
Before the Public Utilities Commission of Nevada

Joint Application of Nevada Power)
Company d/b/a NV Energy, Sierra)
Pacific Power Company d/b/a NV)
Energy (referenced together as)
“NV Energy, Inc.”) and)
MidAmerican Energy Holdings)
Company (“MidAmerican”) for)
approval of a merger of NV)
Energy, Inc. with MidAmerican)

Docket No. 13-07021

**Direct Testimony of
Jeremy I. Fisher, PhD**

PUBLIC VERSION

**On Behalf of
Sierra Club**

October 24, 2013

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1 **1. INTRODUCTION AND PURPOSE OF TESTIMONY**

2 **Q Please state your name, business address, and position.**

3 **A** My name is Jeremy Fisher. I am a Principal Associate at Synapse Energy
4 Economics, Inc. (Synapse), which is located at 485 Massachusetts Avenue, Suite
5 2, in Cambridge, Massachusetts.

6 **Q Please describe Synapse Energy Economics.**

7 **A** Synapse Energy Economics is a research and consulting firm specializing in
8 energy and environmental issues, including electric generation, transmission and
9 distribution system reliability, ratemaking and rate design, electric industry
10 restructuring and market power, electricity market prices, stranded costs,
11 efficiency, renewable energy, environmental quality, and nuclear power.

12 **Q Please summarize your work experience and educational background.**

13 **A** I have ten years of applied experience as a geological scientist, and six years of
14 working within the energy planning sector, including work on integrated resource
15 plans, long-term planning for utilities, states and municipalities, electrical system
16 dispatch, emissions modeling, the economics of regulatory compliance, and
17 evaluating social and environmental externalities. I have provided consulting
18 services for various clients, including the U.S. Environmental Protection Agency
19 (EPA), the National Association of Regulatory Utility Commissioners (NARUC),
20 the California Energy Commission (CEC), the California Division of Ratepayer
21 Advocates (CA DRA), the National Association of State Utility Consumer
22 Advocates (NASUCA), West Virginia Consumer Advocate Division (WV CAD),
23 National Rural Electric Cooperative Association (NRECA), the state of Utah
24 Energy Office, the state of Alaska, the state of Arkansas, the Regulatory
25 Assistance Project (RAP), the Western Grid Group, Western Resource Advocates
26 (WRA), the Powder River Basin Resource Council (PRBRC), the Union of
27 Concerned Scientists (UCS), Sierra Club, EarthJustice, GreenLaw, Natural
28 Resources Defense Council (NRDC), Environmental Defense Fund (EDF), the

1 Sustainable FERC Project, Stockholm Environment Institute (SEI), Citizens
2 Action Coalition of Indiana, Civil Society Institute, and Clean Wisconsin.

3 I have provided testimony in electricity planning and general rate case dockets in
4 Indiana, Kansas, Kentucky, Oregon, Utah, Wyoming, and Wisconsin. In addition,
5 I have reviewed and provided analysis or comment to clients on electricity
6 planning in Nevada, Alaska, Arkansas, California, Connecticut, Georgia,
7 Michigan, and West Virginia.

8 Prior to joining Synapse, I held a post doctorate research position at the
9 University of New Hampshire and Tulane University examining the impacts of
10 Hurricane Katrina. I hold a B.S. in Geology and a B.S. in Geography from the
11 University of Maryland, and a Sc.M. and Ph.D. in Geological Sciences from
12 Brown University.

13 My full curriculum vitae is attached as Exhibit JIF-01.

14 **Q On whose behalf are you testifying in this case?**

15 **A** I am testifying on behalf of Sierra Club.

16 **Q Have you testified in front of the Public Utilities Commission of Nevada?**

17 **A** No, I have not.

18 **Q What is the purpose of your testimony?**

19 **A** My testimony provides perspective on the actions and recent corporate behavior
20 of PacifiCorp, the single largest regulated neighbor of the Nevada utilities
21 (collectively “NV Energy” or NVE), and a MidAmerican Energy Holdings
22 Company (MEHC) subsidiary (together, the “Applicants”).

23 **Q How is your testimony organized?**

24 **A** First, I review some of PacifiCorp’s recent and proposed capital investments, and
25 their justification, as provided by MEHC, as an analog for the type of behavior
26 that might be expected under the new corporate ownership. I detail the
27 disallowance secured against PacifiCorp in the most recent Oregon rate case for

1 imprudent planning. In addition, I discuss the six billion dollars of planned
2 transmission projects currently being pursued by PacifiCorp.

3 Second, I examine the assumption of Companies' witness Ms. Solomon that there
4 are no barriers to market entry in Nevada. I review the historic record of new
5 builds in Nevada and Utah, and NVE's position regarding the new build
6 provisions of Nevada State Bill 123 (SB 123, also known as "NVision"). Finally,
7 I describe the recent successful suit against PacifiCorp alleging that PacifiCorp
8 illegally copied a competitor's plan for a new power station, potentially blocking
9 a new market entrant.

10 **2. CONCLUSIONS AND RECOMMENDATIONS**

11 **Q Do you have any overarching concerns regarding this merger?**

12 **A** Yes.

13 As currently proposed, this merger offers very little, if anything, to the ratepayers
14 of Nevada. The Applicants have made efforts to stress that this is only a financial
15 transaction between two holding companies, and in fact, the merger appears to
16 offer only a downside for ratepayers. The Applicants have managed to find a
17 grand total of \$600,000 of savings for all of Nevada's ratepayers, less than 1.5
18 percent of the compensation being offered to senior management at NVE.¹ At the
19 same time, much of the oversight of the utility will be shifted from Nevada to
20 Iowa, and the utility will be guided by the investment priorities of a massive
21 holdings company. NVE shareholders gain an attractive cash payment for their
22 shares, MEHC gains a utility with a statutorily-guaranteed return for new
23 generation under SB 123, and ratepayers gain nothing. As explained by the
24 investment analysis firm ISI, "NVE would appear to be a prudent place for
25 MEHC to deploy some of Berkshire Hathaway's cash given NVE has a service
26 territory in the early stages of economic recovery [and] potential rate base growth

¹ Exhibit JIF-02: SC 1-54. Proxy statement for the Special Meeting of the Stockholders of NV Energy, Inc. August 20, 2013, page 50. Provided as SC 1-54.

1 opportunities should the NVision [SB 123] legislation be passed...² Without
2 stringent conditions and oversight, this merger will create substantial risks that
3 could expose Nevada ratepayers to large and unnecessary rate increases.

4 The Commission has the discretion to determine if the merger is consistent with
5 the public interest. However, while it offers profits for corporate management, the
6 Joint Applicants' proposal does not offer any real public interest with this merger.

- 7 • Ratepayers are not guaranteed a more effective utility. In fact, the
8 Applicants assure us that operations and planning will not be impacted.³
- 9 • Nevadans will not see a more locally engaged utility because significant
10 components of corporate governance will move from Nevada to MEHC's
11 out-of-state headquarters.
- 12 • The Commission will not see a more responsive utility as the sheer
13 political weight of the holding company will hold sway in seven Western
14 states.
- 15 • Nevadans will not even see lower rates or greater rate stability – the
16 Applicants make no commitments to reduce costs or stabilize rates, and
17 copious evidence suggests that MEHC eagerly anticipates a decade of
18 heavy capital spending, and presumably, recovery, in Nevada.
- 19 • Finally, there are very tangible risks created by this merger. As my
20 colleague Dr. Ackerman testifies, there are significant problems with the
21 market power exerted by the Applicants in gas generation and gas
22 transmission in Nevada, and even the failure of fundamental electricity
23 market power tests in Nevada.

24 Overall, it is difficult to find any way in which this merger is consistent with the
25 public interest.

² Attached as Exhibit JIF-03 SC 2-02, International Strategy and Investment Group, LLC. May 29, 2013.

³ Direct Testimony of William Fehrman, page 23, lines 5-7.

1 The conduct of MEHC subsidiary PacifiCorp in neighboring states provides
2 insight into the behavior that might be expected of NVE, should the utility
3 become beholden to MEHC’s corporate strategy. There are multiple examples
4 where regulators and courts found that MEHC has not acted in the public interest.
5 The Nevada Commission must take firm action to ensure that Nevada ratepayers
6 are protected from bad management practices.

7 **Q Do you have any recommendations regarding the disposition of this merger?**

8 **A** According to MEHC, the motivation behind this merger is simply that of aligning
9 principles. MEHC states that the merger is an “opportunity to learn from one
10 another”, and an “opportunity to expand ... regulatory utility holdings and the
11 associated opportunity for such holdings to earn a regulated rate of return.”⁴⁴
12 However, internal documents show that MEHC perceives this merger quite
13 differently – as the opportunity to spend significant capital in new rate base in
14 Nevada.

15 One of the simplest remedies to ensure that the merger is not simply a grab to
16 overbuild in Nevada is to restrict the ability of the Applicants to self-build
17 generation resources beyond the minimum authorized by SB 123 for a fixed
18 period of time. Such a restriction would allow the utility to build or acquire only
19 50 MW of renewable energy by 2021 and only build or acquire 550 MW of
20 replacement capacity for the purposes of replacing retired coal capacity (SB 123
21 Sec 7.2(b)(6) and Sec 7.2(c), respectively) until 2024. In order to curb the risk of
22 massive overbuilding by MEHC, the Commission should require NVE to meet all
23 other energy and capacity needs exclusively through power purchase agreements
24 (PPA) or market purchases. A self-build moratorium would help ensure that
25 MEHC’s acquisition of NVE does not subject Nevada’s ratepayers to the type of
26 steep increases and large rate base expansion that other MEHC acquisition targets
27 have experienced in the past.

⁴⁴ Direct Testimony of William Fehrman, page 22, lines 20-23.

1 I also recommend that the Commission require the Applicants to guarantee
2 effective, need-based portfolio planning. Nevada already requires NVE to engage
3 in detailed and diverse resource planning. To ensure continued effective oversight
4 of the process, this Commission should set reasonable best practices for future
5 resource planning, including the acquisition of all cost effective energy efficiency,
6 demand reduction mechanisms, and a wide range of renewable energy
7 opportunities. In particular, the Commission should ensure that any future
8 planning is strictly based on need-based requirements that do not downplay the
9 capacity or energy value of renewable energy.

10 Finally, I recommend that the Commission mitigate future capital spending by
11 ensuring that NVE meets ambitious procurement goals for energy efficiency. As a
12 condition of this merger, the Commission should require NVE to include a
13 scenario with a 2% annual energy efficiency target for NVE's next demand side
14 management (DSM) plan. To ensure that NVE meets these goals, the Commission
15 should consider establishing a third-party provider to procure energy efficiency on
16 behalf of NVE. The use of third-party providers has allowed utilities in other
17 states to meet energy efficiency goals more quickly and efficiently than with
18 utility-operated programs.

19 **3. PACIFICORP INVESTMENTS IN AGING PLANTS FOUND TO BE IMPRUDENT**

20 **Q Please describe your understanding of the relationship between PacifiCorp**
21 **and NVE should the merger be approved.**

22 **A** The Companies state that “this is a transaction between two holding Companies,”⁵
23 being MEHC and NVE. PacifiCorp is held exclusively by MEHC, and borders
24 NVE territory to both the east (Utah) and northwest (Oregon/California).
25 PacifiCorp's territory extends through the six states of Utah, Wyoming, Idaho,
26 Washington, Oregon, and California. Despite the proximity of the jurisdictions,

⁵ Direct Testimony of William Fehrman, page 20, line 8.

1 the Companies state that “Nevada will not become the seventh regulatory
2 jurisdiction within the PacifiCorp system.”⁶

3 **Q Why are PacifiCorp’s investments relevant to the case at hand?**

4 **A** PacifiCorp’s recent and planned capital spending represents an investment
5 strategy of PacifiCorp and its parent Company, MEHC. As stated by the Citizen’s
6 Utility Board of Oregon (CUB) in that state’s 2012 rate case, “The driver for
7 capital investment at MEHC is PacifiCorp. If MEHC is going to come close to its
8 goals for capital investment, the vast majority of the costs of these investments
9 will fall on PacifiCorp ratepayers...”⁷ Since MEHC’s shareholders and corporate
10 policies will now provide the basis of NVE’s business strategy, Nevada customers
11 might expect to see the same relentless pace of capital investment.

12 **Q What types of capital investments has PacifiCorp engaged in since the**
13 **acquisition by MEHC?**

14 **A** PacifiCorp is in the midst of an unremitting capital spending campaign on its
15 existing coal fleet, and is embarking on a massive new transmission building
16 agenda. As of late 2010, PacifiCorp anticipated spending \$2.7 billion just on
17 capital retrofits at its coal units, and expected that the “total costs...that will have
18 been incurred by customers to pay for these [coal] pollution control projects
19 during the period 2005 through 2023, [sic] are expected to exceed \$4.2 billion,
20 and by 2023 the annual costs to customers for these projects will have reached
21 \$360 million per year.”⁸ This spending is just a piece of PacifiCorp’s capital
22 plans. The Company also anticipates extensive new transmission projects, totaling
23 \$6.1 billion of new capital in the next decade.⁹

⁶ Direct Testimony of Jonathan Halkyard, page 5, lines 10-11

⁷ Response Testimony of the Citizens’ Utility Board of Oregon in Oregon Docket UE 246. June 20, 2012, page 13, lines 8-10.

⁸ See Exhibit JIF-05. PacifiCorp’s Emissions Reductions Plan. November 2, 2010.

⁹ MidAmerican Energy Holdings Company and PacifiCorp Annual Report of Status Commitments to the Utah Public Service Commission for Period April 1, 2008 through March 31, 2009. General Commitment Number 36. Attached as Exhibit JIF-08.

1 Since its acquisition by MEHC in 2006, PacifiCorp has grossly exceeded its
2 estimated spending on capital investment. In the 2006 merger agreement, MEHC
3 committed “to install, to the extent cost effective, the equipment likely to be
4 necessary under future emissions control scenarios at a cost of approximately
5 \$812 million.”¹⁰ For the most part, these emissions controls were the Company’s
6 response to anticipated federal Regional Haze compliance obligations. MEHC
7 termed the emissions controls strategy the Comprehensive Air Initiative (CAI),
8 and quickly began to spend large sums on capital retrofits at its coal plants,
9 ostensibly for the purposes of meeting environmental requirements.

10 Unfortunately, however, at the time the Company started installing controls,
11 PacifiCorp’s Regional Haze compliance obligations remained uncertain because
12 the EPA had not yet issued final Regional Haze determinations for either Utah or
13 Wyoming. As a result, many of the capital expenditures were unnecessary or
14 more expensive than alternative options. I describe this problem in more depth
15 later.

16 Since the merger, the CAI has expanded markedly, from \$812 million in March
17 2006 to \$1.4 billion in March 2008 to \$1.8 billion in March 2010.¹¹ “As of March
18 31, 2010, PacifiCorp had spent approximately \$865 million... on emission
19 reduction projects in support of its [MEHC merger] Commitment 43 goals.”¹²

20 MEHC has by no means concluded its spending on PacifiCorp’s aging coal fleet.
21 By November 2010, PacifiCorp “anticipated that the total costs for all projects
22 that [were] committed to [in the MEHC merger would] exceed \$2.7 billion by the
23 end of 2022.”¹³ As of early 2013, PacifiCorp estimated about \$1.5 billion in
24 environmental capital expenditures from 2013-2022, which brings the total
25 expense to \$4.2 billion.

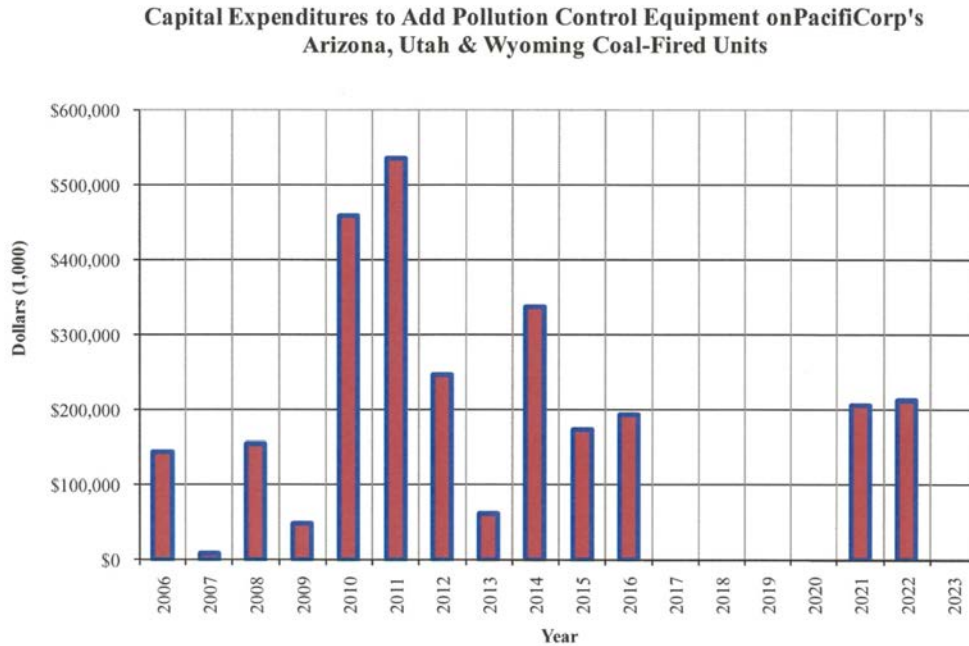
¹⁰ See Exhibit JIF-04, Exhibit Accompanying Reply Testimony of Cathy S. Woollums. Excerpts from PacifiCorp’s Annual Report of the Status of Commitments – 2007 through 2011.

¹¹ See Exhibit JIF-04, annual excerpts, General Commitment Number 43, 2006-2007, 2008-2009, and 2009-2010.

¹² See Exhibit JIF-04, annual excerpts, General Commitment Number 43, 2009-2010.

¹³ See Exhibit JIF-05. PacifiCorp’s Emissions Reductions Plan. November 2, 2010.

1 PacifiCorp’s previous and budgeted pollution control spending as of 2010 is
 2 illustrated in Figure 1, below.¹⁴ This plan does not include expenditures for the
 3 recently proposed Federal Implementation Plan (FIP) for Regional Haze in
 4 Wyoming. If finalized, the Wyoming FIP would accelerate several capital
 5 expense projects for coal plants in Wyoming and require additional controls that
 6 PacifiCorp did not include in its 2010 budget.¹⁵



7

8 **Figure 1. PacifiCorp capital expenditures for air pollution control equipment.¹⁶**

9 **Q Does MEHC influence PacifiCorp’s capital investment strategy?**

10 **A** Yes. MEHC Senior Vice President of environmental services, Cathy Woollums,
 11 supplied testimony in the Oregon 2012 rate case justifying PacifiCorp’s
 12 investments.

13 The projects were part of the commitments made by
 14 MEHC during the merger approval process in 2006. The

¹⁴ See Exhibit JIF-06. MidAmerican Energy Holdings Company 2013 Fixed-Income Investor Conference. April 2013, page 36.

¹⁵ The plan in Figure 1 does not include mitigation or control of coal combustion residuals (CCR) and, as far as I am aware, does not include emissions compliance costs for jointly owned generators in Montana (Colstrip), Colorado (Hayden and Craig), or Arizona (Cholla).

¹⁶ PacifiCorp’s Emissions Reduction Plan. November 2, 2010. Filed with WY DEQ in Regional Haze SIP. Attached as Exhibit JIF-05.

1 Company had developed its Clean Air Initiative to
2 implement emission reduction projects consistent with the
3 regulatory requirements. As part of the process of obtaining
4 approval of the MEHC acquisition, MEHC made a number
5 of specific commitments, including the implementation of
6 emission reduction projects likely to be necessary under
7 future emission control scenarios at a cost of approximately
8 \$812 million (with the understanding that additional
9 controls may be necessary).¹⁷

10 MEHC's continued involvement and defense of PacifiCorp's investments
11 indicates that the holding company is deeply involved in PacifiCorp's investment
12 decisions.

13 **Q What was the impact of these projects on PacifiCorp ratepayers?**

14 **A** CUB addressed this question directly in PacifiCorp's 2012 general rate case.

15 Since MEHC acquired PacifiCorp, rates for Oregon
16 customers have gone through the roof. MEHC claimed that
17 it could purchase PacifiCorp, invest a great deal in its
18 generation and distribution systems, and prevent rates from
19 increasing more than 4% per year. MEHC has so far failed
20 to meet that claim. Instead, rates have increased by 60%,
21 more than double the pace of increase in Portland General
22 Electric's rates.¹³ The primary driver of higher rates has
23 been capital investments, especially the Company's
24 strategy of investing in multiple projects simultaneously:
25 wind, coal, gas, and transmission.¹⁸

26 A recent investor presentation from MEHC indicates that PacifiCorp expects to
27 increase rates by an additional 5% (\$56 million) this year in Oregon.¹⁹

28 While MidAmerican Energy Company witness Mr. Fehrman indicates that
29 "PacifiCorp had some of the lowest electric rates in the country and in the West in
30 2005,"²⁰ his testimony does not reflect the rapid increase since the merger, much
31 less the driving pace of investments planned over the next decade.

¹⁷ Oregon Docket UE 246, PAC/1400 Woollums, page 34, lines 11-18.

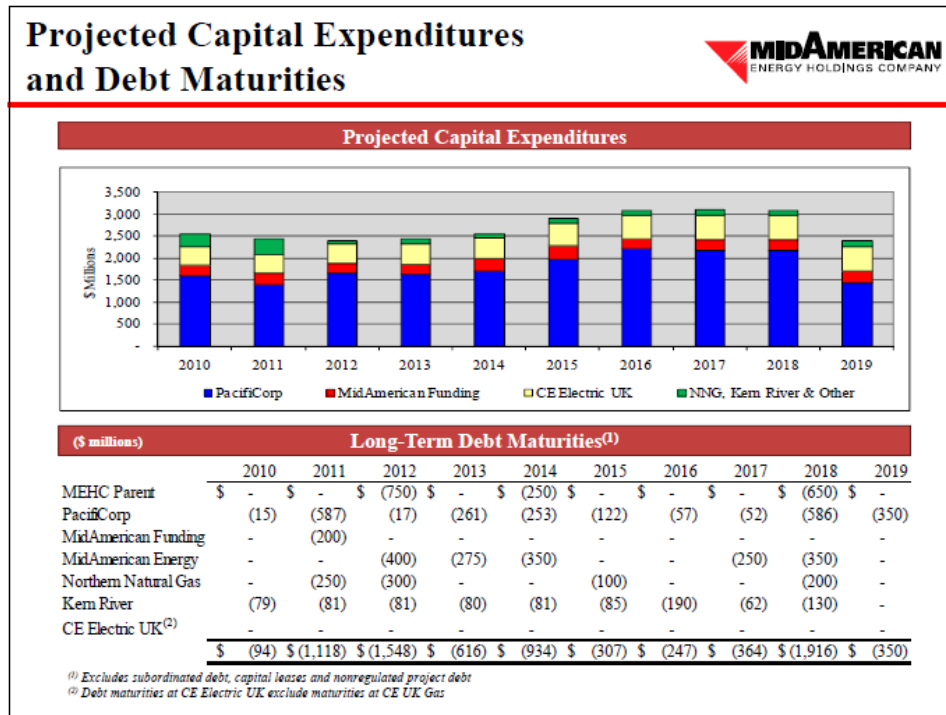
¹⁸ Oregon Docket UE-246, CUB Jenks-Feighner, page 12, lines 6-12.

¹⁹ MidAmerican Energy Holdings Company 2013 Fixed-Income Investor Conference. April 2013, page 36.

²⁰ Direct Testimony of Fehrman, page 26, lines 20-21.

1 **Q Are PacifiCorp’s capital investments profitable for MEHC?**

2 **A** Yes, very. The slide below touts MEHC’s ongoing string of capital expenditures
 3 (as of 2010) to investors. PacifiCorp accounts for about 60-70% of total MEHC
 4 capital investments each year through 2019. As I described before, this trend is
 5 unlikely to stop any time soon.



6
 7 **Figure 2. Source: MidAmerican Energy Holdings Company 2010 Fixed-Income**
 8 **Investor Conference.**²¹

9 **Q Did MEHC’s merger commitments in acquiring PacifiCorp override prudent**
 10 **planning and reasonable oversight?**

11 **A** Yes. In the Company’s 2012 rate case in Oregon, the PUC found that PacifiCorp
 12 (d.b.a. Pacific Power in Oregon) did not conduct prudent planning in advance of
 13 the installation of flue gas desulfurization equipment (“scrubbers”) at Naughton
 14 units 1 and 2, in Kemmerer, Wyoming. The scrubbers, designed to reduce
 15 emissions of sulfur dioxide (SO₂), were installed starting in 2008 at a cost of \$275

²¹ Exhibit JIF-07. Provided as Attachment SDR 48-3 in Oregon Docket UE-246, and as Exhibit CUB/102. Available at: <http://www.sec.gov/Archives/edgar/data/928576/000108131610000016/exh99-1.htm>

1 million, ostensibly to comply with Wyoming’s Regional Haze State
2 Implementation Plan (SIP).

3 PacifiCorp’s actions, however, were not consistent with state and federal
4 environmental obligations. At the time PacifiCorp began the spending program on
5 its coal fleet, the Regional Haze Rule did not require any source-specific SO₂
6 BART projects for Utah or Wyoming plants. Instead, those states participated in a
7 regional program (the Regional SO₂ Milestone and Backstop Trading Program)
8 that did not require source-specific SO₂ limits or controls. PacifiCorp did not
9 carefully analyze the need for its pollution control projects in the context of this
10 regional program, and instead determined to proceed with the capital projects
11 without any regulatory mandate.

12 In addition, the economic analysis conducted by the Company to support the
13 scrubbers indicated only a marginal benefit for ratepayers, and the analysis
14 neglected to include significant known costs and risks. Ultimately, had PacifiCorp
15 performed a reasonable analysis prior to building the scrubbers, their own analysis
16 would have clearly indicated that the pursuit of the capital projects was not in the
17 best interests of their customers.

18 The Oregon PUC found that, regarding the scrubbers, “Pacific Power's imprudent
19 and inadequate analysis and decision-making put ratepayers at risk.”²²

20 [We find] that Pacific Power failed to act prudently in two
21 areas. First, we are not convinced by Pacific Power's claims
22 that there were not legitimate alternative courses of action-
23 both in terms of the mix of compliance actions and,
24 particularly, in the timing of those actions-that could have
25 allowed Pacific Power to meet its air quality requirements
26 at a lower cost and risk to the utility's Oregon ratepayers.
27 The record shows that throughout the period under
28 question, even in response to changing circumstances,
29 Pacific Power did not alter its course of action or consider
30 alternatives of any kind. Second, we find that Pacific Power
31 failed to perform appropriate analyses to determine the
32 cost-effectiveness of the investments. Pacific Power's

²² Oregon PUC Docket UE 246. Order 12-493 (December 20, 2012), page 31.

1 contemporaneous cost-effectiveness analyses were
2 demonstrably deficient, and did not demonstrate the
3 rigorous review that a prudent utility should have
4 performed prior to making these significant investments.²³

5 As a consequence, the Oregon PUC disallowed 10% of Oregon’s share in
6 PacifiCorp’s emission control investments.²⁴

7 This tendency of PacifiCorp to pursue unnecessary and expensive capital projects
8 at its existing generating fleet should raise concerns for this Commission. If
9 MEHC pursues a similarly aggressive capital spending program in Nevada,
10 customers could see rates increase substantially.

11 **Q Mr. Halkyard, the CFO of NVE, testified that “the operations of the Nevada**
12 **Utilities are not impacted by this Proposed Transaction.”²⁵ Do you think that**
13 **this merger would in any way override NVE’s choice of investments or**
14 **prudent planning?**

15 **A** Yes, MEHC would likely exert significant influence over NVE’s decision
16 making, particularly with respect to capital spending. I have now participated in
17 two PacifiCorp IRP proceedings, three PacifiCorp rate cases,²⁶ and a CPCN for
18 new environmental retrofits at its existing Jim Bridger coal-fired facility. In each
19 case, any and all questions regarding environmental compliance obligations have
20 been answered by MEHC’s Senior Vice President, Cathy Woollums. Through her
21 testimony, MEHC, not PacifiCorp, has claimed responsibility for negotiations
22 with state and federal agencies, interpretation of the Company’s obligations and
23 commitments, and defense of PacifiCorp’s investment timing and trajectory.²⁷

²³ Oregon PUC Docket UE 246. Order 12-493 (December 20, 2012), page 28.

²⁴ “Pacific Power seeks recovery, on a company-wide basis, of approximately \$661 million in its emission control investments. The Oregon-allocated share of those investments is approximately \$170 million. Accepting the fact that it is impossible, on this record, to precisely quantify the impact of Pacific Power’s imprudence, we conclude sufficient evidence exists to support a 10 percent (\$17 million) disallowance.”

²⁵ Direct Testimony of Halkyard, page 16, lines 22-23.

²⁶ Oregon Docket UE 246 (2012), Utah Docket No. 10-035-124 (2011), Wyoming Docket 20000-384-ER-10 (2011), and Wyoming Docket 20000-418-EA-12 (2012).

²⁷ Specifically, Ms. Woollums describes her role as follows: “I oversee the organization’s environmental compliance assurance management program, environmental permitting and reporting, and environmental litigation.” Oregon Docket UE 246, PAC/1400 Woollums, page 2, lines 3-5.

1 Specifically, in the Oregon rate case, Ms. Woollums testified to PacifiCorp’s
2 purported obligations under the Regional Haze reduction mechanism known as
3 the Regional Backstop SO₂ Trading Program. She noted that “...of the three states
4 participating in the backstop trading program for SO₂, the Company had, and
5 continues to have, the largest share of SO₂ emissions...Due to the size of the other
6 electric utility units and their relative contributions, the Company cannot rely on
7 other companies to achieve larger reductions and still expect to meet the
8 milestones.”²⁸

9 The Oregon PUC repudiated MEHC’s argument, stating:

10 We are not persuaded by Pacific Power's claim that the
11 state and federal implementation of the RHR imposed a
12 binding plant-specific emission limit on each of the utility's
13 plants that had to be implemented at the time the
14 investments were made.²⁹

15 Later, the Oregon PUC provided an example of why MEHC’s view was so
16 harmful to PacifiCorp ratepayers. “If Pacific Power had properly explored the
17 potential flexibility in the timing of its options under the [Regional Haze Rule], as
18 we believe it had the opportunity to do, the utility and ratepayers would have
19 benefited from additional information that could have been incorporated into cost-
20 effectiveness analyses.”³⁰

21 It is my opinion that while PacifiCorp may remain in control of day-to-day
22 operations, some of the most important operations – such as long-term strategic
23 decisions and investments – are driven by MEHC. I think it is reasonable to
24 conclude that, should the merger be approved, MEHC will ultimately exert
25 control over the planning and capital spending decisions made by NVE.

²⁸ Oregon Docket UE 246, PAC/1400 Woollums, page 33, line 17 - page 34, line 7.

²⁹ Oregon PUC Docket UE 246. Order 12-493 (December 20, 2012), page 28.

³⁰ Oregon PUC Docket UE 246. Order 12-493 (December 20, 2012), page 30.

1 **Q What types of capital investments is PacifiCorp currently planning?**

2 **A** As I noted before, PacifiCorp is now planning for an additional [REDACTED] in
3 new environmental retrofits for the existing coal fleet which, notably, does not
4 appear to include compliance with impending environmental obligations, such as
5 the management of coal combustion residuals.³¹ In addition, PacifiCorp is
6 actively pursuing \$6.1 billion in transmission investments through 2021.³² I
7 discuss PacifiCorp's transmission investments in the next sections below.

8 **4. MEHC'S COMMITMENT TO CAPITAL: TRANSMISSION INVESTMENTS**

9 **Q Why are PacifiCorp's transmission investments relevant to the proceeding at**
10 **hand?**

11 **A** Similar to the environmental retrofit investments I described above, PacifiCorp's
12 transmission investments are attributable in part to commitments made in the
13 MidAmerican acquisition of PacifiCorp in 2006.

14 In that merger, MEHC pledged to actively pursue transmission investments at
15 PacifiCorp. General Commitment 36 reads:³³

16 Regional Transmission: MEHC recognizes that it can and
17 should have a role in addressing the critical importance of
18 transmission infrastructure to the states in which PacifiCorp
19 serves. MEHC also recognizes that some transmission
20 projects, while highly desirable, may not be appropriate
21 investments for PacifiCorp and its regulated customers.
22 Therefore, MEHC shareholders commit their resources and
23 leadership to assist PacifiCorp states in the development of
24 transmission projects upon which the states can agree.
25 Examples of such projects would be RMATS and the
26 proposed Frontier transmission line.

27 As of March 2009, the status of that commitment read as follows:

³¹ [REDACTED]

³² MidAmerican Energy Holdings Company and PacifiCorp Annual Report of Status Commitments to the Utah Public Service Commission for Period April 1, 2008 through March 31, 2009. General Commitment Number 36. Attached as Exhibit JIF-08.

³³ MidAmerican Energy Holdings Company and PacifiCorp Annual Report of Status Commitments to the Utah Public Service Commission for Period April 1, 2008 through March 31, 2009. General Commitment Number 36. Attached as Exhibit JIF-08.

1 PacifiCorp is moving forward with its Energy Gateway
2 Transmission Expansion Project to build approximately
3 2,000 miles of new high-voltage transmission lines
4 primarily in Wyoming, Utah, Idaho, Oregon and the desert
5 Southwest. The plan, with an estimated cost exceeding \$6.1
6 billion, includes projects that will address customer load
7 growth, improve system reliability and deliver energy for
8 new wind-powered and other renewable generation
9 resources throughout PacifiCorp's six-state service area and
10 the Western United States.

11 **Q Leading up to this announced investment, was the Energy Gateway project**
12 **evaluated by PacifiCorp in the 2008 IRP?**

13 **A** No. PacifiCorp's 2008 IRP was released May 2009, two months after this
14 particular update to the Oregon PUC was issued. That IRP included the Energy
15 Gateway projects as core, baseline assumptions and did not evaluate the
16 PacifiCorp system in their absence. Nonetheless, the action plan emerging from
17 that IRP indicated "permit and construct" action items for six major transmission
18 lines between 2012 and 2017.

19 **Q Does the most recent PacifiCorp IRP evaluate the costs and benefits of the**
20 **Energy Gateway projects?**

21 **A** To a limited extent, yes. Under pressure from stakeholders and state commissions,
22 PacifiCorp has started to become more transparent in the way it evaluates major
23 capital expenditures. Nonetheless, I remain unclear on the purpose of the major
24 transmission investments, aside from as a venue for capital recovery for MEHC.

25 **Q Are the Energy Gateway projects supposed to deliver energy for new wind-**
26 **powered and other renewable generation resources?**

27 No. The Energy Gateway projects were originally promoted as necessary to
28 deliver energy from renewables, but that is no longer the case. The 2008
29 PacifiCorp IRP anticipated over 1,300 MW of new wind built by PacifiCorp
30 through 2018,³⁴ and at the time, PacifiCorp framed the purpose of the
31 transmission projects thus:

³⁴ 2008 PacifiCorp Integrated Resource Plan. Page 6.

1 Energy Gateway anticipates the availability and/or
2 development of new resources including renewable energy
3 resources in each of these key areas. The Combination of
4 resources cited in the 2008 IRP action plan and Energy
5 Gateway support building to these resource locations.³⁵

6 However, the 2013 IRP, released May 2013, backs away from this language
7 significantly, noting that “the generation resources in the Company’s preferred
8 portfolio have historically fluctuated significantly from one IRP to the next,”³⁶
9 and thus banking on a specific set of resource additions is not viable. Despite this
10 ill-defined need for the transmission project, the 2013 IRP announces that the
11 Energy Gateway project could, and should, be built regardless of a specific need.

12 Importantly, given the changing resource picture, its design
13 supports multiple future resource scenarios by connecting
14 resource-rich areas and major load centers across the
15 Company’s multi-state service area.³⁷

16 Indeed, there is no clear need for the transmission lines in PacifiCorp’s 2013 IRP,
17 as the IRP anticipates no additional wind build-out in Wyoming until 2024.³⁸

18 **Q What do you conclude from PacifiCorp’s continued pursuit of new**
19 **transmission?**

20 **A** I am concerned that PacifiCorp’s push towards continued transmission
21 investment, despite a lack of demonstrable need and stagnant load growth, is
22 indicative of an MEHC investment strategy that prioritizes capital spending over
23 prudent, local planning. This trend raises the concern that MEHC may direct NVE
24 to pursue similar capital spending initiatives that are not in its customers’ best
25 interests.

³⁵ 2008 PacifiCorp Integrated Resource Plan, page 62.

³⁶ 2013 PacifiCorp Integrated Resource Plan, page 68.

³⁷ 2013 PacifiCorp Integrated Resource Plan, page 68.

³⁸ 2013 PacifiCorp Integrated Resource Plan, page 11, Table ES.3.

1 **5. MEHC'S NEXT INVESTMENT VEHICLE: SB123**

2 **Q Please describe Nevada Senate Bill 123 (SB 123)**

3 **A** SB 123,³⁹ passed June 11, 2013, contains four major provisions of concern to the
4 case at hand. The bill, which emerged from a Company plan termed "NVision",
5 requires that NVE:

- 6 1. Retire at least 800 MW of coal-fired electric generating capacity by the
7 end of 2019;⁴⁰
- 8 2. Issue RFPs for 300 MW of new renewable energy nameplate capacity by
9 the end of 2016;⁴¹
- 10 3. Construct or acquire 50 MW of new renewable energy nameplate capacity
11 by the end of 2017;⁴² and
- 12 4. Construct or acquire 550 MW of unspecified electric generating planning
13 capacity, without a specific timetable.⁴³

14 **Q How was NVision presented to MEHC?**

15 **A** In presenting the case for acquisition to MEHC, [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

³⁹ SB 123 is titled "An Act relating to energy; requiring certain electric utilities in this State to file with the Public Utilities Commission of Nevada an emissions reduction and capacity replacement plan; prescribing the minimum requirements of such a plan; providing for the recovery of certain costs relating to an emissions reduction and capacity replacement plan; prescribing the powers and duties of the Commission and the Division of Environmental Protection of the State Department of Conservation and Natural Resources with respect to such a plan; providing for the mitigation of certain amounts in excess of a utility's total revenue requirement; and providing other matters properly relating thereto."

⁴⁰ SB 123, Sec 7.2(a).

⁴¹ SB 123, Sec 7.2(b)(1)-(3). Note that the MW goals for renewable generation are stated in terms of nameplate capacity rather than capacity for planning purposes. This feature significantly reduces the relative amount of renewable generation because NVE only attributes a portion of renewable nameplate capacity as available for planning purposes.

⁴² SB 123, Sec 7.2(b)(6).

⁴³ SB 123, Sec 7.2(c).

⁴⁴ "Meeting with Maple" May 14, 2013. Response to Staff 08 Conf Attachment 01. Attached as Confidential Exhibit JIF-09, page 59.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 Finally, from a planning perspective, it is unfortunate that NVE appears to have
14 glossed over any reasonable portfolio approach, and assumed that any new
15 generation would, by definition, be gas-fired.

16 On June 4, 2013, just one week before its passage, MEHC prepared an internal
17 summary of SB 123. In that memorandum, the holding company embraced the
18 final version of SB 123's build provisions, pointing out a loophole that could
19 allow the Company to pursue significant self-build opportunities:

20 **Replacement Generation: (3)** If the PUC accepts a
21 retirement or replacement in a coal replacement plan, it
22 must authorize in the same order the utility to construct or
23 acquire and own any needed firm capacity in the utility's
24 filed supply-side plan. This provision would seem to give
25 NVE the opportunity to bring more generation under the
26 coal replacement plan provisions (including cost recovery)

1 than the new limit of 550MW – maybe as much as 800MW
2 total.⁴⁵

3 Regardless of whether this is an accurate interpretation of the law, MEHC clearly
4 perceives SB 123 as an opportunity, and Nevada as a venue, for a very profitable
5 future.

6 **Q How does the investment community view the combination of the merger and**
7 **SB 123?**

8 **A** The investment community appears to corroborate the view that the new
9 investments mandated by SB 123 and the merger with MEHC provide a profitable
10 future for shareholders. Analysts enthusiastically tout MEHC’s deep pockets
11 funding a broad swath of new investments.

12 For example, Williams Capital Group (July 26, 2013) looks forward to a
13 significant swath of new investments and improved shareholder earnings:

14 Over the next five years, we expect further considerable net
15 rate base and EPS growth as a result of significant pending
16 and prospective capital investments. Improvement in the
17 company’s capital structure should support likely future
18 significant investments in transmission and generation and
19 higher utility earnings, in our view. The state is pursuing a
20 long-term strategic expansion of renewable generation
21 resources for both local use and more importantly for
22 export eventually. We expect the company to pursue
23 several billion dollars of capital expansion projects in both
24 generation and electric transmission capacity over the next
25 5-10 years to support the state’s early strategic initiative to
26 become a major exporter of renewable electricity.

27 From the perspective of an acquiring Company with significant capital available,
28 SB 123 provides an opportunity to position Nevada’s ratepayers as a new revenue
29 stream for the parent company.

⁴⁵ Sierra Club DR 2-5, Attachment 1. Email from Brent Gale to Greg Abel. Attached as Exhibit JIF-10.

1 **6. PACIFICORP AND NVE DOMINATE OWNERSHIP OF NEW GENERATION BUILDS**

2 **Q What are the Companies' positions in this docket regarding horizontal**
3 **competition by new entry into the electricity market?**

4 **A** The Companies assert that they do not pose a barrier to new entrants to the
5 electricity market. Joint Companies' witness Ms. Julie Solomon testified that
6 "long run generation markets are presumed to be competitive in the absence of
7 barriers to entry."⁴⁶ Her testimony then states:

8 Evidence of the lack of barriers to entry is found in the
9 number of third-party owned generating facilities that have
10 been built in both Nevada and the broader geographic area
11 of the WECC region in recent years. The entry of new
12 generation into the relevant geographic markets and its
13 ownership by numerous independent entities shows that
14 entry is not constrained. For the 2012-2017 period, the
15 Nevada Commission identified about 1,500 MW of new
16 and proposed capacity being built in Nevada. A roughly
17 equivalent amount of new generation owned by parties
18 other than NVE came on-line in Nevada in the 2002-2011
19 period. Significant new entry has occurred elsewhere in the
20 WECC region.

21 **Q Do you agree with Ms. Solomon's assessment?**

22 **A** No. While there are, indeed, other electricity generators in Nevada and the
23 surrounding region, the specifics actually indicate that Nevada Energy dominates
24 the Nevada market for new generation, and that PacifiCorp and MidAmerican
25 Energy Company are amongst the most dominant players in their own markets as
26 well.

27 Over the time period cited by Ms. Solomon, 2002-2011, the Energy Information
28 Administration identifies 6,511 MW of nameplate capacity built in Nevada, of
29 which 4,819 MW (74%) were built by NVE. While she is correct that about 1,500
30 MW (actually 1,692 MW) of capacity came online from non-NVE parties, it is

⁴⁶ Direct Testimony of Julie Solomon, page 26, lines 9-11.

1 worth delving into those other parties briefly. Of those 1,692 MW, one quarter
2 (434 MW) represented renewable energy or on-site cogeneration producers,⁴⁷
3 which are arguably not considered on par by the utility for planning or
4 procurement purposes. Another 24% (407 MW) are built and sited at Nevada
5 mining properties for industrial users. This leaves only 851 MW of generation - at
6 Apex and Las Vegas Cogeneration - that directly competes with NVE for electric
7 supply.

8 **Q How does NVE’s ownership of 74% of Nevada’s new builds in the last decade**
9 **compare to other states?**

10 **A** Amongst regulated states, NVE has the greatest fraction of in-state new-build
11 ownership in the United States. In absolute terms, only Entergy in Rhode Island
12 and TVA in Tennessee commanded a larger fraction of in-state new build
13 generation. Calpine in Delaware ties NVE (see Table 1, below). The regulated
14 status of these states is fairly important: in non-regulated states, competition is
15 overseen by a market monitor, and new entrants have numerous criteria of where
16 to build within the regional transmission organization (RTO) beyond state
17 jurisdiction questions. Under the Public Utility Regulatory Policies Act (PURPA),
18 TVA is not regulated by state (or most federal) authorities, and it has been argued
19 that the utility exerts significant monopoly power in its service territory.

20 Notably, PacifiCorp in Utah and MidAmerican in Iowa are the second and third,
21 respectively, largest regulated builders of new generation in their respective home
22 jurisdictions. PacifiCorp built 63% of all new generation from 2002-2011 in Utah,
23 while MidAmerican built 48% of all new generation in that period in Iowa.

24

25

26

⁴⁷ Specifically the CityCenter Central Plant, not the Las Vegas Cogeneration units.

1
2

Table 1. Most concentrated states with single-owners of new generation, 2002-2011.
Source: EIA 860, 2012 ER

Rank	State	Utility	State Builds 2002-2011	Utility Builds 2002-2011	Fraction Utility Ownership	Regulatory Status
1	RI	Entergy	616	596	97%	Deregulated
2	TN	TVA	1,073	949	88%	Federal
3	DE	Calpine	263	195	74%	Deregulated
4	NV	NV Energy	6,511	4,819	74%	Regulated
5	MA	Constellation	3,827	2,617	68%	Deregulated
6	UT	PacifiCorp	2,140	1,351	63%	Regulated
7	NJ	PSEG	3,954	1,981	50%	Deregulated
8	IA	MidAmerican	6,997	3,376	48%	Regulated

3

4 **Q Does the concentration of self-built new generation in Nevada, Utah, and**
5 **Iowa by the applicant utilities specifically mean that they exert undue market**
6 **power?**

7 **A** Not necessarily. There may be a number of reasons that these utilities have ended
8 up providing the large majority of new generators in these states over the last
9 decade. However, this pattern does seem to indicate that both of the Applicants
10 (NVE and MEHC) have a significant preference to build their own generation,
11 rather than procure energy from PPAs, available markets, or other suppliers.

12 **Q Ms. Solomon identified 1,500 MW of new generation coming online or**
13 **proposed for Nevada over the next decade. Do you have an opinion on this**
14 **figure?**

15 **A** Yes. It is notable that all of the projects Ms. Solomon listed are renewable energy
16 projects which, regardless of merit, are often considered on a different footing by
17 regulated utilities for planning and procurement purposes. Since most of these
18 resources are not dispatchable, they do not compete, in the Companies' view, with
19 thermal generation. For example, if NVE's capacity value of 38% is assumed for
20 solar projects and 10% for wind projects,⁴⁸ the peak contribution of these
21 resources would be about 700 MW, not the 1,537 MW identified by Ms.
22 Solomon.

⁴⁸ NVE South 2013-2032 IRP, Volume 16, page 121. "Key Modeling Assumptions." June 29, 2012.

1 In addition, the list identified by Ms. Solomon does not appear to include
2 provisions of SB 123, which would add at least 550 MW of Company-built
3 generation to this mix.

4 I would conclude that while NVE may not have explicitly blocked new entry, the
5 market for new generation in Nevada has not been outstandingly competitive.

6 **7. PACIFICORP BLOCKS NEW ENTRANTS**

7 **Q Has MEHC explicitly blocked new entry into the generation market?**

8 **A** Yes. On May 21, 2012, a jury in the Third District Court, in Salt Lake City,
9 awarded \$134 million in damages against PacifiCorp and their law firm for
10 misappropriating trade secret construction plans provided by a competitive bidder
11 for a new generation facility.⁴⁹ In 2001, USA Power, a merchant generation
12 entity, started developing specifications for a natural gas combined cycle facility
13 in Mona, Utah. USA Power developed specifications, obtained an option to
14 acquire property, and submitted air permit materials. In 2002, USA Power
15 approached PacifiCorp with the intent of developing and selling the facility to the
16 utility. In September 2003, PacifiCorp announced that it had determined that
17 building its own facility (the Currant Creek plant) in a neighboring location was
18 economically advantageous. USA Power sued, alleging that PacifiCorp had used
19 its confidentially supplied materials to subvert the competitive bid process, and
20 thus cut USA Power out of the market.⁵⁰ Ultimately, a jury agreed with USA
21 Power, awarding it \$134 million in damages.

22 **8. THE PROPOSED MERGER PROVIDES FEW RATEPAYER BENEFITS**

23 **Q Do the Companies plan on merging their operations at any point in the**
24 **future?**

25 **A** No. The Companies state that:

⁴⁹ Exhibit JIF-11. Exhibits to Utah Office of Consumer Services direct testimony of Donna Ramas in Docket No. 11-035-200. Exhibit OCS 3.20D. Press release from Magleby & Greenwood, and jury findings in *USA Power, LLC, et al. v. Pacifcorp, et al.*, Third District Court Case No 050903412.

⁵⁰ *USA Power, LLC, et al. v. Pacifcorp, et al.*, 2010 UT 31, 235 P.3d 749. May 14, 2010.

1 Consolidating NVE with PacifiCorp was not considered
2 because a premise of the transaction negotiated between
3 MEHC and NVE is that NVE will remain an independent
4 entity with local presence and local authority. Furthermore,
5 consolidation of NVE with PacifiCorp would complicate
6 existing regulatory structures relating to cost allocations
7 with the six states within the PacifiCorp system, and
8 require additional approvals.⁵¹

9 **Q Has the Company identified efficiencies made available through the merger?**

10 **A** Company witness Mr. Kevin Bethel identifies cost reductions in a number of
11 administrative tasks, including information technology (IT), financial, accounting
12 and legal services, and maintenance service agreements, as well as “expected
13 reductions in the cost of new and refinanced debt.”⁵² Overall, Mr. Bethel
14 estimates savings of approximately \$3.5 million of administrative expenses,
15 although this is largely offset by a \$2.9 million charge from MidAmerican for
16 those same services (the MidAmerican Intercompany Administrative Services
17 Agreement). Overall, the Applicants can only promise about \$600,000 of total net
18 ratepayer benefit, less than 1.5 percent of the \$55,071,086 golden parachute
19 compensation package that the top six executives at NVE will make from this
20 transaction.⁵³

21 Overall, however, Mr. Bethel states that “the Joint Applicants estimate the
22 potential to achieve cost reductions of approximately one percent of retail
23 revenues, or \$30 million per annum would be reasonable.”⁵⁴ It appears that the
24 vast majority of this sum is a function of the lower debt rate available to MEHC.

⁵¹ See response to Sierra Club 2-08b. Attached as Exhibit JIF-12.

⁵² Direct Testimony of Mr. Bethel, pages 9-10.

⁵³ Exhibit JIF-02. SC 1-54. Proxy statement for the Special Meeting of the Stokholders of NV Energy, Inc. August 20, 2013, page 50. Provided as SC 1-54.

⁵⁴ Direct Testimony of Mr. Bethel, page 11, lines 6-9.

1 **Q Has the Company committed to a specific level of expected efficiency savings**
2 **available through the merger?**

3 **A** No. While Mr. Bethel proposed a \$30 million value for consideration, he
4 specifically does not commit to such a savings level.

5 **Q Are there any other significant benefits from the merger?**

6 **A** Not for ratepayers. The merger does not include any savings or efficiencies from
7 capacity reserve sharing, at-cost energy sales, shared transmission and generation
8 resources, renewable energy credits, and existing or pending emissions
9 allowances.

10 **9. SELF-BUILD MORATORIUM AT NVE MODELED AFTER ARIZONA**

11 **Q Is there a mechanism by which your specific concerns about MEHC's capital**
12 **spending agenda could be assuaged?**

13 **A** Yes, those concerns could largely be addressed through the imposition of a self-
14 build moratorium, neutralizing the incentive for MEHC to acquire NVE simply to
15 use the utility as another investment vehicle.

16 **Q Is there a reasonable example of a self-build moratorium imposed on a**
17 **utility?**

18 **A** Yes. In mid-2003, Arizona Public Service Company (APS) filed a rate case in
19 Arizona, wherein, amongst other adjustments, it requested rate base of \$700
20 million for five units purchased from its affiliate, Pinnacle West Energy Company
21 (PWEC).⁵⁵ In 2005, the Arizona Corporation Commission determined that the
22 acquisition was to some extent anti-competitive, and imposed a strict self-build
23 moratorium on APS for 10 years, requiring that all new generation and capacity
24 requirements be met through competitive RFPs, in which neither APS nor its
25 affiliates could participate.⁵⁶

⁵⁵ Arizona Docket E-01345A-03-0437.

⁵⁶ Exhibit JIF-13 Opinion and Order in Arizona Docket E-01345A-03-0437. Decision 67744, page 25. Before the Arizona Corporation Commission.

1 The Commission’s language ultimately tightened parties’ settlement language,
2 and expressly forbade APS from building its own generation directly or indirectly.

3 P25. (j.) The Settlement Agreement provides that APS will
4 issue an RFP or other competitive solicitation(s) in 2005
5 seeking long-term resources of not less than 1000 MW for
6 2007 and beyond. ‘Long-term’ resource is defined as
7 acquisition of a generating facility or an interest in one, or
8 any PPA of 5 years or longer. No APS affiliate will
9 participate in this RFP/solicitation, and in the future will
10 not participate unless an independent monitor is appointed.
11 Further, APS will not self-build any Facility with an in-
12 service date prior to January 1, 2015, unless expressly
13 authorized by the commission. As defined in the Settlement
14 Agreement, “self-build” does not include the acquisition of
15 a generating unit or interest in one from a non-affiliated
16 merchant or utility generator, the acquisition of temporary
17 generation needed for system reliability, distributed
18 generation of less than 50 MW per location, renewable
19 resources, or the up-rating of APS generation.

20 We generally agree that the self-build moratorium proposed
21 in the Agreement is useful for addressing the potentially
22 anti-competitive effects that may be associated with rate-
23 basing the PWEC assets. However, to fully realize the
24 benefits of the moratorium for that purpose, the moratorium
25 should apply to the acquisition of a generating unit or
26 interest in one from any merchant or utility generator, as
27 well as to building new units. Accordingly, we will modify
28 the definition of “self build” to include the acquisition of a
29 generating unit or interest in a generating unit from any
30 merchant or utility generator. Consistent with the definition
31 in the Settlement Agreement, “self build” will not include
32 the acquisition of temporary generation needed for system
33 reliability, distributed generation of less than fifty MW per
34 location, renewable resources, or up-rating of APS

1 generation, which up-rating shall not include the
2 installation of new units.⁵⁷

3 **Q How could the Arizona model be applied to the Applicants?**

4 **A** The anti-competitive influences and the risk of overbuilding assets that prompted
5 the Arizona Commission to impose a 10-year self-build moratorium on APS are
6 present here. By imposing a temporary self-build moratorium on new utility-
7 owned generation, this Commission would reduce the risk to Nevada ratepayers
8 that MEHC will pursue costly capital projects. SB 123 precludes a complete self-
9 build moratorium because the law expressly allows NVE to construct or acquire
10 50 MW of renewable energy and 550 MW of replacement capacity. Nonetheless,
11 the self-build moratorium could be applied outside of those statutory allotments.

12 The Commission should craft a self-build moratorium that would allow NVE to
13 construct or acquire no more than the 550 MW of electric generating capacity,
14 and 50 MW of new renewable energy provided by SB 123. The Commission
15 should prohibit any further build-out by the utility for the next 10 years. All other
16 energy or capacity requirements past this threshold would be obtained through a
17 competitive PPA RFP.

18 **10. OTHER CONCERNS AND SUMMARY**

19 **Q Does the proposed merger raise environmental concerns?**

20 **A** Yes. Nevada has an enormous potential for renewable energy development and
21 energy efficiency measures. However, as discussed in my testimony and the
22 testimony of Dr. Ackerman, the merger will create anti-competitive incentives
23 that favor increased natural gas development (benefiting Kern River) and
24 increased capital spending on existing thermal resources (following PacifiCorp's
25 past practices). These forces, if not controlled by the Commission, could create a
26 chilling effect on Nevada's renewable industry sector.

⁵⁷ Exhibit JIF-13 Opinion and Order in Arizona Docket E-01345A-03-0437. Decision 67744, page 25.
Before the Arizona Corporation Commission.

1 The new merged entity will be, by far, the largest emitter of carbon in the West.
2 The combined resources of these utilities were responsible for about 25% of
3 carbon emissions in the West in 2012.⁵⁸

4 **Q Would you please summarize your conclusions and recommendations?**

5 **A** Yes. The Joint Applicants' proposal is not in the public interest. The Commission
6 will not see a more effective, locally engaged or responsive utility as a result of
7 this merger, and ratepayers are not guaranteed lower rates or greater rate stability.
8 Furthermore, as Dr. Ackerman testifies, NVE's customers are captive customers
9 of the MEHC affiliate Kern River Gas, exposing ratepayers to non-competitive
10 practices and subduing incentives for NVE to seek lower cost gas, or non-gas
11 generation alternatives. If the merger is approved, NVE ratepayers will be
12 exposed to the investment priorities of the parent company, MEHC, as seen in the
13 capital spending plans of their neighbor, PacifiCorp.

14 The Nevada Commission must take firm action to ensure that Nevada ratepayers
15 are protected from bad management practices. There are several reasonable
16 mitigation options available to the Commission, if this merger is approved:

- 17 • First, in order to curb the risk of massive overbuilding by MEHC, the
18 Commission should impose a 10-year self-build moratorium and require
19 NVE to meet all energy and capacity needs that are in excess of the
20 acquisition or construction provided by SB 123 exclusively through power
21 purchase agreements (PPA) or market purchases.
- 22 • Second, I recommend that the Commission require the Applicants to
23 guarantee effective, need-based portfolio planning, including
24 consideration of resources to replace retiring coal assets.
- 25 • Third, I recommend that the Commission mitigate future capital spending
26 by ensuring that NVE meets ambitious procurement goals for energy
27 efficiency. As a condition of this merger, the Commission should require

⁵⁸ Derived from EIA Form 860, 2012.

1 NVE to include a scenario with a 2% annual energy efficiency target for
2 NVE's next demand side management (DSM) plan. To ensure that NVE
3 meets these goals, the Commission should consider establishing a third-
4 party provider to procure energy efficiency on behalf of NVE. The use of
5 third-party providers has allowed utilities in other states to meet energy
6 efficiency goals more quickly and efficiently than with utility-operated
7 programs.

8 While these mitigation measures will not solve the fundamental problems
9 associated with a very large utility and an out-of-state holdings company, they
10 will provide some balance to the merger. They eliminate significant financial
11 incentives that might otherwise blind the Applicants to reasonable planning
12 practice, and ensure that Nevada ratepayers are not simply a mechanism for
13 increasing MEHC's bottom line.

14 **Q Does this conclude your testimony?**

15 **A** It does.