

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UE-171

In the Matter of the Request of)	
)	OREGON NATURAL RESOURCES
)	COUNCIL'S RESPONSE
PACIFIC POWER & LIGHT)	TO PACIFICORP'S MOTION
(PACIFICORP))	FOR SUMMARY DISPOSITION
)	
Klamath Basin Irrigation Rates)	
_____)	

I. INTRODUCTION

Irrigators and other water users in the Klamath River Basin in Oregon receive power from PacifiCorp at exceptionally low tariffs set in the 1950s. These tariffs represented a perpetuation and reduction, and/or geographic expansion, of earlier exceptionally low contract tariffs set in 1917. The two 50-year contracts providing these tariffs, one for the irrigators on the federal Bureau of Reclamation's Klamath Irrigation Project ("On-Project) and one for non-Project irrigators in Klamath County ("Off-Project"), are now set to expire. Other water users, such as the Reames Golf and Country Club, a private golf course, also receive these contract tariffs for electricity. For the reasons set forth in PacifiCorp's Motion for Summary Disposition and those presented here, Oregon Natural Resources Council ("ONRC") requests that the Commission terminate the expiring contract tariffs at least by April 16, 2006 and rule that the appropriate tariff for Klamath Basin water users is PacifiCorp's standard irrigation tariff.

In November 2004, PacifiCorp filed a general rate setting case (assigned docket number UE 170) with the Oregon Public Utility Commission ("Commission"). In February, the Commission carved UE 171 out of UE 170 specifically to address the issue

“whether [Klamath Basin] irrigators should continue to be served under these historic contracts, or whether they should be treated like other irrigation customers and served under standard irrigation tariffs.” *In re Pacific Power & Light*, UE 170 & UE 171, Order No. 05-134 (OPUC March 17, 2005) at 5.

As agreed to in the Prehearing Conference, PacifiCorp has filed a Motion for Summary Disposition to explain the expiration of the two contracts at issue. *In re Pacific Power and Light*, UE 171, Prehearing Conference Memorandum and Ruling (OPUC March 3, 2005). With minor exceptions set forth below, ONRC agrees with PacifiCorp’s analysis and conclusions on these legal issues, as described below, and also agrees with WaterWatch of Oregon’s (“WaterWatch”) argument showing that these discriminatory rates are disallowed by statute and that environmental and fairness considerations support termination of the historic, expiring contract tariffs and adoption of the standard tariff.

II. BACKGROUND

ONRC joins PacifiCorp’s and WaterWatch’s presentations of the background regarding the contracts at issue in this proceeding.

III. ARGUMENT

A. Under Oregon Law, the Klamath Contracts Are Subject to Continuing Commission Jurisdiction, They Must Be Fair to Other Customers and They May Not Be Renewed or Extended Except According to Their Terms

1. The USBR and UKRB Contracts Set Retail Rates and Are Tariffs Subject to Commission Review and Revision

ONRC joins PacifiCorp’s analysis and conclusion on this issue.

2. Historical Standards for Special Contracts Require Fairness to Other Customers

ONRC joins PacifiCorp’s analysis and conclusion on this issue.

3. SB 1149 Precludes New Special Contracts After March 1, 2002 and Precludes Revisions to or Extensions of Existing Special Contracts

ONRC joins PacifiCorp's analysis and conclusion on this issue.

B. Application of Oregon Law to the USBR Contract Should Result in Its Termination on April 16, 2006 Because It Contains an Express Termination Date, the Rates It Sets Are No Longer Fair and Reasonable and FERC Lacks Jurisdiction to Dictate a Contract Extension

1. The Commission Should Enforce the April 16, 2006 Termination Date in the USBR Contract

ONRC joins PacifiCorp's analysis and conclusion on this issue.

2. The USBR Rates Are No Longer Just and Reasonable

ONRC joins PacifiCorp's analysis and conclusion on this issue.

3. The Commission's Authority Over the USBR Contract Is Not Subject to FERC Preemption

ONRC joins PacifiCorp's analysis and conclusion on this issue.

C. Application of Oregon Law to the UKRB Contract Should Result in Its Termination on April 16, 2006 Because This Is a Reasonable Contract Expiration Date and the Rates the Contract Sets Are No Longer Just and Reasonable

1. The Commission Should Conclude that April 16, 2006 Is a Reasonable Expiration Date for the UKRB Contract

ONRC joins PacifiCorp's analysis and conclusion on this issue.

2. The Rates Under the UKRB Contract Are No Longer Just and Reasonable

ONRC joins PacifiCorp's analysis and conclusion on this issue with one exception, and joins and incorporates the brief of WaterWatch on their analysis and conclusion as to the proper termination date for the rates. ONRC also joins and incorporates the Pacific Coast Federation of Fishermen's Associations' brief on this issue.

D. Rate Shock Is Not a Legal Defense to the Termination of the USBR and UKRB Contract Rates

ONRC joins PacifiCorp's conclusion that rate shock is not a legal defense to termination of the USBR and UKRB contracts. ONRC also joins and incorporates WaterWatch's brief on this issue.

E. The Historic Contract Rates Are Discriminatory and the Standard Tariff is the Most Economically Appropriate Rate

ONRC joins WaterWatch's analysis and conclusion on this issue.

F. Environmental and Fairness Considerations Support Termination of the Historical Contract Rates and Adoption of the Standard Tariff

The Commission has recognized that ONRC has valid interests regarding the reasonableness of historical rates given their economic and environmental impacts, and informed the parties that UE 171 is the proper forum for addressing these interests. *In re Pacific Power & Light*, UE 170, Revised Joint Ruling and Prehearing Conference Notice (OPUC February 24, 2005) at 2 (“[WaterWatch and Oregon Natural Resources Council] state an interest in the overall reasonableness of rates authorized in those historical agreements, taking into account economic and environmental considerations. The interests of WaterWatch and ONRC are valid; however, those concerns will now be addressed in UE 171.”).

1. The Standard Tariff is the Most Environmentally Appropriate Rate

ONRC joins WaterWatch's analysis and conclusion on this issue.

2. The Standard Tariff is the Most Fair to ONRC's PacifiCorp Ratepayers

ONRC is a statewide, non-profit conservation organization with approximately 6,500 members in the state of Oregon. Many ONRC members, including board

members, purchase electricity from PacifiCorp. Oregon Natural Resources Council's Petition to Intervene in UE 170 (January 7, 2005) at 2. Many of our members find it unfair that the rates they pay are, in effect, subsidizing exceptionally low tariffs for select Klamath Basin irrigators and other water users. To be fair to ONRC's PacifiCorp ratepayers, the Commission should eliminate the expiring contract rates and raise the Klamath Basin irrigators up to standard tariff as PacifiCorp has requested.

IV. CONCLUSION

For the reasons discussed above, ONRC requests that the Commission grant PacifiCorp's Motion for Summary Disposition, or in the alternative, rule that contract rates terminate immediately because they are not just and reasonable.

Respectfully submitted this 28th day of April, 2005,

OREGON NATURAL RESOURCES COUNCIL

By _____

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served Oregon Natural Resources Council's Response to PacifiCorp's Motion for Summary Disposition by mail (where postal address is provided) and email upon each person listed below at the addresses indicated, and upon the Oregon Public Utility Commission (email to Carol.Hulse@state.or.us; puc.filingcenter@state.or.us) (original and five copies mailed pursuant to 860-013-0060).

Dated: April 28, 2005

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