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March 16, 2005

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**VIA ELECTRONIC FILING**

PUC Filing Center  
Public Utility Commission of Oregon  
PO Box 2148  
Salem, OR 97308-2148

**Re: PacifiCorp's Motion to Compel Klamath Water Users' Association to Respond to  
Discovery  
Docket UE 171**

Enclosed for filing are PacifiCorp's Motion to Compel Klamath Waters Users' Association to Respond to Discovery in the above-referenced docket. A hard copy was served on all parties to this proceeding as indicated on the attached service list.

Very truly yours,

A handwritten signature in black ink, appearing to be "SJA", written over the text "Very truly yours,".

Sarah J. Adams Lien

SJL:knp  
Enclosure  
cc: Service List

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BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UE 171

In the Matter of PacifiCorp’s Klamath Basin  
Irrigation Rates

PACIFICORP’S MOTION TO COMPEL  
KLAMATH WATER USERS’  
ASSOCIATION TO RESPOND TO  
DISCOVERY

**EXPEDITED HEARING REQUESTED**

PacifiCorp hereby respectfully moves the Public Utility Commission of Oregon (the “Commission”) for an order requiring Klamath Water Users’ Association (“KWUA”) to respond to PacifiCorp’s Data Requests Numbers 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.17 and 1.20, by producing all non-privileged documents responsive to those requests. Given that the procedural schedule in this proceeding requires the filing of a summary disposition motion imminently, for which PacifiCorp needs the requested data, PacifiCorp also requests that the Commission hear this matter on an expedited basis.

**I. BACKGROUND**

This case began as docket UE 170, filed by PacifiCorp on November 12, 2004. (*In re PacifiCorp*, UE 170, Request for a General Rate Increase (Or. Pub. Util. Comm’n Nov. 12, 2004).) KWUA filed a Petition to Intervene in that docket on December 7, 2004. (*In re PacifiCorp*, UE 170, KWUA Petition to Intervene (Or. Pub. Util. Comm’n Dec. 7, 2004).) On February 18, 2005, the Commission bifurcated from UE 170, into a new docket designated UE 171, the issue of whether certain of PacifiCorp’s irrigation customers should be served under historical agreements or standard tariff. (*In re PacifiCorp*, UE 170, Joint Ruling (Or. Pub. Util. Comm’n Feb. 18, 2005); *In re PacifiCorp*, UE 170, Revised Joint Ruling (Or. Pub. Util. Comm’n Feb. 24, 2005).)

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1 On February 25, PacifiCorp submitted its first set of data requests to KWUA. While  
2 PacifiCorp’s data requests were pending, PacifiCorp, KWUA and the other parties to UE 171  
3 attended a prehearing conference in which all parties agreed to an expedited discovery and  
4 briefing schedule. (*See* Prehearing Conference Memorandum and Ruling (Mar. 3, 2005); *see*  
5 *also id.* at 2 (granting KWUA intervenor status in UE 171).) One week later, on March 11,  
6 KWUA responded to PacifiCorp’s first set of data requests by refusing to provide any of the  
7 requested data. Contrary to the schedule and understandings reached at the prehearing  
8 conference, and as discussed below, contrary to law and Commission rule, KWUA asserts  
9 that it has no obligation to respond to discovery in this case because it has not yet filed  
10 testimony and because it does not have the burden of proof. In the meantime, KWUA has  
11 recently submitted its second set of data requests to PacifiCorp. Apparently, KWUA is  
12 asserting that discovery in this case is a one-way street.

13 Pursuant to OAR 860-014-0070(2), on Friday, March 11, PacifiCorp counsel  
14 conferred with KWUA counsel in an effort to resolve or narrow this dispute without  
15 Commission intervention. KWUA counsel refused to discuss even a partial response to  
16 PacifiCorp’s data requests. With summary disposition briefing due to be filed at the end of  
17 the month, PacifiCorp is left with no option but to respectfully move the Commission to  
18 order production of the requested documents.

19 **II. ARGUMENT**

20 **A. Governing Standards.**

21 Motions to compel discovery are accorded broad and liberal treatment. Oregon Rule  
22 of Civil Procedure (“ORCP”) 43B provides that a requesting party may file a motion to  
23 compel discovery “with respect to any objection to or other failure to respond to the request.”  
24 The party opposing discovery has the burden of showing that discovery should not be  
25 allowed. *Banister Continental Corp. v. Northwest Pipeline Corp.*, 76 Or. App. 282, 291, 709  
26 P.2d 1103 (1985), *vacated on other grounds*, 301 Or. 763 (1986).

1 Likewise, the scope of discovery is broad. Any matter is discoverable if it appears  
2 reasonably calculated to lead to the discovery of admissible evidence, whether or not it  
3 would itself be inadmissible. *Re Portland Extended Area Service Region*, Order No. 91-958  
4 (UM 261), 1991 WL 504886, at \*3 (Or. Pub. Util. Comm’n July 31, 1991), citing ORCP  
5 36B(1) and *Banister Continental*, 76 Or. App. 282, *aff’d* by *Citizens’ Util. Bd. v. Or. Pub.*  
6 *Util. Comm’n*, 128 Or. App. 650 (1994); *see also* ORCP 36B(1) (“parties may inquire  
7 regarding any matter, not privileged, which is relevant to the claim or defense of the party  
8 seeking discovery or to the claim or defense of any other party”); *In re Portland General*  
9 *Elec. Co.*, Order No. 98-163 (UE 102), 1998 WL 265287, at \*3 (Or. Pub. Util. Comm’n Apr.  
10 20, 1998) (ORCP 36 governs the Commission’s discovery practice in most instances).

11 Given the liberal standards applicable to the legal principles governing the right to  
12 discovery and the fact that PacifiCorp requires the discovery sought to enable it to present an  
13 appropriate factual record to the Commission and to fully explore the strengths and  
14 weaknesses of KWUA’s position, the Commission should grant PacifiCorp’s motion to  
15 compel.

16 **B. The Requests and Responses.**

17 The requests and responses at issue in this motion are reproduced in their entirety in  
18 Attachment A to this motion. To summarize, KWUA has refused to produce copies of the  
19 following:

- 20 (1) Correspondence regarding the negotiation of the contract between the U.S.  
21 Bureau of Reclamation and California Oregon Power Company (the “On-  
Project Contract”),
- 22 (2) Correspondence regarding the negotiation of the contract between the  
23 Klamath Basin Water Users’ Protective Association and the California  
Oregon Power Company (the “Off-Project Contract),
- 24 (3) Documents submitted to the Commission and/or the California Public Utility  
25 Commission (the “California Commission”) regarding the On-Project  
Contract or Off-Project Contract (collectively, the “Contracts”),

- 1 (4) Documents regarding Commission and/or California Commission approval of  
the Contracts,  
2  
3 (5) Documents that KWUA believes, or has represented, comprise the Off-Project  
Contract, and  
4  
5 (6) Documents, such as costs-of-service studies, supporting KWUA’s position  
“that PacifiCorp should be bound by the terms of the [Off-Project Contract] so  
long as it owns and operates the Klamath Hydroelectric Project.”

6 With respect to these requests, KWUA raised the following objections:

- 7 (1) KWUA has no obligation to reply to a data request unless and until KWUA  
8 submits testimony and takes an official position in this proceeding. KWUA  
does not have the burden of proof.  
9  
10 (2) The data requests relate to a petition for case-certification filed in Docket  
UE 170.  
11  
12 (3) The data requests are not reasonably related to KWUA’s application for case  
certification.  
13  
14 (4) PacifiCorp is Copco’s successor in interest and KWUA has no duty to  
produce documents that are already in PacifiCorp’s possession.  
15  
16 (5) PacifiCorp is a party to the Contracts and KWUA has no duty to produce  
documents that are already in PacifiCorp’s possession.  
17  
18 (6) Documents filed with or issued by the Commission and California  
Commission are public documents and KWUA has no duty to produce  
documents that PacifiCorp can obtain through public means.  
19  
20 (7) KWUA will provide its legal position in accordance with the Briefing  
Schedule.

21 KWUA also objected to each of PacifiCorp’s data requests “to the extent” the  
22 requests “calls for a legal conclusion, seeks attorney work product and/or seeks documents or  
information subject to attorney-client privilege” and “on grounds that [PacifiCorp’s first set  
of data requests] is unreasonably cumulative, duplicative and overly broad.”  
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1           **C.     KWUA Has No Reasonable Basis for Refusing to Produce the Requested**  
2           **Documents.**

3                   **1.     The Commission’s Discovery Rules Apply to all “Parties.”**

4           KWUA’s argument that it has no obligation to respond to data requests because it has  
5 not testified in this case and does not have the burden of proof in this case has no legal basis.  
6 KWUA, like all parties to this proceeding, must comply with the rules of discovery; it must  
7 “disclose all material pertaining to the pending proceeding that bears upon or reasonably  
8 could lead to matters that bear upon, any issue in the proceeding.” Commission Discovery  
9 Guidelines (available at <http://www.puc.state.or.us>). These discovery obligations are  
10 applicable to all parties to a proceeding—they are not limited to parties bearing the burden or  
11 triggered by the filing of testimony. *Id.* (“A party may serve data requests on *any other party*  
12 for disclosure of discoverable matters.”); OAR 860-014-0070(1) (“Subject to limitations  
13 imposed by the Commission or Administrative Law Judge (ALJ), . . . any party may submit  
14 data requests to *any party.*” (emphasis added)); OAR 860-011-0035(7) (“‘Party’ means any  
15 person . . . admitted as a party under OAR 860-013-0021.”).

16           KWUA appears to be asserting that it need not provide any of the requested  
17 information because it has not yet presented a formal position in this proceeding through the  
18 filing of testimony. This novel theory is not supported by any statute, case law or  
19 Commission rule. Indeed, ORCP 36B(1) permits discovery on “any matter, not privileged,  
20 which is relevant to the claim or defense of the party seeking discovery or to the claim or  
21 defense of any other party.” In other words, a party may request discovery which is relevant  
22 to its own position as well as to explore the factual basis for the positions asserted by another  
23 party.

24           KWUA’s unsupported position turns the intervention process on its head. Pursuant to  
25 Commission rule, persons granted intervention status become parties to the proceeding with  
26 the ability to exercise the rights of a party and subject to all of the attendant responsibilities

1 of a party unless expressly limited by Commission order. OAR 860-013-0021(2).  
2 Intervenor, unlike interested parties under the Commission’s rules, are entitled to service of  
3 documents, to present evidence, to cross-examine witnesses and to file testimony and other  
4 pleadings. As full parties to the proceeding, they have the right to submit data requests  
5 (which they have heretofore fully exercised) and have the corresponding obligation to  
6 respond to data requests. OAR 860-014-0070 (“any party may submit data requests to any  
7 party”). By seeking intervenor status in this proceeding, KWUA sought these rights and  
8 responsibilities. Had KWUA not intended to subject itself to these rights and  
9 responsibilities, it could have sought interested person status. OAR 860-011-0035(4).

10 In any event, KWUA’s claim that it is not subject to discovery runs counter to the  
11 understandings reached at the prehearing conference. The prehearing schedule in this case is  
12 grounded on the understanding that the parties will exchange and respond to discovery  
13 requests during the month of March. See Prehearing Conference Memorandum and Ruling  
14 at 1 (setting March 31 as deadline for PacifiCorp to file motion for summary disposition);  
15 ORCP 47F (trial court has discretion to postpone motion for summary judgment until  
16 discovery is thoroughly conducted). The standards for summary disposition require the  
17 moving party to establish a factual record upon which the Commission can resolve any issue  
18 of material fact. *Portland General Elec. Co. v. Oregon Energy Co.*, Order No. 98-238 (UC  
19 315), 1998 WL 412484, at \*1 (Or. Pub. Util. Comm’n June 12, 1998). PacifiCorp is entitled  
20 to explore the factual record that would support a Commission determination on the issues to  
21 be addressed in a summary disposition motion. Thus, the summary disposition briefing  
22 schedule that the parties discussed and agreed to at the prehearing conference presupposes  
23 discovery of facts necessary to develop a factual record.

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1                   **2.      PacifiCorp’s Data Requests Seek Documents and Information**  
2                   **Reasonably Calculated to Lead to the Discovery of Admissible**  
3                   **Evidence in this Case.**

3                   The scope of discovery encompasses any matter reasonably likely to lead to the  
4 discovery of admissible evidence. *Re Portland Extended Area Service Region*, 1991 WL  
5 504886, at \*3; ORCP 36B(1). KWUA’s objections that the data requests relate to a petition  
6 for case certification filed in UE 170 miss the point. The question is not whether the data  
7 requests seek documents or information related to another case, but rather, whether the data  
8 requests are reasonably calculated to lead to the discovery of admissible evidence *in this*  
9 *case*. Here, PacifiCorp’s data requests relate to the Contracts, approval of the Contracts by  
10 the Commission and California Commission, and KWUA’s positions regarding the  
11 Contracts. These matters directly relate to issues in this case as identified in the bifurcation  
12 and prehearing orders and therefore are proper and relevant areas of discovery.

13                   KWUA’s objection that PacifiCorp already has the documents it seeks are unfounded  
14 and misapprehend the scope of discovery. KWUA does not know what documents  
15 PacifiCorp possesses and PacifiCorp does not know what documents KWUA possesses. The  
16 Contracts date back nearly 50 years. Until KWUA fully responds to discovery, no one but  
17 KWUA can know what documents or information KWUA has in its possession, custody or  
18 control. A party cannot withhold discoverable material on the basis that another party *may*  
19 already possess copies of the same material.

20                   **3.      The Historic Documents Requested by PacifiCorp Are Not**  
21                   **Publicly Available.**

22                   KWUA also makes the unfounded objection that historic documents related to the  
23 Contracts are not subject to discovery because they are publicly available. Most documents  
24 filed with the Commissions and correspondence issued from the Commissions during the  
25 1950s and 1960s, however, are not publicly available because the Commissions only retain  
26



1 documents for a limited time. PacifiCorp has already exhausted the avenue of seeking to  
2 obtain the requested documents from the Commissions, without success.

3 **4. PacifiCorp Asks the Commission to Compel Production of Non-**  
4 **Privileged Documents Only.**

5 Because PacifiCorp is asking herein that the Commission compel production of non-  
6 privileged documents only, KWUA’s objections regarding privilege and legal conclusions  
7 are not implicated by this motion.

8 **5. PacifiCorp Has Submitted a Small Number of Data Requests That**  
9 **Narrowly Target Potentially Admissible Evidence in this Case.**

10 KWUA’s form objection “on grounds that [PacifiCorp’s first set of data requests] is  
11 unreasonably cumulative, duplicative and overly broad” is unfounded. PacifiCorp’s data  
12 requests relate to the Contracts, approval of the Contracts by the Commission and California  
13 Commission, and KWUA’s position regarding the Contracts. KWUA has refused to produce  
14 *anything* in response to PacifiCorp’s requests. KWUA cannot claim that PacifiCorp is asking  
15 for documents or information that KWUA has already provided.

16 **III. REQUEST FOR EXPEDITED HEARING**

17 PacifiCorp requests an expedited hearing on this motion because the deadline for  
18 filing a motion for summary disposition is imminent. The discovery requested by PacifiCorp  
19 is relevant to a central issue in this case—*i.e.*, whether certain of PacifiCorp’s irrigation  
20 customers should be served under historical agreements or standard tariff. In light of the  
21 schedule in this case, PacifiCorp needs the discovery sought in this motion immediately.

22 **IV. CONCLUSION**

23 KWUA has not presented any valid legal objection to the production of the requested  
24 documents. Without valid objection, KWUA must produce all relevant discovery within its  
25 possession, custody or control. KWUA’s objections to PacifiCorp’s data requests improperly  
26

1 constrain the fact-finding ability of the Commission, jeopardizing its ability to make  
2 decisions based upon a full and complete record.

3 Because KWUA has no legal basis for its objections to PacifiCorp's Data Requests  
4 Numbers 1.1, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.17 and 1.20, PacifiCorp  
5 respectfully requests that the Commission require KWUA to promptly and fully respond by  
6 producing all non-privileged documents responsive to those requests.

7 DATED: March 16, 2005.

8 STOEL RIVES LLP

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10 Katherine A. McDowell  
11 Sarah J. Adams Lien

12 Attorneys for PacifiCorp  
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## ATTACHMENT A

The requests and responses at issue in PacifiCorp's Motion to Compel are as follows:

**REQUEST NO. 1.1:** With respect to the "On-Project Power Contract" (the "Contract") referenced on page 2 [of KWUA's Response to Request for Additional Information, dated January 18, 2005, in Case No. UE 170], please produce copies of all correspondence between KWUA and the California Oregon Power Company ("Copco") regarding the negotiation of the Contract.

**KWUA RESPONSE:** KWUA objects to this data request on the grounds that KWUA has no obligation to reply to a data request unless and until KWUA submits testimony and takes an official position in this proceeding. KWUA does not have the burden of proof. KWUA also objects to PacifiCorp's data request in Docket UE 171 relating to a petition for case-certification filed in Docket UE 170. KWUA further objects on the grounds that the request is not reasonably related to KWUA's application for case-certification. KWUA also objects to this request on the grounds that PacifiCorp is Copco's successor in interest and KWUA has no duty to produce documents that are already in PacifiCorp's possession. KWUA objects to the extent that this request calls for a legal conclusion, seeks attorney work product and/or seeks documents or information subject to attorney-client privilege.

**REQUEST NO. 1.3:** Please produce copies of all documents submitted to the Oregon Public Utilities Commission ("Commission") in 1955 or 1956 regarding the Contract.

**KWUA RESPONSE:** KWUA objects to this data request on the grounds that KWUA has no obligation to reply to a data request unless and until KWUA submits testimony and takes a position in this proceeding. KWUA does not have the burden of proof. KWUA also objects to PacifiCorp filing a data request in Docket UE 171 relating to a petition for case-certification filed in Docket UE 170. KWUA further objects on the grounds that the request is not reasonably related to KWUA's application for case-certification. KWUA also objects to this request on the grounds that documents filed with or issued by the Commission are public documents and KWUA has no duty to produce documents that PacifiCorp can obtain through public means. KWUA objects to the extent that this request calls for a legal conclusion, seeks attorney work product and/or seeks documents or information subject to attorney-client privilege.

**REQUEST NO. 1.4:** Please produce copies of all documents submitted to the Commission subsequent to 1956 regarding the Contract.

**KWUA RESPONSE:** KWUA objects to this data request on the grounds that KWUA has no obligation to reply to a data request unless and until KWUA submits testimony and takes a position in this proceeding. KWUA does not have the burden of proof. KWUA also objects to PacifiCorp filing a data request in Docket UE 171 relating to a petition for case-certification filed in Docket UE 170. KWUA further objects on the grounds that the request is not reasonably related to KWUA's application for case-certification. KWUA also objects to this request on the grounds that documents filed with the Commission are public documents and KWUA has no duty to produce documents that PacifiCorp can obtain through public means. KWUA objects to the extent that this request calls for a legal conclusion, seeks attorney work product and/or seeks documents or information subject to attorney-client privilege.

**REQUEST NO. 1.5:** Please produce copies of all documents, not produced in response to the above requests, regarding Commission approval of the Contract or the duration of the Contract.

**KWUA RESPONSE:** KWUA objects to this data request on the grounds that KWUA has no obligation to reply to a data request unless and until KWUA submits testimony and takes a position in this proceeding. KWUA does not have the burden of proof. KWUA also objects to PacifiCorp filing a data request in Docket UE 171 relating to a petition for case-certification filed in Docket UE 170, KWUA further objects on the grounds that the request is not reasonably related to KWUA's application for case-certification. KWUA also objects to this request on the grounds that documents filed with the Commission are public documents and KWUA has no duty to produce documents that PacifiCorp can obtain through public means. KWUA also objects on the grounds that PacifiCorp is a party to the Contract and KWUA has no duty to produce documents that are already in PacifiCorp's possession. KWUA objects to the extent that this request calls for a legal conclusion, seeks attorney work product and/or seeks documents or information subject to attorney-client privilege.

**REQUEST NO. 1.6:** Please produce copies of all documents that KWUA believes, or that KWUA has previously represented, comprise the Off-Project Power Contract referenced on page 2 [of KWUA's Response to Request for Additional Information].

**KWUA RESPONSE:** KWUA objects to this data request on the grounds that KWUA has no obligation to reply to a data request unless and until KWUA submits testimony and takes a position in this proceeding. KWUA does not have the burden of proof. KWUA also objects to PacifiCorp filing a data request in Docket UE 171 relating to a petition for case-certification filed in Docket UE 170. KWUA further objects on the grounds that the request is not reasonably related to KWUA's application for case-certification. KWUA also objects to this request on the grounds that PacifiCorp is a party to the Off-Project Power Contract and KWUA has no duty to produce documents that are already in PacifiCorp's possession. KWUA objects to the extent that this request calls for a legal conclusion, seeks attorney work product and/or seeks documents or information subject to attorney-client privilege.

**REQUEST NO. 1.7:** Please produce copies of all documents submitted to or issued by the Commission in 1955 or 1956 regarding Commission approval of the Off-Project Power Contract referenced on page 2 [of KWUA's Response to Request for Additional Information].

**KWUA RESPONSE:** KWUA objects to this data request on the grounds that KWUA has no obligation to reply to a data request unless and until KWUA submits testimony and takes a position in this proceeding. KWUA does not have the burden of proof. KWUA also objects to PacifiCorp filing a data request in Docket UB 171 relating to a petition for case-certification filed in Docket UE 170. KWUA further objects on the grounds that the request is not reasonably related to KWUA's application for case-certification. KWUA also objects to this request on the grounds that documents filed with or issued by the Commission are public documents and KWUA has no duty to produce documents that PacifiCorp can obtain through public means. KWUA also objects to this request on the grounds that PacifiCorp is a party to the Off-Project Power Contract and KWUA has no duty to produce documents that are already in PacifiCorp's possession. KWUA objects to the extent that this request calls for a legal conclusion, seeks attorney work product and/or seeks documents or information subject to attorney-client privilege.

**REQUEST NO. 1.8:** Please produce copies of all documents submitted to or issued by the Commission subsequent to 1956 regarding the Off-Project Power Contract.

**KWUA RESPONSE:** KWUA objects to this data request on the grounds that KWUA has no obligation to reply to a data request

unless and until KWUA submits testimony and takes a position in this proceeding. KWUA does not have the burden of proof. KWUA also objects to PacifiCorp filing a data request in Docket UE 171 relating to a petition for case-certification filed in Docket UE 170. KWUA further objects on the grounds that the request is not reasonably related to KWUA's application for case-certification. KWUA also objects to this request on the grounds that documents filed with or issued by the Commission are public documents and KWUA has no duty to produce documents that PacifiCorp can obtain through public means. A Briefing Schedule has been established in this proceeding. KWUA will provide its legal position in accordance with the Briefing Schedule. KWUA also objects to this request on the grounds that PacifiCorp is a party to the Off-Project Power Contract and KWUA has no duty to produce documents that are already in PacifiCorp's possession. KWUA objects to the extent that this request calls for a legal conclusion, seeks attorney work product and/or seeks documents or information subject to attorney-client privilege.

**REQUEST NO. 1.9:** Please produce copies of all documents, not produced in response to the above requests, regarding Commission approval of the Off-Project Contract or the duration of the Off-Project Contract.

**KWUA RESPONSE:** KWUA objects to this data request on the grounds that KWUA has no obligation to reply to a data request unless and until KWUA submits testimony and takes a position in this proceeding. KWUA does not have the burden of proof. KWUA also objects to PacifiCorp filing a data request in Docket UE 171 relating to a petition for case-certification filed in Docket UE 170. KWUA further objects on the grounds that the request is not reasonably related to KWUA's application for case-certification. KWUA also objects to this request on the grounds that documents filed with or issued by the Commission are public documents and KWUA has no duty to produce documents that PacifiCorp can obtain through public means. KWUA also objects to this request on the grounds that PacifiCorp is a party to the Off-Project Power Contract and KWUA has no duty to produce documents that are already in PacifiCorp's possession. KWUA objects to the extent that this request calls for a legal conclusion, seeks attorney work product and/or seeks documents or information subject to attorney-client privilege.

**REQUEST NO. 1.10:** Please produce copies of all documents, not produced in response to the above requests, submitted to or issued by the Commission in 1955 or 1956 regarding Commission approval of a proposal, offer or terms under which Copco would

serve “Off-Project water users” as that term is used by KWUA (“Off-Project customers”).

**KWUA RESPONSE:** KWUA objects to this data request on the grounds that KWUA has no obligation to reply to a data request unless and until KWUA submits testimony and takes a position in this proceeding. KWUA does not have the burden of proof. KWUA also objects to PacifiCorp filing a data request in Docket UE 171 relating to a petition for case-certification filed in Docket UE 170. KWUA further objects on the grounds that the request is not reasonably related to KWUA’s application for case-certification. KWUA also objects to this request on the grounds that documents filed with or issued by the Commission are public documents and KWUA has no duty to produce documents that PacifiCorp can obtain through public means. KWUA also objects to this request on the grounds that PacifiCorp is a party to the Off-Project Power Contract and KWUA has no duty to produce documents that are already in PacifiCorp’s possession. KWUA objects to the extent that this request calls for a legal conclusion, seeks attorney work product and/or seeks documents or information subject to attorney-client privilege.

**REQUEST NO. 1.11:** Please produce copies of all documents submitted to or issued by the Commission subsequent to 1956 regarding Commission approval of a proposal, offer or terms under which Copco or its successor would serve Off-Project customers.

**KWUA RESPONSE:** KWUA objects to this data request on the grounds that KWUA has no obligation to reply to a data request unless and until KWUA submits testimony and takes a position in this proceeding. KWUA does not have the burden of proof. KWUA also objects to PacifiCorp filing a data request in Docket UE 171 relating to a petition for case-certification filed in Docket UE 170. KWUA further objects on the grounds that the request is not reasonably related to KWUA’s application for case-certification. KWUA also objects to this request on the grounds that documents filed with or issued by the Commission are public documents and KWUA has no duty to produce documents that PacifiCorp can obtain through public means. KWUA also objects to this request on the grounds that PacifiCorp is a party to the Off-Project Power Contract and KWUA has no duty to produce documents that are already in PacifiCorp’s possession. KWUA also objects to the extent that this request calls for a legal conclusion, seeks attorney work product and/or seeks documents or information subject to attorney-client privilege.

**REQUEST NO. 1.12:** Please produce copies of all documents, not produced in response to the above requests, regarding Commission approval of a proposal, offer or terms under which Copco or its successor would serve Off-Project customers.

**KWUA RESPONSE:** KWUA objects to this data request on the grounds that KWUA has no obligation to reply to a data request unless and until KWUA submits testimony and takes a position in this proceeding. KWUA does not have the burden of proof. KWUA also objects to PacifiCorp filing a data request in Docket UE 171 relating to a petition for case-certification filed in Docket UE 170. KWUA further objects on the grounds that the request is not reasonably related to KWUA's application for case-certification. KWUA also objects to this request on the grounds that documents filed with or issued by the Commission are public documents and KWUA has no duty to produce documents that PacifiCorp can obtain through public means. KWUA also objects to this request on the grounds that PacifiCorp is a party to the Off-Project Power Contract and KWUA has no duty to produce documents that are already in PacifiCorp's possession. KWUA also objects to the extent that this request calls for a legal conclusion, seeks attorney work product and/or seeks documents or information subject to attorney-client privilege.

**REQUEST NO. 1.17:** With respect to the statement on page 3 [of KWUA's Response to Request for Additional Information] that KWUA believes "that PacifiCorp should be bound by the terms of the [Off-Project Contract] so long as it owns and operates the Klamath Hydroelectric Project," please fully describe the basis for that position and produce all documents, including cost of service studies, supporting that position.

**KWUA RESPONSE:** KWUA objects to this data request on the grounds that KWUA has no obligation to reply to a data request unless and until KWUA submits testimony and takes a position in this proceeding. KWUA does not have the burden of proof. KWUA also objects to PacifiCorp filing a data request in Docket UE 171 relating to a petition for case-certification filed in Docket UE 170. KWUA further objects on the grounds that the request is not reasonably related to KWUA's application for case-certification. Furthermore, KWUA has no duty to produce documents that are already in PacifiCorp's possession. KWUA also objects to the extent that this request calls for a legal conclusion, seeks attorney work product and/or seeks documents or information subject to attorney-client privilege.



**REQUEST NO. 1.20:** Please produce copies of all documents, including pre-filed testimony, submitted by the Klamath Basis Water Users Protective Association (“Association”) to the California Public Utilities Commission in 1956 regarding approval of an agreement between Copco and the Association dated November 3, 1955, Application No. 37918.

**KWUA RESPONSE:** KWUA objects to this data request on the grounds that KWUA has no obligation to reply to a data request unless and until KWUA submits testimony and takes a position in this proceeding. KWUA does not have the burden of proof. KWUA also objects to PacifiCorp filing a data request in Docket UE 171 relating to a petition for case-certification filed in Docket UE 170. KWUA further objects on the grounds that the request is not reasonably related to KWUA’s application for case-certification. KWUA also objects to this request on the grounds that documents filed with or issued by the California Public Utilities Commission are public documents and KWUA has no duty to produce documents that PacifiCorp can obtain through public means. KWUA also objects to this request on the grounds that PacifiCorp is a party to the Contract and KWUA has no duty to produce documents that are already in PacifiCorp’s possession. KWUA objects to the extent that this request calls for a legal conclusion, seeks attorney work product and/or seeks documents or information subject to attorney-client privilege.

KWUA also responded, with respect to all of PacifiCorp’s data requests by stating that “KWUA objects to PacifiCorp’s first set of data requests on grounds that it is unreasonably cumulative, duplicative and overly broad.”

**CERTIFICATE OF SERVICE**

1  
2 I hereby certify that I served the foregoing document in docket UE 171 on the  
3 following named person(s) on the date indicated below by e-mail where available, or by first-  
4 class mail, to said person(s) a true copy thereof, addressed to said person(s) at his or her last-  
5 known address(es) indicated below.

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9 Sprague River, OR 97639

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24 DATED: March 16, 2005.



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