



900 S.W. Fifth Avenue, Suite 2600
Portland, Oregon 97204
main 503.224.3380
fax 503.220.2480
www.stoel.com

August 17, 2005

JAMIE M. VAN NOSTRAND
Direct (503) 294-9679
jmvannostrand@stoel.com

BY OVERNIGHT MAIL

Carole Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 Evergreen Park Drive, SW
Olympia, WA 98504

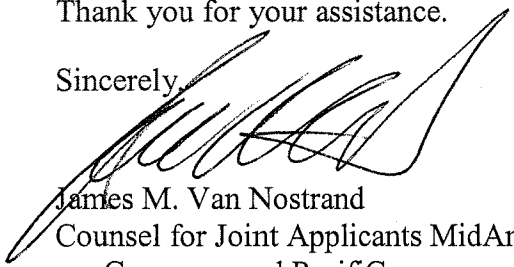
**Re: Docket No. UE-051090
Joint Application of MidAmerican Energy Holdings Company and PacifiCorp d/b/a
Pacific Power & Light Company for Order Authorizing Proposed Transaction**

Dear Ms. Washburn:

Enclosed for filing in the above proceeding are the original and fifteen (15) copies of Applicants' Answer to Petition for Interlocutory Review of Public Utility District No. 1 of Snohomish County, filed in accordance with WAC 480-07-810(3). An electronic copy of the filing will also be sent to the Commission's record center.

Thank you for your assistance.

Sincerely,



James M. Van Nostrand
Counsel for Joint Applicants MidAmerican Energy Holdings
Company and PacifiCorp

cc: Administrative Law Judge Dennis Moss
Service List

Oregon
Washington
California
Utah
Idaho

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

IN THE MATTER OF THE JOINT)	
APPLICATION OF MIDAMERICAN)	Docket No. UE-051090
ENERGY HOLDINGS COMPANY AND)	
PACIFICORP DBA PACIFIC POWER)	ANSWER TO PETITION FOR
& LIGHT COMPANY FOR AN ORDER)	INTERLOCUTORY REVIEW OF
AUTHORIZING PROPOSED)	PUBLIC UTILITY DISTRICT NO. 1
TRANSACTION)	OF SNOHOMISH COUNTY
)	

1 Pursuant to WAC 480-07-810(3), MidAmerican Energy Holdings Company (“MEHC”) and PacifiCorp d/b/a Pacific Power & Light Company (“PacifiCorp”) (sometimes hereinafter jointly referred to as “Applicants”) hereby answer the Petition for Interlocutory Review (“Petition”) filed on August 8, 2005 by Public Utility District No. 1 of Snohomish County, WA (“Snohomish PUD”). The Petition was accompanied by the Declaration of John P. White in Support of Intervention (“Declaration”).

2 The Petition seeks Commission review of the ruling of Administrative Law Judge Dennis Moss at the July 26 prehearing conference denying Snohomish PUD’s intervention. The Petition asserts that Snohomish PUD has a substantial interest in the proceeding that cannot be advanced by another party or, alternatively, that its participation is in the public interest. *Petition at ¶ 17; WAC 480-07-355(3).*

3 Regarding the first prong of the intervention standard under WAC 480-07-355(3)—a “substantial interest in the subject matter of the hearing”—Applicants submit that Snohomish PUD does not have a substantial interest in a matter that is “within the jurisdictional concern of the Commission” (*Cole v. WUTC, 79 Wn.2d 302 at 306, 1971*) or that has been raised as a “subject matter” in this proceeding. It would be within the Commission’s discretion,

however, to grant limited intervention for Snohomish PUD on public interest grounds. The Commission has considerable discretion in ruling on petitions to intervene, particularly with respect to determining whether a party's participation is in the "public interest." At the same time, the issues raised in the Petition—wholesale power, bulk transmission, and decisions of the Bonneville Power Administration—are normally outside the Commission's review, and appear to be related to Snohomish PUD's particular interests rather than to a broader "public interest." As discussed below, Applicants have concerns with Snohomish PUD's participation in the proceeding, particularly if its intervention is not narrowly limited to areas that are within the Commission's purview and that have some nexus to the transaction.

I. SNOHOMISH PUD DOES NOT HAVE A SUBSTANTIAL INTEREST IN MATTERS TO BE ADDRESSED IN THIS PROCEEDING.

4 The interests cited in the Petition and in the Declaration as a basis for granting intervention are not within the scope of this proceeding. Snohomish PUD therefore lacks a substantial interest in the subject matter of the hearing, for the "subject matters" cited in the Petition are either not within the Commission's jurisdiction, or simply do not arise from the transaction. Specifically, Applicants cite the following from the Petition and the accompanying

Declaration:

- The Declaration states that Snohomish PUD "has an interest in the outcome of the proceeding as both a direct and indirect retail customer of PacifiCorp" (*Declaration at* ¶ 15), and that Snohomish PUD "sits in the same position as PacifiCorp's Washington retail customers with respect to purchasing electrical power at competitive prices." *Id. at* ¶ 7. To the contrary, Snohomish is not a retail customer of PacifiCorp, either directly or indirectly. Any interest Snohomish may have in "purchasing electrical power at competitive prices" is at the wholesale level, and outside the jurisdiction of the Commission.
- The Declaration states that Snohomish PUD "has an interest in seeing that the statutory and regulatory limits on REP [the Residential Exchange Program] are observed by the merged entity." *Id. at* ¶ 13. The Residential Exchange Program is administered by the Bonneville Power Administration ("BPA"), and is governed by Section 5(c) of the 1980

Pacific Northwest Electric Power Planning & Conservation Act, 16 U.S.C. § 839c. Review of BPA final actions is properly brought before the Ninth Circuit. BPA and the courts determine “the statutory and regulatory limits on REP,” not the Commission. Snohomish PUD appears to have recognized this fact since it has filed no fewer than three petitions in the Ninth Circuit challenging the level of benefits currently received by PacifiCorp’s residential and small farm customers. Given that such petitions are currently pending, Snohomish PUD will have ample opportunity to argue in the proper forum about the “statutory and regulatory limits on REP.” Moreover, the amount of REP benefits flowing to PacifiCorp are determined according to a ten-year settlement agreement (through September 30, 2011) between PacifiCorp and BPA. The “cost of REP benefits” are therefore fixed by contract and cannot “change because of the merger.” *Declaration at ¶ 13.*

- The Declaration states that Snohomish PUD “has an interest in the merger proposal because it could affect the financial standing of the merged entity and its ability to make good” on a refund to BPA that may arise in the event Snohomish PUD is successful in its litigation involving the REP in the Ninth Circuit. *Id.* Apart from the pure speculation regarding the outcome of the Ninth Circuit litigation and the inane suggestion that a utility owned by MEHC (which, in turn, is backed up by an 83.75% ownership interest in MEHC by Berkshire Hathaway, an AAA-rated company¹) would somehow be less able to pay a refund to BPA, the interest asserted by Snohomish PUD is, at best, nothing more than that of a potential creditor.² The rights of potential creditors are not within the “jurisdictional concern of the Commission.” *Cole v. WUTC, 79 Wn.2d at 306.*
- The Declaration also cites an “interest and concern about regional transmission issues” and states that Snohomish PUD relies upon the regional transmission grid, a substantial part of which will be operated by the merged entity. *Declaration at ¶ 12.* These interests relate to wholesale transmission service – from one utility to another – and such service is regulated exclusively by the Federal Energy Regulatory Commission (“FERC”). Similarly, the fear that the “merger may cause reduced competition in the short term market for the purchase and sale of power” (*Id at ¶ 7*) relates to the wholesale power markets, which also are regulated exclusively by FERC.
- The Declaration also cites Snohomish PUD’s status as a “potential competitor” in “emerging shared technology such as broadband services over electric lines,” and expresses concern that the merged entity will solicit the PUD’s customers and use its size to undercut or impair fair competition. (*Id at ¶ 11.*) Nothing in the Joint Application or supporting testimony, however, mentions the issue of Broadband Over Power Lines (“BPL”) services, and thus it would not be a “subject matter” of the proceeding but for Snohomish PUD’s unfounded reference to it.

¹ Berkshire Hathaway is rated “AAA” by Standard & Poor’s and “Aaa” by Moody’s Investor Service. *Goodman Direct Testimony at page 7.*

² In fact, BPA is the potential creditor, and Snohomish PUD has no standing to assert any rights BPA may have as a potential creditor.

II. SNOHOMISH PUD’S INTERVENTION, IF NOT LIMITED, WOULD BROADEN THE ISSUES IN THE PROCEEDING AND WOULD NOT BE IN THE PUBLIC INTEREST.

5 The interests cited in the Petition in support of Snohomish PUD’s intervention on “public interest” grounds would broaden the issues in this proceeding. Unless Snohomish PUD’s intervention is limited to the issues that are within the Commission’s purview and that have some nexus to the transaction, its participation would not be in the public interest. For example, the Petition cites as precedent the successful intervention of Snohomish PUD in the 1996 merger application of Puget Sound Power & Light Company and Washington Natural Gas Company (Docket Nos. UE-951270 and UE-960195), the predecessor entities to Puget Sound Energy. *Petition at ¶ 15*. That proceeding, however, involved (1) a company that actually provided utility service within Snohomish County (WNG’s provision of natural gas service) and (2) “a basic issue” in the proceeding regarding the “transition from monopoly to retail competition in the electric industry.” *Id., Third Supplemental Order at 7*. There is currently no “Commission policy favoring a competitive model in the electric industry” (*Id.*), and thus the basis upon which Snohomish PUD was granted intervention in past merger/acquisition proceedings ceases to exist. Resurrecting such issues as the “changing and dynamic, competitive electrical energy marketplace” (*Petition at ¶ 12*) goes far beyond the scope of this proceeding.

6 Broadening the proceeding to consider these additional issues would not be in the public interest. These issues are not raised by the transaction itself, and this is not a proper forum for considering broader policy issues. Moreover, the schedule adopted by in the Prehearing Conference Order—which calls for hearings in mid-December—plainly does not provide sufficient time for a wider policy discussion of the type of competitive issues raised in the

Petition. Snohomish PUD's participation, if not limited to the subject matters at issue in this proceeding, would potentially delay the process and jeopardize issuance of a Commission order by February 28, 2006. For the reasons stated in the Joint Application, it is essential that the existing schedule—which should achieve that objective—be maintained.

III. CONCLUSION

7 Applicants submit that Snohomish PUD lacks a substantial interest in the subject matter of this proceeding. To the extent Snohomish PUD is allowed to intervene on "public interest" grounds, its intervention should not be permitted to broaden the matters at issue. Snohomish PUD's intervention, if granted, should be limited to issues that are within the Commission's purview and that have some nexus to the transaction.

Dated: August 18, 2005

**MIDAMERICAN ENERGY HOLDINGS COMPANY
and PACIFICORP D/B/A PACIFIC POWER & LIGHT COMPANY**

By 

James M. Van Nostrand
Stoel Rives LLP
Joint Counsel for MEHC and PacifiCorp

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served the foregoing **ANSWER TO PETITION FOR**
3 **INTERLOCUTORY REVIEW OF PUBLIC UTILITY DISTRICT NO. 1 OF**
4 **SNOHOMISH COUNTY** on the following named person(s) on the date indicated below by

- 5 Mailing with postage prepaid
6 Hand delivery
7 Overnight delivery
8 Electronic mail (Email)

9 to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said person(s)
10 at his or her last-known address(es) indicated below.

11 Melinda Davison
12 Matthew Perkins
13 Davison Van Cleve, P.C.
14 1000 SW Broadway, Ste. 2460
15 Portland, OR 97205
16 Telephone: 503-241-7242
17 Facsimile: 503-241-8160
18 Email: mail@dvclaw.com

Brad M. Purdy
Attorney at Law
2019 North 17th Street
Boise, ID 83702
Telephone: 208-384-1299
Facsimile: 208-384-8511
Email: Bmpurdy@hotmail.com

16 Robert Cromwell
17 Assistant Attorney General
18 Public Counsel Section
19 Office of Attorney General
20 900 Fourth Avenue, Suite 2000
21 Seattle, WA 98164-1012
22 Telephone: 206-464-6595
23 Facsimile: 206-389-2058
24 Email: RobertC1@atg.wa.gov

Robert D. Cedarbaum
Senior Assistant Attorney General
1400 S. Evergreen Park Dr. S.W.
P.O. Box 40128
Olympia, WA 98504-0128
Telephone: 360-664-1188
Facsimile: 360-586-5522
Email: bcedarba@wutc.wa.gov

21 William Miller
22 Nancy Harper
23 IBEW, Local 125
24 17200 NE Sacramento
25 Gresham, OR 97230
26 Telephone: 503-262-9125
Facsimile: 503-262-9947
Email: bill@ibew125.com;
nancy@ibew125.com

John S. Bishop
Adam S. Arms
McKanna Bishop Joffe & Sullivan LLP
1635 NW Johnson St.
Portland, OR 97209
Telephone: 503-226-6111
Facsimile: 503-226-6121
Email: jbishop@mbjlaw.com;
aarms@mbjlaw.com

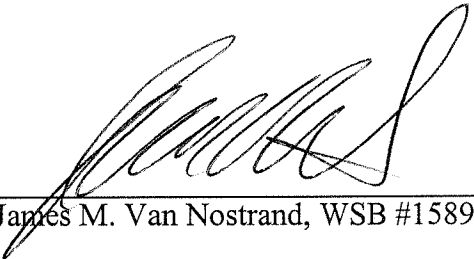
CERTIFICATE OF SERVICE - 1

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21
22
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24
25
26

David W. Wiley
Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Telephone: 206-628-6600
Facsimile: 206-628-6611
Email: dwiley@wkg.com

Michael J. Gianunzio
Eric L. Christensen
Office of General Counsel
Snohomish County PUD No. 1
2320 California Street
P. O. Box 1107
Everett, WA 98206-1107
Telephone: 425-783-8649
Facsimile: 425-783-8305
Email: elchristensen@snopud.com

DATED: August 17, 2005.



James M. Van Nostrand, WSB #15897
Joint Counsel for MidAmerican Energy Holdings
Company and PacifiCorp dba Utah Power &
Light Company