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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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IN THE MATTER OF THE APPLICATION )  
OF UTAH POWER & LIGHT COMPANY, )  
PACIFICORP DBA PACIFIC POWER & ) UMPA'S STATEMENT OF  
LIGHT COMPANY, AND PC/UP&L MERGING ) POSITION AND ISSUES,  
CORP. (TO BE RENAMED PACIFICORP) ) AND DISCUSSION OF  
FOR AN ORDER AUTHORIZING THE ) GROUPINGS AND  
MERGER OF UTAH POWER & LIGHT ) INTERVENTION  
COMPANY AND PACIFICORP INTO PC/ )  
UP&L MERGING CORP. AND AUTHORIZING )  
THE ISSUANCE OF SECURITIES, )  
ADOPTION OF TARIFFS AND TRANSFER ) Case No. 87-035-27  
OF CERTIFICATES OF PUBLIC CONVEN- )  
IENCE AND NECESSITY AND AUTHOR- )  
ITIES IN CONNECTION THEREWITH. )

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Pursuant to the October 6, 1987, Prehearing Conference Order entered by the Commission in this matter, Utah Municipal Power Agency ("UMPA") submits this statement to identify: (1) its general position in the case, (2) the major issues as perceived by UMPA, (3) the position of UMPA with respect to said

issues, (4) UMPA's comments with respect to grouping of parties and intervenors, and (5) UMPA's basis for status as an intervenor.

I. GENERAL STATEMENT OF POSITION

UMPA's general position in this matter is that the proposed merger of Utah Power & Light Co. ("UP&L") and PacifiCorp is contrary to the public interest, is anticompetitive, and will result in discriminatory rates, loss of effective regulation, and undue concentration of economic power and influence.

II. MAJOR ISSUES PERCEIVED BY CREDA

UMPA perceives, and intends to raise, the following as the major issues in this case:

1. Whether the proposed merger is likely to result in a change in the operation of UP&L's facilities in Utah which will adversely affect UMPA and UP&L ratepayers.
2. Whether the proposed merger will tend to create undue concentration of power over transmission and reduce competition, to the detriment of all Utah electric consumers.
3. Whether the proposed merger will impair the effectiveness of regulation of the predominant electric utility in Utah.

### III. UMPA'S POSITION ON THE MAJOR ISSUES

#### A. GENERAL

The Commission's disposition of the merger application in this case will probably be the Commission's most important decision concerning UP&L. UP&L is a Utah-based electric utility and the only electric utility whose retail rates are regulated by the Commission. After the merger, UP&L would become a division of an Oregon-based diversified corporation. The new company's corporate goals and scope of operation will be substantially different from those of UP&L. The merger of UP&L and PacifiCorp will result in more than a change in the ownership of UP&L. It will produce a change in the philosophy governing the operation of existing and future electric facilities in Utah and the planning and development of future electric system resources in Utah. The Commission's action in this case will affect whether and how such far-reaching changes may be brought about. It will also affect the amount of influence this Commission will retain over the process of change in the electric utility industry in Utah.

#### B. ANTICIPATED CHANGES IN OPERATIONS

Based on its reading of the applicants' Application and the accompanying Prefiled Testimony, UMPA is persuaded that the purpose of this merger is to enable the merging companies to achieve greater penetration of wholesale and bulk power supply markets outside of Utah while minimizing regulatory constraints.

Effects of the merger on retail electric service in Utah will be merely incidental to such purpose.

The retail rates of UP&L are higher than those of PP&L. Consequently, if the two systems were integrated for ratemaking purposes without any other changes, the rates of UP&L would decline while the rates of PP&L would increase. PacifiCorp has stated that it intends to maintain the two companies as separate operating divisions after the merger, with separate and distinct retail rates. It has also stated that no PP&L retail rates will increase as a result of the merger. UP&L and PacifiCorp have committed to lower UP&L's retail rates in Utah by 2% immediately upon consummation of the merger and suggested that such rates will be reduced by 5-10% overall over a five-year period thereafter.

In the Prefiled Testimony submitted by the applicants, it is stated that the merged companies' generation and transmission resources will be operated on a coordinated and integrated basis for power supply purposes. This raises the question of how the costs of generation and transmission plant will be allocated between the UP&L and PP&L divisions so as not to increase the retail rates of either. The allocation will in turn significantly affect the Commission's ability to assure that the merged companies' retail rates are just and reasonable.

The applicants' Prefiled Testimony also indicates that the promised 2% retail rate reduction is not justified by any

certain cost savings resulting immediately from the merger. Rather, it is predicated primarily on mere anticipation of substantial increases in surplus bulk power sales by the merged company. Therefore, the proposed retail rate cut represents a certain decrease in revenues without a corresponding decrease in costs and only a speculative increase in revenues. There is no reason to believe that other state regulatory commissions or the Federal Energy Regulatory Commission will allow the merged company to recover the lost revenues in other rates. Consequently, PacifiCorp's earnings can be expected to drop as a result of the promised retail rate decrease, unless a substantial increase in surplus sales materializes quickly after the merger. In the short term, the rate decrease will adversely affect the price of the new company's common stock, and perhaps the price of its bonds as well.

This potential reduction in earnings, coinciding with UP&L's merger with a company which has a weaker credit rating, suggests the likelihood of some deterioration in UP&L's financial condition, resulting in adverse pressure on its cost of capital as a short term result of the merger. This pressure could give rise to diversions of cash generated by electricity sales to captive ratepayers into other non-utility businesses, as management of the merged company attempts to maintain a steady level of earnings by the consolidated entity.

UMPA's members are particularly concerned about potential consequences of the merger with respect to their existing transmission and other arrangements with UP&L. UMPA members are dependent on UP&L for, among other things, delivery of the power and energy that UMPA purchases from Western Area Power Administration and other sources under long term contracts. The merged company will be under pressure to increase its surplus sales in order to recover the foregone revenues from the proposed retail rate decrease. This suggests a significant danger that PacifiCorp Oregon will concentrate its resources for new investment and operation and maintenance work on upgrades to its transmission system intended to increase transfer capability to bulk sales markets, possibly at the expense or to the detriment of the investment and O&M expenditure needed to maintain the transfer capability used for delivering UMPA Members' power and energy from various sources and delivering power and energy to UP&L's retail customers. In addition, the increased loading of the merged company's transmission system which would result from the major increase in surplus sales projected by UP&L and PacifiCorp could adversely impact the transfer capability of the system needed for reliable delivery of UMPA Members' power and energy, as well as retail ratepayers' power and energy from the new company.

C. TENDENCY TO REDUCE COMPETITION

In analyzing the "public interest," it is both appropriate and necessary for the Commission to consider the anticompetitive effects of a proposed utility merger. As previously acknowledged by this Commission in a similar context:

To the extent that the purchase agreement involved here has an anticompetitive or monopolistic effect, we must weigh the general policies of the antitrust laws against the purposes sought to be achieved by the regulated monopoly concept. The role of the commission is to appraise the effects of any curtailment of competition which may result in this case and weigh those effects against advantages accruing from the expansion of the UP&L monopoly position.

In re CP National Corp., 43 PUR 4th 315, 322 (Utah PSC 1981) (emphasis added). The Commission further noted that it should consider "any long-range effects produced by the expansion of UP&L's regulated monopoly position in this state." Id. at 324. Because the proposed merger in this case proposes to extend the monopoly of UP&L/PP&L both inside and outside the State of Utah, the Commission should consider all potential anticompetitive effects of the merger.

Currently, UP&L's only competition in the retail electric sales market comes from municipal and cooperative systems and their joint action agencies such as UMPA. These systems provide a yardstick against which UP&L's performance can be measured. The existence of such competition and the

availability of such yardstick are valuable to Utah retail electric ratepayers and to the Commission.

The proposed merger would create a company with considerably more economic power to undermine and even eliminate its competitors. The merged company would control 28,378 miles of interconnected transmission lines strategically situated to provide linkage between the hydroelectric generating capacity in the Pacific Northwest and the coal-fired generating stations of the Intermountain region (Idaho, Montana, Wyoming, Nevada, Utah and Colorado), on the one hand, and between those supply sources and the fastest growing demand market for power in the region-- southern California and Nevada, Arizona and New Mexico--on the other hand.

In addition to controlling this strategic transmission system, both UP&L and PacifiCorp Maine have substantial coal-fired generating capacity and coal mining operations in the region (Wyoming and Utah). PacifiCorp owns, through its subsidiary NERCO, extensive coal reserves in Wyoming and controls a significant amount of hydroelectric generating capacity in Washington and Oregon.

The combined total assets of the merging companies, based on their balance sheets at December 31, 1986, would be \$8.7 billion dollars, representing a 176% increase in the size of UP&L and a 57% increase in the size of PacifiCorp. On the basis of the companies' 1986 income statements, PacifiCorp's revenues from



electric operations would nearly double, from \$1.072 billion to \$2.056 billion, after the merger.

PacifiCorp would become, through the merger, both a more compact utility in terms of service territory (which would be more concentrated in Utah, Wyoming and southeastern Idaho) and a more extensive utility in terms of transmission capability (gaining major access to Utah, Nevada, Arizona and New Mexico). It would increase its plant by more than half, double its electric operating revenues, and become the only investor-owned electric utility serving retail customers in the State of Utah.

The respective transmission systems of UP&L and PP&L were originally built to deliver power and energy between specific generating units and specific load centers (including wholesale loads) and to provide reliability and stability for that function. After the merger, the loading patterns for the combined transmission systems would change as PP&L dispatchers attempt to (i) serve load from the least costly and most reliable generating resources, and (ii) maximize surplus sales, all on a system-wide basis. Such new loading patterns, together with any system upgrades or expansion that PacifiCorp Oregon may undertake in connection therewith, will affect the transfer capability of the new company's transmission network and also the transfer capability of other transmission systems interconnected with it.

UMPA relies on the transmission system of UP&L for delivery of power from various sources. Consequently, the Agency

is heavily dependent on the transmission system of UP&L for the delivery and stability of its current and future power supplies. Changes in the loading of the combined UP&L/PP&L transmission system and related changes in transfer capability in the region will have a major direct impact on UMPA's operations and planning.

UP&L has demonstrated in the past a determination to use its transmission system to restrict access to other power supply sources and markets by other Utah utilities. PacifiCorp has demonstrated aggressiveness in acquiring loads away from consumer-owned competitors, most notably in Wyoming.

The merger would enhance the opportunities for PacifiCorp Oregon, through operational control over an extensive transmission network on which UMPA is significantly dependent, to: (i) narrowly limit the benefits to UMPA of the existing wheeling agreements that it pays for, and (ii) restrict access to the existing transmission network and the interconnections necessary for construction of new transfer capability. Furthermore, the merger will make available to PacifiCorp Oregon greater cash reserves for use in acquiring the businesses of financially troubled competitors.

D. IMPAIRMENT OF EFFECTIVE REGULATION

UP&L would become, through the merger, part of an electric utility subject to the jurisdiction of seven state regulatory commissions, as opposed to three at present. As a

result of the merger there will thus be a greater need for coordination by this Commission with other state commissions regulating the predominant supplier of retail electric service in Utah. There will be a much greater risk that conflicting state regulation will adversely impact retail rates and service, and development of future facilities, in Utah.

UP&L would also become a division in a holding company when it is merged with PacifiCorp. The latter has approximately 118 subsidiaries in three industries other than electric utility operations and earned only 57% of its 1986 net income from electric operations. The combination of UP&L's business with the businesses of the PacifiCorp companies, and the plan of operations announced by PacifiCorp, will create greater opportunities for misallocations of costs and revenues which will affect the rates regulated by this Commission. Furthermore, the greater size, scope and diversity of PacifiCorp Oregon, and the fact that it is spread over seven states, will make it extremely difficult for this Commission to exercise effective regulation of electric utility operations and rates in Utah.

#### IV. GROUPING OF PARTIES

At the preliminary hearing held on October 19, 1987, the commission recognized that it would be inappropriate to group intervenors who oppose the UP&L/PacifiCorp merger with intervenors who have not announced opposition. UMPA concurs in that view. To the best of UMPA's knowledge, the only other

intervenor in this case who has announced opposition to the merger is the group of independent Utah coal companies. Those companies' interest in the merger is from the perspective of fuel suppliers and retail customers. By contract, UMPA is a wholesale competitor of UP&L which is largely dependent on and affected by UP&L's operation of its generation and transmission facilities in Utah. Accordingly, UMPA submits that it would not be appropriate for UMPA and the independent coal companies to be grouped as intervenors in this proceeding.

V. UMPA IS ENTITLED TO INTERVENTION

Under the screening standards identified by the Commission in the Prehearing Conference Order, UMPA is entitled to participate as an intervenor. UMPA's standing under the various screening standards is as follows:

1. Statutory Right to Intervene. While UMPA has no specific statutory authority to intervene in this case, its right of intervention arises from the right of a party to participate in governmental proceedings that may significantly affect its interests.

2. Direct Interest. UMPA and its Members have a direct interest in the proposed merger because of their numerous interrelationships with UP&L. UMPA is a part owner of Bonanza Unit 1 and the Bonanza Transmission System which interconnects with UP&L's transmission system at the Mona and Upalco substations. UMPA purchases the power and associated energy from

Provo's 6.25% ownership interest in Hunter Unit No. 1 (of which UP&L is co-owner and operator) and from Provo's rights to the output of Phase 1 of the Cove Fort Geothermal Project. Such power and energy is delivered to Provo by UP&L. Both Provo and Manti have transmission and interconnected operations agreements with UP&L, the benefits of which are made available to, and paid for by, UMPA as part of its power supply program. UMPA purchases the majority of its power supply from Western, which is delivered to UMPA Members under transmission agreements between Western and UP&L. The rate which UMPA pays for such power includes a wheeling payment which is passed through to UP&L. The Agency and its Members depend on UP&L for system integrity and reliability because UP&L is the control area utility for most of the Members of UMPA. All of the Agency's Members except Provo and Manti have supplemental power purchase agreements with UP&L. Finally, UMPA is a direct competitor of UP&L for wholesale and bulk power sales. All of these relationships with UP&L would be impacted by the proposed merger.

3. Substantial Interest. The direct interest of UMPA is substantial. Not only would UMPA be directly affected by PacifiCorp's proposal to set rates which will discriminate in favor of Utah retail customers, but UMPA's power supply program has been planned and built around the long term reliability of arrangements for power deliveries over the UP&L transmission system. The merger has the ominous potential of securing an

unfair competitive advantage for the merging utilities and radically changing the usage patterns for the UP&L transmission systems.

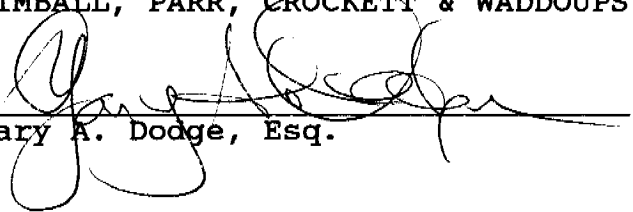
4. Unique Interest. No other applicant for intervention will or can represent the views and interests of UMPA. No other intervenor has a similar variety of utility relationships with UP&L; nor has any similarly situated intervenor taken a position with respect to the merger which is similar to UMPA's position.

5. Broadening of Issues. UMPA's presence in this case will not broaden the issues any more than is appropriate and necessary for the Commission's consideration of the relevant public interests.

Because of the complexity of the proposed merger and the multifaceted impacts and effects that can be anticipated to result from the same, UMPA cannot state with certainty at this preliminary stage what other issues might arise or what its ultimate positions will be on all aspects of the merger. UMPA anticipates that, as the proceeding progresses and it obtains additional information and completes ongoing analyses of the proposed merger, it will refine and identify more completely its positions and the nature of its opposition to the merger.

DATED this 29th day of October, 1987.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "UMPA's Statement of Position and Issues, and Discussion of Groupings and Intervention", was mailed, postage prepaid, this 29th day of October, 1987, to the following:

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