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October 30, 1987

STATE PUBLIC SERVICE COMMISSION

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All Counsel of Record:

Re: PacifiCorp and Utah Power & Light Merger
PSCU Case No. 87-035-27

Pursuant to the Commission bench order of Monday, October 19, 1987, counsel for the respective parties held an attorneys' conference at 8:30 a.m. this day to discuss a proposed protective order and discovery in the above-referenced case. After a discussion and exchange of suggestions, the counsel present agreed that the proposed order should be distributed to all parties in order to receive any further suggestions or objections, if any, to its content. A copy of the proposed protective order reviewed by counsel this morning is enclosed. Please review the proposed order and hand deliver any comments to the undersigned no later than November 3, 1987 at 5:00 p.m.

Counsel agreed during the conference that the sentence on page 4: "Such expert shall not be an officer, director or employee of any person or business entity which engages in or is affiliated with comparable utility service to or against the party producing confidential information", would be burdensome on certain parties and that other language should be substituted.

It was suggested that a document depository be established, either at the offices of Watkiss & Campbell, or at the offices of Utah Power & Light, to avoid unnecessary duplication and distribution of voluminous documents. Counsel of record would be allowed to review documents at the depository and designate for copying those documents needed by their respective clients. Please indicate in your response to this protective order if such a document depository would be acceptable.

In order to expedite discovery, counsel for PacifiCorp asks all other parties to designate dates in the month of December which would not be acceptable for taking depositions of PacifiCorp and

APPROVED BY COMMISSIONERS

BRIAN T. STEWART _____

BRENT H. CAMERON _____

JAMES M. BYRNE _____

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

Superseded
JMB

87 OCT 30 P3:59

In the Matter of the Application :
of Utah Power & Light Company ^{UTAH PUBLIC}
and PC/UP&L Merging Corp. ^{SERVICE COMMISSION} 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:

BY THE COMMISSION:

Based upon the Stipulation and Agreement to the terms of this protective order by Utah Power & Light Company ("UP&L") and PC/UP&L Merging Corp. ("PacifiCorp") (jointly "Applicants"), PacifiCorp, a Maine corporation ("PacifiCorp Maine"), the Division of Public Utilities, the Committee of Consumer Services and certain other parties which have moved to intervene in this case, through their respective counsel and good cause being shown, the Commission herewith makes, the following

FINDINGS OF FACT

1. The parties above-referenced have stipulated and agreed that certain types of documents, materials and papers of which discovery will be sought in this case are of a confidential nature.

2. The parties have further stipulated that disclosure of such confidential information could damage the provider of such information in its ability to effectively conduct their respective utility functions.

3. The parties have further stipulated that entry of this protective order will facilitate and expedite discovery and will afford the necessary protection to the confidential information.

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 Public Service 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, shall be furnished 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 (hereinafter referred to as "Confidential Information"), and shall neither be used nor disclosed except for the purposes of this case, and solely in accordance with 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 or 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. Such expert shall not be an officer, director or employee of any person or business entity which engages in or is affiliated with comparable utility service to or against the party producing 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.

(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 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 1(a) and shall not constitute a verbatim or substantive transcript of the Confidential Information.

(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 including administrative or judicial review thereof.

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 Material Previously Determined Confidential. In the event any party disagrees with the designation of any document, data, information, study or other matter as Confidential Information and it and the providing party cannot

reach agreement on the matter, the party objecting shall forthwith submit the matter to the Commission for its review pursuant to 2(c) of this Order.

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 ten (10) 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 ten (10) business days.

3. (a) Receipt into Evidence. At least ten (10) 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 five (5) 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 parties of record who have signed oaths of confidentiality (one copy each). 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, 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. The provisions of this Order are specifically intended to apply to data or information supplied by or from any party to this case, and any nonparty that supplies documents to any party in this case for use in this case.

Dated at Salt Lake City, Utah, this ____ day of _____, 1987.

BRIAN T. STEWART, Chairman

BRENT H. CAMERON, Commission

JAMES M. BYRNE, Commission

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 sanctions, contempt, damages and/or fines as may be imposed by the Commission or a court of competent jurisdiction.

Name - Typed or Printed

Residence Address

Employer of Firm

Business Address

Party

Date

Signature