged company as an appropriate issue in this proceeding. This Commission has already established Case No. 86-035-20 to address fuel procurement issues, including the issues identified by the Independent Coal Companies.

4. Competition.

Several potential intervenors have identified alleged anticompetitive impacts of the merger as an issue in this case. The record is plain that the Applicants have made requisite filings regarding the proposed merger with the Antitrust Division of the United States Department of Justice and the Federal Trade Commission pursuant to the requirements of the Hart, Scott, Rodino Antitrust Improvements Act of 1976 15 U.S.C. § 1311, et seq. Jurisdictionally, issues of competition and competition analysis are confined to and must be addressed

or raised in those Federal filings and proceedings.

RESPECTFULLY SUBMITTED this 19th day of October, 1987.

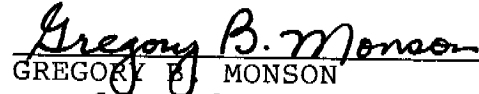


SIDNEY G. BAUCOM  
THOMAS W. FORSGREN  
EDWARD A. HUNTER, JR.  
of and for  
UTAH POWER & LIGHT  
COMPANY  
1407 West North Temple  
Salt Lake City, Utah 84140

Attorneys for Utah Power  
& Light Company



ROBERT S. CAMPBELL, JR.



GREGORY B. MONSON  
of and for  
WATKISS & CAMPBELL  
310 South Main Street  
Suite 1200  
Salt Lake City, Utah 84101



George M. Galloway  
of and for  
STOEL, RIVES, BOLEY,  
JONES & GREY  
Suite 2300  
900 S.W. Fifth Avenue  
Portland, Oregon 97204

Attorneys for PacifiCorp



RECEIVED

'87 OCT 19 A8:50

Sidney G. Baucom  
Thomas W. Forsgren  
Edward A. Hunter, Jr.  
UTAH POWER & LIGHT  
COMPANY  
1407 West North Temple  
Salt Lake City, Utah 84140  
Telephone: (801) 220-4250

Attorneys for Utah  
Power & Light Company

UTAH PUBLIC  
SERVICE COMMISSION

Robert S. Campbell, Jr.  
Gregory B. Monson  
WATKISS & CAMPBELL  
310 South Main Street  
Twelfth Floor  
Salt Lake City, Utah 84101  
Telephone: (801) 363-3300

George M. Galloway  
STOEL, RIVES, BOLEY,  
JONES & GREY  
Suite 2300  
900 S.W. Fifth Avenue  
Portland, Oregon 97204  
Telephone: (503) 224-3380

Attorneys for PC/UP&L Merging  
Corp. ("PacifiCorp")

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. AND AUTHORIZING THE : Docket No. 87-035-27  
ISSUANCE OF SECURITIES, ADOPTION :  
OF TARIFFS, AND TRANSFER OF :  
CERTIFICATES OF PUBLIC CONVENIENCE :  
AND NECESSITY AND AUTHORITIES IN :  
CONNECTION THEREWITH. :

---

APPLICANTS' OBJECTION TO INTERVENTION OF CREDAs

AND

SUGGESTED GROUPING OF OTHER INTERVENORS IN CASE

---

1. Preliminary Statement.

The Applicants, Utah Power & Light Company ("UP&L" or "Utah Power") and PC/UP&L Merging Corp. ("PacifiCorp") pursuant to Rule 6.1.A of the Commission's Rules of Practice and Procedure, herewith make and enter their objection to the intervention of CREDA as a party in the case and further submit their suggestion to the Commission for the grouping of other intervenors, assuming arguendo, that intervention is permitted.

This Commission, in its Prehearing Conference Order of October 6, 1987, set forth as part of the schedule for the prehearing conference to be held on October 19, the question of whether the potential existed to group similarly positioned intervening parties within categories of intervenors to further simplify and expedite the proceeding. The Commission then proceeded to set forth the parameters and standards which it expected intervenor petitions to meet.

Applicants have reviewed the petitions for intervention filed by various proposed intervenors with the Commission as of the cut-off date of 13th of October, 1987. A schedule of said petitioning intervenors, as Applicants have been served and noticed, is annexed hereto as Attachment "1".

2. Objection to Intervention of CREDA.

The Applicants' singular objection to the petitions for intervention in this case is to that filed by CREDA. The basis of the objection is plain and simple -- CREDA has no direct or substantial interest in the proceeding as required

by Commission order and Rule 6.1. To begin with, CREDA claims to be an association of individual members (either associations, rural electrification districts or municipalities, see Ex. A to CREDA notice of intervention). CREDA's members either have no nexus as a retail or wholesale customer of Applicants and have no interest in any power plant of Applicants or they are already members of UAMPS or DG&T and have appeared through those intervenors herein. Only UMPA members are not already represented by UAMPS or DG&T. No municipality or other interest, we submit, is entitled to multiple and duplicative representations under the banners of separate associations.

Secondly, the issues which CREDA purposes to raise deal with competition and transmission questions which are properly before FERC, the Federal Trade Commission, and the Department of Justice, or have otherwise been raised by other intervenors herein. To the Applicants' knowledge, CREDA has never appeared before this Commission in a Utah Power case of any type.

CREDA's position is fundamentally inadequate and insubstantial herein and its petition for intervention should be denied, without prejudice to petition at a later time if issues are framed which would permit intervention for good cause shown.

### 3. Groupings and Categories of Other Intervenors.

Applicants have no objection to the intervention of any other petitioner set forth on Attachment "1", although Applicants do have concerns and objections to a number of the issues sought to be raised by certain intervenors, as well

as to the overlapping of interests. Applicants' concerns and objections are premised on either jurisdictional bases, legal or factual relevancy, standing, appropriateness or materiality.

Applicants respectfully submit that because of the nature, functions and interest of particular intervenors, there is considerable overlapping and duplication of intervenor positions in the legitimate areas of inquiry. In the interests of avoiding unnecessary delay, duplication, redundancy of testimony and argument, simplifying the hearing process and evidence and in keeping with the Commission's statements expressed in its October 6, 1987 Order, Applicants herewith propose that the interests seeking intervention or who are already before the Commission as a matter of right, be placed in the following categories or groupings for purposes of further proceedings in this case:

Group 1: Statutory Intervenors of Right.

- (i) Utah Division of Public Utilities
- (ii) Utah Committee of Consumer Services

Group 2: Retail Municipal Intervenors

- (i) Salt Lake City Corporation and Sandy City Corporation
- (ii) West Valley City
- (iii) Cedar City Corporation

Group 3: Retail Intervenors

- (i) Kennecott Copper Corporation,  
et al.
- (ii) Utah Independent Coal Companies

(iii) Utah Farm Bureau Federation -----  
Irrigation Pumpers

Group 4: Wholesale Intervenors

(i) Utah Associated Municipal Power  
Systems ("UAMPS") and Washington City

(ii) Deseret Generation & Transmission  
Cooperative ("DG&T")


Group 5: Utility Shareholder Association of Utah


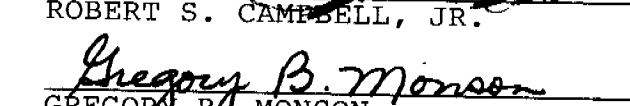
Group 6: United Mine Workers of America, District 22

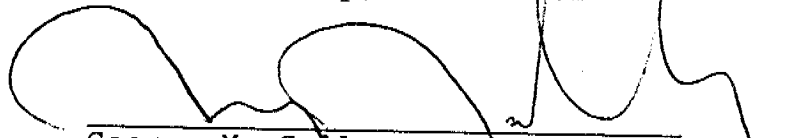
Group 7: Idaho Public Utilities Commission

Applicants submit that it would be appropriate and in the best interests of the proceeding that upon such groupings and issues in the case being defined, the Commission were to request that each group designate a lead counsel, where circumstances reasonably permit, for hearings, examination, and for argument.

RESPECTFULLY SUBMITTED this 19th day of October, 1987.

  
SIDNEY G. BAUCOM  
THOMAS W. FORSGREN  
EDWARD A. HUNTER, JR.  
of and for  
UTAH POWER & LIGHT  
COMPANY  
1407 West North Temple  
Salt Lake City, Utah 84140  
Attorneys for Utah Power  
& Light Company

  
ROBERT S. CAMPBELL, JR.  
  
GREGORY B. MONSON  
of and for  
WATKISS & CAMPBELL  
310 South Main Street  
Suite 1200  
Salt Lake City, Utah 84101

  
George M. Galloway  
of and for  
STOEL, RIVES, BOLEY,  
JONES & GREY  
Suite 2300  
900 S.W. Fifth Avenue  
Portland, Oregon 97204  
Attorneys for PacifiCorp

Attachment 1

**SCHEDULE OF PETITIONING INTERVENORS**

State of Utah Division of Public Utilities, Department  
of Business Regulations

State Committee of Consumer Services

Cedar City Corporation

Coastal States Energy Company, Beaver Creek Coal Company,  
Cyprus Coal Company and Andalex Resources, Inc. (the "Utah  
Independent Coal Companies")

Colorado River Energy Distributors Association, Inc. ("CREDA")

Deseret Generation & Transmission Co-operative

Idaho Public Utilities Commission

Kennecott Copper Corporation, Union Carbide Corporation,  
National Semiconductor Corporation, Sorenson Research  
Corporation, Ideal Basic Industries, Inc., Amoco Oil Com-  
pany, Westinghouse Electric, Western Zirconium Division,  
Kimberly-Clark Corporation and Chemstar, Inc.

Salt Lake City Corporation and Sandy City Corporation

Mike R. Dalpaiz, President of United Mineworkers of Amer-  
ica, District #22 (UMWA District 22")

Utah Associated Municipal Power Systems ("UAMPS") and  
Washington City

Utah Farm Bureau Federation

Utility Shareholders Association of Utah

West Valley City