

CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP

ATTORNEYS AT LAW

SUITE 2000

1001 SW FIFTH AVENUE

PORTLAND, OREGON 97204-1136

TELEPHONE (503) 224-3092

FACSIMILE (503) 224-3176

EDWARD A. FINKLEA

efinklea@chbh.com
www.cablehuston.com

February 22, 2006

**VIA ELECTRONIC FILING
& FIRST CLASS MAIL**

Oregon Public Utility Commission
550 Capitol St. NE, #215
PO Box 2148
Salem, OR 97308-2148
Attn: Filing Center

Re: UE 170 – Pacific Power & Light (dba PacifiCorp) Request for a General Rate
Increase in the Company's Oregon Annual Revenues

Dear Filing Center:

Please find enclosed for filing in the above-referenced docket the original and one copy
of the KLAMATH WATER USERS ASSOCIATION'S MOTION TO COMPEL.

Thank you for your assistance. Should you have any questions regarding this matter,
please feel free to contact me.

Very truly yours,


Edward A. Finklea

cc: UE-170 Service List

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

In the Matter of the Request of)	
)	
PACIFIC POWER & LIGHT)	Docket No. UE 170
(dba PacifiCorp))	
)	
Request for a General Rate Increase in the)	
Company's Oregon Annual Revenues)	

KLAMATH WATER USERS ASSOCIATION MOTION TO COMPEL

Pursuant to OAR 860-013-0031 and 860-014-0070(3), the Klamath Water Users Association ("KWUA") moves to compel PacifiCorp to respond to KWUA's Fifth Set of Data Requests, or, in the alternative, moves to strike the testimony of witness R. Steven Richardson from the record of this proceeding.

REQUEST FOR EXPEDITED CONSIDERATION

The Commission has established a briefing schedule for this proceeding under which simultaneous opening briefs are due on March 3, 2006. The information sought is directly relevant to KWUA briefing, as described in further detail below. KWUA has no interest in altering this briefing schedule or delaying the Commission's resolution of the questions before it. Therefore, KWUA respectfully requests expedited consideration of this Motion, and specifically requests that the deadline for PacifiCorp's response be set as Monday, February 27, 2006, with KWUA's reply due the following day.

CERTIFICATION

Pursuant to OAR 860-014-0070(3), KWUA certifies that February 22, 2006, it conferred with counsel for PacifiCorp concerning the production of the information requested in KWUA's Fifth Set of Data Requests. The parties have been unable to resolve the dispute.

BACKGROUND

KWUA submitted its Fifth Set of Data Requests to PacifiCorp on February 14, 2006.¹ These requests pertain directly and exclusively to the testimony filed by R. Steven Richardson on behalf of PacifiCorp. KWUA's Data Requests are attached as Exhibit A to this Motion. On February 22, 2006, PacifiCorp responded with certain, hand-picked documents that do not fully satisfy KWUA's Fifth Set of Data Requests. PacifiCorp's response is attached hereto as Exhibit B to this Motion.

APPLICABLE LEGAL STANDARD

The Commission has stated that the Oregon Rules of Civil Procedure ("ORCP") govern in all Commission cases except as modified by the Commission. *See generally* OAR 860-011-0000(3). Pursuant to ORCP 36B, any party may seek discovery about any matter that is relevant to its position or a defense. The Oregon Rules of Evidence define "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probably than it would be without the evidence." OEC 401. The information sought need not be admissible evidence so long as the request is reasonably calculated to lead to the discovery of admissible evidence. *See, e.g., Baker v. English*, 324 Or. 585, 588 n.3 (1997); *In re Portland Extended Area Service Region*, OPUC Docket No. UM 261, Order No. 91-958 at 5 (July 31, 1991). In addition, even where the courts do limit the scope of discovery allowed under ORCP 36B, such restrictions typically apply to the use of information and not its *acquisition*. *See generally Vaughan v. Taylor*, 79 Or. App. 359, 365 (1986).

¹ Although KWUA originally, incorrectly stated that PacifiCorp would have 10 days in which to respond, KWUA subsequently corrected this error by notifying PacifiCorp's data center and legal counsel that the time limit applicable to the request, as established by the Commission's scheduling order in this proceeding, would be only five days.

KWUA'S DATA REQUEST WAS RELEVANT AND TIMELY

In its response, PacifiCorp objects to KWUA's Fifth Set of Data Requests on the grounds that the requests were untimely and irrelevant. Contrary to PacifiCorp's objection, KWUA's Fifth Set of Data Requests is reasonably calculated to lead to the discovery of admissible evidence that is directly relevant to KWUA's position in this proceeding. As the Commission is well-aware, KWUA has taken the position in this phase of the proceeding that it would be lawful and appropriate for the Commission to require PacifiCorp to provide rate credits to the Klamath Irrigators based, in part, on the physical, historical and legal inter-relationship between the Klamath Irrigation Project and PacifiCorp's Klamath Hydroelectric Project.

KWUA has submitted testimony in support of its position, including testimony from Steven R. Kandra regarding the historical origins of the Irrigation and Hydroelectric Projects. PacifiCorp submitted numerous data requests relevant to the Kandra Testimony, to which KWUA timely responded. PacifiCorp has not raised any objections to the responses provided by KWUA.² Rather than cross-examining Mr. Kandra, however, PacifiCorp attempted to discredit his testimony by filing a "rebuttal" from its legal counsel, R. Steven Richardson. Mr. Richardson's rebuttal purports to offer a contrasting interpretation of many of the historical and legal documents attached as exhibits to the Kandra Testimony.

KWUA's Fifth Set of Data Requests seek to explore the factual and analytical bases of Mr. Richardson's testimony. This information is highly relevant, for example, to his claims that the Bureau of Reclamation was never authorized to develop hydroelectric power at the Klamath Irrigation Project, as well as his legal interpretation of the relevance of the 1917 and 1956

² PacifiCorp also objects on the grounds that "KWUA waived cross examination of Mr. Richardson." KWUA is aware of no rule that requires one to cross-examine a witness in order to submit data requests relevant to that witness' testimony. In this very case, in fact, PacifiCorp submitted numerous data requests concerning Mr. Kandra's testimony despite the fact that it did not cross-examine him. Apparently PacifiCorp does not feel the need to play by its own made-up rules.

contracts between the United States Department of the Interior (“Interior”) and Copco. The Fifth Set of Data Requests also is directly relevant to Mr. Richardson’s testimony concerning the legal effect of the Klamath Basin Interstate Compact, as well as his opinion that PacifiCorp’s only obligation to compensate Interior is satisfied through Section 10(e) of the Federal Power Act. As the Commission will see, KWUA made every reasonable attempt to limit the scope of its data requests to documents and information directly related to Mr. Richardson’s testimony.

KWUA’s Fifth Set of Data Requests is timely. First, KWUA does not agree with PacifiCorp’s assumption that the evidentiary hearing on February 16 marked the close of the evidentiary record. Second, even if it did, KWUA issued its Fifth Set of Data Requests on February 14, two days prior to the hearing. Finally, PacifiCorp has not identified any brightline legal rule providing that data responses must be due prior to a hearing in order to be timely.

KWUA seeks the requested information in order to help it prepare its opening and responsive briefs. The information also could be helpful as KWUA prepares for the upcoming oral argument. If PacifiCorp had responded fully and completely to KWUA’s request by the appropriate January 21, 2006 deadline, KWUA would have had ample time to review the responsive documents and ascertain whether or not any of them are germane to the upcoming briefing and argument. Rather than fully respond to the requests, however, PacifiCorp is attempting to implement its own version of a “pocket veto.” That is to say, PacifiCorp intends to wait as long as possible, provide an insufficient response, and then argue that it is too late for KWUA to do anything about it. PacifiCorp should not be permitted to manipulate the Commission’s discovery rules in this manner. PacifiCorp should be ordered to make as full and complete of a response as time allows—and if the Commission finds that such response is not legally sufficient then it should strike the underlying testimony.

PACIFICORP'S RESPONSE WAS INCOMPLETE

PacifiCorp's response to KWUA's Fifth Set of Data Requests was incomplete and unsatisfactory. As a general summary, PacifiCorp's response included only those documents that are available to the public. PacifiCorp's response conveniently omits any of the following types of documents and information:

- Correspondence between the witness and PacifiCorp or its representatives, whether in hard copy or electronic format, concerning the testimony.
- Written memoranda or reports prepared by or on behalf of the witness in support of, or relating to, his testimony.
- Drafts of the filed testimony prepared or edited by the witness.
- Analysis undertaken by the witness in support of his conclusions concerning the Compact, the 1956 Contract or any of the referenced Commission and FERC decisions.
- Data or studies undertaken by the witness in connection with his testimony.
- Analysis or correspondence concerning the Kandra Testimony or any position asserted by KWUA in this proceeding.

The forgoing list is merely illustrative, and is not intended to be comprehensive, of the types of responsive documents that are likely to be the possession of either Mr. Richardson or PacifiCorp, or both, but were not provided. KWUA submits that it is reasonable to believe that Mr. Richardson has such documents and information in his possession because, as legal counsel for PacifiCorp, it would be both customary and prudent for Mr. Richardson to retain such information in his files. In other words, as an attorney, Mr. Richardson is in the business of creating and retaining this type of information.

PACIFICORP HAS WAIVED THE ATTORNEY/CLIENT AND WORK PRODUCT PRIVILEGES

PacifiCorp's response also purports to object to KWUA's Fifth Set of Data Requests "on the grounds that * * * it calls for material or communications protected by the attorney client or work product privilege." PacifiCorp's objection on this ground is contrary to law. PacifiCorp has waived its right to assert the attorney-client privilege with respect to any matter testified to by Mr. Richardson. In *Central Lincoln People's Utility District v. Verizon Northwest Inc.*, Docket No. UM 1087, Order No. 04-379, the Commission concluded over strenuous objection that an attorney that submits testimony on behalf of his or her client is subject to full and complete discovery and cross-examination on the same basis as any other witness, notwithstanding the lawyer's professional obligation not to disclose client confidences. Order no. 04-379 at p.5-6 (*citing Schacher v. Dunne*, 109 Or App 607, 611 (1991)). To hold otherwise would give parties the ability immunize their testimony from cross-examination and discovery simply by choosing legal counsel as witnesses. Furthermore, depriving the parties and the Commission access to the documents and information underlying any witness' testimony would be both unfair and counterproductive.

The analysis is the same in this proceeding. The information requested by KWUA is not protected by the attorney-client privilege and PacifiCorp has no reason to contest its disclosure. In order for Mr. Richardson's testimony to be of any value to the Commission, it is vital that KWUA be given the opportunity to conduct meaningful discovery. The Commission will also note that KWUA gave PacifiCorp every opportunity to withdraw the Richardson Testimony in light of this Commission's ruling in *Central Lincoln People's Utility District v. Verizon Northwest Inc.* See Exhibit C. PacifiCorp rejected KWUA's invitation to withdraw the

testimony and thus deliberately and knowingly exposed its legal counsel to discovery in the context of this proceeding.

MOTION TO STRIKE

If PacifiCorp is unwilling or unable to respond fully and completely to KWUA's Fifth Set of Data Requests in a timely manner, KWUA moves in the alternative that the Commission strike Mr. Richardson's testimony from the record in this proceeding. To the extent that Mr. Richardson's testimony cannot be tested, probed or verified through meaningful discovery, it has no business remaining in the record.

CONCLUSION

KWUA respectfully requests that the Commission issue an order compelling PacifiCorp to immediately respond fully and completely to KWUA's Fifth Set of Data Requests. In the alternative, in the event that PacifiCorp is unable to fully respond to KWUA's Fifth Set of Data Requests in a timely, KWUA respectfully requests that the Commission enter an order striking Mr. Richardson's testimony from the record.

DATED this 22nd day of February, 2006.

Respectfully submitted,

A handwritten signature in cursive script that reads "Edward A. Finklea".

By: Edward Finklea, OSB No. 84216
Attorneys for
Klamath Water Users Association

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 170

In the Matter of the Request of)	
)	
PACIFIC POWER & LIGHT)	KLAMATH WATER USERS
(dba PacifiCorp))	ASSOCIATION'S FIFTH SET OF
)	DATA REQUESTS TO PACIFICORP
Request for a General Rate Increase in the)	
Company's Oregon Annual Revenues)	

DATED: February 14, 2006

Please provide responses to these Data Requests by Friday, February 24, 2006 to:

Klamath Water Users Association
c/o **Edward A. Finklea**
Cable Huston et al.
1001 SW 5th Avenue, Suite 2000
Portland, OR 97204

DATA REQUESTS

43. Please provide a copy of all workpapers, electronic files, spreadsheets, technical data, or other documents in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that support the Simultaneous Rebuttal Testimony of R. Steven Richardson.

RESPONSE:

44. Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony that PacifiCorp is not legally obligated to continue providing discounted irrigation power rates for Klamath River Basin Irrigators.

RESPONSE:

Exhibit A Page 1 of 9

45. Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony that Interior planned to develop the hydroelectric potential of the Klamath River Basin.

RESPONSE:

46. Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony concerning the 1917 contract between Copco and Interior.

RESPONSE:

47. Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony concerning the 1956 contract between Copco and Interior.

RESPONSE:

48. Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony that the Federal Power Commission staff offered a compromise under which Copco's acceptance of the license would be made subject to renegotiation of the 1917 Contract.

RESPONSE:

49. Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr.

Richardson's testimony that the 1956 Contract did not create a perpetual obligation to provide low-cost power to KWUA.

RESPONSE:

50. Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony concerning the Federal Energy Regulatory Commission's order of January 20, 2006.

RESPONSE:

51. Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony concerning the primary benefits to Copco, and later to PacifiCorp, of the 1956 Contract.

RESPONSE:

52. Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony concerning the Klamath Basin Compact.

RESPONSE:

53. Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony concerning OPUC Order No. 05-1202.

RESPONSE:

Exhibit A Page 3 of 9

54. Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony concerning Section 10(f) of the Federal Power Act.

RESPONSE:

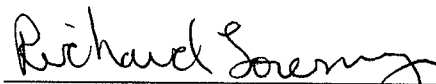
55. Please provide a copy of, or adequate access to, any and all files maintained by or at the direction of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that contain any documents or information reflecting, memorializing or concerning the facts and legal conclusions asserted by Mr. Richardson in his testimony.

RESPONSE:

56. Please provide a copy of, or adequate access to, any other files maintained by or at the direction of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that contain documents or information reflecting, memorializing or concerning Mr. Richardson's representation of PacifiCorp on issues related to the Klamath Hydroelectric Project since 2002, as referenced in his testimony.

RESPONSE:

DATED: February 14, 2006.



EDWARD A. FINKLEA, OSB No. 84216
RICHARD G. LORENZ, OSB No. 00308
CABLE HUSTON BENEDICT
HAAGENSEN & LLOYD LLP
Of Attorneys for
Klamath Water Users Association

efinklea@chbh.com
rlorenz@chbh.com

Exhibit A Page 4 of 9


CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **KLAMATH WATER USERS ASSOCIATION'S FIFTH SET OF DATA REQUESTS TO PACIFICORP** on the attached Service List obtained on February 14, 2006 from the Oregon Public Utility Commission's Website:

[XX] by **MAILING** a full, true and correct copy thereof in a sealed, postage-paid envelope, addressed as shown on the attached Service List, and deposited with the U.S. Postal Service at Portland, Oregon, on the date set forth below;

[XX] **and** by **electronic mail** ("e-mail") to those parties on the Oregon Public Utility Commission's Website Service List who listed an e-mail address.

DATED: February 14, 2006.


EDWARD A. FINKLEA, OSB No. 84216
RICHARD G. LORENZ, OSB No. 00308
CABLE HUSTON BENEDICT
HAAGENSEN & LLOYD LLP
Of Attorneys for
Klamath Water Users Association

efinklea@chbh.com
rlorenz@chbh.com

SERVICE LIST (Parties)

W=Waive Paper service Q=Confidential

NANCY NEWELL

3917 NE SKIDMORE ST
PORTLAND OR 97211
ogec2@hotmail.com

BOEHM KURTZ & LOWRY

KURT J BOEHM (Q)
ATTORNEY

36 E SEVENTH ST - STE 1510
CINCINNATI OH 45202
kboehm@bkllawfirm.com

BOEHM, KURTZ & LOWRY

MICHAEL L KURTZ (Q)

36 E 7TH ST STE 1510
CINCINNATI OH 45202-4454
mkurtz@bkllawfirm.com

**CABLE HUSTON BENEDICT
HAAGENSEN & LLOYD LLP**

EDWARD A FINKLEA (Q)

1001 SW 5TH - STE 2000
PORTLAND OR 97204
efinklea@chbh.com

**CITIZENS' UTILITY BOARD OF
OREGON**

LOWREY R BROWN (Q)

610 SW BROADWAY - STE 308
PORTLAND OR 97205
lowrey@oregoncub.org

JASON EISDORFER (Q)

610 SW BROADWAY STE 308
PORTLAND OR 97205
jason@oregoncub.org

**COMMUNITY ACTION
DIRECTORS OF OREGON**

JIM ABRAHAMSON (Q)
COORDINATOR

PO BOX 7964
SALEM OR 97303-0208
jim@cado-oregon.org

**DANIEL W MEEK ATTORNEY
AT LAW**

DANIEL W MEEK (Q)
ATTORNEY AT LAW

10949 SW 4TH AVE
PORTLAND OR 97219
dan@meek.net

DAVISON VAN CLEVE PC

MELINDA J DAVISON (Q)

333 SW TAYLOR - STE 400
PORTLAND OR 97204
mail@dvclaw.com

MATTHEW W PERKINS (Q)

333 SW TAYLOR - STE 400
PORTLAND OR 97204
mwp@dvclaw.com

DEPARTMENT OF JUSTICE

DAVID HATTON (Q)
ASSISTANT ATTORNEY
GENERAL

REGULATED UTILITY & BUSINESS SECTION
1162 COURT ST NE
SALEM OR 97301-4096
david.hatton@state.or.us

JASON W JONES (Q)
ASSISTANT ATTORNEY
GENERAL

REGULATED UTILITY & BUSINESS SECTION
1162 COURT ST NE
SALEM OR 97301-4096
jason.w.jones@state.or.us

JANET L PREWITT (Q)
ASST AG

1162 COURT ST NE
SALEM OR 97301-4096
janet.prewitt@doj.state.or.us

**HOOPA VALLEY TRIBE
FISHERIES DEPT**

MICHAEL W ORCUTT

PO BOX 417
HOOPA CA 95546
director@pcweb.net

**KLAMATH OFF-PROJECT
WATER USERS INC**

EDWARD BARTELL

30474 SPRAGUE RIVER ROAD
SPRAGUE RIVER OR 97639

**KLAMATH WATER USERS
ASSOCIATION**

GREG ADDINGTON
EXECUTIVE DIRECTOR

2455 PATTERSON ST - STE 3
KLAMATH FALLS OR 97603
greg@cvcwireless.net

**MORISSET, SCHLOSSER,
JOZWIAK & MCGAW**

THOMAS P SCHLOSSER

801 SECOND AVE - STE 1115
SEATTLE WA 98104-1509
t.schlosser@msaj.com

**OFFICE OF THE REGIONAL
SOLICITOR**

STEPHEN R PALMER

2800 COTTAGE WAY - RM E-1712
SACRAMENTO CA 95825

**OREGON DEPARTMENT OF
ENERGY**

PHIL CARVER

625 MARION ST NE STE 1
SALEM OR 97301-3742
philip.h.carver@state.or.us

**OREGON ENERGY
COORDINATORS
ASSOCIATION**

JOAN COTE (Q)
PRESIDENT

2585 STATE ST NE
SALEM OR 97301
cotej@mwvcaa.org

**OREGON NATURAL
RESOURCES COUNCIL**

JIM MCCARTHY
POLICY ANALYST

PO BOX 151
ASHLAND OR 97520
jm@onrc.org

STEVE PEDERY

5825 NORTH GREELEY AVENUE
PORTLAND OR 97214
sp@onrc.org

**PACIFIC COAST FEDERATION
OF FISHERMEN'S ASSOC**

GLEN H SPAIN
NW REGIONAL DIRECTOR

PO BOX 11170
EUGENE OR 97440-3370
fish1ifr@aol.com

PACIFIC POWER & LIGHT

PAUL M WRIGLEY
MANAGER - REGULATION

825 NE MULTNOMAH STE 800
PORTLAND OR 97232
paul.wrigley@pacificorp.com

**PORTLAND GENERAL
ELECTRIC**

RATES & REGULATORY
AFFAIRS

RATES & REGULATORY AFFAIRS
121 SW SALMON ST 1WTC0702
PORTLAND OR 97204
pge.opuc.filings@pgn.com

DOUGLAS C TINGEY

121 SW SALMON 1WTC13
PORTLAND OR 97204
doug.tingey@pgn.com

**PUBLIC UTILITY
COMMISSION**

JUDY JOHNSON (Q)

PO BOX 2148
SALEM OR 97308-2148
judy.johnson@state.or.us

BILL MCNAMEE

PO BOX 2148
SALEM OR 97308-2148
bill.mcnamee@state.or.us

RFI CONSULTING INC

RANDALL J
FALKENBERG (Q)

PMB 362
8351 ROSWELL RD
ATLANTA GA 30350
consultrfi@aol.com

STOEL RIVES LLP

KATHERINE A
MCDOWELL (Q)

900 SW FIFTH AVE STE 1600
PORTLAND OR 97204-1268
kamcdowell@stoel.com

WATERWATCH OF OREGON

LISA BROWN (Q)

213 SW ASH ST - STE 208
PORTLAND OR 97204
lisa@waterwatch.org

JOHN DEVOE (Q)

213 SW ASH ST - STE 208
PORTLAND OR 97204
john@waterwatch.org

YUROK TRIBE

JOHN CORBETT

PO BOX 1027
KLAMATH CA 95548
jcorbett@yuroktribe.nsn.us

KWUA Data Request 43

Please provide a copy of all workpapers, electronic files, spreadsheets, technical data, or other documents in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that support the Simultaneous Rebuttal Testimony of R. Steven Richardson.

Response to KWUA Data Request 43

The evidentiary record in this case has closed, and, in any event, KWUA waived cross-examination of Mr. Richardson. Accordingly, PacifiCorp objects to this untimely request on the grounds that it seeks information that is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence. PacifiCorp also objects to this request on the grounds that it is overly broad and unduly burdensome and to the extent that it calls for material or communications protected by the attorney client or work product privilege. Without waiving these objections, PacifiCorp responds as follows. Mr. Richardson's resume is attached as Attachment KWUA 43-1. Mr. Richardson's testimony [PPL/1900/Richardson/1-25] contains citations to publicly available information that can be readily obtained from the cited sources. Mr. Richardson also relied on the following additional documents, which are provided or cited in the record in this case:

- (a) November 2, 1903 Report to the Chief Engineer of U.S. Geological Survey from John T. Whistler, Engineer. [Reclamation/Service/3; Lesley/1-]
- (b) Letter from Supervising Engineer, Klamath Project, to Director of the U.S. Reclamation Service of June 9, 1911. [KWUA/207; Kandra/1-]
- (c) Memorandum of Conference with Directors of the Klamath Water Users' Association Regarding the DIS Position of the McCormick Tract Near Keno (conference date June 9, 1911) [KWUA/208; Kandra/1-]
- (d) February 24, 1917 Contract between the California Oregon Power Co. and the United States [Reclamation/Service/6; Lesley/1-]
- (e) Letter from Oregon State Engineer Percy A. Capper to H.D. Newell, Project Manager Klamath Irrigation Project, of November 16, 1920 [KWUA/206; Kandra/1-]
- (f) Letter from H.D. Newell, Klamath Irrigation Project Manager, to Klamath Falls Chamber of Commerce of November 16, 1920 [Reclamation/Service/8; Lesley/1]
- (g) 1932 Department of the Interior Solicitor's Opinion, 53 I.D. 693, 1932 I.D. LEXIS 69 (June 9, 1932).

- (h) 1939 Amendments to the Reclamation Act, 53 Stat. 1193, 43 U.S.C. § 485h(c).
- (i) Protest of the United States to the Application for License of the California Oregon-Power Company Project No. 180, before the Hydroelectric Commission of the State of Oregon of June 11, 1951 [KWUA/213; Kandra/1-]
- (j) Letter from Oscar L. Chapman, Secretary of the Interior, to Hon. Thomas C. Buchanan, Acting Chairman, Federal Power Commission of October 10, 1951 [Reclamation/Service/11;Lesley/1]
- (k) U.S. Department of Interior Contract with the California Oregon Power Co., January 31, 1956, Contract No. 14-06-200-5075. [KWUA/215; Kandra/1-]
- (l) In re California Oregon Power Co., Opinion No. 266, 13 F.P.C. 1 at 3-5 (1954); Opinion No. 266-A, 15 F.P.C. 14 (1956).
- (m) California Oregon Power Co. v. FPC, 239 F.2d 426 (D.C. Cir 1956).
- (n) Minutes of the Executive Committee of the Klamath Basin Water Users Protective Association, Held in the California Oregon Power Building, Medford, Oregon, August 11, 1955. [KWUA/217; Kandra/1-]
- (o) Memorandum of John C. Boyle, re Negotiations Leading Up to Contract Between the Bureau of Reclamation and Copco dated October 10, 1955, With Particular Reference to the Matter of Power Rates. [KWUA/218; Kandra/1-]
- (p) FERC, Headwater Benefits Basin Screening Report, Klamath River Basin at 7, available at <http://www.ferc.gov/docs-filing/elibrary.asp> under Docket No. HB32-96-11 (filed Sept. 2, 1998).
- (q) USBR, Histories of Klamath and Uncompahgre Projects available at <http://www.usbr.gov/dataweb/html/klamathh.html> and <http://www.usbr.gov/dataweb/html/uncomph.html>.
- (r) "Klamath Hydroelectric Project" by George Kramer (CH2M-Hill) at 24-27 available at <http://www.pacificorp.com/File/File35389.pdf>.
- (s) USBR, Report to Congress Implementing Provisions of Section 1840 of the Energy Policy Act of 2005 available at <http://www.usbr.gov/power/data/sec1840.pdf>.
- (t) USBR, "Hydroelectric Power" (July 2005) available at <http://www.usbr.gov/power/edu/pamphlet.pdf>.
- (u) USBR, "Hydroelectric Powerplants Operated by Others" available at <http://www.usbr.gov/power/data/faclothr.html>.

UE 170/PacifiCorp
February 22, 2006
KWUA Data Request 43

In addition to these publicly available materials and the materials attached to Mr. Richardson's testimony (PPL/1901-1908), Mr. Richardson also relied on the following:

Attachment KWUA 43-2 – John C. Boyle, "50 years on the Klamath" at 6, 49 (Klocker Printery, Medford Or., 1976).

Attachment KWUA 43-3 – Letter from Roger K. Patterson, USBR, to Randy Landolt, PacifiCorp, Re Temporary Modification of Contract No. 14-06-200-5075 (received June 3, 1997; signed June 5, 1997) and annual communications continuing the modification.

UE 170/PacifiCorp
February 22, 2006
KWUA Data Request 44

KWUA Data Request 44

Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony that PacifiCorp is not legally obligated to continue providing discounted irrigation power rates for Klamath River Basin Irrigators.

Response to KWUA Data Request 44

Please see Response to KWUA Data Request 43.

UE 170/PacifiCorp
February 22, 2006
KWUA Data Request 45

KWUA Data Request 45

Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony Interior planned to develop the hydroelectric potential of the Klamath River Basin.

Response to KWUA Data Request 45

Please see Response to KWUA Data Request 43.

UE 170/PacifiCorp
February 22, 2006
KWUA Data Request 46

KWUA Data Request 46

Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony concerning the 1917 contract between Copco and Interior.

Response to KWUA Data Request 46

Please see Response to KWUA Data Request 43.

UE 170/PacifiCorp
February 22, 2006
KWUA Data Request 47

KWUA Data Request 47

Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony concerning the 1956 contract between Copco and Interior.

Response to KWUA Data Request 47

Please see Response to KWUA Data Request 43.

UE 170/PacifiCorp
February 22, 2006
KWUA Data Request 48

KWUA Data Request 48

Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony that the Federal Power Commission staff ordered a compromise under which Copco's acceptance of the license would be made subject to renegotiation of the 1917 Contract.

Response to KWUA Data Request 48

Please see Response to KWUA Data Request 43.

UE 170/PacifiCorp
February 22, 2006
KWUA Data Request 49

KWUA Data Request 49

Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony that the 1956 Contract did not create a perpetual obligation to provide low-cost power to KWUA.

Response to KWUA Data Request 49

Please see Response to KWUA Data Request 43.

UE 170/PacifiCorp
February 22, 2006
KWUA Data Request 50

KWUA Data Request 50

Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony concerning the Federal Energy Regulatory Commission's order of January 20, 2006.

Response to KWUA Data Request 50

Please see Response to KWUA Data Request 43.

UE 170/PacifiCorp
February 22, 2006
KWUA Data Request 51

KWUA Data Request 51

Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony concerning the primary benefits to Copco, and later to PacifiCorp, of the 1956 Contract.

Response to KWUA Data Request 51

Please see Response to KWUA Data Request 43.

UE 170/PacifiCorp
February 22, 2006
KWUA Data Request 52

KWUA Data Request 52

Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony concerning the Klamath Basin Compact.

Response to KWUA Data Request 52

Please see Response to KWUA Data Request 43.

UE 170/PacifiCorp
February 22, 2006
KWUA Data Request 53

KWUA Data Request 53

Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony concerning OPUC Order No. 05-1202.

Response to KWUA Data Request 53

Please see Response to KWUA Data Request 43.

UE 170/PacifiCorp
February 22, 2006
KWUA Data Request 54

KWUA Data Request 54

Please provide a copy of all documents and information in the possession of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that relate to or concern Mr. Richardson's testimony concerning Section 10(f) of the Federal Power Act.

Response to KWUA Data Request 54

Please see Response to KWUA Data Request 43.

UE 170/PacifiCorp
February 22, 2006
KWUA Data Request 55

KWUA Data Request 55

Please provide a copy of, or adequate access to, any and all files maintained by or at the direction of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that contain any documents or information reflecting, memorializing or concerning the facts and legal conclusions asserted by Mr. Richardson in his testimony.

Response to KWUA Data Request 55

Please see Response to KWUA Data Request 43.

KWUA Data Request 56

Please provide a copy of, or adequate access to, any other files maintained by or at the direction of PacifiCorp, R. Steven Richardson and/or Van Ness Feldman PC that contain documents or information reflecting, memorializing or concerning Mr. Richardson's representation of PacifiCorp on issues related to the Klamath Hydroelectric Project since 2002, as referenced in his testimony.

Response to KWUA Data Request 56

Please see Response to KWUA Data Request 43.

CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP

ATTORNEYS AT LAW

SUITE 2000

1001 SW FIFTH AVENUE

PORTLAND, OREGON 97204-1136

TELEPHONE (503) 224-3092

FACSIMILE (503) 224-3176

February 14, 2006

RICHARD G. LORENZ

rlorenz@chbh.com
www.cablehuston.com

VIA EMAIL & FIRST CLASS MAIL

Katherine McDowell
Stoel Rives LLP
900 SW Fifth Ave., Suite 2600
Portland, OR 97204

Data Request Response Center
PacifiCorp
825 NE Multnomah, Suite 800
Portland, OR 97232

Re: Klamath Water Users Association's Fifth Set of Data Request to PacifiCorp
In Docket UE-170

Dear Ms. McDowell and Data Request Center:

Enclosed please find Klamath Water Users Association's ("KWUA") Fifth Set of Data Requests to PacifiCorp in the above-referenced matter. Please provide your responses to this office no later than Friday, February 24, 2006. For the definitions and instructions that apply to these Data Requests, please refer to KWUA's Revised First Set of Data Requests to PacifiCorp, dated February 3, 2005.

Please be advised that, pursuant to Oregon law, PacifiCorp has waived its right to assert the attorney/client privilege with respect to any matter testified to by R. Steven Richardson. For your convenience, attached hereto is an Order issued by the Oregon Public Utilities Commission under strikingly similar circumstances. The Commission unambiguously concluded that a lawyer that submits testimony on behalf of his or her client is subject to discovery and cross examination, notwithstanding the lawyer's professional responsibility not to disclose client confidences.

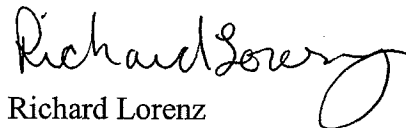
In the attached Order, the Commission afforded the litigant the opportunity to withdraw the testimony of its counsel. Likewise, KWUA is willing to allow PacifiCorp the opportunity to withdraw the testimony of R. Steven Richardson—in which case KWUA is prepared to withdraw the attached Data Requests. We ask that you come prepared at the hearing of February 16, 2006, to announce whether you choose to withdraw the testimony or comply with these Data Requests as your decision could significantly affect the scope and course of the proceedings at that hearing.

Exhibit C Page 1 of 9

Katherine McDowell
Data Request Response Center
February 14, 2006
Page 2

Thank you for your assistance. Should you have any questions regarding this matter, please feel free to contact me.

Very truly yours,


Richard Lorenz

cc: UE-170 Service List (via email & first class mail)

Exhibit C Page 2 of 9

ENTERED JUL 08 2004

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1087

Defendant.

ORDER

DISPOSITION: MOTION TO CERTIFY GRANTED; MOTION TO COMPEL GRANTED

On May 4, 2004, Central Lincoln People's Utility District (CLPUD) moved to certify Administrative Law Judge (ALJ) Smith's April 26, 2004 ruling to the Commission. The ruling granted a motion to compel CLPUD to answer data requests of Verizon Northwest, Inc. (Verizon) over CLPUD's objections that the material was covered by the attorney-client privilege. On May 19, 2004, Verizon replied that it did not object to the motion to certify but did oppose CLPUD's position on the ruling on the merits. The motion to certify has been granted, and we concur with ALJ Smith's initial ruling.

PROCEDURAL BACKGROUND

On April 1, 2004, Verizon filed the Motion to Compel that is at the root of this dispute. On April 19, 2004, CLPUD filed its opposition, and a ruling was issued on April 26, 2004. On May 4, 2004, CLPUD filed this Motion to Certify the ruling to the Commission for decision. On the same day, Verizon called for a status conference because the hearing was scheduled for May 18 and 19, 2004, and the time for response, ruling, and production would come too close to the hearing dates for the material to be useful. A status conference was held May 6, 2004, in which representatives from

CLPUD and Verizon participated. The parties were asked if the dispute could be narrowed or if there was another way to resolve the dispute, but they stated that they could not reach a mutually acceptable solution. The hearing was canceled, and since the parties could not agree on a hearing date through the end of June, the hearing was not rescheduled. Verizon had stated that it would provide a response by May 13, 2004, but delayed its response until May 19, 2004, in an effort to work out an agreement with CLPUD. Those talks were not successful, so this issue is now before us.

Motion to Certify

A motion to certify an ALJ ruling to the Commission will be granted if the ruling "[m]ay result in substantial detriment to the public interest or undue prejudice to any party." OAR 860-014-0091(1)(a). A motion to certify may also be granted for other reasons. *See In re Qwest Corp.*, UM 1025, Order No. 03-533, at 1 (Aug 28, 2003). Verizon did not oppose the motion to certify. While motions to certify are usually granted by an ALJ, for the sake of efficiency, we grant this motion in conjunction with our decision on the merits.

PARTIES' ARGUMENTS

To fully understand the nature of this procedural dispute, we begin with a brief discussion of the underlying substantive issue raised in this proceeding. In this docket, CLPUD argues that it terminated its contract with Verizon for pole attachments and that no contract is currently in place. CLPUD argues that Verizon's attachments are in violation of ORS 757.271(1) and OAR 860-028-0120(1)(a). In its petition, CLPUD asks for sanctions against Verizon. Verizon replies that the original contract is still in effect, and that the terms of CLPUD's proposed contract are unreasonable.

In support of its petition for removal of pole attachments, CLPUD submitted testimony sponsored by Peter Gintner, who is an attorney with Macpherson, Gintner, Gordon & Diaz, which represents CLPUD in this proceeding. His direct testimony relates to sending the notice of violation to Verizon and further communications, and lack of communications, with representatives of Verizon. His reply testimony discussed communication with Ms. Mahanger, a representative of Verizon, regarding which Oregon Administrative Rule related to the notice of violation.

In response, Verizon issued several data requests seeking information from Mr. Gintner. In Verizon's last filing related to this subject, it narrowed its data requests to the following:

- 3.17. "Please state the date your firm was retained to represent CLPUD in this matter, and explain the nature and scope of your firm's legal

representation of CLPUD in this matter." Verizon states that this information is relevant in light of Verizon's assertion that Mr. Gintner said that CLPUD sought to treat Verizon as a "test case."

- 3.20. "Please provide a copy of your files, or files that are maintained by others under your direction, that relate to both the legal and non-legal services your firm has provided to CLPUD in this matter." Verizon limited the scope of documents sought to documents reflecting, memorializing, or concerning (a) the truth of the facts asserted in Mr. Gintner's correspondence or (b) his negotiation with or other interaction with Verizon personnel.
- 3.23 and 3.28. Both questions relate to documents pertaining to conversations with Verizon employees or representatives. Verizon limited the scope of documents sought to questions six through twelve in Mr. Gintner's opening testimony and questions eight through eleven in his reply testimony.
- 3.25. Description of Mr. Gintner's role in the negotiation of pole attachment agreements between CLPUD and other entities that wish to attach to CLPUD's poles.
- 3.30 and 3.31. Asks whether Mr. Gintner believes that CLPUD had an obligation to bargain in good faith, and if not, why not.

In its motion to compel, Verizon argued that CLPUD was obligated to answer the questions because CLPUD had waived its attorney-client privilege when Mr. Gintner submitted testimony. Verizon cited two provisions of the evidence code in support of its argument: ORS 40.225 (OEC 503(4)(d)), which states that the privilege does not apply "to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness;" and ORS 40.280 (OEC 511), which states that the privilege is waived if the "holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter or communication." Further, Verizon argues that the work product doctrine also does not protect any documents sought because Mr. Gintner testified in this proceeding.

CLPUD responded that Mr. Gintner's testimony did not disclose a privileged communication, therefore, he did not waive the attorney-client privilege as to any privileged communications. CLPUD further asserts that the attesting witness exception in Oregon Evidence Code (OEC) 503(4)(d) only applies to an attorney who attests to another's signature, as in a will. It also argues that the work product doctrine

protects an attorney's mental impressions and legal theories, so Mr. Gintner's opinions cannot be the subject of a data request.

The challenged ALJ ruling, issued April 26, 2004, granted Verizon's motion to compel on the basis of OEC 503(4)(d), stating that the privilege did not apply to Verizon's data requests because they sought "communications relevant to an issue" in Mr. Gintner's testimony. The only data request that did not appear relevant was 3.18. Because the analysis stopped at OEC 503(4)(d), application of OEC 511 was not analyzed.

CLPUD moved to certify that ruling to the Commission on the basis that it would unduly prejudice CLPUD to produce the requested information. CLPUD reasserted its arguments related to the attorney-client privilege and work product doctrine, and added "ORS 9.460(3) imposes an affirmative duty on attorneys to protect the confidences and secrets of their clients." It then takes issue with the ruling's application of OEC 503(4)(d) and argues that Mr. Gintner was not an "attesting witness" within the definition of that rule. CLPUD concludes by asserting that the requested information is not discoverable, and is privileged.

Verizon responded by narrowing its data requests to those listed above. It then reiterated its arguments that CLPUD waived the attorney-client privilege when Mr. Gintner submitted testimony. Citing *State v. Sullivan*, 230 Or 136 (1962), Verizon argues that an attorney may properly be cross-examined on communications about which he had not previously testified. Further, Verizon points to treatises on evidence for support of the premise that a lawyer that testifies on behalf of the client should be subject to cross-examination as to "related privileged communications" with that client.¹

DISCUSSION

We agree with CLPUD that the "attesting witness" exception in OEC 503(4)(d) is likely limited. The legislative commentary on OEC 503(4)(d) in the *Oregon Evidence Code Handbook 2000* refers to California Evidence Code section 959. That section makes it clear that an "attesting witness" is one who witnesses another's signature on a document. In that capacity, the attorney is not acting as an attorney, but as a witness, and can testify as to the signer's mental capacity and other matters.

In fact, the revised Oregon Evidence Code does not address the problem of an attorney testifying on behalf of a client. Enacted in 1981, the Oregon Evidence Code outlines the attorney-client privilege, *see* ORS 40.225(2) (OEC 503(2)), and

¹ Additional briefing is not required, as the parties have had numerous opportunities to submit materials. *See In re Qwest Corp.*, UM 1025, Order No. 03-747, at 4 (Dec 18, 2003).

waiver, *see* ORS 40.280 (OEC 511). Oregon court cases interpreting evidence statutes prior to 1981 are not considered to have much weight. *See State v. Ogle*, 297 Or 84, 87-88 (1984). For this reason, there is no relevant Oregon case law on this matter.

Without negotiating the attorney-client privilege as to every disputed data request between Verizon and CLPUD, we address the larger policy question: whether testimony can be fairly considered without allowing discovery and cross-examination on that testimony. It is well established that the testimony of a witness cannot be given much weight without permitting cross-examination.² *See Schacher v. Dunne*, 109 Or App 607, 611 (1991) (purpose of cross-examination is to indicate to fact-finder what weight to give to witness' testimony). Allowing testimony without cross-examination makes it difficult to determine whether the testimony is credible. *See, i.e., Sheedy v. Stall*, 255 Or 594, 596 (1970) ("Hearsay evidence is excluded because of its untrustworthiness. The declarant's accuracy and veracity cannot be tested by cross-examination."), *aff'd*, *State v. Mendez*, 308 Or 9, 18-19 (1989).

At the May 6, 2004 status conference, CLPUD insisted that this testimony had to be considered as part of its case. CLPUD has already provided some evidence that would permit cross-examination, but Verizon asserts that it needs additional documents to effectively cross-examine Mr. Gintner.

We agree that Verizon must have a response to its limited data requests in order to facilitate cross-examination. *See* Order No. 03-747 at 4 (unless underlying documents are produced, Commission would not consider information that was based on those documents). We are especially concerned because Verizon has argued that Mr. Gintner's testimony is misleading. *Responsive Testimony of Veronica Mahanger*, filed March 1, 2004.³ Discovery and cross-examination on matters related to Mr. Gintner's testimony must be permitted to evaluate his testimony, otherwise it cannot be considered by the Commission.

CLPUD's counsel has repeatedly expressed its concerns about disclosing what it considers to be privileged information. These concerns arise, however, only because CLPUD chose to submit testimony sponsored by its attorney. Oregon courts have recognized the inherent policy problem with allowing an attorney to testify on the

² CLPUD argues that one attorney may be a witness while another attorney in the same firm may argue the case. CLPUD is correct. *See* DR 5-102(C). However, the dual roles still present conflicting interests that diminish the credibility of the witness-attorney's testimony. *See Universal Athletic Sales Co. v. Am. Gym, Recreation & Athletics Equip. Corp.*, 546 F2d 530, 538-40 (3rd Cir 1976), *cert den* 430 US 984 (1978).

³ We acknowledge that some documents may contain both discoverable material and work product. The work product doctrine protects an attorney's theory of the case under litigation, but it only protects documents prepared in anticipation of litigation and not in the regular course of business. *See United Pacific Insurance Company v. Trachsel*, 83 Or App 401, 404 (1987). For that reason, we agree that if CLPUD has a question about whether a document is discoverable under the work product doctrine, it shall submit it to the ALJ to be reviewed *in camera* and redacted if necessary.

client's behalf and then claim privilege on related matters that might not be as favorable to the client. *State v. Sullivan*, 230 Or 136, 139 (1962). While that case was decided under an earlier version of the rules of evidence, the dilemma remains as to how to deal with an attorney who testifies on behalf of a client.

Evidence scholars have reached a similar conclusion as to how to treat attorney-witnesses. McCormick notes that disclosure of part of a privileged communication waives the privilege as to the rest of the communication. *McCormick on Evidence*, vol I, § 93, 375 (1999). McCormick further addresses attorney testimony as to non-privileged matters: "if the client uses the lawyer to prove matter which he would only have learned in the course of his employment this again should be considered a waiver as to related privileged communications." *Id.* (footnote omitted).

We acknowledge that CLPUD's brief cited Disciplinary Rule 4-101(D) as authority for its responsibility to not disclose communications with CLPUD. That rule states, "A lawyer shall exercise reasonable care to prevent the lawyer's employees, associates, and others whose services are utilized by the lawyer in connection with the performance of legal services from disclosing or using confidences or secrets of a client." One exception allows production if compelled by a court order, and this admittedly is not a court order. If CLPUD still has those concerns, it has another option: withdraw the testimony of Mr. Gintner and submit substitute testimony by a non-attorney witness, and allow Verizon to submit data requests to that witness. The choice belongs to CLPUD.

ORDER

IT IS ORDERED that:

1. CLPUD shall respond to Verizon's narrowed data requests as set out in its Response to Motion to Certify within 10 days of the date that this order is issued.

2. If CLPUD chooses not to respond to the data requests, CLPUD shall indicate its intention to the Commission whether it intends to submit substitute testimony from another witness within 10 days of the date that this order is issued.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
Commissioner

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

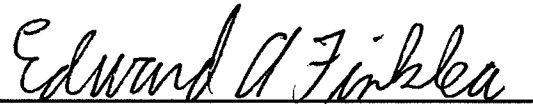
CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the **KLAMATH WATER USERS ASSOCIATION MOTION TO COMPEL** by electronic mail and/or mailing a copy properly addressed with first class postage prepaid to the following:

RATES & REGULATORY AFFAIRS PORTLAND GENERAL ELECTRIC RATES & REGULATORY AFFAIRS 121 SW SALMON STREET, 1WTC0702 PORTLAND OR 97204 pge.opuc.filings@pgn.com	JIM ABRAHAMSON -- CONFIDENTIAL COMMUNITY ACTION DIRECTORS OF OREGON PO Box 7964 SALEM OR 97303 jim@cado-oregon.org
EDWARD BARTELL KLAMATH OFF-PROJECT WATER USERS INC 30474 SPRAGUE RIVER ROAD SPRAGUE RIVER OR 97639	KURT J BOEHM -- CONFIDENTIAL BOEHM KURTZ & LOWRY 36 E SEVENTH ST - STE 1510 CINCINNATI OH 45202 kboehm@bklawfirm.com
LISA BROWN WATERWATCH OF OREGON 213 SW ASH ST STE 208 PORTLAND OR 97204 lisa@waterwatch.org	LOWREY R BROWN -- CONFIDENTIAL CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY, SUITE 308 PORTLAND OR 97205 lowrey@oregoncub.org
PHIL CARVER OREGON DEPARTMENT OF ENERGY 625 MARION ST NE STE 1 SALEM OR 97301-3742 philip.h.carver@state.or.us	JOAN COTE -- CONFIDENTIAL OREGON ENERGY COORDINATORS ASSOCIATION 2585 STATE ST NE SALEM OR 97301 cotej@mwvcaa.org
MELINDA J DAVISON -- CONFIDENTIAL DAVISON VAN CLEVE PC 333 SW TAYLOR, STE. 400 PORTLAND OR 97204 mail@dvclaw.com	JOHN DEVOE WATERWATCH OF OREGON 213 SW ASH STREET, SUITE 208 PORTLAND OR 97204 john@waterwatch.org
JASON EISDORFER -- CONFIDENTIAL CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 jason@oregoncub.org	RANDALL J FALKENBERG -- CONFIDENTIAL RFI CONSULTING INC PMB 362 8351 ROSWELL RD ATLANTA GA 30350 consultrfi@aol.com
PAUL M WRIGLEY PACIFIC POWER & LIGHT 825 NE MULTNOMAH STE 800 PORTLAND OR 97232 paul.wrigley@pacificorp.com	DAVID HATTON -- CONFIDENTIAL DEPARTMENT OF JUSTICE REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 david.hatton@state.or.us
JUDY JOHNSON -- CONFIDENTIAL PUBLIC UTILITY COMMISSION PO BOX 2148 SALEM OR 97308-2148 judy.johnson@state.or.us	JASON W JONES -- CONFIDENTIAL DEPARTMENT OF JUSTICE REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 jason.w.jones@state.or.us

GREG ADDINGTON KLAMATH WATER USERS ASSOCIATION 2455 PATTERSON STREET, SUITE 3 KLAMATH FALLS OR 97603	MICHAEL L KURTZ -- CONFIDENTIAL BOEHM, KURTZ & LOWRY 36 E 7TH ST STE 1510 CINCINNATI OH 45202-4454 mkurtz@bklawfirm.com
JIM MCCARTHY OREGON NATURAL RESOURCES COUNCIL PO BOX 151 ASHLAND OR 97520 jm@onrc.org	KATHERINE A MCDOWELL STOEL RIVES LLP 900 SW FIFTH AVE STE 1600 PORTLAND OR 97204-1268 kamcdowell@stoel.com
DANIEL W MEEK -- CONFIDENTIAL DANIEL W MEEK ATTORNEY AT LAW 10949 SW 4TH AVE PORTLAND OR 97219 dan@meek.net	NANCY NEWELL 3917 NE SKIDMORE PORTLAND OR 97211 ogec2@hotmail.com
MATTHEW W PERKINS DAVISON VAN CLEVE PC 333 SW TAYLOR, STE 400 PORTLAND OR 97204 mwp@dvclaw.com	JANET L PREWITT DEPARTMENT OF JUSTICE 1162 COURT ST NE SALEM OR 97301-4096 janet.prewitt@doj.state.or.us
GLEN H SPAIN PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOC PO BOX 11170 EUGENE OR 97440-3370 fish1ifr@aol.com	DOUGLAS C TINGEY PORTLAND GENERAL ELECTRIC 121 SW SALMON 1WTC13 PORTLAND OR 97204 doug.tingey@pgn.com
JOHN M. ERIKSSON STOEL RIVES LLP 201 SOUTH MAIN ST. SALT LAKE CITY, UT 84111 jmeriksson@stoel.com	MICHAEL W. ORCUTT HOOPA VALLEY TRIBE FISHERIES DEPT. PO BOX 417 HOOPA, CA 95546 director@pcweb.net
THOMAS P. SCHLOSSER MORISSET, SCHLOSSER, JOZWIAK & MCGAW 801 SECOND AVE., STE 1115 SEATTLE, WA 98104-1509 t.schlosser@msaj.com	STEPHEN R. PALMER 2800 COTTAGE WAY, RM E-1712 SACRAMENTO. CA 95825
STEVE PEDERY 5825 NORTH GREELEY AVENUE PORTLAND, OR 97214 SP@ONRC.ORG	BILL MCNAMEE OPUC PO BOX 2148 SALEM, OR 97308-2148 Bill.mcnamee@state.or.us
SCOTT W. WILLIAMS ALEXANDER, BERKEY, WILLIAMS & WEATHERS 2030 ADDISON STREET, SUITE 410 BERKELEY, CA 94704 swilliams@abwwlaw.com	CURTIS G. BERKEY ALEXANDER, BERKEY, WILLIAMS & WEATHERS 2030 ADDISON STREET, SUITE 410 BERKELEY, CA 94704 cberkey@abwwlaw.com

DATED in Portland, Oregon, this 22nd day of February, 2006.

A handwritten signature in cursive script that reads "Edward A. Finklea". The signature is written in black ink and is positioned above a horizontal line.

Edward A. Finklea, OSB #84216

Richard G. Lorenz, OSB #00308

Cable Huston Benedict Haagensen & Lloyd LLP

Telephone: (503) 224-3092

Facsimile: (503) 224-3176

E-Mail: efinklea@chbh.com

rlorenz@chbh.com

Of Attorneys for

Klamath Water Users Association