



August 3, 2005

Attn: Christina M. Smith  
Administrative Law Judge  
Administrative Hearings Division  
Public Utility Commission of Oregon  
P.O. Box 2148  
Salem, OR 97308-2148

**RE: In the Matter of MIDAMERICAN ENERGY HOLDING COMPANY  
Application of Authorization to Acquire Pacific Power & Light, dba PacifiCorp.**

**UM 1209- Petition to Intervene**

Dear Ms. Smith,

Enclosed for filing is an original and five copies of Trout Unlimited's Petition to Intervene in the above-references proceeding. Copies of this filing have been served to all parties listed for this proceeding.

If you have any questions or need additional information, please do not hesitate to contact me or Charlton Bonham at 510.528.4164 or [cbonham@tu.org](mailto:cbonham@tu.org).

Sincerely,

A handwritten signature in cursive script that reads "Kaitlin L. Lovell, Esq.".

Kaitlin L. Lovell

**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

UM 1209

In the Matter of  MIDAMERICAN ENERGY HOLDINGS COMPANY  Application for Authorization to Acquire Pacific Power & Light, dba PacifiCorp.	PETITION TO INTERVENE OF TROUT UNLIMITED
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Pursuant to OAR 860-012-0001, Trout Unlimited respectfully petitions the Commission to intervene as a party in this proceeding. In support of this Petition to Intervene, Trout Unlimited asserts the following:

**A. Name and Address of Petitioner**

Trout Unlimited's principal address is:

1300 N.17<sup>th</sup> St.  
Suite 500  
Arlington, Virginia 22209

Our regional field office is located at:

213 SW Ash St.  
Suite 205  
Portland, OR 97204  
(503) 827-5700

**B. Name and Address of Authorized Representative/Attorney**

Trout Unlimited will be represented by its local counsel, Salmon Policy Coordinator, Kaitlin L. Lovell, Esq. (OR Bar # 02070),<sup>1</sup> who is designated for service of all documents in this matter at the following address:

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<sup>1</sup> If additional outside counsel is required at a later time in this proceeding, Trout Unlimited will file all appropriate motions for pro hac vice in a timely manner.

Kaitlin Lovell  
213 SW Ash Street  
Suite #205  
Portland, OR 97204  
Phone: (503) 827-5700 ext. 13  
Fax: (503) 827-5672  
klovell@tu.org

**C. Organizational Description**

Trout Unlimited is a national, non-profit, coldwater conservation organization with over 149,000 members nationwide, including Oregon and California. It is the leading coldwater fisheries conservation organization in the nation. In Oregon, Trout Unlimited has approximately 3,400 members, many of whom are PacifiCorp ratepayers.

Trout Unlimited's mission is to conserve, protect, and restore North America's trout and salmon fisheries and their watersheds. Its many programs include hydropower policy reform, wild salmon and trout conservation and recovery, salmon and trout education, and habitat restoration. Our hydropower policy reform efforts focus both on national policies affecting hydropower operations, as well as intervention in individual projects to ensure adequate protection, mitigation and enhancement of aquatic resources through hydropower licensing.

**D. Interest in Proceeding**

Trout Unlimited has participated directly in the relicensing of several Federal Energy Regulatory Commission (FERC) regulated hydroelectric facilities owned and operated by Pacific Power & Light (hereinafter "PacifiCorp"). For example, Trout Unlimited is presently involved in the FERC relicensing of PacifiCorp's hydroelectric Klamath Project on the Klamath River in Oregon and California (FERC No. 2082).

Trout Unlimited's general objective in relicensings is to restore and enhance rivers and salmon and trout affected by PacifiCorp operations.

Trout Unlimited's interest in UM 1209 is legal and practical. Trout Unlimited and PacifiCorp have executed contracts, in the form of settlement agreements, as the basis for the relicensing of the Lewis River Project (FERC Nos. 935, 2071, 2111, 2213) and the Condit Project (FERC No. 2342). These agreements establish rights and duties. Trout Unlimited and PacifiCorp are also engaged in efforts to resolve issues regarding the Klamath Project. To take one example, past collaborative efforts between Trout Unlimited and PacifiCorp on that Project have included funding arrangements for joint technical work. Thus, Trout Unlimited has a significant legal stake in the outcome of UM 1209: namely, the effect of the proposed sale of PacifiCorp to MidAmerican on the implementation of agreements that PacifiCorp and Trout Unlimited and other signatories have already executed, and on efforts to reach future agreements and arrangements or settlement in current proceedings. More generally, the proposed sale of PacifiCorp's hydroelectric facilities may affect the beneficial uses of Oregon rivers, and more specifically, may adversely impact Trout Unlimited's ability to restore and enhance rivers and salmon and trout affected by PacifiCorp operations.

**E. Issues Petitioner Will Raise**

Trout Unlimited will raise at least three issues in UM 1209. First, TU will raise its interest in executed contracts or agreements with PacifiCorp.

Second, Trout Unlimited is presently participating in settlement negotiations with PacifiCorp in a relicensing proceeding for its Klamath Hydroelectric Project.

MidAmerican's ability and willingness to continue and conclude such negotiations, and

specifically, whether it would follow PacifiCorp's existing cooperative approach, are uncertain. The outcome of the Klamath relicensing is significant to PacifiCorp customers and ratepayers, as well as to the beneficial uses, including fish, wildlife, and recreation, of an Oregon waterway.

Finally, there is a risk that the proposed sale could cause adverse environmental impacts as a result of changes in the discretionary management of the hydroelectric facilities or associated lands. For example, the successor may be less willing than PacifiCorp to take a discretionary action like a flow release from a storage dam under an existing good-neighbor practice that benefits a rural community which is dependent on boating, angling, or other river-related tourism during the summer. Thus, foreseeable changes in the discretionary management of PacifiCorp's hydroelectric facilities and associated lands may adversely affect the beneficial uses of these natural resources, including recreation by Trout Unlimited's individual members.

The proposed sale and transfer of PacifiCorp to MidAmerican must meet the net benefit and public interest standards. (See In the Matter of Oregon Electric Utility Company, Oregon PUC Order No. 05-1414). The possibility of non-performance of environmental benefits under past or future arrangements raises clear public interest issues. In addition, the possibility of non-performance of the terms of a FERC license or other provisions established as a matter of state contract law may result in protracted, expensive, and ultimately unsuccessful litigation to the detriment of the ratepayers, which will influence the net benefit analysis. Each of the issues raised above involve both the net benefit and public interest standards in this proceeding.

**E. Special Knowledge and Expertise of Petitioner**

Trout Unlimited has special knowledge and expertise in the operation of PacifiCorp's hydroelectric facilities. Trout Unlimited has special knowledge and expertise in the complex and arcane body of law of the Federal Power Act and FERC's implementing regulations regarding hydropower facilities and statutory obligations to protect and enhance fish, wildlife, and recreation on waterways affected by hydropower operations. Trout Unlimited also has special knowledge and expertise in similar Public Utility Commission proceedings involving proposed corporate ownership changes of PUC-regulated utilities, FERC hydropower facilities, and natural resources and environmental issues. Specifically, Trout Unlimited participated as a litigant in the complex bankruptcy of Pacific Gas & Electric Company in federal court in California, and subsequent proceedings before the California Public Utility Commission, where similar issues were raised and resolved.

**F. Additional Basis for Intervention**

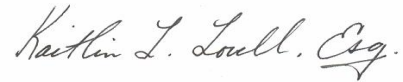
Although Trout Unlimited has only recently become aware that MidAmerican applied to the Commission on July 15, 2005 to purchase PacifiCorp, and was unable to appear at the August 2 Pre Hearing Conference, at this early stage in the proceeding, record development has likely not begun. Nor is it likely that legal or factual contested issues have been fully developed. Trout Unlimited, incident to this petition, seeks no alteration of any schedule or other process established by the Prehearing Conference held on August 2, 2005. Trout Unlimited's appearance and participation will therefore not unreasonably burden the record, or unreasonably delay the proceeding. Further, Trout

Unlimited's stated interests and issues in UM 1290 will not unreasonably broaden the issues for Commission consideration and review.

For the reasons stated above, Trout Unlimited respectfully requests that its petition to intervene be granted.

Dated this 3<sup>rd</sup> day of August, 2005

Respectfully submitted,

A handwritten signature in cursive script that reads "Kaitlin L. Lovell, Esq." The signature is written in black ink on a white background.

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Kaitlin L. Lovell, Esq.  
Salmon Policy Coordinator

**CERTIFICATE OF SERVICE**

I hereby certify that I, Kaitlin Lovell, have this day served the foregoing PETITION TO INTERVENE OF TROUT UNLIMITED upon all parties of record to this proceeding. Service has been made via regular mail or electronic mail.

Dated this 3<sup>rd</sup> day of August, 2005

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Kaitlin L. Lovell, Esq.  
Trout Unlimited