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May 12, 2005

VIA ELECTRONIC MAIL & FIRST CLASS MAIL

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

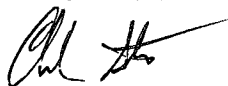
Re: In the Matter of the Request of Pacific Power and Light
Klamath Basin Irrigation Rates -- OPUC Docket No. UE-171

Dear Filing Center:

Enclosed please find an original and one copy of Klamath Water Users Association Motion to Strike relating to the above-referenced docket

Should you have any questions regarding this matter, please call.

Very truly yours,



Chad M. Stokes

CMS/tr

Enclosure

cc: UE-171 Service List (via email & first class mail)

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 171

In The Matter of)	
)	
PACIFIC POWER & LIGHT (dba)	
PACIFICORP))	
)	KLAMATH WATER USERS
Klamath Basin Irrigation Rates.)	ASSOCIATION MOTION TO
)	STRIKE
_____)	

INTRODUCTION

Pursuant to OAR § 860-013-0031, the Klamath Water Users Association (“KWUA”) moves to strike portions of WaterWatch of Oregon’s (“WaterWatch”) Response to Pacific Power and Light d/b/a PacifiCorp’s (“PacifiCorp”) Motion for Summary Disposition. KWUA requests the Oregon Public Utility Commission (“OPUC” or “Commission”) to strike all references to the unsupported factual assertions that are beyond the scope of the narrow legal issues presented in this proceeding. In support of this Motion, KWUA states as follows:

BACKGROUND

On November 12, 2004, PacifiCorp filed a general rate case with the Commission seeking an annual revenue increase of 12.5%, or \$102,000,000. PacifiCorp’s rate proceeding has been docketed as UE-170. In February 2005, the Commission bifurcated the proceeding and initiated UE 171 to address “the narrow issue of whether PacifiCorp’s Klamath Basin irrigation customers should be provided electrical service in accordance with the historical contracts or PacifiCorp’s standard tariffs.” *In re Pacific Power and Light*, UE 171, Ruling on Motion to Compel (April 14, 2005). On March 31, 2005, PacifiCorp filed a Motion for Summary

Disposition (“PacifiCorp Motion”) requesting the Commission terminate the January 31, 1956 contract between California Oregon Power Company and the United States Bureau of Reclamation (“1956 Contract”) and a contract between California Oregon Power Company and the Klamath Basin Water Users Protective Association (“Off-Project Contract”) (collectively “Klamath Basin Contracts”).

ARGUMENT

This docket was initiated to address the narrow legal question of whether the Klamath Basin Contracts should be continued or terminated. This is not a rate setting proceeding or a water adjudication hearing. Nor is it the proper forum to discuss whether the Klamath Basin is “over appropriated” or to delve into the price elasticity of demand for electricity. The matters at issue in this proceeding are “primarily legal in nature, addressing the interpretation of existing contracts.” *In re Pacific Power and Light*, UE 171, Prehearing Conference Memorandum and Ruling at 3 (March 3, 2005).

In its Reply to PacifiCorp’s Motion, WaterWatch adopted PacifiCorp’s position vis-a-vis the Klamath Basin Contracts. In doing so, however, WaterWatch also makes a series of unsupported factual assertions that go well beyond the scope of this proceeding. Instead of interpreting the Klamath Basin Contracts and making legal arguments regarding whether the Klamath Basin Contracts should be continued, WaterWatch makes unsubstantiated editorial comments regarding the alleged environmental impacts associated with the Klamath Basin Contracts. For example, WaterWatch argues “Also as a result of the expiring contract power rates, water is used simply because it is so cheap to pump it.” WaterWatch Response at 8. Notably, this factual assertion has no supporting affidavit or citation.

Even if these editorial comments were factually supportable, WaterWatch's comments on alleged environmental problems resulting from water overallocation have no place in this proceeding. *Id.* at 3. The Commission has recognized the limited scope of this proceeding. In response to the Interventions of the Hoopa Valley Tribe, the Yurok Tribe and the Pacific Coast Federation of Fishermen's Association (collectively "Petitioners"), Administrative Judge Grant stated:

I agree that the three petitioners seek to raise issues beyond the scope of this proceeding. All three petitioners seek to raise "environmental and economic" issues related to the existing rates paid by irrigators in the Klamath Basin. The primary issue before the Commission in this docket, however, is whether PacifiCorp's Klamath Basin irrigation customers should be provided electrical service in accordance with the historical contracts or PacifiCorp's standard tariffs. As explained in the ruling separating this issue from PacifiCorp's general rate proceeding, the matters at issue are 'primarily legal in nature, addressing the interpretation of existing contracts.'

In re Pacific Power and Light, UE 171, Ruling at 3 (April 5, 2005). Judge Grant conditionally granted the interventions but limited their participation "to addressing issues directly related to the legal issues in this proceeding." *Id.* Judge Grant acknowledged the petitioners' other concerns raised in their respective petitions to intervene, but determined that "this docket is the not the appropriate forum to address them." *Id.* The same rules apply to WaterWatch.

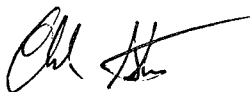
The Commission should strike WaterWatch's Brief from Page 2, Paragraph 3 through the first full paragraph on Page 4 and the section beginning on Page 7, F(1) *The Standard Tariff is the Most Environmentally Appropriate Rate* ending at the bottom of Page 8. Moreover, Exhibit 1 to the affidavit of Lisa Brown should be stricken as it similarly raises issues that are beyond the scope of this proceeding. WaterWatch should not be permitted to fill the record with its opinions or selective facts regarding how water use, environmental and economic issues should be considered in determining what rates should be paid by irrigators in the Klamath Basin.

CONCLUSION

For the reasons described above, the Commission should strike WaterWatch's Brief from Page 2, Paragraph 4 through the first full paragraph on page 4 and the section beginning on Page 7, F(1) *The Standard Tariff is the Most Environmentally Appropriate Rate* ending at the bottom of Page 8 and Exhibit 1 to the affidavit of Lisa Brown.

Dated this 12th day of May, 2005.

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 Klamath Water Users Association Motion to Strike by electronic mail and/or mailing a copy properly addressed with first class postage prepaid to the following:

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Dated in Portland, Oregon, this 12th day of May 2005.



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