

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1209

In the Matter of)	
)	
MIDAMERICAN ENERGY HOLDINGS)	
COMPANY)	RULING
)	
Application for Authorization to Acquire)	
Pacific Power & Light, dba PacifiCorp.)	

DISPOSITION: MOTION TO COMPEL GRANTED

On November 7, 2005, the Hoopa Valley Tribe (“Tribe”) moved to compel responses to data requests served on PacifiCorp and MidAmerican Energy Holdings Company (MEHC). The data requests related to costs estimated by PacifiCorp in relation to its obligations for FERC relicensing of the Klamath Hydro Project. PacifiCorp provided partial responses, but otherwise replied that the requests were irrelevant to the scope of this proceeding.

On November 14, MEHC and PacifiCorp responded to the Tribe’s motion, arguing that the information sought is irrelevant to this proceeding. The companies argue that the Tribe actually seeks the information to use in negotiations in the FERC relicensing proceeding, and that it would provide the Tribe with an unfair advantage in that proceeding. PacifiCorp also points to the August 26 ALJ Ruling on its motion limiting participation of several parties, including the Tribe, to issues related to the transaction under ORS 757.511. That ruling stated, in relevant part, the Tribe “will be required to establish how the issues they raise affect their members *in Oregon* and are otherwise relevant to the Commission’s application of ORS 757.511 in this proceeding.” ALJ Ruling, “Petitions to Intervene Granted; Participation Limited” (Aug 26, 2005).

The Tribe requested and received leave to file a response, and it filed that response on November 16, 2005. In its response, the Tribe argued that the Commission should not allow its jurisdiction to be limited by PacifiCorp, and noted that the Public Utilities Commission of the State of California rejected such limitations on its jurisdiction.

ORCP 36B(1) states that information is discoverable if it “appears reasonably calculated to lead to the discovery of admissible evidence.” Additionally,

OAR 860-014-0045 states that relevant evidence is that which tends “to make the existence of any fact at issue in the proceeding more or less probable than it would be without the evidence.”

The issues list established in this case broadly encompasses the issues raised by the parties that may be relevant to the proceeding. The ruling setting forth the issues list states: “The subject headings are designed to be inclusive * * *. Ultimately, the Commission will consider only those issues that are relevant to the transaction, that are within the Commission’s jurisdiction, and that pertain to whether the Application meets the legal standard under ORS 757.511.” ALJ Ruling, “Issues List Established” at 2 (Nov 1, 2005). Included on that list was the following item: “2. b. Acknowledgement and ability to pay possible liabilities pursuant to FERC relicensing of hydroelectric projects owned by PacifiCorp.” *Id.* Therefore, any request which is “reasonably calculated to lead to the discovery of admissible evidence” related to that issue must be satisfied.

I understand MEHC and PacifiCorp’s argument that the requested information is not relevant to the transaction or this proceeding under ORS 757.511. However, the Tribe has made a plausible argument that the Commission should consider whether this acquisition will affect PacifiCorp’s ability to meet its legal obligations.

As to MEHC and PacifiCorp’s argument that the Tribe seeks this information for use in another proceeding, to the extent that it is appropriate, the compelled responses should be submitted under the protective order which specifically provides, “All persons who are given access to any Confidential Information by reason of this order *shall not use or disclose the Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding*, and shall take all reasonable precautions to keep the Confidential Information secure. Disclosure of Confidential Information for purposes of business competition is strictly prohibited.” *See* Order No. 05-867 App. A at § 12 (emphasis added). Business competition is not the issue in this motion; use of the information in another proceeding is, and that use is strictly prohibited under the protective order.

The motion to compel is granted.

Dated at Salem, Oregon, this 17th day of November, 2005.

Christina M. Smith
Administrative Law Judge