

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UE-170

In the Matter of the Request of)	
)	
PACIFIC POWER & LIGHT)	WATERWATCH OF OREGON'S
(PACIFICORP))	REPLY TO KLAMATH OFF-PROJECT
)	USERS' ANSWER IN OPPOSITION TO
)	PETITIONS TO INTERVENE OF
Request for a General Rate Increase)	WATERWATCH OF OREGON AND
in the Company's Oregon Annual)	OREGON NATURAL RESOURCES
Revenues)	COUNCIL
_____)	

INTRODUCTION

On January 18, 2005, the Klamath Off-Project Water Users ("KOPWU") filed an Answer in Opposition to Petitions to Intervene of WaterWatch of Oregon

("WaterWatch") and Oregon Natural Resources Council ("ONRC") ("Answer").

KOPWU itself is a party seeking intervenor status in this matter. KOPWU opposes intervenor status for WaterWatch and ONRC claiming that "neither party has demonstrated a "sufficient interest" in this proceeding." Answer at 1. Pursuant to OAR § 860-013-0035, WaterWatch of Oregon ("WaterWatch") files this reply addressing KOPWU's Answer as to opposition to WaterWatch's intervention and further detailing why WaterWatch's interests clearly merit intervenor status in this proceeding.¹

**WATERWATCH'S INTERESTS FALL SQUARELY WITHIN
THE SCOPE OF THIS RATE SETTING CASE**

WaterWatch is a statewide river conservation group with approximately 1200 members statewide that is devoted to protecting and restoring streamflow in Oregon's

¹ While this reply directly addresses WaterWatch's interests, WaterWatch believes that the same reasoning applies to intervention by ONRC. WaterWatch fully supports intervention by ONRC.

ivers. WaterWatch has hundreds of members and staff who are PacifiCorp ratepayers² who find it unfair that the rates they pay are, in effect, subsidizing rates for select Klamath Basin irrigators currently paying far below standard irrigation rates. See WaterWatch of Oregon Petition to Intervene at 3.

In addition to concern over the lack of fairness in having to subsidize select Klamath irrigators, WaterWatch is concerned because the low rates paid by these irrigators create an incentive for excessive power and water use that harms the environmental interests of WaterWatch and its members. These artificially low power rates lead to inefficient and uneconomical use of power, and facilitate pumping and use of water that would otherwise not occur. Water is a scarce and extremely valuable resource in the Klamath Basin. This rate incentive is facilitating increased water demand in a Basin where National Wildlife Refuges, federally endangered suckers and federally threatened coho salmon are struggling for lack of water. Contrary to what KOPWU seems to argue, WaterWatch's concerns over these incentive related impacts do not somehow place WaterWatch's interest in the rates outside the scope of the proceeding.

WaterWatch's interest in seeing all Klamath Basin irrigation rates brought up to PacifiCorp's standard irrigation tariff falls squarely within the Commission's statutorily defined inquiry as to the justness and reasonableness of PacifiCorp rates. As PacifiCorp points out, outcomes regarding these subsidized rates and associated contracts are key issues for the irrigators seeking to intervene, KOPWU and the Klamath Water Users

² WaterWatch has over 110 members in the PacifiCorp service area municipalities of Medford, Ashland and Bend alone. This number goes up to 175 just by adding in other small municipalities from the PacifiCorp service area map (available on PacifiCorp's website), but still not counting the parts of Portland served, the unmapped smaller municipalities or the rural areas. Analyzing these areas would likely identify many additional WaterWatch PacifiCorp ratepayers; however, the scale of the map does not easily allow this analysis.

Association, as well as for WaterWatch and ONRC. PacifiCorp Response to Commission's Request for Guidance Re: Case-Certification at 2. The interests of WaterWatch and the intervening irrigators in this proceeding are little more than two sides of the same coin. The irrigators' status and arguments in this proceeding are entitled to no additional weight simply because they seek to perpetuate an artificially low power rate.

KOPWU cites The Steamboaters v. Water Resources Comm'n (85 Or.App. 34 (1987)) to support its contention that WaterWatch's interests are beyond the scope of this proceeding. Answer at 4-5. However, that case provides no authority for the irrigators' contention. In Steamboaters the party's asserted interest in the proceeding related to the "underlying nature and existence of the dam" but the authorizing statutes narrowly limited the scope of the proceeding to identifying and implementing safety modifications to existing dams. *Id.* at 36-37. Steamboaters had been denied party status, at least in part, because its objection to the existence of the dam could not be addressed in the proceeding.³ The state respondents in that case explained the narrow nature of that proceeding as follows:

[ORS 540.350(5) and ORS 540.360] are specifically addressed to the narrow issue of dam safety and they are *designed to deal narrowly with safety matters peculiarly under the control of the dam owner*, so that safety measures can be taken in a timely fashion to avoid injury to life and property.

Id. at 37 (emphasis added).

³ The court also agreed with the state's argument that denying party status in the safety modification proceeding was proper because the proceeding was "aimed at particularizing and implementing" structural rehabilitation proposals that were set forth in an earlier, separate water permitting proceeding where Steamboaters was a party. 85 Or.App. 34, 36-37 (1987). Here, there is no better, separate proceeding where WaterWatch can be a party to PacifiCorp rate setting regarding the Klamath Basin irrigators.

A rate setting case before the Commission is in no way intended to be similarly narrow in substantive scope, or to be limited to “matters peculiarly under the control” of any single party. The Legislature has broadly directed the Commission to “determine the propriety and reasonableness” of the rates, and whether any rate changes are “just and reasonable.” ORS 757.210. The rate setting statutes also clearly dictate that the concerns of “customers” be considered in the process. Id.; ORS 756.040. In fact, (and not surprisingly) KOPWU relies heavily on its status as a consumer entity as the basis for its requested intervention. WaterWatch and its member ratepayers’ concerns regarding rates, and the impacts that result from incentives created by certain rates, are properly within this rate setting case.

In Steamboaters, another key factor supporting denial of party status was that Steamboaters had previously been party to the proper proceeding for addressing its objections to the dam. 85 Or.App. 34, 36-37 (1987). The state argued that the hearing in Steamboaters “[did] not constitute an unlimited opportunity for any interested person to relitigate the appropriateness of approval of an already approved dam.” Id. at 37. In contrast, WaterWatch is not seeking a chance to relitigate any issue. Further, there is no better, separate proceeding where WaterWatch can be a party to PacifiCorp rate setting regarding the Klamath Basin irrigators.

KOPWU further argues that the “Commission lacks jurisdiction to address the issues [WaterWatch and ONRC] intend to raise.” Answer at 1. Again, WaterWatch’s interests easily fit within a proceeding regarding the justness and reasonableness of rates. Further, it is well established in Oregon law that the Commission (previously the Commissioner) has “the broadest authority – commensurate with that of the legislature

itself– for the exercise of [its] regulatory function.” Pacific N. W. Bell v. Sabin, 21 Or.App. 200, 214 (1975). See also Publishers Paper Co. v Davis, 28 Or.App. 189 (1977) (“The process of setting rates, as we have said, is a purely legislative function which involves broad discretion in selecting policies and methods of implementation. The commissioner must have a certain latitude in the exercise of his discretion to select from competing policies . . . It involves judgment on a myriad of factors.”). The expertise and information that WaterWatch brings will be a benefit in this type of proceeding and will demonstrate that there are in fact competing policies regarding the perpetuation of the existing subsidized rates by Klamath Basin irrigators.

Neither does any statute or regulation preclude WaterWatch from raising the environmental impacts resulting from rate incentives. In fact, the Commission regularly allows intervention of renewable energy groups interested in precisely these kinds of incentive based impacts. Additionally, PacifiCorp’s Blue Sky program, which allows customers to purchase renewable power at a higher than standard rate, is evidence that the Commission can and does consider environmental factors in the rate setting forum.

IF GRANTED INTERVENOR STATUS, WATERWATCH WILL NOT UNREASONABLY BROADEN THE ISSUES IN THIS PROCEEDING

KOPWU’s complaint that WaterWatch fails to meet the standard for intervention because it will “unreasonably broaden the issues” is unfounded. Answer at 5-6.

WaterWatch intends to raise rate issues that are within the scope of rate setting proceedings set forth by statute and rule, and that will be of assistance to the Commission. WaterWatch is sensitive to the Commission’s need to conduct a productive proceeding that provides it with information needed to set all of the rates at issue.

WaterWatch is confident that the Commission can properly manage the proceeding.

CONCLUSION

The interests of WaterWatch and its members fall squarely within this rate setting case and nothing bars the Commission from granting intervenor status to the organization. Likewise, WaterWatch supports the intervention of ONRC based on application of the reasoning above. Based on the foregoing reasons, WaterWatch respectfully requests that the Commission reject KOPWU's attempt to limit WaterWatch's participation in this proceeding.

Respectfully submitted this 28th day of January, 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