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August 29, 2005

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**VIA ELECTRONIC FILING**

PUC Filing Center  
Public Utility Commission of Oregon  
PO Box 2148  
Salem, OR 97308-2148

**Re: PacifiCorp's Opening Brief on Statutory Standard for Ratesetting  
Docket UE 170**

Enclosed for filing please find PacifiCorp's Opening Brief on Statutory Standard for Ratesetting in the above-referenced docket. A copy of this filing was served on all parties to this proceeding as indicated in the attached certificated of service.

Very truly yours,

A handwritten signature in black ink, appearing to read "SJL", written over a horizontal line.

Sarah J. Adams Lien

SJL:knp  
Enclosure  
cc: Service List



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BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON

UE 170

In the Matter of PACIFIC POWER &  
LIGHT's (d/b/a PacifiCorp) Request for a  
General Rate Increase in the Company's  
Oregon Annual Revenues.

**PACIFICORP'S OPENING BRIEF ON  
STATUTORY STANDARD FOR  
RATESETTING**

**I. INTRODUCTION**

In accordance with Order No. 05-726 issued in Docket UE 171, the Commission's  
June 30, 2005 Prehearing Conference Memorandum in this docket and its August 17, 2005  
Ruling adopting an issues list, PacifiCorp submits this brief addressing the issue of the  
statutory standard applicable to the setting of electric rates for irrigators located within the  
Klamath River Basin.

The statutory standard issue was one of the issues addressed in the course of briefing  
in Docket UE 171 regarding PacifiCorp's Motion for Summary Disposition.<sup>1</sup> The issue was  
raised initially by the Klamath Water Users Association (KWUA) in the Company's  
relicensing case at FERC, and subsequently by both KWUA and the Klamath Off-Project  
Water Users (KOPWU) in UE 171. In both cases, these parties claimed that the irrigators in  
the Klamath River Basin are entitled to the "lowest power rates which may be reasonable,"  
pursuant to the Klamath River Basin Compact (the "Compact").<sup>2</sup> KWUA and KOPWU  
argued that this was a different, more preferential standard for determining power rates than  
the "just and reasonable" rate standard found in the Commission's governing statutes,  
ORS ch. 756 and 757.

<sup>1</sup> Rather than reproducing exhibits attached to the brief previously filed in UE 171,  
PacifiCorp will only cite those exhibits herein, as they were made part of the record in this  
docket by the Commission's June 30, 2005 Prehearing Conference Memorandum.

<sup>2</sup> Pub L No. 85-222, 71 Stat 497, 500 (1957); ORS 542.620.



1 As shown below, the Klamath Basin irrigators are not governed by a statutory  
2 standard for their electric rates that is any different than the standard applicable to all other  
3 customers of PacifiCorp in Oregon receiving electric service at rates set by this Commission.  
4 The Compact does not entitle the Klamath Basin irrigators to preferential treatment.

## 5 II. SUMMARY OF ARGUMENT

6 The plain language of the Compact demonstrates that it states an objective with  
7 respect to the use of waters of the Klamath River Basin, not a directive with respect to  
8 electric rates for Klamath Basin irrigators. Consistent with its plain terms, the Oregon  
9 legislature designated the Water Resources Director, not this Commission, to administer the  
10 Compact. Moreover, SB 81 affirms the applicability of the “just and reasonable” standard to  
11 the Klamath Basin irrigators.

## 12 III. ARGUMENT

### 13 A. The Statutory Standards Applicable to Setting Electric Rates for 14 Irrigators in the Klamath River Basin Are Contained Entirely Within ORS Chapters 756 and 757.

15 Four words capture the statutory standard which must be met by all Commission-  
16 approved retail electric rates in Oregon, whether the rates are in a special rate contract or in a  
17 standard tariff: fair, just, reasonable and nondiscriminatory. This standard, generally  
18 summed-up by the phrase “just and reasonable,” is contained in several statutes:

19 ORS 756.040(1):

20 In addition to the powers and duties now or hereafter  
21 transferred to or vested in the Public Utility Commission, the  
22 commission shall represent the customers of any public utility  
23 or telecommunications utility and the public generally in all  
24 controversies respecting rates, valuations, service and all  
25 matters of which the commission has jurisdiction. In respect  
26 thereof the commission shall make use of the jurisdiction and  
powers of the office to protect such customers, and the public  
generally, from unjust and unreasonable exactions and  
practices and to obtain for them adequate service at fair and  
reasonable rates. The commission shall balance the interests of  
the utility investor and the consumer in establishing fair and  
reasonable rates. Rates are fair and reasonable for the purposes



1 of this subsection if the rates provide adequate revenue both for  
2 operating expenses of the public utility or telecommunications  
3 utility and for capital costs of the utility, with a return to the  
4 equity holder that is:

5 (a) Commensurate with the return on investments in other  
6 enterprises having corresponding risks; and

7 (b) Sufficient to ensure confidence in the financial integrity of  
8 the utility, allowing the utility to maintain its credit and attract  
9 capital.

10 ORS 757.210(1):

11 Whenever any public utility files with the Public Utility  
12 Commission any rate or schedule of rates stating or  
13 establishing a new rate or schedule of rates or increasing an  
14 existing rate or schedule of rates, the commission may, either  
15 upon written complaint or upon the commission's own  
16 initiative, after reasonable notice, conduct a hearing to  
17 determine the propriety and reasonableness of such rate or  
18 schedule. The commission shall conduct such a hearing upon  
19 written complaint filed by the utility, its customer or  
20 customers, or any other proper party within 60 days of the  
21 utility's filing; provided that no hearing need be held if the  
22 particular rate change is the result of an automatic adjustment  
23 clause. At such hearing the utility shall bear the burden of  
24 showing that the rate or schedule of rates proposed to be  
25 established or increased or changed is just and reasonable.

26 ORS 757.310(2):

A public utility may not charge a customer a rate or an amount  
for a service that is different from the rate or amount the public  
utility charges any other customer for a like and  
contemporaneous service under substantially similar  
circumstances.

ORS 757.325:

(1) No public utility shall make or give undue or unreasonable  
preference or advantage to any particular person or locality, or  
shall subject any particular person or locality to any undue or  
unreasonable prejudice or disadvantage in any respect.

(2) Any public utility violating this section is guilty of unjust  
discrimination.



1 The standard established by these statutes has been recognized and enforced in  
2 innumerable Commission decisions and numerous court decisions. *E.g., Multnomah*  
3 *County. v. Davis*, 35 Or App 521, 526, 581 P2d 968 (1978) (“The Commissioner’s power  
4 over rates constitutes a broad delegation of legislative authority. The only legislative  
5 standards for exercising that authority are that rates be ‘fair and reasonable.’”); *American*  
6 *Can Co. v. Davis*, 28 Or App 207, 224, 559 P2d 898 (1977) (“[T]he Commissioner had not  
7 only the right, but indeed the duty, in exercising his authority to set just and reasonable rates,  
8 to consider and, upon a proper showing, to change the Crown-Pacific Contract with respect  
9 to the rate to be charged thereunder.”); *Re Incentive Rates for Electric Service*, 82 Pub Util  
10 Rep 4th 624, 625 (OPUC 1987) (A “basic restriction” in Oregon law is the requirement that  
11 regulated utilities provide “uniform service and rates for similarly situated customers.”); *In re*  
12 *Portland General Elec. Co.*, UE 111, Order No. 00-491, 2000 WL 1532766 (OPUC Aug. 31,  
13 2000) (a special contract is legal only if: (1) other ratepayers benefit or at least are held  
14 harmless as a result of the contract; (2) the revenue generated from the contract is sufficient  
15 to recover relevant costs; and (3) the contract is not discriminatory).

16 The statutory standard applicable to setting rates for PacifiCorp’s irrigation customers  
17 in the Klamath River Basis is the same as the standard applicable to other retail customers in  
18 Oregon: The rates must be fair, just, reasonable and nondiscriminatory. There is no other  
19 standard.

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**B. The Klamath River Basin Compact Does Not Require The Commission To Order Preferential Rates For Klamath River Basin Irrigators.**

**1. Article IV of the Compact Sets General Objectives Regarding the Distribution and Use of Klamath Waters, as Distinguished from a Statutory Entitlement to a Particular Rate.**

KWUA and KOPWU have argued that the Compact requires that Klamath Basin irrigators receive rates for electric service under a preferential standard.<sup>3</sup> The provision relied upon by KWUA and KOPWU for that position states:

“It shall be the objective of each state, in the formulation and execution and the granting of authority for the formulation and execution of plans for distribution and use of the waters of the Klamath River Basin, to provide for the most efficient use of available power head and its economic integration with the distribution of water or other beneficial uses in order to secure the most economical distribution and use of water and lowest power rates which may be reasonable for irrigation and drainage pumping, including pumping from wells.” Compact, Article IV.

The argument of KOPWU and KWUA, that the Compact requires rates for their members based on a preferential standard, is not supported by the actual language of the Klamath Compact.

Citing the Compact and quoting from the latter portion of Article IV, KWUA has claimed that “Oregon law *requires* that electricity be provided to the Klamath Irrigators . . . under the preferential ‘lowest power rates which may be reasonable’ standard.” (Emphasis added).<sup>4</sup> Similarly, KOPWU has asserted that “[T]he Klamath River Basin Compact, ORS § 542.610 et seq., specifies that [the Klamath Basin irrigation customers] *are to receive* the ‘lowest power rates which may be reasonable’ for irrigation and pumping uses,” and that “Section IV of the Compact describes the rates *to be charged* to Klamath irrigation

<sup>3</sup> Affidavit of Laura Beane, Exhibit 13, at 11-12 (KWUA Motion to Strike Answer of PacifiCorp at FERC); KUWA’s Response to Motion for Summary Disposition (Docket No. UE 171) (“KWUA Response”) at 10-13; KOPWU’s Response to PacifiCorp’s Motion for Summary Disposition (Docket No. UE 171) (“KOPWU’s Response”) at 46-51.

<sup>4</sup> KWUA Response at 10.



1 customers.” (Emphasis added).<sup>5</sup> Contrary to KWUA’s and KOPWU’s assertions, Article IV  
2 of the Compact sets a general objective regarding the distribution and use of waters in the  
3 Klamath River Basin; it does not impose a requirement that the Commission apply a standard  
4 when setting rates for the Klamath Basin irrigators, and in particular does not require the use  
5 of a standard that would result in preferential electric rates as compared to rates paid by other  
6 irrigators.

7 Because the language of the Compact itself does not support a preferential rate  
8 theory, KWUA has asserted that the ratification of the Compact by the Oregon Legislature in  
9 ORS 542.610(1) somehow upgraded the legal significance and meaning of its provisions.  
10 The fact is that, other than confirming the ratification of the Compact, the codification of the  
11 Compact did not change the terms of the Compact in any manner, nor did it add to its legal  
12 significance or meaning. Article IV, as set forth in ORS 542.620, is the same as Article IV of  
13 the Compact prior to its codification, and nothing in ORS 542.610 purports to change the  
14 meaning of Article IV. In particular, ORS 542.610 does not transform the objective  
15 regarding water use stated in Article IV into a directive regarding electric rates, as KWUA  
16 and KOPWU seem to claim.

17 **2. The Compact Does Not Override the Commission’s Statutory**  
18 **Mandate to Ensure that Rates are Fair, Just, Reasonable and Non-**  
**Discriminatory.**

19 Applying various rules of statutory construction, both KWUA and KOPWU argued  
20 that the phrase “lowest power rates which may be reasonable” in Article IV establishes a  
21 ratesetting standard, which the Commission must apply and which differs from the “just and  
22 reasonable” or “fair and reasonable” standard applicable to utility rate regulation by the  
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26 <sup>5</sup> KOPWU Response at 46, 47.



1 Commission. KWUA Response at 11; KOPWU Response at 48 (citing ORS §§ 756.040,  
2 757.210).<sup>6</sup>

3       These arguments fail to give any recognition to the “cardinal” rule of construction  
4 that requires courts to construe statutes according to their terms. *Connecticut Nat’l Bank*,  
5 503 US at 253-54; *see also PGE v. Bureau of Labor & Indus.*, 317 Or 606, 611 (1993).  
6 Here, the Compact refers to the obligation it creates as an “objective.” Compact, Article IV.  
7 Further, and perhaps most significantly, that objective applies “in the formulation and  
8 execution and the granting of authority for the formulation and execution of plans for  
9 distribution and use of the waters of the Klamath River Basin.” *Id.* By its terms, the  
10 Compact’s objectives do not apply to ratemaking or other legislative or administrative  
11 functions of the Commission. *Id.* Thus, the Compact dictates what an objective of the state  
12 must be only when it is formulating and executing, or granting authority to formulate or  
13 execute, plans for the distribution and use of waters of the Klamath River Basin.

14       This interpretation of the plain language of the Compact is also consistent with  
15 common sense and the rule that courts should strive for consistency when construing statutes.  
16 *See, e.g., US v. 103 Electronic Gambling Devices*, 223 F3d 1091, 1102 (9th Cir 2000);  
17 *Circuit Court v. AFSCME*, 295 Or 542, 669 P2d 314, 316 (1983), *Welliver Welding Works v.*  
18 *Farmen*, 133 Or App 203, 890 P2d 429 (1995). The interpretation proposed by KWUA and  
19 KOPWU would be inconsistent with the statutes specifically setting forth the ratesetting  
20 standards to be used by the Commission.

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22       <sup>6</sup> KWUA notes that federal courts interpret Congressionally approved interstate  
23 compacts as if they were interpreting a federal statute. KWUA Response at 11, n.6.  
24 Regardless of whether federal or Oregon state rules of construction are applied, the result is  
25 the same: the wording of Article IV of the Compact is clear and unambiguous and means  
26 just what it says, which is a statement of objective, not a requirement, relevant to the  
distribution and use of waters in the Klamath River Basin. *See, e.g., Connecticut Nat’l Bank*  
*v. Germain*, 503 US 249, 253-54 (“courts must presume that a legislature says in a statute  
what it means and means in a statute what it says there” and “[w]hen the words of a statute  
are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete’”).



1 Both KWUA and KOPWU ignore the plain language of the Compact. Their  
2 arguments, although different in approach, transform the language “[i]t shall be the objective  
3 of each state . . .” into “each state shall be required to . . .” Both arguments then disregard  
4 utterly the phrase “in the formulation and execution and the granting of authority for the  
5 formulation and execution of plans for distribution and use of the waters of the Klamath  
6 River Basin.” Only by misconstruing and disregarding the plain language of the Compact  
7 are KWUA and KOPWU then able to argue that the Compact creates a preferential rate  
8 standard that conflicts with and ultimately trumps the standard in the Oregon Public Utility  
9 Act.

10 KWUA compounds its misconstruction of the Compact by arguing that the meaning  
11 of “reasonable” in Article IV and “just and reasonable” in the Public Utility Act must be  
12 different. KWUA Response at 11 (stating that Oregon law “presumes that statutes having  
13 different words also have different meanings” and citing and quoting *Premier West Bank v.*  
14 *GSA Wholesale, LLC*, 196 Or App 640, 651, 103 P3d 1169, 1176 (2004) (“Ordinarily, when  
15 the legislature has used different terms in related statutes, we infer that it intended different  
16 meanings.”)). Not only does KWUA’s argument fail because the Compact by its terms does  
17 not establish a utility ratesetting standard, KWUA also misapplies *Premier West*. The rule in  
18 *Premier West* applies to *related* statutes only, such as the statutes at issue in *Premier West*  
19 that the court pointed out were enacted as part of the same bill. 196 Or App at 651. The  
20 Compact, the stated purposes of which do not include anything directed at utility ratesetting,  
21 cannot reasonably be considered to be related to the statutes requiring just, reasonable and  
22 nondiscriminatory rates.

23 Moreover, the Compact does not impose a requirement, or even state an objective,  
24 with respect to the rates to be charged irrigators *in the Klamath River Basin*. Yet, both  
25 KWUA and KOPWU very specifically identify the “Klamath Irrigators” and the “Klamath  
26 Basin irrigation customers” as being the targeted recipients of the “lowest power rates which



1 may be reasonable.” (KWUA Response at 10; KOPWU Response at 46). Such a limitation  
2 to the application of the supposed standard is simply not found in the words of the Compact,  
3 and the insertion of the limitation would violate the statutory mandate “not to insert what has  
4 been omitted.” ORS 174.010. The enjoinder set forth in ORS 174.010 is employed in the  
5 first level of analysis when interpreting a statute. “In this first level of analysis, the text of  
6 the statutory provision itself is the starting point for interpretation and is the best evidence of  
7 the legislature’s intent. . . . Also at the first level of analysis, the court considers the context  
8 of the statutory provision at issue, which includes other provisions of the same statute and  
9 other related statutes. . . . If the legislature’s intent is clear from the above-described inquiry  
10 into text and context, further inquiry is unnecessary.” *PGE* at 610-611. The Commission  
11 should acknowledge, just as the Court did in *PGE*, that, “The legislature knows how to  
12 include qualifying language in a statute when it wants to do so,”<sup>7</sup> and not interpret the  
13 reference to power rates in Article IV of the Compact as relating solely to irrigators in the  
14 Klamath Basin.

15 KOPWU also argued that the Compact is a “particular” statute and the statutes  
16 governing ratesetting by the Commission are “general,” and that under ORS 174.020(2), the  
17 “lowest reasonable rate” phrase in the Compact is inconsistent with and must control over the  
18 “just and reasonable” standard. KOPWU Response at 49-51. Again, KOPWU’s argument  
19 misses the mark, being entirely based on the premise that the Compact expresses the intent  
20 that the Klamath Basin irrigators must receive rates lower than the just and reasonable rates  
21 the Commission is charged to set for all customers. As discussed above, that position is  
22 wrong, and like other arguments by KOPWU and KWUA, it fails to construe the Compact  
23 according to its plain language and to give any recognition to the rule of statutory

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25 <sup>7</sup> *Id.* at 614. The fact that the drafters of the Compact knew how to distinguish  
26 between uses within and outside the Klamath Basin is reflected in Article III.C.1 of the  
Compact, where the use of waters within the Basin is distinguished from certain uses outside  
the Basin.



1 construction that whenever possible, courts strive to construe statutes so as to bring about  
2 consistency. *Circuit Court*, 295 Or 542.<sup>8</sup>

3 Finally, both KOPWU and KWUA argued that the “lowest rate” statement in Article  
4 IV would be rendered of no effect and superfluous if the Commission construed it as  
5 synonymous with the “just and reasonable” standard. KOPWU Response at 49; KWUA  
6 Response at 12. This is not the case. Stating the desired results in Article IV—“to secure the  
7 most economical distribution and use of water and lowest power rates which may be  
8 reasonable”—helps provide direction for implementing the stated objective of Article IV:  
9 “to provide for the most efficient use of available power head and its economic integration  
10 with the distribution of water for other beneficial uses.” Thus, the “lowest rates” phrase has  
11 meaning in the context of the stated objective. Efficient maximization of power head helps  
12 achieve the lowest reasonable rates.

13 **3. The Commission is Precluded from Administering Provisions of**  
14 **the Compact.**

15 In codifying the Compact, the Oregon Legislature adopted another provision which  
16 makes it even more clear that the provision in Article IV is not something the Commission is  
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19 <sup>8</sup> The Attorney General opinion relied upon by KOPWU, addressing the Compact and  
20 another statute directed specifically at the use and control of water resources of the State,  
21 does not support KOPWU’s premise that the Compact is a “particular” statute and the  
22 statutes using the “just and reasonable” or “fair and reasonable” terms are “general.” The  
23 Compact cannot reasonably be considered to be the particular provision dealing with  
24 establishing rates for irrigators, especially considering that Oregon’s representation in the  
25 drafting of the Compact was the Oregon Klamath River Commission, whose function was “to  
26 cooperate with a similar commission representing the State of California in formulating and  
submitting to the legislatures of both states for their approval an interstate compact relative to  
the distribution and use of the waters of the Klamath River.” Oregon Law 1953, Chapter  
431, Section 8. The Oregon Klamath River Commission was not created to establish utility  
rate standards; rather, it was created to establish a compact “relative to the distribution and  
use of the waters of the Klamath River,” which it did. Further, in making its argument,  
KOPWU again ignored the “well settled principal” stated in the opinion that statutes should  
be harmonized if possible. 39 Op. Atty. Gen. Or. 748, 751 (1979).



1 to act on: “The Water Resources Director shall be the only representative of this state in  
2 administering the Klamath River Basin Compact set forth in ORS 542.620.” ORS 542.630.

3 Accordingly, if Article IV of the Compact were to have the operative effect asserted  
4 by KWUA and KOPWU, only the Water Resources Director could mandate the rates, or  
5 implement the ratesetting standard, supposedly “required” by the Compact. But the  
6 Legislature has not given the Water Resources Director the authority to set electric rates for  
7 PacifiCorp’s Klamath Basin irrigation customers (or any customers). In accordance with the  
8 principles of statutory construction adopted in Oregon, words of common usage in  
9 ORS 542.630 should be given their “plain, natural, and ordinary meaning.” *PGE* at 611.

10 “Administer” means: “to manage (affairs, a government, etc.); have executive charge of: *to*  
11 *administer the law.*” Webster’s New Universal Unabridged Dictionary 26 (1996). Just as the  
12 rates of utilities are not for the Water Resources Director to administer or manage, the  
13 Compact is not for the Commission to manage.

14 **C. Senate Bill 81 Shows the Legislature’s Intent that the Rates for the**  
15 **Klamath Basin Irrigators Are to be Set on the Just and Reasonable**  
16 **Standard**

17 During the 2005 Regular Session, the Oregon Legislature passed Senate Bill 81,  
18 which, among other things, added provisions directing the Commission to require an electric  
19 company to mitigate rate increases in certain circumstances. The mitigation requirement is  
20 directed specifically at the Klamath Basin irrigators receiving electric service under the terms  
21 of the 1956 On-Project and Off-Project contracts:

22 “This section applies only to customers of an electric company  
23 that purchase electricity at metering points that before the  
24 transition described in subsection (2)(a) of this section were  
25 eligible for rates that were set under contracts entered into  
26 before 1960 and remained unchanged throughout the period of  
the contract.”



1 SB 81, Section 3.<sup>9</sup>

2 The mitigation requirement imposed in subsection (2) is triggered if two elements are  
3 met: “(a) The increase results from a *transition to an electric company’s generally*  
4 *applicable cost-based rate* from the rates established under the contracts described in  
5 subsection (5) of this section; and (b) The increase in the cost of electricity to that class of  
6 customers by reason of the transition will exceed 50 percent during the first 12 calendar  
7 months after the transition occurs.” (Emphasis added.)

8 There can be no dispute that PacifiCorp’s “generally applicable cost-based rate” for  
9 irrigation customers is based on the statutory standard of just, reasonable and  
10 nondiscriminatory rates. Thus, the rate mitigation protection which the Klamath Basin  
11 irrigators sought and obtained is premised on their transition to rates set under the just and  
12 reasonable standard, not some preferential standard such as what KWUA and KOPWU assert  
13 exists under the Compact. Subsection (2)(a) of Section 3 of Senate Bill 81 clearly reflects  
14 the Legislature’s expectation that electric rates for the Klamath Basin irrigators are to be set  
15 under the just and reasonable standard used for setting the cost-based rates generally  
16 applicable to the Company’s irrigation customers in Oregon.

17 Moreover, Senate Bill 81 would have been unnecessary if the Commission were  
18 bound to use the preferential “lowest reasonable rate” standard advocated by KWUA and  
19 KOPWU, because under that standard, the Commission could presumably set rates that  
20 would avoid the need for the specific mitigation mechanism provided in the Bill. There is no  
21 mention of the Compact anywhere in the legislative writing of SB 81, an omission that  
22 demonstrates its inapplicability in the ratemaking context.<sup>10</sup>

23

24 <sup>9</sup> See also May 23, 2005 Minutes of House Committee on Business, Labor, and  
25 Consumer Affairs, attached hereto as Exhibit A.

26 <sup>10</sup> Even if the Commission were to find that the Compact applies, the rates that will  
result from the mitigation required by SB 81 will be the “lowest reasonable rate.”



1 Finally, in addition to the sections providing rate mitigation for the Klamath Basin  
2 irrigators, Senate Bill 81 revised ORS 757.310 regarding discrimination in rates. Section (3)  
3 of the new ORS 757.310 lists three circumstances in which a difference in rates does not  
4 constitute prohibited rate discrimination. Notably absent from that list is a provision for rates  
5 set under a different statutory ratesetting standard such as that advocated by KWUA and  
6 KOPWU.

#### 7 IV. CONCLUSION

8 For the reasons stated above, the Commission should conclude that the ratesetting  
9 standard applicable to irrigators located within the Klamath River Basin is the same just,  
10 reasonable and non-discriminatory standard applicable to the rates set for all other customers  
11 in the state.

12 DATED: August 29, 2005.

13 STOEL RIVES LLP

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15 Katherine A. McDowell  
16 Sarah J. Adams Lien

17 Attorneys for PacifiCorp  
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Exhibit A

**HOUSE COMMITTEE ON  
BUSINESS, LABOR, AND CONSUMER AFFAIRS**

May 23, 2005  
8:30 A.M.

Hearing Room B  
Tapes 138 - 140

**MEMBERS PRESENT:**

Rep. Alan Brown, Chair  
Rep. Sal Esquivel, Vice-Chair  
Rep. Mike Schauler, Vice-Chair  
Rep. Paul Holvey  
Rep. George Gilman  
Rep. Derrick Kitts  
Rep. Chip Shields

**STAFF PRESENT:**

Janet Adkins, Committee Administrator  
Katie Howard, Committee Assistant

**MEASURES/ISSUES HEARD:**

SB 81 - Work Session  
SB 328A - Public Hearing  
SB 327A - Public Hearing and Work Session  
SB 328A - Work Session  
SB 117 - Public Hearing  
SB 122 - Work Session  
SB 130A - Public Hearing and Work Session  
SB 117 - Work Session  
SB 123 - Public Hearing and Work Session  
SB 385A - Public Hearing and Work Session

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
<b>TAPE 138, A</b>		
003	Chair Brown	Calls the meeting to order at 8:40 a.m. Opens the work session on SB 81.
<b><u>SB 81 - WORK SESSION</u></b>		
008	Janet Adkins	Committee Administrator. Explains SB 81 and submits the -3 amendments ( <b>EXHIBIT A</b> ).
025	Shawn Miller	PacifiCorp and Pacific Power. Submits written testimony in support of SB 81 with the -3 amendments ( <b>EXHIBIT B</b> ). States that the Klamath Basin irrigation contracts will expire on October 16, 2006. Indicates that the -3 amendments will mitigate the financial impact of the contracts expiration for irrigators. Asserts that SB 81 will phase in higher rates over a seven year period. Notes that SB 81 will allow PacifiCorp to redistribute the cost to other customers.
057	Matthew Perkins	Klamath Off-Project Water Project. Submits written testimony in support of SB 81 with the -3 amendments ( <b>EXHIBIT C</b> ). Believes that SB 81 will help avert an economic disaster for Klamath Basin farmers. Discusses the history of the Klamath Basin irrigation contracts. States that if the contracts end the rate increase would be



## Exhibit A

### HOUSE BUSINESS, LABOR, AND CONSUMER AFFAIRS

May 23, 2005

Page 2

over 1200%.

089 Rep. Kitts Asks if the Commissioner of the Public Utility Commission (PUC) is in support of SB 81.

093 Shawn Miller Indicates that they worked closely with the PUC and says that Rick Willis is here.

108 John DeVoe Executive Director, Water Watch. Submits written testimony in opposition to SB 81 (**EXHIBIT D**). Says that SB 81 would create an exemption from Oregon's prohibition of discriminatory utility rates. Notes that the -3 amendments would cost ratepayers outside the Klamath Basin \$20 million. Says that the ratepayers gain little in return for the \$20 million investment and instead have to subsidize the Klamath Basin irrigators. Believes subsidized rates causes farmers to use water to the detriment of the environment.

168 Chair Brown Asks if the objection is to the farmers pumping water.

171 DeVoe States that is not his position. Wants to see better management of water in the Klamath Basin and believes that the introduction of current market rates would lead to better water management. Says that the Klamath Basin irrigation contracts encourage farming of marginal land.

178 Chair Brown Asks what Oregonians should get for their \$20 million investment.

180 DeVoe Asserts that Oregonians should get better resource management in the Klamath Basin and Klamath River dams.

186 Rep. Kitts Asks what better management of the dams means.

188 DeVoe States that no volitional fish passage exists at the dams and the passages should be there for fish. Says that water quality issues need to be addressed and some of the dams may have outlived their usefulness.

195 Rep. Kitts Asks what kind of discussion needs to take place regarding the long term implications of undoing the Klamath Basin irrigation contracts.

200 DeVoe Indicates that more public involvement needs to occur.

203 Rep. Kitts Asks if the discussion needs to be more public than the Oregon State Legislature.

204 DeVoe States that rate payers are not aware what is happening with SB 81. Notes that the ratepayers who will pay \$20 million need to be made aware of their contribution.

211 Rep. Gilman Asks if Mr. DeVoe is in favor of the original SB 81.

214 DeVoe Says that they are not rate experts and believes that everyone should pay the same amount regardless of when they use electricity.

224 Jay Ward Oregon Natural Resource Council. Submits and reads written testimony in opposition to SB 81 (**EXHIBIT E**). States that the -3 amendments were originally SB 1058. Gives history of PacifiCorp. Shares concerns about how the inequitable pricing of electricity impacts the fish and wildlife in the Klamath Basin.

301 Chair Brown Asks if the farmers and irrigators would be allowed to pump more water than what they are pumping now.

305 Ward States that SB 81 will enable the farmers to continue current practices.



## Exhibit A

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- 308 Chair Brown Asks if more water will be pumped from the aquifer and if it is controlled by the state of Oregon.
- 320 Ward States that the water that is pumped from the wells is under discussion and accurate metering does not exist in the Klamath Basin.
- 322 Chair Brown Asks if more water will be allowed to be pumped under the -3 amendments.
- 327 Ward States that a net decline in the amount of water is necessary to restore the Klamath Basin's hydrology and salmon.
- 334 Rep. Gilman Asks if using sprinklers, which uses electricity, is better than using flood irrigation.
- 338 Ward Believes that flood irrigation is not a principal that should be used. Says that there is not enough water to flood irrigate.
- 351 Rep. Gilman Counters that the original intent of the Klamath Basin irrigation contracts was to promote sprinklers over flood irrigation.
- 356 Ward Says that it was the original hypothesis. Notes that currently 7,000 horizontal feet of water are being pumped up a steep ridge in order to keep certain lake beds dry.
- 361 Rep. Kitts Asks about the marginal lands and if crops would not grow there.
- 373 Ward States that Oregon has one of the only fish and wildlife refuges where commercial agriculture has equal standing with fish and wildlife. Says that SB 81 will result in less farm land in the Klamath Basin and is not a great place to be growing water intensive crops.
- 395 DeVoe Says that the lands are primarily class four and five arable lands.
- 411 Rep. Shields Asks about the livelihoods of the people who are farming the land.
- TAPE 139, A**
- 001 Ward Says that many of the landowners are out-of-state landowners.
- 017 Sen. Doug Whitsett Senate District 28. Speaks in support of SB 81. States that the people who will go out of business first are those who are lifting groundwater. Says that the water that is pumped from groundwater is mainly used for cattle pastures above Klamath Lake. Notes that these cattle pastures are some of the most productive in the world. Talks about studies that have been done showing that irrigation helps the rivers flow in the fall.
- 060 Greg Addington Executive Director, Klamath Water Users Association. States that Klamath Basin Farmers are not ready to say that they are giving up on their power rate. Says that most of the landowners in the Klamath Basin are not from out-of-state. Notes that the discriminatory electricity rate has a reason for being in place. Talks about how the rate was set by Oregon, Northern California, and the federal government. Mentions that the Yeager study is flawed. Believes that farmers should be phased off the irrigation contracts if the contracts are going to end.
- 105 Chair Brown Asks what it cost a typical irrigator per day to pump water.
- 108 Addington Says he does not know. States that the Klamath Project is 83% efficient.
- 120 Rep. Schaufler Asks if, before the irrigation system existed, less water was going into the streams.



Exhibit A

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- 126 Sen. Whitsett States that from time to time the Klamath River was dry.
- 145 Jeff Bissonette Citizens Utility Board of Oregon. Takes a neutral position on the -3 amendments. Believes that the contract rates should be ended and says that they have known for fifty years that the contract would end. Believes that the "discriminatory" rate making is very narrow in application under SB 81. Notes that setting a seven year limit makes them comfortable with the legislation. Talks about section 3(6) of the -3 amendments and says that the decision will be made through the PUC process.
- 182 Rep. Shields Asks what would happen if the amendments did not pass.
- 187 Bissonette States that if the contract ended then a substantial rate increase would occur. Says that they are advocating for the contract to come to an end and that the farmers in the Klamath Basin be aligned with the rates of other irrigators.
- 212 Rep. Holvey Asks about the discriminatory part of the -3 amendments and asks if the different rates are based on using the electricity during off-peak hours.
- 223 Bissonette Offers to get the information for Rep. Holvey.
- 234 Greg Willis Public Utility Commission. States that they have no problem with the -3 amendments.
- 238 Rep. Holvey Asks if the rates are based on when the Klamath Basin farmers use the power or if it is a flat rate.
- 242 Willis Asks for clarification.
- 246 Rep. Holvey Clarifies question.
- 251 Willis Believes that the rate does not change based on when a farmer uses electricity for their irrigation system.
- 259 Rep. Kitts **MOTION: Moves to ADOPT SB 81-3 amendments dated 05/18/05.**
- 262 **VOTE: 7-0-0**
- Chair Brown **Hearing no objection, declares the motion CARRIED.**
- 264 Rep. Kitts **MOTION: Moves SB 81 to the floor with a DO PASS AS AMENDED recommendation.**
- 267 Rep. Shields States that he had planned on voting for SB 81, but in light of the -3 amendments, will be voting no.
- 273 **VOTE: 5-2-0**  
**AYE: 5 - Esquivel, Gilman, Kitts, Schaufler, Brown**  
**NAY: 2 - Holvey, Shields**
- Chair Brown **The motion CARRIES.**
- 282 Chair Brown **REP. GARRARD will lead discussion on the floor.**  
Closes the work session on SB 81 and opens the public hearing on SB 328A.

**SB 328A - PUBLIC HEARING**

- 288 Janet Adkins Committee Administrator. Explains SB 328A.
- 305 Sen. Frank Morse Senate District 8. Speaks in support of SB 328A. Says that SB 328A will allow housing manufacturers to enter into new markets in other states. Talks about how modular homes made for other states, with different building codes, would not be sold for use in Oregon.



CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing document in Docket UE 170 on the following named person(s) on the date indicated below by email and first-class mail addressed to said person(s) at his or her last-known address(es) indicated below.

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