

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

Docket No. UM - 1209

In the matter of :)
)
) MIDAMERICAN ENERGY HOLDINGS CO.) KARUK TRIBE OF CALIFORNIA
) COMMENTS
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)
) Application for Authorization to Acquire
) Pacific Power & Light, dba PacifiCorp)
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 _____)

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COMMENTS OF THE KARUK TRIBE

The Karuk Tribe would like to thank the Commission, the Applicants and the parties for the opportunity to participate in and contribute to this proceeding which constitutes a fifth part of a significant multi-state public utilities acquisition seeking ownership of the utility resources in Oregon and four of her sister states. In view of the settlement entered into between the Applicants and many of the parties to this proceeding, the Karuk Tribe will not be requesting participation in further hearings nor make an oral presentation before this Commission. The Tribe is not a signatory to the settlement which has been filed for review by this Commission.

In this proceeding, there is only a short doorway in time to look closely at what decisions are at hand. In light of the recent loss of PUHCA safeguards, there is a unique opportunity in this proceeding to reach within the corporate veil and interact directly with the shareholders regarding their business policy and practices. This change necessitates inquiry into the nature and extent of Berkshire Hathaway's commitment to future implementation of environmental safeguards as may be required to protect the Oregon waterways.

These concerns fall directly within the jurisdiction of this Commission and not FERC alone. As new owners, MEHC would be continuing on in that proceeding in the name of PacifiCorp. It is prudent and timely for the Commission to address these issues with any shareholder or entity owning a greater than 5% interest in PacifiCorp prior to final transaction approval. In as much as the affiants' ownership interests far exceed this amount, some measure of caution must be taken to insure that the protection and interests of the ratepayers as customers and ecologically concerned residents of the State of Oregon have been adequately addressed in this proceeding.

In analyzing the intent behind the establishment of the rules under PUHCA, safeguards were established to protect of the greater public interest in fair access to utility service against

competing corporate interests. Because access to affordable heat, light and other utilities are commodities vital to the survival needs of the public as a whole, any individual or corporation owning over a 5% voting/control interest in a utility company was required to be recognized by the state's PUC as an individual or corporate entity having a significant interest in and influence over the operation of that utility. The goal under PUHCA was to keep utilities "public" in their regulation and ownership. The substantial private ownership interests evidenced in this proceeding require a stricter accountability by the Applicants to the public, as regulated by and through its Commission, as an inevitable consequence of PUHCA's repeal.

In this proceeding, the "shareholders" are not an illusive, undefined group of people who we must assume will make sound decisions by and through their Boards; decisions which not only serve their financial interests as shareholders, but likewise, serve the greater public concerns to which they share membership and interest in.

Mr. Buffett and Mr. Scott's affidavits do not go far enough. As an Applicant in the name of Berkshire Hathaway, the primary shareholder affidavits submitted by Warren Buffett and Walter Scott must be more than unenforceable agreements to close their eyes to the business affairs of PacifiCorp and not to influence by vote or otherwise, any corporate decisions related to this asset in which they hold substantial ownership. Ring fencing was not intended to shut the public out of their right to investigate the corporate structure behind which a "public utility" truly operates. What exactly do the recently filed affidavits convey to this Commission and is it humanly possible to divest oneself of either financial or operational interest regarding such a significant asset, especially in light of the ownership structure present in this proceeding? How would this agreement be monitored or enforced in a way sufficient to give it any real meaning or substance? The honor system is meaningless without knowing something about the character of the affiants.

Financial success and stability are inadequate and unreliable measures for determining degree of integrity or genuine public concern possessed by prospective utility owners.

This Commission has the rare opportunity and authority to implement plans and set conditions needed to contribute to the reduction of global and local ecological impact while concurrently regulating and minimizing the incidental costs. The Tribe would submit that PacifiCorp has a preexisting duty to its customers and to the stakeholders to operate their hydro facilities and all other owned facilities with environmental caution. Right of acquisition would require a greater and more expedient involvement in mitigation of environmental damages by the new owners to constitute a “net benefit” to the public.

The health of our environment is of unanimous and immediate concern to all peoples, mandating protection, regulation and enforcement by both state and federal authority. Local and global environmental issues warrant active concern and continued involvement by all governments. This PUC has expressly included environmental concerns as falling within the definition of “public interest” and thereby under its jurisdiction. With respect to the unique hydro issues involved in Oregon, the Commission would be wise to retain some interest in and jurisdiction over local concerns involving the continued operation of the Oregon based hydro facilities by PacifiCorp/MEHC and the associated environmental impact they have on the communities and ecosystems. Berkshire Hathaway needs to be meaningfully joined as co- Applicant to any commitments that have or will be made by MEHC.

Perhaps someday, all environmental regulation of utility companies will come under the exclusive jurisdiction of the federal government, but today is Oregon’s opportunity to raise the standard of care for the future operation of these facilities and address them as specified concerns for the applicants and affiliates to expressly articulate and comment upon for the benefit of the

public and their right to a complete record. The adequacy of the commitments made by MEHC toward global and local environmental safeguards and damage mitigation is an inalienable state interest which involves paramount public safety and welfare concerns. Each state, having regulatory authority over its utilities, has the ability and duty to compel an Applicant to address the issues that constitute the financial and environmental concerns of their represented ratepayers.

In view of the fact that this pending acquisition of PacifiCorp by MEHC coincides with the FERC relicensing of the dams in Oregon, this Commission is able to inquire more directly from MEHC, Berkshire Hathaway and the affiants, what will be PacifiCorp's future intentions with regard to continued operation of the hydro systems and intended allocation of future costs. Perhaps Scottish Power can make an argument to this Commission that FERC has exclusive jurisdiction over all hydro issues; but this argument falls short when made by a new owner seeking to step into this ongoing proceeding involving Oregonian interests. Both applicants and affiants must publicly declare their respective positions regarding the FERC proceeding and its impact on Oregon rates and ecology. The true nature and substance of the policy and business practices of MEHC are indelibly colored by those of Berkshire Hathaway, Warren Buffett and Walter Scott. What are their environmental priorities and philosophies? Due diligence is needed in this new area where utility ownership is held by the few and not the many. This was the danger contemplated by the original drafters of PUHCA. New safeguards need to be established by this Commission to minimize the risks associated with significant private ownership

PacifiCorp was and is compelled under its present ownership, to operate these facilities in manner which protects and serves the public interest. Because of the deteriorating hydropower systems and ecologically unsound impact this system has had on the Klamath Basin and elsewhere, significant infrastructure funding will be required in the near future. A commitment on the part of

the Applicants to fund some portion of these future costs with capital infrastructure investment is not an unreasonable request and can be determined by reviewing estimated costs already determined and analyzed by PacifiCorp.

Oregon is the only state of the five in this multistate acquisition which operates hydropower facilities. Other states should at minimum be put on notice that these are anticipated and significant infrastructure improvements and costs which PacifiCorp will incur. The shareholders proportionate contribution to these costs should not be left wholly undetermined in this proceeding. In the event the cost of reparation required by FERC is too financially burdensome, PacifiCorp may chose to forego relicensing and discontinue operation of its Oregon hydro facilities. This too would create a significant impact on Oregonian ratepayers.

A vital opportunity would be missed by not requiring testimony from the two primary shareholders of Berkshire Hathaway regarding their analysis of the future operation of the hydro facilities unique to Oregon and the contemplated future allocation of all or part of the cost of mandatory conditions to relicensing in 2006. It is unrealistic to assume that Berkshire Hathaway has only a remote financial interest in PacifiCorp's operational costs. Of equal importance is to determine to what degree Berkshire Hathaway and its affiliates are willing to join with MEHC in the general and Oregon specific commitments in a more significant way than is presently proposed by the commitment language contained in the settlement and affidavits.

The Karuk Tribe once again thanks this Commission for the opportunity to address these issues of tribal and collective concern.

Respectfully submitted,

BARBARA LEE NORMAN

Re: OPUC UM 1209

CERTIFICATE OF SERVICE

I, Barbara Lee Norman certify that on January 10, 2006, I electronically filed and served a copy of the **Karuk Tribe's Comments** on all parties listed below. The Original Motion along with 5 copies was mailed to the Oregon PUC on January 10, 2006.

Dated: January 10, 2006 at Gazelle, CA

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