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May 22, 2006

**VIA ELECTRONIC FILING
& FIRST CLASS MAIL**

Oregon Public Utility Commission
550 Capitol St. NE, #215
PO Box 2148
Salem, OR 97308-2148
Attn: Filing Center

Re: UE 179 – In the Matter of Pacific Power & Light (dba PacifiCorp)
Request for a General Rate Increase in the Company's Oregon Annual Revenues

Dear Filing Center:

Please find enclosed the original and one copy of the REPLY OF KLAMATH WATER USERS ASSOCIATION TO RESPONSE IN OPPOSITION in the above-referenced docket.

Thank you for your assistance. Should you have any questions regarding this matter, please feel free to contact me.

Very truly yours,


Richard G. Lorenz

cc: UE-179 Service List (via email & first class mail)

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 179

In the Matter of)	
)	REPLY OF THE KLAMATH WATER
PACIFIC POWER & LIGHT)	USERS ASSOCIATION TO RESPONSE IN
(DBA PacifiCorp))	OPPOSITION
)	
Request for a General Rate Revision)	
)	

INTRODUCTION

The Klamath Water Users Association (“KWUA”) submits this reply to the Response in Opposition of the Industrial Customers of Northwest Utilities (“ICNU”) and the Citizens Utility Board (“CUB”) to KWUA’s request to obtain intervenor funding in this proceeding. KWUA meets the criteria for case certification and will represent the interests of all irrigation customers taking service under rate Schedule 41. No other party will represent Schedule 41 customers.

DISCUSSION

Apparently, ICNU and CUB have already decided how to allocate between themselves the PacifiCorp Issue Fund account. Unlike the PacifiCorp Preauthorized Matching Fund that is available only to ICNU, and the PacifiCorp CUB fund that is available only to CUB, the PacifiCorp Issue fund is available to “[a]ny intervening party that is precertified or case certified.” Intervenor Funding Agreement (“IFA”) 4.3.2 (emphasis added). KWUA has requested intervenor funding from the PacifiCorp Issue Fund in an amount equal to the amount previously allocated to irrigation customers in UE 170. Because these funds were never claimed, they should still be available in the PacifiCorp Issue Fund and should be allocated to irrigation customers in this proceeding.

It is up to the Commission to decide who is entitled to share in the PacifiCorp Issue Fund account, not ICNU and CUB. In making that determination using the guidelines in Section 6.5 of the IFA, the Commission should focus on: (1) Whether it is in the public interest to allocate funds to Schedule 41 customers in this rate proceeding; and (2) Whether KWUA is qualified to represent these customers.

1. Schedule 41 Customers Should Receive Funding In This Case

There are compelling reasons why Schedule 41 customers should receive funding in this rate proceeding. First, unlike residential and industrial customers, intervenor funding has not been used by any advocacy group to ensure that rates for irrigation customers under Schedule 41 are cost-based. ICNU and CUB do not dispute this. Second, UE 170 resulted in a substantial change in the number and the nature of customers taking service under Schedule 41. In particular, KWUA members are generally larger and have a higher load factor than traditional Schedule 41 customers. Accordingly, KWUA believes that the average cost of serving Schedule 41 customers should be lower now than in the past. Despite this fact, PacifiCorp is proposing to increase Schedule 41 by approximately 20 percent.

ICNU and CUB do not dispute the basic fact that Schedule 41 customers are eligible to receive funding in this case. The Schedule 41 customers are, by definition, a broad group or “class” of customers. This proceeding is an Eligible Proceeding under the Intervenor Funding Agreement for which funding is made available. Rather than questioning Schedule 41 customers’ need for funding, ICNU and CUB argue that granting any funding to Schedule 41 customers would harm other customer classes. The harm, says ICNU and CUB, stems from the fact that notice of intent to seek funding was not provided according to the “letter” of the IFA.

Apparently ICNU and CUB had already decided how they would spend the PacifiCorp Issue Fund by the time KWUA applied for funding on behalf of Schedule 41 customers. Allocating any funding to Schedule 41 customers would, therefore, upset the private arrangement between CUB and ICNU. But this can only be considered a “harm” if the Commission presupposes that ICNU and CUB have a legal entitlement to this funding. They do not. The PacifiCorp Issue Fund is available to any intervening party that is precertified or case certified. IFA 4.3.2. It should also be noted that until KWUA filed its request for intervenor funding on May 8, 2006, ICNU and CUB did not know whether KWUA would request payment for UE 170. Because KWUA has not, and will not, request payment for UE 170, these funds should still be available.

ICNU and CUB also argue that the Schedule 41 customers are not entitled to funding in this case on the theory that “rules are rules” and the Commission has no discretion to waive a technical filing requirement. ICNU and CUB are wrong on this point for a number of reasons. First, motions for extensions of time and motions to file pleadings out of time are regularly granted when it is in the public interest. Second, the law specifically states that the Commission’s rules are to be liberally construed to promote the public interest. *See generally* ORS 756.062 (2) (The provisions of such laws shall be liberally construed in a manner consistent with the directives of ORS 756.040 (1) to promote the public welfare, efficient facilities and substantial justice between customers and public and telecommunications utilities). Here, it is in the public interest to allow KWUA to file its request for intervenor funding out of time because KWUA proposes to represent the interests of a broad class of otherwise unrepresented customers.

2. KWUA Is Qualified to Represent Schedule 41 Customers

The Commission should have no reservations about KWUA's ability to represent the Schedule 41 customers. KWUA has engaged qualified legal counsel and technical consultants and already has been case certified to receive intervenor funding.

ICNU and CUB allege that KWUA does not represent a broad class of customers and therefore is not eligible for intervenor funding. They state that "[b]ecause 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." Response at 7. This is not a credible argument. Schedule 41 is the base rate for KWUA members. Obviously, the higher the base rate, the higher the net costs of power will be. Accordingly, KWUA has a direct interest in advocating for cost based rates for Schedule 41. The fact that some Schedule 41 customers may have a different net rate does not make it any less a class. For example, ICNU is a strong advocate for the industrial rate "class" even though there are significant differences in the industrial customers' load profile and rate schedules.

KWUA also finds it ironic that counsel for ICNU would suggest that KWUA is not qualified to receive and use intervenor funding in this proceeding. KWUA reminds the Commission that in UE 170 counsel for ICNU asked for, *and received*, case certification on behalf of the Klamath Off Project Water Users Association ("KOPWUA"). Apparently, counsel for ICNU believes that KOPWUA and KWUA were eligible for funding in UE 170, but KWUA somehow is not eligible for funding in UE 179.

ICNU and CUB also mislead the Commission by asserting that KWUA is requesting intervenor funding for its entire rate case effort. ICNU and CUB are well aware that it would be impossible to advocate for a client in a general rate case by allocating only 5 hours of attorney

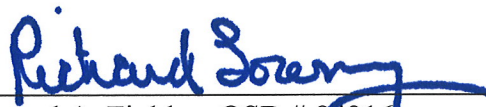
time to hearings and 4 hours of attorney time to writing briefs, as KWUA proposed in its Budget. Obviously, KWUA requested intervenor funding only for a small portion of the funds likely to be required in this proceeding. KWUA has retained an acknowledged rate expert to study the Schedule 41 rates and has committed to using more than 2/3 of the intervenor funding for experts analysis, rather than legal representation. Thus, KWUA will fund virtually all of the legal representation in this proceeding with its own money.

CONCLUSION

The purpose of intervenor funding is to provide a mechanism to make funds available for different customer classes to have adequate legal and technical representation in proceedings before the Commission. ICNU and CUB have no legal entitlement to the PacifiCorp Issue fund as compared to other customer classes. KWUA is asking only for funds previously allocated to PacifiCorp's irrigation customers. The Commission should find that Schedule 41 customers are entitled to funding in the amount of \$30,000 and that KWUA is the only entity willing and capable of representing such customers in this case.

DATED: May 22, 2006.

Respectfully submitted,



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Of Attorneys for Klamath Water Users Association

CERTIFICATE OF SERVICE

I CERTIFY that I have on this day served the foregoing document **REPLY OF THE KLAMATH WATER USERS ASSOCIATION TO RESPONSE IN OPPOSITION** by mailing a copy properly addressed with first class postage prepaid and/or by routing a copy via electronic mail to each party indicated on the current service list maintained by the Oregon Public Utility Commission in this proceeding.

Dated in Portland, Oregon, this May 22, 2006.



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