

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**

3 UE 171

4 In the Matter of PACIFIC POWER & LIGHT  
5 (d/b/a PacifiCorp) Klamath Basin Irrigation  
6 Rates

STAFF'S RESPONSE TO PACIFICORP'S  
MOTION FOR SUMMARY DISPOSITION

7 **I. INTRODUCTION**

8 The issue before the Public Utility Commission of Oregon ("PUC" or "Commission") in  
9 this proceeding is whether PacifiCorp's Klamath Basin irrigation customers should be served in  
10 accordance with historical contracts, or whether they should be served under PacifiCorp's  
11 standard tariffs. *See In re Pacific Power & Light*, UE 170, Revised Joint Ruling and Prehearing  
12 Conference Notice at 2 (OPUC Feb. 24, 2005) (slip op).

13 There are two separate contracts are at issue in this proceeding:

- 14 1. The first agreement ("On-Project Contract"), dated January 31, 1956, is  
15 between the United States Bureau of Reclamation ("USBR") and the  
16 California and Oregon Power Company ("Copco" - the predecessor of  
17 PacifiCorp). The term of the contract is 50 years. Exhibit B of the contract  
18 provides a 6 mill per kWh power rate for water pumping and drainage by  
19 irrigators whose farmlands are located within the boundaries the USBR's  
20 Klamath Irrigation Project ("KIP").  
21 2. The second agreement ("Off-Project Contract"), dated April 30, 1956, is a  
22 one-page document signed by Copco and the Klamath Basin Water Users  
23 Protective Association. The document does not specify a term. This  
24 agreement provides a 7.5 mill per kWh power rate for Klamath area water  
25 users whose farming operations are not located within the KIP boundary.

22 **BACKGROUND**

23 On November 12, 2004, Pacific made a general rate filing with the PUC, which  
24 was docketed as UE 170. In its UE 170 filing, PacifiCorp proposed that, upon expiration  
25 of the On-Project Contract, both the On-Project and Off-Project irrigation customers  
26 should be moved to standard tariff rates. Both Klamath irrigator groups intervened in

1 UE 170 and expressed concern with PacifiCorp’s proposal. Because of the uniqueness of  
2 this issue to a subset of PacifiCorp’s irrigation customers, the Administrative Law Judge  
3 (ALJ) determined that the issue could best be addressed in a separate, new docket –  
4 UE 171. At the Prehearing Conference, there was an agreement that it is necessary to  
5 resolve primary issues in UE 171 prior to the conclusion of UE 170 (September 12, 2005).  
6 Any residual issues from UE 171 will be dealt with in UE 170.

7 As scheduled, Pacific filed its UE 171 Motion for Summary Disposition on March 31,  
8 2005 (“PacifiCorp Motion”).

9 **II. PUC STAFF’S RESPONSE**

10 The PUC Staff’s Response to PacifiCorp’s UE 171 Motion will include discussion of:  
11 (1) PacifiCorp’s UE 171 Motion; (2) The Commission’s jurisdiction regarding special contracts.

12 **1. PACIFICORP’S MOTION FOR SUMMARY DISPOSITION**

13 PacifiCorp seeks a Commission order terminating the Off-Project Contract, and  
14 terminating the special rates under the On-Project Contract, on April 16, 2006.

15 In establishing the April 16, 2006, termination date, PacifiCorp references Articles 17  
16 and 11 of the On-Project Contract. Article 17 states: “This contract shall be in effect for a period  
17 of fifty (50) years from the effective date determined pursuant to article 11.” Article 11 states:  
18 “This contract shall become effective on the date of its approval by the Public Utility  
19 Commissioner of the State of Oregon or the Public Utilities Commission of the State of  
20 California, whichever shall occur later, and shall not be effective in any way until approved by  
21 both regulatory authorities.”

22 PacifiCorp’s Exhibit 3 provides a letter, dated March 9, 1956, signed by the Public Utility  
23 Commissioner of Oregon that states acceptance and implies approval of the On-Project Contract.  
24 Exhibit 4 provides Public Utilities Commission of the State of California Decision No. 52809  
25 that discusses and approves the On-Project Contract to become effective twenty days after the  
26 Decision’s signature date of March 27, 1956. This is an effective date of April 16, 1956.

1 Therefore, PacifiCorp’s Motion establishes an expiration date for the On-Project Contract of  
2 April 16, 2006.

3 In regard to the Off-Project Contract, PacifiCorp’s Exhibit 7 provides the Public Utilities  
4 Commission of the State of California Decision No. 53659 that denies approval of the  
5 Off-Project Contract, stating that rate disparity with users in other parts of the utility’s system  
6 would result in unreasonable discrimination. PacifiCorp states that it has been unable to locate  
7 an order or other documentation from the Oregon Commissioner regarding approval of the  
8 Off-Project Contract. However, PacifiCorp’s Oregon Schedule 33 sets rates for Klamath  
9 irrigators at the level “specified by applicable contract.” PacifiCorp states that the rates set forth  
10 in the Off-Project Contract have been included in Oregon rate cases, and approved, since 1956.

11 In its Motion, PacifiCorp maintains that April 16, 2006 is a reasonable expiration date for  
12 the Off-Project Contract. Staff agrees. PacifiCorp argues that evidence from the time of  
13 contracting shows that the parties intended the Off-Project Contract to expire at the same time as  
14 the On-Project Contract. *See* PacifiCorp’s Motion at 17. PacifiCorp also argues that the Off-  
15 Project Contract rates are no longer just and reasonable and continuance of the rates would be  
16 discriminatory.

17 PacifiCorp concludes that the special rate provisions of the On-Project Contract, and the  
18 Off-Project Contract, should be terminated by the Commission effective April 16, 2006.

19 **2. THE COMMISSION HAS CONTINUING JURISDICTION TO REGULATE**  
20 **SPECIAL CONTRACTS, INCLUDING THE ON-PROJECT AND OFF-PROJECT**  
21 **CONTRACTS AT ISSUE IN THIS PROCEEDING.**

22 **A. The Commission’s Jurisdiction**

23 The Commission’s general powers direct it to “represent the customers of any public  
24 utility ... and the public generally in all controversies respecting rates, valuations, service and all  
25 matters of which the Commission has jurisdiction.” *See* ORS 756.040(1). It also directs the  
26 Commission to use its powers “...to protect such customers, and the public generally, from

1 unjust and unreasonable exactions and practices and obtain for them adequate service at fair and  
2 reasonable rates.” *Id.*

3 This general powers statute states that rates are fair and reasonable if the rates provide  
4 adequate revenue for both the operating expenses and capital costs of the utility, and provide a  
5 return to the equity holder that is commensurate with other investments of similar risk. *Id.* This  
6 criteria is used by the Commission to evaluate the reasonableness of the rate schedules (tariffs)  
7 that each public utility is required to file with the PUC. *See* ORS 757.205 through 757.266.  
8 These tariffs show all the rates, tolls, and charges for any service which the utility offers to its  
9 customers.

10 ORS 757.230 requires that the Commission adopt a customer classification system.  
11 Customers are grouped into classes based upon such factors as quantity of electricity used, the  
12 time when used, the purpose for which used, and any other reasonable consideration. *See* ORS  
13 757.230(1). The classification system adopted by the Commission is intended to ensure that  
14 similarly situated customers receive uniform service and rates and prevents utilities from offering  
15 rate discounts or special services to “preferred” customers.

16 The Commission’s non-discrimination policies are established by ORS 757.310 and ORS  
17 757.325. ORS 757.310 specifically prohibits a utility from charging rates higher or lower than  
18 the rates charged “any other person for a like and contemporaneous service under substantially  
19 similar circumstances.” ORS 757.325 prohibits a utility from giving “undue or unreasonable  
20 preference or advantage to any particular person or locality” and from subjecting “any particular  
21 person or locality to any undue or unreasonable prejudice or disadvantage in any respect.”

22 Prior to the passage of SB 1149 by the 2001 Oregon Legislature, the PUC allowed special  
23 rate discounts for utility customers who could demonstrate a viable alternative to utility service.  
24 These were generally large industrial customers who could build on-site self-generation plants.  
25 The utility would negotiate a special contract with the customer and then file that special contract  
26 with the Commission for review and approval.

1 The applicable standards the Commission used for review of special contracts are set  
2 forth in ORS 757.230 and Order No. 87-402. Generally, these standards require that: (1) Other  
3 ratepayers must benefit from the rate discount; (2) Any rate discount should be no larger than  
4 necessary; and (3) The offer of a discount must not be unduly discriminatory. A Commission  
5 approved special contract has the same status as a tariff. *See Fields v. Davis*, 31 Or App 607,  
6 571 P2d 511 (1977); OAR 860-022-0035.

7 Under rules adopted to implement Oregon's electric industry restructuring law, an  
8 electric utility may no longer enter into new special contracts for power supply. *See* OAR 860-  
9 038-0260. Existing rate discount contracts were grandfathered, but cannot be renewed upon  
10 expiration. The theory behind this rule is that since other providers (electricity service suppliers)  
11 can compete to serve irrigators and other nonresidential customers, allowing the utility to offer a  
12 rate discount would be unfair competition.

13 **B. The On-Project and Off-Project Contracts are Tariffs Subject to Continuing**  
14 **Commission Review**

15 As detailed above, the On-Project and Off-Project Contracts are special contracts under  
16 the Commission's regulatory scheme. Special contracts are filed and treated as tariffs. The  
17 Commission undoubtedly has the power to change the rates established in a written contract  
18 between a utility and one of its customers. *See American Can Co. v. Davis*, 28 Or App 207, 221-  
19 23, 559 P2d 898 (1977). In fact, the Commission has a continuing duty to consider and, upon a  
20 proper showing, to change special contract rates. *Id. at 224.*

21 **C. The Commission Should Exercise Its Jurisdiction Over the On-Project and Off-**  
22 **Project Irrigators to Terminate the Special Contract Rates of the On-Project**  
23 **and Off-Project Contracts, Effective April 16, 2006**

24 The Commission should exercise its authority to terminate the special contract rates  
25 because they are no longer consistent with the Commission's statutory obligations to set cost-  
26 based, nondiscriminatory rates.

1           The existing special contract rates are no longer cost-based. *See generally* PacifiCorp’s  
2 Motion at 11-13. In addition, ORS 757.230 requires the Commission to classify customers to  
3 ensure that similarly situated customers receive uniform service and rates and prevent utilities  
4 from offering rate discounts or special services to preferred customers. The existing special  
5 contract rates simply do not treat PacifiCorp’s irrigation customers similarly and, in fact, the On-  
6 Project and Off-Project irrigators are receiving a tremendous discount as compared with  
7 PacifiCorp’s other irrigation customers in Oregon under standard tariff Delivery Service  
8 Schedule 41/Cost-Based Supple Service Schedule 200. *Id.* at 5-6.

9           The existing special contracts also violate the Commission’s non-discrimination policies  
10 because PacifiCorp is charging a lower rate to the On-Project and Off-Project irrigators than  
11 other irrigators in Oregon receiving a like and contemporaneous service under substantially  
12 similar circumstances. *See* ORS 757.325. The On-Project and Off-Project irrigators may argue  
13 that the rates they pay are not discriminatory because the Commission has previously approved  
14 the special contracts. However, with the passage of electric industry restructuring legislation in  
15 Oregon as of March 1, 2002, an electric utility may no longer enter into a special contract. *See*  
16 OAR 860-038-0260. It is true that existing special contracts are grandfathered, but only  
17 according to their terms. Thus, the special contracts cannot be extended beyond their express  
18 terms. There is no doubt that the On-Project Contract, according to its express terms, terminates  
19 on April 16, 2006. The Off-Project Contract does not contain an express termination term, but it  
20 is reasonable to terminate both contracts at the same time because the historical context  
21 demonstrates that the contracts were related and should be considered together. Regardless of  
22 the express termination dates and as discussed above, the Commission has the continuing power  
23 and duty to review special contract rates, even if the contracts have not expired and amend rates  
24 when they are no longer just and reasonable.

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26 ///

1 **CONCLUSION**

2 Fore the foregoing reasons, the Commission should issue a UE 171 Order terminating the  
3 special rates of the On-Project Contract, and terminating the Off-Project Contract, effective  
4 April 16, 2006.

5 DATED this \_\_\_\_\_ day of April 2005.

6 Respectfully submitted,

7 **HARDY MYERS**  
8 **Attorney General**

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of April 2005, I served the foregoing

upon the parties, hereto by the method/s indicated below:

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