

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1209

In the Matter of)	
)	
MIDAMERICAN ENERGY HOLDINGS)	
COMPANY)	RULING
)	
Application for Authorization to Acquire)	
Pacific Power & Light, dba PacifiCorp.)	

DISPOSITION: MOTION GRANTED AS MODIFIED; SCHEDULE RESET

On November 1, 2005, the Citizens’ Utility Board of Oregon (CUB) filed a motion to modify the schedule. CUB asserts that Applicant’s Direct Testimony was “deficient in at least one key element of the case,” and argues that additional rounds of testimony should be added to the schedule. CUB also states that Applicant’s Supplemental Testimony was not sufficiently responsive to Opening Comments. To remedy this, CUB proposed a schedule to allow additional testimony by Commission Staff (Staff) and Intervenors, followed by all-party Surrebuttal Testimony, then hearings.

On November 2, 2005, a telephone conference was held. Appearing by telephone were the Hoopa Valley Tribe, the Karuk Tribe, Community Action Directors of Oregon and Oregon Energy Coordinators Association (CADO/OECA), Renewable Northwest Project (RNP), Industrial Customers of Northwest Utilities (ICNU), CUB, the City of Portland, Idaho Power Company (Idaho Power), Trout Unlimited, and PacifiCorp and MEHC. Present in the room was an additional representative for PacifiCorp and MEHC. At that time, CUB’s motion was joined by ICNU, CADO/OECA, the Karuk Tribe, and the City of Portland. CUB and PacifiCorp made arguments regarding the merits of adding another round of testimony. PacifiCorp responded that the seemingly new issue raised at the Oral Presentations on October 25, was actually addressed in previously filed written testimony.

The response period was truncated to November 7, 2005. On that date, ICNU and the City of Portland submitted responses in support of CUB’s proposed schedule. Staff submitted another possible alternative schedule, allowing for Staff and Intervenor Surrebuttal Testimony, then Applicant’s written Sursurrebuttal Testimony, followed by hearings. MEHC and PacifiCorp submitted a response stating that they did

not agree that additional testimony was necessary, but, if so, the Applicant and PacifiCorp should be allowed the final round after Staff and Intervenor testimony, in order to allow them the opportunity to bear the burden of proof. MEHC and PacifiCorp submitted two alternative schedules, each of which adhered to the January 4-6 hearing, in order to avoid conflicts with hearings in other states.

On November 9, 2005, another telephone conference was held. Appearing by phone was the Karuk Tribe, the Hoopa Valley Tribe, Staff, CUB, PacifiCorp, MEHC, Public Power Council, and Idaho Power. In the course of the telephone conference, MEHC and PacifiCorp stated that they could support Staff's proposed schedule because the hearing dates did not pose a conflict for their witnesses, who are also testifying in hearings in other states. It was also noted that ICNU may object due to its participation with the PacifiCorp rate case in Washington. PacifiCorp stated that it would do its best to address ICNU's issues early in that proceeding.

A variety of alternatives have been discussed. The scope of the alternatives is limited by a number of factors, including ICNU's participation in the PacifiCorp rate case in Washington, MEHC's hearings in other states involving the same witnesses required for the Oregon hearing, conflicts in the Oregon Commissioners' schedules, as well as various parties' stated need for additional testimony, whether written or oral, and additional discovery after each round of testimony.

I am still not entirely convinced that additional testimony has been established at this point in the proceedings. There has been a great deal of time for intervenor groups to explore the application. Prior to filing of the application, the Applicant spoke with several intervenor groups about the application. On July 15, the day the application was filed, parties were notified by memorandum that data requests could begin concurrent with the filing of a petition to intervene. From the beginning, an accelerated schedule was adopted, and parties have always had the option of making a motion for shorter response times to data requests. Other opportunities to conduct factual inquiry included a two-day clarifying session with the witnesses that submitted the application, multiple settlement conferences, and ongoing discovery. In addition, there will be other opportunities for intervenor groups to continue to explore the facts surrounding the application. The current schedule allows for direct, response, and reply testimony, in which facts will be presented for and against the application. Parties may continue to seek additional information in clarifying sessions, whether currently scheduled or newly requested by a party, and further discovery. In addition, parties may cross-examine PacifiCorp's witnesses at hearing. It is unclear to me, that with all of these past and future opportunities to address issues raised by the application, why additional rounds of testimony are needed.

That said, many parties are arguing for an extended schedule, and MEHC and PacifiCorp appear to have acquiesced. Given all of the arguments provided by the parties, the schedule proposed by Staff satisfies many of the constraints most effectively. It provides for an additional two rounds of written testimony, with time for discovery after each round. While the hearing dates are not ideal, they do pose the least conflict for

the parties. Regarding the presentations to Commission on January 18, witnesses will not be required under oath for that session; however, Commissioners may ask fact-based questions that the parties should be prepared to answer, or at least answer enough to develop the line of inquiry to be explored further at the hearing under oath. Although ICNU was not present at the November 9 telephone conference, I understand from other parties that it may not favor a hearing during the dates scheduled for the Washington PacifiCorp rate case. However, PacifiCorp has stated it will try to minimize that conflict.

The ensuing schedule is set as follows:

Staff and Intervenor Testimony	November 21, 2005
Applicant and PacifiCorp Rebuttal Testimony	December 7, 2005
Staff and Intervenor Surrebuttal	December 30, 2005
Applicant Sursurrebuttal	January 9, 2006
Cross-Examination Statements	January 13, 2006
Executive Summaries	January 13, 2006
Presentations to Commissioners	January 18, 2006
Hearing	January 19-20, 2006

A briefing schedule will be determined at the end of hearing.

At the November 2 telephone conference, RNP and Natural Resources Defense Council suggested that a topic was omitted from the issues list. They proposed an issue titled “Global Climate Leadership” be added under “Renewable Resources and Energy Efficiency.” There was no objection. The issue is added to the November 1, 2005, issues list.

At the November 9 telephone conference, there was also discussion of the role of conditions in testimony. “[W]ritten testimony is subject to rules of admissibility and cross-examination.” OAR 860-014-0060(4)(b). Testimony is evidence; it is not clear how an exchange of conditions can aid in either proving or disproving whether the application is in the public interest under ORS 757.511. Parties are cautioned against attempting to cobble together conditions in lieu of establishing evidence on the record. *See* Order No. 05-114 at 34-35. If a harm or benefit is speculative, a factual record must still be established from which the Commission could infer the possible harm or benefit. *See id.* at 20-21. Only after clearly identifying and quantifying a potential harm posed by this particular transaction should a party recommend a condition to remedy that harm.

Dated at Salem, Oregon, this 10th day of November, 2005.

Christina M. Smith
Administrative Law Judge