

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1209

In the Matter of)	
)	
MIDAMERICAN ENERGY HOLDINGS)	OPENING COMMENTS OF
COMPANY)	PUBLIC POWER COUNCIL
)	
Application for Authorization to Acquire)	
Pacific Power & Light, dba PacifiCorp.)	
_____)	

A. Introduction

In accordance with the schedule set forth in the Commission’s August 4, 2005 ruling, the Public Power Council (PPC) submits these opening comments on the proposed acquisition of PacifiCorp by MidAmerican Energy Holding Company (MEHC). Because PPC is assessing the application and testimony in this proceeding in an effort to evaluate the “big picture” presented by the transaction, PPC hopes that its participation will be of special assistance to the Commission in determining whether to approve MEHC’s application. At this point in the proceedings, PPC is not asserting a position on whether the Commission should approve the application, but takes this opportunity to present its current thoughts on MEHC’s claim of net benefits from the transaction, and the transaction’s effect on the public interest.¹

¹ Under Oregon law, before it can acquire PacifiCorp, MEHC has the burden of demonstrating 1) that the transaction will result in “net benefits” for customers, and 2) that the transaction is “in the public interest.” ORS § 757.511(3); *In re A Legal Standard for Approval of Mergers*, Docket UM 1011, Order No. 01-778 at 11 (Sept. 4, 2001).

B. PPC's Interest in Claimed Net Benefits

According to MEHC, the “chief benefit” of the transaction is the company’s ability and willingness to invest in needed infrastructure in PacifiCorp’s transmission and distribution system.² MEHC has committed to \$1.3 billion in infrastructure investments, including \$350 million for new or upgraded transmission projects and \$140 million of outage risk reduction projects.³ Many PPC member utilities depend upon PacifiCorp’s transmission system to receive their power purchases, and could benefit from these transmission investments. PPC is interested in ensuring that these commitments would be realized, would be incremental to investments that would otherwise occur, would result in betterment of PacifiCorp’s transmission system, and to the extent appropriate, would result in the greatest possible good for electricity consumers throughout the state and region. Finally, PPC has an interest in ensuring that MEHC’s acquisition of PacifiCorp would not result in any diversion of investments from Oregon and the region to other parts of the country.

C. Public Interest Considerations

In addition to demonstrating net benefits from the transaction, MEHC must prove to the Commission that the transaction is “in the public interest.” This means MEHC must show that no harm will result “to the public at large,” or in other words, that the transaction will “not impose a detriment on Oregon citizens as a whole.”⁴ The Commission has wide discretion in forming its inquiry into whether the transaction is in

² Joint Application at 19.

³ Direct Testimony of Gregory E. Abel at 3-4.

⁴ *In re A Legal Standard for Approval of Mergers*, Order No. 01-778 at 11.

the public interest,⁵ and has explained that because it “cannot anticipate what risks might emerge in the future,” it will not limit the types of risks it will consider when reviewing merger applications.⁶ Instead, the Commission considers each transaction on a case by case basis, considering the “total set of concerns” presented.⁷

i) MEHC Presence in Oregon

PPC suggests that a major consideration in this proceeding is the entrance of a sizeable and influential new participant into Oregon’s, and the region’s electric service industry. MEHC, a privately-held company (owned over 80% by Berkshire Hathaway with the remaining ownership held by three individuals),⁸ has six major energy business platforms operating in several states and countries.⁹ Through this proceeding, MEHC seeks to expand its control in the energy business into Oregon and five other states.

PPC urges the Commission to consider, aside from its economic analysis of the transaction, how this change in the paradigm of electric service in the state could affect PacifiCorp’s customers and the public as a whole.¹⁰ As an example, MEHC acknowledges that where issues of “national importance” are of concern to the company, MEHC will “ensure that all business platforms act consistently with a common MEHC position.”¹¹ PPC submits that a company with such broad national scope as MEHC may often find itself adopting a position on matters of national importance that could

⁵ *Id.* (“[T]he Legislature has given the Commission discretion in assessing whether to approve mergers. We do not propose to circumscribe that discretion. . .”); *Id.* (“We cannot say in advance what showing a given utility must make to gain approval; such a determination would restrict the discretion the Legislature has given us.”).

⁶ *Id.* at 4.

⁷ *Id.* at 11.

⁸ Joint Application at 3.

⁹ *See id.* at 10-11.

¹⁰ As the Commission has explained, its inquiry into a merger application is not merely an economic one. *In re A Legal Standard for Approval of Mergers*, Order No. 01-778 at 11.

¹¹ Direct Testimony of Gregory E. Abel at 25.

ultimately affect Oregon’s electric consumers. PPC intends to help the Commission assess how MEHC’s influence over PacifiCorp could shape sensitive regional discussions and issues.

ii) Relationship with Public Power

In support of its declaration that the proposed transaction is in the public interest, MEHC explains that it has “a demonstrated history of emphasizing the importance of positive relationships with public power and cooperative utilities. . .”¹² Like MEHC, PPC believes that this is an important aspect of the transaction, considering the prevalence of public power in the state and region in which PacifiCorp operates. PPC is committed to understanding MEHC’s approach to dealing with public power, and notes that many PPC member utilities border PacifiCorp and cooperate on a variety distribution and transmission issues. Additionally, all of public power in the Northwest has a uniquely complex relationship with investor-owned utilities, including PacifiCorp, since regional investor-owned utilities receive monetary benefits from the Federal Columbia River Power System, to which public power entities have statutory preference rights. PPC will continue to evaluate the effect that the proposed transaction would have on Oregon’s citizens, with a special concern for those public power entities that rely on PacifiCorp’s transmission services to receive power purchases.

Although MEHC’s application shows some evidence of a positive relationship between the company and public power,¹³ PPC’s concern about the transmission needs of publicly-owned utilities is somewhat heightened by events like the Federal Energy Regulatory Commission’s findings in a recent audit, following a complaint by a group of

¹² Joint Application at 17. *See also* Direct Testimony of Brent E. Gale at 7.

¹³ *See, e.g.*, Exhibit PPL/306 following Direct Testimony of Brent E. Gale (copies of three letters from public power utilities).

Iowa municipal utilities,¹⁴ that MidAmerican Energy Company denied access to its transmission system in violation of its Open Access Transmission Tariff.¹⁵ PPC anticipates that public power in the region will increasingly rely on access to available transmission in order to meet its customer load.

D. Conclusion

PPC looks forward to future participation in this proceeding, and to further exploration of the issues raised above. PPC also notes that it may raise additional issues and clarify its position after further evaluation of the parties' testimony and arguments.

Respectfully submitted this 14th day of October, 2005.

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¹⁴ Motion to Intervene and Comments of the Resale Power Group of Iowa, at 3-5, *MidAmerican Energy Company*, Docket No. ER96-719-004 (Dec. 14, 2004).

¹⁵ See *MidAmerican Energy Company*, Order Approving Audit Report and Directing Compliance Actions, 112 FERC ¶ 61,346 (Sept. 29, 2005).

CERTIFICATE OF SERVICE

I certify that on October 14, 2005, I served a copy of the OPENING COMMENTS OF PUBLIC POWER COUNCIL upon the parties shown on the Commission's service list, attached below, via electronic mail, and via U.S. Mail to those parties without a listed email address.

Dated October, 14, 2005.

/s/ Mark R. Thompson
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