

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE JOINT)
APPLICATION OF MIDAMERICAN) CASE NO. PAC-E-05-8
ENERGY HOLDINGS COMPANY (MEHC))
AND PACIFICORP DBA UTAH POWER &)
LIGHT COMPANY FOR AN ORDER)
AUTHORIZING MEHC TO ACQUIRE) ORDER NO. 29973
PACIFICORP)**

On July 15, 2005, PacifiCorp dba Utah Power & Light Company (“PacifiCorp”) and MidAmerican Energy Holdings Company (“MidAmerican”) filed a Joint Application requesting that the Commission authorize MidAmerican’s acquisition of PacifiCorp. PacifiCorp is a public utility subject to the Commission’s jurisdiction and provides retail electric service to nearly 60,000 customers in southeastern Idaho. At present, PacifiCorp is a wholly-owned subsidiary of Scottish Power plc.

If the Joint Application is approved, PacifiCorp would become an indirect, wholly-owned subsidiary of MidAmerican. MidAmerican’s principal owner is Berkshire Hathaway, Inc. The Applicants must obtain approval from the Idaho Commission and the regulatory commissions of the other five states where PacifiCorp provides electric service for MidAmerican to acquire PacifiCorp. In addition, the acquisition must also be approved by several federal agencies including the Federal Energy Regulatory Commission (FERC).¹

On August 18, 2005, the Commission issued its Notice of Application setting this matter for hearing. On December 16, 2005, most of the parties in this proceeding executed a settlement Stipulation urging the Commission to approve the Joint Application conditioned upon 76 “commitments.” On January 17, 2006, the Commission convened a technical hearing to consider the Stipulation. Based upon our review of the Joint Application, the settlement Stipulation, the testimony of the parties and the public comments, the Commission approves the acquisition conditioned upon the commitments incorporated in this Order.

¹ The Wyoming and Utah Commissions approved the acquisition on January 26 and 27, 2006, respectively. FERC authorized the transaction on December 20, 2005 in Docket No. EC05-110-000, 113 FERC ¶ 61,298 (2005), *rehearing granted* (for limited purpose of further consideration), 113 FERC ¶ _____ (Feb. 6, 2006).

THE APPLICATION

A. The Transaction

On May 23, 2005, ScottishPower and its wholly-owned subsidiary directly holding PacifiCorp's common stock, PacifiCorp Holdings, Inc. ("PHI"), entered into a "Stock Purchase Agreement" providing for the sale of all PacifiCorp common stock to MidAmerican. The sale of the common stock is valued at approximately \$9.4 billion, consisting of approximately \$5.1 billion in cash plus approximately \$4.3 billion in net debt and preferred stock that will remain outstanding at PacifiCorp. Application at 6.

MidAmerican is an Iowa corporation whose ownership, as of January 31, 2005, was as follows: Berkshire Hathaway, Inc. (83.75% economic interest); Walter Scott, Jr., including family interest, (15.89% economic interest); David Sokol (0.25% economic interest); and Greg Abel (0.11% economic interest). On a diluted basis the economic interest would be as follows: Berkshire Hathaway (80.48% economic interest); Walter Scott, Jr., including family interest, (15.27% economic interest); David Sokol (2.91% economic interest); and Greg Abel (1.34% economic interest). *Id.* at 3.

When the Joint Application was filed, Berkshire Hathaway held 9.9% of the voting stock ownership of MidAmerican and 41,263,395 shares of MidAmerican's zero coupon convertible preferred stock. *Id.* This preferred stock was convertible to MidAmerican common shares at the option of Berkshire Hathaway under specific circumstances. One such circumstance is the repeal or amendment of the Public Utility Holding Company Act of 1935 (PUHCA) such that the conversion of preferred stock would not cause Berkshire Hathaway to become regulated as a registered holding company.

On August 17, 2005, the Applicants filed a "Revised" Application and testimonies.² The revisions were prompted in part by the President's signing of the Energy Policy Act of 2005 on August 8, 2005. Section 1275 of Title XII (the Electricity Modernization Act of 2005) repeals PUHCA effective six months after the date of enactment, i.e., February 8, 2006. After the effective date of the PUHCA repeal Berkshire Hathaway exercised its right to convert the zero coupon convertible preferred stock. Thus, Berkshire Hathaway's voting interest now corresponds to its ownership interest. *Id.* at 4.

² The "revisions" consist of revised (replacement) pages to the Joint Application and the accompanying prefiled testimonies and exhibits. The prefiled testimony of Company witness Jeffrey Gust is withdrawn as well as Exhibit Nos. 8 and 14.

MidAmerican has established a direct subsidiary limited liability company referred to as PPW Holdings, LLC (“PPW”). PPW will receive an equity infusion of approximately \$5.1 billion raised by MidAmerican through the sale of either common stock or convertible preferred stock to Berkshire Hathaway and the issuance of long-term senior notes, preferred stock or other securities with equity characteristics, to third parties. The transaction is not conditioned on such financing and if funds are not available from third parties, Berkshire Hathaway is expected to provide any required funding. PPW will have no debt of its own for this transaction. *Id.* at 6.

The Stock Purchase Agreement provides that PPW will pay PHI \$5.1 billion in cash at closing in exchange for 100% of the common stock of PacifiCorp. In addition, approximately \$4.3 billion in net debt and preferred stock currently outstanding at PacifiCorp will remain outstanding as liabilities of PacifiCorp. The transaction is subject to customary closing conditions, including approval of the transaction by the shareholders of ScottishPower and the receipt of required state and federal regulatory approvals. *Id.*

The sale of PacifiCorp’s common stock to MidAmerican will also include transfer of control of several PacifiCorp subsidiaries. *Id.* The subsidiaries consist primarily of mining companies and companies created to handle environmental remediation and generate carbon-offset credits. These other companies include Centralia Mining Company, Energy West Mining Company, Glennrock Coal Company, Interwest Mining Company, Pacific Minerals, Inc., Bridger Coal Company, PacifiCorp Environmental Remediation Company, PacifiCorp Future Generations, Inc., Canopy Botanicals, Inc., Canopy Botanicals SRL, PacifiCorp Investment Management, Inc., and Trapper Mining, Inc. *Id.* at 7.

B. Plans for Operating PacifiCorp

The Joint Application stated that MidAmerican and its primary investor, Berkshire Hathaway, customarily acquire “a business with the intention of holding and investing in the business for the long term, where such investments are fair to customers, employees and shareholders.” Application at 7. The Joint Application further recited that

energy investments are stable investments and, if operated correctly, provide opportunities for fair and reasonable returns. The proposed acquisition of PacifiCorp advances [MidAmerican’s] focus on owning and operating a portfolio of high-quality energy businesses with capable management already in place and a strong emphasis on customer satisfaction, reliable service,

employee safety, environmental stewardship and regulatory/legislative credibility.

Id.

The Applicants project that PacifiCorp's service territories will require investments of at least \$1 billion per year, for the next five years, in order to assure reliable electric service. *Id.* MidAmerican asserted it is "uniquely suited" to undertake such investments. MidAmerican noted it is "privately held and not subject to shareholder expectations of regular, quarterly dividends and relatively fast returns on investments." *Id.* at 8. Focusing on significant, long-term investment "should provide PacifiCorp customers, employees, the public and regulators with valuable stability, permitting PacifiCorp's management and employees to apply their full attention to exceeding customer expectations." *Id.*

PacifiCorp's headquarters will remain in Portland, Oregon. All of PacifiCorp's financial books and records will be retained in Portland, and will continue to be available to this Commission. The Applicants stated there are no plans for a reduction in work force as a result of this transaction. MidAmerican will also renew and extend the commitments that have previously been made by PacifiCorp as part of the ScottishPower merger case, PAC-E-99-1 (Order No. 28213). *Id.* at 9.

The Applicants maintain that MidAmerican's acquisition of PacifiCorp will result in an owner of PacifiCorp with significant financial strength, expertise in utility operations and business planning, and a focus on improving reliability and business operations over the long term. *Id.* at 9. MidAmerican claimed it has experience with operating in a diverse service area, with states that have opted for competitive retail services as well as states that have opted for the traditional model of regulated retail electric service. MidAmerican intends to maintain separate debt ratings for PacifiCorp. Moreover, the Applicants expect the transaction will have a positive impact on PacifiCorp's bond ratings and financing costs. *Id.* at 8.

MidAmerican is a privately held Iowa corporation engaged primarily in the production and delivery of energy from a variety of fuel sources including: coal, natural gas, geothermal, hydroelectric, nuclear, wind and biomass. MidAmerican has six major business operations including: MidAmerican Energy Company; CalEnergy Generation; Kern River Gas Transmission Company; Northern Natural Gas Company; CE Electric UK Funding plc; and HomeServices of America, Inc.

C. Financial Strength

The Applicants state MidAmerican has access to significant financial and managerial resources through its relationship with Berkshire Hathaway. Berkshire Hathaway has a debt rating of AAA. MidAmerican has global assets totaling approximately \$20 billion with 2004 revenues totaling \$6.6 billion. As of March 31, 2005, on a consolidated basis (PacifiCorp and MidAmerican), MidAmerican's pro forma combined assets would be approximately \$34 billion, and pro forma combined revenues would be \$9.6 billion. *Id.* at 11.

The senior debt of MidAmerican's United States energy subsidiaries (MidAmerican Energy, Kern River and Northern Natural Gas) are all "A-" rated by the major credit rating agencies. All of MidAmerican's senior debt also holds investment grade ratings from the three major bonding rating agencies (BBB- by Standard & Poor's (S&P), Baa3 by Moody's and BBB by Fitch). *Id.*

After announcement of the proposed transaction, the three credit rating agencies noted that MidAmerican's senior unsecured debt was rated stable and positive. Moody's and Fitch also characterized PacifiCorp's credit rating as stable with an improving future. Although S&P placed PacifiCorp's debt on "CreditWatch," S&P also expressed its intention to review its rating as the transaction progresses. *Id.* at 12.

D. Public Interest

The Applicants maintain the transaction is consistent with the public interest and will benefit Idaho and PacifiCorp's customers in Idaho. *Id.* at 15. The Applicants claim, "the transaction will not increase the percentage of rate increases in PacifiCorp's existing projections. Thus, costs and rates for supplying service in Idaho will not be increased by reason of the transaction." *Id.* at 16. The Applicants also assert that MidAmerican will continue state-specific commitments given by PacifiCorp as part of the ScottishPower merger. *Id.* MidAmerican is poised to invest a significant amount of capital to ensure PacifiCorp has the infrastructure necessary for the provision of reliable and economic electric service.

MidAmerican intends to own PacifiCorp for the long term leading to stability in ownership and investment in infrastructure. The Applicants further state MidAmerican has a demonstrated willingness to invest in a diverse mix of generating technologies, energy efficiencies, demand-side management technologies, and environmental technologies. Diversifying PacifiCorp's generating resources, improving its environmental performance and

balancing reliance on generation with technology that manages the demand for power and energy, will further the energy security of the region. *Id.* at 17.

E. Requested Timing of the Transaction

The Applicants requested that the Commission complete its review of the proposed transaction no later than February 28, 2006. An Order issued no later than February 28 would allow the parties to complete the transaction on or before March 31, 2006. *Id.* at 2. They maintain that closing on or before March 31 will facilitate the transition of PacifiCorp's financial reporting from a fiscal year ending March 31 (the ScottishPower approach) to a calendar fiscal year consistent with MidAmerican's financial statements. MidAmerican asserts that calendar year reporting is consistent with its regulatory reporting and should enable the Commission to utilize a single year's audited financial statements rather than having regulatory reporting span across two fiscal years. *Id.* at 2.

PROCEDURAL HISTORY

A. The Parties

The Commission's Order No. 29846 set a deadline for intervention and directed that parties informally convene to develop a schedule for processing this case. Besides the Applicants, the following parties were granted intervention:

PacifiCorp	James M. Van Nostrand Stoel Rives LLP
MidAmerican Energy Holdings Company	Douglas L. Anderson Mark C. Moench
Commission Staff	Donald L. Howell, II Deputy Attorney General
Monsanto Company	Randall C. Budge Racine, Olsen, Nye, Budge & Bailey, Chartered
Idaho Power Company	Barton L. Kline Monica B. Moen
Idaho Irrigation Pumpers Association, Inc.	Eric. L. Olson Racine, Olsen, Nye, Budge & Bailey, Chartered

The Community Action Partnership
Association of Idaho

Brad M. Purdy

IBEW Local 57

Arthur F. Sandack
Alan Herzfeld
Herzfeld & Piotrowski LLP

J.R. Simplot Company

R. Scott Pasley

B. Proceedings

On September 7, 2005, the parties convened a telephonic prehearing conference. The parties participating in the conference call agreed on a proposed schedule that was subsequently adopted by the Commission in Order No. 29867. Pursuant to the Commission's scheduling Order, a technical workshop was convened on October 4, 2005. The parties held two settlement conferences on November 2 and December 8, 2005. Most of the parties or their representatives attended or participated in at least one of the settlement conferences. As a result of the settlement negotiations, a settlement Stipulation was filed on December 16, 2005.

On December 20, 2005, the Commission Staff and the Community Action Partnership filed testimony in support of the settlement Stipulation. On January 6, 2006, the Applicants filed testimony in support of the settlement Stipulation and the Joint Application. On January 5, 2006, the Commission issued Order No. 29942 serving as a public notice that the parties had entered into a settlement Stipulation. In its Order, the Commission invited public comment regarding the Stipulation or the Joint Application be filed no later than January 19, 2006. The Commission determined that the public hearings were unnecessary and that the request for public comment will allow members of the public to provide their views on the settlement Stipulation and the Joint Application. Order No. 29942 at 3. The Commission convened its technical hearing on January 17, 2006.

THE STIPULATION

In the Stipulation, participating parties reached settlement regarding the issues in this proceeding and recommended that the Commission approve the Joint Application. The parties joining in the Stipulation include: MidAmerican, PacifiCorp, Commission Staff, Community Action Partnership Association of Idaho, Idaho Irrigation Pumpers Association, J.R. Simplot

Company and Monsanto.³ The settlement Stipulation contains 76 “commitments” or conditions that the Applicants or other named parties commit to perform in support of the Application. The commitments are comprised of two groups: 50 general commitments applicable to all states and 26 Idaho-specific commitments. The Stipulation parties assert that the commitments satisfy the statutory standards for MidAmerican’s acquisition of PacifiCorp as set out in *Idaho Code* § 61-328. Stipulation at ¶ 9. In the Motion that accompanied the Stipulation, the parties urged the Commission to adopt the Stipulation, its commitments, and issue an Order approving the acquisition.

The settlement Stipulation also contains a “most favored nations” provision. Stipulation at ¶ 7. This provision allows the Commission to review and adopt any commitment or condition ordered by the other five states, even after this Order is issued. In other words, any assurances, conditions or benefits adopted in the other five states that would create a benefit to Idaho customers could subsequently be adopted in Idaho under the terms of the Stipulation.

The parties to the Stipulation recommend that the Commission approve and adopt the commitments in their entirety. They further agree not to appeal any portion of the Stipulation or any Order approving the same. The Stipulation parties also recognize that approval of the Stipulation and commitments shall not bind the Commission “in other proceedings with respect to the determination of prudence, just and reasonable character, rate or ratemaking treatment, or public interest of services, accounts, costs, investments, in any particular construction project, expenditures or actions referred to in [the] Commitments.” *Id.* at ¶ 12.

THE TECHNICAL HEARING AND PUBLIC COMMENTS

The following parties entered appearances at the technical hearing: the Applicants, Commission Staff, the Community Action Partnership Association of Idaho (CAPAI), and Monsanto. Four witnesses testified in support of the settlement Stipulation at the technical hearing. The Applicants presented two witnesses, and the Commission and CAPAI each presented one witness.

1. The Applicants. The first witness to testify was Brent Gale, Senior Vice President of Legislation and Regulation for MidAmerican Energy Company. Mr. Gale explained that

³ Although it is not a signatory, Idaho Power Company did not oppose settlement of this matter or the terms of the Stipulation. Stipulation at n.1. The IBEW Local 57 did participate in the settlement discussion but did not appear at the technical hearing to oppose the Joint Application or Stipulation. Motion for Approval of Stipulation at n.1.

General Commitments 1 through 32 were the “hold-harmless commitments that are a continuation from the ScottishPower-PacifiCorp transaction.” Tr. at 41. He described the remaining general commitments as providing “net benefits” to the states where PacifiCorp does business.⁴ Tr. at 43. The latter general commitments generally address investments and initiatives that the Applicants will implement after the transaction is completed.

Mr. Gale did take exception to a recommendation contained in Staff witness Terri Carlock’s supplemental testimony. She proposed that the Commission adopt a condition in the Oregon stipulation that any shareholder who owns more than five percent of an acquiring company will not exercise control on matters pertaining to PacifiCorp. *See* Tr. at 107. He explained that two of the four shareholders of MidAmerican Energy Holdings Company are Warren Buffett and Walter Scott, Jr. Treating these two individuals as “applicants” could be “particularly problematic” if the statute were read to require the Oregon Commission’s approval before these individuals could transfer their interest in MEHC, e.g., for estate planning purposes. Tr. at 46. Consequently, he recommended that the Commission not adopt this provision contained in the Oregon stipulation. Tr. at 47-48. Ms. Carlock agreed that this condition is not required. Tr. at 109.

The Applicants’ other witness was Mark Moench, Senior Vice President – Law for MEHC. He discussed several of the Idaho-specific commitments and their benefit to Idaho ratepayers. In particular, he noted that Idaho-specific Commitment 1 obligates PacifiCorp to continue having a dedicated irrigation specialist in Idaho. Tr. at 80. In Idaho-specific Commitment 22, the Company commits to setting up a process to address the technical, economic and planning issues associated with integrated gasification combined cycle (IGCC) technology. The Company will form a working group to develop and share information concerning IGCC technology. Tr. at 81.

He also explained Idaho-specific Commitment 18 requires that the acquisition premium for the transaction be recorded in the accounts of MEHC and not in PacifiCorp’s accounts. Tr. at 82. The “only way that the acquisition premium could ever be included in PacifiCorp’s rates would be if PacifiCorp affirmatively proposed to include the premium in retail rates and the Commission agreed.” *Id.*

⁴ General Commitment 33 is a procedural commitment.

2. CAPAI. Teri Ottens, the Policy Director for CAPAI, testified in support of the settlement Stipulation. In particular, she supported Idaho-specific Commitment Nos. 13 through 15 as improvements to PacifiCorp's low-income and weatherization programs. Tr. at 69-70. While CAPAI believes that PacifiCorp can do more to support the low-income weatherization and the low-income billing assistance program (Lend-a-Hand), she recognized the Applicants have committed to improving the programs and will address these issues in the next rate case. Tr. at 69.

3. Staff. The final witness at the technical hearing was Staff witness Carlock. She too testified in support of the settlement Stipulation. She stated that the Idaho commitments satisfied the statutory standards set out in *Idaho Code* § 61-328. The acquisition is in the public interest because Idaho customers are benefited by the Applicants' "capital commitments, ongoing customer guarantees, access to books and records, ring-fencing provisions, and guaranteed reduced cost of debt." Tr. at 93. She also asserted that the cost of and rates for PacifiCorp service will not increase due to the acquisition itself. Tr. at 94. She noted several commitments require that the acquisition premium and other costs be excluded from PacifiCorp's accounts. Based upon her review of the annual financial statements and reports, statements of regulatory accounts, due diligence reports, disclosure letters, board meeting minutes, and the production request responses in this case, she concluded the Applicants have the bona fide intent and financial ability to operate and maintain PacifiCorp's delivery of service to Idaho customers. Tr. at 95.

She also urged the Commission to modify some of the existing Idaho commitments in Staff Exhibit 101 to reflect the recent stipulation in Oregon. Tr. at 101. She recommended modification of General Commitment Nos. 11, 17, 18, 22, 37, 38, and 48. She proposed adding two new General Commitment Nos. 51 and 52. These general commitments reflect the ownership transfer to PacifiCorp of Intermountain Geothermal Company and associated steam rights. These commitments will eliminate some affiliate transactions and future costs for steam purchases at the Blundell geothermal facility. See Staff Exhibit 102 at 3.

She explained the proposed change to General Commitment 11 clarifies the ring-fencing provision and Commitment 17 clarifies obtaining unrestricted access to information and documents used for credit rating purposes. Tr. at 102. General Commitment 18 provides additional detail related to the restrictions on dividend payments. General Commitment Nos. 22,

37 and 38 are deleted and intentionally left blank. They are replaced with four Oregon commitments now found in Idaho-specific Commitment Nos. 28, 30, 31, and 32. Tr. at 103; Staff Exh. 102. Finally, General Commitment 48 is modified to add the cross-reference to Commitment No. 52.

In addition to the general commitments, she also recommended that the Idaho Commission adopt in whole or in part Oregon-specific Commitment Nos. 5, 7-12, 14-18, 21, and 22. Tr. at 103. In particular, she noted that adoption of the Oregon-specific Commitment 22 would increase the annual contribution to the Idaho Lend-a-Hand program to \$40,000 and eliminate the matching requirement. She also noted that adoption of the Oregon-specific commitments would provide rate credits to the benefit of Idaho customers of approximately \$640,000 annually for test years 2006 and 2007. Staff Exh. 102, I-27 and I-31. Idaho-specific Commitments 28-30 would guarantee that “approximately \$820,000 annually in costs will not be reflected in Idaho rates for test years 2006 through 2010 with approximately \$380,000 annually thereafter.” Tr. at 106.

4. Public Comments. The Commission received five written comments, four supporting the proposed acquisition and one offering no opinion. The four comments supporting the transaction all noted that, if approved, PacifiCorp would gain better access to capital resources. They also stated MidAmerican and PacifiCorp both have similar priorities to providing exceptional customer service.

DISCUSSION AND FINDINGS

A. Standard of Review

The Commission has jurisdiction over this transaction pursuant to *Idaho Code* § 61-328. This section prohibits MidAmerican from acquiring PacifiCorp without the written authorization of the Commission. Before authorizing such a transaction, the Commission must find that: (1) the transaction is consistent with the public interest; (2) the transaction will not cause the cost of or rates for supplying electrical service to increase; and (3) that MidAmerican has the bona fide intent and financial ability to operate and maintain PacifiCorp’s operations in Idaho. *Idaho Code* § 61-328(3). The Commission may also attach such “other terms and

conditions as in its judgment the public convenience and necessity may require.”⁵ *Idaho Code* § 61-328(4).

B. Findings

Based upon our review of the record in light of the standards set out above, we find that the Applicants have met their burden of demonstrating that the acquisition of PacifiCorp by MEHC meets the statutory standards. We begin our analysis by noting the lack of any opposition to this transaction. This is our third merger/acquisition transaction concerning Utah Power & Light and the least contentious. Most of the parties in this proceeding entered into a comprehensive settlement Stipulation that provides significant benefits to PacifiCorp’s Idaho ratepayers. We commend the parties for their diligent work in this case and addressing the concerns of Idaho ratepayers.

Taken as a whole, we find the general and Idaho-specific commitments attached to this Order satisfy the public interest standard. The hold-harmless commitments will foster ongoing customer guarantees, insure continued access to books and records, and implement important ring-fencing protections. As Staff witness Carlock testified ring-fencing provisions isolate the credit risks of PacifiCorp from the credit risks of MEHC and other affiliates. Her recommendation to amend General Commitment 11, along with other commitments, clarifies and strengthens the ring-fencing provisions. We further find that the commitments addressing low-income assistance, low-income weatherization programs, conservation, DSM, and new coal technology will focus the Applicants’ attention on Idaho ratepayers.

We further find that MidAmerican’s acquisition of PacifiCorp will not cause an increase in the rates for electric service. The adopted commitments provide that the acquisition premium is not on PacifiCorp’s books. Idaho ratepayers will have access to lower-cost capital. Idaho-specific Commitments 26-31 provide additional protections for rates in the form of hold-harmless clauses and rate credits. Idaho customers will be the beneficiaries of \$640,000 in rate credits for 2006 and 2007. In addition, approximately \$820,000 per year in expenses will not be reflected in Idaho rates for 2006 through 2010 with additional cost savings thereafter. Obtaining these rate credits and cost savings now will capture benefits for Idaho ratepayers.

⁵ Before approving any acquisition, the Commission must also include any condition required by the director of the Department of Water Resources under *Idaho Code* § 42-1701(6). Idaho-Specific Commitment No. 2 provides that the Applicants will continue to abide by existing water rights agreements. *See* Condition Nos. 19 & 20, Order No. 28213 at 11 (ScottishPower-PacifiCorp transaction).

Finally, we find that the Applicants have the bona fide intent and financial ability to operate and maintain PacifiCorp's electric service to Idaho ratepayers. As indicated by the parties, one of the advantages of the acquisition is PacifiCorp's greater access to capital. General Commitments 34 and 35 both reflect the Applicants' pledge to making investments in both transmission and distribution. MidAmerican already operates energy companies in other regions of the United States and provides service to nearly 1.4 million electric and natural gas customers. MidAmerican Energy operates coal plants, natural gas and oil plants, a large wind project, hydroelectric facilities, biomass facilities and nuclear facilities. Tr. at 15.

We now turn to the one area of contention. We decline to adopt the Staff's proposed condition from paragraph 10 of the Oregon stipulation. This specific condition is based upon an Oregon statute. There is no similar Idaho statute and, therefore, adoption of this condition is not necessary.

In summary, we conclude that MidAmerican's acquisition of PacifiCorp meets the standards set out in *Idaho Code* § 61-328(3). We find it reasonable to approve the Stipulation and the commitments as modified in Staff Exhibit 102. The "most favored nations" provision of the Stipulation also allows the Commission to subsequently adopt commitments ordered in the remaining state proceedings. We expect the Staff and other parties to apprise us if there are new or modified commitments that would benefit Idaho ratepayers.

ORDER

IT IS HEREBY ORDERED that the Joint Application filed by MidAmerican Energy Holdings Company and PacifiCorp dba Utah Power & Light Company is approved as conditioned by the commitments attached to this Order. The Commission recognizes under the "most favored nations" provision of the Stipulation the commitments may be amended based upon the orders issued in the other five (5) states.

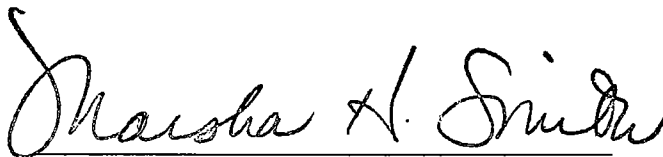
IT IS FURTHER ORDERED that the settlement Stipulation and commitments (as amended by Staff's review of the Oregon commitments) are accepted and adopted.

THIS IS AN INITIAL FINAL ORDER. Any person interested in this Order or in issues decided in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 13th
day of February 2006.



PAUL KJELLANDER, PRESIDENT

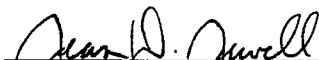


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

b1s/O:PAC-E-05-08_dh5

**MEHC Acquisition of PacifiCorp
Idaho**

Consolidated List of Commitments

Commitments Applicable to All States

- 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)
 - a) 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. This condition will not prohibit MEHC or its affiliates other than PacifiCorp from holding diversified businesses.
 - b) Ring-fencing provisions for PPW Holdings LLC will include the provisions in Appendix 1. These provisions have been derived from those in effect for NNGC Acquisition, LLC as of December 1, 2005.
- 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.

