

1 **Q Please state your name.**

2 A. My name is Judi Johansen.

3 **Q. Are you the same Judi Johansen that has testified previously before this**  
4 **Commission on this docket?**

5 A. Yes, I am.

6 **Q. What is the purpose of your rebuttal testimony in this proceeding?**

7 A. My rebuttal testimony demonstrates that:

- 8 • The testimony of Staff witness Conway and ICNU witness Canon do not  
9 appropriately consider the benefits of new ownership by MEHC as compared  
10 with continued ownership of PacifiCorp by ScottishPower. ScottishPower has  
11 indicated its desire to divest itself of PacifiCorp and, as such, ScottishPower's  
12 past record of management and investment can no longer be considered to be  
13 a precedent for how it will manage and invest in the business going forward;
- 14 • The issues raised by Staff witness Dougherty with regard to the loss of the  
15 payments that PacifiCorp currently receives from its affiliates are already  
16 being actively addressed by PacifiCorp and ScottishPower;
- 17 • The testimony of ICNU witness Wolverton regarding inter-jurisdictional  
18 allocations is misplaced and ignores the fact that this Commission has ratified  
19 the Revised Protocol; and
- 20 • The DSM study proposed by MEHC was suggested by Oregon parties twice  
21 in the last year and is a clear benefit to customers.

22

1 **Ownership by ScottishPower**

2 **Q. ICNU witness Canon states that ScottishPower’s desire to sell PacifiCorp**  
3 **rather than invest significant additional capital should not be considered as a**  
4 **basis for approval. Do you agree?**

5 A. No. It must be a major factor in this Commission’s assessment of the proposed  
6 transaction. I agree with Staff witness Conway’s conclusion that, “in general,  
7 customers are better off if the regulated utility is willing and able to make cost  
8 effective investments than if the regulated utility is unwilling or unable to make  
9 cost-effective investments.” Moreover, ScottishPower’s appetite to continue to  
10 invest in PacifiCorp in a manner consistent with the past will diminish by  
11 reference to more productive or cost effective investment opportunities that are  
12 available to it elsewhere in its businesses.

13 **Q. Do you believe that PacifiCorp will be more willing and able to invest under**  
14 **MEHC ownership than under ScottishPower ownership?**

15 A. Absolutely.

16 **Q. Please explain.**

17 A. The ScottishPower Board has made a definitive decision to sell PacifiCorp. As a  
18 member of the Board, I voted in support of the sale of PacifiCorp to  
19 MidAmerican Energy Holdings Company. As I discussed in my direct testimony,  
20 and in my comments to the OPUC, PacifiCorp has a significant need for new  
21 capital over the foreseeable future. This need, coupled with the expected profile  
22 of returns, is not attractive to ScottishPower’s primarily UK shareholder base.

1                   However, MEHC and its four shareholders possess a very different  
2                   viewpoint. As evidenced by the testimony of Greg Abel, they view PacifiCorp as  
3                   a well-run company with solid business and asset base. They see an opportunity  
4                   to invest in a regulated U.S. electric utility for the long-term and to have an  
5                   opportunity to earn a reasonable return on their investment. I believe that  
6                   PacifiCorp's customers will benefit from being owned by shareholders who are  
7                   willing to take a longer-term and different view of investment needs and returns  
8                   than ScottishPower.

9   **Q.   Staff witness Conway concludes that PacifiCorp does not presently face**  
10 **short-term investor pressures. Is his conclusion correct?**

11 A.   Absolutely not. Below are several excerpts from equity analyst reports on  
12 ScottishPower. While I do not necessarily agree with many of the analysts'  
13 conclusions, they certainly demonstrate the significant investor pressures on  
14 PacifiCorp:

15                   Investors' confidence has been shaken by a profits warning at the group's  
16 regulated US business, Pacificorp, which accounts for around 50% of group  
17 profits. Unexpected cost pressures, lower synfuels royalties and slightly milder  
18 weather vs normal mean that it will now miss the US\$1bn EBIT target set for  
19 FY04/05. The additional revelation of flat performance for the following two  
20 years pending cost recovery highlights dependency on the vagaries of the  
21 retrospective US regulatory system. Past experience means investors have good  
22 reason to be wary. (ING, November 14, 2004)

23  
24                   The deterioration at Pacificorp has stopped the positive earnings momentum at  
25 SPW in its tracks, in our view. The UK Division, while undergoing significant  
26 growth, cannot offset the disappointment in the US. With stagnant growth at  
27 Pacificorp, we believe the previous positive outlook for growth is now subdued.  
28 (Morgan Stanley, November 17, 2004)

29  
30                   The announcement at SPW's H1 that PPW would miss its 2005 \$1bn EBITDA  
31 target was not a great surprise given the weak Q1 and persistently adverse  
32 weather conditions in Q2. What did come as a surprise, however, was that this  
33 figure is unlikely to be attained next year or even in 2007 ...We believe that  
34 confidence in the capacity of PPW to deliver has been undermined to such an

1 extent that the share's discount to its closest peers, the sector and our valuation is  
2 unlikely to unwind in the foreseeable future. (Lehman's, November 19, 2004)  
3 If ScottishPower were to remain the owner of PacifiCorp, it would be

4 under significant, continuing pressure from investors to minimize the amount of  
5 capital invested in PacifiCorp subject, of course, to honoring legal and merger  
6 commitments. This pressure would stem from the fact that:

- 7 • UK utility investors are dividend oriented investors who demand strong,  
8 predictable and growing dividends. Average dividend yields, cover and  
9 growth in the UK utility sector are over 5.0%, 1.45 times, and ~3-7% per  
10 year. Given the significant capital demands in PacifiCorp, combined with  
11 regulatory lag on new investment returns, PacifiCorp will absorb cash for  
12 the next several years and will not be able to support an adequate dividend  
13 to ScottishPower shareholders.
- 14 • UK utility investors believe that PacifiCorp's returns are insufficient to  
15 compensate for the perceived risks. First, the allowed equity returns in  
16 PacifiCorp are no more than the allowed equity returns in the regulated  
17 UK networks businesses—yet PacifiCorp is subject to far greater  
18 regulatory and market risk, as witnessed by the facts that: (i) PacifiCorp's  
19 actual returns are currently well below allowed returns while UK regulated  
20 networks typically achieve their allowed returns; and (ii) PacifiCorp's  
21 annual cash flow volatility is significantly greater than typical UK  
22 networks.

23 **Q. Staff witness Conway expresses concerns that evidence was not offered to**  
24 **demonstrate that PacifiCorp does not meet ScottishPower's investors'**  
25 **expectations. Please respond.**

1 A. I believe the investor reaction around the decision to sell PacifiCorp provides the  
2 strongest evidence of investor disappointment with the business. Shareholder  
3 reaction has been almost uniform in its acknowledgement that the sale of  
4 PacifiCorp is exactly the right strategic and tactical decision. The Shareholder  
5 vote was 99.85% in favor of the PacifiCorp sale. In addition, Merrill Lynch  
6 noted:

7 “The announcement to sell PacifiCorp to Mid American for \$9.4bn  
8 (\$5.1bn equity, \$4.3bn debt) and associated \$4.5bn shareholder  
9 return was clearly welcomed by the market, the shares increasing  
10 nearly 7% on the day.” (Merrill Lynch, June 10, 2005)

11 **Q. Is there evidence of measures taken by ScottishPower to conserve capital  
12 investment at PacifiCorp?**

13 A. Yes, although I must stress that ScottishPower has taken and continues to take  
14 seriously the mandatory capital requirements of PacifiCorp and the need to  
15 provide financial support for these requirements. There are, however, different  
16 ways to deliver safe, reliable, and reasonably priced service within a range of  
17 prudent practices. For example, ScottishPower applied a 10% company-wide  
18 reduction to the capital expenditures projected by PacifiCorp within its current  
19 business plan. This reduction sets a stretch target for my management team and  
20 me which we will achieve by identifying opportunities for reducing discretionary  
21 capital spending in the ordinary course of business.

22 The Asset Risk Program, which MEHC has committed to at a higher level  
23 than contained in the plan, was a potential candidate for spending reductions.

24 Absent this transaction, the Asset Risk Program would remain such a candidate.

1 Another example of capital conservation relates to ScottishPower's  
2 reluctance to allow PacifiCorp to offer a utility-build or -own option in renewable  
3 RFPs. Under continued ScottishPower ownership, these types of resource  
4 acquisitions through purchased power contracts (coupled with power cost  
5 recovery mechanisms) would be favored over utility-build options. This could  
6 have the effect of limiting PacifiCorp's options when a utility-build alternative  
7 might be the least-cost option.

8 **Q. Staff witness Conway asserts that the comparator the Commission should**  
9 **consider in this proceeding is the continued ownership of PacifiCorp by**  
10 **ScottishPower. Do you agree?**

11 A. Yes, with the important qualification that, in light of ScottishPower's decision to  
12 sell PacifiCorp, ScottishPower must be viewed by the Commission as a short-term  
13 owner of PacifiCorp. In UM 1121, the Commission identified short-term  
14 ownership as a harm, finding that such ownership makes it more likely that  
15 customers "will be exposed to the effects of poor spending and investment  
16 decisions" which could lead to "the degradation of utility service and the  
17 diminution of utility assets." Order No. 05-114 at 27. The Commission noted  
18 that negative impact of short-term ownership could be expected to be "more  
19 pronounced" after the decision to sell was made. *Id.*

20 The Commission should assign a high degree of risk to the comparator of  
21 continued, short-term ScottishPower ownership. Without the sale of PacifiCorp  
22 to MEHC, the future of PacifiCorp becomes extremely uncertain. Given the  
23 investor pressures previously discussed, ScottishPower will seek another buyer

1 for PacifiCorp. If this transaction is not approved, ScottishPower's share price  
2 will dip. In this situation, ScottishPower could itself become an attractive target  
3 for potential acquisition. This will lead to continued disruption for employees and  
4 the Commission and a resultant loss of intellectual capital, additional regulatory  
5 proceedings to assess the alternate option which might ultimately be inferior to  
6 this transaction, a diminished commitment to positive long-term stakeholder  
7 relationships given the need for more aggressive short-term results and, most  
8 importantly, an inability to make and implement any long-term plans for the  
9 company and its customers.

10 **Q. What are the specific risks to PacifiCorp associated with ScottishPower's**  
11 **short-term ownership?**

12 A. With ScottishPower's short-term seller's vision, it would likely seek to further  
13 limit discretionary capital spending and seek ways to push expenditures into the  
14 future. ScottishPower could choose to reduce its support for PacifiCorp's credit  
15 rating by providing the bare minimum in equity infusions. ScottishPower could  
16 also require distributions from PacifiCorp, although admittedly, there are ring-  
17 fencing and backstop protections imposed by this Commission that would provide  
18 protections for customers.

19 In parallel, ScottishPower would seek other buyers for some or all of  
20 PacifiCorp. Given the repeal of PUHCA, the universe of potential buyers has  
21 expanded. ScottishPower would be encouraged by its investors to take advantage  
22 of this wider buyer universe to conduct a competitive sale of the business—a

1 process that would create further uncertainty for our customers, communities, and  
2 employees.

3           Given ScottishPower’s track record, I do not believe that ScottishPower  
4 would take imprudent or irresponsible actions in the short term. However, the  
5 fact remains that ScottishPower does not wish to own PacifiCorp. That fact  
6 cannot be ignored in this Commission’s deliberations. As Mr. Jim Abrahamson  
7 of CADO-OECA correctly observes in his testimony, “If this application is  
8 rejected we will be left in a situation where a potentially dissatisfied company,  
9 who will most likely seek another buyer, will own PacifiCorp.” CADO-  
10 OECA/100, Abrahamson/8.

11 **Q. What do you conclude from this discussion?**

12 A. I conclude that the sale of PacifiCorp to MEHC enhances the future of PacifiCorp  
13 and minimizes future risks to PacifiCorp and its customers as compared to the  
14 potential unknown alternatives. I also urge the Commission to assign significant  
15 risks to retention of PacifiCorp by ScottishPower as the comparator in this  
16 proceeding. Indeed, the comparison must be made between ScottishPower, a  
17 reluctant, short-term owner that has demonstrated an absolute desire to sell, and  
18 who believes (rightly or wrongly) that its ability to earn an adequate return on  
19 investment in PacifiCorp has been systematically thwarted with MEHC, a U.S.  
20 based and focused owner with a sound understanding of the U.S. electric utility  
21 environment who views PacifiCorp as an excellent fit with its desire to invest and  
22 hold assets for the long term.

23

1 **Payments from PacifiCorp Affiliates**

2 **Q. In Mr. Dougherty's direct testimony that begins on page 10, he describes the**  
3 **services that PacifiCorp performs for its affiliates. Do you believe that after**  
4 **the approval of this proposed transaction the loss of payments from affiliates**  
5 **will result in increased costs to customers?**

6 A. Not to the degree suggested by Mr. Dougherty. To understand the potential  
7 impact on customers when these affiliates go away, one needs to understand the  
8 types of costs that are incurred to support our affiliates and the plans that are  
9 being developed to reduce these costs so that our customers are not materially  
10 impacted.

11 **Q. Please describe the types and costs of services provided by PacifiCorp to its**  
12 **existing affiliates.**

13 A. For our fiscal year ending 2005 the total charges from PacifiCorp to its existing  
14 affiliates were \$9.4 million. This was composed of four distinct types of costs:

- 15 • Corporate Direct Costs: associated with direct labor support from "group"  
16 corporate functions such as legal, risk management and finance totaling  
17 \$4.4 million,
- 18 • Corporate Business Services (CBS) Direct Costs: associated with direct labor  
19 support of shared business services such as IT and procurement totaling  
20 \$0.4 million,
- 21 • CBS Indirect Costs: allocations of indirect labor and systems costs associated  
22 with shared business services totaling \$3.2 million, and

- 1 • Corporate Management Fee: allocations of indirect corporate labor and non-  
2 labor costs totaling \$1.4 million.

3 Approximately 90% of these services were provided to PPM Energy.

4 **Q. Mr. Dougherty contends that since these affiliates are not part of the sale to**  
5 **MEHC that these costs will roll back into customer rates. Do you agree with**  
6 **this assumption?**

7 A. No. Staff is correct that most of our current PacifiCorp affiliates are not part of  
8 the transaction with MEHC (only PERCO is included), and PacifiCorp will stop  
9 cross-charging these entities once the MEHC transaction is approved. However,  
10 it is not true that all these costs will flow back into customer rates because  
11 PacifiCorp is actively taking steps to reduce these costs.

12 **Q. Please expand on what actions PacifiCorp is taking to mitigate the loss of**  
13 **payments received from PPM and other affiliates.**

14 A. As I noted above, more than 60% of the \$9.4 million of payments received from  
15 PacifiCorp's affiliates last fiscal year were for direct charges, mostly labor  
16 charges. As noted above, the majority of the employees were supporting PPM.  
17 Separation initiatives are underway to identify and transfer to PPM these  
18 corporate functions primarily related to legal, risk management, and finance. We  
19 expect most of the employees performing these functions for affiliates will  
20 transfer as well at the close of the transaction. Given that this exercise impacts  
21 some of our valued employees, we are approaching this in a deliberate way and  
22 the plan has not yet been completed or approved.

23

1 **Q. Has PacifiCorp made Staff aware of the separation planning?**

2 A. Yes, through one-on-one discussions and through discovery responses. For  
3 example, in response to OPUC Staff Data Request 98 (see Staff/203,  
4 Dougherty/19), PacifiCorp states:

5 “Separation costs include the costs of actions necessary to  
6 effectively separate PacifiCorp from ScottishPower, its holding  
7 structure and its affiliates. Activities for separation may include  
8 disconnecting existing organizational interfaces, business  
9 processes or systems.”

10 The challenge for Staff and us is that the separation planning has not yet been  
11 completed.

12 **Q. How much of the costs related to PacifiCorp affiliate charges will go away  
13 after the transaction is completed?**

14 A. Our goal is to reduce as much of these costs as possible by transferring functions  
15 and the related employees to the affiliates, and by reducing controllable costs in  
16 PacifiCorp departments as the workload is reduced. Some costs, such as the IT  
17 hardware and software allocations, are not scalable, and these costs will remain  
18 within PacifiCorp. However, we intend to examine all other controllable  
19 expenses to identify areas of cost savings to mitigate the impact on our customers.

20 **Q. Why should customers incur any of these costs that can not be transferred to  
21 PPM or other affiliates or cost(s) that can not be reduced like system costs?**

22 A. Our goal is to not have our customers incur higher costs as a direct result of the  
23 transaction. However, as I mentioned, certain fixed costs cannot be directly  
24 reduced. For example, \$1.5 million of fixed IT system costs that were charged to  
25 these affiliates last year will not be able to be removed once they leave the group.

26 It is also fair to note that the sizes of these systems were not increased for our

1 affiliates. As such, our customers have benefited for many years by having these  
2 affiliates bear a portion of these fixed costs as opposed to all of these prudent  
3 costs rolling directly into rates.

4 **Q. What is your response to Mr. Dougherty's contention on page 8 of his**  
5 **testimony that the management fee expenses charged to the electric**  
6 **operations will increase as a result the removal of these affiliates?**

7 A. It is true that the removal of these affiliates from the formula for calculating the  
8 management fee will result in a higher percentage being assigned to the electric  
9 operations. Again, the underlying departmental costs that roll into the  
10 management fee include both variable and fixed costs and these costs are also  
11 under review as part of the separation planning efforts. The important figure is  
12 not the percentage but the underlying amount of expenses that are included in the  
13 formula. Just like the direct services that are charged to affiliates, we will be  
14 aggressively reviewing all of these corporate functions that make up the  
15 management fee for ways to reduce costs. It is expected that at the end of the day  
16 the total bucket of costs that make up the management fee group of costs and  
17 amount allocated to the electric operations will be less than the amount charged  
18 today even though the percentage is higher. It is just too early to tell since we  
19 have not yet completed our separation plan.

20 **Q. How will customers be protected against this potential increase in costs?**

21 A. MEHC and PacifiCorp have committed that the customers of PacifiCorp will be  
22 held harmless if the transaction results in a higher revenue requirement for

1 PacifiCorp than if the transaction had not occurred. We understand that we bear  
2 the burden to prove this in any future rate case.

3 **Inter-jurisdictional Allocations**

4 **Q. ICNU witness Wolverton discusses a number of issues related to inter-**  
5 **jurisdictional cost allocation. What actions should the Commission take in**  
6 **this proceeding regarding inter-jurisdictional cost allocation?**

7 A. The Commission should take no action in this proceeding regarding inter-  
8 jurisdictional cost allocation.

9 **Q. Mr. Wolverton's recommendations appear to be based on a belief that issues**  
10 **related to inter-jurisdictional cost allocation have not been resolved in**  
11 **Oregon. Do you agree?**

12 A. No. The OPUC adopted the Revised Protocol in Order No 05-021 on January 12,  
13 2005. As referenced by Mr. Wolverton, ongoing workgroups have addressed or  
14 will address specific areas of further study that were identified when this  
15 Commission adopted the Revised Protocol for use in Oregon. For example, the  
16 Load Growth Report filed with this Commission on October 20, 2005,  
17 demonstrated that the Revised Protocol protects slower growing states from  
18 potential inappropriate cost shifts from PacifiCorp's fastest growing state, Utah.

19 **Q. How does the Revised Protocol address the future risk of allocation**  
20 **shortfalls?**

21 A. It contains the following provision:

22 The Company will continue to bear the risk of inconsistent allocation  
23 methods among the states.

1 As such, Mr. Wolverton's recommendation that MEHC be required to assume all  
2 risks resulting from less than full system cost recovery is neither appropriate nor  
3 necessary.

4 **DSM Study**

5 **Q. Some parties, including Staff, have questioned the need for the DSM study**  
6 **proposed by MEHC. Can you comment?**

7 A. Yes. The concept of a conservation potential study was first raised by CUB in  
8 UM 1169 earlier this year. This docket concerned the question of whether the 3  
9 percent public purpose charge was a "ceiling" or a "floor" for the expenditures  
10 covered by that charge. CUB moved to stay the docket on the basis that the  
11 Commission should not make this decision in the abstract without reviewing  
12 conservation potential studies for both PacifiCorp and PGE. See CUB Motion to  
13 Suspend Proceeding at 3-4, UM 1169 (Feb 4, 2005). In its motion, CUB agreed  
14 to meet with the UM 1169 parties to determine how such a study could be  
15 developed.

16 The concept was raised again in PacifiCorp's current IRP docket, LC 39.  
17 In that case, Staff proposed requiring PacifiCorp to conduct a system DSM study  
18 as a condition of IRP acknowledgement. PacifiCorp contested that condition, in  
19 part due to the uncertainty of recovery for the associated costs. At this time, the  
20 Commission has not ruled on PacifiCorp's IRP.

21 While some parties now suggest a DSM study is unnecessary, both CUB  
22 and Staff independently raised the need for such a study within the last year. The

1 fact that MEHC is willing to step up and contribute \$1 million toward such a  
2 study is a clear benefit to customers.

3 **Q. Does that conclude your rebuttal testimony?**

4 A. Yes, it does.

1 **Introduction**

2 **Q. Please state your name and business address.**

3 A. My name is Brent E. Gale. My business address is 666 Grand Avenue, Suite  
4 2600, Des Moines, Iowa 50309.

5 **Q. Are you the same Brent E. Gale that previously submitted testimony in this**  
6 **docket?**

7 A. Yes, I am.

8 **Q. What is the purpose of your rebuttal testimony?**

9 A. The purpose of my rebuttal is to respond to several of the issues raised in the  
10 testimonies of various parties. I am also sponsoring Exhibit PPL/313, a current  
11 calculation of net benefits from MEHC's proposed acquisition of PacifiCorp, and  
12 PPL/314, a compilation of the 50 commitments of general applicability and 28  
13 state-specific commitments from our settlement in Utah. In addition, I am  
14 sponsoring Exhibit PPL/315, the 5 Oregon-specific commitments being offered  
15 by MEHC and PacifiCorp in this proceeding. I am also sponsoring Exhibit  
16 PPL/316, a summary of MEC's situation regarding competitive gas sales in  
17 Illinois. Finally, I am sponsoring Exhibit PPL/317, a list of the 7 state-specific  
18 commitments from California.

19 I am sponsoring the settlement and commitments from other states,  
20 because, as we have previously indicated, each state may adopt commitments  
21 from the other states.

22

1 **Rate Impacts and Net Benefits**

2 **Q. Mr. Jenks claims that MEHC hasn't analyzed the effect of its plans on**  
3 **customer rates and has generally not addressed the issue of rates. Mr. Jenks**  
4 **provides an excerpt of an exhibit that he claims demonstrates this lack of**  
5 **attention to the impact on rates. How do you respond?**

6 A. Prior to the filing of the Joint Application, MEHC performed a high-level  
7 estimate of changes to overall revenue requirements to ensure there would not be  
8 a negative impact on rates. This was the basis for the statement in my revised  
9 direct testimony at pages 28, line 23, "We do not expect that the commitments we  
10 are offering will cause an increase in the percentage discussed in PacifiCorp  
11 witness Johansen's testimony." In response to issues raised by Mr. Jenks and  
12 others in their testimony, MEHC has continued to refine that analysis, the results  
13 of which are included in Exhibit PPL/313.

14 **Q. Please describe Exhibit PPL/313.**

15 A. This exhibit demonstrates that the implementation of MEHC's commitments will  
16 result in an overall reduction in PacifiCorp's projected revenue requirement of  
17 approximately \$201 million on a net present value basis, measured over the  
18 period of 2006-2015. These savings, which are MEHC's best current estimate,  
19 are presented both in annual form and as a net present value and are derived by  
20 comparison to the confidential PacifiCorp business plan ScottishPower provided  
21 to MEHC in due diligence.

1 **Q. Does the \$201 million net present value of revenue requirement reductions**  
2 **on Exhibit PPL/313 represent all of the benefits of the MEHC commitments**  
3 **to PacifiCorp customers?**

4 A. No. As you can see on Exhibit PPL/313, there are numerous benefits to  
5 PacifiCorp customers that have not yet been quantified. Not all of these benefits  
6 are financial in nature, and not all of them that are have yet been quantified. The  
7 \$201 million benefit only represents the areas that MEHC has been able to  
8 specifically quantify at this time.

9 **Q. What do the figures on this exhibit represent?**

10 A. The figures on this exhibit represent annual increases or decreases in expected  
11 revenue requirements as MEHC currently estimates them from the investments  
12 and initiatives MEHC has committed to as part of this transaction. The exhibit  
13 breaks out revenue requirement impacts by three major categories.

14 The first category is the impact of plant additions. This includes the  
15 investments related to MEHC's commitments, and the figures in this section  
16 represent estimated changes to revenue requirements associated with these  
17 investments. The second section includes O&M expense increases associated  
18 with the MEHC commitments. The third section includes reductions in revenue  
19 requirements that MEHC believes will result from its commitments in this  
20 transaction. These reductions are either in the form of expense reductions or  
21 reductions in revenue requirements associated with reduced capital spending.

22 **Q. What is the source for the figures in the Plant Additions section of the**  
23 **analysis?**

1 A. The primary source of data for the calculations in the Plant Additions section of  
2 the analysis is annual expected capital expenditures for the respective projects.  
3 The revenue requirement impact calculations were based on these capital  
4 expenditure amounts.

5 **Q. How were the changes in revenue requirements associated with these**  
6 **projects determined?**

7 A. First, a net plant value (including AFUDC) to be included in “rate base” at the end  
8 of the construction period was determined for each investment. Then the annual  
9 revenue requirements going forward that would be needed to cover the expenses  
10 related to the investment and to earn a reasonable return for shareholders were  
11 calculated. The calculation includes a return component on the annual rate base  
12 that is adjusted for deferred taxes. The calculation also includes income taxes,  
13 interest on long-term debt, depreciation expense, and O&M expense (in the case  
14 of the emissions reductions from coal-fired generation).

15 **Q. Do the changes in revenue requirements only reflect the changes associated**  
16 **with MEHC’s incremental investment?**

17 A. No. The changes in revenue requirements reflect the net change in investment, as  
18 compared to the PacifiCorp business plan provided MEHC by ScottishPower. In  
19 some cases, the net plant is entirely an incremental investment (Walla Walla, Path  
20 C, and the Local Transmission Risk Projects). In other cases (Emissions  
21 Reductions, Mona-Oquirrh, and Asset Risk), the net plant reflects the capital  
22 expenditures proposed by MEHC less the capital expenditures that were already

1 included in the PacifiCorp capital plan. In these cases, the changes to revenue  
2 requirements are shown as a net effect.

3 **Q. What is the source for the figures in the O&M increases section of the**  
4 **analysis?**

5 A. These figures represent increased O&M expenses that result from the Accelerated  
6 Distribution Circuit Fusing Program and the Saving SAIDI Initiative. The figures  
7 are taken from the direct testimony of Greg Abel in this proceeding. Increased  
8 expenses are modeled to begin in 2007 for the amounts and time durations listed  
9 in Mr. Abel's testimony and my Exhibit PPL/314.

10 **Q. What is the source for the figures in the Cost Reductions section of the**  
11 **analysis?**

12 A. The sources of the cost reductions for Reduced Cost of Debt and Corporate  
13 Overhead Reductions are the direct testimonies of MEHC witnesses Goodman  
14 and Specketer, respectively. The avoidance of replacement power costs  
15 represents a conservative estimate (50% of the maximum expected) of the  
16 purchase power costs PacifiCorp expects to avoid as a result of reduced outage  
17 time associated with MEHC's scheduled emissions reductions investments. The  
18 Walla Walla wheeling revenues are also based on a conservative estimate (again,  
19 50% of the expected maximum) of the wheeling revenues that will be realized  
20 from the Walla Walla line.

21 **Q. What is the source of the figure in the line titled "Path C Enabled Net**  
22 **Benefits" and what does this number represent?**

1 A. This figure represents the net expected reduction in revenue requirements  
2 associated with implementation of the Path C investment, and is taken from  
3 PacifiCorp's November 2005 Updated IRP (Table 4.11, p. 41). This figure  
4 includes both the cost of the project and the expected benefits, including the delay  
5 or elimination of two generation resources. It does not, however, include any  
6 estimate of benefits associated with increased access to wind resources.

7 **Q. Both CUB witness Jenks and CADO-OECA witness Abrahamson express**  
8 **apprehension about the impact of MEHC's investment commitments on**  
9 **rates, implying an ominous lack of concern on MEHC's part regarding**  
10 **customer rate levels. Mr. Abrahamson at page 9, lines 12-14, also attributes**  
11 **PacifiCorp's planned average 4% annual rate increases to MEHC's**  
12 **investment commitments. Please explain.**

13 A. We understand customers' concerns about incremental rate increases and  
14 prepared Exhibit PPL/313 to address and dispel these concerns. In this regard, it  
15 is important to clarify that the average annual 4% rate increase mentioned by  
16 Mr. Abrahamson is not the result of MEHC commitments but instead reflects  
17 PacifiCorp's preexisting need for annual rate increases averaging around 4% total  
18 company over ten years based, regardless of whether this transaction is approved.  
19 As witness Johansen testifies, these projected increases, which are based upon  
20 then-current market prices, are part of the plan by ScottishPower and PacifiCorp  
21 to enable PacifiCorp to meet its capital investments needs and earn its authorized  
22 return. The investments proposed by MEHC are not projected to increase the net

1 revenue requirements of PacifiCorp; rather, as indicated by Exhibit PPL/313,  
2 MEHC's investments are projected to reduce net revenue requirements over time.

3 **Q. How would you characterize Mr. Jenks' testimony as it pertains to MEHC's**  
4 **analysis of quantified benefits in this transaction?**

5 A. Mr. Jenks attempts to show through a series of adjustments that the net benefits  
6 calculation provided by MEHC of \$200 million is actually a net harm to  
7 customers of \$77 million. In addition, Mr. Jenks attempts to show that the  
8 revenue requirement increases from MEHC's commitments outweigh the revenue  
9 requirement decreases associated with the commitments.

10 **Q. Do you agree with the analysis by Mr. Jenks that shows a net harm to**  
11 **customers?**

12 A. No. Of the \$1.3 billion investment proposed by MEHC, somewhat more than  
13 \$400 million is incremental to the PacifiCorp plan provided by ScottishPower to  
14 MEHC, the plan upon which MEHC based its due diligence and analysis for the  
15 purpose of testimony. After reviewing the expected impact of MEHC's proposed  
16 investments on PacifiCorp's other planned expenditures, MEHC was able to  
17 remove or defer somewhat more than \$400 million from PacifiCorp's plan. As a  
18 result, MEHC's proposed \$1.3 billion of investments do not result in a net  
19 increase in the PacifiCorp investment plan as provided to MEHC. Moreover, as  
20 indicated by Exhibit PPL/313, MEHC's investments are expected to provide a net  
21 reduction in PacifiCorp's revenue requirements over time. This will be a net  
22 benefit to customers.

1 I also note that in Mr. Jenks' analysis, he attaches no value to reducing  
2 environmental emissions (until a trading market develops) or increased reliability  
3 or increased deliverability of renewable energy. I understand the difficulty of  
4 monetizing these benefits for the purpose of a revenue requirements analysis, but  
5 that does not mean that the benefits are not real.

6 **Q. Why is Mr. Jenks' adjustment to the corporate overhead reductions benefit**  
7 **inappropriate?**

8 A. It is expected that the reductions to corporate overhead charges in MEHC's  
9 commitments will continue after the timeframe of the commitment has passed and  
10 will not evaporate simply because the commitment is being made for 5 years.  
11 The purpose of the committed timeframe was to provide a guarantee of savings  
12 for a reasonable period of time, not to signal an ending date at which time MEHC  
13 overhead charges will arbitrarily increase. Based on our experience with our  
14 other regulated utility business platforms, we expect that the cost reductions will  
15 continue through the end of the analysis period and that is what should be  
16 reflected in the analysis.

17 **Q. Why is Mr. Jenks' adjustment to the reduced debt issuance costs**  
18 **inappropriate?**

19 A. Mr. Jenks argues that the benefits of the reduced debt issuance costs should only  
20 be recognized to the extent that the reduced expense occurs during the timeframe  
21 of MEHC's specific commitment. As is the case with the corporate overhead  
22 reductions, the reduced debt issuance costs represent a real savings that is

1 expected to be ongoing. The commitment time frame merely provides a  
2 guarantee of that benefit for a reasonable period of time.

3 In addition, once debt is issued at a lower rate, the interest on that debt is  
4 reduced for the entire term, not just for a couple of years. Mr. Jenks fails to  
5 recognize this. The correct analysis extends the benefits of the reduced interest  
6 costs for the entirety of the analysis once the lower-cost debt in each year of  
7 MEHC's commitment is issued.

8 **Q. ICNU witness Canon, beginning at line 18 on page 3 of his direct testimony,**  
9 **concludes that because it may be difficult to ensure that commitments are**  
10 **actually honored after a transaction is approved, rate credits or rate freezes**  
11 **are the preferred method for providing benefits to customers associated with**  
12 **a change in utility ownership. Why has MEHC elected not to offer rate**  
13 **credits or freezes?**

14 A. As PacifiCorp witness Johansen has testified in her direct testimony at page 6,  
15 lines 1-19, PacifiCorp is in a situation where it will need to make significant  
16 investments over the next several years. In addition, PacifiCorp has not been able  
17 to earn anywhere near its authorized return on equity in recent years, and there is  
18 no evidence that it will be able to do so in the near term. In order for PacifiCorp  
19 to be in a position to provide rate credits or even rate freezes, substantial  
20 synergies and cost reductions would need to be realized. Such synergies are not  
21 expected from this transaction, since the transaction is an acquisition and a  
22 continuation of an ongoing business, not a merger.

23 **Q. Please explain.**

1 A. Most utility transactions involve mergers of two utilities, either with or without  
2 holding companies. The transacting utilities almost universally attempt to justify  
3 the transaction on the basis of cost savings through “synergies” or “best  
4 practices.” What this typically means is that the merging utilities claim to be able  
5 to reduce costs through elimination of personnel, functions or service providers.  
6 These cost reductions may or may not be realized. What is realized, however, is  
7 the effective elimination of both merging utilities and the creation of a new entity,  
8 regardless of the name selected for that entity. The consequence of creating a  
9 new entity is almost unavoidably a period of dislocation and sub-optimum  
10 operation.

11 MEHC does not engage in utility mergers. Instead, MEHC *acquires* a  
12 utility and does not merge it with an existing MEHC business platform. An  
13 acquisition permits MEHC to keep the utility’s existing management and  
14 operations largely in place and avoid the period of dislocation and sub-optimum  
15 operation. In other words, the acquisition approach facilitates business continuity,  
16 a desirable objective when the acquired company has good management and good  
17 customer satisfaction. MEHC believes that this approach also facilitates the  
18 acquired utility having a more local focus, responsive to its particular  
19 constituency and customers.

20 The tradeoff for this business continuity, however, is that there are few  
21 apparent synergistic opportunities for cost reductions. It is therefore not  
22 anticipated that significant synergies will be realized. Even if MEHC and  
23 PacifiCorp are able to accomplish greater cost reductions than those guaranteed in

1 the Joint Application, it is not likely they would be large enough to allow for rate  
2 reductions or even rate freezes, since PacifiCorp is not currently earning its  
3 allowed return.

4 **Q. CUB witness Dittmer at page 12 of his testimony refers to a number of**  
5 **potentially shared services. Given your discussion of business continuity as**  
6 **an objective, please discuss the functions that will continue to be performed**  
7 **at PacifiCorp.**

8 A. As MEHC witness Abel noted in his direct testimony, PacifiCorp will be a  
9 separate business platform (*i.e.*, a corporate subsidiary) under MEHC. PacifiCorp  
10 will not be merged into MEC nor will it be a subsidiary of that utility. PacifiCorp  
11 will have its own board of directors, its own management team, and its own  
12 operating staff. PacifiCorp will have its own accounting function, administrative  
13 services function, advertising function, billing/call center/customer services  
14 function, financial staff, human resources personnel, legal services, medical  
15 benefit plans, purchasing function, regulatory/legislative functions, and strategic  
16 planning function. PacifiCorp will also have its own environmental and tax  
17 personnel. It will do its own financing and have its own credit rating.

18 MEHC will provide oversight for many of these functions; coordinate  
19 functions such as environmental, tax and corporate strategy; and provide  
20 corporate assistance and support. This latter ability of MEHC to provide  
21 assistance and support, both by itself and through its subsidiaries, is a significant  
22 benefit of being part of a larger holding company system such as MEHC.

1 **Q. Mr. Dittmer at pages 30 and 31 of his testimony expresses surprise that**  
2 **MEHC is not claiming synergies from this transaction. What is your**  
3 **response?**

4 A. I have previously noted that this transaction is not a merger; it is an acquisition  
5 where business continuity is an objective. In utility mergers, particularly those  
6 involving utilities located in the same state or otherwise with overlapping  
7 territories, it is often possible to reduce or eliminate the costs of some facilities,  
8 personnel and service providers without impacting service quality or  
9 responsiveness to local conditions. For example, in such mergers, accounting,  
10 administrative, legal, human resources, and regulatory services can be combined  
11 in the merged company. As the costs of these services would then be spread over  
12 a larger amount of output, these costs could properly be considered a factor in  
13 determining economies of scale resulting from the merger.

14 In the case of the proposed acquisition of PacifiCorp, however, MEC and  
15 PacifiCorp do not have overlapping, or even contiguous, franchises. Accordingly,  
16 MEHC believes that the two utility subsidiaries will need to maintain their current  
17 separate facilities, personnel and service providers in order to maintain service  
18 quality and responsiveness to local conditions. In this sense, the respective  
19 facilities of the two utilities are not duplicative, and economies of scale would not  
20 be expected to result from the acquisition as the underlying costs of providing  
21 electric service will not substantially change as a result of the acquisition.

1 **Q. Will PacifiCorp be the first acquisition by MEHC where the acquired**  
2 **company was not merged with another subsidiary providing similar**  
3 **services?**

4 A. No. For example, Kern River Gas Transmission Company is an interstate natural  
5 gas pipeline that provides transportation services from the Rocky Mountain area  
6 to California. This subsidiary of MEHC has not been merged with Northern  
7 Natural Gas Company, an interstate natural gas pipeline subsidiary that provides  
8 transportation services primarily in and around the Mississippi River area. Each  
9 of these interstate pipeline subsidiaries serves different geographic areas with  
10 differing customer characteristics. Each has its own management team,  
11 administrative services staff and operations staff. The two pipelines exchange  
12 ideas and information, as we would expect PacifiCorp and MEC to do, but do not  
13 share physical or customer synergies that would yield material benefits if the  
14 organizations were merged.

15 MEHC prefers to acquire companies that are well run and well managed,  
16 where the business can continue seamlessly after the acquisition and existing  
17 management can remain in place to continue to operate the business. That was  
18 the situation with Kern River and Northern Natural, and it is how we view the  
19 situation with PacifiCorp.

20 **Q. Does the fact that MEHC is not claiming synergies to justify this acquisition**  
21 **constitute an acknowledgement that there will be none?**

22 A. No. There may be some cost savings possible in the acquisition of common  
23 services, materials and supplies. We would also expect cost savings and

1 efficiency improvements as a result of the information exchange. But, we cannot  
2 quantify these opportunities until after MEHC better understands the operations  
3 and circumstances of PacifiCorp, and that cannot occur until MEHC owns  
4 PacifiCorp. Regulatory credibility is extremely important to MEHC, as MEHC  
5 witness Abel testified, and we do not make claims that we cannot substantiate or  
6 commitments that we cannot keep. Until we can be more certain what, if any,  
7 synergies can be achieved, we will not make a commitment regarding that  
8 achievement.

9 **Q. Mr. Dittmer also mentions savings attributable to best practices. Why has**  
10 **MEHC not quantified expected savings from this source?**

11 A. As I testified above, there may be cost savings from the exchange of information  
12 between MEC and PacifiCorp. But as I also noted in my direct testimony, both  
13 utilities are very highly rated in terms of customer satisfaction, have among the  
14 lowest delivered coal costs, and rank well in other important practices. Without  
15 the experience that can only be gained by operating the businesses, MEHC is not  
16 able to quantify savings that can be gained by changes in business practices.

### 17 **MEHC Expectations**

18 **Q. CUB witness Dittmer suggests at pages 40-42 that the Commission should be**  
19 **wary of MEHC's eagerness to invest because MEHC is predicting it will**  
20 **invest more in infrastructure than is in PacifiCorp's current business plan.**  
21 **Other witnesses are also concerned that MEHC will over-invest in**  
22 **PacifiCorp to increase its return. What is your response?**

1 A. Mr. Dittmer is mistaken that MEHC anticipates investments that would exceed  
2 the capital requirements in PacifiCorp's long-term business plan. With or without  
3 the transaction, PacifiCorp plans to invest approximately \$1 billion annually for  
4 the next several years, resulting in previously projected annual rate increases  
5 averaging around 4% total company over ten years. MEHC's \$1.3 billion  
6 proposed investments will not be made in a single year but rather over a multi-  
7 year period. In addition, as I previously testified, MEHC's investments do not  
8 increase the amount of PacifiCorp's planned investments on a net basis. But,  
9 MEHC's investments do produce net benefits (*i.e.*, revenue requirements  
10 reductions over time) as compared to PacifiCorp's plan.

11 As I mentioned earlier, our current estimate of the net benefits, on a net  
12 present value basis, exceeds \$200 million through 2015, even without recognition  
13 of the value of the incremental renewables that are made possible by the  
14 transmission investments. Refer to Exhibit PPL/313.

15 While MEHC's investment levels are consistent with those in PacifiCorp's  
16 plan, MEHC brings value to PacifiCorp not only because it would invest in a  
17 somewhat different resource mix than that contained in the plan provided to  
18 MEHC by ScottishPower, but also because it is willing to publicly commit to  
19 funding its planned investments. This provides much more certainty that those  
20 investments will actually occur. MEHC believes its ability to take a longer-run  
21 view will allow it to seek out and make investments that will provide greater rate  
22 stability to PacifiCorp customers through reduction of future costs. MEHC has no  
23 intention of inflating rate base by over-investing. We make investments that are

1 cost-effective or are otherwise necessary to provide reliable and safe service at  
2 reasonable cost. PacifiCorp and its customers need significant incremental  
3 investment that MEHC can provide.

4 **Q. CUB witness Jenks expresses concern that MEHC will not be satisfied with**  
5 **the returns allowed in Oregon and will attempt to use its political muscle to**  
6 **push an aggressive regulatory agenda. He references Iowa regulation of**  
7 **MEC as a basis for his concern. Please respond.**

8 A. Mr. Jenks need not be concerned. First, the earned returns on common equity  
9 provided by Iowa electric **retail** customers over the recent several years have  
10 averaged about 10%. The earnings above 10% have not been provided by retail  
11 electric customers; rather these earnings have been provided through sales in the  
12 wholesale market. It is these earnings from the wholesale market that have  
13 created much of the revenue sharing under MEC's Iowa AFOR. Note that the  
14 issue of what, if any, amount of wholesale revenues should be a reduction to retail  
15 revenue requirement had previously been a contested issue in Iowa.

16 Second, MEHC's Iowa electric business is by no means its only utility  
17 business. In fact, MEC sells natural gas as well as electricity in Iowa, Illinois,  
18 South Dakota and Nebraska. The returns earned in the gas business have been  
19 significantly lower than those earned in the electric business. If, in fact, MEHC  
20 had the political will and political muscle assumed by Mr. Jenks it would surely  
21 have remedied that situation.

22 Third, I also feel compelled to correct the misrepresentations regarding  
23 Iowa regulation contained in Mr. Jenks' testimony. Although we are not seeking

1 the have the Iowa regulatory models and processes adopted in any of the  
2 PacifiCorp states, several points need to be made regarding MEC's Iowa  
3 situation.

- 4 1) MEC's AFOR provided rate reductions and rate credits from 1997  
5 through 2000. When it became apparent in 2001 that additional  
6 generation investment was required to serve customers, it was agreed  
7 that long-term rate stability, rather than short-term rate reductions  
8 followed by rate increases, was a paramount objective. As a result, the  
9 AFOR was modified to allow the customers' portion of revenue  
10 sharing to be used to accelerate the depreciation on the added  
11 generation during the rate freeze, thereby mitigating the impact of the  
12 added generation on rates and rate base once the rate freeze ended.
- 13 2) Iowa has a historical precedent of rewarding management efficiency.
- 14 3) The 12% return on equity threshold (dropping to 11.75% in 2006) in  
15 the Iowa AFOR is not an "allowed" ROE; it is the top of a 200 basis  
16 point dead band within which MEC cannot request rate changes and  
17 no revenue sharing occurs. Above the dead band, revenue sharing is  
18 triggered. Below the dead band, MEC can request rate relief. In other  
19 words, the AFOR is symmetrical in this regard.
- 20 4) A quid pro quo for the AFOR was MEC's assumption of the risk for  
21 increases in power purchase costs, fuel costs and for the performance  
22 of its generation fleet. MEC has no fuel or purchased power

1 adjustment clause, nor is it allowed to defer power costs for future  
2 recovery.

3 5) Contrary to Mr. Jenks' concern, the Iowa ratemaking principles  
4 approved for MEC's generation additions do, in fact, require proof of  
5 the prudence and reasonableness of the proposed generation addition,  
6 including the cost of the same. The degree of proof required is the  
7 same as would be required in a rate case after the generation has been  
8 built. The difference is in the timing of the review. Unlike traditional  
9 regulation, where the reasonableness of the cost is determined after the  
10 expenditure has already been made and it is too late to do much about  
11 it (recall the \$3 billion nuclear plants of the 1980s), the Iowa process  
12 determines the prudent and reasonable level of costs prior to the  
13 expenditure. If MEC's costs exceed the level determined prudent and  
14 reasonable by regulators, it is at risk to prove that the excess is prudent  
15 and reasonable. The Iowa process operates under the principle that the  
16 generation decision is litigated before significant costs have been  
17 incurred and everyone knows the principles upon which the generation  
18 will be judged.

19 6) The 12.2% allowed return that Mr. Jenks finds so unbelievable for  
20 MEC's wind project is fixed over the life of the wind project.  
21 Regardless of what happens to interest rates in the future (in spite of  
22 the fact that they are currently near historical lows), this is all MEC  
23 can expect to be allowed. I would also note that we believe this 12.2%

1 equity return assumption is significantly below the equity return  
2 assumptions used by developers, although we do not have access to  
3 their assumptions.

4 Fourth, Mr. Jenks seems to be implying that Iowa regulators and consumer  
5 advocates were naïve in approving MEC's AFOR and its several extensions. I  
6 would first observe that Iowa Utilities Board member Diane Munns is the  
7 chairman of the National Association of Regulatory Utility Commissioners  
8 ("NARUC"), a veteran of regulation and NARUC, and one of the most respected  
9 commissioners in the industry. I would also observe that Iowa Office of  
10 Consumer Advocate John Perkins is the chairman of the National Association of  
11 State Utility Consumer Advocates ("NASUCA"). Mr. Perkins is a veteran  
12 representative of consumers with extensive knowledge of the industry. In  
13 addition, Mr. Perkins reports to Iowa Attorney General Tom Miller, one of the  
14 most active consumer representatives in the country. These people, and their  
15 extremely capable support staffs, are neither naïve nor incapable of representing  
16 the best, long-term interests of their constituents.

17 Fifth, among the other signatories to the settlements that implemented the  
18 AFOR and extended it several times is Deere & Co., a large and very energy-  
19 savvy industrial customer.

20 Finally, the Iowa AFOR to date has resulted in (1) no electric rate increase  
21 request by MEC since its incorporation; (2) rate reductions and rate credits from  
22 1997 through 2000 and in 2004; (3) the construction of \$2 billion of infrastructure  
23 investment by MEC since 2001; (4) the construction of 360 MW of wind facilities

1 since 2003 and the expected doubling of that amount by the end of 2007; (5)  
2 additional planned electric rate reductions in 2006 and 2007; and (6) an ability by  
3 MEC to commit to no increase in any customers' electric rates before 2010 and no  
4 general increase in rates prior to 2012. MEHC and MEC will stack MEC's  
5 AFOR against any in the country in terms of benefits for its customers.

## 6 **MEHC/PacifiCorp Commitments**

7 **Q. In addition to updating prior commitments made in your direct testimony,**  
8 **Exhibit PPL/314 includes 28 state specific Utah commitments and Exhibit**  
9 **PPL/317 includes 7 state specific California commitments from the respective**  
10 **settlement agreements reached in those states. What is the purpose of**  
11 **including these commitments in those exhibits?**

12 A. In my supplemental direct testimony, MEHC and PacifiCorp agreed to apprise  
13 Oregon of clarifications, modifications and supplemental commitments it agreed  
14 to as part of settlements in other states. Additionally, MEHC and PacifiCorp  
15 offered a "most favored state" clause so as not to discourage early settlement.  
16 Under this clause, Oregon may adopt applicable Utah and California state-specific  
17 commitments.

18 **Q. At page 11, beginning at line 10, ICNU witness Canon expresses confusion**  
19 **regarding the commitments made by MEHC and PacifiCorp. What is your**  
20 **response?**

21 A. Mr. Canon is creating confusion where none exists. As I explained at page 4 of  
22 my direct testimony, MEHC and PacifiCorp met with numerous groups that had  
23 an interest in this transaction and asked them to identify the risks and concerns

1 regarding the transaction. Some of the risks and concerns that they identified  
2 were similar to concerns that were raised and addressed in the ScottishPower  
3 transaction. Therefore, MEHC and PacifiCorp, through my direct testimony,  
4 proposed adopting or continuing commitments and conditions required by one or  
5 more of the regulatory commissions in the ScottishPower transaction. These  
6 Commitments (now numbered for convenience) 1 through 34 in my Exhibit  
7 PPL/314 are referenced as the “existing commitments.”<sup>1</sup>

8 The commitments previously sponsored by MEHC witness Abel (now  
9 numbered 35 through 47) were not commitments or conditions in the  
10 ScottishPower transaction but are responsive to concerns expressed to MEHC in  
11 the meetings with interested groups. These represent “new commitments” as  
12 compared to the ScottishPower transaction.

13 Mr. Canon implies that continuation of existing commitments is not a  
14 benefit to customers. The fact that interested groups have expressed concern for  
15 continuation of the existing commitments indicates they provide some benefit.  
16 Moreover, if Mr. Canon were correct, one would assume that there would be no  
17 objection to eliminating all of those commitments. But, each of those  
18 commitments was drafted or continued because it addressed a concern or risk  
19 identified by someone.

20 Mr. Canon also suggests that some of the new commitments are existing  
21 commitments. He is incorrect—these were not commitments in the

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<sup>1</sup> It is important to recognize that no regulatory commission in the ScottishPower transaction required all 34 of the commitments. Since MEHC and PacifiCorp are extending these commitments to all states, at least one of these 34 commitments will be incremental in each jurisdiction.

1 ScottishPower transaction. Most are completely new commitments. A few, such  
2 as the renewable energy commitment, constitute an expansion of an existing  
3 PacifiCorp goal. And still others, such as the commitment regarding customer  
4 service standards, constitute an extension of existing commitments that might not  
5 otherwise occur without this transaction.

6 **Q. CUB witness Jenks at page 44 has characterized 21 commitments as having**  
7 **no value and Staff witness Conway has characterized 30 commitments as**  
8 **having no value, restate current laws, are unworkable, are unlawful or**  
9 **otherwise restates current PacifiCorp commitments (pages 8-9). Please**  
10 **respond to their views of the commitments.**

11 A. As I previously stated, the commitments address both general and state-specific  
12 concerns and risks. Each commitment has been proposed because someone  
13 (sometimes more than one person/entity) has asked for its inclusion. So, while  
14 one witness may purport to view a particular commitment as “meaningless,”  
15 another stakeholder obviously views the same commitment as quite necessary;  
16 otherwise, the commitment would not have found its way onto the commitment  
17 list.

18 **Q. Can you provide some examples?**

19 A. Yes. For example, Staff witness Conway characterizes Commitment O 4 of  
20 Exhibit PPL/315 as providing no value. This commitment, added in response to  
21 comments of another Oregon party at the technical conference, would require  
22 MEHC to seek Oregon Commission approval under ORS 757.480 if it merges  
23 PacifiCorp with a utility that does not have facilities in Oregon. Mr. Conway

1 claims at page 21 of his testimony that the commitment has no value because  
2 ORS 757.480 has no geographic restriction. While Mr. Conway is correct as far  
3 as he goes, he doesn't go far enough. ORS 757.480 provides the Commission  
4 with approval authority over mergers of "public utilities." The term public utility  
5 is not defined in ORS 757.480 but is defined in ORS 757.005. The definition of  
6 public utility is one with facilities in Oregon. Thus, absent Commitment O 4,  
7 MEHC could potentially merge PacifiCorp with an out-of-state utility, without  
8 seeking Commission approval under ORS 757.480.

9 As another example, CUB witness Jenks claims Commitment 4 has no  
10 value. Among other aspects of that commitment is assurance of access to the  
11 books and records of Berkshire Hathaway, something fellow CUB witness  
12 Dittmer claims at pages 3 and 4 of his testimony is critical to approval of the  
13 transaction.

14 There are numerous other examples where Mr. Conway, Mr. Jenks and  
15 other witnesses denigrate the value of the commitments. But, the fact is that each  
16 commitment has value to someone in one or more of the six PacifiCorp  
17 jurisdictions or (in the case of the existing commitments) had value in the  
18 ScottishPower transaction. And, contrary to Mr. Conway's classification, MEHC  
19 is aware of no commitment that is "unlawful."

20 **Q. How do you believe the MEHC commitments should be viewed?**

21 A. The commitments have been offered by MEHC and PacifiCorp to ensure that the  
22 transaction provides benefits to customers, addresses identified concerns and  
23 risks, creates no harm to the public interest, and otherwise satisfies the regulatory

1 requirements for approval of the transaction. The purpose of the investment  
2 commitments is to provide evidence of MEHC's process for assessing, and  
3 willingness to make, investments in PacifiCorp's infrastructure.

4 MEHC and PacifiCorp are not requesting that the ratemaking treatment of  
5 the commitments, or the reasonableness or prudence of the investments, be  
6 approved by the Commission in this proceeding. MEHC and PacifiCorp  
7 acknowledge that neither the Commission nor any party waives any right to assert  
8 such positions regarding the prudence, just and reasonable character, rate or  
9 ratemaking impact or treatment, or public interest as they deem appropriate  
10 pertaining to any commitment. But, the commitments are important to  
11 demonstrate that no public harm will flow from approval of the transaction and  
12 the transaction will provide net benefits to consumers.

13 **Q. Are there real benefits associated with MEHC's commitments?**

14 A. Definitely. The electric utility business, at its core, is all about producing energy  
15 and delivering it to customers. MEHC has undertaken thoughtful and serious  
16 commitments that are addressed to these core obligations<sup>2</sup>, and that are geared to  
17 the long-term interests of PacifiCorp's customers. The testimony of other parties  
18 should not be allowed to obscure that fact. MEHC understands that some parties  
19 wish there were more, or different, commitments, and that these parties' efforts  
20 and testimony are geared to leveraging concessions from MEHC. However,  
21 PacifiCorp customers' long-term interests are better served by a long-term focus,

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<sup>2</sup> Renewable resources, emissions control, transmission resources that will defer generation additions or permit new wind generation, new coal technology, delivery system improvements, etc.

1 not a short-term fixation with rate credits. The PacifiCorp infrastructure and  
2 customers' interests require substantial capital investment in the years ahead. The  
3 long-term interests of both require a strategy that will enhance PacifiCorp's  
4 ability to efficiently access the capital markets. MEHC will provide that strategy  
5 and execute on it.

## 6 **Benefits**

### 7 **Infrastructure Investments**

8 **Q. Several witnesses have suggested that many of the benefits cited by MEHC**  
9 **and PacifiCorp are merely actions that would be required of a prudent utility**  
10 **or were already planned by PacifiCorp. What is your response?**

11 A. I have three observations.

12 First, a utility, or any business, will (or should) perform the minimum  
13 functions required by law, which in most cases will be deemed prudent. This  
14 approach to conducting business focuses on the short-term horizon. As a  
15 consequence, the approach may fail to identify opportunities where doing *more*  
16 than the minimum will reduce long-term costs for customers. The emissions  
17 control investments that MEHC is proposing are an example of deploying  
18 investment dollars (actually somewhat fewer dollars than PacifiCorp planned) in a  
19 manner that both reduces long-term costs and achieves comparable or greater  
20 benefits (*e.g.*, emissions reductions), as compared to the PacifiCorp plan provided  
21 to MEHC by ScottishPower.

22 Second, although planning, assumptions and goal-setting may all be  
23 accomplished in a prudent manner, the absence of available capital may thwart

1 the achievement of the goal. PacifiCorp's renewable energy goal of 1400 MW of  
2 incremental supply by 2015 is an example. The planning, assumptions and goal  
3 all appear reasonable and prudent for a capital constrained utility. But the capital  
4 constraint means that PacifiCorp's plan for achieving the goal depends upon  
5 others committing to build the renewable facilities and the necessary transmission  
6 being constructed. MEHC believes that if the capital constraint can be removed  
7 (such as through this acquisition), the achievement of the goal is more likely.  
8 MEHC therefore committed to the Path C and Walla Walla transmission projects.  
9 Moreover, by virtue of its extensive experience with renewable energy, it is  
10 MEHC's opinion that the availability of a utility own/operate option also  
11 increases the likelihood of meeting the goal and doing so in a cost-effective  
12 manner. This option becomes a possibility when the capital constraint is  
13 removed; it is not available under current ScottishPower ownership. None of this  
14 means that PacifiCorp's plans and goals are imprudent, but capital constraints  
15 may render PacifiCorp unable to achieve the goal in the desired timeframe.

16 Third, in a particular situation, an action that is prudent for one utility  
17 could be disastrous for another. Again using the renewable goal as an example, a  
18 decision to deploy capital to own/operate a new wind resource might be a prudent  
19 choice for a utility in a strong financial position capable of raising the upfront  
20 capital needed at a relatively low cost, capable of using the production tax credit,  
21 or able to wait to recoup its investment over a period of 20 years or more. That  
22 same decision could be an uneconomic or otherwise undesirable choice for a

1 company with a high debt ratio, a need to recoup its investment quickly, or an  
2 inability to use the production tax credit.

3 **Q. What about the claim that the infrastructure projects committed to by**  
4 **MEHC were already planned by PacifiCorp?**

5 A. PacifiCorp's plans, as provided to MEHC in due diligence, did not contain:

- 6 • the Walla Walla and Path C transmission investments,
- 7 • the full amount of the Asset Risk Program investment,
- 8 • the local transmission risk project investment,
- 9 • the increase in the Accelerated Distribution Circuit program,
- 10 • the extension of the Saving SAIDI program,
- 11 • the DSM study, or
- 12 • the commitment for 100 MW of wind energy within one year of closing.

13 Moreover, while PacifiCorp had expected expenditures in its plan for  
14 emissions reductions at existing coal-fired generating plants, it had no firm  
15 commitment from ScottishPower to support its plan. MEHC was able to commit  
16 to that plan and, in consultation with PacifiCorp's management, refocus and  
17 reduce the expected expenditures to achieve comparable results. This is an  
18 example of MEHC's approach to investment: focusing upon ways to employ  
19 capital more efficiently to reduce long-term revenue requirements, while having a  
20 positive (or at least no negative) impact upon benefits.

21 The mix of infrastructure projects offered by MEHC also provides  
22 regulators and parties a foreshadowing of this long-run perspective that MEHC  
23 will bring to PacifiCorp, a perspective that cannot easily be achieved by a

1 company that must be concerned about the level of quarterly dividends. These are  
2 projects that provide long-term benefits (including cost reductions) to customers,  
3 but that might very well not be undertaken by a prudent utility with a capital  
4 constraint or without an extended long-run perspective.

5 It is also important to recognize that many projects in PacifiCorp's capital  
6 plan were just that: a *plan*. Inclusion of a project in the capital plan by no means  
7 indicates that ScottishPower had committed to finance that project. Corporate  
8 approval of "less than \$6 million" for a small aspect of a \$196 million project as  
9 cited by ICNU witness Canon at page 14, lines 20-24, can hardly be argued to  
10 constitute a "commitment" to the entire project.

11 **Q. Could you provide an example of a project which is the subject of an MEHC**  
12 **commitment that was not included in the PacifiCorp plan previously**  
13 **provided to MEHC by ScottishPower?**

14 A. Yes. The Path C transmission project was not included in PacifiCorp's capital  
15 plan provided to MEHC in due diligence. After reviewing PacifiCorp's planned  
16 generation additions, the potential transmission projects that were not included in  
17 PacifiCorp's plan and the likelihood of PacifiCorp achieving its 1400 MW  
18 renewable energy goal, MEHC, in consultation with PacifiCorp's management,  
19 concluded that the Path C investment would provide desirable long-term benefits.

20 This project is a perfect example of the type of investment MEHC will  
21 enable PacifiCorp to pursue. This is a project that provides a number of future  
22 benefits to PacifiCorp customers, but also requires a significant upfront  
23 expenditure. The Path C project will not only increase transfer capability between

1 the eastern and western portions of PacifiCorp's system, it will also (1) allow two  
2 future generation additions to be deferred or eliminated at significant reduction in  
3 expected revenue requirements, (2) provide increased access to Idaho wind  
4 resources, and (3) increase reliability. Indeed, when PacifiCorp evaluated this  
5 project in its November 2005 IRP Update, it was determined the project had a  
6 twenty-year present value of approximately \$186 million. Refer to Exhibit  
7 PPL/313.

8 **Q. What benefits are provided by MEHC regarding those infrastructure**  
9 **investments that were already included in PacifiCorp's capital plan?**

10 A. As I mentioned, the investments MEHC has committed to make to reduce  
11 emissions at PacifiCorp's coal-fired plants provide a good example. Although  
12 PacifiCorp had included expenditure amounts in its capital plan related to  
13 assumed future emissions reductions, no definitive equipment plan had been  
14 developed and no approval had been given by ScottishPower for the expenditures.

15 MEHC's investment commitment is based on specific equipment additions  
16 on a specific timeline, providing much more certainty that the needed investments  
17 will actually occur on a timely basis. MEHC's plan for compliance with  
18 anticipated federal requirements should also minimize the cost of that compliance  
19 by (1) allowing for purchase of equipment at lower prices because the demand for  
20 that equipment will not be as great as it will be when the industry is confronted  
21 with a legislative or regulatory deadline, and (2) minimizing related outages and  
22 associated replacement energy costs through scheduling equipment installation  
23 during already scheduled outages or maintenance.

1           Indeed, purchasing and installing the equipment now provides greater  
2 assurance that compliance will occur in a timely fashion. If the current demand  
3 for and lack of availability of wind turbines is any indication, it is reasonable to  
4 believe that sufficient emissions reduction equipment may not be available when  
5 it is in highest demand.

6           Because MEHC takes a long-run view, its long-term planning tends to be  
7 more definitive than that of many other companies. The net present value of the  
8 benefits of reduced purchase power costs resulting from the minimization of  
9 outages is \$80 million as shown in Exhibit PPL/313.

10 **Q. At page 13, beginning at line 3, ICNU witness Canon states that the lack of a**  
11 **timeline related to MEHC's investment commitments indicates they are not**  
12 **firm, enforceable commitments. Is MEHC willing to provide a timeline for**  
13 **these investments?**

14 A. Yes. Refer to Exhibit PPL/314. The Path C project target date included in  
15 Commitment 34 is 2010. The Mona-Oquirrh project date is 2011 and the Walla  
16 Walla-Yakima project date is 2010.

17 **Q. Mr. Canon at page 16 of his testimony quarrels with MEHC's**  
18 **characterization of Commitment 36 regarding shareholder investment in the**  
19 **RMATs transmission project as a new commitment. What is your response?**

20 A. Mr. Canon has failed to read the commitment carefully. Neither PacifiCorp nor  
21 ScottishPower have made a commitment to invest shareholder resources in  
22 RMATs; MEHC by this commitment does so. Commitment 36 is new and a  
23 benefit to states served by PacifiCorp.

1 **Q. ICNU witness Canon also expresses concern at page 17, lines 13-21, that**  
2 **accepting an investment as a customer benefit creates the impression that the**  
3 **investment is appropriate. Do MEHC and PacifiCorp regard approval of the**  
4 **transaction as also approving its investment commitments?**

5 A. No. As I testified, we have not asked for, and are not seeking, Commission  
6 approval of the prudence of the investments or the ratemaking treatment. Those  
7 approvals will be sought in appropriate proceedings after approval of the  
8 transaction.

9 Although our preliminary analysis indicates that the investments do  
10 provide net benefits (*i.e.*, reduce net revenue requirements, refer to Exhibit  
11 PPL/313), final analysis of the benefits and the authorization of the recovery of  
12 the costs will be the subject of rate and other proceedings where a full evidentiary  
13 record will be made.

14 **Q. At page 18 of his testimony, ICNU witness Canon suggests that the renewable**  
15 **energy commitment is simply committing to a plan that is already in place.**  
16 **Is he correct?**

17 A. No, he is not. As I have already explained, PacifiCorp had a goal of 1400 MW of  
18 cost-effective renewable energy by 2015; a goal is not necessarily an executable  
19 plan. MEHC has made commitments to invest in transmission, to analyze utility  
20 own/operate options for renewables and to have an additional 100 MW of  
21 incremental renewables in PacifiCorp's portfolio within one year after closing—  
22 all to turn the goal into a concrete, executable plan to achieve the objective.

23

1           It should also be noted that MEHC modified PacifiCorp's goal to be **at**  
2           **least** 1400 MW and to clarify that not all of the renewable energy will come from  
3           wind. Refer to Commitment 40 of Exhibit PPL/314.

4   **Q. Mr. Canon also complains that the advanced coal technology commitment is**  
5           **nebulous. What is your response?**

6   A.   The use of any coal technology can be controversial and the use of advanced coal  
7           technology such as IGCC is only now approaching commercial viability. As a  
8           result, MEHC did not believe it appropriate to presume how it should approach  
9           the use of advanced coal technology in PacifiCorp's service territory until it  
10          received more input from interested parties. After conducting two formal IGCC  
11          information sessions with interested parties and after receiving input in all states,  
12          MEHC and PacifiCorp have been able to develop more definitive commitments  
13          regarding IGCC. Those are Commitments U 15 and U 16 of Exhibit PPL/314.

#### 14           **Extension of Customer Service Standards**

15   **Q. Several witnesses contend that the extension of "existing" customer service**  
16           **and performance standards provide no benefits. What is your response?**

17   A.   As clarified by Exhibit PPL/314, Commitments 1 and 46, MEHC and PacifiCorp  
18           are committing to not seek changes to the standards and guarantees prior to  
19           March 31, 2008. This is a benefit to all those who value the standards and  
20           guarantees as they exist and were concerned that the standards and guarantees  
21           would be modified by MEHC. Moreover, MEHC and PacifiCorp, through  
22           Commitment 46, are committing to a nearly 4-year extension of the standards and  
23           guarantees with modifications only as approved by the Commission and no

1 elimination without Commission approval. This is a commitment that did not,  
2 and perhaps would not, exist without this transaction. It is a benefit to those who  
3 value the standards and guarantees and provides for Commission control over the  
4 elimination of the standards and guarantees—in essence, an extension as long as  
5 the Commission determines the standards and guarantees to be reasonable.

6 **Reduced Cost of Debt & DSM Study**

7 **Q. CUB witness Dittmer attempts to characterize MEHC benefits such as the**  
8 **reduced cost of debt and shareholder funding of the DSM study as de**  
9 **minus. How do you respond?**

10 A. As I noted above, with the acquisition of a well-managed utility, it is unrealistic to  
11 assume that large amounts of costs can be eliminated without negatively  
12 impacting operations, reliability, safety, or customer satisfaction. We have  
13 identified the areas of debt issuance costs and corporate overheads as areas where  
14 we can achieve cost reductions without negatively impacting operations or  
15 customer satisfaction. While these cost reductions may not be as large as  
16 reductions **claimed** (*i.e.*, hoped for) by utilities engaged in mergers, they are cost  
17 reductions that MEHC is confident of delivering. They are also cost reductions  
18 that can be delivered without disrupting management's ability to continue with  
19 reliable service and strong customer relations, which is, itself, a significant  
20 benefit.

21 Similarly, the DSM study is expected to provide benefits to customers  
22 well in excess of the \$1 million cost of the study—a cost borne by MEHC  
23 shareholders.

1 **Q. Concerns have been expressed by several parties that the shareholder-funded**  
2 **DSM study included in MEHC’s commitments is duplicative of efforts by the**  
3 **Energy Trust of Oregon. How do you respond?**

4 A. MEHC has no desire to duplicate the efforts of the Energy Trust of Oregon.  
5 PacifiCorp intends to convene a six-state working group to provide input into the  
6 design phase of the study. One of the key steps in the design phase will be to  
7 compile all recent and relevant studies. We will also consult with entities across  
8 the states with whom we work—including the Energy Trust of Oregon, Western  
9 Resource advocates, and low-income agencies—to ensure we receive their  
10 valuable insight. This workgroup will also provide an opportunity for a sharing of  
11 MEC’s experiences in the area.

## 12 **Potential Harms Addressed**

### 13 **Holding Company Concerns/PUHCA Repeal**

14 **Q. CUB witness Jenks extensively discusses his concerns regarding the loss of**  
15 **PUHCA protections. Please respond.**

16 A. A number of the federal protections previously provided by the SEC will in the  
17 future be provided by FERC. State regulators also have the authority to  
18 implement a number of others at the state level. Significantly, Staff witness  
19 Dougherty, who appears to have significant experience with PUHCA issues,  
20 states on pages 29-30 that he believes the Commission has adequate statutes and  
21 rules to protect against affiliate abuses in the absence of PUHCA.

22 **Q. CUB witness Dittmer offers a lengthy discussion regarding the potential**  
23 **detriment to customers that could occur as a result of the economic and**

1 **political influence that could be wielded by an entity of the size and diversity**  
2 **of Berkshire Hathaway. His resulting proposal at pages 3, 4, 16 and 17, is**  
3 **that Berkshire Hathaway be subject to the same commitments regarding**  
4 **reporting, notification and access that have been offered by MEHC. Is his**  
5 **proposal acceptable to MEHC?**

6 A. By definition, any of the commitments made by MEHC or PacifiCorp with  
7 respect to the affiliates of either will apply to Berkshire Hathaway after the close  
8 of the transaction. Nevertheless, recognizing the importance of this issue to the  
9 parties here and in other states, Exhibit PPL/314 reflects modifications to  
10 previously filed Commitment 4 that specifically apply the commitment to  
11 Berkshire Hathaway. Commitment 4 pertains to access to books and records and  
12 the preservation of those records.

13 Please also note that Commitment 5 of Exhibit PPL/314, by its terms, also  
14 applies to make Berkshire Hathaway personnel available to testify before the  
15 Commission. Commitment 7 of Exhibit PPL/314 ensures compliance with  
16 applicable statutes and regulations regarding affiliate transaction reporting. Also  
17 see Commitment U 20 of Exhibit PPL/314 regarding the filing of a letter by  
18 Berkshire Hathaway committing to be bound by the applicable commitments.  
19 This commitment could also be adopted in Oregon, if desired by the Commission.

20 **MEHC Lack of Operational Capability**

21 **Q. ICNU witnesses Canon and Gorman both express concern regarding**  
22 **MEHC's capability to operate an electric utility. Is that concern justified?**

1 A. No. Although MEHC has only been in the regulated utility business in the United  
2 States for six years (about the same level of experience as ScottishPower  
3 currently), it also has experience in the regulated utility business in the United  
4 Kingdom and as an independent power producer both in the United States and  
5 abroad.

6 MEHC is also able to draw upon the extensive experience of the  
7 management of the regulated utilities it has already acquired. MEHC's vertically  
8 integrated utility MEC and its predecessors, for example, have been in the utility  
9 business in the United States for over one hundred years. Included among the  
10 states served is Illinois, where Mr. Gorman was employed by the Illinois  
11 Commerce Commission for several years.

12 Mr. Gorman's expressed concern is particularly surprising in light of the  
13 fact that he has included in his Exhibit ICNU/203 a report by Standard and Poor's  
14 that cites as a factor in its credit rating "MEHC's history of strong operations and  
15 regulatory management at its only U.S.-based regulated utility."

#### 16 **Corporate Presence Commitments**

17 **Q. ICNU witness Canon at page 19 speculates that MEHC's commitment to**  
18 **increase corporate and senior management positions in Utah will be harmful**  
19 **to customers in the Pacific Northwest because such a split in corporate**  
20 **executives and management may not be workable. Is this a valid concern?**

21 A. No. MEHC has no intention of creating redundancies, overlapping  
22 responsibilities or jurisdictional conflicts among internal management. Corporate  
23 executives certainly do not need to be located in the same office or same city or

1 same state in order to function efficiently. Conversely, being located in the same  
2 office is not a guarantee of efficiency.

3 MEHC understands the concern that Oregon's ability to regulate  
4 PacifiCorp not be diminished by these commitments. MEHC also understands the  
5 concerns that the commitments not diminish local control or PacifiCorp's  
6 responsiveness to its regulators, elected officials and customers. The  
7 commitments are fully consistent with these understandings. Indeed, the  
8 commitments are designed to address these same concerns in each of the six  
9 states.

10 MEHC expects that two or three additional senior executive positions will  
11 be located in Utah, along with the support personnel deemed necessary by those  
12 senior executives. Note that does not necessarily mean a concomitant reduction  
13 in positions in the Pacific Northwest. Until the transaction has closed, vacancies  
14 are identified, and economic analyses are performed, MEHC cannot identify the  
15 additional senior executive positions to be added in Utah. But, regardless of what  
16 those positions are, it will not diminish PacifiCorp's responsiveness to Oregon  
17 issues and concerns.

18 As demonstrated by Commitment U 7 of Exhibit PPL/314, the focus of the  
19 corporate presence commitments is primarily upon allowing local decisions to be  
20 made locally. Accomplishing this does not require significant, uneconomic  
21 relocation of personnel. It is essentially a matter of having sufficient personnel  
22 with adequate and clear authority (and ability) to make sound decisions. Each of  
23 the states need appropriate levels of decision making on a local level and staffing

1 to reflect a commitment to safe, reliable and cost effective service consistent with  
2 cost effective operations.

3 **Q. CUB witness Jenks has suggested that the Commission mandate certain**  
4 **positions remain in Oregon. What is your response?**

5 A. Any such mandate by the Commission would constitute an unreasonable  
6 interference with management prerogative. Moreover, it would be completely  
7 arbitrary since it would be made without knowing the organizational structure and  
8 would not be based upon any cost-effectiveness analyses.

9 **Q. Staff has suggested that MEHC Commitment 47 be revised to include safety**  
10 **in addition to reliable service and cost effective operations, as a service**  
11 **criteria for maintaining adequate levels of staffing and representation in each**  
12 **state. Do you agree?**

13 A. Yes. We have already included that reference in Commitment 47 of Exhibit  
14 PPL/314.

### 15 **Global Warming**

16 **Q. CUB and Renewables Northwest Project/Natural Resources Defense Council**  
17 **express concerns regarding MEHC's commitment to reduction of greenhouse**  
18 **gas emissions. How do you respond?**

19 A. MEHC disagrees that its track record on environmental issues should be of  
20 concern to the Commission; on the contrary, MEHC believes that its leadership in  
21 renewable energy development, coupled with its proposed commitments related to  
22 emissions reduction investment, global warming and IGCC technology, provide  
23 benefits to Oregon customers.

1           MEHC agrees with RNP that a strong commitment to renewable energy is  
2           one important way to address the risk of global warming. MEHC believes that its  
3           track record at MEC with respect to renewables demonstrates strong leadership in  
4           this area. As discussed in my direct testimony, MEC is currently constructing one  
5           of the largest land-based wind projects in the country. Once that is completed,  
6           MEC's supply portfolio will be comprised of over 9% renewable energy  
7           resources in terms of capacity and 5% in terms of energy.

8           In addition, MEC is planning to double the size of its renewable energy  
9           portfolio before the end of 2007. The additional wind energy from that project is  
10          anticipated to increase renewable energy as a portion of the generating capacity in  
11          MEC's total portfolio (even recognizing the 480 MW coal-fired generation  
12          addition in 2007) to 13%. If consideration is given to the "negawatts" represented  
13          by MEC's energy efficiency and DSM programs, the percentage of MEC's total  
14          portfolio represented by renewable energy and DSM will increase to 19%.

15          Moreover, when viewed from a worldwide perspective, MEHC's 2007  
16          renewable portfolio, without consideration of MEC's negawatts, will represent  
17          about 21% of total generation capacity and, with MEC's DSM, will represent  
18          approximately 25% of capacity.

19       **Q. You indicated that a strong commitment to renewable energy is one way to**  
20       **address the risk of global warming. Are there other ways that MEHC is**  
21       **addressing the risk of global warming?**

22       A. Yes. In addition to expanding its renewable generation portfolio, MEHC  
23       continues to evaluate and undertake other actions that reduce, avoid or sequester

1 greenhouse gas emissions through participation in voluntary emissions reduction  
2 programs, investment in energy efficiency programs that reduce energy  
3 consumption and improvements in existing generating facilities. In addition,  
4 MEHC participates in and supports research and development of technologies that  
5 reduce the environmental impacts of its operations and advance the understanding  
6 of climate change. For example, MEHC is actively engaged in discussions with  
7 representatives of the EPA's Landfill Methane Outreach Program to develop  
8 additional landfill methane projects that generate electricity through the beneficial  
9 use of landfill gas that would otherwise be vented to the atmosphere. We also  
10 maintain participation in the SF<sub>6</sub> reduction program and the Natural Gas STAR  
11 methane reduction program, both of which result in the reduction of greenhouse  
12 emissions. Additionally, since technological advancements are likely to play a  
13 critical role in reducing greenhouse gas emissions from the electric generation  
14 sector, MEC funds research associated with greenhouse gas reduction options and  
15 technology development and advancing the science of climate change.

16 MEC funds and participates in two in-state university programs—the Iowa  
17 Energy Center, administered by Iowa State University, and the University of  
18 Iowa's Center for Global and Regional Environmental Research (CGRER).  
19 CGRER was established in 1990 to promote efforts that focus on global  
20 environmental change and the human-induced acceleration of environmental  
21 change caused by modern technologies. MEHC is also a significant supporter of  
22 the Electric Power Research Institute (EPRI). EPRI brings together experts from  
23 the scientific, engineering, and regulatory communities as well as other leading

1 experts to work collaboratively on solutions to the challenges of electric power.

2 Much of MEHC's recent EPRI funding on environmental research has focused on  
3 climate change and emissions controls, including carbon dioxide sequestration,  
4 disposal and utilization opportunities as well as investigating technologies that  
5 can be applied to coal-fueled plants to reduce carbon dioxide emissions.

6 **Q. Can MEHC commit to achieve the same at PacifiCorp?**

7 A. MEHC's ability to understand the details of PacifiCorp's complex system and  
8 explore the opportunities that may be available to address the reduction of  
9 greenhouse gas emissions is limited prior to the close of the proposed transaction.  
10 We understand that two of the limiting factors to additional wind development on  
11 the PacifiCorp system are lack of existing transmission and lack of a necessary  
12 capital commitment by ScottishPower to a utility own/operate option. That is  
13 why we committed to the construction of the Walla Walla and Path C  
14 transmission lines and to offering a utility build/own option in future RFPs. Over  
15 time, parties can expect the same level of commitment to renewables from  
16 PacifiCorp under MEHC ownership as we have demonstrated at MEC.

17 **Q. Are there additional actions that MEHC and PacifiCorp are prepared to**  
18 **take in this area?**

19 A. Yes. MEHC and PacifiCorp are willing to commit to the following specific  
20 actions to further demonstrate their commitment to reducing greenhouse gas  
21 emissions:

- 1 • PacifiCorp will develop a strategy to identify and implement cost-effective  
2 measures to reduce PacifiCorp's greenhouse gas emissions. Refer to  
3 Commitment 42 of Exhibit PPL/314.
- 4 • MEHC and PacifiCorp commit to form an IGCC Working Group,  
5 sponsored by PacifiCorp, to discuss various policy and technology issues  
6 associated with IGCC, carbon capture, and sequestration. Working Group  
7 members would include representatives from major stakeholder and  
8 regulatory groups, PacifiCorp and MEHC officials, and others as  
9 appropriate. The IGCC Working Group would meet periodically to  
10 discuss the above issues and identify possible solutions, and to stay abreast  
11 of the evolving technology and commercial environment. Refer to  
12 Commitment U 15 of Exhibit PPL/314.
- 13 • As soon as practical, but not later than three months after the closing of  
14 the transaction, PacifiCorp will provide to the parties estimated cost and  
15 timeline ranges for completion of an IGCC project, as well as potential  
16 resource alternatives if an IGCC design is not reasonably achievable in  
17 time to economically meet the resource need presently identified in 2012  
18 from a customer and shareholder perspective. Refer to Commitment U 16  
19 of Exhibit PPL/314.
- 20 • PacifiCorp will perform initial conceptual and siting studies, general  
21 feasibility studies, and, where appropriate, other more detailed studies and  
22 engineering work, for an IGCC plant for the 2014 resource need identified  
23 in the 2005 IRP Update. The studies will include an evaluation of the

1 expected cost and performance impacts of constructing a plant to be  
2 carbon capture ready. These studies will be performed in parallel with  
3 similar studies to evaluate other generation technologies. Refer to  
4 Commitment U 16 of Exhibit PPL/314.

- 5 • PacifiCorp will include a utility self-build option of an IGCC unit in any  
6 RFPs for the 2014 and later resource needs, whether or not the IGCC  
7 option is found to be PacifiCorp's preferred cost-based alternative, and  
8 present PacifiCorp's evaluation of the IGCC option against other self-  
9 build alternative(s) as part of the SB 26 process. This will include an  
10 evaluation of the cost and performance impacts of the IGCC resource  
11 being constructed to be carbon capture ready. Refer to Commitment U 16  
12 of Exhibit PPL/314.

13 **Q. How do these actions respond to concerns raised in testimony?**

14 A. They demonstrate that MEHC and PacifiCorp will provide leadership in  
15 responding to the call to “investigate the feasibility of developing the proposed  
16 coal-gasification, combined-cycle power plant” and in ensuring that any  
17 pulverized coal option in any future RFP for PacifiCorp will be able to be  
18 measured against an IGCC alternative.

19 **Illinois Competitive Gas Issue**

20 **Q. At pages 36 through 38 of his testimony, Staff witness Conway asks about a**  
21 **case before the Illinois Commerce Commission (“ICC”) involving MEC’s**  
22 **competitive sales of gas commodity in Illinois. Mr. Conway expresses**

1 **concern that this case may indicate MEHC may have difficulty in operating a**  
2 **utility in multiple states. Please respond.**

3 A. MEC and its predecessors have a long history of working in multiple state  
4 jurisdictions. Of MidAmerican's three predecessors, two (Iowa-Illinois Gas and  
5 Electric Company and Iowa Public Service Company) provided public utility  
6 service subject to the jurisdiction of multiple utility regulatory authorities (two  
7 states for Iowa-Illinois, three states and two municipalities for Iowa Public  
8 Service Company) for decades prior to merger. I believe that MEC's ability to  
9 operate successfully in multiple jurisdictions is characterized by the regulatory  
10 reputation Mr. Conway ascertained in his contacts with Iowa, Illinois and South  
11 Dakota regulators as summarized in his testimony on page 37, lines 7-11. Despite  
12 MEC's lengthy history of successful multiple state operations, Mr. Conway  
13 apparently was advised of only one significant regulatory issue involving MEC.

14 First, I would note that Mr. Conway may have been misinformed  
15 regarding the nature of the competitive gas sales controversy. Most of the  
16 competitive gas commodity sales involved in the case did not occur within the  
17 area of Illinois in which MEC provides bundled retail gas service; most sales  
18 actually were made to non-residential customers outside MEC's retail gas service  
19 territory in Illinois. I have attached, as Exhibit PPL/316, a summary of the  
20 controversy.

21 Directly responding to Mr. Conway's concern, the Illinois case does not  
22 involve a problem of operating in multiple jurisdictions. MEC is well versed in  
23 what is and isn't permitted under the laws of the states in which it operates. This

1 is particularly true with respect to Illinois, which has the most stringent laws and  
2 regulations (and, unfortunately, some of the least clear) of the four states in which  
3 MEC operates. Note, the MEC predecessor that first engaged in competitive gas  
4 commodity sales in Illinois was, for most of its corporate life, an Illinois  
5 corporation.

6 Instead, the case involves a legitimate difference of opinion as to the  
7 interpretation of Illinois statutes and the rights of corporations to engage in lawful  
8 business pursuits. As Mr. Conway notes, the Illinois General Assembly  
9 ultimately agreed with MEC and clarified Illinois law by an overwhelming vote.  
10 In doing so, the General Assembly expressly preserved the contracts executed by  
11 MEC prior to the enactment of the legislation and clearly indicated in legislative  
12 intent that MEC had the right to engage in competitive gas commodity sales even  
13 before the legislation was passed. The case, however, remains currently on  
14 appeal despite MEC's repeated efforts to resolve the matter.

## 15 **Hydro Issues**

16 **Q. The testimony of tribal and conservation parties in this proceeding discusses**  
17 **concerns about the potential negative impact of the proposed transaction on**  
18 **PacifiCorp's ability to finance costs of relicensing its hydro-electric facilities.**  
19 **How do they propose that MEHC address these concerns?**

20 A. The proposed remedies range from the reasonable to the extreme. All parties  
21 want to be certain that MEHC understands the importance and magnitude of the  
22 licensing requirements associated with PacifiCorp's hydro facilities; this is  
23 entirely reasonable. However, requests for this Commission to require MEHC to

1 provide a financial guarantee or shareholder funding for PacifiCorp's relicensing  
2 costs are inappropriate and inconsistent with longstanding Commission  
3 ratemaking policies.

4 **Q. Please describe MEHC's understanding of PacifiCorp's relicensing**  
5 **activities?**

6 A. Through discussions with PacifiCorp and interested stakeholders in California and  
7 Oregon, MEHC has gained a broad understanding of PacifiCorp's relicensing  
8 efforts. These discussions also resulted in specific commitments by MEHC and a  
9 comprehensive settlement with the tribal and conservation groups in the  
10 California proceeding.

11 **Q. Please describe the California settlement agreement.**

12 A. On October 21, 2005, a Stipulation and Settlement Agreement ("Settlement")  
13 were submitted to the California Public Utilities Commission ("CPUC"). The  
14 Settlement was signed by American Rivers and California Trout, Inc., Hoopa  
15 Valley Tribe of California, Trout Unlimited, Yurok Tribe of California, Karuk  
16 Tribe of California, Pacific Coast Federation of Fisherman's Associations,  
17 Institute for Fisheries Resources, Northcoast Environmental Center, Friends of the  
18 River, Oregon Natural Resources Council, Headwaters, Klamath Forest Alliance,  
19 Waterwatch of Oregon, and the Sierra Club. The Settlement includes  
20 commitments to address issues of parties who are part of the customer base and  
21 communities served by PacifiCorp, including the Yurok, Karuk and Hoopa Valley  
22 Tribes. In exchange for the commitments, the Settlement Parties agree to support

1 the Application by recommending that the CPUC approve the Applicant's  
2 request.

3 **Q. Please describe the unique commitments contained in the California**  
4 **Settlement.**

5 A. There are three unique commitments that are germane to the Staff's review of the  
6 proposed transaction.

7 First, PacifiCorp has committed to addressing the extension of electric  
8 service to currently unserved Yurok, Hoopa Valley, Karuk and other Native  
9 American communities located within PacifiCorp's service region. Refer to  
10 Commitment C 4 of Exhibit PPL/317.

11 Second, PacifiCorp has committed to provide funding and support for a  
12 study of the presence, distribution and possible causes of toxic species of blue-  
13 green algae in the Klamath Basin. This commitment explicitly provides for the  
14 inclusion of Oregon counties and agencies in the effort. Given that the blue-green  
15 algae is present throughout the Klamath system up to Klamath Lake, as well as in  
16 river systems throughout Oregon, this study can be expected to provide benefits to  
17 Oregon. Refer to Commitment C 5 of Exhibit PPL/317.

18 Finally, the Settlement includes a commitment by MEHC that the  
19 transaction will not diminish in any way PacifiCorp's ability or willingness to  
20 perform its legal obligations associated with the Klamath River hydroelectric  
21 system. Refer to Commitment C 1 of Exhibit PPL/317. It is disappointing that  
22 none of the Settlement Parties acknowledged in their testimony the benefits of this  
23 Settlement for Oregon.

1 **Q. Given that MEHC is willing to commit that the transaction will not diminish**  
2 **PacifiCorp’s ability or willingness to fulfill its legal obligations associated**  
3 **with hydro relicensing, is it necessary or reasonable for this Commission to**  
4 **require a financial guarantee or shareholder funding for PacifiCorp’s hydro-**  
5 **relicensing costs?**

6 A. No, it is neither necessary nor appropriate.

7 **Q. Please explain.**

8 A. As discussed in the rebuttal testimony of MEHC witness Goodman, a financial  
9 guarantee from MEHC is inconsistent with ring fencing. In addition, investment  
10 in hydro re-licensing should be treated like any other investment—PacifiCorp  
11 should be provided an opportunity to recover its prudently incurred costs,  
12 including a return on its investment. To single hydro re-licensing out as a  
13 shareholder funded investment would be bad public policy and would be at odds  
14 with this Commission’s priorities which have historically recognized the  
15 significant benefits of retaining low-cost hydro resources for customers in the  
16 Northwest.

### 17 **Acquisition Premium**

18 **Q. CUB witness Jenks questions how MEHC expects to recover the acquisition**  
19 **premium (*i.e.*, the amount of the purchase price in excess of book value) from**  
20 **this transaction. Mr. Jenks and other witnesses also object to MEHC and**  
21 **PacifiCorp’s reservation of rights in the language of the commitment**  
22 **regarding the acquisition premium. Some witnesses are concerned about**

1       **potential future acquisitions by MEHC. Do you have a general response to**  
2       **these concerns?**

3       A.     Yes, I do. As I discussed earlier, this transaction is an acquisition, not a merger.  
4       The distinction between a merger and an acquisition is critical with respect to the  
5       expectations for regulatory treatment of the acquisition premium. Merged utilities  
6       may expect to include the acquisition premium in rates if they are able to  
7       demonstrate cost reductions or other benefits to customers exceeding the cost to  
8       customers of providing a return on the acquisition premium. This potential for a  
9       return on the premium may or may not impact the size of the premium that the  
10      merging utilities are willing to negotiate.

11             In contrast, because MEHC transactions are acquisitions and because  
12      MEHC will not claim cost reductions that it is uncertain that it can deliver,  
13      MEHC does not expect to recover the acquisition premium through inclusion in  
14      regulated rates. Accordingly, it is unwilling to negotiate a price significantly in  
15      excess of book value. For example, the prices negotiated for both MEC and  
16      PacifiCorp were approximately 130% of book value. This means that MEHC will  
17      pass up many more opportunities for acquisitions than it will pursue. For  
18      example, this is MEHC's first U.S. utility acquisition in several years and its first  
19      retail U.S. utility acquisition in the nearly 7 years since it acquired MEC.

20             MEHC recognizes that the inability to earn a regulated return on the  
21      acquisition premium is simply the price paid by shareholders for the opportunity  
22      to earn a regulated return on the remainder—the original cost or book value (less  
23      depreciation) used for ratemaking purposes. MEHC accepts that regulatory

1 treatment as long as the regulators apply original cost ratemaking fairly and  
2 equitably. But, when regulators attempt to asymmetrically vary from original cost  
3 ratemaking by seeking to capture benefits not associated with the book value of  
4 the utility (such as imputing cost reductions to regulated operations from other  
5 companies within a holding company structure), MEHC believes it has the duty to  
6 its shareholders to point out to regulators the asymmetrical treatment. This does  
7 not mean that customers cannot benefit from cost reductions at the corporate  
8 level, but it does mean that regulators must match costs and benefits or risks and  
9 opportunities.

10 **Q. At page 6, lines 13-18, ICNU witness Canon portrays MEHC's Application as**  
11 **"uniquely harmful in that MEHC has committed to recover its Acquisition**  
12 **Premium in rates in certain circumstances." Do you have a response?**

13 A. MEHC and PacifiCorp have no objection to completely deleting all commitments  
14 regarding the acquisition premium and being silent on the issue. However, as  
15 evidenced by the testimony, several parties want a commitment regarding the  
16 premium. MEHC and PacifiCorp are willing to commit to recording the premium  
17 at the holding company level, but only with the express reservation of their right  
18 to present an argument to the Commission in the future if one circumstance  
19 should occur.

20 **Q. Please explain MEHC's position regarding inclusion of the acquisition**  
21 **premium in regulated retail rates.**

22 A. There appear to be two sources of confusion regarding MEHC's position on  
23 inclusion of the acquisition premium in retail rates. The first relates to the intent

1 of the commitment. The second relates to what situation would trigger a  
2 PacifiCorp request to include the premium in rates. I will attempt to clarify  
3 MEHC's intent regarding both of these points.

4 **Q. What exactly does the commitment language allow PacifiCorp/MEHC to do?**

5 A. The current version of the commitment language is in Commitment U 4 of  
6 Exhibit PPL/314. Each state may want variations upon the language, which will  
7 be acceptable to MEHC as long as its interests and those of PacifiCorp are  
8 protected.

9 The commitment language is not intended to allow PacifiCorp/MEHC to  
10 unilaterally decide at some future point to include the acquisition premium in the  
11 retail rates of PacifiCorp customers. Because the premium will be recorded at the  
12 holding company level, the only way that the acquisition premium could ever be  
13 included in PacifiCorp's rates would be if PacifiCorp affirmatively proposed to  
14 include the premium in retail rates and the Commission agreed.

15 The intent of the commitment language is merely to preserve the right to  
16 make an argument to the Commission that the acquisition premium should be  
17 included in retail rates under one limited circumstance. MEHC is concerned that  
18 if it agrees to record the acquisition premium at the holding company and does so  
19 without a clear reservation of its rights, it would be denied the opportunity in a  
20 future rate case to even point out a potential violation of the matching principle,  
21 as discussed below.

22 The commitment leaves it up to the Commission, not PacifiCorp or  
23 MEHC, as to whether the inclusion of a premium should be allowed. MEHC is

1 seeking only to retain the right to make a future argument if necessary, nothing  
2 more.

3 **Q. Under what limited circumstance would MEHC expect this right to be**  
4 **exercised?**

5 A. In order for MEHC and PacifiCorp to exercise their right to present an argument  
6 to the Commission regarding inclusion in rates of the acquisition premium,  
7 PacifiCorp must be confronted with a potential violation of the matching principle  
8 of original cost ratemaking that (1) imputes to PacifiCorp customers (*i.e.*, reduces  
9 the regulated revenue requirement on the basis of) a benefit associated with the  
10 premium accruing from a company above PacifiCorp in the holding company  
11 system while (2) failing to recognize in rates the cost associated with achieving  
12 that benefit.

13 Such a situation would occur, for example, if the Commission were to  
14 attribute a lower cost of capital to PacifiCorp's regulated operations based upon  
15 substitution of debt costs from the holding company for the cost of utility equity,  
16 without recognizing the additional risk (higher cost of equity) to the holding  
17 company of its higher leverage. In this instance, PacifiCorp's regulated  
18 customers would benefit from a lower cost of capital that assumes a greater  
19 percentage of debt, which is typically lower cost than equity, without recognizing  
20 the increase in the cost of common equity (due to increased risk) that occurs as a  
21 result of that more leveraged financial structure.

22 No request for inclusion of the acquisition premium in rates would be  
23 triggered, however, in situations where benefits obtained at the holding company

1 level are appropriately allocated to PacifiCorp, along with the costs of achieving  
2 those benefits. For example, if MEHC were able to achieve lower insurance costs  
3 as a result of combining the insurance needs of itself and PacifiCorp, a portion of  
4 such savings (along with the costs related to achieving them) would be properly  
5 allocated to PacifiCorp. MEHC expects the lower net costs would be included in  
6 retail rates (reducing the regulated revenue requirement). MEHC would not  
7 consider this a situation that would allow PacifiCorp to argue for inclusion of the  
8 acquisition premium in retail rates.

9 **Low-Income Issues**

10 **Q. CADO-OECA witness Abrahamson expresses concern that MEHC does not**  
11 **fully support the concepts embodied in SB 1149. He requests MEHC make**  
12 **an explicit commitment to support the permanent continuation of SB 1149,**  
13 **including both the public purpose charge and the separate meter charge that**  
14 **funds the Oregon Energy Assistance Program. He also requests that MEHC**  
15 **commit to support changes in SB 1149 that protect low-income Oregonians**  
16 **from the fluctuations in real purchasing power of these funds caused by**  
17 **increases in electricity prices. Is MEHC willing to make such a**  
18 **commitment?**

19 **A.** MEHC is fully supportive of the continuation of SB 1149. Illinois, also a direct  
20 access state, has a similar funding mechanism for low-income energy assistance,  
21 and MEC proposed the implementation of such a mechanism as part of  
22 unsuccessful restructuring legislation in Iowa. MEHC is willing to support

1 extensions of and/or modifications to SB 1149's low-income funding provisions  
2 to increase energy assistance funding for low-income customers.

3 **Q. Are MEHC and PacifiCorp willing to provide additional support for low-**  
4 **income customers as part of this proceeding?**

5 A. Yes. As part of a stipulation in Utah, MEHC and PacifiCorp have committed to a  
6 number of provisions in Exhibit PPL/314 that benefit low-income customers.

7 These include:

8 U 24. PacifiCorp commits to work with the Utah DSM Advisory Group to  
9 propose a tariff amendment to maximize the cost-effective electricity  
10 savings of Utah ratepayer contributions to federally funded weatherization  
11 programs. As part of this analysis, PacifiCorp agrees to re-examine its  
12 current Company policy of matching federal contributions at 50%.

13 U 25. MEHC and PacifiCorp commit up to \$200,000 annually for five years, to  
14 be recorded in non-utility accounts, to match customer and employee  
15 contributions to the Utah fuel fund bill assistance program. MEHC and  
16 PacifiCorp commit to work with low income advocates and consumer  
17 groups, when appropriate, to evaluate additional matching contributions.

18 U 26. MEHC commits to provide \$25,000 in shareholder funds to hire a  
19 consultant for, and PacifiCorp will provide a resource for facilitation of, a  
20 working group to study and design for possible implementation an  
21 arrearage management project for low-income customers. The project will  
22 be developed by PacifiCorp in conjunction with the Division of Public  
23 Utilities, Committee for Consumer Services, low-income advocates and  
24 other interested parties. The goals of the project will include reducing  
25 service terminations, reducing referral of delinquent customers to third  
26 party collection agencies, reducing collection litigation and reducing  
27 arrearages and increasing voluntary customer payments of arrearages.

28 PacifiCorp and MEHC are willing to explore how these commitments might be  
29 applied in Oregon.

30

1           **Community-Based Renewables**

2   **Q.   Sherman County witness Woodin expresses concern about MEC's Iowa**  
3           **activities regarding community-based renewable energy projects, net billing**  
4           **and renewable energy legislation. Please respond.**

5   A.   Let me start with community-based renewable energy. In 2004 and 2005,  
6           advocates of small wind facilities and community-based renewable energy  
7           sponsored bills to support development of those resources. These efforts included  
8           an Iowa production tax credit (which would not be used by MEC) and other  
9           provisions. MEC advised supporters of the legislation that it would be neutral on  
10          the legislation as long as the interests of its customers were not harmed. The  
11          legislation was passed.

12                 With respect to the 2003 renewable energy legislation referenced in  
13          Mr. Woodin's exhibit, Iowa Governor Vilsack in January 2003 challenged  
14          municipal, rural cooperative and investor-owned utilities to develop ideas as to  
15          how to enable Iowa to have 1,000 MW of renewable capacity installed by 2010. I  
16          personally worked on that challenge. MEC already had 125 MW of renewable  
17          capacity in its portfolio (about 2%) at the time, most of which it purchased under  
18          contract. MEC's analyses indicated that utility owned/operated wind energy  
19          could be a more cost-effective option for its customers. However, Iowa law  
20          contained a provision that prevented investor-owned utilities from counting  
21          utility-owned renewables against the state RPS requirement. The result was to  
22          discourage/prevent utilities from owning renewables. MEC approached the  
23          Governor with a proposed change in Iowa law to allow utility-owned renewables

1 to count towards the state RPS. The Governor, the Iowa Utilities Board and the  
2 Iowa OCA were supportive and the Legislature overwhelmingly agreed. MEC  
3 promptly proceeded with its 360.5 MW wind project. The Iowa PIRG, quoted in  
4 the article attached to Mr. Woodin’s testimony, was concerned that if MEC was  
5 permitted to own and operate wind facilities it might seek to terminate the  
6 agreement MEC had executed in 1999 to purchase 112 MW of wind from  
7 Zond/Enron. Iowa PIRG’s concern was not justified. MEC had no intention of  
8 terminating that contract, particularly recognizing that the pricing is front-end  
9 loaded and MEC starts to pay lower prices in 2006. The contract (which is  
10 confidential at the request of the developer) remains in effect, and MEC will be  
11 reducing customers’ rates to reflect the lower contract costs in 2006—even  
12 though it is not required to do so under its rate freeze.

13 As to the net billing press release from 1998 attached to Mr. Woodin’s  
14 testimony, the Iowa Utilities Board (IUB) net billing provision has never been  
15 authorized by statute. The provision allows net billing customers to completely  
16 eliminate kWh registration from their meters to the extent of their generation.  
17 Since kWh registration is used for determining charges for nearly all components  
18 of rates (not just the energy or generation capacity components), the Iowa net  
19 billing provision effectively requires that investor-owned utilities “buy” all net  
20 billed energy offered at fully bundled retail rates, not avoided energy rates. As a  
21 result, the cross-subsidy that is paid by non-net billing customers to net billing  
22 customers is as much as 6 to 7 cents per kWh. Most importantly, the original net  
23 billing provision had no limits upon the size of the installation that could use net

1 billing or the amount of net billing that MEC must permit on its system. As a  
2 consequence, MEC's non-net billing customers were exposed to unlimited cross-  
3 subsidization of commercial wind installations. MEC believed that a subsidy of  
4 that nature violated PURPA and, if it was to be imposed on our customers, it  
5 should be authorized by legislation. During the course of litigation, the IUB  
6 clarified that the net billing provision was only intended to apply to small  
7 renewable facilities designed for the net billing customer's own consumption and  
8 was not intended to be available for commercial installations. Although MEC  
9 remains concerned about the level of cross-subsidization required of its non-net  
10 billing customers, MEC settled with the IUB and others. Among the limits agreed  
11 upon were that the net billing facility could not be larger than 500 kW (essentially  
12 a commercial facility) and must be sized to meet the customer's load. We have  
13 had a net billing tariff in place now for several years.

14 **Q. Does that conclude your rebuttal testimony?**

15 A. Yes, it does.

Case UM 1209  
PPL Exhibit 313  
Witness: Brent E. Gale

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

MIDAMERICAN ENERGY HOLDINGS COMPANY  
AND PACIFICORP

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**Exhibit Accompanying Rebuttal Testimony of Brent E. Gale**

**MEHC Commitments – Revenue Requirement Impacts**

December 2005

**MEHC Commitments**  
**Revenue Requirement Impacts (\$000)**  
**Quantified Revenue Requirement Impacts as of 12/1/05**

|  | 2006              | 2007               | 2008               | 2009               | 2010               | 2011               | 2012               | 2013               | 2014               | 2015               | 2006-2015<br>Present<br>Value (note 1) |
|--|-------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--|
| <b>Plant Additions</b>   |                   |                    |                    |                    |                    |                    |                    |                    |                    |                    |  |
| Emissions Reductions from Coal-Fired Generation                    | \$ (745)          | \$ (30)            | \$ (3,028)         | \$ 9,823           | \$ 5,096           | \$ (10,166)        | \$ (12,138)        | \$ (25,218)        | \$ (26,858)        | \$ (23,484)        | \$ (46,419)                            |
| Mona-Oquirrh   | \$ -              | \$ -               | \$ -               | \$ (22,723)        | \$ (20,458)        | \$ 7,248           | \$ 5,932           | \$ 4,983           | \$ 4,504           | \$ 4,361           | \$ (15,771)                            |
| Asset Risk Program   | \$ -              | \$ 399             | \$ 890             | \$ 1,339           | \$ 1,224           | \$ 1,138           | \$ 1,067           | \$ 1,004           | \$ 947             | \$ 905             | \$ 5,854                               |
| Walla Walla-Yakima   | \$ -              | \$ -               | \$ -               | \$ 11,639          | \$ 10,479          | \$ 9,614           | \$ 8,959           | \$ 8,455           | \$ 7,950           | \$ 7,446           | \$ 40,603                              |
| Local Transmission Risk Projects                                   | \$ -              | \$ 531             | \$ 213             | \$ 731             | \$ 1,332           | \$ 2,813           | \$ 5,221           | \$ 6,758           | \$ 7,679           | \$ 7,117           | \$ 18,578                              |
| <b>Change in Revenue Requirements from Plant Additions (a)</b>     | <b>\$ (745)</b>   | <b>\$ 900</b>      | <b>\$ (1,925)</b>  | <b>\$ 809</b>      | <b>\$ (2,326)</b>  | <b>\$ 10,647</b>   | <b>\$ 9,042</b>    | <b>\$ (4,018)</b>  | <b>\$ (5,776)</b>  | <b>\$ (3,655)</b>  | <b>\$ 2,844</b>                        |
| <b>O&amp;M Increases</b>   |                   |                    |                    |                    |                    |                    |                    |                    |                    |                    |  |
| Distribution O&M (Accelerated Distribution Circuit Fusing Program) | \$ -              | \$ 1,500           | \$ 1,500           | \$ 1,500           | \$ 1,500           | \$ 1,500           | \$ -               | \$ -               | \$ -               | \$ -               | \$ 5,684                               |
| Distribution O&M (Saving SAIDI Initiative)                         | \$ -              | \$ 2,000           | \$ 2,000           | \$ 2,000           | \$ -               | \$ -               | \$ -               | \$ -               | \$ -               | \$ -               | \$ 4,864                               |
| <b>Increase in Revenue Requirements from Increased O&amp;M (b)</b> | <b>\$ -</b>       | <b>\$ 3,500</b>    | <b>\$ 3,500</b>    | <b>\$ 3,500</b>    | <b>\$ 1,500</b>    | <b>\$ 1,500</b>    | <b>\$ -</b>        | <b>\$ -</b>        | <b>\$ -</b>        | <b>\$ -</b>        | <b>\$ 10,548</b>                       |
| <b>Cost Reductions</b>   |                   |                    |                    |                    |                    |                    |                    |                    |                    |                    |  |
| Reduced Cost of Debt   | \$ (400)          | \$ (600)           | \$ (859)           | \$ (1,726)         | \$ (2,376)         | \$ (2,735)         | \$ (3,797)         | \$ (4,079)         | \$ (4,843)         | \$ (4,843)         | \$ (15,947)                            |
| Corporate Overhead Reductions                                      | \$ -              | \$ (6,000)         | \$ (6,000)         | \$ (6,000)         | \$ (6,000)         | \$ (6,000)         | \$ (6,000)         | \$ (6,000)         | \$ (6,000)         | \$ (6,000)         | \$ (35,953)                            |
| Avoidance of Replacement Power Costs                               | \$ -              | \$ (10,427)        | \$ (22,875)        | \$ (14,251)        | \$ (26,336)        | \$ (17,185)        | \$ (13,317)        | \$ (5,868)         | \$ -               | \$ -               | \$ (79,539) (note 2)                   |
| Wheeling Revenues - Walla Walla                                    | \$ -              | \$ -               | \$ -               | \$ -               | \$ (7,300)         | \$ (7,300)         | \$ (7,300)         | \$ (7,300)         | \$ (7,300)         | \$ (7,300)         | \$ (25,991) (note 3)                   |
| <b>Decrease in Revenue Requirements from Cost Savings (c)</b>      | <b>\$ (400)</b>   | <b>\$ (17,027)</b> | <b>\$ (29,734)</b> | <b>\$ (21,977)</b> | <b>\$ (42,012)</b> | <b>\$ (33,220)</b> | <b>\$ (30,414)</b> | <b>\$ (23,247)</b> | <b>\$ (18,143)</b> | <b>\$ (18,143)</b> | <b>\$ (157,429)</b>                    |
| <b>Subtotal - Revenue Requirement Impacts (a + b + c)</b>          | <b>\$ (1,145)</b> | <b>\$ (12,627)</b> | <b>\$ (28,159)</b> | <b>\$ (17,668)</b> | <b>\$ (42,838)</b> | <b>\$ (21,073)</b> | <b>\$ (21,372)</b> | <b>\$ (27,265)</b> | <b>\$ (23,919)</b> | <b>\$ (21,798)</b> | <b>\$ (144,037)</b>                    |
| <b>Path C Enabled Net Benefits (d)</b>                             | <b>\$ -</b>       | <b>\$ -</b>        | <b>\$ -</b>        | <b>\$ -</b>        | <b>\$ (9,643)</b>  | <b>\$ (11,646)</b> | <b>\$ (9,526)</b>  | <b>\$ (22,202)</b> | <b>\$ (24,041)</b> | <b>\$ (23,089)</b> | <b>\$ (56,986) (note 4)</b>            |
| <b>Total Revenue Requirements Impacts (a + b + c + d)</b>          | <b>\$ (1,145)</b> | <b>\$ (12,627)</b> | <b>\$ (28,159)</b> | <b>\$ (17,668)</b> | <b>\$ (52,481)</b> | <b>\$ (32,719)</b> | <b>\$ (30,898)</b> | <b>\$ (49,467)</b> | <b>\$ (47,960)</b> | <b>\$ (44,887)</b> | <b>\$ (201,023)</b>                    |
| <b>Oregon Revenue Requirement Impacts (27% of total)</b>           | <b>\$ (309)</b>   | <b>\$ (3,409)</b>  | <b>\$ (7,603)</b>  | <b>\$ (4,770)</b>  | <b>\$ (14,170)</b> | <b>\$ (8,634)</b>  | <b>\$ (8,342)</b>  | <b>\$ (13,356)</b> | <b>\$ (12,949)</b> | <b>\$ (12,119)</b> | <b>\$ (54,276)</b>                     |

Note 1 - Present value is calculated at 7.31% discount rate.

Note 2 - Estimated benefits associated with the avoidance of replacement power costs by installing emissions equipment during planned outages rather than scheduling extra outage periods. Benefits are estimated assuming a 50% probability that extending shorter scheduled outages or additional outages may be necessary to install equipment to comply with emerging air quality requirements. The analysis assumes a 35 day outage cycle and power costs based on the most current forward price curve dated 9/30/05.

Note 3 - Wheeling revenues enabled by the Walla Walla-Yakima investment are calculated as \$24.30 x 600 MW of total transfer capability and discounted 50% to reflect the uncertainty of full subscription. Actual revenues may be as high as \$14.3M per year.

Note 4 - The Path C enabled net benefits calculation was determined in preparing PacifiCorp's IRP update and reflects a net present value that includes both the costs and benefits of the Path C investment, including elimination of 2009 and 2013 East side gas resources and the delay of the 2011 resource by one year.

**MEHC Commitments**  
**Revenue Requirement Impacts (\$000)**  
**Quantified Revenue Requirement Impacts as of 12/1/05**

**Non-Quantified Benefits - Investment Commitments**

|   |   |
|---|---|
| Emissions Reductions from Coal-Fired Generation | These projects will provide earlier reductions in emissions than what was anticipated in the PacifiCorp plan  |
| Mona-Oquirrh                                    | Benefits for the Mona-Oquirrh project have not currently been quantified, however, the project enhances reliability, facilitates acceptance of renewable resources and enhances system optimization. Projects enhancing the viability of renewable generation clearly offer societal benefits in the form of portfolio diversification, reduced emissions and conservation of fossil fuel resources.  |
| Asset Risk Program                              | The increase in capital investments in the Asset Risk Program results in benefits that have not currently been quantified. The ARP program was developed to address both the aging T&D assets and improvement of customer reliability performance. Customer benefits will include lower O&M expenses as a result of newer assets placed in service, fewer related capital asset replacements caused by failed equipment, and increased system reliability from reduction in SAIDI outage minutes. |
| Walla Walla-Yakima                              | In addition to the wheeling revenues identified as cost reductions, the line will help the Pacific Northwest region integrate wind resources into the power system and implement resource planning recommendations made by the Northwest Power and Conservation Council. Projects enhancing the viability of renewable generation clearly offer societal benefits in the form of portfolio diversification, reduced emissions and conservation of fossil fuel resources.                          |
| Local Transmission Risk Projects                | Not currently quantified, but will improve system reliability   |

**Non-Quantified Benefits - Other**

|  |  |
|--|--|
| Future Generation Options                      | Not currently quantified - benefits will be quantified in future RFP processes   |
| Renewable Energy                               | Not currently quantified - benefits will be quantified in future RFP processes. Projects enhancing the viability of renewable generation clearly offer societal benefits in the form of portfolio diversification, reduced emissions and conservation of fossil fuel resources.                |
| Coal Technology                                | Not separately quantified - benefits included in emissions reductions from coal-fueled generation  |
| Greenhouse Gas Emission Reductions (SF6)       | Not currently quantified, but clearly offers long-term societal benefits   |
| Energy Efficiency and DSM Management           | Not readily quantifiable, but the benefits should include reduced fuel use, with related environmental and economic benefits, as well as direct customer benefits that may accrue from eliminating or postponing procurement of additional transmission/distribution and generation facilities |
| Customer Service Extension                     | Not readily quantifiable, but clearly offers benefits  |
| Community Involvement and Economic Development | Not readily quantifiable, but clearly offers benefits  |
| Corporate Presence                             | Not readily quantifiable, but clearly offers benefits  |
| Regional Transmission                          | Based on estimates using a representative year, if MEHC's leadership results in transmission construction, it could provide regional benefits between \$60 million and \$90 million annually   |

Case UM 1209  
PPL Exhibit 314  
Witness: Brent E. Gale

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

MIDAMERICAN ENERGY HOLDINGS COMPANY  
AND PACIFICORP

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**Exhibit Accompanying Rebuttal Testimony of Brent E. Gale**

**Utah Stipulation and Consolidated List of Commitments**

December 2005

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

|  |   |                      |
|--|---|----------------------|
| In the Matter of the Application of MidAmerican Energy | ) |                      |
| Holdings Company and PacifiCorp dba Utah Power         | ) | STIPULATION          |
| & Light Company for an Order Authorizing               | ) |                      |
| Proposed Transaction                                   | ) | Docket No. 05-035-54 |

**BACKGROUND**

1. On July 15, 2005, MidAmerican Energy Holdings Company (“MEHC”) and PacifiCorp (“PacifiCorp”) (sometimes hereinafter jointly referred to as “Applicants”) filed an Application with the Public Service Commission of Utah (“Commission”) authorizing a proposed transaction (“Transaction”) whereby MEHC would acquire all of the outstanding common stock of PacifiCorp and PacifiCorp would thereafter become an indirect wholly owned subsidiary of MEHC.

2. The Division of Public Utilities, the Committee of Consumer Services and other parties have reviewed the Application, the pre-filed testimony of the Applicants and the responses to the extensive discovery requests submitted in this and other proceedings.

3. Since the filing of the Application, the parties have engaged in settlement discussions on the issues in this proceeding. The settlement discussions have been open to all parties to this Docket.

**PURPOSE AND PARTIES**

4. This Stipulation (“Stipulation”) is entered into by the parties whose signatures appear on the signature pages hereof (collectively referred to herein as the “Parties” and individually as “Party”) and constitutes the negotiated resolution of all of the issues in this proceeding.

5. The Parties, by signing this Stipulation, acknowledge that the Applicants have satisfied the standard in Utah for approval of the Transaction and request that the Commission issue its order approving the Application and this Stipulation.

6. The Parties agree to support Commission approval of the Application and this Stipulation. The Division of Public Utilities and the Committee of Consumer Services will, and the other Parties may, provide testimony in support of the Application and this Stipulation.

### **MODIFICATION**

7. The Parties have negotiated this Stipulation as an integrated document. If the Commission rejects all or any part of this Stipulation or imposes additional material conditions in approving the Application, any Party disadvantaged by such action shall have the right, upon written notice to the Commission and all Parties within 15 business days of the Commission's order, to withdraw from this Stipulation. However, prior to withdrawal, the Party shall engage in a good faith negotiation process with the other Parties. No Party withdrawing from this Stipulation, including the Applicants, shall be bound to any position, commitment, or condition of this Stipulation.

### **EFFECTIVE DATE**

8. Subject to Paragraph 9 of this Stipulation, the effective date of this Stipulation shall be the date of the closing of the Transaction.

9. The obligations of the Applicants under this Stipulation are subject to the Commission's approval of the Application in this docket on terms and conditions acceptable to the Applicants, in their sole discretion, and the closing of the Transaction.

## COMMITMENTS BY THE PARTIES

10. Appendix A contains the complete list of Commitments that Applicants collectively and individually agree to make in exchange for the support of the Parties in this proceeding (hereinafter referred to as "Commitments"). The Commitments are comprised of several separate categories of commitments; specifically, extensions of existing commitments previously entered into by PacifiCorp and /or ScottishPower, new commitments entered into by the Applicants applicable to all the states in which PacifiCorp's service territory extends and, finally, Utah-specific commitments which apply only to the activities and operations of Applicants within Utah. By virtue of executing this Stipulation, the Applicants agree to perform all of the Commitments set forth in Appendix A according to the provisions of each Commitment as set forth therein.

In the process of obtaining approvals of the Transaction in other states, the Commitments may be expanded or modified as a result of regulatory decisions or settlements. The Applicants agree that the Commission shall have an opportunity and the authority to consider and adopt in Utah any commitments or conditions to which the Applicants agree or with which the Applicants are required to comply in other jurisdictions, even if such commitments and conditions are agreed to after the Commission enters its order in this docket. To facilitate the Commission's consideration and adoption of the commitments and conditions from other jurisdictions, the Parties urge the Commission to issue an order accepting this Stipulation as soon as practical, but to reserve in such order the explicit right to re-open Appendix A to add (without modification of the language thereof except such non-substantive changes as are necessary to make the commitment or condition applicable to Utah) commitments and conditions accepted or ordered in another state jurisdiction. To provide input to the Commission to facilitate a prompt decision

regarding the desirability or lack of desirability for these out-of-state commitments and conditions to be adopted in Utah, the Parties agree to and recommend the following process:

- Within five calendar days after a stipulation with new or amended commitments is filed by the Applicants with a commission in another state jurisdiction, Applicants will send a copy of the stipulation and commitments to the Parties.
- Within five calendar days after a commission in another state jurisdiction issues an order that accepts a stipulation to which Applicants are a party or otherwise imposes new or modified commitments or conditions, that order, together with all commitments and conditions of any type agreed to by Applicants or ordered by the commission in such other state, will be filed with the Commission and served on all parties to this docket by the most expeditious means practical. Within ten calendar days after the last such filing from the other states (“Final Filing”), any party to the docket wishing to do so shall file with the Commission its response, including its position as to whether any of the covenants, commitments and conditions from the other jurisdictions (without modification of the language thereof except such non-substantive changes as are necessary to make the commitment or condition applicable to Utah)) should be adopted in Utah. Within five calendar days after any such response filing, any party to the docket may file a reply with the Commission. The parties agree to support in their filings (or by representation of same by MEHC) the issuance by the Commission of an order regarding the adoption of such commitments and conditions as soon as practical thereafter, recognizing that the transaction cannot close until final state orders have issued.

11. Parties will encourage the Commission to enter a final Utah approval order by February 28, 2006.

12. So long as MEHC files its supplemental testimony pursuant to Commitment U 23 by May 15, 2006, Parties will not object to the use of a future test period solely on the basis of the MEHC acquisition.

13. Not later than the Final Filing, MEHC and PacifiCorp will disclose to the Parties any written commitments, conditions or covenants made in another state jurisdiction (between the date of the filing of the Stipulation and the receipt of the last state order in the transaction docket) intended to encourage approval of the transaction or avoidance of an objection thereto.

#### RESERVATION OF RIGHTS

14. By executing this Stipulation, no Party waives any right to assert such positions regarding the prudence, just and reasonable character, rate or ratemaking impact or treatment, or public interest as they deem appropriate pertaining to any Commitment.

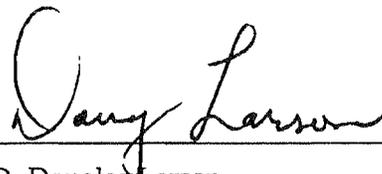
Executed this \_\_\_\_ day of November, 2005.

MIDAMERICAN ENERGY HOLDINGS COMPANY



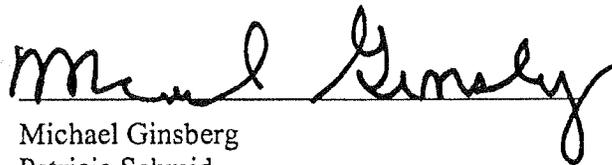
Mark C. Moench  
Senior Vice President, Law

PACIFICORP



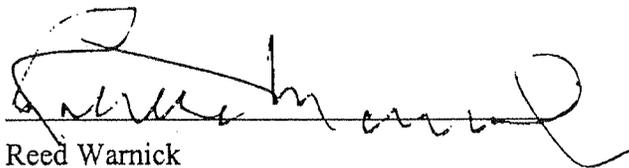
D. Douglas Larson  
Vice President, Regulation

UTAH DIVISION OF PUBLIC UTILITIES



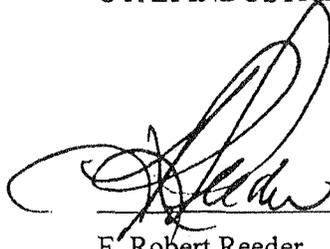
Michael Ginsberg  
Patricia Schmid  
Assistant Attorney General

UTAH COMMITTEE OF CONSUMER SERVICES



Reed Warnick  
Paul Proctor  
Assistant Attorney General

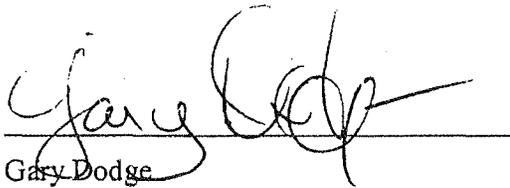
UTAH INDUSTRIAL ENERGY CONSUMERS



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F. Robert Reeder  
Vicki M. Baldwin  
Attorneys for UIEC, an Intervention Group

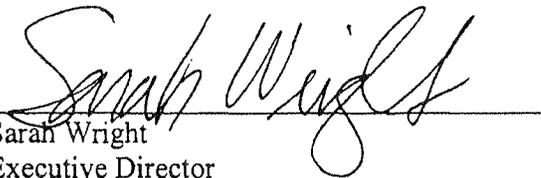
UAE INTERVENTION GROUP



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Gary Dodge  
Attorney for UAE

UTAH CLEAN ENERGY



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Sarah Wright  
Executive Director

WESTERN RESOURCE ADVOCATES

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Eric Guidry  
Energy Program Staff Attorney

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UTAH INDUSTRIAL ENERGY CONSUMERS

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UAE INTERVENTION GROUP

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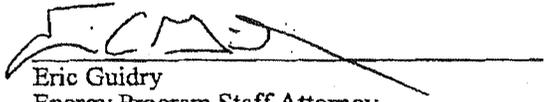
Gary Dodge  
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WESTERN RESOURCE ADVOCATES



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Eric Guidry  
Energy Program Staff Attorney

**MEHC Acquisition of PacifiCorp  
Utah Docket No. 05-035-54**

**Consolidated List of Commitments**

**Extension of Existing Commitments – (reference Gale’s Exhibit UP&L (BEG-1))**

- 1) MEHC and PacifiCorp affirm the continuation (through March 31, 2008) of the existing customer service guarantees and performance standards in each jurisdiction. MEHC and PacifiCorp will not propose modifications to the guarantees and standards prior to March 31, 2008. Refer to Commitment 45 for the extension of this commitment through 2011.
- 2) Penalties for noncompliance with performance standards and customer guarantees shall be paid as designated by the Commission and shall be excluded from results of operations. PacifiCorp will abide by the Commission’s decision regarding payments.
- 3) PacifiCorp will maintain its own accounting system, separate from MEHC’s accounting system. All PacifiCorp financial books and records will be kept in Portland, Oregon. PacifiCorp’s financial books and records and state and federal utility regulatory filings and documents will continue to be available to the Commission, upon request, at PacifiCorp’s offices in Portland, Oregon, Salt Lake City, Utah, and elsewhere in accordance with current practice.
- 4) MEHC and PacifiCorp will provide the Commission access to all books of account, as well as all documents, data, and records of their affiliated interests, which pertain to transactions between PacifiCorp and its affiliated interests or which are otherwise relevant to the business of PacifiCorp. This commitment is also applicable to the books and records of Berkshire Hathaway, which shall retain its books and records relevant to the business of PacifiCorp consistent with the manner and time periods of the Federal Energy Regulatory Commission’s record retention requirements that are applicable to PacifiCorp’s books and records.
- 5) MEHC, PacifiCorp and all affiliates will make their employees, officers, directors, and agents available to testify before the Commission to provide information relevant to matters within the jurisdiction of the Commission.
- 6) The Commission or its agents may audit the accounting records of MEHC and its subsidiaries that are the bases for charges to PacifiCorp, to determine the reasonableness of allocation factors used by MEHC to assign costs to PacifiCorp and amounts subject to allocation or direct charges. MEHC agrees to cooperate fully with such Commission audits.

- 7) MEHC and PacifiCorp will comply with all applicable Commission statutes and regulations regarding affiliated interest transactions, including timely filing of applications and reports.
- 8) PacifiCorp will file on an annual basis an affiliated interest report including an organization chart, narrative description of each affiliate, revenue for each affiliate and transactions with each affiliate.
- 9) PacifiCorp and MEHC will not cross-subsidize between the regulated and non-regulated businesses or between any regulated businesses, and shall comply with the Commission's applicable orders and rules with respect to such matters.
- 10) Due to PUHCA repeal, neither Berkshire Hathaway nor MEHC will be registered public utility holding companies under PUHCA. Thus, no waiver by Berkshire Hathaway or MEHC of any defenses to which they may be entitled under *Ohio Power Co. v. FERC*, 954 F.2d 779 (D.C. Cir.), *cert. denied sub nom. Arcadia v. Ohio Power Co.*, 506 U.S. 981 (1992) ("*Ohio Power*"), is necessary to maintain the Commission's regulation of MEHC and PacifiCorp. However, while PUHCA is in effect, Berkshire Hathaway and MEHC waive such defenses.
- 11) Any diversified holdings and investments (e.g., non-utility business or foreign utilities) of MEHC following approval of the transaction will not be held by PacifiCorp or a subsidiary of PacifiCorp. Ring-fencing provisions (i.e., measures providing for separate financial and accounting treatment) will be provided for PacifiCorp and its subsidiaries including, but not limited to, provisions protecting PacifiCorp and its subsidiaries from the liabilities or financial distress of MEHC and its affiliates. This condition will not prohibit MEHC or its affiliates other than PacifiCorp from holding diversified businesses.
- 12) PacifiCorp or MEHC will notify the Commission subsequent to MEHC's board approval and as soon as practicable following any public announcement of: (1) any acquisition of a regulated or unregulated business representing 5 percent or more of the capitalization of MEHC; or (2) the change in effective control or acquisition of any material part or all of PacifiCorp by any other firm, whether by merger, combination, transfer of stock or assets.
- 13) The Intercompany Administrative Services Agreement (IASA) will include the corporate and affiliate cost allocation methodologies. The IASA will be filed with the Commission as soon as practicable after the closing of the transaction. Approval of the IASA will be requested if required by law or rule, but approval for ratemaking purposes will not be requested in such filing. Refer to Commitment 14 (f). Amendments to the IASA will also be filed with the Commission.
- 14) Any proposed cost allocation methodology for the allocation of corporate and affiliate investments, expenses, and overheads, required by law or rule to be submitted to the Commission for approval, will comply with the following principles:

- a) For services rendered to PacifiCorp or each cost category subject to allocation to PacifiCorp by MEHC or any of its affiliates, MEHC must be able to demonstrate that such service or cost category is necessary to PacifiCorp for the performance of its regulated operations, is not duplicative of services already being performed within PacifiCorp, and is reasonable and prudent.
  - b) Cost allocations to PacifiCorp and its subsidiaries will be based on generally accepted accounting standards; that is, in general, direct costs will be charged to specific subsidiaries whenever possible and shared or indirect costs will be allocated based upon the primary cost-driving factors.
  - c) MEHC and its subsidiaries will have in place positive time reporting systems adequate to support the allocation and assignment of costs of executives and other relevant personnel to PacifiCorp.
  - d) An audit trail will be maintained such that all costs subject to allocation can be specifically identified, particularly with respect to their origin. In addition, the audit trail must be adequately supported. Failure to adequately support any allocated cost may result in denial of its recovery in rates.
  - e) Costs which would have been denied recovery in rates had they been incurred by PacifiCorp regulated operations will likewise be denied recovery whether they are allocated directly or indirectly through subsidiaries in the MEHC group.
  - f) Any corporate cost allocation methodology used for rate setting, and subsequent changes thereto, will be submitted to the Commission for approval if required by law or rule.
- 15) PacifiCorp will maintain separate debt and, if outstanding, preferred stock ratings. PacifiCorp will maintain its own corporate credit rating, as well as ratings for each long-term debt and preferred stock (if any) issuance.
- 16) MEHC and PacifiCorp will exclude all costs of the transaction from PacifiCorp's utility accounts. Within 90 days following completion of the transaction, MEHC will provide a preliminary accounting of these costs. Further, MEHC will provide the Commission with a final accounting of these costs within 30 days of the accounting close.
- 17) MEHC and PacifiCorp will provide the Commission with unrestricted access to all written information provided by and to credit rating agencies that pertains to PacifiCorp.
- 18) PacifiCorp will not make any distribution to PPW Holdings LLC or MEHC that will reduce PacifiCorp's common equity capital below 40 percent of its total capital without Commission approval. PacifiCorp will notify the Commission if for any reason its common equity capital is reduced to below 44 percent of its total capital for a period longer than three consecutive months. PacifiCorp's total capital is defined as common equity, preferred equity and long-term debt. Long-term debt is defined as debt with a term of one year or more. The Commission and PacifiCorp may reexamine these minimum common equity percentages as financial conditions or accounting standards change, and PacifiCorp may request adjustments.

- 19) The capital requirements of PacifiCorp, as determined to be necessary to meet its obligation to serve the public, will be given a high priority by the Board of Directors of MEHC and PacifiCorp.
- 20) Neither PacifiCorp nor its subsidiaries will, without the approval of the Commission, make loans or transfer funds (other than dividends and payments pursuant to the Intercompany Administrative Services Agreement) to MEHC or its affiliates, or assume any obligation or liability as guarantor, endorser, surety or otherwise for MEHC or its affiliates; provided that this condition will not prevent PacifiCorp from assuming any obligation or liability on behalf of a subsidiary of PacifiCorp. MEHC will not pledge any of the assets of the business of PacifiCorp as backing for any securities which MEHC or its affiliates (but excluding PacifiCorp and its subsidiaries) may issue.
- 21) MEHC and PacifiCorp, in future Commission proceedings, will not seek a higher cost of capital than that which PacifiCorp would have sought if the transaction had not occurred. Specifically, no capital financing costs should increase by virtue of the fact that PacifiCorp was acquired by MEHC.
- 22) MEHC and PacifiCorp guarantee that the customers of PacifiCorp will be held harmless if the transaction between MEHC and PacifiCorp results in a higher revenue requirement for PacifiCorp than if the transaction had not occurred; provided, however, that MEHC and PacifiCorp do not intend that this commitment be interpreted to prevent PacifiCorp from recovering prudently incurred costs approved for inclusion in revenue requirement by the Commission.
- 23) PacifiCorp will continue a Blue Sky tariff offering in all states. PacifiCorp will continue to support this offering through innovative marketing, by modifying the tariff to reflect the developing green power market and by monitoring national certification standards.
- 24) PacifiCorp will continue its commitment to gather outside input on environmental matters, such as through the Environmental Forum.
- 25) PacifiCorp will continue to have environmental management systems in place that are self-certified to ISO 14001 standards at all PacifiCorp operated thermal generation plants.
- 26) MEHC will maintain at least the existing level of PacifiCorp's community-related contributions, both in terms of monetary and in-kind contributions. The distribution of PacifiCorp's community-related contributions among the states will be done in a manner that is fair and equitable to each state.
- 27) MEHC will continue to consult with regional advisory boards to ensure local perspectives are heard regarding community issues.

- 28) MEHC will honor PacifiCorp's existing labor contracts.
- 29) After the closing of the transaction, MEHC and PacifiCorp will make no unilateral changes to employee benefit plans prior to May 23, 2007 that would result in the reduction of employee benefits.
- 30) PacifiCorp will continue to produce Integrated Resource Plans according to the then current schedule and the then current Commission rules and orders.
- 31) When acquiring new generation resources in excess of 100 MW and with a dependable life of 10 or more years, PacifiCorp and MEHC will issue Requests for Proposals (RFPs) or otherwise comply with state laws, regulations and orders that pertain to procurement of new generation resources for PacifiCorp.
- 32) Nothing in these acquisition commitments shall be interpreted as a waiver of PacifiCorp's or MEHC's rights to request confidential treatment for information that is the subject of any commitments.
- 33) Unless another process is provided by statute, Commission regulations or approved PacifiCorp tariff, MEHC and PacifiCorp encourage the Commission to use the following process for administering the commitments. The Commission should give MEHC and PacifiCorp written notification of any violation by either company of the commitments made in this application. If such failure is corrected within ten (10) business days for failure to file reports, or five (5) business days for other violations, the Commission should take no action. The Commission shall have the authority to determine if the corrective action has satisfied or corrected the violation. MEHC or PacifiCorp may request, for cause, an extension of these time periods. If MEHC or PacifiCorp fails to correct such violations within the specified time frames, as modified by any Commission-approved extensions, the Commission may seek to assess penalties for violation of a Commission order, against either MEHC or PacifiCorp, as allowed under state laws and regulations.

**New Commitments – (reference G. Abel's Testimony and Exhibit UP&L (GEA-1)**

- 34) Transmission Investment: MEHC and PacifiCorp have identified incremental transmission projects that enhance reliability, facilitate the receipt of renewable resources, or enable further system optimization. Subject to permitting and the availability of materials, equipment and rights-of-way, MEHC and PacifiCorp commit to use their best efforts to achieve the following transmission system infrastructure improvements<sup>1</sup>:

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<sup>1</sup> While MEHC has immersed itself in the details of PacifiCorp's business activities in the short time since the announcement of the transaction, it is possible that upon further review a particular investment might not be cost-effective, optimal for customers or able to be completed by the target date. If that should occur, MEHC pledges to propose an alternative to the Commission with a comparable benefit.

- a) Path C Upgrade (~\$78 million) – Increase Path C capacity by 300 MW (from S.E. Idaho to Northern Utah). The target completion date for this project is 2010. This project:
    - enhances reliability because it increases transfer capability between the east and west control areas,
    - facilitates the delivery of power from wind projects in Idaho, and
    - provides PacifiCorp with greater flexibility and the opportunity to consider additional options regarding planned generation capacity additions.
  
  - b) Mona - Oquirrh (~\$196 million) – Increase the import capability from Mona into the Wasatch Front (from Wasatch Front South to Wasatch Front North). This project would enhance the ability to import power from new resources delivered at or to Mona, and to import from Southern California by “wheeling” over the Adelanto DC tie. The target completion date for this project is 2011. This project:
    - enhances reliability by enabling the import of power from Southern California entities during emergency situations,
    - facilitates the acceptance of renewable resources, and
    - enhances further system optimization since it enables the further purchase or exchange of seasonal resources from parties capable of delivering to Mona.
  
  - c) Walla Walla - Yakima or Mid-C (~\$88 million) – Establish a link between the “Walla Walla bubble” and the “Yakima bubble” and/or reinforce the link between the “Walla Walla bubble” and the Mid-Columbia (at Vantage). Either of these projects presents opportunities to enhance PacifiCorp’s ability to accept the output from wind generators and balance the system cost effectively in a regional environment. The target completion date for this project is 2010.
- 35) Other Transmission and Distribution Matters: MEHC and PacifiCorp make the following commitments to improve system reliability:
- a) investment in the Asset Risk Program of \$75 million over the three years, 2007-2009,
  - b) investment in local transmission risk projects across all states of \$69 million over eight years after the close of the transaction,
  - c) O & M expense for the Accelerated Distribution Circuit Fusing Program across all states will be increased by \$1.5 million per year for five years after the close of the transaction, and
  - d) extension of the O&M investment across all states for the Saving SAIDI Initiative for three additional years at an estimated cost of \$2 million per year.
  - e) MEHC and PacifiCorp will support the Bonneville Power Administration in its development of short-term products such as conditional firm. Based on the outcome from BPA’s efforts, PacifiCorp will initiate a process to collaboratively
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design similar products at PacifiCorp. PacifiCorp will continue its Partial Interim Service product and its tariff provision that allows transmission customers to alter pre-scheduled transactions up to twenty minutes before any hour, and will notify parties to this proceeding if it proposes changes to these two elements of its OATT.

- 36) Regional Transmission: MEHC recognizes that it can and should have a role in addressing the critical importance of transmission infrastructure to the states in which PacifiCorp serves. MEHC also recognizes that some transmission projects, while highly desirable, may not be appropriate investments for PacifiCorp and its regulated customers. Therefore, MEHC shareholders commit their resources and leadership to assist PacifiCorp states in the development of transmission projects upon which the states can agree. Examples of such projects would be RMATS and the proposed Frontier transmission line.
- 37) Reduced Cost of Debt: MEHC believes that PacifiCorp's incremental cost of long-term debt will be reduced as a result of the proposed transaction, due to the association with Berkshire Hathaway. Historically, MEHC's utility subsidiaries have been able to issue long-term debt at levels below their peers with similar credit ratings. MEHC commits that over the next five years it will demonstrate that PacifiCorp's incremental long-term debt issuances will be at least a spread of ten basis points below its similarly rated peers. MEHC's demonstration will include information from a third party industry expert supporting its calculation and conclusion. If MEHC is unable to demonstrate to the Commission's satisfaction that PacifiCorp has achieved at least a ten-basis point reduction, PacifiCorp will accept up to a ten (10) basis point reduction to the yield it actually incurred on any incremental long-term debt issuances for any revenue requirement calculation effective for the five-year period subsequent to the approval of the proposed acquisition. It is projected that this benefit will yield a value roughly equal to \$6.3 million over the post-acquisition five-year period.
- 38) Corporate Overhead Charges: MEHC commits that the corporate charges to PacifiCorp from MEHC and MEC will not exceed \$9 million annually for a period of five years after the closing on the proposed transaction. (In FY2006, ScottishPower's net cross-charges to PacifiCorp are projected to be \$15 million.).
- 39) Future Generation Options: In Commitment 31, MEHC and PacifiCorp adopt a commitment to source future PacifiCorp generation resources consistent with the then current rules and regulations of each state. In addition to that commitment, for the next ten years, MEHC and PacifiCorp commit that they will submit as part of any commission approved RFPs for resources with a dependable life greater than 10 years and greater than 100 MW --including renewable energy RFPs --a 100 MW or more utility "own/operate" alternative for the particular resource. It is not the intent or objective that such alternatives be favored over other options. Rather, the option for PacifiCorp to own and operate the resource which is the subject of the RFP will enable comparison and evaluation of that option against other viable alternatives. In

addition to providing regulators and interested parties with an additional viable option for assessment, it can be expected that this commitment will enhance PacifiCorp's ability to increase the proportion of cost-effective renewable energy in its generation portfolio, based upon the actual experience of MEC and the "Renewable Energy" commitment offered below.

- 40) Renewable Energy: MEHC reaffirms PacifiCorp's commitment to acquire 1400 MW of new cost-effective renewable resources, representing approximately 7% of PacifiCorp's load. MEHC and PacifiCorp commit to work with developers and bidders to bring at least 100 MW of cost-effective wind resources in service within one year of the close of the transaction.

MEHC and PacifiCorp expect that the commitment to build the Walla-Walla and Path C transmission lines will facilitate up to 400 MW of renewable resource projects with an expected in-service date of 2008 -2010. MEHC and PacifiCorp commit to actively work with developers to identify other transmission improvements that can facilitate the delivery of cost-effective wind energy in PacifiCorp's service area.

In addition, MEHC and PacifiCorp commit to work constructively with states to implement renewable energy action plans so as to enable PacifiCorp to achieve at least 1400 MW of cost-effective renewable energy resources by 2015. Such renewable energy resources are not limited to wind energy resources.

- 41) Coal Technology: MEHC supports and affirms PacifiCorp's commitment to consider utilization of advanced coal-fuel technology such as super-critical or IGCC technology when adding coal-fueled generation.

- 42) Greenhouse Gas Emission Reduction: MEHC and PacifiCorp commit to participate in the Environmental Protection Agency's SF<sub>6</sub> Emission Reduction Partnership for Electric Power Systems. Sulfur hexafluoride (SF<sub>6</sub>) is a highly potent greenhouse gas used in the electric industry for insulation and current interruption in electric transmission and distribution equipment. Over a 100-year period, SF<sub>6</sub> is 23,900 times more effective at trapping infrared radiation than an equivalent amount of CO<sub>2</sub>, making it the most highly potent, known greenhouse gas. SF<sub>6</sub> is also a very stable chemical, with an atmospheric lifetime of 3,200 years. As the gas is emitted, it accumulates in the atmosphere in an essentially un-degraded state for many centuries. Thus, a relatively small amount of SF<sub>6</sub> can have a significant impact on global climate change. Through its participation in the SF<sub>6</sub> partnership, PacifiCorp will commit to an appropriate SF<sub>6</sub> emissions reduction goal and annually report its estimated SF<sub>6</sub> emissions. This not only reduces greenhouse gas emissions, it saves money and improves grid reliability. Since 1999, EPA's SF<sub>6</sub> partner companies have saved \$2.5 million from the avoided gas loss alone. Use of improved SF<sub>6</sub> equipment and management practices helps protect system reliability and efficiency. Additionally, PacifiCorp will develop a strategy to identify and implement cost-effective measures to reduce PacifiCorp's greenhouse gas emissions.

- 43) Emission Reductions from Coal-Fueled Generating Plants: Working with the affected generation plant joint owners and with regulators to obtain required approvals, MEHC and PacifiCorp commit to install the equipment likely to be necessary under future emissions control scenarios at a cost of approximately \$812 million. Concurrent with any application for an air permit, MEHC and PacifiCorp will discuss its plans regarding this commitment with interested parties and solicit input. While additional expenditures may ultimately be required as future emission reduction requirements become better defined, MEHC believes these investments in emission control equipment are reasonable and environmentally beneficial. The execution of an emissions reduction plan for the existing PacifiCorp coal-fueled facilities, combined with the use of reduced-emissions coal technology for new coal-fueled generation, is expected to result in a significant decrease in the emissions rate of PacifiCorp's coal-fueled generation fleet. The investments to which MEHC is committing are expected to result in a decrease in the SO<sub>2</sub> emissions rates of more than 50%, a decrease in the NO<sub>x</sub> emissions rates of more than 40%, a reduction in the mercury emissions rates of almost 40%, and no increase expected in the CO<sub>2</sub> emissions rate.
- 44) Energy Efficiency and DSM Management:
- a) MEHC and PacifiCorp commit to conducting a company-defined third-party market potential study of additional DSM and energy efficiency opportunities within PacifiCorp's service areas. The objective of the study will be to identify opportunities not yet identified by the company and, if and where possible, to recommend programs or actions to pursue those opportunities found to be cost-effective. The study will focus on opportunities for deliverable DSM and energy efficiency resources rather than technical potentials that may not be attainable through DSM and energy efficiency efforts. On-site solar and combined heat and power programs may be considered in the study. During the three-month period following the close of the transaction, MEHC and PacifiCorp will consult with DSM advisory groups and other interested parties to define the proper scope of the study. The findings of the study will be reported back to DSM advisory groups, commission staffs, and other interested stakeholders and will be used by the Company in helping to direct ongoing DSM and energy efficiency efforts. The study will be completed within fifteen months after the closing on the transaction, and MEHC shareholders will absorb the first \$1 million of the costs of the study.
  - b) PacifiCorp further commits to meeting its portion of the NWPPC's energy efficiency targets for Oregon, Washington and Idaho, as long as the targets can be achieved in a manner deemed cost-effective by the affected states.
  - c) In addition, MEHC and PacifiCorp commit that PacifiCorp and MEC will annually collaborate to identify any incremental programs that might be cost-effective for PacifiCorp customers. The Commission will be notified of any additional cost-effective programs that are identified.
- 45) Customer Service Standards: MEHC and PacifiCorp commit to continue customer service guarantees and performance standards as established in each jurisdiction,

provided that MEHC and PacifiCorp reserve the right to request modifications of the guarantees and standards after March 31, 2008, and the right to request termination (as well as modification) of one or more guarantees or standards after 2011. The guarantees and standards will not be eliminated or modified without Commission approval.

- 46) Community Involvement and Economic Development: MEHC has significant experience in assisting its communities with economic development efforts. MEHC plans to continue PacifiCorp's existing economic development practices and use MEHC's experience to maximize the effectiveness of these efforts.
- 47) Corporate Presence (All States): MEHC understands that having adequate staffing and representation in each state is not optional. We understand its importance to customers, to regulators and to states. MEHC and PacifiCorp commit to maintaining adequate staffing and presence in each state, consistent with the provision of safe and reliable service and cost-effective operations.

#### **Supplemental General Commitments**

- 48) **IRP Stakeholder Process**: PacifiCorp will provide public notice and an invitation to encourage stakeholders to participate in the Integrated Resource Plan (IRP) process. The IRP process will be used to consider Commitments 34, 39, 40, 41 and 44. PacifiCorp will hold IRP meetings at locations or using communications technologies that encourage broad participation.
- 49) **Reporting on Status of Commitments**: By June 1, 2007 and each June 1 thereafter through June 1, 2011, PacifiCorp will file a report with the Commission regarding the implementation of the Commitments. The report will, at a minimum, provide a description of the performance of each of the commitments that have quantifiable results. If any of the commitments is not being met, relative to the specific terms of the commitment, the report shall provide proposed corrective measures and target dates for completion of such measures. PacifiCorp will make publicly-available at the Commission non-confidential portions of the report.
- 50) **Pension Funding Policy**: PacifiCorp will maintain its current pension funding policy, as described in the 2005 Actuarial Report, for a period of two years following the close of the transaction.

#### **Utah-Specific Commitments – (reference Gale Exhibit UP&L (BEG-1))**

- U 1. PacifiCorp will report call-handling results during wide-scale outages against average answer speeds, hold times and busy indications.
- U 2. MEHC and PacifiCorp will provide notification of and file for Commission approval of the divestiture, spin-off, or sale of any integral PacifiCorp function. This condition does not limit any jurisdiction the Commission may have.

- U 3. PacifiCorp or MEHC will notify the Commission prior to implementation of plans by PacifiCorp or MEHC: (1) to form an affiliate for the purpose of transacting business with PacifiCorp's regulated operations; (2) to commence new business transactions between an existing affiliate and PacifiCorp; or (3) to dissolve an affiliate which has transacted substantial business with PacifiCorp.
- U 4. The premium paid by MEHC for PacifiCorp will be recorded in the accounts of the acquisition company and not in the utility accounts of PacifiCorp. By this commitment, MEHC and PacifiCorp are not agreeing or otherwise committing to waive any arguments that they might have pertaining to a symmetrical expense adjustment based on the regulatory theory of the matching principle in the event a party in a proceeding before the Commission proposes an adjustment to PacifiCorp's revenue requirement associated with the imputation of benefits (other than those benefits committed to in this transaction) accruing from PPW Holdings LLC, MEHC, or affiliates. MEHC and PacifiCorp acknowledge that neither the Commission nor any party to this proceeding is being asked to agree with or accept any such arguments or to waive any right to assert or adopt such positions regarding the prudence, just and reasonable character, rate or ratemaking impact or treatment, or public interest as they deem appropriate pertaining to this commitment.

**Utah-Specific Commitments – (reference Abel Exhibit UP&L (GEA-1))**

- U 5. PacifiCorp and MEHC commit to maintaining sufficient operations and front line staffing to provide safe, adequate and reliable service in recognition of the level of load and customer growth in Utah.
- U 6. PacifiCorp and MEHC commit to increasing the number of corporate and senior management positions in Utah to better reflect the relative size of Utah's retail load compared to the retail loads of the other states. Positions to be examined will include, but not be limited to, engineering, purchasing, information technology, land rights, legal, commercial transactions and asset management. By September 1, 2007, MEHC and PacifiCorp will file a plan with the Commission that explicitly sets forth: (1) senior management positions (and associated corporate personnel positions identified by those senior managers) that have been identified for location in Utah; (2) the timeframe for implementing different stages of the plan; and (3) an economic analysis supporting the cost effectiveness of the plan. MEHC will promptly implement the plan pursuant to the timeframe.
- U 7. PacifiCorp and MEHC will authorize senior management personnel located in Utah to make decisions on behalf of PacifiCorp pertaining to (1) local Utah retail customer service issues related to tariff interpretation, line extensions, service additions, DSM program implementation and (2) customer service matters related to adequate investment in and maintenance of the Utah sub-transmission and distribution network and outage response. For resource transactions in Utah related to special retail contracts and QF contracts, PacifiCorp and MEHC will authorize

Utah-based personnel to negotiate contract terms consistent with system-wide prudent practices. Such decisions will be subject to normal and prompt corporate approval procedures, senior executive approval and board approval, as appropriate. MEHC and PacifiCorp will include a description of the implementation of this commitment in the filing required in Commitment U 6.

- U 8. The Chairman of the Board of PacifiCorp and the President of PacifiCorp will meet at least annually with the Utah Public Service Commission to discuss (1) corporate presence status, plans and commitments, and (2) customer service issues. Senior executives of MEHC and PacifiCorp will also meet regularly with the Division of Public Utilities and the Committee of Consumer Services to discuss regulatory and customer service issues, including the issues discussed at the meetings among the Chairman of the Board of PacifiCorp, the President of PacifiCorp and the Commission.

#### **Supplemental Utah-Specific Commitments**

- U 9. PacifiCorp will provide semi annual reports to the Commission and members of the Service Quality Review Group describing PacifiCorp's performance in meeting service standard commitments, including both performance standards and customer guarantees.
- U 10. PacifiCorp will provide to the Division of Public Utilities and the Committee of Consumer Services, on an informational basis, credit rating agency news releases and final reports regarding PacifiCorp when such reports are known to PacifiCorp and are available to the public.
- U 11. MEHC commits that immediately following the closing of the transaction, the acquiring company (PPW Holdings LLC) will have no debt in its capital structure. MEHC and PacifiCorp commit to provide the Commission 30 days prior notice if PPW Holdings LLC ever intends to issue debt. MEHC and PacifiCorp acknowledge that if PPW Holdings LLC does issue debt, the Commission has the authority to consider whether additional ring-fencing provisions may be appropriate.
- U 12. PacifiCorp commits to apply to the Commission for approval of security issuances pursuant to Utah Code Annotated 54-4-31 and to not seek exemption from this requirement for twelve months following the closing of this transaction.
- U 13. PacifiCorp commits to provide written notice to the Commission pursuant Utah Code Annotated 54-4-27 before any dividends are paid by PacifiCorp.
- U 14. PacifiCorp commits to continue to provide the Division of Public Utilities and the Committee of Consumer Services at the same time as the Commission with the filings, data and documents made with or provided to the Commission pursuant to Commitments 3, 4, 8, 13, 18, 49, U 2, U 3, U 9, U 11, U 12, U 13, U 20 and U 21 at

the same time as filed with the Commission. PacifiCorp will make publicly-available at the Commission non-confidential portions of the report.

- U 15. MEHC and PacifiCorp commit to form an IGCC Working Group, sponsored by PacifiCorp to discuss various policy and technology issues associated with IGCC, carbon capture, and sequestration. Working Group members would include representatives from major stakeholder and regulatory groups, PacifiCorp and MEHC officials, and others as appropriate. Some issues and challenges to development that would be considered by the Working Group would include:
- the status of development of carbon sequestration policy and methods, including requirements for monitoring and verifying sequestration options;
  - information sharing, so that, to the extent possible, all parties develop a shared understanding of expected IGCC technology benefits, expected capital and O&M costs, and potential risks;
  - information sharing to understand such terms and associated requirements with concepts such as “carbon capture ready” and “permanent sequestration”;
  - issues related to technology of and permitting for IGCC air emissions, waste disposal, water use and site usage;
  - commercial terms and conditions associated with IGCC plant development, construction, and maintenance; and
  - implications of SB 26 on development of IGCC plants given the implications of long development lead times, development costs, project risk, and cost uncertainty.

The IGCC Working Group would meet periodically to discuss the above issues and identify possible solutions, and to stay abreast of the evolving technology and commercial environment.

- U 16. MEHC and PacifiCorp commit to the following, subject to the parties supporting timely recovery of prudent costs:
- a) MEHC and PacifiCorp commit to study the economics and viability of an IGCC option and to use good faith efforts to present the results of this study as a resource alternative to inform the resource selection and RFP process under consideration in Docket 05-035-47. PacifiCorp will suggest procedural schedules that will facilitate this commitment. As soon as practical, but not later than three months after the closing of the transaction, PacifiCorp will provide to the parties estimated cost and timeline ranges for completion of an IGCC project, as well as potential resource alternatives if an IGCC design is not reasonably achievable in time to economically meet the resource need presently identified in 2012 from a customer and shareholder perspective. Parties will support the prudently incurred costs of these studies and analyses for inclusion in rates.
  - b) PacifiCorp will perform initial conceptual and siting studies, general feasibility studies, and, where appropriate, other more detailed studies and engineering work, for an IGCC plant for the 2014 resource need identified in the October 2005 IRP Update. The studies will include an evaluation of the expected cost

and performance impacts of constructing a plant to be carbon capture ready. These studies will be performed in parallel with similar studies to evaluate other generation technologies.

- c) PacifiCorp will include a utility self-build option of an IGCC unit in any RFPs for the 2014 and later non-renewable resource needs, whether or not the IGCC option is found to be PacifiCorp's preferred cost-based alternative, and present PacifiCorp's evaluation of the IGCC option against another self-build alternative(s) as part of the SB 26 process. This will include an evaluation of the cost and performance impacts of the IGCC resource being constructed to be carbon capture ready.
- U 17. PacifiCorp agrees to include the following items in the 2006 IRP:
- a) a wind penetration study to reappraise wind integration costs and cost-effective renewable energy levels; and
  - b) an assessment of transmission options for PacifiCorp's system identified in the RMATS scenario 1 related to facilitating additional generation at Jim Bridger and, on equal footing, new cost-effective wind resources.
- U 18. PacifiCorp will issue a Utah-specific RFP for the Blue Sky programs. The purpose of the RFP will be to better geographically balance Blue Sky block product demand and supply. Subject to any necessary counterparty confidentiality releases, PacifiCorp will provide information on the identity, vintage and location of generation associated with its annual procurement for Blue Sky to the Commission and other interested parties, upon request. PacifiCorp will meet annually with interested parties to discuss state-specific program opportunities while maintaining attractive prices to customers.
- U 19. For the purpose of rate cases and formal regulatory proceedings, PacifiCorp will provide parties to the stipulation filed in the acquisition docket who are intervenors in the rate case or formal regulatory proceeding with access, subject to Commitment 32 and the discovery rules of the Commission, to its financial books and records, including documents, data, and records of transactions between PacifiCorp and its affiliated interests which are relevant to issues in the docket.
- U 20. At the time of the closing of the transaction, MEHC will file with the Commission a letter from Berkshire Hathaway committing to be bound by Commitments 4 and 5 and any other commitments applicable to affiliates of MEHC.
- U 21. MEHC and PacifiCorp will request Commission approval, for cost allocation and affiliate transaction purposes, of the IASA and any amendments filed pursuant to Commitment 13.
- U 22. Applicants acknowledge that the Commitments are being made by MEHC and PacifiCorp and are binding only upon them (and their affiliates where noted). Applicants are not requesting in this proceeding a determination of the prudence, just and reasonable character, rate or ratemaking treatment, or public interest of the

investments, expenditures or actions referenced in the Commitments, and the Parties in appropriate proceedings may take such positions regarding the prudence, just and reasonable character, rate or ratemaking treatment, or public interest of the investments, expenditures or actions as they deem appropriate.

U 23. PacifiCorp intends to file its next Utah general rate case, including its direct revenue requirement testimony, by March 1, 2006. PacifiCorp will file its class cost of service, rate spread and rate design studies and supporting direct testimony (together referred to as "Cost of Service Filing") by March 15, 2006. For purposes of that rate case proceeding only, PacifiCorp's March 1, 2006 filing will constitute the date when "the utility's schedules are filed" that starts the 240 day time limit ("Rate Effective Date") wherein the Commission must issue its order granting or -- revising a revenue increase under Utah Code section 54-7-12(3)(b)(i). That March 1, 2006 testimony will include PacifiCorp's best estimates of the revenue requirement impact of the transaction, including revenue requirement adjustments that incorporate Commitments 37 and 38 to the extent that those commitments are applicable to the rate case test period. PacifiCorp will request that the Commission hold a test period hearing within 90 days after the March 1, 2006 filing. In addition, within fifteen days after closing, PacifiCorp will file supplemental testimony by an MEHC witness to discuss and update PacifiCorp's revenue requirement in that case and to incorporate any additional adjustments that are appropriate as a result of the transaction. In order to provide parties with time to address any additional information provided in the MEHC testimony, PacifiCorp will extend the Rate Effective Date to December 11, 2006. If the transaction closes after April 30, 2006, or PacifiCorp fails to file supplemental testimony within fifteen days of closing, PacifiCorp acknowledges that the Rate Effective Date may be further extended by a reasonable period of time, as determined by agreement of the parties or by the Commission. PacifiCorp hereby waives any claim or argument that an additional extension of the Rate Effective Date would violate the provisions of Utah Code section 54-7-12 (3)(b)(i).

PacifiCorp also commits that any request for Commission approval of a PCAM mechanism (or any net power cost adjustment mechanism) will be filed at least three months in advance of a general rate case filing and that intervener testimony deadlines will be the same as those established in the general rate case.

U 24. PacifiCorp commits to work with the Utah DSM Advisory Group to propose a tariff amendment to maximize the cost-effective electricity savings of Utah ratepayer contributions to federally funded weatherization programs. As part of this analysis, PacifiCorp agrees to re-examine its current Company policy of matching federal contributions at 50%.

U 25. MEHC and PacifiCorp commit up to \$200,000 annually for five years, to be recorded in non-utility accounts, to match customer and employee contributions to the Utah fuel fund bill assistance program. MEHC and PacifiCorp commit to work

with low income advocates and consumer groups, when appropriate, to evaluate additional matching contributions.

U 26. MEHC commits to provide \$25,000 in shareholder funds to hire a consultant for, and PacifiCorp will provide a resource for facilitation of, a working group to study and design for possible implementation an arrearage management project for low-income customers. The project will be developed by PacifiCorp in conjunction with the Division of Public Utilities, Committee for Consumer Services, low-income advocates and other interested parties. The goals of the project will include reducing service terminations, reducing referral of delinquent customers to third party collection agencies, reducing collection litigation and reducing arrearages and increasing voluntary customer payments of arrearages.

U 27. The scope of the "most favored nation" commitment contained in Section 10 of the Stipulation will extend to and include any resolution or settlement prior to closing of the transaction of any procedural, jurisdictional or federal law issues or disputes raised in *PacifiCorp vs. Rob Hurless*, Case No. CV-04-031J, United States District Court, District of Wyoming, regardless of the manner, context or proceeding in which any such settlement or resolution paid in connection with such settlement or resolution, to the extent such settlement or resolution includes any kind of ongoing waiver, or agreement to litigate in state tribunals, of any federal preemption, filed rate doctrine or similar federal issues, or any other limitation, condition or waiver of federal jurisdiction or federal forum as it relates to state ratemaking (referred to hereinafter as a procedural limitation clause ("PLC")). If any PLC is agreed to by PacifiCorp in any such settlement or resolution, PacifiCorp agrees to identify the PLC in stand-alone language and MEHC agrees to include such PLC as a deemed commitment to the Wyoming transaction docket and by virtue of the most favored nations clause referred to above, the PLC will be available for adoption in Utah pursuant to the procedures in the Stipulation.

U 28. MEHC and PacifiCorp will supplement the report filed with the Commission, the Division and the Committee, pursuant to Commitment 49, by including information regarding the implementation of each of the Utah-Specific Commitments, U 1 through U 27.

Case UM 1209  
PPL Exhibit 315  
Witness: Brent E. Gale

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

MIDAMERICAN ENERGY HOLDINGS COMPANY  
AND PACIFICORP

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**Exhibit Accompanying Rebuttal Testimony of Brent E. Gale**

**Oregon Specific Commitments**

December 2005

### Oregon State-Specific Commitments

- O 1. MEHC and PacifiCorp agree to the following provisions with respect to information requests and resolution of disputes related to information requests: (1) PacifiCorp and MEHC will provide Staff, upon request, access to books and records of PacifiCorp and MEHC to the extent they contain information specifically related to PacifiCorp, including Board of Director's Minutes. This commitment will not be deemed to be a waiver of PacifiCorp's or MEHC's right to seek a protective order for the information or to object to a request as overbroad, unduly burdensome or outside the scope of the Commission's jurisdiction. (2) In the event of a dispute regarding an information request, an Administrative Law Judge of the Commission shall resolve the dispute by making a determination whether or not the requested documents would be reasonably expected to lead to the discovery of admissible evidence.
- O 2. The corporate headquarters of PacifiCorp will remain in Oregon.
- O 3. Affiliate Transactions: MEHC and PacifiCorp commit that they will interpret Oregon Revised Statutes Sections 757.015 and 757.495 to require Commission approval of any contract between PacifiCorp and (i) any affiliate of MEHC or (ii) any affiliate of Berkshire Hathaway. This shall include the Inter-company Administrative Services Agreement (IASA); after Commission approval of the IASA, no further approval of affiliate transactions which are subject to that agreement shall be required. Commission approval shall not be required for PacifiCorp to provide electric service to affiliates of MEHC or Berkshire Hathaway under tariffs approved by state or federal authorities.
- O 4. Mergers: MEHC and PacifiCorp commit that they will interpret Oregon Revised Statutes Sections 757.480 to require Commission approval of any transaction which results in a merger of PacifiCorp with another public utility, without regard to whether that public utility provides service in Oregon.
- O 5. Subsidiaries: MEHC and PacifiCorp commit that they will interpret Oregon Revised Statutes Section 757.480 to require Commission approval of any transaction which results in the creation of a new subsidiary of PacifiCorp.

Case UM 1209  
PPL Exhibit 316  
Witness: Brent E. Gale

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

MIDAMERICAN ENERGY HOLDINGS COMPANY  
AND PACIFICORP

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**Exhibit Accompanying Rebuttal Testimony of Brent E. Gale**

**Illinois Competitive Gas Case Summary**

December 2005

### Illinois Competitive Gas Commodity Sales Summary

Since the advent of interstate pipeline open access and the implementation of state retail natural gas transportation, MEC and its predecessors Iowa-Illinois Gas and Electric Company and Midwest Resources Inc. have been in the business of selling unbundled natural gas commodity at competitive rates to large and medium-sized retail commercial and industrial customers. MEC offers this service in Iowa, Illinois, South Dakota and Nebraska, where it provides bundled gas service and regulated gas transportation service. The competitive commodity service is offered both within the service area where it provides gas transportation service and outside that area. Since it entered this business, MEC to some extent has also sought to provide competitive gas service in states where it does not have a public utility presence. Presently, it provides competitive gas commodity in Michigan and, until recently, the service was provided in Ohio, states where MEC does not provide gas transportation service. The service provides customers with a competitive option to the commodity component of bundled natural gas utility service and permits the customer to determine when and what to purchase. The gas commodity sold competitively by MEC is purchased separately from the gas commodity used to serve regulated bundled customers.

MEC presently operates a separate division of the public utility to offer competitive gas service and competitive electric service.<sup>1</sup> Accounting mechanisms are maintained by MEC to segregate this activity from its public utility business. MEC has

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<sup>1</sup> Pursuant to Sections 16-115 and 16-116 of the 1997 Customer Choice and Rate Relief Law in Illinois, MEC may engage in competitive **electric** sales in Illinois only through a division of the utility. It cannot create a separate affiliate for competitive electric sales due to the wording of the reciprocity provision of that statute. MEC presently uses the same division for competitive electric and gas sales.

operated its competitive gas business in accordance with all state laws and regulations, and regulatory authorities in Iowa, Illinois, Nebraska and South Dakota have been aware of this business.

In 2003, after years of operation of the competitive gas business, the Staff of the Illinois Commerce Commission asked MEC about its authority under Illinois law to engage in competitive natural gas commodity sales.<sup>2</sup> The timing of ICC Staff's inquiry was a mystery since Staff had annually conducted a detailed review of the prudence of natural gas purchases as well as the manner in which accounting records related to gas costs are maintained. The Staff also had extensive opportunity to review affiliated interest transactions and had investigated MEC's operations in several general gas rate cases since competitive gas commodity service began.

In order to resolve Staff's inquiry, MEC voluntarily filed a declaratory ruling request with the ICC, requesting the Commission to express its opinion as to whether any provision of Illinois law precluded MEC from providing competitive gas service. Under ICC practice, no evidentiary hearings are held regarding a declaratory ruling request; the ruling is issued only on the basis of the pleading. The ICC ultimately issued an opinion that the Illinois statutes did not authorize MEC to engage in competitive gas commodity sales. Had the opinion stopped there, the matter could have been resolved with minimal difficulty. However, the ICC opinion went on to conclude, without an evidentiary record

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<sup>2</sup> The ICC Staff's inquiry effectively turns U.S. jurisprudence on its head. While a regulatory agency must find its authority in an affirmative statutory delegation, a corporation under U.S. jurisprudence (whether a utility or not) may engage in any business not precluded by law. While Illinois had no law affirmatively authorizing MEC (or any other corporation) to engage in competitive gas commodity sales, it also had no law prohibiting such competitive sales.

and on the basis of what the administrative law judge (“ALJ”) appeared to believe were “facts”, that MEC had violated two provisions of the Illinois statute. The ICC then proposed to levy fines and penalties, deny MEC the opportunity to create an evidentiary record, and deny MEC the ability to challenge the ALJ’s hypothecated facts. MEC requested rehearing, although by order of the ALJ, rehearing was limited to whether MEC’s actions constituted violation of one of the two statutory provisions. The order attached to Oregon staff witness Conway is that order on rehearing. Note that MEC prevailed on the only issue upon which it was permitted to seek rehearing. No evidentiary hearing was ever permitted in this proceeding. The order is on appeal.<sup>3</sup>

Recognizing the interests of competitive customers in securing competitively priced supplies of natural gas, the Illinois General Assembly by an overwhelming vote overrode the ICC’s opinion in November 23, 2005. The new law, codified as Section 7-210 of the Act, specifically allows gas utilities of the size of MEC to continue to make sales of competitive natural gas commodity to medium and large-sized commercial customers. The law also expressly recognizes that all contracts for the sale of competitive gas executed before enactment of the law were, and continue to be, valid. In addition to the language of the law, its legislative history, as expressed in bill explanation and in colloquy on the floors of the House of Representatives and Senate,

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<sup>3</sup> In an attempt to allow the orderly suspension of its competitive gas business without jeopardizing competitive customers’ gas supply, MEC sought permission of the Commission on an emergency basis to continue the contracts in place with customers in its service territory. MEC ultimately discontinued its effort and helped customers find alternative supplies after the ICC Staff took the position shortly before the 2004 heating season that the Commission should require the contracts with customers terminated, whether or not the customers were able to obtain service from other suppliers.

makes clear that utilities such as MEC were never precluded from engaging in competitive gas commodity sales, both with and outside their retail service territories and always had the right to do so.

Case UM 1209  
PPL Exhibit 317  
Witness: Brent E. Gale

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

MIDAMERICAN ENERGY HOLDINGS COMPANY  
AND PACIFICORP

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**Exhibit Accompanying Rebuttal Testimony of Brent E. Gale**

**California Specific Commitments**

December 2005

### California State-Specific Commitments

- C1) MEHC commits that the transaction will not diminish in any way PacifiCorp's ability or willingness to perform its legal obligations associated with the Klamath River hydroelectric system or PacifiCorp's ability to recover the costs thereof in rates.
- C2) In implementing commitment 36, PacifiCorp will make cost-effective investments in California to the extent reasonably required to serve load.
- C3) Subject to the costs being recoverable on a timely basis in PacifiCorp's California retail electric rates, PacifiCorp will continue offering cost-effective demand-side management programs in California.
- C4) PacifiCorp will take the following actions to address extending electrical service to unserved Yurok, Hoopa Valley, Karuk or other Indian communities located within PacifiCorp's allocated service territory. Following the closing of the transaction by MEHC and commencing within 30 days of receipt by PacifiCorp of a request for service by the Tribe(s), PacifiCorp will undertake good faith discussions with the affected Tribes, the Commission's Energy Division and Office of Ratepayer Advocates, Pacific Gas & Electric Company, and other appropriate stakeholders, regarding such extension in electrical service. PacifiCorp will consider a reasonable range of options for rural electrification consistent with PacifiCorp's filed tariff regarding line extensions. PacifiCorp will conclude the discussion regarding rural electrification within 1 year of the closing and will at that time file an application or other pleading: (A) seeking permission to extend electrical service to these specified areas or (B) stating its decision not to extend service, and the basis therefore.
- C5) PacifiCorp will provide \$150,000 per year for three years to fund a study to be jointly administered by U.S. Environmental Protection Agency (EPA or lead agency), CalEPA's North Coast Regional Water Quality Control Board, California Department of Fish and Game, Del Norte, Humboldt, Klamath and Siskiyou County health agencies, the Klamath, Yurok, Karuk and Hoopa Valley Tribes, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and the National Marine Fisheries Service. The study will be conducted by an independent consultant acceptable to EPA and PacifiCorp. The study purpose is to identify the presence, distribution, and possible causes of blue-green algae (including *Microcystis aeruginosa* and any other similar toxic species of such algae, hereinafter referred to as "*microcystis*"), and their toxins, within the Klamath Basin. Within 60 days of the closing of the transaction by MEHC, PacifiCorp will ask that EPA convene, and PacifiCorp will participate in, a working group of the above-referenced governmental agencies, in order to design the study protocols and oversee the study implementation. All Settlement Parties acknowledge that the active participation of governmental agencies and full

public accessibility to the monitoring information will assist in addressing the presence of *microcystis* in the Klamath Basin. All study data will be publicly available.

PacifiCorp will cooperate in appropriate implementation efforts to support the study, and will cooperate in providing information for grant applications to secure additional (including public) funding for the study. However, neither the provision of funds for this study nor participation in the study constitutes an admission by PacifiCorp or MEHC of any responsibility or legal liability for *microcystis* outbreaks, nor shall it be deemed as such by any Settlement Party.

- C6) PacifiCorp will provide an opportunity for the Settlement Parties to discuss implementation of Commitment 44 and will provide advance notice of same to the Settlement Parties in the California docket.
- C7) By June 1, 2007 and each June 1 thereafter through 2011, PacifiCorp will file a supplemental report with the CPUC regarding the implementation of the California State-Specific Commitments specified above. The report will, at a minimum, provide a description of the performance of each of the specified commitments that have quantifiable results. If any of the commitments specified herein is not being met, relative to the specific terms of the commitment, the report shall provide proposed corrective measures and target dates for completion of such measures. The Commitments subject to this reporting requirement are C2, C4, and C5.

1 **Q. Please state your name and business address.**

2 A. My name is Patrick J. Goodman. My business address is 666 Grand Avenue,  
3 Suite 2900, Des Moines, Iowa 50309.

4 **Q. Are you the same Patrick J. Goodman that previously submitted prepared**  
5 **direct testimony in this docket?**

6 A. Yes, I am.

7 **Q. What is the purpose of your rebuttal testimony?**

8 A. The purpose of my rebuttal testimony is to respond to the direct testimony of  
9 Mr. Bryan Conway and Ms. Ming Peng of the Oregon Public Utilities  
10 Commission Staff (“Staff”), Mr. Bob Jenks and Mr. James R. Dittmer of the  
11 Citizens Utility Board and Mr. Ken Canon and Mr. Michael P. Gorman  
12 representing the Industrial Customers of Northwest Utilities (“ICNU”). I am also  
13 including a list of Berkshire Hathaway subsidiaries in response to a request of the  
14 Chair of the Oregon Public Utilities Commission (“Commission”).

15 **Q. Please identify the topics that are addressed in your rebuttal testimony.**

16 A. My rebuttal testimony addresses several topics discussed in the direct testimony  
17 of the witnesses I have just mentioned. In order to more efficiently address topics  
18 the witnesses have in common, I have organized my rebuttal to respond to these  
19 comments as shown in the table below rather than respond to each witness  
20 individually and unnecessarily lengthen this reply.

21

1

| Discussion<br>Witness | Credit<br>Quality  | Double<br>Leverage | Ring<br>Fencing | Cost of<br>PacifiCorp<br>Debt |
|-----------------------|--------------------|--------------------|-----------------|-------------------------------|
| Conway                | P. 12-13,<br>28-30 |                    | P. 14, 31       | P. 33-36                      |
| Peng                  |                    |                    |                 | P. 1-4                        |
| Jenks                 |                    | P. 8               |                 | P. 12-13                      |
| Dittmer               |                    | P. 32-38           |                 | P. 9                          |
| Canon                 |                    |                    |                 | P. 19-20                      |
| Gorman                | P. 2-12            | P. 16              |                 | P. 20-23                      |

2

3 **Response to Credit Quality Concerns**

4 **Q. Please summarize the discussions of the various witnesses with regard to**  
5 **credit quality.**

6 A. Fundamentally the concerns of the various witnesses are that MidAmerican  
7 Energy Holdings Company (“MEHC”) allegedly employs too much financial  
8 leverage, has a lower credit rating than ScottishPower and that these factors will  
9 eventually be detrimental to PacifiCorp’s credit quality.

10 **Q. What is your response to the allegation that MEHC employs too much**  
11 **financial leverage?**

12 A. MEHC is very careful and prudent regarding the amount of leverage it employs; it  
13 does not over employ leverage.

14 **Q. Please explain.**

15 A. MEHC is an investment grade company. When compared to other energy  
16 companies, MEHC’s BBB- unsecured credit rating is approximately equal to the  
17 average credit rating for the industry. Further, Standard & Poor’s reports that it  
18 does not believe that the average BBB rating for the industry as a whole will

1 deviate from the current levels.<sup>1</sup> Thus, while Scottish Power does currently have  
2 a higher unsecured bond rating than MEHC, that does not detract from the fact  
3 that MEHC is an investment grade credit and is on positive outlook at  
4 Standard & Poor's and Moody's Investors Service indicating its rating is more  
5 likely to go up than to go down.

6 **Q. Please describe the basis for MEHC's credit standing.**

7 A. A bond rating is a composite of the amount of business risk the firm faces and the  
8 amount of financial risk that the firm chooses to employ. The lower the business  
9 risk, the higher the financial risk that can safely be employed and still leave the  
10 firm investment grade.

11 MEHC is an investment grade company for good reasons. Consider  
12 Exhibit PPL/406. This exhibit contains recent credit reports for MEHC published  
13 by Standard & Poor's, Moody's Investors Service and Fitch Ratings.<sup>2</sup> A review  
14 of these documents will indicate that MEHC is an investment grade credit  
15 primarily for three reasons: stable and diversified cash flows, use of non-recourse  
16 debt, and its relationship with Berkshire Hathaway.

17 **Q. Please explain the impact of stable and diversified cash flows on MEHC's**  
18 **credit standing.**

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<sup>1</sup> "U.S. Utility Upgrades Beat Downgrades In Second Quarter, But Negative Watch List Grew",  
*Standard & Poor's Ratings Direct*, July, 28, 2005.

<sup>2</sup> Mr. Gorman has included portions of the Standard & Poor's and Moody's Investors Service  
reports as his Exhibit ICNU/202. The full reports are included in my exhibit for the purpose of completing  
the record and for ease of reference.

1 A. All the rating agencies comment on the stability of the company's cash flows  
2 which lowers the firm's business risk and, in turn, can be used to fund debt  
3 service.

4 • Standard & Poor's states that MEHC's ratings "... reflect the company's  
5 ability to meet its financial obligations from dividend distributions from its  
6 diverse portfolio of energy assets."

7 • Moody's Investors Service states that the "Diversified geographic and  
8 business operations provide a varied cash flow stream" and "... the long-  
9 term debt rating of MEHC is supported by the quality of cash flows from  
10 its regulated and non-regulated platforms. Regulated subsidiaries ...  
11 provide for lower business risk and more stable cash flows."

12 • Fitch Ratings comments "(t)he ratings reflect the relative predictable cash  
13 flow and solid standalone credit profiles of MidAmerican Energy  
14 Holdings Co.'s (MEHC) five regulated subsidiaries... ."

15 **Q. Please describe MEHC's use of non-recourse debt.**

16 A. Considerable amounts of the debt on MEHC's consolidated balance sheet are  
17 "non-recourse debt" to MEHC. If the rating agencies believe the servicing of this  
18 debt is being handled satisfactorily by the subsidiaries that issued the obligations,  
19 then the determination of MEHC's creditworthiness reflects this. In addition,  
20 portions of MEHC's subordinated debt is structured such that the rating agencies  
21 grant equity treatment for a portion of this subordinated obligation. For instance:

22 • Standard & Poor's comments that "(t)he company's creditworthiness is  
23 ultimately derived from the total quality of the residual distributions from  
24 (its) subsidiaries. Standard & Poor's has made this analytical judgment  
25 based on MEHC's extensive use of nonrecourse project financing ...."  
26 Standard & Poor's goes on to state that due to the structure of significant  
27 portions of MEHC's subordinated debt, up to 40% of some portions of this  
28 debt are treated as equity and 100% of other portions are treated as equity.

29 • Moody's Investors Service states that a "(l)arge bulk of (MEHC's) debt ...  
30 consists of non-recourse debt and also includes \$1.5 billion of trust  
31 preferred securities issued to Berkshire Hathaway, which are subordinate  
32 to senior debt, have deferral provisions and are non-transferable by  
33 Berkshire." The rating agency goes on to state "(w)e also view the

1 existing substantial investment by the majority owner in the form of parent  
2 company subordinated debt to be predominately equity-like given the  
3 unique characteristics of this instrument. The interest on the instrument is  
4 deferrable at MEHC's option for up to five years, and the ownership of the  
5 subordinated debt cannot be transferred."

6 While Fitch Ratings does not comment on this feature of MEHC's  
7 financial structure, its recognition is implicit in the BBB credit rating they give  
8 the company.

9 It is difficult to separate out all the adjustments rating agencies make to  
10 MEHC's financial statements in the course of their credit review. Thus, while the  
11 adjustments mentioned above are made to grant equity credit to portions of  
12 MEHC's debt, there may be other adjustments, some undisclosed, that are made  
13 by the rating agencies to MEHC financials to reflect obligations such as leases,  
14 pensions, capitalized interest, inventory methods, non-recurring items and  
15 possibly other issues. As a result, the final total debt to total capital ratios  
16 published by the rating agencies can be difficult to interpret.

17 **Q. How does the relationship with Berkshire Hathaway affect MEHC?**

18 A. MEHC's relationship with Berkshire Hathaway is a positive for the company's  
19 creditworthiness and the rating agencies acknowledge their comfort with the  
20 relationship between Berkshire Hathaway and MEHC in their reports.

- 21 • Standard & Poor's comments "...the financial resources of Berkshire  
22 Hathaway provide some flexibility, which is incorporated in the rating."
- 23 • Moody's Investors Service states that MEHC's "(o)wnership and business  
24 organizational structure provides (a) degree of financial and operational  
25 flexibility." The report goes on to state "Moody's views the increased  
26 investment by majority owner Berkshire Hathaway to be a favorable  
27 indication of the company's continuing commitment to MEHC and the  
28 energy sector."

- 1 • Fitch Ratings comments “(t)he ratings reflect ... the considerable support  
2 provided by the company’s principal shareholder, Berkshire Hathaway  
3 Inc.” The report further identifies the financial interest of Berkshire  
4 Hathaway as a “Key Credit Strength” for MEHC.

5 The clear conclusion of the rating agencies after their diligent review of  
6 MEHC’s financial structure is that the company has (1) diversified and stable cash  
7 flows, (2) that large amounts of the leverage on MEHC’s consolidated balance  
8 sheet are satisfactorily serviced by the primarily investment grade subsidiaries  
9 that issued the debt and that portions of MEHC’s own debt are actually treated as  
10 equity due to the deferral provisions of the debt service and the non-transferability  
11 of the securities by Berkshire Hathaway, and (3) MEHC’s association with  
12 Berkshire Hathaway is unanimously noted as a strong positive influence on  
13 MEHC’s creditworthiness. MEHC’s balance sheet is simply not over leveraged  
14 for the business risk it has and this is reflected by its investment grade credit  
15 rating.

16 **Q. How do you respond to the concerns expressed by some witnesses about the**  
17 **relationship between Berkshire Hathaway and MEHC and their suggestion**  
18 **that Berkshire Hathaway can’t be relied upon to support MEHC?**

19 A. There were two comments made in the testimony of Mr. Gorman. (*See* Gorman,  
20 pages 9-12.) First, Mr. Gorman states that the relationship between MEHC and  
21 Berkshire Hathaway in terms of financial support is not contractual and therefore  
22 cannot be counted on and, second, that the relationship depends on Mr. Warren  
23 Buffett continuing to lead Berkshire Hathaway.

24 In discussing his first comment, Mr. Gorman states that it would be  
25 “speculative and inappropriate” to count on the promises of Mr. Buffett and

1 Berkshire Hathaway. Standard & Poor's disagrees. Standard and Poor's report  
2 clearly addresses this issue by stating that "(i)ndeed, MEHC's and Berkshire  
3 Hathaway's managements have told Standard & Poor's that if the need arises,  
4 these securities would be restructured before any default." See Exhibit PPL/406,  
5 Page 2. Clearly Standard & Poor's sought and received assurances that Berkshire  
6 Hathaway intends to stand by MEHC. While Mr. Gorman may consider the  
7 promise of Berkshire Hathaway "speculative and inappropriate,"  
8 Standard & Poor's is publishing reports informing clients that it is comfortable  
9 with the commitment of Berkshire Hathaway.

10 Mr. Gorman's second comment is that if Mr. Buffett retires, the direction  
11 of Berkshire Hathaway would be in question. In a regulatory world that generally  
12 relies on the known and measurable in making decisions, Mr. Gorman's comment  
13 is unusual. Mr. Buffett is in good health, he has indicated no desire to leave his  
14 position at Berkshire Hathaway, and the board of directors of Berkshire Hathaway  
15 has already addressed the succession issue. What is known and measurable is that  
16 Mr. Buffett intends to continue to manage Berkshire Hathaway and continue to  
17 support MEHC's investments in the energy sector. If there is any regulatory  
18 concern here, it is Mr. Gorman's suggestion that "speculation" is a basis upon  
19 which a regulatory authority should act rather than on what is known and  
20 measurable.

21 **Q. Is there tangible evidence to support the position that PacifiCorp's**  
22 **creditworthiness will be improved by a relationship with MEHC?**

1 A. Yes. At the time of the announcement that MEHC proposed to purchase  
2 PacifiCorp from Scottish Power, Moody's Investors Service affirmed the  
3 PacifiCorp rating and stated that:

4 "…the acquisition of PacifiCorp by MEHC may have long-  
5 term positive benefits, particularly given the size of the capital  
6 investment program, (however) new near-term regulatory  
7 challenges may surface as the merger-related approval process in  
8 each of the six states could affect the timing and the outcome of a  
9 number of important rate cases that are underway. … This near-  
10 term concern is balanced against the longer-term benefits to  
11 PacifiCorp's bondholders of ownership by MEHC, which is 80.5%  
12 owned by Berkshire Hathaway, and considers MEHC's successful  
13 track record in operating other regulated utility businesses as well  
14 as Moody's belief that the potential new owners are likely to take a  
15 long-term view towards enhancing returns at PacifiCorp." *See*  
16 *Exhibit PPL/407, Pages 2-3.*

17 Fitch Ratings also commented on the acquisition announcement by  
18 affirming PacifiCorp's unsecured debt rating (A-), and declared PacifiCorp's  
19 ratings outlook to be stable. Fitch Ratings mentioned that while it believes  
20 regulation is a primary risk for PacifiCorp, it believes there has been progress in  
21 this area and that such progress will continue. Fitch Ratings also noted that  
22 MEHC has the financial capability to provide equity financing for PacifiCorp's  
23 ongoing capital expenditure program. *See Exhibit PPL/407, Page 4.*

24 After the announcement of the proposed acquisition, Standard & Poor's  
25 placed PacifiCorp's credit rating on CreditWatch with negative implications.  
26 Standard & Poor's explained that its current unsecured credit rating for  
27 PacifiCorp, BBB+, reflected Scottish Power's consolidated credit profile and that  
28 the CreditWatch is based on PacifiCorp's weaker stand-alone metrics. Standard  
29 & Poor's also expressed its intention to assess other factors as the transaction  
30 proceeds, including the structure of the financing of the acquisition, MEHC's

1 resulting consolidated creditworthiness, the benefits of any ring-fencing  
2 mechanisms that MEHC structures around PacifiCorp, PacifiCorp's stand-alone  
3 metrics, MEHC's history of strong operations and regulatory management, and  
4 any necessary support for PacifiCorp's sizable capital expenditure program. *See*  
5 Exhibit PPL/407, Pages 5-6.

6 While Moody's and Fitch Ratings have concluded that the proposed  
7 acquisition will be either a positive credit event or have no negative implications  
8 for PacifiCorp, Standard & Poor's is monitoring PacifiCorp's on-going financial  
9 results, rate case outcomes, application of SB 408 and the transaction structures  
10 before finalizing their review. My direct testimony discusses MEHC's intention  
11 to ring-fence PacifiCorp, and states that PacifiCorp will continue to have its own  
12 debt rating, and my belief that PacifiCorp's cost of debt will benefit from an  
13 association with Berkshire Hathaway. That testimony also contained a table  
14 (reproduced below, updated to November 2005 and revised to include  
15 PacifiCorp's unsecured credit ratings) showing that all of MEHC's regulated  
16 utility subsidiaries, all of which are ring-fenced, have unsecured credit ratings  
17 equal to or above those of PacifiCorp.

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| Table 1<br>Senior Unsecured Credit Ratings – November 2005 |                   |                           |               |
|--|-------------------|---------------------------|---------------|
|  | Standard & Poor's | Moody's Investors Service | Fitch Ratings |
| Berkshire Hathaway   | AAA               | Aaa                       | AAA           |
| MidAmerican Energy Holdings Company                        | BBB-              | Baa3                      | BBB           |
| MidAmerican Energy Company                                 | A-                | A3                        | A-            |
| Northern Natural Gas Company                               | A-                | A3                        | A-            |
| Kern River Gas Transmission Co.                            | A-                | A3                        | A-            |
| Northern Electric Distribution Ltd                         | BBB+              | A3                        | A-            |
| Yorkshire Electric Distribution plc                        | BBB+              | A3                        | A-            |
| PacifiCorp   | BBB+              | Baa1                      | A-            |

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Furthermore, the Joint Application states that MEHC has committed to finance the acquisition, should it be approved, in a manner that maintains or improves MEHC's current investment grade credit rating (Joint Application, page 18 and Appendix 5 to the Joint Application, page 22). In my direct testimony, I discussed the fact that, after announcement of the transaction, Standard & Poor's placed MEHC's corporate rating and senior unsecured rating on CreditWatch with positive implications, Moody's affirmed MEHC's senior unsecured rating and noted a positive outlook for MEHC, and Fitch Ratings affirmed MEHC's senior unsecured rating with a stable outlook. Overall, these statements by the rating agencies imply improving credit quality at MEHC and compliance with the financing commitments mentioned in the Joint Application.

1 **Q. Are there any examples where MEHC has acquired a company and assisted**  
2 **the acquired company in improving its creditworthiness?**

3 A. Yes. In early 2002, Northern Natural Gas Company (“Northern”) was owned by  
4 Enron and, due to that entity’s bankruptcy, Northern was rated CC by  
5 Standard & Poor’s and B2 by Moody’s Investors Service, both credit ratings well  
6 below investment grade. In February 2002, Dynegy Inc. acquired Northern and  
7 by late July 2002, Standard & Poor’s had issued Northern a credit rating of B+  
8 and Moody’s Investors Service rating remained unchanged reflecting Dynegy  
9 Inc.’s credit quality at that time, an improvement by Standard & Poor’s but still  
10 below investment grade. In July 2002, MEHC announced its intention to  
11 purchase Northern and, by August 2002, Standard & Poor’s had raised Northern’s  
12 credit rating to BBB- and Moody’s Investors Service had raised its rating to Baa2,  
13 both investment grade ratings. At that time, Standard & Poor’s indicated  
14 Northern’s rating would remain on CreditWatch with positive implications due to  
15 the expectation that MEHC would structure Northern as a ring-fenced,  
16 bankruptcy-remote entity whose rating could achieve a level above MEHC,  
17 similar to how MEHC had structured other subsidiaries. Standard & Poor’s stated  
18 that it expected MEHC to reduce the leverage at Northern, which would also  
19 support a higher credit rating. In September 2002, after MEHC structured  
20 Northern as a ring-fenced, bankruptcy-remote entity and infused \$150 million of  
21 equity into Northern’s capital structure, Standard & Poor’s raised Northern’s  
22 credit rating to A- and after further improvement in the business operations and

1 financial results, Moody's Investors Service issued a rating of A3 in 2005.  
2 Northern's credit rating has remained at that level since that time.

3 A similar example is MEHC's acquisition of Kern River Gas Transmission  
4 Company ("Kern River"). At the time of the acquisition in March 2002, Kern  
5 River carried a credit rating of A- from Standard & Poor's and A2 from Moody's  
6 Investors Service. However, it was undertaking a significant pipeline expansion  
7 project that, under the terms of its existing indentures, required an investment  
8 grade entity other than Kern River to provide completion guarantees. The  
9 Williams Companies, Inc., Kern River's former parent, was experiencing  
10 significant financial problems and by July 2002 had fallen below investment  
11 grade. MEHC was able to step in and, as an investment grade company, provide  
12 the necessary completion guarantees. MEHC subsequently infused over  
13 \$300 million of equity into Kern River and it continues to have an A-/A3  
14 investment grade credit rating today.

15 While MEHC has never needed to make infusions of capital into  
16 MidAmerican Energy Company ("MEC"), as noted in my revised direct  
17 testimony, despite extensive capital expansion projects, MEC has gradually  
18 improved its equity ratio under MEHC's ownership from 48%, as of  
19 December 31, 1998 to approximately 53%, as of December 31, 2004.<sup>3</sup>

20 As a further example of the favorable impact of MEHC ownership,  
21 PacifiCorp recently renegotiated its \$800 million revolving credit facility in order  
22 to take advantage of a strong market for such facilities. This facility was

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<sup>3</sup> The entity that is now named MEHC purchased MEC in March of 1999.

1 successfully re-negotiated and, not only did nearly all the invited banks who  
2 participated in the previous line of credit participate in the new facility, the term  
3 of the facility was also extended, interest costs were reduced, and PacifiCorp was  
4 able to obtain consents from the entire bank group to allow MEHC to purchase  
5 PacifiCorp. This consent was required because a change in control triggers a  
6 consent requirement. Based on my discussions with Mr. Bruce Williams, the  
7 PacifiCorp Treasurer, the banks expressed positive comments regarding the  
8 change in control and felt that MEHC would be a better parent for PacifiCorp.

9 In summary, there is considerable evidence that rating agencies and  
10 lenders look favorably upon the proposed acquisition. MEHC has every  
11 expectation that over the long-term, with just, fair and reasonable regulatory  
12 outcomes, PacifiCorp's creditworthiness will improve.

13 **Q. Mr. Gorman alleges that MEHC does not have a credit agreement that will**  
14 **allow it to post adequate collateral to cover wholesale marketing and trading**  
15 **activities in the event MEHC falls below investment grade. (Gorman, pages**  
16 **6-7) Is this a legitimate concern?**

17 A. No. Mr. Gorman fails to recognize that MEHC is not an operating electric utility.  
18 MEHC does not engage in any wholesale marketing and trading activity. MEC is  
19 the operating utility and that entity has more than adequate credit facilities in  
20 place and, as noted in Table 1 above, is rated A-. Furthermore, Mr. Gorman fails  
21 to note that his own exhibit (Exhibit INCU/202, pages 2, 3) addresses this issue.

22 Therein, Standard & Poor's states:

23 "Compared with other developers, MEHC's business risk is low,  
24 due to its limited exposure to the electricity trading and marketing

1 function and other unregulated ventures in comparison with its exposure to  
2 the purely regulated delivery businesses that lack commodity risk.  
3 ...MEHC has adequate liquidity and access to capital to meet ongoing  
4 financial obligations. MEHC maintains revolving, unsecured credit  
5 facilities of \$100 million, which it is in the process of expanding to \$400  
6 million, to support liquidity needs and LOCs. As of December 31, 2004,  
7 there were no borrowings, but \$70 million of capacity was taken with  
8 LOCs. Total unrestricted cash at the parent and subsidiaries was \$828.2  
9 million as of June 30, 2005, which is sufficient, given MEHC's stable  
10 distribution profile and limited equity commitments." (Note: The  
11 acronym "LOC" stands for Letter of Credit. An LOC is a promise by a  
12 bank or consortium of banks to extend short-term loans.)

13 **Q. Mr. Gorman and Mr. Conway claim that MEHC has significant capital**  
14 **obligations to meet that put its credit rating at risk. (Gorman, pages 7-8 and**  
15 **Conway, pages 26-27) Is this a concern?**

16 A. No. Mr. Gorman's own exhibit once again answers his own question. Exhibit  
17 ICNU/202, page 3, which he quotes on page 8 of his testimony, clearly states that  
18 "MEHC has adequate cash on hand to fund these maturities." While Mr. Conway  
19 acknowledges that MEHC has prepared for these maturities, he expresses concern  
20 that MEHC is committing to an "aggressive infrastructure investment" program at  
21 PacifiCorp, that MEHC may not be able to withstand a poor earnings year at  
22 PacifiCorp and may be planning other acquisitions. *See* Conway, page 27.  
23 Mr. Conway need not speculate. Credit rating agencies routinely stress test a  
24 company's cash flows to determine their ability to withstand adverse  
25 circumstances. The stability and diversity of MEHC's cash flows, as well as the  
26 financial resources of Berkshire Hathaway, provide MEHC with the ability to  
27 withstand poor economic performance by one subsidiary (which, by the way, just  
28 as likely could be offset by superior performance by another subsidiary). With  
29 regard to further acquisitions, the clear pattern by MEHC is that acquisitions in

1 excess of \$50 million are not undertaken without Berkshire Hathaway  
2 involvement.

3 **Q. Mr. Gorman suggests that the cost of MEHC's subordinated debt, issued to**  
4 **Berkshire Hathaway, is high at 11% (Gorman, page 6) and Mr. Conway**  
5 **fears that the 11% coupon will cause short-term pressure on MEHC's**  
6 **liquidity (Conway, pages 25-26). Are these valid concerns?**

7 A. No. Unfortunately, Mr. Gorman and Mr. Conway do not have the full story  
8 surrounding the financing Berkshire Hathaway has provided. As part of previous  
9 acquisitions, MEHC has issued 11% trust preferred securities and zero coupon,  
10 non voting, convertible trust preferred securities. I should add that MEHC has  
11 never paid a dividend on its common stock since Berkshire Hathaway became an  
12 investor. Thus Berkshire Hathaway's cash return on its investment in MEHC has  
13 been limited to the amounts it has received on the 11% trust preferred securities  
14 which are only a part of its investment in MEHC. Additionally, the trust preferred  
15 securities are being amortized and are scheduled to be completely repaid by 2012.

#### 16 **Response to Double Leverage Concerns**

17 **Q. In your opinion is a discussion of double leverage appropriate in this**  
18 **proceeding?**

19 A. No it is not. How the acquisition is structured has nothing to do with whether  
20 MEHC and PacifiCorp have met the statutory thresholds to earn this  
21 Commission's approval of the proposed acquisition. Double leverage discussions  
22 are best left for future general revenue requirement determinations. I note that no  
23 Staff member has raised this issue in their direct testimony.

1 **Q. Please summarize the discussions of the various witnesses with regard to**  
2 **double leverage.**

3 A. The witnesses claim that PacifiCorp should not be able to recover income taxes in  
4 its retail revenue requirement that are alleged to not be paid to state and federal  
5 taxing authorities. It is alleged that recovery of such taxes will lead to  
6 inappropriate earnings at the holding company level. *See Jenks, page 8; Dittmer,*  
7 *pages 3, 32-36; and Gorman, pages 16, 19.*

8 **Q. Does who owns a utility company necessarily have any impact on the rate of**  
9 **return required by investors?**

10 A. No. Assume two identical electric utility companies with identical capital  
11 structures. Assume the common shares of Company A are owned by the general  
12 public and the common shares of Company B are owned by a holding company.  
13 If both companies are identical then their risks would be identical and the required  
14 rate of return to attract capital would also be identical. In the landmark *Bluefield*  
15 *Water Works* case, the United States Supreme Court ruled that:

16 “A public utility is entitled to such rates as will permit it to earn a  
17 return upon the value of the property which it employs for the convenience  
18 of the public equal to that generally being made at the same time and in  
19 the same general part of the country on investments in other business  
20 undertakings which are attended by corresponding risks and uncertainties,  
21 but it has no constitutional right to profits such as are realized or  
22 anticipated in highly profitable enterprises or speculative ventures. The  
23 return ... should be reasonably sufficient to assure confidence in the  
24 financial soundness of the utility, and should be adequate, under efficient  
25 and economical management, to maintain and support its credit, and  
26 enable it to raise the money necessary for the proper discharge of its  
27 public duties.” [*Bluefield Water Works and Improvement Co. v. Public*  
28 *Service Comm’n.* 262 U.S. 679, 692 (1923)]

29 The Supreme Court recognizes here that (1) a regulated firm cannot  
30 remain financially sound unless the return it is allowed an opportunity to earn on

1 the value of its property is at least equal to the cost of capital; and (2) an  
2 appropriate allowed rate of return should be sufficient under efficient and  
3 economical management to maintain and support the utility's credit and to attract  
4 the necessary capital. Neither of these standards can be met if the regulatory  
5 authority does not allow the operating utility an opportunity to earn a return on its  
6 investment equal to the return investors expect to earn on other investments of the  
7 same risk.

8 **Q. If MEHC's proposed acquisition of PacifiCorp is approved, how will MEHC**  
9 **structure the transaction?**

10 A. As discussed in my revised direct testimony, the common stock of PacifiCorp  
11 would be owned by an entity to be called PPW Holdings LLC. This company  
12 would have no debt, and it would be a subsidiary of MEHC.

13 **Q. Is it absolutely inevitable that a holding company will earn a rate of return**  
14 **higher than that allowed by a subsidiary operating utility?**

15 A. No. The implicit assumption of those raising this issue is that the operating utility  
16 can earn its allowed rate of return. That is not a foregone conclusion.  
17 Additionally, the holding company has different financial and business risks than  
18 the operating utility company and whether it earns a higher or lower return should  
19 not impact the operating utility.

20 **Q. From a theoretical point of view, if a holding company did earn a return**  
21 **higher than the return the regulated operating utility was allowed the**  
22 **opportunity to earn, can that be justified?**

1 A. Yes. Several parties in this proceeding have argued that additional leverage leads  
2 to additional risk. That principle is true and it is apparent in different credit  
3 quality ratings. However, as risk increases, so does the market required rate of  
4 return. Thus the holding company, if it employs additional leverage, has higher  
5 risks, lower credit ratings, and a higher required rate of return.

6 **Response to Ring-fencing Concerns**

7 **Q. Staff witness Conway discusses his concerns surrounding whether ring-**  
8 **fencing will adequately protect PacifiCorp (Conway, pages 30-31). Do you**  
9 **have anything to add regarding this issue?**

10 A. My Exhibit PPL/408 contains documents establishing the ring-fencing provisions  
11 related to NNGC Acquisition, LLC, the entity created to ring-fence MEHC's  
12 acquisition of Northern. These provisions, which will be adopted by PacifiCorp,  
13 have been found by rating agencies to provide adequate ring-fencing to allow the  
14 stand-alone ratings of the applicable ring-fenced subsidiaries to be higher than  
15 those of the parent.

16 To reflect this, Commitment 11 in MEHC witness Gale's Exhibit PPL/314  
17 will be amended to read as follows:

18 "Any diversified holdings and investments (*e.g.*, non-utility  
19 business or foreign utilities) of MEHC following approval of the  
20 transaction will not be held by PacifiCorp or a subsidiary of  
21 PacifiCorp. Ring-fencing provisions for PPW Holdings LLC will  
22 be the same as those in effect for NNGC Acquisition, LLC.  
23 MEHC and PacifiCorp will notify the Commission of any changes  
24 in the ring-fencing provisions. This condition will not prohibit  
25 MEHC or its affiliates other than PacifiCorp from holding  
26 diversified businesses."  
27

1 **Q. With regard to the calculation of PacifiCorp's equity ratio before a**  
2 **distribution can be made by PacifiCorp, Mr. Gorman (Gorman, pages 13-14)**  
3 **suggests the inclusion of short-term debt in the calculation. Are you**  
4 **agreeable to this?**

5 A. No. MEHC's intent here is to utilize PacifiCorp's long-term capitalization to  
6 calculate the capital structure of PacifiCorp to meet the distribution test. As a  
7 matter of principle, MEHC does not finance long-term assets (*i.e.*, rate base) using  
8 short-term sources of funds. MEHC therefore does not believe the inclusion of  
9 short-term debt in a regulatory capital structure calculation is appropriate. Rating  
10 agency's calculations of leverage ratios reflect adjustments that would not be used  
11 for ratemaking purposes and, frankly, may not be disclosed by the agency.  
12 Therefore, MEHC believes the concept of adhering to PacifiCorp's long-term  
13 sources of capital for this calculation is the appropriate policy to pursue for this  
14 commitment. I note that Staff witness Conway does not include short-term debt  
15 in his suggested calculation of PacifiCorp's minimum equity ratio.

16 **Q. You mentioned Staff witness Conway's minimum equity ratio calculation. Is**  
17 **Mr. Conway's calculation appropriate for PacifiCorp?**

18 A. Mr. Conway suggests that the minimum equity ratio that PacifiCorp must  
19 maintain before a dividend can be made to PPW Holdings LLC be 48%.  
20 Mr. Conway utilized long term capitalization balances in his calculation and splits  
21 the preferred stock component 50%/50% between debt and equity.

22 It is my understanding that Mr. Conway has discussed ring-fencing with at  
23 least representatives of Standard & Poor's and he has received some positive

1 feedback that the ring-fencing structures employed by MEHC around MEC and  
2 Northern are very effective. The structure employed to ring-fence Northern is  
3 contained within the documents attached as Exhibit PPL/408. That structure  
4 contains a two-part test to determine whether dividends can be made by  
5 PacifiCorp. The test requires that PacifiCorp have no more than 65% leverage  
6 and 2.5 times interest coverage, or if such cannot be met, that PacifiCorp have a  
7 senior unsecured long-term debt rating of at least BBB from Standard & Poor's  
8 and Baa2 from Moody's Investors Service. I believe that these tests address  
9 Mr. Conway's concerns.

10 **Q. There has been a request that MEHC provide some sort of financial**  
11 **guarantee regarding any legal obligations that PacifiCorp may face**  
12 **associated with the relicensing of its hydro facilities. Would this be**  
13 **consistent with ring-fencing provisions between PacifiCorp and MEHC?**

14 A. No, it would not. One of the goals of ring-fencing is to prevent a bankruptcy  
15 court from reaching the conclusion that PacifiCorp should be consolidated with  
16 MEHC in a MEHC bankruptcy proceeding. The effect of financial arrangements  
17 and/or guarantees between MEHC and PacifiCorp would be to provide grounds  
18 upon which MEHC creditors could argue and the bankruptcy court could reach  
19 the conclusion the two should be consolidated and PacifiCorp's assets be subject  
20 to the claims of MEHC creditors. As a result, financial arrangements, as  
21 suggested here, need to be avoided.

22 **Q. In Staff's testimony (Staff/100, Conway/40-43), Staff concludes that**  
23 **Berkshire Hathaway, Walter Scott and Warren Buffett should be applicants**

1           **in this proceeding because they all have the power to exercise substantial**  
2           **influence over PacifiCorp. Do you agree with this analysis?**

3    A.    No. These entities and individuals have the ability to influence PacifiCorp only in  
4           their capacity as shareholders and/or board members of MEHC, or in the case of  
5           Mr. Buffett, as a shareholder of a shareholder. Because MEHC is before this  
6           Commission as the applicant, the Commission has the full ability to review and  
7           regulate how MEHC proposes to own and operate PacifiCorp, including any  
8           MEHC actions directed by its board or shareholders. There is thus no need for the  
9           Commission to go up the ownership chain from MEHC to assert jurisdiction over  
10          the entity that will actually purchase and control PacifiCorp.

11   **Q.    Is MEHC the actual purchaser of PacifiCorp?**

12   A.    Yes. MEHC is Scottish Power's counter-party in the Stock Purchase Agreement  
13          (SPA) for the sale of PacifiCorp. In Article III of the SPA, MEHC indicates that  
14          it "has the full power and authority to enter in this Agreement, to perform its  
15          obligations hereunder, and to consummate the transactions contemplated hereby."  
16          See SPA Section 3.2. Article III also provides that MEHC requires no consents or  
17          corporate proceedings to proceed with the transactions and its obligations there  
18          under. *Id.* at Sections 3.2 and 3.3.

19   **Q.    Have you provided a list of Berkshire Hathaway subsidiaries in order to**  
20          **respond to the Oregon Commission's request for such information?**

21   A.    Yes. This list is provided as Exhibit PPL/409.

22   **Q.    Will MEHC have the ability to control PacifiCorp post-transaction?**

1 A. Yes. MEHC’s largest shareholder is Berkshire Hathaway. Berkshire Hathaway is  
2 an investor in MEHC, but definitely not its operator. As shown in Exhibit  
3 PPL/409 to my testimony, Berkshire Hathaway owns dozens of other major  
4 companies, including many that are substantially larger than MEHC. Berkshire  
5 Hathaway employs less than 20 people. As Staff correctly noted in its testimony,  
6 Berkshire Hathaway has a “hands-off” approach to managing the businesses it  
7 owns, delegating “to the point of abdication.” (Staff/100, Conway/42).

8 As a matter of business philosophy and practical reality, Berkshire  
9 Hathaway and its major investor, Warren Buffett, do not involve themselves  
10 directly in even the major business decisions of Berkshire Hathaway’s subsidiary  
11 companies, including capital investment decisions, executive appointments and  
12 corporate financing. Berkshire Hathaway and Mr. Buffett do not involve  
13 themselves in the business decisions of the subsidiaries of MEHC such as MEC  
14 other than in their capacity as board members of MEHC.

15 **Q. Does MEHC’s proposed ring-fencing of PPW Holdings LLC further insulate**  
16 **PacifiCorp from the influence of Berkshire Hathaway or its shareholders?**

17 A. Yes. MEHC believes that its proposed ring-fencing of PacifiCorp is the most  
18 comprehensive ever proposed for an Oregon utility.

19 **Q. Have other applicants under ORS 757.511 ever joined their shareholders or**  
20 **upstream shareholders as co-applicants?**

21 A. Not to my knowledge. In the proposed acquisition of PGE by the Texas Pacific  
22 Group (“TPG”), UM 1121, TPG joined as applicants the two investment funds,  
23 TPG Partners III, L.P. and TPG Partners IV, L.P (“the TPG Funds”), that together

1 would hold 5 percent of the shares of the intermediate holding company, Oregon  
2 Electric Utility Company (“Oregon Electric”). The joinder of the TPG Funds  
3 appeared to be in recognition of the fact the TPG Funds had consent rights that  
4 gave them full control over Oregon Electric, rendering Oregon Electric an  
5 intermediate holding company of PGE, rather than the actual controlling entity  
6 over PGE.

7 **Q. Did the other parties to UM 1121 recognize the significance of the consent**  
8 **rights in this regard?**

9 A. Yes. Staff, ICNU and CUB all argued that the consent rights gave the TPG  
10 Funds, not Oregon Electric, the ability to exercise substantial influence over PGE.  
11 *See* Staff/200, Morgan/51 (“The Consent Rights appear to provide an  
12 overwhelming level of control at TPG.”); ICNU/100, Shoenbeck/5 (“These rights  
13 give TPG control of virtually all of PGE’s fundamental business decisions...”);  
14 CUB/200, Dittmer/5-6 (“Even though the five local Oregon business persons  
15 comprising the Managing Members control 95% of the voting interests of Oregon  
16 Electric, TPG will retain *effective* control of PGE. ...[T]here is an extensive list  
17 of *consent rights* that will be held by TPG that effectively secure TPG control  
18 over Oregon Electric, and in turn, PGE.”; (emphasis in original)).

19 **Q. Do shareholders of MEHC or any upstream shareholders have individual**  
20 **consent rights over PacifiCorp similar to those held by the TPG Funds?**

21 A. No. The shareholders may act only through MEHC to exercise oversight of  
22 PacifiCorp.

1 **Q. Has MEHC proposed an intermediate holding company like Oregon Electric**  
2 **as a part of its ring-fencing of PacifiCorp?**

3 A. Yes. As shown in Exhibit PPL/409, PPW Holdings LLC will be the intermediate  
4 holding company, roughly equivalent to Oregon Electric in the TPG acquisition.  
5 As the entity that will hold and exercise actual control over PacifiCorp, MEHC is  
6 in a position roughly equivalent to the TPG Funds or TPG, the manager of the  
7 TPG Funds. Because MEHC, not PPW Holdings LLC, will exercise substantial  
8 influence over PacifiCorp, MEHC is the proper applicant in this case.

9 **Q. In Docket UM 1121, did the Application include as applicants the investors in**  
10 **the TPG Funds, the manager of the TPG Funds—TPG, or any of the**  
11 **shareholders of TPG?**

12 A. No. While the identity of the investors in the TPG Funds was disclosed to  
13 intervenors only on a highly confidential basis, *see* Order 05-114 at 28 n.17, the  
14 public record indicates that at least one investor held a very significant position in  
15 the TPG Funds. The Application in UM 1121 indicates that the Oregon Public  
16 Employees Retirement Fund (“OPERS”) was “the single largest investor TPG  
17 Funds.” UM 1121 Application at 10. OPERS invested \$300 million in TPG  
18 Fund IV shortly before TPG’s mid-November announcement of its intent to  
19 acquire PGE, a transaction based on a total \$420 million investment from the TPG  
20 Funds. *Texas Pacific Takes Heat Over Ethics, Timing*, The Oregonian (Sept 23,  
21 2004).

22 Additionally, the Application in UM 1121 also disclosed that TPG had  
23 “full discretion over the investment decisions relating to the capital...committed

1 to [its] respective funds.” Testimony of Kelvin Davis at 3-4. Thus, while TPG  
2 itself was not an applicant in UM 1121, the testimony in the case indicated that  
3 the TPG Funds used to purchase PGE were TPG investment funds over which  
4 TPG had complete management control.

5 **Q. In its order disapproving the Docket UM 1121 application, did the**  
6 **Commission raise any concerns about the failure to join these investors or**  
7 **upstream parties?**

8 A. No.

9 **Q. Through MEHC, does the Commission have the ability to oversee the actions**  
10 **of MEHC shareholders that may impact PacifiCorp?**

11 A. Yes. Berkshire Hathaway is an affiliate of MEHC and is thus covered by the  
12 Commission’s affiliated interest statutes and additional MEHC commitments  
13 pertaining to affiliates, such as Commitment 5 (making personnel available to  
14 testify before the Commission) and Commitment 7 (ensuring compliance with  
15 applicable statutes and regulations regarding affiliate transaction reporting).  
16 Additionally, MEHC has agreed to Commitment 4 that will ensure Commission  
17 access to the relevant books and records of Berkshire Hathaway. Finally,  
18 Commitment U 20 contains a commitment to the filing of a letter by Berkshire  
19 Hathaway agreeing to be bound by the applicable commitments. These  
20 commitments are listed in witness Gale’s Exhibit PPL/314.

21 **Response to Cost of Incremental PacifiCorp Debt Issuances**

22 **Q. Please describe the position of the parties with regard to the commitment by**  
23 **MEHC and PacifiCorp that, over the five year period following the approval**

1 **of this proposed acquisition, PacifiCorp will be able to issue incremental**  
2 **long-term debt at a spread 10 basis points below that of similarly rated peers.**

3 A. The concerns raised by Mr. Dittmer (Dittmer, page 9), Mr. Canon (Canon, pages  
4 19-20), Mr. Gorman (Gorman, page 20-22) and Ms. Peng (Peng, pages 1-4) are  
5 whether the spread can be accurately quantified and whether PacifiCorp's overall  
6 cost of capital will rise as a result of the proposed acquisition.

7 **Q. Are these concerns well founded?**

8 A. No. With regard to the concern over the accuracy of the quantification of the  
9 spread, the burden of proof rests with MEHC and PacifiCorp on this issue in the  
10 appropriate regulatory proceeding. If a party to such proceeding is not convinced,  
11 based on the evidence presented by MEHC and PacifiCorp, that a 10 basis point  
12 or greater reduction has been achieved in the incremental cost of PacifiCorp's  
13 long-term debt, as compared to PacifiCorp's similarly rated peers, then that party  
14 can take the position in the proceeding that the cost of the respective issuances by  
15 PacifiCorp for ratemaking purposes should be reduced by up to a maximum of ten  
16 basis points from the cost that PacifiCorp reports over the remainder of the five  
17 year commitment period. If the Commission concurs, then it can order that  
18 adjustment. The risk of failure to provide sufficient evidence rests with MEHC  
19 and PacifiCorp. No other party shoulders the company's burden to substantiate  
20 its claim.

21 **Q. Ms. Peng states that she believes PacifiCorp debt issuance spreads are**  
22 **already an average of 29 basis points lower than its peers. Have you**  
23 **reviewed the basis for her claim?**

1 A. My previous discussion with regard to which party shoulders the burden of proof  
2 in this matter still applies. In any event, it is worth noting briefly that Ms. Peng's  
3 study appears to attempt to compare specific debt issuances by PacifiCorp to  
4 average issuance statistics. For instance, Ms. Peng appears to employ the average  
5 yield on A-rated public utility bonds during June 2005 as published by Moody's  
6 Investors Service and in Standard & Poor's *CreditWeek*, if available, to compare  
7 to the PacifiCorp June 13, 2005 issuance. There appear to be several issues with  
8 Ms. Peng's data and it may not be suitable for the type of analysis that MEHC  
9 would propose to undertake. Ms. Peng's data is not comparable to PacifiCorp as  
10 it is a composition of electric, natural gas and water companies. Further, it does  
11 not disclose a current list of the number of A+/A1, A/A2 or A-/A3 issues in the  
12 average or how they are distributed within the average. It also does not disclose  
13 the maturity or duration of the issues in the average only noting that it is 5 years  
14 or longer. It does not disclose the size of the principle outstanding of the issues in  
15 the average but does note that each issue is at least \$100 million. It does not  
16 appear to account for any difference between secondary market yields and new  
17 issue premiums, if any, that may have existed at the time PacifiCorp issued new  
18 debt. Finally, Ms. Peng's study compares PacifiCorp issuances to debt that is  
19 already outstanding, again this is not the commitment that MEHC is proposing.  
20 MEHC has committed to a savings of at least 10 basis points versus other  
21 issuances rather than a broad index of electric, gas and water utilities with  
22 maturities of five years or greater. With all due respect to Staff, I submit that the  
23 data source they employed is not as discriminating as the data available to

1 investment bankers that can segregate issues by size, maturity, duration, credit  
2 quality and date of issuance. We agree with Ms. Peng that PacifiCorp has been  
3 able to achieve competitively priced financing that has served its customers well,  
4 however, I conclude that the Staff's findings are not as precise a measurement as  
5 MEHC would provide.

6 **Q. Mr. Canon also suggests that this commitment will be difficult to enforce. Do**  
7 **you have any rebuttal to this claim?**

8 A. I am unaware of any obstacles to the enforcement of this commitment. The  
9 commitment is certainly public and, I assume, will become part of the  
10 Commission's order in this docket if the transaction is approved. In any event,  
11 MEHC and PacifiCorp would consider themselves bound by the commitment if  
12 the proposed acquisition is approved. If the Commission rules that MEHC and  
13 PacifiCorp have not carried their burden of proof in a future proceeding where the  
14 company's allowed rate of return is determined, then the Commission can simply  
15 order an adjustment to the cost of PacifiCorp's incremental long-term debt in the  
16 determination of any revenue requirement effective for the five year period  
17 subsequent to the closing of the proposed acquisition. Enforcement would seem  
18 to be quite straight forward.

19 **Q. Mr. Conway states that MEHC's subsidiary MEC operates under a different**  
20 **regulatory arrangement than exists in Oregon (Conway, pages 29-30) and**  
21 **that it is the regulatory environment, not the affiliation with Berkshire**  
22 **Hathaway that accounts for the ability of MEC to issue debt at spreads below**  
23 **those of its peers. Do you have any comment?**

1 A MEC does operate under a different regulatory structure in Iowa than PacifiCorp  
2 does in Oregon. The Iowa structure includes an alternative regulatory plan and  
3 the ability to request the Iowa regulatory authority to specify the ratemaking  
4 treatment it will apply to investments in generating facilities before those facilities  
5 are built. Mr. Conway's description of the ratemaking treatment for generating  
6 facilities is not entirely accurate but the point is that Iowa is not unique. Several  
7 states have implemented alternative regulatory mechanisms and at least four other  
8 states besides Iowa allow utilities the opportunity to seek regulatory principles  
9 before making major expenditures. It should be noted that the factors  
10 Mr. Conway refers to do impact the business risk and ultimately the credit rating  
11 of MEC.

12 All that is relevant, no matter what the cause, is whether or not PacifiCorp  
13 as a MEHC subsidiary can issue incremental long-term debt at least 10 basis  
14 points below the spreads incurred by similarly rated peers. If MEHC/PacifiCorp  
15 cannot demonstrate that it can do that, then the Oregon Commission may reduce  
16 the cost for those incremental debt issues by up to 10 basis points for five years.

17 **Q. What response do you have to the allegation that the measure should be**  
18 **PacifiCorp's overall cost of capital, not the incremental cost of long-term**  
19 **debt?**

20 A. Although it is MEHC's policy to strive for a single A credit rating for its utility  
21 business platforms, MEHC cannot guarantee a specific bond rating for  
22 PacifiCorp. That requires not only efficient and economical utility management,  
23 it also requires that the regulatory authority grant the utility an opportunity to earn

1 a fair rate of return. MEHC has made an asymmetric commitment that if  
2 PacifiCorp cannot meet certain credit metrics, PacifiCorp will need to be an  
3 investment grade utility before any distributions to MEHC would be permitted.  
4 That commitment carries with it the risk that the regulatory authority will not  
5 employ a double leverage adjustment without allowing PacifiCorp the opportunity  
6 to request compensating recovery of the acquisition adjustment.

7 Thus a desire to keep PacifiCorp's cost of capital unaffected or to lower it  
8 is a collaborative effort in applying the regulatory compact. MEHC will deploy  
9 efficient and effective management in return for the regulatory authority's  
10 allowance of an opportunity to earn a fair, just and reasonable rate of return.

11 **Conclusion**

12 **Q. Do you have any concluding comments?**

13 A. Yes. PacifiCorp is currently owned by an entity that has publicly stated that  
14 wishes to divest itself of its investment in PacifiCorp. The Commission has  
15 before it a decision to allow a financially strong, proven manager of utility assets  
16 that is willing to commit capital to the business to acquire PacifiCorp. MEHC  
17 takes pride in its commitment to regulatory integrity. I believe MEHC is an  
18 appropriate acquirer for PacifiCorp and will be an excellent partner for the state of  
19 Oregon into the future.

20 **Q. Does this conclude your rebuttal testimony?**

21 A. Yes, it does.

Case UM 1209  
PPL Exhibit 406  
Witness: Patrick J. Goodman

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

MIDAMERICAN ENERGY HOLDINGS COMPANY  
AND PACIFICORP

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**Exhibit Accompanying Rebuttal Testimony of Patrick J. Goodman**

**MEHC Credit Rating Reports**

December 2005

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## Research:

### Summary: MidAmerican Energy Holdings Co.

Publication date: 07-Sep-2005  
 Primary Credit Analyst: Scott Taylor, New York (1) 212-438-2057;  
 scott\_taylor@standardandpoors.com

Credit Rating: BBB-/Watch Pos/--

### ■ Rationale

The 'BBB-' corporate credit rating on MidAmerican Energy Holdings Co. (MEHC) is on CreditWatch with positive implications. The rating on MEHC was placed on CreditWatch on May 25, 2005, following the company's announcement that is purchasing PacifiCorp from Scottish Power PLC for \$9.4 billion, including \$5.1 billion in cash and the assumption of \$4.3 billion in net debt and preferred stock. The positive CreditWatch listing for MEHC reflects Standard & Poor's Ratings Services expectation that the acquisition will be financed primarily with an equity infusion from MEHC's ultimate parent, Berkshire Hathaway Inc. (AAA/Stable/A-1+), a practice consistent with past acquisitions.

Des Moines, Iowa-based MEHC has about \$3 billion of debt and \$1.8 billion of trust-preferred securities outstanding at the holding company level.

Because the outlook on MEHC was positive before the acquisition announcement, an upgrade is not entirely contingent on the transaction being completed. Likewise, if the acquisition is completed, any upgrade will depend on the final financing structure of the acquisition.

Standard & Poor's ratings on MEHC reflect the company's ability to meet its financial obligations from dividend distributions from its diverse portfolio of energy assets. The company's creditworthiness is ultimately derived from the total quality of the residual distributions from these subsidiaries. Standard & Poor's has made this analytical judgment based on MEHC's extensive use of nonrecourse project financing, limited interdependency among the individual business units, and the perception that MEHC would abandon equity investments when the economics of the stand-alone business unit so dictate.

MEHC's business profile is a '5' (satisfactory). Utility business profiles are categorized from '1' (excellent) to '10' (vulnerable). The business risk score reflects the wide mix of businesses that MEHC operates, including rather low-risk pipeline and transmission and distribution, the medium-risk integrated utility, and the higher-risk unregulated electric generation in the U.S. and the Philippines and its cyclical real estate services. If the acquisition of PacifiCorp is consummated, MEHC's business profile score will likely remain '5'. Standard & Poor's considers MEHC a diversified energy company, comparable with the project developers included in that group. Compared with other developers, MEHC's business risk is low, due to its limited exposure to the electricity trading and marketing function and other unregulated ventures in comparison with its exposure to the purely regulated delivery businesses that lack commodity risk.

There is potential volatility in distributions to the parent due to subsidiary-level leverage and structural features in nonrecourse debt that could result in cash being trapped at the subsidiary level. However, the financial resources of Berkshire Hathaway provide some flexibility, which is incorporated in the rating.

Consolidated credit metrics have shown improvement in recent years due to the acquisition of two large pipeline assets. Funds from operations (FFO) interest coverage has improved to 3.1x for 2004 from 2.3x for 2002 (with equity treatment for trust-preferred securities), while over the same time period, FFO to debt improved to about 12.9% from about 9.3%. For the 12 months ended June 30, 2005, these

numbers slipped a bit to 2.7x and 12.4%, but Standard & Poor's expects year-end 2005 credit metrics to be consistent with 2004.

Of the trust-preferred securities, MidAmerican Capital Trust I, II, and III account for \$1.48 billion. Berkshire Hathaway and its affiliates, which are prohibited by the indenture's terms from transferring the securities to a nonaffiliated entity, hold these. The other trust-preferred securities do not contain any transfer prohibitions. Standard & Poor's examines credit ratios assuming that all the trust-preferred securities are debt and also assuming that all are equity. In determining the rating, the CalEnergy Trust securities are given typical equity treatment of about 40%, while the MidAmerican Capital Trusts that are held by Berkshire Hathaway are given 100% equity treatment. This is based on Standard & Poor's view that because these trusts represent Berkshire Hathaway's equity investment in MEHC, and are nontransferable, management would treat them in an equity-like manner. Indeed, MEHC's and Berkshire Hathaway's managements have told Standard & Poor's that if the need arises, these securities would be restructured before any default.

Standard & Poor's continues to expect stable performances from MEHC's regulated U.S. assets. The pipelines, Kern River Gas Transmission Co. (A-/Negative/--) and Northern Natural Gas Co. (A-/Watch Pos/--), and electric utility MidAmerican Energy Co. (A-/Stable/A-1) continue to support holding-company debt and offset lower returns from the company's U.K. investments in CE Electric U.K. Funding Co. (BBB-/Stable/A-3). Debt ratings on the U.K. investments currently remain investment grade, but MEHC forecasts little or no distributions from them for the foreseeable future, as excess cash will be used to fund debt maturities.

CE Casecan Water and Energy Co. Inc. (B+/Positive/--) and the other Philippine geothermal power plants continue to perform well after legal settlements in 2003, which reduced risk related to industry restructuring and boosted liquidity at the projects, freeing up cash for distributions. MEHC expects to use cash generated in the Philippines together with cash generated in the U.K. to fund maturities in the U.K. PacifiCorp will become a large dividend producer over time, if the acquisition is consummated, but dividends will be suppressed in the early years due to high regulatory capital needs.

### Liquidity

MEHC has adequate liquidity and access to capital to meet ongoing financial obligations. MEHC maintains revolving, unsecured credit facilities of \$100 million, which it is in the process of expanding to \$400 million, to support liquidity needs and LOCs. As of Dec. 31, 2004, there were no borrowings, but \$70 million of capacity was taken with LOCs. Total unrestricted cash at the parent and subsidiaries was \$828.2 million as of June 30, 2005, which is sufficient, given MEHC's stable distribution profile and limited equity commitments.

In acquiring PacifiCorp, MEHC will purchase all of PacifiCorp's outstanding shares for about \$5.1 billion in cash. PacifiCorp's long-term debt and preferred stock will remain outstanding. MEHC expects to fund the acquisition either wholly by Berkshire Hathaway or with proceeds from an investment by Berkshire Hathaway of about \$3.4 billion in zero-coupon nonvoting convertible preferred stock or common stock and the issuance by MEHC to third parties of about \$1.7 billion of long-term senior notes, preferred stock, or other securities with equity characteristics.

MEHC will need to maintain its access to capital markets, as it has some large maturities to fund in the coming years. Maturities at the parent over the next five years include trust-preferred redemptions of \$189 million in 2005 and \$234 million each year through 2009. MEHC will also have debt maturities of \$260 million in September 2005, zero in 2006, \$550 million in 2007, \$1 billion in 2008, and zero in 2009. MEHC has adequate cash on hand to fund these maturities. MEHC has no ratings triggers embedded in its financing documents.

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UNITED STATES  
Americas

June 2005

| Contact                           | Phone          |
|-----------------------------------|----------------|
| <i>New York</i><br>Richard Donner | 1.212.553.1653 |

## Midamerican Energy Holding Company

### Credit Strengths

- Diversified geographic and business operations provide a varied cash flow stream.
- Large bulk of debt levels consists of non-recourse debt and also includes \$1.5 billion of trust preferred securities issued to Berkshire Hathaway, which are subordinate to senior debt, have deferral provisions and are non-transferable by Berkshire.
- Ownership and business organizational structure provides degree of financial and operational flexibility.
- US utility operates in a constructive regulatory environment in Iowa and Illinois.

### Credit Challenges

- High consolidated leverage as a result of acquisition activity.
- Large capital expenditure requirements at MEC in the next several years for generation construction.

### Credit Strengths

#### DIVERSIFIED GEOGRAPHIC AND BUSINESS OPERATIONS PROVIDE A VARIED CASH FLOW STREAM

The Baa3 senior unsecured long term debt rating of MEHC is supported by the quality of cash flows from its regulated and non-regulated platforms. Regulated subsidiaries, including MEC, the UK distribution companies (Northern Electric and Yorkshire Electricity) and the pipeline businesses Kern River Gas Transmission Company (KRGIT) and Northern Natural Gas (NNG), provide for lower business risk and more stable cash flow. In addition, MEHC owns CE Generation LLC, which holds a portfolio of US geothermal and gas generation projects, and also owns geothermal projects and a hydroelectric facility in the Philippines.

On May 26, 2005, Moody's affirmed the ratings of MEHC and the rating outlook remained positive. This action followed the announcement that MEHC plans to acquire PacifiCorp (PacifiCorp, Baa1 senior unsecured) from Scottish Power plc (SP, Baa1 senior unsecured) for \$9.4 billion, including \$5.1 billion in cash and the assumption of about \$4.3 billion of net debt of PacifiCorp.



**Moody's Investors Service**  
Global Credit Research

The ratings affirmation considers Moody's expectation that a significant portion of the \$5.1 billion in cash will be funded through a substantial equity contribution to MEHC from its major shareholder Berkshire Hathaway Inc. While the precise amount and terms of the equity contribution from Berkshire Hathaway are not known at this stage, the rating affirmation incorporates Moody's expectation that it will be sufficient to at least support the current ratings.

The positive rating outlook was maintained because it reflects Moody's view that the acquisition of PacifiCorp will have long-term positive benefits for MEHC. The transaction has the potential for increased diversification and stability of MEHC's sources of earnings and cash flow from regulated utility operations. The transaction is also expected to result in an organization with a more diversified customer base, service territory and generation portfolio. The positive outlook also considers MEHC's successful track record in operating other regulated utility businesses.

### **LARGE BULK OF DEBT LEVELS CONSISTS OF NON-RECOURSE DEBT AND ALSO INCLUDES \$1.5 BILLION OF TRUST PREFERRED SECURITIES ISSUED TO BERKSHIRE HATHAWAY, WHICH ARE SUBORDINATE TO SENIOR DEBT, HAVE DEFERRAL PROVISIONS AND ARE NON-TRANSFERABLE BY BERKSHIRE**

### **OWNERSHIP AND BUSINESS ORGANIZATIONAL STRUCTURE PROVIDES DEGREE OF FINANCIAL AND OPERATIONAL FLEXIBILITY**

Moody's views the increased investment by majority owner Berkshire Hathaway to be a favorable indication of the company's continuing commitment to MEHC and the energy sector. It is expected that additional equity down streamed to MEHC will represent a substantial majority of the cash requirements for the acquisition of PacifiCorp. In addition, the terms of the existing zero coupon convertible preferred stock, which was designed to prevent Berkshire Hathaway from becoming subject to the Public Utility Holding Company Act (PUHCA), provides for its conversion to common equity in the event that PUCHA were to be repealed by Congressional legislation. We also view the existing substantial investment by the majority owner in the form of parent company subordinated debt to be predominantly equity-like given the unique characteristics of this instrument. The interest on the instrument is deferrable at MEHC's option for up to five years, and the ownership of the subordinated debt cannot be transferred.

### **US UTILITY OPERATES IN A CONSTRUCTIVE REGULATORY ENVIRONMENT IN IOWA AND ILLINOIS**

## **Credit Challenges**

### **HIGH CONSOLIDATED LEVERAGE AS A RESULT OF ACQUISITION ACTIVITY**

The Baa3 senior unsecured rating also considers the large parent debt burden resulting from debt-financed acquisitions.

### **LARGE CAPITAL EXPENDITURES AT MEC IN THE NEXT SEVERAL YEARS FOR GENERATION CONSTRUCTION**

Moody's also considers the significant cash funding requirements over the next several years related to the development and construction of three generation facilities, including the 517 mw natural gas fired combined cycle unit, the 790 mw coal fired plant in Council Bluffs, and a 360 mw wind power facility. MEC received approval from the Iowa Utilities Board (IUB) under a settlement agreement for a rate freeze from Dec. 31, 2000 through 2005, as well as the reinstatement of the revenue sharing provisions of the 1997 pricing plan. In conjunction with the construction of the wind project, MEC proposed on 5/27/03, a rate freeze extension through December 31, 2010, with a portion of the revenues in the last four years to be applied towards an offset to some of the capital costs associated with the construction of the three proposed generation facilities in Iowa. The IUB approved MEC's filing in October 2003. A third settlement agreement was approved by the IUB on January 31, 2005, in conjunction with a further expansion of the wind power project. This settlement extends the rate freeze through December 31, 2011. Additionally, if MEC's Iowa retail electric returns on equity fall below 10% in an any consecutive 12 month period after January 1, 2006, MEC may seek to file for a general rate increase, but only after a 30 day good faith negotiation period with all related parties.

## **Company Description**

MidAmerican Energy Holdings Company is based in Des Moines, Iowa, and is a privately-owned global provider of energy services. MidAmerican provides electric and natural gas services to 5 million customers worldwide.

## **Related Research**

### Industry Outlook:

U.S. Electric Utilities, January 2005 (91075)

### Rating Methodology:

Global Regulated Electric Utilities, March 2005 (91730)

*To access any of these reports, click on the entry above. Note that these references are current as of the date of publication of this report and that more recent reports may be available. All research may not be available to all clients.*

## **Financial Statement Ratios**

Financial Statement Ratios: MidAmerican Energy Company

*To access any Financial Statement Ratios or to download them in .csv format, click on the link above.*

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Report Number: 93141

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|----------------|-----------------------------|
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Global Power/North America  
Credit Update**MidAmerican Energy Holdings  
Co.****Ratings**

| Security Class   | Current Rating | Previous Rating | Date Changed |
|------------------|----------------|-----------------|--------------|
| Sr. Unsec. Notes | BBB            | BBB-            | 5/19/00      |
| Preferred Stock  | BBB-           | BB+             | 5/19/00      |

Rating Watch..... None  
 Rating Outlook..... Stable

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**Profile**

MEHC, a majority-owned subsidiary of Berkshire Hathaway, provides electric and gas service to more than 5 million customers worldwide through its regulated subsidiaries, MEC, NNG, KRGT, Northern Electric Plc and Yorkshire Electricity Group Plc. MEHC also has three geothermal and one hydroelectric project in the Philippines, and a 50% interest in CE Generation LLC, a power project holding company with geothermal and gas-fired power projects in the United States.

**Related Research**

- MidAmerican Energy Company, Credit Update, Sept. 19, 2005.
- CE Generation LLC, Credit Analysis, June 11, 2004.
- CE Electric UK Funding Company, Credit Update, May 10, 2005.
- Kern River Funding Corp., Credit Analysis, Feb. 22, 2005.
- Northern Natural Gas Company, Credit Update, April, 20, 2005.

**Key Credit Strengths**

- Strong regulated subsidiaries with stable cash flows.
- Majority ownership by Berkshire Hathaway.

**Key Credit Concerns**

- High consolidated leverage.
- Subsidiary debt covenants that restrict distributions to MEHC

**Rating Rationale**

The ratings reflect the relatively predictable cash flow and solid stand-alone credit profiles of MidAmerican Energy Holdings Co.'s (MEHC) five regulated subsidiaries and the considerable support provided by the company's principal shareholder, Berkshire Hathaway Inc. (Berkshire Hathaway, senior unsecured debt rated 'AAA', Stable Rating Outlook). Regulated operations include an electric and gas utility and two natural gas interstate pipelines in the United States and two electric distribution companies in the UK. The ratings also assume that a significant portion of the pending acquisition of PacifiCorp (PPW, senior unsecured debt rated 'A-', Stable Rating Outlook) is funded with an equity infusion from Berkshire Hathaway. The acquisition of PPW would add another source of stable, regulated cash flows to MEHC's portfolio of domestic electric utility and pipeline assets. PPW will increase MEHC's existing EBITDA by approximately 50% and increase EBITDA from regulated utilities to approximately 85% from 79%.

The primary rating concerns are the significant layer of acquisition debt at MEHC (\$2.7 billion) and intermediate holding company MidAmerican Funding LLC (\$700 million) and protective subsidiary bond covenants that under certain circumstances could restrict cash distributions from the operations to MEHC. Favorably, the restrictive bond covenants have not historically limited the flow of cash to MEHC, reflecting the solid credit quality of the regulated entities. Other investments in the Philippines and the UK are nonrecourse to MEHC and are not relied on for cash distributions. Sovereign risk associated with international operations is also a concern, although currency risk is mitigated by contracts on certain projects that are denominated in U.S. dollars.

**Recent Developments**

In May 2005, Fitch affirmed the ratings of MEHC following the announcement of an agreement to acquire PPW from Scottish Power PLC (Scottish Power) for \$9.4 billion, including \$5.1 billion in cash and approximately \$4.3 billion of net debt, which will remain at PPW. While the precise amount and terms of the equity contribution from Berkshire Hathaway are not known, Fitch expects that it will be sufficient to support the current ratings and maintain the current capital structure. Prior acquisitions, including Kern River Gas Transmission Corp. (KRGT) and Northern Natural Gas Company (NNG), were also funded with a substantial equity component from Berkshire Hathaway. The acquisition has been approved by Scottish Power's shareholders but is still subject to approval by the state regulators in Utah, Oregon, Wyoming, Washington, California and Idaho as well as the Federal Regulatory Commission (FERC) and the Nuclear Regulatory Commission, among others. The acquisition, if approved by regulators, is expected to close by mid-2006.

September 19, 2005

The Energy Policy Act of 2005 provides for the repeal of the Public Utility Holding Company Act (PUHCA) six months after the enactment of the energy bill. Berkshire Hathaway is expected to convert its \$1.6 billion of zero-coupon convertible preferred stock into common stock upon the effective date of the repeal of PUHCA and after all regulatory approvals are obtained, including from the states of Iowa and Illinois. The zero-coupon convertible preferred stock was included in stockholders' equity, and therefore, the conversion to common will not effect MEHC's leverage calculations. To date, Berkshire Hathaway has invested \$3.4 billion in common stock, zero-coupon convertible preferred stock and trust preferred securities into MEHC. Upon conversion, Berkshire Hathaway will own approximately 83.8% of the voting common stock interest. Fitch views this continued investment as tangible evidence of the parent company's commitment to MEHC and the energy sector.

■ **Liquidity and Debt Structure**

MEHC has access to short-term liquidity through a \$400 million unsecured credit revolver that expires in

August 2010. The facility also provides backup support for letters of credit. As of June 30, 2005, approximately \$50 million letters of credit were outstanding. Electric utility subsidiary MidAmerican Energy Company (MEC) maintains a separate \$425 million unsecured credit facility.

Consolidated leverage, as measured by the ratios of debt-to-EBITDA and total debt-to-total capitalization, are weak for the rating category at more than 4.0 times (x) and 79%, respectively. Approximately \$6.3 billion of consolidated debt is structured as nonrecourse project debt and includes NNG, KRGT, CE Electric UK Funding Company, CalEnergy Company and the Philippines operations. Contracts with the Philippine National Oil Company (PNOC) for the three Leyte plants expire in 2006-2007, and the plants revert back to PNOC at that time. MEHC is unlikely to pursue any future ventures in emerging markets, although the company may make additional investments in developed international countries.

## Fitch Ratings

## Corporate Finance

**Financial Summary — MidAmerican Energy Holdings Co.**

(\$ Mil., Fiscal Years Ended Dec. 31)

|   | LTM     |         | 2004   | 2003   | 2002   |
|---|---------|---------|--------|--------|--------|
|   | 6/30/05 | 6/30/04 |        |        |        |
| <b>Fundamental Ratios (x)</b>                   |         |         |        |        |        |
| Funds from Operations/Interest Expense          | 2.4     | 2.5     | 2.4    | 2.7    | 2.4    |
| Cash from Operations/Interest Expense           | 2.5     | 2.7     | 2.6    | 2.6    | 2.2    |
| Debt/Funds from Operations                      | 9.4     | 9.2     | 9.3    | 9.4    | 13.7   |
| Operating EBIT/Interest Expense                 | 1.7     | 1.7     | 1.7    | 1.9    | 1.8    |
| Operating EBITDA/Interest Expense               | 2.3     | 2.4     | 2.4    | 2.7    | 2.6    |
| Debt/Operating EBITDA                           | 5.7     | 5.8     | 5.5    | 5.8    | 7.3    |
| Common Dividend Payout (%)                      | 0.0     | 0.0     | 0.0    | 0.0    | 0.0    |
| Internal Cash/Capital Expenditures (%)          | 113.5   | 137.8   | 120.8  | 99.9   | 56.4   |
| Capital Expenditures/Depreciation (%)           | 203.3   | 161.5   | 164.8  | 202.2  | 253.2  |
| <b>Profitability</b>                            |         |         |        |        |        |
| Revenues  | 6,637   | 6,348   | 6,553  | 5,966  | 4,794  |
| Net Revenues                                    | 3,768   | 3,735   | 3,802  | 3,565  | 2,950  |
| O&M Expense                                     | 1,659   | 1,591   | 1,638  | 1,512  | 1,303  |
| Operating EBITDA                                | 2,109   | 2,059   | 2,164  | 2,053  | 1,648  |
| Depreciation and Amortization Expense           | 604     | 632     | 638    | 603    | 530    |
| Operating EBIT                                  | 1,505   | 1,427   | 1,525  | 1,450  | 1,118  |
| Interest Expense                                | 906     | 843     | 903    | 761    | 632    |
| Net Income for Common                           | 218     | 410     | 170    | 416    | 380    |
| O&M % of Net Revenues                           | 44.0    | 42.6    | 43.1   | 42.4   | 44.2   |
| Operating EBIT % of Net Revenues                | 39.9    | 38.2    | 40.1   | 40.7   | 37.9   |
| <b>Cash Flow</b>                                |         |         |        |        |        |
| Cash Flow from Operations                       | 1394    | 1406    | 1425   | 1218   | 758    |
| Change in Working Capital                       | 115     | 120     | 128    | (44)   | (122)  |
| Funds from Operations                           | 1279    | 1285    | 1297   | 1262   | 880    |
| Dividends                                       | 0       | 0       | 0      | 0      | 0      |
| Capital Expenditures                            | (1228)  | (1020)  | (1179) | (1219) | (1342) |
| Free Cash Flow                                  | 166     | 385     | 245    | (1)    | (585)  |
| Net Other Investment Cash Flow                  | (792)   | (319)   | (251)  | (386)  | (2379) |
| Net Change in Debt                              | 154     | (455)   | 113    | (328)  | 2,439  |
| Net Change in Equity                            | 19      | 11      | (3)    | (1)    | 274    |
| <b>Capital Structure</b>                        |         |         |        |        |        |
| Short-Term Debt                                 | 961     | 622     | 1,343  | 649    | 550    |
| Long-Term Debt                                  | 11,043  | 11,246  | 10,663 | 11,225 | 11,464 |
| Total Debt                                      | 12,003  | 11,869  | 12,006 | 11,874 | 12,014 |
| Preferred and Minority Equity                   | 105     | 101     | 104    | 102    | 101    |
| Common Equity                                   | 3,076   | 2,972   | 2,971  | 2,771  | 2,294  |
| Total Capital                                   | 15,184  | 14,941  | 15,081 | 14,747 | 14,409 |
| Total Debt/Total Capital (%)                    | 79.1    | 79.4    | 79.6   | 80.5   | 83.4   |
| Preferred and Minority Equity/Total Capital (%) | 0.7     | 0.7     | 0.7    | 0.7    | 0.7    |
| Common Equity/Total Capital (%)                 | 20.3    | 19.9    | 19.7   | 18.8   | 15.9   |

LTM – Latest 12 months. Operating EBIT – Operating Income before total reported state and federal income tax expense. Operating EBITDA – Operating income before total reported state and federal income tax expense plus depreciation and amortization expense. O&M – Operations and maintenance. Note: Numbers may not add due to rounding and are adjusted for interest and principal payments on transition property securitization certificates. Long-term debt includes trust preferred securities. Source: Financial data obtained from SNL Energy Information System, provided under license by SNL Financial, LC of Charlottesville, Va.

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MidAmerican Energy Holdings Co.

Case UM 1209  
PPL Exhibit 407  
Witness: Patrick J. Goodman

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

MIDAMERICAN ENERGY HOLDINGS COMPANY  
AND PACIFICORP

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**Exhibit Accompanying Rebuttal Testimony of Patrick J. Goodman**

**PacifiCorp Credit Rating Reports**

December 2005



Moody's Investors Service

Global Credit Research  
Credit Opinion  
27 MAY 2005

Save as PDF

Credit Opinion: PacifiCorp

PacifiCorp

Portland, Oregon, United States

**Ratings**

| Category                                 | Moody's Rating |
|--|----------------|
| Outlook                                  | Developing     |
| Issuer Rating                            | Baa1           |
| First Mortgage Bonds                     | A3             |
| Senior Secured                           | A3             |
| Senior Unsecured MTN                     | Baa1           |
| Subordinate Shelf                        | (P)Baa2        |
| Preferred Stock                          | Baa3           |
| Commercial Paper                         | P-2            |
| <b>Parent: Scottish Power plc</b>        |                |
| Outlook                                  | Stable         |
| Issuer Rating                            | Baa1           |
| Sr Unsec Bank Credit Facility            | Baa1           |
| Senior Unsecured                         | Baa1           |
| <b>Utah Power &amp; Light Co</b>         |                |
| Outlook                                  | Developing     |
| Preferred Stock                          | Baa3           |
| <b>PacifiCorp Group Holdings Company</b> |                |
| Outlook                                  | Stable         |
| Bkd Commercial Paper                     | P-2            |

**Contacts**

| Analyst                 | Phone          |
|-------------------------|----------------|
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| Kevin G. Rose/New York  |                |
| Daniel Gates/New York   |                |

**Key Indicators**

| PacifiCorp   | Q3 2005 LTM | 2004  | 2003  | 2002  |
|--|-------------|-------|-------|-------|
| Funds from Operations / Adjusted Debt [1]                                  | 16.1%       | 17.5% | 14.6% | 6.0%  |
| Retained Cash Flow / Adjusted Debt [1]                                     | 11.9%       | 13.6% | 14.6% | -0.7% |
| Common Dividends / Net Income Available for Common                         | 81%         | 66%   | 0%    | 95%   |
| Adjusted Funds from Operations + Adjusted Interest / Adjusted Interest [2] | 3.53        | 3.53  | 3.09  | 2.00  |
| Adjusted Debt / Adjusted Capitalization [1][3]                             | 56.5%       | 55.4% | 56.6% | 60.3% |
| Net Income Available for Common / Common Equity                            | 6.9%        | 7.5%  | 4.2%  | 10.9% |

[1] Debt is adjusted for operating leases, guaranteed preferred beneficial interests in company's junior sub, and debentures & preferred stock subject to mandatory redemption. [2] Adjusted Interest reflects adjustments for operating leases and preferred stock dividends. [3] Adjusted Capitalization reflects the adjusted debt.

Note: For definitions of Moody's most common ratio terms please see the accompanying User's Guide.

## Opinion

### Credit Strengths

PacifiCorp's credit strengths are:

Low-cost generating assets and extensive transmission network through the western US

Recent key regulatory decisions have been constructive

While credit metrics lag relative to similarly rated peers, recent rate increases are expected to improve credit metrics.

Financing plan contemplates substantial equity support

### Credit Challenges

PacifiCorp's credit challenges are:

Regulatory uncertainty still remain due to numerous rate applications pending

Future capital expenditures will increase materially

Six state utility network creates regulatory challenges

Financial performance can be affected by hydro levels in the Pacific Northwest

### Rating Rationale

The Baa1 senior unsecured rating of PacifiCorp reflects the relative predictability of cash flows expected from a well-positioned, vertically integrated utility, and an affiliation with parent, Scottish Power, plc, (SP) who has implemented operational efficiencies, and has fortified relations with the state regulators. The rating also considers the company's reasonably successful efforts to raise rates which improve regulated returns and sustainable cash flow and can support an increasing capital budget over the next several years. While regulatory challenges remain for PacifiCorp, the rating incorporates an expectation that the company will continue to maintain constructive regulatory relationships during this important period.

The rating also considers the announcement by MidAmerican Energy Holding Company (MEHC) to acquire PacifiCorp from SP for \$9.4 billion, including \$5.1 billion in cash and the assumption of around \$4.3 billion of PacifiCorp net debt. The rating considers the expected continuation of equity support from SP prior to the completion of the acquisition and factors in the belief that MEHC will manage PacifiCorp's business, including its future capital structure, in a way that is supportive to credit quality.

### Rating Outlook

PacifiCorp's rating outlook is developing. While Moody's views the acquisition of PacifiCorp by MEHC to have long-term positive benefits, particularly given the size of the capital investment program, the developing rating outlook incorporates the near-term potential for new regulatory challenges for PacifiCorp as the merger-related approval process in each of the six states could affect the timing and the outcome of a number of important rate cases that are underway throughout the company's six state jurisdiction. Most of the current rate cases have the potential for PacifiCorp to obtain some form of rate increase, which collectively will enhance the company's returns and cash flow as the utility increases its capital investment. To the extent that the merger approval process, which is expected to take 12 to 15 months, substantially affects the timeliness or the amount of rate recovery currently being pursued by PacifiCorp, the company's credit quality could, in the near-term, be negatively affected.

This near-term concern is balanced against the longer-term benefits to PacifiCorp's bondholders of ownership by

MEHC, which is 80.5% owned by Berkshire Hathaway, and considers MEHC's successful track record in operating other regulated utility businesses as well as our belief that the potential new owners are likely to take a long-term view towards enhancing returns at PacifiCorp.

Moody's will monitor the merger approval process at the state and federal level and assess the impact, if any, on PacifiCorp's existing regulatory filings, as well as the final form in which MEHC intends to finance this acquisition. To the extent that the merger related regulatory proceedings do not meaningfully affect the timeliness or the outcome of state regulatory proceedings currently underway, the PacifiCorp rating outlook could stabilize.

#### What Could Change the Rating - DOWN

Given the size of PacifiCorp's capital program and the rating's reliance on ongoing regulatory support, the rating could be downgraded if timely regulatory support is delayed or materially affected due to the merger related regulatory approvals.

#### What Could Change the Rating - UP

While the size of the capital expenditures limit the prospects for a rating upgrade at PacifiCorp in the near-term, the rating could be upgraded over the intermediate term if the company's capital expenditure program continues to be financed conservatively and if reasonably regulatory support is secured on a timely basis resulting in an improvement in credit metrics. This would include PacifiCorp's funds from operations (FFO) to total adjusted debt being in excess of 20% on a sustainable basis and its FFO to adjusted interest expense being in excess of 4.0x on a sustainable basis.

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**Fitch Ratings Affirms PPW's Ratings; Rating Outlook Stable** [Ratings](#)

24 May 2005 2:24 PM (EDT)

Fitch Ratings-New York-May 24, 2005: Fitch Ratings has affirmed PacifiCorp's (PPW) long- and short-term credit ratings as indicated below following the announcement of the proposed sale of the utility to MidAmerican Energy Holdings Company (MEHC; senior unsecured debt rated 'BBB' by Fitch) by PPW's corporate parent, Scottish Power plc. (SP; senior unsecured debt rated 'BBB+' by Fitch). The affirmation affects approximately \$4.5 billion of rated debt. The Rating Outlook is Stable. See separate commentary on MEHC 'Fitch Affirms MidAmerican Energy Holdings at 'BBB' After PacifiCorp Acquisition Announced,' for more information.

--Senior secured 'A';

--Senior unsecured 'A-';

--Preferred 'BBB+';

--Short-term debt 'F2'.

The rating affirmation and Stable Rating Outlook assume that MEHC will implement structural ring-fencing at PPW consistent with the structures utilized at both Northern Natural Gas and Kern River Pipeline. The ratings and Stable Outlook also assume ongoing financial support from SP for PPW's capital spending program prior to close of the proposed merger. PPW's ratings incorporate reasonable outcomes in pending regulatory proceedings to recover capital spending to meet its load growth requirements. Fitch also recognizes PPW's recent progress in the multistate process, including stipulated agreements regarding interjurisdictional cost allocation issues in several key jurisdictions.

In the past, PPW has been challenged by a lack of regulatory support and low returns. Fitch continues to view regulation as a primary risk for PPW fixed-income investors. In particular, Fitch assumes that progress in this area made by incumbent management will continue under new ownership. This is especially important in light of PPW's significant capital requirements.

The acquisition is subject to approval by the shareholders of Scottish Power, as well as a number of state and federal regulatory commissions and is expected to take 12-15 months to consummate. In addition to regulatory reviews from FERC, FTC, NRC, and SEC, approvals from state regulators in Utah, Oregon, Wyoming, Washington, Idaho, and California are also required. If the merger is completed, Fitch believes that MEHC has the financial capability to provide equity financing for ongoing capital spending to support load growth.

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**Research:****Research Update: MidAmerican Ratings Put On Watch Pos,  
PacifiCorp Rtg On Watch Neg Re Acquisition Announcement**

Publication date: 25-May-2005  
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Credit Rating: BBB-/Watch Pos/--

**■ Rationale**

On May 25, 2005, Standard & Poor's Ratings Services placed its 'A-/A-2' corporate credit rating on PacifiCorp on CreditWatch with negative implications and its 'BBB-' corporate credit rating on MidAmerican Energy Holdings Co. (MEHC) on CreditWatch with positive implications.

The rating actions follow the announcement by Scottish Power PLC (A-/Stable/A-2) that it has agreed to sell PacifiCorp to MEHC for \$9.4 billion, including \$5.1 billion in cash, and the assumption of \$4.3 billion in net debt and preferred stock.

In addition, Standard & Poor's placed its 'A-' rating on Northern Natural Gas Co. on CreditWatch with positive implications, reflecting the fact that Northern Natural's rating is capped at a level three notches above the rating on MEHC, and that it can support an 'A' rating on a stand-alone basis.

The CreditWatch listing reflects the fact that the current 'A-' corporate credit rating on PacifiCorp is based on ScottishPower's consolidated credit profile, whose solid financial performance has compensated for the U.S. utility's weaker stand-alone metrics. The positive CreditWatch listing for MEHC reflects Standard & Poor's expectation that the acquisition will be financed primarily with the infusion of equity from MEHC's ultimate parent, Berkshire Hathaway Inc. (AAA/Stable/A-1+), a practice consistent with past acquisitions.

If the transaction proceeds, Standard & Poor's will assess the financing structure of the acquisition, MEHC's resulting consolidated creditworthiness, the benefit of any ring-fencing mechanisms that MEHC structures around PacifiCorp, and the utility's stand-alone credit metrics. Standard & Poor's will also consider MEHC's history of strong operations and regulatory management at its only U.S.-based regulated utility, MidAmerican Energy Co. (A-/Stable/A-1), as well as any necessary support for PacifiCorp's sizable capital expenditures over the near term.

The acquisition will require regulatory approval from each of the six states that PacifiCorp operates, which will take at least a year. As details of the merger become clear, Standard & Poor's will update the CreditWatch listings as appropriate.

**■ Ratings List**

|  | To               | From          |
|--|------------------|---------------|
| Ratings Placed On CreditWatch Negative |                  |               |
| PacifiCorp                             |                  |               |
| Corp credit rating                     | A-/Watch Neg/A-2 | A-/Stable/A-2 |

|                       |                |      |
|-----------------------|----------------|------|
| Senior secured debt   | A-/Watch Neg   | A-   |
| Senior unsecured debt | BBB+/Watch Neg | BBB+ |
| Subordinated debt     | BBB+/Watch Neg | BBB+ |
| Preferred stock       | BBB/Watch Neg  | BBB  |
| Commercial paper      | A-2/Watch Neg  | A-2  |

## Ratings Placed On CreditWatch Positive

## MidAmerican Energy Holdings Co.

|                         |                   |                  |
|-------------------------|-------------------|------------------|
| Corporate credit rating | BBB-/Watch Pos/-- | BBB-/Positive/-- |
| Senior unsecured        | BBB-/Watch Pos    | BBB-             |
| Preferred stock         | BB/Watch Pos      | BB               |

## Northern Natural Gas Co.

|                         |                 |                |
|-------------------------|-----------------|----------------|
| Corporate credit rating | A-/Watch Pos/-- | A-/Positive/-- |
| Senior unsecured debt   | A-/Watch Pos    | A-             |

Complete ratings information is available to subscribers of RatingsDirect, Standard & Poor's Web-based credit analysis system, at [www.ratingsdirect.com](http://www.ratingsdirect.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com); under Credit Ratings in the left navigation bar, select Find a Rating, then Credit Ratings Search.

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Ratings Services receives compensation for its ratings. Such compensation is normally paid either by the issuers of such securities or third parties participating in marketing the securities. While Standard & Poor's reserves the right to disseminate the rating, it receives no payment for doing so, except for subscriptions to its publications. Additional information about our ratings fees is available at [www.standardandpoors.com/usratingsfees](http://www.standardandpoors.com/usratingsfees).

Case UM 1209  
PPL Exhibit 408  
Witness: Patrick J. Goodman

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

MIDAMERICAN ENERGY HOLDINGS COMPANY  
AND PACIFICORP

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**Exhibit Accompanying Rebuttal Testimony of Patrick J. Goodman**  
**NNGC Acquisition, LLC Company Agreement**

December 2005

## NNGC ACQUISITION, LLC

### AMENDMENT TO LIMITED LIABILITY COMPANY AGREEMENT

This Amendment to Limited Liability Company Agreement (this "Amendment"), dated as of September 27, 2002, by MidAmerican Energy Holdings Company, an Iowa corporation (the "Member"). This Amendment amends the Limited Liability Company Agreement of NNGC Acquisition, LLC, a Delaware limited liability company (the "Company"), dated as of July 31, 2002 (the "Agreement"), between the Member and the Company. Capitalized terms used but not defined in this Amendment have the meanings given to them in the Agreement.

#### WITNESSETH:

WHEREAS, the Member desires to amend the Agreement as set forth in this Amendment.

NOW, THEREFORE, the Member hereby resolves as follows:

1. The Agreement is hereby amended by adding a new Section 8(j), which shall read as follows:

"(j) *Limitation on Distributions.* So long as the Company owns or holds an Equity Interest, the Company shall not permit NNGC to declare or make any Distribution to the Company or any other person that owns or holds an Equity Interest, unless, on the date of such Distribution, none of the events set forth in Section 6 of the Form of Security, attached as Exhibit A to the Fiscal Agency Agreement, dated as of May 24, 1999, between NNGC and Chase Bank of Texas, National Association, shall have occurred and be continuing and no such event will result from the making of such Distribution, and either:

1. at the time and as a result of such Distribution, NNGC's Leverage Ratio does not exceed 0.65:1 and NNGC's Interest Coverage Ratio is not less than 2.5:1; or

2. (if NNGC is not in compliance with the foregoing ratios) at such time, NNGC's senior unsecured long term debt rating is at least BBB (or its then equivalent) with Standard & Poor's Ratings Group and Baa2 (or its then equivalent) with Moody's Investors Service, Inc.

For purposes of this Section 8(j), the following terms shall be defined as follows:

"**Capitalized Lease Obligations**" means all lease obligations of NNGC and its Subsidiaries which, under GAAP, are or will be required to be capitalized, in each case taken at the amount thereof accounted for as indebtedness in conformity with such principles.

"**Consolidated Current Liabilities**" means the consolidated current liabilities of NNGC and its Subsidiaries, but excluding the current portion of long term Indebtedness which

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would otherwise be included therein, as determined on a consolidated basis in accordance with GAAP.

**“Consolidated Debt”** means, at any time, the sum of the aggregate outstanding principal amount of all Indebtedness for Borrowed Money (including, without limitation, the principal component of Capitalized Lease Obligations, but excluding Currency, Interest Rate or Commodity Agreements and all Consolidated Current Liabilities) of NNGC and its Subsidiaries, as determined on a consolidated basis in conformity with GAAP.

**“Consolidated EBITDA”** means, for any period, the sum of the amounts for such period of NNGC’s (i) Consolidated Net Operating Income, (ii) Consolidated Interest Expense, (iii) income taxes and deferred taxes (other than income taxes (either positive or negative) attributable to extraordinary and non-recurring gains or losses or sales of assets), (iv) depreciation expense, (v) amortization expense, and (vi) all other non-cash items reducing Consolidated Net Operating Income, less all non-cash items increasing Consolidated Net Operating Income, all as determined on a consolidated basis in conformity with GAAP; *provided*, that to the extent NNGC has any Subsidiary that is not a wholly owned Subsidiary, Consolidated EBITDA shall be reduced by an amount equal to the Consolidated Net Operating Income of such Subsidiary multiplied by the quotient of (A) the number of shares of outstanding common stock of such Subsidiary not owned on the last day of such period by NNGC or any Subsidiary of NNGC divided by (B) the total number of shares of outstanding common stock of such Subsidiary on the last day of such period.

**“Consolidated Interest Expense”** means, for any period, the aggregate amount of interest in respect of Indebtedness for Borrowed Money (including amortization of original issue discount on any Indebtedness and the interest portion on any deferred payment obligation, calculated in accordance with the effective interest method of accounting; and all commissions, discounts and other fees and charges owed with respect to bankers’ acceptance financing) and the net costs associated with Interest Rate Agreements and all but the principal component of rentals in respect of Capitalized Lease Obligations, paid, accrued or scheduled to be paid or to be accrued by NNGC and each of its Subsidiaries during such period, excluding, however, any amount of such interest of any Subsidiary of NNGC if the net operating income (or loss) of such Subsidiary is excluded from the calculation of Consolidated Net Operating Income for such Subsidiary pursuant to clause (ii) of the definition thereof (but only in the same proportion as the net operating income (or loss) of such Subsidiary is excluded), less consolidated interest income, all as determined on a consolidated basis in conformity with GAAP; *provided* that, to the extent that NNGC has any Subsidiary that is not a wholly owned Subsidiary, Consolidated Interest Expense shall be reduced by an amount equal to such interest expense of such Subsidiary multiplied by the quotient of (A) the number of shares of outstanding common stock of such Subsidiary not owned on the last day of such period by NNGC or any Subsidiary of NNGC divided by (B) the total number of shares of outstanding common stock of such Subsidiary on the last day of such period.

**“Consolidated Net Operating Income”** means, for any period, the aggregate of the net operating income (or loss) of NNGC and its Subsidiaries for such period, as determined on a consolidated basis in conformity with GAAP; *provided* that the following items shall be excluded from any calculation of Consolidated Net Operating Income (without duplication): (i)

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the net operating income (or loss) of any person (other than a Subsidiary) in which any other person has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to NNGC or another Subsidiary of NNGC during such period; (ii) the net operating income (or loss) of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such net operating income is not at the time permitted by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation or license; and (iii) all extraordinary gains and extraordinary losses.

**“Currency, Interest Rate or Commodity Agreements”** means an agreement or transaction involving any currency, interest rate or energy price or volumetric swap, cap or collar arrangement, forward exchange transaction, option, warrant, forward rate agreement, futures contract or other derivative instrument of any kind for the hedging or management of foreign exchange, interest rate or energy price or volumetric risks, it is being understood, for purposes of this definition, that the term “energy” shall include, without limitation, coal, gas, oil and electricity.

**“Distribution”** means any dividend, distribution or payment (including by way of redemption, retirement, return or repayment) in respect of shares of capital stock of NNGC.

**“GAAP”** means generally accepted accounting principles in the United States as in effect from time to time.

**“Indebtedness”** means, with respect to NNGC or any of its Subsidiaries at any date of determination (without duplication), (i) all Indebtedness for Borrowed Money, (ii) all obligations in respect of letters of credit or other similar instruments (including reimbursement obligations with respect thereto), (iii) all obligations to pay the deferred and unpaid purchase price of property or services, which purchase price is due more than six months after the date of placing such property in service or taking delivery and title thereto or the completion of such services, except trade payables, (iv) all Capitalized Lease Obligations, (v) all indebtedness of other persons secured by a mortgage, charge, lien, pledge or other security interest on any asset of NNGC or any of its Subsidiaries, whether or not such indebtedness is assumed; *provided*, that the amount of such Indebtedness shall be the lesser of (A) the fair market value of such asset at such date of determination, and (B) the amount of the secured indebtedness, (vi) all indebtedness of other persons of the types specified in the preceding clauses (i) through (v), to the extent such indebtedness is guaranteed by NNGC or any of its Subsidiaries, and (vii) to the extent not otherwise included in this definition, obligations under Currency, Interest Rate or Commodity Agreements. The amount of Indebtedness at any date shall be the outstanding balance at such date of all unconditional obligations as described above and, upon the occurrence of the contingency giving rise to the obligation, the maximum liability of any contingent obligations of the types specified in the preceding clauses (i) through (vii) at such date; *provided*, that the amount outstanding at any time of any Indebtedness issued with original issue discount is the face amount of such Indebtedness less the remaining unamortized portion of the original issue discount of such Indebtedness at such time as determined in conformity with GAAP.

**“Indebtedness for Borrowed Money”** means any indebtedness (whether being principal, premium, interest or other amounts) for (i) money borrowed, (ii) payment obligations

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under or in respect of any trade acceptance or trade acceptance credit, or (iii) any notes, bonds, debentures, debenture stock, loan stock or other debt securities offered, issued or distributed whether by way of public offer, private placement, acquisition consideration or otherwise and whether issued for cash or in whole or in part for a consideration other than cash; *provided, however*, in each case that such term shall exclude any indebtedness relating to any accounts receivable securitizations.

**"Interest Coverage Ratio"** means, with respect to NNGC on any Measurement Date, the ratio of (i) the aggregate amount of Consolidated EBITDA of NNGC for the four fiscal quarters for which financial information in respect thereof is available immediately prior to such Measurement Date to (ii) the aggregate Consolidated Interest Expense during such four fiscal quarters.

**"Leverage Ratio"** means the ratio of Consolidated Debt to Total Capital, calculated on the basis of the most recently available consolidated balance sheet of NNGC and its consolidated Subsidiaries (provided that such balance sheet is as of a date not more than 90 days prior to a Measurement Date) prepared in accordance with GAAP.

**"Measurement Date"** means the record date for any Distribution.

**"Subsidiary"** means, with respect to any person, any corporation, association, partnership, limited liability company or other business entity of which 50% or more of the total voting power of shares of capital stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, or trustees thereof is at the same time owned, directly or indirectly, by (i) such person, (ii) such person and one or more Subsidiaries of such person, or (iii) one or more Subsidiaries of such person.

**"Total Capital"** of any person is defined to mean, as of any date, the sum (without duplication) of (a) Indebtedness for Borrowed Money, and (b) consolidated stockholder's equity of such person and its consolidated Subsidiaries."

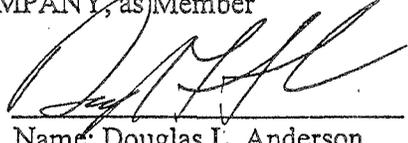
2. This Amendment shall be construed, performed and enforced in accordance with, and governed by, the laws of the State of Delaware (without giving effect to the principles of conflicts of laws thereof).

3. Except as expressly amended herein, all terms of the Agreement shall remain in full force and effect.

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IN WITNESS WHEREOF, the undersigned has executed this Amendment as of the date first above written.

MIDAMERICAN ENERGY HOLDINGS  
COMPANY, as Member

By: 

Name: Douglas L. Anderson  
Title: Senior Vice President and  
General Counsel

**NNGC ACQUISITION, LLC**  
**LIMITED LIABILITY COMPANY AGREEMENT**

This Limited Liability Company Agreement (this "Agreement"), dated as of July 31, 2002 between MIDAMERICAN ENERGY HOLDINGS COMPANY (the "Member") and NNGC ACQUISITION, LLC, a Delaware limited liability company (the "Company").

WITNESSETH:

WHEREAS, the Member has decided to form a limited liability company under the Limited Liability Company Act of the State of Delaware (the "Act"); and

WHEREAS, the Member desires to set forth, among other things, how the business and affairs of the Company shall be managed.

NOW, THEREFORE, the Member hereby resolves as follows:

**1. Formation and Name.**

The undersigned does hereby form a limited liability company under the Act. The name of the limited liability company is NNGC Acquisition, LLC. The business of the Company may be conducted under any other name deemed necessary or desirable by the Member in order to comply with local law.

The undersigned resolve to form and continue the Company as a limited liability company pursuant to the provisions of the Act and of this Agreement and resolve that its rights and liabilities shall be as provided in the Act for members except as provided herein.

**2. Principal Place of Business.**

The principal office of the Company shall be located at 666 Grand Avenue, Des Moines, Iowa 50303-0657, or such other place as the Member may designate from time to time.

**3. Registered Agent.**

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware shall be c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19805.

**4. Duration.**

The Company shall continue in existence perpetually unless the Company is dissolved and its affairs wound up in accordance with the Act or this Agreement.

**5. Fiscal Year.**

The fiscal year of the Company shall be the twelve months ended December 31 each year.

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6. **Members.**

The Member shall continue to be the sole member of the Company. The of the Member is as follows: 666 Grand Avenue, Des Moines, Iowa 50303-0657.

7. **Purposes.**

(a) The purposes of the Company are to engage in the following activities:

1. to purchase and own 100% of the capital stock in Northern Natural Gas Company ("NNGC"; and any equity interest therein, an "Equity Interest");

2. to participate in the management of NNGC;

3. in connection with the purchase of the Equity Interest, to negotiate, authorize, execute, deliver and perform documents including, but not limited to, that certain Assignment and Assumption of Purchase and Sale Agreement between the Member and the Company pursuant to which the Member will assign to the Company all of the Member's rights and obligations under that certain Purchase and Sale Agreement, between the Member and the other persons parties thereto, dated as of July 28, 2002 and any other agreement or document contemplated thereby (the "Transaction Documents"); and

4. to do such other things and carry on any other activities, and only such things and activities, which the Board, defined herein, determines to be necessary, convenient or incidental to any of the foregoing purposes, and to have and exercise all of the power and rights conferred upon limited liability companies formed pursuant to the Act in furtherance of the foregoing.

(b) The Company, by or through one or more Officers of the Company, may enter into and perform the Transaction Documents and all documents, agreements, certificates or financing statements contemplated thereby or related thereto, with such final terms and provisions as the Officer or Officers of the Company executing the same shall approve, his or their execution thereof to be conclusive evidence of his or such approval, all without any further act, vote or approval of the Member, the Board of Directors or any other Officer notwithstanding any other provision of this Agreement, the Act or applicable law, rule or regulation. All actions taken by the Member, any Director or Officer on behalf of the Company or on behalf of any of its affiliates prior to the date hereof, to effect the transactions contemplated by the Transaction Documents or the formation of the Company, are hereby ratified, approved and confirmed in all respects. Simultaneously with or following the execution of this Agreement the Company may enter into each of the Transaction Documents with such final terms and provisions as the Officer or Officers of the Company executing the same shall approve, his or their execution thereof to be conclusive evidence of his or their approval.

8. **Management.**

(a) *Board of Directors.* The business and affairs of the Company shall be managed by or under the direction of a board of one or more Directors (the "Board"); provided

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that from and after the purchase of an Equity Interest, and for so long as the Company shall own an Equity Interest, one of the members of the Board shall be an Independent Director.

An "Independent Director" shall mean a member of the board who is not at the time of initial appointment, or at any time while serving on the Board, and has not been at any time during the preceding five (5) years: (a) a member, stockholder, director (except as such Independent Director of the Company), officer, employee, partner, attorney or counsel of the Company or any affiliate of the Company; (b) a creditor, customer other than a consumer, supplier or other person who has derived in any one of the preceding (5) calendar years revenues from its activities with the Company or any affiliate of the Company (except as such Independent Director); (c) a person related to or employed by any person described in clause (a) or clause (b) above, or (d) a trustee, conservator or receiver for the Company or any affiliate of the Company. As used in this definition, "affiliate" shall have the meaning given to such term under Rule 405 under the Securities Act of 1933, as amended.

Except as otherwise provided in this Section 8(a) with respect to the Independent Director, the Member by unanimous vote or unanimous written consent, may determine at any time in its sole and absolute discretion, the number of Directors to constitute the Board. The initial number of Directors shall be two. At the time of the purchase of an Equity Interest by the Company, if one of the Directors is not then a qualified Independent Director, the number of Directors on the Board shall be automatically increased by one, such additional position to be filled as soon as practicable by an Independent Director selected by a majority vote of all of the Directors then in office. Each Director elected, designated or appointed shall hold office until a successor is elected and qualified or until such Director's earlier death, resignation or removal. The following persons are the Directors of the Company as of the date hereof. Each Director shall be a "manager" within the meaning of the Act.

| <u>Name</u>         | <u>Position</u> |
|---------------------|-----------------|
| Greg E. Abel        | Director        |
| Douglas L. Anderson | Director        |

(b) *Powers.* Subject to this Section 8, the Board shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. Except as provided in the certificate and subject to Section 8(i), the Board has the authority to bind the Company by a majority of the votes held by the Directors. For purposes of voting, each Director shall have one vote.

(c) *Meetings of the Board of Directors.* Regular meetings of the Board, which shall be held quarterly, *i.e.*, at least once within each calendar quarter, may be held without notice at such time and at such place as shall from time to time be determined by the Board. Special meetings of the Board may be called by the President on not less than one day's notice to each Director by telephone, facsimile, mail, telegram, or any other means of communication, and special meetings shall be called by the President or Secretary in like manner and with like notice upon the written request of any one or more of the Directors. Any Director may waive notice of

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any meeting of the Board in writing and shall be deemed to have waived notice of any meeting of the Board which the Director attends or in which the Director participates.

(d) *Quorum; Acts of the Board.* At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business and, except as otherwise provided in any other provision of this Agreement or in the Certificate, the act of a majority of the votes held by the Directors present at any meeting at which there is a quorum shall be the act of the Board. In the case of an act which requires the unanimous vote of the Directors and/or the vote of the Independent Director, only the presence at the subject meeting of all of the Directors, including the Independent Director, shall constitute a quorum. If a quorum shall not be present at any meeting of the Board, the Directors present at such meeting may adjourn the meeting from time to time, without written notice other than announcement at the meeting, until a quorum shall be present.

(e) *Action by Unanimous Written Consent.* Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if all members of the Board consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

(f) *Electronic Communications.* Members of the Board may participate in meetings of the Board, or any committee, by means of telephone conference or similar communications equipment that allows all persons participating in the meeting to hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

(g) *Compensation of Directors; Expenses.* The Board shall have the authority to fix the compensation of Directors, which shall be not more than \$50 per meeting per Director for all Directors. The Directors may be paid their reasonable expenses, if any, of attendance at meetings of the Board, which may be a fixed sum for attendance at each meeting of the Board and shall in no event exceed \$50 per meeting.

(h) *Removal of Directors.* Unless otherwise restricted by law, any Director or the entire Board may be removed, with or without cause, by the Member, and subject to Section 9, any vacancy caused by any such removal may be filled by action of the Member. In the event of the removal of the Independent Director or other event that causes the Independent Director to cease to be an Independent Director on the Board, no action requiring the vote of the Independent Director shall take place until such time as a replacement Independent Director is elected to the Board by the Member.

(i) *Limitations on the Company's Activities.*

1. This Section 8(i) is being adopted in order to comply with certain provisions required in order to qualify the Company as a "special purpose entity" and so long as the Company holds or owns an Equity Interest, this Section 8(i) shall govern the activities of the Company notwithstanding any other provision of this Agreement.

2. So long as the Company holds or owns an Equity Interest, the Board shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and

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franchises. At all times, unless otherwise provided in the Transaction Documents, the Board shall cause the Company to:

- a) maintain its own separate books and records, financial statements, and bank accounts;
- b) except for tax and accounting purposes, at all times hold itself out to the public as a legal entity separate from the Member and any other Person and not identify itself as a division of any other Person;
- c) have a Board, the composition of which in sum is unique from that of any other Person;
- d) file its own tax returns, if any, as may be required under applicable law, and pay any taxes required to be paid under applicable law;
- e) not commingle its assets with assets of any other Person;
- f) conduct its business in its own name and hold all of its assets in its own name;
- g) pay its own liabilities only out of its own funds;
- h) maintain an arm's length relationship with its affiliates, including its Member;
- i) from its own funds, pay the salaries of its own employees;
- j) not hold out its credit as being available to satisfy the obligations of others;
- k) maintain its own office and telephone line separate and apart from its affiliates, although it may lease space from an affiliate and share a phone line with an affiliate, having either a separate number or extension, and in furtherance thereof allocate fairly and reasonably any overhead for shared office space;
- l) use separate stationery, invoices and checks bearing its own name;
- m) not pledge its assets for the benefit of any other Person;
- n) correct any known misunderstanding regarding its separate identity;
- o) maintain adequate capital and an adequate number of employees in light of its contemplated business purposes; and

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- p) not acquire any obligations or securities of the Member or its affiliates, other than the Equity Interest.

Failure of the Company to comply with any of the foregoing covenants shall not affect the status of the Company as a separate legal entity or the limited liability of the Member or the Directors.

3. So long as the Company holds or owns an Equity Interest and unless otherwise provided in the Transaction Documents, the Company shall not:

- a) become or remain liable, directly or contingently, in connection with any indebtedness or other liability of any other person or entity, whether by guarantee, endorsement (other than endorsements of negotiable instruments for deposit or collection in the ordinary course of business), agreement to purchase or repurchase, agreement to supply or advance funds, or otherwise;
- b) grant or permit to exist any lien, encumbrance, claim, security interest, pledge or other right in favor of any person or entity in the assets of the Company or any interest (whether legal, beneficial or otherwise) in any thereof;
- c) engage, directly or indirectly, in any business other than as permitted to be performed under Section 7 hereof;
- d) make or permit to remain outstanding any loan or advance to, or own or acquire (a) indebtedness issued by any other person or entity, or (b) any stock or securities of or interest in, any person or entity, other than the Equity Interest;
- e) enter into, or be a party to, any transaction with any of its affiliates, except (A) in the ordinary course of business, (B) pursuant to the reasonable requirements and purposes of its business and (C) upon fair and reasonable terms (and, to the extent material, pursuant to written agreements)) that are consistent with market terms of any such transactions entered into by unaffiliated parties;
- f) elect to be classified as an association taxable as a corporation for federal, state, local income or other tax purposes; or
- g) make any change to its name or principal business or use of any trade names, fictitious names, assumed names or "doing business as" names.

4. So long as the Company holds or owns an Equity Interest, none of the Company, the Member or the Board shall be authorized or empowered, nor shall they permit the Company, without the prior unanimous written consent of all of the Directors on the Board, including the Independent Director, to institute proceedings to have the Company adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or

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insolvency proceedings against the Company or file a voluntary petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy, or consent to appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or a substantial part of its property, or make any assignment for the benefit of creditors of the Company, or admit in writing the Company's inability to pay its debts generally as they become due, or to the fullest extent permitted by law, to take any action in furtherance of any such action. Moreover, the Board may not vote on, or authorize the taking of, any of the foregoing actions unless there is at least one Independent Director then serving in such capacity. To the fullest extent permitted by law, for so long as the Company holds or owns an Equity Interest, none of the Company, the Member or the Board shall be authorized or empowered, nor shall they permit the Company to consolidate, merge, dissolve, liquidate or sell all or substantially all of the Company's assets.

**9. Independent Director.**

From the time an Independent Director is initially appointed and for so long as the Company holds or owns an Equity Interest, the Company shall at all times have at least one Independent Director who, except as provided in Section 8(a), will be appointed by the Member. To the fullest extent permitted by Section 18-1101(c) of the Act, the Independent Director shall consider only the interests of the Company, including its respective creditors, in acting or otherwise voting on the matters that come before them. No Independent Director shall at any time serve as trustee in bankruptcy for any affiliate of the Company.

**10. Enforcement by Independent Director.**

Notwithstanding any other provision of this Agreement, the Member agrees that this Agreement, including, without limitation, Sections 7, 8, 9, 18, 22, 24 and 28, constitutes a legal, valid and binding agreement of the Member, and is enforceable against the Member by the Independent Director, in accordance with its terms. In addition, the Independent Director shall be an intended beneficiary of this Agreement.

**11. Officers.**

The officers of the Company (the "Officers") shall be responsible for the day to day operations of the Company and shall not be deemed to be "managers" of the Company as such term is defined in Section 18-101(10) of the Act. The Officers shall be chosen by the Board and shall consist of at least a President, a Vice President, a Secretary and a Treasurer. The Board of Directors may also choose more Assistant Secretaries and Assistant Treasurers. The following persons shall continue to be the initial officers of the Company and shall have the titles set forth opposite their respective names, each to hold office until his respective successor is duly appointed by the Board of Directors or until his earlier resignation or removal:

| <u>Name</u>         | <u>Position</u>       |
|---------------------|-----------------------|
| Greg E. Abel        | President             |
| Patrick J. Goodman  | Senior Vice President |
| Douglas L. Anderson | Senior Vice President |

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|                  |           |
|------------------|-----------|
| Brian Hankel     | Treasurer |
| Paul J. Leighton | Secretary |

The Board may appoint such other Officers and agents as it shall have deemed necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board. The salaries of all Officers and agents of the Company, if any, shall be fixed by or in the manner prescribed by the Board. The Officers of the Company shall hold office until their successors are chosen and qualified. Any Officer elected or appointed by the Board may be removed at any time, with or without cause, by the affirmative vote of the majority of the votes held by the Directors on the Board. Any vacancy occurring in any office of the Company shall be filled by the Board.

(a) *President.* The President shall be the chief executive officer of the Company, shall preside at all meetings of the Member, if any, and the Board; shall be responsible for the general and active management of the business of the Company; and shall see that all orders and resolutions of the Board are carried into effect. The President shall execute all bonds, mortgages and other contracts, except: (i) where required or permitted by law or this Agreement to be otherwise signed and executed, including Section 7(b); (ii) where signing and execution thereof shall be expressly delegated by the Board to some other Officer or agent of the Company; and (iii) as otherwise permitted in Section 11(c).

(b) *Senior Vice Presidents.* In the absence of the President or in the event of the President's inability to act, the Senior Vice President, or if there are more than one, the Senior Vice Presidents in the order determined by the Board (or if there shall be no determination, then in order of election), shall perform the duties of the President; and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Senior Vice President shall perform such other duties and have such other powers as the Board may from time to time prescribe.

(c) *Secretary and Assistant Secretary.* The Secretary shall be responsible for filing legal documents and maintaining records for the Company. The Secretary shall attend all meetings of the Board and all meetings of the Member, if any, and record all the proceedings of the meetings of the Company and of the Board in a book to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the Member, if any, and special meetings of the Board, and shall perform such other duties as may be prescribed by the Board or the President, under whose supervision the Secretary shall serve. The Assistant Secretary, if any, or if there is more than one, the Assistant Secretaries in the order determined by the Board (or if there be no such determination, then in order of their election), shall, in the absence of the Secretary or in the event of the Secretary's inability to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

(d) *Treasurer and Assistant Treasurer.* The Treasurer shall have the custody of the Company funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Company as may be

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ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and to the Board, at its regular meetings or when the Board so requires, an account of all of the Treasurer's transactions and of the financial conditions of the Company. The Assistant Treasurer, if any, or if there is more than one, the Assistant Treasurers in the order determined by the Board (or if there be no such determination, then in order of election), shall, in the absence of the Treasurer or in the event of the Treasurer's inability to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

(e) *Officers as Agents.* The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Board not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business, and the actions of the Officers taken in accordance with such powers shall bind the Company. An Officer may only bind the Company with respect to the matters having received the requisite vote or approval required by the Certificate or this Agreement.

#### 12. Limited Liability.

Except as otherwise expressly provided in the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort, or otherwise, shall be the debts, obligations and liabilities solely of the Company, and none of the Member or any Director shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member or Director of the Company.

#### 13. Capital Contributions.

The Member shall initially have a 100% limited liability company interest in the Company. Capital contributions ("Capital Contributions") shall be made in cash or in the form of marketable securities or other assets or properties. No Member shall be entitled to withdraw any part of its Capital Contributions to, or receive any distributions from, the Company except as provided in Section 15 and Section 22.

#### 14. Allocation of Profits and Losses; Capital Accounts.

At any time that the Company shall have more than one Member, a capital account shall be established and maintained for each Member in accordance with Section 704 of the Code and the Regulations promulgated thereunder (as to each Member, its "Capital Account"). Allocations of profits and losses to the Members shall be made to the Members in accordance with their respective percentage limited liability company interests, as the same may be adjusted pursuant to Section 13 from time to time. No Member shall be required to restore a negative balance in its Capital Account at any time.

#### 15. Distributions.

Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Board. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to the Member if such distribution would violate Sections 18-607 or 18-804 of the Act or any other applicable law.

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Except as otherwise provided by law, no Member shall be required to restore to the Company any funds properly distributed to it pursuant to this Section 15.

**16. Books and Records.**

The Board shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. The books of the Company shall at all times be maintained by the Secretary. The Member and its duly authorized representatives shall have the right to examine the Company books, records and documents during normal business hours. The Board covenants for itself and on behalf of the Company, not to exercise any right it may have to keep confidential from the Member any information that the Board would otherwise be permitted to keep confidential from the Member pursuant to Section 18-305(c) of the Act. The Company's books of account shall be kept using the method of accounting determined by the Member. The Company's independent auditor shall be an independent public accounting firm selected by the Member.

**17. [Reserved]**

**18. Exculpation and Indemnification.**

(a) No Member, Officer, Director, employee, agent or affiliate of the Company and no employee, representative or agent of an affiliate of the Company (collectively, the "Covered Persons") shall be liable to the Company for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement excepting a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

(b) Except as otherwise provided herein, the Board shall cause the Company to, to the extent legally permissible, indemnify each Covered Person against all liabilities and expenses (including judgments, fines, penalties and reasonable attorneys' fees and all amounts paid, other than to the Company, in compromise or settlement) imposed upon or incurred by any such person in connection with, or arising out of, the defense or disposition of any action, suit or other proceeding, whether civil or criminal, in which he or she may be a defendant or with which he or she may be threatened or otherwise involved, directly or indirectly, by reason of his or her being or having been such a Covered Person.

(c) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(d) To the extent that, at law or in equity, a Covered Person has duties, including fiduciary duties, and liabilities relating thereto to the Company or to any other Covered

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Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person for its good faith reliance on the provisions of this Agreement or any approval or authorization granted by the Company or any other Covered Person. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Member to replace such other duties and liabilities of such Covered Person.

(e) The Company shall provide no indemnification with respect to any matter as to which any such Covered Person shall be finally adjudicated in such action, suit or proceeding not to have acted in good faith in the reasonable belief that his or her action was in the best interests of the Company. The Company shall provide no indemnification with respect to any matter settled or compromised, pursuant to consent decree or otherwise, unless such settlement or compromise shall have been approved as in the best interests of the Company, after notice that indemnification is involved, by (i) a disinterested majority of the Board of Directors, or (ii) the Member.

(f) Indemnification may include payment by the Company of expenses in defending a civil or criminal action or proceeding in advance of the final disposition of such action or proceeding upon an undertaking of the person indemnified to repay such payment if it is ultimately determined that such person is not entitled to indemnification.

(g) The right of indemnification shall not be exclusive of or affect any other rights to which any Covered Person may be entitled under any agreement, statute, vote of the Member or otherwise. The Company's obligation to provide indemnification shall be offset to the extent of any other source of indemnification or any otherwise applicable insurance coverage under a policy maintained by the Company or any other person.

(h) The foregoing provisions of this Section 18 shall survive any termination of this Agreement.

#### 19. Assignments.

Subject to Sections 20 and 21, the Member may assign in whole or in part its limited liability company interests in the Company. If any Member transfers all of its limited liability company interest in the Company pursuant to this Section 19, the transferee shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the withdrawal incident to such transfer, and, immediately following such admission, the transferor Member shall cease to be a member of the Company. Notwithstanding anything in this Agreement to the contrary, any successor to a Member by merger or consolidation shall, without further act, be a Member hereunder, and such merger or consolidation shall not constitute an assignment for the purposes of this Agreement.

#### 20. Transfers.

So long as the Company holds or owns an Equity Interest, any transfer of a limited liability company interest in the Company is not permitted except pursuant to Section 19

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hereof. Any transfer of a limited liability company interest in the Company must comply with all applicable laws, including the federal securities laws, so as not to violate any such law and not to cause any offer or transfer of such an interest, security, entity or arrangement, or the Company itself, to be subject to registration under state or federal securities laws.

#### 21. Admission of Additional Member.

One or more additional members of the Company may be admitted to the Company with the written consent of the Member, provided that, notwithstanding the foregoing, so long as the Company holds or owns an Equity Interest, no additional members may be admitted to the Company unless the Member retains a majority in percentage limited liability company interest in the Company.

#### 22. Dissolution.

(a) The Company shall be dissolved, and its affairs shall be wound up only upon the entry of a decree of judicial dissolution under Section 18-802 of the Act; and shall not dissolve prior to the occurrence of such event, provided, however, to the fullest extent permitted by law, the Member and the Directors shall not make an application under Section 18-802 of the Act so long as the Company holds or owns an Equity Interest.

(b) So long as the Company owns or holds an Equity Interest, the Member shall cause the Company to have, at all times, at least one person who shall automatically become a member having 0% economic interest in the Company (the "Springing Member") upon the dissolution of the Member or upon the occurrence of any other event that causes the Member to cease being a member of the Company. Upon the occurrence of any such event, the Company shall be continued without dissolution and the Springing Member shall, without any action of any person or entity, automatically and simultaneously become a member of the Company having a 0% economic interest in the Company and the Personal Representative(s) (as defined in the Act) of the Member shall automatically become an unadmitted assignee of the Member, being entitled thereby only to the distributions to which the Member was entitled hereunder and any other right conferred thereupon by the Act. In order to implement the admission of the Springing Member as a member of the Company, the Springing Member has executed a counterpart to this Agreement as of the date hereof. Pursuant to Section 18-301 of the Act, the Springing Member shall not be required to make any capital contributions to the Company and shall not receive any limited liability company interest in the Company. Prior to its admission to the Company as a member of the Company pursuant to this Section 24(b), the Springing Member shall have no interest (economic or otherwise) and is not a member of the Company.

(c) Notwithstanding any other provision of this Agreement, the Bankruptcy of a Member shall not cause the Member to cease to be a member of the Company and upon the occurrence of such an event, the business of the Company shall continue without dissolution. Notwithstanding any other provision of this Agreement, the Member waives any right they might have under Section 18-801(b) of the Act to agree in writing to dissolve the Company upon the Bankruptcy of a Member or the occurrence of any other event that causes such Member to cease to be a member of the Company. "Bankruptcy" means, with respect to a Member, if the

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Member (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against itself an order for relief, in any bankruptcy or insolvency proceeding, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Member or of all or any substantial part of its properties, or (vii) 120 days after the commencement of any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation, if the proceedings have not been dismissed, or if within 90 days after the appointment, without the Member's consent or acquiescence, of a trustee, receiver or liquidator of the Member or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. With respect to the Member, the foregoing definition of "Bankruptcy" is intended to replace and shall supersede the definition of "bankruptcy" set forth in Sections 18-101(1) and 18-304 of the Act.

(d) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act. Upon completion of the winding up process, the Board shall cause the execution and filing of a Certificate of Cancellation in accordance with Section 18-203 of the Act.

#### 23. Waiver of Partition; Nature of Interest.

Except as otherwise expressly provided in this Agreement, to the fullest extent permitted by law, the Member hereby irrevocably waives any right or power that the Member might have to cause the Company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the Company, to compel any sale of all or any portion of the assets of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company. No Member shall have any interest in any specific asset of the Company, and no Member shall have the status of a creditor with respect to any distribution pursuant to Section 15 hereof. The limited liability company interests of the Member in the Company are personal property.

#### 24. Benefits of Agreement: No Third-Party Rights.

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of a Member. Subject to Section 10, nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person.

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This Agreement shall be binding upon and inure to the benefit of the Member and its successors and permitted assigns.

**25. Severability of Provisions.**

Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

**26. Entire Agreement.**

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

**27. Governing Law.**

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws. Each party hereto (i) irrevocably submits to the non-exclusive jurisdiction of any Delaware State court or Federal court sitting in Wilmington, Delaware in any action arising out of this Agreement, and (ii) consents to the service of process by mail. Nothing herein shall affect the right of any party to serve legal process in any manner permitted by law or affect to bring any action in any other court.

**28. Amendments.**

Neither this Agreement nor the Certificate may be modified, altered, supplemented or amended (each such event being referred to as a "Change") except pursuant to a written agreement executed and delivered by the Member. So long as the Company holds or owns an Equity Interest and the NNGC or any subsidiary thereof has any debt outstanding that is rated by Standard & Poor's, Moody's Investors Service, or by Fitch Ratings (each, a "Rating Agency"), no Change shall take effect unless (i) each Rating Agency rating such debt shall have delivered a written confirmation that such Change will not result in the downgrade or withdrawal of any such rating assigned by it to such debt, and (ii) the Independent Director shall have approved the Change in a vote of Directors if the Change relates to Section 7, Section 8(i) or Section 9; provided that none of the conditions identified in either of clause (i) or (ii) hereof needs be satisfied if the Change is designed to: (x) cure any ambiguity or internal inconsistency in this Agreement or the Certificate or (y) convert or supplement any provision hereof in a manner consistent with the intent of this Agreement or the Certificate.

**29. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

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**30. Notices.**

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail, or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to the Company at its address set forth in Section 2, (b) in the case of a Member, to the Member at the Company's address set forth in Section 2, and (c) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.

**31. Taxation.**

At any time that the Company shall have more than one Member, it is intended that the Company shall be treated as a partnership for federal and all relevant state and local tax purposes. In the event the Company shall have only one Member, it is intended that the Company shall be disregarded for federal and all relevant state and local tax purposes. The Member resolves and agrees to take all action, if any, that may be necessary to qualify for and receive such tax treatment in accordance with this Section 31.

**32. Captions.**

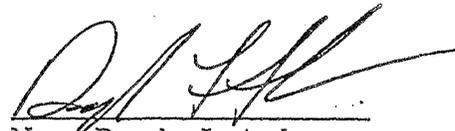
All captions used in this Agreement are for convenience only and shall not affect the meaning or construction of any provision hereof.

1079009.1

IN WITNESS WHEREOF, the undersigned has executed this Limited Liability Company Agreement as of the date first above written.

MIDAMERICAN ENERGY HOLDINGS  
COMPANY, as Member.

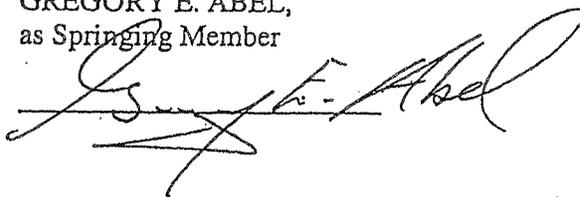
By:



Name: Douglas L. Anderson  
Title: Senior Vice President  
and General Counsel

1079009.1

GREGORY E. ABEL,  
as Springing Member

A handwritten signature in cursive script, appearing to read "Gregory E. Abel", is written over a horizontal line. The signature is fluid and somewhat stylized, with a large initial "G" and a long, sweeping underline.

Case UM 1209  
PPL Exhibit 409  
Witness: Patrick J. Goodman

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

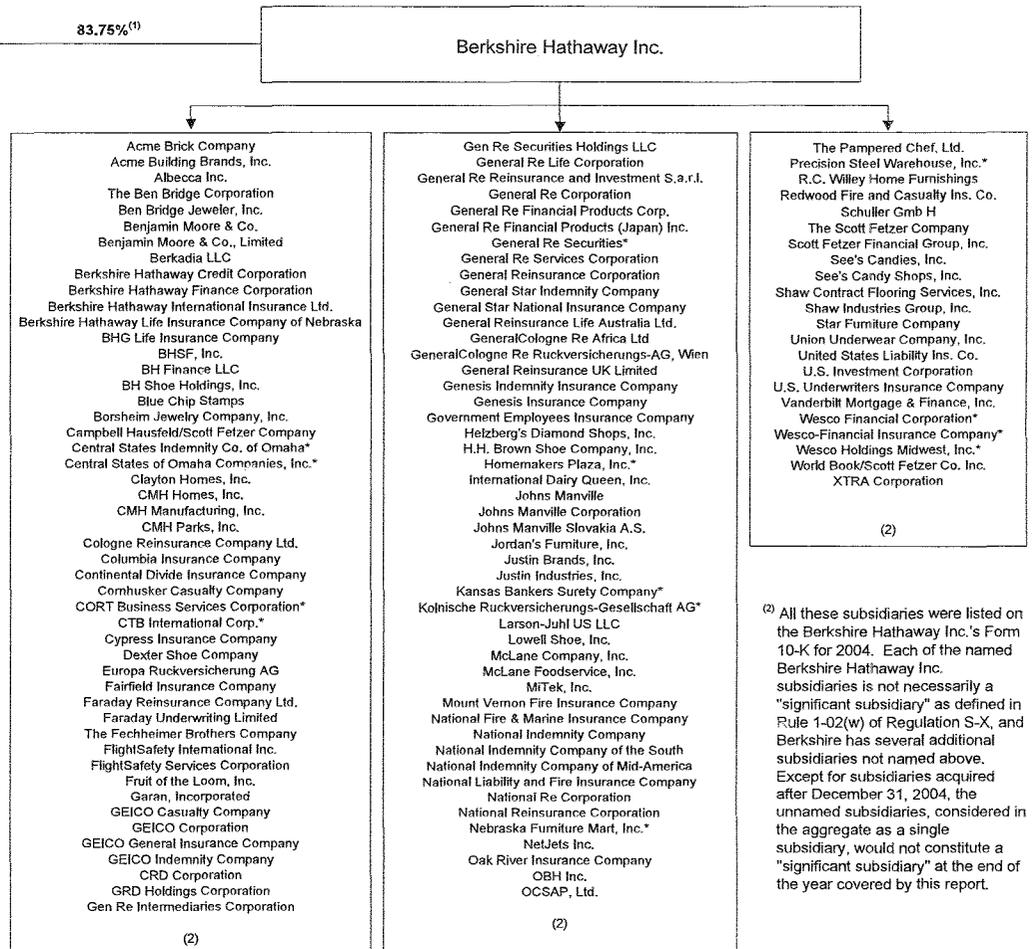
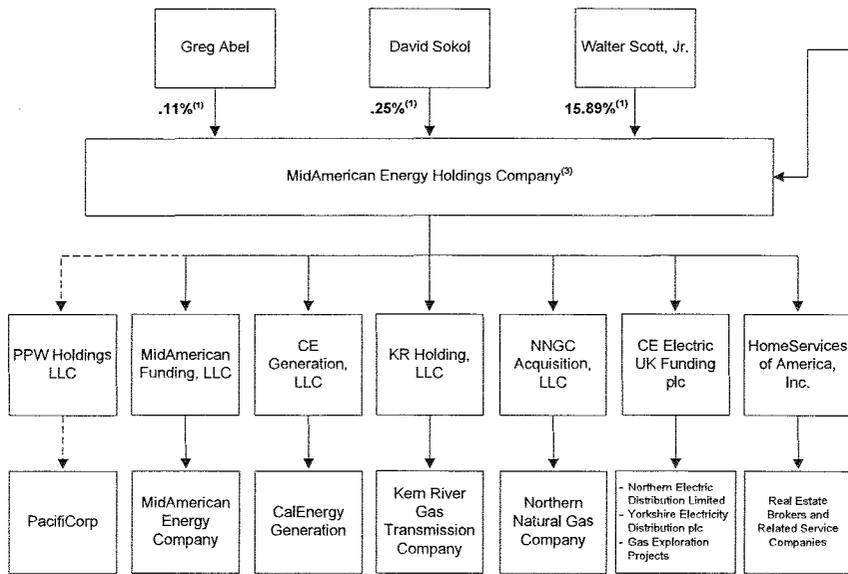
MIDAMERICAN ENERGY HOLDINGS COMPANY  
AND PACIFICORP

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**Exhibit Accompanying Rebuttal Testimony of Patrick J. Goodman**

**Listing of Berkshire Hathaway Companies**

December 2005



<sup>(1)</sup> Ownership share of these four parties once PUHCA is repealed.

<sup>(2)</sup> Note: Intermediate subsidiaries of MEHC are shown, here, in a simplified format. Please refer to MEHC witness Patrick J. Goodman's Exhibit PPL/402 for a more complete illustration of the organizational structure.

<sup>(2)</sup> All these subsidiaries were listed on the Berkshire Hathaway Inc.'s Form 10-K for 2004. Each of the named subsidiaries is not necessarily a "significant subsidiary" as defined in Rule 1-02(w) of Regulation S-X, and Berkshire has several additional subsidiaries not named above. Except for subsidiaries acquired after December 31, 2004, the unnamed subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a "significant subsidiary" at the end of the year covered by this report.

All of the foregoing business organizations, shown in the three boxes, above, are 100% owned by Berkshire Hathaway Inc., either directly or indirectly, with the exception of those that are marked with an asterisk (\*). All of the business organizations marked with an asterisk (\*) are majority-owned by a Berkshire, direct or indirect, subsidiary.

1 **Q. Please state your name, employer and business address.**

2 A. My name is Thomas B. Specketer, MidAmerican Energy Company, 666 Grand  
3 Avenue, Des Moines, Iowa 50303.

4 **Q. Are you the same Thomas B. Specketer who previously submitted**  
5 **testimony in this docket?**

6 A. Yes, I am.

7 **Q. Please describe the purpose of your rebuttal testimony.**

8 A. The purpose of my testimony is to address issues raised by intervener witnesses  
9 generally, and specifically by Oregon Public Utilities Commission (“OPUC”)  
10 Staff witness Dougherty, Citizens Utility Board (“CUB”) witness Dittmer and  
11 CUB witness Jenks, pertaining to shared services/corporate cost assignment,  
12 affiliate transactions, and certain commitments made by MidAmerican Energy  
13 Holdings Company (“MEHC”) in my direct testimony.

14 **Q. Staff witness Dougherty concludes that as a result of the transaction,**  
15 **corporate overhead expense is expected to increase for all of PacifiCorp**  
16 **and for the Oregon jurisdiction. Do you agree with that conclusion?**

17 A. No, I do not. Mr. Dougherty attributes this conclusion to a number of issues  
18 that I will address individually and that are summarized on Exhibit PPL/504.  
19 It remains my belief that PacifiCorp shared services costs billed under MEHC  
20 ownership will be at least \$6 million per year, on a total PacifiCorp basis, less  
21 than such costs billed under ScottishPower ownership today.

22 **Q. Staff witness Dougherty states that the ScottishPower amount for**  
23 **PacifiCorp shared services costs to compare to the MEHC amount**

1           **anticipated for such services is \$8.8 million instead of the \$15 million you**  
2           **state in your direct testimony. Do you agree?**

3    A.    No, I do not. It is my understanding that the \$8.8 million is comprised of  
4           \$11.7 million that was purported to be the “ScottishPower cross-charge amount  
5           in UE 170”<sup>1</sup> less \$2.9 million of cross-charges from PacifiCorp to  
6           ScottishPower. The \$11.7 million amount in UE 170 was an OPUC Staff  
7           derived value and was not a value that PacifiCorp agreed to in any testimony  
8           pertaining specifically to cross-charges. While the \$11.7 million was indeed  
9           listed among various adjustments included in the computation of the revenue  
10          requirement stipulation for UE 170, the reduction in cross-charge expense from  
11          the amount originally filed by PacifiCorp in that proceeding could just as easily  
12          have been applied to another item of cost of service to achieve an overall  
13          revenue requirement that was acceptable and reasonable to the parties involved  
14          in that proceeding. The fact that the stipulated revenue requirement was  
15          achieved, in part, from the reduction of net cross-charge expense from  
16          ScottishPower is not pertinent to this proceeding. In fact, in accordance with  
17          the partial stipulation in UE 170, parties are prohibited from using any part of  
18          the settlement in resolving issues in other proceedings.

19    **Q.    So the \$11.7 million is not a relevant amount to compare to MEHC’s \$15**  
20    **million estimate?**

21    A.    Correct. MEHC’s commitment is expressed in terms of reduction in *costs*  
22           *billed*, not the *rate treatment* of such costs (over which we have no control).  
23           While the entire \$15 million estimated billings from ScottishPower may not

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<sup>1</sup> Staff Exhibit 200 page 6, lines 12-13.

1 currently be reflected in retail rates, we cannot say with certainty that the entire  
2 \$9 million to be billed from MEHC/MEC would be allowed in rates either.  
3 Regardless of how such costs are ultimately handled in future rate proceedings,  
4 ScottishPower estimated net cross-charges to be \$15 million of FY 2006 and  
5 for purposes of the costs savings evaluation in this proceeding, that amount is  
6 the relevant cost to use for this analysis. For reference, Exhibit PPL/505 details  
7 the net ScottishPower actual cross charges to PacifiCorp for fiscal year 2005.

8 **Q. What about the \$2.9 million of cross-charges from PacifiCorp to**  
9 **ScottishPower?**

10 A. There are two reasons that the \$2.9 million in Mr. Dougherty's testimony is in  
11 error. First, this \$2.9 million cross-charge from PacifiCorp to ScottishPower  
12 that he subtracts from the \$11.7 million stipulated amount is as irrelevant as the  
13 \$11.7 million itself. It is my understanding that the cross-charges from  
14 PacifiCorp to ScottishPower have already been removed from the "gross"  
15 ScottishPower costs billed to PacifiCorp to arrive at the \$15 million amount  
16 estimated for fiscal year 2006. This estimate is comparable to the actual fiscal  
17 year 2005 amounts as reported in PacifiCorp's 2005 Form 10-K, Footnote 4,  
18 which states that expenses incurred from affiliated entities ScottishPower UK  
19 (SPUK) was \$18.3 million, which is the gross charges and before the  
20 \$2.9 million charges from PacifiCorp back to ScottishPower. Second, the  
21 \$2.9 million is the actual 2005 fiscal year charges whereas the UE 170  
22 stipulated rate case amounts were based on fiscal year 2004 and in that period  
23 the PacifiCorp to ScottishPower charges were only \$0.7 million. As I stated

1 above, I do not agree with Mr. Dougherty's starting point of the stipulated  
2 \$11.7 million, however, if this \$0.7 million amount was deducted, then the net  
3 amount would equal \$11 million, not the \$8.8 million stated in his testimony.

4 **Q. Mr. Dougherty claims that PacifiCorp costs will increase \$7.9 million for**  
5 **direct bills to PacifiCorp affiliates and \$1.5 million for increased**  
6 **“management fees,” or corporate overhead allocations, due to certain**  
7 **affiliates such as PPM no longer being included in the allocation of such**  
8 **costs. Do you agree?**

9 A. No, I do not. With respect to the \$7.9 million and as discussed in further detail  
10 in the rebuttal testimony of PacifiCorp witness Johansen, PacifiCorp is  
11 presently evaluating the corporate functions that provide shared services to its  
12 current affiliates and determining how such services will be provided upon the  
13 close of MEHC's acquisition of PacifiCorp, at which time such entities no  
14 longer will be affiliates. It is likely that some employees will be reassigned to  
15 those affiliates. PacifiCorp intends to aggressively review corporate functions  
16 for other ways to reduce costs.

17 While this transaction will not result in significant merger synergies  
18 with MEHC, as MEHC witness Gale discusses in his rebuttal testimony, it is  
19 illogical to assume that costs for employees who do not presently perform  
20 services for PacifiCorp will simply be absorbed into PacifiCorp when work  
21 does not exist. The specifics of how such costs will be managed and which  
22 positions get reassigned to which entities have not been completely resolved,  
23 the “separation” process is ongoing within the context of continuing to provide

1 the quality service these entities expect and pay for. It remains MEHC's  
2 expectation that corporate costs will not increase for PacifiCorp as a result of  
3 this transaction.

4 With respect to the \$1.5 million amount, it is true that the PacifiCorp  
5 percentage of total corporate overhead costs will increase after the transaction  
6 since certain affiliates such as PPM will remain under ScottishPower  
7 ownership. However, it would also be expected that the size of the corporate  
8 overhead cost pool would shrink consistent with the reduced volume of services  
9 needed to be performed as PPM and the other affiliates receive such services  
10 elsewhere. Again, it is too early in the process to discuss specifics of the  
11 separation plan.

12 **Q. What assurances can be made that PacifiCorp's corporate costs will not**  
13 **increase as a result of this transaction?**

14 A. MEHC and PacifiCorp have committed that the customers of PacifiCorp will be  
15 held harmless if the transaction results in a higher revenue requirement for  
16 PacifiCorp than if the transaction had not occurred. As with many issues in this  
17 docket, the ultimate measurement of how such costs were managed will be  
18 determined in the context of PacifiCorp's next general rate case. To the extent  
19 that corporate overhead costs were not managed as MEHC has indicated in this  
20 proceeding, they can be dealt with at that time. We understand that PacifiCorp  
21 will bear the burden to demonstrate its cost control in such a proceeding.

1 **Q. Mr. Dougherty suggests that in addition to transaction costs, PacifiCorp**  
2 **exclude transition, integration and segregation costs from PacifiCorp’s**  
3 **utility accounts. Do you agree?**

4 A. No, I do not, for two reasons. First, costs for transition, integration and  
5 segregation are expected to be comprised primarily of existing internal labor.  
6 Absent the acquisition, this labor would not have been avoided and would have  
7 been charged to utility accounts. Second, as I have stated above, MEHC does  
8 not expect corporate overhead costs to increase merely as a result of the  
9 acquisition. That expectation is net of the costs incurred to achieve that  
10 ultimate outcome. So, to the extent that costs incurred for transition, integration  
11 and segregation are equal to or less than the cost savings that result from such  
12 activities to achieve MEHC’s expected outcome, customers would be obtaining  
13 a benefit at the expense of shareholders under Mr. Dougherty’s proposal. This  
14 inconsistent treatment of costs and benefits seems inequitable and  
15 inappropriate. It is reasonable to assume that there may be one-time out of  
16 pocket costs incurred in the context of transition, integration and segregation  
17 activities. The treatment of such costs in rates (*e.g.*, normalization) relative to  
18 the timing of benefits that result is a matter to be determined in a rate  
19 proceeding. However, broadly requiring that such costs be assigned below-the-  
20 line is inequitable and discourages cost reduction initiatives.

21 **Q. Mr. Dougherty claims that because PacifiCorp’s captive insurance**  
22 **affiliate, Dornoch International Limited (“Dornoch”), will no longer be**

1           **available to be used by PacifiCorp, it will lose savings and/or incur**  
2           **increased costs totaling \$4.3 million per year. Do you agree?**

3    A.    No. While no action has yet been taken to establish a captive insurance  
4           arrangement for PacifiCorp's use, MEHC is confident that one can be  
5           established for coverages and costs comparable to that in place today at  
6           Dornoch at least for the next two years.

7                    I would also note that MEHC uses a captive insurance arrangement at  
8           Northern Electric and has experience in such matters. Again, to the extent that  
9           actual experience varies from the expectations laid out here, that matter can be  
10          addressed in PacifiCorp's next base rate case.

11   **Q.    Mr. Dougherty suggests that the MEHC commitment regarding corporate**  
12          **cost allocations be changed to require the use of PacifiCorp's current**  
13          **three-factor allocation basis. Do you agree?**

14    A.    No. While it is debatable whether the two-factor allocation basis proposed by  
15           MEHC or the three-factor allocation basis currently used by PacifiCorp is more  
16           appropriate, that discussion is better left for either a proceeding to specifically  
17           approve MEHC's Intercompany Administrative Services Agreement ("IASA")  
18           or a general rate case. It should be noted that in the context of PacifiCorp's cost  
19           of service, the difference between the three-factor and a two-factor  
20           methodologies is not material.

21   **Q.    CUB witness Dittmer proposes that regulators be granted access to**  
22          **Berkshire Hathaway's personnel, books and records comparable to the**

1           **access available to PacifiCorp and MEHC records. Do you have any**  
2           **comments on that proposal?**

3    A.     Yes. Commitment 4 in MEHC witness Gale's Exhibit PPL/314 provides access  
4           to the books and records of Berkshire Hathaway to the extent relevant to  
5           PacifiCorp's business.

6    **Q.     Mr. Dittmer has proposed that asymmetrical pricing be applied to affiliate**  
7           **transactions such that charges to PacifiCorp are priced at the lower of cost**  
8           **or market and charges from PacifiCorp are priced at the higher of cost or**  
9           **market. Do you have any comments on this proposal?**

10   A.     Yes. MEHC and PacifiCorp will comply with the applicable affiliate pricing  
11           requirements of each state. But, as Mr. Dittmer notes, for many of the  
12           executive management services that MEHC/MEC will provide to PacifiCorp,  
13           there is no comparable market, so it will be necessary to use fully distributed  
14           cost in these instances. Moreover, the new rules that will be promulgated soon  
15           by the Federal Energy Regulatory Commission, in lieu of the Public Utility  
16           Holding Company Act of 1935, may also address this issue.

17   **Q.     Mr. Dittmer suggests that positive time reporting be required for MEHC**  
18           **or MEC employees working for the benefit of PacifiCorp. Do you have**  
19           **any objections to that requirement?**

20   A.     No. As indicated in Commitment 14 of Exhibit PPL/314 to MEHC witness  
21           Gale's rebuttal testimony, MEHC and its subsidiaries will have in place  
22           positive time reporting systems adequate to support the allocation and  
23           assignment of costs of executives and other relevant personnel to PacifiCorp.

1 **Q. CUB witness Jenks proposes that a master services agreement be**  
2 **developed to protect PacifiCorp from subsidizing other Berkshire**  
3 **subsidiaries. Do you agree?**

4 A. No. Berkshire is not expected to bill either MEHC or PacifiCorp costs.  
5 Purchases from other Berkshire subsidiaries are expected to be nominal and in  
6 the ordinary course of business. Sales to other Berkshire subsidiaries are  
7 expected to be at prices established by regulated tariff. This proposal stems  
8 from Mr. Jenks' concern over repeal of Public Utility Holding Company Act of  
9 1935. However, as Staff witness Dougherty noted, "...there are adequate  
10 protections currently in place to ensure transparency concerning transactions  
11 between PacifiCorp and MEHC and affiliates..."<sup>2</sup> Another services agreement  
12 beyond the IASA is unnecessary. Note that the IASA will be filed with the  
13 Commission pursuant to Commitment 13 of Exhibit PPL/314 accompanying  
14 Mr. Gale's testimony.

15 **Q. Please summarize your rebuttal testimony.**

16 A. Contrary to the assertions of OPUC Staff and other interveners, MEHC  
17 continues to expect that the transaction will result in cost savings for PacifiCorp  
18 over costs incurred today under ScottishPower ownership. While actions  
19 necessary to assure that this result is realized are either in progress or not yet  
20 started, we believe that the achievement of this expectation should and will be  
21 demonstrated in PacifiCorp's next general rate case. Further, the incremental  
22 costs required to achieve overall cost savings should be evaluated in cost of

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<sup>2</sup> Staff Exhibit 200 page 33, lines 1-3.

1 service and not categorically accounted for below-the-line, in order to promote  
2 the pursuit of further cost savings.

3 **Q. Does that conclude your rebuttal testimony?**

4 **A. Yes.**

Case UM 1209  
PPL Exhibit 504  
Witness: Thomas B. Specketer

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

MIDAMERICAN ENERGY HOLDINGS COMPANY  
AND PACIFICORP

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**Exhibit Accompanying Rebuttal Testimony of Thomas B. Specketer**

**Reconciliation of Corporate Overhead Savings**

December 2005

MidAmerican Energy Holding Company  
 UM 1209 Rebuttal  
 Reconciliation of Corporate Overhead Savings  
 Undiscounted Amounts in (000's)

|   | MEHC           | <u>Total System</u> |                   |
|---|----------------|---------------------|-------------------|
|   | <u>View</u>    | Staff               |                   |
|   |                | <u>View</u>         | <u>Difference</u> |
| MEHC cross-charges to PPW                 | 9,000          | 9,000               | -                 |
| Less: Scottish Power cross-charges to PPW | 15,000         | 11,703              | 3,297             |
| Plus: PPW cross-charges to Scottish Power | -              | 2,898               | (2,898)           |
| Lower A&G billings to affiliates          | -              | 7,931               | (7,931)           |
| Management fee increases                  | -              | 1,531               | (1,531)           |
| Additional insurance costs                | -              | 4,300               | (4,300)           |
| Net change expected from transaction      | <u>(6,000)</u> | <u>13,957</u>       | <u>(19,957)</u>   |

Case UM 1209  
PPL Exhibit 505  
Witness: Thomas B. Specketer

BEFORE THE PUBLIC UTILITY COMMISSION  
OF THE STATE OF OREGON

MIDAMERICAN ENERGY HOLDINGS COMPANY  
AND PACIFICORP

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**Exhibit Accompanying Rebuttal Testimony of Thomas B. Specketer**

**Actual Fiscal Year 2005 ScottishPower Cross Charges**

December 2005

**Related Party Transactions Between PacifiCorp and ScottishPower  
FY2005**

Expenses Incurred From ScottishPower - Group Corporate Cost Recharge (GCCR)

| SP Cost Center | SP Cost Center Name                    | \$ Allocated to PacifiCorp | \$ Allocated to PFS  | \$ Allocated to PERCo | \$ Allocated to Pac Trans | \$ Allocated Total      | Allocation Method |
|----------------|--|----------------------------|----------------------|-----------------------|---------------------------|-------------------------|-------------------|
| 77008          | Environment                            | \$ 167,877.88              | \$ 1,134.31          | \$ 270.88             | \$ 16.93                  | \$ 169,300.00           | G                 |
| 77009          | Corp Strat Dir & Support               | 275,367.32                 | 1,860.59             | 444.32                | 27.77                     | 277,700.00              | G                 |
| 77012          | Director's Executive Support           | 488,660.48                 | 3,301.76             | 788.48                | 49.28                     | 492,800.00              | G                 |
| 77013          | Corp Secretarial                       | 2,510,235.40               | 16,961.05            | 4,050.40              | 253.15                    | 2,531,500.00            | G                 |
| 77014          | Corp Affairs                           | 149,929.92                 | 1,013.04             | 241.92                | 15.12                     | 151,200.00              | G                 |
| 77015          | Strategic Planning                     | 222,118.40                 | 1,500.80             | 358.40                | 22.40                     | 224,000.00              | G                 |
| 77018          | Atlantic Quay                          | 986,426.88                 | 6,678.56             | 1,594.88              | 99.68                     | 996,800.00              | AQ                |
| 77023          | Legal & Risk Management                | 198,914.96                 | 1,344.02             | 320.96                | 20.06                     | 200,600.00              | G                 |
| 77024          | ITBS Infrastructure Charge             | 591,687.72                 | 3,997.89             | 954.72                | 59.67                     | 596,700.00              | ITBS              |
| 77043          | Corp Affairs - Internal Communications | 42,737.96                  | 288.77               | 68.96                 | 4.31                      | 43,100.00               | CIRC              |
| 77048          | Corp Secretarial - Security            | 144,277.80                 | 974.85               | 232.80                | 14.55                     | 145,500.00              | G                 |
| 77049          | Other Corp Sites                       | 49,183.36                  | 332.32               | 79.36                 | 4.96                      | 49,600.00               | AVO               |
| 77052          | Corp Secretarial & Support             | 109,770.12                 | 741.69               | 177.12                | 11.07                     | 110,700.00              | G                 |
| 77053          | Exec & Supp Salary & Benefits          | 337,540.64                 | 2,280.66             | 544.64                | 34.04                     | 340,400.00              | G                 |
| 77220          | Leadership Development                 | 744,096.64                 | 5,027.68             | 1,200.64              | 75.04                     | 750,400.00              | SMG               |
| 77240          | Reward                                 | 353,207.92                 | 2,386.54             | 569.92                | 35.62                     | 356,200.00              | SMG               |
| 77431          | Grp Performance Reporting              | 134,460.96                 | 908.52               | 216.96                | 13.56                     | 135,600.00              | G                 |
| 77432          | Grp Performance Management             | 227,175.56                 | 1,534.97             | 366.56                | 22.91                     | 229,100.00              | G                 |
| 77433          | Grp Dir Insurance                      | 4,958.00                   | 33.50                | 8.00                  | 0.50                      | 5,000.00                | G                 |
| 77435          | External Reporting                     | 315,824.60                 | 2,133.95             | 509.60                | 31.85                     | 318,500.00              | G                 |
| 77436          | Corp Controller                        | 455,937.68                 | 3,080.66             | 735.68                | 45.98                     | 459,800.00              | G                 |
| 77437          | Insurance Risk                         | 110,563.40                 | 747.05               | 178.40                | 11.15                     | 111,500.00              | G                 |
| 77440          | Taxation                               | 125,933.20                 | 850.90               | 203.20                | 12.70                     | 127,000.00              | G                 |
| 77441          | Finance Dir & Support                  | 460,994.84                 | 3,114.83             | 743.84                | 46.49                     | 464,900.00              | G                 |
| 77455          | Grp Dir - Credit                       | 79,823.80                  | 539.35               | 128.80                | 8.05                      | 80,500.00               | G                 |
| 77534          | Exec Dir Proj - Finance                | 816,185.96                 | 5,514.77             | 1,316.96              | 82.31                     | 823,100.00              | G                 |
| 77538          | Exec Dir Proj - Strategy               | 20,228.64                  | 136.68               | 32.64                 | 2.04                      | 20,400.00               | G                 |
|                | March Year-end accrual                 | 2,886,356.22               | 19,502.41            | 4,657.29              | 291.08                    | 2,910,807.00            |                   |
|                | <b>TOTAL (ABOVE THE LINE)</b>          | <b>\$ 13,012,476.26</b>    | <b>\$ 87,922.14</b>  | <b>\$ 20,996.33</b>   | <b>\$ 1,312.27</b>        | <b>\$ 13,122,707.00</b> |                   |
| 77009          | Corp Strat Dir & Support               | \$ 157,565.24              | \$ 1,064.63          | \$ 254.24             | \$ 15.89                  | \$ 158,900.00           | Gb                |
| 77012          | Director's Executive Support           | 262,873.16                 | 1,776.17             | 424.16                | 26.51                     | 265,100.00              | Gb                |
| 77015          | Strategic Planning                     | 149,235.80                 | 1,008.35             | 240.80                | 15.05                     | 150,500.00              | Gb                |
| 77240          | Reward                                 | 4,263.88                   | 28.81                | 6.88                  | 0.43                      | 4,300.00                | SMG               |
| 77440          | Taxation                               | 1,983.20                   | 13.40                | 3.20                  | 0.20                      | 2,000.00                | Gb                |
| 77441          | Finance Dir & Support                  | 396.64                     | 2.68                 | 0.64                  | 0.04                      | 400.00                  | Gb                |
| 77534          | Exec Dir Proj - Finance                | 991.60                     | 6.70                 | 1.60                  | 0.10                      | 1,000.00                | Gb                |
| 77538          | Exec Dir Proj - Strategy               | 80,418.76                  | 543.37               | 129.76                | 8.11                      | 81,100.00               | Gb                |
| 77491          | LTIP Amortization                      | 1,209,256.20               | 8,170.65             | 1,951.20              | 121.95                    | 1,219,500.00            | LTIP              |
|                | <b>TOTAL (BELOW THE LINE)</b>          | <b>\$ 1,866,984.48</b>     | <b>\$ 12,614.76</b>  | <b>\$ 3,012.48</b>    | <b>\$ 188.28</b>          | <b>\$ 1,882,800.00</b>  |                   |
|                | <b>TOTAL</b>                           | <b>\$ 14,879,460.74</b>    | <b>\$ 100,536.90</b> | <b>\$ 24,008.81</b>   | <b>\$ 1,500.55</b>        | <b>\$ 15,005,507.00</b> |                   |

Expenses Incurred From ScottishPower - International Assignees **\$ 3,423,953.66**  
**TOTAL Expenses Incurred From ScottishPower \$ 18,303,414.40**

Expenses Recharged to ScottishPower - Group Corporate Cost Recharge (GCCR) **\$ 2,079,120.34**

Expenses Recharged to ScottishPower - International Assignees **\$ 902,577.80**  
**TOTAL Expenses Recharged to ScottishPower \$ 2,981,698.14**

**Net Expense Incurred From ScottishPower \$ 15,321,716.26**

**Allocation Methods**

G - the allocation method used for costs of a Group nature, and are allocated based on a four factor formula.

Gb - the allocation method used for costs of a Group nature but, for US purposes, this cost should be charged "Below The Line."

SMG - Senior Management Group and specific cost centers are allocated based on the proportionate membership of the SMG, be it UK Division, PPW, PPM etc.

AQ - Atlantic Quay. Allocation rate derived from this reflects weighting of allocation rates of Group departments' at AQ based on headcount.

CIRC - These costs relate to the Staff Magazine, "One" and are allocated based on headcount.

ITBS - IT Business Services. Allocation rate derived from this reflects weighting of allocation rates of Group departments' at ITBS based on headcount.

AVO - Avondale. Allocation rate derived from this reflects weighting of allocation rates of Group departments' at Avondale based on headcount.

LTIP - Long-term Incentive Plan. As with SMG, the allocation is relative to split of membership.