

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 170

In the Matter of)	
)	
PACIFIC POWER & LIGHT (dba PacifiCorp))	RULING
)	
Request for a General Rate Increase in the)	
Company's Oregon Annual Revenues)	
(Klamath River Basin Irrigator Rates).)	

DISPOSITION: ISSUES LIST ADOPTED

The parties to this docket were unable to reach agreement on a joint issues list and have submitted two proposals. The first list is supported by Hoopa Valley Tribe, Yurok Tribe, Oregon Natural Resources Council, Pacific Coast Federation of Fisherman's Association, Pacific Power and Light, dba PacifiCorp (PacifiCorp), WaterWatch of Oregon, the Public Utility Commission of Oregon Staff (Staff) (collectively referred to as Group 1). The second proposal is supported by the Klamath Water Users Association (KWUA), the Klamath Off-Project Water Users (KOPWU), the Bureau of Reclamation and the U.S. Fish and Wildlife Service (collectively referred to as Group 2).¹

Both lists use, as a starting point, the three primary issues identified by the Commission in Order No. 05-726 for consideration in the remand portion of this proceeding. The lists differ, however, in the number of sub-issues the parties believe should be addressed to resolve the three primary issues. Following the parties' lead, I will similarly organize my discussion by the three primary issues identified by the Commission.

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

To resolve this issue, Group 1 and Group 2 agree on the wording of two sub-issues, but disagree on the third. The mutually agreeable two sub-issues are as follows:

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

¹ Staff filed the first list and inadvertently stated that it was supported by KWUA. KWUA subsequently clarified that it supports the second list.

be reasonable”) for determining the appropriate rates for Klamath Basin irrigation customers?

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

With regard to the disputed third sub-issue, Group 1 and Group 2 propose the following alternate questions:

Group 1	Group 2
<i>Does SB 81 prescribe, modify or otherwise affect the applicable statutory standard?</i>	<i>If the statutory standard applicable to establishing rates for Klamath Basin irrigation customers is not the “just and reasonable” standard and the Compact does not establish the applicable statutory standard, what statutory standard applies?</i>

I adopt the sub-issue presented by Group 1, but slightly modify the language in the first sub-issue to incorporate the question proposed by Group 2. Sub-issue (1)(a) will be modified to read:

- a. *Is the statutory standard applicable to establishing rates for Klamath Basin irrigation customers the “just and reasonable” standard found in ORS §§ 756.040, 757.210 et seq., the “lowest power rate that may be reasonable” standard found in ~~or does the Klamath River Basin Compact (the “Compact”), ORS § 542.610 et seq., or some other standard~~ establish a separate and distinct statutory standard (“lowest power rate that may be reasonable”) ~~for determining the appropriate rates for Klamath Basin irrigation customers?~~*

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

Both groups agree on the wording of the first sub-issue. I adopt the sub-issue, but modify it to be consistent with the modification to sub-issue (1)(a). Accordingly, sub-issue (2)(a) reads as follows:

- a. *Are the current rates under the On-Project and Off-Project Agreements justifiable according to the “applicable statutory standard to the setting of electric rates for irrigators located within the Klamath River Basin?” (i.e., are the current rates “just and reasonable,” ~~or~~ consistent with the “lowest power rate which may be reasonable” standard in the Compact, or other ~~whichever is applicable~~ standard?).*

Both groups also agree on the following two sub-issues, which I will designate as (2)(b) and (c):

- 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?*

Group 2 also proposes numerous subparts to (2)(b) and (c). Specifically, they propose six subparts to (2)(b) that appear designed to identify possible grounds to distinguish the Klamath Basin irrigation customers from other irrigation customers served by PacifiCorp. Similarly, they identify three subparts to (2)(c) that address the value provided by the Klamath Basin irrigators to PacifiCorp's hydroelectric facilities and PacifiCorp's cost to provide service to these irrigators.

Although the parties in Group 2 may address any of these subparts in support of a position taken with respect to issue (2)(b) and (c), I decline to adopt them in the issues list for this proceeding. The issues list is designed to identify the issues needed for Commission resolution, not every argument the parties might present in an effort to obtain a favorable ruling on a particular issue.

In addition, Group 2 proposes three additional sub-issues for Commission consideration of the appropriate rates for the Klamath River Basin irrigators. I separately address these three additional sub-issues below, and for the reasons provided decline to adopt any of them.

▪ *Are the On-Project and Off-Project Agreements "Special Contracts"?*

The issue of whether the historic contracts were "special contracts" was raised by the parties in UE 171. While the Commission reached no conclusion in that docket, it clarified that the agency's regulatory authority to modify rates was independent from the terms of the historic contracts:

Utilities and customers cannot limit [the Commission's regulatory] power by private contract. *American Can Co., v. Davis*, 28 Or App 207, rev den 278 Or 393 (1977). Although the Commission previously approved the On-Project and Off-Project Contracts, we have the continuing authority and obligation to review the appropriateness of the rates contained in those contracts. *American Can Co., v. Davis*, 28 Or App at 224. Thus, regardless of the expiration term of either contract, this Commission has the duty to examine the rates contained therein and, upon a proper showing, modify them. Order No. 05-726 at 4.

While the Commission's holding addressed whether the historic contracts have expired, its reasoning equally applies to the question of whether these contracts should

be considered special contracts. Regardless of that determination, the “Commission has the duty to examine the rates contained therein and, upon a proper showing, modify them.”

- *If it is determined that Klamath Basin irrigation should be included in the same class as other Oregon irrigation customers, is PacifiCorp’s standard irrigation tariff the appropriate rate for Klamath Basin irrigation customers or is a different rate justified?*

ORS 757.230 requires that the Commission adopt a customer classification system. Customers are grouped into classes based on such factors as quantity of electricity used, the time when used, the purpose for which used, and any other reasonable consideration. *See* ORS 757.230(1). The classification system is intended to ensure that similarly situated customers receive uniform service and rates and prevents utilities from offering rate discounts or special services to “preferred” customers. Indeed, ORS 757.310 specifically prohibits a utility from charging rates higher or lower than the rates charged “any other person for a like and contemporaneous service under substantially similar circumstances.” Similarly, ORS 757.325 prohibits a utility from giving “undue or unreasonable preference or advantage to any particular person or locality” and from subjecting “any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.”

This statutory framework makes clear, if the Klamath Basin irrigation should be included in the same class as other Oregon irrigation customers, PacifiCorp must charge these customers the same standard tariff that it charges other irrigation customers in the same class. PacifiCorp cannot charge some customers rates that differ from other customers in the same class. Accordingly, for the Commission to conclude that a different rate is justified for the Klamath Basin irrigators, it must find that these customers should be treated as a separate class of customers.

- *What impact should the Federal Energy Regulatory Commission actions regarding PacifiCorp’s right to operate the Klamath Hydroelectric Project under annual licenses have on actions taken by the Oregon Public Utility Commission in this docket?*
- *If the Federal Energy Regulatory Commission grants PacifiCorp an annual extension of its current license to operate Project No. 2082 facilities and explicitly or implicitly conditions PacifiCorp’s continued operation of the Klamath Hydroelectric Project after April of 2006 upon PacifiCorp continuing to comply with its License Settlement Agreement – including the obligation to provide power for pumping Klamath water for use on project lands and for drainage of project lands and for pumps operated by the United States or successors in interest at the current rates – should the Oregon Public Utility Commission authorize PacifiCorp to continue charging the historic rates to the United States, to the On-Project irrigation customers, and to the Off-Project irrigation customers?*
- *Should this Commission order any rate change prior to FERC granting PacifiCorp an annual license?*

The Commission has previously addressed the issue of FERC's annual licensing process in UE 171. There, the Commission recognized the importance of PacifiCorp's Klamath Hydroelectric Project and FERC's authority to issue an annual license, extending the terms and conditions of an existing license, to bridge the period between the lapse of an original license and the issuance of a new one. The Commission, however, declined to defer action on the setting of retail rates for the Klamath River Basin irrigators pending the relicensing process for three primary reasons:

First, there is no certainty that FERC will, as the Bureau suggests, issue an annual license that temporarily extends the On-Project Contract rates past the April 2006 termination date. In fact, FERC has twice declared that the rates PacifiCorp charges to its retail customers are not relevant to its relicensing review. Second, and more importantly, this Commission, not FERC, has jurisdiction over rates charged by PacifiCorp to its Oregon retail customers. Consequently, even if FERC extends the On-Project Contract rates, such action cannot relieve this Commission of the duty to review those rates under the American Can standard discussed above. Finally, as the Bureau concedes, the extension of any conditions through an annual license would affect only those rates paid by the On-Project irrigators, as the original license contained no provision addressing service to Off-Project irrigators. Thus, the deferral of the On-Project rate issue would not delay the review of the Off-Project rate. We believe that the rates of the Klamath River Basin irrigators should be determined through one, not two, regulatory processes. Order No. 05-726 at 5 (Footnotes omitted).

Accordingly, the Commission has already made clear that the ongoing relicensing proceeding at FERC should not delay this rate case. Moreover, the first sub-issue—requiring an assumption that FERC grants an annual license requiring PacifiCorp to charge rates set forth in the historic contracts—is too speculative for inclusion in an issues list. While the Commission will obviously consider any action taken by FERC prior to the resolution of this proceeding, there is no reason to address one possible scenario of many—especially since the proposed scenario is contrary to FERC's own statements that PacifiCorp's retail rates are not relevant to the relicensing review.

3. 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?

Group 1 recommends that one sub-issue be addressed to resolve the implementation of any new rates adopted in this proceeding:

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

Group 2 proposes five sub-issues to address the implementation issue:

- a. If the rates for Klamath Basin irrigators are modified, when should that modification take effect?*

- *During the time PacifiCorp operates Klamath Basin hydroelectric facilities under annual licenses?*
- *Once the terms of any new FERC license is known?*
- b. *If the rates for Klamath Basin irrigation customers are modified, should Schedule 33 remain in place to implement rates for those customers?*
- c. *What if the maximum percentage of annual rate change that is allowable according to the statutory standard adopted in the first phase of this proceeding?*
- d. *If the rates for Klamath Basin irrigation customers are increased, does any OPUC rate mitigation policy applied in UE 170 limit the overall rate increase that those customers should receive?*
 - *Does any rate mitigation policy applied in UE 170 limit the overall rate increase that Klamath irrigation customers may receive in only one year?*
- e. *Do any other rate mitigation policies, rules, or statutes apply?*

Many of Group 2's proposals appear to be subject to Senate Bill 81, which requires the Commission to mitigate certain rate increases imposed on customers like the Klamath Basin irrigators. Accordingly, I adopt the following sub-issues for the implementation issue:

- a. *Are the provisions of 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?*

Accordingly, the issues list, attached as Appendix A, is adopted from this proceeding. Parties should use this list to organize testimony and briefs in this proceeding.

Dated at Salem, Oregon, this 17th day of August 2005.

Michael Grant
Chief Administrative Law Judge

UE 170 – Klamath Basin Irrigation Rates - Issues List

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

- a. Is the statutory standard applicable to establishing rates for Klamath Basin irrigation customers the “just and reasonable” standard found in ORS §§ 756.040, 757.210 et seq., the “lowest power rate that may be reasonable” standard found in the Klamath River Basin Compact (the “Compact”), ORS § 542.610 et seq., or some other standard?
- b. If the Klamath River Basin Compact establishes a different statutory standard than the “just and reasonable” standard for determining the appropriate rates for Klamath irrigation customers, 1) what standard does the Compact establish, and 2) what is the effect and meaning of that standard in terms of setting rates?
- c. Does SB 81 prescribe, modify or otherwise affect the applicable statutory standard?

2. 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 “applicable statutory standard to the setting of electric rates for irrigators located within the Klamath Basin?” (i.e., are the current rates “just and reasonable,” consistent with the “lowest power rate which may be reasonable” standard in the Compact, or other applicable standard?).
- 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?

3. 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 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?