

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

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

3 **PARTY REPRESENTATIVES:** James M. Van Nostrand, Stoel Rives LLP, Portland, Oregon, represents PacifiCorp. 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. Mr. Goldfarb entered appearances for Michael J. Gianunzio, General Counsel, and Eric Christensen, Assistant General Counsel, Snohomish County PUD No. 1. 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").¹

4 **PETITIONS TO INTERVENE:** The following persons filed petitions to intervene:

1. ICNU
2. Snohomish County Public Utility District No. 1
3. The Energy Project

No one objected to the petitions filed by ICNU or The Energy Project. Their petitions demonstrate a substantial interest in the outcome of the proceeding and that their participation will be in the public interest. The petitions to intervene of ICNU and The Energy Project are granted.

5 MidAmerican Holdings and PacifiCorp (Joint Applicants) commented that the reasons Snohomish County PUD No. 1 (Snohomish PUD) asserts in its Petition as establishing the bases of its interest in the proceeding appear, in fact, to be beyond the scope of the proceeding. Nevertheless, Joint Applicants did not object to the PUD's petition at prehearing.

6 Commission Staff did object. Noting that the only interests stated by Snohomish PUD concern interstate transmission and matters related to Snohomish PUD's access to wholesale power markets, Staff stated its concern that the PUD's involvement would unnecessarily complicate the proceeding, particularly in the context of settlement negotiations. Staff argued that Snohomish PUD failed to

¹ In formal proceedings, such as this case, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding ALJ, and the Commissioners' policy and accounting advisors from all parties, including Staff. RCW 34.05.455.

establish by its petition a substantial interest in the proceeding and did not show that its participation would be in the public interest.

- 7 Snohomish PUD asserts in its Petition that its interest in the outcome of this proceeding turns on the facts that the PUD relies on the regional transmission grid to move power from remote generation sources to the PUD's system. Snohomish PUD also states that it relies on the purchase of power in Western wholesale markets to meet a significant part of its customers needs. Snohomish PUD states in its Petition that its interest in this proceeding turns on the extent to which the proposed transaction "may affect generation or transmission market power or the operation of the regional transmission grid." After hearing Staff's objection, Snohomish PUD did not state any additional basis upon which the Commission might consider its request to participate as a party intervenor.
- 8 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.
- 9 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.

- 10 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.
- 11 **DISCOVERY; PROTECTIVE ORDER:** Discovery will continue pursuant to the Commission's discovery rules, WAC 480-07-400 – 425. Parties will respond to data requests made on and after November 14, 2005, in five business days from the date the data request is received. When a data request is received on or before noon on a given day, that day is counted as the first day of the response period. The Commission urges the parties to work cooperatively together to avoid having to bring discovery matters forward for formal resolution.
- 12 PacifiCorp requests that the Commission enter a protective order with provisions for handling information and documents that parties may designate as "confidential" or "highly confidential," consistent with the terms of such order and the Commission's procedural rules. PacifiCorp furnished at prehearing a form of protective order that is based on the Commission's standard protective order, amended to provide for the designation and treatment of highly confidential information. The parties have reviewed the proposed form of order and do not object. The Commission will enter the proposed order, subject to any edits the Commission may wish to make, in due course.
- 13 **PROCEDURAL SCHEDULE:** The Commission establishes the procedural schedule that is attached to this Order as Appendix 1, which is incorporated into the body of this Order by this reference.
- 14 **FILING; COPIES OF MATERIALS:** Parties must file with the Commission an original plus 15 copies of all pleadings, motions, briefs, and other prefiled materials. Paper copies of these materials are required to conform to the format and publication guidelines set forth in WAC 480-07-395 and 480-07-460, and

must be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.

- 15 All filings must be mailed to the Commission Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250, or delivered by hand to the Commission Executive Secretary at the Commission's records center at 1300 S. Evergreen Park Drive, S.W., Olympia, Washington, 98504. Both the post office box and street address are required to expedite deliveries by U.S. Postal Service.
- 16 An electronic copy of all filings must be provided by e-mail delivery to <records@wutc.wa.gov>, or by delivering with each filing a 3.5-inch IBM-formatted high-density diskette including the filed document(s). The Commission prefers that parties furnish electronic copies of nonconfidential documents and redacted versions of confidential documents in .pdf (Adobe Acrobat) format, supplemented by a separate file in MS Word 6.0 (or later), or WordPerfect 5.1 (or later) format. **Documents that display confidential information should be furnished electronically in "read-only" .pdf format.** Parties are required to organize and identify electronic files as specified in WAC 480-07-140(5).
- 17 **NOTICE TO PARTIES: Any objection to the provisions of this Order or petition for interlocutory review must be filed within ten (10) days after the date of mailing of this statement, pursuant to WAC 480-07-355(5), -430(3) and -810. Absent such objection, this prehearing conference order will control further proceedings in this matter, subject to Commission review.**

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DATED at Olympia, Washington, and effective this 27th day of July, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

APPENDIX 1

PROCEDURAL SCHEDULE
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EVENT	DATE	INTERVAL
PacifiCorp's Prefiled Direct Testimony	July 15, 2005	
Technical Conference ²	September 15, 2005	61 days
Settlement Conference ²	October 13-14, 2005	28 days
Staff, Public Counsel, and Intervenor Response Testimony	November 14, 2005	31 days (120 days after filing)
PacifiCorp Rebuttal Testimony	November 28, 2005	14 days
Public Comment Hearing	T/B/D	
Evidentiary Hearing	December 19-22, 2005	21 days
Simultaneous Initial Briefs	January 30, 2006	39 days
Aspirational Date for Order	February 28, 2006	29 days

² This is an informal event to be conducted outside the presence of a presiding officer. The parties may elect to reschedule as appropriate to their needs. The Commission should be kept informed of any changes via courtesy communication to Administrative Law Judge Dennis Moss.

APPENDIX 2

**PARTIES' REPRESENTATIVES
 DOCKET NO. UE-051090**

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
PacifiCorp	James M. Van Nostrand Stoel Rives LLP 900 S.W. Fifth Avenue, Suite 2600 Portland, OR 97204	503-386-9679	206-386-7500	jmvannostrand@stoel.com
Industrial Customers of Northwest Utilities (ICNU)	Melinda Davison Matthew Perkins Davison Van Cleve, P.C. 1000 SW Broadway, Ste. 2460 Portland, OR 97205	503-241-7242	503-241-8160	mail@dvclaw.com
The Energy Project	Brad M. Purdy Attorney at Law 2019 North 17 th Street Boise, ID 83702	208-384-1299	208-384-8511	Bmpurdy@hotmail.com
Public Counsel	Robert Cromwell Assistant Attorney General Public Counsel Section Office of Attorney General 900 Fourth Avenue, Suite 2000 Seattle, WA 98164-1012	206-464-6595	206-389-2058	RobertC1@atg.wa.gov
Commission Regulatory Staff	Robert D. Cedarbaum Senior Assistant Attorney General 1400 S. Evergreen Park Dr. S.W. P.O. Box 40128 Olympia, WA 98504-0128	360-664-1188	360-586-5522	bcedarba@wutc.wa.gov