

1 **BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING**

2 **DOCKET NUMBER 20000-EA-05-226**

3 **PRE-FILED TESTIMONY OF BRYCE J. FREEMAN**

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5  
6 **Q. PLEASE STATE YOUR NAME, ADDRESS AND OCCUPATION.**

7  
8 A. My name is Bryce J. Freeman. My business address is 2515 Warren Avenue, Suite 304,  
9 Cheyenne, WY, 82002. I am the Administrator of the Wyoming Office of Consumer  
10 Advocate (OCA). The OCA is an independent consumer advocacy agency that was  
11 created by an act of the legislature in the 2003 general session.  
12

13 **Q. WHAT IS THE FUNCTION OF THE OCA?**

14  
15 A. Pursuant to W.S. 37-2-401,

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17 The office of consumer advocate shall represent the interests of Wyoming  
18 citizens and all classes of utility customers in matters involving public  
19 utilities. In the exercise of its powers the office of the consumer advocate  
20 shall consider all relevant factors, including, but not limited to, the  
21 provision of safe, efficient and reliable utility services at just and  
22 reasonable prices.  
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24  
25 **Q. ARE THE ANALYSES AND RECOMMENDATIONS OF THE OCA, IN THIS OR**  
26 **ANY OTHER CASE BEFORE THE COMMISSION, INFLUENCED OR**  
27 **DIRECTED BY THE COMMISSION?**  
28

1 A. No. Although the OCA is a division within the Commission according to W.S. 37-2-401,  
2 it is a separate division with no reporting or supervisory links to the Commission, and the  
3 OCA has the right under W.S. 37-2-402(ii), to appeal decisions of the Commission that it  
4 does not find in the public interest. The only link between the OCA and the Public Service  
5 Commission is the source of common funding provided by the assessment on gross utility  
6 operating revenues; this assessment funds both the Commission and the OCA.  
7 Additionally, as Administrator of the OCA I report directly to the Governor of Wyoming.

8  
9 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**  
10 **OCCUPATIONAL EXPERIENCE.**

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12 A. I received a Bachelor of Science degree in business administration from the University of  
13 Wyoming in 1982. The area of concentration in my undergraduate work was statistics.  
14 After graduating from the University of Wyoming, I was employed for three years by the  
15 Laramie County Treasurer as Deputy Treasurer, and then for six years by the Wyoming  
16 Department of Revenue as a Principal Appraiser dealing primarily with utility valuation  
17 and capital cost issues. I came to the Wyoming Public Service Commission in April of  
18 1994, in the capacity of Senior Economist, serving in that position for approximately two  
19 years. In 1996 I accepted a position as Lead Rate Analyst in the rates and pricing section  
20 on the Commission Staff, and in May of 2003 I was appointed Administrator of the OCA.

21  
22 **Q. HAVE YOU TESTIFIED BEFORE THIS COMMISSION IN PREVIOUS**  
23 **PROCEEDINGS?**

24  
25 A. Yes. I have detailed the cases in which I have testified before this Commission, in  
26 Appendix A attached to my testimony.

27  
28 **Q. ON WHOSE BEHALF DO YOU APPEAR HERE TODAY?**

29  
30 A. I appear here today on behalf of the OCA. As I indicated previously, the OCA is an  
31 independent party in this proceeding, separate and apart from the Commission or its  
32 advisory staff.

1 **Q. AS A MEMBER OF THE OCA, DO YOU ADVOCATE THE INTERESTS OF**  
2 **CERTAIN GROUPS OF CONSUMERS OVER OTHERS?**

3  
4 A. No. As a member of the OCA, it is my statutory obligation to advocate the best interest  
5 of all citizens in the state. Specifically, W.S. § 37-2-401 states that the OCA “shall  
6 represent the interests of Wyoming citizens and all classes of utility customers in  
7 matters involving public utilities.” This public interest standard requires the OCA to  
8 represent the broadest possible utility consumer constituency, even though some of those  
9 consumers may also be represented independently as parties in this case. The OCA is  
10 responsible for balancing the positions and recommendations of the Company, and of  
11 other parties, to arrive at a set of recommendations that serve the overall long term public  
12 interest.

13  
14 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

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16 A. The purpose of my testimony in this proceeding is to present my analysis and  
17 recommendations regarding the application of Mid American Energy Holdings  
18 Corporation (hereinafter MEHC) to reorganize PacifiCorp as a wholly owned subsidiary  
19 of MEHC. My testimony, which focuses on the potential operational and organizational  
20 impacts of the proposed transaction, is offered in association with the testimony of OCA  
21 witness Ms. Marci Norby who will examine the potential financial and regulatory  
22 impacts of the transaction. My testimony offers several additional commitments and  
23 conditions that the Commission should adopt in approving the proposed transaction,  
24 beyond the voluntary commitments contained in the application. I will explain those  
25 conditions and commitments as well as the reasoning behind them in the balance of my  
26 testimony.

27  
28 **Q. WHAT STANDARD OF REVIEW IS REQUIRED FOR YOUR**  
29 **RECOMMENDATIONS IN THIS PROCEEDING?**

30  
31 A. The standard for review of such applications is set out in W.S. 37-1-104(a) which states  
32 in relevant part:  
33

1 The commission shall not approve any proposed reorganization if the  
2 commission finds, after public notice and opportunity for public hearing,  
3 that the reorganization will adversely affect the utility's ability to serve the  
4 public.

5  
6 In effect, the statute requires that no harm will come to consumers as a result of the  
7 Commission's approval of a reorganization.

8  
9 **Q. ARE YOU MAKING A LEGAL CONCLUSION BASED ON YOUR**  
10 **INTERPRETATION OF THE STATUTE?**

11  
12 A. No, that is not my intention. However, in order to effectively analyze the application  
13 before us it is necessary to establish a benchmark by which it can be evaluated. In this  
14 case the OCA is evaluating the application relative to the "no harm" standard cited here.  
15 In order to satisfy this standard the Applicants must demonstrate that PacifiCorp will be  
16 at least as well able to serve the public after consummation of the reorganization as it is  
17 under current ownership.

18  
19 **Q. HAVE MEHC AND PACIFICORP SATISFIED THE NO HARM STANDARD IN**  
20 **THE APPLICATION AND DIRECT TESTIMONY FILED IN THIS**  
21 **PROCEEDING?**

22  
23 A. No, at least not entirely. In the application MEHC and PacifiCorp identify numerous  
24 commitments that they are willing to make in order to effectuate the merger. These  
25 commitments range from generally increased levels of investment to identification and  
26 commitment to construct specific transmission projects, as well as commitments  
27 regarding expense allocations and access to the books and records of affiliated  
28 companies. Additionally, MEHC has committed to honoring the ongoing and unfulfilled  
29 commitments made by Scottish Power when it acquired PacifiCorp. MEHC and  
30 PacifiCorp characterize these commitments as consumer benefits. However, there are  
31 gaps in the application which are not addressed in the direct testimony that may harm  
32 customers.

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**Q. WILL YOUR TESTIMONY DEMONSTRATE THAT CUSTOMERS WILL IN FACT BE HARMED IF THE COMMISSION APPROVES THE APPLICATION AS IT WAS FILED?**

A. It would be exceedingly difficult to demonstrate that either harm or benefit will derive from the commitments identified in the application and any actions that MEHC and PacifiCorp might undertake in the future to satisfy those commitments. From this perspective it is apparent that there are some potential benefits as well as some potential harm that could result from the Commission’s approval of the application. My purpose here, since the Applicants have already identified the potential benefits, is to point out the potential customer harm to the Commission and suggest conditions that the Commission should adopt to ameliorate that potential harm to customers.

**Q. WHAT IS THE POTENTIAL OPERATIONAL HARM THAT CONCERNS YOU IN THIS PROCEEDING?**

A. There are several areas in the application where revised operation of the PacifiCorp system under MEHC ownership might adversely affect Wyoming consumers. The first is the proposed level of investment in the system.

**Q. WHY ARE THE INVESTMENTS THAT MEHC AND PACIFICORP HAVE COMMITTED TO IN THE APPLICATION OF CONCERN TO YOU?**

A. The OCA advocates investments by PacifiCorp that are necessary to meet customer energy needs, including load growth, and to ensure the reliability of the system. In fact we applaud the apparent willingness of MEHC to make additional capital available to invest in the system and we recognize its financial wherewithal to do so. This is in stark contrast to Scottish Power’s past pattern of under investment and investments that typically relied on an exceedingly short planning horizon. We agree that some substantial system investments will be required by PacifiCorp in the near and medium terms to meet growing demands on the system on a least cost basis and to ensure system

1 reliability. However, we are concerned that the investment commitments articulated by  
2 the Applicants thus far don't demonstrate, in sufficient detail, how customers will be no  
3 worse off under MEHC ownership than under Scottish Power ownership.  
4

5 As an initial matter I would note that the vast majority of the investment commitments  
6 made in the application are voluntary commitments made by the applicants. The  
7 investment commitments, as with most of the commitments identified in the application,  
8 contain no self imposed penalties for non-compliance. I would also remind the  
9 Commission that Scottish Power has these same obligations but has developed its  
10 investment policy with short term returns and minimal capital requirements in mind. The  
11 voluntary investment commitments contained in the application give me little comfort, by  
12 themselves, that MEHC ownership will ultimately lead to more investment in the system,  
13 and in Wyoming, to the benefit of Wyoming customers.  
14

15 Additionally, because of the lack of long term planning and investment on the part of  
16 Scottish Power, I am concerned that the Commission will view any and all capital  
17 projects proposed by MEHC to be necessary and worthy of inclusion in customer rates.  
18 While I agree that new capital will be necessary, I would urge the Commission to be  
19 vigilant in overseeing MEHC's investment program, if the transaction is approved, to  
20 ensure that capital expenditures are prudent, necessary, cost effective, and that they  
21 represent the least cost alternative for customers.  
22

23 The Commission should also seek to satisfy itself that Wyoming will be treated fairly and  
24 equitably relative to other states in the PacifiCorp system with regard to invested capital.  
25 For example, MEHC has committed to increasing the investment in its Asset Risk  
26 Program by approximately \$70 million over the next three years. The Asset Risk  
27 Program is designed to identify delivery system infrastructure at risk of failure due to age  
28 related and functional obsolescence. Although PacifiCorp's Wyoming operations  
29 constitute approximately fifteen percent of the total system, Wyoming's share of the  
30 increased Asset Risk Program investment is substantially less than that as shown on  
31 confidential exhibit BJF 1. The same is true of the distribution capital program. As  
32 shown on confidential exhibit BJF 2, planned expenditures on Wyoming distribution

1 infrastructure are substantially less than is indicated by Wyoming's share of the total  
2 system.

3  
4 MEHC has also enumerated several commitments to investments in transmission  
5 infrastructure upgrades totaling \$360 million, none of which are located in Wyoming. To  
6 the extent that these investments are cost effective and enhance the efficiency and  
7 reliability of the system I have no concern. But there are other transmission paths on the  
8 Company's system that would benefit from upgrades and expansion of capacity, and  
9 would allow for low cost thermal and renewable generation resources to be developed in  
10 Wyoming. Since there are no Wyoming specific commitments regarding transmission  
11 expansion contained in the application, Wyoming customers may be adversely affected  
12 by the transaction relative to total system investment.

13  
14 Finally, the absence of any commitments regarding expansion of the transmission system  
15 in Wyoming speaks to MEHC's plans to develop additional generation resources in  
16 Wyoming, at least in the near term. Without additional transmission capacity out of  
17 southwest Wyoming, no new generation, thermal or renewable, can be developed. Such  
18 resources could be a cost effective alternative to the continued construction of gas fired  
19 generation and can only be seriously considered if MEHC is willing to commit capital  
20 dollars to transmission expansion.

21  
22 **Q. BASED ON YOUR ANALYSIS OF THE INVESTMENT COMMITMENTS**  
23 **CONTAINED IN THE APPLICATION, ARE YOU RECOMMENDING THAT**  
24 **THE COMMISSION REJECT THE APPLICATION IN THIS PROCEEDING?**

25  
26 **A.** No. The apparent lack of plans to make investments in its Wyoming system on the part  
27 of the Company is not sufficient grounds alone for the Commission to deny the  
28 application. The Commission should, however, notwithstanding additional concerns that  
29 I will outline, condition its approval on a detailed demonstration by MEHC that it is  
30 committed to an ongoing investment in its Wyoming operations that reflects not only  
31 investments that are necessary to continue providing safe and affordable service, but that  
32 are reasonable and equitable relative to the other states in PacifiCorp's system.

1  
2 In that regard, it is my recommendation that the Commission direct MEHC and  
3 PacifiCorp to engage immediately upon approval of this application in a stakeholder  
4 dialog to determine what role PacifiCorp can play in advancing the transmission  
5 expansion contemplated in recommendation one of the RMATS<sup>1</sup> report. Specifically, the  
6 applicants should revisit the RMATS report and determine what action they can take, as  
7 one of the principal transmission owners in southwest Wyoming, to facilitate additional  
8 transmission capacity from Miners to Bridger, Bridger to Ben Lomond and from Bridger  
9 to Mid Point in Idaho. Additionally, as an informational filing, the Commission should  
10 direct the Company to update and file its Asset Risk Program annually. In those filings,  
11 the Commission should direct the Company to identify what investments have been made  
12 under the program during the preceding year, what investments it plans to make in the  
13 coming year, and the vintage and type of equipment being replaced.

14  
15 **Q. DO YOU HAVE ANY ADDITIONAL CONCERNS REGARDING THE FUTURE**  
16 **INVESTMENT PLANS OF THE APPLICANTS?**

17  
18 A. One last area of concern regarding MEHC's and PacifiCorp's investment plans relates to  
19 MEHC's commitment to invest in substantial amounts of pollution control facilities at its  
20 existing coal fired generation plants, many of which are located in Wyoming. MEHC has  
21 committed to investing over \$800 million dollars in abatement of emissions at its existing  
22 plants. At first blush this seems reasonable and even desirable. The OCA, as a matter of  
23 principle, favors generation resources that are environmentally sustainable over the long  
24 run.

25  
26 However, we also believe that the generation resources included in customer rates must  
27 be affordable. While we might speculate about what types of federal and state  
28 regulations may be imposed on generation owners in the future, including MEHC and  
29 PacifiCorp, at present there are no federal or state regulations that would require the

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<sup>1</sup> Rocky Mountain Area Transmission Study (2004). This study was commissioned by Governor Freudenthal of Wyoming and Governor Levitt of Utah. The full study can be accessed at <http://psc.state.wy.us/htdocs/subregional/home.htm>

1 investment in pollution control facilities that MEHC and PacifiCorp have committed to in  
2 the Application. MEHC and PacifiCorp would not be offsetting a financial impact under  
3 current law by making these investments as there are currently no taxes imposed under  
4 either state or federal law for the release of criteria pollutants. Rather, all of the  
5 associated costs would be attributable to ratepayers with Wyoming ratepayers bearing a  
6 proportionate share.

7  
8 Moreover, these investments will not enhance or expand the reliability of the system or  
9 increase the capacity of the system to serve additional loads. Revenues will not increase,  
10 but capital costs and expenses will. Some of PacifiCorp's coal generation plants, such as  
11 the Dave Johnston plant, are approaching fifty years in service. Making a substantial  
12 investment in pollution control equipment that will be amortized over the next thirty or  
13 more years may or may not make economic sense relative to the remaining useful life of  
14 those aging plants.

15  
16 Ultimately, the Commission should judge the prudence of the investments associated  
17 with MEHC's commitment on pollution control investments as it does all other  
18 investments that PacifiCorp makes. The Commission should determine, on a case-by-  
19 case basis, whether or not the investments are necessary, in the public interest, and that  
20 they provide the least cost alternative for consumers. My recommendation in this regard  
21 is for the Commission to require PacifiCorp to give at least six months advanced notice  
22 before beginning construction on major pollution control facilities and that the  
23 Commission continue to review the prudence of the Company's investments as they arise  
24 for consideration in future general rate proceedings. The Commission should review  
25 these investments before they are made to ensure that PacifiCorp has satisfied its burden  
26 to show that they are necessary and cost effective. To the extent that these investments,  
27 as with other investments that the Company makes, are demonstrated to be necessary,  
28 prudent and cost effective, then they should be included in rates and amortized over their  
29 useful lives, just as all other prudent investments are recovered.

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31 **Q. HOW DO CONSUMERS BENEFIT FROM THE CURRENT INTEGRATED**  
32 **OPERATION OF THE PACIFICORP SYSTEM?**

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A. PacifiCorp operates an integrated electric utility system across portions of six western states including, Wyoming, Utah, Idaho, Oregon, Washington and California. In its territory PacifiCorp owns generation, transmission and distribution infrastructure necessary to provide service to its retail customers on a regulated basis. Because its service area is so large it is characterized by a diverse mix of loads, including large urban areas, large commercial and industrial customers, and smaller towns and rural areas, and resources, including coal, gas, wind, and hydro electric generation resources. This diversity of loads and resources, when managed properly, provides flexibility in the operation of the system which ultimately benefits consumers.

Because of its integrated operation, it would be exceedingly difficult to directly assign the recovery of costs associated with system resources to individual states or groups of customers. Rather, the cost of system generation and transmission resources that are used for the benefit of consumers on the system have historically been allocated to states based on a consensus formula developed and approved with participation from a majority of states in PacifiCorp’s service territory. In its present form this allocation agreement is known as the Multi-State Protocol or MSP. PacifiCorp has historically approached its planning for and acquisition of new system resources on a system-wide basis by conducting system-wide integrated resource planning and acquisition.

**Q. HOW DOES PACIFICORP CURRENTLY PLAN FOR AND ACQUIRE RESOURCES?**

A. As I mentioned, PacifiCorp conducts its system operations and resource planning on an integrated basis. In order to plan for and acquire needed system resources in a timely manner, and in anticipation of reasonable cost recovery, it is necessary for PacifiCorp to achieve consensus among the various states regarding what resources should be acquired and how the cost of those resources will be allocated among the states. This can be a difficult process and does not always result in complete agreement among the states.

1 **Q. ARE THERE EXAMPLES OF WHAT HAPPENS WHEN THE STATES CAN'T**  
2 **AGREE ON COST ALLOCATIONS AND RESOURCE ACQUISITIONS?**

3  
4 Several years ago the Utah Public Service Commission issued an order in a PacifiCorp  
5 rate case that substantially altered the allocation process that was then in place and left  
6 PacifiCorp with the prospect of not recovering a sizeable portion of its system  
7 investments. This triggered a filing by PacifiCorp in which it proposed to restructure the  
8 Company into six separate operating companies which would buy generation and  
9 transmission services from a FERC regulated affiliate. This filing was known as the  
10 Structural Realignment Proposal or SRP. It also spawned what is now known as the  
11 Multi-State Proceeding, or MSP, which has taken nearly four years of study and pain  
12 staking negotiation to hammer out.

13  
14 There have also been disputes among the states about what types of generation resources  
15 PacifiCorp should be acquiring to serve its retail customers. Oregon in particular favors  
16 more investment in renewable resources and conservation and eschews further  
17 investment in base load coal generation resources. Some parties in various state  
18 proceedings have also advocated disallowing investments in certain generation facilities  
19 to be recovered from customers.

20  
21 Notwithstanding the periodic disputes among the states over planning and cost recovery  
22 issues, PacifiCorp has done an admirable job of keeping the system together and  
23 operating it on an integrated basis. This integrated operation provides operating  
24 efficiencies that would otherwise not be available if the system were operated on a  
25 disaggregated basis and ultimately results in lower rates to consumers.

26  
27 **Q. HAS MEHC PROPOSED TO CHANGE THE WAY THAT THE SYSTEM IS**  
28 **OPERATED IN ITS APPLICATION OR TESTIMONY IN THIS PROCEEDING?**

29  
30 A. No. In fact, in this proceeding MEHC has committed to maintaining the MSP agreement  
31 on cost allocations among the states. However, MEHC's plans for future operation of the  
32 system are not entirely clear based on statements made by Greg Abel and responses to

1 data requests propounded by the OCA. When asked generally about its plans for future  
2 operation of the system and its plans for future acquisition of generating resources  
3 MEHC's official position is that "The proposed acquisition of PacifiCorp is still in the  
4 relatively early stages. MEHC has not analyzed the current integrated operation," and  
5 "Future operation of the system may change in response to market structure changes or  
6 other events."

7  
8 Greg Abel, President and Chief Operating Officer of MEHC, has stated his view, on  
9 more than one occasion, that in order to adequately provide for system resources in the  
10 future it may be necessary to depart from PacifiCorp's past practice of acquiring  
11 resources on an integrated system basis and begin acquiring generating resources that are  
12 acceptable to individual states. This would presumably accommodate the desire of some  
13 of PacifiCorp's states to limit future resource procurements to renewable and  
14 conservation resources while allowing other states to acquire additional thermal  
15 generation resources. It is unclear how the responsibility for recovery of the cost of these  
16 disparate resources would be allocated among the various states, but it is profoundly clear  
17 that any disintegration of system resources, either in the way they are acquired and  
18 allocated, or in the way they are operated, would result in the loss of key benefits of  
19 system integration with great detriment to customers.

20  
21 For example, if thermal resources were acquired to serve retail loads in Wyoming and  
22 Utah, would the Company offer those resources for sale in the remaining states if system  
23 generation resources were insufficient to serve native loads in those remaining states?  
24 Would the sales be made at market prices? If not, would the other states benefit from the  
25 rate basing of additional resources in Wyoming and Utah without a reciprocal obligation?  
26 The answers to these questions are not clear, but what is abundantly clear is that any  
27 attempt to disaggregate the system could lead to adverse impacts on Wyoming  
28 consumers. For instance, if the system was disaggregated to the point that generation  
29 resources were assigned to individual states or control areas, Wyoming would likely lose  
30 the benefit of the hydro-electric generation that PacifiCorp owns in the pacific northwest.

31

1 I don't think it is MEHC's intent to engage in a restructuring of PacifiCorp at this point,  
2 but the Commission should be wary of any intent, however innocuous it may appear, to  
3 start down that road. Rather, the Commission should recognize the benefits of integrated  
4 operation of such a diverse system and endeavor to retain those benefits.

5  
6 **Q. HOW CAN THE COMMISSION GUARD AGAINST AN UNWARRANTED**  
7 **DISAGGREGATION OF THE PACIFICORP SYSTEM?**

8  
9 A. In view of the obvious benefits of integrated system operation to all six PacifiCorp states  
10 it is difficult to imagine a circumstance that would warrant a different approach to system  
11 operation and resource acquisition, but there could be one. The key for the Commission  
12 on this issue is to allow itself and interested parties adequate opportunity for review and  
13 comment on any changes that MEHC proposes in this regard. To that end, as a condition  
14 for Commission approval of the proposed acquisition, I recommend that the Company be  
15 required to file an informational report with the Commission no less frequently than  
16 semi-annually regarding the status of system operations, cost allocations, current and  
17 future resource procurement activities, and the ability of the Company to meet system  
18 demands on an integrated basis including any state regulatory issues that might preclude  
19 the Company from doing so. The Commission should also require the Company to give  
20 at least six months notice before any filing is made that would alter the way the system is  
21 currently operated.

22  
23 **Q. ARE THERE OTHER AREAS OF POTENTIAL HARM TO WYOMING**  
24 **CONSUMERS THAT MIGHT RESULT FROM COMMISSION APPROVAL OF**  
25 **THE APPLICATION IN THIS PROCEEDING?**

26  
27 A. I have one additional area of concern to consumers that the Commission should be aware  
28 of in its deliberations in this case. As you are aware, MEHC and PacifiCorp have  
29 indicated in the Application in this matter that they believe the PacifiCorp system is in  
30 need of substantial capital improvement in order to be capable of meeting applicable  
31 reliability standards and satisfying growth in system demand. In fact, in his direct  
32 testimony in this proceeding Mr. Abel indicates that projections show that PacifiCorp

1 will require capital investment of at least one billion dollars per year for at least the next  
2 five years.

3  
4 Assuming that all of this investment goes directly into rate base, and further assuming  
5 that Wyoming remains approximately fifteen percent of the total system, this could mean  
6 an annual revenue increase of nearly sixty million dollars in capital carrying costs alone.  
7 Although some of this new investment will offset higher maintenance and operating  
8 expenses associated with the aging plant that it will replace, and may reduce other costs  
9 of operating the system, make no mistake that new investments at this level will cause  
10 consumer rates to increase, perhaps substantially.

11  
12 I am convinced that some portion of this proposed new investment is necessary, prudent  
13 and in the public interest, but at this point I have no way of knowing precisely what that  
14 level is. It could be one billion or five billion. The amounts will need to be determined  
15 on a case-by-case basis and relative to other options that are available to the Company  
16 consistent with its obligation to provide reliable service to its retail customers using the  
17 lowest cost resource options reasonably available. Notwithstanding the implementation  
18 of a mutual agreeable Alternative Form of Regulation (AFOR), such as that requested by  
19 the Company in Docket 20000-ER-05-230, PacifiCorp should continue to bear the  
20 burden of demonstrating that its investments and associated costs are reasonable and  
21 prudent in the context of general rate proceedings, and if they are not, PacifiCorp should  
22 be at risk for non-recovery.

23  
24 **Q. IS IT YOUR CONTENTION THAT PACIFICORP IS NOT CURRENTLY**  
25 **PROVIDING THE LOWEST POSSIBLE COST SERVICE TO ITS RETAIL**  
26 **CUSTOMERS?**

27  
28 A. Not at all. PacifiCorp has, for many years, conducted a comprehensive resource planning  
29 process to guide its resource decisions and those decisions have been subject to  
30 determination by this and other state regulatory commissions in the context of general  
31 rate proceedings.

1           However, if this application is ultimately approved we will embark on an unprecedented  
2           era of capital expansion for the Company. There will be many resource alternatives  
3           available to the Company in meeting its future resource needs. The Company, in  
4           consultation with the Commission and other interested stakeholders, should evaluate  
5           those competing resource alternatives in a fair and rational manner without preference to  
6           one alternative over another. The Company should consider renewable energy resources  
7           as well as traditional fossil based resources, and demand side resources along with supply  
8           side resources, all on an equal basis.

9  
10          The question that needs to be answered is not whether the Company has the least cost set  
11          of resources in place to serve existing demand. Obviously, through the exercise of its  
12          jurisdiction in past cases where recovery of the cost of those resources was at issue the  
13          Commission determined to allow the prudent costs associated with the present resource  
14          mix to be recovered from customers, notwithstanding any disallowances and adjustments  
15          that may have been made by the Commission in individual proceedings. Rather, the  
16          question that needs to be answered is whether or not, based on what is known about  
17          MEHC and its plan for the future, will we continue to have a least cost set of resources in  
18          the long run?

19  
20          **Q.    HOW CAN THE COMMISSION BE ASSURED THAT MEHC WILL ACQUIRE**  
21          **LEAST COST RESOURCES IN THE FUTURE IF THE TRANSACTION IS**  
22          **APPROVED?**

23  
24          A.    The best way to assure that the system is developed and operated on a least cost basis is  
25          to be actively engaged in the process of planning and developing the system through  
26          participation in PacifiCorp's IRP process, continued review and monitoring of the MSP  
27          process, and careful scrutiny of the Company's requests to recover costs associated with  
28          new investments in future general rate proceedings.

29  
30          Beyond these measures, however, there other important steps the Commission should  
31          take to ensure that retail electric service remains reliable and affordable for Wyoming  
32          customers. The commitments that MEHC has made in the application, from the

1 consumer prospective, are decidedly one-sided in that they favor additional Company  
2 investments in generation, transmission and distribution infrastructure, the supply side of  
3 the resource equation, with little or no commitment to investment in resources on the  
4 demand side. In view of the Company's need for new system resources and the requisite  
5 investment, the Commission should insist that the Company demonstrate that increasing  
6 supply side capacity is the most cost effective alternative relative to investments in  
7 conservation and demand reduction. While the Company has a natural incentive to favor  
8 supply side resources since it earns a return on its investment in these resources, demand  
9 side resources should be considered with equal favor as effective implementation of  
10 demand management practices and programs could eliminate the need for a significant  
11 portion of the planned new supply side capacity, and could do so cost effectively.  
12 Avoiding the need to construct new generation and transmission facilities, to the greatest  
13 extent possible, will save consumers money and provide other benefits over the long run.  
14 I will outline my specific recommendations for demand side resources later in my  
15 testimony.

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17 **Q. DOESN'T PACIFICORP ALREADY HAVE CONSERVATION AND DEMAND**  
18 **REDUCTION PROGRAMS IN PLACE FOR ITS WYOMING CUSTOMERS?**

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20 A. PacifiCorp's conservation and demand side management programs in Wyoming are  
21 woefully lacking in comparison to what it provides in other states it serves. The only two  
22 tangible efficiency programs offered by the Company in Wyoming are the Energy  
23 Exchange and FinAnswer programs. The Energy Exchange is a program available to  
24 larger customers in which they voluntarily commit to reducing their energy usage during  
25 peak periods in return for a rate credit. FinAnswer is a program that offers advice on  
26 customer investments in energy saving equipment and provides financing for those  
27 upgrades. There are no substantive conservation and efficiency programs available for  
28 residential customers in Wyoming.

29  
30 **Q. WHAT TYPES OF CONSERVATION AND EFFICIENCY PROGRAMS ARE**  
31 **AVAILABLE TO RESIDENTIAL AND COMMERCIAL CUSTOMERS IN THE**  
32 **OTHER STATES THAT PACIFICORP SERVES?**

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A. PacifiCorp offers a multitude of programs across its other states, some designed for commercial customers and some for residential customers. Examples of the types of conservation and efficiency programs that are available in the other states that PacifiCorp serves are shown in Exhibit BJB 3.

Many of the programs outlined in this exhibit could be beneficial to Wyoming consumers both by helping them to reduce their individual bills and by mitigating the need for the Company to acquire additional resources, at least a portion of the cost of which will be allocated to Wyoming consumers. The Commission should insist that MEHC review all of its existing efficiency programs, regardless of the state in which they are deployed and report to the Commission regarding the applicability of each program in Wyoming, including its cost effectiveness, if it could be effectively implemented in Wyoming, and if not, why not. Additionally, the Commission should solicit further efficiency measures from the Company that might compliment the existing measures already in place in other states. The Commission should direct MEHC to file such an informational report not later than one year after the close of the transaction, coincident with the report that it has already committed to filing regarding additional cost effective DSM measures.

**Q. DO YOU BELIEVE THAT ALL OF THESE PROGRAMS SHOULD BE IMPLEMENTED IN WYOMING?**

A. Certainly all cost effective efficiency measures should be available to Wyoming consumers. The Commission may determine however, after having reviewed the report from the Company, that some of those measures are either not cost effective or are impractical to implement in Wyoming. Nevertheless, the Commission should actively review those programs and determine for itself which of them are worth pursuing on behalf of Wyoming consumers.

**Q. HASN'T MEHC ALREADY COMMITTED TO A SHARE HOLDER FUNDED STUDY OF POTENTIAL DSM AND EFFICIENCY MEASURES THAT WILL ADDRESS THE ISSUES YOU HAVE RAISED?**

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A. MEHC has indeed committed to a study, up to one million dollars of which would be funded by shareholders, to seek advice from an independent consultant regarding additional DSM and efficiency measures that might be cost effectively deployed in PacifiCorp’s service territory. Of course, MEHC can do as it pleases with shareholder funds and the OCA supports the additional study committed to by MEHC regarding cost effective demand management.

That study, however, will not cure, at least in a timely manner, the fact that PacifiCorp has implemented many DSM and efficiency measures in its other states that it obviously found to be cost effective and beneficial for consumers in those states, presumably with the approval and encouragement of the regulators in those states, yet it has failed to implement those programs in Wyoming. I see no reason to revisit the efficacy of those initiatives through a new study. Rather, this Commission should, as I stated previously, determine the value of existing DSM and efficiency programs for Wyoming consumers, and it should do so within one year of the close of this transaction.

**Q. EARLIER IN YOUR TESTIMONY YOU MENTIONED THE VOLUNTARY COMMITMENTS THAT MEHC HAS MADE IN THE APPLICATION. DO YOU SUPPORT COMMISSION ADOPTION OF THOSE COMMITMENTS IN ITS ORDER IN THIS PROCEEDING?**

A. With the caveats and recommendations that I have outlined regarding system investment, system operation, and resource procurement I would support Commission adoption of those voluntary commitments, but only in so far as they relate to issues that I have reviewed in my testimony. Ms. Marci Norby of the OCA will also be presenting her review of MEHC’s commitments related to the financial and regulatory issues made by MEHC and will have recommendations for Commission action on those issues in her testimony.

1 **Q. DO YOU RECOMMEND ANY ADDITIONAL CONDITIONS THAT SHOULD**  
2 **BE ADOPTED BY THE COMMISSION IF IT ELECTS TO APPROVE THE**  
3 **APPLICATION?**

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5 A. Yes. I believe the Commission should invoke the most favored nation treatise offered by  
6 the Company and further condition its approval of the transaction on some of the state  
7 specific commitments that MEHC has agreed to in the Utah proceeding. MEHC has  
8 reached a stipulation with a majority of the interested parties in that case and the  
9 stipulation contains additional state specific commitments that would be beneficial for  
10 Wyoming consumers as well.

11  
12 **Q. PLEASE IDENTIFY THE SPECIFIC COMMITMENTS FROM THE UTAH**  
13 **STIPULATION THAT YOU RECOMMEND BE ADOPTED BY THE WYOMING**  
14 **COMMISSION IN ITS ORDER IN THIS PROCEEDING.**

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16 The supplemental state specific commitments from the Utah stipulation that I recommend  
17 be adopted by this Commission as additional conditions in this proceeding, amended to  
18 reflect Wyoming interests, are as follows:

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20 • U 8. The Chairman of the Board of PacifiCorp and the President of PacifiCorp will  
21 meet at least annually with the Wyoming Public Service Commission to discuss (1)  
22 corporate presence status, plans and commitments, and (2) customer service issues.  
23 Senior executives of MEHC and PacifiCorp will also meet regularly with the  
24 Commission Technical Staff and the Office of Consumer Advocate to discuss  
25 regulatory and customer service issues, including the issues discussed at the meetings  
26 among the Chairman of the Board of PacifiCorp, the President of PacifiCorp and the  
27 Commission.
- 28 • U 15. MEHC and PacifiCorp commit to form an IGCC Working Group, sponsored  
29 by PacifiCorp to discuss various policy and technology issues associated with IGCC,  
30 carbon capture, and sequestration. Working Group members would include  
31 representatives from major stakeholder and regulatory groups, PacifiCorp and MEHC  
32 officials, and others as appropriate. Some issues and challenges to development that  
33 would be considered by the Working Group would include:
- 34 • the status of development of carbon sequestration policy and methods, including  
35 requirements for monitoring and verifying sequestration options;

- 1 • information sharing, so that, to the extent possible, all parties develop a shared  
2 understanding of expected IGCC technology benefits, expected capital and O&M  
3 costs, and potential risks;
- 4 • information sharing to understand such terms and associated requirements with  
5 concepts such as “carbon capture ready” and “permanent sequestration”;
- 6 • issues related to technology of and permitting for IGCC air emissions, waste  
7 disposal, water use and site usage;
- 8 • commercial terms and conditions associated with IGCC plant development,  
9 construction, and maintenance; and

10  
11 The IGCC Working Group would meet periodically to discuss the above issues and  
12 identify possible solutions, and to stay abreast of the evolving technology and  
13 commercial environment.

- 14  
15 • U 16.MEHC and PacifiCorp commit to the following, subject to the parties supporting  
16 timely recovery of prudent costs:
  - 17 a) MEHC and PacifiCorp commit to study the economics and viability of an IGCC  
18 option and to use good faith efforts to present the results of this study as a resource  
19 alternative to inform the resource selection and RFP process the next time such  
20 filings are made with the Wyoming Commission. As soon as practical, but not later  
21 than three months after the closing of the transaction, PacifiCorp will provide to the  
22 parties estimated cost and timeline ranges for completion of an IGCC project, as  
23 well as potential resource alternatives if an IGCC design is not reasonably  
24 achievable in time to economically meet the resource need presently identified in  
25 2012 from a customer and shareholder perspective.
  - 26 b) PacifiCorp will perform initial conceptual and siting studies, general feasibility  
27 studies, and, where appropriate, other more detailed studies and engineering work,  
28 for an IGCC plant for the 2014 resource need identified in the October 2005 IRP  
29 Update. The studies will include an evaluation of the expected cost and  
30 performance impacts of constructing a plant to be carbon capture ready. These  
31 studies will be performed in parallel with similar studies to evaluate other  
32 generation technologies.
  - 33 c) PacifiCorp will include a utility self-build option of an IGCC unit in any RFPs for  
34 the 2014 and later non-renewable resource needs, whether or not the IGCC option  
35 is found to be PacifiCorp’s preferred cost-based alternative, and present  
36 PacifiCorp’s evaluation of the IGCC option against another self-build alternative(s).  
37 This will include an evaluation of the cost and performance impacts of the IGCC  
38 resource being constructed to be carbon capture ready.

- 1       • U 17.PacifiCorp agrees to include the following items in the 2006 IRP:
- 2             a) a wind penetration study to reappraise wind integration costs and cost-effective  
3             renewable energy levels; and
- 4             b) an assessment of transmission options for PacifiCorp’s system identified in the  
5             RMATS scenario 1 related to facilitating additional generation at Jim Bridger and, on  
6             equal footing, new cost-effective wind resources.
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- 8       • U 22.Applicants acknowledge that the Commitments are being made by MEHC and  
9       PacifiCorp and are binding only upon them (and their affiliates where noted).  
10       Applicants are not requesting in this proceeding a determination of the prudence, just and  
11       reasonable character, rate or ratemaking treatment, or public interest of the investments,  
12       expenditures or actions referenced in the Commitments, and the Parties in appropriate  
13       proceedings may take such positions regarding the prudence, just and reasonable  
14       character, rate or ratemaking treatment, or public interest of the investments,  
15       expenditures or actions as they deem appropriate.
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- 17       • U 24.PacifiCorp commits to work with the Office of Consumer Advocate to propose a  
18       tariff amendment to maximize the cost-effective electricity savings of Wyoming  
19       ratepayer contributions to federally funded weatherization programs. As part of this  
20       analysis, PacifiCorp agrees to re-examine its current Company policy of matching federal  
21       contributions at 50%.
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- 23       • U 25.MEHC and PacifiCorp commit up to \$200,000 annually for five years, to be  
24       recorded in non-utility accounts, in additional funding to Energy Share. MEHC and  
25       PacifiCorp commit to work with the Office of Consumer Advocate, low income  
26       advocates and other interested parties, when appropriate, to evaluate additional  
27       contributions.
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- 29       • U 26.MEHC commits to provide \$25,000 in shareholder funds to hire a consultant for,  
30       and PacifiCorp will provide a resource for facilitation of, a working group to study and  
31       design for possible implementation an arrearage management project for low-income  
32       customers. The project will be developed by PacifiCorp in conjunction with the Office of  
33       Consumer Advocate, the Commission Technical Staff, low-income advocates and other  
34       interested parties. The goals of the project will include reducing service terminations,  
35       reducing referral of delinquent customers to third party collection agencies, reducing  
36       collection litigation and reducing arrearages and increasing voluntary customer payments  
37       of arrearages.
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40   **Q.    WHY ARE YOU RECOMMENDING ADOPTION OF THESE ADDITIONAL**  
41   **CONDITIONS FROM THE UTAH PROCEEDING?**

42

1 A. In keeping with the concerns that I outlined earlier in my testimony regarding the future  
2 investment plans of MEHC and PacifiCorp, I fully support the considered study of  
3 Integrated Gasification Combined Cycle (IGCC) generation technology, its potential  
4 benefits to the PacifiCorp system and the feasibility of locating one or more IGCC plants  
5 in Wyoming. As MEHC has committed to such a study in Utah it is critical that  
6 interested stakeholders in Wyoming be actively engaged as full partners in that process.

7  
8 Additionally, given the potential for large rate increases based on future investments  
9 made by MEHC, which will disproportionately affect low income customers in  
10 Wyoming, MEHC and PacifiCorp should be more than willing to examine existing  
11 programs for supporting low income customers, and should be willing, in partnership  
12 with interested parties in Wyoming, to examine new and creative ways to mitigate the  
13 impact of rate increases on low and fixed income customers in the state. The Utah  
14 commitments reflecting additional contributions to low income funds and arrearage  
15 management are consistent with the goal of fostering additional investments in the  
16 system, and allowing concomitant rate increases, while at the same time ensuring, to the  
17 greatest extent possible, that the impacts of those increases are sufficiently mitigated for  
18 low and fixed income customers.

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20 **Q. PLEASE SUMMARIZE YOUR TESTIMONY IN THIS PROCEEDING.**

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22 A. My testimony in this proceeding focuses on the standard, set out in Wyoming statute, that  
23 customers of PacifiCorp should not be adversely impacted by the acquisition proposed by  
24 MEHC. My review of the application and testimony submitted by MEHC and  
25 PacifiCorp in this proceeding suggests that while there are some potential benefits to  
26 customers that derive from the voluntary commitments made by the applicants, there are  
27 also significant potential harms that could adversely impact the ability of the Company to  
28 serve its Wyoming customers. In my judgment these potential harms outweigh the  
29 potential benefits requiring the Commission to impose additional conditions and  
30 protections in order to assure that the net result of its approval of the application in this  
31 proceeding will be to ensure that PacifiCorp's ability to serve its Wyoming customers  
32 will not be adversely affected by the proposed acquisition.

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To that end, I have made several recommendations for additional commitments on the part of both MEHC and PacifiCorp, beyond those commitments offered voluntarily in the application, which if adopted by the Commission, will assure that consumers are not harmed by the proposed acquisition. The additional conditions and commitments that I am advocating address the proposed future investments of PacifiCorp, the future system planning and operational protocols to be used by PacifiCorp, and the future resource acquisition strategies of the Company, with particular emphasis on a fair consideration of demand side management and efficiency measures that could offset, to some degree, the need for additional generation and transmission investments. I also recommend that the Commission adopt several commitments from an agreement that has been filed in Utah and is supported by many of the parties to the Utah proceeding.

I am offering, and the Commission should consider my recommendations, and those of Ms. Norby, to be conditions on which the Commission should base its approval of the application in this proceeding. The OCA believes that on balance, without adoption of the conditions we are recommending, the potential harms that we have identified outweigh the potential benefits enumerated by MEHC and PacifiCorp in their joint application in this matter. If MEHC and PacifiCorp are unwilling to accept the conditions that the OCA is advocating in this case then the Commission should deny the application.

**Q. DOES THAT CONCLUDE YOUR PREFILED DIRECT TESTIMONY IN THIS PROCEEDING?**

A. Yes, it does.