

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 170

In the Matter of the Request of)	UNITED STATES' BUREAU OF
)	RECLAMTION AND U.S. FISH
PACIFIC POWER & LIGHT)	AND WILDLIFE SERVICE
(d/b/a PacifiCorp))	REPLY BRIEF ON RATE
)	STANDARD
Klamath Basin Irrigation Rates)	
_____)	

In accordance with the Chief Administrative Law Judge's Prehearing Conference Memorandum, dated June 30, 2005, the United States Bureau of Reclamation (Reclamation) and the U.S. Fish and Wildlife Service (Service) submit their Reply Brief in this docket concerning the appropriate rate standard to apply to "irrigation customers located within the Klamath River Basin." As stated in our Opening Brief, Reclamation and the Service conclude that the appropriate rate standard is dictated by the Klamath River Basin Compact. In this Reply Brief, we are only addressing certain of the issues raised in the other parties' opening briefs and refer the ALJ to our Opening Brief for the balance of our arguments.

I. The Klamath River Basin Compact is limited in scope to the Upper Klamath River Basin as defined in the Compact such that the rate standard specified in Article IV of the Compact applies to power uses in the Upper Klamath River Basin.

PacifiCorp argues that the Klamath River Basin Compact (Compact) does not impose a requirement or objective with respect to power rates for irrigation in the Klamath River Basin. PacifiCorp's Opening Brief on Statutory Standard for Ratesetting, p. 8-9. Contrary to PacifiCorp's argument, the Compact is clear as to its geographic scope. There is nothing in the Compact to suggest that its focus is outside the Upper Klamath River Basin. For example,

Articles III. B. and C. of the Compact restrict the use of water to the Upper Klamath River Basin. Further, Article III. B. 2. and 3. require that all return flow from the use of such waters be returned to the Klamath River above Keno, Oregon. Article III is immediately followed by Article IV that addresses the use of Upper Klamath River Basin water for power to be used for “irrigation and drainage pumping, including pumping from wells.”

At the time the Compact was being written, use of power for pumping of drainage water in the Upper Klamath River Basin was important to the generation of power as it ensured an additional source of water for the hydro generation plants downstream of Keno, Oregon. As noted above, the Compact expressly required this drainage or return flow water to be returned to the Klamath River upstream of the power dams so that water was available for use to generate power as envisioned by Article IV. This important concept was also integral to the Klamath Project and off project contracts and the Federal Power licenses issued to PacifiCorp’s predecessor Copco. Thus, providing the “lowest power rates which may be reasonable” to the irrigators in the Upper Klamath Basin for pumping drainage water, as well as irrigation (which produces a significant portion of the drainage water), ensures that this additional supply of water will be available for power generation. This was also expressed in the Klamath Basin Off Project Contract.

II. Senate Bill 81 does not restrict the setting of rates to the “just and reasonable” standard.

PacifiCorp argues that the language of Senate Bill 81 referencing a “transition to an electric company’s generally applicable cost-based rate” means a transition to rates set only under the just and reasonable standard and not any other standard such as provided by Article IV of the Compact. PacifiCorp’s Opening Brief on Statutory Standard for Ratesetting, p. 12. Senate Bill

81 does not require that a specific standard be used, rather it requires rate mitigation whenever an increase in rates is due to a change from a contract mandated rate. As discussed in our Opening Brief, Senate Bill 81 established a separate class based on certain types of contracts that allows for the Commission to establish separate rates for that class. The mitigation for that class of customers is triggered by Senate Bill 81 when the contract rates are no longer applicable, i.e. a shift to “generally applicable cost-based rates” instead of the specific contract rate.

III. Conclusion

As discussed above and in our Opening Brief the Klamath River Basin Compact and Senate Bill 81 provide the basis for establishing a customer class that allows a separate rate to be established for that class. That rate must be based on the parameters described in Article IV of the Compact which restrict any rate increase for irrigation and drainage pumping to that associated with the generation of power by PacifiCorp from its use of the waters of the Klamath River. Further, any phase in of such rates will most likely be delayed by the issuance of an annual license to PacifiCorp by FERC.

Respectfully submitted,

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Dated: September 15, 2005

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CERTIFICATE OF SERVICE

RE: Pacific Power & Light; UE170

I, the undersigned, declare that I am a citizen of the United States, over the age of eighteen, and am not a party to this litigation. On September 15, 2005, I served the following:

**“UNITED STATES’ BUREAU OF RECLAMATION AND
U.S. FISH AND WILDLIFE SERVICE
REPLY BRIEF ON RATE STANDARD”**

by placing the foregoing document, enclosed in a sealed envelope via Federal Express mail, via facsimile and via diskette in PDF format at Sacramento, California to the following:

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I certify that the foregoing is true under penalty of perjury. Executed this 15th day of September, 2005, at Sacramento, California.

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