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August 19, 2005

Public Utility Commission of Oregon  
ATTN: Filing Center  
550 Capitol St., NE #215  
P.O. Box 2148  
Salem, OR 97308-2148

RE: In the Matter of MidAmerican Energy Holding Company Application for  
Authorization to Acquire Pacific Power & Light, dba PacifiCorp  
Docket No.: UM-1209

Dear Clerk:

Attached please find for electronic filing the following document:

1. **YUOK TRIBE'S REPLY TO MEHC'S OBJECTIONS TO INTERVENTION**

The original and five (5) copies of the document have been forwarded to your offices by first class mail.

Should you have any questions regarding this matter, please do not hesitate to contact our Berkeley office.

Very truly yours,

ALEXANDER, BERKEY, WILLIAMS & WEATHERS LLP

/s/ Curtis G. Berkey  
Curtis G. Berkey

Enclosures

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**Docket No. UM 1209**

|  |   |                               |
|--|---|-------------------------------|
| In the Matter of                                 | ) |                               |
|  | ) | <b>YUROK TRIBE’S REPLY TO</b> |
| MIDAMERICAN ENERGY HOLDING CO.                   | ) | <b>MEHC’S OBJECTIONS TO</b>   |
|  | ) | <b>INTERVENTION</b>           |
| Application for Authorization to Acquire Pacific | ) |                               |
| Power & Light, dba PacifiCorp and to Exercise    | ) |                               |
| Substantial Influence Over the Policies and      | ) |                               |
| Actions of PacifiCorp                            | ) |                               |

**INTRODUCTION**

MidAmerican Energy Holdings Company (MEHC) has entered into an agreement to purchase for \$9.4 billion all of the stock of, and to operate, PacifiCorp, a public utility serving customers in Oregon (and elsewhere). *Joint Application* at 6. The Commission is called upon to determine whether MEHC’s acquisition of PacifiCorp “will serve the public utility’s customers in the public interest.” ORS § 757.11(3). MEHC bears the burden of establishing that its acquisition “is in the public interest.” *Id.*

The Yurok Tribe, a sovereign Indian nation with headquarters on its Reservation on the Klamath River in Northern California, has petitioned to intervene. OAR § 860-012-0001. The Tribe’s petition addresses the “public interest,” and in particular, the potential impact of MEHC hydropower operations on the economy, culture, and fishery of the Tribe. *Yurok Tribe’s petition, passim.* The Yurok Tribe has members who are customers of PacifiCorp; and the Tribe and Tribal entities are also customers of PacifiCorp. *Yurok Tribe Petition* at 2.

MEHC objects to the Tribe’s participation in this proceeding. *MEHC’s and PacifiCorp’s Objections to the Hydro Parties’ Petitions to Intervene.* MEHC does not, and could not assert

that the Yurok Tribe somehow lacks an interest in this proceeding. OAR 860-012-0001(d). Instead, MEHC asserts that the participation of PacifiCorp customers affiliated with the Yurok Tribe will somehow “unreasonably broaden the scope ..., burden the record and unreasonably delay” its application to acquire the public utility serving these Yurok customers. MEHC Objection at 2. . MEHC’s concern is without merit.

## **DISCUSSION**

This Commission has interpreted its obligations under ORS § 757.511, to mean that an acquisition request such as MEHC’s shall be approved only if (1) the applicant demonstrates “a net benefit to the utility’s customers,” and (2) the Commission finds that “the proposed transaction will not impose a detriment on Oregon citizens as a whole.” *In the Matter of the Legal Standard for Approval of Mergers*, Order No. 01-778 at 11 (2001)(interpreting ORS 757.511(3), the statute at issue in this proceeding). The Commission determined as well, that the “net benefit” standard is not limited to “economic considerations.” Instead, the Commission will assess the presence, or absence, of a “net benefit” by considering “the total set of concerns presented by each merger application....” *Id.* That is precisely what the Yurok Tribe proposes to do if granted permission to intervene: assist the Commission in evaluating the “total set of concerns” posed by MEHC’s acquisition of the public utility which provides service to the Tribe and its members.

As stated in its petition, the Yurok Reservation straddles the Klamath River from the mouth at the Pacific Ocean, to the confluence with the Trinity River, approximately 44 miles upstream. Petition at 2. The Tribe’s economy is based upon fishing; fish, the River, and the River’s environs are the source of the Tribe’s culture, and religious and spiritual practices. Petition at 5. The water which flows through the River, through the center of the Yurok

Reservation, is essential to every aspect of Tribal social and economic life. The Yurok Tribe has legally confirmed and protected fishing and water rights in the lower River. *Klamath Water Users Association v. Patterson, Yurok Tribe, et al.*, 204 F.3d 1206, 1209 (9<sup>th</sup> Cir. 1999), *cert. denied*, 531 U.S. 812 (2000). The flow of water to the Reservation is largely controlled by dams on the Klamath River in both Oregon and California; those dams are owned, and/or operated and controlled by PacifiCorp. *Kandra v. United States, Yurok Tribe, et al.*, 145 F.Supp.2d 1192, 1196 (D.Or. 2001).

Simply stated, the health, or lack of health, of the River and the Yurok Tribe which relies upon that River, are to a large degree dependent upon the United States government which manages water diversions from the Klamath River for the Klamath Irrigation Project; and upon PacifiCorp, the owner and/or operator of the dams upstream of the Reservation which constitute complete bars to fish passage, which have deprived fish of substantial areas of historic habitat, and which contribute adversely to the quality of water which flows through the Reservation. The Tribe intends to present evidence concerning the question of whether there will be a “net benefit” to the Tribe and its members who are customers of PacifiCorp, arising from MEHC’s acquisition of the utility company. As this Commission has stated, the Tribe intends to present evidence on the central question of whether MEHC’s application will “promote the interests of” the Yurok Tribe and Tribal members who are customers of PacifiCorp.

MEHC itself, acknowledges its obligation to establish a “net benefit” and the furtherance of public interest, but does so in a notably sparse manner. It proclaims as part of its “plan” for operating PacifiCorp, that it emphasizes “customer satisfaction” and “environmental stewardship.” *Application* at 7. It claims that its customers will enjoy benefits arising from MEHC’s “financial strength.” *Id.* at 9, 11. It asserts that PacifiCorp customers will suffer “no

harm,” though that is not the legal standard it must meet. *Compare, Application* at 16, with *Legal Standard for Approval of Mergers, supra*, at 10, 11 (to “serve the public utility’s customers” means to “promote the interests of” and provide a “net benefit” to customers; it means more than a “no harm” standard). MEHC similarly asserts that there will be “no harm” to public interests. (*Application* at 16) with a passing reference to “environmental initiatives” which are limited to emission controls.

MEHC’s only discussion of proposed “benefits” to customers focuses almost entirely upon economic considerations. *Id.* at 18-19 (the “chief benefit from the proposed transaction is MEHC’s willingness and ability to deploy capital ....”). But MEHC ignores the principle that the net benefit statutory standard is not limited to “economic considerations.” *Legal Standard for Approval, supra*, at 11.

The Yurok Tribe’s contributions to this proceeding, if authorized, are decidedly within the scope of the issues which the Commission must address: whether MEHC’s application will “promote the interests of” PacifiCorp customers such as the Yurok Tribe whose economy, culture and religious practices have been so damaged by the existence of PacifiCorp’s dams. ORS 757.511. The Tribe does not intend to, and will not “broaden the scope” of these proceedings, “burden the record” or “unreasonably delay” the consideration of this application. The Tribe will assist the Commission by presenting evidence directly relevant to the standards applied to the application.

## **CONCLUSION**

For the reasons set forth in the Yurok Tribe’s petition to intervene, and in this reply to MEHC’s objections, the Tribe asks the Commission to grant its request for intervention. The Commission’s powers include the ability to protect utility customers, and the public generally,

“from unjust and unreasonable exactions and practices,” a power which would be applied wisely to an analysis of whether there will be a “net benefit” to the customers and public by approval of this application. The Tribe requests that it be authorized to present evidence relevant to the standards by which this application is measured.

Dated: August 19, 2005

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## ACKNOWLEDGMENT OF SERVICE

I certify that I have this day caused to be served the foregoing document:

### 1. **YUOK TRIBE'S REPLY TO MEHC'S OBJECTIONS TO INTERVENTION**

upon all parties of record in this proceeding by mailing a copy properly addressed with first class postage prepaid or by electronic means pursuant to OAR 860-013-0070, to the following parties or attorneys or parties:

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I further certify that on August 19, 2005, in addition to filing the document electronically, I caused to be mailed the original and five (5) copies of the Yurok Tribe's Reply to MEHC's Objections to Intervention with the Public Utility Commission of Oregon, via first class mail, to the following address:

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I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on August 19, 2005, at Berkeley, California.

/s/ Curtis G. Berkey  
Counsel for Petitioner,  
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