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August 18, 2005

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VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
P.O. Box 2148
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Re: Docket UM 1209

Enclosed for filing is MEHC's and PacifiCorp's Response To Joint Motion For Certification in the above proceeding. A hard copy was served on all parties listed on the attached certificate of service.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Katherine A. McDowell', with a long, sweeping horizontal stroke at the end.

Katherine A. McDowell

KAM:jmd
Enclosures
cc: Service List

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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1209

In the Matter of MIDAMERICAN
ENERGY HOLDINGS COMPANY’S
Application for an Order Authorizing
MEHC to Exercise Substantial Influence
Over the Policies and Actions of PacifiCorp

**MEHC’s AND PACIFICORP’s
RESPONSE TO JOINT MOTION FOR
CERTIFICATION**

Pursuant to OAR 860-013-0035 and 860-013-0050, MidAmerican Energy Holdings Company (“MEHC”) and PacifiCorp (collectively, the “Filing Parties”) provide the following response to the Joint Parties’¹ Motion for Certification of Administrative Law Judge Christina M. Smith’s August 4, 2005 Ruling establishing the procedural schedule in UM 1209 (“Joint Motion for Certification”).

1. As a general matter, the Filing Parties can support any reasonable procedural schedule that results in a Commission order by the end of the suspension period of February 28, 2006. The Filing Parties believe that a reasonable procedural schedule is one that accommodates the needs of the Commission to develop an orderly and complete record and the needs of Staff and Intervenors to constructively and fully respond to the Application. The Filing Parties believe that the schedule contained in the ALJ’s August 4, 2005 Ruling (“August 4 Ruling”) meets these goals.

A reasonable procedural schedule also needs to respect the practical limitations and constraints associated with the fact that this case is now pending in five other states. The Filing Parties appreciate the ALJ’s consideration in setting the current hearing dates of

¹ The parties to this motion are the Citizens’ Utility Board, the Industrial Customers of Northwest Utilities, Community Action Directors of Oregon and the Oregon Energy Coordinators Association, Renewable Northwest Project, and NW Energy Coalition (collectively, the “Joint Parties”).

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1 January 5-6, 2006, a schedule that avoids conflicts with hearings now set in other states in
2 this case and with hearings in PacifiCorp’s Washington rate case. The Filing Parties
3 respectfully request that any Commission order in response to the Joint Motion for
4 Certification adhere to the current January 5-6 hearing dates because of conflicts on other
5 dates in December 2005 and January 2006. Furthermore, the Filing Parties and others have
6 agreed to a schedule in Wyoming and are now negotiating a schedule in Idaho that assume
7 that the Oregon hearing will occur as scheduled.

8 2. OAR 860-012-0035 gives the ALJ the authority to set a schedule and requires
9 the ALJ to “maintain order” in this case. Because the ALJ’s August 4 Ruling is a procedural
10 order that falls squarely within the ALJ’s rights and duties, it is an unusual candidate for
11 certification to the Commission under OAR 860-014-0091. By its terms, the certification
12 option is reserved for rulings that “may result in substantial detriment to the public interest or
13 undue prejudice to any party,” a standard that appears to implicate more substantive subject
14 matter than the terms of a particular testimony filing date within a case schedule.

15 3. The Joint Motion for Certification seeks a Commission ruling adopting the
16 schedule the parties proposed at the pre-hearing conference instead of the schedule
17 announced in the August 4 Ruling. The “undue prejudice” alleged in the Joint Motion is not
18 the rejection of a stipulated schedule, however, nor could it be. Under OAR 860-014-
19 0085(4), a stipulation among the parties “shall not be binding on the Commission or
20 Administrative Law Judge (ALJ).” In any event, the ALJ made clear in the Ruling of
21 August 5, 2005 that she modified the proposed schedule for good cause: “The schedule
22 ultimately adopted uses some of the dates and events in the proposed schedule, but modified
23 other events to better serve the needs of the Commission to develop a sound factual record
24 and arguments in a timely fashion.” The Filing Parties supported the schedule proposed at
25 the pre-hearing conference. Based on the ALJ’s representation that the schedule in the
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1 August 4 Ruling will better serve the Commission’s needs in this case, the Filing Parties
2 support the revised schedule set forth in that ruling.

3 4. The ALJ’s responsibility for case management is particularly important in
4 ORS 757.511 proceedings. The statute gives the Commission a dual mandate: the duty to
5 examine and investigate an application and the duty to do so “promptly,” a term defined by
6 the statute as 19 business days or less. While MEHC has agreed in this case to add
7 approximately seven months to the 19-business day suspension period, for the reasons stated
8 in its Application, it has not waived the requirement of ORS 757.511 that the Commission’s
9 examination and investigation be conducted “promptly.” The schedule set forth in the
10 August 4 Ruling balances the requirements of ORS 757.511 by permitting a prompt but
11 thorough examination and investigation.

12 5. The Joint Motion for Certification complains that the schedule adopted in the
13 August 4 Ruling departs significantly from the schedule followed in UM 1121. The
14 Commission has historically set a wide range of schedules in ORS 757.511 proceedings, with
15 the UM 1121 schedule ranking as one of the most protracted. Others have been shorter than
16 the seven and one-half month schedule set for this case in the August 4 Ruling. *See, e.g., In*
17 *re NW Natural’s Acquisition of PGE*, UM 1045 (scheduled for final order on May 28, 2002,
18 six months after November 28, 2001 filing); *In re PacifiCorp Holdings, Inc.* (internal
19 restructuring proposal approved under ORS 757.511 within two months of filing).

20 In general, the more straightforward the application, the more truncated the schedule.
21 The Application here involves the acquisition of PacifiCorp by a well-financed, deeply
22 experienced energy company interested in long-term ownership. This is a much more
23 straightforward transaction than the highly-leveraged, short-term acquisition of PGE
24 proposed by a non-energy company, Oregon Electric Utility Company, LLC and TPG
25 Partners III and IV, LLP (collectively “TPG”) in UM 1121.

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1 6. This case also differs from UM 1121 because the Filing Parties have had an
2 opportunity to observe and learn from procedural problems that occurred in that case. In pre-
3 filing discussions with stakeholders, many expressed dissatisfaction with the case process in
4 UM 1121. The Filing Parties responded to this feedback by filing a comprehensive
5 Application, with a full set of testimony responding to the concerns and issues raised in the
6 pre-filing discussions. The Filing Parties agreed in their initial filing to dozens of
7 commitments derived from other merger proceedings, avoiding the need to negotiate or
8 litigate these in this case. The Filing Parties also instituted procedures to expedite the
9 discovery process in this case, including opening an electronic data room stocked with
10 hundreds of background documents. The Filing Parties respectfully submit that these
11 procedural changes make the UM 1121 schedule inapplicable as precedent here.

12 7. The Joint Motion for Certification bases its claim of “undue prejudice” on the
13 change in the date for Staff and Intervenor Testimony from December 12, 2005 to November
14 21, 2005. The Motion focuses primarily on the fact that Staff and Intervenor Testimony is
15 now due 24 days instead of 45 days after the Applicant’s Supplemental Direct Testimony.
16 As a practical matter, the Filing Parties believe that the Staff and Intervenor testimony will
17 focus most significantly on Applicant’s Direct Testimony filed on July 15, 2005, because it
18 anticipates that Applicant’s Supplemental Direct Testimony will be relatively narrow in
19 scope. The November 21, 2005 deadline for the Staff and Intervenor testimony is more than
20 four months after the filing of Applicant’s Direct Testimony.

21 8. To address the concerns raised in the Joint Motion for Certification about the
22 shortened period between Applicant’s Supplemental Direct Testimony and the Staff and
23 Intervenor Testimony, the Filing Parties offer to file Applicant’s Supplemental Direct
24 Testimony on an earlier date, such as October 21, 2005, at the ALJ’s direction.
25 Additionally, to address concerns about the ability to conduct discovery on Applicant’s
26 Supplemental Direct Testimony, the Filing Parties agree to a five-day, best-efforts discovery

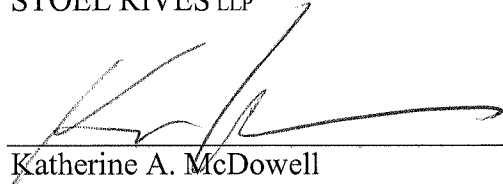
1 turn-around period between the filing of Applicant's Supplemental Direct Testimony and the
2 filing of Staff and Intervenor Testimony.

3 9. The Filing Parties also pledge to continue to take all steps within their control
4 to expedite normal procedures in this case. In this regard, the Filing Parties have expedited
5 the PUHCA repeal-related changes to their initial filing due on August 22, 2005, and filed
6 these revisions on August 17, 2005.

7 10. The Joint Motion for Certification also claims that holding Opening
8 Presentations on January 4, 2006 is prejudicial because it may impinge on the ability to
9 prepare for hearing. The Commission has adopted the Oregon Rules of Civil Procedure
10 under OAR 860-011-0000(3). Under ORCP 58, opening statements are a normal part of trial
11 procedure. The August 4, 2005 Ruling cannot be deemed prejudicial on the basis that it
12 includes such a requirement.

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14 DATED: August 18, 2005.

15 STOEL RIVES LLP

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Katherine A. McDowell

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CERTIFICATE OF SERVICE

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2 I hereby certify that I served the foregoing document in docket UM 1209 on the
3 following named person(s) on the date indicated below by

- 4 Mailing with postage prepaid
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