

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM-1209

In the Matter of)	PACIFIC COAST FEDERATION
)	OF FISHERMEN’S
MIDAMERICAN ENERGY)	ASSOCIATION’S (“PCFFA”)
HOLDINGS COMPANY)	RESPONSE TO MEHC’S AND
)	PACIFICORP’S OBJECTION TO
Application for Authorization to Acquire)	OUR PETITION TO INTERVENE
Pacific Power & Light, dba PacifiCorp and)	
To Exercise Substantial Influence Over the)	
Policies and Actions of PacifiCorp)	

INTRODUCTION

PCFFA filed a Petition to Intervene in this rate case on August 1, 2004. MEHC and PacifiCorp filed their objections to our intervention on August 11, 2005, apparently (and incorrectly) fearing that we intended to “relitigate” specific hydropower relicensing issues already (and properly) before FERC in other forums. In fact we have no intention of doing so. Our public interests in this case are also clear and pervasive and go far beyond any single FERC relicensing, well into issues relevant only to this PUC investigation and solely within its jurisdiction.

Nor do we intend to “unreasonably burden the issues, burden the record [and] unreasonably delay the proceeding,” as MEHC and PacifiCorp fallaciously assert. In fact we represent a strong public interest that should properly be heard, and on issues directly relevant to these proceedings. PCFFA special expertise in some of these issues might, in fact, make the resolution of this case speedier rather than the reverse.

Issues of relevancy should be dealt with on a case-by-case basis, not through a thinly veiled effort to preemptively and broadly exclude public testimony before that testimony

has even been developed, particularly when that exclusion is based on wildly hypothetical assumptions.

MEHC's and PacifiCorp's assertion that excluding PCFFA would somehow be in the public interest is also incorrect. It is not in the public interest to stifle public input by excluding major stakeholders.

ARGUMENT

The Pacific Coast Federation of Fishermen's Associations ("PCFFA") is the west coast's largest trade association of commercial fishing families, many of whom make their living harvesting salmon resources that are directly affected by numerous hydropower operations owned and operated by PacifiCorp. Many PCFFA members also live within the PacifiCorp service area and are PacifiCorp customers. This is certainly a "sufficient interest" for purposes of intervention under OAR §860-012-0001(2).

PCFFA has much broader interests at stake than merely one FERC-licensed project (e.g., the Klamath Project). *Nearly every PacifiCorp hydroelectric project affects the biological health of a river that in turn impacts the health of commercially harvested salmon runs within it or below it.*

Much of PacifiCorp's energy portfolio derives from hydropower dam operations that dramatically affect the Northwest's rivers in which salmon live and thus affect the livelihoods of our members. All of those dams carry with them numerous financial and legal obligations that might be affected by any corporate merger or transfer of corporate control.

MidAmerican Energy Holdings Company (MEHC) has entered into an agreement to purchase PacifiCorp outright for \$9.4 billion in stock exchanges, and will thereafter exercise complete legal control over PacifiCorp as its parent company. New management of PacifiCorp could theoretically change the entire hydropower program and rearrange management of its hydropower assets. New management could also terminate, renegotiate or fail to perform on numerous obligations embodied in numerous FERC licenses, non-FERC hydropower operations agreements, and dam relicensing and decommissioning settlement agreements all across the river landscape in any or all of its various hydropower projects. This would certainly affect PCFFA's interests.

We are certainly willing to give MEHC the initial benefit of the doubt in this proceeding, we appreciate the candor it has shown to date, and we have taken no position on its application – nor would we until sufficient information has been developed in this proceeding upon which to rationally base such a position.

We are also well aware of the limited nature of this proceeding under ORS §757.511. The primary issue in this case is whether the proposed sale and transfer of ownership is in the public interest, and it must meet both the “net benefit” and “public interest” standards in that determination. We have no intention of going beyond the already broad scope of these key questions. That scope, however, is not limited only to “economic considerations,” but must consider “the total set of concerns presented by each merger application...” (See *In the Matter of Oregon Electric Utility Company*, UM 1121, Oregon PUC Order No. 05-114. See also *In the Matter of the Legal Standard for Approval of Mergers*, PUC Order No. 01-778 (2001), particularly at 11, which interprets ORS §757.511).

However, the public (including PCFFA members) are nevertheless rightfully concerned that MEHC is a relative newcomer to hydropower production (its present utility operations are based on coal, not hydropower), has never operated in any substantial way in the Northwest before, and is a closely held, non-public holding company owned by a handful of private individual entrepreneurs about whom very little is known.

The threshold question currently at hand is not whether or not this merger should or should not be approved. The question raised by MEHC and PacifiCorp in challenging our intervention is simply whether PCFFA, representing a major public interest stakeholder, should even be allowed to participate in the effort to make that determination.

We believe it is not in the public interest to exclude or attempt to preemptively limit major public stakeholders (of which PCFFA is but one) from participating in such an information gathering process – particularly, not based on sheer hypotheticals, prior to any real issue of relevancy in fact, and with an overly broad-brush standard that might well eliminate testimony that is quite relevant.

In ascertaining whether the standards of ORS §757.511 are met, and as the representative of major stakeholders, PCFFA should be able to question MEHC in detail about its past environmental record and its plans for the future of its Northwest operations should its purchase of PacifiCorp be approved. Those questions are, we believe, directly relevant to the public interest and net benefits examination of this major corporate merger. This examination may also highlight or discover the need for the PUC to impose conditions that would be prudent for the protection of the public and the state's power grid.

While MEHC in its filings assures the Commission it has no current plans to change the way PacifiCorp operates and plans to meet all PacifiCorp's current legal obligations, the Commission cannot just take MEHC's very sketchy and often conclusory assertions at face value. The purpose of this PUC and public interest review is to independently ascertain how MEHC's new ownership of PacifiCorp will affect the Northwest customer rate-paying public for perhaps decades to come, and to independently and effectively protect that public interest. Indeed, this type of independent review has saved the Northwest from potentially serious corporate raids of utilities in the past.¹ Foreclosing participation by any major public interest would be extremely counterproductive to this important public review process.

While we are indeed involved in the FERC relicensing process in several FERC forums, the fact that we have intervened in other FERC relicensing proceedings demonstrates that we are using those FERC forums, and not this one, to address the issues FERC has jurisdiction over. However, FERC does not have jurisdiction over ownership of hydropower dams, and thus licenses dams regardless of ownership. The PUC, however, investigates ownership and management issues that are uniquely subject to PUC jurisdiction – as for example in proceedings under ORS §757.511 such as this one.

¹ As a recent example, it was only after a similar independent PUC investigation and public scrutiny of the proposed takeover of PGE by the Texas Pacific Group (UM-1121) that it was discovered that Texas Pacific's true intentions were to slash PGE's hydropower program, fire staff, weaken license commitments and eliminate funds allocated to the Clackamas relicensing process. Prior to that, PGE itself was caught in the backwash of numerous leveraged buyout scandals and unfair trading practices by Enron, some of which might have been prevented by more thorough PUC scrutiny. These and many other examples point up the need for thorough public interest reviews of corporate merger and buyout proposals generally, however good they might initially look on their face.

Additionally, MEHC and PacifiCorp refer to evidentiary limits placed on PCFFA and some other Intervenor in UM-171 (Order April 5, 2005). However, that rate case was solely about a very limited and specific legal issue, not a broad public interest investigation such as represented by this \$9.4 billion corporate merger review case. Given the potentially widespread impacts of such a merger, perhaps lasting for decades and affecting hundreds of thousands of Oregonians, the scope of discovery, evidence and investigation under ORS §757.511 must necessarily be as broad as the public interest that type of investigation is designed to protect. Arguments over relevancy should be on a case-by-case basis, not by broad-brush fiat even before any evidence has been developed.

Finally, MEHC's and PacifiCorp's citation of *Steamboaters vs. Water Resources Commission*, 85 Or. App. 34, 37; 735 P.2d 649 (1987) makes our point, and not theirs. *Steamboaters* was decided the way it was because another, more appropriate, forum in fact existed. Unlike in the *Steamboaters* case, the issues raised by this public interest review of a major corporate merger have no other forum than the PUC, and are not within the jurisdiction of FERC or any other agency.

CONCLUSION

We will continue to argue FERC-related issues in FERC forums, are actively doing so, and acknowledge that the FERC process is the appropriate place for those specific relicensing issues. That has in fact always been our intent, and we have no intent of going outside the scope of ORS §757.511 in this proceeding.

However, in this PUC forum we should be entitled to broadly raise all other issues relevant to the public interest and net benefit scrutiny mandated by ORS §757.511. MEHC's and PacifiCorp's fallacious and thinly veiled efforts to preemptively and broadly limit or truncate that scrutiny should be denied. Arguments over relevancy should be on a case-by-case basis if and when disputed evidence has actually been developed, *if ever*, not by broad-brush fiat in advance, based on sheer speculation.

Dated: August 25, 2005

Respectfully submitted,

/s/ _____
Glen H. Spain, J.D., Northwest
Regional Director, PCFFA

UM1209-PCFFAReplytoMEHC

PROOF OF SERVICE

I hereby certify that I have delivered a true and accurate copy of this Response to the current Service List attached below, by U. S. mail, first class postage prepaid, on August 24, 2005, in addition to electronic email filing and notice to the email service list maintained in this docket, plus mailed the original and five (5) copies to the Oregon PUC Filing Center office (either by U.S. Express Mail or Federal Express, next day delivery) at 550 Capitol Street, NE, Suite 215, Salem, OR 97301-2551 on August 25, 2005.

August 25, 2005

/s/ _____
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