

ISSUED: April 15, 2010

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 219

In the Matter of

PACIFICORP, dba PACIFIC POWER

Application to Implement the Provisions of
Senate Bill 76.

RULING

DISPOSITION: PETITIONS TO INTERVENE GRANTED

Ten petitions to intervene in this proceeding were filed, prior to, or on the date of the prehearing conference in this proceeding—April 5, 2010—on behalf of the following thirteen petitioners:

| <u>Petitioner Name</u> | <u>Date Filed</u> |
|--|-------------------|
| Oregon Department of Fish and Wildlife | March 30, 2010 |
| Oregon Department of Environmental Quality | March 30, 2010 |
| Industrial Customers of Northwest Utilities (ICNU) | March 31, 2010 |
| Klamath Tribes | March 31, 2010 |
| Klamath Water Project | March 31, 2010 |
| Yurok Tribe | March 31, 2010 |
| Salmon River Restoration Council | March 31, 2010 |
| Oregon Water Resources Department | April 1, 2010 |
| Klamath Water Users Association | April 1, 2010 |
| Oregon Water Resources Department | April 1, 2010 |
| Trout Unlimited | April 2, 2010 |
| Pacific Coast Federation of Fishermen's Associations (PCFFA) | April 5, 2010 |
| Institute for Fisheries Resources (IFR) | April 5, 2010 |

Conference participants agreed that all responses to petitions to intervene filed as of the date of the prehearing conference were due on April 13, 2010.

On April 13, 2010, ICNU filed a response. Although ICNU does not oppose the intervention of any particular petitioner, ICNU asks that all petitions to intervene be granted with the condition that participation in the proceeding is limited to the issues related to the application and

implementation of SB 76.¹ ICNU observes that several petitioners do not typically appear before the Commission. ICNU also worries that several petitioners intend to raise issues not related to SB 76, perhaps for the purpose of gaining an advantage in another forum.² ICNU's Response discusses prior Commission orders regarding limitations on intervenor participation.³ ICNU recommends an expedited process for opposing any attempt by a party to unreasonably broaden the issues, burden the record, or unreasonably delay the proceeding. ICNU suggests that a motion to terminate a party's participation should be permitted with responses due within five days.

¹ ICNU's Response states at page 4:

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 [are] 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.

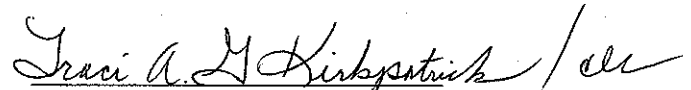
² ICNU's Response states at pages 4-5:

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, the 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 addressed. E.g., PCCFA/IFR Petition to Intervene at 2; Salmon River Reforestation Council Petition to Intervene at 3.

³ ICNU's Response at page 3 points to the rejection of the intervention of Biomass One in a Pacific Power rate case due to concern the qualifying facility may be participating in order to influence its contractual situation (Re PacifiCorp, Docket No. UE 111, Order No. 00-427 at 2 (August 7, 2000)). ICNU's Response at page 3 also observes that the participation of the International Brotherhood of Electrical Workers (IBEW) was conditioned in a certain case to specify that a motion to terminate the IBEW's participation could be filed should issues beyond the scope of the proceeding be raised—the IBEW's participation was ultimately terminated (Re Verizon, Docket No. UM 1431, Order No. 09-409 at 6 (Oct. 14, 2009)).

SB 76 defines the scope of this proceeding, limiting it to the determination of a depreciation schedule for the Klamath River dams and a fairness and reasonableness review of surcharges imposed under the Klamath Hydroelectric Settlement Agreement (KHSA). Upon review of the petitions to intervene, I grant the petitions to intervene. I remind each party to act in accordance with the limited scope of this proceeding. Should a party be concerned that another party is acting beyond the limited scope, any appropriate motion will be handled on an expedited basis, with responses due within five calendar days.

Dated this 15th day of April, 2010, at Salem, Oregon.



Traci A. G. Kirkpatrick
Administrative Law Judge