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October 14, 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 and six copies of the Opening Comments 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,



Ruth A. Miller

Enclosures

cc: Service List

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1209

In the Matter of)	
)	
MIDAMERICAN ENERGY HOLDINGS COMPANY)	OPENING COMMENTS OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES
)	
Application for Authorization to Acquire Pacific Power & Light, dba PacifiCorp.)	
_____)	

The Industrial Customers of Northwest Utilities (“ICNU”) submits these Opening Comments regarding MidAmerican Energy Holdings Company’s (“MEHC”) application (“Application”) to the Public Utility Commission of Oregon (“OPUC” or the “Commission”) for approval of the proposed purchase of PacifiCorp from ScottishPower for \$9.4 billion.

The Application as filed does not provide net benefits to Oregon ratepayers and does not satisfy the requirements of ORS § 757.511. The alleged benefits offered to customers are illusory and based largely on the fact that ScottishPower has decided that U.S. regulated utilities such as PacifiCorp are no longer its “preferred investment vehicle.”^{1/} Regardless of ScottishPower’s perspective on ownership of regulated utilities in the U.S., customers do not benefit merely because ScottishPower has found a willing purchaser for PacifiCorp. The “commitments” offered by MEHC in its Application represent the baseline obligations of any prudently operated utility or reflect plans that PacifiCorp has already developed. In addition, certain of MEHC’s proposals will likely result in harm to customers. In short, the Application

^{1/} Martin Rosenberg, The Scots Retreat – ScottishPower Sells PacifiCorp to MidAmerican, Energybiz Magazine, Sept.-Oct. 2005, at 16.

provides no “incremental” benefit to Oregon customers, and MEHC has not met its burden to demonstrate that PacifiCorp’s Oregon customers will be better off under MEHC’s ownership. In order to obtain approval of the Application, MEHC must mitigate the potential risks of the proposed transaction and provide meaningful customer benefits.

A. The Application Does Not Demonstrate That Customers Benefit From Establishing PacifiCorp as Another MEHC Business Platform

According to the Application, approval of the proposed transaction will establish PacifiCorp as another “business platform” of MEHC and place the Company squarely within the MEHC structure. MEHC’s other energy business platforms include MidAmerican Energy (“MEC”), the Kern River Gas Transmission Company, CE Electric UK Funding plc, CalEnergy Generation, and Northern Natural Gas Company. The combined system maps provided in PPL/302 reflect that adding PacifiCorp to MEHC’s business platforms will create a network of service territories, transmission lines, and gas pipeline infrastructure for MEHC that will cover much of the Midwestern and Western U.S.

If the proposed transaction is approved, PacifiCorp will be the largest utility that MEHC owns. In contrast to the approximately 700,000 customers that MEC provides electric service to in Iowa, Illinois, and South Dakota, PacifiCorp provides electric service to over 1.6 million customers in Oregon, Washington, California, Idaho, Wyoming, and Utah. The Company has over 500,000 customers in Oregon alone. The proposed transaction is not merely as simple as MEHC absorbing PacifiCorp into its corporate umbrella and managing and operating the Company in the same manner that MEHC operates smaller utilities with less dispersed service territories. MEHC has described at great length the history and programs of MEC in an effort to demonstrate that “MEHC has experience with the types of issues and risks

that confront PacifiCorp;” however, the bottom line is that PacifiCorp differs from any of MEHC’s current business platforms and there is no evidence that MEHC understands PacifiCorp’s issues. PPL/300, Gale/6.

1. Recent Federal Energy Regulatory Commission Orders Call Into Question MEHC’s Claims About Infrastructure Investment

MEHC has not demonstrated that Oregon customers would be better off if PacifiCorp were operated like MEC. One of the primary themes in MEHC’s Application is that ScottishPower is no longer willing to invest the amounts that are necessary to maintain the PacifiCorp system, but MEHC is willing to do so.^{2/} Application at 7-8. Factual evidence, however, contradicts MEHC’s assertion. Indeed, evidence from recent Federal Energy Regulatory Commission (“FERC”) proceedings reveals that such investments may have not always been made on the MEC system.

On June 1, 2005, FERC instituted an investigation under section 206 of the Federal Power Act to determine if MEC had generation and transmission market power in its control area after MEC revealed that it had failed FERC’s wholesale market share screen. Re MEC, FERC Docket No. ER96-719, Order on Updated Market Power Analysis, Instituting Section 206 Proceeding and Establishing Refund Effective Date (June 1, 2005). In response to MEC’s market share analysis, the Midwest Municipal Transmission Group (“MMTG”) presented evidence that MEC possesses market power in its control area in part because MEC had “not planned and built its system to accommodate the needs of network customers.” Re MEC, FERC Docket No. ER96-719, MMTG Motion to Intervene, Protest and Request For

^{2/} ScottishPower, as an owner of a regulated utility, has an absolute obligation to make the necessary capital investment to maintain a certain level of service quality. In fact, this was a primary theme and commitment in ScottishPower’s bid to acquire PacifiCorp in 1999.

Hearing, Attachment A, Affidavit of Anne Kimber at 6 (Dec. 14, 2004). MMTG's Vice Chair claimed that "cities are often lucky to have access to *any* power supply at all, given the weak state to which vertically-integrated utilities have allowed the transmission grid to fall." Id. at 5.

Both MMTG and the Resale Power Group of Iowa ("RPGI") provided examples in which MEC allegedly relied on the constraints created by the weakened transmission system to create the opportunity to exercise market power. Id.; Re MEC, FERC Docket No. ER96-719, Motion to Intervene and Comments of RPGI (Dec. 14, 2004). RPGI described the attempts of the Cities of Hudson and Indianola, Iowa, to procure power from a MEC competitor, Ameren Energy Marketing:

Several weeks before the end of 2003 (and the expiration of the then-current supply contract that RPGI had with MidAmerican), MidAmerican informed RPGI that it had sufficient transmission capacity to serve Hudson and Indianola, but only if MidAmerican, and not Ameren, were the supplier. Faced with the imminent termination of their electric service, both Hudson and Indianola agreed to purchase power after the end of 2003 from MidAmerican. RPGI, acting on Hudson's behalf, signed a one-year contract with MidAmerican, which was recently renewed for a second year. Indianola, in turn, signed a three-year contract with MidAmerican.^{3/}

FERC Docket No. ER96-719, Motion to Intervene and Comments of RPGI at 4. This evidence reflects a utility that has not only lacked investment in transmission infrastructure, and has been

^{3/} MEC subsequently reached a settlement with RPGI and MMTG to resolve these issues. Re MEC, FERC Docket No. ER96-719, Notice of Withdrawal of Comments of RPGI (June 10, 2005); Re MEC, FERC Docket No. ER96-719, Notice of Withdrawal of MMTG's of Motion to Intervene, Protest, and Request for Hearing (June 23, 2005). Among other things, MEC agreed to terminate the contract that Hudson, Iowa signed with MEC at the end of 2003, and to provide transmission service for Hudson to purchase from an alternative supplier. FERC Docket No. ER96-719, Notice of Withdrawal of Comments of RPGI at 2. MEC subsequently claimed that RPGI's Motion to Intervene in the Section 206 FERC was contrary to RPGI's withdrawal of its comments pursuant to the settlement. Re MEC, FERC Docket No. ER96-719, Motion for Leave to Answer and Answer of MEC at 3-5 (Sept. 13, 2005). RPGI interpreted MEC's claim as a charge that RPGI had "violated its settlement agreement with [MEC]." Re MEC, FERC Docket No. ER96-719, Motion for Leave to Answer and Answer of RPGI at 3 (Sept. 28, 2005).

accused of capitalizing on the lack of investment for its own advantage on the power side. This evidence also contradicts MEHC's claims in its Application regarding its "cooperative relationships with other utilities, public and private." PPL/300, Gale/32.

More recently, MEC agreed to complete \$9.2 million in unplanned transmission system upgrades and to accelerate another \$14.7 million in planned improvements in order to resolve FERC's findings that MEC had not complied with certain FERC regulations. Re MEC, FERC Docket No. PA04-18, Order Approving Audit Report and Directing Compliance Actions at 1 (Sept. 29, 2005). FERC approved a staff compliance audit that found that MEC had:

1) allowed its wholesale merchant function to use network transmission service to import power to make possible off-system sales; 2) provided transmission services to its wholesale merchant function that were not transparently available to unaffiliated companies; and 3) did not require its wholesale merchant function to comply with applicable tariff provisions regarding the designation of network resources. Id. These reports should give cause for concern about how PacifiCorp and its infrastructure would be used and operated within MEHC's energy business platforms. The situation with Enron and Portland General Electric ("PGE") has demonstrated that reports such as these should be taken seriously, particularly given MEHC's use of MEC as a model for how PacifiCorp would be operated in the future.

2. Efforts to Undermine SB 408 Harm Customers

MEHC also has expressed "a great deal of concern" regarding the legislature's passage of SB 408 and the OPUC's temporary rule implementing the Bill and has stated an intent to meet with leaders across the state to discuss the "the negative impact of these rules on the business climate in Oregon." Gail Kinsey Hill, Jobs, Taxes at Stake in Meeting Tied to

PacifiCorp Sale, The Oregonian, Sept. 23, 2005. MEHC is a recent entry to the Oregon business community as far as its proposed acquisition of PacifiCorp, and its immediate negative reaction to SB 408 and the OPUC's temporary rule are troubling in terms of acceptance of Oregon law and the regulatory environment. It is unlikely that this attitude will change if the proposed transaction is approved. The Oregon legislature has acted to address a serious problem that has plagued Oregon ratepayers, and customers are harmed by any effort to undermine SB 408 and the OPUC's efforts to implement the Bill as intended.

3. MEHC's Discovery Practices Do Not Reflect an Emphasis on Regulatory Credibility

MEHC also states that "MEC takes seriously the need to maintain its regulatory credibility" and that MEHC seeks constructive relationships with regulators that "monitor" its utilities. PPL/300, Gale/23. MEHC's discovery practices in this proceeding, however, reflect a greater focus on creating unnecessary barriers to obtaining basic information than fostering openness or establishing relationships with customers groups. On September 20, 2005, ICNU submitted data requests to MEHC and PacifiCorp seeking all responses to data requests submitted by OPUC Staff and the Citizens' Utility Board ("CUB") as of that date. MEHC responded on October 4, 2005, objecting to the request and refusing to provide the Staff and CUB responses based on a claim that the OPUC discovery guidelines prohibit "blanket requests for all responses to all data requests made by other parties." ICNU traditionally submits this type of data request in these proceedings in an effort to minimize the number of data requests asked and the burden of the responding party. ICNU does not believe that its data requests were prohibited "blanket requests. "Of all the ORS § 757.511 proceedings ICNU has been a party to, this is the first applicant that has initially refused to provide the responses to data requests

submitted by other parties.^{4/} MEHC eventually did provide ICNU the responses to the Staff and CUB requests, but only after ICNU submitted a follow-up request that identified by number the Staff and CUB data requests at issue (i.e., nos. 1-115) and ICNU requested that the Administrative Law Judge convene a telephone conference to discuss these issues. This was a silly and unnecessary hoop that MEHC forced ICNU to jump through and only served the purpose of delaying ICNU's access to data. MEHC's discovery practices do not reflect an entity that is placing a premium on its "regulatory credibility" in this proceeding or one that will do so in the future.

In addition, on October 12, 2005, MEHC and PacifiCorp submitted a Motion to Amend Protective Order in UM 1209, seeking to preclude ICNU and other intervenors without "statutory rights of intervention" from receiving copies of certain "highly confidential" information requested in discovery. Re MEHC, OPUC Docket No. UM 1209, Motion to Amend Protective Order at 2 (Oct. 12, 2005). The Motion ties the need to preclude non-statutory intervenors from receiving copies of highly confidential information to the improper disclosure of information that was subject to the protective order issued in UM 1121.^{5/} First, MEHC proposals are unworkable. Second, there has been no determination as to the source of the improper disclosure in UM 1121, and the distinction between statutory and non-statutory intervenors for particular levels of protection is arbitrary. ICNU participates in a number of

^{4/} In UM 1121, ICNU requested that Texas Pacific Group ("TPG"), an organization with no prior relationship with utility regulators or customers, provide all responses to data requests submitted by any party in that proceeding. TPG not only provided the responses to requests it had received at that point, it also continued to provide those responses throughout the proceeding.

^{5/} The Motion also refers to an improper disclosure of information that was subject to the protective order in UF 4218/UM 1206. It is ICNU's understanding based on a conference call held in UF 4218/UM 1206 on September 29, 2005, that the information at issue was not confidential and not subject to the protective order in UF 4218/UM 1206.

proceedings before the OPUC and Washington Utilities and Transportation Commission, and no party has ever claimed that ICNU has improperly disclosed confidential information. Proposing arbitrary and unworkable restrictions on the receipt of certain information by non-statutory intervenors provides no basis to conclude that MEHC will be a cooperative regulatory participant on an ongoing basis. Rather, MEHC's tactics suggest that it is a company that seeks to limit the number of parties who will have meaningful review of the Application.

4. MEHC's Commitments Are Reminiscent of ScottishPower's 1999 Application to Acquire PacifiCorp

Many of the "commitments" made by MEHC in this proceeding reflect only the baseline obligations of any prudently run utility and resemble the same commitments made by ScottishPower in its 1999 application. ScottishPower relied on its experience operating utilities in the United Kingdom as a basis to demonstrate that it would invest significant amounts in PacifiCorp in order to improve system reliability and customer service. See, e.g., Re PacifiCorp, OPUC Docket No. UM 918, ScottishPower/1, Richardson/8-11 (Feb. 26, 1999). Much like MEHC's intent to be the "last owner" of PacifiCorp, ScottishPower also claimed that it took a "long-term view of its investment" and used this as evidence of its commitment to capital investment. Re PacifiCorp, OPUC Docket No. UM 918, ScottishPower/28, Richardson/16 (June 2, 1999). At the same time, however, ScottishPower claimed that it could achieve "\$10 million per annum in net reduction in corporate costs" and a "reduction in the borrowing costs that PacifiCorp will incur as it becomes integrated into a larger, financially stronger ScottishPower group, with combined capitalization of over \$18 billion." Re PacifiCorp, OPUC Docket No. UM 918, ScottishPower/25, Richardson/2 (May 14, 1999). By November 2004, however, ScottishPower had decided that PacifiCorp was insufficiently profitable and that it no longer

wanted to own the utility, and there is no evidence that ScottishPower lived up to the representations upon which its application was based. PPL/200, Johansen/8-9. The facts surrounding ScottishPower today strongly suggest that customers cannot rely on unsupported claims put forth in an ORS § 757.511 application.

B. The Risks of the Proposed Transaction Outweigh the “Benefits” Offered by MEHC

MEHC’s Application demonstrates that Oregon customers will be worse off under MEHC ownership. MEHC offers the promise of annual rate increases and a highly leveraged capital structure, both of which present harms and risks for customers. Moreover, certain of the “commitments” made by MEHC in an attempt to demonstrate the benefit of the Application may harm customers as well. Described below are some of the harms and risks that ICNU has preliminarily identified with respect to the Application. ICNU will supplement these issues as additional discovery is reviewed and issues are identified.

Rate Increases. The testimony of PacifiCorp’s President and Chief Executive Officer indicates that the Company and customers should expect annual rate increases of at least 4% for the foreseeable future due to the need for infrastructure investment. PPL/200, Johansen/7. Andrew MacRitchie, PacifiCorp’s Executive Vice President of Strategy, Regulation, and External Affairs, has indicated that such investments are particularly needed in Utah, where growth has “outpaced all forecasts.” Martin Rosenberg, The Scots Retreat – ScottishPower Sells PacifiCorp to MidAmerican, Energybiz Magazine, Sept.-Oct. 2005. Given MEHC’s promise to deliver acquisition “benefits” to PacifiCorp customers through rate case filings, the primary message in the Application for Oregon customers is that PacifiCorp will be filing annual rate cases with cost increases of at least 4% largely in order to pay for Utah growth

and the associated infrastructure investment. The proposed rate increases are likely to be higher in reality, however, because MEHC has made it clear that it seeks to speed up this capital investment. PacifiCorp's Oregon customers simply cannot afford annual rate increases of this magnitude.

MEHC's proposes to compound the harm of these constant rate cases by retaining the benefit of any cost savings "accruing from the acquisition company" in order to recover \$1.2 billion acquisition premium associated with MEHC's purchase price. PPL/400, Goodman/15. MEHC states that its "shareholders understand that they may not earn a return *on* the acquisition premium," but this statement appears to presume that there will be return *of* the acquisition premium. PPL/100, Abel/13 (emphasis added). Any proposal to recover the acquisition premium in Oregon rates is altogether inappropriate and harms customers. MEHC's proposal creates the initial impression that MEHC is an organization that is focused on complete cost recovery, even for costs of an acquisition premium that is unrelated to the cost of providing utility service and stems from the deal negotiated by MEHC.

MEHC proposes an ownership scenario in which PacifiCorp files annual rate cases to recover the costs of the "commitments" in MEHC's Application, but MEHC retains any acquisition-related cost savings in order to recover its transaction premium rather than using those savings to minimize rate increases. Under PacifiCorp's current situation, customers receive the benefit of cost savings demonstrated in a rate case, including some related to ScottishPower. See, e.g., Re PacifiCorp, OPUC Docket UE 170, Order No. 05-1050 at 18 (Sept. 28, 2005) (ordering adjustment to income taxes included in rates based on the "interest expense deduction among PHI affiliates.") Under MEHC's ownership, however, MEHC or Berkshire

Hathaway will retain such savings. In fact, the best that customers can hope for is that PacifiCorp, Staff, and intervenors would be able to argue about whether particular cost decreases are attributable to the acquisition company and are appropriate to offset the acquisition premium.^{6/} The Commission recognized in UM 1121 that arguments about the nature of particular cost decreases and why those decreases occurred are largely a matter of speculation. Re Oregon Electric Util. Co., OPUC Docket No. UM 1121, Order No. 05-114 at 30 (Mar. 10, 2005) (“Order No. 05-114”). MEHC’s proposal to recover the acquisition premium rather than flowing through cost savings to offset the annual rate increases is a substantial harm to Oregon customers as opposed to the status quo.

Financial Risks/Capital Structure. Like TPG’s proposed purchase of PGE from Enron, MEHC proposes to use a consolidated capital structure that includes significant debt, which increases risk for the utility and customers. The application states that MEHC’s existing consolidated structure consists of 77.1% long-term debt. PPL/400, Goodman/6. PacifiCorp’s current capital structure is approximately 51.4% debt and 48.6% equity, and approximately \$4.3 billion in existing PacifiCorp debt and preferred stock is projected to remain outstanding. Id. at Goodman/7. With respect to the consolidated capital structure if the proposed transaction closes, MEHC has estimated that it would consist of 70.6% debt, assuming that MEHC issues \$1.7 billion in long-term debt associated with the acquisition. Id. at Goodman/5, 8.

The significant leverage at both the utility and the parent company can have immediately negative impacts on utility service and finances. As the Applicants note, Standard

^{6/} MEHC does not explain how it would be determined that particular costs savings are attributable to PPW, MEHC, or Berkshire Hathaway. PPL/400, Goodman/15. It is conceivable that MEHC could argue that tax cost decreases attributable to interest expense deduction of MEHC or Berkshire Hathaway should “accrue” to the acquisition company and be used to offset the acquisition premium.

& Poor's placed PacifiCorp on CreditWatch with negative implications following the announcement of the proposed transaction. PPL/400, Goodman/10. Standard & Poor's took this same action when TPG announced the proposed acquisition of PGE using a double leveraging in 2004. Re Oregon Electric Util. Co., OPUC Docket No. UM 1121, ICNU/201, Antonuk-Vickroy/16 (July 21, 2004). The Commission ultimately found in UM 1121 that a potential drop in credit ratings due to acquisition debt represented a potential harm to customers, and that "hold harmless," "cash sweep," and "re-leveraging" conditions that TPG had agreed to did not "guarantee" that PGE's credit ratings would not be downgraded after the deal was closed. Order No. 05-114 at 22.

In addition, in April 2005, Fitch Ratings revised its rating outlook for Berkshire Hathaway from stable to negative due to a "very high level of 'key person risk' at Berkshire (Warren Buffet), which is placing increasing pressure on its ratings, and, to a lesser extent, Berkshire's increased use of debt to fund finance subsidiaries." Fitch Ratings, Rating Report, Berkshire Hathaway and affiliates (July 5, 2005). Fitch went on to state that it "believes it is unlikely that Berkshire would be able to operate with the attributes that have historically allowed it to achieve 'AAA' ratings after the inevitable departure of Mr. Buffet." Id. The substantial debt associated with the proposed transaction and the ratings community's reaction to the uncertainty surrounding key personnel in the Berkshire Hathaway organization should raise a "red flag" with the Commission at this preliminary stage of these proceedings. ICNU will continue to review the financial aspects of the proposed transaction and will fully describe the harms associated with these issues in testimony.

Local Presence. The Commission and customers expect local representation from Oregon utilities. See Order No. 05-114 at 32. Absent from MEHC’s Application is any commitment to maintain the local representation on PacifiCorp’s Board, and loss of that representation could result in harm to Oregon and customers as compared to the status quo. See id. It has been reported that certain jobs and functions within PacifiCorp would be shifted to Utah under MEHC’s ownership. Kennedy Maize, Analysis: PacifiCorp Deal is Wobbly, The Electricity Daily Vol. 25 No. 66, Oct. 4, 2005, at 1. Regardless of whether MEHC commits to maintain PacifiCorp’s corporate headquarters in Portland, the potential for a gradual shift of jobs and focus to PacifiCorp’s other service territories is likely and could harm Oregon customers and the public interest.

PUHCA Repeal/Transparency. MEHC’s revision of its Application in response to the repeal of the Public Utility Holding Company Act of 1935 (“PUHCA”) was much like the effect of PUHCA repeal itself. The portions of the Application dealing with PUHCA and approval of the proposed transaction by the Securities and Exchange Commission (“SEC”) are gone and the effect of those deletions is unclear. MEHC has not explained the impact of PUHCA repeal on the proposed transaction, and it is unclear what aspects of PacifiCorp’s operations the OPUC will need to regulate more closely against the backdrop of PUHCA repeal.

In addition, substantial risks exist with PacifiCorp becoming part of a holding company structure that consists of multiple monopoly utilities with exclusive service territories throughout the country. As described above, the potential for allegations of abuse exists for small, relatively centralized utilities. That potential expands dramatically for a utility holding company with utility infrastructure that reaches across most of the Midwest and West. Review

of the MEHC proposal is unlike the examination of the other applications that the OPUC has considered under ORS § 757.511 in that SEC review no longer exists. Any gaps in the regulation of PacifiCorp between the OPUC and FERC present a risk that customers should not bear.

C. The “Benefits” Offered by MEHC Are Illusory and May Result in a Net Detriment to Oregon Customers

Given the harms posed by the proposed transaction, MEHC has a heavy burden to demonstrate that the Application results in a “net benefit” to Oregon customers as a whole. Scrutiny of the “commitments” in the Application demonstrates that MEHC has not met its burden. MEHC has not even demonstrated that its proposal will maintain the status quo for customers, which is the baseline against which the Application is judged. Order No. 05-114 at 18. As described below, the “benefits” offered by MEHC, for the most part, restate the fundamental obligations of all Oregon utilities and are otherwise uncertain.

Cost Reductions. MEHC has claimed that it will reduce PacifiCorp’s corporate overhead costs by \$36 million on a system-wide basis over five years and will reduce the Company’s cost of long-term debt by ten basis points (\$6.3 million system wide) over the same period. According to MEHC, these benefits will be flowed to customers through future rate cases.

As an initial matter, the \$42 million in system-wide cost savings over five years is not a “rate credit,” and it does not represent significant rate savings for Oregon Customers. Indeed, it appears that MEHC has exaggerated these minimal cost savings. MEHC’s alleged cost reductions are based on the fact that ScottishPower will “bill” PacifiCorp \$15 million for corporate overhead in FY 2006; however, information provided in discovery indicates that only

\$11.7 million in corporate overhead charges will actually be included in rates. In other words, the actual corporate overhead cost savings appear to be substantially less than MEHC claims. Furthermore, given that these amounts refer to the costs and savings for the entire PacifiCorp system, the actual total cost savings for Oregon customers over the five-year period appears to be approximately \$4 million. This is less than \$1 million per year out of PacifiCorp's annual Oregon revenue requirement of \$834 million. In any event, MEHC provides no detail about when or how these savings would be provided to Oregon customers. Given the minimal amount of cost reductions at issue and the lack of specificity and accuracy, ICNU does not consider MEHC's proposal a benefit. ICNU may be able to identify this level of cost savings in a rate case without MEHC's commitment.

In addition, any benefit of MEHC's proposed cost savings is further minimized by MEHC's proposal to recover the \$1.2 billion acquisition premium by retaining savings "accruing from the acquisition company."^{7/} PPL/400, Goodman/15. As described above, any proposal to recover the acquisition premium in Oregon rates harms customers, especially when the savings that MEHC proposes to retain could offset rising costs in other areas.

Finally, Commission recognized in UM 1121 that an offsettable rate credit provided little benefit to customers because it was inherently uncertain and would lead to arguments about the nature of the cost reductions. Order No. 05-114 at 30. In the absence of MEHC's intent to recover the acquisition premium, cost savings resulting from the acquisition

^{7/} MEHC appears to propose that the cost reductions related to corporate overhead charges and a lower cost of long-term debt would not be subject to offset by recovery of the acquisition premium. PPL/400, Goodman/15. However, given that those savings actually are only a fraction of what MEHC has represented, the benefit of excluding those costs is negligible. Furthermore, MEHC's retention of any cost savings in order to recover the acquisition premium in a period of rising costs effectively offsets more than the total benefit of cost reductions to customers.

would be flowed through to customers. MEHC's proposal to provide certain cost savings to customers but offset others is more speculative and subject to dispute than the rate credit rejected in UM 1121.

Infrastructure Investment. MEHC's commitment to invest in PacifiCorp's infrastructure provides no incremental benefit to PacifiCorp's Oregon customers and may lead to arguments about the recovery of the costs of such projects in rates. A substantial portion of the investments to which MEHC has committed involve transmission projects, but PacifiCorp's Integrated Resource Plan ("IRP") and the Company's public statements demonstrate that such investments are already needed to keep up with Utah load growth. MEHC has not demonstrated that Oregon customers will benefit from a commitment to make improvements that were planned prior to the proposed transaction. Moreover, it is unclear how Oregon customers benefit from transmission improvements that are designed primarily to meet requirements of Utah customers.

In addition, MEHC's commitment to particular investments is a double-edged sword for customers and the Commission. First, if the Commission were to accept such commitments as a legitimate benefit, it would only pave the way for arguments that PacifiCorp is entitled to recover the costs of that investment because of the "benefit" to customers. It is inappropriate to find in this proceeding that customers benefit from any particular project or investment, because the actions of the utility are not under review for prudence.

Second, it is worth noting that MEHC has left itself an "out" from this commitment by stating that it will not undertake the investment if it determines that it is not "optimal" for customers. PPL/100, Abel/14 n.1. Regardless of whether MEHC claims that it

will provide an alternative with “comparable benefit” if this occurs, the uncertainty created by such a statement provides no basis to conclude that this is a tangible benefit to customers. Id.

Service Quality Measures. MEHC also has proposed a two-year extension of PacifiCorp’s service quality measures. PPL/100, Abel/6. Extension of the measures currently in place is not a meaningful benefit to Oregon customers. The Commission determined in UM 1121 that such commitments were typical of the activities any prudent, well-managed utility, even though TPG had agreed to extend PGE’s service quality measures for ten years. Order No. 05-114 at 31-32. MEHC’s proposal falls short of providing a benefit to Oregon customers. Customers, particularly high tech customers in the Corvallis area, need to see improved service quality measures.

Renewable Resources. MEHC also has committed to “affirmation” of the goals in PacifiCorp’s IRP regarding renewable resources. Application at 18. Once again, customers do not benefit from MEHC committing to plans that PacifiCorp has already set in motion. This is maintenance of the status quo and does not demonstrate that customers will be better off.

Demand Side Management/Energy Efficiency Programs. MEHC has committed to fund the first \$1 million of a “company-defined third-party market potential study” of the potential for additional DSM and energy efficiency measures. PPL/100, Abel/17-18. The benefit of this study to Oregon customers is unclear. In addition, the Application does not state who will bear the costs of this study in excess of \$1 million. If customers will bear this cost, it would result in harm to PacifiCorp’s ratepayers in the form of higher rates. Furthermore, it is unclear how this proposal fits in with the obligations and responsibilities of the Energy Trust.

Emissions Reductions. MEHC states that its commitment to implement measures to reduce emissions from PacifiCorp's coal-fired generating facilities and greenhouse gas emissions will benefit customers by allowing the equipment to be installed in an orderly manner across PacifiCorp's system. PPL/100, Abel/20. As MEHC notes, these measures are likely to be *required* in the future. Id. It is inappropriate to claim that customers benefit from required regulatory compliance measures. Furthermore, MEHC's claims that implementing these measures at present will result in better contract terms and reduced costs is a matter of speculation. If this is true, customers expect a response from PacifiCorp to meet its environmental commitments in the most cost-effective manner.

D. The Appropriate Owner for PacifiCorp is One that Will Guarantee Customer Protections and Provides a Net Benefit

MEHC's claim that ScottishPower is no longer a willing owner of PacifiCorp resembles TPG's argument in UM 1121 that the immediate end to Enron's ownership of PGE was a benefit to customers. Order No. 05-114 at 33. Underlying MEHC's Application is the notion that the Commission and customers should accept ownership of PacifiCorp on MEHC's terms because ScottishPower is poised to let the Company fall into ruin through neglect. The Commission should not be swayed by this suggestion, as it would set a dangerous precedent that a utility would be permitted to not make the required capital investments.

CONCLUSION

ICNU is underwhelmed by MEHC's commitments. The Application provides few, if any, benefits to Oregon customers, and MEHC certainly has not demonstrated that the proposed transaction as a whole results in a "net" benefit to those customers. The harms associated with MEHC ownership, on the other hand, are real and identifiable. The Application

makes clear that if this transaction is approved, then Oregon's influence will shift to Utah, Oregon will be expected to pay for even more of Utah's load growth, and annual rate cases will become the norm. In addition, the opportunity to recover "goodwill" is present, and the negative impact of the double leverage structure has the potential to increase costs. Noticeably absent from the Application, however, are any guaranteed rate credits to offset these harms. Finally, ICNU sees an even greater likelihood of a contentious, rather than cooperative, relationship with PacifiCorp under MEHC ownership. ICNU appreciates the opportunity to provide these initial comments in advance of the presentations to the Commissioners on October 25, 2005.

Dated this 14th day of October, 2005.

Respectfully submitted,



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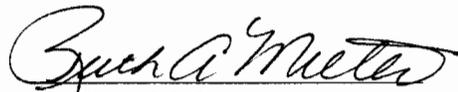
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Of Attorneys for Industrial Customers
of Northwest Utilities

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing Opening Comments of the Industrial Customers of Northwest Utilities upon the parties, on the service list shown below, by causing the same to be electronically served via email to those who have an email address, and through the U.S. Mail, postage-prepaid, to those without an email address.

Dated at Portland, Oregon, this 14th day of October, 2005.


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October 14, 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 and six copies of the Opening Comments 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/ Ruth A. Miller
Ruth A. Miller

Enclosures
cc: Service List

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