

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)
_____)

BENCH REQUEST BRIEF
OF THE
CITIZENS' UTILITY BOARD OF OREGON

February 6, 2006



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I. Introduction

At the request of the Public Utility Commission, CUB is filing this Brief to clarify our conclusion that the stipulation with MidAmerican Energy Holdings Company substantially addresses the concerns raised in our Comments and Opening Testimony, and brings additional benefits to PacifiCorp's Oregon customers. We believe the Stipulation offers customers a net benefit over any residual harms, and thus satisfies the statutory test in ORS 757.511.

It is important to appreciate that some of the parties' concerns were addressed quantitatively, some qualitatively, some functionally, and a few not at all. Nevertheless, between the commitments designed to mitigate concerns and those designed to create new benefits, in our judgment, the overall settlement satisfies the net benefit standard.

II. CUB Comments

Before we examine the issues raised in our Testimony, we want to emphasize the value of the Comments CUB sponsored, especially the Comments of Lynn Hargis. We think Ms. Hargis' Comments should be used by any utility regulator faced with a merger or acquisition of a regulated utility in the new post-PUHCA world. We certainly learned an enormous amount from her Comments, and applied those lessons to our Testimony and negotiations in this case. We commend to the Commission future reference to Ms. Hargis' comments as we make our way in the new regulatory context.

III. CUB Testimony

A. Overview

CUB filed testimony from Bob Jenks and Jim Dittmer, and each witness raised a number of issues. Our intent is to identify the major issues raised by CUB witnesses, and to identify MidAmerican's response in its Testimony, Commitments, or the Stipulation that mitigate or eliminate the potential harms of the transaction. This Brief is not intended to be an exhaustive correlation between harms and commitments, but, instead, is intended to show how MidAmerican's response to CUB's concerns led to our determination that the net benefit standard of ORS 757.511 was met.

B. Rate Impacts

A major issue raised in Mr. Jenks' Testimony was MidAmerican's offer of \$1.3 billion of new investment in PacifiCorp's system. A net present value calculation presented by Mr. Jenks showed the overall investment to be a net harm, not a benefit, to

customers. CUB/100/Jenks/9-21. These investments primarily included transmission upgrades and emission control technology. Mr. Jenks deconstructed the value of these investments using the information available in MidAmerican's initial Testimony and from data responses and discovery, and demonstrated that the proposed benefit to customers would actually result in a net harm of \$77 million. CUB/100/Jenks/15.

In Rebuttal Testimony, MidAmerican reveals that only about \$400 million of its proposed investment is incremental to PacifiCorp's existing investment plan, and that MidAmerican would be able to eliminate or defer another \$400 million from the PacifiCorp plan. PPL/312/Gale/7. This new information made clear that the actual MidAmerican incremental investment plan did result in a positive net present value. PPL/313/Gale/1. This new information also meant, of course, that a good portion of the proposed benefit from the proposed system investments was not incrementally better than PacifiCorp's status quo plan. For additional benefits we had to look elsewhere.

While this new information effectively rebutted Mr. Jenks' Testimony addressing MidAmerican's investment plan, it is also clear that this issue caused MidAmerican to more carefully consider the rate impacts of its proposals. As a result, MidAmerican responded to CUB's analysis in commitments designed to directly reduce rates. MidAmerican agrees to \$142 million in system-wide, off-settable rate credits (O7 through O12), including a reduction of non-fuel costs of the West Valley lease (O8), and a \$6 million annual reduction in PacifiCorp A&G costs through 2010 (O12). In addition, there are commitments addressing low-income bill payment assistance which we address below.

C. Shareholder Return & Increasing Rate Base Vs Efficient Operations

Mr. Jenks analyzed MidAmerican's business plan for PacifiCorp, and, in the Company's related Testimony, discovered that MidAmerican had made no meaningful exploration of finding efficiencies and streamlining PacifiCorp's operations, while seeming too eager to invest capital in PacifiCorp's system in order to maximize shareholder earnings. CUB/100/Jenks/5-7 and 21-25.

We explored these concerns in settlement negotiations, and MidAmerican responded in several ways. In regard to operating efficiencies, MidAmerican commits to the rate discipline measures identified above in O7, O8, and O12. The future desire to rate base capital investment is harder to limit by commitment. However, in recognition of this concern, MidAmerican agreed to deemphasize an early commitment on renewable resources that promised consideration of a rate-base option for wind (which would be a prudent consideration anyway). In contrast, O25, in which MidAmerican commits to acquire 400 MW of renewables by the end of 2007, assumes an "RFP procedure" and includes a statement that "all other things being equal, MEHC and PacifiCorp will not prefer ownership of facilities."

D. MidAmerican In A Post-PUHCA World

CUB raised a set of issues included under the umbrella of a utility operating in a post-PUHCA world. The concerns included the ultimate size of, and number of, utilities under a single holding company, oversight of affiliate transactions, access to books and records, the complexity of the corporate structure, and other related issues.

CUB/100/Jenks/34-44 and CUB/201/Dittmer/17-26.

MidAmerican responded by committing to retain and allow access to pertinent documents beyond MidAmerican, and up to Berkshire Hathaway (3, 4), to seek approval of its cost allocation method (13, 14, O6), to seek approval to make loans to transfer funds to MidAmerican, Berkshire Hathaway, or their subsidiaries (20), and to seek approval of a merger without regard to the utility having service territory in Oregon (O4). Further, the Stipulation offers to its signatories, access to senior executives, and a commitment to share plans regarding potential legislation or possible acquisition of an Oregon utility. Stipulation, page 7.

Finally, the parties negotiated extensive ring-fencing to ensure that PacifiCorp is adequately capitalized and is sufficiently separated from its parents' other business activities. Among other things, MidAmerican agrees to the extensive ring-fencing measures that were part of the NNGC acquisition (11), to maintain separate debt (15), to keep within certain capital structure limits (O15), to not reduce equity levels without Commission approval (28), and to temporarily tie assumed yield for debt to rating agency downgrades (O14). There are numerous other commitments to protect customers from financial harms resulting from the transaction, such as exclusion of transaction costs (16), MidAmerican's agreement to not seek a higher cost of capital due to the transaction (21), and the exclusion of the acquisition premium from rates (O13).

E. Low-Income, Public Purposes & The Environment

In Testimony, CUB wonders how this new owner would view utility-related policy issues, especially in light of the admitted potential for serial rate increases and the

growing environmental concerns related to a coal-heavy utility. CUB/100/Jenks/32-34 and 28-30.

First, MidAmerican agrees to guarantee at least \$400,000 per year for five years raised by the Company for low-income bill payment assistance (O22) and to fund an arrearage management study (O21).

Second, MidAmerican agrees to support extension of the 3% public purposes charge from SB 1149 under appropriate circumstances, and to support continued operation of the Energy Trust (O19). MidAmerican will fund a \$1 million system-wide DSM potential study (44). MidAmerican also commits to acquire 300 MW of incremental renewable generation (for a total of 400 MW) by the end of 2007 (O25), and to file a ten-year plan for achieving the 1400 MW that is supported by PacifiCorp's current IRP (O26).

Finally, MidAmerican commits to form a global warming working group to examine ways to reduce PacifiCorp's carbon footprint (42), and an IGCC working group to study IGCC resource acquisition options (41, O31, O31).

F. Local Presence

CUB raised the issue of the potential shift of both workforce and policy influence from west to east. CUB/100/Jenks/39-44. While very real, this potential harm is difficult to control without actually managing PacifiCorp. Nevertheless, MidAmerican commits

to keep Pacificorp's headquarters in Portland, and to maintain a balance of corporate and senior management positions between Oregon and Utah (O2). As mentioned above, the Stipulation also grants its signatories access to senior PacifiCorp executives to discuss policy matters. Stipulation, page 7.

G. Application Of ORS 757.511

Finally, CUB expressed significant concerns in written and oral comments to the Commission that the integrity of ORS 757.511 might be undermined if the requirement to submit an application to exercise influence over the utility were not applied to substantial holders of economic interest in PacifiCorp such as Berkshire Hathaway, Warren Buffett, and Walter Scott. We will not rehash the legal argument here, because, after extensive negotiation, the parties agreed to a path that moots the question. Berkshire Hathaway has become an applicant in the ORS 757.511 filing. Msrs. Buffett and Scott, both either direct or indirect significant shareholders of MidAmerican, filed affidavits disclaiming control over PacifiCorp, recusing themselves from voting matters regarding PacifiCorp, and requiring the future transferees of their MidAmerican or Berkshire Hathaway shares to abide by the same limitations. See Amended Application, Affidavit of Walter Scott, Jr. and Affidavit of Warren E. Buffett.

IV. Conclusion

In closing, the Stipulation and MidAmerican's Commitments sufficiently address the concerns CUB expressed in our Comments and Testimony, as well as provide a number of benefits for PacifiCorp's Oregon customers, thereby satisfying the statutory test in ORS 757.511. In addition, MidAmerican's creativity and willingness in settlement

negotiations give us comfort that, as the parent company of PacifiCorp, it will be responsive to Oregon's concerns in the future.

Respectfully Submitted,
February 6, 2006

A handwritten signature in black ink that reads "Jason Eisdorfer". The signature is written in a cursive style 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 6th day of February, 2006, I served the foregoing Bench Request Brief 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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