

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UE-171

In the Matter of the Request of)	
)	
PACIFIC POWER & LIGHT)	WATERWATCH OF OREGON’S
(PACIFICORP))	MOTION TO COMPEL KLAMATH
)	WATER USERS’ ASSOCIATION
Klamath Basin Irrigation Rate)	TO RESPOND TO DISCOVERY
_____)	

WaterWatch of Oregon (“WaterWatch”) respectfully moves the Public Utility Commission of Oregon (“Commission”) for an order compelling Klamath Water Users’ Association (“KWUA”) to produce immediately all non-privileged documents responsive to WaterWatch’s first set of data requests number one (which incorporated PacifiCorp’s data requests 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, and 1.17) and number two.

Pursuant to OAR 860-014-0070(2), on Wednesday, March 22, WaterWatch counsel conferred with KWUA counsel in an effort to resolve or narrow this dispute without Commission intervention. KWUA counsel has agreed to produce certain documents which have not yet been reviewed by KWUA’s counsel or by WaterWatch. Accordingly, the parties agreed that WaterWatch would file this motion pending review of the documents to be produced.

I. BACKGROUND

WaterWatch’s data request at issue here was filed in docket UE-171. This docket was carved out of UE-170 to address the issue of whether certain PacifiCorp irrigation

customers in the Klamath Basin should continue to receive low power rates established by expiring historical contracts. *In re PacifiCorp*, UE-170, Joint Ruling (Or. Pub. Util. Comm'n Feb. 18, 2005); *In re PacifiCorp*, UE-170 Revised Joint Ruling (Or. Pub. Util. Comm'n Feb. 24, 2005).

On March 4, 2005, WaterWatch submitted its first set of data requests to KWUA. WaterWatch requested: (1) KWUA's responses to a list of requests made in PacifiCorp's first set of data requests to KWUA; and (2) information relating to the alleged contribution of water by on- or off- Project irrigators to the Klamath River. Two weeks later, on March 18, KWUA responded to WaterWatch's first set of data requests by refusing to provide any of the requested data. As to data request number one, KWUA attached its response to PacifiCorp refusing to give PacifiCorp any of the data requested in PacifiCorp's first data request; as to data request number two, KWUA raised a number of objections and also stated that it had no such information that it had commissioned. KWUA's First Set of Data Responses to WaterWatch of Oregon at 2.

At the Prehearing Conference in UE-171, WaterWatch expressed concern about the extremely abbreviated discovery and briefing schedule in this matter. These concerns were essentially dismissed by the irrigation interests – the same interests that now have failed to produce a single document in response to WaterWatch's (and apparently PacifiCorp's) data requests in this matter. While the issues initially to be addressed in this matter are legal issues, discovery in advance of motions for summary judgment or disposition is a common, basic and essential component of most legal proceedings. KWUA should not be allowed to benefit from its discovery conduct given the pending schedule in this matter.

KWUA's counsel has also provided a letter to Judge Grant setting forth various arguments against allowing discovery at this stage of the proceeding. Despite counsel's assertions, discovery is not simply a tool to address or resolve disputed issues of fact after testimony has been presented. The scope of ORCP 36 is much broader and wide-ranging than the scope of discovery suggested by KWUA counsel. Furthermore, whatever the merits of the arguments against allowing the utility to conduct basic discovery against an intervening party, those arguments have no merit when considered in the context of intervenor to intervenor discovery.

II. ARGUMENT

A. WaterWatch Data Request Number One

WaterWatch's data request number one was a request for KWUA's responses to PacifiCorp's first set of data requests to KWUA. To the extent relevant, WaterWatch incorporates PacifiCorp's argument in support of its Motion to Compel KWUA to respond to discovery (available on the OPUC website at:

<http://edocs.puc.state.or.us/efdocs/HAO/ue171hao154516.pdf>)

B. WaterWatch's Data Request Number Two

WaterWatch's data request number two is as follows:

Please provide all data, analyses, reports, studies or correspondence commissioned by or in the possession of KWUA regarding the alleged contribution of water by on- or off-Project water users to Klamath River surface water flows, and/or to PacifiCorp's hydroelectric facilities on the Klamath River. Please include all draft as well as final versions of the above-requested documents.

With respect to this data request, KWUA raised the following objections:

- a) The material sought does not bear upon, nor reasonably could lead to matters that bear upon, any issue in this proceeding.

- b) This proceeding is a rate case filed by PacifiCorp, not a water adjudication hearing instituted by KWUA.
- c) KWUA will provide its legal position in accordance with the established UE-171 Briefing Schedule.
- d) KWUA objects to any data request that is not is not reasonably related to its legal position or that requires KWUA to respond prior to stating its legal position.
- e) The request is not “commensurate with the needs of this case.”
- f) The request is unreasonably cumulative, duplicative and overly broad.
- g) KWUA objects to the request to the extent that it seeks materials protected by attorney/client privilege or materials that KWUA is otherwise obligated or entitled to keep confidential.
- h) KWUA objects to the request to the extent that it seeks public documents available from the United States Bureau of Reclamation, or documents that are in the possession of the applicant bearing the burden of proof in this proceeding: PacifiCorp.
- i) “Subject to, as limited by, and without waiving the foregoing objections” KWUA has no responsive information “commissioned by KWUA.”

1. The Data Requested was Alleged to be Relevant by a Party to this Proceeding

With regards to items (a) through (e) above, WaterWatch based this request on a statement by KOPWU at the prehearing conference that it intended to use information encompassed by this request at some point in this proceeding to garner low power rates for its members. WaterWatch agrees with KWUA that use of this information in this proceeding (or in UE-170) is questionable; however, since KOPWU stated its intention to do so, WaterWatch requested the information from the irrigator interests in anticipation of this use. WaterWatch will withdraw the request if the irrigation interests in this matter certify that they will not use such information in this matter.

2. KWUA's Response is Incomplete

WaterWatch requested all responsive information "commissioned by or in the possession of KWUA." KWUA only states that, subject to its list of objections, it has no such information that was "commissioned by KWUA." KWUA does not indicate whether it has any information in its possession that is responsive to the request. Accordingly, the response is incomplete and any responsive information in the possession, custody or control of KWUA should be produced.

3. WaterWatch is Asking the Commission to Compel Production of Non-Privileged Documents Only

WaterWatch is asking the Commission to compel production of non-privileged documents only. Therefore, KWUA's objections regarding attorney/client privilege and confidentiality are not warranted here.

III. REQUEST FOR EXPEDITED HEARING

WaterWatch requests an expedited hearing regarding this matter due to the tight schedule in this docket. Clearly PacifiCorp has the most immediate deadline for filing a motion in this proceeding, but WaterWatch and other parties have responsive briefs due in only a little over five weeks. The discovery sought is relevant to critical issues in the docket and is needed by WaterWatch immediately.

IV. CONCLUSION

KWUA's objections to production of the requested documents are not legally valid, thus KWUA must produce the requested discovery. Specifically, WaterWatch requests the Commission to require KWUA to promptly and fully respond by producing all non-privileged documents responsive to WaterWatch requests number one (which

incorporated PacifiCorp's data requests 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, and 1.17) and number two.

Respectfully submitted this 24th day of March, 2005,

John DeVoe, OSB # 90247
WaterWatch of Oregon
213 SW Ash Street, Suite 208
Portland, OR 97204
Phone: 503.295.4039 x22
FAX: 503.295.2791
E-mail: john@waterwatch.org

Counsel and Executive Director for
WaterWatch of Oregon



John DeVoe
WaterWatch of Oregon
213 SW Ash Street, Suite 208
Portland, OR 97204

March 24, 2005

PUC Filing Center
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148

**RE: WATERWATCH'S MOTION TO COMPEL KLAMATH WATER
USERS TO RESPOND TO DISCOVERY IN DOCKET UE-171**

VIA ELECTRONIC FILING AND US POSTAL MAIL

Enclosed for filing are WaterWatch of Oregon's Motion to Compel Klamath Water Users' Association to Respond to Discovery in UE-171 and certificate of service.

Sincerely,

John DeVoe

Enclosure

cc: UE-171 Service List

CERTIFICATE OF SERVICE

I hereby certify that I have this day served WaterWatch of Oregon's Motion to Compel Klamath Water Users' Association to Respond to Discovery in UE-171 by email and postage prepaid mail upon each person listed below at the address indicated, upon the Oregon Public Utility Commission (email to Carol.Hulse@state.or.us; puc.filingcenter@state.or.us) (original and five copies mailed pursuant to 860-013-0060).

Dated: March 24, 2005

Lisa Brown
WaterWatch of Oregon
213 SW Ash Street, Suite 208
Portland, OR 97204
503.295.4039 x26

EDWARD BARTELL
KLAMATH OFF-PROJECT WATER USERS,
INC.
30474 SPRAGUE RIVER ROAD
SPRAGUE RIVER OR 97639

JASON EISDORFER - **CONFIDENTIAL**
CITIZENS' UTILITY BOARD OF OREGON
610 SW BROADWAY STE 308
PORTLAND OR 97205
jason@oregoncub.org

EDWARD A FINKLEA
CABLE HUSTON BENEDICT H
LLOYD LLP
1001 SW 5TH, SUITE 2000
PORTLAND OR 97204
efinklea@chbh.com

DAN KEPPEN
KLAMATH WATER USERS ASSOCIATION
2455 PATTERSON STREET, SUITE 3
KLAMATH FALLS OR 97603

JIM MCCARTHY
OREGON NATURAL RESOURCES COUNCIL
PO BOX 151
ASHLAND OR 97202
jm@onrc.org

KATHERINE A MCDOWELL
STOEL RIVES LLP
900 SW FIFTH AVE STE 1600
PORTLAND OR 97204-1268
kamcdowell@stoel.com

BILL MCNAMEE
PUBLIC UTILITY COMMISSION
PO BOX 2148
SALEM OR 97308-2148

MICHAEL W. ORCUTT
HOOPA VALLEY TRIBE FISHERIES DEPT.
PO BOX 417
HOOPA, CA 95546

STEVE PEDERY
OREGON NATURAL RESOUR
COUNCIL
sp@onrc.org

MATTHEW W PERKINS
DAVISON VAN CLEVE PC
1000 SW BROADWAY STE 2460
PORTLAND OR 97205
mwp@dvclaw.com

THOMAS P SCHLOSSER
MORISSET, SCHLOSSER, JOZWIAK &
MCGAW
t.schlosser@msaj.com

ROB ROY SMITH
MORISSET, SCHLOSSER, JOZ
MCGAW
1115 NORTON BLDG.
801 SECOND AVE.
SEATTLE, WA 98104-1509
r.sr.smith@msaj.com

GLEN SPAIN
PACIFIC COAST FEDERATION OF
FISHERMEN'S ASSOCIATIONS
PO BOX 11170
EUGENE, OR 97440-3370
fishlifr@aol.com

ROBERT VALDEZ
PO BOX 2148
SALEM, OR 97308-2148
bob.valdez@state.or.us

PAUL M WRIGLEY
PACIFIC POWER & LIGHT
825 NE MULTNOMAH STE 800
PORTLAND OR 97232
paul.wrigley@pacificcorp.com