FILED
07-10-12
04:59 PM

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

In the Matter of:	)	
	)	
The Application of PACIFICORP (U 901 E),	)	Application No. 10-03-015
an Oregon Company, for an Order Authorizing	)	(Filed March 18, 2010)
a Rate Increase Effective January 1, 2011, and	)	
Granting Conditional Authorization to Transfer	)	
Assets, Pursuant to the Klamath Hydroelectric	)	
Settlement Agreement	)	

PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS (PCFFA), INSTITUTE FOR FISHERIES RESOURCES (IFR) and the KARUK TRIBE

OPENING BRIEF

Glen H. Spain, Esq.
General Legal Counsel
PO Box 11170
Eugene, OR 97440-3370
Phone: (541)689-2000
Fax: (541)689-2500
Email: fish1ifr@aol.com

William F. "Zeke" Grader, Jr., Esq.
Special Legal Counsel
PO Box 29370
San Francisco, CA 94129-0370
Phone: (415)561-5080 x 224
Fax: (415)561-5464
Email: zgrader@ifrfish.org

Attorneys for Pacific Coast Federation of Fishermen's Associations and Institute for Fisheries Resources

The Karuk Tribe
Attn: Craig Tucker, Klamath Coordinator
PO Box 1016
Happy Camp, CA 96039
(530)627-3446
Fax: (530)493-5322
C/o Email: ctucker@karuk.us

Dated: July 10, 2012

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

//

Introduction

This is the Opening Brief of the Karuk Tribe of California, Pacific Coast Federation of Fishermen's Associations (PCFFA) and the Institute for Fisheries Resources (IFR) in this proceeding. All three organizations are Interveners in this proceeding, and all have many individual members who are PacifiCorp customer ratepayers. This Opening Brief is filed in accordance with the schedule set forth in the *Assigned Commissioner's Scoping Memo and Ruling Regarding Petition to Modify Decision 11-05-002,* issued June 29, 2012.

Summary of Position

We believe the Petition/Application of PacifiCorp for this minor rate adjustment is both timely and warranted. It is clear that some 8 months of unanticipated delay did occur between the issuance of the Decision 11-05-002 and the allowed beginning date for the actual collection of this Klamath surcharge, and that these unfortunate internal Commission staff delays were entirely due to forces outside PacifiCorp's control, as noted in the PacifiCorp Petition filed on January 13, 2012.[1]

In other words, PacifiCorp was obligated to start its 9-year surcharge collections schedule already 8 months in the hole! Getting back on track with a mere 21 cents/month per average ratepayer adjustment is a necessary but entirely routine and relatively minor accounting matter, and nothing more. It will also be much better for ratepayers to make such adjustments now rather than later. Funds collected now will bear offsetting interest for a longer period than funds collected later.

[1] See *Petition of PacifiCorp (U901E) for Modification of Decision 11-05-002 and Expedited Request for Consideration*, filed in this docket on January 13, 2012.

Indeed, the original *Decision* authorizing the original surcharge made provision for just such potential adjustments, specifically providing that "[t]he amount of the Klamath surcharge may be revised, subject to the annual limit on surcharge revenue of 2% of the authorized annual revenue requirement as of January 1, 2010."[2] And in fact, on January 13, 2012, as provided under that *Decision*, PacifiCorp made this timely adjustment request through a Petition (now treated as an Application) with notice to all parties, and also showed that even the increased rate will still not exceed the 2% limit.[3]

We also do not believe that an evidentiary hearing is required for what is purely an accounting issue. Nor do we believe any additional public hearings are needed or necessary for this simple mathematical adjustment.

Since any further delays would simply compound the problem, the requested increase should therefore also be granted on an expedited basis.

Limited Scope of this Proceeding

This case is merely a routine proceeding to review a *Petition for Modification* by PacifiCorp filed January 13, 2012, requesting very minor but necessary rate adjustments from the schedule approved in the previous Commission's *Decision D.11-05-002* issued more than a year ago, on May 6, 2011. That *Decision* already authorized collection of a small monthly surcharge for the purpose of accumulating funds to help pay for projected Klamath Hydropower Project dam removals in 2020 as contemplated in the Klamath Hydropower Settlement Agreement (KHSA). Thus all the controversial issues about whether the KHSA "Settlement deal" is in the best

[2] See *Decision D.11-05-002*, Ordering paragraphs 6 and 7.
[3] See *Petition of PacifiCorp (U901E) for Modification of Decision 11-05-002 and Expedited Request for Consideration*, Attachment C to the Griffith Declaration (January 13, 2012).

interests of ratepayers, and whether the Company should collect a Klamath surcharge from its California customers to total $13.76 million by 2020, *have already long been decided.*

The KHSA was signed on February 18, 2010, and major portions of the KHSA are now being implemented. However, speculations as to just when and how the KHSA will be fully implemented between now and the target removal date of 2020 are merely speculations – and all are well beyond the limited scope of this very specific proceeding.

Indeed, the ALJ's *Ruling*[4] on May 18, 2012, specifically limited the scope of this supplemental proceeding to the following subjects:

> "The Commission intends to limit the scope of this proceeding to those issues raised in PacifiCorp's petition for modification, which include whether the period over which the Klamath surcharge is amortized should be revised and as a result of that change, whether the amount of the Klamath surcharge should be revised." (ALJ's *Ruling*, pg. 6)

The ALJ's Ruling also specifically noted that concerns raised earlier in this proceeding about whether the Klamath surcharge collection should be delayed until other preconditions for full KHSA implementation have first been met were <u>specifically rejected</u> in D.11-05-002 and will not be reopened in this proceeding. To that effect the ALJ's *Ruling* stated:

> "Therefore, I anticipate that the scope of the further proceeding will not include consideration of whether the fact that those events have not yet come to pass are a reason to reverse our prior determination that a surcharge of $13.76 million should be collected in order to support the anticipated KHSA removal start date." (ALJ's *Ruling*, pg. 7)

To emphasize that point, the *Assigned Commissioner's Scoping Memo*[5] filed June 29, 2012, also noted:

"This proceeding is limited to an examination of only the following:

---

[4] See *Administrative Law Judge's Ruling Treating Petition for Modification as an Application and Setting Prehearing Conference*, filed in this docket on May 18. 2012, referred to hereinafter by "ALJ's *Ruling*."
[5] See *Assigned Commissioner's Scoping Memo and Ruling Regarding Petition to Modify Decision 11-05-002*, pg. 3.

1. Whether the period over which the Klamath surcharge is amortized should be revised; and

2. As a result of that change, whether the amount of the Klamath surcharge should be revised.

As stated in the assigned ALJ's May 18, 2012, ruling, all other issues, including but not limited to any possible delay in achievement of project milestones, is not within the scope of the current proceedings. In their opening and reply briefs, parties should address only issues within the above-stated scope of this proceeding." (*Commissioner's Memo*, pg. 3)

In that light, it should be noted that the February 10, 2012, *Response* to the original PacifiCorp Petition filed by Siskiyou County *et al*.[6] attempts to raise multiple side issues which are wholly irrelevant to, and well outside the limited scope of, this supplemental proceeding. Therefore the many irrelevant issues, speculations and assertions in that *Response* should be ignored in this very limited supplemental proceeding.[7]

Respectfully submitted,

July 10, 2012

/s/ Glen H. Spain
For Pacific Coast Federation of Fishermen's Associations and Institute for Fisheries Resources

/s/ Craig Tucker
For the Karuk Tribe

[6] See *Response of County of Siskiyou, Siskiyou County Flood Control and Water Conservation District, and Siskiyou Power Authority to Petition of PacifiCorp (U901E) for Modification of Decision 11-05-002 and Expedited Request for Consideration*, filed in this docket on February 10, 2012.

[7] Additionally, we believe that nearly every one of the Siskiyou County, *et als*., many conclusory statements in that *Response* are at best highly debatable based on the science, and that many are simply factually incorrect. However, as those Siskiyou County *et al.* statements in that *Response* are well outside the scope of this proceeding, we will not enumerate those many errors in this Opening Brief, but reserve the right to do so at a later time in later documents should any of those issues raised in that *Response* be later allowed into consideration in this proceeding.