

# Davison Van Cleve PC

TEL (503) 241-7242 • FAX (503) 241-8160 • mail@dvclaw.com

Suite 400  
333 SW Taylor  
Portland, OR 97204

January 18, 2005

*Via Electronic and US Mail*

Ms. Carol Hulse  
Oregon Public Utility Commission  
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 Ms. Hulse:

Enclosed please find an original and one copy of the Answer to Petition to Intervene of WaterWatch of Oregon and Oregon Natural Resources Council on behalf of the Klamath Off-Project Water Users, Inc.

Please return one file-stamped copy of the document in the self-addressed, stamped envelope provided. Thank you for your assistance.

Sincerely,



Ally L. Smith

Enclosures

cc: Service List

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UE 170**

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

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Pursuant to OAR §§ 860-013-0025, 860-013-0050, and 860-011-0030, the Klamath Off-Project Water Users, Inc. (“KOPWU”) submits this Answer in Opposition to the Petitions to Intervene of WaterWatch of Oregon (“WaterWatch”) and Oregon Natural Resources Council (“ONRC”), filed on January 7, 2005, in Oregon Public Utility Commission (“OPUC” or the “Commission”) Docket No. UE 170. KOPWU urges the Commission to deny the Petitions to Intervene on the basis that neither party has demonstrated a “sufficient interest” in this proceeding. The general purpose of this proceeding is to determine whether the rates filed by PacifiCorp are just and reasonable. ORS § 757.210. WaterWatch’s and ONRC’s asserted interests fall outside the scope of this proceeding, and the Commission lacks jurisdiction to address the issues these parties intend to raise. As a result, the Commission should deny the Petitions to Intervene. In the alternative, if the Commission grants the Petitions, it should condition that approval on WaterWatch and ONRC raising only issues directly related to whether PacifiCorp’s rates are just and reasonable.

PAGE 1 – KOPWU’S ANSWER IN OPPOSITION TO PETITIONS TO INTERVENE OF WATERWATCH AND ONRC

## **DISCUSSION**

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. The Commission or ALJ may impose appropriate conditions upon any intervenor's participation in the proceeding.

KOPWU was unable to find that the published Commission orders interpreting the meaning of the phrase "sufficient interest;" however, the Oregon Supreme Court, in interpreting the Oregon Administrative Procedures Act, has stated that when an agency allows a person to intervene, it does so in recognition of the fact that the person "present[s] an interest that the legislature wished to have considered." Marbet v. Portland General Electric Co., 277 Or. 447, 457 (1977). Thus, the Commission should consider whether WaterWatch and ONRC meet the requirements of OAR § 860-013-0021(2). The Commission should also consider whether WaterWatch and ONRC will present an interest that the legislature wished for the OPUC to consider in a rate case proceeding.

According to ORS § 757.210, the purpose of a rate case is for the Commission to determine whether a utility's proposed rates are "just and reasonable." ORS § 757.210(1). The Commission has a general duty to protect customers and the general public "from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and

reasonable rates,” and its jurisdiction is expressly limited to supervision and regulation of public utilities and telecommunications utilities. ORS § 756.040.

Neither WaterWatch nor ONRC has demonstrated a sufficient interest related to PacifiCorp’s rates to justify intervention in this proceeding. WaterWatch describes itself as an organization that is “devoted *exclusively* to restoring and protecting flows in [Oregon’s] rivers and streams.” Re PacifiCorp, OPUC Docket No. UE 170, WaterWatch of Oregon Petition to Intervene at 2 (Jan. 7, 2005) (emphasis added). WaterWatch states that its interest in this rate case is “the highly subsidized power rates currently provided by PacifiCorp to select irrigators in the Klamath Basin.” Id. The crux of WaterWatch’s argument is that the “highly subsidized” rates it complains of encourage water use and management patterns that “significantly hinder Klamath Basin restoration efforts, including those pursued by WaterWatch.” Id. at 2. In short, WaterWatch’s interest in PacifiCorp’s rates is based on a speculative relationship between certain power rates and “water use, allocation and management,” an alleged relationship that is tenuous at best. Id. at 3. Its interests lie not with the electricity rates at issue in this proceeding, but with “water use, allocation and management” in the Klamath River Basin. Id.

WaterWatch states that the issues it intends to raise in this proceeding relate to “the benefits that eliminating the current power subsidy would have for water management and allocation, streamflows, and fish and wildlife in the Klamath Basin, and for WaterWatch members, board and staff.” Id. at 3. These issues are not related to the issue of whether the rates PacifiCorp has filed are just and reasonable. WaterWatch does allege that it has members and staff who are PacifiCorp ratepayers, but the interest it alleges on their behalf involves an alleged

subsidy of “inefficient water use in the Klamath Basin.” Id. Efficiency of water use in the Klamath Basin is, again, not related to the issue of whether the rates proposed by PacifiCorp are just and reasonable and falls outside of the scope of the Commission’s jurisdiction.

ONRC describes itself as “an active and consistent participant in environmental issues regarding the Klamath River Basin” and states that its “primary goals are to permanently protect federal forests and to protect and restore critical habitat for native fish and wildlife.” Re PacifiCorp, OPUC Docket No. UE 170, ONRC Petition to Intervene at 2 (Jan. 7, 2005)

According to ONRC, it “seeks to obtain Commission consideration of the economic interests of its members and the general public in this proceeding, as well as consideration of the non-irrigation values of the Klamath River Basin, including fish and wildlife, recreation, water quality, and other non-developmental values.” Id. at 3.

ONRC’s interests, like those of WaterWatch, are unrelated to the issues before the Commission in this proceeding. ONRC asserts that certain of its members are PacifiCorp customers, but it does not assert an interest on behalf of those members related to the rate increase proposed by PacifiCorp. The issues in this case involve a relatively narrow focus on PacifiCorp’s rates, and the Commission cannot expand that focus to include the unrelated issues raised by ONRC.

Under circumstances similar to those presented here, the Oregon Court of Appeals upheld the Water Resources Commission’s denial of party status to the Steamboaters, an Oregon nonprofit corporation, when the organization’s asserted interests went beyond the scope of the subject matter of the proceeding. The Steamboaters v. Water Resources Comm’n, 85 Or. App.

34 (1987). In that case, the proceeding at issue involved the safety measures to be taken as part of a dam project. The dam project had already been approved in a prior proceeding, in which Steamboaters had participated. Id. at 37. Steamboaters sought party status in the safety proceeding, but the interests it asserted were related to “the underlying nature and existence of the dam and the project, as distinct from the safety concerns which were the subject of the proceeding.” Id. For that reason, the court held that Steamboaters’ request for party status in the safety proceeding was properly denied, noting that “[a] hearing conducted pursuant to these provisions does not constitute an unlimited opportunity for any interested person to relitigate the appropriateness of approval of an already approved dam.” Id.

In this proceeding WaterWatch and ONRC assert interests that are related to such issues as “water management and allocation” and “instream flows, healthy river environments, ecological and hydrological processes, and recreation.” WaterWatch Petition to Intervene at 3; ONRC Petition to Intervene at 4. The Commission has no jurisdiction over these issues and, like the issues related to the existence of the dam and project in the Steamboaters case, they are distinct from the subject of the current proceeding. As such, granting WaterWatch and ONRC intervention is unwarranted because the Commission cannot address the issues that these parties raise.

WaterWatch and ONRC also do not meet the OPUC standard for intervention because the issues they intend to raise will broaden the issues in this proceeding. Indeed, the issues raised by WaterWatch and ONRC are admittedly outside the scope of PacifiCorp’s general rate case filing. Nowhere in its filed testimony does PacifiCorp address the nature of

water use or allocation or the consideration of issues in the Klamath River Basin that are unrelated to electric service. As a result, intervention by WaterWatch and ONRC will “unreasonably broaden the issues” to concerns that are not properly before the Commission and over which the Commission lacks jurisdiction. OAR § 860-013-0021(2). Under these circumstances, the Commission should deny the WaterWatch and ONRC Petitions to Intervene. In the alternative, if the Commission grants the Petitions to Intervene, it should condition that approval on WaterWatch and ONRC raising only issues directly related to whether PacifiCorp’s rates are just and reasonable. OAR § 860-013-0021(2). It is inappropriate for an entity to seek party status for the purpose of achieving higher electric rates for a class of customers in an attempt to achieve an environmental objective. As a matter of law and policy, the Commission should not allow its rate cases to be used in this manner.

### **CONCLUSION**

WaterWatch and ONRC have not demonstrated a sufficient interest in this proceeding to justify granting intervention. WaterWatch and ONRC identified interests in their Petitions that are not directly related to the rate filing made by PacifiCorp, and granting the Intervention of these parties will unreasonably broaden the issues in this proceeding to include topics over which the Commission does not have jurisdiction.

WHEREFORE, KOPWU requests that the Commission deny WaterWatch's and ONRC's Petitions to Intervene.

Dated this 18th day of January, 2005.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.



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Matthew W. Perkins  
Davison Van Cleve, P.C.  
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.



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Answer to  
Petition to Intervene of WaterWatch of Oregon and Oregon Natural Resources Council on behalf  
of the Klamath Off-Project Water Users, Inc. upon the parties on the service list, shown below,  
by causing the same to be mailed, postage-prepaid, through the U.S. Mail.

Dated at Portland, Oregon, this 18th day of January, 2005.

  
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
EDWARD BARTELL KLAMATH OFF-PROJECT WATER USERS, INC. 30474 SPRAGUE RIVER ROAD SPRAGUE RIVER OR 97639	KURT J BOEHM BOEHM KURTZ & LOWRY 36 E SEVENTH ST - STE 1510 CINCINNATI OH 45202 kboehm@bklawfirm.com
LOWREY R BROWN CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY, SUITE 308 PORTLAND OR 97205 lowrey@oregoncub.org	PHIL CARVER OREGON OFFICE OF ENERGY 625 MARION ST NE STE 1 SALEM OR 97301-3742 philip.h.carver@state.or.us
JOAN COTE OREGON ENERGY COORDINATORS ASSOCIATION 2585 STATE ST NE SALEM OR 97301 cotej@mwvcaa.org	MELINDA J DAVISON DAVISON VAN CLEVE PC 1000 SW BROADWAY STE 2460 PORTLAND OR 97205 mail@dvclaw.com
JOHN DEVOE WATERWATCH OF OREGON 213 SW ASH STREET, SUITE 208 PORTLAND OR 97204 john@waterwatch.org	JASON EISDORFER CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 jason@oregoncub.org
RANDALL J FALKENBERG RFI CONSULTING INC PMB 362 8351 ROSWELL RD ATLANTA GA 30350 consultrfi@aol.com	EDWARD A FINKLEA CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP 1001 SW 5TH, SUITE 2000 PORTLAND OR 97204 efinklea@chbh.com

<p>DAVID HATTON DEPARTMENT OF JUSTICE REGULATED UTILITY &amp; BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 david.hatton@state.or.us</p>	<p>DAN KEPPE KLAMATH WATER USERS ASSOCIATION 2455 PATTERSON STREET, SUITE 3 KLAMATH FALLS OR 97603</p>
<p>MICHAEL L KURTZ BOEHM, KURTZ &amp; LOWRY 36 E 7TH ST STE 1510 CINCINNATI OH 45202-4454 mkurtz@bklawfirm.com</p>	<p>JIM MCCARTHY OREGON NATURAL RESOURCES COUNCIL PO BOX 151 ASHLAND OR 97520 jm@onrc.org</p>
<p>KATHERINE A MCDOWELL STOEL RIVES LLP 900 SW FIFTH AVE STE 1600 PORTLAND OR 97204-1268 kamcdowell@stoel.com</p>	<p>PAUL M WRIGLEY PACIFIC POWER &amp; LIGHT 825 NE MULTNOMAH STE 800 PORTLAND OR 97232 paul.wrigley@pacificorp.com</p>
<p>JANET L PREWITT DEPARTMENT OF JUSTICE 1162 COURT ST NE SALEM OR 97301-4096 janet.prewitt@doj.state.or.us</p>	<p>DOUGLAS C TINGEY PORTLAND GENERAL ELECTRIC 121 SW SALMON 1WTC13 PORTLAND OR 97204 doug.tingey@pgn.com</p>