

# Davison Van Cleve PC

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Suite 2460  
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January 18, 2005

***Via Electronic and US Mail***

Carole Hulse  
Administrative Specialist  
Oregon Public Utilities Commission  
PO Box 2148  
Salem, OR 97308-2148

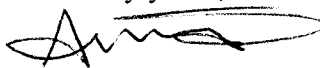
Re: In the Matter of PACIFIC POWER & LIGHT Request for a General Rate  
Increase in the Company's Oregon Annual Revenues  
**Docket No. UE 170**

Dear Ms. Hulse:

Enclosed please find an original and one copy of the Response to Request for  
Additional Information and the Declaration of Edward Bartell on behalf the Klamath Off-Project  
Water Users, Inc. in the above-captioned docket.

Please return one file-stamped copy of the document in the self-addressed,  
stamped envelope provided. Please call me at (503) 241-7242 if you have any questions. Thank  
you for your assistance.

Sincerely yours,



Ally L. Smith

Enclosures

cc: Service List

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UE 170**

In the Matter of	)	
	)	
PACIFIC POWER & LIGHT	)	RESPONSE TO REQUEST FOR
(dba PACIFICORP)	)	ADDITIONAL INFORMATION OF
	)	THE KLAMATH OFF-PROJECT
Request for a General Rate Increase in the	)	WATER USERS
Company's Oregon Annual Revenues.	)	
_____	)	

Pursuant to Administrative Law Judge (“ALJ”) Grant’s Ruling issued on January 10, 2005, in Oregon Public Utility Commission (“OPUC” or the “Commission”) Docket No. UE 170, the Klamath Off-Project Water Users, Inc. (“KOPWU”) submits this Response to Request for Additional Information. The Ruling directs KOPWU and the Klamath Water Users Association (“KWUA”) to provide additional information in support of their respective requests for case certification. The Ruling also requests that KOPWU, KWUA, and PacifiCorp provide guidance to the Commission regarding the application of the Intervenor Funding Agreement (“IFA”). Finally, the Ruling directs KOPWU to address whether the dual representation of KOPWU and the Industrial Customers of Northwest Utilities (“ICNU”) presents an actual or potential conflict of interest. KOPWU’s response to each of these issues is below.

**DISCUSSION**

**A. KOPWU Members Are Separate and Distinct from the Members of KWUA**

KOPWU’s members differ from the members of KWUA in both physical location within the Klamath River Basin and based upon the terms under which they receive electric

service from PacifiCorp. As described in KOPWU's intervention, KOPWU is a nonprofit association of individuals and businesses in and around the Klamath River Basin. PacifiCorp (or the "Company") provides electric service to KOPWU's members in accordance with an April 30, 1956 agreement (the "Off-Project Agreement") between the Klamath Basin Water Users Protective Association and PacifiCorp's predecessor, the California Oregon Power Company ("Copco"). The Off-Project Agreement took effect on May 1, 1956, and bears no expiration date. KOPWU's members are distinct from other PacifiCorp customers in the Klamath River Basin, including KWUA's members, in that they are not located on "Project Land" of the Klamath Reclamation Project, as defined in the "Upper Klamath River Basin Irrigation and Agricultural Drainage Pumping Service Tariff (For Users Not on Project Land)" (the "Off-Project Tariff"). Attachment A, Declaration of Edward Bartell at 2. The Off-Project Tariff implements the Off-Project Agreement and provides the specific terms under which KOPWU's members take electric service from the Company. The Off-Project Tariff, like the Off-Project Agreement, took effect on May 1, 1956; however, it bears no expiration date. Id.

Members of KWUA are located on "Project Land" (i.e., within the Klamath Reclamation Project) and are served under a contract entered into by the United States and Copco on January 31, 1956 (the "On-Project Agreement"). The On-Project Agreement does not provide for electric service to Off-Project customers and will expire in 2006.

Prior to the start of this rate case, PacifiCorp made clear that it intended to move both KOPWU's members (the Off-Project customers) and KWUA's members (the On-Project customers) to standard tariffs upon the expiration of the On-Project Agreement in 2006. Up to the time that PacifiCorp made this intention clear, KWUA's membership included both Off-

Project customers and On-Project customers. However, after PacifiCorp indicated that it intended to move both Off-Project and On-Project customers to standard tariffs in 2006, it became apparent that the Off-Project customers' interests would diverge from those of the On-Project customers due to the differing terms in the On-Project Agreement and the Off-Project Agreement. As a result, the Off-Project customers formed KOPWU in September 2004 to represent the specific interests of Off-Project customers.

All Klamath Basin irrigators, both On-Project and Off-Project, are defined as customers of PacifiCorp under Schedule 33, "Klamath Basin Irrigation Contracts—Irrigation Drainage and Pumping." The net monthly rate and conditions of service under Schedule 33 are determined by the applicable contract—the Off-Project Agreement for KOPWU's members and the On-Project Agreement for KWUA's members. Other PacifiCorp irrigation customers take service under Schedule 41, "Agricultural Pumping Service, Delivery Service."

The distinction between KOPWU and KWUA is significant because each organization likely will be advocating separate and distinct positions in this case. PacifiCorp has stated that it plans to move KOPWU's members to standard tariff rates in 2006, in violation of the Off-Project Agreement. PPL/100, Furman/13. Through its participation in this proceeding, KOPWU intends to enforce the terms of the Off-Project Agreement, which does not provide PacifiCorp the right to unilaterally transfer KOPWU's members to standard tariffs. In addition, given PacifiCorp's statement that it intends to move KOPWU's members to standard tariffs in 2006, KOPWU intends to focus on the rates and terms for service under PacifiCorp's standard tariffs for all irrigation customers. KOPWU does not intend to take a position on issues relating to the On-Project Agreement except as they relate to issues affecting KOPWU's members.

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KWUA has stated that its “participation in UE-170 will focus on PacifiCorp’s revenue requirement, overall rate of return and irrigation tariff design.” Re PacifiCorp, OPUC Docket No. UE 170, KWUA Application for Case Certification at 3 (Dec. 6, 2004). KWUA has not stated a position on KOPWU’s issue related to the Off-Project Agreement, and it is uncertain whether KWUA will take a position on that issue. Thus, KOPWU and KWUA have similar interests related to PacifiCorp’s standard tariffs for irrigation customers but have separate and possibly conflicting issues related to the specific agreement under which each organization’s members currently receive electric service from PacifiCorp. KOPWU’s and KWUA’s interests in that regard are separate and distinct and should be treated as such.

**B. Application of the Intervenor Funding Agreement**

ALJ Grant requested that the parties address application of Section 5.3 of the IFA in light of the application of both KOPWU and KWUA for case-certification. Section 5.3 of the IFA provides that a party seeking case-certification must, among other things, demonstrate that “no precertified intervenor participating in the proceeding adequately represents the specific interests of the class of customers represented by the organization related to rates and terms and conditions of service.”

The IFA does not address simultaneous applications for case-certification by organizations representing a similar class of customers. As a result, KOPWU’s and KWUA’s applications should each be addressed on its own merits. No precertified intervenor in this proceeding adequately represents the interests of KOPWU. ICNU and the Citizens’ Utility Board (“CUB”) are the only precertified intervenors participating in this proceeding. ICNU and CUB represent classes of customers that are separate and distinct from both irrigation customers

in general and the Off-Project customers in particular. As a result, the participation of precertified intervenors in this proceeding will not benefit KOPWU in resolving its interests in this proceeding.

If the Commission decides to rule on the applications for case-certification of KOPWU and KWUA in relation to each other, it should grant case-certification to both KOPWU and KWUA as long as each application satisfies Section 5.3 of the IFA. As described above, KOPWU and KWUA each represent a broad group of irrigation customers; however, each organization has separate and distinct members with differing interests in this proceeding. KWUA will not adequately represent the interests of KOPWU in this proceeding.

**C. Dual Representation of KOPWU and ICNU Does Not Present a Conflict of Interest**

ALJ Grant's Ruling also inquires whether the dual representation of KOPWU and ICNU by Davison Van Cleve will present an actual or potential conflict of interest. On January 1, 2005, the Oregon Code of Professional Responsibility was replaced with the new Oregon Rules of Professional Conduct ("New Rules"). Rule 1.7(a) of the New Rules prohibits representation of multiple clients that involves a "current conflict of interest" unless the clients have given informed consent.

Davison Van Cleve does not anticipate that this dual representation will present a current conflict of interest because the interests of ICNU and KOPWU will not be "directly adverse" under Rule 1.7(a)(1) of the New Rules. First, KOPWU and ICNU will primarily focus on distinct issues in this proceeding. KOPWU's primary focus in this proceeding will be ensuring that PacifiCorp abides by the terms of the Off-Project Agreement. However, in light of PacifiCorp's statements in this proceeding that it intends to move KOPWU's members to

standard tariffs in 2006, KOPWU also will focus on ensuring that any rate increase under PacifiCorp's standard tariffs is cost-justified. With respect to KOPWU's focus on the proposed rate increase for PacifiCorp's general service schedules, KOPWU's and ICNU's interests are aligned. One of ICNU's primary focuses will be reviewing the basis for the substantial rate increase for PacifiCorp's general service schedules and, in particular, the Company's industrial schedules. ICNU has no position regarding KOPWU's contract issue at this time and does not anticipate taking a position in this case. Davison Van Cleve obtained consent from both clients to participate in this rate case.

Davison Van Cleve believes that its dual representation of KOPWU and ICNU will create administrative efficiencies in this case. Both organizations have limited resources to litigate in this proceeding and the efficiencies created by dual representation likely will help to conserve those resources. As such, no conflict exists at this time (and it is unlikely that one will develop), and dual representation will likely benefit both parties.

Dated this 18th day of January, 2005.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

  
\_\_\_\_\_  
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Of Attorneys for Klamath Off-Project  
Water Users, Inc.

PAGE 6 – RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION OF KOPWU

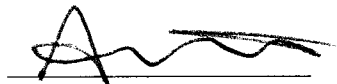
DAVISON VAN CLEVE, P.C.  
333 SW Taylor, Suite 400  
Portland, OR 97204  
Telephone: (503) 241-7242

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Response to Request for Additional Information and the Declaration of Edward Bartell on behalf of the Klamath Off-Project Water Users, Inc. upon the service list, shown below, by causing the same to be mailed, postage-prepaid, through the U.S. Mail.

DATED this 18th day of January, 2005.

Davison Van Cleve, P.C.

  
Ally L. Smith

RATES & REGULATORY AFFAIRS PORTLAND GENERAL ELECTRIC RATES & REGULATORY AFFAIRS 121 SW SALMON STREET, 1WTC0702 PORTLAND OR 97204 pge.opuc.filings@pgn.com	JIM ABRAHAMSON COMMUNITY ACTION DIRECTORS OF OREGON 4035 12TH ST CUTOFF SE STE 110 SALEM OR 97302 jim@cado-oregon.org
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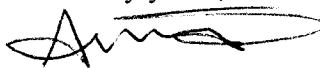
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**BEFORE THE PUBLIC UTILITY COMMISSION  
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**UE 170**

In the Matter of	)	
	)	DECLARATION OF EDWARD
PACIFIC POWER & LIGHT	)	BARTELL
(dba PACIFICORP)	)	
	)	
Request for a General Rate Increase in the	)	
Company's Oregon Annual Revenues.	)	
_____	)	

1                   I, Edward Bartell, hereby declare that I have personal knowledge of the matters  
2 set forth in this Declaration and am competent to testify to them:

3           1.       My full name is Edward Bartell. I am President of Klamath Off-Project Water  
4 Users, Inc. ("KOPWU"). My business address is: 30474 Sprague River Road, Sprague River,  
5 Oregon 97639.

6           2.       KOPWU is a nonprofit corporation that was incorporated on September 22, 2004  
7 to advocate for the interests of PacifiCorp's irrigation customers not located on lands within the  
8 Klamath Reclamation Project, as defined by the Upper Klamath Basin Irrigation and Agricultural  
9 Drainage Pumping Service Tariff (For Users Not on Project Land), known as the "Off-Project  
10 Tariff." KOPWU's membership includes individuals, irrigation districts, and businesses that are  
11 located off project land and receive electric service from PacifiCorp under the Off-Project  
12 Agreement, as discussed below.

13          3.       KOPWU's members receive electric service pursuant to a contract entered into on  
14 April 30, 1956, between the PacifiCorp's predecessor, the California Oregon Power Company  
15 ("Copco"), and the Klamath Basin Water Users Protective Association. This agreement, known

1 as the “Off-Project Agreement,” provides off-project users with electric service at a low rate in  
2 consideration for “an increased flow of water caused by the development of lands for agricultural  
3 purposes within the Upper Klamath River Basin, which increased flow will be used for the  
4 generation of electric power.” The Agreement exempts off-project users from standby fees but  
5 requires them to pay for line extensions to new pumping sites. Finally, the Off-Project  
6 Agreement bears no expiration date.

7 4. KOPWU is a distinct group from other PacifiCorp irrigation customers in the  
8 Klamath River Basin because the Off-Project users have different contractual rights from other  
9 irrigation customers. I estimate there to be approximately 2,100 metered PacifiCorp customers  
10 for both the Off-Project and On-Project water users. I am not aware of the breakdown of meters  
11 between the two groups.

12 5. KOPWU’s membership includes a broad range of Off-Project water users.  
13 KOPWU’s Board of Directors is comprised of members that represent specific geographic areas  
14 served under the Off-Project Agreement, so the entire area served under the Off-Project  
15 Agreement is represented by the Board. KOPWU’s members include Klamath Basin  
16 organizations such as the Klamath Cattlemen’s Association and Klamath County Farm Bureau,  
17 as well as various irrigation districts and individuals. We are continuing efforts to notify other  
18 Off-Project water users of the PacifiCorp case, as well as providing them the opportunity to join  
19 our organization.

20 6. Given our unique contractual situation, no other group represents our interests,  
21 and our interests are distinct from those of the Klamath Water Users who have a contract with  
22 PacifiCorp that expires in January 2006.

1 ///

2 ///

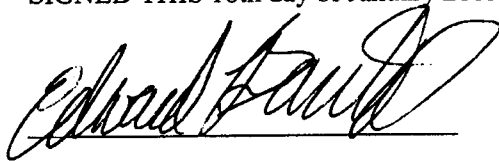
3 I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE  
4 BEST OF MY KNOWLEDGE AND BELIEF.

5 SIGNED THIS 18th day of January 2005, at Sprague River, Oregon.

6

7

8

A handwritten signature in cursive script, appearing to read "Edward Bartell", is written over a horizontal line.

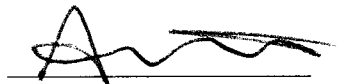
EDWARD BARTELL

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Ally L. Smith

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