

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
Docket No. UE 171**

In the Matter of the Request of)	
)	
PACIFIC POWER & LIGHT)	HOOPA VALLEY TRIBE’S REPLY IN
(dba PacifiCorp))	SUPPORT OF APPLICATION FOR
)	INTERVENTION
Request for a General Rate Increase in the)	
Company’s Oregon Annual Revenues)	
[Supplemental Docket to UE-170])	

COMES NOW the Hoopa Valley Tribe (“Tribe”), by and through its counsel of record, and hereby replies in support of its Application for Intervention in Docket UE-171 filed March 14, 2005. O.A.R. § 860-013-0035. This reply is timely. *Id.* § 860-013-0050(2).

REPLY IN SUPPORT OF APPLICATION FOR INTERVENTION

On March 24, 2005, the Klamath Off-Project Water Users (“Water Users”) filed an answer objecting to the Hoopa Valley Tribe’s and the Yurok Tribe’s applications for intervention.¹ The Water Users argue in the alternative that either the Tribe should be denied intervention because the Tribe’s interests “fall outside the scope of the proceeding” or that the Tribe should be granted intervention but be limited to “raising only issues directly related to the legal issues in the proceeding.” Water Users’ Answer at 1-2. The Water Users’ broadly cast and self-contradicting objection is without merit. The Water Users’ ask the Commission to consider the rate subsidies in a vacuum, ignoring the real and direct effects of rate subsidies on

¹ The Hoopa Valley Tribe and the Yurok Tribe are each federally-recognized Indian tribes with separate sovereign governments and independent rights and interests. The Hoopa Valley Tribe and the Yurok Tribe have related, but distinct interests in this proceeding as demonstrated by their separate filings for intervention. It is improper for the Water Users to lump both tribes together for purposes of their answer.

downstream river flows and the corresponding adverse effects of these low flows on the Tribe's federally reserved fishing rights.

The Tribe's interests directly relate to the question presented in this docket: "whether [the Klamath] irrigators should continue to be served under [] historic contracts, or whether they should be treated like other irrigation customers and served under standard irrigation tariffs." Order No. 05-134 at 5 (Mar. 17, 2005). The Tribe's application for intervention made clear that it seeks intervention to raise concerns "directly related to the legal issues in this proceeding and whether PacifiCorp's rates are just and reasonable." Water Users' Answer at 4; *see* Tribe's Application for Intervention at 2 ("The Tribe believes that the unreasonable and unfair power rate subsidies . . . will have a direct and substantial adverse effect" on the Tribe and the fishery).

The Tribe has not asked the Commission to make a determination with respect to the Tribe's federally reserved fishing rights. *C.f.* Water Users' Answer at 3. Rather, the federally reserved fishing rights of the Tribe in the Klamath and Trinity Basin, and the Tribe's reliance on the fishery resource for its culture and subsistence, are well-established and provide the basis for the undeniable interest that the Tribe has in this proceeding. *See* O.R.S. § 756.525(2) (considering "[a]ny special knowledge or expertise of the petitioner that would assist the [PUC] in resolving the issues in the proceeding"). The provision of electricity to Klamath Basin irrigation customers at rates originally established in 1917 that are now 1/5 to 1/6 of the rates charged to other Oregon irrigators is not just and reasonable, and has a dramatic adverse affect on environmental and cultural resources of vital importance to the Tribe.

Indeed, it is irresponsible of the Water Users' to believe that electricity rates generated from the Klamath Hydroelectric Project and the waters of the Klamath River do not affect environmental and cultural resources. The Klamath-Trinity River Basin and those who rely upon its bounty are forced to directly bear the burden of the destruction of upriver fish runs and the

environmental effects of dam operations, pumped diversions, and water waste. When water is inefficiently used in the upper Klamath Basin it must come out of the portion left in the river to support fisheries vital to the Tribe. The provision of electricity at unfair and unreasonable rates encourages wasteful consumptive water use. This directly affects the Hoopa's federally-reserved fishing rights. The Tribe is uniquely situated to bring these important issues to the Commission's attention when it makes its rate decisions.

CONCLUSION

The Tribe has a direct and substantial interest in this proceeding, will not broaden the issues in this proceeding, and has satisfied the requirements of O.R.S. § 756.525(2). For the foregoing reasons, the Hoopa Valley Tribe respectfully requests that the Commission grant its application to intervene in the above-captioned proceeding.

DATED this 4th day of April, 2005.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of April, 2005, in addition to electronic service, I mailed the original and five copies of Hoopa Valley Tribe's Application for Intervention with the Public Utility Commission of Oregon, via ***First-Class Mail*** to:

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I further certify that on the on the 4th day of April, 2005, in addition to electronic service, I served a copy of Hoopa Valley Tribe's Application for Intervention on counsel via ***First-Class Mail and/or E-mail*** to the following addresses:

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[Notice will not be electronically mailed, but mailed *First-Class* to]:

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I declare the above to be true and correct under penalty of perjury. Executed this 4th day of April, 2005, at Seattle, Washington.

/s/ Rob Roy Smith

Rob Roy Smith, OSB No. 00393

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