

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1209

In the Matter of)	
)	
MIDAMERICAN ENERGY HOLDINGS)	
COMPANY)	RULING
)	
Application for Authorization to Acquire)	
Pacific Power & Light, dba PacifiCorp.)	

**DISPOSITION: PETITIONS TO INTERVENE GRANTED;
PARTICIPATION LIMITED**

On August 11, 2005, MidAmerican Energy Holdings Company (MEHC) and Pacific Power & Light, dba PacifiCorp (PacifiCorp) filed an objection to the petitions to intervene submitted by the Hoopa Valley Tribe, the Karuk Tribe, the Yurok Tribe, the Pacific Coast Federation of Fishermen’s Associations (PCFFA), Trout Unlimited, and American Rivers, referred to by MEHC and PacifiCorp as the “Hydro Parties.” The petitions had been submitted between August 1 and August 4, 2005, so the objection is timely. *See* OAR 860-013-0050(1)(c). The petitions had been conditionally granted by ALJ ruling on August 5, 2005.

In their objection, MEHC and PacifiCorp argue that this proceeding is governed by ORS 757.511, which requires the Commission to consider whether the Application provides a net benefit to the utility’s customers and does not impose a detriment on Oregon citizens as a whole. MEHC and PacifiCorp argue that the Hydro Parties seek to raise issues that are related to PacifiCorp’s current management of its system, within the jurisdiction of the Federal Energy Regulatory Commission (FERC), or considered in UE 170/UE 171, the current rate case under consideration by the Commission. None of these issues are relevant to the Application addressed in this docket, they argue. If these petitions are granted, MEHC and PacifiCorp argue that they should be limited in scope, as they were in UE 171. *See* UE 171, ALJ ruling (April 5, 2005).

On August 15, 2005, Hoopa Valley Tribe responded to the objection, stating that the proposed transaction could harm Oregon’s citizens and environment if MEHC is not aware of, and does not fulfill, obligations related to the Klamath

Hydroelectric Project. On August 16, 2005, Trout Unlimited and American Rivers responded, arguing that their participation should not be limited because there was no other forum to address their concerns, the parties had a long history of working with PacifiCorp to settle disputes regarding various hydro projects that they wanted to continue, and the change in management of the Klamath Basin “hydroelectric generating system may have adverse impacts on the environmental quality” that affects the interest of Oregon citizens. On August 19, 2005, the Yurok Tribe responded that it should remain a party in the case because it can provide a perspective on whether MEHC’s acquisition of PacifiCorp will benefit the Tribe and its members as customers of PacifiCorp. On August 25, 2005, the Karuk Tribe responded that it has an interest in the proceeding as a customer with economic interests and as a Tribe with unique non-economic considerations. Also on that date, the PCFFA responded that MEHC is a newcomer to hydropower production and “could theoretically change the entire hydropower program and rearrange management of its hydropower assets” to the detriment of PCFFA’s members.

As noted in the April 5, 2005, ruling issued in UE 171, the case relating to PacifiCorp’s Klamath Basin Irrigation rates, a petition to intervene may be granted any time before the final taking of evidence as long as the intervenor does not unreasonably broaden the issues or burden the record. *See also* ORS 756.525(2); OAR 860-012-0001(2). Proceedings under ORS 757.511 are limited in scope by statute and related Commission decisions. The statute provides, in part:

If the commission determines that approval of the application will serve the public utility’s customers in the public interest, the commission shall issue an order granting the application. The commission may condition an order authorizing the acquisition upon the applicant’s satisfactory performance or adherence to specific requirements. The commission otherwise shall issue an order denying the application. The applicant shall bear the burden of showing that granting the application is in the public interest.

ORS 757.511(3). The Commission has interpreted its evaluation of “the public interest” to require that transactions under ORS 757.511 undergo “a two step analysis: first, the assessment that utility customers will be served; second, the demonstration that granting the application is in the public interest. * * * Therefore, in addition to finding a net benefit to the utility’s customers, we must also find that the proposed transaction will not impose a detriment on Oregon citizens as a whole.” Order No. 01-778 at 11.

In applying the statute to a proposed acquisition of Portland General Electric Company (PGE), the Commission found that the statute required it to compare the benefits and harms of the proposed transaction against the state of the utility as it was currently configured. *See* Order No. 05-114 at 18. Further, the Commission stated,

[W]e question the parties' ability to pursue conditions unrelated to harms posed by the transaction. While we have authority to place some conditions on an order approving an application, we do not believe we have the authority to add conditions for the sole purpose of adding benefits.

See id. at 35.

At this early stage, it is difficult to determine whether the issues raised by the Hydro Parties will be relevant to the legal standard that utility customers must see a net benefit and Oregon citizens will not be harmed by the transaction. In testimony, the Hydro Parties will be required to establish how the issues they raise affect their members *in Oregon* and are otherwise relevant to the Commission's application of ORS 757.511 in this proceeding.

Accordingly, MEHC and PacifiCorp's objection to the petitions to intervene filed by the Hydro Parties is denied, and the petitions are granted. However, the intervenors' participation is limited to addressing issues directly related to the legal issues in this proceeding. *See* OAR 860-012-0001(2).

Dated at Salem, Oregon, this 26th day of August, 2005.

Christina M. Smith
Administrative Law Judge