Exhibit No. ___(KC-1T)
Docket Nos. UE-051090
Witness: Ken Canon

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application of MIDAMERICAN ENERGY HOLDINGS COMPANY AND PACIFICORP d/b/a PACIFIC POWER & LIGHT COMPANY, For an Order Authorizing Proposed Transaction.	)	**Docket No. UE-051090**

DIRECT TESTIMONY OF KEN CANON

ON BEHALF OF

THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

November 18, 2005

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS?

A. My name is Ken Canon. I am a partner in the law firm of Canon and Hutton. My business address is 13400 S. Myrtle, Myrtle Creek, OR 97457.

Q. PLEASE DESCRIBE YOUR BACKGROUND AND EXPERIENCE?

A. For 28 years I have represented industrial customer interests on electric policy and ratemaking issues in my role of Assistant General Counsel of Associated Oregon Industries from 1978-1981 and as Executive Director of Industrial Customers of Northwest Utilities ("ICNU") from 1981-2005. I have appeared before regulatory commissions, including both the Oregon Public Utility Commission ("OPUC") and the Washington Utilities and Transportation Commission ("WUTC" or the "Commission"), public utility governing boards, governmental agencies, state legislatures, and Congress. My qualification statement is attached as Exh. No.___(KC-2) .

Q. ON WHOSE BEHALF ARE YOU APPEARING IN THIS PROCEEDING?

A. I am testifying on behalf of ICNU, which is a non-profit industrial trade association, whose members are large industrial customers served by electric utilities throughout the Pacific Northwest. Many members of ICNU are PacifiCorp customers in Washington or Oregon.

I. INTRODUCTION AND SUMMARY

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I will address the alleged benefits offered by MidAmerican Energy Holdings Company ("MEHC" or the "Applicant") to PacifiCorp's (or the "Company") customers. I also will compare those benefits to those offered by ScottishPower when it requested authorization to acquire PacifiCorp in 1999. My testimony demonstrates that this transaction as currently proposed does not benefit customers, but rather the proposed transaction would harm PacifiCorp's customers if approved.

Q. PLEASE BRIEFLY SUMMARIZE YOUR TESTIMONY.

A. MEHC asserts that its Application "provides evidence of benefits to PacifiCorp's customers, employees, and communities if the transaction is approved."[1/] While the Application touts "more than 60 commitments to the customers and the states served by PacifiCorp," many of those commitments are: 1) simply the continuation of activities either underway or planned by PacifiCorp; or 2) represent the fundamental, baseline obligations of any prudently run utility.[2/]

In addition, although MEHC maintains that these commitments demonstrate that the proposed transaction is in the public interest, almost all of MEHC's proposed "benefits" involve a commitment by MEHC to spend amounts collected from customers in rates. MEHC, in eschewing rate credits or rate freezes, places little of its own money at risk to create a tangible customer benefit.

Finally, the Application does not clearly identify benefits to individual states. Most of the alleged "commitments" are system-wide, with no discussion of how they would impact or benefit the different states within the PacifiCorp service area. Therefore, many of these "commitments" could also create risks by increasing costs for the system in order to provide benefits to specific states.

In short, MEHC is not proposing any meaningful benefits for customers, yet, as ICNU witness Michael Gorman explains, a change in ownership under the terms

---

1/ Exh. No. ___(GEA-1T) at 3.
2/ Id.

proposed by MEHC poses significant risk to customers. Michael Gorman identifies the specific risks posed by MEHC ownership.

Q. WHAT HAS BEEN YOUR EXPERIENCE WITH CHANGES IN OWNERSHIP OF INVESTOR-OWNED UTILITIES IN THE PACIFIC NORTHWEST IN RECENT YEARS?

A. In the last nine years, I have been involved in at least eight regulatory proceedings concerning the merger or acquisitions of investor-owned utilities. Six of these were in Oregon and two were in Washington. With the recent repeal of the Public Utility Holding Company Act of 1935 ("PUHCA"), it is likely that the trend of changes in utility ownership could accelerate.

It was only six years ago that the Commission was considering ScottishPower's proposal to acquire PacifiCorp. Notably, ScottishPower stated in its 1999 application that it took a "long-term view" of its investment in PacifiCorp and used this as evidence of its commitment to capital investment.[3/] This perspective obviously changed in a relatively short period of time. This highlights one of the major problems with evaluating an application for approval of proposed change in utility ownership in the current environment.

In most applications, the applicant-buyer makes representations and commitments to the Commission and to customers in order to show that the acquisition overall is in the public interest. Once a change of ownership is secured, however, it is often difficult to ensure that there is appropriate follow through on the representations and commitments that formed the basis for approval. That is one reason why ICNU supports definite and

---

[3/] Re ScottishPower, WUTC Docket No. UE-981627, Direct Testimony of Alan Richardson at 14 (Apr. 23, 1999).

certain customer benefits, such as rate credits or a “rate freeze” associated with a change in utility ownership. Meaningful and guaranteed rate credits will provide a benefit that customers may obtain immediately after a change in ownership is approved regardless of whether the purchaser quickly has a change of heart and abandons the more speculative and unenforceable commitments made in the application. MEHC has not offered any proposal whatsoever with respect to rate credits or a rate freeze, which has been a fundamental element of many of the other applications, including ScottishPower’s application in 1999.

Q. PLEASE SUMMARIZE THE PROPOSED TRANSACTION.

A. MEHC has agreed to purchase PacifiCorp from ScottishPower for $9.4 billion. The total purchase price consists of $5.1 billion in cash and approximately $4.3 billion in currently outstanding net debt and preferred stock. The purchase price negotiated by MEHC exceeds PacifiCorp’s book value by $1.2 billion (the “Acquisition Premium”).

The Application describes MEHC as a privately-held, Iowa corporation “engaged primarily in the production and delivery of energy from a variety of fuel sources.” MEHC’s ownership, as of January 31, 2005, was as follows: Berkshire Hathaway, Inc. (83.75% economic interest), Walter Scott, Jr. (15.89% economic interest), David Sokol (0.25% economic interest), and Greg Abel (0.11% economic interest).

If the proposed transaction is approved, PacifiCorp would be included under MEHC corporate structure and PacifiCorp would be included as one of MEHC’s business platforms. Greg Abel will serve as the Chairman of the PacifiCorp Board of Directors if the proposed transaction is successful.

Q. IN LIGHT OF YOUR EXPERIENCE WITH THESE PREVIOUS UTILITY ACQUISITION PROCEEDINGS, WHAT IS YOUR IMPRESSION OF MEHC'S APPLICATION?

A. MEHC's Application lacks any meaningful benefits to customers, and all indications are that customers would be harmed if the proposed transaction is approved.

MEHC has made most of the same generalized representations included in the other applications but MEHC also relies heavily on the notion that ScottishPower is no longer willing to own PacifiCorp as a basis to claim that the proposed transaction is in the public interest. MEHC states that "the chief benefit from the proposed transaction is MEHC's willingness and ability to deploy capital to meet PacifiCorp's significant infrastructure needs."[4/] MEHC has committed to specific capital investment projects that it asks the Commission to accept as a benefit, and that it will ask customers to fund. As I describe later in my testimony, MEHC has not, for the most part, committed to "new" projects that were not contemplated prior to the proposed transaction, and its commitments to certain projects are not legitimate benefits. Moreover, approval of the proposed transaction on the basis of commitments to specific projects creates the impression that such investments have been deemed appropriate.

MEHC also has stated that it has not identified any opportunities for cost savings, with the exception of the minor cost reductions alleged in the Application. Cost savings and synergies has been a focus of many other applications. Attached as Exh. No.___(KC-3) is the California Office of Ratepayer Advocates' ("ORA") Report regarding MEHC's Application before the California Public Utilities Commission ("CPUC") in which ORA recommended that the CPUC reject MEHC's application

4/ Application at 19.

because MEHC had “not demonstrated that the request is in the public interest.”[5/] In commenting on the $1.2 billion Acquisition Premium paid by MEHC, ORA stated that “[w]ith a proposed purchase price in excess of book value, and only minor savings identified MEHC, ORA concludes that there must be synergies, efficiencies, and cost savings that MEHC will pursue that it is not identifying to justify the acquisition cost paid by MEHC.”[6/] MEHC has proposed cost savings in terms of an alleged reduction in corporate overhead and cost of debt but MEHC’s claims regarding these amounts are highly suspect.

MEHC’s Application is uniquely harmful in that MEHC has committed to attempt to recover its Acquisition Premium in rates in certain circumstances. This is a definitive harm to customers that does not exist under ScottishPower’s ownership and was not present in the other acquisition proceedings that have been approved. If the Commission is inclined to approve MEHC’s Application, that approval must be conditioned on excluding the cost of this “goodwill” from customers’ rates.

Finally, MEHC appears to have reviewed PacifiCorp’s operating plan for the future and merely restated many of the Company’s plans or studies under the guise of “commitments” or “benefits” to customers. This is an insufficient basis for MEHC to claim that customers benefit from the proposed transaction.

Q. YOU MENTIONED CUSTOMER BENEFITS. WHAT STANDARD HAVE YOU APPLIED TO EVALUATE THE PROPOSED TRANSACTION?

A. MEHC has filed essentially the same testimony and exhibits in Oregon and Washington, and MEHC’s witnesses claim that customers will “benefit” from MEHC’s proposals. In

---

5/ Exh. No.___(KC-3) at 2.

6/ Id. at 13. ORA noted that in response to an ORA data request regarding potential cost savings, “MEHC stated that it ‘has not performed a study of potential savings from the transaction.’” Id.

addition, MEHC has committed to apply its proposals to each state in a uniform manner, with some "state-specific" exceptions. Given MEHC's representations that the same Application and commitments satisfy Oregon's "net benefit" standard or the "no harm" standard applied by the WUTC in the past, each state should hold MEHC to its claims that customers will benefit from the proposed transaction.

MEHC's Application, however, currently does not meet the "no harm" test, and it certainly does not meet the "net benefits" standard required under Oregon law. As described in my testimony and in the testimonies of Michael Gorman and Lincoln Wolverton for ICNU, the potential harms of the proposed transaction far outweigh the speculative and unenforceable "benefits" offered by MEHC. As a result, ICNU urges the Commission to deny the Application.

II. COMPARISON TO THE SCOTTISHPOWER APPLICATION

Q. HOW DOES THIS ACQUISITION COMPARE TO SCOTTISHPOWER'S ACQUISITION OF PACIFICORP?

A. In a number of ways, the two applications are very similar. In its application to acquire PacifiCorp in 1999, ScottishPower stressed:

1. Its experience in operating and transforming average performing businesses into industry leaders;
2. That improvements will come faster and more efficiently because of the skills and expertise of ScottishPower;
3. Improved service to customers through customer service standards and improvement to system performance;
4. Its expertise in cutting costs;
5. It was committed to the business for the long term;
6. That it would honor labor contracts;

7. That borrowing costs would be lower;

8. Local PacifiCorp decision making; and

9. Its ScottishPower Values.

In its application, MEHC relies on many of the same elements to show that its proposal is in the public interest and should be approved.

Q. IF THE COMMISSION DETERMINED THAT THESE ELEMENTS WERE IN THE PUBLIC INTEREST REGARDING SCOTTISHPOWER'S ACQUISITION OF PACIFICORP, WOULDN'T THEY APPLY AS WELL TO MEHC?

A. No, for several reasons. First, the ScottishPower merger included several conditions that are absent in MEHC's application. Notably, ScottishPower agreed to a guaranteed merger credit to be paid to customers after the close of that transaction.[7/]

Second, there are several elements in MEHC's application that raise significant concerns that were not part of ScottishPower's application. Of greatest concern is MEHC's commitment to recover its $1.2 billion Acquisition Premium under certain circumstances. "Goodwill" was specifically excluded from PacifiCorp's utility accounts in the ScottishPower acquisition, and MEHC's proposal to have the opportunity to recover all or even a portion of the Acquisition Premium from customers presents a substantial risk that is not present under the status quo. ICNU witness Michael Gorman addresses this point in more detail.

Finally, MEHC only has six years of regulated utility experience in the United States.

[7/] Under my direction, however, ICNU opposed ScottishPower's application to acquire PacifiCorp.

Q. HAS PACIFICORP INDICATED THAT IT MIGHT LACK ACCESS TO CAPITAL IF SCOTTISHPOWER'S OWNERSHIP CONTINUES?

A. Yes. On October 25, 2005, Judi Johansen, PacifiCorp's Chief Executive Officer ("CEO"), made a presentation to the OPUC in which she stated:

> [O]ne of the first things that I think I'll draw to the Commission's attention . . . is where PacifiCorp stands today. And the issue of funding, the issue of access to capital, is, from a CEO's perspective, a very key and important issue for a utility. As you know, the nation's energy infrastructure is deteriorating and needs investment, it needs significant investment, and so does PacifiCorp's . . . . Our appetite and our need for capital is quite significant. And it is, frankly, greater than the desire of our current owner, Scottish Power, to invest in over the long-term. Now this tension that we face right now in terms of our appetite versus our current owner's desire to invest creates funding uncertainty. And on a year-to-year basis we have to decide what, if any – well, what of our capital budget will be funded by the parent.[8/]

Q. ARE YOU CONCERNED THAT STATEMENTS REGARDING SCOTTISHPOWER'S UNWILLINGNESS TO INVEST ADDITIONAL CAPITAL IN PACIFICORP COULD BE CONSTRUED TO CREATE A "BENEFIT" OF THE MEHC ACQUISITION?

A. Yes, for several reasons. First, ScottishPower won approval of its application to acquire PacifiCorp based, in part, on its commitment to PacifiCorp for the long-term and on its willingness and ability to make investments to improve system performance and to enhance reliability. ScottishPower's representations that were adopted by the Commission and formed the basis for approval obviously have proven unreliable. This calls into questions the similar representations that are now being made by MEHC.

Second, ScottishPower's position presents a considerable challenge to the regulatory approval process for utility acquisitions. Utilizing statements such as Ms. Johansen's to justify a purchase by a successor utility will set a dangerous precedent. If a

---

8/ OPUC Docket No. UM 1209, Presentations to OPUC, Remarks of Judy Johansen, CEO, PacifiCorp, Tr. at 1:21 – 2:19 (Oct. 25, 2005).

utility owner wishes to exit the utility business, it would merely need to state that it no longer will provide capital for the necessary and prudent operation of the utility. ScottishPower should not be allowed to create a benefit for MEHC by refusing to fulfill the responsibilities of any prudent utility owner, including the provision of capital necessary to provide reliable utility service.

Finally, Ms. Johansen's statement should not be used as a basis for approving MEHC's proposals. Rather, such statements provide a basis to investigate whether ScottishPower is violating its merger commitments or operating PacifiCorp in an imprudent manner.

III. PROPOSED COMMITMENTS

Q. CAN YOU SUMMARIZE THE COMMITMENTS MADE BY MEHC IN SUPPORT OF ITS APPLICATION?

A. MEHC has proposed a list of "existing" and "new" commitments, but it is unclear how MEHC has distinguished between "new" and "existing" commitments because it is difficult to determine the difference between those labeled "existing" and those determined to be "new."

MEHC claims that most of the "existing" commitments are carried over from ScottishPower's purchase of PacifiCorp, with appropriate modifications. A number of the "new" commitments, however, are either reaffirmation of a current PacifiCorp commitment (i.e., Renewable Energy, Coal Technology) or a continuation of current activities (i.e., Community Involvement and Economic Development.) It appears that MEHC considers many of these commitments "new" more because they are new to MEHC, not because they provide some incremental or additional benefit to customers as compared to PacifiCorp's current plans, operations, and obligations.

Q. FROM YOUR PERSPECTIVE, ARE NEW COMMITMENTS IMPORTANT?

A. Yes. In order to demonstrate that MEHC's application is in the public interest and benefits customers, MEHC must demonstrate benefits that are new, tangible, substantial, and go beyond what a prudent utility is required to do to provide reliable electric service. Mr. Gorman has identified many of the risks and potential harms associated with MEHC ownership. Given these harms, MEHC must offer appropriate protections to mitigate the risk and provide substantial and tangible benefits in order to merely maintain the status quo.

Q. DO MEHC'S "NEW" COMMITMENTS MEET THE CRITERIA OF PROVIDING NEW BENEFITS?

A. No. Many of the commitments that MEHC claims will benefit customers involve projects that PacifiCorp has already studied or planned for or reflect actions that any prudently run utility would undertake. For example, using ratepayer-backed funds to pay for prudent transmission upgrades or emission controls on coal plants are activities that should be expected of any prudent utility.

Furthermore, a commitment to spend money on certain activities (i.e., transmission upgrades) without a detailed analysis of how much this would actually benefit (or harm) customers does not provide enough information to allow a judgment as to whether a new commitment leads to the creation of a new benefit.

Finally, noticeably absent from these alleged capital improvement commitments is a timeline. MEHC makes many vague commitments but for a majority of these proposals, there is no specific date as to when the commitment will be fulfilled. This lack of specificity is yet another reason that the Commission should not view MEHC's statements as firm, enforceable commitments.[9/]

Q. PLEASE DISCUSS THE SPECIFIC COMMITMENTS THAT MEHC CLAIMS WILL PROVIDE A BENEFIT TO CUSTOMERS.

A. The commitments that I discuss in detail can be broken down into two broad categories: 1) commitments related to infrastructure and resource investments; and 2) commitments related to customer service and other issues. For the reasons explained below, these commitments for the most part represent plans that PacifiCorp already has or are so speculative and unenforceable that they are essentially meaningless.

Q. WHAT ARE SOME OF THE CAPITAL INVESTMENTS THAT MEHC COMMITS TO?

A. MEHC has identified approximately $1.3 billion in capital investments. The specific projects identified by MEHC include:

1. An $812 million investment to implement an emissions reduction plan for existing coal-fueled generation;
2. A $196 million investment in a transmission line from Mona to Oquirrh to increase import capability into the Wasatch Front;
3. A $78 million investment in a Path C transmission upgrade to increase the transfer capability between PacifiCorp's east and west control areas and increase wind energy deliverability;
4. An $88 million investment in a transmission link between Walla Walla and Yakima or Vantage to enhance the ability to accept wind energy;
5. $75 million investment in the Asset Risk Program over three years (2007-2009);
6. $69 million investment in local transmission risk projects across all states; and

[9/] This is not to say that ICNU believes that all the proposed capital expenditures are necessary or prudent. These issues will be evaluated in an appropriate rate proceeding.

7. Commitment of MEHC resources and involvement in Rocky Mountain Area Transmission Study.

Attached as Exh. No.___(KC-4) is a response to a data request in which MEHC and PacifiCorp have identified which of these commitments represent "new" projects and those that already have been planned by PacifiCorp.

Q. ARE THE TRANSMISSION PROJECTS AND INVESTMENTS IDENTIFIED BY MEHC "NEW" PROJECTS?

A. No. Page one of Exh. No.___(KC-4) states that although the Mona-Oquirrh project "was included in the budget, no commitment was made." However, pages three and four of this Exhibit is a response to a different data request that states that PacifiCorp has "approved funding" for certain aspects of the Mona-Oquirrh project and that the "commitment to the project is less than $6 million." This exhibit further indicates that the Mona-Oquirrh project was "identified and studied in PacifiCorp's 2004 [Integrated Resource Plan ("IRP")]." It is clear from these responses that MEHC's impression on what "new" projects it is offering to customers is more a matter of wordplay than of an actual demonstrable benefit that has not already been planned or committed to by PacifiCorp.

This exhibit also demonstrates that PacifiCorp is planning to evaluate the Path-C upgrade as part of its 2004 IRP Update and that the Company has plans to evaluate the Walla Walla – Yakima or Mid-C project as well.

Q. IS MEHC'S COMMITMENT TO INVEST IN AND IMPLEMENT A PLAN FOR EMISSIONS REDUCTIONS A "NEW" COMMITMENT?

A. No. First, MEHC acknowledges in its testimony that these controls likely will be required by law in the near future. Complying with the law is a necessary part of utility functioning, not a basis to conclude that MEHC is offering a "new" commitment.

Second, Exh. No.___(KC-4) reflects that PacifiCorp has already identified the need for these controls. Thus, MEHC has committed to implement plans that are in place.

Q. IS MEHC'S PROPOSAL TO INVEST IN TRANSMISSION UPGRADES AND ENVIRONMENTAL MITIGATION A SIGNIFICANT BENEFIT?

A. No. An applicant-purchaser in these proceedings should not be allowed to claim that activities any prudent utility would undertake are a benefit to customers. Assuming the investments made by the utility are prudent, the costs will be recouped from customers through rates including a reasonable rate of return. Furthermore, MEHC has made no demonstration that these transmission investments will actually benefit customers in Washington as compared to customers in other states served by PacifiCorp.

Q. WOULD APPROVING MEHC'S APPLICATION ON THE BASIS OF THE BENEFIT OF THESE COMMITMENTS POTENTIALLY CREATE PROBLEMS IN TERMS OF THE FUTURE REVIEW OF ANY OF THESE PROJECTS?

A. Yes, possibly. Accepting as a customer benefit a specific project creates the impression that such the investment is appropriate. When the Commission has to later address the ratemaking treatment of any of these investments, it will create an awkward record in terms of determining whether the cost of the investment should be included in rates. This further demonstrates the inappropriateness of finding the customers will benefit based on speculation about future investments.

Regardless of this issue, however, MEHC has left itself an "out" of its commitment to specific projects saying that "it is possible upon further review a particular investment might not be cost-effective or optimal for customers. If that should occur, MEHC pledges to propose an alternative to the Commission with a comparable benefit."[10/] This statement further highlights the lack of enforceability of the representations upon which MEHC seeks approval and undermines any benefit that the Commission should ascribe to MEHC's commitments to investments.

Q. MEHC HAS MADE OTHER COMMITMENTS REGARDING RENEWABLE RESOURCES AND ENERGY EFFICIENCY. ARE THESE COMMITMENTS A TANGIBLE BENEFIT?

A. No. MEHC's "affirmation" of PacifiCorp's commitment to 1400 MW of cost-effective renewable resources obviously is committing to a plan that is already in place. So is MEHC's commitment to "support and affirm" PacifiCorp's commitment to utilization of "advanced coal-fuel technology . . . when adding coal-fueled generation."[11/] Apart from already being part of PacifiCorp's plans, commitments such as these are so nebulous that they are unenforceable and provide no basis to approve the proposed transaction.

With respect to the proposed system-wide DSM study, it is unclear if customers will benefit from such a study and if customers will be requested to bear costs in excess of $1 million.

Q. WHAT ARE SOME OF THE COMMITMENTS MADE BY MEHC THAT DO NOT DEAL WITH CAPITAL INVESTMENTS?

A. The other commitments that MEHC has made include:

1. An extension of customer service standards through 2011;
2. A Utah-specific commitment to increasing the number of corporate and senior management in Utah;
3. A 10 basis point reduction for five years in the cost of PacifiCorp's long-term debt;
4. A $30 million, system wide reduction (over five years) in corporate overhead; and

---

10/ Exh. No.__(GEA-1T) at 14.
11/ Exh. No.___(GEA-2) at 3.

5. Uniform application of the commitments in all six states.

Q. DO CUSTOMERS BENEFIT FROM MEHC'S COMMITMENT TO EXTEND THE CURRENT CUSTOMER SERVICE STANDARDS FOR APPROXIMATELY FOUR YEARS?

A. This is not a meaningful benefit. MEHC's commitment to extend existing service quality measures is merely preservation of the status quo.

Q. WHAT ABOUT MEHC'S COMMITMENT TO INCREASE CORPORATE AND SENIOR MANAGEMENT POSITIONS IN UTAH?

A. A shift in focus to Utah likely would harm PacifiCorp's customers in the Pacific Northwest. It is unclear how workable it will be to have senior level corporate executives and management split between the Pacific Northwest and Utah.

Q. WILL CUSTOMERS BENEFIT FROM MEHC'S COMMITMENTS REGARDING THE REDUCTION IN PACIFICORP'S COSTS OF CORPORATE OVERHEAD COSTS AND LONG-TERM DEBT?

A. No. Mr. Gorman addresses each of these commitments in detail but it appears that these proposals have been widely rejected as overstated and unenforceable. For example, with respect to MEHC's proposal regarding the reduction in cost of debt, the California ORA concluded that "MEHC needs far more support to prove its claim that Berkshire Hathaway subsidiaries enjoy lower credit costs than a single affiliated debt issuance compared to a small sample of companies' debt issuances spanning 18 months and including four different types of debt."[12/] ORA also states that MEHC's proposal regarding a reduction in the cost of debt would "be difficult, if not impossible, to

---

[12/] Exh. No.___(KC-3) at 13.

enforce."[13/] This is consistent with the concerns that OPUC staff expressed in opening comments regarding MEHC's Application about not being able to verify this benefit.

Q. WHAT OTHER REPRESENTATIONS HAS MEHC MADE TO SUPPORT ITS APPLICATION?

A. MEHC focuses on its unique blend of management discipline and vision and willingness to efficiently invest capital. In addition, it touts the stability that it will bring and that it plans to be a longer term owner of PacifiCorp. MEHC also emphasizes customer satisfaction, reliable service, employee safety, environmental stewardship and regulatory/legislative credibility.

As discussed earlier in my testimony, ScottishPower also made many of these same representations in 1999, including the promise to be long-term owner. Six years later, however, it has decided to sell PacifiCorp. MEHC has stated that it intends to be the "last owner" of PacifiCorp, obviously, such generalized representations and commitments are unenforceable and meaningless.

Q. ARE THESE IMPORTANT ELEMENTS?

A. They are elements that every potential purchaser will proclaim. To do otherwise would likely make for a short regulatory process.

Q. WHAT IS YOUR ULTIMATE CONCLUSION ABOUT THE BENEFITS THAT MEHC HAS OFFERED?

A. MEHC's Application does not demonstrate that customers will benefit from MEHC ownership or that the proposed transaction is in the public interest. MEHC has put forth many of the same representations and promises that other potential utility purchasers have made but these statements are no more enforceable or certain that those the

---

[13/] Id.

ScottishPower made in 1999. Many of the commitments offered by MEHC preserve the status quo or implement plans that PacifiCorp has already formulated, and commitments such as these provide no benefit to customers. Given the potential harms and risks associated with MEHC's ownership, MEHC has not demonstrated that the proposed transaction is in the public interest.

Q. WHAT ARE YOUR OVERALL OBSERVATIONS ABOUT THE PROPOSED TRANSACTION?

A. Yes. The proposed transaction, if approved, would seriously lower the bar for what is required to meet the public interest standard and acquire a local utility. Essentially, MEHC is arguing that its proposal to maintain the status quo, when considered in light of its affiliation with Berkshire Hathaway, is enough to warrant approval. There is not much else to MEHC's Application. Although ICNU did not support ScottishPower's bid for PacifiCorp, I consider MEHC's proposal to be worse for customers. MEHC's general unwillingness to use its funds to pay for any of its commitments, the financial issues discussed by Mr. Gorman, the shift of executives and senior management to Utah, and the threat of recovery of the Acquisition Premium all lead to one conclusion—customers will be worse off under MEHC's ownership.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.