

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 219

In the Matter of)	
)	THE INDUSTRIAL CUSTOMERS OF
PACIFICORP, dba PACIFIC POWER)	NORTHWEST UTILITIES' RESPONSE
)	TO PETITIONS TO INTERVENE
Application to Implement Provisions of)	
Senate Bill 76.)	
_____)	

I. INTRODUCTION

Pursuant to OAR 860-012-0001 and Administrative Law Judge (“ALJ”) Kirkpatrick’s Prehearing Conference Report, the Industrial Customers of Northwest Utilities (“ICNU”) files this response to the petitions to intervene that have been filed by April 5, 2010. ICNU does not oppose any specific intervention at this time, but recommends that ALJ Kirkpatrick grant the interventions based upon the condition that parties be limited to addressing issues regarding the application and implementation of Senate Bill (“SB”) 76.

II. BACKGROUND

The Oregon Legislature passed SB 76 in 2009, authorizing PacifiCorp to file with the Oregon Public Utility Commission (“OPUC” or the “Commission”) surcharges to fund the costs of removing the Klamath River dams. SB 76 imposes substantive and procedural limitations regarding the issues that will be addressed in a surcharge filing, and imposes an expedited five to six month schedule to resolve all relevant issues.

On March 18, 2010, PacifiCorp filed this application to implement the provisions of SB 76. PacifiCorp's application addresses only SB 76, and is limited to only three specific provisions of SB 76: 1) the requirement to file a final Klamath Hydroelectric Settlement Agreement; 2) a request to collect two surcharges to fund the costs of the removal of the Klamath dams; and 3) a request to set a new depreciation schedule for the Klamath Project.

Numerous interventions have been filed in this proceeding, many by parties which do not routinely participate in Commission regulatory proceedings. Interventions have been filed by the Pacific Coast Federation of Fisherman's Associations ("PCFFA"), the Institute for Fisheries Resources ("IFR"), Trout Unlimited, Klamath Water Users Association, the Oregon Water Resources Department, the Yurok Tribe, the Klamath Tribe, the Klamath Water Project, the Salmon River Restoration Council, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Citizens' Utility Board of Oregon ("CUB"), and ICNU. CUB can intervene in Commission proceedings as a matter of right. See ORS § 774.180; OAR § 860-012-0001. ICNU does not propose any conditions upon CUB's intervention.

III. RESPONSE

1. Legal Standard

Any person may intervene in a Commission proceeding, if they can demonstrate that they have sufficient interest in the proceeding, and that they "will not unreasonably broaden the issues, burden the record, or unreasonably delay the proceeding" OAR § 860-012-0001(2). The ALJ has the discretion to "impose appropriate conditions upon any intervenor's participation in the proceeding." Id.

The Commission has rejected and/or imposed conditions upon interventions which sought to raise issues outside scope of the proceeding, which would unreasonably broaden the issues, burden the record and delay the proceeding. The Commission rejected the intervention of Biomass One, a qualifying facility customer of PacifiCorp in a PacifiCorp rate proceeding because the intervention was filed late in the proceeding and Biomass One sought to use the proceeding “to pressure PacifiCorp into buying out its QF contract.” Re PacifiCorp, Docket No. UE 111, Order No. 00-427 at 2 (Aug. 7, 2000). In a recent proceeding, the ALJ first conditioned and then the Commission terminated the participation of the International Brotherhood of Electrical Workers (“IBEW”). Re Verizon, Docket No. UM 1431, Order No. 09-409 at 6 (Oct. 14, 2009). The ALJ conditioned IBEW participation because the IBEW might “abuse” the regulatory process “to extract concessions regarding matters exogenous to” the case. Docket No. UM 1431, Ruling at 2 (July 2, 2009). IBEW’s intervention was conditioned by allowing any party to file a motion to terminate its participation based upon a showing that IBEW attempted to use the regulatory process in a manner beyond the scope of the proceeding. Id. The Commission ultimately terminated IBEW’s party status because IBEW had sought to use the discovery process in a manner that exceeded the scope of the docket. Docket No. UM 1431, Order No. 09-409 at 6.

2. The ALJ Should Conditionally Approve the Interventions of the Parties in this Proceeding

A large number of interventions have been filed by parties that may not be familiar with the rules regarding practice before the Commission, and who may raise issues and

concerns that are beyond the scope of this proceeding. ICNU recommends that the ALJ limit the parties' ability to raise issues beyond the scope of those issues identified above.

The scope of this proceeding is defined by statute, and it encompasses: 1) “whether the imposition of the surcharges under the terms of the final agreement results in rates that fair, just and reasonable;” and 2) the appropriate depreciation rate for the Klamath dams. ORS §§ 757.734, 757.736(4). Issues regarding the best way to resolve natural resource disputes in the Klamath Basin, the Klamath dams' impacts on fishing, and how dam removal will impact tribal and cultural issues are beyond the scope of issues in this proceeding. No party should be allowed to burden the record in this expedited proceeding with any extraneous and irrelevant issues that have no bearing on the appropriate depreciation rate or whether PacifiCorp's surcharge rates are fair, just and reasonable.

Despite the limited scope of this proceeding, many of the petitions to intervene filed to date identify interests in the proceeding and/or state that they intend to raise issues that are beyond the scope of this proceeding. For example, Trout Unlimited's petition to intervene specifically states that it “intends to raise” issues regarding what “is necessary to resolve outstanding natural resource disputes in the Klamath Basin.” Trout Unlimited Petition to Intervene at 2-3. Similarly, the Yurok Tribe “intends to raise” issues regarding its “extensive scientific knowledge of the Klamath River and Klamath River Fish, Yurok cultural matters, and Yurok Fishing subsistence fishing and is available to clarify or supplement the record with these special interests and expertise as required.” Yurok Tribe Petition to Intervene at 3. Other petitioners have identified sufficiently narrow scopes of issues that they intend to raise, but identify broad interests in the proceeding which exceed the scope of issues that will be

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addressed. E.g., PCCFA/IFR Petition to Intervene at 2; Salmon River Restoration Council Petition to Intervene at 3. No party should be allowed to leverage their participation in this proceeding to obtain an advantage in a separate, unrelated matter.

ICNU recommends that the ALJ conditionally approve any petitions to intervene in this proceeding. Any ruling addressing interventions should specifically reference the narrow scope of this proceeding, and only grant interventions on the condition that the parties cannot broaden the proceeding to address irrelevant issues, including how to resolve natural resource disputes and the impact of the Klamath dams on fishing, the tribes and culture. The ALJ may consider utilizing the process recently used in the recent Verizon proceeding and allow parties to file motions to terminate another parties participation if any party attempts to unreasonably broaden the issues, burden the record, or unreasonably delay the proceeding Responses to any such motion should be due within five days, which is consistent with the Verizon proceeding and the expedited nature of this proceeding.

IV. CONCLUSION

The unique nature of this proceeding has resulted in large number of interventions by parties that do not typically participate in Commission proceedings. Some of the interventions have identified interests and/or specifically intend to raise issues that are outside the scope of the proceeding and would warrant denial of the interventions because they would unreasonably broaden the scope of this proceeding, burden the record and delay the proceeding. ICNU, however, does not recommend at this time that any interventions should be denied, but that the ALJ impose reasonable conditions upon the interventions to ensure that all parties simply address the issues in this proceeding.

Dated this 13th day of April, 2010.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Melinda J. Davison

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April 13, 2010

Via Electronic and U.S. Mail

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Re: In the Matter of PACIFICORP Application to Implement the Provisions of
Senate Bill 76
Docket No. UE 219

Dear Filing Center:

Enclosed please find an original of the Response to Petitions to Intervene on behalf of the Industrial Customers of Northwest Utilities in the above-referenced docket. Thank you for your attention to this matter.

Sincerely yours,

/s/ Martin H. Patail
Martin H. Patail

Enclosures
cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Response to Petitions to Intervene on behalf of the Industrial Customers of Northwest Utilities upon the parties, on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid, and via electronic mail where paper service has been waived.

Dated at Portland, Oregon, this 13th day of April, 2010.

/s/ Martin H. Patail

Martin H. Patail

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