

Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • mail@dvclaw.com
Suite 400
333 S.W. Taylor
Portland, OR 97204

February 16, 2006

Via Electronic and U.S. Mail

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

Re: In the Matter of PACIFIC POWER & LIGHT Request for a
General Rate Increase in the Company's Oregon Annual Revenues
Docket No. UE 170

Dear Filing Center:

Enclosed please find the original and two copies of the Answer to Center for Tribal Water Advocacy's Motion for Leave to Appear as Amicus Curiae of the Klamath Off-Project Water Users in Docket No. UE 170.

Please return one file-stamped copy of this document in the enclosed stamped envelope.

Thank you for your assistance.

Sincerely,

/s/ Anna E. Studenny
Anna E. Studenny

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Answer to Center for Tribal Water Advocacy's Motion for Leave to Appear as Amicus Curiae of the Klamath Off-Project Water Users, Inc., upon the parties on the service list, shown below, by causing the same to be served by U.S. Mail, postage-prepaid, through the U.S. Mail, and/or via email to those parties with an email address.

Dated at Portland, Oregon, this 16th day of February, 2006.

/s/ Anna E. Studenny
Anna E. Studenny

PORTLAND GENERAL ELECTRIC
RATES & REGULATORY AFFAIRS
RATES & REGULATORY AFFAIRS
121 SW SALMON ST 1WTC0702
PORTLAND OR 97204
pge.opuc.filings@pgn.com

COMMUNITY ACTION DIRECTORS OF OREGON
JIM ABRAHAMSON
PO BOX 7964
SALEM OR 97303-0208
jim@cado-oregon.org

KLAMATH WATER USERS ASSOCIATION
GREG ADDINGTON
2455 PATTERSON ST - STE 3
KLAMATH FALLS OR 97603
greg@cvcwireless.net

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

BOEHM KURTZ & LOWRY
KURT J BOEHM
36 E SEVENTH ST - STE 1510
CINCINNATI OH 45202
kboehm@bkllawfirm.com

WATERWATCH OF OREGON
LISA BROWN
213 SW ASH ST - STE 208
PORTLAND OR 97204
lisa@waterwatch.org

CITIZENS' UTILITY BOARD OF OREGON
LOWREY R BROWN
610 SW BROADWAY - STE 308
PORTLAND OR 97205
lowrey@oregoncub.org

OREGON DEPARTMENT OF ENERGY
PHIL CARVER
625 MARION ST NE STE 1
SALEM OR 97301-3742
philip.h.carver@state.or.us

YUROK TRIBE
JOHN CORBETT
PO BOX 1027
KLAMATH CA 95548
jcorbett@yuroktribe.nsn.us

OREGON ENERGY COORDINATORS ASSOCIATION
JOAN COTE
2585 STATE ST NE
SALEM OR 97301
cotej@mwvcaa.org

WATERWATCH OF OREGON
JOHN DEVOE
213 SW ASH ST - STE 208
PORTLAND OR 97204
john@waterwatch.org

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

STOEL RIVES LLP

JOHN M ERIKSSON
201 SOUTH MAIN ST
SALT LAKE CITY UT 84111
jmeriksson@stoel.com

RFI CONSULTING INC

RANDALL J FALKENBERG
PMB 362
8351 ROSWELL RD
ATLANTA GA 30350
consultrfi@aol.com

CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP

EDWARD A FINKLEA
1001 SW 5TH - STE 2000
PORTLAND OR 97204
efinklea@chbh.com

DEPARTMENT OF JUSTICE

DAVID HATTON
REGULATED UTILITY & BUSINESS SECTION
1162 COURT ST NE
SALEM OR 97301-4096
david.hatton@state.or.us

PUBLIC UTILITY COMMISSION

JUDY JOHNSON
PO BOX 2148
SALEM OR 97308-2148
judy.johnson@state.or.us

DEPARTMENT OF JUSTICE

JASON W JONES
REGULATED UTILITY & BUSINESS SECTION
1162 COURT ST NE
SALEM OR 97301-4096
jason.w.jones@state.or.us

BOEHM, KURTZ & LOWRY

MICHAEL L KURTZ
36 E 7TH ST STE 1510
CINCINNATI OH 45202-4454
mkurtz@bklawfirm.com

OREGON NATURAL RESOURCES COUNCIL

JIM MCCARTHY
PO BOX 151
ASHLAND OR 97520
jm@onrc.org

STOEL RIVES LLP

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

PUBLIC UTILITY COMMISSION

BILL MCNAMEE
PO BOX 2148
SALEM OR 97308-2148
bill.mcnamee@state.or.us

DANIEL W MEEK ATTORNEY AT LAW

DANIEL W MEEK
10949 SW 4TH AVE
PORTLAND OR 97219
dan@meek.net

DANIEL W MEEK ATTORNEY AT LAW

NANCY NEWELL
3917 NE SKIDMORE ST
PORTLAND OR 97211
ogec2@hotmail.com

HOOPA VALLEY TRIBE FISHERIES DEPT

MICHAEL W ORCUTT
PO BOX 417
HOOPA CA 95546
director@pcweb.net

OFFICE OF THE REGIONAL SOLICITOR

STEPHEN R PALMER
2800 COTTAGE WAY - RM E-1712
SACRAMENTO CA 95825

OREGON NATURAL RESOURCES COUNCIL

STEVE PEDERY
5825 NORTH GREELEY AVENUE
PORTLAND OR 97214
sp@onrc.org

DEPARTMENT OF JUSTICE

JANET L PREWITT
1162 COURT ST NE
SALEM OR 97301-4096
janet.prewitt@doj.state.or.us

MORISSET, SCHLOSSER, JOZWIAK & MCGAW

THOMAS P SCHLOSSER
801 SECOND AVE - STE 1115
SEATTLE WA 98104-1509
t.schlosser@msaj.com

PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOC

GLEN H SPAIN
PO BOX 11170
EUGENE OR 97440-3370
fish1ifr@aol.com

PORTLAND GENERAL ELECTRIC

DOUGLAS C TINGEY
121 SW SALMON 1WTC13
PORTLAND OR 97204
doug.tingey@pgn.com

PACIFIC POWER & LIGHT

PAUL M WRIGLEY
825 NE MULTNOMAH STE 800
PORTLAND OR 97232
paul.wrigley@pacificorp.com

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 170

In the Matter of)	
)	
PACIFIC POWER & LIGHT)	KLAMATH OFF-PROJECT WATER
(dba PACIFICORP))	USERS' ANSWER TO CENTER FOR
)	TRIBAL WATER ADVOCACY'S
Request for a General Rate Increase in the)	MOTION FOR LEAVE TO APPEAR AS
Company's Oregon Annual Revenues.)	AMICUS CURIAE
_____)	

Pursuant to OAR §§ 860-013-0025 and 860-013-0050, the Klamath Off-Project Water Users, Inc. ("KOPWU") submits this Answer to the Center For Tribal Water Advocacy's ("CTWA") Motion for Leave to Appear as Amicus Curiae, filed on February 8, 2006, in Oregon Public Utility Commission ("OPUC" or the "Commission") Docket No. UE 170. KOPWU urges the Commission to deny the motion on the basis that: 1) the motion is an untimely petition to intervene; 2) CTWA's appearance and participation will unreasonably broaden the issues and burden the record in this docket; and 3) granting CTWA's motion at this late stage in the proceeding would be prejudicial to other parties.

DISCUSSION

Although CTWA has styled its request as a motion to appear as amicus curiae, it appears from the substance of CTWA's motion that CTWA seeks a role in this proceeding that goes beyond the traditional role of an amicus curiae. An amicus curiae is "[a] person who is not a party to a lawsuit but who petitions the court or is requested by the court to file a brief in the action because that person has a strong interest in the subject matter." Black's Law Dictionary

**PAGE 1 – KOPWU'S ANSWER TO CENTER FOR TRIBAL WATER ADVOCACY'S
MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE**

83 (7th ed. 1999). CTWA has not asked the Commission for leave to file a brief in this case—it has asked for an order that will allow CTWA to “appear” and “participate” in the case. CTWA Motion at 1. Moreover, if its motion is granted, CTWA intends to raise “unique and as yet unaddressed arguments for the requested rate increase.” *Id.* at 3. In short, CTWA seeks a role in this proceeding that is more akin to that of an intervener than it is to that of an amicus curiae.

The Commission should not allow CTWA to use the pretext of seeking amicus curiae status to achieve intervention at this advanced stage of the proceeding. The deadline for intervention in UE 170 was January 7, 2005—more than one year ago. Re PacifiCorp, OPUC Docket No. UE 170, Prehearing Conference Memorandum (Dec. 8, 2004). The parties have filed expert testimony and conducted extensive discovery, and the evidentiary hearing is imminent. CTWA has not provided any explanation as to why it did not file a timely petition to intervene.

In addition, CTWA’s request does not meet the Commission’s standards for intervention. Intervention in OPUC proceedings is governed by OAR § 860-013-0021(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.

As noted above, CTWA intends to raise at least five arguments that have not been raised by any party to this proceeding. These arguments would unreasonably broaden the issues and burden the record in this proceeding. The parties have already framed the issues and developed a record without addressing any of the arguments that CTWA intends to raise, and opening briefs are due in two weeks. It would simply be unreasonable, and extremely prejudicial, to require parties to respond to arguments raised for the first time on the eve of the evidentiary hearing and only weeks before briefing begins.

CTWA's argument that its interests are not adequately represented by current parties is unpersuasive. CTWA notes that its members include members of the Klamath, Yurok, and Hoopa Valley Tribes, all of which are current parties. CTWA Motion at 2. However, CTWA then claims that it "does not purport to represent, in any capacity, members of the four tribes (Yurok, Klamath, Hoopa, and Karok) that are already parties to this case." Id. at 3. Yet CTWA argues that it is "impossible" for its interests to be adequately represented by the tribes that are already parties to this proceeding because "the rights of tribal members are in a separate category from those of the tribe to which they are members." Id. at 4. If CTWA does not represent tribal members, it is unclear what interests CTWA represents that are separate from the interests already represented by the tribes that are current parties.

Finally, even assuming that CTWA's motion is correctly categorized as one requesting amicus curiae status, CTWA's request fails based on the standards articulated by CTWA itself. According to CTWA, a court has broad discretion in determining whether to grant amicus status, and "amicus status may be denied 'where the parties are well represented, joint consent of the parties is lacking, and the amicus comes as an advocate for one side rather than as a neutral entity.'" CTWA Motion at 2. All three of these factors are present in this case. The parties are well represented, only one party has consented to granting CTWA amicus status, and CTWA has not presented itself as a neutral entity. As a result, CTWA's motion should be denied.

WHEREFORE, KOPWU requests that the Commission deny CTWA's Motion for Leave to Appear as Amicus Curiae.

Dated this 16th day of February, 2006.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

Melinda J. Davison
Matthew W. Perkins
333 S.W. Taylor, Suite 400
Portland, Oregon 97204
(503) 241-7242 phone
(503) 241-8160 facsimile
mail@dvclaw.com
Of Attorneys for Klamath Off-Project
Water Users, Inc.

PAGE 4 – KOPWU'S ANSWER TO CENTER FOR TRIBAL WATER ADVOCACY'S
MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE