

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 179

In the Matter of)	
)	
PACIFICORP, dba PACIFIC POWER & LIGHT COMPANY)	ORDER
)	
Request for a General Rate Increase in the Company's Oregon Annual Revenues.)	

**DISPOSITION: APPLICATION FOR CASE-CERTIFICATION
GRANTED; PROPOSED BUDGETS GRANTED
IN PART**

Three parties seek intervenor funding in this proceeding. Two of those parties, the Citizens' Utility Board (CUB) and the Industrial Customers of Northwest Utilities (ICNU) are currently eligible to receive funding and seek to split the estimated \$89,800 remaining in PacifiCorp's Issue Fund account. They oppose the request for eligibility of the third party, Klamath Water Users Association (KWUA), as well as its request for a \$30,000 grant. For reasons that follow, we grant KWUA's request for eligibility and modify the proposed budgets for all three parties.

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, CUB and 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.

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, and not narrow interests or issues that are ancillary to the impact of the rates and terms and conditions of service to the customer group;
- (b) The organization demonstrates that it is able to effectively represent the particular class of customers it seeks to represent.
- (c) The organization's members who are customers of one or more of the utilities affected by the proceeding that are parties to the agreement, contribute a significant percentage of the overall support and funding of the organization.
- (d) The organization demonstrates, or has demonstrated in past Commission proceedings, the ability to substantively contribute to the record on behalf of customer interests related to rates and the terms and conditions of service, including in any proceeding in which the organization was case-certified and received a grant; .
- (e) The organization demonstrates that
 - (A) No precertified intervenor participating in the proceeding adequately represents the specific interests of the class of customers represented by the organization related to rates and terms and conditions of service; or
 - (B) 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.

Request for Certification

KWUA contends that it meets the requirements for case-certification. KWUA describes itself as a non-profit corporation funded almost entirely by dues collected from irrigation districts and private irrigators located in PacifiCorp's service territory. KWUA claims to be one of the largest associations of irrigation districts and irrigators in Oregon, and states it will effectively represent the interests of all irrigation customers served by PacifiCorp. KWUA's participation will focus solely on the rates, rate design and quality of service applicable to PacifiCorp's standard irrigation tariff, Schedule 41.

KWUA adds that it has previously been certified to receive intervenor funding in a prior rate proceeding, and has retained experienced counsel and expert witnesses to ensure its ability to substantively contribute to the record on behalf of irrigation customer interests. KWUA claims that no other party or pre-certified intervenor adequately represents the specific interests of irrigators in this proceeding, and emphasizes that such representation is needed given PacifiCorp's proposal to increase Schedule 41 rates by nearly 20 percent.

CUB and ICNU oppose KWUA's request on two grounds. Procedurally, CUB and ICNU object to KWUA's late filing of its request. The two parties point out KWUA filed its request on May 8, 2006, three weeks after it submitted its petition to intervene in the proceeding on April 17, 2006. Substantively, CUB and ICNU object to KWUA's qualifications for intervenor funding. Both parties suggest that KWUA represents only a sub-class of irrigation customers located in the Klamath River Basin, which does not constitute a group broad enough for the KWUA to qualify for funding.

KWUA's request for case-certification and its motion to file out of time are granted. We agree, and KWUA acknowledges, that a party should file its intent to seek intervenor funding at the time it petitions to intervene in the proceeding. However, while April 17, 2006, was designated as the due date for the filing for intervention, ORS 756.525(2) allows any person to seek party status at "any time before the final taking of evidence in a proceeding." Therefore, KWUA could have waited and filed its petition to intervene on May 8, 2006, the same time it submitted its intent to seek intervenor funding. Therefore, the mere delay in filing is not determinative; the key inquiries are whether there was good cause for the delay and whether the late filing harms other parties.

We first conclude that KWUA has established good cause for the delay. As explained in its filing, this Commission was still addressing issues raised in PacifiCorp's last rate case at the time the utility made this rate filing. We issued a final order in the prior proceeding less than a week before petitions to intervene were due here. In that decision, we reversed long-standing practice and concluded that KWUA members and other irrigators located in the Klamath River Basin should pay rates based on PacifiCorp's Schedule 41. Thus, KWUA's members did not find themselves in the position of being subject to Schedule 41 rates until just days before the deadline to intervene.

We further conclude that KWUA's three week delay in filing its intent to seek funding will not harm other parties in this proceeding. We appreciate CUB's and ICNU's recognition of the limited availability of funds and their decision to work together to prepare budgets and share resources. We also acknowledge that they may have commenced work on this proceeding based on the understanding that no other

parties would request intervenor funding. However, no party is legally entitled to reservation of moneys in the issue fund until its budget is approved.¹

As to CUB's and ICNU's substantive challenge, that KWUA does not represent a broad group of customers that would qualify under OAR 860-012-0100(4), we note that this Commission previously certified KWUA as eligible for case-certification under the IFA. *See* Order No. 05-134 at 3. The IFA requires that the organization be comprised of members who are customers of the participating utility and, perhaps more importantly, that the organization represents the interests of a broad group or class of customers.² Here, KWUA has asserted that its participation will focus on PacifiCorp's irrigation rate and tariff design and will benefit the entire class of customers taking service under Schedule 41. We conclude that KWUA should be case-certified to receive intervenor funds in this proceeding for that stated purpose.

Budgets

Precertified and 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.

If the Commission receives one or more proposed budgets, we will determine the amount, if any, of funding that will be made available for the eligible proceeding and the allocation of that amount among the intervening parties. 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;

¹ The unique circumstances related to the overlapping of PacifiCorp's rate cases and change in rates paid by the Klamath Basin irrigators nullify CUB's and ICNU's additional concerns about the potential precedent of late-filed funding requests.

² The organization's membership need not include all members of a class of customers to become eligible for intervenor funding.

- 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* IFA Article 6.5.

All three parties' proposed budgets include the requisite information and reflect the current schedule adopted in this docket. CUB and ICNU propose to split \$88,900, an amount they believe represents the remaining available funds. KWUA seeks \$29,900.

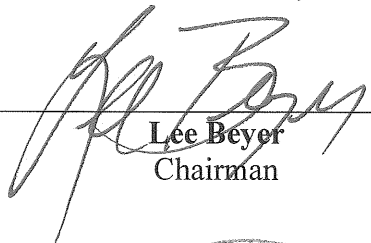
CUB's and ICNU's calculations are correct. There is \$88,894 remaining in PacifiCorp's Issue Fund—an amount insufficient to fully cover the three proposed budgets. Considering many of the factors listed above, including the breadth and complexity of the issues to be addressed by all parties and the financial impact of the issues at stake for each represented class of customers, we modify the budget requests and allocate the remaining issues funds as follows: CUB and ICNU should have approved budgets of \$40,000 each; KWUA should have an approved budget of \$8,000.

ORDER

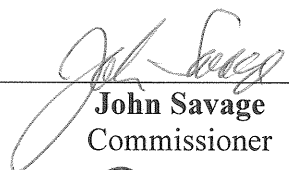
IT IS ORDERED that:

- 1) The Klamath Water Users Association's (KWUA) application for case-certification and motion to file out of time are granted.
- 2) The proposed budgets filed by KWUA, the Citizens' Utility Board (CUB) and the Industrial Customers of Northwest Utilities (ICNU) are granted in part. CUB and ICNU each receive an approved budget of \$40,000. KWUA receives an approved budget of \$8,000.

Made, entered, and effective JUN 01 2006.



Lee Beyer
 Chairman



John Savage
 Commissioner



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 by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.