

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**IN THE MATTER OF THE)
APPLICATION OF MIDAMERICAN)
ENERGY HOLDINGS COMPANY AND)
PACIFICORP DBA UTAH POWER &)
LIGHT COMPANY FOR AN ORDER)
AUTHORIZING PROPOSED)
TRANSACTION**

Docket No. 05-035-54

**STIPULATION TESTIMONY
OF MARK C. MOENCH**

DECEMBER 2, 2005

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

2 A. My name is Mark C. Moench and my business address is 201 South Main Street,
3 Suite 2300, Salt Lake City, Utah

4 **Q. By whom are you employed and in what position?**

5 A. I am the Senior Vice President, Law, for MidAmerican Energy Holdings
6 Company (“MEHC”).

7 **Q. Please summarize your education and business experience.**

8 A. I received a B.A. degree from the University of Utah in 1978 and a J.D. degree,
9 from the California Western School of Law, in 1981. My experience in the
10 energy industry covers a twenty-two (22) year time span. I served as an Assistant
11 Attorney General for the State of Utah from 1981 to 1987, representing among
12 other state agencies, the Division of Public Utilities (“Division”) and the Board of
13 Oil, Gas and Mining. Thereafter I joined the Williams Companies, Inc. in 1987,
14 where I held positions as senior attorney for Northwest Pipeline Corporation,
15 general counsel for Kern River Gas Transmission Company (Kern River) and
16 finally senior counsel for the pipeline holding company, Williams Gas Pipeline
17 Company. Upon the acquisition of Kern River by MEHC in 2002, I served as
18 Vice President and General Counsel at Kern River until named to my present
19 position this year.

20 **Purpose and Summary of Testimony**

21 **Q. What is the purpose of your testimony?**

22 A. On July 15, 2005, MEHC and PacifiCorp (jointly referred to as the “Applicants”)
23 filed an application and supporting testimony with the Commission for

1 authorization of a transaction whereby MEHC would acquire all of the
2 outstanding common stock of PacifiCorp (“Transaction”), and PacifiCorp would
3 thereafter become an indirect wholly-owned subsidiary of MEHC. During the
4 months since that filing, the Division, the Committee of Consumer Services
5 (“Committee”), and other parties have, together with the Applicants, engaged in
6 technical conferences and settlement discussions in an attempt to understand and
7 reach agreement on the issues in this proceeding.

8 As a result of that process, the Applicants, the Division, the Committee,
9 the Utah Industrial Energy Consumers (“UIEC”), the Utah Association of Energy
10 Users (“UAE”), Utah Clean Energy, and Western Resource Advocates have
11 reached a stipulation (“Stipulation”) regarding the issues in this proceeding. That
12 Stipulation was filed with the Commission on November 18, 2005.

13 The purpose of my testimony is to describe the Stipulation and to explain
14 why its terms are just, reasonable and in the public interest. A copy of the
15 Stipulation is attached to my testimony as Exhibit UP&L ____ (MCM-1).

16 **General Description of Stipulation and Commitments**

17 **Q. Please generally describe the Stipulation.**

18 A. In their direct testimony, the Applicants provided evidence that the Transaction is
19 in the public interest, including an offer to adopt a set of commitments based upon
20 the commitments adopted in this and other jurisdictions from the prior transaction
21 (i.e., Scottish Power’s acquisition of PacifiCorp). In addition, the Applicants
22 offered numerous new commitments involving generation options, transmission
23 investment, clean air investment, energy efficiency, and customer service among

1 other subjects. While the parties that participated in the technical conferences and
2 settlement discussions recognized the benefits of those commitments, they raised
3 some additional issues they thought should be addressed by the Applicants. The
4 Stipulation addresses and resolves those issues in a way which, the parties to the
5 Stipulation agree, satisfies the standard in Utah for approval of the Transaction.

6 **Q. Please generally describe the commitments included in the Stipulation.**

7 A. The commitments included in Appendix A to the Stipulation are comprised of the
8 commitments offered in the Applicants' direct testimony with, in some cases,
9 modifications to address issues raised by the parties; new commitments entered
10 into by the Applicants that apply to all PacifiCorp's jurisdictions; and new Utah-
11 specific commitments that either apply only to the Applicants' activities and
12 operations in Utah or could be extended to other states at their option. Under the
13 terms of the Stipulation, the Applicants agree to perform all of the commitments
14 set forth in Appendix A according to the provisions of each commitment. These
15 Stipulation commitments are intended to supersede the commitments from the
16 prior transaction and the commitments offered in the Applicants' direct testimony.

17 The commitments are only binding upon MEHC, PacifiCorp and, where
18 noted, their affiliates. The commitments have been offered by MEHC and
19 PacifiCorp to ensure that the transaction provides benefits to customers, addresses
20 identified concerns and risks, creates no harm to the public interest, and otherwise
21 satisfies the regulatory requirements for approval of the transaction. MEHC and
22 PacifiCorp will not allege in any future proceeding before the Commission or the
23 courts that by approving or agreeing to the Stipulation and the transaction the

1 Commission or the signatories agreed to waive any right to assert or adopt such
2 positions regarding the prudence, just and reasonable character, rate or ratemaking
3 impact or treatment, or public interest as they deem appropriate pertaining to the
4 commitments.

5 In the event MEHC and PacifiCorp determine that a commitment ceases to
6 be in the public interest or otherwise should be eliminated or modified, MEHC
7 and PacifiCorp will file with the Commission for approval of the elimination or
8 modification, serving copies of the filing upon all parties to this proceeding.

9 **Q. Does the Stipulation include provisions to address the expansion or**
10 **modification of commitments in other jurisdictions?**

11 A. Yes. We anticipated the Utah parties' concerns regarding the potential
12 uncertainty of Utah being one of the first jurisdictions to hold hearings and to,
13 hopefully, issue an order approving the Transaction. In order to address those
14 concerns, the Stipulation provides that the Commission shall have the opportunity
15 and authority to consider and adopt commitments or conditions accepted by the
16 Applicants or ordered in another state jurisdiction. Paragraph 10 of the
17 Stipulation provides a proposed process to facilitate the Commission's and the
18 parties' prompt consideration and adoption of out-of-state commitments. This
19 process is based on the recognition that the Transaction cannot close until final
20 state orders have been issued.

21 **Utah-Specific Commitments**

22 **Q. Please discuss some of the Utah-specific commitments included in the**
23 **Stipulation, starting with those that deal with local presence issues.**

1 A. Local presence was one of the areas of concern identified by this Commission and
2 the parties in our early discussions. In order to address those concerns, Appendix
3 A to the Stipulation includes Utah-specific commitments on staffing
4 (Commitments U 5 through U 8).

5 For example, Commitment U 6 responds to the parties' concerns regarding
6 the need for a specified process and schedule for the implementation of plans to
7 increase the number of corporate and senior management positions in Utah. The
8 commitment requires the Applicants to file a plan with the Commission by
9 September 1, 2007, setting forth the positions to be located in Utah, the time
10 frame for implementation of the plan and economic analysis supporting the cost-
11 effectiveness of the plan.

12 Similarly, Commitment U 7 responds to the parties' concerns regarding
13 local decision-making authority. That commitment specifies that the Applicants
14 will authorize senior management personnel located in Utah to make decisions
15 regarding local issues and to address resource and contract issues important to
16 Utah customers.

17 **Q. Please discuss the Utah-specific commitments that deal with IGCC**
18 **(“Integrated Gasification Combined Cycle”) issues.**

19 A. Utah-specific Commitments U 15 and U 16, which are found on pages 13 and 14
20 of Appendix A to the Stipulation, set up a process to address various policy,
21 technical, economic and planning issues associated with IGCC technology.

22 Commitment U 15 provides for the formation of an IGCC Working Group
23 to discuss, consider, share information regarding and develop a common

1 understanding of issues associated with IGCC technology, including the benefits,
2 costs and risks of that technology.

3 Under Commitment U 16, the Applicants agree to perform and present
4 studies of the economics, viability and timeline ranges for an IGCC resource
5 option in the ongoing RFP Docket No. 05-035-47. In addition, the Applicants
6 agree that PacifiCorp will include an IGCC self-build option in any RFPs to meet
7 non-renewable resource needs for 2014 or later and will present its evaluation of
8 that option in the SB 26 process. The evaluations will include consideration of
9 the availability of tax credits and other government funding for IGCC.

10 These commitments will facilitate the development and sharing of
11 information between interested parties regarding this technology, including
12 information regarding the development of IGCC resources, and should benefit
13 PacifiCorp's resource planning process.

14 **Q. Please discuss the rate case schedule provisions included in Utah-specific**
15 **Commitment U 23.**

16 A. Utah-specific Commitment U 23, which is found on page 15 of Appendix A to the
17 Stipulation, addresses what I characterize as a timing concern. PacifiCorp intends
18 to file its next general rate case by March 1, 2006. Because that filing may pre-
19 date the closing of the Transaction, the parties wanted PacifiCorp to file
20 supplemental testimony by an MEHC witness to discuss and update, if
21 appropriate, the revenue requirement in the rate case. The Applicants agreed to
22 provide that supplemental testimony and, in order to provide the parties to the rate

1 case with additional time to respond to that supplemental filing, agreed to delay
2 the rate effective date for its general rate case.

3 **Q. Please explain the Utah-specific acquisition premium commitment.**

4 A. Utah-specific Commitment U 4, which is found on page 11 of Appendix A to the
5 Stipulation, addresses the acquisition premium issue. The commitment, which is
6 a modified version of the general commitment offered in direct testimony,
7 requires the premium be recorded in the accounts of the acquisition company and
8 not in PacifiCorp's accounts.

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

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

16 The intent of the commitment language is merely to preserve the right to
17 make an argument to the Commission that the acquisition premium should be
18 included in retail rates under one limited condition. MEHC is concerned that if it
19 agrees to a commitment not to include the acquisition premium in rates and if it
20 does so without a clear reservation of its rights, it would be denied the opportunity
21 in a future rate case to even point out a potential violation of the matching
22 principle, as discussed hereafter.

1 The commitment leaves the determination of whether the inclusion of a
2 premium should be allowed in the hands of the Commission, not PacifiCorp or
3 MEHC. MEHC is only seeking to retain the right to make a future argument if
4 necessary, nothing more.

5 **Q. Under what limited condition would MEHC expect this right to be exercised?**

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

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

1 No request for inclusion of the acquisition premium in rates would be
2 triggered, however, in situations where benefits obtained at the holding company
3 level are appropriately allocated to PacifiCorp, along with the costs of achieving
4 those benefits. For example, if MEHC were able to achieve lower insurance costs
5 post acquisition as a result of combining the insurance needs of itself and
6 PacifiCorp, a portion of such savings (along with the costs related to achieving
7 them) would be properly allocated to PacifiCorp. MEHC expects the lower net
8 costs would be included in retail rates (reducing the regulated revenue
9 requirement). MEHC would not consider this a situation that would allow
10 PacifiCorp to argue for inclusion of the acquisition premium in retail rates.

11 The commitment also makes clear that neither the Commission nor any
12 party is being asked to accept or agree with any such arguments, or to waive any
13 of their rights to object to such a request for relief.

14 **Conclusion**

15 **Q. Why do you believe the Stipulation is just, reasonable and in the public**
16 **interest?**

17 A. Appendix A to the Stipulation includes 50 general and 28 Utah-specific
18 commitments which address issues of importance to PacifiCorp's Utah customers.
19 Among those commitments are new commitments related to reducing costs for
20 PacifiCorp and to increasing the number and authority of senior management
21 personnel located in Utah. The Stipulation also includes commitments which
22 reflect MEHC's willingness and ability to deploy capital to meet PacifiCorp's
23 significant infrastructure needs, including increased investment in transmission,

1 renewable energy and energy efficiency. The Applicants have also agreed, as I
2 discussed above, that the Commission shall have the opportunity and authority to
3 consider and adopt conditions and commitments agreed to or adopted in other
4 jurisdictions.

5 The Applicants submit that this Stipulation, including the most-favored-
6 states commitment, strengthens many of the existing commitments, addresses the
7 issues and concerns raised by the parties, and provides real and significant
8 benefits to PacifiCorp's Utah customers. For all of these reasons, I conclude that
9 the Stipulation is just, reasonable and in the public interest and should be
10 approved by this Commission.

11 **Q. Does this conclude your testimony?**

12 A. Yes.