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March 22, 2005

VIA EMAIL & FIRST CLASS MAIL

Honorable Michael Grant
Oregon Public Utility Commission
550 Capitol St. NE, #215
PO Box 2148
Salem, OR 97308-2148
Attn: Filing Center

Re: In the Matter of the Request of Pacific Power and Light
Klamath Basin Irrigation Rates
OPUC Docket No. UE-171

Dear Judge Grant:

I write in response to your Ruling and Notice of Conference dated March 18, 2005 regarding PacifiCorp's Motion to Compel. The Klamath Water Users' Association ("KWUA") received 20 data requests from PacifiCorp on February 25, 2005. On March 11, 2005, KWUA timely objected to PacifiCorp's requests on numerous grounds. PacifiCorp filed a Motion to Compel on March 16, seeking expedited consideration.

As discussed this morning with counsel for PacifiCorp, KWUA is willing to cooperate with PacifiCorp and conduct a search of reasonable scope for relevant documents. Subject to, as limited by, and without waiving any of its objections, KWUA agrees to produce responsive, non-privileged documents, if any, requested by PacifiCorp in its Motion to Compel. KWUA and PacifiCorp have agreed that KWUA will produce any responsive documents by Noon Pacific Standard Time Friday, March 25, 2005, subject to a continuing search for further responsive documents. In light of this understanding, the conference scheduled for March 24, 2005 is unnecessary and KWUA recommends that it be cancelled.

Notwithstanding KWUA's agreement to provide responsive documents, KWUA remains concerned that PacifiCorp is wielding its discovery rights in a manner calculated to deter participation in these proceedings. PacifiCorp has applied to the Commission for permission to extract an additional \$100,000,000 per year from its ratepayers, which include KWUA and most of KWUA's members. The Commission should not lose sight of the fact that PacifiCorp has the burden of proof in this process, and intervenors such as KWUA are not *required* to either file testimony or take any legal position. Nevertheless, PacifiCorp seeks to require KWUA to respond to numerous discovery requests even before KWUA has taken a legal or factual

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position.¹ If this tactic is allowed, KWUA is concerned PacifiCorp and other Oregon utilities would view the discovery process as an opportunity to intimidate interested parties and discourage them from intervening in general rate proceedings.

Accordingly, KWUA objected to the requests because, until there are disputed issues of fact, there is nothing to discover. Furthermore, PacifiCorp's request seeks public documents or documents that PacifiCorp already has in its possession. PacifiCorp's expectation that KWUA provide documents that are readily available through other means is both inappropriate and unnecessary. Third, some of the disputed data requests are relevant only to proceedings ongoing at the Federal Energy Regulatory Commission. PacifiCorp abuses its discovery rights where it seeks documents or information that it intends to use only outside of this proceeding. Notwithstanding these objections, KWUA agrees to provide responsive, non-privileged documents in its possession.

Finally, KWUA renews its objection to any data request to the extent it is not reasonably related to any issue in either UE 170 or UE 171, or seeks documents that call for a legal conclusion, seeks attorney work product and /or seeks documents or information subject to attorney client privilege.

Please feel free to call if you have any questions.

Very truly yours,



Edward A. Finklea

cc: UE-171 Service List (via email & first class mail)

¹ KWUA has taken a legal position only with respect to its Petition for Case Certification for Intervenor Funding. The Commission has granted that Petition. To the extent that PacifiCorp's data requests relate solely to Intervenor Funding, KWUA agrees that they may be timely and relevant.