

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

Docket No. UE 170

In the Matter of)	
)	
PACIFIC POWER & LIGHT (dba PacifiCorp))	HOOPA VALLEY TRIBE'S
)	OPENING BRIEF ON
Request for a General Rate Increase in the)	RATE STANDARD
Company's Oregon Annual Revenues)	
(Klamath River Basin Irrigator Rates).)	

The Hoopa Valley Tribe, (the "Tribe") in accordance with the Commission's June 30, 2005 Prehearing Conference Memorandum, and August 17, 2005 Ruling Adopting Issues List submits this opening brief on the appropriate standard for the setting of electric rates for irrigators located within the Klamath Basin.

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

The appropriate rate standard is the "just and reasonable" standard found in ORS §§ 756.040, 757.210 *et. seq.* Neither the Klamath River Basin Compact nor SB 81 modify the Commission's duty to set just, reasonable, and non-discriminatory electric rates in this proceeding.

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

Under Oregon law, the Commission represents the public interest by ensuring that electric rates are just, reasonable, and non-discriminatory. ORS § 756.040 (commission shall represent the public generally; commission shall obtain for customers adequate service at fair and reasonable rates); ORS § 756.210 (commission may order utility to show that its rates are

just and reasonable); ORS § 756.230 (commission shall consider whether rates generate sufficient revenues to ensure just and reasonable rates are established for remaining customers of the utility); ORS §§ 757.310; 757.325 (utility must not unjustly discriminate between similarly situated customers); *American Can Co. v. Davis*, 28 Or. App. 207, 224, 559 P.2d 898 (1977) ("[T]he Commissioner had not only the right, but indeed the duty, in exercising his authority to set just and reasonable rates, to consider and, upon a proper showing, to change . . . the rate to be charged"). Nothing in Oregon law modifies the generally applicable rate standard in this proceeding. The Commission should ensure that the electric rates established are just, reasonable, and non-discriminatory.

The Klamath River Basin Compact (the "Compact") does not establish or alter the applicable rate standard in this proceeding, and does not modify the authority of the Commission to set "just and reasonable" electric rates. Nothing in the Compact can reasonably be read to modify the Commission's authority over electric rates. The Commission should not easily accept the argument that a passive reference to power rates in the Compact, which relates only to use and distribution of water, divests it of its clear statutory authority to set "just and reasonable" power rates.

The Compact does not establish a "rate standard." Article IV of the Compact does not actually *require* anything at all. It merely states an objective and does not impose any enforceable obligation on the states related to setting of power rates (or anything else).

The stated objective in Article IV is not even directly related to power rates - it is related to efficient use and distribution of the states' water. Under the Compact, the objective of each state is "to provide for the most efficient use of available power head and its economic integration with the distribution of water for other beneficial uses." According to Article IV of

the Compact, the ultimate goal of meeting that efficiency objective is "to secure the most economical distribution and use of water and lowest power rates which may be reasonable for irrigation and drainage pumping." At most, the Compact provides a non-binding "objective" for each state to provide for efficient use and distribution of water with the potential result of that efficiency being low power rates. In no way does the Compact *require* the lowest reasonable power rates or affect the Commission's authority over rates in any way.

Article IV of the Compact is even further limited by the fact that it only applies "in the formulation and the execution and the granting of authority for the formulation and execution of plans for the distribution and use of water." Therefore, even if there were any binding obligation on the states in Article IV, it would only apply when the states are formulating and executing plans for water use and distribution - not in rate-setting proceedings of this Commission.

The Compact relates only to use and distribution of water, and not to setting of power rates. Article I states that the purpose of the Compact is to "facilitate and promote the orderly, integrated and comprehensive development, use, conservation and control" of Klamath Basin water resources and to further the cooperation between Oregon and California with regard to such use of water resources. The focus on use and distribution of water resources is further evidenced by ORS § 542.630 which designates the Oregon Water Resources Director as the sole Oregon representative for administering the Compact. The Commission should not lightly assume that a Compact focused on use and distribution of water affects its independent statutory authority to set power rates.

In sum, Article IV of the Compact states a goal related to efficient water use and distribution, and nothing more. It does not mandate the states to do *anything* and certainly does not bind this Commission in a rate-setting proceeding. The Compact does not require the lowest

power rates but simply envisions that low and reasonable power rates will be made more attainable through the efficient use and distribution of the states' water resources.

The Commission should evaluate this proceeding under the "just and reasonable" standard. That standard appropriately balances the public interest with the interests of the utility and is the standard that this Commission is experienced in applying. The Compact does not alter the usual statutory standard and the Tribe sees no reason why any standard other than the "just and reasonable" standard should apply in this proceeding.

b. *If the Klamath River Basin Compact establishes a different statutory standard than the "just and reasonable" standard for determining the appropriate rates for Klamath irrigation customers, 1) what standard does the Compact establish, and 2) what is the effect and meaning of that standard in terms of setting rates?*

As stated above, the Klamath River Basin Compact is not relevant to this rate-setting proceeding and does not alter the statutory "just and reasonable" standard. However, if the Commission finds that the Compact does govern this proceeding, it should also find that there is no substantive difference between the "lowest power rates which may be reasonable for irrigation and drainage pumping," and rates which are "just and reasonable."

One purpose of this proceeding is to ensure a level and non-discriminatory playing field for all of Oregon's farmers. Currently, farmers outside of the Klamath Basin pay "just and reasonable" rates which are a minimum of 6 times higher than those paid within the Klamath Basin. There is no logical reason why this Commission should find that the "lowest power rates which may be reasonable for irrigation and drainage pumping" in the Klamath are less than the "just and reasonable" rates currently paid by other irrigators throughout Oregon.

Even if the Compact governs, it does not say that the Klamath Basin is entitled to the lowest power rates *anywhere*, or the lowest power rates in the State - it only refers to the lowest

power rates which may be *reasonable* for the *specific purposes* of irrigation and drainage pumping. The logical way for the Commission to determine what rates are reasonable for irrigators is to examine the rates that the Commission previously established for Oregon's irrigators and to apply those "just and reasonable" rates in the Klamath Basin.

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

SB 81 does not modify or otherwise affect the applicable statutory "just and reasonable" standard. The modifications made to ORS § 757.310 do not change its substance, and that statutory section still prohibits rate discrimination between similarly situated customers.

The additions to ORS § 757.205 also do not alter the applicable standard. Those additions recognize the Commission's authority to raise the rates being evaluated in this case and provide for transition between the rates established in 1917 and the rates that are "just and reasonable" in 2005.

In conclusion, the appropriate standard for setting electric rates in this proceeding is the "just and reasonable" standard that is well established in Oregon law. No other standard is relevant or applicable.

DATED this 29th day of August, 2005.

Respectfully submitted,

MORISSET, SCHLOSSER, JOZWIAK & MCGAW

/s/ Thomas P. Schlosser

Thomas P. Schlosser, WSBA No. 06276
1115 Norton Building
801 Second Avenue
Seattle, WA 98104-1509
Tel.: 206/ 386-5200
Fax: 206/ 386-7322
Email: t.schlosser@msaj.com

/s/ Rob Roy Smith

Rob Roy Smith, OSB No. 00393

1115 Norton Building

801 Second Avenue

Seattle, WA 98104-1509

Tel.: 206/ 386-5200

Fax: 206/ 386-7322

Email: r.smith@msaj.com

Attorneys for the Hoopa Valley Tribe

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of August, 2005, in addition to electronic service, I mailed the original and five copies of Hoopa Valley Tribe's Opening Brief on Rate Standard with the Public Utility Commission of Oregon, via ***First-Class Mail*** to:

Public Utility Commission of Oregon
Attn: Filing Center
550 Capitol St., NE #215
P.O. Box 2148
Salem, OR 97308-2148
Email: PUC.FilingCenter@state.or.us

I further certify that on the 29th day of August, 2005, I served a copy of Hoopa Valley Tribe's Opening Brief on Rate Standard on counsel via ***First-Class Mail and/or E-mail*** to the following addresses:

Rates & Regulatory Affairs
Portland General Electric
Rates & Regulatory Affairs
121 S.W. Salmon Street, 1WTC0702
Portland, OR 97204
pge.opuc.filings@pgn.com

Kurt J. Boehm – ***Confidential***
Boehm Kurtz & Lowry
36 E. Seventh St. – Suite 1510
Cincinnati, OR 45202
kboehm@bkllawfirm.com

Phil Carver
Oregon Department of Energy
625 Marion St., N.E., Suite 1
Salem, OR 97301-3742
philip.h.carver@state.or.us

Melinda J. Davison - ***Confidential***
Davison Van Cleve PC
333 S.W. Taylor, Suite 400
Portland, OR 97204
mail@dvclaw.com

Jim Abrahamson – ***Confidential***
Community Action Directors of Oregon
4035 12th St Cutoff, S.E., Suite 110
Salem, OR 97302
jim@cado-oregon.org

Lowrey R. Brown – ***Confidential***
Citizens' Utility Board of Oregon
610 S.W. Broadway, Suite 308
Portland, OR 97205
lowrey@oregoncub.org

Joan Cote – ***Confidential***
Oregon Energy Coordinators Association
2585 State St., N.E.
Salem, OR 97301
cotej@mwvcaa.org

Jason Eisdorfer – ***Confidential***
Citizens' Utility Board of Oregon
610 S.W. Broadway, Suite 308
Portland, OR 97205
jason@oregoncub.org

Randall J. Falkenberg – **Confidential**
FRI Consulting Inc.
PMB 362
8351 Roswell Road
Atlanta, GA 30350
consultrfi@aol.com

David Hatton - **Confidential**
Department of Justice
Regulated Utility & Business Section
1162 Court Street, NE
Salem, OR 97301-4096
david.hatton@state.or.us

Matthew W. Perkins
Davison Van Cleve PC
333 S.W. Taylor, Suite 400
Portland, OR 97204
mwp@dvclaw.com

Janet L. Prewitt
Department of Justice
1162 Court Street N.E.
Salem OR 97301-4096
janet.prewitt@doj.state.or.us

John Corbett
Yurok Tribe
P.O. Box 1027
Klamath, CA 95548
jcorbett@yuroktribe.nsn.us

Lisa Brown
Waterwatch of Oregon
213 S.W. Ash Street, Suite 208
Portland, OR 97204
lisa@waterwatch.org

Jim McCarthy
Oregon Natural Resources Council
P.O. Box 151
Ashland, OR 97520
jm@onrc.org

Edward A. Finklea – **Confidential**
Cable Huston Benedict Haagensen & Lloyd LLP
1001 S.W. 5th, Suite 2000
Portland, OR 97204
efinklea@chbh.com

Katherine A. McDowell - **Confidential**
Stoel Rives LLP
900 S.W. Fifth Ave., Suite 1600
Portland, OR 97204-1268
kamcdowell@stoel.com

Glen H. Spain
Pacific Coast Federation of Fishermen's Assoc.
P.O. Box 11170
Eugene, OR 97440-3370
fish1ifr@aol.com

Douglas C. Tingey
Portland General Electric
121 S.W. Salmon 1WTC13
Portland, OR 97204
doug.tingey@pgn.com

Paul M. Wrigley
Pacific Power & Light
825 N.E. Multnomah, Suite 800
Portland, OR 97232
paul.wrigley@pacificcorp.com

John Devoe
Waterwatch of Oregon
213 S.W. Ash Street, Suite 208
Portland, OR 97204
john@waterwatch.org

Bill McNamee
Public Utility Commission
P.O. Box 2148
Salem, OR 97308-2148
bill.mcnamee@state.or.us

Michael L. Kurtz – ***Confidential***
Boehm, Kurtz & Lowry
36 E. 7th St., Ste. 1510
Cincinnati, OH 45202-4454
mkurtz@bkllawfirm.com

Judy Johnson – ***Confidential***
Public Utility Commission
P.O. Box 2148
Salem, OR 97308-2148
judy.johnson@state.or.us

Jason W. Jones – ***Confidential***
Department of Justice
Regulated Utility & Business Section
1162 Court St., N.E.
Salem, OR 97301-4096
jason.w.jones@state.or.us

Nancy Newell
3917 N.E. Skidmore
Portland, OR 97211
ogec2@hotmail.com

Greg Addington
Klamath Water Users Association
2455 Patterson Street, Suite 3
Klamath Falls, OR 97603
greg@cvcwireless.net

Steve Pedery
Oregon Natural Resources Council
sp@onrc.org

Daniel W. Meek – ***Confidential***
Daniel W. Meek, Attorney at Law
10949 S.W. 4th Avenue
Portland, OR 97219
dan@meek.net

[Notice will **not** be electronically mailed, but mailed *First-Class* to]:

Edward Bartell
Klamath Off-Project Water Users, Inc.
30474 Sprague River Road
Sprague River, OR 97639

Michael W. Orcutt
Hoopa Valley Tribe Fisheries Department
P.O. Box 417
Hoopa, CA 95546

Stephen R. Palmer
Office of the Regional Solicitor
2800 Cotage Way, Rm. E-1712
Sacramento, CA 95825

I declare the above to be true and correct under penalty of perjury. Executed this 29th day of August, 2005, at Seattle, Washington.

/s/ Rob Roy Smith
Rob Roy Smith, OSB No. 00393