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November 16, 2005

Via Electronic and US Mail

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

Re: In the Matter of MIDAMERICAN ENERGY HOLDINGS COMPANY
Application for Authorization to Acquire Pacific Power & Light, dba PacifiCorp
Docket No. UM 1209

Dear Filing Center:

Enclosed please find an original of the Motion to Compel on behalf of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Please return one file-stamped copy of the document in the self-addressed, stamped envelope provided. Thank you for your assistance.

Sincerely,

/s/ Anna E. Studenny
Anna E. Studenny

Enclosure

cc: Service List (via email)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Motion to Compel of the Industrial Customers of Northwest Utilities upon the parties, on the official service list shown below for UM 1209, via electronic mail.

Dated at Portland, Oregon, this 16th day of November, 2005.

/s/ Anna E. Studenny
Anna E. Studenny

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1209

In the Matter of)	
)	
MIDAMERICAN ENERGY HOLDINGS COMPANY)	MOTION TO COMPEL OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES
)	
Application for Authorization to Acquire Pacific Power & Light, dba PacifiCorp.)	<i>(expedited consideration requested)</i>
_____)	

Pursuant to OAR 860-013-0031, the Industrial Customers of Northwest Utilities (“ICNU”) files this Motion to Compel (“Motion”) responses to ICNU’s data requests 7.11 and 7.12 to MidAmerican Holdings Company (“MEHC”) in Public Utility Commission of Oregon (“OPUC” or the “Commission”) Docket No. UM 1209. Given that intervenor testimony in this proceeding is due on November 21, 2005, ICNU requests that Administrative Law Judge (“ALJ”) Smith consider this Motion on an expedited basis pursuant to OAR § 860-013-0050.

BACKGROUND

On October 18, 2005, ICNU served data requests on MEHC that stated the following:

- 7.1 Please provide all documents and/or analyses that refer or relate to acquisition of the stock or assets of Portland General Electric by MEHC or Berkshire Hathaway.
- 7.2 Has Berkshire Hathaway or MEHC considered, studied, or analyzed acquisition of the stock or assets of Portland General Electric Company within the past five years?

MEHC responded on November 1, 2005, stating in response to each request that “MEHC objects to this data request on grounds that it seeks information that is irrelevant to any issue under

review in Docket No. UM 1209.” A copy of MEHC’s responses to ICNU DRs 7.11 and 7.12 is attached.

On or about November 4, 2005, counsel for ICNU contacted counsel for MEHC to reassert this request, stating that the rules of discovery in OPUC proceedings allow for broader discovery than merely “relevant information.” Counsel for ICNU inquired whether any responsive documents existed, and counsel for MEHC indicated that she would inquire and respond.

On November 14, 2005, counsel for ICNU contacted counsel for MEHC by email to inquire about the response to this data request as well as other outstanding responses to ICNU’s data requests. Receiving no response to that inquiry, counsel for ICNU left a voice message for MEHC counsel on November 16, 2005, and spoke to Counsel for MEHC later that day. Counsel for MEHC represented that MEHC continued to object on the basis of relevance and that the parties had reached the point in discussions that it would be necessary for a motion to compel to be filed if ICNU intended to pursue this issue.

ICNU submits this Motion to Compel at this time, requesting that the ALJ order MEHC to provide any documents responsive to these requests. Pursuant to OAR § 860-014-0070, ICNU certifies that it conferred with MEHC prior to filing this Motion and has been unable to resolve the dispute.

ARGUMENT

The Commission has recognized that “[d]iscovery is a right afforded to parties in a legal proceeding by our rules and by the Oregon Rules of Civil Procedure, which we follow except where our rules differ.” Re PGE, OPUC Docket No. UE 102, Order No. 98-294 at 3 (July

16, 1998); see OAR § 860-011-0000(3). ORCP 36B(1) allows broad discovery of information “regarding any matter, not privileged, which is relevant to the claim or defense of the party seeking discovery” The Oregon courts and the Commission have interpreted this provision to mean that the information sought need not be admissible itself, as long as it is reasonably calculated to lead to the discovery of admissible evidence. Baker v. English, 324 Or. 585, 588 n.3 (1997); Re Portland Extended Area Service Region, OPUC Docket No. UM 261, Order No. 91-958 at 5 (July 31, 1991). In addition, when the courts have limited the scope of discovery, restrictions typically have been directed at the use of, rather than the acquisition of, the information sought. Vaughan v. Taylor, 79 Or. App. 359, 365 (1986). The Commission rules do not impose any additional limitations on the scope of discoverable information. OAR §§ 860-014-0070, 860-011-0000(3).

ICNU’s data requests are within the scope of discoverable information in this proceeding in that they are reasonably calculated to lead to the discovery of admissible evidence. OPUC Docket No. UM 261, Order No. 91-958 at 5. MEHC has proposed to acquire PacifiCorp, one of two investor-owned utilities that provide electric service in the City of Portland. The other investor-owned utility providing electric service in the City of Portland is Portland General Electric Company (“PGE”), the subject of ICNU’s data request. Information regarding MEHC’s investigation of the purchase of PGE is relevant to determining whether approval of MEHC’s application is in the public interest. If MEHC were to acquire PacifiCorp and PGE, it would have substantial control over the two major providers of electric service in Portland and many other areas of Oregon. Such a situation is relevant to a determination as to whether MEHC’s present application is in the public interest and should be approved.

WHEREFORE, ICNU requests that the ALJ grant this Motion to Compel.

Dated this 16th day of November, 2005.

Respectfully submitted,

/s/ Matthew Perkins

Melinda J. Davison

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Of Attorneys for Industrial Customers
of Northwest Utilities

UM-1209/PacifiCorp
November 1, 2005
ICNU 7th Set Data Request 7.11

ICNU Data Request 7.11

Please provide all documents and/or analyses that refer or relate to acquisition of the stock or assets of Portland General Electric by MEHC or Berkshire Hathaway.

MEHC's Response to ICNU Data Request 7.11

MEHC objects to this data request on grounds that it seeks information that is irrelevant to any issue under review in Docket No. UM-1209.

UM-1209/PacifiCorp
November 1, 2005
ICNU 7th Set Data Request 7.12

ICNU Data Request 7.12

Has Berkshire Hathaway or MEHC considered, studied, or analyzed acquisition of the stock or assets of Portland General Electric Company within the past five years?

MEHC's Response to ICNU Data Request 7.12

MEHC objects to this data request on grounds that it seeks information that is irrelevant to any issue in Docket No. UM-1209.