

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

In the Matter of the Joint Application)	
of)	DOCKET NO. UE-051090
)	
MIDAMERICAN ENERGY)	ORDER NO. 03
HOLDINGS COMPANY AND)	
PACIFICORP, d/b/a PACIFIC)	DENYING PETITION FOR
POWER & LIGHT COMPANY)	INTERLOCUTORY REVIEW OF
)	ORDER NO. 01—PREHEARING
For an Order Authorizing Proposed)	CONFERENCE ORDER
Transaction)	
.....)	

1 **PROCEEDINGS:** On July 15, 2005, MidAmerican Energy Holdings Company (MidAmerican Holdings) and PacifiCorp, d/b/a Pacific Power & Light Company (PacifiCorp) filed with the Commission a joint application for an order authorizing proposed transaction. The transaction is MidAmerican Holdings’ proposed purchase of PacifiCorp from Scottish Power.

2 The Commission conducted a prehearing conference on July 26, 2005, before Administrative Law Judge Dennis J. Moss. The Commission considered, among other things, the Petition To Intervene of Public Utility District No. 1 of Snohomish County, Washington. The Commission denied this Petition by Order No. 01, Prehearing Conference Order, entered on July 27, 2005. Snohomish PUD, on August 8, 2005, filed a Petition for Interlocutory Review of Prehearing Conference Order No. 1. On August 18, 2005, MidAmerican Holdings and PacifiCorp filed a joint Answer, and Commission Staff filed an Answer to Snohomish PUD’s Petition for Interlocutory Review. These parties oppose the Petition.

3 The Commission determines, for the reasons stated in this Order, that Snohomish
PUD's Petition for Interlocutory Review should be denied.

4 **PARTY REPRESENTATIVES:** James M. Van Nostrand, Stoel Rives LLP,
Portland, Oregon, represents MidAmerican Holdings and PacifiCorp
(Applicants). Melinda Davison and Matthew Perkins, Davison Van Cleve PC,
Portland, Oregon, represent the Industrial Customers of Northwest Utilities
(ICNU). Michael Goldfarb, Law Office of Michael A. Goldfarb, Seattle,
Washington, represents Snohomish County PUD No. 1 (Snohomish PUD). Mr.
Goldfarb entered appearances for Michael J. Gianunzio, General Counsel, and
Eric Christensen, Assistant General Counsel, Snohomish PUD. Brad M. Purdy,
Attorney at Law, Boise, Idaho, represents The Energy Project. Robert Cromwell,
Assistant Attorney General, Seattle, Washington, represents the Public Counsel
Section of the Washington Office of Attorney General. Robert D. Cedarbaum,
Senior Assistant Attorney General, Olympia, Washington, represents the
Commission's regulatory staff ("Commission Staff" or "Staff").

5 **PETITION TO INTERVENE; PREHEARING CONFERENCE ORDER.**
Snohomish PUD stated in its Petition To Intervene that its interests in this
proceeding arise from the PUD's reliance on the regional transmission grid to
move power from remote generation sources to the PUD's system and its
reliance on the purchase of power in Western wholesale markets to meet a
significant part of its customers' needs. Snohomish PUD stated that it is
concerned about the extent to which the proposed transaction "may affect
generation or transmission market power or the operation of the regional
transmission grid."

- 6 MidAmerican and PacifiCorp stated at prehearing their “concern” that Snohomish PUD’s asserted interests are not within the scope of this proceeding, but they did not formally object to Snohomish PUD’s petition. Commission Staff, expressing the same concern as the Applicants, did formally object.
- 7 Staff argued that interstate transmission and matters related to Snohomish PUD’s access to wholesale power markets are not matters “within the scope of the Commission’s jurisdiction or the scope of interest that the Commission is here to protect.” *TR. 9:14-16*. Staff argued that the PUD’s involvement would unnecessarily complicate the proceeding. Staff argued that Snohomish PUD could best pursue its stated interests in proceedings before the Federal Energy Regulatory Commission (FERC) and the Securities and Exchange Commission (SEC).¹
- 8 The Commission denied Snohomish PUD’s Petition To Intervene, stating its reasons in Order No. 01 as follows:

Snohomish PUD’s asserted interests concern matters that are within the jurisdiction of the Federal Energy Regulatory Commission (FERC) and that will be considered by the FERC as it reviews this proposed transaction under Sections 203 and 205 of the Federal Power Act. Both the FERC and, presumably, the Securities and Exchange Commission, will review the transaction in terms of its potential to concentrate wholesale market power or otherwise have an anticompetitive impact in that market. The FERC will consider whether there should be revisions to PacifiCorp’s Open Access Transmission Tariff.

¹ After hearing Staff’s objection, Snohomish PUD had an opportunity to elaborate on the interests it asserted via its Petition To Intervene, or to state additional reasons in support of its Petition. Snohomish PUD offered no elaboration or additional argument. The presiding Administrative Law Judge, as discussed below, denied the Petition To Intervene, noting that Snohomish PUD would have the right to petition for interlocutory review. *TR. 11:21-12:25*.

Snohomish PUD's intervention in this proceeding effectively proposes to broaden the issues into areas that are within the jurisdiction of federal authorities. This could unnecessarily complicate the Commission's consideration of the proposed transaction. There will be proceedings before the FERC and the SEC in which Snohomish PUD may pursue its stated interests.

Snohomish PUD has failed to establish a substantial interest in this proceeding. The Commission does not find that the PUD's intervention would be in the public interest. Snohomish PUD's Petition to Intervene is denied for the reasons stated.²

9 **PETITION FOR INTERLOCUTORY REVIEW.** Snohomish PUD filed its Petition for Interlocutory Review on August 8, 2005. Staff and the Applicants filed Answers opposing the Petition on August 18, 2005.

10 Snohomish PUD acknowledges in its Petition for Interlocutory Review that "when an unregulated competitor participates in a Commission proceeding, there is a risk both of protraction of the proceeding and complication of the record to matters either irrelevant to the outcome or outside the Commission's jurisdictional purview." Snohomish PUD offers to "tailor its presentation," but does not explain exactly how we might limit its participation and still offer it a meaningful opportunity to participate as a party.

11 Snohomish PUD states that its interests in this proceeding:

are directed generally to an understanding and evaluation of the merged entity's role in a changing and dynamic, competitive electrical energy marketplace, to weighing and contributing evidence of the proposed impacts of the combined entity on

² *In re Joint Application of MidAmerican Energy Holdings Company and PacifiCorp for an Order Authorizing Transaction*, Docket No. UE-051090, Order No. O1-Prehearing Conference Order (July 27, 2005) at ¶¶ 8 -10.

existing and prospective electrical energy customers, and to whether electrical power generation and distribution forces impacted in the retail electrical energy marketplace may cause Snohomish PUD economic harm or otherwise detrimentally affect its ability to sustain an economically and technologically viable operation in the future.³

- 12 Snohomish PUD states that the issues it believes merit consideration in this proceeding, and to which its participation would contribute include:

[E]merging shared technology intersection topics such as broadband service over electrical lines . . . continuing concerns about regional transmission (including avoidance of regional brownouts such as occurred recently in California) and lingering residential exchange issues under the 1980 Pacific Northwest Electric Power Planning and Conservation Act.⁴

These issues are discussed in more detail in Mr. John White's declaration filed in support of Snohomish PUD's Petition for Interlocutory Review.⁵

- 13 Applicants present detailed argument that shows the interests Snohomish PUD asserts are not within the scope of this proceeding because they are either outside the Commission's jurisdiction or are not implicated by the transaction.⁶ Mr. White's Declaration states, for example, Snohomish PUD's interest in seeing that the statutory and regulatory limits on REP [Residential Exchange Program] are

³ Petition for Interlocutory Review at ¶ 12.

⁴ *Id.* at ¶ 16.

⁵ We note Applicants' argument that Mr. White's Declaration is misleading and factually inaccurate in its assertion at ¶ 15 that Snohomish PUD has an "interest in the outcome of the proceeding as both a direct and indirect customer of PacifiCorp." Applicants state, and we have no reason to doubt, that Snohomish PUD is neither a direct nor indirect retail customer of PacifiCorp. Snohomish County is geographically remote from PacifiCorp's service territory in Washington State.

⁶ Applicants' Answer at ¶ 4.

observed by the merged entity.”⁷ As Applicants argue, the Residential Exchange Program is governed by federal law, Section 5(c) of the 1980 Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 889(c), which is administered by a federal agency, the Bonneville Power Administration. Jurisdiction over matters arising under 16 U.S.C. § 889(c) rests with the United States Court of Appeals for the Ninth Circuit. Applicants argue that other interests Snohomish PUD asserts relate exclusively to wholesale transmission in interstate commerce. Such matters are within the exclusive jurisdiction of the Federal Energy Regulatory Commission, which will review the proposed merger and provide Snohomish PUD a forum to address any concerns it has in this regard.

- 14 Snohomish PUD argues that even if the Commission finds the PUD has failed to articulate a substantial interest in the proceeding, the Commission nevertheless should allow Snohomish PUD to intervene because its participation would be in the public interest. As the basis for this argument, the PUD relies on what it characterizes as

[t]he Commission’s articulation of an evolving public interest standard almost a decade ago in Docket Nos. UE-951270 and UE-960195, *In re Puget Sound Power & Light Company and Puget Sound Power & Light Company and Washington Natural Gas Company*, Third Supplemental Order Modifying Prehearing Order (June 1996), in which it reversed denial of intervention status to Snohomish PUD in a previous significant merger proceeding.⁸

The passage Snohomish PUD quotes from the referenced order as the Commission’s “standard” states:

⁷ White Declaration at ¶ 13.

⁸ Petition at ¶ 15.

This proceeding raises significant competitive issues beyond those involved in a typical rate case. The transition from monopoly to retail competition in the electric industry is a basic issue in this proceeding. In this transitional environment, the Commission believes that it is in the public interest for it to be generous in allowing issues on the table. WPUDA and other competitors can bring an expertise to the table that may assist the Commission in determining how the merger will affect the Commission policy favoring a competitive model in the electric industry.⁹

This language does not support Snohomish PUD's argument. Indeed, it demonstrates that the Commission's decision to allow public utility district interests to participate in the earlier proceeding was grounded in specific circumstances pertinent to that case. Those circumstances, as Snohomish PUD acknowledges, are not present here. Nor are analogous circumstances even arguably present.¹⁰

15 Staff points out that other circumstances present in the Puget/Washington Natural Gas merger that supported the Commission's decision to permit Snohomish PUD's intervention are not present here. Snohomish PUD was a

⁹ *Id.* (citing *In re Puget Sound Power & Light Company and Puget Sound Power & Light Company and Washington Natural Gas Company*, Docket Nos. UE-951270 and UE-960195, Third Supplemental Order Modifying Prehearing Order (June 1996) at 7.

¹⁰ The specific circumstances to which Snohomish PUD refers are:

the emerging shared technology intersection topics such as broadband service over electric lines and continuing concerns about regional transmission (including avoidance of regional brownouts such as occurred recently in California) and lingering residential exchange issues under the 1980 Pacific Northwest Electric Power Planning & Conservation Act, 16 U.S.C. § 839c, raised by the merger of a prominent regional investor-owner utility and a public utility holding company whose subsidiary operations span approximately a third of the territory of the United States.

We have already discussed the fact that these matters are not within the scope of this proceeding.

retail customer of Washington Natural Gas and the two utilities operated in overlapping service territories. Snohomish PUD is not a retail customer of PacifiCorp and the two service territories are geographically remote.

16 Applicants argue that the interests Snohomish PUD articulates “appear to relate to Snohomish PUD’s particular interests rather than to the broader ‘public interest’.”¹¹ Staff also states this concern and argues that allowing Snohomish PUD to participate as a party would unnecessarily complicate this proceeding. Indeed, to the extent Snohomish PUD does state broader interests, they are beyond the scope of this proceeding. This proceeding is not an appropriate forum, for example, to consider sweeping policy issues such as the “changing and dynamic, competitive electricity market.”¹²

17 **COMMISSION DETERMINATION.** The Commission determines that Snohomish PUD does not have a substantial interest in this proceeding. Snohomish PUD has failed to state any specific issue of interest to the PUD that is within the scope of this proceeding. The matters Snohomish PUD proposes to pursue focus on the PUD’s particular interests, not the broader public interests that are within the scope of our jurisdiction. To the extent Snohomish PUD’s interests have broader implications, those are best considered in other fora, which are available to Snohomish PUD, as discussed above. There is no reason to provide an additional forum for consideration of these issues in this proceeding. Accordingly, we determine that Snohomish PUD’s Petition for Interlocutory Review should be denied.

¹¹ Applicants Answer at ¶ 3.

¹² Petition at ¶ 12.

ORDER

18 THE COMMISSION ORDERS THAT Snohomish PUD's Petition for Interlocutory Review of Prehearing Order No. 1 is denied.

DATED at Olympia, Washington, and effective this 26th day of August, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PHILIP B. JONES, Commissioner