

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

UE 170/UE 171

In the Matter of	)	
	)	
PACIFIC POWER & LIGHT	)	
	)	
Request for a General Rate Increase in	)	
the Company's Oregon Annual	)	ORDER
Revenues (UE 170),	)	
	)	
In the Matter of	)	
	)	
PACIFIC POWER & LIGHT	)	
	)	
Klamath Basin Irrigator Rates (UE 171).	)	

**DISPOSITION: APPLICATIONS FOR CASE CERTIFICATION  
GRANTED IN UE 170, BUT DENIED IN UE 171;  
PROPOSED BUDGETS IN UE 170 GRANTED IN  
PART**

These two dockets relate to the general rate filing of PacifiCorp, dba Pacific Power & Light (PacifiCorp). The Commission opened docket UE 170 to generally address the proper rates for all of PacifiCorp's customers. The Commission opened docket UE 171 to specifically address the rates of irrigators in the Klamath Basin. Irrigators located within the boundaries of the Klamath Reclamation Project (On-Project Irrigators) buy power from PacifiCorp at rates established pursuant to a 50-year contract between PacifiCorp's predecessor (the California-Oregon Power Company) and the Federal Bureau of Reclamation. PacifiCorp represents that the On-Project Contract was signed in 1956 and expires in 2006. The Klamath Basin irrigators located outside the boundaries of the Klamath Reclamation Project (Off-Project Irrigators) buy power from PacifiCorp pursuant to a separate contract that is dated April 30, 1956. PacifiCorp proposes to move both the On-Project and Off-Project irrigators to standard tariff rates concurrent with the expiration of the On-Project Contract.

Separate groups representing the On-Project and Off-Project Irrigators seek case certification in both dockets in order to receive intervenor funding under OAR 860-012-0100.<sup>1</sup> The Klamath Water Users Association (KWUA) represents the On-Project Irrigators. KWUA indicates that it intends to represent the interests of all PacifiCorp's irrigation customers, including the Off-Project Irrigators. The Klamath Off-Project Water Users (KOPWU) represents Off-Project Irrigators. KOPWU intends to represent the interests of PacifiCorp's customers in general, and to oppose PacifiCorp's proposal to move Off-Project Irrigators to standard irrigation tariffs. Both groups have also submitted proposed budgets to be funded by PacifiCorp's Issue Fund under the Intervenor Funding Agreement approved by the Commission in Order No. 03-388.

### **Intervenor Funding Agreement (IFA)**

The Intervenor Funding Agreement (IFA) implements Oregon Laws 2003, Chapter 234 (Senate Bill 205). This law authorizes the Commission to approve written agreements for intervenor funding grants between certain utilities and organizations representing broad customer interests in Commission regulatory proceedings.

The IFA, signed by PacifiCorp, Portland General Electric Company, Northwest Natural Gas Company, Northwest Industrial Gas Users, Citizens' Utility Board of Oregon (CUB), and Industrial Customers of Northwest Utilities (ICNU), specifies the terms and conditions for intervenor funding grants. As applicable here, those terms establish: (1) criteria an organization must meet to become eligible for intervenor funding in specific proceedings; and (2) requirements for the review and approval of proposed budgets. We will address each separately by docket.

### **UE 170**

#### Case Certification

In order to be case certified to be eligible to receive an Issue Fund Grant, an organization must meet the requirements of OAR 860-012-0100(4):

- (a) The organization represents the interests of a broad group or class of customers, and its participation in the proceeding will be primarily directed at public utility rates and terms and conditions of service affecting that broad group or class of customers.

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<sup>1</sup> The Oregon Natural Resources Council (ONRC) filed an opposition to KWUA's and KOPWU's application for case certification in UE 170. ONRC's opposition, filed prior to the opening of UE 171, primarily addressed the Klamath Basin irrigation rate issue. Accordingly, we treat ONRC's filing as opposing case certification in UE 171 and need not address it given our resolution below.

- (b) The organization must demonstrate that it is able to effectively represent its particular group or class of customers.
- (c) The organization's members, who are customers of one or more of the utilities affected by the proceeding, contribute a significant percentage of the overall support and funding of the organization.
- (d) The organization demonstrates, or has demonstrated in the past, the ability to substantively contribute to the record on behalf of customer interests related to rates, and terms and conditions of service.
- (e) The organization demonstrates that (i) no precertified intervenor in this docket adequately represents the specific interests of the class of customers represented by the organization as to rates, and terms and conditions of service; or (ii) the specific interests of a class of customers will benefit from the organization's participation; and
- (f) The organization demonstrates that its request for case-certification will not unduly delay the schedule of the proceeding.

Both organizations contend they meet the requirements for case certification. Both state they will effectively represent the interests of irrigation customers that fund their respective organization. While neither group has previously appeared in Commission proceedings, each has retained experienced counsel to ensure its ability to substantively contribute to the record on behalf of irrigation customer interests.

Separately, each application meets the criteria for case certification. A question arises, however, when the applications are viewed together. While both organizations represent different groups of irrigators, their interests in UE 170 are identical concerning rates, terms, and conditions of service. Unfortunately, the IFA does not address how the Commission should treat two pending applications for case certification that represent the same class of customers. As noted above, Article 5.3(e)(i) of the IFA only contemplates an existing precertified intervenor, and requires an applicant to demonstrate that the existing intervenor does not adequately represent the interests of the class of customers represented by the applicant. Consequently, there is no guidance as to whether the Commission must certify one intervenor over the other, or whether it may certify both to represent the interests of both groups.

Fortunately the Commission need not resolve that issue here. KWUA and KOPWU have agreed to equally share any intervenor funding approved by the Commission. Under the circumstances, the Commission will not differentiate between the two organizations for intervenor funding purposes, but rather will treat KWUA and

KOPWU as one entity. The combined entity is case certified, and will share equally the intervenor funding budget addressed below.

Budgets

Case-certified intervenors must present an issue fund budget to the Commission that contains, at a minimum, the following information:

- 1) A statement of the work to be performed;
- 2) A description of the areas to be investigated;
- 3) A description of the particular customer class(es) that will benefit from the intervenor's participation;
- 4) Identification of the specific fund accounts from which the intervenor is seeking monies; and
- 5) A budget showing estimated attorney, consultant and expert witness fees, which may include the cost for appropriate support staff and operations support.

Once the proposed budget is received, the Commission will decide whether Issue Fund Grants are available for use. We make these determinations based on the following factors:

- 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 Eligible Proceedings in which intervenors may seek additional Issue Fund Grants from the same Fund account(s).

We have the authority to accept, deny or partially deny the request, and may place reasonable conditions on the grant. *See* Article 6.5.

At the outset of this proceeding, KWUA and KOPWU each filed separate proposed budgets. KWUA's proposed budget sought \$102,500; KOPWU's budget sought \$25,000. After both parties learned that the requested amounts exceeded the monies available in the PacifiCorp Issue Fund, KWUA and KOPWU effectively amended their proposed budgets by indicating their willingness to equally share any reasonable amount determined by the Commission.

The Commission has previously approved proposed budgets filed by ICNU (\$147,950) and CUB (\$45,597). With the commitment of those monies, only \$47,592 remains in the 2005 PacifiCorp Issue Fund account. Based on the factors listed above, particularly (8) and (9), the Commission concludes that a reasonable amount of intervenor funds to be shared by KWUA and KOPWU is \$30,000.

## **UE 171**

Before addressing KWUA's and KOPWU's applications for case certification and proposed budgets in UE 171, we must address a preliminary issue whether intervenor funding is appropriate for this docket. Unlike prior dockets with intervenor funding, UE 171 addresses the rates to be paid by a subset of a class of customers. As described above, irrigators in the Klamath Basin pay reduced rates under historic contracts. The issue in UE 171 is whether these irrigators should continue to be served under these historic contracts, or whether they should be treated like other irrigation customers and served under standard irrigation tariffs.

This distinction is important, because the intervenor funds are charged to and paid by the entire customer class of customers represented. *See* Article 7.7. Thus, if KWUA and KOPWU were to receive intervenor funds, all irrigation customers would be required to pay for advocacy benefiting the Klamath Basin irrigators, even if other irrigators opposed that advocacy.

We acknowledge that UE 171 meets the definition of an "eligible proceeding" set forth in the IFA.<sup>2</sup> Nonetheless, we do not believe that intervenor funds are appropriate in a proceeding where the advocacy would benefit only a subset of a class of customers. Accordingly, the applications for case certification filed by KWUA and KOPWU are denied.

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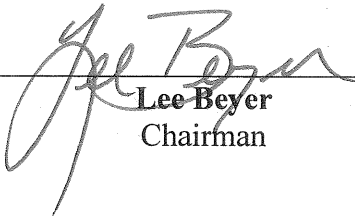
<sup>2</sup> Article 1(c) defines "eligible proceeding" as "any Commission proceeding that directly affects one or more of the Participating Public Utilities, including but not limited to rulemaking proceedings, declaratory ruling proceedings, adjudications, and contested cases, but does not include complaint proceedings if one or more of the Participating Intervenors initiates or causes to be initiated the complaint proceeding."

**ORDER**


IT IS ORDERED that:

- 1) The applications for case certification in UE 170, filed by the Klamath Water Users Association (KWUA) and the Klamath Off-Project Water Users (KOPWU), are granted.
- 2) KWUA's and KOPWU's proposed budgets for Issue Fund Grants are granted in part. Each organization will equally divide \$30,000.
- 3) The applications for certification in UE 171, filed by the KWUA and KOPWU, are denied.

Made, entered, and effective MAR 17 2005.

  
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**Lee Beyer**  
Chairman

  
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**John Savage**  
Commissioner

  
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**Ray Baum**  
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable