

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 UE 170

4 In the Matter of

5 PACIFIC POWER & LIGHT COMPANY
6 (dba PacifiCorp)

7 Request for a General Rate Increase in the
8 Company's Oregon Annual Revenues

9 (Klamath Basin Irrigator Rates)

STAFF'S REPLY BRIEF

9 **INTRODUCTION**

10 As discussed in Staff's Opening Brief, alleged return flows do not constitute a unique
11 circumstance or a substantial and reasonable basis for subsidizing Klamath Basin irrigation
12 customers and treating them differently from other similarly situated Oregon irrigation
13 customers. Simply put, alleged return flows are not a benefit that should be considered in the
14 context of retail ratemaking.

15 The Federal Energy Regulatory Commission's ("FERC") recent statement of intent to
16 decouple the Government dam use charges from PacifiCorp's retail rates also demonstrates and
17 adds additional support for the conclusion that alleged return flows are not appropriate to
18 consider when setting Oregon retail rates. *See* 114 FERC ¶ 61,051, Order Denying Petition for
19 Declaratory Order and Issuing Notice of Proposed Readjustment of Annual Charges for the Use
20 of a Government Dam ("FERC Order"). The appropriate place for that determination is in the
21 Government dam use charges set by FERC and generally passed on to Oregon retail customers
22 as a hydro expense.

23 Furthermore, other regulated Oregon electric utilities do not compensate irrigators that
24 are located upstream of an existing utility hydro project for instream water flows that may derive
25 from upstream irrigation or drainage operations. Finally, even if the Commission were to find
26

1 that the hydrology evidence was relevant to setting Oregon retail rates, the evidence
2 demonstrates withdrawals from the watershed exceed return flows.

3 The Klamath Basin irrigators should be moved to Schedule 41 rates beginning April 17,
4 2006, because the characteristics of Schedule 33 customers are similar to the current Schedule 41
5 customers in that distributions are similar, including small to high usage customers, both
6 schedules contain usage that is seasonal, and the aggregate load factors are similar. While every
7 customer is “unique” in some way, the characteristics and usage characteristics of Schedule 33
8 and Schedule 41 customers are substantially similar and do not merit a separate customer
9 classification. In addition, the economic concept of price elasticity of demand, which the
10 irrigators do not address in their opening briefs, offers additional support for moving Schedule
11 33 customers to Schedule 41.

12 In their opening briefs, the Klamath Off-Project Water Users (“KOPWU”), Klamath
13 Water Users Association (“KWUA”), and United States Bureau of Reclamation and United
14 States Fish & Wildlife Service (“USBR & USFW”), assert that there are unique circumstances
15 that entitle them to lower rates than Oregon’s other irrigation customers. While it is
16 understandable that these parties have a direct financial interest in paying less for electricity
17 service, they fail to demonstrate that there is a meritorious rationale for other Oregon customers
18 to subsidize the price they pay for electricity. Instead, they incorrectly argue that return flows
19 are a benefit that should be considered in retail ratemaking and reargue issues that have already
20 been decided by the Public Utility Commission of Oregon (“Commission”).

21 Although the Klamath irrigators mainly restate past positions and do not directly
22 challenge Staff’s conclusions on return flows in the context of Oregon retail ratemaking, Staff
23 takes this opportunity to highlight some misrepresentations of its testimony and further discuss
24 the implementation of SB 81. Namely, Staff’s testimony is not biased nor does it state that the
25 Commission should send “price signals” to the Klamath irrigators. In addition, Staff’s rate credit
26 calculation is the only calculation consistent with the text and legislative intent of SB 81.

1 **DISCUSSION**

2 **1. Staff's witness, Dr. McNamee, is an expert in economic analysis of electric utility**
3 **rates.**

4 Dr. McNamee has been employed by the Commission for over 20 years as an expert in
5 conducting economic analysis of electric utility rates. *See* Staff/1501, McNamee/1. In addition,
6 Dr. McNamee holds a Ph.D. in Agricultural and Resource Economics from Oregon State
7 University. *See* Id.

8 KOPWU correctly notes that "Mr. [sic] McNamee has not provided any qualifications to
9 make hydrologic analysis." *See* KOPWU Opening Brief at 28, note 7. Dr. McNamee does not
10 claim to be a hydrology expert. Dr. McNamee, however, is an expert on cost of service retail
11 rates. In that capacity, Dr. McNamee has testified that return flows are not considered a benefit
12 that is included in the context of Oregon retail ratemaking. *See* Transcript¹ 375, line 10 through
13 376, line 1. Indeed, it would be odd for Staff to offer expert hydrologic evidence considering
14 that hydrologic analysis is not something that the Commission has considered, or should consider
15 in establishing Oregon retail rates.²

16 In fact, Staff's position is clearly that the Commission's role is to establish retail rates,
17 consistent with the Commission's statutes and rules, and not to resolve hydrologic and water
18 resource issues. *See* Staff/1500, McNamee/20. FERC's intent to decouple the Government dam
19 use charges from retail rates demonstrates that FERC, not the Commission, is the appropriate
20 forum for considering the benefit, if any, of return flows. *See* FERC Order.

21 KOPWU also contends that Staff's position deserves no weight and reflects a bias that is
22 not based on independent evidence or study. *See* KOPWU Opening Brief at 29. This is
23 incorrect. Apparently, KOPWU believes Staff's position is biased because Staff concludes that
24 KOPWU's arguments lack merit. Staff's conclusion that the Klamath irrigators' arguments do

25 ¹ Hereafter, the Transcript will be referred to with the abbreviation "Tr."

26 ² Dr. McNamee also testified that, based upon KOPWU's own testimony, withdrawals exceed return flow. *See*
Staff/ 1502, McNamee/10, line 4 through McNamee/13, line 4. While not a hydrology expert, Dr. McNamee's
educational background and experience qualify him to point out this component of KOPWU's own testimony.

1 not have merit within the context of ratemaking principles is not biased, but is expert analysis of
2 the merits, or lack of merits, of the parties' positions. In fact, Dr. McNamee answered questions
3 of bias on recross-examination, which demonstrate that Staff's position is based upon ratemaking
4 principles, not bias:

5 Q: Mr. [sic] McNamee, are there a variety of environmental externalities associated with
6 the various uses of electricity by PacifiCorp's commercial and industrial customers?

7 A: Probably. We don't take them into consideration in our ratemaking process.

8 Q: So in setting the right prices under the laws of Oregon for Klamath irrigation loads, it
9 is your recommendation that the Commission consider the environmental
10 externalities associated with irrigation in the Klamath Basin? Or should we treat
11 Klamath irrigation no different than if someone was operating a timber mill and using
12 electricity to turn old-growth timber into two by fours?

13 A: It's my recommendation they be treated the same as other irrigation customers in
14 Oregon. And in those rates I don't believe environmental externalities play a role.

15 * * *

16 Q: Mr. [sic] McNamee, I understand from your testimony isn't it true that your goal in
17 this proceeding is essentially to reduce electricity demands in the Klamath Basin?

18 A: No, that's not my goal. But if rates are increased, that's a likely outcome.

19 Q: An outcome that you would prefer.

20 A: I really don't have an opinion on that. My job, once again, is to provide the
21 Commission with as good an analysis and recommendations as I can do.

22 *See Tr. at 378-379.*

23 **2. Staff's testimony does not conclude that the Commission should send a "price**
24 **signal." Rather, Staff's testimony concludes that Klamath irrigators should pay a**
25 **cost of service rate like all other Oregon irrigation customers.**

26 The KWUA claims that Staff concluded that the Commission "should send a 'price
signal' to the Klamath irrigators . . . In other words, Staff would have this Commission exercise
its rate setting authority to essentially punish the family farmers and ranchers of the Klamath
Basin for the alleged over use of water." KWUA goes on to state: "More importantly, Staff's
recommendation to send a 'price signal' to the On-Project Irrigators is not a lawful criterion

1 upon which this Commission may make a rate classification.” *See* KWUA Opening Brief a 7-8.
2 For citation, the KWUA points to Staff/1502, McNamee/9. This is a clear misrepresentation of
3 Staff’s testimony.

4 Nowhere on Staff/1502, or McNamee/9, does the phrase “price signal” appear. Thus, the
5 quotation marks around the phrase must mean that “price signal” is KWUA’s phrase for what
6 Staff is discussing. Staff’s testimony, however, is clearly not discussing price signals or
7 punishment for the family farmers and ranchers of the Klamath Basin. Indeed, Staff’s testimony
8 is discussing a concept that is conveniently ignored by the irrigators, which is the economic
9 concept of price elasticity of demand. *See* Staff/1502, McNamee/8, line 20 through
10 McNamee/10, line 3.

11 The price elasticity of demand provides that a large increase in the price of electricity
12 (*e.g.* movement from Schedule 33 to Schedule 41) will lower consumption. *See* Staff/1502,
13 McNamee/9, lines 3-4. The price elasticity of demand and Staff’s testimony has absolutely
14 nothing to do with sending “price signals” or punishing anyone. Rather, it simply demonstrates
15 that economic theory (and common sense) would suggest that the Klamath irrigators’ usage
16 characteristics will go down when the price increases.

17 **3. Staff’s rate credit formula is consistent with the text, context, and legislative intent**
18 **of SB 81 and should be adopted.**

19 Although KOPWU is familiar with Staff’s rate credit formula, it does not discuss it in its
20 opening brief. *See* KOPWU/604 at 3. Staff’s rate credit formula was provided in response to a
21 data request from KOPWU, which was admitted at the evidentiary hearing.

22 However, KOPWU does argue against PacifiCorp’s proposed rate credit calculation.
23 Staff’s proposed rate credit calculation is similar to PacifiCorp’s to the extent that they both
24 apply the 50 percent rate mitigation to the contract rates (the right side of the formula). Staff’s
25 calculation, however, includes the BPA credit in the variable “A.”

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1 KOPWU argues that the meaning of SB 81 should be resolved by application of the
2 statutory analysis described in PGE v. BOLI, 317 Or 606, 610-11 (1993). *See* KOPWU Opening
3 Brief at 38. Staff agrees.

4 KOPWU, however, offers a table and Attachment 1 that double count the BPA credit.
5 KOPWU counts the BPA credit in its Schedule 41 net revenue (\$2.7 million) and it includes the
6 current Schedule 33 BPA credit in the customer net revenues. *See* KOPWU, Attachment 1.
7 Obviously, the BPA credit should not be counted twice and the KOPWU table and associated
8 analysis should be disregarded.

9 Based upon the text of SB 81, Staff's calculation takes into account "the total charges for
10 electricity service, including all special charges and credits." As noted in Staff's opening brief,
11 under the Klamath irrigators' proposed calculation the Klamath irrigation rates would not be
12 close to Schedule 41 cost of service rates at the end of the seven year mitigation period.³ Staff's
13 calculation is consistent with the text and accomplishes the intent of the legislature and,
14 therefore, should be adopted.

15 DATED this 13th day of March 2006.

16 Respectfully submitted,

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18 HARDY MYERS
Attorney General

19
20 /s/Jason W. Jones
Jason W. Jones, #00059
21 Assistant Attorney General
22 Of Attorneys for the Public Utility Commission
23 of Oregon
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25 _____
26 ³ To the extent that the text of SB 81 is ambiguous on where the "total charges" are included in the calculation, the
legislative history demonstrates that it must be done in a way that moves the rates to full market rates within seven
years. Staff's calculation would move the irrigators to full market rates within the seven years.

CERTIFICATE OF SERVICE

I certify that on March 13, 2006, I served the foregoing upon the parties hereto by electronic mail and/or by mailing a true, exact and full copy by regular mail, postage prepaid, or by hand-delivery/shuttle mail.

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