

BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UE-170

In the Matter of	)	
	)	<b>CENTER FOR TRIBAL WATER</b>
PACIFIC POWER & LIGHT COMPANY	)	<b>ADVOCACY'S MOTION FOR</b>
(dba Pacific Corp)	)	<b>LEAVE TO APPEAR AS</b>
	)	<b><u>AMICUS CURIAE</u> AND</b>
Request for General Rate Increase in the	)	<b>MEMORANDUM IN SUPPORT</b>
<u>Company's Oregon Annual Revenues</u>	)	<b>THEREOF</b>

**CERTIFICATION**

The Attorney for Petitioner, Center for Tribal Water Advocacy, certifies that he has forwarded a draft copy of the Motion to Appear as *Amicus Curiae* and Memorandum in Support Thereof to each party on the docket service list in this matter together with a cover letter requesting that parties concurrence with this Motion. To date, Petitioner has received only one response to its request which came from the Attorney for the Hoopa Valley Tribe who has indicated the Hoopa Valley Tribes consents to the request to appear as *Amicus*.

**MOTION**

Petitioner Center for Tribal Water Advocacy respectfully moves this Commission for an order permitting it to appear in this case and to participate as *Amicus Curiae*. Petitioner's participation in this matter will assist the Commission in resolving the important issues related to the impact of the Request for General Rate Increase in Pacific Power and Light Company's (PP&L) annual revenues on instream flows, water quality and tributary habitat in the Klamath River Basin.

**MEMORANDUM IN SUPPORT OF MOTION TO APPEAR AS AMICUS Curiae**

**I. Legal Standard to Appear as *Amicus Curiae***

The privilege of being heard amicus rests in the broad discretion of the Court, which

may grant or refuse leave accordingly as it deems the proffered information timely, useful, or otherwise.

*U.S. v. Washington State Department of Ecology*, Case No. C1-47-001Z citing *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982); *Leigh v. Engle*, 535 F. Supp. 418, 420 (N.D. 1111. 982). In addition, Amicus status may be denied “where the parties are well represented, joint consent of the parties is lacking, and ‘the amicus comes as an advocate for one side rather than as a neutral entity’” *U.S. v. DOE* citing *Ryan v. Commodity Futures Trading & Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (citing *United States v. Gotti*, 755 F. Supp.1157,1158 (E.D.N.Y. 1991)).

## **II. Identity of Petitioner.**

Petitioner is a non-profit public interest organization dedicated to protecting water resources of the members of North Western Indian Tribes and the general public. Petitioner conducts legal and scientific research, analysis, policy and litigation in its efforts to protect and restore water quantity, water quality and water rights for the health of the watershed ecosystem, preservation of cultural identity and the benefit of tribal members. Petitioner’s membership consists of a Board of practicing attorneys, scientists and members of Northwest Indian Tribes along with local citizens interested in the shared goal of protecting the environment through scientific and legal means.

## **III. Petitioner’s Interest in the Case.**

The members of Petitioner, who include members of the Klamath, Yurok and Hoopa Valley Tribes, hike, hunt, fish, river raft and engage in other recreational and cultural activities in and around the Klamath River and its tributaries. As a result, Petitioner has a direct and personal stake in the outcome of these proceedings due to its significant interest in water use and supply issues in the Klamath River Basin and/or Tributaries to the Klamath River. Petitioner has an interest in ensuring that diversion of surface flows and pumping of ground water in the Klamath River basin will not (1) diminish streamflows needed for the fish and wildlife resources in the Klamath River and Tributaries, (2) exacerbate existing water quality problems in the Klamath River and Tributaries, (3) allow inefficient or wasteful use of water,

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(4) result in speculation of water and (5) set bad precedent. Petitioner also has an interest in ensuring that water allocation decisions for pending regional supply projects will ensure that environmentally sensitive sources (such as the Klamath River and Tributaries) will be protected from further development and that water conservation will be an important source of water for meeting future water supply needs.

#### **IV. Petitioner's Intended Arguments as *Amicus Curiae*.**

Members of *Amicus* Petitioner reside in the Klamath Basin and pay utility rates to PP&L for power. In addition, a substantial part of the events or omissions giving rise to the request of petitioners to raise power rates occurred in the Klamath Basin area. The underlying action arises under and alleged violations of the ORS 756.040; Article IV of ORS 542.620 and other laws related to the PUC. As *Amicus Curiae*, Petitioner will provide unique and, as yet, un-addressed arguments for the requested rate increase in this matter including whether the 1956 "Link River" contract between Pacific Power and Light (PPL) and the U.S. Bureau of Land Management. Copco and the Bureau of Land Management (USBR) (Contract) and the artificially low power rates for water users in the Klamath basin: a) are a violation of ORS 756.185 which states that "Any public utility which does, or causes or permits to be done, any matter, act or thing prohibited by ORS chapter 756, 757 or 758 or omits to do any act, matter or thing required to be done by such statutes, is liable to the person injured thereby in the amount of damages sustained in consequence of such violation."; b) are a violation of existing state and federal environmental and consumer laws; c) allows Klamath Basin irrigators in both Oregon and California, to avoid standard pump fees in violation of Oregon Water Resources Department regulations; d) provides Klamath Basin irrigators with free powerline extensions subsidized by other PPL power customers in violation of current consumer laws; e) are in violation of the Tribal Trust responsibility of the Bureau of Reclamation, Bureau of Land Management and other federal entities.

#### **V. Petitioner's Interest are Not Adequately Represented by Current Parties.**

Petitioner does not purport to represent, in any capacity, members of the four Tribes (Yurok, Klamath, Hoopa and Karok) that are already parties in this case. Thus, Petitioner's concerns are not already adequately represented since Petitioner does not represent any Indian Tribe as a group unless specifically requested to do so by the governing body of that entity. In

this matter, Petitioner has not been asked to represent a tribal entity and thus cannot be held or assumed to represent the interest of any tribe. As stated in this Motion, Petitioner represents only its membership many of whom happen to be members of federally recognized Indian Tribes but have separate and distinct interests and concerns from such tribes.

Further, it is impossible for Petitioner's interest to be adequately represented by other entities since the rights of tribal members are in a separate category of from those of the tribe to which they are members. It is a basic principle of Indian law, for example, that tribal treaty and hunting, fish and gathering rights are owned communally by the Tribe itself and do not belong to any individual tribal member, and that it is only the Tribe itself that has the right to assert these rights on behalf of its members. *See United States v. Washington*, 520 F.2d 676, 688 (9<sup>th</sup> Cir. 1975).

Dated this 8th day of February, 2006

Respectfully submitted,

s/ HAROLD S. SHEPHERD  
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BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

**Ue-170**

In the Matter of	)	
	)	
PACIFIC POWER & LIGHT COMPANY,	)	
(dba Pacific Corp)	)	CERTIFICATE OF SERVICE
	)	
Request for General Rate Increase in the	)	
<u>Company's Oregon Annual Revenues</u>	)	

I hereby certify that I served the foregoing True Copy of "Center for Tribal Water Advocacy's Motion for Leave to Appear as Amicus Curiae and Memorandum in Support Thereof" on those individuals on the service list as provided in "Attachment A" to which this certificate is attached by the method indicated:

- |                   |   |
|-------------------|---|
| <u>          </u> | Personal Delivery upon the person(s) named below  |
| <u>  X  </u>      | Mailing a copy, certified by me to be a true copy, contained in a sealed envelope with postage paid and deposited in the United States Post office at Pendleton, OR and addressed to the person(s) named below.                       |
| <u>          </u> | Telephonic facsimile communication device maintained by the undersigned attorney's office which device was operating at the time service was made. Said facsimile was directed to the person(s) named below at the fax number listed. |

DATED: February 8, 2006.

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## Public Utility Commission

### eDockets

#### Docket Summary

**Docket No:** UE 170**Docket Name:** PACIFIC POWER & LIGHT[Print Sum](#)**Subject Company:** PACIFIC POWER & LIGHT**See also:** 05-013

In the Matter of PACIFIC POWER & LIGHT (dba PacifiCorp) Request for a General Rate Increase in the Company's Oreg Annual Revenues. Filed by D. Douglas Larson.

**Filing Date:** 11/12/2004**Advice No:** 04-018**Effective:** 10/4/2005**Expiration:** 10/3/2005**Status:** PERM SUSPEND**Case Manager:** JUDY JOHNSON**Phone:** (503) 378-6636**Email:** [judy.johnson@state.or.us](mailto:judy.johnson@state.or.us)**Law Judge:** KATHRYN LOGAN**Phone:** (503) 378-2844**Law Judge:** MICHAEL GRANT**Phone:** (503) 378-6102[Email Service List \(semi-colon delimited\)](#)[Email Service List \(comma de](#)[General Information about Tarif](#)

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Q=Confidential

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