

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UE 170**

In the Matter of	)	
	)	
PACIFIC POWER & LIGHT	)	KLAMATH OFF-PROJECT WATER
(dba PACIFICORP)	)	USERS AND KLAMATH WATER
	)	USERS ASSOCIATION’S ANSWER IN
	)	OPPOSITION TO PETITION TO
Request for a General Rate Increase in the	)	INTERVENE OF PACIFIC COAST
Company's Oregon Annual Revenues.	)	FEDERATION OF FISHERMEN’S
	)	ASSOCIATIONS

---

Pursuant to OAR § 860-013-0025, the Klamath Off-Project Water Users, Inc. (“KOPWU”) and Klamath Water Users Association (“KWUA”) (collectively “Joint Respondents”) submits this Answer in Opposition to the Petition to Intervene of the Pacific Coast Federation of Fishermen’s Associations (“PCFFA”), filed on or about February 22, 2005, in Oregon Public Utility Commission (“OPUC” or the “Commission”) Docket No. UE 170. The Joint Respondents urge the Commission to deny the Petition to Intervene on the basis that PCFFA has not demonstrated a “sufficient interest” in this proceeding.<sup>1/</sup> The general purpose of this proceeding is to determine whether the rates filed by PacifiCorp are just and reasonable. ORS § 757.210. PCFFA’s asserted interests fall outside the scope of this proceeding, and the Commission lacks jurisdiction to address the issues this party intends to raise. As a result, the Commission should deny PCFFA’s Petition to Intervene. In the alternative, if the Commission

---

<sup>1/</sup> In addition, PCFFA’s Petition is untimely. The deadline for Petitions to Intervene in UE 170 was January 7, 2005.

grants the Petition, it should condition that approval on PCFFA raising only issues directly related to whether PacifiCorp's rates are just and reasonable.

## **DISCUSSION**

Intervention in OPUC proceedings is governed by OAR § 860-012-0001(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.

Joint Respondents were unable to find any 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 PCFFA meets the requirements of OAR § 860-012-0001(2). The Commission should also consider whether PCFFA 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.

PCFFA has not demonstrated a sufficient interest related to PacifiCorp’s rates to justify intervention in this proceeding. PCFFA describes itself as a “trade association representing the interests of commercial fishing families and small family commercial fishing business operators and owners[.]” PCFFA Petition to Intervene at 2 (Feb. 19, 2005). In this proceeding, PCFFA intends to “raise environmental and economic issues related to the current Klamath Basin irrigation tariff and its impacts on lower river, fishing-dependent communities.” Id. at 6. PCFFA’s primary interest is the issue of the “adverse impacts of ... subsidized power rates on lower Klamath River Basin water resources, salmon fisheries and the environment.” Id. at 3. PCFFA ties its interests to its members based on “adverse impacts on [the commercial fishing] industry from water-wasteful discriminatory irrigation subsidies are paid for by all other PacifiCorp ratepayers, including PCFFA members residing or doing business within the PacifiCorp service area.” Id. at 4. PCFFA ultimately claims that electric rates such as the Joint Respondents’ force commercial fishermen who are PacifiCorp customers to “subsidize the water depletion of the Klamath River and the destruction of their own livelihoods.” Id. Issues regarding the efficiency of water use in the Klamath Basin, recovery efforts for salmon, and the impacts of PacifiCorp’s electric rates on commercial fishing are unrelated to whether the rates proposed by PacifiCorp are just and reasonable. Thus, these issues fall outside of the scope of the Commission’s jurisdiction.

PCFFA also does not meet the OPUC standard for intervention because the issues it intends to raise will broaden the issues in this proceeding. Indeed, the issues raised by PCFFA are 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 PCFFA will "unreasonably broaden the issues" to concerns that are not properly before the Commission and over which the Commission lacks jurisdiction. OAR § 860-012-0001(2). Under these circumstances, the Commission should deny PCFFA's Petition to Intervene. In the alternative, if the Commission grants the Petition to Intervene, it should condition that approval on PCFFA raising only issues directly related to whether PacifiCorp's rates are just and reasonable. OAR § 860-012-0001(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**

PCFFA has not demonstrated a sufficient interest in this proceeding to justify granting intervention. PCFFA identified interests in its Petition that are not directly related to the rate filing made by PacifiCorp, and granting the Intervention of this party will unreasonably broaden the issues in this proceeding to include topics over which the Commission does not have jurisdiction.

WHEREFORE, KOPWU and KWUA request that the Commission deny

PCFFA's Petition to Intervene in UE 170.

Dated this 3rd day of March, 2005.

Respectfully submitted,

/s/ Matthew W. Perkins

Matthew W. Perkins  
Davison Van Cleve, P.C.  
333 S.W. Taylor, Suite 400  
Portland, OR 97204  
(503) 241-7242 phone  
(503) 241-8160 facsimile  
mail@dvclaw.com  
Of Attorneys for Klamath  
Off-Project Water Users, Inc.

/s/ Edward A. Finklea

Edward A. Finklea  
Cable Huston Benedict Haagensen & Lloyd LLP  
1001 S.W. 5<sup>th</sup> Avenue, Suite 2000  
Portland, OR 97204  
(503) 224-3092 phone  
(503) 224-3176 facsimile  
efinklea@chbh.com  
Of Attorneys for Klamath  
Water Users Association

March 3, 2005

***Via Electronic and US Mail***

Oregon Public Utility Commission  
Attn: Filing Center  
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 Filing Center:

Enclosed please find an original and two copies of the Answer to Petition to Intervene of the Pacific Coast Federation of Fishermen's Associations on behalf of the Klamath Off-Project Water Users, Inc., and the Klamath Water Users Association.

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

Sincerely,

/s/ Christian Griffen  
Christian W. Griffen

Enclosures  
cc: Service List

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Answer to Petition to Intervene of Pacific Coast Federation of Fishermen's Associations on behalf of the Klamath Off-Project Water Users, Inc., and the Klamath Water Users Association 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 3rd day of March, 2005.

/s/ Christian Griffen  
Christian W. Griffen

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
LOWREY R BROWN CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY, SUITE 308 PORTLAND OR 97205 lowrey@oregoncub.org	KURT J BOEHM BOEHM KURTZ & LOWRY 36 E SEVENTH ST - STE 1510 CINCINNATI OH 45202 kboehm@bkllawfirm.com
JOAN COTE OREGON ENERGY COORDINATORS ASSOCIATION 2585 STATE ST NE SALEM OR 97301 cotej@mwvcaa.org	PHIL CARVER OREGON DEPARTMENT OF ENERGY 625 MARION ST NE STE 1 SALEM OR 97301-3742 philip.h.carver@state.or.us
JASON EISDORFER CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 jason@oregoncub.org	MELINDA J DAVISON DAVISON VAN CLEVE PC 333 SW TAYLOR, STE. 400 PORTLAND OR 97204 mail@dvclaw.com
RANDALL J FALKENBERG RFI CONSULTING INC PMB 362 8351 ROSWELL RD ATLANTA GA 30350 consultrfi@aol.com	DAVID HATTON DEPARTMENT OF JUSTICE REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 david.hatton@state.or.us

KATHERINE A MCDOWELL STOEL RIVES LLP 900 SW FIFTH AVE STE 1600 PORTLAND OR 97204-1268 kamcdowell@stoel.com	MICHAEL L KURTZ BOEHM, KURTZ & LOWRY 36 E 7TH ST STE 1510 CINCINNATI OH 45202-4454 mkurtz@bklawfirm.com
JANET L PREWITT DEPARTMENT OF JUSTICE 1162 COURT ST NE SALEM OR 97301-4096 janet.prewitt@doj.state.or.us	DOUGLAS C TINGEY PORTLAND GENERAL ELECTRIC 121 SW SALMON 1WTC13 PORTLAND OR 97204 doug.tingey@pgn.com
ROBERT VALDEZ PO BOX 2148 SALEM OR 97308-2148 bob.valdez@state.or.us	PAUL M WRIGLEY PACIFIC POWER & LIGHT 825 NE MULTNOMAH STE 800 PORTLAND OR 97232 paul.wrigley@pacificcorp.com