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14 **BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

15 UM 1209

17 In the Matter of 18 MIDAMERICAN ENERGY HOLDINGS 19 COMPANY 20 Application for Authorization to Acquire 21 Pacific Power & Light, dba PacifiCorp.	<b>OPENING COMMENTS OF AMERICAN RIVERS AND TROUT UNLIMITED</b>
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23 **AMERICAN RIVERS AND TROUT UNLIMITED’S OPENING COMMENTS**

24 American Rivers (“AR”) and Trout Unlimited (“TU”) (collectively “Conservation  
25 Groups”) respectfully submit these opening comments in the Matter of MidAmerican Energy  
26 Holdings Company’s (“MEHC’s”) Application for Authorization to Acquire Pacific Power &  
27 Light, dba PacifiCorp, pursuant to the ALJ’s August 4, 2005 scheduling ruling.  
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1 **THE CONSERVATION GROUPS**

2 American Rivers is a nonprofit conservation organization, incorporated under the laws of  
3 the District of Columbia, with its principal place of business in Washington, D.C., and regional  
4 offices in Oregon and other western states. With more than 30,000 members throughout the  
5 nation, including 800 in Oregon, AR is America’s leading river conservation organization.  
6 American Rivers’ mission is to protect and restore rivers and the variety of life they sustain for  
7 people, fish and wildlife.

8 Trout Unlimited is a national, nonprofit, coldwater conservation organization with more  
9 than 149,000 members nationwide. It is the leading coldwater fisheries conservation  
10 organization in the nation. In Oregon, TU has approximately 3,400 members. Trout Unlimited’s  
11 mission is to conserve, protect, and restore North America’s trout and salmon fisheries and their  
12 watersheds. Conservation Groups’ will participate in this proceeding to implement their  
13 respective missions, and represent their members, many of whom are PacifiCorp ratepayers.

14 **STATEMENT OF ISSUES**

15 Conservation Groups’ interest in UM 1209 is straightforward. First, TU and AR have  
16 executed contracts with PacifiCorp, in the form of settlement agreements, as the basis for the  
17 relicensing of the Lewis River Project (FERC Nos. 935, 2071, 2111, 2213), and the Condit  
18 Project (FERC No. 2342), and AR has executed a contract with PacifiCorp for the Powerdale  
19 Project (FERC No. 2659). These agreements establish rights and duties. MEHC is a new  
20 corporation without a track record concerning hydroelectric dams in any western state, let alone  
21 in Oregon on waterways with federally-listed endangered species. *See* ORS §§ 757.511(d), (g)  
22 (requiring Application to describe compliance with federal law and experience in operating  
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1 public utilities). It is unclear whether the proposed acquisition would affect these contracts. The  
2 Application and its supporting Exhibits make no mention of these existing commitments.

3         Second, the proposed sale of PacifiCorp’s hydroelectric facilities may affect the  
4 beneficial uses of Oregon rivers, and more specifically, may adversely impact Conservation  
5 Group’s ability to restore and enhance rivers and salmon and trout affected by PacifiCorp  
6 operations. These hydroelectric dams use the state’s most valuable and limited resource: water.  
7 This fact necessarily raises an evaluation to determine whether the potential harms of the  
8 proposed transaction outweigh the potential benefits. The proposed sale of PacifiCorp to MEHC  
9 must meet the net benefit and public interest standards. *See* In the Matter of Oregon Electric  
10 Utility Company, UM 1121, Oregon PUC Order No. 05-114.

11         Third, AR and TU are presently participating with PacifiCorp in a relicensing proceeding  
12 for its Klamath Hydroelectric Project. Conservation Groups do not seek to raise complaints  
13 about PacifiCorp’s current hydroelectric operations. Nor are Conservation Groups solely  
14 concerned here with future licensed operations, which are enforceable by the Federal Energy  
15 Regulatory Commission and other permitting agencies. However, Conservation Groups do ask  
16 in this proceeding how the proposed transaction of MEHC acquiring PacifiCorp affects the  
17 ability of PacifiCorp to comply with, implement, or finance any future regulatory conditions for  
18 those dams that FERC may impose or other body of competent jurisdiction.

19         The Conservation Groups therefore raise the following specific concerns:

20         1.         Do the Applicants propose to undertake any transmission or distribution system  
21 upgrades for the benefit of PacifiCorp’s Oregon customers? If so, which?

22         2.         Do the Applicants propose to acquire any renewable resources located in Oregon?  
23 If so, which?

1           3.       What if any actions will Applicants undertake to reduce greenhouse gas emissions  
2 originating in Oregon?

3           4.       What if any actions will Applicants undertake to improve the status of federal or  
4 state endangered and threatened species existing in Oregon waterways where PacifiCorp  
5 hydroelectric facilities are located?

6           5.       What if any actions will Applicants undertake to improve energy efficiency and  
7 demand-side management?

8           6.       What if any actions will Applicants undertake for community involvement,  
9 environmental justice, and economic development in Oregon?

10          7.       Will the proposed transaction affect in any way PacifiCorp’s ability or willingness  
11 to recover the capital and other costs of the environmental mitigation or restoration measures as  
12 may be required by the new license, including any related settlement agreement, for hydropower  
13 projects including, but not limited to, the Powerdale, Klamath, Lewis and Condit Projects that  
14 are either located in Oregon or affect Oregon waterways?

15          8.       Applicants have stated that the proposed transaction does not contemplate any  
16 changes in PacifiCorp’s utility operations. What assurances do Applicants provide that the  
17 proposed transaction will not affect PacifiCorp’s operations of the Powerdale, Klamath, Lewis,  
18 Condit, or any other project, within the discretion granted by the original or new license?

19          9.       Pursuant to the “most favored nation” treatment, how will the Applicants  
20 implement in Oregon any conditions of approval of the proposed transaction as may be imposed  
21 by other states?

22          10.      The Application qualifies the public interest commitments: “While MEHC has  
23 immersed itself in the details of PacifiCorp’s business activities in the short time since the  
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1 announcement of the transaction, it is possible that upon further review of this investment and  
2 the two which follow, the investments may not prove to be cost-effective or optimal for  
3 customers. If that should occur, MEHC pledges to propose an alternative with a comparable  
4 benefit to the Commission.” Application, p. 18, n. 3. Given that qualification, what are the  
5 enforceable public interest commitments which are conditions of approval of this proposed  
6 transaction? How will such a proposed alternative be evaluated to determine “comparable  
7 benefit” and ensure that the transaction provides a net benefit and is in the public interest?

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### 13 CONCLUSION

14 Conservation Groups respectfully submit the foregoing opening comments for the  
15 Commission’s consideration as it prepares to review the questions of law and fact related to the  
16 net benefit and public interest considerations in the proposed transaction.

17 Dated this October 14, 2005.

18 Respectfully submitted,

19 *Kaitlin L. Lovell, Esq.*

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*Brett Swift*

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served TROUT UNLIMITED and AMERICAN RIVERS Opening  
3 Comments in docket UM 1209 on the following named person(s) via email as indicated on the  
4 Service List for UM 1209 unless no email was provided, in which case service was made via  
5 regular prepaid postage mail in a sealed envelope, addressed to said person(s) at his or her  
6 address on the date indicated below.  
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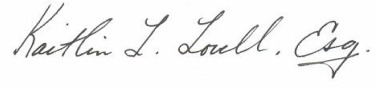
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