

MEMORANDUM

March 31, 1999

TO: PARTIES, DOCKET NO. 98-2035-04

FROM: PUBLIC SERVICE COMMISSION

SUBJECT: GUIDANCE FOR THE APRIL 2, 1999 HEARING IN THIS DOCKET

1. Before we decide whether to reject any merger-approval issues raised by parties, it is our intention to permit each party to present in direct testimony the case for the issues it raises. This testimony must carefully explain why the issue is germane to our consideration of the Application, and it must discuss the remedy that the party seeks. On the basis of our review of the direct testimony, we will decide whether some issues should be excluded.

We assume the merger-approval issues so far presented by parties exhaust all that may be relevant and material to the inquiry. A compilation of these is appended. If a party wishes to raise others, it is appropriate to use the hearing scheduled for April 2, 1999, to do so.

2. Not least of our concerns at this early point in the proceedings is the absence of a clear sense of the findings we must make to support a public interest decision on the Application. We ask parties to address this at the April 2 hearing.

3. All parties agree the approval standard is net positive benefits. Applicants have

indicated they will comply with it and have so structured testimony filed to date. There being good reason to adopt this standard and none to do otherwise, we will employ the net positive benefits standard in this Docket just as we have in preceding dockets, notably, the 1989 merger of Pacific Power and Light and Utah Power and Light Companies.

We do not comment beyond the following on PacifiCorp's verbal statement that it may argue, at a later point, if it chooses, that the proper standard is not net positive benefits but no harm to ratepayers. In every docket that comes before us, we make it a practice to hear all relevant argument and testimony so the evidentiary record is complete. We will do so here. To the extent parties feel the PacifiCorp statement may undermine their efforts, we assure them this is not the case. For the evidentiary record to be complete, parties must make every effort to present their positions on issues. This would be true regardless of the approval standard, unless the different standards required consideration of different issues. Net positive benefits creates the more extensive list, it seems to us, and therefore drives the more exhaustive examination. We believe that is appropriate for a case of this importance.

4. Clearly, Applicants have the burden to show that the merger is in the public interest, meaning, given the approval standard, that it will produce net positive benefits. This means that the record must show both the costs and the benefits of the merger so we can determine whether, on balance, netting costs and benefits, the merger is or is not in the public interest.

We understand that parties might be concerned to address particular issues in detail and others either to a lesser extent or not at all. We will not interpret lack of critical analysis of an issue by a party to indicate indifference unless we are informed otherwise. Because it is our investigative staff, however, the Division must give its best effort to address everything it believes may affect the public interest.

As our first statement on burden of proof in this Docket, we repeat what the Commission stated on the subject in its November 20, 1987 Report and Order in Docket No. 87-035-27 (the Pacific Power - Utah Power merger), pp. 2 - 3: “With respect to considerations outside our normal regulatory jurisdiction and enforcement powers . . . which nonetheless bear on the public interest, Applicants bear no affirmative burden to demonstrate benefits or even an absence of harm. In those areas other parties will carry the burden of demonstrating either some benefit or some substantial harm by reason of the merger. However, Applicants do carry the burden in all areas subject to our jurisdiction to show that on balance the merger will be beneficial and those areas will be our primary focus in the case.”

We will give parties opportunity, if desired, to present further argument on burden during the April 2, 1999 hearing.

5. We can decide whether to approve the merger, approve it with conditions, or disapprove it. The approval-with-conditions choice makes little sense unless conditions can be enforced and we can determine whether conditions have been violated. We would like the preliminary comments of parties on this issue during the April 2 hearing, as we consider whether this issue must be briefed.

COMPILATION OF ISSUES RAISED BY PARTIES

1. Local Control: If loss of local control occurs, cost cutting and declines in service quality and reliability are a threat. Vulnerability increased with management control over both capital and O&M budgets perhaps not local but emanating from Scotland. Effects on Utah work force. Condition approval on improved local control and local accountability.
2. Restructuring: Possible inducement to vertical disaggregation, divestiture, diversification. Service upgrades; permanent access to Company’s low-cost generation; new policies to protect

quality and reliability of service if disaggregation occurs. Merger-approval conditions sought.

3. Quality of Service: Merger-approval conditions required to ensure promised improvements.

Standards. Benchmarks. Penalties. Improved aesthetics of local facilities; policy on placing lines underground; low-income impacts.

4. Reliability: Transmission standards; a new reliability data base; Commission control over reliability; interconnection issues and ScottishPower's intentions.

5. Rural Concerns: Higher cost of service and lower returns make rural areas a target for cost cutting especially if the merged company employs a profit-driven strategy. Seek conditions and safeguards.

6. Effects on Regulation: Scope of Utah Commission jurisdiction; access to books and information; future of integrated resource planning; authority over transfers of assets; effects of UK regulatory policy and practice if felt here; impact on costs of regulation.

7. Corporate Structure: Independence of US electric operations in a holding company structure; new cost allocation and affiliate relations problems; likelihood of vertical disaggregation, divestiture, or diversification.

8. Cost Allocations: Allocation of costs of new corporate structure and functions (treasury, accounting, legal, computing, etc.). Retention of existing PacifiCorp accounting system based on the Uniform System of Accounts.

9. Access to Capital: External and internal sources; dividend policy; currency exchange impacts; bond ratings and cost of capital.

10. Acquisition Premium: Effects on ratepayers; effects on distribution or generation plant valuation. If not recovered from ratepayers, how? Pressure to alter operations, sell plant (disaggregation and divestiture), seek nonregulated investments (diversification)?

11. Merger Transactions Costs: Amounts, by category -- legal, consulting, etc. Ratepayers not to bear these costs. Approval conditions.
12. Effects on Competition: Between the merged company and cities; between the merged company and other suppliers; incentives; retail access.
13. Property Valuation: Book value for rates but fair market value for merger. Merger effect on local (county) taxation.
14. Environment and Energy Efficiency: Effects on air quality, carbon emissions; demand-side management programs; renewable resources; integrated resource planning.
15. Municipal Annexation and Purchase of Company Distribution Facilities: Effect of merger on book value of distribution plant.