

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PacifiCorp)	Docket No. P-2082-040
Klamath Hydroelectric Project)	
)	KLAMATH WATER USERS
)	ASSOCIATION MOTION TO
)	INTERVENE

I. Motion to Intervene

The Klamath Basin Water Users Protective Association, d.b.a. Klamath Water Users Association, (“KWUA”) hereby submits this motion to intervene (“Motion”) in the above-captioned proceedings pursuant to Rule 214 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003). In support of this Motion, KWUA states as follows:

II. Correspondence

The names, titles and mailing addresses of the persons to whom service is to be made and to whom communications are to be addressed in this proceeding are:

Greg Addington, Executive Director
Klamath Water Users Association
2455 Patterson Street, Suite 3
Klamath Falls, Oregon 97603

J. Laurence Cable
Richard G. Lorenz
Cable Huston Benedict Haagensen & Lloyd, LLP
1001 S.W. Fifth Avenue, Suite 2000
Portland, Oregon 97204

Paul S. Simmons
Somach, Simmons & Dunn
Hall of Justice Building
813 Sixth Street, Third Floor
Sacramento, California 95814

KWUA requests that each of the above-named individuals be placed on the official Commission service list in order to assure timely responses and communications.

III. Background Information Regarding KWUA

KWUA is a nonprofit corporation comprised of approximately 20 public agencies, most of which are irrigation districts, and many individuals and businesses located in the Upper Klamath River Basin. KWUA Members¹ receive water for irrigation through facilities constructed or improved by the United States Bureau of Reclamation (“Bureau”) as part of the Klamath Irrigation Project. Many of the Klamath Irrigation Project facilities are operated by KWUA Members in cooperation with the Bureau. Over 200,000 acres of farmland are irrigated by Klamath Irrigation Project facilities in both Southern Oregon and Northern California.

IV. KWUA’s Interest in this Proceeding

At issue in this proceeding is the “headwater benefits investigation” ordered by the Commission with respect to the Klamath River Hydroelectric Project No. 2082. 115 FERC ¶ 61,104 (April 25, 2006). Presumably, this investigation will establish the charges that PacifiCorp must pay for the benefits conferred upon PacifiCorp’s downstream hydroelectric generation by certain facilities owned and operated by the Bureau. KWUA has a direct and substantial interest in these headwater benefit charges.

As a condition on its original license, the Commission required PacifiCorp to enter into a contract (“Contract”) with the Bureau governing certain operational, water and power issues. The Commission required PacifiCorp to execute the Contract in response to a mandatory license condition submitted by the Department of Interior under § 4(e) of the Federal Power Act. *See generally In The Matter of the California Oregon Power Company Upon Application for*

License, 13 F.P.C. 1, 1954 WL 47779 (January 28, 1954) (“In reporting under Section 4(e) of the Federal Power Act on Copco’s application for license, the Secretary of the Interior recommended that the license be denied.”).

KWUA understands that the Commission concluded in 1998 that any obligation that PacifiCorp may have had to pay headwater benefits was satisfied by the considerations provided by PacifiCorp pursuant to the Contract. The Contract contained an expiration date of April 16, 2006. The Commission recently determined that the Contract would expire according to its terms, notwithstanding the fact that it was an express condition of PacifiCorp’s original license and Section 15(a)(1) of the Federal Power Act mandates that all such conditions shall also be conditions of any annual license. *See* 114 FERC ¶ 61,051 (January 20, 2006). In light of the expiration of the Contract, the Commission subsequently determined that it would be necessary to conduct this investigation into the charges that PacifiCorp must pay on a prospective basis for the headwater benefits that it will receive. *See* 115 FERC ¶ 61,104.

This Commission abdicated its statutory responsibility to ensure that the Contract continues during the term of any annual license based, in part, on the theory that the states of Oregon and California have exclusive jurisdiction over the retail rate component of the Contract. KWUA has, therefore, presented a case for a retail rate credit before the Public Utility Commission of Oregon (“OPUC”) and in the near future will present such a case before the California Public Utilities Commission (“CPUC”). To date, the OPUC has agreed that KWUA’s Members are entitled to a credit against PacifiCorp’s retail rates in proportion to the benefits that the actions undertaken to operate the Klamath Irrigation Project confers upon PacifiCorp’s

¹ For purposes of this Motion to Intervene, the “KWUA Members” includes entities who are contractors in the Klamath Irrigation Project and the individuals and entities to whom such entities provide irrigation or drainage service.

downstream generation of hydroelectric power. *See* OPUC Order No. 06-172 (April 12, 2006). The OPUC has ordered KWUA, PacifiCorp and other interested parties to work together to quantify the system benefits, attributable to KWUA's Members.

V. KWUA's Position In This Proceeding

Although there may be similarities, the headwater benefits investigation to be undertaken by the Commission is legally distinct from the retail rate credits that will be ordered by the OPUC and the CPUC. According to section 10(f) of the Federal Power Act, headwater benefit charges are to be paid to other licensees, permittees or the United States for benefits to downstream hydropower generation conferred by facilities they have developed. For example, any storage benefit associated with Link River Dam would qualify as a headwater benefit. By contrast, the retail rate credit contemplated by the OPUC relates not to the mere existence of specific upstream structures but to the full range of benefit afforded by the operation of all facilities comprising or within the Klamath Irrigation Project. These include benefits from actions of KWUA members operating federally-owned facilities and their own facilities.

In fact, PacifiCorp has publicly disavowed any connection between annual charges set by this Commission and the retail rate credits established by the OPUC and CPUC. KWUA filed a motion asking the OPUC to consider certain statements made by PacifiCorp concerning annual charges set by this Commission. PacifiCorp, through its counsel, objected to KWUA's motion on the following grounds:

[T]he information which [sic] KWUA seeks to add to the record, as it is described in its Motion, is *simply irrelevant* to the issue posed by ALJ Grant in his March 13, 2006 Memorandum: "the relationship between this Commission's authority to set retail rates for PacifiCorp's irrigation customers and the Federal Energy Regulatory Commission's ("FERC") authority to establish Government dam use charges and determine and assess headwater benefits for the Klamath Hydroelectric Project No. 2082." *As*

*PacifiCorp said at oral argument, there is no such relationship * **
*. (Emphasis added).

A true and correct copy of PacifiCorp's statement is attached hereto as Exhibit A. Nevertheless, KWUA remains concerned that PacifiCorp will ask this Commission for a broad determination that the Klamath Irrigation Project does not confer any benefits on downstream generation in an effort to undermine KWUA's retail rate credit arguments.

In light of the forgoing, KWUA takes the position that the Commission should, before completing its headwater benefits investigation, allow the OPUC and CPUC to complete their respective analyses of the retail rate credits to which KWUA's members may be entitled. This would serve to avoid any inconsistencies between the decisions issued by this Commission and the OPUC and CPUC. KWUA also takes the position that the Commission should acknowledge and articulate that its headwater benefits investigation will be conducted solely for purpose of complying with Section 10(f) of the Federal Power Act and is not intended to affect any retail rates or credits ordered by the CPUC or the OPUC. Finally, when and as the headwater analysis proceeds, KWUA requests that procedures be established under which KWUA may furnish such information and analysis that may be helpful to the Commission.

V. KWUA's Motion Should Be Granted

The interests of KWUA and its Members, as set forth above, are directly affected by the outcome of this proceeding and cannot be adequately represented by any other party hereto. As such, intervention in the proceeding by KWUA is appropriate under 18 C.F.R. §§ 385.214(b)(2)(ii)(A)(B) and (C). Alternatively, KWUA's participation in this proceeding is in the public interest and, therefore, KWUA's intervention is appropriate under 18 C.F.R. § 385.214(b)(2)(iii).

WHEREFORE, KWUA respectfully requests that the Commission grant KWUA's Motion to Intervene in the above-captioned proceeding that that it be made a party hereto, with full rights. KWUA reserves the right to raise any additional issues affecting its interests that may come to light through the course of this proceeding.

DATED this 15th day of June, 2006.

Respectfully submitted,



J. Laurence Cable, OSB No. 71035
Richard G. Lorenz, OSB No. 00308
Cable Huston Benedict Haagensen & Lloyd, LLP
1001 SW Fifth Avenue, Suite 2000
Portland, Oregon 97204
Tel: (503) 224-3092
Fax: (503) 224-3176
Email: lcable@chbh.com
Email: rlorenz@chbh.com

Attorneys for KWUA

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 170

1
2
3
4 In the Matter of PACIFIC POWER &
5 LIGHT (dba PacifiCorp) Request for a
6 General Rate Increase in the Company's
Oregon Annual Revenues
(Klamath River Basin Irrigators Rates)

**PACIFICORP'S RESPONSE TO
KWUA'S MOTION TO RE-OPEN
RECORD OR, IN THE
ALTERNATIVE, REQUEST FOR
OFFICIAL NOTICE**

7
8 Pursuant to ALJ Grant's March 28, 2006 Ruling in UE 170, PacifiCorp respectfully
9 submits this response to the Klamath Water Users Association's ("KWUA") Motion to Re-
10 Open Record or, in the Alternative, Request For Official Notice.

11 KWUA's Motion represents its second inappropriate attempt to inject into the record,
12 after the hearing, a pleading filed by PacifiCorp with the FERC that is irrelevant to the issues
13 before the Commission. See KWUA Post-hearing Brief, Exhibit A. As the Commission is
14 all too aware, the parties seek a final order on the matters at issue in this phase of the
15 proceeding by April 14, to allow for implementation immediately following the expiration of
16 the On-Project Contract on April 16, 2006.

17 Contrary to the requirements of ORS 756.558 and OAR 860-014-0050, KWUA
18 requests the Commission re-open the record or take official notice of its one-sided
19 presentation of the "evidence."¹ If the additional evidence is allowed into the record under
20 ORS 756-558(1), the statute requires "a reasonable opportunity of the parties to examine any
21 witnesses with reference to the additional evidence and otherwise rebut and meet such

22 _____
23 ¹ Without addressing the substance of the pleading, PacifiCorp notes that KWUA
24 asserts that PacifiCorp has taken the position before this Commission that the annual
25 government dam use charges are sufficient compensation to the Klamath Irrigation Project
26 for any system benefits that might be provided by the Irrigation Project. KWUA Motion at 1.
KWUA has things backwards: PacifiCorp noted in its Opening Brief that the FERC order of
January 20, 2006, suggests that the discounted rates for electric service to
Reclamation/Service have been in lieu of a separately determined government dam use
charge. PacifiCorp's Opening Brief on Appropriate Rates for Klamath Irrigators, March 6,
2006, at 27.

STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600, Portland, OR 97204
Main (503) 224-3380 Fax (503) 220-2480

1 additional evidence.” Similarly, OAR 860-014-0050 provides that a party objecting to the
2 taking of official notice will have 15 days from notification to explain or rebut the noticed
3 fact. Pursuant to ORS 756.558 and OAR 860-014-0050, the Commission would therefore
4 need to provide an opportunity to parties to respond to the new evidence. Consequently, re-
5 opening the record or taking official notice of the pleading, would derail the Commission’s
6 ability to prepare a timely final order. That alone dictates against KWUA’s Motion.

7 Moreover, the information which KWUA seeks to add to the record, as it is described
8 in its Motion, is simply irrelevant to the issue posed by ALJ Grant in his March 13, 2006
9 Memorandum: “the relationship between this Commission’s authority to set retail rates for
10 PacifiCorp’s irrigation customers and the Federal Energy Regulatory Commission (“FERC”)
11 authority to establish Government dam use charges and determine and assess headwater
12 benefits for the Klamath Hydroelectric Project. No. 2082.” As PacifiCorp said at oral
13 argument, there is no such relationship, and this Commission’s authority to set retail rates is
14 unaffected by FERC’s authority regarding dam use charges. There is simply no need to
15 delay the final order in this case in order to add irrelevant evidence to the record.

16 For the reasons stated above, PacifiCorp respectfully requests the Commission deny
17 KWUA’s Motion to Re-Open Record or, in the Alternative, Request For Official Notice.

18 DATED: March 31, 2006.

19 STOEL RIVES LLP



20 Sarah J. Adams Lien
21 John M. Eriksson

22 Attorneys for PacifiCorp
23
24
25
26

STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600, Portland, OR 97204
Main (503) 224-3380 Fax (503) 220-2480

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in Docket UE 170 on the following named person(s) on the date indicated below by email and first-class mail addressed to said person(s) at his or her last-known address(es) indicated below.

STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600, Portland, OR 97204
Main (503) 224-3380 Fax (503) 220-2480

Rates & Regulatory Affairs
Portland General Electric
121 SW Salmon Street, 1WTC0702
Portland, OR 97204
pge.opuc.filings@pgn.com

Jim Abrahamson
Community Action Directors
of Oregon
4035 12th Street Cutoff SE, Suite 110
Salem, OR 97302
jim@cado-oregon.org

Greg Addington
Klamath Water Users Assoc.
2455 Patterson Street, Suite 3
Klamath Falls, OR 97603
greg@cvcwireless.net

Edward Bartell
Klamath Off-Project Water Users, Inc.
30474 Sprague River Road
Sprague River, OR 97639

Kurt Boehm
Boehm Kurtz & Lowry
36 E. Seventh Street, Suite 1510
Cincinnati, OH 45202
kboehm@bkllawfirm.com

Lisa Brown
WaterWatch of Oregon
213 SW Ash Street, Suite 208
Portland, OR 97204
lisa@waterwatch.org

Lowrey R. Brown
Citizens' Utility Board of Oregon
610 SW Broadway, Suite 308
Portland, OR 97205
lowrey@oregoncub.org

Phil Carver
Oregon Office of Energy
625 Marion Street NE, Suite 1
Salem, OR 97301-3742
philip.h.carver@state.or.us

John Corbett
Yurok Tribe
PO Box 1027
Klamath, CA 95548
jcorbett@yuroktribe.nsn.us

Joan Cote
Oregon Energy Coordinators Assoc.
2585 State Street NE
Salem, OR 97301
cotej@mwvcaa.org

Melinda J. Davison
Davison Van Cleve, PC
333 SW Taylor, Suite 400
Portland, OR 97204
mail@dvclaw.com

John DeVoe
WaterWatch of Oregon
213 SW Ash Street, Suite 208
Portland, OR 97204
john@waterwatch.org

STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600, Portland, OR 97204
Main (503) 224-3380 Fax (503) 220-2480

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Jason Eisdorfer
Citizens' Utility Board
610 SW Broadway, Suite 308
Portland, OR 97205
jason@oregoncub.org

Randall J. Falkenberg
RFI Consulting
PMB 362
8351 Roswell Road
Atlanta, GA 30350
consultrfi@aol.com

Edward Finklea
Cable Huston Benedict Haagen
& Lloyd LLP
1001 SW Fifth Avenue, Suite 2000
Portland, OR 97204
efinklea@chbh.com

David Hatton
Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
david.hatton@state.or.us

Judy Johnson
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148
judy.johnson@state.or.us

Jason W. Jones
Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
jason.w.jones@state.or.us

Michael Kurtz
Boehm, Kurtz & Lowry
36 E. Seventh Street, Suite 1510
Cincinnati, OH 45202-4454
mkurtz@bkllawfirm.com

Jim McCarthy
Oregon Natural Resources Council
PO Box 151
Ashland, OR 97520
jm@onrc.org

Bill McNamee
Public Utility Commission of Oregon
PO Box 2148
Salem, OR 97308-2148
bill.mcnamee@state.or.us

Daniel W Meek
Daniel W Meek Attorney at Law
10949 SW 4th Ave
Portland OR 97219
dan@meek.net

Nancy Newell
3917 NE Skidmore
Portland OR 97211
ogec2@hotmail.com

Michael W. Orcutt
Hoopa Valley Tribe Fisheries Dept.
PO Box 417
Hoopa, CA 95546
director@pcweb.net

Stephen R. Palmer
Office of the Regional Solicitor
2800 Cottage Way, Rm. E-1712
Sacramento, CA 95825

Steve Pedery
Oregon Natural Resources Council
sp@onrc.org

Matthew Perkins
Davison Van Cleve PC
333 SW Taylor, Suite 400
Portland, OR 97204
mwp@dvclaw.com

Janet Prewitt
Department of Justice
janet.prewitt@doj.state.or.us

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Thomas P. Schlosser
Morisset, Schlosser, Jozwiak
& McGaw
801 Second Avenue, Suite 1115
Seattle, WA 98104-1509
t.schlosser@msaj.com

Glen H. Spain
PCFFA
PO Box 11170
Eugene, OR 97440-3370
fishlifr@aol.com

Douglas Tingey
Portland General Electric
121 SW Salmon, 1WTC13
Portland, OR 97204
doug.tingey@pgn.com

DATED: March 31, 2006



Katherine A. McDowell

Of Attorneys for PacifiCorp

STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600, Portland, OR 97204
Main (503) 224-3380 Fax (503) 220-2480

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy via First Class Mail of the foregoing document on all persons designated on the official service lists compiled by the Secretary in these proceedings.

DATED Thursday, June 15, 2006.



J. Laurence Cable, OSB No. 71035
 Richard G. Lorenz, OSB No. 00308
 Cable Huston Benedict Haagensen & Lloyd, LLP
 1001 SW Fifth Avenue, Suite 2000
 Portland, Oregon 97204
 Tel: (503) 224-3092
 Fax: (503) 224-3176
 Email: lcable@chbh.com
 Email: rlorenz@chbh.com

Attorneys for KWUA

Cory Scott PacifiCorp 825 NE Multnomah St Ste 1500 Portland, OR 97232-2135	Therese Lamb, Managing Director PacifiCorp 825 NE Multnomah St., Suite 1500 Portland, OR 97232-2135
Randy A Landolt, Managing Director PacifiCorp 825 NE Multnomah St, Ste 1500 LCT Portland, OR 97232	Daniel Stuart Hirschman, Agency Counsel United States Department of the Interior 1849 C Street NW, MS - 6456 Washington, DC 20240
Tom Dang, Reg. Program Manager Bureau of Indian Affairs Department of the Interior 2800 Cottage Way, W-2619 Sacramento, CA 95825-1846	Nolan Shishido, Attorney US Department of the Interior PACIFIC NORTHWEST REGION 500 NE Multnomah St Ste 607 Portland, OR 97232-2036
Stephen R. Palmer US Department of the Interior 2800 Cottage Way, E-1712 Sacramento, CA 95825-1846	Barbara Scott-Brier US Department of the Interior 500 NE Multnomah St., Ste. 607 Portland, OR 97232-2023
William Bettenberg, Director, Off. of Policy US Department of the Interior 1849 C Street, NW, MS-4426-MIB Washington, DC 20240-0001	

Submission Contents

Klamath Water Users Association's Motion to Intervene in Docket P-2082-040
KWUA-MTI-040.pdf..... 1-12