

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 179

In the Matter of)	
)	
PACIFIC POWER & LIGHT)	RESPONSE IN OPPOSITION OF
(dba PACIFICORP))	THE INDUSTRIAL CUSTOMERS OF
)	NORTHWEST UTILITIES AND THE
Request for a General Rate Increase in the)	CITIZENS' UTILITY BOARD
Company's Oregon Annual Revenues.)	
_____)	

I. INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) and the Citizens’ Utility Board of Oregon (“CUB”) submit this joint response opposing the Klamath Water Users Association’s (“KWUA”) request to obtain case certification for intervenor funding in this proceeding (“KWUA Funding Request”). ICNU and CUB respectfully request that the Oregon Public Utility Commission (“OPUC” or “Commission”) reject the KWUA Funding Request because KWUA failed to comply with all relevant legal requirements, harms other intervenors, and may only benefit a small, narrow class of customers.

The KWUA Funding Request directly violates the Commission’s intervenor funding rules and the Intervenor Funding Agreement (“IFA”). KWUA’s late filed request for intervenor funding is inconsistent with the intent and spirit of the Commission’s requirements and violates KWUA’s obligation to provide notice to, and work cooperatively with, other parties in order to reduce costs and share the very limited intervenor funds.

The KWUA Funding Request should also be rejected under the Commission's guidelines regarding the eligibility for, and availability of, intervenor funding. KWUA does not represent a broad group or class of customers, but represents only a narrow subset of the agricultural pumping customers and its participation may not benefit the entire class of irrigation customers. The complexity and significance of the issues, KWUA's refusal to fund a portion of its own participation in this proceeding, the participation of ICNU and CUB, and level of available funds strongly suggest that the Commission should reject KWUA's Funding Request.

II. BACKGROUND

In July 2003, the Commission adopted temporary rules regarding intervenor funding and the IFA between ICNU, CUB, PacifiCorp, Portland General Electric Company ("PGE"), Northwest Natural Gas Company ("NWN") and the Northwest Industrial Gas Users ("NWIGU"). The Commission was explicitly authorized by the Oregon legislature to approve agreements for financial assistance between energy utilities and organizations "representing broad customer interests." Re Temporary Rules Defining Qualifications for Certification as an Intervenor, OPUC Docket No. AR 462, Order No. 03-388, Appendix A at 2 (July 2, 2003). Final rules were adopted by the Commission on January 1, 2004. Re Adoption of Rules Establishing Certification Qualifications for Intervenors, OPUC Docket No. AR 465, Order No. 04-007 (Jan. 1, 2004).

The Commission's rules and IFA have established requirements regarding eligibility for funding, notice, and the submission of budgets, including the requirement that all intervenors must provide notice of their intention to seek intervenor funding at the

time they submit their petition to intervene. IFA § 6.2. The rules and the IFA are also “binding on all organizations seeking a grant under [the IFA] and will be followed by the Commission in administering the agreement.” OAR § 860-012-0100(2). These procedures are not merely formal requirements, but were established to ensure that intervenors work together and pool resources. See OPUC Docket No. AR 462, Order No. 03-388, Appendix A at 3.

On February 23, 2006, PacifiCorp filed its 2006 general rate case. On February 24, 2006, CUB submitted its notice of intervention and its intent to request intervenor funding, and on March 9, 2006, ICNU submitted its petition to intervene and notice of its intention to request an issue fund grant. KWUA submitted its petition to intervene on April 17, 2006, but did not provide any notice to the parties or the Commission that it intended to request any intervenor funding.

On May 8, 2006, ICNU and CUB submitted their proposed budgets. As ICNU and CUB were informed that they were the only organizations that intended to seek intervenor funding, ICNU and CUB worked cooperatively to develop and submit their individual budgets. For example, the estimated total remaining amount in the Issue Fund Account is approximately \$89,800. ICNU and CUB discussed the remaining amounts and submitted separate budgets requesting half the available amount, or \$44,900 each. The amounts requested by ICNU and CUB were significantly less than the total amounts they intend to expend.^{1/} In addition, ICNU and CUB have and will continue to work cooperatively to share costs, reduce the number of issues they address, and are jointly sponsoring a cost of capital witness.

^{1/} ICNU’s total proposed budget is at least \$175,700 and CUB’s total proposed budget is \$107,766.

KWUA also submitted its proposed budget on May 8, 2006. Although KWUA was aware that ICNU and CUB had requested intervenor funding, KWUA did not notify or work with ICNU and CUB to share the limited funds, reduce costs, or pool resources. In contrast to ICNU and CUB, which are both funding the majority of their costs and are only seeking intervenor funding for part of their budgets, it appears that KWUA is requesting full funding of its proposed budget.

KWUA admitted that it violated the Commission's rules in not providing notice of an intention to seek intervenor funding and filed a motion to file its notice of intent "out of time" ("Motion to File Late"). KWUA requests that the Commission accept its late filed intervenor funding request because: 1) KWUA was "forced to operate in overlapping rate cases;" 2) KWUA will allegedly represent all irrigation customers; and 3) KWUA believes no other party will be prejudiced. ICNU and CUB disagree.

III. RESPONSE

A. The Commission Should Strictly Apply the Intervenor Funding Rules

The Commission's intervenor funding rules and the IFA have been adopted to promote cooperation among parties seeking intervenor funding. The Commission should not grant waivers or accept late filings from parties that do not follow the letter and the spirit of the intervenor funding requirements.

The IFA does not provide the Commission with the discretion to grant KWUA's Motion to File Late. The Commission adopted the IFA, which is an agreement between the major Oregon energy utilities and three main customer organizations. The IFA extends until December 31, 2007, and its terms cannot be changed without consent of ICNU, CUB, NWIGU, NWN, PGE, and PacifiCorp. IFA §§ 2, 10.9. The

Commission should not approve any intervenor funding request that violates the IFA without express consent by the signators to the IFA.

The Commission's rules also prohibit the Commission from granting KWUA's Motion to File Late. The rules specifically state that the terms of the IFA "will be followed by the Commission in administering the agreement." OAR § 860-012-0100(2). KWUA has not established any good cause for the Commission to deviate from this requirement.

B. KWUA's Failure to Comply with the Intervenor Funding Requirements Harms Other Parties

KWUA's Funding Request should be denied because KWUA failed to provide the parties in PacifiCorp's general rate case with notice that it would seek intervenor funding. The notice requirement is not merely a formality, but is intended to require the parties to work together to prepare budgets and share resources, as ICNU and CUB have done.

ICNU and CUB will be directly harmed by KWUA's late filed Funding Request. ICNU and CUB prepared their budgets, hired consultants and commenced work in this proceeding based upon the understanding that no other parties would request intervenor funding. ICNU and CUB are aware of the limited availability of funds remaining in PacifiCorp's issue fund, and have sought to work together in order to jointly present parts of their case and reduce their costs in this proceeding. The Commission should not reward ICNU and CUB's joint cooperation by granting the funding request from a party that has completely disregarded the Commission's rules and the IFA.

KWUA's Funding Request also harms other parties who may seek intervenor funding in the future. If the Commission waives the requirement to file a

notice of intention to seek intervenor funding, then parties will have less of an incentive or ability to cooperatively work together to resolve disputes regarding the availability of funds or to share resources in proceedings. The problems presented by KWUA's late-filed funding request—a dispute over limited funds and the complete lack of coordination between KWUA and other intervenors—may be avoided in the future by the Commission's strict compliance with the intervenor funding rules in this proceeding and by rejecting KWUA's Funding Request.

C. KWUA May Not Qualify for Intervenor Funding

KWUA's Funding Request should be denied because KWUA does not appear to be eligible for intervenor funding. KWUA may not represent a broad group or class of customers, and should not be permitted to receive funding to promote only narrow interests and issues, especially when there are only limited funds available.

Organizations eligible for intervenor funding must represent “a broad group or class of customers and its participation” must be primarily directed at rates, terms and conditions of service “affecting that broad group or class of customers” OAR § 860-012-0100(4)(a); IFA §§ 5.2, 5.3. Organizations representing only “narrow interests” do not qualify for intervenor funding. OAR § 860-012-0100(4)(a); IFA §§ 5.2, 5.3. Organizations that clearly qualify under this standard include the main customer groups like ICNU, CUB and NWIGU, and other broad based organizations like Associated Oregon Industries.

KWUA appears to only represent a narrow subclass of customers. Contrary to KWUA's assertions, KWUA does not represent the interests of all irrigation customers on Schedule 41. Based on PacifiCorp's last general rate case, the on-project

customers represent less than a fifth of all the irrigation customers that take service from PacifiCorp. Re PacifiCorp, OPUC Docket No. UE 170, KOPWU/300, Iverson/4.

Because of specific contractual, statutory and historic rights, KWUA does not pay the full Schedule 41 rate, and has specific interests in this proceeding that may be contrary to those of PacifiCorp's other irrigation customers. KWUA should be permitted to vigorously promote the interests of the on-project water users in this proceeding; however, KWUA does not represent a broad group of irrigators.

D. The Commission Should Provide the Limited Remaining Intervenor Funds to ICNU and CUB Because Their Participation Will Benefit All PacifiCorp Ratepayers

The Commission has the ability to accept, deny or partially deny any request for intervenor funding, and may place reasonable conditions on a funding request. Re PGE, OPUC Docket No. UM 1234, Order No. 06-049 at 2 (Jan. 31, 2006); IFA § 6.5. In considering whether issue fund grants are available for use the Commission will consider the: 1) breadth and complexity of the issues; 2) significance of policy issues; 3) procedural schedule; 4) dollar magnitude of the issues at stake; 5) participation of other parties that adequately represent the interests of customers; 6) amount of funds being provided by the applicant intervenor; 7) qualifications and experience before the Commission; 8) level of available funds; and 9) other proceedings in which intervenors may seek additional issue fund grants from the same fund. OPUC Docket No. UM 1234, Order No. 06-049 at 1-2.

KWUA has requested the Commission fully fund its entire \$30,000 proposed budget. In contrast, ICNU and CUB will fund the majority of their participation in this proceeding, and have requested funding that will cover less than one

third of their combined total proposed budgets. The remaining PacifiCorp issue funds should be provided to ICNU and CUB because they have fully contributed to their participation in numerous past rate proceedings, and will bear the majority of their costs to participate in this proceeding.

The breadth, complexity and significance of the issues also suggest that the Commission should reject KWUA's Funding Request. Accepting KWUA's argument that it will represent the generic interests of PacifiCorp's irrigators, KWUA is still requesting funding to review issues related to only Schedule 41, which is about 1% of PacifiCorp's total revenues. ICNU and CUB not only represent larger classes of ratepayers, but ICNU and CUB will address a broad array of issues. Resolving many of the complex issues that ICNU and CUB intend to raise in this proceeding is likely to bring benefits to all ratepayers, including the irrigation customers. For example, in PacifiCorp's last general rate case, ICNU and CUB addressed administrative and general costs, cost of capital and return on equity, power costs, and other revenue requirement issues that resulted in lower rates for all customers. Therefore, the limited amount of remaining funds should be provided to ICNU and CUB because they will benefit the majority of PacifiCorp's customers.

E. KWUA Has Not Provided the Commission a Legitimate Basis to Waive the Requirement to Submit a Notice of Intention to Request Intervenor Funding

KWUA should not be permitted to ignore the Commission's rules on the grounds that KWUA "was forced to participate in overlapping rate cases." Motion to File Late at 1. KWUA acknowledges that "under normal circumstances, KWUA should have filed its notice of intent to seek intervenor funding and application for case certification along with its intervention." Id. at 1-2. KWUA argues this requirement

should be waived because it was busy working on PacifiCorp's last general rate case and that it did not know that it would be addressing general irrigation rates until right before it was required to submit its notice of intention to seek intervenor funding. Id. at 2

KWUA's rationale does not provide a basis to waive the Commission's intervenor funding requirements. KWUA's intervention was due on April 17, 2006, five days after the Commission resolved the Klamath issues in UE 170. Even according to KWUA's argument, it was aware of the Commission's final ruling on the Klamath irrigation issues before KWUA needed to file its notice of intention to seek intervenor funding. KWUA had sufficient time between the final order in UE 170 and the due date for filing interventions to decide whether it intended to seek intervenor funding. Finally, KWUA does not explain why it did not file its notice as soon as it became aware that it would seek intervenor funding, but instead waited until the time budgets were due.

IV. CONCLUSION

The Commission should reject KWUA's Funding Request and its Motion to File Late. KWUA's request for intervenor funding is late, violates the Commission's rules and the IFA, and is inconsistent with KWUA's obligation to work with other intervenors regarding the availability and use of intervenor funding. KWUA is also requesting intervenor funding to address only narrow issues, and not benefit a broad group of customers. Finally, the Commission's standards regarding whether issue funding is available indicate that the Commission should provide the funding in this proceeding to ICNU and CUB because they are supporting the majority of the costs of their participation, have fully funded their own participation in past proceedings, and are

addressing a broad range of complex and significant issues that are likely to benefit all customers, including irrigation customers.

Dated this 18th day of May, 2006.

Respectfully submitted,

/s/ Irion Sanger

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May 18, 2006

Via Electronic and U.S. Mail

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Re: In the Matter of PACIFIC POWER & LIGHT Request for a
General Rate Increase in the Company's Oregon Annual Revenues
Docket No. UE 179

Dear Filing Center:

Enclosed please find an original and two copies of the Response in Opposition on behalf of the Industrial Customers of Northwest Utilities and the Citizens' Utility Board in the above-referenced docket.

Please return one file-stamped copy of the document in the stamped envelope provided. Thank you for your assistance.

Sincerely,

/s/ Anna E. Studenny
Anna E. Studenny

Enclosures
cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Response in Opposition on behalf of the Industrial Customers of Northwest Utilities and the Citizens' Utility Board upon the parties, on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid.

Dated at Portland, Oregon, this 18th day of May, 2006.

/s/ Anna E. Studenny
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