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March 24, 2005

Via Electronic and US Mail

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 PACIFIC POWER & LIGHT Klamath Basin Irrigation Rates
Docket No. UE 171

Dear Filing Center:

Enclosed please find an original and two copies of the Answer in Opposition to Petitions to Intervene of Hoopa Valley Tribe and Yurok Tribe on behalf of the Klamath Off-Project Water Users and the Klamath Water Users Association.

Please return one file-stamped copy of the document in the self-addressed, stamped envelope provided. Thank you for your assistance.

Sincerely,

/s/ Ruth A. Miller
Ruth A. Miller

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Answer in Opposition to Petitions to Intervene of Hoopa Valley Tribe and Yurok Tribe on behalf of the Klamath Off-Project Water Users, upon the parties on the service list, shown below, by causing the same to sent by electronic mail to all parties who have an email address, as well as mailed, postage-prepaid, through the U.S. Mail.

Dated at Portland, Oregon, this 24th day of March, 2005.

/s/ Ruth A. Miller
Ruth A. Miller

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 171

In the Matter of)	
)	
PACIFIC POWER & LIGHT)	KLAMATH OFF-PROJECT WATER
(dba PACIFICORP))	USERS' ANSWER IN OPPOSITION TO
)	PETITIONS TO INTERVENE OF
Klamath Basin Irrigation Rates.)	HOOPA VALLEY TRIBE AND YUROK
)	TRIBE
)	
)	

Pursuant to OAR 860-013-0025, the Klamath Off-Project Water Users, Inc. (“KOPWU”) submits this Answer in Opposition to the Petitions to Intervene of the Hoopa Valley Tribe and the Yurok Tribe (collectively “Petitioners”), filed on or about March 14, 2005, and March 16, 2005, respectively, in Oregon Public Utility Commission (“OPUC” or the “Commission”) Docket No. UE 171. KOPWU urges the Commission to deny the Petitions to Intervene on the basis that Petitioners have not demonstrated a “sufficient interest” in this proceeding.^{1/} The purpose of this proceeding is to determine whether PacifiCorp’s proposal to move Klamath Basin irrigation customers to standard tariffs is lawful and will result in just and reasonable rates. Petitioners’ asserted interests fall outside the scope of this proceeding, and the Commission lacks jurisdiction to address the issues that these parties intend to raise. As a result, the Commission should deny the Petitions to Intervene. In the alternative, if the Commission grants the Petitions, it should condition approval upon Petitioners raising only issues directly

^{1/} In addition, the Yurok Tribe’s Petition is untimely. The deadline for Petitions to Intervene in UE 171 was March 14, 2005.

related to the legal issues in this proceeding and whether PacifiCorp's rates are just and reasonable.

DISCUSSION

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 proceeding 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.

Administrative Law Judges ("ALJ") Grant and Kirkpatrick have described the primary issue before the Commission in this Docket as whether PacifiCorp's Klamath Basin irrigation customers should be provided electrical service in accordance with the On-Project and Off-Project Agreements or PacifiCorp's standard tariffs. Re PacifiCorp, OPUC Docket No. UE 170, Revised Joint Ruling and Prehearing Conference Noticed at 2 (Feb. 24, 2005). The ALJs also have stated that they "believe the issues to be raised in UE 171 to be primarily legal in nature, addressing the interpretation of existing contracts." Re PacifiCorp, OPUC Docket No. UE 171, Prehearing Conference Memorandum and Ruling at 3 (Mar. 3, 2005). The Commission's determination regarding the appropriate rates for Klamath irrigation customers also will involve consideration of whether PacifiCorp's proposals are "just and reasonable." ORS § 757.210(1).

Petitioners have not demonstrated sufficient interests related to the issues in this proceeding to justify intervention. The Yurok Tribe, which is based in California, generally

describes its interest as related to Klamath irrigation customers' electric rates and states that the Commission "must also consider the environmental and cultural impacts of its decision as well as the full range of economic impacts." Re PacifiCorp, Docket No. UE 171, Petition to Intervene of the Yurok Tribe at 8-9 (Mar. 16, 2005) ("Yurok Petition"). The Hoopa Valley Tribe, which also is based in California, states that its interest relates to the effect of Klamath irrigation customers' electric rates on the salmon fishery of the Klamath and Trinity Rivers, "federally-reserved fishing rights of the Tribe, and other cultural and economic resources of the Tribe." Re PacifiCorp, Docket No. UE 171, Hoopa Valley Tribe's Application for Intervention at 2-3 (Mar. 14, 2005) ("Hoopa Valley Petition"). Issues regarding the Tribes' fishery resources, treaty rights, culture, and economy are unrelated to the legal determination regarding the On-Project and Off-Project agreements and whether PacifiCorp's proposed rates are just and reasonable. Furthermore, the Commission's jurisdiction is expressly limited to supervision and regulation of public utilities and telecommunications utilities and its mandate is to protect public utility customers from unjust and unreasonable rates. ORS § 756.040. The OPUC does not have jurisdiction over Tribal fishery resources, treaty rights, and culture. The Petitioners' interests fall outside of the scope of this Docket and the Commission's jurisdiction.

Petitioners also do not meet the OPUC standard for intervention because the issues they intend to raise will broaden the issues in this proceeding. Neither PacifiCorp's testimony in UE 170 nor the ALJs' rulings in establishing this Docket address fishery resources, treaty rights, or cultural and environmental issues in relation to the determination regarding Klamath Basin irrigation customers' rates for electric service. In addition, Petitioners both state that they advocate "market-based" rates and tariffs for Klamath irrigation customers. Hoopa

Valley Petition at 6; Yurok Petition at 6. Petitioners’ support for market-based tariffs falls outside the scope of the issue that the ALJs determined would be decided in this Docket, which is whether Klamath irrigation customers should take service under: 1) the On-Project and Off-Project Agreements; or 2) PacifiCorp’s standard tariffs. As a result, Petitioners’ interest and the issues Petitioners intend to raise will “unreasonably broaden” the limited issues to be decided in this Docket.

The Commission should deny the Hoopa Valley and Yurok Tribes’ Petitions to Intervene. Nevertheless, if the Commission grants the Petitions, it should condition that approval on Petitioners raising only concerns directly related to the legal issues in this proceeding and whether PacifiCorp’s rates are just and reasonable. OAR 860-012-0001(2). It is inappropriate for entities to seek to intervene to achieve higher electric rates for a class of customers in an attempt to further environmental, cultural, and treaty right objectives. The OPUC is not the appropriate forum for addressing such issues. As a matter of law and policy, the Commission should not allow proceedings such as this to be used in this manner.

CONCLUSION

Petitioners have not demonstrated sufficient interests in this proceeding to justify intervention. Petitioners’ identified interests are not directly related to the issues in this proceeding and granting the intervention of these parties will unreasonably broaden the issues.

WHEREFORE, KOPWU requests that the Commission deny the Petitions to Intervene of the Hoopa Valley and Yurok Tribes.

Dated this 24th day of March, 2005.

Respectfully submitted,

/s/ Melinda J. Davison

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