

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

STAFF'S OPENING BRIEF ON RATE
STANDARD

9 **INTRODUCTION**

10 Consistent with the schedule and issues list adopted in this proceeding, the issues
11 currently presented at this stage of the proceeding are listed in "Issue 1," including its sub-parts,
12 as established by Administrative Law Judge Michael Grant, in Appendix A of the ruling issued
13 August 17, 2005, establishing the issues list in the docket. As such, the Public Utility
14 Commission of Oregon Staff ("Staff") will organize its opening brief around the following issue,
15 including its sub-parts.

16 **ANALYSIS**

- 17 1. What is the statutory standard applicable to the setting of electric rates for irrigators
18 located within the Klamath Basin?

19 The statutory standard applicable to the setting of electric rates for irrigators located
20 within the Klamath Basin is the "just and reasonable" standard found in ORS §§ 756.040 and
21 ORS 757.205 et seq. Simply put, every public utility is required to file with the Public Utility
22 Commission ("Commission") schedules showing all the rates, tolls and charges. *See* ORS
23 757.205. Furthermore, the Commission may conduct a hearing to determine the propriety and
24 reasonableness of the rates. *See* ORS 757.210. In establishing the appropriate rate, the
25 Commission has the duty to establish "just and reasonable" rates. *See* ORS 756.040.

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1 a. Is the statutory standard applicable to establishing rates for Klamath Basin
2 irrigation customers the “just and reasonable” standard found in ORS §§
3 756.040, 757.210 et seq., the “lowest power rate that may be reasonable”
4 standard found in the Klamath River Basin Compact (the “Compact”), ORS §
5 542.610 et seq., or some other standard?

6 Here, both the Klamath Water Users Association (“KWUA”) and the Klamath Off-
7 Project Water Users (“KOPWU”) try to divert the Commission’s attention from the setting of
8 “just and reasonable” rates by arguing that the Klamath Basin Compact (“Compact”) establishes
9 a different rate standard. Article IV of the Compact describes the Compact’s general objectives.

10 It states:

11 It shall be the objective of each state, in the formulation and execution and the
12 granting of authority for the formulation and execution of authority for the
13 formulation and execution of plans for the distribution and use of the water of the
14 Klamath River Basin, to provide for the most efficient use of available power head
15 and its economic integration with the distribution of water for other beneficial uses
16 in order to secure the most economical distribution and use of water and the lowest
17 power rates which may be reasonable for irrigation and drainage pumping,
18 including pumping from wells.

19 Compact, Article IV (emphasis supplied).

20 At the outset, Article IV of the Compact, by its own plain words, is not a rate standard.
21 Rather, it states some general objectives related to the distribution and use of water for the
22 Klamath Basin, which should result in the lowest power rates which may be reasonable for
23 irrigation pumping. Because the KWUA and KOPWU do not want to pay “just and reasonable”
24 cost-of-service rates for their electricity, they attempt to make this very general objective
25 language a “rate standard” that would preempt the Commission’s legislatively delegated duty to
26 establish just and reasonable rates for public utilities. The Klamath irrigators incorrectly and
unlawfully attempt to boot-strap the Compact’s statement of objectives into a rate standard that
would preempt the Commission’s rate-setting standard that applies to all public utilities.

27 The first level analysis for statutory interpretation is the text and context of the statute.
28 See *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). Under *PGE v.*
29 *BOLI*’s methodology, the first step is to examine the text of the statute, giving words of common

1 usage their plain, natural, and ordinary meaning. The first step of analysis also includes
2 examination of the context of the statute and other related statutes. Only if the legislature’s
3 intent is unclear after a review of the text and context, is the legislative history of the statute
4 considered. If the legislature’s intent still remains unclear, the last step in the analysis is to resort
5 to general maxims of statutory construction. *See Id.*

6 This issue presented in this case is resolved by analyzing *PGE v. BOLI*’s first level of
7 analysis, which is the plain, natural, and ordinary meaning of the statutes. The plain, natural, and
8 ordinary meaning of ORS 756.040 and ORS 757.205 et seq. is that the Commission establishes
9 “just and reasonable” rates for public utilities. On the other hand, the plain, natural, and ordinary
10 meaning of ORS 542.620 is a statement of general objectives for formulating and executing
11 plans for distribution and use of water to achieve certain results, including the lowest power rates
12 which may be reasonable. Absolutely nothing in a plain, natural, and ordinary reading of the
13 Compact suggests that the legislature intended to replace the “just and reasonable” rate standard.

14 Oddly, KWUA and KOPWU both argue that the ORS 542.620 is a more particular
15 provision than the ORS 756.040 and ORS 757.205 et seq. “just and reasonable” provisions. In
16 fact, the opposite is true. The Commission’s “just and reasonable” standard is a particular,
17 specific rate-setting standard, whereas, the Compact is a general statement of objectives. KWUA
18 relies on two cases for the proposition that the more specific statutory provisions control over the
19 more general. *See KWUA UE 171 May 12, 2005, Reply Brief at 7-8.* The fundamental problem
20 with KWUA’s reliance, however, is that both of the cases that it relies on involve interpretations
21 of specific chapters within Chapter 757, in which there were specific rate-setting statutes. That
22 is not the case here where the Compact is contained in an unrelated chapter and is unrelated to
23 the Commission’s rate-setting functions. Those cases are, therefore, distinguishable.

24 Furthermore, the Klamath irrigator’s reliance on maxims of statutory construction for
25 contextual analysis is misplaced because those rules only apply to the context of the statute and
26 related statutes. *See PGE v. BOLI* at 611. Here, the statutes are not related statutes. Indeed, one

1 statute provides for the appropriate rate standard while the other states general objectives related
2 to water use in the Klamath Basin. Furthermore, the “just and reasonable” standard has been
3 around much longer than the Compact. If the legislature desired to provide a preferential rate
4 standard, it could have amended Chapter 756, or stated its intent to provide a different rate
5 standard. Regardless, the general objectives of the Compact that are contained in an entirely
6 different chapter of Oregon laws do not, and cannot, be interpreted to alter the Commission’s
7 specific “just and reasonable” rate standard.

- 8 b. If the Klamath Basin Compact establishes a different statutory standard than the
9 “just and reasonable” standard for determining the appropriate rates for the
10 Klamath irrigation customers, 1) what standard does the Compact establish, and
11 2) what is the effect and meaning of that standard in terms of setting rates?

12 As described above, the Compact does not establish a different statutory standard than the
13 “just and reasonable” standard. Therefore, further discussion of what the Compact means related
14 to rate-setting is unnecessary and unwarranted.

- 15 c. Does SB 81 prescribe, modify or otherwise affect the applicable statutory
16 standard?

17 No. SB 81 is a rate mitigation measure and will likely affect the rates charged to the
18 Klamath irrigators. However, that rate mitigation calculation is set out in SB 81 and does not
19 change the fact that the applicable statutory standard is the “just and reasonable” standard.

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1 **CONCLUSION**

2 For the foregoing reasons, Staff respectfully urges the Commission to confirm that the
3 applicable statutory standard is the “just and reasonable” standard in ORS 756.040, 757.210 et
4 seq.

5 DATED this 29th day of August 2005.

6 Respectfully submitted,

7 **HARDY MYERS**
8 Attorney General

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CERTIFICATE OF SERVICE

I certify that on August 29th, 2005, I served the foregoing upon the parties hereto by mailing a true, exact and full copy by regular mail, postage prepaid, by shuttle mail delivery, and/or by electronic mail:

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