

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF CALIFORNIA**

Application of PacifiCorp (U 901-E) and MidAmerican Energy Holdings Company for Exemption Under Section 853(b) from the Approval Requirements of Section 854(a) of the Public Utilities Code With Respect to the Acquisition of PacifiCorp by MidAmerican.

A. 05-07-010

**STIPULATION AND SETTLEMENT AGREEMENT**

**1. Introduction**

1.1. Purpose and Background

The purpose of this Stipulation and Settlement Agreement (“Settlement Agreement” or “Settlement”) is to resolve contested issues in the above-captioned proceeding before the California Public Utilities Commission (“Commission”) in A.05-07-010, the Application of PacifiCorp and Mid-American Energy Holdings Company (“MEHC”) (collectively, “Applicants”) for an exemption from the provisions of Public Utilities Code Section 854(a) by means of an exemption to be granted by the Commission under Section 853(b) of the Code. The “Settlement Parties” include Applicants and all entities, organizations and Tribes which are signatories to this Settlement Agreement. A schedule has been set by means of an Assigned Commissioner’s Ruling and Scoping Memo, and this Settlement is intended to reduce or eliminate the need for the hearings in this proceeding.

1.2. Settlement Parties

This Settlement Agreement is entered into by the Settlement Parties, as identified by their attached signatures. Settlement Parties agree to actively support approval of this Settlement Agreement in A.05-07-010 as specified in Section 3.1 below. Settlement Parties also agree not to support any changes to this Settlement Agreement that would be effective during the term of this Settlement in any other California regulatory, legislative or judicial forum, other than as allowed under this Settlement Agreement. A successor company to a Settlement Party will be bound by this Agreement and Commission orders approving this Settlement. Except as set forth herein, this provision

does not restrict the participation by any of the Settlement Parties in any rate case or other proceeding in which modifications, clarifications, or enforcements of the Commitments in Appendix A are at issue during any time subsequent to the adoption of a final decision by the Commission in A. 05-07-010.

- 1.2.1 This Settlement is admissible in the Oregon Docket No. UM1209 as the Settlement Party's joint representation that the Commitments (as defined in Section 3.2) will protect the public interest of California in this transaction under Public Utilities Code section 853(b). Through this Settlement, the Settlement Parties make no representation whether the Commitments satisfy the requirements of Oregon law.
- 1.2.2 If any Settlement Party contends that another Party has engaged in conduct in violation of its duty to support this Settlement arising under Sections 1.2, 1.2.1, or 3.1, the complaining Party must provide written notice to the Party allegedly in violation within 5 days of the receipt of the information or filing which raises the issue of a violation. Notice to counsel of record for a Party is sufficient notice for purposes of this Section. In the event of the issuance of such notice, both Parties must coordinate a means of meeting or otherwise communicating with each other and must confer to resolve the dispute within 5 days of the issuance of the notice in an attempt to resolve the dispute regarding the violation. A Settlement Party in violation of its obligations under the above-referenced Sections to support this Settlement is to be given a reasonable period of time to cure any violation following the meeting or conference. Such period and the means of curing the violation are to be determined by the Parties based upon the circumstances, but in no event shall a Party have less than 7 days to effect a cure. This is the exclusive remedy for such violation of the duty to support arising under Sections 1.2 and its subparts and 3.1, and no contract remedies or damages shall be available.

### 1.3. Compromise and Support

This Settlement Agreement is a negotiated compromise of contested issues in this proceeding and is supported by the Settlement Parties with stakeholder interests in the Klamath River Basin where PacifiCorp operates three dams and hydroelectric generation facilities. The Settlement Parties, by signing this Settlement Agreement and taking the other actions specified in Section 3.1 and its subparts, will support Commission approval and subsequent implementation of this Settlement. Furthermore, Applicants will not oppose recovery of reasonable intervenor compensation requests made by other Settlement Parties to the extent the requests comply with the statutory and Commission requirements for such compensation.

- 1.3.1. Except as provided in Section 1.2.1, nothing contained herein shall be deemed to constitute an admission or an acceptance by any Settlement Party of any fact, principle, or position asserted by any other Settlement Party contained herein.
- 1.3.2. Nothing contained herein shall be deemed to compromise or resolve any contested issue in any other pending or future administrative or judicial proceeding, including the pending proceeding before the Federal Energy Regulatory Commission and other agencies with respect to relicensing the Klamath River Project, any proceeding related to any damages asserted to be caused by the project, and any proceeding related to PacifiCorp's obligations for utility service. This Settlement shall not be

admissible as evidence, argument, or admission on any contested issue in any such proceeding, except that the Settlement will be offered in the Oregon Docket UM1209 as provided in Section 1.2.1.

#### 1.4. Complete Package

This Settlement Agreement is to be treated as a complete package not as a collection of separate agreements on discrete issues or proceedings. To accommodate the interests of different Settlement Parties on diverse issues, the Settlement Parties acknowledge that changes, concessions, or compromises by a Party or Parties in one section of this Settlement Agreement necessitated changes, concessions, or compromises by other Parties in other sections.

#### 1.5. Modifications by Commission

In the event the Commission rejects or modifies this Settlement Agreement, the Settlement Parties reserve their rights under Rule 51.7 of the Commission's Rules of Practice and Procedure. The Parties agree to a good faith negotiation process in the event the Commission modifies the settlement.

### **2. Term of Settlement**

#### 2.1. Effective Date

The effective date of this Settlement Agreement shall be the date of the Commission order approving this Settlement.

#### 2.2. Settlement Period

Once it is approved and takes effect, the Settlement will remain in effect indefinitely, until modified by subsequent Commission order. The Settlement Parties agree not to seek any changes to this Settlement, absent consent of the Applicants, prior to June 1, 2011, except to the extent permitted in Section 1.2 above.

### **3. Support for the Application**

#### 3.1. Overview of the Settlement

In exchange for the commitment of Applicants to commit to undertake and perform the specific commitments contained in Appendix A hereto, the undersigned Settlement Parties agree to withdraw any pending protests and support Application 05-07-010 by recommending that the Commission approve of the requested exemption under Section 853(b) of the Public Utilities Code, on conditions pursuant to and consistent with the Commitments in Appendix A. Such support shall be conveyed by the following appropriate means: (1) joinder in Applicants' motion for approval of the Settlement, and (2) the filing of conforming comments on the Proposed Decision of the Commission in A.05-07-010.

#### 3.2. Commitments by the Applicants

Appendix A contains the complete list of Commitments that Applicants collectively and individually agree to make in exchange for the support of the Settlement Parties in this proceeding (hereafter, "Commitments"). The Commitments are comprised of several separate categories of commitments, specifically, extensions of existing commitments previously entered into by PacifiCorp and/or Scottish Power, new commitments entered into by PacifiCorp and MEHC applicable to all the states to which PacifiCorp's service territory extends, and, finally,

California-specific commitments which apply only to the activities and operations of Applicants within California. By virtue of executing this Settlement, upon closing of the transaction, 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, with the reservation that in the process of obtaining approval for the transaction in other states, the Commitments applicable to all jurisdictions within the PacifiCorp service territory may be altered by regulatory decisions or settlements, and in that event the Applicants will conform the Commitments in this Settlement to match those applicable to all other jurisdictions.

#### **4. Recovery of Costs Related to Hydroelectric System Relicensing**

All Settlement Parties agree that this Settlement and the instant transaction do not affect in any way their position regarding the recovery in retail electric rates of the costs of the mandated conditions for the relicensing and operation of PacifiCorp's hydroelectric facilities.

Executed this 21st day of October, 2005.

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