

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

3                                   UE 170

4   In the Matter of

5   PACIFIC POWER & LIGHT COMPANY  
6   (dba PacifiCorp)

7   Request for a General Rate Increase in the  
8   Company's Oregon Annual Revenues

9   (Klamath Basin Irrigator Rates)

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

10                                   **INTRODUCTION**

11           On March 27, 2006, the Klamath Water Users Association ("KWUA") moved to re-open  
12   the record, asking that a document filed by PacifiCorp in a FERC proceeding be made part of the  
13   UE 170 evidentiary record. In the alternative, KWUA asks that official notice be taken of the  
14   document. On March 28, 2006, ALJ Kathryn Logan issued a ruling establishing March 31,  
15   2006, by 4:00 p.m. as the deadline for filing responses. Specifically, the ruling states that  
16   responses are to be limited to whether the docket should be re-opened to admit the requested  
17   document, or whether official notice should be taken of the document. Consistent with that  
18   ruling, Staff takes this opportunity to respond to KWUA's motion to re-open record or, in the  
19   alternative, request for official notice ("Motion").

20           The document at issue is the "Answer of PacifiCorp to Comments Regarding  
21   Readjustment of Annual Charges" for the use of a government dam before the Federal Energy  
22   Regulatory Commission ("FERC") and was filed at FERC in Project No. 2082-040. Generally  
23   speaking, the document contains PacifiCorp's position and arguments on certain issues before  
24   FERC in the relicensing proceeding of Project No. 2082-040.

25           For the following reasons, KWUA's Motion should be denied in its entirety.

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1 **DISCUSSION**

2 **1. The Commission should not reopen the record in this proceeding.**

3 ORS 756.558(1), which KWUA cites to support its motion to reopen the record, provides  
4 that after the record closes “no additional evidence shall be received except upon the order of the  
5 commission and a reasonable opportunity of the parties to examine any witnesses with reference  
6 to the additional evidence and otherwise rebut and meet such additional evidence.” The Public  
7 Utility Commission of Oregon (“Commission”) is expected to issue an order in this docket prior  
8 to April 16, 2006 (which is a Sunday). Given the timelines in this docket, KWUA’s Motion does  
9 not give the parties a reasonable opportunity to examine any witnesses regarding the additional  
10 evidence and otherwise rebut and meet such additional evidence as required by ORS 756.558(1).

11 In that regard, it is important to note that the material KWUA wants to enter into the  
12 record is not a FERC order, or facts that are not subject to reasonable dispute because they are  
13 generally known or can be accurately and readily determined by sources whose accuracy cannot  
14 reasonably be questioned. Rather, they are PacifiCorp’s *arguments* to FERC that are disputed  
15 and undecided by FERC. In addition, the ALJ’s ruling makes it clear that responses to KWUA’s  
16 Motion are not to argue about the substance of the material that KWUA wishes to enter into the  
17 record. KWUA’s motion to reopen the record should be denied.

18 **2. The material that KWUA offers does not meet the requirements for official notice.**

19 KWUA cites OAR 860-014-0050(1)(a), which provides that the Commission may take  
20 official notice of all matters of which the courts of the State of Oregon take judicial notice.  
21 KWUA further cites *In re Compensation of Calder*, 157 Or App 224, 227 (1998) for the  
22 proposition that the material at issue in its Motion is the type of material of which Oregon courts  
23 can take judicial notice. That case provides that a court or administrative agency may take  
24 judicial notice of *facts* “capable of accurate and ready determination by resort to sources whose  
25 accuracy cannot reasonably be questioned.” Specifically, *Calder* involved the use of a medical  
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1 dictionary for a definition of a medical term. *See In re Compensation of Calder*, 157 Or App at  
2 227 citing OEC 201(b)(2); ORS 183.450(4).

3 Here, KWUA is not requesting that the Commission take official notice of facts. Rather  
4 KWUA is requesting that notice be taken regarding *arguments* and *positions* that PacifiCorp has  
5 filed in a FERC proceeding. PacifiCorp's arguments and positions are not facts that are "capable  
6 of accurate and ready determination by resort to sources whose accuracy cannot reasonably be  
7 questioned."<sup>1</sup> By its very nature, the material is subject to argument.<sup>2</sup> This is not a FERC order  
8 but, rather, comments by one party to a FERC proceeding on a matter which FERC has not yet  
9 decided. The offered material is not the type of material that the Commission should take  
10 official notice of under OAR 860-014-0050(1)(a).

### 11 CONCLUSION

12 For the foregoing reasons, the Commission should deny KWUA's Motion.

13 DATED this 31<sup>st</sup> day of March 2006.

14 Respectfully submitted,

15 HARDY MYERS  
16 Attorney General

17  
18 /s/David B. Hatton  
19 David B. Hatton, #75151  
20 Jason W. Jones, #00059  
21 Assistant Attorneys General  
22 Of Attorneys for the Staff of the Public Utility  
Commission of Oregon

23 <sup>1</sup> Although it is Staff's position that the Commission should not take official notice of PacifiCorp's comments, if the  
24 Commission were to take official notice, it should take official notice of all the parties' filings in the FERC docket  
for Project No. 2082-040.

25 <sup>2</sup> For example, KWUA's Motion asserts what position PacifiCorp has taken before this Commission. *See* Motion at  
26 1. However, KWUA makes no cite to the record for this proposition and that is not Staff's understanding of  
PacifiCorp's position on the record. Of course, there are many other positions on the record regarding the annual  
dam use charges that are not discussed in the material. This highlights some of the problems that would be incurred  
if the Commission were to reopen the record or take official notice of this material.

## CERTIFICATE OF SERVICE

I certify that on March 31, 2006, I served the foregoing upon the parties hereto by electronic mail and/or by mailing a true, exact and full copy by regular mail, postage prepaid, or by hand-delivery/shuttle mail.

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