

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
Docket No. UE 171**

In the Matter of the Request of)	
PACIFIC POWER & LIGHT)	HOOPA VALLEY TRIBE’S RESPONSE TO
(dba PacifiCorp))	PACIFICORP’S MOTION FOR SUMMARY
)	DISPOSITION
Request for a General Rate Increase in the)	
Company’s Oregon Annual Revenues)	
[Supplemental Docket to UE-170])	

Pursuant to the Prehearing Conference Memorandum and Ruling in this matter, PacifiCorp filed a motion for summary disposition on March 31, 2005. The Hoopa Valley Tribe respectfully requests that the Commission grant PacifiCorp’s motion for summary disposition.

PacifiCorp’s motion correctly points out that the special contracts under which certain Klamath Basin irrigation customers have received electric power are based upon rates that are a small fraction of PacifiCorp’s avoided costs, costs of generation, and delivery costs. One of the contracts expressly expires on April 16, 2006. The other contract was negotiated to provide off-project irrigators the same rights; accordingly, the same expiration date should be implied in that contract, both because of the intent of the parties and to avoid discriminatory treatment.

PacifiCorp correctly shows that nothing in the Federal Energy Regulatory Commission (“FERC”) License for Project No. 2082 requires the extension of these contracts beyond 2006.¹ Further, *American Can Co. v. Davis*, 28 Or. App. 207, 559 P.2d 898 (1977), and *Midland Realty*

¹ For this reason, the recent suggestion of the Bureau of Reclamation that the Commission should defer the issues raised in Docket No. UE 171 until FERC decides the terms of a new license, if any, is immaterial as well as being beyond the scope of issues appropriate to this docket. Reclamation has made no request of FERC concerning its annual charges theories. Nothing is pending before FERC that could implicate this proceeding.

Co. v. Kansas City Power & Light Co., 300 U.S. 109 (1937), clearly show that the Commission has power (1) to supersede rates previously established by contract between utilities and customers; (2) to require provision of service at non-discriminatory rates; and (3) to avoid rates too low to yield the costs of power. For these reasons, PacifiCorp's motion for summary disposition should be granted.

In the April 5, 2005 order granting Hoopa Valley Tribe's intervention, the Commission noted that the Hoopa Valley Tribe is very concerned about the effect of ultra-low power rates as an incentive to divert precious water from the Klamath River system, to the detriment of fish, wildlife and cultural requirements of the downstream tribe. PacifiCorp's motion notes, at page 11, footnote 5, that the proponents of the ultra-low power rates of the expiring contracts may also wish to use arguments concerning their use of water from the Klamath River, or alleged contribution of water to the river, in support of their position. In deference to limitations suggested in the Commission's order, the Hoopa Valley Tribe has refrained from reemphasizing the connection between water and power issues in this proceeding.

For all these reasons, PacifiCorp's motion for summary disposition should be granted.

DATED this 28th day of April, 2005.

Respectfully submitted,

MORISSET, SCHLOSSER, JOZWIAK & MCGAW

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of April, 2005, in addition to electronic service, I mailed the original and five copies of *Hoopa Valley Tribe's Response to PacifiCorp's Motion for Summary Disposition* with the Public Utility Commission of Oregon, via ***First-Class Mail*** to:

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I further certify that on the 28th day of April, 2005, in addition to electronic service, I served a copy of *Hoopa Valley Tribe's Response to PacifiCorp's Motion for Summary Disposition* on counsel via ***First-Class Mail and/or E-mail*** to the following addresses:

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[Notice will not be electronically mailed, but mailed *First-Class* to]:

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I declare the above to be true and correct under penalty of perjury. Executed this 28th day of April, 2005, at Seattle, Washington.

/s/ Rob Roy Smith

Rob Roy Smith, OSB No. 00393

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