

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UM 1209

4 In the Matter of

5 MIDAMERICAN ENERGY HOLDINGS
6 COMPANY and PACIFICORP

7 Application for Authorization to Acquire
8 Pacific Power & Light, dba PacifiCorp

STAFF'S OPENING COMMENTS

9 Staff of the Public Utility Commission of Oregon submits the following Opening
10 Comments. Staff will (1) briefly explain the nature of this proceeding, (2) discuss its general
11 observations on the filing made by MidAmerican Energy Holdings Company (MidAmerican or
12 MEHC), and (3) provide a list of general areas of inquiry that guided staff's initial effort and
13 which to various degrees still merit further review and investigation.

14 **Nature of ORS 757.511 Proceedings**

15 The Commission's decision to approve or deny MidAmerican's application to acquire
16 Pacific Power & Light, dba PacifiCorp (PacifiCorp) is governed by ORS 757.511. ORS
17 757.511(3) provides the standard the Commission should apply when considering
18 MidAmerican's application. ORS 757.511(3) states, in relevant part:

19 If the Commission determines that approval of the application will serve the public
20 utility's customers in the public interest, the commission shall issue an order
21 granting the application. The commission may condition an order authorizing the
22 acquisition upon the applicant's satisfactory performance or adherence to specific
23 requirements. The Commission shall otherwise issue an order denying the
24 application. The applicant shall bear the burden of showing that granting the
25 application is in the public interest.

23 The Commission most recently considered ORS 757.511(3) in its Order No. 05-114
24 (Order). There, the Commission provided guidelines for how it would apply the statute.

25 The Commission first determined that the Applicant has the burden of proving that its
26 final package, including any offered conditions, "serves the public utility's customers in the

1 public interest.” Order at 16-17. In reviewing the meaning of the quoted language, which
2 appears in ORS 757.511(3), the Commission affirmed its earlier conclusion set forth in Order
3 No. 01-778 that an applicant under the statute must show its proposal would provide a “net
4 benefit” to the utility’s customers. Order at 17. The Commission declared that providing net
5 benefits is a specific way to cure the general concern enunciated in ORS 757.506 that a
6 transaction could harm customers. Putting this together, the Commission concluded that a
7 successful applicant must show the proposed transaction would (1) provide a net benefit to the
8 utility’s customers and (2) that it will not harm Oregon citizens as a whole. Order at 17-18.

9 In further considering the matter, the Commission concluded the net benefit standard
10 requires consideration of a “comparator.” In other words, the Commission found that it should
11 weigh an approval of the application against the likely operation of the utility should it deny the
12 application. The Commission suggested that the usual comparator would be the utility “as it is
13 currently configured.” Order at 18.

14 Finally, the Commission reviewed its statutory authority to impose conditions under ORS
15 757.511(3). The Commission noted there was a possible ambiguity in the statute. Under one
16 reading, the Commission must first approve the application as presented, and only then impose
17 conditions. Under a second reading, the statute grants the Commission authority to place
18 conditions on the application so that it meets the public interest test. The Commission decided
19 not to resolve this possible ambiguity but declared it would not in any event issue a conditional
20 order for the case at hand. Order at Summary; Order at 19-20.

21 **Staff’s Initial Observations about MEHC’s Application**

22 Staff is currently deeply involved with analyzing MidAmerican’s application to acquire
23 PacifiCorp. Thus, while staff appreciates the opportunity to provide these initial Opening
24 Comments, staff’s work is still preliminary. Some issues or areas of concern may yet arise,
25 while others may prove to be without merit upon further investigation and receipt of additional
26 information. The following is thus really a “snapshot” of staff’s work to date.

1 Preliminarily, the proper comparator is continued prudent operation of PacifiCorp by its
2 current owner, ScottishPower. Staff is unaware of any other proposal or plan for PacifiCorp that
3 would suggest a different outcome in the foreseeable future.

4 Turning to the application, as an overarching theme, using continued ownership under
5 Scottish Power as the comparator, staff is concerned that many of MEHC's alleged benefits of
6 the proposed acquisition are of little value or even nonexistent. In some, if not many, instances
7 MEHC's offered benefits to the acquisition represent nothing more than a promise to continue
8 the commitments ScottishPower has already made on behalf of PacifiCorp. Examples of alleged
9 benefits of this nature include (1) should the Commission deny the application, staff expects
10 ScottishPower would generally continue to make prudent investment in PacifiCorp's
11 infrastructure, (2) the value of MEHC's commitment to continue the Service Quality Measures
12 (SQMs) through 2011 is essentially worthless in light of the fact PacifiCorp has made the same
13 commitment through the year 2014, and (3) Scottish Power already embraces the customer
14 guarantees MEHC offers. *See generally* MEHC Application at PPL/100, Abel/13-14, 18.
15 Further, in considering this matter generally, it is important to note the Commission is familiar
16 with ScottishPower and its ability to fulfill all commitments made, while MEHC has an
17 unproven track record in working with the Commission.

18 In a similar vein, staff intends to carefully review other alleged benefits of the transaction
19 whose value may be less than MEHC represents. MEHC states that PacifiCorp's cost of long-
20 term debt would be reduced as a result of the proposed transaction, due to the association with
21 Berkshire-Hathaway. PPL/100, Abel/15-16; PPL/400, Goodman/8-9. MEHC estimates this
22 benefit as equal to approximately \$6.3 million over the five years post-Commission approval of
23 its application.

24 Staff is concerned that it will be difficult to measure this alleged benefit. MEHC
25 proposes to use "comparable companies" as a measurement standard, but the choice of
26 companies is likely to be contentious. Further, staff is uncertain whether it would have access to

1 the “all-in” costs of debt for comparable companies in the same timeframe. In other words, staff
2 may not have access to the appropriate information to verify that the cost of debt for PacifiCorp
3 was indeed lower than the other comparable companies. Further, staff is uncertain how it will
4 verify that the cost of debt is lower because of MEHC’s association with Berkshire Hathaway or
5 due to some other unrelated circumstance.

6 MEHC promises that the corporate overhead charges to PacifiCorp from the service
7 company and MidAmerican Energy Company (MEC) will not exceed \$9 million annually for a
8 five year period after the closing of the transaction. PPL/100, Abel/16; PPL/500, Specketer/10-
9 14. MEHC compares the \$9 million to an alleged \$15 million annual charge under continued
10 Scottish Power ownership. As such, MEHC claims a \$30 million benefit resulting from a
11 reduced overhead charge under its ownership.

12 Staff’s preliminary analysis of this claimed benefit shows it may be nonexistent. First,
13 staff believes that a more appropriate estimate of the overall annual overhead charge is \$11.7
14 million, not the claimed \$15 million. Further, MEHC fails to recognize that Pacific Power
15 Marketing (PPM), a PacifiCorp subsidiary, would stay with ScottishPower if MEHC’s
16 application is approved. As such, without the ability to assign a portion of overhead costs to
17 PPM, PacifiCorp’s allocation of corporate overhead charges would result in an *increased* charge
18 to PacifiCorp, potentially resulting in higher costs for its customers. Staff estimates this increase
19 to corporate overhead costs for PacifiCorp would be approximately \$3 million annually.

20 MEHC commits to conducting a company-defined third-party market potential study of
21 additional DSM and energy efficiency operations within PacifiCorp’s service areas. PPL/100,
22 Able/17-18. Staff will review the alleged benefit of this commitment to ensure it is not
23 duplicative or unnecessary given that the Oregon Public Purpose Funding and the Energy Trust
24 Organization may also provide such benefits. Oregon customers should not pay for ETO-like
25 services in other states and any alleged benefits of such a study may be duplicative with ETO’s
26 efforts.

1 In addition to analyzing MEHC's alleged benefits, staff has identified possible risks to
2 the proposed acquisition. Staff's review is not yet complete, so the list of potential risks may
3 grow, or some may ultimately be eliminated. Nonetheless, for the purpose of these Opening
4 Comments, staff identifies the following areas requiring further investigation: (1) impacts, if any,
5 of MEHC's decision to shift unidentified corporate executives from PacifiCorp's Portland
6 headquarters to Utah; (2) impacts of increased interconnection of MEC's and PacifiCorp's
7 system networks; (3) negative impacts, if any, to PacifiCorp's credit rating (currently MEHC is
8 rated BBB- and ScottishPower is rated BBB+); and (4) impacts, if any, of PacifiCorp losing
9 ScottishPower's affiliated insurer (Dornoch Risk International Limited) as its carrier for liability
10 insurance.

11 **General Areas of Inquiry**

12 Finally, staff initially identified the following areas of general inquiry and its review of
13 these matters is still ongoing:

- 14 1. Should the Commission grant the application under ORS 757.511?
- 15 2. If the Commission grants the application, what risk mitigation/ring fencing,
16 conditions and/or affiliated interest conditions should the Commission impose to
17 protect customers?
- 18 3. Will the acquisition of PacifiCorp under terms and conditions currently provided by
19 Applicants provide net benefits for customers and impose no harm on the public?
- 20 4. What service quality measures are proposed in the application? Do they provide a
21 benefit? Are any modifications necessary?
- 22 5. Should the Commission implement customer guarantees? (*See, e.g.*, Commission
23 Order No. 99-00616, Appendix Stipulation 5, pages 11-14).
- 24 6. What is MEHC's proposal for financing the acquisition and does it create any risks
25 for customers?
- 26 7. What access should the Commission have to the books and records of MEHC,
Berkshire Hathaway, their affiliates, and/or other investors in MEHC to protect
PacifiCorp's customers?

- 1 8. What are Applicants' plans for changing PacifiCorp's operations or management? If
2 no current plans exist, what plans are there for reviewing operations and management
3 at PacifiCorp?
- 4 9. What should be the terms and conditions of the Master Services Agreement?
- 5 10. Are there tax-related ratemaking issues that should be considered in this proceeding?
- 6 11. Are there cost savings or efficiencies available that would benefit ratepayers as a
7 result of the proposed acquisition? If so, how would potential cost savings benefit
8 customers?
- 9 12. Would potential cost saving efforts or efficiencies create a degradation of services
10 provided to ratepayers?
- 11 13. Does MEHC intend to establish any new unregulated subsidiaries of PacifiCorp or
12 MEHC, and are additional commitments required to protect PacifiCorp's customers?
- 13 14. How is MEHC's exposure to existing and potential lawsuits and/or liabilities affected
14 if this transaction is approved and what impact would that have on PacifiCorp's
15 customers?
- 16 15. What risks and benefits to PacifiCorp, if any, are associated with MEHC's other
17 business platforms?
- 18 16. What are the Applicants' plans for energy supply as it relates to renewable energy and
19 to issues affecting the development of renewables, such as transmission?
- 20 17. What effect, if any, would MEHC ownership have on PacifiCorp's credit quality?
- 21 18. What is needed to assure that there are adequate investments (e.g., maintenance and
22 infrastructure) to meet present and future needs?
- 23 19. What conditions affecting direct access service should be required as a condition of
24 the acquisition of PacifiCorp to facilitate the implementation of SB 1149 and to serve
25 the public interest?
- 26 20. What is the relevant comparator against which the benefits currently offered by
MEHC should be measured to determine if net benefits exist?
- 21. What plans are there to shift jobs from Oregon to Utah? What impact would these
plans have on local jobs?
- 22. To what extent does the Commission have authority over a change in investors in
MEHC and/or a change of control of MEHC?
- 23. To what extent would Brookshire-Hathaway control PacifiCorp through its ownership
of MEHC?

1 24. Should PacifiCorp/s power costs be independent of other MEHC companies
2 regardless of the level of interconnection?

3 25. What is the amount of good will in this transaction and should any amount of good
4 will ever be recovered in customers' rates?

5 DATED this 14th day of October 2005.

6 Respectfully submitted,

7 HARDY MYERS
8 Attorney General

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1 **CERTIFICATE OF SERVICE**

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3 I certify that on October 14, 2005, I served the foregoing upon the parties hereto by
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5 mail and by electronic mail to:

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