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November 21, 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. **DIRECT TESTIMONY OF TROY FLETCHER ON BEHALF OF
INTERVENOR YUOK TRIBE**

The original and five (5) copies of the document have been forwarded to your offices by first class mail.

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)	DIRECT TESTIMONY OF TROY
)	FLETCHER ON BEHALF OF
MIDAMERICAN ENERGY HOLDING CO.)	INTERVENOR YUROK TRIBE
)	
Application for Authorization to Acquire Pacific)	
Power & Light, dba PacifiCorp and to Exercise)	
Substantial Influence Over the Policies and)	
Actions of PacifiCorp)	

1. What Is Your Current Occupation?

Acting Executive Director of the Yurok Tribe. I expect to be relieved of this duty on November 22d, 2005, when the recently-hired Executive Director takes over. At that point, I will continue in the Tribe's employ as a consultant.

2. What Other Positions Have You Held With the Yurok Tribe?

I was Executive Director from August 1999 to February 2005. I was the director of the Tribe's fisheries program from May 1996 to May 1999. I was an assistant fisheries program manager for the Tribe from October 1993 to April 1995. I am currently also serving as a consultant to the Tribe with regard to the FERC application of PacifiCorp for a license to continue operating the Klamath Hydroelectric beyond 2006, when the current license expires.

3. What Are Your Responsibilities as Acting Executive Director of the Yurok Tribe?

I oversee all of the departments of the Yurok Tribe, and I report directly to the Tribal Council. I represent the Tribe at various meetings with federal, state and local agencies whose actions affect tribal interests, in particular those having to do with the Tribe's Klamath River fishery. I have represented the Yurok Tribe at meetings of the Klamath Fishery Management Council, the Klamath River Basin Fisheries Task Force, and the Trinity River Management Council, which are federal advisory committees. I represent the Yurok Tribe in discussions with PacifiCorp with regard to the FERC relicensing proceeding.

4. What is Your Tribal Membership and Where Do You Reside?

I am an enrolled member of the Yurok Tribe. I live on the Hoopa Valley Reservation, which formerly was the joint reservation of the Yurok Tribe and the Hoopa Valley Tribe until Congress partitioned the reservations in 1988. I have fished on the Klamath River since I was

very young, and my family has lived near the Klamath River at the village of Pecwan on the Yurok Reservation for many many generations. I and my family participated in many of the cultural activities of the Yurok Tribe, and have done so for many many years.

5. Describe the Legal Status of the Yurok Tribe?

It is a federally-recognized Tribe with over 4,500 members, with headquarters in Klamath, California. The Yurok Tribe is the largest Indian tribe in California. The Tribe is governed by a Tribal Council which exercises jurisdiction over the reservation lands and resources of the Tribe. The Yurok Tribe adopted a written constitution in 1993, which provides, among other things, that the Klamath River is the highway of the Yurok people which provided social and ecological balance for the community until the arrival of Europeans.

6. Does the Yurok Tribe Have Members Living in Oregon Within the Service Area of PacifiCorp?

Yes, particularly in the Medford and Ashland areas of southern Oregon. Because the Yurok Reservation included only a small part of the aboriginal territory of the Tribe, many tribal members were forced to move outside the Reservation boundaries to find places to live. The Yurok Reservation today is able to sustain only a small part of the population of the Tribe, due to the small land base and the abysmal lack of basic services, such as electric power, in significant parts of the Reservation.

7. Please describe the Yurok Reservation and Its Role in the Life of the Yurok Tribe.

The Yurok people have always relied on the resources of the Klamath River for their survival. The fish from the River, particularly salmon, is the mainstay of the Yurok diet. Cultural ceremonies related to the River and salmon tie the Yurok people to the natural and spiritual world. The identity of the Yurok people comes from their connections to the Klamath River and the fishery it sustains. The Klamath River and the lands that surround it are part of the aboriginal territory of the Yurok Tribe, which before the arrival of Europeans, encompassed millions of acres in what is now northern California. The Yurok Reservation today covers only a small fraction of the original Yurok territory. The significance of the Reservation, which was established in the mid-19th century, lies less in its size than in the fact that the Klamath River runs through the heart of it.

8. Describe the Fishing Rights of the Yurok Tribe.

The courts have said that the Yurok Tribe has those rights that are necessary to fulfill the purpose of the Yurok Reservation. The central purpose of the Yurok Reservation was to create a permanent place for the Yurok way of life – which was then and is now – based on fishing. The Yurok Tribe spent many years in the courts defending and protecting its fishing rights; the courts have ruled that the Yurok Tribe has a legal right to take fish from the Klamath River for subsistence, commercial and ceremonial purposes. Throughout its history, the Yurok Tribe has exercised its fishing right for all of these purposes. Under federal law, the Tribe is entitled to 50% of the allowable catch each year, or a sufficient amount to maintain a moderate standard of

living, whichever is less. Because the Klamath River fishery has been decimated by low water flows, poor water quality and destruction of fish habitat, the Yurok Tribe has been unable to take sufficient numbers of fish to meet its needs. The Yurok Tribe also has a federal right to sufficient amounts of water to sustain the Tribe's fishery.

9. Mr. Fletcher, are you involved in the proceedings pending before the Federal Energy Regulatory Commission concerning PacifiCorp's application for relicensing.?

Yes.

10. In what manner are you involved?

I am a member of the Yurok Tribe and am a paid consultant to the Yurok Tribe. In my capacity as consultant to the Tribe, I am retained to act as lead negotiator for the Tribe on the PacifiCorp relicensing proceedings pending before FERC.

11. How long have you been involved in the FERC relicensing proceedings?

Since approximately the Fall of 2004, when the discussions about relicensing, and the possibility of a settlement of the disputes regarding relicensing, began.

12. Has the Yurok Tribe taken a position regarding conditions which should be imposed upon FERC's issuance of a new license to PacifiCorp?

Yes.

13. What is that position?

In general, the Yurok Tribe takes the position that the existence and operation of the dams upriver from the Yurok Reservation, have adversely affected the Tribe's fishery. The Tribal fishery includes a variety of fish species including coho salmon, Fall Chinook salmon, Spring Chinook salmon, green sturgeon, lamprey and others. One of those species, the coho, was listed in 1997 as threatened under the Endangered Species Act. Other species have suffered significant declines in their population and unless reversed, those declines may well lead to listing of other species under the ESA as they approach extinction. Accordingly, the Tribe's position in the FERC relicensing proceeding is to insure that FERC imposes to the maximum extent permitted by law, conditions on any relicensure sufficient to permit the restoration and maintenance of the Tribe's fishery.

14. Has the Tribe developed specific proposals for the restoration of the fishery?

Yes. There are three specific conditions that the Tribal fish biologists and others believe appropriate. First, four dams should be removed from the Klamath River. Iron Gate, Copco 1, Copco 2, and J.C. Boyle dams are located generally in the area of river mile 190 to 224. Iron Gate Dam is an impassable barrier to fish; it prohibits all migrating fish from passage upriver

beyond the dam. Removal of all four dams would return approximately 40 river miles of fish habitat in the Klamath River and provide access to spawning grounds and other essential habitat. Second, there should be a condition on the license requiring full fish passage throughout the Basin below Upper Klamath Lake. Third, there should be full access of salmonid fish species to their native habitat/historic range throughout the Basin, including the Williamson and Sprague Rivers.

15. What position does the Tribe take in the FERC proceedings in regard to the first of these conditions, removal of the four dams?

The Tribe advocates that relicensing should be conditioned upon removal of the four dams.

16. Without disclosing any information made available to you in confidential settlement discussions, do you have an estimate or a range of estimates for the cost of removal of all four dams?

Estimates available to us for the cost of removing all four dams are in the range of several hundred, to five hundred million dollars.

17. What type of work is included within these estimates to the best of your knowledge?

The work includes costs for analysis of removal from both a biological and engineering standpoint, the actual work of demolishing the dams, management of sediment which has built up behind the dams since the dates of their construction (1962, 1925, 1918, and 1958 respectively), removal of other structures impeding the natural flow of the River, and post-removal habitat restoration projects.

18. What is the Tribe's position concerning the second of the conditions on relicensure, the restoration of full fish passage throughout the Basin?

From the perspective of the Tribe, there is no viable alternative to decommissioning of the four dams. But if alternatives to dam removal must be considered, full fish passage is essential. If the dams are not removed, or if some but not all four of the dams are removed, there remains the question of fish access to habitat below and above Upper Klamath Lake. There are various methods of achieving fish passage, dam removal among them. Short of decommissioning the dams, there are both "volitional" and "trap and haul" fish passage methods. The most effective means of restoring fish passage, to the best of my knowledge, is removal of dams and similar barriers to passage. Installation of fish ladders and other means of allowing fish on their volition to navigate their way around dams, is another alternative. And then trapping fish, containing them, hauling the container around the dams, and releasing the fish above the dam, is another alternative.

19. Have you considered cost estimates for the establishment of full fish passage?

Yes. Obviously, the costs are dependent upon whether any dams are removed, and if so, how many and which ones. Restoration of fish passage with one dam, as opposed to four, is less expensive. Assuming that all four dams remain in place below Link River Dam, we have considered cost estimates which range up to \$100 million for the provision of full fish passage within the Klamath River Basin.

20. What does the Tribe mean when it states that it seeks as a condition of relicensure, full access of salmonid fish species to their native habitat/range?

Removal of the four dams which now constitute an impenetrable barrier to fish access to the upper Basin, is only part of the solution to the problem of restoration of the Tribe's fishery. Dam removal would allow fish access to the mainstem Klamath River. But we need to insure that fish which make it up the River have access to, and are able to survive in the tributaries. The Tribe's position is that watershed, riparian, and other stream restoration projects would have to take place on the tributaries; those projects would be similar to ones undertaken for anadromous fish in the lower Klamath River. Removal of the dams with restoration of fish passage to the upper River would not succeed in restoring a health fishery unless the habitat in the mainstem and the tributaries is fully restored.

21. Do you have an estimate of the cost of providing full access of salmonids to their native habitat/range?

We do not have a reliable projection at this point. We believe that the costs would be in the range of hundreds of millions of dollars.

22. For what reason does the Yurok Tribe assert that restoration of full access as you have described it, is a legitimate requirement here?

The Yurok people are a fishing people. When in the mid-1800s, the United States Government promised the Yuroks peace in return for leaving their aboriginal land and agreeing to live on what is now the Yurok Reservation, the federal government promised to protect the Yuroks' fishing way of life. The Yuroks seek here only what the federal government has already promised, and what the federal government is obligated to provide.

23. Is there any other condition that the Yurok Tribe seeks in connection with the relicensing of the PacifiCorp dams that could be a factor for consideration in the application pending before this commission?

Yes. The Tribe has concluded on the basis of the best available science, that one of the ways in which the existence and operations of the dams affect the Tribe, its members, and the Tribal fishery, is with respect to the poor quality of the water in the Klamath River. The Tribe contends that a condition of relicensure should be a requirement that PacifiCorp protect the quality of the water, and in particular, operate the dams so as to prevent a recurrence of a toxic algae *microcystis aeruginosa* (which I refer to as "microcystis").

24. Why is the Tribe concerned about microcystis?

In the summer of 2005, there were microcystis algae blooms in the reservoirs above PacifiCorp's dams. Those blooms caused the algae to spread throughout the River, even below PacifiCorp's dams. Testing done by Tribal scientists and others confirmed that there was present in the water a toxic product of the algae, known as *hepatotoxin microcystin*. Human contact with the toxin causes hay-fever type symptoms, dermatitis, nausea, diarrhea, tingling, paralysis, and sometimes death. Microcystin exposure, whether an acute single-dose or a long-term low dose, can cause decreased liver function in humans and animals; the effects are permanent. Microcystin levels in the Klamath River during the past summer were hundreds of times above the level set by the World Health Organization as causing a risk to human health.

25. What did the Tribe do in response to the discovery of hazardous microcystin levels?

The Tribe issued a health warning to Tribal members and others on the Yurok Reservation. The Tribe explained the risks, and warned people to stay out of the River, avoid contact with River water, protect their children, and even, keep their dogs from going in the River. Tribal members stopped fishing because of the health risks from the water; the risks of consuming fish from the unhealthy River are still not clear to us. Part of the reason that the degree of the risk to health is unknown to the Tribe, is that PacifiCorp has gathered data on these algae blooms and despite repeated requests to release it, has refused to release that data to the Tribe or to other agencies monitoring human health until very recently.

26. Does the Tribe have some estimate of the costs of the damage done in 2005, and of the costs of monitoring and otherwise protecting in the future those whose lives depend upon a healthy Klamath River?

It is difficult to quantify in dollar terms, the value of a healthy River to the Yurok people. The River is the center of Yurok life. Yurok people depend upon the River for reasons which are economic, social, and cultural. Our spiritual practices revolve around the River. It is said that without a healthy River and without the Klamath River fish, Yurok people would no longer exist. Nonetheless, it is possible to determine adverse health effects, lost revenue from fishing, and emotional distress to individuals, and we are gathering that information. The degree of health risk depends upon the levels of toxins in the River; and without access (until recently) to PacifiCorp's data, we were unable to reasonably calculate that. As to the costs of protecting the River in the future, that is a question is more easily answered. But the answer again depends upon information which PacifiCorp has until recently, withheld from the Tribe. Without PacifiCorp's monitoring and other data, we have been unable to make a reasonably intelligent determination of the damages for 2005, and of the costs of water quality protection efforts for the future.

27. Does this conclude your direct testimony?

Yes.

Dated: November 21, 2005

ACKNOWLEDGMENT OF SERVICE

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

1. **DIRECT TESTIMONY OF TROY FLETCHER ON BEHALF OF INTERVENOR YUOK TRIBE**

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

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I further certify that on November 21, 2005, in addition to filing the document electronically, I caused to be mailed the original and five (5) copies of the DIRECT TESTIMONY OF TROY FLETCHER ON BEHALF OF INTERVENOR YUOK TRIBE with the Public Utility Commission of Oregon, via first class mail, to the following address:

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Salem, OR 97308-2148
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I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on November 21, 2005, at Berkeley, California.

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