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TO: Public Service Commission

FROM: Division of Public Utilities
Constance White, Director,
Artie Powell, Energy Section Manager
Charles Peterson, Technical Consultant

DATE: June 28, 2006

RE: Docket No. 06-035-40. Application of PacifiCorp for Approval of the
Intercompany Administrative Services Agreement with MidAmerican Energy
Holdings Company.

I. ISSUE

Pursuant to Commitment U21 in the matter of the Acquisition of PacifiCorp by MidAmerican Energy Holdings Company, Docket No. 05-035-54, PacifiCorp (the Company) is seeking Commission approval of the Intercompany Administrative Services Agreement (IASA) with MidAmerican Holdings Company (MEHC).

On May 31, 2006, the Commission issued a Notice of Deadline for Filing Comments indicating that interested parties had until June 14, 2006 to file comments on the IASA, with reply comments to be filed by June 28, 2006. In documents dated June 14, 2006, the Committee of Consumer Services (CCS) and the group known as the Utah Industrial Energy Consumers (UIEC) filed Comments. The Division hereby files reply comments pursuant to the Notice.

II. RECOMMENDATION

The Division recommends approval of the IASA for the limited purposes contained in the Application. The Division recommends that in approving the IASA the Commission acknowledges that the IASA is for internal company accounting only and is not necessarily endorsed as a mechanism for setting retail rates in Utah.

The Division agrees with the CCS recommendations that any changes to the IASA allocation methodology “should also be communicated to the regulatory agencies.”¹ We also concur with

¹ CCS to the Public Service Commission of Utah, June 14, 2006, p.3.

the CCS that an up-to-date cost allocation manual be maintained, that documentation of any Berkshire Hathaway participation in cost sharing be provided and that the IASA not be approved for rate making purposes.²

III. DISCUSSION

The terms under which the IASA would be submitted to the Commission for approval were set forth in the Acquisition agreements of the parties and adopted by the Commission in Docket No. 05-035-54. This agreement, in Commitments 13 and U21, provided that the IASA would be submitted to the Commission for approval, “but approval for ratemaking purposes will not be requested in such filing.”³ PacifiCorp complies with these commitments in making this Application.

As the CCS indicates in its filing the parties in the Acquisition settlement discussions were concerned that the IASA become the accepted basis for rate treatment. While PacifiCorp is certainly free to offer the IASA as the basis for rate treatment, the Parties wanted to be free to challenge any portion or all of the IASA. Therefore the recommendation of acceptance by the Commission of the IASA is predicated on the recognition that no outside party is bound to accept it for rate making purposes.

The other points of the CCS memo relate to the ability of the regulators and other parties to be able to audit and examine for reasonableness the transactions that PacifiCorp might engage in with affiliates. The Division believes this is reasonable. The Division notes as well that PacifiCorp’s Procurement Policy, which was approved by the Commission some time ago,⁴ remains in effect and also provides for many protections against potential abuse.

The UIEC gives an extended discussion of FERC Order No. 665, Paragraph 117. This deals with goods and services delivered to a utility through special purpose affiliates and that such goods and services would be accounted for at the lower of cost or market. The Division believes that the PacifiCorp affiliates currently signatories to the IASA are not special purpose entities and probably would not fall under this part of the FERC Order; UIEC does not appear to claim otherwise. However, since UIEC is allowed to investigate and challenge any transaction made under the IASA or any other transaction in the future, the UIEC argument here appears to serve as notice that such challenges might be contemplated in the future.

As part of the Acquisition of PacifiCorp by MEHC, considerable discussions were held with the intervening Parties regarding the transparency and the ability to audit affiliate transactions and relationships between PacifiCorp and its affiliates, including its ultimate parent, Berkshire Hathaway. MEHC and PacifiCorp, and in certain specific cases Berkshire Hathaway as well,

² Id.

³ Commitment 13.

⁴ The Procurement Policy was approved by the Commission in Docket No. 90-2035-05. There was an update to the policy communicated to the Commission on August 28, 1998. Since then, there apparently have been no changes.

entered into several general and Utah-specific Commitments that appear to provide significant safeguards related to affiliate transactions, transparency, and provision of information.⁵ Given these Commitments, the Division at this time has little concern regarding the approval of the IASA.

The Division recommends that the IASA be approved for the limited purposes as described in the Application and in the Acquisition Commitments.

⁵ A partial listing of Acquisition Commitments in Docket No. 05-035-54 related to auditing, affiliate transactions and relationships, and to the provision of information are the following: C3, C4, C5, C6, C7, C8, C9, C11, C12, C14, C17, C20, C32, C49, U3, U8, U10, U14, U19, U20, U28, U36, U37, U42; Stipulation Provisions 15d, 18, and 19.