

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 171

In the Matter of)	
)	
PACIFIC POWER & LIGHT (dba)	RULING
PACIFICORP))	
)	
Klamath Basin Irrigation Rates.)	

DISPOSITION: MOTION TO COMPEL DENIED

A discovery dispute exists between WaterWatch of Oregon (WaterWatch) and the Klamath Water Users Association (KWUA). WaterWatch submitted two sets of data requests on KWUA. KWUA initially objected to both requests, but later provided documents related to WaterWatch’s first request. The dispute relates to WaterWatch’s unanswered second request, which seeks the following information:

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.

KWUA states that it has not commissioned any such studies, but is aware of preliminary drafts of a study commissioned by the United State Bureau of Reclamation entitled “Undeleted Natural Flow of the Upper Klamath River.” KWUA suggests that WaterWatch request copies of the most recent version of this study from the Bureau of Reclamation. WaterWatch responds that KWUA’s answer is not adequate. Believing that KWUA has the Bureau of Reclamation report in its possession, WaterWatch contends that KWUA must produce the document in order to comply with the discovery request. WaterWatch requests an expedited hearing to resolve this matter.

APPLICABLE LAW

The Oregon Rules of Civil Procedure (ORCP), which the Commission has adopted as its own procedure, defines the scope of discovery as follows:

For all forms of discovery, parties may inquire regarding any matter, not privileged, which is relevant to the claim or defense of

the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Rule 36B.

DISCUSSION

WaterWatch contends that its data request falls within the scope of discovery permitted by ORCP 36. WaterWatch notes that the data request was based on a statement by the other intervening irrigator group, the Klamath Off-Project Water Users (KOPWU), that it intended to use information encompassed by this request at some point in the proceeding to obtain lower rates for its members. WaterWatch also points out that KWUA is apparently negotiating with PacifiCorp for lower power rates based on a concept that irrigation interests contribute water to the river that benefit hydro operations. Consequently, WaterWatch concludes that information related to the contribution of water by irrigators to the flow of the river or hydroelectric operations is relevant to this power rate setting proceeding.

WaterWatch overstates the scope of this proceeding. Contrary to its characterization, this docket was opened to address the narrow issue of whether PacifiCorp's Klamath Basin irrigation customers should be provided electrical service in accordance with the historical contracts or PacifiCorp's standard tariffs. It is not a power rate setting proceeding. As previously explained, the matters at issue here are "primarily legal in nature, addressing the interpretation of existing contracts." Prehearing Conference Memorandum and Ruling at 3 (Mar. 3, 2005).

Because WaterWatch has failed to establish how the requested study is relevant to the interpretation of the historical contracts, its motion to compel is denied. Moreover, if other parties, including the two irrigator groups, attempt to present information in this docket, UE 171, that is encompassed by WaterWatch's request, I will strike any such information as not relevant. Finally, I note that information regarding the irrigators' contribution of water may become relevant if the Commission addresses the residual issue of the new, non-contract rate level for the Klamath Basin irrigators in PacifiCorp's general rate proceeding, UE 170. Under such circumstances, WaterWatch may pursue such discovery in that docket.

Dated in Salem, Oregon, this 14th day of April, 2005.

Michael Grant
Chief Administrative Law Judge