

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE-170

In the Matter of)	
)	
Pacific Power & Light Company)	HOOPA VALLEY TRIBE'S RESPONSE
(dba PacifiCorp))	TO THE CENTER FOR TRIBAL WATER
)	ADVOCACY'S MOTION TO APPEAR AS
Request for General Rate Increase in the)	AMICUS CURIAE AND KOPWU'S
Company's Oregon Annual Revenues)	OPPOSITION THEREOF
(Klamath Basin Irrigator Rates))	
_____)	

The Hoopa Valley Tribe, intervenor in this proceeding, supports and consents to the Center for Tribal Water Advocacy's (CTWA) participation as *Amicus Curiae* in this proceeding. CTWA's participation will provide the Commission with valuable information on tribal water rights in the Klamath Basin, and the adverse impact that continuance of subsidized power rates will have on tribal governments and tribal members not currently represented in this proceeding.

CTWA has not requested intervention and thus the standards for intervention cited by KOPWU are inapplicable. CTWA should be permitted leave to participate as *amicus curiae* because such participation will assist the Commission's understanding of water rights in the Klamath Basin, will address interests of tribal governments and members not currently represented in this proceeding, and will be limited to issues within the scope of this proceeding.

The Klamath Basin irrigators have raised the issue of Klamath Basin water rights in support of their "credit for value" theories. The Commission, when considering the irrigators' arguments, must also consider the existence of senior tribal water rights in the Klamath Basin. *See United States v. Adair*, 723 F.2d 1394 (9th Cir. 1983) (holding that Klamath Tribes and their members have water rights in the Klamath Basin reserved in the Treaty of 1864). Having raised

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the issue of water rights to support their theories, the irrigation interests cannot claim that issues relating to tribal water rights are outside the scope of this proceeding.

At present, only two tribal governments (Hoopa Valley and Yurok) have intervened in this proceeding. The Hoopa Valley Tribe has intervened to ensure adequate consideration and protection of its federally reserved water and fishing rights. *See Parravano v. Babbitt*, 70 F.3d 539 (9th Cir. 1995). The Hoopa Valley Tribe does not purport to represent the interests of all tribal governments or tribal members in the Klamath Basin region. Each Tribe in the region has a unique history and it is inappropriate to assume that the presence of some tribal intervenors is sufficient to represent the interests of all tribal members in the area. It would similarly be inappropriate to assume that KWUA adequately represents KOPWU's interests and vice versa.

CTWA should be granted leave to participate as *amicus curiae*. CTWA's participation (which will be limited in scope) will assist the Commission's resolution of this proceeding, will not prejudice any party, and will present views and interests of tribal governments and tribal members that are different from those presented by the Hoopa Valley Tribe.

DATED this 21st day of February, 2006.

MORISSET, SCHLOSSER, JOZWIAK & MCGAW

/s/ Thomas P. Schlosser

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of February, 2006, in addition to electronic service, I mailed the original and five copies of Hoopa Valley Tribe's Response To Center For Tribal Water Advocacy's Request for Leave To Appear As Amicus Curiae and KOPWU'S Opposition Thereto, via ***First-Class Mail*** to:

Public Utility Commission of Oregon
Attn: Filing Center
550 Capitol St., NE #215
P.O. Box 2148
Salem, OR 97308-2148
Email: PUC.FilingCenter@state.or.us

I further certify that on the on the 21st day of February, 2006, in addition to electronic service, I served a copy of the above-referenced document on counsel via ***First-Class Mail*** ***and/or E-mail*** to the following addresses:

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[Notice will not be electronically mailed, but mailed *First-Class* to]:

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Stephen R. Palmer Office of the Regional Solicitor 2800 Cottage Way, Room E-1712 Sacramento, CA 95825	

I declare the above to be true and correct under penalty of perjury. Executed this 21st day of February, 2006, at Seattle, Washington.

/s/ Rob Roy Smith
Rob Roy Smith, OSB No. 00393

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