

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Joint Application)	
of)	DOCKET NO. UE-051090
)	
MIDAMERICAN ENERGY)	ORDER NO. 07
HOLDINGS COMPANY AND)	
PACIFICORP, d/b/a PACIFIC)	
POWER & LIGHT COMPANY)	FINAL ORDER APPROVING AND
)	ADOPTING SETTLEMENT
For an Order Authorizing Proposed)	STIPULATION; REQUIRING
Transaction)	SUBSEQUENT FILING
.....)	

Synopsis: The Commission approves MidAmerican Energy Holding Company's (MEHC) proposed purchase of PacifiCorp from ScottishPower on conditions specified in a settlement agreement supported by all parties to this proceeding. The settlement conditions protect against harm to the public interest that might otherwise result from MEHC's acquisition of PacifiCorp and provide benefits to PacifiCorp's customers in Washington.

1 **PROCEEDINGS:** On July 15, 2005, MidAmerican Energy Holdings Company (MEHC) and PacifiCorp, d/b/a Pacific Power & Light Company (PacifiCorp) filed a joint application for an order authorizing MEHC's proposed purchase of PacifiCorp from Scottish Power. On August 16, 2005, the applicants filed a revised application reflecting the impact of the enactment of the federal Energy Policy Act of 2005, including repeal of the Public Utility Holding Company Act of 1935, effective February 8, 2006. The Commission has jurisdiction under chapter 80.12 RCW, which concerns transfers of property by public service companies. The parties filed a Stipulation on January 20, 2006, which they propose the Commission approve and adopt in resolution of this proceeding.

2 **PARTY REPRESENTATIVES:** James M. Van Nostrand, Stoel Rives LLP, Portland, Oregon, represents the applicants. Mark C. Moench, Senior Vice President – Law, MEHC, Salt Lake City, Utah, also appeared at hearing for the applicants. Melinda Davison and Matthew Perkins, Davison Van Cleve PC, Portland, Oregon, represent the Industrial Customers of Northwest Utilities (ICNU). Brad M. Purdy, Attorney at Law, Boise, Idaho, represents The Energy Project. Simon ffitch and Shannon Smith, Assistant Attorneys General, Seattle, Washington, represent the Public Counsel Section of the Washington Office of Attorney General. Robert D. Cedarbaum, Senior Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (“Commission Staff” or “Staff”).¹

3 **COMMISSION DETERMINATION:** The Commission finds that MEHC’s proposed purchase of PacifiCorp, subject to the conditions stated in the parties’ Stipulation filed on January 20, 2006, is consistent with the public interest. WAC 480-143-170. Accordingly, the Commission concludes that it should adopt the Stipulation as part of its Final Order and approve the proposed transfer of property under chapter 80.12 RCW.

4 The Commission also determines that it should require PacifiCorp to file, within 30 days after the transaction closes, a petition for an accounting order to authorize deferral accounting for certain rate credits provided for in the Stipulation as commitments Wa 3 and Wa 7.²

¹ In formal proceedings, such as this case, the Commission’s regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an “*ex parte* wall” separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners’ policy and accounting advisors from all parties, including Staff. RCW 34.05.455.

² No filing may be necessary if the Commission determines in PacifiCorp’s pending general rate proceeding that the rate credits should be implemented as

MEMORANDUM

I. Background and Procedural History

- 5 MEHC and PacifiCorp filed, on July 15, 2005, their joint application for an order authorizing MEHC's proposed purchase of PacifiCorp from Scottish Power. The Commission conducted a prehearing conference on July 26, 2005, and entered Order No. 01 on July 27, 2005. Order No. 01 established a procedural schedule including dates for parties to prefile testimony and exhibits, and for evidentiary hearings to be held. On November 18, 2005, the Commission accepted response testimonies and exhibits filed by Staff, Public Counsel and ICNU. MEHC and PacifiCorp filed rebuttal testimony on December 5, 2006.
- 6 On December 19, 2005, the parties informed the Commission that they had agreed to waive cross-examination of all witnesses and to proceed on the basis of a stipulated record. The parties proposed that the record would include, with some exceptions, their witnesses' prefiled testimonies and exhibits, the proposed cross-examination exhibits the parties had exchanged and submitted to the Commission on December 14, 2005, and a stipulation of facts that would be filed by Staff and the applicants.
- 7 On December 20, 2005, the parties filed their Joint Motion To Admit Exhibits. The parties stipulated to the admission into evidence of all exhibits identified on an exhibit list filed with their Motion. Also on December 20, 2005, Staff and the applicants filed their Stipulation of Facts.

part of the Company's compliance filing following a Final Order in Docket No. UE-050684.

8 The Commission granted the parties' Motion and accepted the record as
tendered.

9 On January 20, 2006, the parties filed a Stipulation. The Stipulation, if approved
and adopted by the Commission, would fully resolve the issues in this
proceeding. The Commission received additional evidence and heard testimony
concerning the terms of the proposed settlement on February 9, 2006.

II. Settlement Agreement

10 The Stipulation filed on January 20, 2006, is attached to this Order as an
Appendix and, by this reference, is incorporated into this Order.

11 The Stipulation states that the parties, following a series of meetings spanning
the period from mid-October 2005 through early January 2006, reached
agreement on proposed commitments by MEHC and PacifiCorp that provide a
basis upon which all parties can support approval of the proposed transaction.
Appendix A to the Stipulation, includes 53 commitments the applicants have
made in all six jurisdictions where PacifiCorp provides utility services, 26
commitments the applicants made that are specific to Washington, and a set of
ring-fencing provisions that will be operative in all jurisdictions.³ In developing
the Washington Stipulation, the parties considered and agreed to adoption of
various commitments applicants made in proceedings in Utah, Oregon, Idaho
and California.

12 As of January 20, 2005, though settlements were pending approval in several
states, no state had yet taken final action. In addition, a stipulation was filed in

³ Commitments 11, 15, 18, 20, 21, WA 11, and WA 24 include ring-fencing
provisions. In addition, Appendix 1 to the Stipulation includes comprehensive
ring-fencing provisions.

Wyoming after January 20, 2005. As of the date of this Order, stipulations have been approved in Wyoming, Utah, Idaho and California. The Stipulation provides that the Commission will have an opportunity to consider and adopt in Washington any commitments or conditions to which the applicants agree or with which the applicants are required to comply in other jurisdictions after the Commission enters its order in this docket. The Parties ask that the Commission issue an order accepting the Stipulation as soon as practical, expressly reserving the right to re-open Appendix A of the Stipulation to add commitments and conditions accepted or ordered in another state jurisdiction. The Stipulation spells out in detail a suggested process to implement this provision.

- 13 The Stipulation includes applicants' acknowledgment that the Commission's approval of the Stipulation does not bind the Commission in other proceedings. Thus, with respect to any construction project, expenditure or action referenced in the commitments, the Commission may determine the prudence, just and reasonable character, rate or ratemaking treatment, or public interest of any services, accounts, costs, practices or investments.

III. Discussion and Decision

- 14 The parties' Stipulation reflects their significant efforts in Washington, and in the other jurisdictions where PacifiCorp provides service, to fashion a set of commitments that collectively protect PacifiCorp's ratepayers and the broader public interest.
- 15 MEHC and PacifiCorp commit to continue existing customer service guarantees and performance standards, without proposing modifications, through March 31, 2008. In addition, PacifiCorp's right to request termination of one or more of the guarantees or standards is delayed until 2011. Thus, these guarantees and standards, established at the time of ScottishPower's acquisition of PacifiCorp, are extended for several years beyond what is currently required. Moreover, the

companies agree that the guarantees and standards will not be modified after 2008, or eliminated after 2011, without Commission approval.

- 16 The commitments to which MEHC and PacifiCorp agree provide meaningful protection for the regulated utility from financial risks associated with it becoming part of a holding company structure. Commitment numbers 11, 15, 18, 20, 21, Wa 11 and Wa 24 are specifically intended to protect PacifiCorp from any financial distress MEHC or its other subsidiaries and affiliates might experience following the acquisition.⁴ In addition, Appendix 1 to the Stipulation sets forth extensive ring-fencing provisions that apply to PPW Holdings LLC, the intermediary corporate entity between PacifiCorp and MEHC in whose name PacifiCorp's stock will be held. MEHC and PacifiCorp will maintain separate debt and preferred stock, if any. PacifiCorp will maintain its own corporate credit rating, and ratings for long-term debt and preferred stock, from major national ratings agencies. The two companies agree to potential restrictions on dividends by requiring Commission approval for dividends from PacifiCorp to MEHC or PPW Holdings LLC under conditions specified in commitment 18. In addition, the companies agree under commitment Wa 24 that PacifiCorp will not make any dividends to MEHC or PPW Holdings LLC if PacifiCorp's unsecured debt rating is BBB- or lower by Standard & Poor's or Fitch, or Baa3 or lower by Moody's, as indicated by two of the three rating agencies. MEHC and PacifiCorp also commit that neither PacifiCorp nor its subsidiaries will make loans or transfer funds other than dividends or payments under their Inter-company Administrative Services Agreement (IASA) to MEHC, Berkshire Hathaway or their subsidiaries without Commission approval. MEHC and Berkshire Hathaway agree to not pledge any of PacifiCorp's assets as backing for any securities that MEHC, Berkshire Hathaway or their subsidiaries may issue, excluding securities that PacifiCorp or its subsidiaries may issue.

⁴ Exhibit No. 1 at 13:1-7.

- 17 The Stipulation identifies several potential transmission projects MEHC and PacifiCorp believe will enhance reliability, facilitate the receipt of renewable resources, or enable further system optimization. MEHC and PacifiCorp also commit to improve system reliability and to take steps toward more efficient use of the existing system through targeted investment in the transmission and distribution system. MEHC acknowledges in the Stipulation that it should have a role in addressing the critical importance of transmission infrastructure in the states where PacifiCorp provides service. MEHC commits its resources and leadership to assist these states in the development of transmission projects upon which the states can agree.
- 18 The Stipulation expressly provides that all parties reserve their rights to assert positions they deem appropriate regarding the prudence, just and reasonable character, rate or ratemaking impact or treatment, or public interest pertaining to any of the commitments included in Appendix A of the Stipulation. Thus, the Stipulation does not determine the ratemaking consequences of any investment, expenditure or action taken by the Applicants under these commitments. PacifiCorp's burden of proof in future rate proceedings is not changed.
- 19 Several of the commitments concern renewable energy, emissions, and a proposed Demand Side Management (DSM) study. PacifiCorp reaffirms its commitment to acquire 1400 MW of new cost-effective renewable resources, including at least 100 MW of cost-effective wind resources to be in service within one year following the close of the transaction. PacifiCorp will undertake several efforts to focus on cost-effective emission reduction measures. Within 15 months after closing, a DSM study initially funded by \$1 million in shareholder funds will be completed with the goal of identifying additional DSM and energy efficiency opportunities within PacifiCorp's service territories. PacifiCorp further commits to meeting its portion of the Northwest Power Planning Council's energy efficiency targets for Oregon, Washington and Idaho, if the targets can be achieved by means deemed cost-effective by the affected states.

- 20 MEHC and PacifiCorp have committed to \$142.55 million (total company amount) of off-settable rate credits. The proposed treatment of these credits in Washington is described in commitments Wa 3 through Wa 7, in Appendix A to the Stipulation. These rate credits will be reflected in rates on the effective date of new rates as determined by the Commission in a general rate case, including Docket No. UE-050684, PacifiCorp's current general rate proceeding. The rate credits will terminate on December 31, 2010, to the extent not previously offset, unless otherwise provided in the individual commitments.
- 21 Two of the rate credit commitments, Wa 3 and Wa 7, require reductions in specific costs. In commitment Wa 3, MEHC and PacifiCorp agree to reduce the annual non-fuel costs of the West Valley lease by \$0.417 million per month (total company) or an expected \$3.7 million in 2006 (assuming a March 31, 2006 Transaction closing), \$5 million in 2007 and \$2.1 million in 2008. The lease terminates on May 31, 2008. These figures are the amounts of the commitment to either reduce West Valley costs or provide a credit against rates if the costs are not reduced. If the costs of West Valley are included in Washington rates by Commission order, Washington's share of the monthly rate credit will be deferred (unless included in rates in PacifiCorp's current general rate case) for the benefit of customers and accrue interest at PacifiCorp's authorized rate of return. This commitment is off-settable, on a prospective basis, under conditions specified in the Stipulation. Mr. Gale testified, however, that any accumulated balances in the rate credit deferral account at the time these credits are first included in rates are not off-settable.
- 22 In commitment Wa 7, MEHC and PacifiCorp agree that PacifiCorp's total company administrative and general (A&G) costs will be reduced by \$6 million annually based on the A&G categories, assumptions, and values contained in Appendix 3 to the Stipulation, which is titled, "UM 1209 A & G Stretch." The amount of the total company rate credit is \$6 million per year. Beginning with

the first month after the transaction is closed, Washington's share of the \$0.5 million monthly rate credit will be deferred for the benefit of customers (unless included in rates in Docket No. UE-050684) and accrue interest at PacifiCorp's authorized rate of return. The credit will be off-settable by the amount that PacifiCorp demonstrates to the Commission's satisfaction, in a general rate case, that total company A&G expenses included in PacifiCorp's rates are lower than the benchmark defined in the commitment and have not been shifted to other regulatory accounts.

- 23 As discussed in the preceding two paragraphs, it may be necessary for PacifiCorp to establish deferral accounts in which to record the regulatory liabilities that may arise under commitments Wa 3 and Wa 7. Mr. Speketer testified that the applicants' did not plan to file a separate petition for accounting authority to establish these deferral accounts in the belief that the Commission's order in this proceeding would be sufficient, if the Stipulation is approved. We find, however, that the Stipulation does not provide sufficient detail concerning the proposed accounting treatment of the credits established by these commitments. Accordingly, as a condition of our approval, we require that PacifiCorp file an appropriate accounting petition within 30 days after the date of this Order unless that action is made unnecessary by the Commission's determinations in PacifiCorp's pending general rate proceeding in Docket No. UE-050684.
- 24 The remaining rate credit commitments, Wa 4, Wa 5, and Wa 6, are "hold harmless" provisions that protect ratepayers from increases in certain costs, but do not require any reductions in costs. There is no requirement for deferral accounting or other special accounting treatment in connection with these commitments.
- 25 The Stipulation includes several commitments that will benefit PacifiCorp's low-income customers. Commitment Wa 13 provides that MEHC will provide

shareholder funding to hire a consultant to study and design an arrearage management project. MEHC and PacifiCorp agree in commitment Wa 14 to contribute \$80,000 annually in low-income bill payment assistance, for a five-year period beginning in July 2006. Under commitment Wa 15, MEHC and PacifiCorp will initiate a collaborative effort with Staff, the Energy Project and others to track low-income issues by identifying and collecting data pertinent to low-income issues in PacifiCorp's Washington service territory.

26 Finally, to protect the Commission's continuing ability to regulate Pacificorp, MEHC and PacifiCorp make a number of commitments to protect and facilitate access to information. PacifiCorp will maintain its own accounting system, separate from that of MEHC. All of PacifiCorp's financial books and records will be kept in Portland, Oregon. The Commission will have access to all books of account, documents, data and records of MEHC, Berkshire Hathaway, PacifiCorp and their affiliates that pertain to transactions between PacifiCorp and its affiliated interests or that are otherwise relevant to PacifiCorp's business. Additional commitments protecting the Commission's access to information include numbers 5 – 8, 17, and Wa 23.

27 Taken together, the commitments summarized above, and a number of additional commitments specified in Appendix A to the Stipulation but not specifically mentioned here, comprehensively address the concerns raised by the parties through their respective prefiled testimonies. Commission Staff, Public Counsel, ICNU and the Energy Project offer testimony that the Stipulation not only meets the Washington standard for approval of this transaction, which requires us to find there is no harm to the public interest arising from the transaction, but also provides benefits to customers.

28 In summary, the Stipulation is consistent with the public interest because it includes a comprehensive set of commitments that emphasize important public service obligations including customer service, safety, system reliability, and

diversity in resource mix, including renewable generation, use of energy efficiency and DSM. The Stipulation includes basic safeguards intended to protect PacifiCorp's customers from any financial distress experienced by other companies within the MEHC holding company structure. The Stipulation provides for rate credits, which protect customers from rate increases that might otherwise result from the transaction. The Stipulation includes commitments that provide benefits to low-income customers. Finally, the Stipulation protects the Commission's ability to regulate in the public interest and set rates that are just, fair, reasonable and sufficient by guaranteeing full access to all relevant information and by confirming that approval of the Stipulation does not in any respect determine the prudence or reasonableness of any investment, expenditure or action undertaken by the applicants under these commitments.

29 We find, for these reasons, that the proposed transaction, conditioned by the commitments made in the Stipulation, is consistent with the public interest. We conclude that the requirements under chapter 80.12 RCW and chapter 480-143 WAC governing transfers of property are satisfied. Accordingly, we conclude that the Joint Application, as modified by the terms of the Stipulation filed in this proceeding on January 20, 2006, should be approved.⁵

FINDINGS OF FACT

30 Having discussed above all matters material to our decision, and having stated general findings, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the Commission's ultimate decisions are incorporated by this reference.

⁵ We note that the Stipulation provides that additional commitments may be added as conditions of our approval if new commitments are made in other states following the entry of this Order.

- 31 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including electric companies.
- 32 (2) PacifiCorp is a “public service company” and an “electrical company” as those terms are defined in RCW 80.04.010 and as those terms otherwise are used in Title 80 RCW. PacifiCorp is engaged in Washington State in the business of supplying utility services and commodities to the public for compensation. PacifiCorp is a subsidiary of ScottishPower and PacifiCorp Holdings, Inc. (PHI), ScottishPower’s wholly owned subsidiary that directly holds 100 percent of PacifiCorp’s common stock.
- 33 (3) MEHC is an Iowa corporation and is privately held by Berkshire Hathaway, which has a super-majority interest (*i.e.*, more than 80% ownership). MEHC is a holding company whose subsidiaries are engaged primarily in the production and delivery of energy from a variety of fuel sources.
- 34 (4) On May 23, 2005, ScottishPower and PacifiCorp Holdings, Inc. agreed to sell all of PacifiCorp’s common stock, held by PHI, to MEHC for approximately \$9.4 billion, consisting of approximately \$5.1 billion in cash plus approximately \$4.3 billion in net debt and preferred stock, which will remain outstanding at PacifiCorp. The stock will be held by MEHC’s wholly owned subsidiary, PPW Holdings LLC.
- 35 (5) On July 15, 2005, MEHC and PacifiCorp (Joint Applicants) filed their Application requesting an order of the Washington Utilities and Transportation Commission (Commission) authorizing MEHC’s proposed acquisition of 100 percent of PacifiCorp’s outstanding common stock. The Commission set the matter for hearing.

- 36 (6) On January 20, 2006, Joint Applicants, Commission Staff, Public Counsel, ICNU, and the Energy Project filed a Stipulation and requested the Commission to adopt its terms as conditions for approval of the proposed transaction and as a full resolution of the issues pending in this proceeding.
- 37 (7) The terms of the parties' Stipulation are as set forth in the Appendix to this Order which is incorporated into the body of this Order by reference, as if set forth in full.

CONCLUSIONS OF LAW

- 38 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the Commission's ultimate decisions are incorporated by this reference.
- 39 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings. *Title 80 RCW.*
- 40 (2) Chapter 80.12 RCW requires public service companies, including PacifiCorp, to secure Commission approval before it can lawfully sell or otherwise dispose of the whole or any part of its franchises, properties or facilities that are necessary or useful in the performance of its duties to the public. *RCW 80.12.020.* Any sale, disposition made without Commission authority is void. *RCW 80.12.030.*

- 41 (3) The Stipulation, considered in the light of the record, including supportive testimony from all parties, fairly resolves the issues in this proceeding and should be approved and adopted as the Commission's determination of the issues. The proposed transaction, subject to the requirements stated in the Stipulation, is consistent with the public interest. WAC 480-143-170. Accordingly, the parties' request for approval of MEHC's acquisition of PacifiCorp based on the terms included in the Stipulation should be granted.
- 42 (4) Nothing in this Order establishes the prudence or reasonableness of any investment, expenditure, action or practice undertaken by the Applicants under the commitments included in the Stipulation.
- 43 (5) The Commission should retain jurisdiction over the subject matter and the parties to effectuate the terms of this Order, including to give effect to paragraph 8 of the Stipulation, which provides for "most favored state" treatment so that each state in which PacifiCorp provides service will have the opportunity to adopt commitments and conditions offered or adopted in other states even if such are agreed to after the Commission enters this Order.
- 44 (6) PacifiCorp should be required to file a petition for an accounting order within 30 days after the transaction closes for authority to establish deferral accounts, as necessary to make effective the terms of commitment numbers Wa 3 and Wa 7, set forth in Appendix A to the Stipulation.

ORDER

THE COMMISSION ORDERS THAT:

- 45 (1) Joint Applicants' Motion for Leave To File Revised Pages [to original
application], filed in this proceeding on August 15, 2005, is granted.
- 46 (2) The Stipulation attached as an Appendix to this Order is approved and
adopted in full resolution of the issues pending in this proceeding.
- 47 (3) The Application filed by MEHC and PacifiCorp on July 15, 2005, as
modified by the terms of the Stipulation, is consistent with the public
interest and is approved.
- 48 (4) Within 30 days after the transaction closes PacifiCorp is required to file a
petition for an accounting order to establish its authority to create deferral
accounts, as necessary to make effective the terms of commitment
numbers Wa 3 and Wa 7, set forth in Appendix A to the Stipulation. The
filing is to be made as a "subsequent filing" under WAC 480-07-880 and -
885.
- 49 (5) The Commission retains jurisdiction to effectuate the terms of this Order
including to make effective the terms of paragraph 8 of the Stipulation,
which provides for "most favored state" treatment of any post-order
commitments made by the Applicants in any state in which PacifiCorp
does business.

DATED at Olympia, Washington, and effective this 21st day of February 2006.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.

Appendix