

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**Docket No. UE 171**

In the Matter of the Request of	)	PETITION TO INTERVENE BY
	)	THE YUROK TRIBE
PACIFIC POWER & LIGHT	)	
(dba PacifiCorp)	)	
	)	
Request for a General Rate Increase in the	)	
Company's Oregon Annual Revenues	)	

**PETITION TO INTERVENE OF THE YUROK TRIBE**

Pursuant to ORS § 756.525 and OAR § 860-013-0021, the YUROK TRIBE is the federally recognized Indian tribe to represent Yurok Tribal members and hereby submits this Petition to Intervene in the above-captioned proceeding and seeks party status as provided in OAR § 860-001-0035(5). This petition is being filed on behalf of the 310 Yurok Tribal members who reside in Oregon, and are customers of PacifiCorp, the Yurok Tribe as a direct customer of PacifiCorp, Tribal economic enterprises who are customers of PacifiCorp, individual Yurok Tribal members who are customers of PacifiCorp, and on behalf of those Yurok economic and cultural interests directly impacted by the Oregon PUC's decision on this matter. The name, mailing address and contact information of the YUROK TRIBE as a party of record in this proceeding is:

YUROK TRIBE  
Attn: John Corbett  
190 Klamath Blvd.  
P.O. Box 1027  
Klamath, CA 95548  
(707) 482-1350  
Fax: (707) 482-1363

[jcorbett@yuroktribe.nsn.us](mailto:jcorbett@yuroktribe.nsn.us)

Staff Attorney, John Corbett will represent the interests of The Yurok Tribe in this proceeding. We may also appoint additional counsel at a later date. All documents related to this proceeding should be served to John Corbett at the address above.

### **DESCRIPTION OF PETITIONER'S ORGANIZATION**

The Yurok Tribe is California's largest Indian Tribe with nearly 5,000 enrolled members. The Yurok Tribe's Territory consists of all Ancestral Lands, specifically including, but not limited to, the Yurok Reservation's lands, which currently extend from one mile on each side from the mouth of the Klamath River and upriver for a distance of 44 miles. The Yurok Tribe's people are also known historically as the Pohlik-la, Ner-er-er, Petch-ik-lah and Klamath River Indians. For millennia traditional Yurok religion and sovereignty was pervasive and practiced throughout all our historic villages along the Pacific Coast and inland on the Klamath River. The Yurok people carried on extensive trade and social relations through this region and beyond.

The Yurok social and ecological balance, thousands of years old, was shattered by the invasion of the non-Indians beginning in the 17th century. As white explorers, gold-miners and settlers came to this region, the Yurok people lost more than three-fourths of our population through fatal contact with European diseases and unprovoked massacres by vigilantes. The Yurok people agreed to sign a "Treaty of Peace and Friendship" with representatives of the President of the United States in 1851, however, the US Senate failed to ratify the treaty. In 1855, the US Government ordered our people to be confined on the Klamath River Reserve which was created by Executive Order. The relocation of

Yurok families to unfamiliar lands caused great hardships. The forced removal of our children to US Government boarding schools where they were denied the right to practice their cultural traditions caused the disruption of our heritage. Throughout the past history of Yurok contacts with the US Government and State of California, we have fought to protect and maintain access to our Ancestral Lands. These struggles were legally complicated by the fact that the Yurok people had never established a formal structure with a written form of government. After the land-based natural resources and fisheries of our aboriginal lands had been decimated, and the traditional stewardship of our people ignored, the Yurok people knew it was time to establish a federally recognized Tribal Sovereignty and Authority to protect and preserve both the traditions of our people and the land and river of our ancestors.

On November 24, 1993, the Constitution of the Yurok Tribe was certified and approved, after having passed a Ratification Election by a majority of the Yurok Tribal members. The Constitution defines the territory, jurisdiction and authority of its Tribal Government. The Yurok Tribe's main offices are located in Klamath, California and the Tribal government employs nearly 200 individuals. Enrolled and registered to vote Tribal members elect nine of its members to the Tribal Council. The Tribal Chairperson and Vice Chairperson are elected at-large. Seven Council members represent the seven Tribal Districts. Each Council member serves a term of three years. The Council meets at least monthly. Individual Council members have District meetings at least quarterly. All regular and special meetings of the Council are open to members of the Yurok Tribe. All votes of the Council are a matter of public record.

The Yurok Tribe is the largest Indian Tribe in California, with nearly 5,000 enrolled members. While much of the land has been wounded, broken or lost, the Spirit of the Creator and our inherent Tribal Sovereignty still thrive in the hearts and minds of our people as well as in the strong currents, deep canyons, thick forests and high mountains of our Ancestral Lands. The new dawn on the Yurok Tribe that has emerged is giving us renewed strength, pride and recommitment to the sacred and vibrant traditions of our people.

In accordance with our Constitution, in order to exercise the inherent sovereignty of the Yurok Tribe, we pledge in common to:

- 1.) Preserve forever the survival of our Tribe and protect it from forces which may threaten its existence.
- 2.) Uphold and protect our Tribal sovereignty which has existed from time immemorial and which remains undiminished.
- 3.) Reclaim the Tribal land base within the Yurok Reservation and enlarge the Reservation boundaries to the maximum extent possible within the Ancestral Lands of our Tribe and/or any compensatory land area.
- 4.) Preserve and promote our culture, language, religious beliefs and practices and pass them on to our children, our grandchildren, and to their children forever.
- 5.) Provide for the health, education, economy and social well-being of our members and future members.
- 6.) Restore, enhance and manage Tribal fishery, Tribal water rights, Tribal forests and all other natural resources.

7.) Insure peace, harmony and protection of individual human rights among our members and among others who may come within the jurisdiction of our Tribal government.

#### Basic Facts and Challenges

- At 63,035 acres, the Yurok Reservation is the size of many cities or counties. Without a tax base, gaming or other business revenues, the Yurok Tribe does not have the resources to construct essential community facilities, to install or replace eroding infrastructure or to create sustainable economic development on the Reservation.
- Over 70% of the Yurok reservation has no access to basic telephone or electricity services.
- Poverty rates average 80% on the reservation.
- Problems including lack of land for economic development and community facilities, inadequate telecommunications and electrical infrastructure and a grossly substandard transportation system inhibit chance for economic growth, access to health care and educational opportunities, reduce any potential for agricultural production, and limit job opportunities.

However, as a newly organized government, the Yurok Tribe employs 200 individuals in more than 12 departments including Environmental Protection, Forestry, and Fisheries.

The Tribe is hopeful about our increasing capacity for self-governance and cultural preservation and for a bright future of the Yurok Tribe and our people.

## NATURE AND EXTENT OF PETITIONER'S INTEREST

There are many issues raised in this rate case, but the Yurok Tribe's primary interest in this case has to do with discriminatory power rate subsidies to federal and non-federal commercial irrigators in the Upper Klamath Basin, and the adverse impacts of those subsidized power rates on lower Klamath River Basin water resources, fisheries and the environment. The Yurok Tribe has been an active and consistent participant in salmon and other anadromous fish species restoration and water allocation issues regarding the Klamath River Basin for more than 20 years, with considerable staff time devoted to those issues.

Current power rates to Klamath Basin irrigators are fixed at 1917 power rates far below current market rates, and in fact far below the rates paid for irrigation by any other Oregon farming operations. Below market irrigation pumping subsidies encourage wasteful and inefficient water use in the upper Klamath Basin, which means less water left in a water-starved Klamath River to support economically important salmon fisheries, undercutting state and federal recovery efforts for the Klamath Basin Coho salmon (which are listed as "threatened with extinction" under the federal Endangered Species Act (ESA) as well as under the California ESA) and for economically valuable fall and spring Chinook.

We do not and never have opposed the reasonable use of irrigation water for agriculture in the Upper Klamath Basin. However, we do advocate rational, market-based, non-discriminatory power rates that encourage the efficient use and conservation of water for irrigation and other purposes that does less harm to in-river flows and valuable downriver commercial salmon fisheries in the Klamath Basin. That is best achieved by setting agricultural power rates at the same market rate as all other agricultural users.

Below market subsidies eliminate economic “signals” to conserve the resource. When discriminatory, below market and water-wasteful irrigation power subsidies in the upper Klamath Basin cause inefficient use of the basin’s extremely limited water resources, this deprives the lower Klamath River of much needed water to support anadromous fisheries. These fisheries are an integral part of the Yurok culture and tradition, as well as being an economic interest to the Yurok Tribe and surrounding communities. The decreased flows put the Tribe and the surrounding communities at economic risk, reducing fishing opportunities for their members, and putting commercial salmon fishing families throughout the area out of work.

In addition to the Tribe’s economic interests being put at risk, and more importantly, is the fact that thousands of years of Yurok culture and tradition are at risk. The Yurok people have always looked to the river for life giving sustenance. It plays a vital role in ceremonies such as the Jump Dance, Brush Dance, and White Deerskin Dance, all of which play a vital role in Yurok religious beliefs and are of immense cultural significance.

We believe that the present PacifiCorp far below market rate irrigation tariffs in the Klamath River Basin support uneconomical and inefficient use of water from Klamath Basin lakes, rivers, streams, and groundwater for irrigation and other purposes. These tariffs directly impact the total volume of water left in the Klamath River to support commercial as well as, sustenance level fisheries promised to the Yurok , and other Native peoples, by the trust obligation of the government to Native Americans. Only so much water is available each year from the arid basin’s limited rainfall, and the water resources of the basin are clearly over-appropriated. When water is inefficiently used in the upper Klamath Basin it must come out of the portion left in the river to support fisheries. It

makes no sense, in an already over-appropriated basin fraught with water conflicts, to maintain irrigation rates that are many times below market costs and thus discourage conservation and efficient water use.

Problems with the dewatering of the lower Klamath River have been serious and getting worse. Over the past 40 years, vastly increased upper basin irrigation demand (in part fueled by the current huge irrigation subsidy) has artificially lowered water flows in the lower Klamath River to near record low levels that have led to major fish kills in roughly 7 out of 10 years, culminating in September 2002 in a fish kill of at least 60,000 dead adult spawners in what has been described as the worst adult fish kill in U.S. history.

Furthermore, uneconomical irrigation operations adversely affect natural physical river processes, hydrology, water quality, and the health of many aquatic species and their habitat. Vastly below market Klamath Basin irrigation tariffs also promote inefficient energy consumption, thereby counteracting necessary energy conservation efforts, and represent an inequitable distribution of the costs of electrical service.

#### **ISSUES PETITIONER INTENDS TO RAISE AT THE PROCEEDING**

We intend primarily to raise environmental and economic issues related to the current Klamath Basin irrigation tariff and its impacts on lower river, fishing-dependent communities, as well as impacts on traditional Yurok practices and culture. Some of these issues are already before the Commission through the filings of other Intervenors.

However, the unique economic, environmental, and cultural interests of Yurok



communities generally, are directly affected by the outcome of this proceeding, but these interests are not represented by any other party.

The PUC must also consider the environmental and cultural impacts of its decisions as well as the full range of economic impacts, and should have a full range of parties and information before it on which to make those assessments.

The Yurok Tribe seeks to obtain careful Commission consideration of both the environmental and economic costs of the current below-market Klamath irrigation power subsidy to lower river communities dependent upon the Klamath River as a functioning river system capable of supporting economically valuable salmon fisheries and salmon-based economies, as well as maintaining Yurok culture and tradition.

#### **SPECIAL KNOWLEDGE AND EXPERTISE OF PETITIONER**

The Yurok Tribe has maintained an extensive Fisheries Program as well as exhaustive river flow monitoring operations for several years. The expertise of the Yurok Tribe's biologists and technicians, as well as the experience that comes from several years of litigation directly involving water rights issues, would be at the disposal of the PUC in helping to decide this matter.

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Based on the information provided above, in accordance with the Commission's rules of procedure, the Yurok Tribe would request to participate in this proceeding as an intervenor. The Yurok Tribe will not unreasonably broaden the issues, burden the record, or unreasonably delay the proceeding. OAR 860-013-0021.

Respectfully submitted,

s / John W. Corbett  
John Corbett, Staff Attorney  
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PROOF OF SERVICE

I employed in Del Norte County, California.

I am over the age of eighteen years and not a party to the within cause.

On March 16, 2005, I served the attached documents:

Motion to Intervene Oregon PUC Docket # UE-171

On the following person (s)

EDWARD BARTELL KLAMATH OFF-PROJECT WATER USERS, INC. 30474 SPRAGUE RIVER ROAD SPRAGUE RIVER OR 97639	LISA BROWN WATERWATCH OF OREGON 213 SW ASH ST STE 208 PORTLAND OR 97204 lisa@waterwatch.org
	JOHN DEVOE WATERWATCH OF OREGON 213 SW ASH STREET, SUITE 208 PORTLAND OR 97204 john@waterwatch.org
JASON EISDORFER CITIZENS' UTILITY BOARD OF OREGON 610 SW BROADWAY STE 308 PORTLAND OR 97205 jason@oregoncub.org	EDWARD A FINKLEA CABLE HUSTON BENEDICT HAAGENSEN & LLOYD LLP 1001 SW FIFTH AVENUE, SUITE 2000 PORTLAND OR 97204 efinklea@chbh.com
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16 The above mentioned document was served on the following persons on March 17,  
17 2005

18 GLEN H SPAIN  
19 PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOC  
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22 [fish1ifr@aol.com](mailto:fish1ifr@aol.com)

23 THOMAS P SCHLOSSER, Rob Roy Smith  
24 MORISSET, SCHLOSSER, JOZWIAK & MCGAW

25 [t.schlosser@msaj.com](mailto:t.schlosser@msaj.com)

xxx By Electronic notification, and/or by U.S. Mail.

1 The following person was served on March 25, 2005 by U.S. Mail  
2 MICHAEL W ORCUTT  
3 HOOPA VALLEY TRIBE FISHERIES DEPT  
4 PO BOX 417  
5 HOOPA CA 95546

6 I certify the foregoing is true.

7 Executed on March 25, , 2005, at Klamath California.

8 By: s? Robert Bohrer

9 Robert Bohrer  
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