

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

In the Matter of the Request of)	
)	
PACIFIC POWER & LIGHT)	Docket No. UE 170
(dba PacifiCorp))	
)	
Request for a General Rate Increase in the)	
Company's Oregon Annual Revenues)	

KLAMATH WATER USERS ASSOCIATION OPENING BRIEF

I. INTRODUCTION

The Klamath Water Users Association ("KWUA") respectfully submits this Opening Brief on behalf of irrigators served through facilities of the United States Bureau of Reclamation's ("Reclamation") Klamath Irrigation Project. Other irrigators in the Klamath Basin that are not located within the Klamath Irrigation Project are represented by the Klamath Off-Project Water Users Association ("KOPWUA"). The members of KWUA and KOPWUA are collectively referred to herein as the "Klamath Irrigators."

Most of KWUA's members are retail customers of PacifiCorp within the State of Oregon who purchase power pursuant to a contract executed by PacifiCorp and Reclamation in 1956 ("1956 Contract").¹ As explained in greater detail below, the 1956 Contract was executed by PacifiCorp in compliance with a condition placed in its federal license for the Klamath Hydroelectric Project by the Federal Power Commission (now "FERC").² On its face, the 1956 Contract expires in April of 2006. In UE 171, both KWUA and Reclamation demonstrated that the terms of the 1956 Contract will automatically be extended on an annual basis, along with PacifiCorp's original FERC license, until such time as a new license is issued. KWUA also has

¹ For simplicity, KWUA refers to PacifiCorp interchangeably with its predecessor California-Oregon Power Company ("Copco").

² KWUA also uses "Federal Energy Regulatory Commission" interchangeably with its predecessor, the "Federal Power Commission."

requested that FERC include a similar contract condition on any new license issued to PacifiCorp.³

In the event that the current (or other) contract terms are no longer required as a condition on PacifiCorp's FERC license, this Commission would have the responsibility to determine the appropriate rates chargeable by PacifiCorp to the Klamath Irrigators. In connection with this responsibility, the Commission issued an Order in this Docket on August 17, 2005, setting forth three issues to be addressed with respect to the Klamath Irrigators' rates. The Commission has framed the issues as follows:

1. **What is the statutory standard applicable to the setting of electric rates for irrigators located within the Klamath Basin?**
2. **What are the appropriate rates PacifiCorp should charge the Klamath Basin Irrigators for electric service?**
3. **If any rate change affecting the Klamath Basin Irrigators is implemented, how and when should these customers be transitioned from the rates established in the historical contracts?**

II. SUMMARY OF ARGUMENTS

1. **The statutory standard that the Commission must use if and when it sets electric rates for the Klamath Irrigators is found in ORS 542.620, which codifies the Klamath River Basin Compact ("Compact"). The text and context of ORS 542.620 both indicate that the Klamath Irrigators have a statutory entitlement to electric power at the lowest reasonable cost of generating that power using the waters of the Klamath River. This statutory rate is a unique standard under Oregon law because it ties specific end-users to a particular generating resource, but it is consistent with numerous federal "preference" laws.**
2. **The appropriate rate PacifiCorp should charge the Klamath Irrigators is the lowest reasonable rate that reflects the cost of generating hydroelectric power using the waters of the Klamath River. This is consistent with prior practices. KWUA is prepared to present expert testimony concerning the costs of generating power at the Klamath Hydroelectric Project. KWUA also is prepared to present expert testimony concerning the lowest reasonable distribution costs for such power using rate-making methodologies that have been approved by this Commission. In an evidentiary proceeding, KWUA could establish the factual basis for calculating a rate that satisfies the statutory mandate of ORS 542.620 and still fully reimburses PacifiCorp for the costs incurred in serving the Klamath Irrigators. This rate would not result in a "subsidy" from PacifiCorp's other ratepayers.**

³ Although this Commission retains regulatory authority over any such retail contracts, refusing to approve a contract required by FERC as a condition on PacifiCorp's license would deprive PacifiCorp of the privilege of continuing to operate the Klamath Hydroelectric Project.

3. **Senate Bill 81 describes how any rate change shall be implemented. Senate Bill 81 does not purport to, and cannot, repeal ORS 542.620. Nor does it set the rate that the Klamath Project Irrigators must pay—it only caps how much that rate may be increased each year.**

III. DISCUSSION

1. **The Statutory Standard Applicable To Klamath Irrigators' Electric Rates Is Established By The Compact And Codified At ORS 542.620.**

- a. The applicable standard comes from the Compact.

The Compact is a legally enforceable agreement between Oregon, California and the United States, and is a state and federal statute. The purpose of the Compact is to establish a long-term equilibrium between various interests seeking to use the waters of the Klamath River. These competing interests include fish and wildlife, irrigation, hydroelectric development and other domestic uses. In concrete terms, the Compact was enacted to ensure the peaceful coexistence of both the Klamath Irrigation Project and the Klamath Hydroelectric Project. The Compact was enacted by Oregon, California and the United States in 1957. *See generally* 1957 Or. Laws, ch. 142; California Statute, 1957, ch. 113 (codified at Cal. Water Code Section 5901); Pub. L. 85-222, 71 State. 497 (1957).

Article IV of the Compact specifically addresses hydroelectric development of the Klamath River. The drafters understood that the only hydroelectric development on the river was (and is) PacifiCorp's Klamath Hydroelectric Project.⁴ Based on that knowledge, they crafted Article IV of the Compact as follows:

ARTICLE IV HYDROELECTRIC POWER

It shall be the objective of each state, in the formulation and the execution and the granting of authority for the formulation and execution of plans for the distribution and use of the water 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 for 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.*

⁴ The United States Congress ratified the Compact through S.B. 2431. The Report accompanying S.B. 2431 states that "[a]t the present time, *Copco is the owner and operator of all power plants on the river.*" P.3 (Emphasis added). Thus, the parties all understood and intended that Article IV would apply directly and exclusively to PacifiCorp's Klamath Hydroelectric Project. The S.B. 2431 Report is attached hereto as Exhibit A.

(Emphasis added). Thus, Article IV ties together a particular generating resource (the Klamath Hydroelectric Project) to provide power to a specific class of end-users (the Klamath Irrigators) at a cost-based rate (the “lowest power rates which may be reasonable.”).

b. The Compact is the *law* of Oregon.

The Commission must make no mistake that the Compact is a law of the State of Oregon, and that law sets forth the statutory rate standard for the Klamath Irrigators. *See* ORS 542.620. In UE 171, PacifiCorp argued that the Compact is not a legally binding obligation of the State. *See generally* PacifiCorp’s Motion for Summary Disposition, p. 16. The Oregon Legislative Assembly appears to have anticipated this argument. They drafted and adopted a second provision of the statute, in addition to ORS 542.620, to confirm that the Compact is the *law* in Oregon. ORS 542.610(1) provides: “The Legislative Assembly of the State of Oregon hereby ratifies the Klamath River Basin Compact set forth in ORS 542.620, and *the provisions of such compact hereby are declared to be the law of this state* upon such compact becoming effective * * *.” (Emphasis added).

The Attorney General also has rejected the general premise advanced by PacifiCorp. The Attorney General has unambiguously concluded that the Compact is not a policy statement but is the *law* in Oregon:

Oregon, California and the federal government have entered into the Klamath River Basin Compact, codified in ORS 542.610 and 542.620. The United States Constitution, art 1, sec 10, par 3, requires the consent of Congress for states to enter into compacts. The Klamath River Basin Compact was ratified by Congress in 1957 (Pub L 222, Aug. 30, 1957) and became effective September 11, 1957. *The compact is a contract between the states involved and the federal government; the parties are bound by the compact’s terms.*

Or Op Atty Gen 748 (1979) (Emphasis added). Not only is the Compact the law, it is the type of law that must be read liberally to give full effect to its provisions. *See* Or Op Atty Gen OP-5559 (“It is, however, a general principle of statutory interpretation that *compacts, like treaties, are to be given a liberal interpretation to carry out the intended objectives of the contracting parties.*”) (Emphasis added).

c. ORS 542.620 cannot be conflated with the default “just and reasonable” standard.

Given that ORS 542.620 is the law of Oregon, the Commission’s next task is to ascertain what it means. PacifiCorp has proposed that Article IV of the Compact means nothing, and is simply another way of describing the default “just and reasonable” standard. *See* Motion for Summary Disposition, p. 16. But such a reading of the statute violates multiple rules of statutory construction and must, therefore, be rejected.

First, Oregon law presumes that related statutes having different terms also have different meanings. *See, e.g., Premier West Bank v. GSA Wholesale, LLC*, 196 Or App 640, 103 P3d 1169 (Or App 2004) (“Ordinarily, when the legislature has used different terms in related statutes, we infer that it intended different meanings.”). In this case, the Oregon Legislative Assembly specifically chose to adopt the phrase “lowest power rate which may be reasonable” to describe power service to the Klamath Irrigators. Furthermore, this standard is directly tied to the hydroelectric development of the Klamath River. In negotiating and adopting Article IV of the Compact and ORS 542.620, Oregon’s representatives could have used the words “just and reasonable,” which appear in Oregon law as early as 1912. *See generally Woodburn v. Pub. Serv. Comm’n*, 82 Or 114, 117, 161 P 391 (1916). But they did not do so. To the contrary, they chose words that, as explained below, are much more similar to the federal preference laws of the time. Because the Oregon Legislative Assembly chose different words for the Compact and ORS 542.620 than those used in ORS 756.040, the law presumes that they intended to adopt a different rate standard.

Second, Oregon law does not permit any interpretation of ORS 542.620 that would either render it superfluous or fail to give meaning to all its provisions. *See Keller v. SAIF Corp.*, 175

Or App 78, 82, 27 P3d 1064 (Or App 2001) (“We will not construe a statute in a way that renders its provisions superfluous.”); *Fed’n of Parole & Prob. Officers v. Washington County*, 142 Or App 252, 259, 920 P.2d 1141 (Or App 1996) (“In construing those statutes, we are to presume that the legislature did not intend to enact a meaningless statute.”). ORS 174.010 further commands that when interpreting a statute one shall not “omit what has been inserted.” PacifiCorp’s suggestion that the Commission may simply conflate the standard contained in ORS 542.620 with the default standard contained in ORS 756.040 violates both of these related principles of interpretation. The law requires the Commission to give ORS 542.620 some meaning separate and distinct from ORS 756.040.

Third, ORS 174.020(2) provides that “[w]hen a general and particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent.” In this case, ORS 756.040 is a general provision that sets forth the default just and reasonable standard. ORS 542.620 is a particular provision that provides a different rate for a specific customer class in a specific geographic region using a specific generating resource. The two provisions, which use different words and describe different standards, cannot both be applied to the Klamath Irrigators. In this case, therefore, ORS 174.020(2) requires that the default standard must yield to the specific standard set forth in the Compact.

The Oregon Attorney General already has determined that the Compact is specific legislation that trumps default administrative standards. *See* 39 Op Atty Gen Or 748 (1979). In 1979, the Oregon Water Resources Department asked the Attorney General whether it had the authority under ORS 536.300 and 536.310 to adopt minimum stream flows contrary to Article III of the Compact. *Id.* at 748-49. The Attorney General concluded that “ORS 536.310 is a general statute dealing with statewide water use considerations and policies. The compact, however, is an act dealing specifically with the Klamath River Basin.” *Id.* at 751. The Attorney General concluded that: “[A]lthough the board has general authority to establish a state wide, integrated and coordinated program for water use, that authority is subject to the requirements of the

Klamath River Basin Compact.” *Id.* The Attorney General noted that this conclusion was strengthened by the fact that “the specific provision (the compact) was adopted after the more general statute.” *Id.* Here, the Commission’s general authority to establish just and reasonable rates is subject to the more specific requirements of the Compact—which was adopted after the “just and reasonable” standard.

d. The Compact is analogous to federal power preference clauses.

The Commission Staff and PacifiCorp may find the rate requirement of the Compact and ORS 542.620 unusual, or even unique, as a matter of Oregon law. But this rate requirement actually is analogous to the federal “preference” laws that were common during the dam-building era. The Commission will recall that the Compact is a federal law that was negotiated and drafted, in part, by representatives of the federal government.⁵ There are numerous federal laws that prescribe a cost-based power rate for consumers in a specific geographic region using specific generating resources. *See, e.g.,* Pacific Northwest Electric Power Planning and Conservation Act of 1981, 16 U.S.C. §§ 839-839h (the “Regional Act” granting regional consumer-owned utilities a statutory preference over power generating by the Federal Columbia River Power System (“FCRPS”)).

For example, the Hungry Horse Dam Act of 1944 created a similar geographic preference with respect to any power generated at the Hungry Horse Dam. The Act provides:

[F]or the purpose of irrigation and reclamation of arid lands, for controlling floods, improving navigation, regulating the flow of the South Fork of the Flathead River, for the generation of electric energy, and for other beneficial uses primarily in the State of Montana but also in downstream areas, the Secretary of the Interior is authorized and directed to proceed as soon as practicable with the construction . . . of the proposed Hungry Horse Dam. . . .

43 USC § 539 (Emphasis added). This clause has been interpreted by BPA as creating a “Montana Reservation,” which gives Montana residents a preference to power from Hungry

⁵ In addition to being a state law, the Compact also was ratified by the United States Congress. The United States Supreme Court has declared that an interstate compact approved by Congress has the same legal status as a federal statute. *See Virginia v. Maryland*, 540 U.S. 56, 66, (2003) (“We interpret a congressionally approved interstate compact just as if we were addressing a federal statute.”) (Internal citations omitted.)

Horse Dam even as compared to other BPA customers. *See* 44 Fed. Reg. ¶ 57,824 (1979). The Montana Reservation was reaffirmed by statute in 1964 and again in 1980. The 1964 law refers to the Hungry Horse Dam Act as creating a “geographical preference of power users in the State of Montana.” 16 USC § 837h.

Other preference clauses are directly tied to the “lowest rates reasonably possible,” or some variation thereof. For example, the Niagara Power Project Act provides that at least 50% of the project power shall be made available for domestic and rural customers within economic transmission distance “at the lowest rates reasonably possible.” 16 USC § 836(b)(1). The Flood Control Act of 1944 provides that the Secretary of Energy shall distribute electric power generated at reservoir projects under control of the Department of Army “in such a manner as to encourage the most widespread use thereof at *the lowest possible rates* to consumers consistent with sound business principles * * *.” 16 USC § 825s (Emphasis added). The Flood Control Act further clarifies that the “lowest possible rates” means no more than “the cost of producing and transmitting such electric energy, including the amortization of the capital investment allocated to power over a reasonable period of years.” *Id.* The Pacific Northwest Federal Transmission System Act provides that BPA shall provide transmission at rates fixed and established “with a view to encouraging the widest possible diversified use of electric power *at the lowest possible rates* * * *.” (Emphasis added).

Viewed in light of these and other federal preference laws, the Compact is neither unique nor unusual. Article IV of the Compact provides that the hydroelectric potential of the Klamath River shall be used to provide the Klamath Irrigators “the lowest power rates which may be reasonable.” This language is strikingly similar to numerous contemporaneous federal statutes that create a geographic preference for hydroelectric power at “the lowest possible rate” or “the lowest rate reasonably possible.” The Commission also will notice that the Compact is no less specific than these other federal preference laws. In short, the Compact is no mystery; it is directly analogous to a federal power preference clause that gives the Klamath Irrigators a

statutory right to purchase power from the Klamath Hydroelectric Project at the lowest reasonable rates.

- e. The Compact was enacted, in part, to preserve the deal between PacifiCorp and the United States.

Why would the Compact grant a preference to the Klamath Irrigators? Very simply, the Compact reflects and perpetuates the long-standing policy and agreement that the hydroelectric potential of the Klamath River Basin would be developed in substantial part, whether by public or private developers, to provide low-cost power to the Klamath Irrigators.

Reclamation is one of the largest hydroelectric developers in the nation. Reclamation's hydroelectric operations support its various irrigation projects across the western United States. Reclamation initially delayed development of hydroelectric generation at the Klamath Irrigation Project, however, due to an agreement reached with PacifiCorp in 1917 ("1917 Agreement"). Through this 1917 Agreement, PacifiCorp provided low-cost power to the Irrigation Project in exchange for the right to control stream flows on the Klamath River to maximize its hydroelectric generation. As the term of the 1917 Agreement was winding down, Reclamation began studying the prospects of developing its own power resources on the Klamath River for the benefit of the Klamath Irrigation Project. *See Reply Brief of the Secretary of Interior*, October 17, 1952, p. 10 ("If power were developed by the Interior Department, it would be available for pumping, for financial aid to irrigation, and for sales to customers having preference rights under the reclamation laws.").

At roughly the same time, however, PacifiCorp applied for a federal license to construct a major, new hydroelectric facility on the Klamath River. Knowing that it would not be possible for both it and PacifiCorp to develop and operate new hydroelectric facilities on the Klamath River, Reclamation filed a protest against PacifiCorp's 1951 license application ("Protest"). *See Protest of the United States to the Application For License of the California-Oregon Power Company, Project No. 180, June 1, 1951*. Reclamation made the following arguments to FERC:

However important future agricultural development of the Klamath Basin may be, vastly more important is the preservation of the existing agricultural economy of the region. This economy is largely dependent upon low cost power for pumping. Without low cost power, many thousands of acres in the project would be forced out of production. Low cost power has been available for over 25 years by virtue of a contract between the United States and the California-Oregon Power Company. However, this contract terminates in 1967 and, if the water is not available at that time for the development of power either by the United States or the water users, the success or failure of a majority of the farmers with the project will depend entirely upon what rate the California-Oregon Power Company shall charge.

See id. In short, Reclamation believed that PacifiCorp should not be entitled to develop the Klamath River if it meant subjecting the Klamath Irrigation Project to PacifiCorp's normal tariff rate.

In a resolution facilitated by FERC, Reclamation agreed to withdraw its Protest and allow PacifiCorp to receive the original FERC license for the Klamath Hydroelectric Project on the condition that PacifiCorp continues supplying the Klamath Project with low-cost power. *See In The Matter of the California Oregon Power Company Upon Application for License*, 13 F.P.C. 1, 1954 WL 47779 (January 28, 1954). FERC explained:

In reporting under Section 4(e) of the Federal Power Act on Copco's application for license, the Secretary of the Interior recommended that the license be denied. However, in the oral argument before us, counsel for the Secretary stated that the Presiding Examiner's Initial Decision in the project proceeding was generally satisfactory—*primarily because it contains a condition which would require Copco to enter into a contract with the Department of the Interior prior to issuance of a license. That requirement will be included in the license.*

Id. at 4 (Emphasis added). Reclamation withdrew the Protest in exchange for the original license condition requiring PacifiCorp to execute a contract to continue providing power to the Klamath Irrigation Project at rate terms acceptable to Reclamation.

PacifiCorp and Reclamation subsequently negotiated and executed the 1956 Contract. The record reflects that the price specified in the 1956 Contract corresponds to PacifiCorp's cost of producing power *at the Klamath Hydroelectric Project*. Meeting minutes kept by KWUA reflect the following: "The discussion on power rate schedule was brief, however, Mr. Boyle did

state that the 6 mill rate was at cost before delivery. 4.54 mills to generate, 1.43 mills pump storage; making 5.97 mills at the switchboard.” Exhibit B. Another memorandum prepared by J.C. Boyle⁶ entitled “Negotiations Leading up to Contract Between the Bureau of Reclamation and Copco dated October 10, 1955, With Particular Reference to the Matter of Power Rates,” confirms that “the power rates in the original contract were established on a cost basis and that they fairly represented the cost of power throughout the term of the contract to date.” Exhibit C. In short, since 1917 PacifiCorp has provided power to the Klamath Irrigators at a price that reflects the cost of generating power using the Klamath Hydroelectric Project.

It is against this historical backdrop that the Compact and ORS 542.620 must be read. The ink was barely dry on the 1956 Contract when the Compact was negotiated and drafted. The two documents deal, at least in part, with precisely the same question: Under what terms may PacifiCorp or anyone else use the waters of Klamath River to generate hydroelectric power? There are two basic terms: (1) PacifiCorp’s use of the water to generate hydroelectric power is subordinate to the Klamath Irrigators’ use of the water for irrigation, and (2) PacifiCorp must make power available to the Klamath Irrigators from any hydroelectric development of the Klamath River at the lowest reasonable cost of producing the power. The Compact and ORS 542.620 do not expire in 2006. Clearly the drafters of the Compact and the Oregon Legislative Assembly intended for PacifiCorp to continue to honor the terms of its bargain so long as PacifiCorp continues to monopolize the hydroelectric potential of the Klamath River, even *after* the expiration of the 1956 Contract and PacifiCorp’s original FERC license.

2. Under ORS 542.620 And The Compact, The Appropriate Rate Reflects The Cost Of Generating Power At The Klamath Hydroelectric Project And Delivering It To The Klamath Irrigators.

KWUA is prepared to submit expert testimony that gives a straight-forward meaning to the statutory standard established by the Compact if or when it becomes necessary for this

⁶ J.C. Boyle was, at that time, the President of Copco. Mr. Boyle was intimately involved in both the engineering and legal development of the Klamath Hydroelectric Project. In recognition of his contributions, the primary hydroelectric facilities in the Klamath Hydroelectric Project have been named in his honor.

Commission to develop a new power rate for the Klamath Irrigators. The power cost component of any new rate to be charged to the Klamath Irrigators must be based on the cost of power generated by the Klamath Hydroelectric Project. As discussed above, it is no coincidence that the “lowest power rates which may be reasonable” appear under the heading “Hydroelectric Power.” Nor is it any coincidence that PacifiCorp was and is the only developer of hydroelectric power on the Klamath River. Thus, the rate standard set forth in Article IV of the Compact and ORS 542.620 is directly linked to the cost of power at PacifiCorp’s Klamath Hydroelectric Project.

To determine the cost of power from the Klamath Hydroelectric Project, the Commission will determine PacifiCorp’s fully-embedded investment in the facilities, plus the expenses incurred operating and maintaining the facilities. For example, it is most likely that following relicensing there will be four hydroelectric generating facilities on the Klamath River: JC Boyle, Iron Gate, and Copco 1 and 2. The cost of power generated from these four facilities can be (and has been) readily ascertained from PacifiCorp’s books and records. This would take into account operation and maintenance costs, as well as the precise investment and depreciation expense incurred each year associated with plant investments. The generation output of the four facilities under normal water conditions can also be readily ascertained. The power component of the rate for the Klamath Irrigators would then reflect the per-megawatt cost of producing power from the four facilities. Below is a schematic depicting how such a calculation would be derived, without placing any numbers on the components at this time.

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**METHOD FOR CALCULATING
KLAMATH FALLS HYDROELECTRIC FACILITY
POWER COSTS**

	BOYLE	IRON GATE	COPCO #1	COPCO #2	TOTAL
Direct Costs:					
Operation & Maintenance Expense					
Taxes – Other					
Depreciation Expense (Return of Capital)					
Return on Capital					
Total:					
Normalized Generation (MWh)					
Cost - \$/MWh or Mills/kWh					
Cost Cents/kWh					

KWUA is aware that the costs and operations of the Klamath Hydroelectric Project will be much different if and when PacifiCorp is granted a new license for Klamath Hydroelectric Project. For example, undepreciated capital investment costs are likely to increase as a result of the relicensing proceeding. Furthermore, it is unknown at this time what the output of the hydroelectric facilities will be under normal water conditions after the facilities are granted a new license. Nevertheless, these variables can be estimated based on representations made by PacifiCorp to FERC in the context of its application for a new license.

The other rate components include the cost of distribution, metering, billing and general overhead expenses. These components would be developed using well-established cost of service principles. The Commission would take into account the long-run and short-run marginal costs, as well as embedded costs of those functions. The Compact's "lowest reasonable rate" language requires the Commission to explore all recognized methods of measuring cost causation and to use the method that results in the "lowest reasonable rate." For example, the

Commission has endorsed the use of short-run marginal costs plus a minimum contribution to fixed costs as an acceptable method for recovering a utility's distribution costs. *See generally Re Northwest Natural Gas Co.*, UG 71, UG 5, Order No, 89-1358, 107 P.U.R.^{4th} 306, 1989 WL 418502 (Or.PUC 1989).

An investigative proceeding would be required to develop a factual record supporting the Commission's decision. In an evidentiary hearing, the Commission would receive expert testimony concerning the embedded fixed and variable costs of power production at the Klamath Hydroelectric Project. The Commission also would receive factual evidence concerning the lowest reasonable distribution costs. Experts might differ on these numbers, in which case the Commission would apply expertise in cost of service principles to establish the lowest power rates which may be reasonable.

Much has been said already about other PacifiCorp customers "subsidizing" the Klamath Irrigators. But under the method described herein, the Klamath Irrigators would pay the full costs of their electric service. The Klamath irrigation loads would be served at-cost from a designated source of power, the Klamath Hydroelectric Project. There is no shortfall left to "subsidize."⁷ This is not unlike the benefit that PacifiCorp's residential customers enjoy due to the "residential exchange" provisions of the Regional Act, which give such customers a limited

⁷ If there is a subsidy at all in this case, it is one flowing from the Klamath Irrigation Project to PacifiCorp. Even if PacifiCorp were to recoup nothing for power provided to the Klamath Irrigators, the cost of producing the remaining power at the Klamath Hydroelectric Project still would likely be below PacifiCorp's average system cost for power. Thus, even if service to the Klamath Irrigators were below costs, there still would be a net-benefit to PacifiCorp's other ratepayers that would more than justify such a rate. J.C. Boyle testified to this before the California Public Utilities Commission:

In my opinion the operation of the Link River Dam for the extended term, as an indispensable adjunct to our peak load plants, permits the company to meet its peak load requirements at the lowest average cost for capacity and energy. This reduction in operating expenses enables the company to make such service available to its California customers at the lowest possible cost.

Thus, the benefits to the company of this contract will be directly reflected in the rates to our California customers. We do not consider the special rates to the United States, which is contained in this contract, to be a concession of any sort but instead consider it to be a reasonable price for the company to pay for the advantage it receives for itself and its customers under the contract.

Exhibit D. But KWUA is not asking for a below-cost rate in this proceeding. It is merely seeking to enforce its statutory entitlement to receive power at cost from the Klamath Hydroelectric Project.

legal entitlement to FCRPS power. It has never been suggested that this rate differential perpetuates a “subsidy” by PacifiCorp’s other ratepayers. Computing the Klamath Irrigators’ rates using this method differs from the traditional “just and reasonable” rate standard, but is cost-based and fair to all interested parties.

3. Senate Bill 81 Describes The Implementation Of The New Rates For The Klamath Irrigators, And Nothing More.

On July 21, 2005, the Oregon Legislative Assembly enacted Senate Bill 81 (“SB 81”) into law. Section 3 of SB 81 provides that the Commission shall require PacifiCorp to mitigate a rate increase for “rates that were set under contracts entered into before 1960 and remained unchanged throughout the period of the contract” if the increase in the cost of electricity to that class of customers by reason of the transition will exceed 50 percent during the first 12 calendar months after the transition occurs. There should be no question that SB 81 applies to the Klamath Irrigators after the expiration of the 1956 Contract and any extension thereof required by FERC.

SB 81 provides a mathematical formula for gradually transitioning from the historical contract rate if and when the Klamath Irrigators’ power rates change, either by virtue of a FERC ruling, a ruling of this Commission or otherwise. In other words, this Commission must either set or approve the new rate, and SB 81 sets the maximum rate at which the transition shall occur. The Commission should note that SB 81 does not establish a rate standard, but merely describes how fast applicable rates may transition to new rates.

Nothing on the face or in the legislative history of SB 81 purports to repeal or interpret the Compact or ORS 542.620. Nor could the Oregon Legislative Assembly unilaterally terminate the rights conferred under Article IV. Article XIV of the Compact provides that “[t]his compact may be terminated at any time by legislative consent of both states, but despite such termination, all rights then established hereunder or recognized hereby shall continue to be recognized as valid by the states.” SB 81 is not an act by both states, and does not attempt to terminate the Compact or any rights conferred by the Compact.


IV. CONCLUSION

For the foreseeable future, the current power rates paid by the Klamath Irrigators will continue to be required as a condition of PacifiCorp's FERC license for the Klamath Hydroelectric Project. If and when FERC issues PacifiCorp a new license that does not require the current, or any other, power rate, then this Commission will be called upon to establish the appropriate rates. In making this determination, the Commission will be guided by the Compact and ORS 542.620. The text and context of these provisions provide the Klamath Irrigators a statutory right to the lowest reasonable cost of hydroelectric power generated using the waters of the Klamath River. This is a unique rate standard under Oregon law that may not be either ignored or conflated with the default rate standards. Furthermore, this is a cost-based rate standard that is fair to all of PacifiCorp's ratepayers and shareholders in light of PacifiCorp's continued access to the hydroelectric potential of the Klamath River.

DATED this 29th day of August, 2005.

Respectfully submitted,

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PROCEEDINGS AND DEBATES OF THE 85th CONGRESS, FIRST SESSION

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X. 1053

UNITED STATES GOVERNMENT PRINTING OFFICE, WASHINGTON, 1957

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2420-2467

SENATE BILLS

- S. 2426—Continued
Mr. Ellender; Committee on Agriculture and Forestry, 10601.
- S. 2427—To insure greater consistency among Federal loan programs, to avoid hidden subsidies, and to achieve more effective coordination between Federal loan programs and the fiscal and credit policies of the Federal Government.
Mr. Capehart; Committee on Banking and Currency, 10601.
- S. 2428—To amend the act known as the "District of Columbia Revenue Act of 1937," approved August 17, 1937.
Mr. Magnuson; Committee on the District of Columbia, 10601.
- S. 2429—For the relief of Ma Chuck Moon and Ma Chuck Woon.
Mr. Magnuson; Committee on the Judiciary, 10601.
- S. 2430—For the relief of Carlos Olmos Chang and his wife, Maria Luisa Chin de Chang.
Mr. Kuchel; Committee on the Judiciary, 10601.
- S. 2431—Granting the consent of Congress to the Klamath River Basin Compact between the States of California and Oregon, and for related purposes.
Mr. Kuchel, Mr. Knowland, Mr. Morse, and Mr. Neuberger; Committee on Interior and Insular Affairs, 10601.—Reported (S. Rept. 834), 13818.—Passed Senate, 14236.—Referred to House Committee on Interior and Insular Affairs, 14627.—Committee discharged, amended and passed House (in lieu of H. R. 8465), 15210.—Senate concurs in House amendment, 15334.—Examined and signed, 15586, 15678.—Presented to the President, 15813.—Approved [Public Law 222], 16735.
- S. 2432—To require that any person taken into custody as a suspect in the commission of a crime in the District of Columbia shall be arraigned within 12 hours from the time at which he is taken into custody.
Mr. Butler; Committee on the District of Columbia, 10601.
- S. 2433—To provide for the construction of minimum basic recreation facilities in the Owyhee Reservoir area, Oregon, and for other purposes.
Mr. Neuberger and Mr. Morse; Committee on Interior and Insular Affairs, 10601.
- S. 2434—To amend the act entitled "An act to provide books for the adult blind."
Mr. Hennings; Committee on Rules and Administration, 10601.—Reported (S. Rept. 773), 13091.—Passed Senate, 13582.—Referred to Committee on House Administration, 13803.—Reported (H. Rept. 1228), 15679.—Passed House, 15656.—Examined and signed, 16016, 16171.—Presented to the President, 16282.—Approved [Public Law 308], 16736.
- S. 2435—To organize and microfilm the papers of Presidents of the United States in the collections of the Library of Congress.
Mr. Hennings; Committee on Rules and Administration, 10601.
- S. 2436—To amend subsection (f) (1) of section 209 of the Highway Revenue Act of 1956 (70 Stat. 387).
Mr. Potter; Committee on Finance, 10760.
- S. 2437—For the relief of Douglas Keddy.
Mr. Potter; Committee on the Judiciary, 10760.
- S. 2438—To amend the District of Columbia Business Corporation Act.
Mr. Clark; Committee on the District of Columbia, 10760.—Reported with amendments (S. Rept. 986), 14979.—Amended and passed Senate, 15318.—Passed House (in lieu of H. R. 8220), 15961.—Examined and signed, 16056,
- S. 2438—Continued
16171.—Presented to the President, 16282.—Approved [Public Law 254], 16735.
- S. 2439—For the relief of Evangelia Margarita Novak.
Mr. Smith of New Jersey; Committee on the Judiciary, 10760.
- S. 2440—For the relief of Siegbert Haja.
Mr. Smith of New Jersey; Committee on the Judiciary, 10760.
- S. 2441—To amend the act of March 4, 1933, to extend by 10 years the period prescribed for determining the rates of toll to be charged for use of the bridge across the Missouri River near Rulo, Nebr.
Mr. Hruska; Committee on Public Works, 10760.—Reported (S. Rept. 727), 12787.—Passed Senate, 13574.—Indefinitely postponed (H. R. 988 passed in lieu), 13831.
- S. 2442—For the relief of William S. Sherrill.
Mr. Hill; Committee on Armed Services, 10760.
- S. 2443—To permit certain veterans to waive entitlement to insurance benefits under title II of the Social Security Act in order to preserve their rights to receive disability pensions under laws administered by the Veterans' Administration.
Mr. Young; Committee on Finance, 10760.
- S. 2444—To authorize cooperative associations of producers to bargain with purchasers singly or in groups and for other purposes.
Mr. Aiken; Committee on Agriculture and Forestry, 10760.
- S. 2445—To extend for 2 months the time during which annual assessment work on mining claims held by location may be made.
Mr. Case of South Dakota; Committee on Interior and Insular Affairs, 10760.
- S. 2446—To authorize the partition or sale of inherited interests in allotted Indian lands in South Dakota, to provide for an interim trust patent, and for other purposes.
Mr. Case of South Dakota; Committee on Interior and Insular Affairs, 10760.
- S. 2447—To authorize and direct the Secretary of the Interior to undertake continuing studies of the effects of insecticides, herbicides, and fungicides upon fish and wildlife for the purpose of preventing losses of those invaluable natural resources following spraying and to provide basic data on the various chemical controls so that forests, croplands, and marshes can be sprayed with minimum losses of fish and wildlife.
Mr. Magnuson; Committee on Interstate and Foreign Commerce, 10760.
- S. 2448—To authorize a payment to the Government of Denmark.
Mr. Green; from Committee on Foreign Relations (S. Rept. 572), 10760.—Ordered placed on the calendar, 10760.—Passed Senate, 10894.—Referred to House Committee on Foreign Affairs, 10924.—Reported (H. Rept. 928), 13076.
- S. 2449—To extend the effectiveness of the Missing Persons Act, as extended, until April 1, 1958.
Mr. Russell; from Committee on Armed Services (S. Rept. 573), 10760.—Ordered placed on the calendar, 10760.—Passed Senate, 10979.—Referred to House Committee on Armed Services, 11161.—Reported (H. Rept. 888), 12958.—Passed House, 13026.—Examined and signed, 13090, 13219.—Presented to the President, 13167.—Approved [Public Law 121], 13965.
- S. 2450—For the relief of Luther Joe Bracey (Choi Myung Dal).
Mr. Jackson; Committee on the Judiciary, 10760.
- S. 2451—For the relief of Berta Irene Heurung (Hahn Myo Soon).
Mr. Jackson; Committee on the Judiciary, 10760.
- S. 2452—For the relief of Lou Jean Clark (Whang Marion).
Mr. Jackson; Committee on the Judiciary, 10760.
- S. 2453—For the relief of Emile Zaidan.
Mr. Scott; Committee on the Judiciary, 10760.
- S. 2454—To provide that the Secretary of Agriculture shall convey certain land to the village of New Richland, Minn.
Mr. Humphrey; Committee on Agriculture and Forestry, 10829.
- S. 2455—For the relief of Sari Rothmann.
Mr. Hickenlooper; Committee on the Judiciary, 10829.
- S. 2456—For the relief of Michael Carlyle Erickson.
Mr. Hickenlooper; Committee on the Judiciary, 10829.
- S. 2457—For the relief of Lucy Irene Henning.
Mr. Hickenlooper; Committee on the Judiciary, 10829.
- S. 2458—For the relief of Victoria V. F. Farhat.
Mr. Hickenlooper; Committee on the Judiciary, 10829.
- S. 2459—To amend section 402 of the Civil Aeronautics Act of 1938.
Mr. Bricker and Mr. Magnuson; Committee on Interstate and Foreign Commerce, 10829.
- S. 2460—To authorize the transfer of certain housing projects to the city of Decatur, Ill., or to the Decatur Housing Authority.
Mr. Douglas; Committee on Banking and Currency, 10829.—Reported with amendment (S. Rept. 1043), 15101.—Amended and passed Senate, 15501.—Passed House, 15825.—Examined and signed, 16016, 16171.—Presented to the President, 16282.—Approved [Public Law 234], 16735.
- S. 2461—To prohibit the unauthorized disclosure of certain information by members, officers, and employees of regulatory agencies of the Government.
Mr. Jackson and Mr. McClellan; Committee on the Judiciary, 10829.
- S. 2462—To prohibit certain communications with respect to adjudicatory matters pending before Government agencies.
Mr. Jackson, Mr. McClellan, and Mr. Yarborough; Committee on the Judiciary, 10829.
- S. 2463—For the relief of Richard M. Taylor and Lydia Taylor.
Mr. Bricker; Committee on the Judiciary, 10867.
- S. 2464—For the relief of Hope Whang (Hope Whang Faust) and Arden Whang (Arden Whang Faust).
Mr. Bricker; Committee on the Judiciary, 10867.
- S. 2465—To stimulate the investment of venture capital in the production of strategic and critical metals or minerals.
Mr. Murray; Committee on Finance, 10867.
- S. 2466—To repeal the Sustained Yield Act of March 29, 1944 (58 Stat. 132), and for other purposes.
Mr. Murray, Mr. Neuberger, Mr. Humphrey, Mr. Scott, and Mr. Morse; Committee on Agriculture and Forestry, 10867.
- S. 2467—To authorize the Administrator of Veterans' Affairs to negotiate a new contract with the city of Sturgis, S. Dak., with respect to the use of the sewage facilities of such city by the Fort Meade Veterans' Hospital, Sturgis, S. Dak.
Mr. Case of South Dakota and Mr. Mundt; Committee on Labor and Public Welfare,

GRANTING THE CONSENT OF CONGRESS TO THE KLAMATH RIVER
BASIN COMPACT BETWEEN THE STATES OF CALIFORNIA AND
OREGON, AND FOR RELATED PURPOSES

AUGUST 7 (legislative day, JULY 8), 1957.—Ordered to be printed

Mr. KUCHEL, from the Committee on Interior and Insular Affairs,
submitted the following

REPORT

[To accompany S. 2431]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 2431) to grant the consent of Congress to the Klamath River Basin compact between the States of California and Oregon, and for other purposes, having considered the same, report thereon with the recommendation that the bill do pass.

NEGOTIATION OF COMPACT AUTHORIZED

Congress in Public Law 316, 84th Congress, approved August 9, 1955, gave its consent to the negotiation of the Klamath River Basin compact between the States of California and Oregon. Each of the States named commissioners. Frank A. Banks, the Bureau of Reclamation engineer who supervised construction of Grand Coulee Dam in Washington State, was appointed by the President as Federal representative and he participated in the negotiations.

Following lengthy negotiations, the compact was approved and signed by the commissioners of each State. Subsequently the Legislatures of California and Oregon unanimously enacted legislation ratifying the compact, which measures were approved by the governors of the respective States.

The Bureau of the Budget, which has assumed the responsibility of coordinating the views of the executive agencies in connection with interstate compacts, advised that there would be no objection to enactment of S. 2431 and " * * * seemed to be the most satisfactory solution to a difficult problem."

The bill (S. 2431) is sponsored by the four Senators from California and Oregon, as was Public Law 316, 84th Congress.

86006

KLAMATH RIVER BASIN COMPACT

The Klamath River Basin compact has been the subject of extended discussions with representatives of the compacting States and among affected agencies of the executive branch of the Government. Following ratification of the compact by the two States, efforts were directed toward reaching agreement on a draft of consent legislation which would be acceptable to all concerned. These efforts culminated in a draft of legislation which, in the particular circumstances involved in this compact, seemed to be the most satisfactory solution to a difficult problem. S. 2431 is patterned after that draft.

Accordingly, the Bureau of the Budget would have no objection to the enactment of this bill.

Sincerely yours,

ROBERT E. MERRIAM,
Assistant Director.

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85TH CONGRESS
1st Session

AUTHORIZING
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DESCRIPTION OF THE UPPER KLAMATH RIVER BASIN

The Klamath River Basin encompasses an area of some 10,010,000 acres, of which 3,610,000 acres are in Oregon and the remaining 6,400,000 acres are in California. The drainage system for this area is comprised of the Williamson, Sprague, and Wood Rivers in Oregon which flow into Upper Klamath Lake and form the headwaters of the Klamath River, and the Shasta, Scott, Salmon, and Trinity Rivers which are California tributaries to the Klamath. In addition, the Lost River, which rises in northeastern California, flows into Oregon and back into California where it discharges into Tule Lake, has been joined by an artificial channel with the Klamath River so that it too contributes to the streamflow of the Klamath.

Under natural conditions it is estimated that there would have been an average of 12,850,000 acre-feet of runoff annually into the Pacific Ocean from the entire Klamath River drainage basin. Of this amount approximately 1,883,000 acre-feet, or 15 percent, would have been contributed by the drainage area tributary to the Klamath River system above the Oregon-California boundary. The remaining 85 percent would have been tributary entirely within California. Uses presently made of Klamath River water for irrigation and other consumptive purposes reduce the average amount of water which now flows into the ocean from the Klamath River system to 12,450,000 acre-feet, of which some 1,472,000 acre-feet is tributary to the Klamath River in Oregon.

CONFINED TO UPPER BASIN PRINCIPALLY

The compact mainly concerns itself with the upper portion of the basin referred to in the compact as the Upper Klamath River Basin. It is defined as the drainage area of the Klamath River and all its tributaries upstream from the boundary between Oregon and California and the closed basins of Butte Valley, Red Rock Valley, Lost River Valley, Swan Lake Valley, and Crater Lake.

Of the 4,800,000 acres of land in this upper basin approximately 690,000 are classed as suitable for irrigated agricultural crops. There are 469,000 irrigable acres in the Oregon portion and 221,000 irrigable acres in the California portion of the upper basin.

Excluding lands within the Klamath project of the United States Bureau of Reclamation, there are presently irrigated about 174,000 acres of land in the Oregon portion and 23,000 acres of land in the California portion of the upper basin. Irrigation constitutes the major use of water in the upper basin, although sizable quantities are utilized for generation of hydroelectric power, the maintenance of fishlife, and the preservation of waterfowl.

HYDROELECTRIC POSSIBILITIES

Because of the very rapid fall of the Klamath River between Keno, Oreg., and Copco, Calif., averaging 44 feet per mile, this stretch of river is very well suited for hydroelectric power development. To date the California Oregon Power Co. has constructed 47,750 kilowatts of installed capacity in this reach and is now undertaking the construction of an additional 80,000 kilowatts. In addition it has plans for the construction of hydroelectric developments within this

portion of the river which will increase its generating capacity by another 168,000 kilowatts. At the present time Copco is the owner and operator of all powerplants on the river.

Situated in the upper portion of the Klamath River are several wildfowl refuges encompassing many thousands of acres of land. One of the important features of these wildfowl refuges is the areas of open water and marsh which serve as resting and feeding grounds for the millions of ducks and geese which pass through this portion of the Pacific flyway on their annual migration between the summer nesting areas in Canada and the warmer climate of the South.

FEDERAL INTERESTS EXTENSIVE

There are extensive Federal interests in the area of the Upper Klamath River Basin. The Klamath project of the Bureau of Reclamation covers the two-State area surrounding Lower Klamath and Tule Lakes. It was commenced in 1905. This project, presently serving nearly 200,000 acres of choice farmland with irrigation water through federally constructed facilities, makes the Bureau of Reclamation the largest water service agency in the basin.

The United States Fish and Wildlife Service maintains four wildlife refuges encompassing many thousands of acres of marshlands, open water, and agricultural lands. A portion of Crater Lake National Park and the entire Lava Beds National Monument are included.

Essentially all of the 2,000 square miles comprising the Klamath Indian Reservation are within the basin.

The Federal Power Commission is vitally concerned with the licensing of hydroelectric power developments on the Klamath River, and the Army Corps of Engineers with flood control and the improvement of downstream navigation. Finally, the Forest Service is interested in water for stock grazing and persons camping on national forest lands lying in the basin.

Representatives of affected Federal agencies participated in the discussions which led to the formulation of the compact, and the proposed Federal consent legislation adequately protects the interests of the Federal Government, according to a spokesman for the Bureau of the Budget.

COMMENTS OF THE BUREAU OF THE BUDGET

The report of the Bureau of the Budget dated July 17, 1957, on S. 2431 is as follows:

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D. C., July 12, 1957.

HON. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in reply to your letter of July 6, 1957, requesting the views of the Bureau of the Budget on S. 2431, a bill granting the consent of Congress to the Klamath River Basin compact between the States of California and Oregon, and for related purposes.

03

MINUTES OF THE EXECUTIVE COMMITTEE OF THE KLAMATH BASIN
WATER USERS PROTECTIVE ASSOCIATION, HELD IN THE CALIFORNIA
OREGON POWER BUILDING, MEDFORD, OREGON, AUGUST 11, 1955

The Executive Committee, complying with Article III, Section 2, of the By-Laws, met in Special session (by prearrangement) with Mr. John Boyle, General Manager and Vice President of The California Oregon Power Company, in his office in Medford, Oregon, at 1:30 P.M. Thursday, August 11, 1955.

Committee members present were Frank Z. Howard, chairman, E. M. Mitchell, Vice-Chairman and Frank L. King, Jr., and John L. Stewart, Jr., Secretary.

The Chairman opened the meeting by stating that this committee was present to discuss the draft of proposed Contract between the United States Department of the Interior and Copco (which incidently was received from C. H. Spencer, Bureau of Reclamation just prior to meeting date but after date had been set).

Mr. Boyle stated that he was very willing to discuss all or any part of the draft but that he could not commit himself on any of the committees questions.

General discussion was then had on questions and statements by committee and answers by Mr. Boyle, the highlights of which are as follows:

1. Why shouldn't the Indian Lands and all other lands outside the boundaries of the Project in the Upper Klamath River Basin be included in this Contract for a reasonable power rate and the Contract be signed by the Secretary of the Interior Mr. Douglas McKay (not C. H. Spencer) who has jurisdiction over the Indian Lands. Too, nearly all drainage water, including well water, in the upper reaches of the Klamath Drainage Basin, finds its way down for irrigation and power purposes, whether over Project lands or not.

Mr. Boyle stated that if signing the Contract by Secty. Douglas McKay instead of Mr. Spencer would make it legally OK to give Indian Lands and all other lands lying outside of the Project a low power rate without the Public Utilities Commission of the State of Oregon ruling that partiality was being shown, he believed that Copco would approve such a rate. Further, that it would without a doubt be a good thing financially for Copco if a favorable power rate could be granted.

The Committee countered by stating that the Public Utilities Commission certainly should weight the magnitude and importance of the other things involved at this time in this area of Oregon as pertains to water and power, and not try to compare with a problem with no similarity in another part of the State.

2. That a reasonable power rate would enable approximately 300,00 acres (including Butte Valley) to irrigate whether all land was levelled or not as sprinklers would be used on many thousands of hill land acres. That irrigating by sprinklers would also make it better for Copco from a power use standpoint.

Mr. Boyle stated that Copco can readily see this to be true.

3. That many homes and other useages for power at commercial rates would materilize on this 300,000 acres, creating business for merchants, dealers, etc., as well as for Copco.

Mr. Boyle stated that there was no doubt but what additional revenue from commercial use would warrant a reasonable power rate for pumping on these lands.

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4. That it would be a general stimulation.

Mr. Boyle stated that Copco can readily see this to be true.

5. That a reasonable power rate for these lands is the only way in which water for beneficial use can be used quickly and assuredly. That it is a fallacy to infer that when these lands lying outside of the Project are taken into the Project they can then benefit by the 6 mill rate, when in fact only approximately 75,000 acres of the 300,000 acres could ever be taken into or served by the Project and benefit from the proposed 6 mill rate. This approximately 70,000 acres being Butte Valley and high land lying on the fringe of the Project.

Mr. Boyle answered the first part of this question by stating that it is true that the Bureau is usually many years in bringing their plans to completion.

He would not commit himself that he knew the second part of the question to be true and was rather hesitant and evasive in an inconclusive answer.

6. There should be a Paragraph or Section in this draft of Contract stating that Copco will furnish at some given time additional storage in vicinity of Upper Klamath Lake and at the end of 50 year Contract will transfer title to the USA or its successors or assigns.

Mr. Boyle stated that Copco will not approve this request. That for Copco to say that they will give away to anyone an ultimate \$13,000,000 investment (additional storage only) would be down right foolishness. Mr. Boyle did, however, explain in some detail the proposed storage plans that Copco has and gave each person present a copy of a layout drawing.

7. That paragraph 7 of Water Users draft of Contract should be included in draft of Bureau-Copco Contract.

Mr. Boyle stated that again Copco would be giving away a healthy investment, that someday they expect to be reimbursed by somebody for any remaining interest they may have invested in these dykes, flowage and easement rights.

8. An explanation of paragraph 5 was requested.

Mr. Boyle stated that this paragraph implies that Copco has first right to the waters of the Upper Klamath Basin for power purposes.

9. An explanation of paragraph 9 was requested.

Mr. Boyle stated, among other things, that it was understood that the Fish and Wildlife is to decrease their acreage rather than increase it.

The Committee countered by stating that this was very hard to believe, indeed.

The discussion on power rate schedule was brief, however, Mr. Boyle did state that the 6 mill rate was at cost before delivery. 4.54 mills to generate, 1.43 mills pump storage; making 5.97 mills at the switchboard.

With general discussion at an end the meeting adjourned at 4:00 P.M.

Prior to the departure to Medford there being a quorum present, the members approved the signing of vouchers and checks as follows:

#73	Virginia Dyer	Clerical Serv.	\$ 6.00
#74	Smith-Bates Prtg Co	Office Suppl.	5.25
#75	Chet Langslet-Postmaster	1 roll 3¢ stamps	15.00
#76	John L. Stewart, Jr	Serv. Secty-Treas	70.00
#77	Klamath Irr. Dist.	Phone service	1.40

ATTEST:


Secretary


Chairman

MINUTES OF KLAMATH BASIN WATER USERS PROTECTIVE
ASSOCIATION, BUREAU OF RECLAMATION ADMINISTRATIVE
BUILDING, AIRPORT, KLAMATH FALLS, OREGON, AUGUST 17, 1955

The Board of Directors of the Klamath Basin Water Users Protective Association met in Special session in the Bureau of Reclamation Administration Building, Airport, Klamath Falls, Oregon, at 1:30 P.M. August 17th, 1955.

The meeting was called to order by Frank Z. Howard, President of the Board.

Present in answer to roll call were Directors: Frank Z. Howard, E. M. Mitchell, Dick Henzel, John A. Marshall, Frank L. King, Jr., and Lloyd Gift, and John L. Stewart, Jr., Secretary-Treasurer.

Others present were: Wm. Ganong, Attorney, Nelson Reed and George Stevenson of the Oregon Klamath River Commission and Paul Tschirky of Tulelake.

The minutes of Executive Committee meetings on June 7th and August 11th, were read by the Secretary and on motion made, seconded and duly passed, were approved as read and ordered signed.

After General discussion on the draft of proposed Contract, as a whole, between the United States Department of the Interior and The California Oregon Power Company, it was agreed that each paragraph of the Contract be read and discussion on each be had, making changes, additions and deletions where deemed necessary.

The changes, additions and deletions to this proposed draft of Contract and the reasons therefore, will be set forth in letter form very shortly and transmitted to Secretary of the Interior Douglas McKay, Mr. C. H. Spencer, Regional Director, Bureau of Reclamation, and others, with a copy of draft of proposed Contract as revised by the Board of Directors of this Association.

The Board unanimously agreed that a Contract as important as this one is should be signed by the Secretary of the Interior and not by Mr. C. H. Spencer. For one reason, among others, Mr. Spencer has no jurisdiction over Fish & Wildlife and this Contract contains a paragraph pertaining to that Government Service.

The Board directed the Secretary to see if he could obtain prints of Upper Klamath River Basin, marked Exhibit A. These are necessary to complete revised draft of Contract.

KWVA 00235

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MEMORANDUM

Negotiations Leading up to
Contract Between the Bureau of Reclamation and Copco
dated October 10, 1955,
With Particular Reference to the Matter of Power Rates

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Five years ago, on November 10, 1955, the Attorney General of Oregon rendered an opinion, contrary to the former Attorney General's opinion, that the waters in the Klamath basin were subject to appropriation. The opinion was submitted to attorneys Roberts, Rives and Kuykendall for review. The result was authorization by the board of directors on February 15, 1951 to make application to the Federal Power Commission and the Hydroelectric Commission of Oregon for the construction of a project on the Klamath River designated as Big Bend. These applications were prepared and filed with both commissions under date of April 16, 1951.

Protests were filed with both commissions by practically all of the irrigation districts in the Klamath basin, the State of California, the State of Oregon, the state legislative representatives, the Secretary of the Interior, the Bureau of Reclamation, County of Klamath, City of Klamath Falls and many individuals. In fact the company had very little support other than certain business interests.

A hearing was held in Klamath Falls before the Hydroelectric Commission on June 11, 1951, at which time the company stated that no development could be made on the Klamath River without an extension of the Klamath Lake contract. So the commission stated that "No further hearings will be held at the present time, and we are satisfied that if the company could work out an agreement with the Bureau of Reclamation for an extension of the contract on the Upper Klamath Lake there would be no further question about the issuance of a license."

The Federal Power Commission asked for additional information relative to water supply, economic studies of various plant capacities, and information on the past, present and future uses of Klamath River for navigation. The data was prepared and sent to the FPC, with the result that the FPC held a hearing on June 30 at Klamath Falls at which time statements were made by all parties opposing issuance of a license. Exhibits were introduced and stenographic records were made of all the proceedings.

After the FPC hearing, time was granted for those intervening to file briefs and supplemental data. This consumed a period of about a year, or until October 2, 1953, when the FPC issued a license for Project #2082, Big Bend #2.

KWVA 00124

Exhibit C Page 1 of 9

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The FPC license for construction of Project #2082 provided:

1. That the license should be accepted within a year, and that with acceptance of the license there should be copies of the agreement between the Licensee and the Bureau of Reclamation for extension of the Upper Klamath Lake regulation for the term of the license.
2. That the company should file applications for licenses on all of its power plants on the Klamath River, namely, East Side, West Side, Keno and the two Copco plants. Extensions of time have been granted by the FPC as requested.

During the spring of 1953, certain individuals representing the irrigation districts and the business interests believed that the opposition to the company's development of Big Bend #2 could be removed if the company was willing to discuss with organized groups provisions which they believed should be put in the contract between the Bureau and the company. The first meeting was held with a limited group in April 1953 at which meeting Attorney Ganong, supposedly representing all water users, stated that the most important item for consideration in the contract was the matter of power rates. The company had indicated that the power rates in the original contract were established on a cost basis and that they fairly represented the cost of power throughout the term of the contract to date. In response to the request of this group, the company prepared a statement of its power cost and a statement of its estimated cost for the proposed Big Bend #2 plant. These costs were quoted in a letter to Mr. Ganong of April 20, 1953, as follows:

Production cost at powerhouse switchboard (present plants)	4.54 mills
Transmission cost from powerhouse to distribution substation	<u>1.65</u> mills
Total	6.19 mills
Estimated cost of power at switch- board (Big Bend #2 plant)	4.37 mills
Transmission cost from power plant to distribution substation	<u>1.60</u> mills
Total	5.97 mills

After several meetings, this group organized the Klamath Basin Water Users Protective Association (incorporated July 8, 1953), and agreed with us that we could make no progress in obtaining a contract without starting negotiations with the

KWVA 00125

Exhibit C Page 2 of 9

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Bureau of Reclamation. Communication with the Bureau in May 1953 resulted in a statement from the Bureau that they would meet with the company to discuss the terms and conditions of the contract. So the company was asked for a statement of the conditions and stipulations under which the company would extend the Link River dam contract. These were contained in memorandum of July 10, 1953 which contained seven conditions:

1. 50-year term.
2. Same priorities for irrigation as contract of February 24, 1917.
3. Eliminate 25-mile radius from Merrill.
4. Subject to water rights conferred by treaty on Indians.
5. Operate upper lake same as contract of 1917.
6. Surplus and return waters above Keno. No diversion outside the Klamath basin watershed.
7. Company furnish electric power for all pumping plants on project:
 - a. At same rates for the Bureau.
 - b. 6 mills per kilowatt hour eliminating 7-1/2 HP or less.

This memorandum was submitted to both the Bureau and the water users association.

Under date of September 1, 1953, Mr. Ganong directed a letter to the Klamath Basin Water Users Protective Association stating that:

1. The proposed 6-mill rate of Copco was not quite low enough.
2. The boundaries of the area should be more adequately described.
3. That it was his understanding that Copco would be willing to enter into an agreement giving priority for beneficial use of water to all lands above the Keno shelf as the return flow would be above Keno.
4. The company was willing to furnish power at cost.

Late in 1953, advance copies of the Upper Klamath River Basin report, being prepared by the Bureau of Reclamation, was made available. Butte Valley came actively into the picture because of the Bureau's proposal to divert Upper Klamath Lake water through

KWVA 00126

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Butte Valley to a proposed power plant above Copco. Considerable time was taken in studying this report by all concerned. It was indicated by the Butte Valley water users that if they could get a favorable pumping rate that they would not be interested in the Bureau's proposed irrigation and power scheme.

On April 20, 1954, at a meeting with the Oregon Klamath River Commission there was considerable discussion about Butte Valley, supplemental storage, water rights and pumping rates to be applied not only to on-project users but off-project users. The Oregon Klamath River Commission felt that some off-project pumping rates would be necessary to satisfy all users of power for pumping in the area.

On April 22, 1954, at a meeting with the Klamath Basin Water Users Protective Association, the proposed extension of the contract between the company and the Bureau was discussed. No members of Copco were present. Certain districts favored opposing extension of the proposed contract for regulation of the lake indefinitely. Others favored extension of the contract providing off-project pumping rates were obtained, and other items. It was concluded that the association would draft a form of contract which they thought should be negotiated between the Bureau and the company.

Later the water users association passed a resolution in favor of an extension of the contract provided it incorporated the ideas of the farmers.

On April 29, 1954, a tentative form of contract drawn up by the water users association was sent to the company. This contract included:

1. 50-year term.
2. Control of water levels by the Bureau.
3. The company to create at its own expense 450,000 acres of additional reservoir capacity and give it to the government at the end of the contract period.
4. No water should be used for power purposes on the project or off the project when needed for irrigation of any lands within the Klamath drainage basin in Oregon, and all lands in California within 40 miles of Merrill.
5. The company assumes all liability for damage in the regulation of the lake.
6. The company maintains a dam.
7. All rights and easements of the company relating to dikes, levees and flowage around Upper Klamath Lake to become the property of the government at the end of the contract.

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8. The company supply power:
 - a. For the Bureau at 4 mills and 2 mills.
 - b. For on-project pumping at 5 mills and 3 mills.
9. That the company pay the United States \$300,000 a year to be applied by the Secretary to operation and maintenance of the districts and all of the irrigable land within the project.
10. 60-day cancellation provision.
11. Successors and assigns.
12. No members of Congress, etc.

A meeting was held in Klamath Falls on May 18, 1954 at which were present Butte Valley Protective Association, Bureau of Reclamation, California Water Resources Board, and representatives of several of the irrigation districts. The form of contract submitted by the Association was reviewed, and my memorandum stated as follows:

1. California people opposed to any contract or Big Bend construction until they had opportunity to study the Bureau's report and make final report,
2. Bureau of Reclamation had not received any instructions to talk contract with Copco
3. Semons received assurance from McKay that Interior would not agree to extension of contract until after all parties had opportunity to be heard, and the Bureau's report reviewed.
4. I stated that the contract submitted was not satisfactory:
 - a. Copco could not construct the storage reservoir and give it to the government.
 - b. Proposal on boundaries of Upper Klamath basin not accurate enough.
 - c. Company could not give upper lake releases to government at end of contract period.
 - d. Matter of power rates should be pended until main provisions of contract were agreed upon.
 - e. Copco would not pay \$300,000 a year for use of the upper lake.

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5. Company stated that it would be willing to cooperate in investigating Boundary dam.
6. All agreed that any water used for irrigation should be returned to Klamath River above Keno.
7. It was the general feeling of the group that pumping rates would have to be established for all irrigation uses in the Klamath basin, including Butte Valley, through separate negotiations, or through filings with the state agencies, which would be beneficial to all users whether districts or individuals.
8. It was concluded that Copco would prepare a tentative draft of contract which it would consider satisfactory, and to present it to the directors of the organizations present prior to the meeting to be held on June 9.

On May 26, 1954 Copco's redraft of the proposed contract was submitted to the water users association. It contained essentially the same provisions as the contract of 1917 without Exhibit B covering pumping rates.

This redraft of contract was prepared by Brobeck, Phleger & Harrison, and submitted to the Bureau and the water users association setting forth a 6-mill rate for on-project pumping.

Another proposed contract drafted by the water users association on June 25, 1954 still contained some of the provisions of the original draft: the irrigation pumping rates to be applied on all lands in the Klamath drainage basin, including pumping from wells. Copies were forwarded to the Bureau of Reclamation.

During the first of July 1954, negotiations with the Bureau of Reclamation on the proposed contract were actively started, and involved a satisfactory solution of the Butte Valley plans and the elimination of power development by the Bureau. Copies of the Bureau's report were then given to the company.

Until May 23, 1955, the time was taken with discussions with the Bureau of Reclamation arriving at the terms of the contract to be submitted for general circulation by the Bureau. The rate included in this draft was the 6-mill rate for on-project pumping, and some other minor changes. Draft of contract was forwarded by the Bureau to all concerned, including the Klamath Basin Water Users Protective Association, and finally resulted in the draft of October 10, 1955 which has now been submitted for final approval of the Secretary. The Bureau, however, proposed a special rate for the Butte Valley area which was refused by the company. There was considerable support from local interests, including the labor unions, City of Klamath Falls, businessmen, and some of the individual farmers to have this contract executed.

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On September 16, 1955 the water users association directed a resolution to the Hon. James E. Murray, Chairman of the Committee on Interior and Insular Affairs, stating that they did not want any interference by Wayne Morse, Neuberger or anyone else in the matter of negotiating a contract between the Bureau and Copco, and stated in part, "We are not asking for a hearing before any committee . . . We feel that this is not necessary, and also it would be too expensive a proposition for some of us to have to appear in Washington. However, if some of our wishes are not granted, we think there should be a hearing before the Secretary, such hearing to be held here in Klamath Falls on our own home ground. The minor changes in the contract as drafted on August 5, 1955, which we are suggesting are:

1. To broaden the definition of 'Project Land' to include all irrigable land in the Klamath Basin.
2. To extend the reduced pumping rates to all water users in the Klamath Basin.
3. To reject a paragraph in the proposed contract which limits the generation of power to Copco.
4. To include the transfer of all easements to levees, dikes, flowage, etc., to the United States at the end of the fifty year period."

Numbers 1, 3 and 4 have subsequently been eliminated by negotiation.

At the hearing in Klamath Falls on September 16, 1955 before the joint river commissions, the question of off-project pumping rates was again brought up. As the company had prepared a statement in advance, it read into the records of this hearing the following:

The company has said that it would consider off-peak pumping rates and discuss with the properly organized districts or individual pumpers pumping rates outside of the jurisdiction of the Bureau which would be equal to the pumping rates in the contract plus the equivalent of what is paid the government for water. The matter could only be determined by the Public Utilities Commissions of Oregon and California in a regular proceeding in which the Public Utilities Commissions would determine whether or not any special rates are proper and legal. The company cannot make a commitment at this time which would bind either the company or the commission. This is a matter entirely beyond the scope of the Link River dam contract.

On October 7, 1955, the Klamath Basin Water Users Protective Association met with members of the Oregon Klamath River Commission and wrote a letter stating that there were some matters of rates which had not been settled, and they would like a statement from the company before they took final action on the contract. These were:

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"Do you agree to a lower pumping rate on-project from 5 mills to 4 mills? And from 3 mills to 2 mills?"

"Will the company submit a letter that it will not oppose the application of non-project users applying a pumping rate of 8 mills, and if necessary will Copco make application?"

"Will Copco make a proposal for off-peak pumping rate for all irrigation and drainage uses? Will this rate apply over a 24-hour load, or off-peak use only?"

On October 10, the company in a letter restated the above quotation read into the public record on September 16.

An estimate was made of the reduction in revenue under the above proposed 8-mill rate, assuming that the answer was "No" to #1 above, which made the average kilowatt hour cost for the off-project 231 customers in the Butte Valley-Klamath basin 9.6 mills, or a reduction in revenue on 1954 billing of \$72,700.

On October 17, the water users arranged for a meeting to discuss these off-project rates, at which time the company made a proposal which was confirmed in a letter of October 24, 1955:

1. The company would make application to the PUC for a 15% reduction in Schedule 20.
2. The company would make application for 5-mill off-peak pumping rate.

The reduction in revenue under this rate, for the same 231 customers, would be approximately \$47,000. The water users association advised that the 5-mill off-peak rate was satisfactory, but the 15% reduction in Schedule 20 was not enough.

After a further meeting on November 2, the association was advised that the company would like to receive a proposal from them stating just exactly what they would approve in the way of a satisfactory off-project pumping rate. This was incorporated in the association's letter of November 3, 1955, and was in effect a reduction on the 231 customers in the Klamath basin on the basis of 1954 billing of about \$28,000.

The minutes of the meeting of the association on November 3 stated:

"Mr. Howard stated that if Copco approves and returns a copy of the acceptance that he will immediately call a meeting of the Board of Directors of the Association and endeavor to get their approval and also action on submitting a letter to Mr. C. H. Spencer withdrawing all opposition to the contract between Copco and the Bureau of

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of Reclamation and requesting that signing of contract
not be delayed."

Copy of the Klamath Basin Water Users Protective Association's
letter of November 3, 1955 is hereto attached.


J. C. Boyle

JCB:EA

Encl.

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BEFORE THE PUBLIC UTILITIES COMMISSION

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
JAMES M. HARRIS, Sheriff
I, the undersigned, James M. Harris, Sheriff of the County of San Francisco, do hereby certify that the within and foregoing is a true and correct copy of the original of the same as the same appears from the records of said County.

Witness my hand and the seal of said County at San Francisco, California, this 13th day of April, 1924.

James M. Harris, Sheriff
Seal of the County of San Francisco

Recorded for Information No. 1372

1956)
Jan - June

Water Resources
Center Archives

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
BOYLE, J. I. " " (rec)	5 33	21 46	
MILLS, DELOS	60	66	
HOWARD, FRANK Z.	69	72	74
KING, FRANK, JR.	78	82	
JENKINS, CLIFF	82		
HOLZHAUSER, HARRY A.	84	85	
THORP, ARCHIE D.	86		
ROBINSON, WALTER	88		
JOHNSON, THEO	89		
LOGAN, LLOYD	91		
ZOLLERS, DUDLEY	96	99	
WILLIAMS, THOMAS	100	103	104
BARNES, GLENN	108	113	
HENZEL, DICK	116		

<u>EXHIBITS</u>	<u>IDEN</u>	<u>EVID</u>
1 (Application No. 37724)	15	33
2	15	33
1 (Application No. 37918)	34	46
2	40	46
3	45	46
4	61	68
5	81	81

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

MANLEY W. EDWARDS, Examiner, presiding.

* * * * *

In the Matter of the Application of
the CALIFORNIA OREGON POWER COMPANY,
for authority to enter into contract
with the United States of America for
regulation of Link River Dam, etc.

} Application No. 37724

In the Matter of the Application of
the CALIFORNIA OREGON POWER COMPANY,
for approval of agreement with
Klamath Basin Water Users Protective
Association.

} Application No. 37918

APPEARANCES:

Brobeck, Phleger & Harrison by ROBERT N. LOWRY and
MALCOLM T. DUNGAN, 111 Sutter Street, San
Francisco 4, California, appearing for the
California Oregon Power Company, Applicant.

J. J. DEUEL, BERT BUZZINI and JOSEPH Q. JOYNT, 2223
Fulton Street, Berkeley, California, appearing
for the California Farm Bureau Federation,
Interested Party.

Bert A. Phillips, Chairman, by ROBERT B. BOND,
Executive Assistant, P. O. Box 1079, Sacramento 5,
California, appearing for the California Klamath
River Commission, Interested Party.

RICHARD W. HUBBELL, of the Herald & News, Klamath Falls,
Oregon, appearing for the News Editor, Max Wauchope,
Interested Party, separate and distinct applications.

HAROLD T. SIPE, appearing for the Commission's staff.

* * * * *

1 DORRIS, CALIFORNIA, MAY 8, 1956, 1:00 P.M.

2 * * * * *

3 EXAMINER EDWARDS: The Commission will be in order.

4 The Commission is holding a hearing this afternoon
5 in the matter of the application of the California Oregon
6 Power Company, for authority to enter into contract with
7 the United States of America for regulation of Link River
8 Dam, et cetera, under Application No. 37724 and also in
9 the matter of the application of the California Oregon
10 Power Company, for approval of agreement with Klamath
11 Basin Water Users Protective Association, Application No.
12 37918.

13 Is it satisfactory, gentlemen, to consolidate these
14 matters for hearing purposes but not necessarily for
15 purpose of decision, is that satisfactory?

16 MR. LOWRY: Yes.

17 I would like to make the company's position clear.
18 The applicant filed for a decision in Application No.
19 37724, a separate and independent application from the
20 application of 37918 and we are of the opinion that the
21 two applications are separate and distinct applications
22 dealing with them and should have separate decisions in
23 the matter. We do not object to consolidating, however,
24 for hearing purpose only.

25 EXAMINER EDWARDS: Yes, separate decisions.

26 Any other statements? If not, that will be done.

1 other sources.

2 Unquestionably the first alternative would be much
3 more expensive than securing our peak load requirements
4 by means of the Klamath River plants operated in con-
5 junction with the Link River Dam.
6

7 As to the second alternative, we have contracts
8 with PG&E for firm power under which we must pay a high
9 standby charge plus an energy charge reflecting essentially
10 the full cost of steam generation. In 1955, for 60,000
11 kilowatts the cost to the company was \$1,188,000 plus
12 energy used at 3.35 mills per kilowatts.

13 In my opinion the operation of the Link River Dam
14 for the extended term, as an indispensable adjunct to our
15 peak load plants, permits the company to meet its peak
16 load requirements at the lowest average cost for capacity
17 and energy. This reduction in operating expenses enables
18 the company to make such service available to its California
19 customers at the lowest possible cost.

20 Thus, the benefits to the company of this contract
21 will be directly reflected in the rates to our California
22 customers. We do not consider the special rate to the
23 United States, which is contained in this contract, to
24 be a concession of any sort but instead consider it to be
25 a reasonable price for the company to pay for the advantages
26 it receives for itself and its customers under the contract.

MR. LOWRY: That concludes the company's presentation

1 EXAMINER EDWARDS: Do you wish to submit on the record
2 as made on file briefs?
3

4 MR. LOWMY: Submit on the record as made.

5 MR. BUELLINI: Submit on the record.

6 EXAMINER EDWARDS: The matter will be submitted and
7 the Commission stands adjourned.

8 Thank you, gentlemen, for your kindness.

9 (Whereupon, at the hour of 5:20 p.m., the above
10 matter was submitted, and the Commission then
11 adjourned.)
12

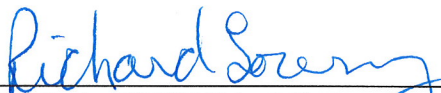
13 * * * * *

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served the foregoing **Klamath Water Users Association's Opening Brief** on the attached current Service List obtained from the Oregon Public Utility Commission's Website:

- [XX] by **MAILING** a full, true and correct copy thereof in a sealed, postage-paid envelope, addressed as shown on the attached Service List, and deposited with the U.S. Postal Service at Portland, Oregon, on the date set forth below;
- [XX] **and** by **electronic mail** ("e-mail") to those parties on the Oregon Public Utility Commission's current Website Service List who listed an e-mail address.

DATED this 29th day of August, 2005.



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