

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1209

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

ORDER

DISPOSITION: CERTIFICATION GRANTED; SCHEDULE UPHELD AS MODIFIED

On August 10, 2005, a joint motion to certify was filed by the Citizens' Utility Board of Oregon, the Industrial Customers of Northwest Utilities, Community Action Directors of Oregon and the Oregon Energy Coordinators Association, Renewable Northwest Project, and NW Energy Coalition ("Joint Parties"). The Joint Parties sought to certify the Administrative Law Judge's August 4, 2005, Ruling which declined to adopt the schedule proposed at the prehearing conference by the parties and adopted a different schedule, which was later clarified in the August 5 Ruling. MidAmerican Energy Holdings Company (MEHC or Applicant) and Pacific Power & Light, dba PacifiCorp (PacifiCorp) responded on August 18, 2005. As noted in the August 4 Ruling, we were involved in discussions leading to the adoption of the schedule, and while the Commission does not typically involve itself in scheduling matters, we resolve this matter due to the magnitude of this case.

The Joint Parties state that the adopted schedule will result in unnecessary and undue prejudice to Intervenors, primarily because of the shortened response time between Applicant's Supplement Direct Testimony and the Intervenors' Testimony, and the arrangement of Opening Presentations to Commissioners one day prior to the hearing. We address each issue in turn.

First, the Joint Parties argue that they are prejudiced by shortening the period of time between Applicant's Supplemental Direct Testimony and Intervenors' Testimony. The shortened interval does not allow enough time to conduct discovery based on new issues raised by Applicant's Supplemental Direct Testimony, assert the Joint Parties. The Joint Parties also highlight that this is the only opportunity they will have to submit evidence to respond to Applicant's testimony.

MEHC and PacifiCorp respond that they would be willing to advance the deadline for the Supplemental Direct Testimony by one week, from the currently scheduled October 28 to October 21, 2005. In addition, they commit to “a five day, best-efforts discovery turn-around period” between the filing of Supplemental Direct Testimony and Intervenor’s Testimony.¹

Along with its initial application on July 15, MEHC submitted Direct Testimony. MEHC argues that its Direct Testimony is substantial and addresses many of the issues that would otherwise be addressed by its first round of testimony submitted later in the schedule. Because its initial Direct Testimony was so substantial, MEHC argues, Intervenor has sufficient time to reply and they will not be harmed by a shortened response time to the Supplemental Direct Testimony. The schedule in this case allows for Supplemental Direct Testimony to address new issues that may arise prior to submission of additional testimony, and for any unexpected events.

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 Intervenor’s Testimony at that time.² To allow parties time to review the Supplemental Direct Testimony in advance of Presentations to the Commissioners to be held October 25, we move the deadline for Supplemental Direct Testimony to October 20, 2005. Accepting MEHC’s offer to adjust its response times, as well as its assertion that its Supplemental Direct Testimony will be narrow in scope, we conclude that the resulting interval between Supplemental Direct and Intervenor’s Testimony is not an unreasonable amount of time.

Second, the Joint Parties argue that they are prejudiced by holding Opening Presentations to the Commissioners immediately prior to the hearing. They assert that the presentations will be of limited usefulness because the evidentiary record will not yet be complete. MEHC and PacifiCorp argue that because Opening Presentations mirror those included in ORCP 58,³ there is no prejudice in requiring the same in this proceeding.

¹ The parties always have the option of requesting a shortened response time for discovery requests, and that is common right before hearing. *See* ALJ Ruling, Dockets UF 4218/UM 1206, at 2 (July 19, 2005).

² These motions are often received and, for good cause, granted. *See* ALJ Ruling, Dockets UF 4218/UM 1206 (Aug 30, 2005) (granting joint motion for extension where response to data request is delayed); ALJ Ruling, UM 1121 (Jan 11, 2005) (granting extension of time due to release of confidential material to the media); ALJ Ruling, UE 161 (June 16, 2004) (modifying procedural schedule to accommodate settlement discussions).

³ ORCP 58B provides the order for a jury trial: first the jury will be selected and sworn, then “[t]he plaintiff shall concisely state plaintiff’s case and the issues to be tried; the defendant then, in like manner, shall state defendant’s case based upon any defense or counterclaim or both.” *Id.* at (3).

These Opening Presentations are an opportunity for each party to argue its case before the Commissioners and for Commissioners to ask questions. In past cases, the Commission held oral arguments after post-hearing briefing. This arrangement has been problematic. First, because the evidentiary record had already been closed, Commissioners were limited in the kinds of questions they could ask. In fact, many parties have raised concerns about the Commissioners asking questions that often required a factual response from a party witness. To address such concerns, Commissioners could ask the parties to provide additional evidence on a particular issue. However, this requires a burdensome process of reopening the record and setting a schedule for bench requests and rebuttal testimony to be submitted. Having the Opening Presentations occur contemporaneously with the evidentiary hearing allows the Commissioners to make a full inquiry into all issues. This order of events allows the parties to supplement the record, or move for an extension if further development of the record or additional time is necessary. Further, based on our experience in UM 1121 and other dockets, we believe that holding Opening Presentations prior to hearing will add value to the process.

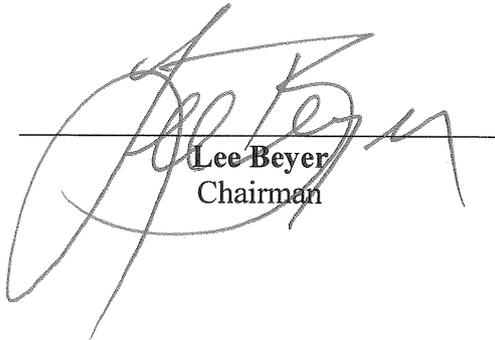
Additionally, the Joint Parties argue that they are prejudiced because the schedule proposed in this case is not as long as the schedule used in UM 1121, which lasted exactly one year from application to decision. We decline to adopt a rigid schedule for certain types of Commission cases and, instead, adhere to our practice of setting procedural schedules on a case-by-case basis. Here, we have made sought to learn from the events in UM 1121, as well as other prior cases, and have adopted a schedule designed to be more efficient and effective. If events or issues arise which require a deviation from the adopted schedule, parties may make a motion at that time and the Administrative Law Judge will decide if the schedule should be altered. Until then, we adhere to the adopted schedule, as modified per our discussion.

ORDER

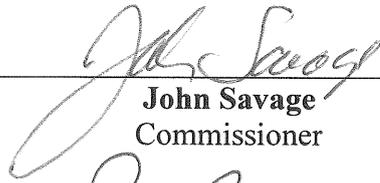
IT IS ORDERED that:

1. The deadline for Supplemental Direct Testimony is moved to October 20, 2005.
2. The time for MidAmerican Energy Holdings Company's and Pacific Power & Light, dba PacifiCorp's responses to data requests will be five days for data requests issued between October 20 and November 12, 2005.
3. The remainder of the schedule set forth in the August 4, 2005, Ruling is affirmed.

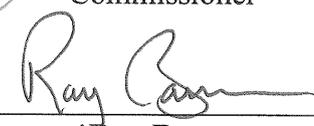
Made, entered, and effective AUG 31 2005 .



Lee Beyer
Chairman



John Savage
Commissioner



Ray Baum
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.