

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**Docket UM-1209**

In the matter of	)
	) <b>HOOPA VALLEY TRIBE'S</b>
MIDAMERICAN ENERGY HOLDINGS CO.	) <b>REPLY IN SUPPORT OF</b>
	) <b>MOTION TO COMPEL RESPONSES</b>
Application for Authorization to Acquire	) <b>TO DATA REQUESTS</b>
Pacific Power & Light, dba PacifiCorp	)
_____	)

The Hoopa Valley Tribe ("Tribe") respectfully submits this Reply in Support of Motion To Compel Responses To Data Requests.<sup>1</sup> The Applicants' response brief not only attacks the Tribe's data requests, but also the legitimate scope of this Commission's authority. The Applicants suggest that this Commission has no authority to evaluate the significant legal liability that FERC will soon impose on PacifiCorp, or how this proposed acquisition will affect PacifiCorp's ability to meet its legal obligations. The Tribe strongly disagrees with the Applicants' narrow view of this Commission's mandate to protect the public interest.

The Applicants also argue that they provided an adequate response to the Tribe's data requests. The Applicants did provide some information on the costs of the upcoming FERC liability, but the cost estimates in the few pages provided conflicted and Applicants provided no documentation to support the cost estimates. The Tribe's follow-up request for an explanation of the conflicting cost estimates, along with some level of supporting documentation, is not unreasonable. Nor would disclosure of supporting documentation have any negative impact on the ongoing FERC settlement negotiations. The Applicants should be required to answer all data

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<sup>1</sup> Although Oregon PUC rules do not provide for a reply brief, the Tribe requested leave to file a reply in its opening motion and orally at the November 9, 2005 telephone conference. At the November 9 conference, Judge Smith orally granted leave to the Tribe to file a reply brief no later than two days after the filing of Applicants' response.

requests not answered and to provide supporting documentation within the scope of the requests for the bare cost estimates disclosed.

**A. This Commission Has Authority, And An Obligation, To Evaluate Whether This Acquisition Will Adversely Affect PacifiCorp's Ability To Meet Its Significant Legal Obligations Imposed In The New FERC License.**

The Tribe's data requests are focused solely on the costs of a significant legal liability, amounting to hundreds of millions of dollars, which will soon be incurred by PacifiCorp. Consistent with its duty to protect Oregon's public interest, this Commission must examine how MEHC's proposed acquisition will affect PacifiCorp's ability to satisfy its legal obligations imposed in the FERC license. Perhaps the acquisition will have no effect, or maybe it will have a substantial one. The Applicants take the extreme position that such an inquiry is not even within the scope of this Commission's jurisdiction. The Tribe disagrees.

The Applicants' response cites repeatedly to the Commission's order limiting the Tribe's participation to the legal issues relevant to this proceeding. That order begs the question of what issues are within the scope of this proceeding and within the scope of Commission authority. The permissible scope of the Tribe's participation is no broader or narrower than the scope of this Commission's jurisdiction. The Commission has authority to consider the costs of PacifiCorp's significant upcoming FERC liability and to ensure that this acquisition will not negatively affect PacifiCorp's ability to meet its legal obligations. Because this issue is within the legitimate scope of the Commission's authority, the Tribe's data requests are relevant to this proceeding.

It is possible, if not likely, that PacifiCorp will require capital, financing, or some other form of assistance from its parent company, whether that is Scottish Power or MEHC, to meet the legal obligations imposed by the FERC license. The FERC liability is unique. The FERC license will mandate the first infrastructure improvements to the Klamath Project in over fifty

years. These improvements are required under federal law to protect, enhance, and mitigate damages to water quality and decimated fish runs in the Upper Klamath Basin. If MEHC, as parent company, is not willing to invest capital necessary to bring the Klamath Project into timely compliance with law, Oregon not only fails to benefit, but may suffer actual harm from the acquisition.

The Tribe is seeking a condition in this proceeding that MEHC will guarantee or act as a financial surety for the costs associated with FERC license compliance. The Tribe is somewhat surprised at the Applicants strong resistance to such a condition. After all, the Tribe's suggested condition requires nothing more than a commitment by the Applicant, MEHC, to ensure that its newly acquired subsidiary, PacifiCorp, has sufficient capital to satisfy its legal obligations in a timely manner. The Applicants argue that such a commitment is beyond the scope of this proceeding, implying that this Commission lacks jurisdiction to ensure Oregon utilities have sufficient capital to meet their legal obligations. The Applicants' argument strikes broadly at the heart of this Commission's mandate to protect the public interest and should be rejected.

To date, neither the Tribe nor this Commission has any reason to believe that MEHC intends to assist PacifiCorp improve the Klamath Project, let alone meet its minimum legal obligations. Supplemental testimony filed by the Applicants only confirms their non-committal approach to investment in the Klamath Project:

- Q. Please address the concern relating to the ability of PacifiCorp to finance the re-licensing of PacifiCorp's hydro-electric projects across the Northwest.
- A. PacifiCorp is an investment grade public utility and assuming a reasonable business climate and opportunity to attempt to earn its allowed rate of return then MEHC is confident that PacifiCorp will be able to finance reasonable requirements associated with all future hydro re-licensing.

Supplemental Direct Testimony of Patrick J. Goodman, PPL Exhibit 404, filed October 2005.

According to this testimony, MEHC apparently believes that PacifiCorp must meet its legal obligations imposed by the FERC license only if: (a) the "business climate" is reasonable; (b) PacifiCorp can earn its allowed rate of return; and (c) the requirements of the license are reasonable.<sup>2</sup> This response ignores the reality of the situation. A legally binding license will be issued by FERC, and PacifiCorp will be expected to comply with, and pay for, the legal obligations contained therein regardless of the "business climate." MEHC, as PacifiCorp's parent company, should be obligated to step in and provide necessary capital if PacifiCorp, for whatever reason, is unable to finance the license obligations.

The Commission may ultimately disagree that the Tribe's requested condition is necessary, but that is for the Commission to decide after being presented with all the relevant evidence. The Applicants want to prevent the Commission from even considering how the acquisition will affect license compliance. That is improper.

The Applicants argue that the Commission can not focus on complaints about PacifiCorp's current operations. Whether or not that is true, the Applicants misconstrue the Tribe's data requests. The Tribe's requests do not focus on PacifiCorp's current operations, but solely relate to the estimated costs of the significant liability associated with the new FERC license after the current license expires on February 28, 2006. Complaints about current operations at the Klamath Project are being dealt with in the FERC proceeding. However, FERC will not evaluate how MEHC's proposed acquisition will affect PacifiCorp's ability to comply with the license conditions. Nor will FERC ensure that the MEHC acquisition provides a net public benefit to Oregon. That is the job of this Commission.

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<sup>2</sup> This attitude toward investment in the Klamath is quite different than the Applicants' representations in the Application where they state that the "chief benefit" of the transaction is MEHC's ability and willingness to deploy capital to meet PacifiCorp's significant infrastructure needs.

The California Public Utility Commission agreed with the Tribe that the costs of the upcoming FERC liability are relevant to the proposed MEHC acquisition of PacifiCorp. The California PUC, after considering arguments similar to those presented in Applicants' response brief, issued a scoping memo which stated:

Specific matters that are within the scope of this proceeding are as follows: . . .

How the proposed transaction will affect PacifiCorp's ability to finance, implement, and comply with any future conditions associated with PacifiCorp's Klamath River dams that may be imposed by the Federal Energy Regulatory Commission (FERC) or other body of competent jurisdiction.

See Assigned Commissioner's Ruling and Scoping Memo, 9/26/05, at p. 2, attached as **Exhibit**

**A**. One day later, the Administrative Law Judge in the California proceeding issued an order requiring the Applicants to file a supplement to their Application, providing the following information and documents:

2. Please provide a detailed explanation regarding whether and how the proposed acquisition of PacifiCorp by MidAmerican Energy Holdings Company (MEHC) will affect PacifiCorp's ability to finance, implement, and comply with any future conditions associated with PacifiCorp's Klamath River dams that may be imposed by the FERC or other body of competent jurisdiction.

See Administrative Law Judge's Ruling Directing The Applicants To File A Supplement To The Application, 9/27/05, at p. 1, attached as **Exhibit B**. The California PUC rejected the same arguments being presented by the Applicants to this Commission and agreed that the costs of the upcoming FERC liability are relevant to this proposed acquisition.<sup>3</sup>

The Commission should reject the Applicants' broad attack on its authority. The Commission can evaluate whether a proposed acquisition will facilitate or impair a utility's ability to satisfy its legal liabilities. Therefore, information regarding the upcoming FERC liability is relevant and discoverable in this proceeding. The motion to compel should be granted.

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<sup>3</sup> That some parties, including MEHC and the Hoopa Valley Tribe, were able to reach a settlement in California, does not indicate that sufficient data exist to address effects in Oregon.

**B. The Applicants' Responses To The Data Requests Were Inadequate, And The Additional Information Requested By The Tribe Would Have No Impact On FERC Settlement Negotiations.**

The Applicants argue that the one-page cost breakdown provided to the Tribe is adequate for the Tribe to present its case to the Commission. The Tribe does not think it unreasonable to request at least some modicum of supporting documentation for the very specific figures presented in the Applicants' breakdown. After the Tribe received the one-page estimate from the Applicants, it asked, as any reasonable litigant would, for documentation to support the cost estimates provided. The Applicants refused, resulting in this Motion to Compel.

The only argument presented by the Applicants to justify non-disclosure is that disclosure of this backup documentation would somehow undermine settlement negotiations in the FERC re-licensing. It is unclear why that is true. The Applicants have voluntarily disclosed an estimate of the costs of license compliance. The Tribe isn't asking for a different cost estimate (although the Tribe does think Applicants should be compelled to disclose its "high-cost" estimate in addition to the "low-cost" estimate already provided). The Tribe is simply asking for the information upon which those cost estimates are based. Applicants fail to explain how that supporting documentation would undermine PacifiCorp's settlement position - unless of course the cost estimates are completely baseless and unsupportable to begin with.<sup>4</sup>

Other questions that the Applicants refused to answer, relating to the financing of project improvements and the extent of information provided to MEHC about the Klamath Project, also have no ascertainable effect on any settlement of the FERC proceeding. The Applicant does not claim the data requests are burdensome; nor do they deny they have withheld material within the

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<sup>4</sup> The Tribe also objects to the Applicants' unfounded accusation that its data requests were based on illegitimate motives. The Applicants accusation is based on nothing but their unsupported conjecture and this Commission has no reason to believe such accusations.

scope of the requests. The Commission should compel disclosure of the unanswered questions and should require disclosure of relevant documentation for the cost estimates already provided.

In addition, the fact that some issues overlap in two pending proceedings does not mean a party can withhold otherwise discoverable information. If that were the rule, the Applicants could constantly object to discovery in this proceeding on the grounds that it would undermine settlement discussions in one of the other five parallel PUC proceedings regarding this proposed acquisition. It is doubtful that the Commission would accept such an argument.

The Tribe's data requests are well within the scope of this proceeding. Applicants have presented no adequate grounds to resist disclosure and the motion to compel should be granted.

DATED this 16th of November, 2005.

Respectfully submitted,

MORISSET, SCHLOSSER, JOZWIAK & MCGAW

/s/ Thomas P. Schlosser

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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of PacifiCorp (U-901-E) and MidAmerican Energy Holdings Company for Exemption Under Section 853(b) from the Approval Requirements of Section 854(a) of the Public Utilities Code with Respect to the Acquisition of PacifiCorp by MidAmerican.

Application 05-07-010  
(Filed July 15, 2005)

**ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO**

**1. Summary**

In Application (A.) 05-07-010, PacifiCorp and MidAmerican Energy Holdings Company (MEHC) (referred to jointly as "Applicants") request an exemption under Pub. Util. Code § 853(b)<sup>1</sup> from § 854(a) with respect to the proposed acquisition of PacifiCorp by MEHC. Sections 853(b) and 854(a) state, in relevant part, as follows:

**Section 853(b)**: The commission may...by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility...from [§ 854(a)] if it finds that the application thereof with respect to the public utility...is not necessary in the public interest.

**Section 854(a)**: No person or corporation...shall merge, acquire, or control...any public utility organized and doing business in this state without first securing authorization to do so from the commission...Any merger, acquisition, or control without that prior authorization shall be void and of no effect.

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<sup>1</sup> All statutory references are to the Public Utilities Code unless otherwise indicated.



A prehearing conference (PHC) was held on September 9, 2005. Pursuant to Rules 6(a)(3) and 6.3 of the Commission's Rules of Practice and Procedure (Rules), this ruling and scoping memo (collectively, "Ruling" ) determines the scope, need for evidentiary hearings, schedule, principal hearing officer, and the category of this proceeding. This Ruling also establishes certain procedures for the conduct of this proceeding.<sup>2</sup>

## **2. Scope of the Proceeding**

The general scope of this proceeding is whether to approve the Applicants' request to exempt the proposed transaction from § 854(a) pursuant to § 853(b). If it is determined that the proposed transaction should not be exempted from § 854(a), this proceeding will determine whether to approve the proposed transaction under § 854(a).<sup>3</sup> This proceeding will also determine what conditions, if any, should attach to the proposed transaction whether it is exempted under § 853(b) or approved under § 854(a).

Specific matters that are within the scope of this proceeding are as follows:

- How the proposed transaction will affect PacifiCorp's ability to finance utility infrastructure in general, without focusing on specific infrastructure projects.
- How the proposed transaction will affect PacifiCorp's ability to finance, implement, and comply with any future conditions associated with PacifiCorp's Klamath River dams that may be imposed by the Federal Energy Regulatory Commission (FERC) or other body of competent jurisdiction.

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<sup>2</sup> Parties were invited to submit written PHC statements, including parties that were unable to attend the PHC. All written PHC statements were considered in preparing this Ruling.

<sup>3</sup> See PHC transcript pages (pp.) 3 - 4.

Specific matters that are outside the scope of this proceeding are as follows:

- Issues that will continue to exist regardless of whether the proposed transaction is ultimately approved and consummated. These issues include (1) the provision of electric service to areas that currently lack service, and (2) adverse impacts associated with PacifiCorp's hydroelectric facilities on the Klamath River.
- Issues that are better addressed in other Commission proceedings, such as the type, location, and/or reasonableness of renewable resources that PacifiCorp will acquire in the future.
- Issues that are beyond the Commission's jurisdiction to resolve, including the imposition of conditions associated with the operation of PacifiCorp's Klamath River hydroelectric facilities that fall under FERC's exclusive purview.
- The costs, benefits, and other issues associated with each of the utility infrastructure investments that the Applicants commit to undertake in A.05-07-010 if the proposed transaction is approved.

This proceeding will not include a formal environmental review of the proposed transaction, as this proceeding will not review or approve any new construction, including changes to existing facilities and structures. Nor will this proceeding review or approve any changes to the operation of PacifiCorp's hydroelectric facilities.

Section 854(c) does not apply to the proposed transaction because neither of the Applicants has gross California utility revenues in excess of \$500 million per year.<sup>4</sup> Accordingly, the Applicants will not have to demonstrate that the proposed transaction satisfies § 854(c).

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<sup>4</sup> Section 854(c) states: Before authorizing the...acquisition...of any electric...utility...where any of the entities that are parties to the proposed transaction has gross annual California revenues exceeding...\$500,000,000, the commission shall consider each of the [following] criteria...and find, on balance, that the [proposed transaction] is in the public interest.

*Footnote continued on next page*

### **3. All-Party Conference**

The Applicants shall arrange and coordinate an all-party conference. The purpose of the conference is to identify and discuss the principal issues in this proceeding, resolve disputes, and prepare stipulations or settlements. Parties unable to attend may participate by telephone. Following the conference, the Applicants shall coordinate, file, and serve a joint conference statement that lists and describes the issues resolved and the issues still outstanding.

Parties are strongly encouraged to use this opportunity to narrow the issues. To the extent that issues remain, all-party stipulations of facts and applicable law will be useful in helping the Commission to resolve these issues.

### **4. Need for Hearings**

The Commission preliminarily determined in Resolution 176-3156, issued on July 21, 2005, that there is no need for evidentiary hearings in this proceeding. The Applicants oppose evidentiary hearings, but support a “quasi-legislative hearing” for parties to present their concerns and recommendations. Several of the parties have requested that evidentiary hearings be scheduled, but these parties have not identified any specific factual issues within the scope of this

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(1) Maintain or improve the financial condition of the resulting public utility doing business in the state. (2) Maintain or improve the quality of service to public utility ratepayers in the state. (3) Maintain or improve the quality of management of the resulting public utility doing business in the state. (4) Be fair and reasonable to affected public utility employees, including both union and nonunion employees. (5) Be fair and reasonable to the majority of all affected public utility shareholders. (6) Be beneficial on an overall basis to state and local economies, and to the communities in the area served by the resulting public utility. (7) Preserve the jurisdiction of the commission and the capacity of the commission to effectively regulate and audit public utility operations in the state. (8) Provide mitigation measures to prevent significant adverse consequences which may result.

proceeding.<sup>5</sup> Therefore, this Ruling affirms the Commission's preliminary determination that evidentiary hearings are not necessary.

Although this Ruling determines that evidentiary hearings are not necessary, parties may submit testimony in order to establish a factual record for their recommendations and arguments. Opening and rebuttal testimony should be served (but not filed) on October 19 and 27, 2005, respectively. All testimony should be verified in accordance with Rule 2.4. The need for the evidentiary hearings will be reassessed after reply testimony is served.<sup>6</sup> If evidentiary hearings are deemed necessary, they will be held on November 8 and 9, 2005.<sup>7</sup>

The Assigned Commissioner will hold a formal hearing on November 22, 2005, in San Francisco. In accordance with Rule 8(f)(2), the purpose of the formal hearing is to provide parties an opportunity to offer comments and arguments (but not testimony) on the record. Each party will have 20 minutes to make an opening presentation and 10 minutes for a closing presentation. There will not be cross examination. An agenda and ground rules for the hearing will be provided in a ruling issued by the assigned ALJ. Parties unable to attend the hearing may file and serve written presentations prior to the hearing.

There will be at least one public participation hearing (PPH). The date, time, and location of the PPH will be set in a subsequent ruling by the Assigned Commissioner or the assigned ALJ. In addition to the PPH, members of the

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<sup>5</sup> See, e.g., the PHC transcript (pp. 6, 7, 20, and 21) and the written PHC statements filed by American Rivers *et al.* (pp. 1-3, 5), the Hoopa Valley Tribe (p. 10), the Pacific Coast Federation of Fisherman's Associations *et al.* (p. 9), and the Office of Ratepayer Advocates (p. 6).

<sup>6</sup> If appropriate, a ruling will be issued by the Assigned Commissioner or the assigned Administrative Law Judge (ALJ) that sets evidentiary hearings and establishes the scope of the evidentiary hearings.

<sup>7</sup> If evidentiary hearings are not held, the assigned ALJ will issue a ruling that admits the written testimony into the record.

public may express their views about this proceeding by sending regular mail or e-mail to the Commission's Public Advisor. All such correspondence will be included in the formal file for this proceeding.

### **5. Procedure for Requesting a Final Oral Argument**

Parties may request a final oral argument before the Commission pursuant to Rule 8(d). Parties must include the request in the opening line of their concurrent opening briefs and should identify in the heading of the brief that the brief includes this request. If a party does not file an opening brief, it must file and serve a stand-alone request for a final oral argument.

### **6. Schedule**

The schedule for this proceeding, which is derived from the parties' proposals,<sup>8</sup> is as follows:

<b>Date</b>	<b>Event</b>
September 26, 2005 9:30 a.m.	<ul style="list-style-type: none"> <li>▪ Applicants arrange and coordinate an all-party conference in San Francisco to identify and resolve issues. Parties unable to attend may participate by telephone.</li> </ul>
September 27, 2005 9:30 a.m.	<ul style="list-style-type: none"> <li>▪ All-party conference continues, if appropriate. Parties unable to attend may participate by telephone.</li> <li>▪ Settlement talks may continue, as appropriate, after September 27, 2005.</li> </ul>
September 30, 2005	<ul style="list-style-type: none"> <li>▪ Applicants coordinate, file, and serve a Joint Conference Statement that lists and describes the issues resolved and the issues still outstanding.</li> </ul>
To Be Determined	<ul style="list-style-type: none"> <li>▪ Public Participation Hearing.</li> </ul>
October 19, 2005 12 noon	<ul style="list-style-type: none"> <li>▪ ORA and intervenor testimony served. Testimony must be verified in accordance with Rule 2.4.</li> </ul>

<sup>8</sup> The parties submitted proposed schedules on September 16, 2005.

Date	Event
October 27, 2005	<ul style="list-style-type: none"> <li>▪ Rebuttal testimony served. Reply testimony must be verified in accordance with Rule 2.4.</li> </ul>
Nov. 8 and 9, 2005 9:30 a.m.	<ul style="list-style-type: none"> <li>▪ Evidentiary hearings, if necessary, at the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco.</li> </ul>
November 18, 2005	<ul style="list-style-type: none"> <li>▪ Opening briefs.</li> <li>▪ Deadline to file &amp; serve requests for a final oral argument.</li> </ul>
November 22, 2005 10:00 a.m.	<ul style="list-style-type: none"> <li>▪ Formal Hearing before the Assigned Commissioner, at the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco.</li> </ul>
November 30, 2005	<ul style="list-style-type: none"> <li>▪ Reply briefs.</li> <li>▪ Case submitted.</li> </ul>
January 25, 2006	<ul style="list-style-type: none"> <li>▪ Draft Decision.</li> </ul>
February 24, 2006	<ul style="list-style-type: none"> <li>▪ Final Decision.</li> </ul>

As indicated above, the anticipated submission date is tied to the date that parties file concurrent reply briefs. The proposed decision will be filed as soon after submission as the ALJ's workload permits. Because the Commission has not yet set the dates for its public meetings in 2006, the dates for the proposed decision and the final decision are approximate only. As required by § 1701.5(a), the issues identified in this Ruling shall be resolved no later than 18 months from the date of this Ruling.

### **7. Category**

This Ruling affirms the Commission's preliminary determination in Resolution ALJ 176-3156, dated July 21, 2005, that this is a ratesetting proceeding as set forth in Rule 5(c). This Ruling's determination of category may be appealed in accordance with Rule 6.4.

**8. Principal Hearing Officer**

This Ruling designates ALJ Kenney as the principal hearing officer for this proceeding pursuant to Rule 5(l) for evidentiary hearings, if any. Commissioner Bohn will preside at the formal hearing on November 22, 2005.

**9. Ex Parte Communications**

This is a ratesetting proceeding in which evidentiary hearings might be held. Because there might be evidentiary hearings, this Ruling determines in accordance with Rule 6.6 that ex parte communications in this proceeding will be subject to the restrictions and reporting requirements set forth in § 1701.3(c) and Rules 7 and Rule 7.1.

**10. Organization and Service of Documents**

Parties shall limit their written testimony and briefs to matters within the scope of this proceeding. To the extent possible, parties should organize their written testimony and briefs in the same manner as the Applicants' testimony attached to A.05-07-010. All parties shall e-mail an electronic copy of their documents submitted in this proceeding to the assigned ALJ at tim@cpuc.ca.gov. The electronic copy must be Microsoft Word and/or Excel to the extent possible.

All documents must be served in accordance with Rules 2.3 and 2.3.1. These Rules require, among other things, that documents be served electronically, in a searchable format, unless a party has not provided an e-mail address. If no e-mail address has been provided, service should be made by United States mail. Parties shall provide concurrent e-mail service to all parties on the service list that have provided an e-mail address, including those listed under "State Service" and "Information Only."

**IT IS RULED** that:

1. The scope, need for hearings, and the schedule for this proceeding is set forth in the body of this Ruling. The assigned Administrative Law Judge (ALJ) may revise the schedule, as necessary.

2. Applicants shall arrange and coordinate an all-party conference in San Francisco, California, on September 26 and 27, 2005. The purpose of the conference is to identify and discuss the principal issues in this proceeding, resolve disputes, and prepare stipulations or settlements. Parties unable to attend may participate telephonically.

3. The Applicants shall coordinate, file, and serve a joint conference statement that lists and describes the issues resolved at the all-party conference and the issues still outstanding.

4. Requests for a final oral argument before the Commission must be filed and served no later than November 18, 2005.

5. The category for this proceeding is ratesetting. This determination of category may be appealed in accordance with Rule 6.4.

6. ALJ Kenney is designated the principal hearing officer pursuant to Rule 5(l) for evidentiary hearings in this proceeding, if any. Commissioner Bohn will preside at the oral arguments on November 9, 2005.

7. Ex parte communications are permitted subject to the restrictions and reporting requirements in Pub. Util. Code § 1701.3(c) and Rules 7 and 7.1.

8. Parties shall limit their written testimony and briefs to matters within the scope of this proceeding. To the extent possible, parties should organize their written testimony and briefs in the same manner as the Applicants' testimony attached to Application 05-07-010.



9. All documents must be served in accordance with Rules 2.3 and 2.3.1. These Rules require, among other things, that documents be served electronically, in a searchable format, unless a party has not provided an e-mail address. If no e-mail address has been provided, service shall be made by United States mail.

10. Parties shall provide concurrent e-mail service to all parties on the service list that have provided an e-mail address, including those listed under "State Service" and "Information Only."

11. All parties shall e-mail an electronic copy of their documents submitted in this proceeding to the assigned ALJ at tim@cpuc.ca.gov. The electronic copy must be Microsoft Word and/or Excel to the extent possible.

Dated September 26, 2005, at San Francisco, California.

/s/ JOHN BOHN  
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John Bohn  
Assigned Commissioner

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of PacifiCorp (U-901-E) and MidAmerican Energy Holdings Company for Exemption Under Section 853(b) from the Approval Requirements of Section 854(a) of the Public Utilities Code with Respect to the Acquisition of PacifiCorp by MidAmerican.

Application 05-07-010  
(Filed July 15, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING DIRECTING THE APPLICANTS TO FILE A SUPPLEMENT TO THE APPLICATION**

This Ruling requires PacifiCorp and MidAmerican Energy Holdings Company (collectively, Applicants) to file and serve a supplement to Application (A.) 05-07-010 by October 12, 2005, that provides the following information and documents:

1. Please provide a copy of the federal Hart-Scott-Rodino (HSR) filings that are mentioned on page 26 of A.05-07-010 and on pages 20-21 of Exhibit 400 appended to A.05-07-010. Please also provide (i) any federal response to the HSR filings, or (ii) the date when the "waiting period" expired without any federal response to the HSR filings.<sup>1</sup>
2. Please provide a detailed explanation regarding whether and how the proposed acquisition of PacifiCorp by MidAmerican Energy Holdings Company (MEHC) will affect PacifiCorp's ability to finance, implement, and comply with any future conditions associated with PacifiCorp's Klamath River dams that may be imposed by the Federal Energy Regulatory Commission or other body of competent jurisdiction.

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<sup>1</sup> If not available by Oct. 12, 2005, Items 1.i or 1.ii should be provided when it becomes available.

3. Decision (D.) 01-12-013 and D.99-06-049 (as modified by D.02-04-061 and D.99-10-059) adopted conditions applicable to previous transfers of control of PacifiCorp. Please state which of these previously adopted conditions (with any appropriate modifications) should apply to the proposed acquisition and which should not. If any of these conditions should not apply, please explain why.
4. What is the amount of the annual management fee, dividend, or similar disbursements, if any, that PacifiCorp will be expected to pay, either directly or indirectly, to its owner(s) after the transaction proposed in A.05-07-010 is consummated?
5. Please provide PacifiCorp's consolidated financial statements for each of the years 2002, 2003, and 2004 (i.e., financial statements that reflect PacifiCorp's subsidiaries listed on page 12 of A.05-07-010). The financial statements provided for each year should include an income statement, balance sheet, and cash flow statement prepared in accordance with generally accepted accounting principles (GAAP).
6. Please provide stand-alone financial statements for PacifiCorp's public utility operations for each of the years 2002, 2003, and 2004 (i.e., financial statements that do not reflect PacifiCorp's subsidiaries listed on p. 12 of A.05-07-010). The financial statements provided for each year should include an income statement, balance sheet, and cash flow statement prepared in accordance with GAAP.
7. Please provide a detailed projection of cash-flow that shows how PacifiCorp and its affiliates and subsidiaries acquired by MEHC will collectively generate (or otherwise obtain) sufficient cash during each of the next five years (i.e., 2006 through 2010) to pay for the cost of capital used by MEHC to acquire PacifiCorp while continuing to fund PacifiCorp's operations, maintenance, and capital expenditures at a level sufficient to provide safe and reliable service at reasonable rates. This projection should identify all significant assumptions (e.g., the assumed cost of capital used to acquire PacifiCorp).
8. Please provide any projected internal rates of return, return on investment, net present value, and/or similar analyses that the MEHC relied upon in deciding to acquire PacifiCorp.

9. A.05-07-010 states at page 13, “ It is projected that PacifiCorp’s service territories will require investment of at least \$1 billion per year, for the next five years, in order to assure reliable electric service. While the profile of the returns on these capital requirements was not compatible with ScottishPower’s continued ownership of PacifiCorp, MEHC is uniquely suited to undertake such investments.”
- a. Please provide a detailed explanation regarding why the “profile of the returns on these capital requirements was not compatible with ScottishPower’s continued ownership of PacifiCorp.”
  - b. Does the \$1 billion of annual capital expenditures refer to PacifiCorp as a whole (i.e., includes capital expenditures for the PacifiCorp subsidiaries listed on page 12 of A.05-07-010), or does it refer only to PacifiCorp’s public utility operations? If the former, what are the projected annual capital expenditures for the next five years for PacifiCorp’s public utility operations?
  - c. How much of the \$1 billion of annual capital expenditures will be spent on PacifiCorp’s public utility operations in California?
  - d. What was the amount of capital expenditures during each of the years 2002, 2003, and 2004 for (i) PacifiCorp’s public utility operations as a whole (including PacifiCorp’s non-California operations), and (ii) PacifiCorp’s public utility operations in California?
  - e. What is the amount of budgeted capital expenditures during 2005 for (i) PacifiCorp’s public utility operations as a whole (including PacifiCorp’s non-California operations), and (ii) PacifiCorp’s public utility operations in California.

The contents of the supplement required by this Ruling shall be verified in accordance with Rule 2.4 of the Commission’s Rules of Practice and Procedure. Applicants shall email an electronic copy of the supplement to the assigned Administrative Law Judge (ALJ) at [tim@cpuc.ca.gov](mailto:tim@cpuc.ca.gov). The electronic copy should be in Microsoft Word and Excel to the extent possible. Applicants shall also provide a hardcopy of the supplement to the ALJ.

**IT IS RULED** that:

1. Applicants shall file and serve by October 12, 2005, a supplement to Application 05-07-010 that contains the information and documents specified in the body of this Ruling.
2. The contents of the supplement shall be verified in accordance with Rule 2.4 of the Commission's Rules of Practice and Procedure.
3. Applicants shall email an electronic copy of the supplement to the assigned Administrative Law Judge (ALJ) at tim@cpuc.ca.gov. The electronic copy shall be in Microsoft Word and Excel to the extent possible. Applicants shall also provide a hardcopy of the supplement to the ALJ.

Dated September 27, 2005, at San Francisco, California.

/s/ TIMOTHY KENNEY

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Timothy Kenney  
Administrative Law Judge

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on November 16, 2005, I electronically filed the *Hoopa Valley Tribe's Reply in Support of Motion to Compel Responses to Data Requests* with the Public Utility Commission of Oregon. The original and (1) copy was mailed, via First-Class Mail, to:

Public Utility Commission of Oregon  
Attn: Filing Center  
PO Box 2148  
Salem OR 97308-2148  
Email: [Puc.Filingcenter@state.or.us](mailto:Puc.Filingcenter@state.or.us)

I further certify that I served a copy of the aforementioned document upon counsel via *First-Class Mail and/or E-mail* to the following addresses:

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COS - HVT's Reply in Supp. of Mot.  
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I declare the above to be true and correct under penalty of perjury. Executed November  
16, 2005, at Seattle, Washington.

/s/ Thomas P. Schlosser  
Thomas P. Schlosser