

DOCKETED

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Appli-)
cation of UTAH POWER & LIGHT)
COMPANY, 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 Issuance of)
Securities, Adoption of)
Tariffs, and Transfer of)
Certificates of Public Con-)
venience and Necessity and)
Authorities in Connection)
Therewith.)

CASE NO. 87-035-27

ORDER ON INTERVENTION

ISSUED: October 30, 1987

BY THE COMMISSION:

SYNOPSIS OF DECISION

By this Order the Commission decides those applicants who will be allowed to intervene as parties in this matter and how such parties will be grouped for the purpose of avoiding duplicative discovery, presentation of evidence and cross-examination of witnesses.

PROCEDURAL BACKGROUND

Pursuant to notice a prehearing conference was held in this matter on October 19, 1987 before the Commission. At that time the Commission heard from the prospective parties arguments for and against intervention, the positions they intend to take in the case, statements of the issues and suggested scheduling.

PROSPECTIVE INTERVENORS

Those seeking intervention timely in this case are as follows: CREDA, UAMPS, Salt Lake City, Sandy City, Cedar City, Washington City, West Valley City, Coastal States Energy, Beaver Creek Coal, Cyprus Coal, Andalex Resources, Deseret Generation and Transmission, Utah Farm Bureau Federation, Utah Utility Shareholders Association, Kennecott Copper, Union Carbide, National Semiconductor, Sorensen Research, Ideal Basic Industries, Amoco Oil, Westinghouse Electric, Western Zirconium, Kimberly-Clark, Chemstar, United Mineworkers, and the Idaho Public Utilities Commission. Those filing untimely were the Utah Energy Office, SUPERA, AMAX Magnesium Corporation and NUCOR Steel.

INTERVENTION STANDARDS

In the very lengthy and complex Simonelli case (Case No. 84-035-12) we were confronted with challenging and hotly contested intervention issues. By our Order of December 9, 1986, we attempted to resolve those issues in that case by posing certain questions based upon applicable statutes and regulations. Those questions were:

1. Does the petitioner have a statutory right to intervention?

2. Does the petitioner have a direct, as opposed to indirect, interest in the outcome of the proceeding?

3. Does the petitioner have a substantial interest in the outcome of the proceeding?

4. Assuming that a petitioner has both a direct and substantial interest in the case, is that interest unique or is it already represented and protected by a participant? The benefits that might accrue to such a petitioner from participation must be weighed against the administrative cost of multiple parties representing essentially the same interest.

5. Will the petitioner's presence in the case unduly broaden the issues?

While these questions may not be useful in every case before the Commission where intervention is sought, we believe that they are helpful and useful in this case and will apply them to some extent.

SUPERA

By our Order of October 6, 1987 the Commission required that petitions for intervention be filed not later than October 13, 1987 and that such petitioners file a statement of their positions and the issues in the case not later than October 15, 1987. Commissioner Cameron was contacted by telephone at 4:50 p.m. on October 13, 1987 and informed that SUPERA desired to intervene in this case. Commissioner Cameron informed SUPERA of the deadline and indicated that the issue of a late filing would have to be heard by the Commission. SUPERA subsequently late-filed on October 14, 1987. Commissioner Cameron called counsel for SUPERA and told him that the issue of the untimely intervention request would be heard by the Commission at the prehearing conference

scheduled for October 19, 1987. However, no one appeared on behalf of SUPERA at the prehearing conference and the Commission consequently ruled from the bench that SUPERA's intervention request was denied.

CREDA

The Colorado River Energy Distributors Association ("CREDA") timely filed a Petition to Intervene. CREDA is a non-profit membership corporation of the State of Colorado and consists of 117 electric systems serving in the six states of Utah, Wyoming, Colorado, New Mexico, Arizona and Nevada. Petitioner's members include some who have wheeling and interconnection agreements with UP&L, some who purchase power from UP&L, some who are co-owners with UP&L in electric generation facilities, some who are beneficiaries of wheeling agreements between UP&L and the Western Area Power Administration, and several who are direct competitors of UP&L and PP&L in the bulk power markets in the intermountain region. Utah members include the Intermountain Consumers Power Association, Provo City, Strawberry Water Users Association and Utah Municipal Power Agency.

We are of the view that CREDA as a whole does not belong in this case inasmuch as we do not intend to take up interstate matters which belong to other jurisdictions such as the FERC and the DOJ. Its presence in the case would likely lead to a major expansion of the issues before us. We do not believe that such

expansion is consistent with administrative efficiency. Furthermore, CREDA lacks a direct and substantial interest in this case. At the same time it is evident that Utah members of CREDA may have a sufficient interest in this case to participate by themselves. We will allow each Utah member two weeks from the date of issuance of this Order to provide us notice of their intervention separately, or as a group. Those who choose to intervene may be grouped appropriately with others having similar interests.

AMAX

AMAX Magnesium Corporation ("AMAX") alleges a unique interest in this case by reason of a special contract rate negotiated with UP&L and claims that its interest cannot be protected by any other party. This, however, is not a rate design case and we fail to see that AMAX has a meaningfully unique position in the context of this case. Furthermore, AMAX did not timely file its Petition for Intervention and has not presented us with a compelling reason for its failure to timely file. This is the second case in which AMAX has been untimely. In the first (the Simonelli case) we agreed to its late intervention because it had a unique and unprotected interest (allocation of funds) and at least a plausible reason for being tardy. In this case, however, to allow AMAX to intervene would impair the integrity of our Order of October 6, 1987 deadlining intervention petitions. Accordingly, AMAX' Petition for Intervention is denied without prejudice.

NUCOR STEEL

NUCOR Corporation, like AMAX, has petitioned to intervene untimely and similarly its Petition will be denied without prejudice.

UTAH ENERGY OFFICE

The Utah Energy Office ("UEO") is a third petitioner filing untimely. For that reason the UEO's Petition will likewise be denied without prejudice.

ALLOWANCE FOR MONITORING

Having denied the petitions of AMAX, NUCOR and the UEO, without prejudice, the Commission will allow those petitioners to monitor the proceedings, receive copies of all Commission orders and prefiled documents and to appear on public witness day to make any statements they may wish to make. Further, if at any time these petitioners can demonstrate to our satisfaction that any of them has a separate, direct and substantial interest in this case which is unprotected, we will reconsider the question of that petitioner's full participation.

ENTITIES GRANTED INTERVENTION AND GROUPING

Those petitioners who timely filed, basically meet our intervention criteria and are properly in this case are UP&L and Pacificorp; the Division of Public Utilities; the Committee of Consumer Services and the Utah Farm Bureau; the industrial

customers, who will be grouped as such, including Kennecott Copper, Union Carbide, National Semiconductor, Ideal Basic Industries, Sorenson Research, Amoco Oil, Westinghouse Electric, Western Zirconium, Kimberly-Clark and Chemstar; large retail municipal customers, who will be grouped as such, including Salt Lake City, Sandy City, Cedar City, and West Valley City; wholesale customers, who will be grouped as such, including UAMPS, Washington City and DG&T; the Utah Shareholders Association; the United Mineworkers; the independent coal producers, who will be grouped as such, including Coastal States Energy, Beaver Creek Coal, Cyprus Coal, and Andalex Resources; and the Idaho PUC.

The Commission believes that the grouping of parties with substantial but similar interests will allow all such parties to be part of the case and at the same time achieve certain administrative efficiencies.


Those intervenors placed in groups, including the Committee of Consumer Services and the Utah Farm Bureau, will be responsible to designate a lead counsel for purposes of discovery, calling of witnesses, et cetera and must disclose to the Commission the person chosen before further participation in these proceedings. Any intervenor grouped may at any time request that the Commission review the grouping for the reason that the intervenor does not believe that its interests are adequately represented or protected in such grouping. Such an intervenor will have the burden of persuading the Commission that the grouping is inadequate.

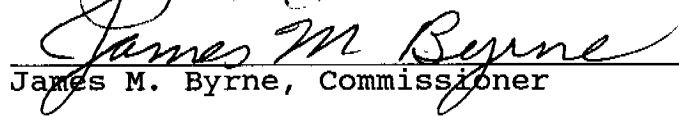
Based upon the foregoing, the Commission will make the following:

ORDER


NOW, THEREFORE, IT IS HEREBY ORDERED that the issue of intervention be and is hereby resolved in accord with the foregoing discussion.

DATED at Salt Lake City, Utah, this 30th day of October, 1987.


Brian T. Stewart, Chairman


James M. Byrne, Commissioner

ATTEST:


Stephen C. Hewlett
Commission Secretary

BRENT H. CAMERON CONCURRING AND DISSENTING

I concur with the majority on most provisions of its Order on Intervention. However, I disagree in some general and some specific aspects.

First, I must comment on the general area of strict adherence to timely filings. While I don't condone inattention to Commission deadlines, and do approve of measures which improve our administrative efficiency, I believe some flexibility is appropriate. We are an administrative agency and as such need not be as strict as a court in following procedural rules. FERC, for example, often allows late intervention as do most other administrative agencies, and so have we in the past. In addition, as

pointed out in our August 7, 1987 Order on Application for Reconsideration and Rehearing of AMAX and USX, in Case No. 84-035-12 (Simonelli) the Commission has discretionary powers to allow intervention at any time in the proceeding. I believe flexibility is particularly appropriate in this case where intervention, although technically untimely, is sought at the beginning of the proceeding rather than after months of hearings.

Specifically, I would allow intervention of AMAX and NUCOR and the Utah Energy Office (UEO) at the outset. I would group NUCOR and AMAX with the other industrial interveners and the UEO as a non-grouped party. No party objected to the intervention of AMAX or NUCOR and though the Applicants objected to the UEO intervention, I was not convinced on that ground. The majority excluded them on the basis of timeliness alone.

I believe we would advance the cause of administrative efficiency in this proceeding more by allowing their intervention and limiting actual participation by grouping AMAX and NUCOR and by requiring a showing of separate and substantial interest for individual participation. The majority will allow public witness appearance and specific motions at a later date to consider intervention again. Admittedly, this distinction of being "in" but limited in full participation, as opposed to being "out," but without prejudice and allowed to monitor and later seek limited participation may ultimately have the same affect.

The intervention of CREDA poses a different problem. First, CREDA is the only potential intervenor which opposes the merger at

the outset of the case (other parties being either in favor or seeking additional information before taking a position); therefore, I am uncomfortable with their preclusion. I do, however, admit to some confusion about the position of the Utah entities which are members of CREDA and also members of or associated with either DG&T or UAMPS (allowed intervention herein), which do not oppose the merger at this time. To the extent these positions differ or are in conflict, I would allow the individual Utah entities to clarify their position and urge them to designate one specific intervenor as representing their interest.(1)

Regardless of the confusion about the position of the Utah entities which are members of CREDA I would allow intervention. To exclude the one party specifically opposed to the merger may have the effect of limiting the information provided to us for our consideration. CREDA's Petition alleges direct and substantial interest which, even though addressed in other forums having primary jurisdiction may also be relevant to our proceeding. To exclude their presentation of information for our policy consideration, rather than for our enforcement is, I believe, an error.

1) As is sometimes the case in State agency appearances before this Commission, one agency of the State may take an opposite position to another. The Utah entities, especially municipalities, may have the same situation, i.e., one position as it relates to them as a customer, another as an entity seeking access to a competitor and another as a representative of their citizens. I would allow argument as to dual participation if necessary.

To the extent there are Utah entities, members of CREDA, but not represented by UAMPS, DG&T or another intervenor, that would not be represented under the majority's Order I agree they should be allowed to intervene.

I think the more appropriate way to deal with such issues is to give different weight to such evidence and argument at hearing and to address them in our yet-to-be-issued order establishing the issues in this proceeding. Common sense tells me this merger may have a substantial impact on CREDA, and their ability to present their case in other forums at this time is speculation and should not be the reason for exclusion. In addition, I don't agree that because the majority of their members are entities outside of Utah State boundaries, that they lack a direct and substantial interest in the outcome of our proceeding.

By using our ability to control the hearing process, to group parties, and to establish the issues, the intervention of AMAX, NUCOR, UEO or CREDA need not unduly delay or prejudice the rights of the Applicants or other parties and they should be allowed intervention.


Brent H. Cameron, Commissioner