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August 2, 2005

Public Utility Commission of Oregon
ATTN: Filing Center
550 Capitol St., NE #215
P.O. Box 2148
Salem, OR 97308-2148

RE: In the Matter of MidAmerican Energy Holding Company Application for
Authorization to Acquire Pacific Power & Light, dba PacifiCorp
Docket No.: UM-1209

Dear Clerk:

Attached please find for electronic filing the following document:

1. **YUROK TRIBE'S PETITION FOR INTERVENTION**

The original and five (5) copies of the document have been forwarded to your offices by overnight service.

Should you have any questions regarding this matter, please do not hesitate to contact our Berkeley office.

Very truly yours,

ALEXANDER, BERKEY, WILLIAMS & WEATHERS LLP

/s/ Curtis G. Berkey
Curtis G. Berkey

Enclosures

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

Docket No. UM 1209

In the Matter of)
)
MIDAMERICAN ENERGY HOLDING CO.) **YUROK TRIBE'S PETITION**
) **FOR INTERVENTION**
)
Application for Authorization to Acquire Pacific)
Power & Light, dba PacifiCorp and to Exercise)
Substantial Influence Over the Policies and)
Actions of PacifiCorp)

THE YUROK TRIBE'S PETITION FOR INTERVENTION

Pursuant to ORS § 756.525 and OAR § 860-012-0001, the Yurok Tribe, a federally recognized Indian tribe, hereby petitions the Oregon Public Utility Commission for an order granting it status as a party intervenor in the above-captioned proceeding.

NAME AND ADDRESS OF THE PETITIONER

The Yurok Tribe is located on the Yurok Reservation, which stretches for 44 miles from the mouth of the Klamath River to the confluence of the Trinity River. The Tribe is recognized by the United States as an Indian tribe for all purposes under federal law. 68 Fed. Reg. 68,183 (Dec. 5, 2003). The Tribe's headquarters is on the Reservation, with an address at 190 Klamath Boulevard, Klamath, California 95548. In this proceeding the Yurok Tribe is represented by its attorneys and service of process and other communication with regard to this proceeding should be made to them as follows:

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A. NATURE AND EXTENT OF YUOK TRIBE'S INTEREST

1. Yurok Tribe's interest in a healthy Klamath River Fishery

Pacificorp owns and operates the Klamath Hydroelectric project which adversely affects the Klamath River and its fishery. To understand the Tribe's interest in conserving the resource one must understand the Tribe's history and culture. Since time immemorial, the Yurok people have relied on the resources of the Klamath River for their survival. The River and the lands that surround it are part of the Tribe's aboriginal territory, which encompassed millions of acres in what is now northern California. The heart of Yurok culture, social organization and food supply is based on the tribal fishery. See Kandra v. United States, 145 F. Supp.2d 1192, 1200 (D. Ore. 2001) ("The Klamath and Yurok Tribes rely on the fish as a vital component of the Tribes' culture, traditions and economic vitality.") Klamath River salmon and related species are the Tribe's most significant cultural, economic and subsistence resource. For centuries, the Yurok Tribe has had a symbiotic relationship with the anadromous fish species in the Klamath River Basin. Each nourished and sustained the other.

The Yurok Reservation, established in the mid-nineteenth century, covers only a small fraction of the original Yurok country. Through a series of executive orders under statutory authority, the Reservation boundaries were fixed at one mile on each side of the River from the Pacific Ocean to the confluence of the Klamath and Trinity Rivers, a distance of approximately 45 miles. The location of the Reservation means that critical portions of anadromous fish habitat lay within the Reservation boundaries.

The history of the Reservation reflects the Tribe's close relationship with the Klamath River and its fishery. The purpose of the Reservation was to secure a permanent place for the Yurok way of life—which was then and is now based on fishing—to flourish without interference

or impairment and to reserve federally recognized fishing rights. This fact has been recognized repeatedly since the Reservation was established – by the Department of the Interior, the U.S. States Supreme Court, the lower federal courts, and the California courts. A sampling of such cases includes: Mattz v. Arnett, 412 U.S. 481, 487 (1973) (The Yurok Reservation “abounded in salmon and other fish” and was “ideally suited for the Yuroks.”); Donnelly v. United States, 228 U.S. 243, 259 (1913); Parravano v. Masten, 70 F.3d 539, 545-46 (9th Cir. 1995), cert. denied, 116 S.Ct. 2546 (1996); Blake v. Arnett, 663 F.2d 906, 909 (9th Cir. 1981); Mattz v. Superior Court, 46 Cal.3d 355, 362-364, 758 P.2d 606, 610-612 (1988).

The Yurok right to take fish from the Klamath River includes the right to fish for ceremonial, subsistence and commercial purposes. United States v. Eberhardt, 789 F.2d 1359 (9th Cir. 1986). Throughout its history, the Yurok Tribe has exercised its fishing rights for all of those purposes. Further, when a reservation is established for the purpose of securing fishing rights, water is also reserved in sufficient quantities to sustain that use. United States v. Adair, 723 F.2d 1394, 1408-11 (9th Cir. 1983), cert. denied, 467 U.S. 1252 (1984).

Consistent with the central place of salmon in the Yurok identity and way of life, the protection and conservation of these anadromous fish is one of the Tribe’s highest priorities. The Tribe’s powers of sovereignty are exercised by a Tribal Council under a written constitution, which in the Preamble describes the Klamath River as “our highway” that provided “social and ecological balance.” In exercise of its sovereignty, currently, the Tribe operates a fisheries department that monitors anadromous fish runs, develops resource management plans, and regulates tribal commercial, ceremonial, and subsistence fishing. The department establishes annual allocations to tribal members that ensure adequate escapement rates necessary to preserve the resource. Unfortunately, due to off reservation user groups and despite the Tribe’s

substantial investment of time and resources in conservation and restoration, Klamath River salmon stocks are at historic lows. The poor condition of the Tribe's fishery threatens a resource that has been described as "not much less necessary to the existence of the Indians than the atmosphere they breathe." Blake v. Arnett, 663 F.2d 906, 909 (9th Cir. 1981).

Pacificorp's dams on the Klamath River deprive salmon access to spawning grounds and divert Klamath River water which adversely affects the remaining salmon spawning grounds and habitat. When the National Marine Fisheries Service (NMFS) listed coho salmon as threatened in 1997, the agency noted that water withdrawals were "major activities responsible for the decline of coho salmon in Oregon and California." Threatened Status SONCC ESU7 of Coho Salmon, 62 Fed. Reg. 24588 (May 16, 1997). There is no more dramatic example of the causal relationship between the decades of mismanagement and the health of the Yurok Tribe's salmon fishery than the massive, fish kill of September 2002, in which an estimated 60,000 salmon died. The United States Fish and Wildlife Service, the California Department of Fish and Game, and the Yurok Tribal Biologists concluded that low water flows were a major contributing factor to the kill.

2. Yurok Tribe's Interest as an Electric Power Customer of Pacificorp

The Yurok Tribe's governmental offices, business entities, and tribal members are customers of Pacificorp. The Yurok Reservation boundaries follow the Klamath River one mile on both sides for 44 miles from the mouth of the Klamath River to the boarder of the Hoopa Reservation totaling 63,035 acres. Over 70% of the Yurok reservation has no access to basic telephone or electric services. Pacificorp is the sole provider of power services to the remote North Eastern corner of the reservation. Also, 310 of the Tribe's 5,000 members live in Oregon and are Pacificorp customers.

The Yurok Tribe is the largest federally recognized Tribe in California. Due to the remote location of the reservation, opportunities for economic development are limited. The Tribe does not have a tax base, gaming or business entity generating income for the tribe. Furthermore, the area surrounding the reservation is economically depressed. As a result, 80% of the Tribal members living on the reservation live below the poverty level. Recently, the Tribe reorganized its government infrastructure in efforts of providing jobs for tribal members and to develop economic opportunities on the reservation. The Tribal Government's primary concern is to maintain cultural traditions while developing telecommunication and electrical infrastructures, public transportation systems, tribal businesses, educational opportunities, and to manage natural resources.

Because the Tribe has federally protected fishing and water rights, commercial fishing in the Klamath estuary is a primary source of income for Tribal members, generating an average of \$420,000 to \$630,000 annually. As previously noted, the fisheries department is the Tribe's largest department, which manages the Tribe's harvest in a sustainable manner necessary for preservation of the resource. The Tribe and its members, not only have a federally recognized right to fish and to manage the fishery, but also have an economic interest in the development of the Klamath River and its fisheries.

B. ISSUES THE YUROK TRIBE INTENDS TO RAISE

The Yurok Tribe intends to raise issues germane to PacifiCorp's and MidAmerican's operation of the Klamath Hydroelectric Project in Oregon and California and the Project's impact on the interests of the Tribe identified in the preceding section. The Joint Petition of PacifiCorp and MidAmerican submitted to the Commission for an authorizing order contains several references to the environmental policies and practices of the companies, and in fact

describes them as being responsible environmental stewards. The Yurok Tribe is particularly interested in ensuring that these policies and practices adequately protect the fishery and cultural resources of the Tribe from harm arising from the operation of the Klamath Hydroelectric Project.

The Joint Petition and accompanying testimony and exhibits include references to obligations that MidAmerican has agreed to assume or undertake with regard to PacifiCorp's assets and operations. "MEHC Adoption of Prior Commitments," Exhibit Accompanying Direct Testimony of Brent E. Gale, PPL Exhibit 301. With regard to environmental matters, the Exhibit states that "PacifiCorp will continue its commitment to gather outside input on environmental matters, such as through the Environmental Forum." *Id* at 5. Noticeably absent from this list is any commitment to avoid or mitigate harm to tribal fishery resources on the Klamath River, or any indication that MidAmerican is prepared to assume financial and legal obligations to rectify such harm. Also missing is any reference to the on-going relicensing proceeding at the Federal Energy Regulatory Commission concerning the Klamath Hydroelectric Project. PacifiCorp's license to operate the project expires in 2006. The cost of compliance with fishery and water protection measures should be considered as a factor in this proceeding.

The Joint Petition also asserts that approval of the request to exercise substantial influence over PacifiCorp is in the "public interest." The Joint Petition appears to define the term too narrowly, such that impacts on tribal fishery and cultural resources would not likely be considered in the Commission's determination. The Yurok Tribe is concerned that the public interest will not be defined in terms sufficiently broad to encompass the unique interests of the Tribe in a healthy and sustainable Klamath River.

In sum, the Yurok Tribe intends to raise environmental and economic issues in this proceeding. The unique economic, environmental, social and cultural interests of the Yurok Tribe cannot be represented or presented by any other party. The Tribe's intervention is necessary to ensure that its perspective is accurately and fairly represented, and to ensure that the factual record of the Commission includes information sufficient to reach conclusions consistent with the public interest. The Yurok Tribe seeks to ensure that the Commission carefully and thoroughly considers the environmental and economic impacts of the policies and practices of the companies on the Tribe's Klamath River fishery and economy.

C. THE YUROK TRIBE'S SPECIAL KNOWLEDGE AND EXPERTISE

Granting the Tribe intervenor status will assist the Commission in understanding the public interests surrounding this proceeding. The Tribe has considerable knowledge regarding the impacts of the operations of the Klamath Hydroelectric Facilities owned by Pacificorp upon the resources and people, including tribal and non-tribal members, of the Klamath River. The Tribe has been an active and consistent participant in salmon and other anadromous fish species restoration, research, and water allocation issues since the Tribe was formally organized in 1993. Over the years, the Tribe's Environmental Protection, Forestry, and Fisheries departments have gathered extensive scientific data tracking the adverse effects of Pacificorp's project on the Klamath River. Tribal scientists and biologists have utilized this information to compile extensive resource management plans that explain the adverse effects of water diversion and suggest reasonable water flows, escapement rates and habitat restoration measures. By granting the Tribe's motion to intervene the Commission will have access to the Tribe's extensive knowledge regarding the public interests surrounding this project.

D. CONCLUSION

The Yurok Tribe should be granted intervenor status. The Tribe's participation will not broaden the issues or burden the record; rather, it will assist the Commission by providing special knowledge and expertise acquired through years of conducting scientific studies regarding Pacifcorp's dams adverse effects to anadromous fish and the people of the Klamath River. For the foregoing reasons, the Yurok Tribe respectfully requests that the Commission grant its application to intervene in the above-captioned proceeding.

Dated: August 2, 2005

Respectfully submitted,

ALEXANDER, BERKEY, WILLIAMS & WEATHERS LLP

By: /s/Curtis G. Berkey
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ACKNOWLEDGMENT OF SERVICE

I certify that I have this day caused to be served the foregoing document:

1. YUOK TRIBE'S PETITION FOR INTERVENTION

upon all parties of record in this proceeding by mailing a copy properly addressed with first class postage prepaid and by electronic means pursuant to OAR 860-013-0070, to the following parties or attorneys or parties:

UTILITY WORKERS UNION OF AMERICA PO BOX 37 SAN CLEMENTE CA 92674-0037 uwua@redhabanero.com	DOUGLAS L ANDERSON MIDAMERICAN ENERGY HOLDINGS CO 302 S 36 ST STE 400 OMAHA NE 68131 gerickson@midamerican.com
RALPH CAVANAGH NATURAL RESOURCES DEFENSE COUNCIL 111 SUTTER ST FL 20 SAN FRANCISCO CA 94104 rcavanagh@nrdc.org	MELINDA J DAVISON DAVISON VAN CLEVE PC 333 SW TAYLOR, STE. 400 PORTLAND OR 97204 mail@dvclaw.com
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MICHAEL T WEIRICH DEPARTMENT OF JUSTICE REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 michael.weirich@state.or.us	

I further certify that on August 2, 2005, in addition to filing the document electronically, I caused to be mailed the original and five (5) copies of the Yurok Tribe's Petition for

Intervention with the Public Utility Commission of Oregon, via overnight service, to the following address:

Public Utility Commission of Oregon
ATTN: Filing Center
550 Capitol Street, NE #215
Salem, OR 97308-2148
E-mail: PUC.FilingCenter@state.or.us

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on August 2, 2005, at Berkeley, California.

/s/ Curtis G. Berkey
Counsel for Petitioner,
The Yurok Tribe