



900 S.W. Fifth Avenue, Suite 2600
Portland, Oregon 97204
main 503.224.3380
fax 503.220.2480
www.stoel.com

November 17, 2005

KATHERINE A. MCDOWELL
Direct (503) 294-9602
kamcdowell@stoel.com

VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

**Re: MEHC's Response to ICNU's Motion to Compel
Docket UM 1209**

Enclosed for filing please find MEHC's Response to ICNU's Motion to Compel in the above-referenced docket. A copy of this filing has been served on all parties to this proceeding as indicated on the attached certificate of service.

Very truly yours,



Katherine A. McDowell

KAM:knp
Enclosure
cc: Service List

1 BEFORE THE PUBLIC UTILITY COMMISSION
2 OF OREGON

3 UM 1209

4 In the Matter of MIDAMERICAN
5 ENERGY HOLDINGS COMPANY
6 Application for Authorization to Acquire
7 Pacific Power & Light, dba PacifiCorp.

**MEHC's RESPONSE TO ICNU's
MOTION TO COMPEL**

8 MidAmerican Energy Holdings Company ("MEHC") provides the following
9 expedited response to the Industrial Customers of Northwest Utilities' ("ICNU") Motion to
10 Compel responses to ICNU 7.11 and 7.12.

11 1. ICNU seeks to compel responses to data requests asking whether MEHC or
12 Berkshire Hathaway have considered the acquisition of PGE within the past five years and
13 requesting all related documents and analysis. MEHC objected to these requests because
14 they seek information that is irrelevant to this case. *See* MEHC Responses to ICNU 7.11
15 and 7.12.

16 2. ICNU correctly states in its motion to compel that ORCP 36B(1) allows
17 discovery "regarding any matter, not privileged, *which is relevant* to the claim or defense of
18 the party seeking discovery . . ." Motion to Compel at 3 (emphasis added). As noted in the
19 Commission's Ruling on August 25, 2005 in this case, "[p]roceedings under ORS 757.511
20 are limited in scope by statute and related Commission decisions." Ruling at 2, *Petitions to*
21 *Intervene Granted; Participation Limited*, UM 1209 (August 26, 2005) ("August 26, 2005
22 Ruling"). The bounds of permissible discovery in this case are set by well-defined
23 limitations on the scope of ORS 757.511 proceedings.

24 3. The focus in a case under ORS 757.511 is the potential benefits and harms of
25 the proposed transaction compared "against the state of the utility as it [is] currently
26 configured." August 26, 2005 Ruling at 2; *see In re Oregon Electric Utility Company*,

1 UM 1121, Order 05-114 at 20 (Or Pub Util Comm’n Mar. 10, 2005) (“*TPG Order*”). The
2 “statute does not provide for consideration of counter-offers or competing proposals.” *TPG*
3 *Order* at 16; *see also id.* at 18 n.14 (rejecting consideration of public purchase of PGE as an
4 alternative base case “because ORS 757.511 does not provide for consideration of competing
5 proposals.”)

6 The Commission assesses each merger on a case by case basis, focusing on the
7 particulars of the transaction before it. *See In re Legal Standard for Approval of Mergers*,
8 UM 1011, Order 01-778 at 11 (Or Pub Util Comm’n Sept. 4, 2001). In UM 918, the
9 Commission approved ScottishPower’s merger with PacifiCorp over ICNU’s objection that
10 the merger could preclude a domestic merger from which synergies could be derived. In that
11 Order, the Commission noted that “all mergers involve . . . a comparison of the status quo
12 with the effect of the merger.” *In re ScottishPower*, UM 918, Order 99-00615 (Or Pub Util
13 Comm’n Oct 6, 1999).

14 In summary, in considering a transaction under ORS 757.511, the Commission
15 reviews the transaction before it, without consideration of potential additional or alternative
16 transactions.

17 4. ICNU 7.11 and 7.12 inquire into additional or alternative transactions to the
18 transaction which is the subject of this case (*i.e.*, a purchase of PGE by MEHC). This
19 information is outside the proper scope of ORS 757.511 and is not therefore discoverable in
20 this case. Permitting discovery into other potential business transactions considered by an
21 ORS 757.511 applicant would expand the scope of the proceedings, exacerbate the already
22 difficult challenges associated with the management of highly confidential business
23 information in these cases, and ultimately deter investment in Oregon utilities because of
24 exposure to discovery of wholly unrelated, confidential business transactions under
25 ORS 757.511.

26

1 5. ICNU claims that information regarding MEHC’s consideration of the
2 purchase of PGE is relevant to this case because “if MEHC were to acquire PacifiCorp and
3 PGE, it would have substantial control over the two major providers of electric service in
4 Portland and many other areas of Oregon.” Motion to Compel at 3. The problem with
5 ICNU’s argument, however, is that it posits a potential harm associated with this transaction
6 related to a hypothetical purchase of PGE by MEHC. As noted above, however,
7 ORS 757.511 reviews actual transactions, eschewing consideration of hypothetical
8 alternatives or additions. No amount of discovery into MEHC’s review of a possible
9 purchase of PGE will turn this hypothetical transaction into an actual transaction. In any
10 event, ICNU’s concerns about the potential harm of MEHC owning both PacifiCorp and
11 PGE are not well-founded because any MEHC purchase of PGE would require separate
12 review under ORS 757.511—if such a purchase is ever proposed.

13 6. The information requested by ICNU—analysis for an unrelated utility
14 acquisition—is highly confidential business information. ORCP 36(C)(7) provides that the
15 court can limit or deny a motion compelling discovery of “a trade secret or other confidential
16 research, development, or commercial information.” This provision acknowledges that the
17 more sensitive the information, the more discovery of it should be regulated. Here, where the
18 discovery sought is marginal at best, the Commission should conclude the harm of ordering
19 disclosure far outweighs ICNU’s need for the information.

20 7. ICNU has asked for expedited treatment of this motion and MEHC has
21 complied by filing this expedited response. While MEHC believes there is no basis for
22 production of the information requested by ICNU 7.11 and 7.12, it can expeditiously comply
23 with an order compelling production. MEHC objects to any delay in the filing of ICNU’s
24 testimony on the basis of the pendency of ICNU’s motion to compel.

25 ///

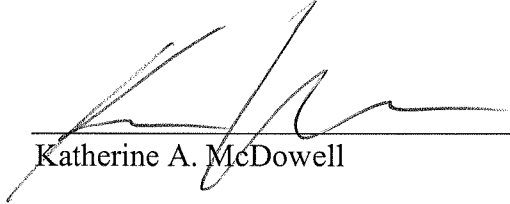
26 ///

STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600, Portland, OR 97204
Main (503) 224-3380 Fax (503) 220-2480

1 For all the foregoing reasons, MEHC asks the Commission to deny ICNU's Motion to
2 Compel.

3 DATED: November 17, 2005.

4 STOEL RIVES LLP

5 
6 _____

Katherine A. McDowell

7 Attorneys for MEHC and PacifiCorp
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

1
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

5 hand delivery

6 facsimile transmission

7 Electronic mail

8 to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said
9 person(s) at his or her last-known address(es) indicated below.

10 NW Energy Coalition
11 219 First Street, Suite 100
12 Seattle, WA 98104

Rates & Regulatory Affairs
Portland General Electric
121 SW Salmon Street, 1WTC0702
Portland, OR 97204
pge.opuc.filings@pgn.com

13 Adam S. Arms
14 aarms@mbjlaw.com

Utility Workers Union of America
PO Box 37
San Clemente, CA 92674-0037
uwua@redhabanero.com

15 Jim Abrahamson
16 Community Action Directors of Or
17 4035 12th Street Cutoff SE, Suite 110
18 Salem, OR 97302
19 jim@cado-oregon.org

Douglas L. Anderson
MidAmerican Energy Holdings Co
302 S 36 Street, Suite 400
Omaha, NE 68131
gerickson@midamerican.com

20 Edward Bartell
21 Klamath Off-Project Water Users, Inc.
22 30474 Sprague River Road
23 Sprague River, OR 97639

Curtis G. Berkey
Alexander Berkey Williams
& Weathers
2000 Center Street, Suite 308
Berkey, CA 94704
cberkey@abwwlaw.com

24 Maggie Brilz
25 Idaho Power Company
26 PO Box 70
Boise, ID 83707-0070
mbrilz@idahopower.com

Lowrey R. Brown
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308
Portland, OR 97205
lowrey@oregoncub.org

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Joanne M. Butler
Idaho Power Company
PO Box 70
Boise, ID 83707-0070
jbutler@idahopower.com

Phil Carver
Oregon Department of Energy
625 Marion Street NE, Suite 1
Salem, OR 97301-3742
philip.h.carver@state.or.us

Bryan Conway
Oregon Public Utility Commission
PO Box 2148
Salem, OR 97308-2148
bryan.conway@state.or.us

Joan Cote
Oregon Energy Coordinators Assoc
2585 State Street NE
Salem, OR 97301
cotej@mwvcaa.org

Melinda J. Davison
Davison Van Cleve, PC
333 SW Taylor, Suite 400
Portland, OR 97204
mail@dvclaw.com

Jason Eisdorfer
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308
Portland, OR 97205
jason@oregoncub.org

Andrea Fogue
League of Oregon Cities
PO Box 928
Salem, OR 97308
afogue@orcities.org

D. Kevin Carlson
Dept. of Justice
General Counsel Division
1162 Court Street NE
Salem, OR 97301-4096
d.carlson@doj.state.or.us

Ralph Cavanagh
Natural Resources Defense Council
111 Sutter Street, FL 20
San Francisco, CA 94104
rcavanagh@nrdc.org

John Corbett
Yurok Tribe
PO Box 1027
Klamath, CA 95548
jcorbett@yuroktribe.nsn.us

Chris Crean
Christopher.d.crean@co.multnomah.or.us

Michael Early
Industrial Customers of NW Utilities
333 SW Taylor, Suite 400
Portland, OR 97204
mearly@icnu.org

Ann L. Fisher
energylaw@aol.com

John R. Gale
Idaho Power Company
PO Box 70
Boise, ID 83707-0070
rgale@idahopower.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Bernardo R. Garcia
Utility Workers Union of America
215 Avendia Del Mar, Suite M
San Clemente, CA 92672
uwua@redhabanero.com

David E. Hamilton
davidh@norrstev.com

Jason W. Jones
Department of Justice
Regulated Utility & Business Section
1162 Court Street NE
Salem, OR 97301-4096
jason.w.jones@state.or.us

Kaitlin Lovell
Charlton Bonham
klovell@tu.org
cbonham@tu.org

Mark C. Moench
MidAmerican Energy Holdings Co
201 South Main Street, Suite 2300
Salt Lake City, UT 84111
mcmoench@midamerican.com

Barbara Lee Norman
Karuk Tribe of California
PO Box 657
Yreka, OR 96097
bnorman@karuk.us

Janet L. Prewitt
Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
janet.prewitt@doj.state.or.us

Ann English Gravatt
Renewable Northwest Project
917 SW Oak, Suite 303
Portland, OR 97205
ann@rnp.org

William Miller
Nancy Harper
bill@ibew125.com
nancy@ibew125.com

Barton Kline
Idaho Power Company
PO Box 70
Boise, ID 83707-0070
bkline@idahopower.com

Daniel W. Meek
Attorney at Law
10949 SW 4th Avenue
Portland, OR 97219
dan@meek.net

Christy Monson
League of Oregon Cities
1201 Court Street NE, Suite 200
Salem, OR 97301
cmonson@orcities.org

Matthew W. Perkins
Davison Van Cleve PC
333 SW Taylor, Suite 300
Portland, OR 97204
mwp@dvclaw.com

Lisa F. Rackner
Ater Wynne LLP
222 SW Columbia, Suite 1800
Portland, OR 97201-6618
lfr@aterwynne.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Steve Rothert
strothert@amrivers.org

Gregory W. Said
Idaho Power Company
PO Box 70
Boise, ID 83707-0070
gsaid@idahopower.com

Thomas P. Schlosser
t.schlosser@msaj.com

Rob Roy Smith
r.smith@msaj.com

Thane Somerville
t.somerville@msaj.com

Glen H. Spain
Pacific Coast Federation of
Fishermen's Associations
PO Box 11170
Eugene, OR 97440-3370
fish1ifr@aol.com

John W. Stephens
Esler Stephens & Buckley
888 SW Fifth Avenue, Suite 700
Portland, OR 97204-2021
stephens@eslerstephens.com

Mark Thompson
Public Power Council
1500 NE Irving Street, Suite 200
Portland, OR 97232
mthompson@ppcpdx.org

Douglas C. Tingey
Portland General Electric Co
121 SW Salmon Street, 1WTC1301
Portland, OR 97204
doug.tingey@pgn.com

Sandi R. Tripp
Karuk Tribe
Dept. of Natural Resources
PO Box 1016
Happy Camp, CA 95546
strip@karuk.us

Sarah Wallace
Ater Wynne LLP
222 SW Columbia, Suite 1800
Portland, OR 97201-6618
sek@aterwynne.com

Benjamin Walters
Susan Anderson
bwalters@ci.portland.or.us
susananderson@ci.portland.or.us

Michael T. Weirich
Department of Justice
Regulated Utility & Business Section
1162 Court Street NE
Salem, OR 97301-4096
michael.weirich@state.or.us

Steven Weiss
Northwest Energy Coalition
4422 Oregon Trail Court NE
Salem, OR 97305
steve@nwenergy.org

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

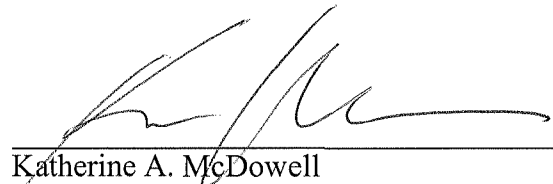
Linda K. Williams
Kafoury & McDougal
10266 SW Lancaster Road
Portland, OR 97219-6305
linda@lindawilliams.net

Michael W. Orcutt
Hoopa Valley Tribe Fisheries Dept
PO Box 417
Hoopa, CA 95546
director@pcweb.net

Peter J. Richardson
Richardson & O'Leary
PO Box 7218
Boise, ID 83707
peter@richardsonandoleary.com

Paul Woodin
Western Wind Power
282 Largent Lane
Goldendale, WA 98620-3619
pwoodin@gorge.net

DATED: November 17, 2005.



Katherine A. McDowell
Of Attorneys for MEHC