

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1209**

In the Matter of )  
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 )  
MIDAMERICAN ENERGY HOLDINGS )  
COMPANY, )  
 )  
Application for Authorization to Acquire )  
Pacific Power & Light, dba PacifiCorp. )  
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**THE CITIZENS' UTILITY BOARD OF OREGON'S  
MOTION TO MODIFY THE SCHEDULE**

November 1, 2005



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 MIDAMERICAN ENERGY HOLDINGS ) THE CITIZENS' UTILITY BOARD  
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**I. Introduction**

The Citizens' Utility Board of Oregon moves that an additional round of Applicant testimony be added to the schedule, and that remaining dates be modified accordingly.<sup>1</sup>

The primary basis for this Motion is that the existing schedule, given the Applicant's Opening and Supplemental Direct Testimonies, does not allow parties to respond sufficiently or effectively to the position of the Applicant, whatever that may be. After the submission of the Applicant's Direct Testimony, ultimately a schedule was adopted that included a round of Comments by Staff and intervenors, Applicant's Supplemental Direct due less than one week later, followed by two consecutive rounds of testimony from Staff and intervenors – Staff and intervenor Direct Testimony and All-Party Rebuttal Testimony. This means that Staff and intervenors must base the entirety

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<sup>1</sup> Given the desire to file this motion as quickly as possible, we did not attempt to gather cosponsors of the motion. Other parties may weigh in at the telephone conference on Wednesday, November 2, 2005.

of their cases on the record on the Applicant's Direct and Supplemental Direct Testimonies.

We believe, and the Applicant admits, that the Applicant's Direct Testimony is deficient in at least one key element of the case, and that the Applicant's Supplemental Direct was of minimal substance, offering us no further insight into the Applicant's plans and rationale for the transaction or response to the parties' comments. While the Applicant will not give us any more testimony to work with, the schedule allows for the Applicant to present the better part of its case, including rebuttal of Staff and intervenor arguments, when it files testimony concurrent with Staff and intervenors' second, and final, round of testimony. Staff and intervenors never get a full opportunity to respond to the Applicant's rebuttal of their testimony.

As a result, CUB, and we believe, Staff and other intervenors, are significantly harmed by having to make a case on a deficient application, not having the opportunity to file testimony addressing Applicant's response to our case, and suffering the likelihood of having to respond at the hearing to the bulk of the Applicant's case filed in its rebuttal.

The simple solution to this problem is an additional round of testimony by the Applicant between Staff and intervenor Testimony and the, what would now be, All-Party Surrebuttal. To accommodate this additional round of testimony, we propose adjusting the remaining schedule in a way that would move the hearing two or three weeks later, as in the following example:

Staff & Intervenor Testimony	Nov. 21, 2005
Applicant Rebuttal Testimony	Dec. 12, 2005
All-Party Surrebuttal	Jan. 6, 2006
Executive Summary and Cross-Examination Statements	Jan. 13, 2006
Opening Presentations to the Commission	Jan. 23, 2006
Hearings	Jan. 24-25, 2006

## II. Procedural History

Applicant filed its ORS 757.511 Application and Direct Testimony supporting the Application on July 15, 2005. At the August 2, 2005 prehearing conference, the parties agreed to a proposed schedule that culminated in hearings on January 23-24, 2006. In two rulings, dated August 4 and 5, 2005, Judge Smith did not accept the schedule proposed by the parties, and adopted a schedule that is approximately three weeks shorter than the agreed-upon schedule. The Judge's order provided the following schedule:

Applicant's letter on Effect of PUHCA Repeal on	Aug. 22, 2005
Deadline for Petitions to Intervene and Intervenor Budgets	Aug. 29, 2005
Workshops	Aug. 29-30, 2005
Staff & Intervenor Opening Comments	Oct. 14, 2005
Settlement Conference	Oct. 24, 2005
Oral Presentation to the Commission	Oct. 25, 2005
Applicants' Supplemental Direct Testimony	Oct. 28, 2005
Settlement Conference	Nov. 7, 2005
Staff & Intervenor Testimony	Nov. 21, 2005
All-Party Rebuttal Testimony	Dec. 12, 2005
Executive Summary and Cross-Examination Statements	Dec. 21, 2005
Opening Presentations to the Commission	Jan. 4, 2006
Hearings	Jan. 5-6, 2006
All-Party Opening Briefs	Jan. 27, 2006
All-Party Reply Briefs	Feb. 10, 2006

On August 10, 2005, the Joint Parties<sup>2</sup> filed a Motion for Certification, arguing in part that the shortened schedule prejudiced the Joint Parties, and that the initial round of

<sup>2</sup> The Joint Parties consisted of The Citizens' Utility Board, Industrial Customers of Northwest Utilities, Community Action Directors of Oregon and Oregon Energy Coordinators Association, Renewable Northwest Project, and the NW Energy Coalition.

Staff and intervenor Testimony is the only opportunity they have to respond to Applicant's case, given that the next round is All-Party Rebuttal with no intervening round of Applicant response. Joint Motion, page 6. The Commission responded on August 31, 2005, by upholding the adopted schedule, but modified it by moving the date for the Applicant's Supplemental Direct Testimony to October 20, 2005, less than a week after Staff and intervenor Comments were to be filed, in order to allow the parties to review the Applicant's Supplemental Direct before their Oral Presentations to the Commission.

### **III. Argument**

Based on how the accelerated schedule is playing out, on the content of the Applicant's Supplemental Direct, and on statements made by the Applicant at the Oral Presentation to the Commission, CUB believes that this schedule does not provide an adequate opportunity for the parties' to effectively put their cases before the Commission. In the Commission's rejection of the Joint Parties' Motion to Certify, the Commission stated:

We acknowledge the Joint Parties' concerns about the ability to respond to significant new issues raised in Supplemental Direct Testimony. If Supplemental Direct Testimony raises an issue that demands significant additional time and data to address, the Administrative Law Judge will entertain a motion to extend the schedule for Intervenors' Testimony at that time.

Order No. 05-970, page 2, August 31, 2005. Footnote omitted.

The problem, we now know, is not that the Applicant's Supplemental Direct raised new issues, as the Joint Parties feared (before the Commission moved the date of the Supplemental Direct up more than a week), but that the Applicant's Supplemental Direct addressed no issues substantively. The collapsed schedule did not provide time for

the Applicant to provide meaningful, substantive testimony addressing the concerns that the parties' laid out in their Comments. CUB now has time to respond to issues raised in the Applicant's Supplemental Direct, but the Supplemental Direct did not raise any issues to respond to. To state that the Applicant's Supplemental Direct was a total of 13 pages greatly exaggerates its content. It includes little except introductions to the exhibits, which are the Applicant's list of offered conditions and a comparison of repealed PUHCA provisions with new federal provisions.

We should point out, that even had the Applicant's Supplemental Direct been more robust, there is still the issue of it being a premature response. The filing of comments was to serve as initial arguments, not testimony. Our office had not exhausted our review of the data responses, or completed our analysis of the transaction prior to filing of our comments. In fact, we still do not know the full implications of our consultant's research and testimony. Indeed, Staff filed only seven pages of comments, three of which are mostly questions which indicate what Staff will focus on in its Testimony. How the Applicant could file responsive testimony to Staff's case or CUB's case, when we don't yet know what Staff's or our own case will be, is something of a mystery. A responsive filing made before testimony is filed is not responsive. Since this schedule anticipates that Staff and intervenors will file two rounds of testimony before we see a responsive filing from the Applicant, our ability to make a full case to the Commission is severely hampered.

To make matters worse, there are some significant issues left unexplained and unexplored by the Applicants. One major issue that we raise in our comments is the balance between investment and efficient operations in the Applicant's business plan, and

the effect that balance will have on rates. At the Oral Presentation, Greg Abel, representing the Applicant, said: "... a fundamental comment we've heard today is that MidAmerican and potentially Berkshire have the desire to invest without regard to our customers' interests or the potential implications on rates. And if I could start by saying that I am the first to acknowledge that our Application and the Testimony was probably deficient in that area."<sup>3</sup>

This Motion is not concerned with the substance of the business plan issue; rather, it identifies the concern that, even though the Applicant admits that its Application is deficient on the subject, and even though the Applicant's Supplemental Direct did nothing to shed more light on the subject, the current schedule has intervenors filing their two rounds of testimony before we hear from the Applicant again. When we do hear from the Applicant during All-Party Rebuttal, it will, most likely, be too late for us to effectively respond.

In most past 757.511 cases, as in most major rate cases, there have been five rounds of testimony. This allows for considerable back-and-forth debate over issues and concerns, as well as a full record supporting the Commission's decision. The parties can expose deficiencies in the original filing, the Applicant can supplement the record, the parties can then respond to that supplemented record, and the Applicant can respond in kind.

In this case, the Applicant's Direct Testimony is deficient on a fundamental point. While deficiency in an initial filing may not be unusual, the fact that the schedule in this docket does not provide for Staff and intervenors to respond to a meaningful filing by the Applicant addressing this point is extremely concerning. The next filing by the Applicant

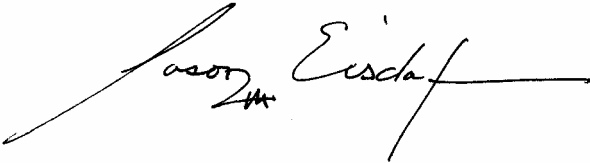
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<sup>3</sup> Greg Abel, Oral Presentation to the Commission, October 25, 2005. Transcribed by Shannon Floyd.

will not occur until after the parties have completed their cases on paper. This seriously handicaps Staff's and intervenors' ability to fully investigate the facts and evaluate the Applicant and its proposal.

The Applicant's desire for an expedited process does not outweigh the parties', and, indeed, the Commission's, need for a schedule that allows for an effective vetting of issues and concerns, a thorough case exploration, and a full, developed record. The current schedule does not allow for this. An additional round of Applicant testimony should be added between the two rounds of Staff and intervenor testimonies, and the rest of the schedule should be adjusted accordingly.

Respectfully Submitted,  
November 1, 2005,

A handwritten signature in black ink, appearing to read "Jason Eisdorfer". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jason Eisdorfer #92292  
Attorney for the Citizens' Utility Board of Oregon



**CERTIFICATE OF SERVICE**

I hereby certify that on this 1<sup>st</sup> day of November, 2005, I served the foregoing Motion of the Citizens' Utility Board of Oregon, in docket UM 1209 upon each party listed below, by email, or, when not available, by mail, postage prepaid, and upon the Commission by email and by sending 6 copies by U.S. mail, postage prepaid, to the Commission's Salem offices.

Respectfully submitted,



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 Jason Eisdorfer #92292  
 Attorney for Citizens' Utility Board of Oregon

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