

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**Docket No. UE 171**

In the Matter of the Request of	)	REPLY TO KLAMATH
	)	OFF-PROJECT WATER USERS'
PACIFIC POWER & LIGHT	)	ANSWER IN OPPOSITION TO
(dba PacifiCorp)	)	PETITION FOR INTERVENTION
	)	OF PACIFIC COAST FEDERATION
Request for a General Rate Increase in the	)	OF FISHERMEN'S ASSOCIATIONS
Company's Oregon Annual Revenues	)	
[Supplemental Docket to UE-170]	)	
_____	)	

**PCFFA'S INTERESTS FALL SQUARELY WITHIN THE SCOPE OF THIS RATE CASE AND THE ISSUES RAISED ARE WELL WITHIN PUC'S BROAD JURISDICTION**

The Pacific Coast Federation of Fishermen's Associations ("PCFFA") hereby submits this reply to the 21 March 2005 "Klamath Off-Project Water Users' ("KOPWU") Answer in Opposition" to our Petition to Intervene in this proceeding.

In its answer, KOPWU asserts that PCFFA has not demonstrated a "sufficient interest" in the proceeding. However, KOPWU's unsupported conclusion is based on an interpretation of the jurisdiction and role of the PUC that is far too narrow, as well as a misrepresentation of our Petition. KOPWU also asserts an interpretation of PUC powers that implies the Commission cannot consider environment impacts of rate decisions – a position quite at odds with customary PUC powers and authority, and which ignores a large number of PUC orders and prior cases.

In fact, the jurisdiction of the PUC to protect the general public interest is quite broad. Among the powers of the PUC are those set forth in ORS §756.040, which include the following broad statements:

“(1) In addition to the powers and duties now or hereafter transferred to or vested in the Public Utilities Commission, the commission shall represent the customers of any public utility ... *and the public generally* in all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction. *In respect thereof the commission shall make use of the jurisdiction and powers of the office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates....*

(2) The commission is vested with power and jurisdiction to supervise and regulate every public utility ... in this state, *and to do all things necessary and convenient in the exercise of such power and jurisdiction....*” (emphases added)

Unjust and unreasonable rates are greatly condemned under the law. For instance,

ORS §757.310 reads in relevant part as follows:

“(1) [N]o public utility or any agent or officer thereof shall, directly or indirectly, by any device, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by it than:

(a) It charges, demands, collects or receives from any other person for a like and contemporaneous service under substantially similar circumstances....

(2) Any public utility violating this section is guilty of unjust discrimination.”

ORS §757.325 also reads as follows:

“(1) No public utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.

(2) Any public utility violating this section is guilty of unjust discrimination.”

Key Question of this case: Is it “just and reasonable” to maintain irrigation power rates unchanged since 1917, at between 0.3 and 0.75 cents/kWh, that are as low as 1/18<sup>th</sup> of Oregon’s average electrical rate of 6.18 cents/kWh in order to maintain a special subsidy for a very small group of irrigators that is underwritten and paid for out of the pockets of every other ratepayer, including other similarly situated irrigators? We believe it is not.

Whether the current Klamath Basin agricultural rate tariffs are “unjust and unreasonable,” and thus constitute “unjust discrimination,” are precisely the issues PCFFA seeks to address, as can readily be ascertained from reading its Petition. Every other similarly situated rural or agricultural community in Oregon is at an extreme competitive disadvantage with respect to Klamath farmers receiving this subsidy because similarly situated irrigators in these other farming communities must pay for similar agricultural power under substantially the same circumstances at “cost of service” rates of approximately 5.444 cents/kWh. In other words, all others of Oregon’s similarly situated farming and rural (including coastal) communities routinely pay *up to 18 times more than the highly subsidized power rates of this select group of irrigators existing solely in the Klamath Basin.*

That we intend to raise issues directly related to whether Klamath Basin subsidized power rates are “unjust and unreasonable” and constitute “unjust discrimination” is clear from even a cursory reading of our Petition. To take a few illustrative quotes from our Petition:

“We contend that the current power rate subsidy is an arbitrary, unjust, and unreasonably discriminatory exaction from other power users, including PCFFA member organizations and their constituency.” [PCFFA Petition, pg. 3]

“We intend primarily to raise environmental and economic issues related to the current far below market, discriminatory Klamath Basin irrigation tariff and the adverse impacts of this massive subsidy on water allocation, which in turn damages lower river fishing-dependent communities.” [PCFFA Petition, pg. 7]

“Because a return to standard irrigation tariffs in the Klamath River Basin in 2006 can be reasonably expected to reduce uneconomic and inefficient use of Klamath River Basin water resources for irrigation and other purposes, will likely also improve energy efficiency and conservation in Oregon, will more equitably distribute electrical service costs among PacifiCorp customers, and will help restore water flows sufficient to protect valuable downriver salmon fisheries and ESA-

listed species, PCFFA will primarily address these issues in this proceeding.”  
[PCFFA Petition, pg. 8]

If these issues are not directly within the jurisdiction of the PUC it would be hard to imagine what might be.

**BOTH EXTERNALIZED AND INTERNALIZED ENVIRONMENTAL COSTS  
MUST BE CONSIDERED IN COMMISSION RATE DECISIONS**

KOPWU appears to assert that consideration of the environmental consequences of utility rates is outside the purview of the PUC and cannot be taken into account in its resource planning and utility rate decisions. This is simply not that case, as the PUC itself has made clear in a number of Orders, including *Re: Least-cost Planning for Resource Acquisition*, UM-180, Order No. 89-507 (April 20, 1989) [*Public Utilities Reports* 102 PUR4th 301]. This Order made it clear that the PUC must take into account both internalized and externalized environmental costs in all its utility resource planning:

“It is the Commission’s decision that, with the exceptions noted below, external costs are to be considered in the development of a plan. The Commission recognizes that such costs may not be easily quantifiable and that different decision makers will reach different conclusions as to the costs and their applicability. However, the Commission believes that a cost-effectiveness evaluation should include, to the fullest extent practical and quantifiable, costs and benefits external to any resource transaction.... [*Ibid.*, 309]

“In preparing its plan, a utility should include in the costs of a resource all costs that will or may be internalized, i.e., those costs, such as the costs of pollution control and wildlife mitigation, which will be charged to the utility and its customers.” [*Ibid.*, 309]

The Concurring Opinion of Commissioner Myron B. Katz in this Order is particularly to the point here:

“The Commission has noted that many costs which were once external (i.e., borne by others) are now being internalized (i.e., borne by utilities). Mitigation of hydroelectric damage to fish and wildlife, installation of expensive stack scrubbers at coal-fired power plants to reduce emissions, a boost in the liability ceiling for a single nuclear power accident from \$710 million to \$7 billion, and the inclusion of power plant decommissioning costs in rates are all examples of internalized costs that push the price of energy to more nearly reflect social costs. Moreover, it is likely that the trend toward internalization of social costs will continue....

“Commission decisions should promote the public interest. The Commission should strive to pilot Oregon toward socially appropriate conduct and away from socially wasteful conduct. This is precisely what this order does.” [*Ibid.*, 310-311]

Indeed, water scarcity problems created in the Klamath Basin are increasingly becoming internalized costs to the PacifiCorp balance sheet. Three fish species subject to federal protection under the Endangered Species Act (ESA) now occur within the Klamath Hydroelectric Project, triggering serious economic constraints on water flows and generation of power. Excessive irrigation diversions from the Klamath River (exacerbated and encouraged by far below market power rates for pumping that water) have had serious impacts on water quantity as well as quality, and these impacts have adversely affected survival rates of many aquatic species, for which PacifiCorp is increasingly becoming financially liable for mitigation. Other similar examples show that problems caused by water scarcity in the Klamath Basin are being increasingly internalized into the power rate structure. This will be all the more so during this year’s serious drought.

Likewise, in *Re: Guidelines for the Treatment of External Environmental Costs*, UM-424, PUC Order No. 93-695 (May 17, 1993) [*Public Utilities Reports* 142 PUR4th 465, at 468], the Commission found that although it has limited authority to require utilities to include all external environmental costs in choosing among resource options, and can only hold utilities directly responsible for environmental costs that will be

internalized and cause some resource choices to be more expensive than others, nevertheless utilities should fully consider and include environmental externalities in their decision-making process. The Commission, in that case, also noted:

“We believe that environmental effects should not be weighed differently simply because they occur outside Oregon or the utility’s service territory.” [*Ibid.*, at 474-475]

In its Petition to Intervene, PCFFA merely reminds the Commission that these environmental and economic impacts exist and must be taken into account as a component in determining what are “just and reasonable” power rates. Some selected quotes from the PCFFA Petition make this point clear:

“There are many other social, environmental and economic values involved in rate case decisions besides irrigation needs. The Commission should also have information before it, that PCFFA is uniquely positioned to provide, on the environmental and economic costs of the current discriminatory Klamath irrigation tariff to the non-irrigation values of the Klamath River Basin.” [PCFFA Petition, pg. 7]

“When water is inefficiently used in the upper Klamath Basin it must come out of the portion left in the river to support fisheries. *It makes no sense, in an already over-appropriated basin fraught with water conflicts, to maintain irrigation rates that are many times below market costs and thus discourage conservation and efficient water use.*” [PCFFA Petition, pg. 5 – emphasis in original]

“Problems with the dewatering of the lower Klamath River have been serious and getting worse. Over the past 40 years, vastly increased upper basin irrigation demand (in part fueled by the current huge irrigation subsidy) has artificially lowered water flows in the lower Klamath River to near record low levels that have led to major fish kills in roughly 7 out of 10 years, culminating in September 2002 in a fish kill of at least 60,000 dead adult spawners in what has been described as the worst adult fish kill in U.S. history.” [PCFFA Petition, pgs. 5-6]

“Furthermore, uneconomical irrigation operations adversely affect natural physical river processes, hydrology, water quality, and the health of many aquatic species and their habitat. Vastly below market Klamath Basin irrigation tariffs also promote inefficient energy consumption, thereby counteracting necessary energy conservation efforts, and represent an inequitable distribution of the costs of electrical service.” [PCFFA Petition, pgs. 6]

Finally, whether these types of economic and environmental issues are properly before the PUC and the Administrative Law Judge has already been considered and answered in the affirmative. In the “Revised Joint Ruling” (“Ruling”) dated February 24, 2005, docketed in UE-170 (the order which created this special docket UE-171), the Administrative Law Judge, in considering whether two environmental groups (Oregon Natural Resources Council (ONRC) and WaterWatch of Oregon) could intervene, already determined this very issue and allowed them to intervene:

“Both petitioners indicated that the primary reason for intervening in the proceeding was to address the elimination of subsidized rates for certain irrigators in the Klamath Basin area of PacifiCorp’s service territory. Petitioners claim the subsidized rates will result in economic inefficiency and environmental externalities....” (*Ruling*, pg. 2)

“Both organizations share an interest in the overall reasonableness of rates authorized in those historical agreements, taking into account economic and environmental considerations. The interests of WaterWatch and ONRC are valid; however, those concerns will now be addressed in UE 171.” (*Ruling*, pg. 3)

In other words, this rate case docket is precisely the place where the economic and environmental issues PCFFA raises are supposed to be reviewed and decided. Dealing with those economic and environmental issues is not only clearly not outside the jurisdiction of the PUC, it is the very reason this separate docket exists!

**THERE WILL BE NO ADDITIONAL BURDEN IN CONSIDERING ENVIRONMENTAL IMPACTS THE COMMISSION IS ALREADY OBLIGATED TO CONSIDER**

Intervention in OPUC proceedings is governed by OAR §860-012-0001(2), which states:

“If the Commission or Administrative Law Judge (ALJ) finds the petitioner has sufficient interest in the proceedings and the petitioner’s appearance and

participation will not unreasonably broaden the issues, burden the record, or unreasonably delay the proceeding, the Commission or ALJ shall grant the petition. The Commission or ALJ may impose appropriate conditions upon any intervenor's participation in the proceeding.”

However, these provisions are also to be construed liberally:

“OAR §860-011-0000(5): These rules shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented.”

As made clear above, the PUC (or in this case the Administrative Law Judge) is already obligated to consider economic and environmental impacts of its rate case decisions, particularly those many environmental costs that will or may become internalized costs to the company through regulation, litigation or required fish & wildlife mitigation. Since consideration of these very impacts is all PCFFA is asking, this cannot be deemed any additional burden on the processes, nor will it unduly broaden the record. Indeed, PCFFA's unique expertise on these impacts will, as an Intervener, efficiently provide information on these very impacts, and thus help expedite the whole decision-making process in this case.

### **CONCLUSION**

PCFFA's participation as a party-Intervener in this proceeding will assist the Commission in resolving some of the key issues related to the Klamath Basin irrigation tariff, will be limited in scope to that issue, and will not unreasonably broaden the issues, unduly burden the record, nor unreasonably delay the proceeding. As an affected economic interest, PCFFA and its member associations have a direct and substantial interest in this proceeding insofar as discriminatory power subsidies to be considered in this case directly and indirectly impact the fish and wildlife resources of the Basin and PCFFA members. Many of those costs are or will soon be internalized costs of the utility.



PCFFA's intervention will also bring its unique expertise into this process and will help expedite the speedy and efficient consideration of these issues.

WHEREFORE, we respectfully request leave to intervene and request all the rights of a party in this proceeding.

March 31, 2005

Respectfully submitted,

PACIFIC COAST FEDERATION OF  
FISHERMEN'S ASSOCIATIONS, INC.

By \_\_\_\_\_

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CERTIFICATE OF SERVICE

I hereby certify that I have delivered a true and accurate copy of this Petition to the Service List attached below, by U.S. mail, first class postage fully paid, plus the original and two (2) copies of this document on the Oregon PUC Office, and made electronic filing and notice to the Service List as well on March 31, 2005.

Date: March 31, 2005

/s/ \_\_\_\_\_  
Glen H. Spain

PCFFA MOTION TO INTERVENE – DOCKET UE-171

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