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March 3, 2006

VIA ELECTRONIC FILING

Oregon Public Utility Commission
Attn: Filing Center
550 Capitol Street, N.E., #215
P.O. Box 2148
Salem, Oregon 97308-2148

RE: In the Matter of the Request of Pacific Power & Light's (dba PacifiCorp)
Request for a General Rate Increase in the Company's Oregon Annual
Revenues
Docket No. UE 170

Dear Filing Center:

Enclosed please find an original and (5) copies of the **Klamath Water Users Association's Revised Exhibit 403**, and (new) **Exhibit 404**, as requested by Judge Grant during the evidentiary hearing, in Docket No. UE 170.

Paper copies will also be served on the Honorable Michael Grant, and all parties on the OPUC's current Service List.

Thank you for your assistance.

Respectfully submitted,



Edward A. Finklea

EAF/nh

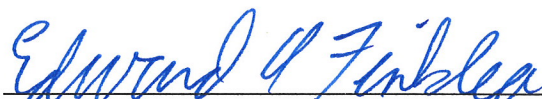
cc: Honorable Michael Grant
Current Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 3, 2006 I caused to be served the attached **Klamath Water Users Association's Revised Exhibit 403**, and (new) **Exhibit 404** on the attached Service List obtained on this date from the Oregon Public Utility Commission's Website as follows:

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

DATED Wednesday, March 6, 2006.



EDWARD A. FINKLEA, OSB No. 84216

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UE 170
SB 81 Implementation
Comparison Exhibit

		<u>Pacifcorp Proposal</u>		<u>KWUA Recommendation</u>	
	Current Rate	Charges/ Credits	Amount	Charges/ Credits	Amount
1	Base Energy Rate:	0.0075	\$80.70	0.0075	\$80.70
2	Public Purpose %	3.00%	\$2.42	3.00%	\$2.42
3	BPA Credit	-0.00488	-\$52.51	-0.00488	-\$52.51
4	Total Bill:		\$30.61		\$30.61
5	Effective Rate (\$/MWh):		\$2.85		\$2.85
Proposed Rate					
6	Base Energy Rate:	0.01125	\$121.05	0.01125	\$121.05
7	Public Purpose %	3.00%	\$3.63	3.00%	\$3.63
8	BPA Credit	-0.00488	-\$52.51	-0.00488	-\$52.51
9	Total Bill:		\$72.17		\$72.17
10	Effective Rate (\$/MWh):		\$6.71		\$6.71
11	SB 81 Rate Limiter (\$/MWh):		N/A		\$4.27
12	SB 81 Credit:		N/A		-\$26.25
13	Increase:		\$41.56		\$15.31
14	Percent Increase:		136%		50%
15	Based on Usage of:	10,760 kWh per PPL/1218			

825 N. E. Multnomah, Suite 1500
Portland, Oregon 97232
(503) 813-5000



February 23, 2004

Ms. Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Klamath Hydroelectric Project (FERC Project No. 2082)

Dear Ms. Salas,

With this letter, PacifiCorp transmits the application for a new license for the Klamath Hydroelectric Project, FERC No. 2082. The application has been prepared in accordance with current Commission regulations 18 CFR Sections 4.32 and 4.51, license for Major Project - Existing Dam, and with more recently amended regulations 18 C.F.R. §§ 5.22(a)(2), 5.23(b)(1).

PacifiCorp, in following the amended FERC regulations, will be submitting the CWA 401 applications to the states of Oregon and California in mid-September 2004 unless the Commission determines the license application ready for environmental review at an earlier date (see attached letters). If the later case, PacifiCorp will submit the CWA 401 applications no later than 60 days after FERC issues a public notice that the final license application is ready for environmental analysis.

In accordance with 18 CFR 4.51 (g)(3), two copies of the Supporting Design Report will be sent under separate cover.

A public notice of this filing of the application for new license will be published and proof provided to the commission within 14 days of license application submittal.

Sincerely,

Todd Olson
Licensing Project Manager
Hydro Licensing

cc: FERC Service List – Project 2082

Attachments

- (1) Copy of CWA 401 letters to ODEQ and SWRCB
- (2) FERC Klamath Service List
- (3) FERC Letter of Waiver for Paper Copies

Enclosure – New License Application for Klamath Hydroelectric Project #2082

- 9) California Water Code § 1200 *et seq.*—Governs appropriation and beneficial use of water, including appropriation and use of water for power generation purposes.
- 10) California Water Code §13160 and California Code of Regulations, title 23, § 3855 *et seq.*—Implements State Water Resource Control Board responsibilities related to water quality certification for activities otherwise required to obtain such a certification under federal law.
- 11) California Water Code §6000 *et seq.*—Requires owners of dams to cooperate with the California Division of Safety of Dams (CDSOD) in the inspection and maintenance of dams.
- 12) Public Utilities Code, Division 1, §201 *et seq.*—Regulates the right of a public utility to produce, generate, transmit, or furnish power to the public.

Oregon and California

- 1) Federal Clean Water Act, 33 USC §1341—Establishes requirements for state certification of proposed projects or activities that may result in any discharge of pollutants to navigable waters.

The steps that the Licensee has taken or plans to take to comply with each of the laws cited above are as follows:

- 1) The Licensee has the water rights necessary to operate the Project.
- 2) The Licensee will file applications for water quality certificates with ODEQ and the California State Water Resources Control Board (CSWRCB) according to FERC licensing protocol.
- 3) The Licensee will cooperate with the Oregon Division of State Lands (ODSL) to determine whether a hydroelectric power lease is required for any Project facility; if required, the Licensee will negotiate such a lease with ODSL.
- 4) The Licensee will cooperate with CDSOD on annual inspections of Project dams.
- 5) The Licensee has demonstrated the ability to engage in the business of developing, transmitting, and distributing power under the appropriate California statute.

Additional statutes, regulations, and comprehensive plans are discussed in Exhibit E of this license application.

7. APPLICANT'S PROJECT WATER RIGHTS

The Applicant holds various Certificates of Water Right for seven diversions on the Project.

Oregon Water Rights. Oregon's water laws are based on the system of prior appropriation, and Oregon water rights are controlled by state law and administered by the Oregon Water Resources Department (OWRD). Some of the Project facilities located in Oregon use water pursuant to

rights that have been recognized, quantified, and certificated under Oregon law. Other facilities operate with water rights perfected before Oregon's Water Code was enacted in 1909; these rights are currently being determined in a general stream adjudication for the Klamath Basin.

State of Oregon Hydropower Permits. Hydropower water rights in Oregon are governed by Oregon Revised Statutes (ORS) Chapter 543 and Chapter 543A, pursuant to which hydropower generators may operate under either a "Power Claim" or a "Hydroelectric License." Both types of permit require payment of annual fees to OWRD. Functionally, there are two types of Power Claims. A hydropower water right that was developed before 1909 and is adjudicated may be recognized as a Power Claim; the water rights associated with such claims are vested but inchoate, not limited or subordinated to other water uses, and assumed to be perpetual. Hydropower water rights developed from 1909 through 1931 are also subject to Power Claims and are given a perpetual, certificated water right. Such certificates typically contain a subordination clause making the right subject and subordinate to junior as well as senior irrigation water rights. Neither adjudicated nor certificated Power Claims require reauthorization by the state. Since 1932, the use of water for hydropower generation has been governed by the state Hydroelectric License, which is a time-limited permit to use water for hydropower purposes and does not include a separate certificated water right until after it is reauthorized pursuant to ORS Chapter 543A. Hydroelectric Licenses contain limitations similar to the subordination clauses found in Power Claim certificates and, because they are time-limited, are subject to reauthorization by the state.

The Applicant holds all three types of licenses permitting the use of water to generate electricity. Specifically, the Oregon water rights and hydroelectric permit types for each of the Project facilities within Oregon may be summarized as follows:

- *East Side Power Plant.* State of Oregon Certificate of Water Right No. 24508 certifies the right to use 1,000 cubic feet per second (cfs) of the waters of the Link River (Klamath River) at East Side powerhouse for the purpose of development of electricity, with a priority date of February 24, 1919. The state permits this use through Power Claim No. 667. The certificate contains a subordination clause in which the right is "made subject and subordinate in right and time to any appropriations of water which may hereafter be made at points above on Upper Klamath Lake or its tributaries, for irrigation, or for storage for irrigation purposes for use on lands in Oregon."

The East Side Power Plant also generates electricity with a second, adjudicated water right for 150 cfs, which is permitted under Power Claim No. 34. This adjudicated right is further discussed below.

- *West Side Power Plant.* The West Side Power Plant generates electricity with a 205-cfs adjudicated water right, which is further discussed below. The state of Oregon permits this use through Power Claim No. 35. The Applicant also holds an adjudicated, nonhydropower water right for irrigation at the plant operator's cottage located at this facility.
- *J.C. Boyle Dam and Power Plant.* Water for electric generation at the J.C. Boyle facility is permitted through State of Oregon Hydropower License No. HE 180 (HE 180), issued in 1956 for the period between January 1, 1957, and December 31, 2006. Article 9 of the

license provides for use of 2,500 cfs from the Klamath River for hydroelectric power at the plant. The water right has a priority date of April 17, 1951, and is vested in the licensee during the period of the license as well as any renewal. The use of water under HE 180 is subject to any junior water right permit for "domestic, stock, or irrigation purposes" issued after April 17, 1951. In addition, the right is subject to bypass limitations. Specifically, Article 3 of the license requires up to 150 cfs to be bypassed for the "preservation of fish" and for a minimum flow of 200 cfs to be maintained below the powerhouse.

- **Fall Creek Power Plant.** The Fall Creek hydroelectric facility is located in California; however, the plant uses water that is diverted in Oregon from Spring Creek (a tributary of Jenny Creek, which is a tributary of the Klamath River) into a canal that runs into Fall Creek above the powerhouse. The Oregon water right, for 16.5 cfs, is adjudicated and is discussed further below. The water right is not subject to a state Power Claim or Hydroelectric License because ORS Chapters 543 and 543A apply to the generation of electricity rather than specifically to the diversion of water, and they do not have extraterritorial application.

Unadjudicated Oregon Water Right Claims. The state is currently adjudicating pre-1909 water rights in the Klamath Basin. The contest period closed in May 2000 and the adjudication is ongoing. The Applicant has made claim to four hydropower rights or rights associated with hydropower facilities. For each claim, the Applicant has completed the evidentiary hearing (or stipulation) process, and each claim has been recommended, in a proposed final order issued by a hearing officer from the Hearing Officer Panel, for the amounts listed in the following summaries of the four unadjudicated claims:

Claim No. 168:

Source	Link River
Type of Use	Power—West Side powerhouse
Priority Date	December 11, 1891
Rate of diversion	205 cfs
Status of Claim	Hearing Officer issued Proposed Final Order to Adjudicator

Claim No. 164:

Source	Link River
Type of Use	Irrigation for operator's cottage
Priority Date	December 11, 1891
Rate of diversion	0.01 cfs
Status of Claim	Hearing Officer issued Proposed Final Order to Adjudicator

Claim No. 167:

Source	Link River
Type of Use	Power—East Side powerhouse
Priority Date	November 1, 1895
Rate of diversion	150 cfs
Status of Claim	Hearing Officer issued Proposed Final Order to Adjudicator

Claim No. 218:

Source	Spring Creek
Type of Use	Power—Fall Creek facility
Priority Date	September 23, 1902
Rate of diversion	16.5 cfs
Status of Claim	Hearing Officer issued Proposed Final Order to Adjudicator

The Applicant's unadjudicated claims will become enforceable water rights when the Adjudicator issues a Final Order. It is unclear when a Final Order will be issued, however, because many claims and contests have yet to be heard and the OWRD has not provided a schedule for issuing a Final Order. The Final Order will be reviewed by the Klamath County Circuit Court and that court will issue a final decree. The decree can be appealed. Final resolution of the Klamath adjudication is likely years away. Oregon law provides that pre-1909 water rights are vested rights. The Applicant is entitled to use the water under the unadjudicated claims while the Final Order is pending.

REAUTHORIZATION OF OREGON HYDROPOWER LICENSE NO. 180

HE 180 is a state hydropower license that includes a time-limited water right for the generation of electricity at the J.C. Boyle development. HE 180 is subject to reauthorization by the state of Oregon. Oregon law requires that the state "shall issue a water right for continued operation of an existing hydroelectric project upon a finding that the proposed use will not impair or be detrimental to the public interest" ORS 543A.025(1). The quoted statute provides several factors the state must consider in making its finding. Those factors are addressed in the discussion that follows.

ORS 543A.025(1)(a). The Applicant's use of water under HE 180 conserves the highest use of such water for all purposes. First, the water right is subject to all prior rights to water on the Klamath River and is also made expressly subordinate to junior water rights for "domestic, stock, or irrigation purposes." Thus, no upstream water users for domestic, stock watering, or irrigation purposes are affected by HE 180. Because the use is nonconsumptive, no downstream users are affected. Second, HE 180 requires bypass flows and the maintenance of instream flows below the powerhouse. These requirements, along with ramping limitations, ensure the protection of both aquatic wildlife and recreational use.

ORS 543A.025(1)(b). The Applicant's use of water under HE 180 maximizes the economic development of that resource. The Applicant manages and operates the J.C. Boyle development, in conjunction with all other Project developments, to use water efficiently for hydroelectric generation, as well as to protect and conserve such water for other beneficial uses, as discussed above. The Applicant's operation of Project developments produces numerous economic benefits, such as the provision of local employment, contribution to the local tax base, and the availability of electricity at reasonable rates.

ORS 543A.025(1)(c). The Applicant's operation of Project developments controls the water used at the J.C. Boyle development to provide several resource benefits to the public, including minor flood control and recreational opportunities. For example, the United States Bureau of Land Management manages a segment of the Klamath River downstream of the J.C. Boyle development under the federal Wild and Scenic Rivers Act. The federally designated segment is popular for whitewater rafting and other recreation. The Applicant supports such recreational use as evidenced by its consideration of flow (generation) timing of releases downstream of J.C. Boyle and by providing and maintaining a number of recreational facilities, such as take-out points for rafters in the California segment of that federally managed Klamath River reach.

ORS 543A.025(1)(e). Because the Applicant manages and operates the J.C. Boyle facility efficiently for hydroelectric generation, and because Project operations provide resource and economic benefits as described above, the use of water under HE 180 prevents wasteful, uneconomic, impracticable, or unreasonable use of this resource.

ORS 543A.025(1)(f). The Applicant's use of water under HE 180 protects vested and inchoate rights to water or its use. Under the prior appropriation system, the Applicant's rights are subordinate to all prior rights to water on the Klamath River, which includes all rights perfected before April 17, 1951. Vested and inchoate water rights on the Klamath River are now in the process of being adjudicated (see discussion above). Until the adjudication is complete, holders of those rights cannot have the Applicant's rights enforced against them, pursuant to OWRD policy. In addition, the express terms of HE 180 make the Applicant's use of water subject to junior water rights for "domestic, stock, or irrigation purposes" and to bypass and instream flow requirements. Thus, no upstream water users for domestic, stock watering, or irrigation purposes are affected by HE 180, whether their water rights are junior or senior to the Applicant's. In addition, no downstream users are affected because the use is nonconsumptive.

ORS 543A.120(2)(b). The Applicant's use of water at the J.C. Boyle development and other Project developments is compatible with applicable basin programs and land use plans. First, the state of Oregon implements its statewide water allocation policies through individual "basin plans" established by administrative rules promulgated by the Oregon Water Resources Commission. However, the Commission has not adopted a basin plan for the Klamath Basin, so use of the waters of the Klamath River is subject to general statutes and rules, including ORS 542.620 (see Oregon Administrative Rule 690-500-0010(5)). The Applicant's use of water under HE 180 complies with such statutes and rules. For example, the Applicant's use of water throughout the Project represents an efficient use of that resource for hydroelectric generation, as mandated by ORS 542.620, Article IV. Second, Klamath County's Comprehensive Plan establishes goals for the use of land and resources in the county. For example, Policy 1 of Goal 13, the "Energy Conservation" portion of the Comprehensive Plan, states: "The County shall encourage the use of renewable and efficient energy sources in residential, commercial, and industrial development." The Applicant's nonconsumptive use of water — a renewable energy source — at Project developments is compatible with this goal.

Because the Applicant's use of water under HE 180 meets the public interest and other requirements set forth in ORS Chapter 543A, the Applicant anticipates that the state of Oregon will reauthorize the license.

California Water Rights. Since 1914, appropriative water rights have been acquired and regulated pursuant to the California Water Code, section 1200, *et seq.*, and predecessor statutes. These "post-1914" appropriative water rights are administered by the State Water Resources Control Board (SWRCB) through water right permits and licenses. Prior to 1914, appropriative rights were established by diversion and continuous use of water for reasonable and beneficial purposes. So long as the appropriation was diligently prosecuted, the relative priority date of a "pre-1914" appropriative right relates back to the first act indicating an intent to appropriate water. No SWRCB permit or license is required to exercise pre-1914 appropriative water rights, and SWRCB jurisdiction and authority over these rights is more limited than with permitted and licensed water rights. Pre-1914 water right holders are encouraged to file Statements of Water Diversion and Use (SWDU) with the SWRCB, which provide the SWRCB with information

regarding diversion and use under pre-1914 appropriative water rights. Riparian rights attach to lands adjacent to a water course, and authorize reasonable use of water on that riparian land. No SWRCB permit or license is required to exercise riparian rights, and SWRCB jurisdiction and authority over these rights is more limited than with permitted and licensed water rights.

The Applicant exercises both pre-1914 appropriative water rights and post-1914 licenses issued by the SWRCB for its hydroelectric project developments in California. Specifically, the California water rights for each of the hydroelectric project developments in California can be summarized as follows:

- *Iron Gate Dam and Powerhouse.* Water diversion at Iron Gate dam for use at the Iron Gate powerhouse and the Iron Gate fish hatchery is authorized pursuant to SWRCB License No. 9457 (Permit No. 12259, Application No. 17527). License No. 9457 was initiated in 1957 via application filed by the Applicant's predecessor-in-interest, Pacific Power and Light Company. The license authorizes year-round diversion of up to 3,300 cfs at Iron Gate dam, of which up to 1,800 cfs may be diverted through the Iron Gate powerhouse and up to 50 cfs may be diverted through the fish hatchery facilities. Water diverted in excess of power and fish propagation needs may be temporarily stored or regulated in Iron Gate for later use. License No. 9457 contains the standard terms and conditions ordinarily included in water rights licenses, and several special license terms. The special terms and conditions provide that: (1) License No. 9457 is generally subordinate to rights previously or subsequently acquired for certain uses in the Shasta Valley-Ager area; (2) License No. 9457 is subject to the Klamath River Basin Compact and Article 38 of Applicant's FERC License No. 2082; (3) Licensee must ensure a specific release and flow schedule downstream of Iron Gate dam; and (4) Licensee must adhere to a specific ramping rate for reservoir releases.

The Applicant also claims a separate water right, documented in SWDU No. 12968, to divert up to 48 cfs, year-round, for fish propagation purposes at the Iron Gate fish hatchery. SWDU No. 12968 claims a pre-1914 water right, but a riparian water right may also be claimed. Diversions to the Iron Gate fish hatchery also are authorized under License No. 9457, as discussed above.

- *Copco Dams and Powerhouses.* The Applicant exercises three pre-1914 appropriative water rights for diversions at Copco No. 1 and Copco No. 2 dams, and for use at the associated Copco No. 1 and No. 2 powerhouses. These rights are documented by three SWDUs filed with the SWRCB in 2002, as follows:
 - SWDU No. 15374 (2002): SWDU No. 15374 documents a pre-1914 appropriation initiated by the Applicant's predecessor-in-interest, Siskiyou Electric Power and Light Company, for diversion at Copco No. 1 dam. The appropriation was evidenced by the posting of notice near the point of diversion, and by claim filed with the County Recorder's Office in Siskiyou County on February 13, 1909. The claim is for year-round diversion of 50,000 miners inches (conservatively, 1,000 cfs), for various beneficial uses, including power generation.
 - SWDU No. 15375 (2002): SWDU No. 15375 documents a pre-1914 appropriation initiated by the Applicant's predecessor-in-interest, Siskiyou Electric Power and Light

Company, for diversion at Copco No. 1 dam. The appropriation was evidenced by the posting of notice near the point of diversion, and by claim filed with the County Recorder's Office in Siskiyou County on February 4, 1909. The claim is for year-round diversion of 150,000 miners inches (conservatively, 3,000 cfs), for various beneficial uses, including power generation.

- SWDU No. 15376 (2002): SWDU No. 15376 documents a pre-1914 appropriation initiated by the Applicant's predecessor-in-interest, Siskiyou Electric Power and Light Company, for diversion at Copco No. 2 dam. The appropriation was evidenced by the posting of notice near the point of diversion, and by claim filed with the County Recorder's Office in Siskiyou County on February 13, 1909. The claim is for year-round diversion of 400,000 miners inches (conservatively, 8,000 cfs), for various beneficial uses, including power generation.
- *Fall Creek Diversion and Powerhouse*. The Applicant diverts water from Fall Creek via the Fall Creek diversion dam for power generation uses at the Fall Creek powerhouse. Water diverted at the Fall Creek diversion dam originates from two watersheds: (1) the Fall Creek watershed ("native water"), and (2) water diverted and conveyed from Spring Creek in the Jenny Creek watershed ("foreign water"). Foreign water from the Jenny Creek watershed is released into Fall Creek above the Fall Creek diversion dam and commingled with the native Fall Creek water for diversion and use at the Fall Creek powerhouse. The foreign water from the Jenny Creek watershed is diverted in Oregon under Oregon's water laws, and rights to this water is addressed above in the discussion of Oregon water rights. The native water from the Fall Creek watershed is diverted in California under California's water laws. As to the native Fall Creek water, the Applicant exercises two pre-1914 appropriative water rights for diversions at the Fall Creek diversion dam, for use at the Fall Creek powerhouse. These rights are documented by two SWDUs filed with the SWRCB in 2002, as follows:
 - SWDU No. 15372 (2002): SWDU No. 15372 documents a pre-1914 appropriation initiated by the Applicant's predecessors-in-interest, E.H. Steele and J.W. Churchill, for diversion of native flow from Fall Creek. The appropriation was evidenced by the posting of notice near the point of diversion, and by claim filed with the County Recorder's Office in Siskiyou County on July 2, 1902. The claim is for year-round diversion of 3,000 miners inches (conservatively, 60 cfs), for power generation use.
 - SWDU No. 15373 (2002): SWDU No. 15373 documents a pre-1914 appropriation initiated by the Applicant's predecessors-in-interest, E.H. Steele and J.W. Churchill, for diversion of native flow from Fall Creek. The appropriation was evidenced by the posting of notice near the point of diversion, and by claim filed with the County Recorder's Office in Siskiyou County on May 14, 1902. The claim is for year-round diversion of 1,000 miners inches (conservatively, 20 cfs), for power generation use.

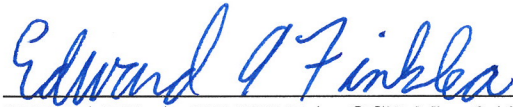
In addition to the above-referenced California water rights, which are exercised in the operation of the Applicant's Klamath Hydroelectric Project, the Applicant holds other California water rights to the Klamath River and its tributaries. Those other water rights are not required for the operation of the Project, and therefore are not discussed in this document.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 3, 2006 I caused to be served the attached **Klamath Water Users Association's Revised Exhibit 403**, and (new) **Exhibit 404** on the attached Service List obtained on this date from the Oregon Public Utility Commission's Website as follows:

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

DATED: March 3, 2006.



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