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VIA ELECTRONIC FILING

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

Re: Docket UE 170 (Klamath River Basin Irrigator Rates)

Enclosed for filing in this matter is PacifiCorp's Opening Brief on Appropriate Rates for Klamath Irrigators. A copy of this filing was served on all parties to this proceeding as indicated on the attached certificate of service.

Very truly yours,

Sarah J. Adams Lien

SJL:jlf
Enclosure
cc: Service List

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UE 170

In the Matter of PACIFIC POWER & LIGHT's (d/b/a PacifiCorp) Request for a General Rate Increase in the Company's Oregon Annual Revenues	**PACIFICORP'S OPENING BRIEF ON APPROPRIATE RATES FOR KLAMATH IRRIGATORS**

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I. INTRODUCTION

In accordance with the briefing schedule and Chief Administrative Law Judge Michael Grant's February 22, 2006 Memorandum in this docket, PacifiCorp submits this brief addressing the following issues:

1. What are the appropriate rates PacifiCorp should charge the Klamath Basin irrigators for electric service?

   a. Are the current rates under the On-Project and Off-Project Agreements justifiable according to the "just and reasonable" rate standard set forth in ORS chapters 756 and 757? See Order No. 05-1202.

   b. Should the Klamath Basin irrigation customers be included in the standard class of irrigation customers, or is there substantial and reasonable basis for establishing a separate and distinct class of irrigation customers in the Klamath Basin for purposes of service and rates (*i.e.*, a separate service classification under ORS 757.230)?

   c. If it is determined that Klamath Basin should not be included in the same class as other Oregon irrigation customers and a different rate than the standard irrigation tariff is justified, what is the appropriate rate?

2. If any rate change affecting these customers is implemented, how and when should these customers be transitioned from the rates established in the historical contracts?

   a. Are the provisions of Senate Bill 81 ("SB 81") applicable to such a rate change and, if so, how should this legislation be implemented with respect to these customers?

   b. If the provisions of SB 81 are not applicable, do any other rate mitigation policies, rules, or statutes apply and, if so, how should such policies, rules, or statutes be implemented with respect to these customers?

3. What are the possible implications of the Federal Energy Regulatory Commission's ("FERC") proposal to decouple the government dam use charges from PacifiCorp's retail rates and set such charges for Klamath Project No. 2082 at the graduate fixed rates set forth in 18 CFR § 11.3(b)?

II. BACKGROUND

Parties to this proceeding have extensively briefed the circumstances surrounding the contracts under which irrigators and pumpers in the Upper Klamath River Basin (the

"Klamath Customers") receive electric service at discounted rates. The On-Project Agreement (or "USBR Contract"), dated January 31, 1956, was entered into between PacifiCorp's predecessor, the California Oregon Power Company ("Copco"), and the U.S. Bureau of Reclamation ("Reclamation") for pumping on land within the Klamath Irrigation Project (the "KIP"). The Off-Project Agreement (or "UKRB Contract"), dated April 30, 1956, was entered into between Copco and the Klamath Basin Water Users Protective Association ("KWUA") for agricultural pumping by users within the Upper Klamath River Basin but outside the boundaries of KIP. The Commission's statement of undisputed facts in Order No. 05-726 in UE 171, describes the background for the matters now before the Commission.

III. ARGUMENT

The record in this case demonstrates that there is no substantial evidence of quantified value being provided by the Klamath Customers for which they should be compensated. For the reasons set forth below, the Commission should order that beginning April 17, 2006, the electric rates for the Klamath Customers should be those rates established in PacifiCorp's standard tariff schedules generally applicable in Oregon. Further, the Commission should order rate mitigation for the Klamath Customers under SB 81 in accordance with PacifiCorp's proposal. Pursuant to SB 81, the cost of that rate mitigation should be spread among other Oregon customers.

1. The Appropriate Rates for Electric Service for the Klamath Customers Are the Standard Tariff Rates Under Existing Rate Schedules.

a. The Current Rates Under the On-Project and Off-Project Agreements Are Not Justifiable According to the "Just and Reasonable" Rate Standard Set Forth in ORS Chapters 756 and 757.

Current rates under the On-Project and Off-Project agreements are not "just and reasonable" under ORS chapters 756 and 757. ORS 756.040 and ORS 757.210 require that the Commission establish just and reasonable rates in all ratemaking proceedings. *See also*

OAR 860-022-0035; ORS 757.210(b) (requiring review of special contract rates and alternative forms of regulation under just and reasonable standard). To be just and reasonable, rates must be cost-based and non-discriminatory. ORS 757.310 (prohibiting public utilities from charging one customer rates different than those charged other customers receiving "like and contemporaneous service under substantially similar circumstances"); ORS 757.325 (prohibiting public utilities from giving undue or unreasonable preference or advantage to particular customers); *In re Incentive Rates for Electric Service*, 82 Pub Util Rep 4th 624, 625 (Or Pub Util Comm'n 1987) (stating that the provision of "uniform service and rates for similarly situated customers * * * prevents utilities from unfairly offering discounts to 'preferred customers'"); *American Can Co. v. Davis*, 28 Or App 207, 222, 559 P2d 898, *rev den* 278 Or 393 (1977) (citing *Midland Co. v. K. C. Power Co.*, 300 US 109, 113, 57 S Ct 345, 81 L Ed 540 (1937)).

Over the last five decades, electric service has been provided to On-Project and Off-Project irrigators and pumpers in the Upper Klamath River Basin in Oregon at discounted rates pursuant to the On-Project and Off-Project agreements. The rates under these agreements are dramatically lower than rates paid by irrigators outside the Klamath Basin and drastically below the short- and long-run costs necessary to provide service to the customers.

While the rates for most of the Klamath Customers under the On-Project and Off-Project agreements are 0.6 and 0.75 cents per kWh, respectively, the overall average cost to serve PacifiCorp Oregon irrigation customers is 10.25 cents per kWh. PPL/1700, Anderberg/3. "That is, the average cost to serve irrigation customers is 13 to 17 times greater than the rates being paid by most of the customers in these two groups." *Id.* Staff witness William A. McNamee, who also concluded that the rates under the agreements do not satisfy the "just and reasonable" standard under ORS chapters 756 and 757, compared the rates under the agreements to the rates paid by other Oregon irrigators under Schedules 41/200.

Staff/1500, McNamee/18-19. Mr. McNamee observed that the rates under the agreements are less than one-tenth of the Schedule 41/200 rates, which are representative of the cost to serve irrigation customers in PacifiCorp's Oregon service territory. *Id.*

Because the current rates under the On-Project and Off-Project agreements are less than one-tenth of the rates paid by other irrigators, and because the current contract rates fail to cover the relevant cost of service, the current rates are not "just and reasonable" under ORS chapters 756 and 757. *Midland Co.*, 300 US at 113, (commission has duty to disapprove contract rate that fails to cover relevant cost of service).

b. The Klamath Customers Should Be Included in the Standard Class of Irrigation Customers.

Schedule 41 is applicable to agricultural pumping loads under 1,000 kW. PPL/1214, Griffith/6. Thus, by its terms, Schedule 41 is the rate schedule that should be applied to all but one of the Klamath Irrigators.[1] All other Klamath Basin irrigation customers have load characteristics similar to those irrigation customers served under Schedule 41: they take service for agricultural pumping and are seasonal in nature; the majority of their usage occurs in the summer; nearly all of them take service at secondary distribution voltage; and the aggregate annual load factors for both groups are between 12 and 13 percent. PPL/1700, Anderberg/5. There are no service characteristics that differ significantly from other Oregon irrigation customers. *Id.*

KOPWU and KWUA's recommendations for a separate rate classification is essentially a proposal for zonal rates for a subgroup of Oregon customers based on geographic location and on slight differences in average per kWh costs for those customers. PPL/1216, Griffith/2. The higher energy usage of the Klamath Irrigators does not provide a

[1] PacifiCorp identified one Klamath Irrigator that has a load size of 1,000 kW or greater, which qualifies for service under Schedule 48. PPL/1700, Anderberg/4-5.

sufficient justification for a separate customer class. PPL/1700, Anderberg/6; Staff/1502, McNamee 9-10. KWUA's suggestion that the Klamath Irrigators should be served under a rate schedule separate from Schedule 41 is based on the fact that their energy use is higher than the average Schedule 41 customer's use, and the premise that higher-use customers should pay a lower per-unit rate for delivery-related costs than lower-use customers because those costs are generally fixed and therefore can be spread over more kWhs. Yet, KWUA witness Donald Schoenbeck's proposal would lead to a large irrigation customer located near Medford paying a higher per-unit rate than a smaller Klamath Irrigator—a result contrary to his assertion that the per-unit cost of large customers should be lower than that of small customers. PPL/1703, Anderberg/1-2; Schoenbeck Cross-Examination, Tr. at 206-07 (agreeing that proposal would result in different rates for irrigators in Klamath Basin than irrigators in Medford despite no differences in their load characteristics).

As stated by Mr. McNamee, "Given that ORS 757.310(1)(b) prohibits utilities from charging different rates to customers with substantially similar service requirements and conditions, the Klamath Irrigators contention that they merit a separate customer classification should be rejected." Staff/1502, McNamee 9-10.

c. The Klamath Customers Have Not Provided Substantial Evidence to Justify a Different Rate than the Standard Irrigation Tariff.

(i) The Histories of the KIP and the Klamath Hydroelectric Project Do Not Provide a Basis for Discounted Electric Rates.

KWUA provides considerable testimony and documentation regarding the histories of the KIP and the Klamath Hydroelectric Project in an attempt to support its claim that PacifiCorp "induced" the federal Department of Interior ("Interior") to forgo its own power development on the Klamath River by agreeing to deliver power to the KIP at PacifiCorp's cost of generation at its Klamath Hydroelectric Project. KWUA/200, Kandra/3, 7. KWUA's claim is based on a faulty premise that does not provide a basis for continuing discounted electric rates past the expiration of the 1956 USBR Contract.

KWUA's assertion that Reclamation "allowed" PacifiCorp to develop power along the Klamath "in lieu of Interior doings so" (KWUA/200, Kandra/3) is unsupported by the record. Although it is not disputed that Reclamation has, at times, had plans regarding hydroelectric development along the Klamath, such development was never authorized, and Interior was never authorized to "allow" PacifiCorp to develop the hydroelectric projects. PPL/1900, Richardson/9-10. Having plans for hydroelectric development is a far cry from actually having the authority to carry out those plans. Richardson/13 (commenting on hundreds of proposed projects that included hydroelectric as one of their purposes but were not completed or authorized for construction).

KWUA's suggestion that the USBR Contract and the purported benefits to PacifiCorp's customers from the hydroelectric development along the Klamath River created a perpetual obligation to provide low-cost power to KWUA's members is likewise unsupported by the record. The undisputed fact is that the USBR Contract has a finite life: it will expire April 16, 2006. Order 05-726 at 1 (June 6, 2005); PPL/1900, Richardson/16. Notwithstanding KWUA's assertion that the USBR Contract "was intended to govern PacifiCorp's operation of the Project until a new license is issued" (KWUA/200, Kandra/11), the contract has a specific 50-year term, and FERC has determined that following its expiration on April 16, 2006, PacifiCorp will no longer have any rights or obligations under the contract. Order Denying Petition for Declaratory Order and Issuing Notice of Proposed Readjustment of Annual Charges for the Use of a Government Dam, Jan. 20, 2006, Project Nos. 2082-039, 2082-040; PPL/1908, Richardson/10-11. Although the parties to the USBR

Contract could have negotiated a longer term,[2] they did not. KWUA cannot now rewrite the contract so as to extend PacifiCorp's obligations past its expiration date.

KOPWU also suggests that the existence of the Off-Project Agreement provides a basis for the continuation of the discounted rates. KOPWU argues that the Off-Project Agreement has no expiration date, and that the Off-Project Irrigators have made significant investment in pumping and sprinkler systems based on the expectation that the contract rates would continue, apparently in perpetuity. KOPWU/100, Bartell/6, 8, 14. However, the record shows that the Off-Project Irrigators have understood for at least 40 years that the Off-Project Agreement would not continue indefinitely, and that, in any event, their rates were subject to change. *See* PPL/1216, Griffith/4-5 (testifying that, for at least 40 years, irrigators have been signing electric service agreements that expressly state that rates are subject to change, and that since 2002 irrigators have been entering into contracts that expressly state, "Customer agrees to pay Company for deliveries hereunder at the rate of 0.75¢ per kwh in accordance with said contract, dated April 30, 1956, and then at the rate given in the effective *succeeding contract, or applicable state tariff rate.*" (emphasis added)).

Moreover, even assuming that Off-Project irrigators invested in systems with the expectation that the contract rate would continue in perpetuity, such expectation was not reasonable. As this Commission recognizes, contract rates are subject to change as a matter of law. *See* Order 05-726 at 4 (citing *American Can Co.*, 28 Or App at 224). *American Can* held that the Commission's duty to set just and reasonable rates cannot be constrained by

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[2] Indeed, the FERC license requirement was for an agreement "covering a time period *at least* equivalent to the time period of this license." KWUA/200, Kandra/11 (emphasis added). Even if it were true that "the 1956 Contract—and particularly the power rate stated in the contract—was the consideration for PacifiCorp's right to develop the Klamath Hydroelectric Project in its current form" (KWUA/200, Kandra/12), KWUA erroneously assumes that the consideration must continue past the term of the contract. As FERC determined, the rights and obligations under the contract end upon its expiration. Consideration to the government in the form of government dam use charges is addressed below in Section 3.

private contracts between a utility and its customers. 28 Or App at 221-23. Thus, KOPWU's suggestion that the existence of the Off-Project Agreement somehow justifies a departure from cost-based and non-discriminatory rates is contrary to the law and the evidence.

(ii) Nor Have the Klamath Customers Proven That They Provide a Benefit That Justifies Discounted Electric Rates.

KWUA and KOPWU argue that they should receive recognition or "credit" for purported value attributable to increased generation that they assert results from their irrigation activities. KWUA proposes a 6.4 cents per kWh hydro value credit, which, applied to a cost-based standard rate of 7.7 cents, yields a rate for KWUA irrigators of 1.3 cents per kWh. KWUA/102, Schoenbeck/10. KOPWU proposes that the Commission recognize the "incremental value" of the generation purportedly made possible by KOPWU members as a basis for approving continuation of the rate in the Off-Project Agreement. KOPWU/300, Iverson/7. Alternatively, if the Commission decides to alter the rate for the Off-Project Irrigators, KOPWU proposes that the Commission recognize the "incremental energy production" provided by the Off-Project Irrigators when setting new rates. *Id.*

For all intents and purposes, both groups are making a claim for compensation or credit for the generation they purportedly make possible by providing increased flow in the Klamath River above Keno. The record simply does not contain evidence supporting these claims. Not only do they fail to demonstrate the quantity, if any, of increased flow attributable to their activities, they also fail to account for whether PacifiCorp may actually use the purported increases in flow to generate electricity. *See* PPL/1802, Smith/7-8 (testifying that minimum flow requirements and ramping rates make additional water of little or no value for generation).

(1) KWUA's Claims of Increased Water Flow Resulting in Additional Generation Are Seriously Flawed.

KWUA claims that the KIP provides an average water year benefit of 261,000 acre feet of increased flow available for potential generation in the Klamath River above Keno.

KWUA/300, Van Camp/3. KWUA claims that this increased flow is attributable to the following three activities of the On-Project Irrigators: (1) introduction of water from the Lost River Basin to the Klamath River;[3] (2) return of waters in excess of KIP needs to the Klamath River,[4] and (3) storage and withdrawal of water.[5] KWUA/300, Van Camp/3.

KWUA does not calculate the quantity of water provided from theses activities. Instead, KWUA's hydrology expert, Marc Van Camp, compared monthly "adjusted" net inflow at Upper Klamath Lake with monthly flow at Keno, and attributed any positive differences to KWUA. KWUA/300, Van Camp/13, 17-21. In other words, KWUA's calculation compares point A ("adjusted" net Upper Klamath Lake inflow) to point B (flow at Keno) and presumes that KWUA is responsible for all positive differences between the two points. *Id.*; Van Camp Cross-Examination, Tr. at 177.

KWUA's methodology includes an adjustment to net Upper Klamath Lake inflow that counts as a benefit any water that KWUA members could have used (*i.e.,* estimated consumptive demand) but which they did not use or which they returned to the Klamath

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[3] KWUA claims that the KIP causes water from the Lost River reservoirs and Lost River Diversion Channel to be stored and diverted to irrigation use and that the excess flows to the Klamath River. KWUA/300, Van Camp/6. KWUA claims that the KIP is responsible for diverting this water from its natural drainage into Tule Lake to the Klamath River above Keno. *Id.* Thus, KWUA claims, but for the KIP, Lost River water would not have flowed to the Klamath River. *Id.* at 16.

[4] KWUA claims that the Klamath system goes to great lengths to store, reuse, and return irrigation water above Keno. KWUA/300, Van Camp/8-10. Water exceeding the needs of the KIP is then used by other irrigators and the Lower Klamath National Wildlife Refuge. Water exceeding these users' needs is then returned to the Klamath River. *Id.* at 11.

[5] According to KWUA, controlled storage benefits PacifiCorp by increasing the usable supply by allowing storage during high run-off periods for use at other times. KWUA/300, Van Camp/14. The KIP stores Klamath River water and return flow for later irrigation use and use by the Lower Klamath Natural Wildlife Refuge. Any excess is returned to the Klamath River. KWUA/300, Van Camp/12-13. Water is collected for storage at Upper Klamath Lake, Lost River Dam, Lake Ewauna, and Tule Lake. KWUA/300, Van Camp/11.

River. KWUA/300, Van Camp/13 (stating that methodology captures effect of water not being diverted).

KWUA's estimated 261,000 acre feet of increased flow is overstated as a result of at least four errors:

1. KWUA's methodology incorrectly attributes all flows between Upper Klamath Lake and Keno to KWUA. This is despite the fact that natural flows and flows from other sources drain into the Klamath River between Upper Klamath Lake and Keno.

2. KWUA's methodology incorrectly accounts for increases in flow while disregarding decreases. That is, KWUA arrives at 261,000 acre feet by summing all increases in flow and counting them as a benefit, but does not count any decreases in flow as a detriment.

3. KWUA's methodology fails to consider whether the increases in flow are usable. That is, the methodology counts all assumed increases in flow without regard to whether they occur during high water periods or other times, when they provide little or no benefit to PacifiCorp's hydroelectric system.

4. KWUA's methodology incorrectly adjusts net Upper Klamath Lake inflows in order to not "penalize" KWUA members for exercising their water right. This adjustment is technically and legally flawed. It both overestimates the KIP's consumptive use and disregards the fact that, under Oregon water law, the KIP has no rights in return flow or water that it does not in fact use.

(a) KWUA's Methodology Incorrectly Attributes All Flows Between Upper Klamath Lake and Keno to KWUA.

KWUA's claimed benefit of 261,000 acre feet rests on the assumption that the difference between adjusted net inflow at Upper Klamath Lake and the flow at Keno is entirely attributable to the KIP. Van Camp Cross-Examination, Tr. at 177. Rather than calculating the quantity of water provided from KWUA's activities, KWUA's hydrology expert, Mr. Van Camp, instead arrived at the 261,000 acre feet figure by comparing the adjusted net inflow at Upper Klamath Lake with the flow at Keno, and attributing any positive differences to KWUA. KWUA/300, Van Camp/17-21. In other words, Mr. Van Camp's calculation assumes that, when Keno flow is higher than the adjusted net Upper Klamath Lake inflow, the difference constitutes water provided by the KIP. Van Camp

Cross-Examination, Tr. at 177 (agreeing that KWUA's estimate includes all increases in flow between Upper Klamath Lake and Keno); KWUA/300, Van Camp/21.

By counting all increases in flow between Upper Klamath Lake and Keno, KWUA's estimate (261,000 acre feet) includes increased flow attributable to sources other than the KIP. For example, under this approach, KWUA appropriates for On-Project customers the increases in flow attributable to the larger natural drainage basin around Keno. PPL/2100, Karpack/4-5 (USGS statistics for runoff per square mile show that Keno natural flow would be approximately 33,000 acre feet greater than Upper Klamath Lake natural flow). KWUA's estimate also captures increases in flow attributable to other sources, including activities of the Reclamation Project or Off-Project Irrigators to the extent that such activities increase flows between Upper Klamath Lake and Keno. PPL/2100, Karpack/5; KOPWU/202, Rozaklis/25 (Off-Project Irrigators provide return flows that enter the Klamath River at Keno); Reclamation/Service/2, Lesley/6 (Reclamation Project provides return flows that enter the Klamath River via drains between Upper Klamath Lake and Keno). Thus, to the extent that increased flow between Upper Klamath Lake and Keno is attributable to other sources, KWUA has overestimated the benefit from increases in flow attributable to KWUA members.

(b) KWUA's Methodology Overstates Return Flows by Counting Increases in Flow While Disregarding Decreases.

Mr. Van Camp arrived at his 261,000 acre feet estimate by summing all months with increased flow and averaging those increases over a period of 51 years. KWUA/306, Van Camp/1; Van Camp Cross-Examination, Tr. at 179-80. For any month in which Keno flow was the same or less than adjusted net Upper Klamath Lake inflow, Mr. Van Camp counted that month as zero. KWUA/306, Van Camp/1; Van Camp Cross-Examination, Tr. at 180-82. In other words, if the KIP took 100 acre feet of water out of the Klamath River in one month, causing a 100 acre feet decrease in flow, Mr. Van Camp counted that month as zero; and, if

the KIP put that same water back the next month, Mr. Van Camp counted that month as an increase of 100 acre feet. Van Camp Cross-Examination, Tr. at 182-83; KWUA/300, Van Camp/21 (when Keno flow is the same or less than adjusted net Upper Klamath Lake inflow, it is depicted as a "blank"); KWUA/306, Van Camp/1 (showing "blanks" 3-6 months per year). *See also* PPL/2100, Karpack/3-4 (criticizing KWUA methodology for failing to count as detriment withdrawals that decrease flow while counting as benefit that same water when it provides return flow in later months). Thus, to the extent that Mr. Van Camp counts increases but disregards decreases, KWUA has overestimated the benefit of any increase in flow attributable to KWUA members.[6]

(c) KWUA's Methodology Fails to Consider Whether Increases in Flow Provide Usable Generation.

KWUA's methodology would be relevant to its claim for a discounted rate only if proven increases in flows provide an actual benefit to PacifiCorp; namely, if increased flows can actually be used by PacifiCorp to generate electricity. PPL/1802, Smith/4, 6. Instead, KWUA's methodology counts all assumed increases in flow without regard to whether they actually provide a benefit to PacifiCorp's hydroelectric system.

Despite this fact, the 261,000 acre feet figure does not reflect *any* adjustments to account for flows that are, in fact, not usable. Although Mr. Van Camp stated in his Direct Testimony that his calculation *does not* assume all increased flow is used for generation, (KWUA/300, Van Camp/16), he acknowledged the inaccuracy of this statement at the hearing. Van Camp Cross-Examination, Tr. at 190-93. Mr. Van Camp explained that he relied on Mr. Schoenbeck to adjust the increased flow figure to account for unusable flow.

[6] KWUA's assertion that this is correct because the irrigators have a prior water right to use the water is irrelevant to this outcome. As further discussed in Section 1(c)(ii)(1)(d) below, water consumed by KWUA members by definition does not return to the river for potential use in generation, and thus should be properly deducted from flow calculations.

Id. (testifying that he left it for somebody else to determine if the estimated increased flow actually resulted in any power benefit). Nor did Mr. Schoenbeck make any adjustment for unusable flow. Instead, Mr. Schoenbeck counted "every single drop" of assumed increase in flow without regard to whether it actually provides a benefit to PacifiCorp's hydroelectric system. Schoenbeck Cross-Examination, Tr. at 211. Thus, to the extent that increased flow occurred during high water periods or other times when PacifiCorp could not use the increased flow for generation, KWUA has overestimated the benefit from increases in flow between Upper Klamath Lake and Keno.

(d) KWUA's Methodology Incorrectly Assumes That the KIP's Water Rights Create an Entitlement in Unused Water That Should Be Counted as a Benefit to PacifiCorp's System.

Mr. Van Camp adjusted the Upper Klamath Lake inflow data by reducing it by an amount equal to the KIP's full theoretical consumptive use. KWUA/300, Van Camp/18-19. In other words, Mr. Van Camp subtracted an estimate of the KIP's theoretical water consumption[7] from the Upper Klamath Lake inflow figures. *Id.*; Van Camp Cross-Examination, Tr. at 184.

This adjustment is flawed in at least two respects: (1) its underlying premise disregards Oregon water law, pursuant to which the KIP has no rights in return flows or water that it does not *in fact* use for beneficial purposes; and (2) it overestimates the KIP's theoretical consumptive use.

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[7] "Consumptive use" is the amount of water consumed by the land. It includes water consumed by the crops on the land (crop use) and water that evaporates (evapotransporation). Van Camp Cross-Examination, Tr. at 185. Mr. Van Camp did not calculate the KIP's consumptive use by analyzing the actual amount of water used. Rather, he calculated the KIP's full theoretical consumptive use by estimating the amount of KIP land (*i.e.*, crop acreage) and then estimating consumptive use for such crop acreage. He did not consider whether the irrigators actually use that amount of water. *Id.* at 186-87, 190 ("I did not verify the diversions were actually made"); KWUA/300, Van Camp/18.

1. Disregards Oregon Water Law. By reducing net Upper Klamath Lake inflows by the amount of the KIP's full theoretical consumptive use, Mr. Van Camp effectively credits KWUA for any water that it theoretically *could have used*, but either did not divert from the river or diverted but returned to the river between Upper Klamath Lake and Keno. To illustrate, if net Upper Klamath Lake inflow were 100 acre feet, KIP's full theoretical consumptive use were 40 acre feet, and flow at Keno were 100 acre feet, Mr. Van Camp's methodology would recognize a 40 acre feet *increase* in flow at Keno, even though net Upper Klamath Lake inflow and flow at Keno were the same.[8]

Mr. Van Camp testified that he reduced net Upper Klamath Lake inflows by KWUA's full theoretical consumptive use in order "not [to] penalize the Project for exercise of its senior water rights. Exercise of these rights is treated as part of the baseline condition as it relates to Klamath Project operations." KWUA/300, Van Camp/19; Van Camp/18 ("I have taken into consideration that the water rights for the Klamath Project represent water to which the Klamath Project has a right that is senior to PacifiCorp's generation facilities.").

However, the assumption that the KIP's water rights create a compensable benefit or entitlement in unused or excess water is contrary to Oregon water law. Under Oregon water law, unused and excess water belongs to the public. *See* ORS 537.110 ("[a]ll water within the state from all sources of water supply belongs to the public"). Unused water belongs to the public because the right to use water is itself a usufructuary right; that is, it is not a right in the water itself, but rather a right to use the water for a beneficial purpose. ORS 540.610 ("[b]eneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state"); *Saylor v. Water Resources Dept.*, 100 Or App 745, 746, 788 P2d 494 (1990). Thus, all waters in excess of that beneficial purpose (*i.e.*, return flow and water left in the

[8] Keno Flow of 100 – (Net UKL Inflow of 100 – Theoretical Consumptive Use of 40) = Increased Flow of 40.

streams and rivers) belong to the public. *Jones v. Warmsprings Irr. Dist.*, 162 Or 186, 195, 91 P2d 542 (1939). In *Jones*, the Oregon Supreme Court explained:

> "Where, after use by a prior appropriator, water is discharged into a stream for the purpose of drainage or as a convenient method of disposing of it, and without any intent upon the part of the owner of the right to reserve or recapture it, it works an abandonment of such water, and the water thus discharged becomes a part of the natural stream, and is subject to reappropriation and to the same rights as the water naturally flowing therein, and can not afterward be taken out by the original appropriator to the injury of other rights which have attached and vested to it."

Id.; *see also Dry Gulch Ditch Co. v. Hutton*, 170 Or 656, 680, 133 P2d 601 (1943) ("When possession of the actual water * * * has been relinquished or lost, by overflow or discharge after use, property in it ceases; the water becomes again nobody's property and re-enters the negative community, or 'belongs to the public' * * * ." (quoting Vol. 1, Wiel, *Water Rights* (3d ed.) at 36, § 37)).

Thus, KWUA members' rights in the water are limited by their actual beneficial use of the water. KWUA members retain no right in the water they do not in fact use for a beneficial purpose. All waters in excess of their beneficial use—*i.e.*, return flow and water left in the river—therefore belong to the public and cannot rightly be said to create an entitlement that should be counted as a benefit to PacifiCorp's system.

2. Overestimates Consumptive Use. Moreover, even if KWUA's underlying premise were not flawed, the adjustment is nevertheless erroneous because Mr. Van Camp overestimates the full theoretical consumptive use of KWUA members' crop acreages. First, he fails to account for the fact that some of the consumptive use of the KWUA members' crop acreage is satisfied by rainfall. Van Camp Cross-Examination, Tr. at 185-86; PPL/2100, Karpack at 8 (National Weather Service data shows 57,800 acre feet of rain for Klamath Project acreage during the irrigation season). Second, he fails to account for limitations on the KIP's ability to take water. For example, Mr. Van Camp does not adjust

his consumptive use figures to account for any legal restrictions on timing, amount, and use of water, and he does not adjust his consumptive use figures to account for capacity limits of the physical infrastructure to divert and convey water to all points of demand at all times of demand. Van Camp Cross-Examination, Tr. at 189; PPL/2100, Karpack/4.

(2) KOPWU's Claims of Increased Water Flow Resulting in Additional Generation Are Also Seriously Flawed.

KOPWU claims that pumping of water for irrigation and drainage purposes on Off-Project lands by KOPWU's members provides PacifiCorp with at least 131,000 acre feet per year of increased supply for hydropower generation. KOPWU/200, Rozaklis/3. KOPWU's hydrology expert, Louis T. Rozaklis, calculated this purported increase in flow by combining estimates of the amount of return flow from groundwater pumping and estimates of the decrease in consumptive use of drained agricultural lands compared to pre-development wetlands. Both estimates are askew.

Specifically, Mr. Rozaklis estimated the amount of return flow from groundwater pumping by: (1) estimating the amounts and locations of groundwater-supplied Off-Project lands (KOPWU/200, Rozaklis/9); (2) estimating the amount of consumptive use of those lands (Rozaklis/13); (3) estimating the amount of water irrigators would pump to meet that consumptive use (*id.* at 12); and (4) estimating the amount of excess water (*id.*). Using this methodology, Mr. Rozaklis concludes that groundwater pumping by KOPWU members results in approximately 73,000 acre feet of excess water annually. KOPWU/200, Rozaklis/3-4. Mr. Rozaklis's computation assumes that all excess water from groundwater pumping increases flow in the Klamath River above Keno. KWUA/202, Rozaklis/14-15 (stating that groundwater return flow either drains to Klamath River or helps meet demands of other users, thereby decreasing withdrawals from Klamath River). Thus, Mr. Rozaklis concludes that groundwater pumping by KOPWU members contributes 73,000 acre feet per year of increased flow to the Klamath River. KOPWU/200, Rozaklis/3-4.

Mr. Rozaklis estimated the amount of increased flow in the Klamath River attributable to drainage of Off-Project lands by KOPWU members by: (1) estimating the amounts and locations of Off-Project lands that were previously marsh and open water lands; (2) estimating the amount of consumptive use of those lands in their pre- development state—*i.e.,* as marshes and open water—and in their post-development state—*i.e.,* as crop acreages; and (3) multiplying the difference between pre- and post-development consumptive use by the amount of Off-Project lands that were previously marshes and open water. Rozaklis/17-21. Using this methodology, Mr. Rozaklis concludes that drained Off-Project lands use approximately 58,000 acre feet less water annually than those lands used when they were natural wetlands. *Id.* at 6. Thus, Mr. Rozaklis concludes that drainage by KOPWU members contributes 58,000 acre feet per year of increased flow to the Klamath River. *Id.*

KOPWU's estimated 131,000 acre feet of increased flow is overstated as a result of at least 3 errors:

1. KOPWU fails to account for the connection between the groundwater aquifer and surface flows. That is, KOPWU counts return flows from groundwater pumping as added water, without any adjustment for the depletion of surface flows caused by groundwater pumping.

2. KOPWU's methodology underestimates the consumptive use of drained agricultural lands. Thus, KOPWU overstates the amount of increased water resulting from drainage.

3. KOPWU's methodology fails to consider certain timing issues related to water diversions and return flows, despite the fact that timing is integral to the existence of benefit, because increased flow during high water periods provides little to no benefit.

(a) KOPWU's Methodology Incorrectly Assumes That Pumping from Groundwater Wells Adds Water to the Klamath River.

KOPWU's methodology treats water transferred from the groundwater aquifer to the Klamath River as water added to the river system, without regard to the fact that withdrawals from the groundwater aquifer *deplete river flows*. In other words, KOPWU counts all return flow from groundwater pumping as increased flow in the Klamath River. Rozaklis Cross-

Examination, Tr. at 238 (return flow is calculated by subtracting crop use from volume of water pumped); *id.* at 233 (agreeing that computation did not account for impact of groundwater pumping on surface flows). Thus, Mr. Rozaklis's computation of the supposed system benefit from groundwater pumping ignores the connection between groundwater pumping and surface flows in the Upper Klamath Basin. *Id.* at 233-34 (acknowledging that groundwater aquifer and surface flows are hydraulically connected such that pumping from groundwater aquifer depletes stream flows); PPL/2002, Deverel/5 ("Increased pumping from the basalt aquifer decreases water levels and actually reduces groundwater inflows to the rivers and springs.").

Mr. Rozaklis suggests that the connection between the groundwater aquifer and surface flows is sufficiently remote and lagged to justify ignoring it. Rozaklis Cross-Examination, Tr. at 233-34; KOPWU/202, Rozaklis/8, 15. However, rather than showing that the connection is remote and lagged, the evidence shows that the connection is direct and proportional. *See, e.g.,* KOPWU/609 (Oregon Water Resources Department Report ("Grondin Report"), concluding that hydraulic connection between deep groundwater aquifer and surface flows in eastern Lost River subbasin is direct and proportional; summarizing numerous reports that confirm hydraulic connection); ONRC et al./403-06 (denials and proposed denials of applications for groundwater pumping in Williamson and Lost river subbasins on basis that groundwater pumping depletes surface flows); PPL/2002, Deverel/7-10 (citing studies that conclude that surface flows in Sprague River subbasin and Lost River subbasin are directly affected by pumping from deep groundwater aquifer); Deverel/23 (depicting sources of water derived from pumping wells). Mr. Rozaklis's failure to adjust his computation of increased flow to account for depletions caused by groundwater pumping renders meaningless his conclusions about benefits from groundwater pumping.

(b) KOPWU's Methodology Underestimates the Consumptive Use of Drained Agricultural Lands, Thereby Overstating the Amount of Increased Water Resulting from Drainage.

As explained above, Mr. Rozaklis also concludes that drainage of Off-Project lands provides increased flow in the Klamath River, because those lands used more water in their natural wetland condition than they use in their drained agricultural condition. KOPWU/202, Rozaklis/22. Mr. Rozaklis attributes this decrease in consumptive use to a number of factors, including assumptions about the evaporation of water from marshes and open water areas compared to agricultural lands, and about the consumption of water by wetland plants compared to agricultural crops. Rozaklis/17.

Mr. Rozaklis's calculation underestimates the consumptive use of drained agricultural lands, thereby overstating the difference between pre- and post-development consumptive use by as much as 50%. PPL/2002, Deverel/12. Mr. Rozaklis's calculation assumes that the consumptive use of drained agricultural lands between November and March is zero. He claims that the lands have zero consumptive use during this time because they are drained (thus no evaporation) and no crops are growing (thus no crop consumption). KOPWU/202, Rozaklis/20-21. However, the evidence actually shows that drained agricultural lands consume at least some water during the winter. PPL/2002, Deverel/12 (citing studies showing that consumptive use of drained agricultural lands in Upper Klamath Basin during winter range from 0.12 to 1.5 inches per month). Moreover, at least some of the drained Off-Project lands are allowed to flood during the off-season. *Id.*; Deverel Cross-Examination, Tr. at 60 (interviews with USGS and Oregon State University Klamath County Extension employees confirm that some drained Off-Project lands are allowed to flood between November and March). Because flooded land consumes more water than off-season drained land, Mr. Rozaklis's inaccurate assumption that all drained Off-Project lands are not allowed to flood between November and March results in an underestimate of the amount of post-

development consumptive use. PPL/2002, Deverel/12; Rozaklis Cross-Examination, Tr. at 244-45 (agreeing that benefit from drainage is overestimated if some Off-Project drained lands are allowed to flood during off-season).

(c) KOPWU's Methodology Fails to Consider Certain Timing Issues Related to Water Diversions and Return Flows.

During high run-off periods, increased stream flow provides little or no hydroelectric generation value. Notwithstanding this fact, Mr. Rozaklis's computation does not account for times when increased flow occurs during high run-off periods. *See* Rozaklis Cross-Examination, Tr. at 239-40 (agreeing that increased flows during high run-off periods has decreased likelihood of providing value). Instead, Mr. Rozaklis makes a series of assumptions regarding the timing of return flows and concludes from these assumptions that most return flows occur during low stream flow periods. KOPWU/202, Rozaklis/14.

The evidence indicates that Mr. Rozaklis's analysis contains significant errors regarding the timing of return flows. For example, the Grondin Report indicates that Mr. Rozaklis underestimated by as much as fifty fold the transmissivity (*i.e.*, the capacity of the upper aquifer to transmit water). PPL/2002, Deverel/10-11 (citing Grondin Report). The amount of time it takes subsurface return flows to move through the aquifer to streams and drains is directly proportional to the aquifer transmissivity. PPL/2002, Deverel/10-11 (citing Grondin Report); KOPWU/609 (excerpt from Grondin Report); ONRC et al./401 (executive summary of Grondin Report); *see also* PPL/2002, Deverel/12-13 (stating that timing of diversions and return flows from drained lands should be considered). These errors cast further doubt on the reliability of KOPWU's estimates.

(3) In any Event, Increased Flow from Pumping and Storage, if It Exists, Does Not Provide a Reasonable Basis for Discounted Electric Rates.

Even if the Klamath Customers had established with substantial evidence a quantity of increased water flow in the Klamath River that could be used for additional generation,

they have not established a reason why they should be compensated for such flow. Increased flow that is merely incidental to the Klamath Customers' normal course of business does not provide a reasonable basis for shifting the cost of serving the Klamath Customers to PacifiCorp's other customers.

The Klamath Customers attribute value to quantities of water as though all the water is being provided for the purpose of benefiting PacifiCorp. However, the Klamath Customers have not provided evidence of the quantity, if any, of increased flow in the Klamath River that was provided for any purpose other than meeting their own irrigation, drainage or other needs.[9]

The Klamath Customers' claims for compensation for added water to the Klamath River are akin to residential customers, who, for their own motives, installed compact fluorescent lighting in their homes, claiming a credit based on the benefit of reduction in peak demand. There is no rational basis for providing such compensation. The Commission should not require PacifiCorp to compensate customers for undertaking their usual activities—that is, doing what they would do whether or not they were compensated by PacifiCorp. As Mr. McNamee explains:

> "[T]he USBR and other irrigators should not be compensated for return flows resulting from drainage and flood control practices that are necessary to maintain the agricultural usefulness of the KIP lands. These are not activities that the irrigators are directly undertaking for PacifiCorp's benefit."

Staff/1502, McNamee/13.

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[9] For example, KWUA bases its computation of "benefit" in part on the "introduction of water from the Lost River Basin to the Klamath River." KWUA/300, Van Camp/3. However, the Lost River Diversion Dam and Diversion Channel was constructed to allow the diversion of the Lost River into the Klamath River in 1912, five years before the 1917 contract. KOPWU/400, Bartell/3. Thus, KWUA is claiming benefits for aspects of the KIP that have no connection to Reclamation's supposedly allowing PacifiCorp to construct hydroelectric facilities in lieu of Interior doing so.

Not only do the Klamath Customers' claims for compensation fail to recognize that water flows as a result of normal irrigation and pumping activities, they also fail to recognize the legal obligation that return flow be returned to the Klamath River above Keno. The Klamath River Compact contains the following requirements:

> "That water diverted from Upper Klamath Lake and the Klamath River and its tributaries upstream from Keno, Oregon, for use in Oregon and not consumed therein and appearing as surface *return flow and waste water within the Upper Klamath River Basin shall be returned to the Klamath River or its tributaries above Keno*, Oregon." ORS 542.620, Art. III.B.2(b) (emphasis added).

> "That substantially all of the return flows and waste water finally resulting from [diversions from the Klamath River within the Upper Klamath River Basin for use in California] and use appearing as surface waters in the Upper Klamath River Basin *shall be made to drain so as to be eventually returned to the Klamath River upstream from Keno*, Oregon." ORS 542.620, Art. III.B.3(b) (emphasis added).

KWUA cannot claim an intent to benefit PacifiCorp when its actions merely follow from its legal obligation. KWUA acknowledges that "[w]ater is diverted from the Klamath River system for use in the Klamath Project." KWUA/300, Van Camp/7. Thus, inasmuch as KWUA has "accounted for, or provided credit for, . . . water use from the Klamath River" that is then made available at Keno, KWUA is seeking compensation from PacifiCorp for KWUA's members complying with the law. KWUA/300, Van Camp/13.

Moreover, KWUA and KOPWU appear to count as a benefit tens of thousands of acre feet of pumped groundwater (approximately 74,000 in 2005) for which Reclamation has already paid the irrigators millions of dollars ($4 million in 2005). PPL/2200 (USBR response to PacifiCorp Data Request).

Similarly, Reclamation/Service seeks reduced electric rates (without specifying the desired reduction) on the basis that water storage that occurs in Reclamation facilities allow for increased flows in the Klamath River, and that it provides additional water to the Klamath River above Keno as a result of its pumping activities. Reclamation/Service/2, Lesley/6.

The activities of Reclamation/Service are presumably conducted pursuant to requirements imposed by laws and regulations related to the operation of the Irrigation Project and the refuges. In any event, the record contains no evidence that activities of Reclamation/Service occur for the purpose of providing a benefit to PacifiCorp for which the government is entitled to compensation from PacifiCorp's other customers.[10]

To the extent the Klamath Customers are claiming entitlement to a credit for increased flows in the Klamath River that would not occur but for the reduced rates they receive, their claim cannot be supported by the record in this case. There is simply no evidence in the record quantifying the amount of increased flow that occurs as a result of the reduced rates—*i.e.,* the amount of increased flow that is beyond the amount that would normally occur due to the Klamath Customers' irrigation and pumping activities under standard tariff rates.

(4) The Irrigators Overvalued the Alleged Generation Resulting From Increased or Return Flow to the Klamath River.

KWUA and KOPWU both attempt to place a value on their asserted increased flows to the Klamath River by estimating the value of increased generation they believe results from that flow. Even assuming the accuracy of the Irrigators' estimates of increased flow quantity, the Irrigators' estimates of value from that increased flow are flawed in at least two fundamental respects: (1) the Irrigators overestimate the quantity of increased generation; and (2) the Irrigators overestimate the value of that generation.[11]

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[10] More than half of the increased flow asserted by Reclamation/Service is attributed to the Lost River Diversion Channel. Reclamation/Service/2, Lesley/6. Yet, as already noted (*see supra* note 9), that channel was built by the government five years before the 1917 Contract, and thus clearly has no connection with PacifiCorp.

[11] The quantities of generation assumed by both KWUA and KOPWU are also erroneous because of the overestimation of increased flow discussed above.

KWUA witness Mr. Schoenbeck bases his estimate of value on the assumption that "every single drop" of increased water results in additional generation. Schoenbeck Cross-Examination, Tr. at 211. That assumption is erroneous because, among other things: (1) it disregards the fact that incremental flow often exceeds generating capacity and must be spilled (PPL/1802, Smith/2; Schoenbeck Cross-Examination, Tr. at 211-13); (2) it fails to account for ramp rates (Schoenbeck Cross-Examination, Tr. at 213); (3) it disregards PacifiCorp's reservoir storage level commitments and downstream minimum flow requirements (PPL/1802, Smith/6-7); and (4) it fails to account for any costs (or at least decreased value) associated with unpredictable increases in flow (PPL/1802/Smith/7).[12] Simply put, Mr. Schoenbeck fails to take into account the realities of operating PacifiCorp's Klamath facilities and generation system. Therefore, it would be unreasonable to rely on his assumptions about increased generation. In fact, Mr. Schoenbeck himself characterizes his estimate as an "order-of-magnitude number." Schoenbeck Cross-Examination, Tr. at 211. In other words, he apparently believes his estimate may be inaccurate by a factor of ten. *Id.* Such "evidence" not only falls far short of substantial evidence, it warrants no consideration.

KOPWU's witness Mr. Rozaklis's estimate of 81,000 MWh of incremental energy is similarly flawed. Mr. Rozaklis fails to measure incremental flow increases and fails to adjust for the lack of predictability associated with any potential increased flow. PPL/1802, Smith/8. A sudden increase in Klamath generation, due to an unpredictable increase in flow, does not result in a system-wide increase in electricity generation. Rather, an unpredictable increase in Klamath generation would necessitate a reduction in generation at another plant in order to maintain system balance. Obviously, this shifting of generation does not provide any increase in incremental generation to PacifiCorp. *Id.*

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[12] Unpredictable increases in flow cause PacifiCorp to reduce generation at another plant to balance its system (in which case there is not an increase in the company's system generation). PPL/1802, Smith/7.

Using flawed estimates of incremental generation, both irrigator groups then exacerbate their errors by multiplying those quantities by erroneous energy values to arrive at estimates of annual values of the supposed increased water they have made available at Keno. Taking the average monthly volumes of the "incremental hydro associated with the development of the Klamath Basin" estimated by Mr. Van Camp, Mr. Schoenbeck calculates a market value of the "incremental water supply" purportedly provided by the On-Project irrigators. KWUA/102, Schoenbeck/10. Mr. Schoenbeck bases his valuation on forward market prices, without any explanation as to why such prices would be appropriate. *Id.* The price used by Mr. Schoenbeck was $62 per MWh, which was based on prices at Mid-C for firm transactions. PPL/1802, Smith/6. Similarly, KOPWU witness Kathryn Iverson calculates an incremental value for the 81,000 MWh estimated by Mr. Rozaklis. However, Ms. Iverson uses PacifiCorp's projected cost of replacement power from PacifiCorp's FERC license application, assuming PacifiCorp would have to buy replacement power if it were not able to generate power at the Klamath Hydroelectric Project. KOPWU/300, Iverson/7. Ms. Iverson values the estimated incremental generation at $68.86 per MWh. *Id.*

The values for the asserted incremental generation are seriously exaggerated. First, neither value accounts for the operational difficulties and risks attributable to unpredictable flow increases, which can occur in any hour of any day and, as such, have limited if any value to PacifiCorp. PPL/1802, Smith/4, 6, 8. Further, Mr. Schoenbeck's value of $62 per MWh is based on a "flat" price, reflecting a product that provides a constant level of energy, which is certainly not what unpredictable and fluctuating increases in flow on the Klamath River provide. *Id.* The even higher value assumed by Ms. Iverson, $68 per MWh, fails to account for the uncertainty associated with the relicensing effort, which will most likely have a detrimental effect on project flexibility, control and value. PPL/1802, Smith/8.

The value of increased generation due to purported increased flows at Keno is, at best, reflected by PacifiCorp's decremental generation costs, because unpredictable increased

hydro generation results in PacifiCorp backing down its generation elsewhere. PPL/1802, Smith/7-8. This figure must also be adjusted downward to reflect the likelihood of spill and increased operational risk. *Id.*

2. The Klamath Customers Should Be Transitioned from Historical Contract Rates in Accordance with SB 81 if They Are Moved to a Generally Applicable Cost-Based Rate Schedule.

There appears to be no dispute that the mitigation provisions of SB 81 are applicable if the Klamath Customers are moved from the historical contract rates to generally applicable cost-based rate schedules. PPL/1214, Griffith/3; Staff/1500, McNamee/19; KOPWU/300, Iverson /8-9; KWUA/102, Schoenbeck/13. PacifiCorp also agrees that the SB 81 rate mitigation applies to current metering points at which service is provided under the Klamath contract rates, even for new customers that take service at such metering points. Griffith Cross-Examination, Tr. at 103-04. Thus the only dispute is with respect to how SB 81 is to be applied.[13]

PacifiCorp and Staff recommend that the SB 81 rate credit should be equal to the difference between the net standard rate (*i.e.,* excluding the Schedule 98 BPA credit reduction) and the historical contract rate (6 mills for non-government irrigators under the USBR Contract; 5 mills (on-peak) and 3 mills (off-peak) for U.S. government pumps in the basin; 7.5 mills under the UKRB Contract) increased by 50%. Staff/1502, McNamee/16; PPL/1214, Griffith/4; PPL/1216, Griffith/7; PPL/1217.

In contrast, KOPUW proposes to include BPA benefits as part of the total charges in computing customers' SB 81-based Klamath contract rates, which has the effect of reducing the increase to the SB 81 Klamath contract rates to less than 50% per year. PPL/1216,

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[13] If the provisions of SB 81 are not applicable (such as if the customers are moved to a rate schedule that is not "generally applicable"), there are no other rate mitigation policies, rules, or statutes applicable to the Klamath Customers currently served under Schedule 33. Staff/1500, McNamee/19-20.

Griffith/5. The application of SB 81 proposed by KOPWU would dilute the BPA residential exchange benefits of customers qualified to receive the BPA credit. *Id.* Consistent with the Commission's past practice, the effects of the BPA credit must not be taken into account in setting the base rates of the Klamath Customers, and accordingly, the SB 81 implementation proposed by KOPWU must be rejected. *Id.*

Further, consistent with PacifiCorp's proposal for transitioning the Klamath Customers to Schedule 41 rates, the Commission should adopt the Company's proposal to increase the BPA credit for qualifying Klamath Irrigators by 0.08 cents per year for seven years, or until the BPA credit for those customers is equal to the credit being applied to other customers. PPL/1214, Griffith/5.

3. Implications of FERC's Proposal to Decouple Government Dam Use Charges from PacifiCorp's Retail Rates.

PacifiCorp identifies two potential implications from FERC's January 20, 2006 order, in which FERC determined that it would exercise its authority to readjust PacifiCorp's charges for the use of surplus water from the Link River Dam, and proposed to "decouple these charges from PacifiCorp's retail rates." PPL/1908, Richardson/11 (FERC Order Denying Petition for Declaratory Order and Issuing Notice of Proposed Readjustment of Annual Charges for the Use of a Government Dam, dated January 20, 2006).

First, the proposal to "decouple" the government dam use charges from PacifiCorp's retail rates suggests that the discounted rates provided in the 1956 USBR Contract have constituted the charge against PacifiCorp for use of the government dam (Link River Dam) or for "use of surplus water from the Link River Dam." *Id.* That is, the discounted rates for electric service to Reclamation/Service have been in lieu of a separately determined government dam use charge.

Second, the FERC order reflects that PacifiCorp will be compensating the government, other than through discounted electric rates, for its hydroelectric operations on

the Klamath River. Accordingly, double recovery by the government, through discounted electric rates in addition to the government dam use charges, would be inappropriate.

IV. CONCLUSION

For the reasons set forth above, PacifiCorp respectfully requests the Commission order that beginning April 17, 2006, the electric rates for the Klamath Customers will be those rates established in PacifiCorp's standard tariff schedules generally applicable in Oregon. Further, the Commission should order rate mitigation for the Klamath Customers under SB 81, as set forth above.

DATED: March 6, 2006.

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CERTIFICATE OF SERVICE

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

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