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September 16, 2005

Public Utility Commission of Oregon  
ATTN: Filing Center  
550 Capitol St., NE #215  
P.O. Box 2148  
Salem, OR 97308-2148

RE: In the Matter of Pacific Power & Light (dba PacifiCorp) Request for a General  
Rate Increase in the Company's Oregon Annual Revenues  
Docket No.: UE-170

Dear Clerk:

Attached please find for electronic filing the following document:

1. **YUOK TRIBE'S REPLY BRIEF ON RATE STANDARD**

The original and five (5) copies of the document have been forwarded to your offices by first class mail.

Should you have any questions regarding this matter, please do not hesitate to contact our Berkeley office.

Very truly yours,

ALEXANDER, BERKEY, WILLIAMS & WEATHERS LLP

/s/ Scott W. Williams  
Scott W. Williams

Enclosures

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**Docket No. UE 170**

In the Matter of	)	
	)	
PACIFIC POWER & LIGHT COMPANY	)	<b>YUOK TRIBE’S REPLY BRIEF</b>
(dba PacifiCorp)	)	<b>ON RATE STANDARD</b>
	)	
Request for General Rate Increase in the	)	
Company’s Oregon Annual Revenues	)	

**INTRODUCTION**

The task at this stage of these proceedings is to determine what statutory standard is applicable to the setting of electric rates for irrigators located within the Klamath Basin. Order, Administrative Law Judge Michael Grant, Appendix A (August 17, 2005). All of the parties to this proceeding, except the irrigators themselves and the Federal Government, agree that the rate standard for the irrigators as with anyone else in Oregon, is that set forth in Oregon utility law: the Commission must establish “just and reasonable” rates. *See*, ORS 756.040.

The irrigators and the federal government argue that the Klamath Basin agricultural community is entitled to rates set by other standards entirely: “the lowest reasonable cost of generating that power using the waters of the Klamath River.” *See*, Klamath Water Users Association Opening Brief at 2 (“KWUA brief”); Klamath Off-Project Water Users’ Opening Brief at 17 (“KOPWU brief”); *and see*, “United States’ [sic] Bureau of Reclamation [et al] Opening Brief on Rate Standard” at (unnumbered page) 6 (“BOR brief”).

The rate standard proposed by the irrigators and the federal government is not found anywhere in Oregon law. Consequently, the Commission’s duty is unchanged. The Commission is delegated the authority by the Legislature to protect all Oregon customers from “unjust and

unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.” ORS 756.040. The Yurok Tribe replies briefly to the irrigators’ and federal government’s mistaken claims.

## DISCUSSION

According to the irrigators and the federal government, “the applicable standard comes from the [Klamath Basin] Compact.” KWUA brief at 3; KOPWU brief at 1; BOR brief at (unnumbered pages) 5-6. The only conceivable location in the compact where one could look for this utility rate standard is Article IV. ORS 542.620 (Article IV). Article IV is frequently restated and is the subject of a great deal of discussion by the parties to these proceedings. So the Tribe addresses it only briefly.

Article IV of the Compact states that Oregon and California have agreed to an “objective” one purpose of which is to formulate a plan to “secure the most economical distribution and use of water . . .” *Id.* A second purpose of the Compact’s objective in Article IV is to establish a plan to secure the:

most economical distribution and use of water and the lowest power rates which may be reasonable for irrigation and drainage pumping, including pumping from wells.

*Id.* It is this last portion of the Compact’s sentence which provides the sole basis for the irrigators’ and federal government’s claims.

These proponents of a special rate standard for Klamath Basin farmers assert that the Compact’s language (above) actually means that the irrigators are “entitled” to a rate:

that reflects the cost of providing service from PacifiCorp’s Klamath hydroelectric facilities.

KOPWU brief at 17; KWUA brief at 2.

The irrigators and federal government have transformed the Compact's plain language in two respects. First, the Compact's "objective" in formulating "plans" has been made into a statutory "entitlement." Second, the Compact's objective to formulate a plan for efficient use of water and for lowest reasonable power rates, has been transformed into an economic analysis for the determination of electric rates solely for irrigators: they argue the irrigators are "entitled" to a rate standard which is based entirely upon the cost of generating electricity only from the hydroelectric projects on the Klamath River. Neither the "entitlement" nor the method for calculating a rate is included in the Compact. KOPWU, KWUA and BOR can achieve this transformation of plain words only by ignoring every fundamental principle of statutory construction embodied in Oregon law.

Because the irrigators and federal government tell us that their rate standard is found in the Compact, we interpret the language of the Compact. Fundamental, unexceptional principles of statutory construction are available for interpreting the Compact's "objective" to seek the "lowest" "reasonable" rates for Klamath Basin farmers. "The text of the statutory provision itself is the starting point for interpretation . . ." *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-11 (1993). Then a court "considers rules of construction of the statutory text that bear directly on how to read the text." *Id.* at 611. "[W]ords of common usage are given their plain, natural and ordinary meaning." *Id.* And, significantly for KWUA and BOR, the court's job is "not to insert what has been omitted, or to omit what has been inserted" in the statute being interpreted. ORS 174.010.

The "plain, natural and ordinary" meaning of the Compact's statement of objectives for hydroelectric power is obvious. The states of Oregon and California have agreed on an "objective," one part of which is to formulate "plans" to obtain the "lowest ... reasonable" power

rates for Klamath Basin farmers. Compact, Article IV, *supra*. The Compact states nothing more than that. We are prohibited from “inserting” in that statement of objectives terms which are simply not there. ORS 174.010. Accordingly, we cannot add to the Compact language about “statutory entitlements” to electricity “generat[ed] . . . using the waters of the Klamath River.” KWUA brief at 2. Neither those words, nor those concepts, are included in the Compact. Had the drafters of the Compact wished to insure that Klamath irrigators’ electric rates were based solely on the costs of generating power from hydroelectric facilities on the Klamath River, the drafters could easily have said so.

This is not the first time that the Klamath Basin farmers have attempted to read into the Klamath Basin Compact entitlements which are not there. *See, United States v. Adair*, 723 F.2d 1394, 1419 (9<sup>th</sup> Cir. 1984) (in action to declare water rights of Klamath Tribes, irrigators argued that Compact limited the federal government’s and Tribes’ water rights; the court disagreed, finding that the Compact was not intended to limit Tribal irrigation, hunting and fishing rights); *and see, Klamath Irrigation District v. United States, Pacific Coast Federation of Fishermen’s Associations*, \_\_\_ Fed.Cl. \_\_\_, 2005 WL 2100579, slip opn. at 11, 47-48 (Ct. Fed. Cl. 2005)(Klamath irrigators brought claims for monetary damages in consequence of reductions in water deliveries in 2001 and alleged, in part, that their water rights were vested by the Klamath Basin Compact; court held that irrigators claims were “subservient” to prior rights of United States and Klamath Basin Indian tribes and that Compact, interpreted in accordance with its “plain meaning,” did not “enhance” the farmers’ rights). Here too, the Compact does not “enhance” the irrigators’ status as compared to other Oregon ratepayers. The Compact’s “plain meaning” does not include language changing Oregon utility law to provide for a unique utility rate standard for the irrigators.

## CONCLUSION

The Commission's duty to set rates for the irrigators which are fair, just, reasonable and nondiscriminatory, is unchanged. See, ORS 756.040, 757.210(1), 757.310(2), 757.325; *Multnomah County v. Davis*, 35 Or.App. 521, 526 (1978). The Klamath irrigators are entitled to rates set in accordance with the standards applicable to all Oregon ratepayers.

Dated: September 16, 2005

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## ACKNOWLEDGMENT OF SERVICE

I certify that I have this day caused to be served the foregoing document:

### 1. **YUOK TRIBE'S REPLY BRIEF ON RATE STANDARD**

upon all parties of record in this proceeding by mailing a copy properly addressed with first class postage prepaid or by electronic means pursuant to OAR 860-013-0070, to the following parties or attorneys or parties:

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I further certify that on September 16, 2005, in addition to filing the document electronically, I caused to be mailed the original and five (5) copies of the Yurok Tribe's Reply Brief on Rate Standard with the Public Utility Commission of Oregon, via first class mail, to the following address:

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I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on September 16, 2005, at Berkeley, California.

/s/ Scott W. Williams  
Counsel for the Yurok Tribe