

ISSUED: March 1, 2006

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 170

In the Matter of)	
)	
PACIFIC POWER & LIGHT (dba PacifiCorp))	
)	
Request for a General Rate Increase in the)	RULING
Company's Oregon Annual Revenues)	
(Klamath River Basin Irrigator Rates).)	

**DISPOSITION: MOTION TO COMPEL DENIED;
MOTION FOR EXTENSION OF TIME GRANTED**

Klamath Water Users Association (KWUA) has filed two motions in this docket since the close of the evidentiary hearings. In the first motion, KWUA seeks an order to compel PacifiCorp to respond to KWUA's Fifth Set of Data Requests or, in the alternative, to strike the testimony of witness R. Steven Richardson. In the second motion, KWUA seeks an extension of time to file briefs due to delays in the preparation of the transcript. I address each motion separately.

MOTION TO COMPEL

On February 14, 2006, KWUA served data requests on PacifiCorp pertaining to rebuttal testimony of PacifiCorp witness R. Steven Richardson. The data requests sought to explore the factual and analytical bases of Mr. Richardson's testimony, despite the fact that KWUA waived cross-examination of Mr. Richardson. The requests asked PacifiCorp to produce all documents in all files of PacifiCorp, Mr. Richardson, or his law firm that contain any document that relate in any way to Mr. Richardson's testimony or his representation of PacifiCorp on issues related to the Klamath Hydroelectric Project since 2002.

On February 22, 2006, PacifiCorp timely responded to KWUA's requests, objecting to them on various grounds. Without waiving its objections, PacifiCorp filed a response that: (1) noted that Mr. Richardson's testimony contained citations to publicly available information; and (2) provided a list of 21 additional publicly available documents relied upon by Mr. Richardson.

Ruling

Oregon Rules of Civil Procedure (ORCP) generally govern discovery in Commission proceedings. *See* OAR 860-011-0000(3). Under ORCP 36B, a party may seek discovery of any information that bears upon, or reasonably could lead to matters that bear upon, any issue in the proceeding. The information sought, however, must be “reasonably calculated to lead to the discovery of admissible evidence.” ORCP 36(B)(1)

Here, KWUA served discovery on the afternoon of February 14, 2006—more than a week after PacifiCorp filed the rebuttal testimony of Mr. Richardson and only one full business day before the evidentiary hearing. Even under the expedited 5-business day discovery schedule, PacifiCorp’s response was not due until after the close of the evidentiary hearing. Data requests by themselves are not evidence; they must be introduced as an exhibit while the record is open. Additionally, KWUA’s assertion that the information might be relevant to its briefing is not persuasive. As PacifiCorp notes, KWUA’s briefs must refer to evidence contained in the record and, even if this motion was granted, KWUA would have no right to introduce the information into the record.

Moreover, prior to hearing, KWUA waived cross-examination of Mr. Richardson. Under the circumstances, KWUA has failed to establish how its untimely data request, seeking information underlying the testimony of a witness it did not plan to cross-examine, is designed to lead to admissible evidence. Failure to compel the evidence after the hearing does not injure KWUA’s ability to cross-examine a witness at a hearing that has already passed. KWUA’s motion to compel, or in the alternative to strike Mr. Richardson’s testimony, is denied.

MOTION FOR EXTENSION OF TIME

Because of delays in the preparation of the transcript for the hearing held on February 15 and 16, 2006, KWUA requests that the deadline for opening briefs and reply briefs be extended until the close of business on March 6 and March 13, 2006, respectively. KWUA states that it has contacted counsel for PacifiCorp, the Klamath Off Project Water Users, WaterWatch, *et al.*, and Commission Staff, and all support the requested extension.

Ruling

KWUA’s motion for an extension of time regarding the filing of opening and reply briefs is granted.

Dated at Salem, Oregon, this 1st day of March 2006.

Michael Grant
Chief Administrative Law Judge