

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UE 170**

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

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Pursuant to OAR § 860-013-0035, Klamath Off-Project Water Users Association, Inc. ("KOPWU") submits this Reply to the Responses to Request for Additional Information of the Klamath Water Users Association ("KWUA") and PacifiCorp (or the "Company") submitted on January 18, 2005, in Public Utility Commission of Oregon ("OPUC" or the "Commission") Docket No. UE 170. KOPWU submits this Reply to address certain statements made by KWUA and PacifiCorp regarding both the genesis and interest of KOPWU and the nature and intent of the Intervenor Funding Agreement ("IFA"). KOPWU respectfully requests that Chief Administrative Law Judge ("ALJ") Grant schedule a conference call with the parties to resolve the important issues regarding the differences between KOPWU and KWUA and each organization's eligibility for intervenor funding. KOPWU's specific response to these issues is below.

**1. KOPWU and KWUA Have Materially Different Interests in this Proceeding**

In its Response, KWUA makes a number of statements regarding KOPWU and its relationship to KWUA that are factually inaccurate. Most importantly, KWUA states that

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REQUEST FOR ADDITIONAL INFORMATION

KOPWU was formed “for the specific purpose of addressing certain historical differences between the On-Project Power Contract and the Off-Project Power Contract.” Re PacifiCorp, OPUC Docket No. UE 170, KWUA Response to Request for Additional Information at 2 (Jan. 18, 2005) (“KWUA Response”). In fact, many KOPWU members financially contributed to KWUA in the past, but those members formed KOPWU after KWUA notified both On Project and Off-Project Users that a potential conflict existed between customers who received electric service in accordance with the Off-Project Agreement (“Off-Project Users”) and those who took service in accordance with the On-Project Agreement (“On-Project Users”). At the point KWUA notified its contributors of this potential conflict, it continued to represent the interests of the On-Project Users and asked the Off-Project Users to seek their own legal counsel. In other words, KOPWU was not formed to address “historical” issues or “specifically to enforce the Off-Project Power Contract in 2006 and beyond” as KWUA claims. Id. at 3. Rather, KOPWU was formed to represent the interests of the Off Project Users because KWUA had made clear that it could not fully advocate on behalf of those customers. See Re PacifiCorp, OPUC Docket No. UE 170, KOPWU Response to Request for Additional Information, Attachment A, Declaration of Edward Bartell at 1 (Jan. 18, 2005).

Under these circumstances, KOPWU disagrees with KWUA’s statements that “KWUA is aware of no material differences between KWUA and KOPWU in this proceeding” and that there are “no issues that KOPWU intends to address in this proceeding that will not already be addressed by KWUA.” KWUA Response at 3, 4. Having informed the Off-Project Users that a potential conflict existed, KWUA cannot now reasonably claim that it represents the

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interests of the Off-Project Users for the purposes of an intervenor funding request.

Furthermore, KWUA cannot credibly claim that there is no potential conflict between the two groups. KWUA cannot adequately represent the interests of KOPWU members under the Off-Project Agreement. KWUA has stated that it “will not use any intervenor funding to advocate for an extension or renewal of the On-Project Power Contract,” which ostensibly means that it also will not advocate for the continued existence of the Off-Project Agreement. KWUA Response at 4.

The most important difference between KOPWU and KWUA is that while the On-Project Agreement will expire in 2006, the Off-Project Agreement bears no expiration date. KOPWU strongly objects to efforts to place its members on standard irrigation tariffs in 2006. KWUA characterizes the differences in the two agreements as “historical,” but continued existence of the Off-Project Agreement is central to KOPWU’s interests and is relevant to this proceeding. KOPWU intends to raise the issue of PacifiCorp’s proposal to shift KOPWU members to standard tariffs in 2006—KWUA does not.

## **2. KOPWU Does Not Represent “General” Irrigation Interests.**

KWUA also claims that both it and KOPWU “represent ‘irrigation’ interests generally.” KWUA Response at 1. KOPWU represents the irrigation interests of a broad, but particular, group of irrigators—those who receive service under the Off-Project Agreement. While both the Off-Project and On-Project Users take service from PacifiCorp under PacifiCorp’s Schedule 33 (Special Contracts), the two groups take service under different tariffs and pay different rates.

**3. KWUA Is Neither Better Qualified Nor Better Situated to Represent PacifiCorp's Irrigation Customers**

KWUA claims that it is “better qualified and situated” to represent PacifiCorp’s irrigation customers, but it does not explain why it is better qualified than KOPWU or how it is better situated than KOPWU. KWUA Response at 3. KWUA implies that it is superior to KOPWU because “KOPWU was formed just within the last year by a select group of irrigators to deal with a single issue.” Id. at 4. First, while it is true that KOPWU was incorporated within the past year, it is also true that KOPWU was formed because of the potential conflict identified by KWUA. KOPWU’s members who were previously represented by KWUA therefore have the same experience “participating effectively in [a] broad range of administrative and legal proceedings” as KWUA members do. Id. Second, it is not true that KOPWU will focus on “a single issue.” Id. KOPWU’s focus encompasses all of the interests of the Off-Project Users.

Finally, KWUA states that its “use of intervenor funding in this proceeding will benefit the entire class of irrigation customers that purchase power from PacifiCorp.” Id. at 3. As described above, however, KWUA does not and cannot adequately represent KOPWU’s interests. It is difficult to understand, therefore, how its use of intervenor funding in this proceeding would benefit KOPWU’s members, especially when KWUA claims that the differences between the On-Project and Off-Project contracts “will have no bearing on this rate proceeding.” Id. at 4. KWUA’s statement is in itself against KOPWU’s interests in this proceeding.

#### **4. The Commission Should Not Adopt PacifiCorp's Interpretation of the IFA**

PacifiCorp argues that intervenor funding for KWUA or KOPWU would only be appropriate if “the organizations represent issues common to the entire class of irrigators.” Re PacifiCorp, OPUC Docket No. UE 170, PacifiCorp Response to Request for Additional Information at 5 (Jan. 18, 2005). PacifiCorp claims that “intervenor funding is not appropriate for promotion of interests related to the contracts or special discount rates specific to irrigators in the Klamath Basin.” Id. at 4. PacifiCorp's reasoning is that “[i]t would be unfair for irrigators currently on the standard tariff to fund their competitors' pursuit of discounted rates.” Id. at 5. PacifiCorp's argument appears to be based on the incorrect premise that KOPWU can only meet eligibility requirements for intervenor funding if it raises issues in this proceeding that are shared by all Oregon irrigators who receive electrical service from the Company. The Commission should not interpret the IFA in this overly restrictive manner. KOPWU is eligible for intervenor funding under the IFA even though it does not purport to represent the interests of every PacifiCorp customer on an irrigation schedule.

The IFA states that an organization may be case-certified if it “represents the interests of a *broad group or class of customers* and its participation in the proceeding will be primarily directed at *public utility rates and terms and conditions of service* affecting that broad group or class of customers, and not narrow interests or issues that are ancillary to the impact of the rates and terms and conditions of service to the customer group.” IFA § 5.3(a) (emphasis added). KOPWU meets the requirements of the IFA.

First, the Off-Project Users that make up KOPWU are a “broad group or class of customers.” The total number of electric meters for both the Off-Project and On-Project Users in the Klamath River Basin is estimated to be 2,100. OPUC Docket No. UE 170, KOPWU Response, Attachment A at 2. Although the specific breakdown of the two groups is unknown, KOPWU’s membership is substantial and spans a larger geographic area than KWUA’s. KOPWU is, at the very least, a “broad group” of customers.

Second, KOPWU’s participation in the proceeding will be directed entirely at the rates and terms and conditions of service to Off-Project Users. The issue of the Off-Project Agreement, far from being narrow or ancillary, is central to the impact of the rates, terms, and conditions of service to Off-Project Users—the Agreement is what currently sets those rates, terms, and conditions.

Finally, PacifiCorp states that it would be unfair for irrigators currently on the standard tariff to fund KOPWU’s participation in this proceeding because the IFA requires the cost of intervenor funding to be allocated to the represented class. PacifiCorp does not address, however, why it would be equitable for KOPWU’s members and all other irrigation customers to bear the cost of intervenor funding for KWUA, when KWUA admittedly will not represent KOPWU’s interests and has not demonstrated that it will be a better representative than KOPWU for the irrigation customer class as a whole.

## **CONCLUSION**

KOPWU and KWUA each represent a broad group of irrigation customers with unique interests in this proceeding, but neither will fully and adequately represent the interests of

the other. Under these circumstances, both groups are similarly situated in terms of meeting the requirements in the IFA, and the Commission should grant case-certification to both groups or neither of them.

Dated this 20th day of January, 2005.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

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