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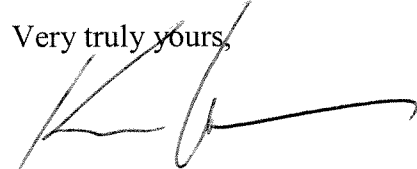
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Public Utility Commission of Oregon
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**Re: MEHC's and PacifiCorp's Objections to Hydro Parties' Petitions to Intervene
Docket UM 1209**

Enclosed for filing please find MEHC's and PacifiCorp's Objections to Hydro Parties' Petitions to Intervene in the above-referenced docket. A copy of this filing has been served on all parties to this proceeding as indicated on the attached certificate of service.

Very truly yours,



Katherine A. McDowell

KAM:knp
Enclosure
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1 alternative, the Commission should impose appropriate, limiting conditions upon the
2 participation of these parties. *Id.*

3 **II. ARGUMENT**

4 **A. The Proper Scope of this Proceeding is Whether MEHC’s Acquisition of**
5 **PacifiCorp Satisfies the Commission’s Approval Standards under ORS**
6 **757.511.**

7 This is a proceeding under ORS 757.511. Under this statute, the Commission reviews
8 the Application to determine whether the transaction provides a net benefit to the utility’s
9 customers and does not impose a detriment on Oregon citizens as a whole. *In re Oregon*
10 *Electric Utility Company*, UM 1121, Order 05-114 at 17 (Or Pub Util Comm’n Mar. 10,
11 2005); *In re Legal Standard for Approval of Mergers*, UM 1011, Order 01-778 at 11 (Or Pub
12 Util Comm’n Sept. 4, 2001).

13 The focus of such a case is the potential benefits and harms of the transaction. *See In*
14 *re Oregon Electric Utility Company*, Order 05-114 at 20. The focus of such a case is *not*
15 complaints about PacifiCorp’s current operations. Indeed, PacifiCorp’s current operations
16 are relevant only as the base case or comparator from which a determination of net benefits is
17 derived. *See id.* at 18.

18 Proposed conditions that are not related to either the potential harms of the
19 transaction or the transaction itself are outside the scope of ORS 757.511. *Id.* at 35. Thus,
20 the issue of whether the transaction “is in the public interest” does not expand the scope of
21 the proceedings such that parties can pursue conditions unrelated to the alleged harms posed
22 by the transaction. *Id.*

23 **B. The Hydro Parties’ Petitions to Intervene Will Unreasonably Broaden the**
24 **Scope of These Proceedings, Burden the Record and Unreasonably Delay**
25 **the Proceedings.**

26 The Hydro Parties consist of three California Indian Tribes: Hoopa Valley; Yurok;
and Karuk; and three fish and water conservation organizations: Trout Unlimited; American

1 Rivers; and PCFFA. Each of these parties is currently active in PacifiCorp’s Klamath
2 relicensing proceedings at FERC.

3 While the Petitions vary somewhat in the statement of interests and issues, as
4 described below, none raise issues that are germane to this proceeding:

5 1. The Petitions from the Hoopa Valley, Yurok and Karuk Tribes allege that
6 PacifiCorp’s current operation of its Klamath project is detrimental to their environmental,
7 economic and cultural interests. The Petitions also allege a desire to change PacifiCorp’s
8 current hydro practices. The impact of PacifiCorp’s Klamath project on these Petitioners and
9 the correctness of PacifiCorp’s general hydro practices are outside the scope of an ORS
10 757.511 proceeding because these issues address PacifiCorp’s current operations, not the
11 impact of a transfer of ownership to MEHC.

12 2. The Petition from the Yurok Tribe complains that MEHC’s Application
13 contains no commitments or conditions related to the Klamath project or PacifiCorp’s
14 relicensing proceedings, and implies the need to intervene to address this omission. Because
15 conditions unrelated to the proposed transaction are outside of the scope of ORS 757.511, a
16 Petition to Intervene cannot be predicated on the desire to propose such conditions.

17 3. The Petitions from Trout Unlimited, American Rivers and the Karuk tribe all
18 allege an interest in ensuring that PacifiCorp honors existing hydro-related agreements.
19 Similarly, the Karuk and Hoopa Valley Tribes allege a concern about PacifiCorp continuing
20 to honor federally assigned fishing rights. As MEHC’s Application makes clear, this
21 transaction proposes to replace MEHC for ScottishPower as the owner of PacifiCorp, without
22 other material changes in PacifiCorp’s current structure, operations or assets. Thus,
23 PacifiCorp will remain the license holder for all of its hydro projects irrespective of whether
24 MEHC’s acquisition is approved. Similarly, PacifiCorp will remain bound by all agreements
25 related to such licenses irrespective of approval of the MEHC acquisition. Because the
26

1 Application in this case does not implicate any changes to PacifiCorp’s responsibility for its
2 hydro projects, this issue is outside of the scope of the proceeding.

3 4. All of the Petitions allege an interest in the Klamath relicensing proceedings,
4 particularly as the proceedings address fish-related issues. These issues are within FERC’s
5 jurisdiction and FERC now has an open proceeding on these issues, FERC No. 2082. In the
6 Commission’s recent order in UE 171 where it asserted jurisdiction over retail rate issues
7 involving the Klamath River Basin irrigators, the Commission expressly acknowledged the
8 federal interests and authority over the Klamath hydro relicensing proceedings and explained
9 that its decision was not intended to undermine FERC’s authority in this regard. *In re*
10 *PacifiCorp*, UE 171, Order No. 05-726 at 6 (Or Pub Util Comm’n June 6, 2005). Deference
11 to FERC’s authority over the Klamath relicensing process requires rejection of Petitions to
12 Intervene that seek to raise Klamath relicensing issues in this case.

13 5. Three of the Petitioners, Hoopa Valley Tribe, Yurok Tribe and PCFFA, are
14 intervenors in UE 170/UE 171, addressing retail rates of the Klamath River Basin irrigators.
15 This ORS 757.511 proceeding is unrelated to that rate proceeding and participation in that
16 docket should not provide any basis for intervention in this case.

17 6. MEHC and PacifiCorp understand that, with respect to MEHC’s California
18 state approval proceedings, the Karuk Tribe has stated that it wants the opportunity to argue
19 that the Klamath project relicensing must be completed before the MEHC transaction can
20 proceed. The Karuk Tribe’s Petition to Intervene in this case is broad enough to suggest that
21 it intends to make the same arguments in Oregon as well. The Commission has
22 acknowledged previously that “FERC is not expected to complete the relicensing proceeding
23 prior to the expiration of PacifiCorp’s current FERC license for the [Klamath] project [in
24 February 2006].” *In re PacifiCorp*, Order 05-726 at 4. The position of the Karuk Tribe will
25 thus “unreasonably delay the proceedings.” In any event, such a position is outside the
26 proper scope of ORS 757.511.

1 **C. The Commission Should Deny or Condition the Petitions to Intervene to**
2 **Prevent Delay and Disorder in this Case.**

3 Under ORS 757.511, the Commission is to “promptly” examine and investigate an
4 Application. This statutory mandate makes it imperative that the Commission exercise its
5 authority under OAR 860-013-0021(2) to deny Petitions to Intervene that seek to broaden the
6 issues, burden the record and delay the proceedings.

7 The Oregon Courts have upheld the exclusion of intervenors from administrative
8 proceedings as necessary to keep the issues in the case properly focused. *See The*
9 *Steamboaters v. Water Resources Comm’n*, 85 Or App 34, 37, 735 P2d 649 (1987) (denying
10 intervention in dam safety proceeding to intervenor who sought to relitigate appropriateness
11 of dam approval).

12 In the alternative, the Commission should exercise its authority to condition the
13 intervention of the Hydro Parties by limiting the issues these parties can raise to only those
14 directly relevant to this ORS 757.511 proceeding. The Commission recently exercised this
15 authority in conditionally allowing and limiting the intervention of certain of the parties in
16 UE 171 (the Hoopa Valley and Yurok Tribes and PCFFA) because the Petitions raised
17 “environmental and economic” issues beyond the scope of that proceeding. *See In re*
18 *PacifiCorp*, Petitions to Intervene Granted; Participation Limited, UE 171, Ruling at 3 (Or
19 Pub Util Comm’n April 5, 2005).

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III. CONCLUSION

For all the reasons stated, MEHC and PacifiCorp respectfully request that the Commission deny or condition and limit the Petitions to Intervene of the Hydro Parties.

DATED: August 11, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document in docket UM 1209 on the following named person(s) on the date indicated below by

- mailing with postage prepaid
hand delivery
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to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said person(s) at his or her last-known address(es) indicated below.

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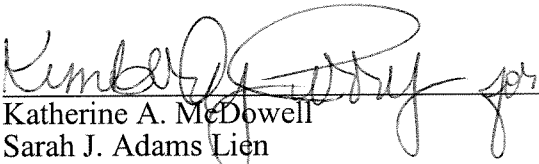
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