PACIFICORP
A MIDAMERICAN ENERGY HOLDINGS COMPANY

Mark C. Moench
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June 9, 2006

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

RE: Compliance Filing in Docket No. UE-05 1090
Mid-American Energy Acquisition Commitments

Dear Ms. Washburn:

Please find enclosed for filing the non-consolidation opinion provided in compliance with Commitment (WA8), pursuant to the Washington Utilities and Transportation Commission's *Order Approving the Stipulation supporting MidAmerican Energy Holdings Company's acquisition of PacifiCorp from Scottish Power*, issued on February 22, 2006, and amended on March 10, 2006, in the referenced proceeding.

By copy of this letter, other parties to the proceeding are being provided notice of this filing.

Please call if you have any questions regarding this filing.

Sincerely,

Mark C. Moench

Mark C. Moench

enc.
cc: Parties (w/o enc.)

I hereby certify that on this 9th day of June, 2006, I caused to be served, via U.S mail, a true and correct copy of PacifiCorp's Compliance Filing (Commitment WA8) in Docket No. UE-051090 Mid-American Energy Acquisition Commitments.

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June 7, 2006

TO THE PARTIES LISTED ON EXHIBIT A:

Re: Stock Purchase Agreement by and among Scottish Power PLC, as Seller Parent, PacifiCorp Holdings, Inc. ("PacifiCorp Holdings"), as Seller, and MidAmerican Energy Holdings Company ("MEHC"), as Buyer, for the purchase and sale of all of the common stock, no par value, of PacifiCorp, an Oregon corporation, dated as of May 23, 2005, as amended as of March 21, 2006 (the "Purchase Agreement")

Ladies and Gentlemen:

We have acted as counsel to MEHC, an Iowa Corporation and PPW Holdings LLC, a Delaware limited liability company ("PPW") in connection with the purchase of PacifiCorp, an Oregon corporation ("PacifiCorp") and the other transactions (collectively, the "Transaction") contemplated by the Purchase Agreement.

In connection with the Transaction, you have requested our opinion as to whether a bankruptcy court would, on its own or upon proper request by a party in interest, in a case under title 11 of the United States Code, 11 U.S.C. § 101, et seq. (the "Bankruptcy Code"), commenced by or against MEHC, order the substantive consolidation of the assets and liabilities of either PacifiCorp or PPW with those of MEHC.

For the purpose of rendering this opinion, we have reviewed solely the Purchase Agreement and certain documents related thereto (the "Purchase Documents"), and such other agreements, instruments, certificates, corporate and other records which we are aware of and have been furnished with, the organizational documents of PPW and other documents as we have deemed appropriate for the purpose of rendering this opinion (collectively, the "Documents"), as set forth in Exhibit B hereto. In connection with the delivery of this opinion, we have made no independent investigation of the facts referred to herein, except as expressly set forth herein, and have relied on the accuracy and completeness of all statements, representations, warranties and covenants as to factual matters contained in the Documents and in the officers' certificates delivered in connection herewith, to the extent such certificates relate to PacifiCorp, PPW and/or MEHC and are material to this opinion. All capitalized terms used but not otherwise defined in this opinion shall have the meanings ascribed to such terms in the Documents or the Bankruptcy Code, as applicable.

In rendering this opinion, we have assumed that:

(a) each of the Documents has been duly authorized, executed and delivered by all parties thereto;

(b) the parties to each of the Documents had at all relevant times, and continue to have, the legal power and authority to act in the capacities in which they have acted and are to act thereunder;

(c) the Documents constitute the valid and legally binding obligations of the parties thereto and are enforceable in accordance with their terms, except as such enforceability may be limited by the laws related to bankruptcy, insolvency or creditors' rights;

(d) none of the Documents will be amended, modified or changed in any respect material to this opinion;

(e) the Documents submitted to us as originals are authentic and all Documents submitted to us as copies conform to the original documents;

(f) all signatures on all Documents submitted to us are genuine;

(g) any motion or other proceeding brought to substantively consolidate the assets and liabilities of either PacifiCorp or PPW with those of MEHC will be actively opposed by creditors and representatives of PacifiCorp, PPW or any subsidiary thereof, and litigated until all appeals are exhausted or time to appeal has expired;

(h) any ruling upon the issues which are the subject of this opinion will follow existing applicable legal precedents after hearing a competent presentation and argument of the relevant facts and law;

(i) all covenants, representations and warranties in the Documents, including, without limitation, all requirements set forth in the organizational documents of PPW, have been and will be complied with in all material respects by MEHC, PPW and PacifiCorp insofar as they pertain to the valid existence of PPW and PacifiCorp and their separateness from MEHC; provided, however, that notwithstanding anything contained in this opinion or in the Documents to the contrary, we do not assume that either PPW or PacifiCorp will in the future remain adequately capitalized or solvent, not become a debtor under the Bankruptcy Code or have the ability to pay its debts in the future. With regard to the company procedures and financial effect set out in Section I.D. below, the relevant provisions (including, but not limited to, provision (j) with respect to each PPW and PacifiCorp) do not assume that either PPW or PacifiCorp will in the future remain adequately capitalized or solvent;

(j) as of the date hereof, except for any outstanding obligations under the IASA (as defined below) there are no intercompany loans or advances between PacifiCorp and/or PPW (including their subsidiaries or affiliates) on the one hand, and MEHC on the other; and

(k) creditors of PacifiCorp, PPW or any subsidiary thereof are relying on the separate existence of MEHC from PPW and PacifiCorp, and any substantive consolidation of the assets and liabilities of MEHC with those of either PPW or PacifiCorp would materially prejudice the rights of the creditors of PPW, PacifiCorp or any subsidiary thereof, as the case may be.

I. FACTS

A. The Parties

MEHC is a corporation organized under the laws of the State of Iowa and is the sole member and manager of PPW. MEHC has substantial assets other than its interests in the Equity Interest (as defined herein) and was not formed for the purpose of owning PacifiCorp.

PPW is a special purpose entity and a limited liability company formed under the laws of the State of Delaware on May 23, 2005. Since the date of its formation and through the date hereof, PPW has not engaged in any business activities and it has not incurred any liabilities. PPW is a wholly-owned subsidiary of MEHC and owns 100% of the Equity Interest.

PacifiCorp is corporation organized under the laws of the State of Oregon. PPW owns 100% of the outstanding common stock of PacifiCorp. PacifiCorp also has preferred stock outstanding in an aggregate principal amount of approximately $82.5 million. The preferred stock is comprised of various classes and series, all of which are publicly registered and held. Certain series of the preferred stock vote together with the PacifiCorp common stock on all matters. The common stock owned by PPW represents approximately 99.75% of the outstanding voting power of PacifiCorp's outstanding voting securities.

B. The Transaction

Pursuant to the Purchase Documents, MEHC agreed to purchase from PacifiCorp Holdings, a corporation organized under the laws of the State of Delaware, and PacifiCorp Holdings agreed to sell to MEHC or its designee, 100% of the capital stock of PacifiCorp (the "Equity Interest"). The Purchase Documents contain customary representations, warranties, covenants and events of default. In addition, a certain Intercompany Administrative Services Agreement has been entered into, dated as of March 31, 2006, by and between PacifiCorp and MEHC (the "IASA"), which provides for the corporate and affiliate cost allocation methodologies between the parties. Also, a certain Tax Allocation Agreement, effective as of March 21, 2006, has been entered into by and among Berkshire Hathaway Inc., MEHC and MEHC's affiliated corporations (the "TAA"). Further, the terms and conditions of the IASA and TAA are intrinsically fair and substantially similar to those available on an arm's-length basis with unaffiliated third parties.

In connection with the approval of the Transaction by the applicable state regulatory authorities, MEHC and PacifiCorp entered into stipulations ("Stipulations") with certain regulatory parties from each state in which PacifiCorp serves its retail customers (i.e., Utah, Oregon, Wyoming, Washington, Idaho and California) wherein MEHC and PacifiCorp agreed to undertake and comply with certain commitments. These commitments are comprised of the following categories: (a) extensions of existing commitments previously entered into by PacifiCorp and/or Scottish Power plc (e.g., operating restrictions and ring-fencing provisions); (b) new commitments entered into by PacifiCorp and MEHC applicable to all the states in which PacifiCorp's service territory extends; and (c) state-specific commitments that apply only to the activities and operations of PacifiCorp and MEHC within each respective state. Notwithstanding MEHC's agreement to perform under each Stipulation, MEHC does not guarantee any of PacifiCorp's financial obligations set forth therein; although, the Stipulations contain certain financial commitments made solely by MEHC whose aggregate liability is de minimis in relation to the size of the Transaction.

The Documents also require PPW to comply with certain affirmative and negative covenants, including covenants restricting the incurrence of additional indebtedness and prohibiting PPW from acquiring any other property or assets or conducting any business other than as specified in the organizational documents of PPW.

C. Governance Procedures

Pursuant to PPW's limited liability company agreement, dated as of March 15, 2006 (the "LLC Agreement"), PPW was formed for the purpose of engaging in the following activities: (a) to purchase and own the Equity Interest; (b) in connection with the purchase of the Equity Interest, to negotiate, authorize, execute, deliver and perform under documents, including, but not limited to, that certain Assignment and Assumption of Stock Purchase Agreement between MEHC and PPW, pursuant to which MEHC has assigned to PPW all of MEHC's rights and obligations under the Purchase Agreement (the "Assignment Agreement"), and any other agreement or document contemplated thereby; (c) to do such other things and carry on any other activities, and only such things and activities, which the Board (as defined herein) determines to be necessary, convenient or incidental to any of the foregoing purposes; and (d) to have and exercise all of the power and rights conferred upon limited liability companies formed pursuant to the Limited Liability Company Act of the State of Delaware in furtherance of the foregoing.

The LLC Agreement also provides that the business and affairs of PPW shall be managed by or under the direction of a board of one or more directors (the "Board"); provided that from and after the purchase of the Equity Interest, and for so long as PPW shall own the Equity Interest, one of the members of the Board shall be an Independent Director. Pursuant to the LLC Agreement, an "Independent Director" shall mean a member of the Board who is not at the time of initial appointment, at any time while serving on the Board and/or has not been at any time during the preceding five years: (a) a member, stockholder, director (except as such Independent Director of PPW), officer, employee, partner, attorney or counsel of PPW or any affiliate of PPW; (b) a creditor, customer (other than a consumer), supplier or other person who has derived in any one of the preceding five years revenues from its activities with PPW or any affiliate of PPW (except as such

Independent Director); (c) a person related to or employed by any person described in clause (a) or clause (b) above; or (d) a trustee, conservator or receiver for PPW or any affiliate of PPW.[1]

The LLC Agreement further provides that, for as long as PPW owns or holds the Equity Interest, neither PPW, MEHC nor the Board shall be authorized or empowered, nor shall they permit PPW, without prior unanimous written consent of all of the Board, including the Independent Director, to: (a) consolidate, merge, dissolve, liquidate or sell all or substantially all of PPW's assets; (b) institute proceedings to have PPW adjudicated bankrupt or insolvent; (c) consent to the institution of bankruptcy or insolvency proceedings against PPW; (d) file a voluntary petition seeking, or consenting to, reorganization or relief with respect to PPW under any applicable federal or state law relating to bankruptcy; (e) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of PPW or a substantial part of its property; (f) make any assignment for the benefit of creditors of PPW; (g) admit in writing PPW's inability to pay its debts generally as they become due; or (h) to the fullest extent permitted by law, take any action in furtherance of any such action. Moreover, the Board may not vote on, or authorize the taking of, any of the foregoing actions unless there is at least one Independent Director then serving in such capacity.

The LLC Agreement further provides that, for so long as PPW owns or holds the Equity Interest, MEHC shall cause PPW to have, at all times, at least one person who shall automatically become a member having 0% economic interest in PPW (the "Springing Member") upon the dissolution of MEHC or upon the occurrence of any other event that causes MEHC to cease being a member of PPW. Upon the occurrence of any such event, PPW shall be continued without dissolution and the Springing Member shall, without any action of any person or entity, automatically and simultaneously become a member of PPW having a 0% economic interest in PPW. The Springing Member shall not be required to make any capital contributions to PPW and shall not receive any limited liability company interest in PPW. Prior to its admission to PPW as a member of PPW, the Springing Member shall have no interest (economic or otherwise) in, and is not a member of, PPW.

D. Company Procedures and Financial Effect

Based on the provisions set forth in the Documents, including, without limitation, the provisions contained in the LLC Agreement, we assume that the following has been and will be true of PPW at all times since its formation:

(a) The Documents, to the extent they relate to the separateness and valid existence of PPW, have been and will continue to be complied with in accordance with the terms thereof as of their respective effective dates.

(b) The activities of PPW have been and will continue to be limited to those set forth in the LLC Agreement. The LLC Agreement has limited and will continue to limit PPW's activities to those activities set forth therein.

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[1] As used in this definition, "affiliate" shall have the meaning given to such term under Rule 405 under the Securities Act of 1933, as amended.

(c) PPW has observed and will continue to observe all material corporate procedures, as applicable, insofar as such procedures relate to its separateness and valid existence, as required by the LLC Agreement and applicable law.

(d) The financial records and accounts of PPW have been, are and will continue to be prepared and maintained in accordance with the method of accounting determined by MEHC. The independent auditor for PPW shall be an independent public accounting firm selected by MEHC.

(e) PPW shall:

i. maintain its own separate books and records, financial statements and bank accounts;

ii. except for tax and accounting purposes, at all times hold itself out to the public as a legal entity separate from MEHC and any other Person and not identify itself as a division of any other Person;

iii. have a Board, the composition of which in sum is unique from that of any other Person;

iv. file its own tax returns, if any, as may be required under applicable law, and pay any taxes required to be paid under applicable law;

v. not commingle its assets with assets of any other Person;

vi. conduct its business in its own name and hold all of its assets in its own name;

vii. pay its own liabilities only out of its own funds;

viii. maintain an arm's-length relationship with its affiliates, including MEHC;

ix. from its own funds, pay the salaries of its own employees;

x. not hold out its credit as being available to satisfy the obligations of others;

xi. maintain its own office and telephone lines separate and apart from its affiliates, although it may lease space from an affiliate and share phone lines with an affiliate, having either separate numbers or extensions, and in furtherance thereof allocate fairly and reasonably any overhead for shared office space;

xii. use separate stationery, invoices and checks bearing its own name;

xiii. not pledge its assets for the benefit of any other Person;

xiv. correct any known misunderstanding regarding its separate identity;

xv. maintain adequate capital and an adequate number of employees in light of its contemplated business purposes; and

xvi. not acquire any obligations or securities of MEHC or its affiliates, other than the Equity Interest.

(f) Assets have not been and will not be transferred to or from PPW from or to MEHC without fair consideration (except for the Equity Interest pursuant to the Assignment Agreement and any distribution made in the ordinary course by PPW, to the extent permitted by the LLC Agreement and applicable law) or with the intent to hinder, delay or defraud the creditors of PPW, MEHC or PacifiCorp and its subsidiaries.

(g) PPW has not and will not transfer any of its assets in contemplation of insolvency or with the intent to hinder, delay or defraud any present or future creditor of PPW, MEHC or PacifiCorp and its subsidiaries. The Transaction contemplated by the Purchase Agreement does not create conditions which would cause such Transaction to be a fraudulent transfer or fraudulent conveyance under the laws which govern the LLC Agreement.

(h) For so long as PPW holds or owns the Equity Interest, PPW shall not:

i. become or remain liable, directly or contingently, in connection with any indebtedness or other liability of any other person or entity, whether by guarantee, endorsement (other than endorsements of negotiable instruments for deposit or collection in the ordinary course of business), agreement to purchase or repurchase, agreement to supply or advance funds, or otherwise;

ii. grant or permit to exist any lien, encumbrance, claim, security interest, pledge or other right in favor of any person or entity in the assets of PPW or any interest (whether legal, beneficial or otherwise) in any thereof;

iii. engage, directly or indirectly, in any business other than as permitted to be performed under Section 7 of the LLC Agreement;

iv. make or permit to remain outstanding any loan or advance to, or own or acquire: (1) indebtedness issued by any other person or entity; or (2) any stock or securities of or interest in, any person or entity, other than the Equity Interest;

v. enter into, or be a party to, any transaction with any of its affiliates, except: (1) in the ordinary course of business; (2) pursuant to the reasonable requirements and purposes of its business; and (3) upon fair and reasonable terms (and, to the extent material, pursuant to written agreements) that are consistent with market terms of any such transactions entered into by unaffiliated parties; or

vi. make any change to its name or principal business or use of any trade names, fictitious names, assumed names or "doing business as" names.

(i) PPW believes that: (i) it will not, either as a result of the Transaction contemplated by the Documents or otherwise, incur debts that are in fact or which it believes are beyond its ability to pay or that would be prohibited by its organizational documents; and (ii) its assets and cash flow enable it and will continue to enable it to meet its obligations in the ordinary course of business as they become due.

(j) Upon the closing of the Transaction, PPW shall not be rendered insolvent or inadequately capitalized in light of its contemplated business operation and anticipated payment obligations.

(k) PPW has no present intent to file a voluntary petition (or consent to the filing of an involuntary petition) under the Bankruptcy Code or under any applicable bankruptcy, insolvency or other similar law.

Based on the provisions set forth in the Documents, including, without limitation, the provisions contained in the Stipulations, we assume that the following is true of PacifiCorp all times since its organization:

(a) The Documents, to the extent they relate to the separateness and valid existence of PacifiCorp, have been and will continue to be complied with in accordance with the terms thereof as of their respective effective dates.

(b) The activities of PacifiCorp have been and will continue to be limited to those set forth in the Stipulations and applicable law.

(c) PacifiCorp has observed and will continue to observe all material corporate procedures, as applicable, insofar as such procedures relate to its separateness and valid existence, as required by the Stipulations and applicable law.

(d) The financial records and accounts of PacifiCorp have been, are and will continue to be prepared and maintained in accordance with the method of accounting determined by PacifiCorp. The independent auditor for PacifiCorp shall be an independent public accounting firm selected by PacifiCorp.

(e) PacifiCorp shall:

i. maintain its own separate books and records, financial statements and bank accounts;

ii. except for tax and accounting purposes, at all times hold itself out to the public as a legal entity separate from MEHC and any other Person and not identify itself as a division of any other Person;

iii. have a Board, the composition of which in sum is unique from that of any other Person;

iv. file its own tax returns, if any, as may be required under applicable law, and pay any taxes required to be paid under applicable law;

v. not commingle its assets with assets of any other Person;

vi. conduct its business in its own name and hold all of its assets in its own name;

vii. pay its own liabilities only out of its own funds;

viii. maintain an arm's-length relationship with its affiliates, including MEHC;

ix. from its own funds, pay the salaries of its own employees; provided that to the extent PacifiCorp uses the services of an employee of MEHC (or vice-versa), an appropriate allocation will be made for such services;

x. not hold out its credit as being available to satisfy the obligations of others;

xi. maintain its own office and telephone lines separate and apart from its affiliates, although it may lease space from an affiliate and share phone lines with an affiliate, having either separate numbers or extensions, and in furtherance thereof allocate fairly and reasonably any overhead for shared office space;

xii. use separate stationery, invoices and checks bearing its own name;

xiii. not pledge its assets for the benefit of any other Person;

xiv. correct any known misunderstanding regarding its separate identity;

xv. maintain adequate capital and an adequate number of employees in light of its contemplated business purposes; and

xvi. not acquire any obligations or securities of MEHC or its affiliates.

(f) Assets have not been and will not be transferred to or from PacifiCorp from or to MEHC without fair consideration (except as otherwise provided in the Documents) or with the intent to hinder, delay or defraud the creditors of PacifiCorp, MEHC or PPW.

(g) PacifiCorp has not and will not transfer any of its assets in contemplation of insolvency or with the intent to hinder, delay or defraud any present or future creditor of PacifiCorp, MEHC or PPW. The Transaction contemplated by the Purchase Agreement does not create conditions which would cause such Transaction to be a fraudulent transfer or fraudulent conveyance under applicable law.

(h) For so long as PPW holds or owns the Equity Interest, PacifiCorp shall not:

i. become or remain liable, directly or contingently, in connection with any indebtedness or other liability of any other person or entity, whether by guarantee, endorsement (other than endorsements of negotiable instruments for deposit or collection in the ordinary course of business), agreement to purchase or repurchase, agreement to supply or advance funds, or otherwise;

ii. grant or permit to exist any lien, encumbrance, claim, security interest, pledge or other right in favor of any of PacifiCorp's affiliates in the assets of PacifiCorp or any interest (whether legal, beneficial or otherwise) in any thereof;

iii. make or permit to remain outstanding any loan or advance to, or own or acquire: (1) indebtedness issued by any of PacifiCorp's affiliates; or (2) any stock or securities of or interest in, any of PacifiCorp's affiliates; or

iv. enter into, or be a party to, any transaction with any of its affiliates, except: (1) in the ordinary course of business; (2) pursuant to the reasonable requirements and purposes of its business; and (3) upon fair and reasonable terms (and, to the extent material, pursuant to written agreements) that are consistent with market terms of any such transactions entered into by unaffiliated parties.

(i) PacifiCorp believes that: (i) it will not, either as a result of the Transaction contemplated by the Documents or otherwise, incur debts that are in fact or which it believes are beyond its ability to pay or that would be prohibited by the Stipulations or applicable law; and (ii) its assets and cash flow enable it and will continue to enable it to meet its obligations in the ordinary course of business as they become due.

(j) Upon the closing of the Transaction, PacifiCorp was not rendered insolvent or inadequately capitalized in light of its contemplated business operation and anticipated payment obligations.

(k) PacifiCorp has no present intent to file a voluntary petition (or consent to the filing of an involuntary petition) under the Bankruptcy Code or under any applicable bankruptcy, insolvency or other similar law.

With respect to each PacifiCorp and PPW: (a) since their formation, neither the assets nor creditworthiness of each PacifiCorp or PPW has been generally held out by it as being available for the payment of any of the liabilities of any other entity; and (b) in the future, neither the assets nor creditworthiness of either PacifiCorp or PPW will be generally held out by it as being available for the payment of any liability of any such other entity.

With respect to MEHC: (a) neither the assets nor the creditworthiness of MEHC has been generally held out by it as being available for the payment of any liability of either PacifiCorp or PPW; and (b) in the future, neither the assets nor the creditworthiness of MEHC will be generally held out by it as being available for the payment of any liability of either PacifiCorp or PPW.

Except for their own respective officers and directors, and as otherwise provided in their respective organizational documents or in Section 2 of the Assignment Agreement, neither PacifiCorp nor PPW has in the past indemnified, presently indemnifies or will in the future indemnify any of the past, present or future officers or directors of MEHC (except in their capacities as officers or directors of either PacifiCorp or PPW) or any of their respective Affiliates (other than PacifiCorp or PPW). MEHC has not in the past indemnified, does not presently indemnify nor will in the future indemnify any of the past, present or future officers or directors of PacifiCorp or PPW.

E. Disclosure of the Transaction

The financial statements of each of PacifiCorp, PPW and MEHC will disclose the material effects of the Transaction in accordance with Generally Accepted Accounting Principles, consistently applied, and will also disclose that the assets of PacifiCorp and PPW will not be directly available to pay creditors of MEHC or vice versa.

Neither PacifiCorp, PPW nor MEHC has engaged or will engage in any fraud in connection with the Transaction.

II. LEGAL ANALYSIS

A. Applicable Law[2]

Substantive consolidation is an equitable remedy available in cases under the Bankruptcy Code and the Bankruptcy Code's predecessor, the Bankruptcy Act of 1898, as amended (the "Bankruptcy Act"). In applying the remedy of substantive consolidation, a court combines the assets and liabilities of a debtor in a case under the Bankruptcy Code, or Bankruptcy Act, with those of other debtors, or in some cases, non-debtors.[3] See Colonial Realty, 966 F.2d at 58; Union Sav. Bank v. Augie/Restivo Baking Co., Ltd. (In re Augie/Restivo Baking Co., Ltd.), 860 F.2d 515, 518 (2d Cir.

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[2] As an initial matter, we note that the case law on substantive consolidation developed under the Bankruptcy Code has not addressed, to our knowledge, the issue of substantive consolidation of a limited liability company. We assume for purposes of this opinion that a Bankruptcy Court considering the issue would apply the general principles of substantive consolidation that have been developed in cases arising under the Bankruptcy Code, most of which address consolidating a corporation with a corporation. In this regard, we note that substantive consolidation has been ordered of: (i) a general partnership with its general partners, FDIC v. Colonial Realty Co., 966 F.2d 57, 58 (2d Cir. 1992) (hereinafter "Colonial Realty"); (ii) a partnership, a corporation and individuals, Holywell Corp. v. Bank of New York, 59 B.R. 340 (S.D. Fla. 1986), cert. denied, 488 U.S. 823 (1988); and (iii) individuals and corporations. In re Baker & Getty Fin Serv., Inc., 78 B.R. 139 (Bankr. N.D. Ohio 1987). In each instance, courts employed the same type of analysis utilized when considering whether to order the substantive consolidation of corporations. For example, the Second Circuit has stated, while applying principles of substantive consolidation to individual general partners and their general partnership, that "[t]here is simply no basis, in either these critical factors or in their underlying equitable considerations, for a blanket proscription of their application to the bankruptcy estate of individuals." Colonial Realty, 966 F.2d at 61. Accordingly, we have relied for our analysis on the general body of substantive consolidation case law and assume, for purposes of this opinion, that such law would be applicable to the court's determination as to whether to consolidate an entity with a limited liability company.

[3] Courts disagree on whether the substantive consolidation of a debtor with a non-debtor is permitted. Compare Morse Operations, Inc. v. Robins LE-COCQ, Inc. (In re Lease-A-Fleet, Inc.), 141 B.R. 869, 872 (Bankr. E.D. Pa. 1992) (in denying substantive consolidation of debtor's and non-debtor's estates, court stated that "caution must be multiplied exponentially in a situation where a consolidation of a debtor's case with a non-debtor is attempted"); In re Julien Co., 120 B.R. 930, 937-938 (Bankr. W.D. Tenn. 1990) (motion to substantively consolidate assets of non-debtor with those of debtor is not sufficiently protective of non-debtor and relief therefore must be sought by adversary proceeding); Goldman v. Haverstraw Assocs. (In re R.H.N. Realty Corp.), 84 B.R. 356, 358 (Bankr. S.D.N.Y. 1988) ("To amend the caption so as to add [the non-debtor] as a co-debtor would deprive [the non-debtor] of the opportunity of contesting the involuntary petition . . . ."); In re Alpha & Omega Realty, Inc., 36 B.R. 416, 417 (Bankr. D. Idaho 1984) (questions jurisdiction and due process requirements necessary for applying the remedy of substantive consolidation involving a non-debtor); United States v. AAPC, Inc. (In re AAPC, Inc.), 277 B.R. 785, 791 (Bankr. D. Utah 2002) (same), with Alexander v. Compton (In re Bonham), 229 F.3d 750, 770 (9th Cir. 2000) (court orders substantive consolidation where individual debtor commingled her assets with two corporate non-debtors as part of a Ponzi scheme and all named parties were on notice of the requested relief); Munford, Inc. v. Toc Retail, Inc. (In re Munford, Inc.), 115 B.R. 390, 398 (Bankr. N.D. Ga. 1990) (ability to file involuntary petition under section 303 of the Bankruptcy Code did not preclude the use of substantive consolidation under section 105(a) as an alternative means to bring a non-debtor's assets into a debtor's estate); In re Crabtree, 39 B.R. 718, 722 (Bankr. E.D. Tenn. 1984) (permitting amendment of caption to include non-debtor because non-debtor was the debtor's alter ego); In re 1438 Meridian Place, N.W. Inc., 15 B.R. 89, 95 (Bankr. D.D.C. 1981) (finding jurisdiction over the subsidiary supports jurisdiction over the parent and no deprivation of substantive rights existed because all named parties were on notice of the requested relief).

1988) (hereinafter "Augie/Restivo"); Drabkin v. Midland-Ross Corp. (In re Auto-Train Corp., Inc.), 810 F.2d 270, 276 (D.D.C. Cir. 1987) (hereinafter "Auto-Train"); Chemical Bank v. Kheel, 369 F.2d 845, 847 (2d Cir. 1966) (hereinafter "Kheel") (former Bankruptcy Act case). Substantive consolidation is employed in cases where the interrelationships of the debtors are hopelessly tangled and the time and expense required to unscramble them are so substantial as to threaten the realization of any net assets for all of the creditors. First Nat'l Bank of Barnesville v. Rafoth (In re Baker & Getty Fin. Serv., Inc.), 974 F.2d 712, 720 (6th Cir. 1992).

The court's power to effect substantive consolidation is not specifically provided for by the Bankruptcy Code, but arises out of its general powers of equity and common law. See 11 U.S.C. § 105. See, e.g., Sampsell v. Imperial Paper & Color Corp., 313 U.S. 215, 219, 61 S. Ct. 904, 907 (1941); Colonial Realty, 966 F.2d at 59; Woburn Assocs. v. Kahn (In re Hemingway Transport, Inc.), 954 F.2d 1, 11 n.14 (1st Cir. 1992) (citing section 105 of the Bankruptcy Code for the court's power to substantively consolidate affiliated entities).[4]

The substantive consolidation of two or more entities could have a dramatic impact on the rights and obligations of creditors and other parties in interest in a case or cases under the Bankruptcy Code. For example, the substantive consolidation of one entity having little or no assets with another entity having substantial assets could have a beneficial impact on the creditors of the former entity at the expense of the creditors of the latter entity. See, e.g., Auto-Train, 810 F.2d at 276 ("because every entity is likely to have a different debt-to-asset ratio consolidation almost invariably redistributes wealth among the creditors of the various entities"); SMA, 935 F.2d at 248 (same); In re Snider Bros., Inc., 18 B.R. 230, 234 (Bankr. D. Mass. 1982) (hereinafter "Snider Bros.") (differing asset-to-liability ratios prejudice creditors of entity with higher ratio). Another potential impact on creditors from the substantive consolidation of affiliated entities is the likely elimination of any intercompany obligations or liabilities among the consolidated entities. See, e.g., Colonial Realty, 966 F.2d at 58-59 ("[s]ubstantive consolidation usually results . . . in 'eliminating inter-[entity] claims'") (citation omitted); Auto-Train, 810 F.2d at 276 ("liabilities of consolidated entities inter se are extinguished by the consolidation"); Flora Mir Candy Corp. v. R. S. Dickson & Co. (In re Flora Mir Candy Corp.), 432 F.2d 1060, 1063 (2d Cir. 1970) (former Bankruptcy Act case) (hereinafter "Flora Mir") (substantive consolidation would eliminate corporation's claim against another for misappropriation of assets). Similarly, a creditor holding a guaranty claim against an entity that is substantively consolidated with the primary obligor on the guaranteed debt would likely lose the guaranty claim in favor of a single claim against the consolidated entity. See, e.g., In re Manzey Land

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[4] As an equitable doctrine, substantive consolidation is to promote fairness to all creditors and, therefore, the doctrine may be applied to consolidate the estates of corporations, partnerships and individual debtors. See Colonial Realty, 966 F.2d at 58-61 (distinguishing substantive consolidation from doctrine of piercing the corporate veil and rejecting argument that estates of individual debtors should not be consolidated with estate of partnership). See also In re Nite Lite Inns, 17 B.R. 367 (Bankr. S.D. Cal. 1982) (permitting substantive consolidation of estates of corporations, partnership and individual debtors). The court will apply the same analysis and evaluate the same factors in determining whether the estates of corporations, partnerships or individuals should be consolidated. See, e.g., Eastgroup Properties v. Southern Motel Assoc., Ltd. (In re Southern Motel Assoc., Ltd.), 935 F.2d 245, 249-252 (11th Cir. 1991) (hereinafter "SMA") (applying factors to consolidation of estates of limited partnership and corporation).

& Cattle Co., 17 B.R. 332, 338 (Bankr. D.S.D. 1982) (hereinafter "Manzey") (unsecured creditor's claim against individual guarantors would be a single unsecured claim against the consolidated estate of the individuals and the corporation).

In view of such potentially significant consequences from the substantive consolidation of two or more entities, many courts have stated that this remedy should be granted sparingly. See, e.g., In re Owens Corning, 419 F.3d 195, 211 (3d Cir. 2005) (hereinafter "Owens") ("because substantive consolidation is extreme . . . and imprecise, this 'rough justice' remedy should be rare and, in any event one of last resort"); Colonial Realty, 966 F.2d at 61; Alexander v. Compton (In re Bonham), 229 F.3d 750, 768 (9th Cir. 2000) (hereinafter "Bonham"). Nevertheless, in appropriate cases, courts will order the substantive consolidation of two or more entities. See SMA, 935 F.2d at 249 (citing In re Murray Indus., 119 B.R. 820, 828 (Bankr. M.D. Fla. 1990) (hereinafter "Murray") (liberal trend in ordering substantive consolidation arises from the increased judicial recognition of interrelated corporate structures for tax and business planning purposes)).

The issue of whether substantive consolidation would be appropriate is further complicated because the determination is sui generis – to be decided on a case-by-case basis. See, e.g., Colonial Realty, 966 F.2d at 61 (thorough searching of the record is required); Auto-Train, 810 F. 2d at 276; In re Cooper, 147 B.R. 678, 682 (Bankr. D.N.J. 1992) ("[t]he factors [used in determining whether substantive consolidation is warranted] are only sign posts to assist the court's judgment"); Murray, 119 B.R. at 829 ("[t]here is no one set of elements that mandates consolidation"); Snider Bros., 18 B.R. at 234 (same). Courts generally agree, however, that the determination of whether substantive consolidation would be appropriate requires a detailed factual analysis. See, e.g., Fish v. East, 114 F.2d 177, 191 (10th Cir. 1940) (former Bankruptcy Act case); In re DRW Property Co., 54 B.R. 489, 495 (Bankr. N.D. Tex. 1985) (hereinafter "DRW").

The appropriateness of substantive consolidation is decided based on an evaluation of one or more of the following three areas of inquiry: (i) the pre-bankruptcy conduct of and interrelationship between the separate entities; (ii) the balance of the benefits and harms to creditors and other parties in interest; and (iii) the impact of the substantive consolidation on the bankruptcy estates. See, e.g., Fish v. East, 114 F.2d at 191 (interrelationship factor analysis); In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723, 764 (Bankr. S.D.N.Y. 1992) (hereinafter "Drexel") (consider interrelationship factors in the larger context of balancing harms and benefits); Manzey, 17 B.R. at 338 ("it would be very difficult for these Debtors to reorganize and operate on a stand-alone basis"). See also First Nat'l Bank v. Giller (In re Giller), 962 F.2d 796, 799 (8th Cir. 1992) (utilizes all three approaches); In re Richton Int'l Corp., 12 B.R. 555, 558 (Bankr. S.D.N.Y. 1981) (same) (hereinafter "Richton"). Each of these three areas of inquiry has been shaped by the courts in a developing body of case law. See id.[5]

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[5] The Second, Ninth, Eleventh and District of Columbia Circuits have each articulated a standard for evaluating the factors relevant to determining whether substantive consolidation is warranted. Under the Second Circuit test, the court must consider whether creditors dealt with the to-be-consolidated entities as a single unit and did not rely on their separate identities when extending credit, or whether the affairs of the debtor are so entangled that consolidation will benefit all creditors because disentangling is either impossible or too costly to justify. See Colonial Realty, 966

Recently, the Third Circuit articulated a two-prong test for substantive consolidation similar to the one utilized in the Second Circuit. In Owens, the Third Circuit held that substantive consolidation would not be granted unless the proponent could prove, with respect to the entities for which consolidation is being sought, that: "(i) prepetition they disregarded separateness so significantly their creditors relied on the breakdown of entity borders and treated them as one legal entity, or (ii) postpetition their assets and liabilities are so scrambled that separating them is prohibitive and hurts all creditors." Id. at 211. The Third Circuit also stated that "[i]f an objecting creditor relied on the separateness of the entities, consolidation cannot be justified vis-à-vis the claims of that creditor" even if the benefits of consolidation heavily outweigh the harm. Id. at 210. Indeed, to justify substantive consolidation based on the hopeless commingling of assets and liabilities between the entities, the proponent would need to show that "every creditor will benefit from the consolidation" as the "[m]ere benefit to some creditors, or administrative benefit to the Court, falls far short." Id. at 214.

1. Interrelationship of the Entities

If the pre-bankruptcy conduct of and interrelationship between entities suggest that they were operated as one enterprise, substantive consolidation may be warranted. See, e.g., In re Standard Brands Paint Co., 154 B.R. 563, 572 (Bankr. C.D. Cal. 1993) (hereinafter "Standard Brands") (five debtor entities always held themselves out as a single consolidated unit); In re I.R.C.C., Inc., 105 B.R. 237, 243 (Bankr. S.D.N.Y. 1989) (three debtor subsidiaries operated as a single economic unit). The existence of this fact alone, however, may be insufficient to mandate substantive consolidation. See, e.g., Manzey, 17 B.R. at 337 (court found operation as a single unit only one factor to be considered). Nevertheless, the interrelationship of the entities has become a focal point of analysis in many cases. See, e.g., Augie/Restivo, 860 F.2d at 519.

The interrelationship inherent between a parent corporation and single purpose financing subsidiaries was found not to warrant substantive consolidation of such subsidiaries with their parent corporation in Anaconda Bldg. Materials Co. v. Newland, 336 F.2d 625, 627 (9th Cir. 1964) (former Bankruptcy Act case) (hereinafter "Anaconda") (subsidiaries purchased mortgage loans from parent with proceeds of debentures). In contrast, similar facts resulted in substantive consolidation of a parent corporation with its single purpose subsidiary in Hamilton Ridge Lumber

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F.2d at 61; Augie/Restivo, 860 F.2d at 518. Substantive consolidation should be ordered where the inequalities of substantive consolidation are outweighed by the practical difficulties of tracing complex transactions between interrelated entities. Augie/Restivo, 860 F.2d at 519. The Ninth Circuit has adopted the Second Circuit test articulated in Augie/Restivo. See Alexander v. Compton (In re Bonham), 229 F.3d 750, 766 (9th Cir. 2000).

Under the District of Columbia Circuit test, the proponent of consolidation must show a substantial identity between the entities to be consolidated, and the necessity of consolidation to avoid some harm or to realize some benefit. If these showings have been made, then a presumption arises that creditors have not relied solely on the credit of one of the entities involved. At that point, the burden shifts to the party opposing consolidation to show that at least some creditors: (a) relied on the separate credit of one of the entities to be consolidated; and (b) will be prejudiced by substantive consolidation. If the party opposing consolidation makes this showing, then the court may order consolidation only if the court also determines that the demonstrated benefits of consolidation heavily outweigh the harm. See Auto-Train, 810 F.2d at 276. The Eleventh Circuit has adopted the District of Columbia Circuit test. See SMA, 935 F.2d at 249.

Sales Corp. v. Wilson, 25 F.2d 592, 594 (4th Cir. 1928) (former Bankruptcy Act case) (ostensible sale of assets to subsidiary was to secure bank's loan). Compare Morse Operations, Inc. v. Robins LE-COCQ, Inc. (In re Lease-A-Fleet, Inc.), 141 B.R. 869, 872 (Bankr. E.D. Pa. 1992) and Stone v. Eacho (In re Tip Top Tailors, Inc.), 127 F.2d 284, 288 (4th Cir.), cert. denied, 317 U.S. 635 (1942) (former Bankruptcy Act case) (subsidiary of parent which owned and operated a store was a mere "corporate pocket" or department of the parent's business), with In re Lewellyn, 26 B.R. 246, 251 (Bankr. S.D. Iowa 1982) (hereinafter "Lewellyn") (fact that subsidiary is a "corporate pocket" is not grounds for substantive consolidation, without other factors).

In analyzing the pre-bankruptcy interrelationships between entities for purposes of evaluating the appropriateness of substantive consolidation, courts have considered, in varying degrees of importance, the extent to which many, if not all, of the following factors are present:

(a) the parent corporation owns all or a majority of the capital stock of the subsidiary;

(b) the parent and subsidiary corporations have common directors or officers;

(c) the parent corporation finances the subsidiary or guarantees loans made to the subsidiary;

(d) the parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation;

(e) the subsidiary has grossly inadequate capital;

(f) the subsidiary has no employees;

(g) the parent corporation pays the salaries, expenses or losses of the subsidiary;

(h) the subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to it by the parent corporation;

(i) in the papers of the parent corporation, and in the statements of its officers, the subsidiary is referred to as such or as a department or division;

(j) the directors or executives of the subsidiary do not act independently, but take direction from the parent corporation;

(k) the formal legal requirements of the subsidiary as a separate and independent corporation are not observed;

(l) consolidation at a single physical location would provide economic benefit;

(m) assets and business functions of the parent and subsidiary are commingled;

(n) segregating and ascertaining individual assets and liabilities of the parent and subsidiary would be difficult; and

(o) assets were transferred between the entities without observance of corporate formalities.

See FDIC v. Hogan (In re Gulfco Inv. Corp.), 593 F.2d 921, 928-29 (10th Cir. 1979) (former Bankruptcy Act case) (hereinafter "Gulfco"); Fish v. East, 114 F.2d at 191; Maule Indus., Inc. v. Gerstel, 232 F.2d 294, 297 (5th Cir. 1956) (former Bankruptcy Act case); Drexel, 138 B.R. at 744, 764; In re Vecco Constr. Indus., Inc., 4 B.R. 407, 410 (Bankr. E.D. Va. 1980) (former Bankruptcy Act case); DRW, 54 B.R. at 495.

Extensive guarantees of an affiliate's debt and substantial intercompany debt suggest the pre-bankruptcy interrelationship warrants substantive consolidation. See, e.g., Drexel, 138 B.R. at 766 (presence of interlocking directors and officers, sharing of overhead, management and other expenses, shifting of funds between entities without observing corporate formalities, intricate network of intercompany accounts and extensive cross-corporate guarantees were all factors in court granting substantive consolidation); Richton, 12 B.R. at 558 (consolidation ordered where parent controlled management and operations of subsidiaries, interlocking officers and directors existed, funds were regularly shifted among entities resulting in substantial intercompany debt and extensive cross-corporate guarantees of both trade and bank debt existed); Soviero v. Franklin Nat'l Bank, 328 F.2d 446, 448 (2d Cir. 1964) (evidence that proceeds of affiliates' sales were deposited in parent's account and that all guarantees given to customers of the affiliates' debts were given solely in name of parent corporation were factors supporting substantive consolidation). Absent other factors suggesting operation of the different entities as one enterprise, however, the existence of intercorporate guarantees and loans alone will not mandate substantive consolidation. For example, in Augie/Restivo, the court found that a lender that had sought and received a cross-corporate guaranty of a loan to one company from the other company had operated on the assumption the lender was dealing with separate entities. 860 F.2d at 519. See also In re Donut Queen, Ltd., 41 B.R. 706, 710 (Bankr. E.D.N.Y. 1984) (guarantees by two debtors relative to one specific transaction did not evidence commonality of business purpose justifying consolidation); Snider Bros., 18 B.R. at 239 (despite frequency of intercorporate guarantees and loans, court denied substantive consolidation where each debtor kept separate records of the same evidencing lack of severe corporate entanglement).

Similarly, while an entity's lack of employees favors substantive consolidation, it is only one of many factors in the analysis. See, e.g., Murphy v. Stop & Go Shops, Inc. (In re Stop & Go of America, Inc.), 49 B.R. 743, 746 (Bankr. D. Mass. 1985) (hereinafter "Stop & Go") (in addition to lack of employees, the court considered debtor corporation's lack of funds, office, income, expenses and other factors in determining that debtor had no real existence and was mere instrumentality and alter ego of related entity, thereby warranting substantive consolidation); Kroh Bros. Dev. Co. v. Kroh Bros. Management Co. (In re Kroh Bros. Dev. Co.), 117 B.R. 499, 502 (W.D. Mo. 1989) (in ordering substantive consolidation of debtor corporation with non-debtor related entity, bankruptcy court considered, among other things, that non-debtor entity had no employees, offices or separate bank accounts and "virtually no independent existence"); Drexel, 138 B.R. at 744 (among many factors cited by court in granting substantive consolidation were that entities to be consolidated with related

debtor lacked employees, failed to publish unconsolidated financial statements, advertise in their own name or represent themselves to the public as independent entities and that no creditors or customers ever looked to the independent credit of those entities).

Complete domination or control of one entity by another is another factor supporting substantive consolidation of the entities. See, e.g., Stop & Go, 49 B.R. at 750 (court cited "pervasive control" in granting substantive consolidation); In re Baker & Getty Fin. Serv. Inc., 78 B.R. 139, 142 (Bankr. N.D. Ohio 1987) (while control of individual debtors over corporate debtors was factor in court determining to consolidate estates, court also considered extensive commingling of assets, use of corporate funds to purchase individual debtors' assets and failure to observe corporate formalities); Richton, 12 B.R. at 558 (parent's complete control over subsidiaries was significant factor in court's decision to substantively consolidate debtors; among other factors cited were existence of extensive cross guarantees, consolidated tax returns and financial statements and apparent lack of prejudice to any particular group of creditors from a consolidation). However, dominance and control of one entity by another entity does not automatically lead to substantive consolidation of both entities. See Nordberg v. Murphy (In re Chase & Sanborn Corp.), 55 B.R. 451, 452-53 (Bankr. S.D. Fla. 1985) (application for substantive consolidation of individual debtor with corporate debtors had been denied notwithstanding fact that the individual debtor "dominated and controlled" each of the corporate debtors and it would be impossible to reconstruct separate financial records).

2. Balancing of Benefits and Harms

Inasmuch as substantive consolidation could have a significant impact upon the relative rights and obligations of creditors and other parties in interest, see Auto-Train, 810 F.2d at 276, the interrelationship factors discussed above "must be evaluated within the larger context of balancing the prejudice resulting from the proposed consolidation against the effect of preserving separate debtor entities." Drexel, 138 B.R. at 764-765. Although the prejudice suffered by the proponent of substantive consolidation alone may be insufficient to justify substantive consolidation, see, e.g., Anaconda, 336 F.2d at 628, the balance of benefits and harms may be sufficient to tip in favor of granting substantive consolidation where the harm to the bulk of the creditors is substantial, see, e.g., SMA, 935 F.2d at 251.

In considering the impact on creditors, courts also look to the extent that creditors have relied on the separate credit of each entity. See SMA, 935 F.2d at 251; Auto-Train, 810 F.2d at 276; Kheel, 369 F.2d at 848. "There is also a rule that a creditor who relies on the sole credit of one entity is entitled to have its claim satisfied out of that entity's assets even if the entity is no more than a corporate pocket of a parent entity. This rule should control consolidations unless it is clear that the economic prejudice of continued debtor individuality substantially outweighs the economic prejudice of consolidation." Lewellyn, 26 B.R. at 251 (citations omitted). See also Auto-Train, 810 F.2d at 276 (the proponent of substantive consolidation must show a substantial identity of the entities and that substantive consolidation is necessary to avoid some harm or realize a benefit; the opponent must then show it relied on the separate credit of one entity and that its rights will be prejudiced; then the court may order substantive consolidation if the benefits heavily outweigh the harm); Bonham, 229 F. 3d at 767 (opponent must overcome presumption that it did not rely on separateness); James Talcott, Inc. v. Wharton (In re Continental Vending Mach. Corp.), 517 F.2d 997, 1001 (2d Cir. 1975), cert. denied,

424 U.S. 913 (1976) (former Bankruptcy Act case) (a court need not find that "creditors knowingly deal with the corporations as a unit" to substantively consolidate two or more corporations); Standard Brands, 154 B.R. at 572 (court found no undue prejudice to creditors from substantive consolidation where no creditors relied on the separate credit of the debtor's subsidiaries).

3. Impact on the Estates

Courts also will consider whether substantive consolidation will enhance and facilitate the debtors' rehabilitation or aid an orderly liquidation. See Manzey, 17 B.R. at 338 ("One of the policies behind the enactment of [c]hapter 11 is to give the debtor one meaningful and reasonable chance to rehabilitate. The [c]ourt finds substantive consolidation in this case furthers that intent of Congress."); Standard Brands, 154 B.R. at 571 (debtor's plan confirmable so long as court grants substantive consolidation); Richton, 12 B.R. at 559 (consolidated plan is probably the only alternative to liquidation). Although there is no established standard for applying this consideration, courts will focus on several factors, including: (a) the potential savings in costs and time associated with disentangling the records and accounts of the debtors; (b) the elimination of duplicate claims against several debtors and the need to adjudicate which debtor is liable; and (c) the financial benefit, if any, from consolidating the operations of the debtors. See Kheel, 369 F.2d at 847; Drexel, 138 B.R. at 765; In re F. A. Potts & Co., Inc., 23 B.R. 569, 574 (Bankr. E.D. Pa. 1982); In re Interstate Stores, Inc., 15 C.B.C. 634, 642 (Bankr. S.D.N.Y. 1978) (former Bankruptcy Act case). But see DRW, 54 B.R. at 496-97 (accounting difficulties alone are not hopeless obscurity which will lead to substantive consolidation); Gulfco, 593 F.2d at 929 ("Although the intercompany transactions were complex, the record does not indicate that the assets of the entities were hopelessly commingled."); Flora Mir, 432 F.2d at 1063 (minimal accounting difficulties).

III. DISCUSSION

As demonstrated above, there is no uniform standard for analyzing and applying the law of substantive consolidation to the facts at hand. Moreover, assuming that MEHC were to become a debtor in a case under the Bankruptcy Code, but PacifiCorp and PPW were not, a significant issue would exist at the outset as to whether a court's equitable powers were broad enough to apply the law of substantive consolidation to non-debtors. As discussed below, even if PacifiCorp or PPW were to become a debtor in a case under the Bankruptcy Code, the court would not order the substantive consolidation of either PacifiCorp or PPW with those of MEHC.

A. Pre-Bankruptcy Conduct and Interrelationships

With regard to the first area of inquiry – i.e., pre-bankruptcy conduct and interrelationship – many of the factors which weigh in favor of maintaining PacifiCorp and PPW as separate entities are present. For example, the businesses of each PacifiCorp and PPW have been and will be operated separately from that of other entities. PacifiCorp and PPW have in the past maintained, and will at all relevant times in the future maintain, their own separate books, records and bank accounts. PacifiCorp and PPW have in the past preserved, and will at all relevant times in the future preserve, their existence as entities duly organized, validly existing and in good standing (if

applicable) under the laws of the jurisdiction of their organization or formation, and there will be no commingling of funds or other assets between either PacifiCorp or PPW and any other entity.

The Documents clearly indicate that PacifiCorp and PPW conduct and will continue to conduct business with other Affiliates on terms similar to those in an arm's-length transaction. If PacifiCorp or PPW utilize the services of the employees of MEHC or any other entity, or shares office space with MEHC or any other entity, appropriate allocations for expenses and payments have been and will be made for such services and space.

As noted above, the Stipulations contain commitments provided by MEHC and PacifiCorp. However, MEHC is not guarantying any of PacifiCorp's financial obligations under the Stipulations or otherwise. Moreover, because the aggregate liability of the financial commitments made solely by MEHC under the Stipulations is such a small amount, we believe that such liability is de minimis in relation to the size of the Transaction and, therefore, does not affect our opinions herein.

B. Balancing of Benefits and Harm to Creditors and Others

In balancing the benefits and harms of substantive consolidation to creditors and interest holders, a court should consider that each PacifiCorp and PPW has in the past held, and will at all relevant times in the future hold, itself out to conduct business with third parties as an independent entity or Person. The court should evaluate the impact of substantive consolidation upon the creditors of each entity or Person being considered for consolidation, taking into account the expectations of the creditors when the transactions occurred. Notably, given the separateness of books, records, financial statements and tax returns, and the manner in which the discussed entities have been conducting and will conduct themselves, the creditors of the discussed entities should experience no confusion regarding the identity of the entities with which they transact business. On the other hand, substantive consolidation may be prejudicial to creditors of one or more of these entities, as each creditor is relying on the continued separate existence of a particular entity to satisfy its claims. A creditor is unlikely to have reviewed or considered the asset and liability structure of any entity other than the one to which it extended credit, and may be unfavorably impacted by substantive consolidation. With respect to each PacifiCorp and PPW: (a) since their formation, neither the assets nor creditworthiness of each PacifiCorp or PPW has been generally held out by it as being available for the payment of any of the liabilities of any other entity; and (b) in the future, neither the assets nor creditworthiness of each PacifiCorp or PPW will be generally held out by it as being available for the payment of any liability of any such other entity. With respect to MEHC: (y) neither the assets nor the creditworthiness of MEHC has been generally held out by it as being available for the payment of any liability of either PacifiCorp or PPW; and (z) in the future, neither the assets nor the creditworthiness of MEHC will be generally held out by it as being available for the payment of any liability of either PacifiCorp or PPW.

C. Impact on the Estates

Substantive consolidation of either PacifiCorp or PPW with MEHC may be prejudicial to the creditors of each PacifiCorp and PPW, as the case may be, and result in unintended consequences to the detriment of such creditors. Further, the substantive consolidation of either PacifiCorp or PPW with MEHC may not even enhance or facilitate the rehabilitation or liquidation of

MEHC to the extent it seeks relief under the Bankruptcy Code. Moreover, in addition to the considerations discussed above, inasmuch as limited liability company and corporate formalities will be observed, and inasmuch as the discussed entities will maintain separate books, records and assets (which are not commingled by the discussed entities), there should be minimal or no costs of disentangling the affairs of the discussed entities from that of any other entity.

IV. CONCLUSION

Based on the foregoing analysis, and relying on the facts, assurances, assumptions and discussion set forth herein and the law as it currently exists, and there being no reported case law directly on point, we are of the opinion that if MEHC were to become a debtor in a case under the Bankruptcy Code, and if the matter were properly briefed and presented to a court, the court would not order the substantive consolidation of the assets and liabilities of either PacifiCorp or PPW with those of MEHC.

We note, however, that, notwithstanding our analysis and conclusions, a court's decision in determining whether substantive consolidation should be ordered is based on its own analysis and interpretation of the factual evidence before it and applicable legal principles. Accordingly, a court viewing the facts and circumstances at the time of consideration of whether substantive consolidation is appropriate could reach a different conclusion with which, based on the foregoing opinions, we would not agree.

The opinions expressed herein are not a guaranty as to what a court would actually hold, but an opinion as to the decision of a court if the issue were properly presented to it and the court followed existing legal precedents applicable to the subject matter of the opinion.

V. QUALIFICATIONS

This opinion is limited by, subject to and based upon the following qualifications:

(a) We are members of the Bar of the State of New York and do not express any opinion with respect to the laws of any jurisdiction other than the laws of the United States of America and the laws of the State of New York.

(b) We express no opinion as to the availability of any remedies with respect to a default under the Documents.

(c) We express no opinion as to the ability or inability of PacifiCorp, PPW, MEHC or any other entity to dissolve, liquidate, reorganize or merge with any other entity, or to convey all or substantially all of its properties or assets.

(d) We express no opinion as to events which may have occurred prior to the Transaction that are not consistent with the representations, warranties and statements made in the Documents or the impact those events could or would have on the opinions rendered herein. We note that we have made no investigation of, and are not aware of, the existence of any such events.

(e) Any Bankruptcy Code analysis must recognize that the power of a court of competent jurisdiction with respect to a case, proceeding or matter under the Bankruptcy Code is extremely broad. For instance, pursuant to the powers granted in section 105(a) of the Bankruptcy Code, "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). Therefore, the conclusions reached herein must be considered in light of, and subject to, these broad statutory and equitable powers of the relevant court over a debtor's property, estate, creditors and equity interest holders.

(f) Except with respect to the opinions set forth above, we do not opine to the likelihood that any entity will be substantively consolidated with any other entity or the impact of any such consolidation on the opinions rendered herein.

(g) Further, we express no opinion as to any matter or law not expressly addressed herein.

This opinion is rendered for the sole benefit of the addressees hereof and no other Person or entity is entitled to rely hereon. Copies of this opinion may not be made available to any other Person or entity and this opinion may not be quoted or referred to in any other document.

The opinions expressed herein are given on the date hereof only and we assume no obligation to update or supplement such opinions to reflect any fact or circumstance that may hereafter come to our attention, any amendments or modifications to the Documents or any change in law that may hereafter occur or become effective.

Very truly yours,

Willkie Farr & Gallagher LLP

Willkie Farr & Gallagher LLP

EXHIBIT A

Utah Public Service Commission
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City UT 84114
Attention: Julie P. Orchard
Commission Secretary
UPSC Docket No. 05-035-54

Idaho Public Utilities Commission
472 West Washington
Boise, ID 83702-5983
Attention: Jean D. Jewell
Commission Secretary
IPUC Docket No. PAC-E-05-08

Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
Salem, OR 97310-2551
Attention: Vickie Bailey-Goggins, Administrator
Regulatory and Technical Support
OPUC Docket No. UM-1209

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298
Attention: Sean Gallagher
Director, Energy Division
CPUC Docket No. A. 05-07-010

Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
Mail Stop: FY 11/720
Olympia, WA 98504-7250
Attention: Carole Washburn
Executive Secretary
WUTC Docket No. UE-051090

Wyoming Public Service Commission
2515 Warren Avenue, Suite 300
Cheyenne, Wyoming 82002
Attention: Steve Oxley,
Commission Secretary
WPSC Docket No. 20000-EA-5-226

EXHIBIT B

LIST OF DOCUMENTS

1. Stock Purchase Agreement by and among Scottish Power PLC, as Seller Parent, PacifiCorp Holdings, Inc., as Seller, and MidAmerican Energy Holdings Company, as Buyer, for the purchase and sale of all of the common stock, no par value, of PacifiCorp, an Oregon Corporation, dated as of May 23, 2005, as amended by Amendment No. 1, dated March 21, 2006.

2. Assignment and Assumption of Stock Purchase Agreement between MidAmerican Energy Holdings Company and PPW Holdings LLC, dated as of March 21, 2006

3. Certificate of Formation of NWQ, LLC, dated May 23, 2005

4. NWQ, LLC Limited Liability Company Agreement, dated as of May 23, 2005

5. Certificate of Amendment of Certificate of Formation NWQ, LLC, dated May 27, 2005

6. Certificate of Amendment of Certificate of Formation of NWQ, LLC, dated July 11, 2005

7. PPW Holdings LLC, Limited Liability Company Agreement, dated as of March 15, 2006

8. Intercompany Administrative Services Agreement by and between PacifiCorp and MidAmerican Energy Holdings Company, dated as of March 31, 6006

9. Stipulation, dated November 15, 2005, by and among MidAmerican Energy Holdings Company, PacifiCorp, Utah Division of Public Utilities, Utah Committee of Consumer Services, Utah Industrial Energy Consumers, UAE Intervention Group, Utah Clean Energy and Western Resource Advocates, annexed to the Report and Order issued by the Public Service Commission of Utah on January 27, 2006

10. Amendment to Stipulation, dated March 3, 2006, by and among MidAmerican Energy Holdings Company, PacifiCorp, Utah Division of Public Utilities, Utah Committee of Consumer Services, Utah Industrial Energy Consumers, UAE Intervention Group, Utah Clean Energy and Western Resource Advocates, annexed to the Report and Order issued by the Public Service Commission of Utah on March 14, 2006

11. Stipulation, dated December 16, 2005, by and among MidAmerican Energy Holdings Company, PacifiCorp, Idaho Commission Staff, Monsanto Company, Idaho Power Company, Idaho Irrigation Pumpers Association, Inc., The Community Action Partnership Association of Idaho, IBEW Local 57 and J.R. Simplot Company, annexed to the Order of the Idaho Public Utilities Commission dated February 13, 2006

12. Amendment to Stipulation, dated March 9, 2006, by and among MidAmerican Energy Holdings Company, PacifiCorp, Idaho Commission Staff, Monsanto Company, Idaho Power Company, Idaho Irrigation Pumpers Association, Inc., The Community Action Partnership Association of Idaho, IBEW Local 57 and J.R. Simplot Company, annexed to the Order of the Idaho Public Utilities Commission dated March 14, 2006

13. Stipulation, dated December 23, 2005, by and among MidAmerican Energy Holdings Company, PacifiCorp, Staff of the Public Utility Commission of Oregon, the Citizens' Utilities Board, the Industrial Customers of Northwest Utilities, Renewable Northwest Project, Natural Resources Defense Council, Community Action Directors of Oregon, Oregon Energy Coordinators Association, League of Oregon Cities, Sherman County and Pacific Coast Federation of Fishermen's Associations, annexed to the Order entered by the Public Utility Commission of Oregon on February 24, 2006

14. Amendment to Stipulation, dated March 7, 2006, by and among MidAmerican Energy Holdings Company, PacifiCorp, Staff of the Public Utility Commission of Oregon, the Citizens' Utilities Board, the Industrial Customers of Northwest Utilities, Renewable Northwest Project, Natural Resources Defense Council, Community Action Directors of Oregon, Oregon Energy Coordinators Association, League of Oregon Cities, Sherman County and Pacific Coast Federation of Fishermen's Associations, annexed to the Order entered by the Public Utility Commission of Oregon on March 14, 2006

15. Stipulation and Settlement Agreement, dated October 21, 2005, by and among MidAmerican Energy Holdings Company, PacifiCorp, American Rivers, California Trout, Inc., Hoopa Valley Tribe, Trout Unlimited, Karuk Tribe of California, Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources, Northcoast Environmental Center, Friends of the River, Oregon Natural Resources Council, Headwaters, Klamath Forest Alliance and Waterwatch of Oregon, annexed to the Decision Granting Conditional Approval of the Acquisition of PacifiCorp by MidAmerican Energy Holdings Company, dated February 16, 2006

16. Stipulation, dated January 20, 2006, by and among MidAmerican Energy Holdings Company, PacifiCorp d/b/a Pacific Power & Light Company, Staff of Washington Utilities and Transportation Commission, the Public Counsel Section of the Office of the Attorney General, Industrial Customers of Northwest Utilities and the Energy Project, annexed to the Order Approving and Adopting Settlement Stipulation by the Washington State Utilities and Transportation Commission, dated February 22, 2006

17. Amendment to Stipulation, dated March 8, 2006, by and among MidAmerican Energy Holdings Company, PacifiCorp d/b/a Pacific Power & Light Company, Staff of Washington Utilities and Transportation Commission, the Public Counsel Section of the Office of the Attorney General, Industrial Customers of Northwest Utilities and the Energy Project, annexed to the Order Granting Stipulated Motion to Amend Order 07 by the Washington State Utilities and Transportation Commission, dated March 9, 2006

18. Stipulation, dated January 20, 2006, by and among MidAmerican Energy Holdings Company, PacifiCorp, the Officer of Consumer Advocate, Wyoming Industrial Energy Consumers, Wyoming Infrastructure Authority, Utility Workers Union of America, AFL-CIO, Utility Workers Union of America Local 127, Western Resource Advocates and Basin Electric Power Cooperative, annexed to the Order Approving Application for Reorganization by the Public Service Commission of Wyoming, dated February 28, 2006

19. Order Amending February 28, 2006 Order Approving Application for Reorganization by the Public Service Commission of Wyoming, dated March 10, 2006

20. Tax Allocation Agreement, effective as of March 21, 2006, by and among Berkshire Hathaway Inc., MidAmerican Energy Holdings Company ("MEHC") and MEHC's affiliated corporations

CERTIFICATE OF PACIFICORP

This certificate (the "Certificate") is delivered in connection with the execution of the legal opinion, dated June 7, 2006 (the "Opinion Letter"), delivered by Willkie Farr & Gallagher LLP, regarding the non-consolidation of assets and liabilities of either PacifiCorp, an Oregon corporation, or PPW Holdings LLC, a Delaware limited liability company ("PPW"), with those of MidAmerican Energy Holdings Company, an Iowa corporation ("MEHC"), in connection with the transactions contemplated by the Documents (as defined in the Opinion Letter). All capitalized terms used but not otherwise defined in this Certificate shall have the meanings ascribed to such terms in the Opinion Letter, the Documents or the Bankruptcy Code, as applicable.

The undersigned hereby certifies, as an officer of PacifiCorp and not in her/his individual capacity, that he/she: (a) is an officer of PacifiCorp; (b) is authorized and qualified to sign this Certificate on behalf of PacifiCorp; (c) has reviewed the Opinion Letter and the Documents; and (d) either has personal knowledge of or has conducted such investigation deemed necessary to verify the matters set forth herein.

The undersigned further certifies on behalf of PacifiCorp, and not in her/his individual capacity, that:

1. The undersigned is familiar with the transactions contemplated by, and the terms of, the Documents.

2. The statements set forth in the Facts section of the Opinion Letter, which are incorporated herein by reference, are, and are intended to remain, true and correct in all material respects at all relevant times.

3. From and after the date of the closing of the Transaction, PacifiCorp will not engage in any transaction with any of its Affiliates, including, without limitation, MEHC and PPW, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties or as otherwise permitted under the Documents.

4. The undersigned is not aware of any additional material facts that would materially affect the accuracy, correctness or validity of the facts, statements, assumptions and conclusions set forth in the Opinion Letter.

5. From and after the date of the closing of the Transaction, each of the representations and warranties of PacifiCorp in the Documents to which it is a party relating to valid existence and to "separateness" will remain true and correct in all material respects.

6. From and after the date of the closing of the Transaction, PacifiCorp will perform in all material respects all covenants and agreements with respect to

valid existence and to "separateness" required under the Documents to which it is a party to be performed by it for such relevant time.

7. Notwithstanding MEHC's agreement to perform under each Stipulation, MEHC does not guarantee any of PacifiCorp's financial obligations set forth therein; although, the Stipulations contain certain financial commitments made solely by MEHC whose aggregate liability is de minimis in relation to the size of the Transaction.

The undersigned understands that: (a) Willkie Farr & Gallagher LLP is relying on this Certificate; (b) this Certificate will be attached to the Opinion Letter; and (c) this Certificate will be relied upon by the persons and entities that are entitled to rely on the Opinion Letter.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of June 7, 2006.

PACIFICORP, an Oregon corporation

By: Mark C. Moench
Name: MARK C. MOENCH
Title: SR. VICE PRES

CERTIFICATE OF PPW HOLDINGS LLC

This certificate (the "Certificate") is delivered in connection with the execution of the legal opinion, dated June 7, 2006 (the "Opinion Letter"), delivered by Willkie Farr & Gallagher LLP, regarding the non-consolidation of assets and liabilities of either PacifiCorp, an Oregon corporation, or PPW Holdings LLC, a Delaware limited liability company ("PPW"), with those of MidAmerican Energy Holdings Company, an Iowa corporation ("MEHC"), in connection with the transactions contemplated by the Documents (as defined in the Opinion Letter). All capitalized terms used but not otherwise defined in this Certificate shall have the meanings ascribed to such terms in the Opinion Letter, the Documents or the Bankruptcy Code, as applicable.

The undersigned hereby certifies, as an officer of MEHC and not in her/his individual capacity, that he/she: (a) is an officer of MEHC, the managing member of PPW, and, as a result, is authorized and qualified to sign this Certificate on behalf of PPW; (b) has reviewed the Opinion Letter and the Documents; and (c) either has personal knowledge of or has conducted such investigation deemed necessary to verify the matters set forth herein.

The undersigned further certifies on behalf of MEHC, as the managing member of PPW, and not in her/his individual capacity, that:

1. The undersigned is familiar with the transactions contemplated by, and the terms of, the Documents.

2. The statements set forth in the Facts section of the Opinion Letter, which are incorporated herein by reference, are, and are intended to remain, true and correct in all material respects at all relevant times.

3. From and after the date of the closing of the Transaction, PPW will not engage in any transaction with any of its Affiliates, including, without limitation, MEHC and PacifiCorp, except as expressly permitted in its organizational documents.

4. The undersigned is not aware of any additional material facts that would materially affect the accuracy, correctness or validity of the facts, statements, assumptions and conclusions set forth in the Opinion Letter.

5. From and after the date of the closing of the Transaction, each of the representations and warranties of PPW in the Documents to which it is a party relating to valid existence and to "separateness" will remain true and correct in all material respects.

6. From and after the date of the closing of the Transaction, PPW will perform in all material respects all covenants and agreements with respect to valid existence and to "separateness" required under the Documents to which it is a party to be performed by it for such relevant time.

7. Since the date of its formation and through the date hereof, PPW has remained dormant, it has not engaged in any business activities and it has not incurred any liabilities.

The undersigned understands that: (a) Willkie Farr & Gallagher LLP is relying on this Certificate; (b) this Certificate will be attached to the Opinion Letter; and (c) this Certificate will be relied upon by the persons and entities that are entitled to rely on the Opinion Letter.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of June 7, 2006.

PPW HOLDINGS LLC, a Delaware limited liability company

By: MIDAMERICAN ENERGY HOLDINGS COMPANY, its Managing Member

Name: _____

Title: _____

CERTIFICATE OF MIDAMERICAN ENERGY HOLDINGS COMPANY

This certificate (the "Certificate") is delivered in connection with the execution of the legal opinion, dated June 7, 2006 (the "Opinion Letter"), delivered by Willkie Farr & Gallagher LLP, regarding the non-consolidation of assets and liabilities of either PacifiCorp, an Oregon corporation, or PPW Holdings LLC, a Delaware limited liability company ("PPW"), with those of MidAmerican Energy Holdings Company, an Iowa corporation ("MEHC"), in connection with the transactions contemplated by the Documents (as defined in the Opinion Letter). All capitalized terms used but not otherwise defined in this Certificate shall have the meanings ascribed to such terms in the Opinion Letter, the Documents or the Bankruptcy Code, as applicable.

The undersigned hereby certifies, as an officer of MEHC and not in her/his individual capacity, that he/she: (a) is an officer of MEHC; (b) is authorized and qualified to sign this Certificate on behalf of MEHC; (c) has reviewed the Opinion Letter and the Documents; and (d) either has personal knowledge of or has conducted such investigation deemed necessary to verify the matters set forth herein.

The undersigned further certifies on behalf of MEHC, and not in her/his individual capacity, that:

1. The undersigned is familiar with the transactions contemplated by, and the terms of, the Documents.

2. The statements regarding MEHC set forth in the Facts section of the Opinion Letter, which are incorporated herein by reference, are, and are intended to remain, true and correct in all material respects at all relevant times.

3. From and after the date of the closing of the Transaction, MEHC will not engage in any transaction with any of its Affiliates, including, without limitation, PacifiCorp and PPW, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties or as otherwise permitted under the Documents.

4. The undersigned is not aware of any additional material facts that would materially affect the accuracy, correctness or validity of the facts, statements, assumptions and conclusions set forth in the Opinion Letter.

5. Notwithstanding MEHC's agreement to perform under each Stipulation, MEHC does not guarantee any of PacifiCorp's financial obligations set forth therein; although, the Stipulations contain certain financial commitments made solely by MEHC whose aggregate liability is de minimis in relation to the size of the Transaction.

The undersigned understands that: (a) Willkie Farr & Gallagher LLP is relying on this Certificate; (b) this Certificate will be attached to the Opinion Letter; and (c) this Certificate will be relied upon by the persons and entities that are entitled to rely on the Opinion Letter.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of June 7, 2006.

MIDAMERICAN ENERGY HOLDINGS COMPANY, an Iowa corporation

By: _____
Name: Douglas L. Anderson
Title: Sr. V. P.