

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Application 05-07-010
(Filed July 15, 2005)

ASSIGNED COMMISSIONER'S RULING AND SCOPING MEMO

1. Summary

In Application (A.) 05-07-010, PacifiCorp and MidAmerican Energy Holdings Company (MEHC) (referred to jointly as "Applicants") request an exemption under Pub. Util. Code § 853(b)¹ from § 854(a) with respect to the proposed acquisition of PacifiCorp by MEHC. Sections 853(b) and 854(a) state, in relevant part, as follows:

Section 853(b): The commission may...by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility...from [§ 854(a)] if it finds that the application thereof with respect to the public utility...is not necessary in the public interest.

Section 854(a): No person or corporation...shall merge, acquire, or control...any public utility organized and doing business in this state without first securing authorization to do so from the commission...Any merger, acquisition, or control without that prior authorization shall be void and of no effect.

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

A prehearing conference (PHC) was held on September 9, 2005. Pursuant to Rules 6(a)(3) and 6.3 of the Commission's Rules of Practice and Procedure (Rules), this ruling and scoping memo (collectively, "Ruling") determines the scope, need for evidentiary hearings, schedule, principal hearing officer, and the category of this proceeding. This Ruling also establishes certain procedures for the conduct of this proceeding.²

2. Scope of the Proceeding

The general scope of this proceeding is whether to approve the Applicants' request to exempt the proposed transaction from § 854(a) pursuant to § 853(b). If it is determined that the proposed transaction should not be exempted from § 854(a), this proceeding will determine whether to approve the proposed transaction under § 854(a).³ This proceeding will also determine what conditions, if any, should attach to the proposed transaction whether it is exempted under § 853(b) or approved under § 854(a).

Specific matters that are within the scope of this proceeding are as follows:

- How the proposed transaction will affect PacifiCorp's ability to finance utility infrastructure in general, without focusing on specific infrastructure projects.
- How the proposed transaction will affect PacifiCorp's ability to finance, implement, and comply with any future conditions associated with PacifiCorp's Klamath River dams that may be imposed by the Federal Energy Regulatory Commission (FERC) or other body of competent jurisdiction.

² Parties were invited to submit written PHC statements, including parties that were unable to attend the PHC. All written PHC statements were considered in preparing this Ruling.

³ See PHC transcript pages (pp.) 3 - 4.

Specific matters that are outside the scope of this proceeding are as follows:

- Issues that will continue to exist regardless of whether the proposed transaction is ultimately approved and consummated. These issues include (1) the provision of electric service to areas that currently lack service, and (2) adverse impacts associated with PacifiCorp's hydroelectric facilities on the Klamath River.
- Issues that are better addressed in other Commission proceedings, such as the type, location, and/or reasonableness of renewable resources that PacifiCorp will acquire in the future.
- Issues that are beyond the Commission's jurisdiction to resolve, including the imposition of conditions associated with the operation of PacifiCorp's Klamath River hydroelectric facilities that fall under FERC's exclusive purview.
- The costs, benefits, and other issues associated with each of the utility infrastructure investments that the Applicants commit to undertake in A.05-07-010 if the proposed transaction is approved.

This proceeding will not include a formal environmental review of the proposed transaction, as this proceeding will not review or approve any new construction, including changes to existing facilities and structures. Nor will this proceeding review or approve any changes to the operation of PacifiCorp's hydroelectric facilities.

Section 854(c) does not apply to the proposed transaction because neither of the Applicants has gross California utility revenues in excess of \$500 million per year.⁴ Accordingly, the Applicants will not have to demonstrate that the proposed transaction satisfies § 854(c).

⁴ Section 854(c) states: Before authorizing the...acquisition...of any electric...utility...where any of the entities that are parties to the proposed transaction has gross annual California revenues exceeding...\$500,000,000, the commission shall consider each of the [following] criteria...and find, on balance, that the [proposed transaction] is in the public interest.

Footnote continued on next page

3. All-Party Conference

The Applicants shall arrange and coordinate an all-party conference. The purpose of the conference is to identify and discuss the principal issues in this proceeding, resolve disputes, and prepare stipulations or settlements. Parties unable to attend may participate by telephone. Following the conference, the Applicants shall coordinate, file, and serve a joint conference statement that lists and describes the issues resolved and the issues still outstanding.

Parties are strongly encouraged to use this opportunity to narrow the issues. To the extent that issues remain, all-party stipulations of facts and applicable law will be useful in helping the Commission to resolve these issues.

4. Need for Hearings

The Commission preliminarily determined in Resolution 176-3156, issued on July 21, 2005, that there is no need for evidentiary hearings in this proceeding. The Applicants oppose evidentiary hearings, but support a “quasi-legislative hearing” for parties to present their concerns and recommendations. Several of the parties have requested that evidentiary hearings be scheduled, but these parties have not identified any specific factual issues within the scope of this

(1) Maintain or improve the financial condition of the resulting public utility doing business in the state. (2) Maintain or improve the quality of service to public utility ratepayers in the state. (3) Maintain or improve the quality of management of the resulting public utility doing business in the state. (4) Be fair and reasonable to affected public utility employees, including both union and nonunion employees. (5) Be fair and reasonable to the majority of all affected public utility shareholders. (6) Be beneficial on an overall basis to state and local economies, and to the communities in the area served by the resulting public utility. (7) Preserve the jurisdiction of the commission and the capacity of the commission to effectively regulate and audit public utility operations in the state. (8) Provide mitigation measures to prevent significant adverse consequences which may result.

proceeding.⁵ Therefore, this Ruling affirms the Commission's preliminary determination that evidentiary hearings are not necessary.

Although this Ruling determines that evidentiary hearings are not necessary, parties may submit testimony in order to establish a factual record for their recommendations and arguments. Opening and rebuttal testimony should be served (but not filed) on October 19 and 27, 2005, respectively. All testimony should be verified in accordance with Rule 2.4. The need for the evidentiary hearings will be reassessed after reply testimony is served.⁶ If evidentiary hearings are deemed necessary, they will be held on November 8 and 9, 2005.⁷

The Assigned Commissioner will hold a formal hearing on November 22, 2005, in San Francisco. In accordance with Rule 8(f)(2), the purpose of the formal hearing is to provide parties an opportunity to offer comments and arguments (but not testimony) on the record. Each party will have 20 minutes to make an opening presentation and 10 minutes for a closing presentation. There will not be cross examination. An agenda and ground rules for the hearing will be provided in a ruling issued by the assigned ALJ. Parties unable to attend the hearing may file and serve written presentations prior to the hearing.

There will be at least one public participation hearing (PPH). The date, time, and location of the PPH will be set in a subsequent ruling by the Assigned Commissioner or the assigned ALJ. In addition to the PPH, members of the

⁵ See, e.g., the PHC transcript (pp. 6, 7, 20, and 21) and the written PHC statements filed by American Rivers *et al.* (pp. 1-3, 5), the Hoopa Valley Tribe (p. 10), the Pacific Coast Federation of Fisherman's Associations *et al.* (p. 9), and the Office of Ratepayer Advocates (p. 6).

⁶ If appropriate, a ruling will be issued by the Assigned Commissioner or the assigned Administrative Law Judge (ALJ) that sets evidentiary hearings and establishes the scope of the evidentiary hearings.

⁷ If evidentiary hearings are not held, the assigned ALJ will issue a ruling that admits the written testimony into the record.

public may express their views about this proceeding by sending regular mail or e-mail to the Commission’s Public Advisor. All such correspondence will be included in the formal file for this proceeding.

5. Procedure for Requesting a Final Oral Argument

Parties may request a final oral argument before the Commission pursuant to Rule 8(d). Parties must include the request in the opening line of their concurrent opening briefs and should identify in the heading of the brief that the brief includes this request. If a party does not file an opening brief, it must file and serve a stand-alone request for a final oral argument.

6. Schedule

The schedule for this proceeding, which is derived from the parties’ proposals,⁸ is as follows:

Date	Event
September 26, 2005 9:30 a.m.	<ul style="list-style-type: none"> ▪ Applicants arrange and coordinate an all-party conference in San Francisco to identify and resolve issues. Parties unable to attend may participate by telephone.
September 27, 2005 9:30 a.m.	<ul style="list-style-type: none"> ▪ All-party conference continues, if appropriate. Parties unable to attend may participate by telephone. ▪ Settlement talks may continue, as appropriate, after September 27, 2005.
September 30, 2005	<ul style="list-style-type: none"> ▪ Applicants coordinate, file, and serve a Joint Conference Statement that lists and describes the issues resolved and the issues still outstanding.
To Be Determined	<ul style="list-style-type: none"> ▪ Public Participation Hearing.
October 19, 2005 12 noon	<ul style="list-style-type: none"> ▪ ORA and intervenor testimony served. Testimony must be verified in accordance with Rule 2.4.

⁸ The parties submitted proposed schedules on September 16, 2005.

Date	Event
October 27, 2005	<ul style="list-style-type: none"> ▪ Rebuttal testimony served. Reply testimony must be verified in accordance with Rule 2.4.
Nov. 8 and 9, 2005 9:30 a.m.	<ul style="list-style-type: none"> ▪ Evidentiary hearings, if necessary, at the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco.
November 18, 2005	<ul style="list-style-type: none"> ▪ Opening briefs. ▪ Deadline to file & serve requests for a final oral argument.
November 22, 2005 10:00 a.m.	<ul style="list-style-type: none"> ▪ Formal Hearing before the Assigned Commissioner, at the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco.
November 30, 2005	<ul style="list-style-type: none"> ▪ Reply briefs. ▪ Case submitted.
January 25, 2006	<ul style="list-style-type: none"> ▪ Draft Decision.
February 24, 2006	<ul style="list-style-type: none"> ▪ Final Decision.

As indicated above, the anticipated submission date is tied to the date that parties file concurrent reply briefs. The proposed decision will be filed as soon after submission as the ALJ's workload permits. Because the Commission has not yet set the dates for its public meetings in 2006, the dates for the proposed decision and the final decision are approximate only. As required by § 1701.5(a), the issues identified in this Ruling shall be resolved no later than 18 months from the date of this Ruling.

7. Category

This Ruling affirms the Commission's preliminary determination in Resolution ALJ 176-3156, dated July 21, 2005, that this is a ratesetting proceeding as set forth in Rule 5(c). This Ruling's determination of category may be appealed in accordance with Rule 6.4.

8. Principal Hearing Officer

This Ruling designates ALJ Kenney as the principal hearing officer for this proceeding pursuant to Rule 5(l) for evidentiary hearings, if any. Commissioner Bohn will preside at the formal hearing on November 22, 2005.

9. Ex Parte Communications

This is a ratesetting proceeding in which evidentiary hearings might be held. Because there might be evidentiary hearings, this Ruling determines in accordance with Rule 6.6 that ex parte communications in this proceeding will be subject to the restrictions and reporting requirements set forth in § 1701.3(c) and Rules 7 and Rule 7.1.

10. Organization and Service of Documents

Parties shall limit their written testimony and briefs to matters within the scope of this proceeding. To the extent possible, parties should organize their written testimony and briefs in the same manner as the Applicants' testimony attached to A.05-07-010. All parties shall e-mail an electronic copy of their documents submitted in this proceeding to the assigned ALJ at tim@cpuc.ca.gov. The electronic copy must be Microsoft Word and/or Excel to the extent possible.

All documents must be served in accordance with Rules 2.3 and 2.3.1. These Rules require, among other things, that documents be served electronically, in a searchable format, unless a party has not provided an e-mail address. If no e-mail address has been provided, service should be made by United States mail. Parties shall provide concurrent e-mail service to all parties on the service list that have provided an e-mail address, including those listed under "State Service" and "Information Only."

IT IS RULED that:

1. The scope, need for hearings, and the schedule for this proceeding is set forth in the body of this Ruling. The assigned Administrative Law Judge (ALJ) may revise the schedule, as necessary.

2. Applicants shall arrange and coordinate an all-party conference in San Francisco, California, on September 26 and 27, 2005. The purpose of the conference is to identify and discuss the principal issues in this proceeding, resolve disputes, and prepare stipulations or settlements. Parties unable to attend may participate telephonically.

3. The Applicants shall coordinate, file, and serve a joint conference statement that lists and describes the issues resolved at the all-party conference and the issues still outstanding.

4. Requests for a final oral argument before the Commission must be filed and served no later than November 18, 2005.

5. The category for this proceeding is ratesetting. This determination of category may be appealed in accordance with Rule 6.4.

6. ALJ Kenney is designated the principal hearing officer pursuant to Rule 5(l) for evidentiary hearings in this proceeding, if any. Commissioner Bohn will preside at the oral arguments on November 9, 2005.

7. Ex parte communications are permitted subject to the restrictions and reporting requirements in Pub. Util. Code § 1701.3(c) and Rules 7 and 7.1.

8. Parties shall limit their written testimony and briefs to matters within the scope of this proceeding. To the extent possible, parties should organize their written testimony and briefs in the same manner as the Applicants' testimony attached to Application 05-07-010.

9. All documents must be served in accordance with Rules 2.3 and 2.3.1. These Rules require, among other things, that documents be served electronically, in a searchable format, unless a party has not provided an e-mail address. If no e-mail address has been provided, service shall be made by United States mail.

10. Parties shall provide concurrent e-mail service to all parties on the service list that have provided an e-mail address, including those listed under “State Service” and “Information Only.”

11. All parties shall e-mail an electronic copy of their documents submitted in this proceeding to the assigned ALJ at tim@cpuc.ca.gov. The electronic copy must be Microsoft Word and/or Excel to the extent possible.

Dated September 26, 2005, at San Francisco, California.

/s/ JOHN BOHN

John Bohn
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's Ruling and Scoping Memo on all parties of record in this proceeding or their attorneys of record.

Dated September 26, 2005, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.