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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 171

In the Matter of PACIFIC POWER &
LIGHT (d/b/a PacifiCorp) Klamath Basin
Irrigation Rates

PACIFICORP'S MOTION FOR
SUMMARY DISPOSITION

I. INTRODUCTION

For almost 50 years, PacifiCorp has served Klamath Basin irrigation customers under special contracts that have provided rates significantly below PacifiCorp's general tariff rates. For all of the reasons set forth in this motion, PacifiCorp submits that the special rate provisions under the On-Project Contract, and the Off-Project special rate contract, terminate effective April 16, 2006. Both the law and the circumstances have changed significantly since these special contracts were entered into and approved. Precisely because the rate discounts provided under these contracts are so significant and have been so long-lived, the termination of these rates is a matter of vital interest to a wide range of stakeholders.

To ensure that this matter receives the focus it is due, the Oregon Public Utility Commission (the "OPUC" or the "Commission") created this docket, UE 171, to address a single key issue: "whether [the Klamath] 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, 171, Order No. 05-134 at 5 (OPUC Mar. 17, 2005) (slip op); *see also In re Pacific Power & Light*, UE 170, Revised Joint Ruling and Prehearing Conference Notice at 2 (OPUC Feb. 24, 2005) (slip op) ("The issue before the Commission is whether certain irrigator customers of PacifiCorp should be served under a historical agreement or a standard contract.").

At the prehearing conference in UE 171, the parties agreed that the issue identified by the Commission in initiating this docket was primarily a legal question, best resolved through a motion for summary disposition, rather than through testimony and a hearing. *See Portland*

1 *General Elec. Co. v. Oregon Energy Co.*, UC 315, Order No. 98-238, 1998 WL 412484
2 (OPUC June 12, 1998) (summary disposition is proper when there is no genuine issue of
3 material fact and the moving party is entitled to judgment as a matter of law); *In re*
4 *PacifiCorp*, UE 111, Order No. 00-090, 2000 WL 362998, at *2 (OPUC Feb. 14, 2000)
5 (applying ORCP 47 standard).

6 Accordingly, the parties proposed and the Commission adopted a schedule that begins
7 with the filing of this Motion for Summary Disposition by PacifiCorp seeking a Commission
8 order terminating the Klamath special contract rates on April 16, 2006. *In re Pacific*
9 *Power & Light*, UE 171, Prehearing Conference Memorandum and Ruling (OPUC Mar. 3,
10 2005). If this motion is granted, the parties agreed to address the residual issue of the new,
11 non-contract rate level for the Klamath irrigators in PacifiCorp’s pending rate case, UE 170,
12 before the end of the suspension period in that case. *Id.*

13 Therefore, pursuant to the Prehearing Conference Memorandum in this case,
14 PacifiCorp respectfully submits this Motion for Summary Disposition seeking a Commission
15 order terminating the Off-Project Contract, and terminating the special rates under the On-
16 Project Contract, on April 16, 2006.

17 II. BACKGROUND

18 At issue in this proceeding are two contracts that have provided fixed, discounted
19 rates to Klamath irrigators since 1956. One is a January 31, 1956 contract between
20 California Oregon Power Company (“Copco”) and the USBR (the “USBR Contract” or the
21 “On-Project Contract”). (*See* Affidavit of Laura Beane, Exhibit 1.) The other is a contract
22 between Copco and the Klamath Basin Water Users Protective Association (the “UKRB
23 Contract” or the “Off-Project Contract”). (*See* Affidavit of Laura Beane, Exhibit 2.)

24 Copco entered into the USBR Contract pursuant to a provision in the original license
25 issued by the Federal Power Commission for Project 2082, consisting of certain dams and
26 hydroelectric facilities on the Klamath River. That provision stated:

1 Contract. In response to the Association’s agreement to withdraw this objection, the
2 Association and Copco negotiated a deal whereby the off-project irrigators would receive a
3 special contract rate for the duration of the USBR Contract. (See Affidavit of Katherine A.
4 McDowell, Exhibit 16 (portions of transcript of CPUC hearing regarding UKRB Contract;
5 Minutes of Association Executive Committee).) The terms of this negotiation were
6 memorialized in a letter signed by both parties in November 1955 (“November 1955
7 Agreement”). (See Affidavit of Laura Beane, Exhibit 5.) On April 11, 1956, Copco filed the
8 November 1955 Agreement with the CPUC as the agreement between the parties, stating in
9 the application that “[t]he level and term of such reduced rates are set forth in the
10 agreement.” (See Affidavit of Laura Beane, Exhibit 6, (CPUC Application at 2).)

11 Later in April 1956, Copco and the Association signed a document titled
12 “Agreement” (the “April 1956 Agreement”), which appears to summarize and confirm
13 certain terms in the November 1955 Agreement. Among other terms, the April 1956
14 Agreement specifies the rate of 7½ mills (0.75 cents) per kWh for agricultural pumping
15 motors of 10 horsepower or greater. However, the April 1956 Agreement is silent regarding
16 certain key terms, including duration and regulatory approval.²

17 On August 29, 1956, the CPUC denied the Application for approval of the UKRB
18 Agreement on the basis that “a flat rate as low as 7½ mills per kwhr for this agricultural
19 power would burden the other classes [of customers,]” and that the contract term, which the
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22 _____
23 Klamath Basin Water Users Protective Association in its historic capacity as a party to the
Off-Project Contract will be to the “Association.”

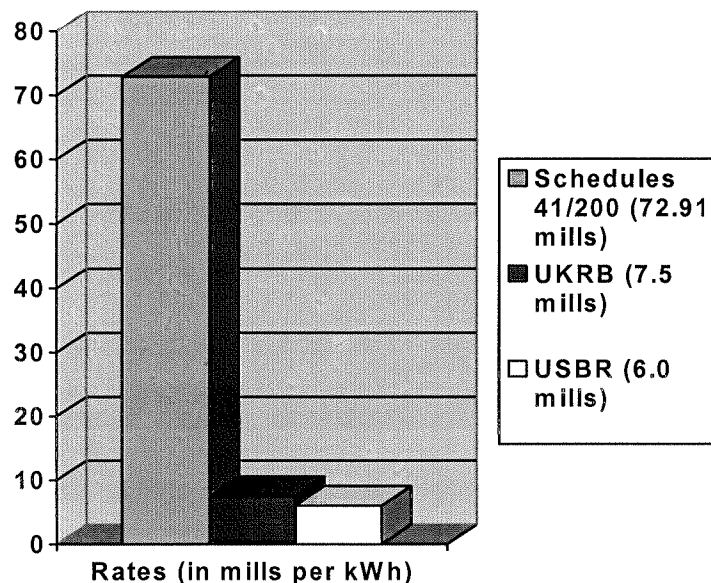
24 ² PacifiCorp has been unable to determine why the parties executed the April 1956
25 Agreement, considering that the Association had already accepted Copco’s revisions and
acted on the agreement by withdrawing its objection to the On-Project Contract, and that the
26 November 1955 Agreement was already before the CPUC and likely also before the OPUC.
(See Exhibit 16 (Minutes of the Association’s Executive Committee).)

1 CPUC construed to be “equivalent” to the USBR Contract, was “undesirably long.” (See
2 Affidavit of Laura Beane, Exhibit 7 (CPUC Decision No. 53659 at 5-6).)

3 Notwithstanding exhaustive research of its files and OPUC files and counter-party
4 discovery, PacifiCorp has been unable to locate an OPUC order or other documentation from
5 the OPUC regarding its approval of the UKRB Contract. However, there is evidence that the
6 contract was in fact approved, and the rates set forth in the UKRB Contract have consistently
7 been included in rate cases since 1956, and approved by the Commission. (See Affidavit of
8 Katherine A. McDowell, Exhibit 16 (portions of transcript of CPUC hearing regarding
9 UKRB Contract; Minutes of Association Executive Committee).)

10 PacifiCorp became a successor to the USBR and UKRB Contracts when it acquired
11 Copco in 1961. The USBR and UKRB Contracts are incorporated in PacifiCorp’s tariffs in
12 Oregon as Schedule 33, which sets rates for the Klamath irrigators at the level “specified by
13 applicable contract.”

14 Over the last five decades, electric service has been provided to On-Project and Off-
15 Project irrigators in the Upper Klamath River Basin in Oregon at discounted rates pursuant to
16 the USBR and UKRB Contracts.



1 The rate chart graphically shows a comparison of the special contract rates to rates
2 paid by other PacifiCorp irrigation customers in Oregon under standard tariff Delivery
3 Service Schedule 41/Cost-Based Supply Service Schedule 200. The standard tariff rate is
4 based on the Company’s currently approved rates for Secondary service in the Summer and
5 includes only the per kWh Distribution Energy Charge, Transmission & Ancillary Services
6 Charge and the Energy Charge. The rate level for the USBR Contract is the rate in Rate
7 Schedule “A” of the Contract (Rate Schedule “B” has even lower rates). The comparison
8 does not include BPA exchange benefits which both the standard tariff and contract groups
9 currently receive, nor other adjustments identified in PacifiCorp’s tariff Schedule 90.³

10 PacifiCorp currently has a relicensing proceeding before the Federal Energy
11 Regulatory Commission (“FERC”) for hydroelectric operations on the Klamath River.
12 (Project No. 2082-027.) Klamath Water Users Association (“KWUA”) and Klamath Off-
13 Project Water Users, Inc. (“KOPWU”) have intervened in that proceeding. KWUA has taken
14 the position that FERC should require PacifiCorp to continue the USBR Contract. Similarly,
15 KOPWU has taken the position that the rate under the Off-Project Contract should remain in
16 effect under the new FERC license. (See Affidavit of Laura Beane, Exhibit 8 (KWUA
17 Motion to Intervene (dated Oct. 12, 2004), FERC Project No. 2082-027 at 2-4; KOPWU
18 Motion to Intervene (dated Oct. 15, 2004), FERC Project No. 2082-027 at 3-4).)

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³ While the comparison does not include the Schedule 299 Rate Mitigation Adjustment, it also does not include either the Basic Charge or the Load Size Charge under Schedule 41.

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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.

Like all special contracts for retail rates, the USBR and UKRB Contracts are tariffs subject to the Commission’s continuing regulatory authority. See *Fields v. Davis*, 31 Or App 607, 613-14, 619-20, 571 P2d 511 (1977) (holding that special contracts are subject to same filing requirements as tariffs); OAR 860-022-0035 (providing that special contracts “are in legal effect tariffs and are subject to supervision, regulation, and control as such”; clarifying that special contracts classified as rate schedules are subject to review and approval pursuant to requirements of OAR 860-022-0005 through 860-022-0030). In compliance with these mandates, the USBR and UKRB Contracts are incorporated into PacifiCorp’s Oregon tariffs as Schedule 33.

The Commission has a continuing duty to review all tariffs, including special contract tariffs such as the USBR and UKRB Contracts, to ensure that the rates are fair, just and nondiscriminatory. *Multnomah County v. Davis*, 35 Or App 521, 526, 581 P2d 968 (1978); *American Can Co. v. Davis*, 28 Or App 207, 224, 559 P2d 898 (1977) (“[T]he Commissioner had not only the right, but indeed the duty, in exercising his authority to set just and reasonable rates, to consider and, upon a proper showing, to change the Crown-Pacific Contract with respect to the rate to be charged thereunder.”). The Commission has the power to change rates or other conditions memorialized in a written contract between a utility and one of its customers. *American Can*, 28 Or App at 221-23 (holding that the exercise of that power does not violate Article I, section 10, of the U.S. Constitution, the Mobile-Sierra doctrine or equitable principles of estoppel). See also *In re Incentive Rates for Electric Service*, Order No. 87-402, 82 Pub Util Rep 4th (PUR) 624, 632 (OPUC 1987) (interpreting

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1 Commission’s regulatory authority with respect to special contracts and ordering that
2 negotiated rates are permissible subject to condition that Commission “must be able to
3 change any negotiated rate”).

4 The Commission’s duty to set just and reasonable rates cannot be constrained by
5 private contracts between a utility and its customers. *American Can*, 28 Or App at 221-23.
6 Indeed, were private parties and regulated utilities able to contract around the Commission’s
7 authority, “the whole public interest in utility regulation would become meaningless, since by
8 making separate contracts with all or any of its individual customers, the utility and the
9 customer could effectively bypass all or any relevant part of the public utility regulatory
10 statutes and the regulations governing the public utility.” *Id.* at 223.

11 Nor is the Commission’s authority to review and revise rates in contracts between a
12 regulated utility and its end-use customer constrained by whether the Commission previously
13 approved the contract. *Id.* at 223-24 (citing *Pacific N. W. Bell v. Sabin*, 21 Or App 200,
14 225-26, 534 P2d 984 (1975) (holding that Commissioner’s prior approval of contract
15 between utility and affiliated interest does not estop him from disallowing any portion of
16 those payments when exercising his authority to determine and impose just and reasonable
17 rates)).

18 While *American Can* is a recent case with virtually indistinguishable facts from those
19 presented in this case,⁴ the holding of that case is the continuation of a long line of precedent:

21 ⁴ *American Can* involved a customer’s request for a refund of the difference between
22 a contract rate and a higher rate established in a general rate case. *American Can*, 28 Or App
23 at 220-24. The customer, Crown Zellerbach, had purchased electricity from PacifiCorp and
24 its predecessors under a series of contracts dating back to 1911. At the time of the
25 Commissioner’s order, the parties were operating under a contract executed in 1965 and, by
26 its terms, set to expire on April 1, 1976, more than two years after PacifiCorp filed its
proposed tariff revision. *Id.* at 220. The court ultimately concluded that the Commissioner
acted within his authority when he raised Crown Zellerbach’s rates to a level he found to be
reasonable. *Id.* at 222.

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

3 SB 1149 changed Oregon law on special contracts. Under OAR 860-038-0260(3), an
4 electric company may not enter into new special contracts for power supply after March 1,
5 2002. Under OAR 860-038-0260(4), existing special contracts such as the USBR and UKRB
6 Contracts “will be governed by the terms of the contract.” Thus, existing special contracts
7 are grandfathered under the law, but only according to their terms. Among other things, this
8 means that existing special contracts that lack renewal or extension provisions—such as the
9 USBR and UKRB Contracts—may not be renewed or extended beyond their express terms.

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

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

14 By its express terms, the USBR Contract expires on April 16, 2006. (*See* Affidavit of
15 Laura Beane, Exhibit 1 (USBR Contract Article 17 at 9 (providing that contract shall remain
16 in effect “for a period of fifty (50) years from the effective date determined pursuant to
17 article 11”), Article 11 at 7 (providing that contract “shall become effective on the date of its
18 approval by the Public Utility Commissioner of the State of Oregon or the Public Utilities
19 Commission of the State of California, whichever shall occur later, and shall not be effective
20 in any way until approved by both regulatory authorities”)); Exhibit 4 (CPUC Order
21 No. 52809 at 5 approving USBR Contract, order effective April 16, 1956)); Exhibit 3 (OPUC
22 letter constituting approval, dated March 6, 1956.) *See also Re California Oregon Power*
23 *Co.*, 23 FPC 59 (Fed’l Power Comm’n 1960) (commenting on agreement between the United
24 States and Copco for a 50-year term terminating in the year 2006).

25 In its FERC filings in the Klamath relicensing docket, KWUA has acknowledged the
26 April 16, 2006 termination of the USBR Contract. (*See* Affidavit of Laura Beane, Exhibit 8,

1 (KWUA Motion to Intervene, FERC Project No. 2082-027, at 2-3).) Under OAR 860-038-
2 0260, the Commission should enforce the express termination date of the USBR Contract.

3 **2. The USBR Rates Are No Longer Just and Reasonable.**

4 Even if the contract did not terminate by its own terms, the Commission should
5 terminate the USBR Contract rates after April 16, 2006, because the rates it sets are no longer
6 just and reasonable. *See American Can*, 28 Or App at 222 (citing *Midland*, 300 U.S. at 113
7 (commission has duty to disapprove contract rate that fails to cover relevant cost of service));
8 *McPherson v. Pacific Power & Light Co.*, 207 Or 433, 452-53, 296 P2d 932 (1956) (“In
9 respect to power companies, we find that the statutes declare every unjust or unreasonable
10 charge, § 112-407, O.C.L.A. (now ORS 757.020), every unjustly discriminatory charge,
11 § 112-463, O.C.L.A. (now ORS 757.310), and every charge in excess of the lawfully filed
12 schedule of rates, § 112-431, O.C.L.A. (now ORS 757.225) to be unlawful.”).

13 The rates under the USBR Contract fail to provide recovery of relevant costs of
14 service under any reasonable measure of the cost of serving the irrigators.⁵ To begin with,
15 the rates do not cover the marginal costs of generation. “As the system nears capacity, the
16 minimum rate must reflect the impact of system expansion on average costs.” *Re Incentive*
17 *Rates for Electric Service*, 82 Pub Util Rep 4th at 631. That circumstance is applicable to the
18 Company today, when it is both building new generation and acquiring additional supply-
19 side resources in order to meet load. The cost of system expansion is reflected in the
20 Company’s marginal or “avoided” cost of generation.

21 _____
22 ⁵ KWUA and KOPWU may argue that the rates under the Klamath Contracts should
23 not be subject to a cost recovery standard, but, instead, should be based on some “value”
24 provided by the on-project and off-project irrigators taking service under the contracts. Such
25 an argument would be contrary to the position taken by both KWUA and KOPWU that data,
26 analyses, etc. regarding “the alleged contribution of water by on- or off-Project water users to
Klamath River surface flows, and/or to PacifiCorp’s hydroelectric facilities on the Klamath
River” are not relevant to the issues in this proceeding. (*See* Affidavit of Laura Beane,
Exhibit 9 (KWUA’s Response to Request No. 2 of KWUA’s First Set of Data Responses to
Waterwatch of Oregon; KOPWU’s Response to Waterwatch’s Data Request No. 2).)

1 To determine the minimum rate applicable under this standard for approval, the
2 Commission should look to the Company's currently approved avoided costs. Those costs
3 are set forth in the Company's tariff Schedule 5, approved by the Commission under Advice
4 No. 01-002. (See Affidavit of Laura Beane, Exhibit 10.) The lowest avoided cost under
5 Schedule 5 (for generation delivered during off-peak hours) is 3.42 cents per kWh, over 5
6 times the rate of 0.6 cents under the USBR Contract.⁶

7 The Company's embedded generation cost might also be considered when
8 determining whether customers receiving service at the rates in the USBR Contract are
9 paying the relevant costs of service. The Company's currently approved Schedule 200, Cost-
10 based Supply Service, specifies its unbundled generation cost for the various customer
11 classes. (See Affidavit of Laura Beane, Exhibit 11.) In contrast to the 0.6 cents per kWh
12 paid under the USBR Contract, the rates paid during the summer by other Oregon irrigators
13 (Schedule 41), just for the cost of generation, are 3.269 cents/kWh and 3.117 cents/kWh for
14 secondary and primary service, respectively (winter rates are higher). With current
15 generation costs being more than 5 times the rates under the USBR Contract, those special
16 rates fall well short of providing recovery of the cost of producing energy to serve the
17 irrigators.

18 Because the rates under the USBR Contract fail to cover the cost of generation, they
19 cannot even begin to contribute to the Company's fixed costs of delivering energy to the
20 irrigators. While the discussion above addressed different measures of the cost of generation,

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⁶ The USBR Contract also has a "Rate Schedule B" that provides even lower rates of
23 5 mills (on-peak) and 3 mills (off-peak) for certain drainage pumping. The Company
24 provides service under that Rate Schedule to a very limited number of customers. Inasmuch
25 as the 6 mill rate under the USBR Contract falls far short of meeting any cost recovery
26 standard, PacifiCorp does not separately address application of the standards to the
Schedule B rates that are lower, because they fail the cost recovery tests to an even greater
degree.

26

1 consideration of the costs of delivery provides a more complete understanding of the extent
2 of under-recovery occurring under the contract.

3 The Company's currently approved delivery service rates for Agricultural Pumping
4 Service (which would be applicable to the Klamath Customers if they were not served under
5 the existing special contracts) are specified in the Company's tariff Schedule 41. (*See*
6 Affidavit of Laura Beane, Exhibit 12.) Schedule 41 specifies different rates for secondary
7 and primary delivery voltages. Virtually all of the service under the USBR Contract is
8 delivered at secondary voltage.⁷ Thus, the appropriate rates to consider for delivery service
9 are those for secondary delivery voltage. The Distribution Energy Charge alone for
10 secondary service is 3.579 cents/kWh. If the Transmission & Ancillary Services Charge of
11 0.443 cents/kWh is added to that, the cost, which does not include the Basic and Load Size
12 Charges, is 4.022 cents/kWh.⁸ By comparison, the total rate under the USBR Contracts is 0.6
13 cents/kWh, less than one-sixth of the delivery costs.

14 In summary, under any applicable measure, the USBR Contract does not cover costs
15 of service in the manner required by Oregon special contract law.

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

18 The Commission's authority to review and approve just and reasonable retail rates is
19 not subject to preemption by FERC. Under the Federal Power Act, FERC does not have
20 authority to set PacifiCorp's retail rates in Oregon. 16 USC § 824(b); *see also New York v.*
21

22 ⁷ Company records reflect that in 2004, only one account under the Klamath
23 Contracts received service at primary voltage. (*See* Affidavit of Laura Beane.)

24 ⁸ The Basic and Load Size Charges are not stated on a kWh basis, and assumptions
25 would have to be made to convert the charges to costs per kWh. Given the magnitude of the
26 disparity between the Klamath Contract rates and the sum of the Distribution Energy Charge
and Transmission & Ancillary Services Charge, PacifiCorp believes it is unnecessary to look
at the total of all the delivery costs for the purpose of the comparison.

1 *Federal Energy Regulatory Comm’n*, 535 US 1, 28, 122 S Ct 1012, 152 L Ed 2d 47 (2002) (a
2 state’s regulatory power over retail rates is recognized by 16 USC § 824(b), “giving FERC
3 jurisdiction over ‘transmission of electric energy,’ but recognizing state jurisdiction over ‘any
4 . . . sale of electric energy’ other than ‘sale of electric energy at wholesale’” (quoting 16 USC
5 § 824(b))).⁹

6 KWUA will likely argue here, as it has in the FERC re-licensing proceeding, that
7 FERC has the authority to require that the KWUA members be provided with retail
8 electricity at the same rates contained in the USBR Contract, preempting any OPUC decision
9 to the contrary. As stated by KWUA, “[A]ll KWUA seeks through this relicensing process is
10 the continuation of the Contract between PacifiCorp and the Bureau.” (Affidavit of Laura
11 Beane, Exhibit 13 (KWUA Motion to Strike Answer of PacifiCorp to Comments, Protests
12 and Motions to Intervene (dated Dec. 13, 2004), Project No. 2082-027 at 8 (“KWUA
13 Motion”)).) However, contrary to KWUA’s request, FERC cannot preempt the Commission
14 and set the retail rates for PacifiCorp’s electric service to customers in Oregon.

15 At FERC, KWUA argued that, notwithstanding its attempt to get FERC to extend the
16 USBR Contract rates, KWUA “does not seek to have [FERC] regulate PacifiCorp’s retail
17 rates,” because “‘rate regulation’ involves scrutiny of all costs that a utility seeks to recover
18 from its ratepayers to ensure that such costs are reasonable and prudent,” and KWUA is not
19 seeking to have PacifiCorp submit and justify its costs and other items to FERC. (*Id.*)
20 KWUA argues that a FERC requirement that PacifiCorp continue charging the retail rates set
21 forth in the USBR Contract, or substantially similar rates, would not constitute regulating
22 PacifiCorp’s retail rates. This proceeding involves issues similar to those raised by KWUA

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24 ⁹ KOPWU has also taken a position at FERC that a new license should be conditioned
25 on the continuance of the Off-Project Contract rate during the term of the new license. Thus,
the arguments herein regarding the lack of FERC authority over PacifiCorp’s retail rates
apply to KOPWU as well.

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1 at FERC regarding the continuing viability of the USBR Contract without scrutiny of
2 PacifiCorp’s costs of service. KWUA’s position that this type of proceeding does not
3 involve retail rate regulation disregards the reality of the subject matter at issue.

4 KWUA goes on to argue at FERC:

5 “Implicit in PacifiCorp’s argument is the notion that
6 PacifiCorp’s relationship with its retail customers is the solely
7 [sic] province of the OPUC. Again, a renewal of the Contract
8 would not require [FERC] to usurp or interfere with the
9 OPUC’s regulatory authority over PacifiCorp’s retail rates.
10 The OPUC would remain *free either to approve the Contract*
11 *and allow PacifiCorp to recover the costs as a reasonable and*
prudent expense for the privilege of owning and operating the
Project, or to disallow the recovery of such expenditures
through PacifiCorp’s tariff rates and require PacifiCorp to
internalize such costs within the corporation.” (Id. (emphasis
added).)

12 Notwithstanding, and perhaps highlighted by, KWUA’s mid-sentence sleight-of-
13 hand, in which it says that the Commission would remain free to either approve the Contract
14 or disallow the costs (*i.e.*, let the Contract rates go into effect and require PacifiCorp’s
15 shareholders to bear the cost of underrecovery), KWUA’s position at FERC is clearly that if
16 FERC orders the special reduced rates, this Commission cannot say otherwise. Completely
17 absent from the options that KWUA says the Commission is free to exercise is the ability to
18 *disapprove* the discounted rates that KWUA seeks to have mandated by FERC. KWUA’s
19 position is absolutely contrary to this Commission’s authority and the authority granted to
20 FERC under the Federal Power Act, as discussed above. It should be noted that the USBR
21 Contract itself recognizes that approval by the CPUC and the OPUC was and is necessary for
22 the setting of retail rates in their respective jurisdictions: Section 11 expressly provides that
23 “[the contract] shall not be effective in any way until approved by both regulatory
24 authorities.”

25 KWUA also argued at FERC that the Klamath River Basin Compact, Pub L No. 85-
26 222, 71 Stat 497, 500 (1957) (the “Compact”), “specifically directs that the waters of the

1 Klamath River shall be used to provide the lowest cost power for irrigation in the region.”
2 (Affidavit of Laura Beane, Exhibit 13 (KWUA Motion at 11-12).) The provision relied upon
3 by KWUA for that position states:

4 “It shall be the objective of each state, in the formulation and
5 execution and the granting of authority for the formulation and
6 execution of plans for distribution and use of the waters of the
7 Klamath River Basin, to provide for the most efficient use of
8 available power head and its economic integration with the
9 distribution of water or other beneficial uses in order to secure
10 the most economical distribution and use of water and lowest
11 power rates which may be reasonable for irrigation and
12 drainage pumping, including pumping from wells.” Compact,
13 Article IV.

14 Notably, the Federal Power Commission (the “FPC,” FERC’s predecessor at the time of the
15 Compact’s adoption) was not even mentioned in the Compact, despite the fact that the FPC
16 had already issued a license for the operation of the Klamath hydroelectric project.
17 Moreover, the quoted provision speaks only of an “objective” of the States of California and
18 Oregon. Furthermore, the Compact does not call for the lowest possible rate, but the lowest
19 power rates that *may be reasonable* for the specified purposes—the same reasonableness
20 standard that the Commission is asked to apply in this proceeding. The Compact does not
21 speak of an objective of the federal government, and certainly does not state a “directive” to
22 the federal government or to the State of Oregon. Accordingly, the Compact cannot be a
23 basis for the FERC mandating particular retail electric rates for Klamath irrigators.

24 It is for this Commission, not FERC, to determine the rates PacifiCorp shall charge
25 the Klamath irrigators for retail electric service. There is recent evidence that the FERC Staff
26 concurs with this view. (See Affidavit of Laura Beane, Exhibit 14 (FERC Staff Response to
Additional Study Requests at 16, DOI-28 (dated Mar. 16, 2005) (rejecting study request
regarding impacts associated with the expiration of electrical service contract because “We
do not consider the rates that PacifiCorp charges its customers to be an appropriate issue for
analysis in this proceeding”)).)

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

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

7 The UKRB Contract omits a number of key terms, most significantly the duration of
8 the contract. Under Oregon law, a contract that is indefinite as to its duration expires after a
9 reasonable term. *Lund v. Arbonne Intern., Inc.*, 132 Or App 87, 90-91, 887 P2d 817 (1997);
10 *see also* Restatement (Second) of Contracts § 204 (1981) (“When the parties to a . . . contract
11 have not agreed with respect to a term which is essential to a determination of their rights and
12 duties, a term which is reasonable in the circumstances is supplied by the court.”).

13 A reasonable term for the UKRB Contract should be defined by reference to the
14 USBR Contract as 50 years. The evidence from the time of contracting shows that the
15 parties intended the UKRB Contract to expire at the same time as the USBR Contract.

16 For example, in November 1955, after months of negotiations, KWUA drafted and
17 sent to Copco an agreement that stated that the term of the Off-Project Contract would mirror
18 the On-Project Contract. (*See* Affidavit of Laura Beane, Exhibit 5 (“That after power rates
19 have been established for off-project pumpers and applications have been approved by the
20 Public Utilities Commissions of Oregon and California, no change in power rates for the
21 term of the contract between the Bureau of Reclamation and Copco shall be submitted to the
22 Commissions unless filed jointly by Copco and this Association.”).) This agreement was
23 preceded by an October 28, 1955 letter stating that the contract rate for the off-project users
24 should apply “for the duration of the contract between the Department of Interior and The
25 California Oregon Power Company.” (Affidavit of Laura Beane, Exhibit 15.)

26 Likewise, Copco filed with the CPUC, on April 11, 1956, the November 1955
27 Agreement as the agreement between the parties, stating in the application that “[t]he level

1 and term of such reduced rates are set forth in the agreement.” (Affidavit of Laura Beane,
2 Exhibit 6 (CPUC Application at 2).) In its Decision, the CPUC recognized the parties’
3 anticipation of a term “equivalent to the term of the Reclamation Bureau contract.”
4 (Affidavit of Laura Beane, Exhibit 7 at 6.)¹⁰ Nothing in the CPUC Decision indicates that
5 the application was supplemented with the April 1956 Agreement, or that it was introduced
6 at the hearing regarding the November 1955 Agreement.

7 It is unreasonable to conclude that the UKRB Contract continues in effect after the
8 termination of the USBR Contract. The evidence demonstrates that the UKRB Contract was
9 entered into as a “me too” agreement, designed to help the off-project users achieve closer
10 parity in rates to the on-project users in return for the off-project users’ support of the USBR
11 Contract. (See Affidavit of Katherine A. McDowell, Exhibit 16.) The fact that the rates set
12 in the UKRB Contract are less attractive than those in the USBR Contract demonstrates the
13 secondary nature of the UKRB Contract. Given this context, it would be unreasonable to
14 construe the UKRB Contract as having a different and more favorable contract length for the
15 irrigators than the USBR Contract.

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

18 Like the USBR Contract, the Commission should terminate the UKRB Contract after
19 April 16, 2006, because its rates are no longer just and reasonable. See *American Can*, 28 Or
20 App at 222 (citing *Midland*, 300 US at 113 (Commission has duty to disapprove contract rate
21 that fails to cover relevant cost of service)). While the rates set under the UKRB Contract are
22 slightly higher than those under the USBR Contract, the difference is immaterial in terms of
23 _____

24 ¹⁰ Although the CPUC referred to a term of “39 years equivalent to the term of the
25 Reclamation Bureau contract,” it also correctly recognized that the USBR Contract was
26 effectively a 39-year *extension* of the 1917 contract that was set to expire in 1967. (See
Affidavit of Laura Beane, Exhibit 4 at 3-4.)

1 covering the costs of service. The UKRB Contract rates are four times below both the
2 Company’s currently approved avoided costs and its embedded costs of generation, and
3 represent less than one-fifth of the Company’s delivery cost.

4 In 1956, the CPUC rejected the UKRB Contract on the basis that “a flat rate as low as
5 7½ mills per kwhr for this agricultural power would burden the other classes [of customers,]”
6 and that the contract term, which the CPUC construed to be equivalent to that of the USBR
7 Contract, was “undesirably long.” (Affidavit of Laura Beane, Exhibit 7 (CPUC Decision
8 53659 at 5-6).) Fifty years later, the 7½ mill rate under the UKRB Contract cannot be
9 sustained as just and reasonable, nor can the position that the contract extends beyond
10 April 16, 2006.

11 Finally, it would be discriminatory to perpetuate the rates in the UKRB Contract after
12 the USBR Contract terminates on April 16, 2006. The same desire for rate parity between
13 the on-project irrigators and the off-project irrigators that led to the execution of the UKRB
14 Contract should now lead to its termination concurrent with termination of the USBR
15 Contract.

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

18 KWUA and KOPWU have indicated that they intend to raise the issue of “rate shock”
19 in opposition to termination of their special contract rates. Rate shock is not a legal defense
20 to the termination of the USBR and UKRB Contract rates, but rather is a consideration
21 relevant to the post-contract rate level for these customers. *Re Portland General Elec. Co.*,
22 UE 155, Order No. 01-988, 213 Pub Util Rep 4th (PUR) 376, 380 (OPUC 2001) (“‘Rate
23 shock’ is not a legal principle; rather, it is a factor the Commission has considered in the rate
24 spread and rate design stage of various rate proceedings.”). Under OAR 860-038-0260(4),
25 the Commission may not revise the terms of an existing special contract, including the
26

1 contract length and the rate levels. Thus, if the Commission concludes that the contracts do
2 not produce rates that are just and reasonable, then it must terminate those rates.

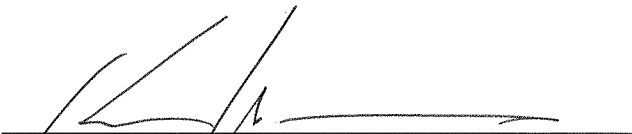
3 All parties at the prehearing conference in this case agreed that if the Commission
4 terminated the USBR and UKRB Contract rates in this docket, then the new rate levels for
5 these customers should be addressed as part of PacifiCorp's current general rate case, UE
6 170. It is in this context, as part of the overall rate spread and rate design exercise in UE 170,
7 that the Commission may review issues of rate shock and rate gradualism for the irrigation
8 class and the countervailing concerns about interclass rate subsidies and the need for cost-
9 based rates. *See In re Portland General Elec. Co.*, UE 93, Order No. 95-1216, 1995 WL
10 790302, at *9 (OPUC Nov. 20, 1995) (holding, in response to "rate shock" arguments, that
11 "[t]he attempt to achieve parity among customer classes is an appropriate movement toward
12 that goal and should be pursued in this case. Attempts to aid particular classes of customers
13 run counter to the aim [of] achieving cost-based rates.").

14 IV. CONCLUSION

15 For the reasons stated above, the Commission should conclude that the special rate
16 provisions under the USBR Contract, and the UKRB special rate contract, terminate effective
17 April 16, 2006.

18
19 DATED: March 31, 2005.

20 STOEL RIVES LLP

21 
22 Katherine A. McDowell
Sarah J. Adams Lien

23 Attorneys for PacifiCorp
24
25
26

STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600, Portland, OR 97204
Main (503) 224-3380 Fax (503) 220-2480

CERTIFICATE OF SERVICE

1
2 I hereby certify that I served the foregoing document in docket UE 171 on the
3 following named person(s) on the date indicated below by e-mail where available, and by
4 first-class mail, to said person(s) a true copy thereof, addressed to said person(s) at his or her
5 last-known address(es) indicated below.

| | | |
|----|--|--|
| 6 | Edward Bartell Klamath Off-Project Water Users, Inc. 30474 Sprague River Road Sprague River, OR 97639 | Lisa Brown Waterwatch of Oregon 213 SW Ash Street, Suite 208 Portland, OR 97204 lisa@waterwatch.org |
| 9 | John Devoe Waterwatch of Oregon 213 SW Ash Street, Suite 208 Portland, OR 97204 john@waterwatch.org | Jason Eisdorfer Citizens' Utility Board of Oregon 610 SW Broadway, Suite 308 Portland, OR 97205 jason@oregoncub.org |
| 12 | Edward A. Finklea Cable Huston Benedict Haagensen & Lloyd LLP 1001 SW Fifth Avenue, Suite 2000 Portland, OR 97204 efinklea@chbh.com | Dan Keppen Klamath Water Users Association 2455 Patterson Street, Suite 3 Klamath Falls, OR 97603 |
| 16 | Jim McCarthy Oregon Natural Resources Council PO Box 151 Ashland, OR 97520 jm@onrc.org | Bill McNamee Public Utility Commission PO Box 2148 Salem, OR 97308-2148 bill.mcnamee@state.or.us |
| 19 | Steve Pedery Oregon Natural Resources Council PO Box 151 Ashland, OR 97520 sp@onrc.org | Matthew W. Perkins Davison Van Cleve PC 333 SW Taylor, Suite 400 Portland, OR 97204 mwp@dvclaw.com |
| 22 | Robert Valdez PO Box 2148 Salem, OR 97308-2148 bob.valdez@state.or.us | Lowrey R. Brown Citizens' Utility Board of Oregon 610 SW Broadway, Suite 308 Portland, OR 97205 lowrey@oregoncub.org |

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DATED: March 31, 2005.



Katherine A. McDowell

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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 171

In the Matter of PacifiCorp's Klamath
Basin Irrigation Rates

AFFIDAVIT OF LAURA BEANE

STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

I, Laura Beane, being first sworn do state:

1. My current position is Oregon Manager, in the PacifiCorp Regulation Department. In this capacity, I have personal knowledge about the matters covered in this affidavit.

2. PacifiCorp's business records show that for the year 2004, only one PacifiCorp customer receiving electric service at the rates under the 1956 contracts entered into between the California Oregon Power Company ("Copco") and the U.S. Bureau of Reclamation, and Copco and the Klamath River Water Users Protective Association, received service at a primary delivery voltage.

3. Attached to this Affidavit are the following documents, which are true and correct copies of documents retained as records of PacifiCorp in the ordinary course of business:

Exhibit 1—United States Department of the Interior Contract with the California Oregon Power Company, Contract No. 14-06-200-5075, dated January 31, 1956.

Exhibit 2—Agreement dated April 30, 1956 between The California Oregon Power Company and Klamath Basin Water Users Protective Association.

Exhibit 3—Letters dated March 6, 1956 and March 9, 1956 from the Oregon Public Utilities Commissioner to Mr. J. C. Boyle, Vice President and General Manager, The California Oregon Power Company.

Exhibit 4—Decision No. 52809 dated March 27, 1956, and Decision 53658 dated August 29, 1956, of the Public Utilities Commission of the State of California regarding Application No. 37724.

Exhibit 5—Letter dated November 3, 1955 from Frank Z. Howard, President, Klamath Basin Water Users Protective Association to the California Oregon Power Company, Attention: Mr. J. C. Boyle.

Exhibit 6—Application, dated April 10, 1956, of The California Oregon Power Company to the Public Utilities Commission of the State of California for approval of an agreement with Klamath Basin Water Users Protective Association.

Exhibit 7—Decision No. 53659 dated August 29, 1956, of the Public Utilities Commission of the State of California regarding Application No. 37918.

Exhibit 8—Klamath Water Users Association Motion to Intervene, Federal Energy Regulatory Commission Docket No. P-2082-027, dated October 12, 2004, and Motion to Intervene in Opposition of the Klamath Off-Project Water Users, Inc. in Federal Energy Regulatory Commission Docket No. P-2082-027, dated October 15, 2004.

Exhibit 9—KWUA's Response to Waterwatch's Data Request No. 2 and KOPWU's Response to Waterwatch's Data Request No. 2.

Exhibit 10—Pacific Power & Light Company Partial Requirements Service 1,000 kW or Less, Oregon Schedule 5.

Exhibit 11-- Pacific Power & Light Company Cost-Based Supply Service, Oregon Schedule 200.

Exhibit 12—Pacific Power & Light Company Agricultural Pumping Service Delivery Service, Oregon Schedule 41.

Exhibit 13—Klamath Water Users Association Motion to Strike Answer of PacifiCorp to Comments, Protests and Motions to Intervene, Federal Energy Regulatory Commission Docket No. P-2082-027, dated December 13, 2004.

Exhibit 14—FERC Staff Response to Additional Study Requests, dated March 16, 2005, Federal Energy Regulatory Commission Docket No. P-2082-027.

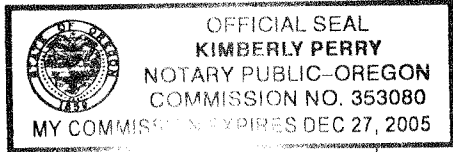
Exhibit 15—Letter from Frank Z. Howard, President Klamath Basin Water Users Protective Association to The California Oregon Power Company, Attention: Mr. J. C. Boyle, dated October 28, 1955.

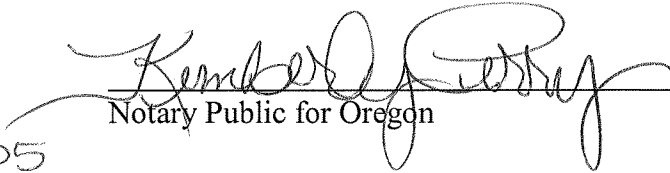
DATED: March 31, 2005.

Laura Beane



SUBSCRIBED AND SWORN to before me this 31st day of March, 2005.





Notary Public for Oregon

My commission expires: 12/27/05

Contract No.
14-06-200-5075

UNITED STATES
DEPARTMENT OF THE INTERIOR

CONTRACT WITH THE CALIFORNIA OREGON POWER COMPANY

THIS CONTRACT, made this 31st day of January, 1956,
in pursuance of the Act of Congress of June 17, 1902 (32 Stat. 368),
and acts amendatory thereof or supplementary thereto, hereinafter
referred to as "the Federal reclamation laws", and acts of Congress re-
lating to the preservation and development of fish and wildlife resources,
between THE UNITED STATES OF AMERICA, hereinafter called "the United
States", represented by the officer executing this contract, his duly
appointed successor, or his duly authorized representative, hereinafter
called "the Contracting Officer", and THE CALIFORNIA OREGON POWER COMPANY,
a California corporation, its successors or assigns, hereinafter called
"Copco";

WITNESSETH:

WHEREAS, the United States, pursuant to the Federal reclamation
laws, is now engaged in the reclamation and irrigation of lands lying in
the State of Oregon and in the State of California in the vicinity of
Klamath Falls, Oregon, known as the Klamath Project; and

WHEREAS, the United States has investigated and is further
investigating and preparing plans for the development of water and related
resources of the Upper Klamath River Basin, including the area in
California known as Butte Valley; and

WHEREAS, on February 24, 1917, an agreement was made for the term of fifty (50) years between the United States and a predecessor of Copco, which agreement was thereafter assigned to Copco, providing, among other things, for the construction of Link River Dam, Klamath County, Oregon, for the purpose of regulating the level of Upper Klamath Lake, and said agreement has been amended and supplemented from time to time; and

WHEREAS, the parties deem it to their advantage and to the best interest of the users of the water in the Upper Klamath River Basin that a new agreement be entered into for a period of fifty (50) years, upon the terms and conditions hereinafter expressed;

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. Whenever used in this contract, the following terms shall have the respective meanings set opposite thereto:

(a) Upper Klamath River Basin -- The area so designated and delineated on the map annexed hereto and made a part hereof, marked Exhibit "A".

(b) Klamath Water -- The water lying or flowing in or which has been diverted from Upper Klamath Lake, Link River, Lake Ewauna, Lost River, Klamath River, or their tributaries, or water that is pumped from underground sources for use on Project Land as part of a plan for maximum water resource development.

(c) Project Land -- All land of the United States lying in the Upper Klamath River Basin, and all land in the Upper Klamath River Basin lying within any public district or within the service area of any association which has contracted or may hereafter contract and any land of individuals or corporations in the Upper Klamath River Basin which have contracted or may hereafter contract with the United States, pursuant to the Federal reclamation laws, for water service or for the construction of irrigation, drainage, or other reclamation works.

2. Copco shall operate and maintain for a period of fifty (50) years from the effective date hereof, subject to the conditions hereinafter provided, Link River Dam, located in Klamath County, Oregon, heretofore constructed by Copco and transferred to the United States pursuant to the agreement of February 24, 1917. Copco may regulate the water level of Upper Klamath Lake between the elevations 4143.3 and 4137, (Reclamation Service Datum), but the water level shall not be raised above elevation 4143.3 and shall not be lowered below elevation 4137, except at such times, and on such conditions, as may be satisfactory to the Contracting Officer: Provided, That the Contracting Officer from time to time may specify a higher minimum elevation than 4137 if in his opinion such must be maintained in order to protect the irrigation and reclamation requirements of Project Land. Whenever the elevation of the

lake drops to a point two-tenths of a foot above the applicable minimum elevation, the Contracting Officer may assume control of the Link River Dam and its outlets and continue in control so long as the lake level remains at or below that elevation.

All elevations stated in this article, or specified by the Contracting Officer pursuant to this article, shall mean elevations in a state of calm.

3. Copco shall at its own expense maintain the approach channel to the "A" Canal of the Klamath Project to the satisfaction of the Contracting Officer so far as may be necessary to carry a flow of not less than 1200 c.f.s. into the "A" Canal with the water of Upper Klamath Lake at an elevation of 4137.

4. Copco assumes any and all liability for damages resulting from operation of the Link River Dam by Copco or resulting from its regulation and control of the water levels of Upper Klamath Lake. Copco hereby undertakes to hold the United States harmless from any and all liability for damage arising out of the operation by Copco of Link River Dam and the regulation and control by Copco of Upper Klamath Lake herein provided for.

5. For the period of this contract Copco agrees to furnish electric power for the purposes and for the rates set forth in Exhibit "B", attached hereto and hereby made a part of this contract.

6. Nothing in this agreement shall curtail or in anywise be construed

as curtailing the rights of the United States to Klamath Water or to the lands along or under the margin of Upper Klamath Lake. No Klamath Water shall be used by Copco when it may be needed or required by the United States or any irrigation or drainage district, person, or association obtaining water from the United States for use for domestic, municipal, and irrigation purposes on Project Land: Provided, That nothing in this agreement shall curtail or interfere with the water rights of Copco having a priority earlier than May 19, 1905, and: Provided further, That no water originating in the Upper Klamath River Basin shall be transported beyond the Upper Klamath River Basin except under the provisions of Article 7 of this contract and except for that water which originates within the drainage area of Fourmile Lake.

7. If there shall be authorized for construction pursuant to the Federal reclamation laws projects or units of projects including lands lying within Butte Valley, all drainage water shall be returned to the Klamath River at a point above the town of Keno, Oregon, unless the Secretary of the Interior shall determine that this would render the irrigation and reclamation of lands within Butte Valley economically less feasible than under an alternate plan of development, in which event, upon construction of such projects or units of projects, the drainage water from Project Land lying within Butte Valley shall be returned to the Klamath River at such point upstream from Copco Lake as shall be determined by the Secretary of the Interior: Provided, That

if Copco makes economic benefits available to such projects or units of projects by means of power rates lower than those specified in Exhibit "B", or otherwise, that will make it equally feasible, to the satisfaction of the Secretary of the Interior, to return the drainage water to a point in the Klamath River above Keno, then the drainage water shall be returned to the Klamath River above Keno. Copco shall have the first right to develop, for power purposes, drainage water removed by the United States from Project Land lying within Butte Valley, subject to establishment by Copco of its rights under the applicable state law.

8. Nothing in this agreement shall be deemed to confer on the United States or upon any of its successors any right to the use of Klamath Water for the purpose of generating electric power.

9. Except for the water rights of Copco having a priority earlier than May 19, 1905, no Klamath Water shall be used by Copco when it may be needed or required by the United States for waterfowl conservation in the Upper Klamath River Basin in the quantities in which it is being used for that purpose as of the effective date of this contract.

10. The failure of Copco to comply in the true intent and meaning with any of the provisions of this agreement in regard to the operation and use of Link River Dam during the fifty (50) year period shall render this contract in regard to said dam subject to cancellation by the Secretary of the Interior upon sixty (60) days' written notice to Copco stating the cause for such proposed cancellation and in case of failure

or refusal of Copco to comply with the provisions of this contract within the period allowed by the Secretary of the Interior he may cancel this contract. After such cancellation, or at the expiration of the fifty (50) year period of this contract, Copco shall have no further rights in regard to the use of Link River Dam and its appurtenances, the operation and control of which shall immediately pass to the United States, but such cancellation shall in nowise curtail or affect the rights which Copco now has in the waters of Link River and Klamath River.

11. This contract shall become effective on the date of its approval by the Public Utility Commissioner of the State of Oregon or the Public Utilities Commission of the State of California, whichever shall occur later, and shall not be effective in any way until approved by both regulatory authorities. Within thirty (30) days after the execution of this contract Copco shall file applications with both regulatory authorities for orders authorizing Copco to carry out the terms thereof and shall prosecute the applications and any proceedings on them diligently. If such orders are not issued and effective within nine (9) months after execution of this contract, the United States may, within sixty (60) days, terminate this contract on thirty (30) days' notice to Copco.

12. This contract shall supersede and cancel the contract, including all amendments thereto, entered into under date of February 24, 1917, by Copco and its predecessor company, California-Oregon Power Company, and the United States, upon the effective date hereof.

13. In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the non-discrimination clause. The contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

14. No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

15. This contract binds and inures to the benefit of the parties hereto, their successors and assigns, including without limitation any water users' organization or similar group which may succeed either by assignment or by operation of law to the rights of the United States hereunder.

16. Copco warrants that it has not employed any person to solicit or

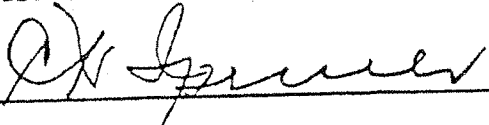
secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the United States the right to annul the contract or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fee. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by Copco for the purpose of securing business.

17. This contract shall be in effect for a period of fifty (50) years from the effective date determined pursuant to article 11.

IN WITNESS WHEREOF, the parties hereto set their hands and the seal of Copco is hereto affixed.


APPROVED AS TO LEGAL
FORM AND SUFFICIENCY
ACTING Kurt S. Swartz
REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

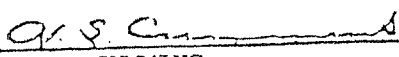
THE UNITED STATES OF AMERICA

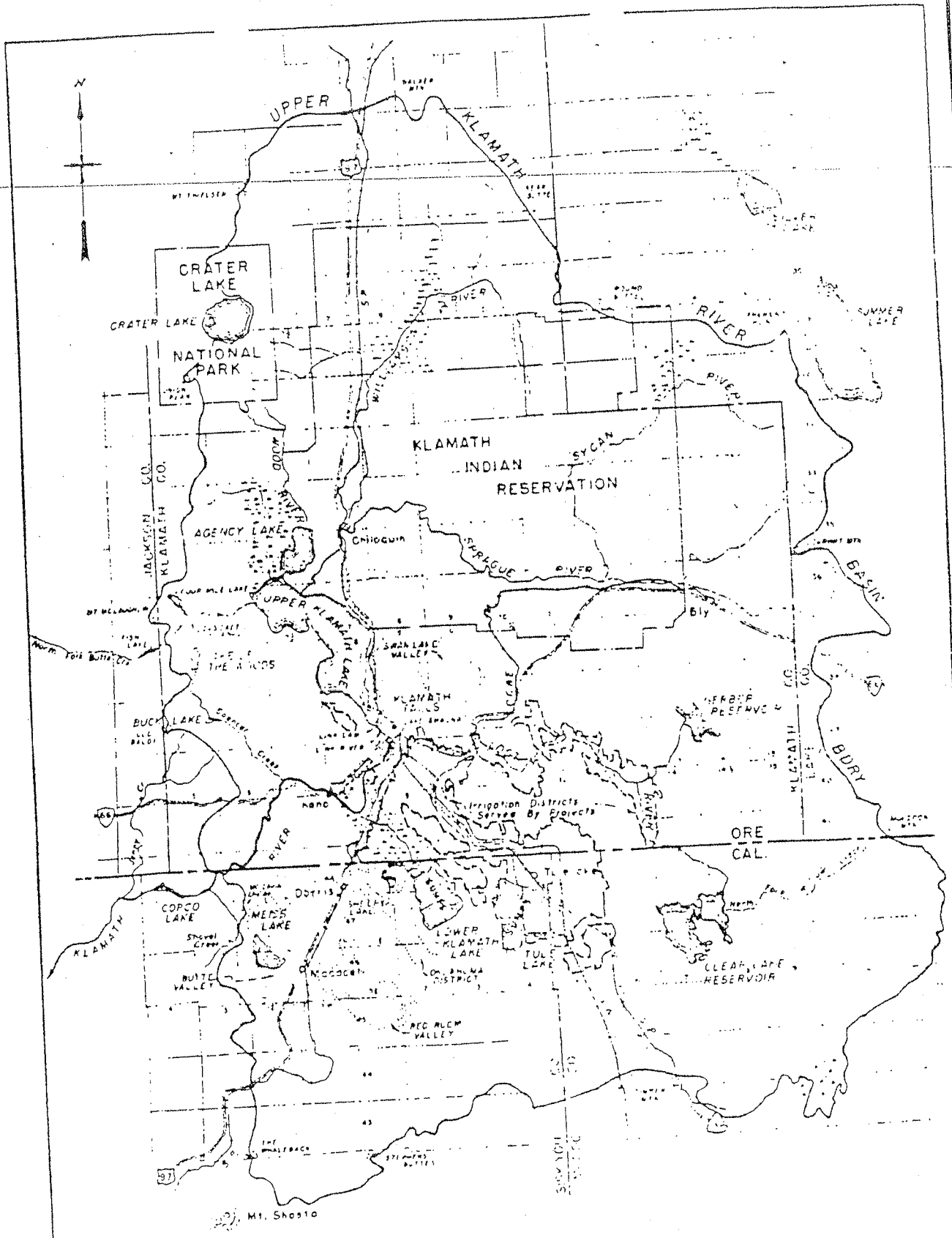
By 
Title Regional Director, Region 2
Bureau of Reclamation,
U. S. Department of the Interior
Address P. O. Box 2511
Sacramento 11, California

THE CALIFORNIA OREGON POWER COMPANY

Attest:


E. L. LENOX
Title Secretary

By 
A. S. CUMMINS
Title President
Address 216 West Main Street
Medford, Oregon



UPPER KLAMATH RIVER BASIN
OREGON - CALIFORNIA

REPORTED URE. IN 40
S. CAL. IN 40
SEE "UCB" FORM CONTRACTS
Exhibit "B"

STATES OF CALIFORNIA AND OREGON
SPECIAL GOVERNMENT POWER RATE UNDER CONTRACT DATED January 31, 1956
BETWEEN UNITED STATES OF AMERICA AND THE CALIFORNIA OREGON POWER COMPANY
AGRICULTURAL POWER SERVICE: --RATE SCHEDULE "A"

This rate schedule shall be applicable only to pumping Klamath
Water for use on Project Land and for drainage of Project Land.

Territory:

Applicable to the Upper Klamath River Basin.

Rate:

0.6¢ per kwh

Annual Minimum Charge:

The annual minimum charge is based on the name plate rating in
horsepower of the maximum connected motor load at each instal-
lation during a calendar year.

100 H.P. or over:

| | |
|--------------------------------|------------------------------------|
| for first two years of service | \$10.45 per H.P. per calendar year |
| after two years of service | No Charge |

99 H.P. or less:

| | |
|---------------------------------|-----------------------------------|
| for first five years of service | |
| first 25 H.P. | \$6.00 per H.P. per calendar year |
| next 74 H.P. | \$5.25 " " " " " |
| after five years of service | |
| first 25 H.P. | \$3.00 per H.P. per calendar year |
| next 74 H.P. | \$2.625 " " " " " |

Special Conditions:

- (1) Where 3-phase service is required for installation under 7-1/2 H.P., the annual minimum charge will be based on 7-1/2 H.P.
- (2) Installations in service prior to the effective date of this contract shall receive credit for the time service has been rendered under special power contracts entered into pursuant to the contract between the United States and Copco dated February 24, 1917, in meeting the time requirements used in determining annual minimum charges.
- (3) Energy will be supplied either single-phase or 3-phase at nominal voltages consistent with those in effect elsewhere in the territory served by Copco.
- (4) Special contracts shall be executed for all installations under this rate and all contracts shall have attached thereto a letter from the Contracting Officer stating the proposed consumer is entitled to this rate.
- (5) For installations of more than 7-1/2 H.P., Copco shall make all necessary line extensions at its own expense.
- (6) For installations of 7-1/2 H.P., or less, Copco shall make necessary line extensions in accordance with its established line extension policies as filed with the State regulatory authorities having jurisdiction.
- (7) The annual minimum charge is payable in consecutive monthly installments of 1/6 (one-sixth) of the annual minimum charge, beginning the first month of operation until such time as the accumulated energy charges equal the annual minimum charge.

REPORTED Sch 46 (ON PEAK)
AND Sch 47 (OFF PEAK)

DRAINAGE PUMPING: --RATE SCHEDULE "B"

This rate schedule shall be applicable only to the pumps operated by the United States, or its successors in interest, for the removal of water from Tule Lake Sumps and Lower Klamath Lake Sumps and any drains leading thereto or therefrom and for power used to pump such drainage water for the irrigation of the areas lying within the beds of Tule Lake and Lower Klamath Lake, all as shown on the map marked Exhibit "A".

Rate:

On-peak pumping--eight (8:00) A.M. to eight (8:00) P.M. of each day except Saturdays, Sundays and legal holidays--five (5) mills per kwh

Off-peak pumping--eight (8:00) P.M. to eight (8:00) A.M. of each day and during the 24-hour period of Saturdays, Sundays and legal holidays--three (3) mills per kwh

If at any time Copco's commercial rates for like service are lower than the rates specified in Schedules "A" and "B" herein, the commercial rates shall prevail during such time.

THE CALIFORNIA OREGON POWER COMPANY

WHEREAS, the officers of this Company have negotiated a contract with the United States of America, Department of the Interior, acting by and through the Bureau of Reclamation, for the regulation of the waters of Upper Klamath Lake through the operation of Link River Dam and related irrigation and reclamation matters in the Upper Klamath River Basin; and

WHEREAS, said contract is for a period of 50 years from its effective date and is to supersede a contract dated February 24, 1917, as amended, between California-Oregon Power Company (a predecessor company) and the United States; and

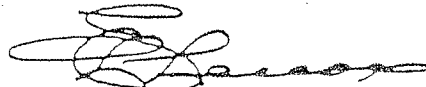
WHEREAS, the Officers and Counsel for the Company have negotiated a new contract with representatives of the United States identified as "Draft of October 10, 1955 (Revision of Draft dated August 5, 1955)," which draft was approved by the Assistant Secretary of the Interior Fred G. Aandahl on December 27, 1955; and

WHEREAS, the Board of Directors have reviewed said draft of contract and believe that its execution is in the best interest of the Company;

NOW, THEREFORE, BE IT RESOLVED, that the President of The California Oregon Power Company, Mr. A. S. Cummins, is hereby authorized to execute said contract, to make and file with such regulatory bodies as may have jurisdiction, any applications, including amendments, for the purpose of obtaining any necessary authorization or approval of such regulatory bodies of the aforesaid contract and to do all other acts and to execute and deliver such other documents as may be necessary or desirable to effectuate the purpose of these resolutions.

I, E. L. LENOX, Secretary of The California Oregon Power Company, hereby certify the above and foregoing to be a full, true and correct copy of a resolution adopted by the Board of Directors of said Corporation at a meeting thereof held on January 26, 1956; that there was then and there present and voted thereon a quorum of said Board; and that said resolution is in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation this 26th day of January, 1956.



Secretary

A G R E E M E N T

AGREEMENT, dated April 30, 1956, between The California Oregon Power Company, hereinafter called Copco, and the Klamath Basin Water Users Protective Association, regarding proposed agricultural pumping power rates for off-project users in the Upper Klamath River Basin boundary which is shown on Exhibit "A" attached.

In consideration for an increased flow of water caused by the development of lands for agricultural purposes within the Upper Klamath River Basin, which increased flow will be used for the generation of electric power in Copco's proposed dam improvements on the Klamath River below Keno, Copco agrees to provide power rates for agricultural pumping for all off-project users in the Upper Klamath River Basin, as follows:

10 Horsepower motors or over. 7½ mills per KWH

First five year seasonal minimum charge shall be \$111.60 for the first 10 horsepower and \$10.80 per horsepower for all excess horsepower based upon rated horsepower connected but not less than \$111.60 per season.

The minimum charges are payable in consecutive monthly installments of one-sixth of the seasonal minimum charges beginning the first month of seasonal operation, until such time as the accumulated charges equal the seasonal minimum charge.

After the fifth year of continuous use of the same installation, the minimum charge shall be one-half of the first five-year period.

It is agreed that the above proposed rates will take effect on May 1, 1956.

THE CALIFORNIA OREGON POWER COMPANY

J. C. Boyle
J. C. Boyle, Vice-President and
General Manager

KLAMATH BASIN WATER USERS PROTECTIVE
ASSOCIATION

Frank Z. Howard
Frank Z. Howard, President

STATE OF OREGON
PUBLIC UTILITIES COMMISSIONER

SALEM
March 6, 1956

IN REPLY PLEASE REFER

TO FILE NO

8001-E-08
IC-ED-7305

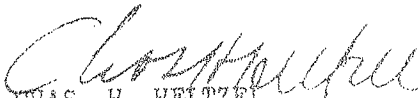
Mr. J. C. Boyle
Vice President and General Manager
The California Oregon Power Company
Medford, Oregon

Dear Mr. Boyle:

We acknowledge receipt of contract between
The California Oregon Power Company and the Reclamation
Bureau of the United States Department of The Interior,
which provides for service and charges by your Company
and other considerations.

The contract is being accepted for filing
and we are returning one receipted copy for your files.
Our Bill No. 24699 in the amount of \$3.00 is enclosed
to cover filing fees in accordance with our code.

Very truly yours,


CHAS. H. HELTZEL
Commissioner

CHH:lb
enc.

STATE OF OREGON
PUBLIC UTILITIES COMMISSIONER

SALEM
March 9, 1956

IN REPLY PLEASE REFER

TO FILE NO

8001-E-08

IC-ED-7305

Mr. J. C. Boyle
Vice President and General Manager
The California Oregon Power Company
Medford, Oregon

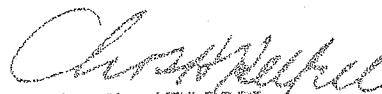
Dear Mr. Boyle:

This is in further reference to the contract between The California Oregon Power Company and the United States of America, dated January 31, 1956.

Our letter of March 6, accepted the agreement and specifically included the acceptance of the rates and other terms and conditions therein that come under the jurisdiction of this office.

The status of the agreement, by its acceptance for filing, places it in the same category as if a hearing had been held and an order issued.

Very truly yours,



CHAS. H. WELTZEL
Commissioner

GHH:lb

Decision No. 52809

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

| | | |
|--|---|-----------------------|
| In the Matter of the Application of |) | |
| THE CALIFORNIA OREGON POWER COMPANY |) | |
| for authority to enter into contract |) | Application No. 37724 |
| with the United States of America |) | |
| for regulation of Link River Dam, etc. |) | |

OPINION AND ORDER

By the above-entitled application The California Oregon Power Company requests an order of the Commission, under Section 532 of the Public Utilities Code, authorizing it to carry out the terms and conditions of a special contract with the United States of America, dated January 31, 1956, providing, among other things, for the operation by applicant of Link River Dam in Oregon and for special rates and charges for irrigation and drainage pumping service in the Upper Klamath River Basin. A copy of said contract, designated as Contract No. 14-06-200-5075 is attached to the application as Exhibit B.

Prior Contract

Applicant now operates Link River Dam located in Oregon, which controls water releases from Upper Klamath Lake, under a contract dated February 24, 1917, as amended^{1/}, said contract expiring in 1967. Applicant's East Side, West Side, Keno, Copco No. 1, and Copco No. 2 hydroelectric plants, the first three located in Oregon and the latter two in California, with a total rated capacity of 51,560 kw, all use water from Upper Klamath Lake. As part consideration for the right to regulate the flow of water to these plants,

1/ The original agreement of February 24, 1917, and four supplements dated, respectively, January 28, 1919, April 27, 1920, December 10, 1920, and September 10, 1931, were filed with the Commission on November 13, 1941. The fifth supplement, dated April 22, 1941, was filed with the Commission on November 5, 1941.

applicant agreed in said contract to furnish power at stipulated rates for all pumping requirements for irrigation and drainage of lands deriving their water supply in connection with the works of the Klamath Project of the U. S. Bureau of Reclamation. Such stipulated rates are lower than applicant's filed tariffs for agricultural power service in California.

New Contract

Applicant and the United States, through its Bureau of Reclamation, have entered into a new agreement dated January 31, 1956, which will supersede and cancel the original contract and all amendments thereto. The new contract, as did the prior contract, provides for applicant to regulate the level of water in Upper Klamath Lake for a term of 50 years from its effective date. The effective date is stated to be the date of its approval by the Public Utilities Commissioner of Oregon or by the Public Utilities Commission of the State of California, whichever is the later.

As consideration for the new contract applicant has agreed to provide electricity for pumping purposes at the rates contained in Schedules A and B of the contract. Rate Schedule A, which is applicable to pumping Klamath water for use on Project land and for drainage of Project land, reduces the presently effective rate for this service from 7 mills to 6 mills per kilowatt-hour. Customers entitled to the rates provided in said Schedule A are the same as those entitled to the corresponding rates in the 1917 contract. Rate Schedule B, which is applicable to pumps operated by the United States, or its successors in interest, for pumping water from Tule Lake sumps and Lower Klamath Lake sumps and for irrigation within the beds of Tule Lake and Lower Klamath Lake, reflects no change in presently effective rates. These

rates are 5 mills per kilowatt-hour during peak hours and 3 mills per kilowatt-hour during off-peak hours.

Applicant states it served 30 customers in California under the 1917 contract rates, as amended, which would be replaced by Rate Schedule A of the new contract. Revenue from this service amounted to \$4,852.79 in 1955. Had the rates provided for in Rate Schedule A been in effect during 1955, revenues from such customers would have been \$4,383.73, a reduction of \$469.06.

In addition to the benefits accruing to applicant under the operation of the original contract as well as the new contract, applicant states that the obtaining of a new 50-year contract for the operating of Link River Dam will enable it to accept a license from the Federal Power Commission to construct and operate on the Klamath River in Oregon a hydroelectric project known as Big Bend No. 2, having a rated capacity of 50,000 kw and using water from Upper Klamath Lake. The acceptance of said license is contingent on the approval of the new contract herein submitted.

Applicant's Position

Applicant states that its regulation of the flow of water from Upper Klamath Lake through the operation of Link River Dam is required for the efficient operation of its present hydroelectric plants which use this water supply. Operation of the dam permits conservation of water at times of scarcity on occasions when low-cost power can be purchased, and provides peaking capacity through the regulated release of water at the time of greatest need. Furthermore, execution of the contract will allow it to increase such peaking capacity by its Big Bend No. 2 project.

Applicant is of the opinion that the rate provisions of the contract are reasonable and in the public interest and that the

benefits to be derived from extension of the contract for some 39 years will inure to all of applicant's customers and will more than offset the relatively slight reduction in revenues provided for in the new contract. Applicant states that it knows of no opposition to its entering into the new contract, and, in view of this as well as the benefits to be derived from the contract, it asks that this application be granted by ex parte action.

Conclusions

The Commission in Decision No. 49417 dated December 11, 1953, in Application No. 34349, the most recent rate increase application of this utility, commented respecting the prior contract of February 24, 1917, which the new contract of January 31, 1956 cancels and supersedes, as follows:

"We have reviewed applicant's contract with the United States, as amended and as accepted for filing with this Commission, which sets forth rates for irrigation and pumping power used in connection with the Klamath Reclamation Project of the U. S. Reclamation Service. Although these rates are lower than presently filed tariff for Agricultural Power Service, we find no unreasonable discrimination in the application of said contract to the particular circumstances pertaining to power deliveries accorded special rate treatment therein.

"1/ The contract bears a date of February 24, 1917 and runs for a term of fifty years."

After considering applicant's statements and the facts relating thereto we conclude and so find that there is no unreasonable discrimination in the application of rates and charges for electric service contained in the contract of January 31, 1956, under the particular circumstances here obtaining. Being of the opinion that the application should be granted and that a public hearing is not necessary; therefore,

IT IS HEREBY ORDERED that The California Oregon Power Company be and it is authorized to carry out the terms and conditions of the written contract dated January 31, 1956, with the United States of America, Department of the Interior, Bureau of Reclamation, in so far as it pertains to the California operations of applicant.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this
27th day of March, 1956.

PETER E. MITCHELL
President
JUSTUS F. CRAEMER
RAY E. UNTEREINKER
MATTHEW J. DOOLEY
REX HARDY
Commissioners

ATA 8/29/56

Decision No. 53658

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 THE CALIFORNIA OREGON POWER COMPANY)
 for authority to enter into contract) Application No. 37724
 for regulation of Link River Dam, etc.)
 _____)

Brobeck, Phleger & Harrison by Robert N. Lowry and Malcolm T. Dungan, for applicant.

California Farm Bureau Federation by J. J. Deuel, Bert Buzzini and Joseph Q. Joynt; California Klamath River Commission by Bert A. Phillips and Robert B. Bond; Herald & News, Klamath Falls, Oregon, by R. W. Hubbell for News Editor, Max Wauchope; interested parties.

Harold T. Sipe, for the Commission's staff.

SUPPLEMENTAL OPINION AND ORDER

On March 27, 1956, this Commission issued Decision No. 52809 in the above-entitled matter authorizing applicant, The California Oregon Power Company, to carry out the terms of a contract dated January 31, 1956, with the United States of America, Department of the Interior, Bureau of Reclamation, in so far as such contract pertains to applicant's California operations. The contract provides, among other things, for the operation by applicant of Link River Dam in Oregon and for special rates and charges for irrigation and drainage pumping service in the Upper Klamath River Basin.

Authorization to carry out the terms of the contract was granted on an ex parte basis without public hearing, in part, upon applicant's statement that it knew of no opposition to its entering into the proposed contract. Subsequently, on April 11, 1956,

applicant filed Application No. 37918 for approval of an agreement offering reduced rates to members of the Klamath Basin Water Users Protective Association. One basis given as the reason for this latter agreement was that the Klamath Basin Water Users Protective Association entered strenuous objection to execution of applicant's new Link River Dam contract and withdrew such objection only upon provision being made for off-project pumping power at 7½ mills per kwhr rate as set forth in the agreement with the Association. It therefore appeared that there was some opposition to the Link River Dam contract, consequently, on April 17, 1956, the Commission reopened this matter for hearing to determine whether Decision No. 52809 should be revoked, altered or amended in any particular.

Public Hearing

After due notice a public hearing was held upon this application on May 8, 1956, before Examiner M. W. Edwards at Dorris, California. Hearing also was held at this time upon Application No. 37918, the two matters being joined for purposes of hearing. Applicant presented testimony by one witness and two exhibits in support of its position that Decision No. 52809 should not be revoked, altered or amended in any particular. The California Farm Bureau Federation took the position that this Link River Dam contract is of benefit in development of the Klamath River Basin. The Commission staff, through an electrical engineer, cross-examined the witness for the purpose of fully developing in the record for the Commission to consider the facts concerning this application and upon submission of the matter at the close of the hearing, stated it was in accord with the application.

Rate Schedule "A"

As previously pointed out in Decision No. 52809, Rate

Schedule "A" is applicable to pumping of Klamath Water for use on Klamath Project land and for drainage of Klamath Project land within the Upper Klamath River Basin. A rate of 6 mills per kwhr is provided which is one mill lower than the former rate for this service under the 1917 contract, as amended. Applicant's Exhibit No. 1 shows that for the year 1955 the 30 customers under this rate consumed 532,216 kwhr at a billing of \$4,852.79. Under the new rate the billing would have been \$4,383.73 or \$469.06 less. This exhibit also shows that if these customers were billed under Schedule No. 20, the appropriate filed tariff schedule for this service, the revenue would have been \$11,091.23.

Rate Schedule "B"

Rate Schedule "B" is applicable only to the pumps operated by the United States, or its successor in interest, for the removal of water from Tule Lake Sumps and Lower Klamath Lake Sumps and any drains leading thereto or therefrom and for power used to pump such drainage water for the irrigation of the areas lying within the beds of Tule Lake and Lower Klamath Lake. Rates of 5 mills per kwhr are provided for on-peak pumping and 3 mills per kwhr for off-peak pumping. Such rates are at the same level as provided in the 1917 contract, as amended. Applicant's Exhibit No. 2 shows that for the year 1955 the 23 accounts under this rate consumed 8,615,806 kwhr at a billing of \$32,462.64. This exhibit also shows that these accounts, if billed under Schedule No. 20, would have paid \$97,339.84.

Link River Dam Amortization

Under the 1917 contract the applicant had to make an investment of \$345,000 in the Link River Dam which was conveyed to the United States in exchange for the 50-year rights of regulating the water through it. Under the new contract, applicant

is granted this right for another 39 years without the requirement of further capital investment. Applicant was amortizing this investment over the 50-year term of the original contract. As a result of this new contract, the period in which the Link River Dam must be amortized has been correspondingly extended and applicant will reduce the annual charge from \$8,690 a year to \$1,887 a year.

Discussion

Compared to the filed tariff, Schedule No. 20, applicant is not receiving some \$6,700 per year on the "A" schedule and some \$64,800 per year on the "B" schedule, but is saving about \$6,800 per year in amortization expenses. This is a net total amount of roughly \$65,000 per year not being received. Applicant contends that the right to regulate the flow in the Klamath River for another 39 years and develop more hydro capacity thereon is largely offsetting of this amount. With regard to the special rate to the United States, applicant does not consider it to be a concession of any sort, but instead considers it to be a reasonable price to pay for the advantages received for itself and its customers under the contract.

Applicant states that its approximate cost of energy is 4.54 mills per kwhr for production and 1.65 mills per kwhr for transmission and that the 6 mill rate for pumping on project land will largely recover these direct costs. Applicant mentioned that there are other costs involved in this pumping but holds that these are clearly chargeable to the system as a whole because of the contract which enables cheap hydro power development and protection of the existing investment on the Klamath River.

The Commission in general agrees with applicant's position regarding service to the United States under Schedule "B", inasmuch as General Order No. 96, Section X(B) permits reduced rates to governmental agencies such as the United States and its departments.

However, the service under Schedule "A" to individual customers is a different matter because in addition to the production and transmission costs mentioned by applicant there are distribution, customer and other costs. Granting applicant authority to enter into this contract with the U. S. Bureau of Reclamation could therefore constitute an undue burden on its other customers. This matter is not being decided at the present time as there is no proposal to increase rates to other customers to make up for the indicated annual deficiency resulting from the Bureau contract.

O R D E R

The California Oregon Power Company having filed the above-entitled application and the Commission having heretofore by ex parte action approved such application by Decision No. 52809, public hearing having been held thereon to determine whether this decision should be revoked, altered or amended in any particular, the matter having been submitted and it being the opinion of the Commission that this prior action should not be revoked or altered, but amended to include therein the opinion part of this decision; therefore,

IT IS HEREBY ORDERED that the Commission's prior action, Decision No. 52809, in authorizing the contract dated January 31, 1956, between the applicant and the United States of America, Department of Interior, Bureau of Reclamation, is affirmed and the opinion part of that decision is hereby amended to include therein the opinion part of this decision.

A. 37724 AM

The effective date of this order shall be twenty days
after the date hereof.

Dated at Los Angeles, California, this
29th day of August, 1956.

PETER E. MITCHELL
President
JUSTUS F. CRAEMER
RAY E. UNTEREINER
MATTHEW J. DOOLEY
REX HARDY
Commissioners

KLAMATH BASIN WATER USERS PROTECTIVE ASSOCIATION
POST OFFICE BOX 430
KLAMATH FALLS, OREGON

November 3, 1955

The California Oregon Power Company
Medford, Oregon

ATTENTION: Mr. J. C. Boyle
Vice-President and General Manager

Dear Mr. Boyle:

The following is in confirmation of the conversation of yesterday, between you, representing the California Oregon Power Company, and the Executive Committee of the Board of Directors of the Klamath Basin Water Users Protective Association, regarding proposed agricultural power pumping rates on off-project land in the Upper Klamath River Basin, in connection with the proposed contract, dated October 10, 1955, between the Department of the Interior and Copco, for the operation of Link River Dam.

This letter is, also, a withdrawal of the letter of the Association, dated October 28, 1955, which made proposals for reduced rates for both on-peak and off-peak periods and for on-project and off-project pumpers, and replaces it with a new proposal eliminating the matter of peak periods and dealing with off-project users, only. The new proposal is a plan for securing reduced off-project pumping rates by the united efforts of Copco and the Association, carried through along lines agreeable to both, and the procedure is as follows:

- (1) That as soon as it is practicable after the contract has become effective, the applications for reduced agricultural off-project pumping rates in the Upper Klamath River Basin, will be presented by Copco to the Public Utilities Commission of California and to the Public Utilities Commissioner of Oregon.
- (2) That any such petition for reduced pumping rates shall be by joint application of The California Oregon Power Company and the Klamath Basin Water Users Protective Association.
- (3) That the application shall be for the approval of an "Area Rate" designed to apply only to that area defined in the proposed contract as the Upper Klamath River Basin.
- (4) That it is necessary to have a paper or office survey made to determine the pumping potential of the Upper Klamath River Basin. In presenting the applications to the Public Utilities Commissions, the extent of the possible future pumping development should be known.
- (5) That the rates granted by the Public Utilities Commissions, shall apply only to motors of 10 H. P. and over.

(6) That minimum charges applicable to pumps, shall be the same as minimums now set up by Copco under Schedule "20", for a period of five years, and after the fifth year shall be one-half the first-five-year rate. It is understood that this is to be considered a new rate and affects all off-project pumps in the Basin, whether already in use or newly installed.

(7) That after power rates have been established for off-project pumps and applications have been approved by the Public Utilities Commissions of Oregon and California, no change in power rates for the term of the contract between the Bureau of Reclamation and Copco shall be submitted to the Commissions unless filed jointly by Copco and this Association.

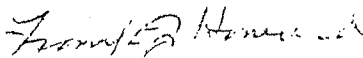
(8) That the agricultural power pumping rate for all off-project users in the Upper Klamath River Basin, shall be:

50 H. P. and over - 7 mills.

49 H. P. and less - 8 mills.

If the above is acceptable to Copco, the Executive Committee, upon receipt of the "ACCEPTANCE", will immediately present the matter to the Board of Directors of the Klamath Basin Water Users Protective Association, and, when approved, will immediately withdraw all objections to the proposed contract, dated October 10, 1955.


Yours truly,



Frank Z. Howard, President,
Klamath Basin Water Users Protective Association

ACCEPTANCE with the following changes:

November 22, 1955
The California Oregon Power Company


J. C. Boyle, Vice-President and
General Manager.

Paragraph (6), insert in the third line after the words "fifth year" the words "of continuous use."

Change paragraph (8) to read as follows:

"That the agricultural power pumping rate for all off-project users in the Upper Klamath River Basin, shall be 7-1/2 mills."

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Application of
THE CALIFORNIA OREGON POWER COMPANY
for approval of agreement with
Klamath Basin Water Users Protective
Association

Application

APPLICATION

By this application THE CALIFORNIA OREGON POWER COMPANY (hereinafter called applicant), seeks authority under Section 532 of the Public Utilities Code to carry out an agreement with Klamath Basin Water Users Protective Association, providing for special rates and charges for irrigation and drainage pumping service in the Upper Klamath River Basin as set forth herein. In support of its application, applicant respectfully shows:

I

Applicant is a corporation duly organized and existing under and by virtue of the laws of the State of California. A certified copy of its articles of incorporation as last amended is on file with this Commission in Application No. 30346 and said articles are hereby incorporated herein by reference. Its corporate office is at 332 West Miner Street, Yreka, California, and its principal executive office is at 216 West Main Street, Medford, Oregon. Communications in regard to this application should be addressed to J.C. Boyle, Vice President and General Manager, The California Oregon Power Company, 216 West Main Street, Medford, Oregon and to applicant's attorneys, Messrs. Brobeck, Phleger & Harrison 111 Sutter Street, San Francisco 4, California.

II

Applicant is an operating utility engaged in the production, transmission, distribution and sale of electricity for domestic, commercial, industrial, agricultural and municipal purposes in northern California and southern Oregon. Applicant also sells electricity to others for resale. For a fuller description of applicant's operations, reference is hereby made to Application No. 34349.

Its balance sheet at December 31, 1955, and its income and profit and loss statement for the year 1955 are attached hereto, marked "Exhibit C", and hereby made a part hereof.

III

By Decision No. 52809, in Application No. 37724, the Commission authorized applicant to carry out the terms of its contract with the United States of America, dated January 31, 1956, providing for operation by applicant of Link River Dam in the regulation of Upper Klamath Lake. The benefits to applicant from such contract are set forth in said Application No. 37724, to which reference is hereby made for statement thereof.

IV

Attached hereto, marked "Exhibit B" and hereby made a part hereof, is a copy of an agreement, executed November 22, 1955, between applicant and Klamath Basin Water Users Protective Association, which provides for reduced rates, below those provided in applicant's Schedule 20 on file with this Commission. The area in which such proposed reduced rates would apply is that defined as the Upper Klamath River Basin in applicant's aforesaid agreement with the United States, dated January 31, 1956, exclusive of land included within the Klamath River Project of the United States Bureau of Reclamation. The level and term of such reduced rates are set forth in the agreement.

The basis for the agreement for which approval is sought herein is two-fold:

(a) The Klamath Basin Water Users Protective Association entered strenuous objection to execution of applicant's new Link River Dam contract and withdrew such objection only upon provision being made for off-project pumping rates as set forth in the agreement filed herewith. The vital importance to applicant of the new Link River Dam contract is set forth in its Application No. 37724.

(b) Within the Upper Klamath River Basin area there is now a large acreage of land lying above the gravity system, the area involved being between 100,000 and 150,000 acres. This land, as shown on the map attached hereto, marked "Exhibit A", and made a part hereof, is not now irrigated but could be irrigated through pumping. The members of the Klamath Basin Water Users Protective Association assured the applicant that the granting of the rates proposed in the agreement filed herewith will promote the use of electricity for the development of irrigation for this area not now irrigated. Applicant deems it desirable to promote this development, as it would increase its load off the annual peak and ultimately would add to applicant's revenues from non-pumping services.

VI

In 1955 applicant served 100 customers in California within the Upper Klamath River Basin, as shown on Exhibit A attached to the contract between the Bureau and applicant, who are not included in the Klamath Project but took service under Schedule 20 which was effective January 1, 1954. These customers had pumping installations of 10 HP or over. The revenues from this service in 1955 amounted to \$78,029.66. Application of the rates proposed in the agreement with the Water Users to these 1955 customers would have resulted in a reduction in revenue of \$22,789.60, or 29.21%.

VII

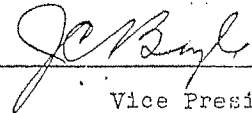
Applicant knows of no opposition to its carrying out the terms of the proposed agreement. Applicant respectfully requests, pursuant to Rule 15(d) of the Rules of Procedure, that this application be granted by ex-parte action without public hearing.

WHEREFORE, applicant prays the Commission to issue its order authorizing applicant to carry out the terms of the aforesaid agreement between applicant and Klamath Basin Water Users Protective Association, executed November 22, 1955; and for such other and further relief as the Commission may deem just and proper.

Dated at Medford, Oregon, this 10th day of April, 1956.

THE CALIFORNIA OREGON POWER COMPANY

By _____



Vice President

Brobeck, Phleger & Harrison
Brobeck, Phleger & Harrison
111 Sutter Street
San Francisco 4, California

Attorneys for Applicant

STATE OF OREGON)
County of Jackson) ss.

J. C. BOYLE, being first duly sworn, deposes and says:

That he is an officer, to wit, Vice President of THE CALIFORNIA OREGON POWER COMPANY, a corporation, the applicant named in the foregoing application; that he has read the said application and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and that as to those matters he believes it to be true.

J. C. Boyle

Subscribed and sworn to before me
this 10th day of April, 1956.

[Signature]

NOTARY PUBLIC

In and for the County of Jackson,
State of Oregon.

My Commission expires Jan. 20, 1957

COMPARATIVE BALANCE SHEET

| ASSETS AND OTHER DEBITS | THIS YEAR | LAST YE | LIABILITIES AND OTHER CREDITS | THIS YEAR | LAST YEAR |
|--|----------------|----------------|---|----------------|----------------|
| UTILITY PLANT (AT ORIGINAL COST) | 130 526 982 06 | 120 032 116 14 | CAPITAL STOCK | 32 773 380 00 | 32 409 240 00 |
| ELECTRIC PLANT | | | COMMON CAPITAL STOCK | | |
| TOTAL UTILITY PLANT | 130 526 982 06 | 120 032 116 14 | PREFERRED CAPITAL STOCK | 6 621 800 00 | 6 997 100 00 |
| UTILITY PLANT ADJUSTMENTS | | | PREMIUM ON CAPITAL STOCK | 4 183 470 00 | 4 172 310 00 |
| INVESTMENT AND FUND ACCOUNTS | 309 205 00 | 297 131 58 | TOTAL CAPITAL STOCK | 43 578 650 00 | 43 578 650 00 |
| OTHER PHYSICAL PROPERTY | 285 81 | 885 81 | BONDS (Note C) | 48 000 000 00 | 48 000 000 00 |
| INVESTMENTS IN AFFILIATED INTERESTS | 2 050 00 | 2 050 00 | BANK LOANS | 21 850 000 00 | 14 959 000 00 |
| OTHER INVESTMENTS | | | TOTAL LONG - TERM DEBT | 69 850 000 00 | 62 950 000 00 |
| SINKING FUNDS | | | CURRENT AND ACCRUED LIABILITIES | | |
| MISCELLANEOUS SPECIAL FUNDS | | | NOTES PAYABLE | | |
| TOTAL INVESTMENT AND FUND ACCOUNTS | 312 140 81 | 300 067 39 | ACCOUNTS PAYABLE - SALARIES AND WAGES | 246 971 91 | 17 764 25 |
| CASH | 3 024 978 71 | 3 625 478 69 | ACCOUNTS PAYABLE - OTHER | 769 566 32 | 852 583 13 |
| SPECIAL DEPOSITS | 10 000 00 | 10 000 00 | DIVIDENDS DECLARED | 745 618 23 | 7-4 753 52 |
| WORKING FUNDS | 26 279 52 | 20 136 59 | CUSTOMERS' DEPOSITS | 85 327 93 | 70 152 11 |
| TEMPORARY CASH INVESTMENTS | | | TAXES ACCRUED | 1 435 844 57 | 1 566 067 74 |
| NOTES RECEIVABLE | | | INTEREST ACCRUED | 384 214 50 | 363 941 76 |
| ACCOUNTS RECEIVABLE | | | EQUIPMENT PURCHASE CONTRACTS | | |
| CUSTOMERS | 999 682 11 | 816 392 39 | FUTURE INSTALLMENTS | 378 925 95 | 172 166 92 |
| KONNEVILLE POWER ADMINISTRATION | 422 137 56 | 422 651 33 | OTHER CURRENT AND ACCRUED LIABILITIES | 32 359 76 | 29 637 83 |
| OTHER | 76 194 16 | 165 059 65 | TOTAL CURRENT AND ACCRUED LIABILITIES | 1 079 259 17 | 3 657 712 56 |
| INTEREST AND DIVIDENDS RECEIVABLE | | | DEFERRED CREDITS | | |
| MATERIALS AND SUPPLIES | 910 503 17 | 618 517 61 | UNA-MORTGAGED PREMIUM ON DEBT | 277 038 02 | 268 282 25 |
| PREPAYMENTS | 1 304 818 92 | 1 284 722 49 | CUSTOMERS' ADVANCES FOR CONSTRUCTION | 269 056 50 | 241 519 74 |
| OTHER CURRENT AND ACCRUED ASSETS | | | PREPAID LINE EXTENSION REVENUES-ORE. | 89 675 00 | 60 217 39 |
| TOTAL CURRENT AND ACCRUED ASSETS | 6 812 594 15 | 7 022 958 95 | OTHER DEFERRED CREDITS | 30 463 32 | 6 563 32 |
| DEFERRED DEBITS | | | TOTAL DEFERRED CREDITS | 666 232 84 | 617 712 62 |
| UNAMORTIZED DEBT DISCOUNT AND EXPENSE | 24 680 61 | 25 757 27 | RESERVES | | |
| PRELIMINARY SURVEY AND INVESTIGATION CHARGES | 273 224 54 | 233 737 00 | DEPRECIATION (Note A) | 12 691 116 88 | 11 358 709 92 |
| CLEANING ACCOUNTS | 635 09 | 411 04 | AMORTIZATION OF LIMITED-TERM | 337 674 41 | 329 650 60 |
| RE-TRIMMING WORK IN PROGRESS | 870 64 | (5 225 02) | UNCOLLECTIBLE ACCOUNTS | 46 006 00 | 38 163 99 |
| OTHER WORK IN PROGRESS | (7 432 50) | | OTHER RESERVES - DEFERRED FEDERAL INCOME AND CALIFORNIA BANK AND CORP. FRANCHISE TAXES (Note B) | 2 339 000 00 | 1 318 000 00 |
| OTHER DEBT ENHANCED DEBITS | 49 047 58 | 7 145 91 | TOTAL RESERVES | 15 413 797 29 | 13 344 809 52 |
| TOTAL DEFERRED DEBITS | 341 025 98 | 261 826 20 | CONTRIBUTIONS IN AID OF CONSTRUCTION | 321 943 09 | 268 445 37 |
| DISCOUNT ON CAPITAL STOCK | | | CAPITAL SURPLUS | | |
| CAPITAL STOCK EXPENSE | | | EARNED SURPLUS | 4 093 860 61 | 3 279 638 61 |
| RECORDED SECURITIES | | | TOTAL LIABILITIES AND OTHER CREDITS | 138 028 743 00 | 127 616 968 68 |
| TOTAL ASSETS AND OTHER DEBITS | 138 028 743 00 | 127 616 968 68 | | | |

(1 DENOTE RED FIGURE)

FORM 112-55

THE CALIFORNIA OREGON POWER COMPANY

ANALYSIS OF LONG TERM DEBT AND PREFERRED AND COMMON STOCK ISSUES - DECEMBER 31, 1955

| <u>ISSUE</u> | <u>AUTHORIZED</u> | <u>ISSUED</u> | <u>NET OUTSTANDING*</u> |
|--|-------------------|----------------------|-------------------------|
| LONG-TERM DEBT | | | |
| Bonds | | | |
| 1st Mortgage Bonds, Series Due November 1, 1974, 3-1/8% | Not Limited | \$ 13 500 000 00 | \$ 13 500 000 00 |
| 1st Mortgage Bonds, Series Due April 1, 1978, 3-1/8% | " | 4 500 000 00 | 4 500 000 00 |
| 1st Mortgage Bonds, Series Due August 1, 1979, 2-7/8% | " | 7 000 000 00 | 7 000 000 00 |
| 1st Mortgage Bonds, Series Due June 1, 1981, 3-5/8% | " | 6 000 000 00 | 6 000 000 00 |
| 1st Mortgage Bonds, Series Due October 1, 1982, 3-5/8% | " | 7 000 000 00 | 7 000 000 00 |
| 1st Mortgage Bonds, Series Due March 1, 1984, 3-1/4% | " | <u>10 000 000 00</u> | <u>10 000 000 00</u> |
| Total Bonds | | \$ 48 000 000 00 | \$ 48 000 000 00 |
| Bank Loans | \$ 23 000 000 00 | \$ 21 850 000 00 | \$ 21 850 000 00 |
| TOTAL LONG-TERM DEBT | | | \$ 69 850 000 00 |
| CAPITAL STOCK | | | |
| Preferred Stock | | | |
| Par Value \$100 Per Share | | | |
| 7% | \$ 2 437 300 00 | \$ 1 821 000 00 | \$ 1 821 000 00* |
| 6% | 779 300 00 | 600 800 00 | 600 800 00* |
| 4.70% | 4 200 000 00 | 4 200 000 00 | 4 200 000 00 |
| Unallotted | 7 583 400 00 | | |
| Common Stock | | | |
| Par Value \$20 Per Share | \$ 50 000 000 00 | \$ 32 773 380 00 | \$ 32 773 380 00 |
| Premium on Capital Stock | | | 4 183 470 00 |
| TOTAL CAPITAL STOCK | | | <u>43 578 650 00</u> |
| TOTAL | | | <u>\$113 428 650 00</u> |

* Includes thirty-seven shares of Seven Per Cent and twelve shares of Six Per Cent Preferred Stock with a par value of \$100 per share held in treasury

THE CALIFORNIA OREGON POWER COMPANY

BALANCE SHEET NOTES

- A. Depreciation of utility plant, other than property included in the North Umpqua project, is computed on a straight-line remaining-life basis.

Depreciation of property in the North Umpqua project, licensed by the Hydroelectric Commission of Oregon for 50-year periods, is computed on a straight-line basis. Prior to January 1, 1955, depreciation on the initial units of property in said project was computed by use of service lives not exceeding the unexpired terms of the respective licenses, as required therein. By order of October 28, 1955, said Commission authorized the Company to compute such depreciation, commencing January 1, 1955 and until the further order of the Commission, by the use of estimated service lives. The Company changed its depreciation practice accordingly as of said date and discontinued amortization of non-depreciable property included in the project.

The order further provides that, at such time as the Hydroelectric Commission deems it advisable, the rates of depreciation will be increased to permit the depreciation of the original units during the terms of the licenses therefor. The Company has filed suit in the Circuit Court of the State of Oregon for Marion County to obtain a declaratory judgment which would permit elimination of the license requirement that service lives of initial units not exceed the unexpired terms of the licenses. Pending final determination of the suit, the Company is making no provision for the excess of depreciation based upon lives not exceeding the respective license terms over depreciation based upon estimated useful service lives.

As a result of the change in practice described in the second preceding paragraph, the provisions for depreciation and amortization for 1955 were reduced approximately \$240,000, provision for income taxes was increased \$125,000, and net income was increased \$115,000.

- B. Emergency facilities (all of which are included in the North Umpqua project) are being amortized over periods of five years for income tax purposes as permitted by the Internal Revenue Code. As a result, Federal and State income taxes are approximately \$1,021,000 less in 1955 and \$1,038,000 less in 1954 than they would have been had book depreciation and amortization been deducted for tax purposes. Accordingly, the Company has included these amounts in Operating Revenue Deductions - Taxes by credits to a reserve account. Following termination of the period of accelerated amortization, one twenty-fifth of the amount accumulated in the reserve will be restored each year to income.

The approximate amounts of depreciation and amortization of utility plant claimed or to be claimed for Federal income tax purposes are as follows:

| | 1955 | 1954 |
|--------------------------------------|-------------|-------------|
| Depreciation | \$2,770,000 | \$2,520,000 |
| Amortization of emergency facilities | \$2,120,000 | \$2,215,000 |

Federal income taxes for years prior to 1953 have been settled.

- C. First mortgage bonds:

| | |
|-------------------------------------|---------------|
| Series due November 1, 1974, 3-1/8% | \$13,500,000 |
| Series due April 1, 1978, 3-1/8% | 4,500,000 |
| Series due August 1, 1979, 2-7/8% | 7,000,000 |
| Series due June 1, 1981, 3-5/8% | 6,000,000 |
| Series due October 1, 1982, 3-5/8% | 7,000,000 |
| Series due March 1, 1984, 3-1/4% | 10,000,000 |
| | \$ 48,000,000 |

- D. At December 31, 1955, the Company had commitments of approximately \$500,000 for contracts and purchase orders relating to new construction.

BALANCE SHEET NOTES

| CLASSIFICATION | THIS YEAR | | | CURRENT MONTH | | | THIS YEAR | | | LAST YEAR | | |
|---|--------------|----------|--------------|---------------|-------------|----------|---------------|----------|---------------|-----------|----------|----------|
| | AMOUNT | PER CENT | PER CENT | AMOUNT | PER CENT | PER CENT | AMOUNT | PER CENT | PER CENT | AMOUNT | PER CENT | PER CENT |
| | | | | | | | | | | | | |
| 501 OPERATING REVENUES | 1 814 725 20 | 100.00 | 1 603 337 30 | 100.00 | 211 387 90 | 13.18 | 13 648 236 14 | 100.00 | 17 022 637 45 | | | |
| 502 OPERATING EXPENSES | 513 434 53 | 28.29 | 536 076 10 | 33.44 | (22 641 57) | (4.22) | 6 073 738 18 | 32.05 | 4 722 833 07 | | | |
| 503 MAINTENANCE AND REPAIRS | 176 139 81 | 9.71 | 61 168 65 | 3.82 | 114 971 16 | 187.96 | 993 156 17 | 5.87 | 1 009 672 42 | | | |
| 503 DEPRECIATION | 176 603 50 | 9.73 | 170 435 75 | 10.63 | 6 167 75 | 3.62 | 2 044 034 60 | 10.19 | 2 038 042 71 | | | |
| 504 AMORT. OF LIMITED-TERM INVESTMENTS: | | | | | | | | | | | | |
| LINK RIVER DAM | 724 34 | .04 | 724 34 | .05 | 2 21 | .31 | 8 659 68 | .04 | 8 663 16 | | | |
| N. UMPQUA PROJECT, NON-DEPR. | | | | | | | (2 765 51) | (655 67) | 32 944 56 | | | |
| 507 TAXES (OTHER THAN INCOME) | 182 746 51 | 10.07 | 163 891 33 | 10.22 | 18 855 18 | 11.50 | 2 107 583 64 | 11.12 | 1 647 615 49 | | | |
| 507 PROVISION FOR FEDERAL INCOME TAX | 112 767 35 | 6.21 | 15 622 92 | .97 | 97 144 43 | 621.81 | 1 103 018 95 | 5.85 | 1 139 164 54 | | | |
| 507 PROVISION FOR DEFERRED FEDERAL INCOME AND CALIF. BANK AND CORPORATION FRANCHISE TAXES | 69 500 00 | 3.83 | 86 500 00 | 5.39 | (17 000 00) | (19.65) | 1 021 000 00 | 5.39 | 1 035 000 00 | | | |
| TOTAL OPERATING REVENUE DEDUCTIONS | 1 231 915 84 | 67.88 | 1 037 182 19 | 64.69 | 194 733 65 | 18.78 | 13 365 305 55 | 70.54 | 11 925 105 07 | | | |
| NET OPERATING REVENUES | 582 809 36 | 32.12 | 566 155 11 | 35.31 | 16 654 25 | 2.94 | 5 582 830 59 | 29.46 | 5 116 631 47 | | | |
| NET UTILITY INCOME | 582 809 36 | 32.12 | 566 155 11 | 35.31 | 16 654 25 | 2.94 | 5 582 830 59 | 29.46 | 5 116 631 47 | | | |
| 511 INCOME FROM NON-UTILITY OPERATIONS | | | | | | | | | | | | |
| 511 REVENUES FROM LEASE OF OTHER PHYSICAL PROP. | 12 50 | | 32 00 | | (19 50) | | 2 945 86 | | 2 292 50 | | | |
| 513 DIVIDEND REVENUES | | | | | | | 120 00 | | 120 00 | | | |
| 514 INTEREST REVENUES | | | | | | | 11 60 | | | | | |
| 515 REVENUES FROM SINKING AND OTHER FUNDS | | | | | | | | | | | | |
| 516 MISCELLANEOUS NON-OPERATING REVENUES | 54 878 16 | | 6 075 96 | | 48 802 22 | | 54 878 18 | | 6 075 96 | | | |
| 517 NON-OPERATING REVENUE DEDUCTIONS | 14 006 90 | | 1 603 61 | | 12 403 29 | | 19 809 20 | | 7 462 64 | | | |
| TOTAL OTHER INCOME | 40 883 76 | | 4 504 35 | | 36 379 43 | | 38 146 44 | | 1 925 62 | | | |
| GROSS INCOME | 623 693 14 | | 570 659 46 | | 53 033 68 | | 5 621 037 33 | | 5 119 577 09 | | | |
| 520 INTEREST ON LONG-TERM DEBT | 193 261 92 | | 171 815 27 | | 21 466 65 | | 2 149 215 26 | | 1 913 011 11 | | | |
| 521 AMORTIZATION OF DEBT DISCOUNT AND EXPENSE | 89 72 | | 89 72 | | | | 1 076 64 | | 1 076 64 | | | |
| 522 AMORTIZATION OF PREMIUM ON DEBT | (937 02) | | (937 02) | | | | (11 204 24) | | (10 311 32) | | | |
| 523 OTHER INTEREST CHARGES | 222 30 | | 172 74 | | 49 56 | | 2 947 45 | | 14 765 81 | | | |
| 523 INTEREST CHARGED TO CONSTRUCTION | (34 506 92) | | (38 778 47) | | 4 271 55 | | (389 207 93) | | (336 821 44) | | | |
| 527 MISCELLANEOUS AMORTIZATION | | | | | | | | | | | | |
| 528 MISCELLANEOUS INCOME DEDUCTIONS | 11 486 56 | | 38 125 27 | | (26 628 71) | | 51 223 60 | | 123 240 55 | | | |
| TOTAL INCOME DEDUCTIONS | 169 646 56 | | 170 487 51 | | (840 95) | | 1 824 010 78 | | 1 703 455 10 | | | |
| NET INCOME | 454 046 58 | 25.02 | 400 171 95 | 24.96 | 53 874 63 | 13.46 | 3 817 026 55 | 20.14 | 3 416 361 49 | | | |
| BALANCE TRANSFERRED TO EARNED SURPLUS | 454 046 58 | 25.02 | 400 171 95 | 24.96 | 53 874 63 | 13.46 | 3 817 026 55 | 20.14 | 3 416 361 49 | | | |

() DENOTE RED FIGURE

KLAMATH BASIN WATER USERS PROTECTIVE ASSOCIATION
POST OFFICE BOX 430
KLAMATH FALLS, OREGON

November 3, 1955

The California Oregon Power Company
Medford, Oregon

ATTENTION: Mr. J. C. Boyle
Vice-President and General Manager

Dear Mr. Boyle:

The following is in confirmation of the conversation of yesterday, between you, representing the California Oregon Power Company, and the Executive Committee of the Board of Directors of the Klamath Basin Water Users Protective Association, regarding proposed agricultural power pumping rates on off-project land in the Upper Klamath River Basin, in connection with the proposed contract, dated October 10, 1955, between the Department of the Interior and Copco, for the operation of Link River Dam.

This letter is, also, a withdrawal of the letter of the Association, dated October 28, 1955, which made proposals for reduced rates for both on-peak and off-peak periods and for on-project and off-project pumpers, and replaces it with a new proposal eliminating the matter of peak periods and dealing with off-project users, only. The new proposal is a plan for securing reduced off-project pumping rates by the united efforts of Copco and the Association, carried through along lines agreeable to both, and the procedure is as follows:

- (1) That as soon as it is practicable after the contract has become effective, the applications for reduced agricultural off-project pumping rates in the Upper Klamath River Basin, will be presented by Copco to the Public Utilities Commission of California and to the Public Utilities Commissioner of Oregon.
- (2) That any such petition for reduced pumping rates shall be by joint application of The California Oregon Power Company and the Klamath Basin Water Users Protective Association.
- (3) That the application shall be for the approval of an "Area Rate" designed to apply only to that area defined in the proposed contract as the Upper Klamath River Basin.
- (4) That it is necessary to have a paper or office survey made to determine the pumping potential of the Upper Klamath River Basin. In presenting the applications to the Public Utilities Commissions, the extent of the possible future pumping development should be known.
- (5) That the rates granted by the Public Utilities Commissions, shall apply only to motors of 10 H. P. and over.

(6) That minimum charges applicable to pumps, shall be the same as minimums now set up by Copco under Schedule "20", for a period of five years, and after the fifth year shall be one-half the first-five-year rate. It is understood that this is to be considered a new rate and affects all off-project pumps in the Basin, whether already in use or newly installed.

(7) That after power rates have been established for off-project pumps and applications have been approved by the Public Utilities Commissions of Oregon and California, no change in power rates for the term of the contract between the Bureau of Reclamation and Copco shall be submitted to the Commissions unless filed jointly by Copco and this Association.

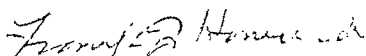
(8) That the agricultural power pumping rate for all off-project users in the Upper Klamath River Basin, shall be:

50 H. P. and over - 7 mills.

49 H. P. and less - 8 mills.

If the above is acceptable to Copco, the Executive Committee, upon receipt of the "ACCEPTANCE", will immediately present the matter to the Board of Directors of the Klamath Basin Water Users Protective Association, and, when approved, will immediately withdraw all objections to the proposed contract, dated October 10, 1955.

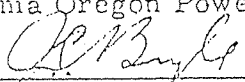
Yours truly,



Frank Z. Howard, President,
Klamath Basin Water Users Protective Association

ACCEPTANCE with the following changes:

November 22, 1955
The California Oregon Power Company

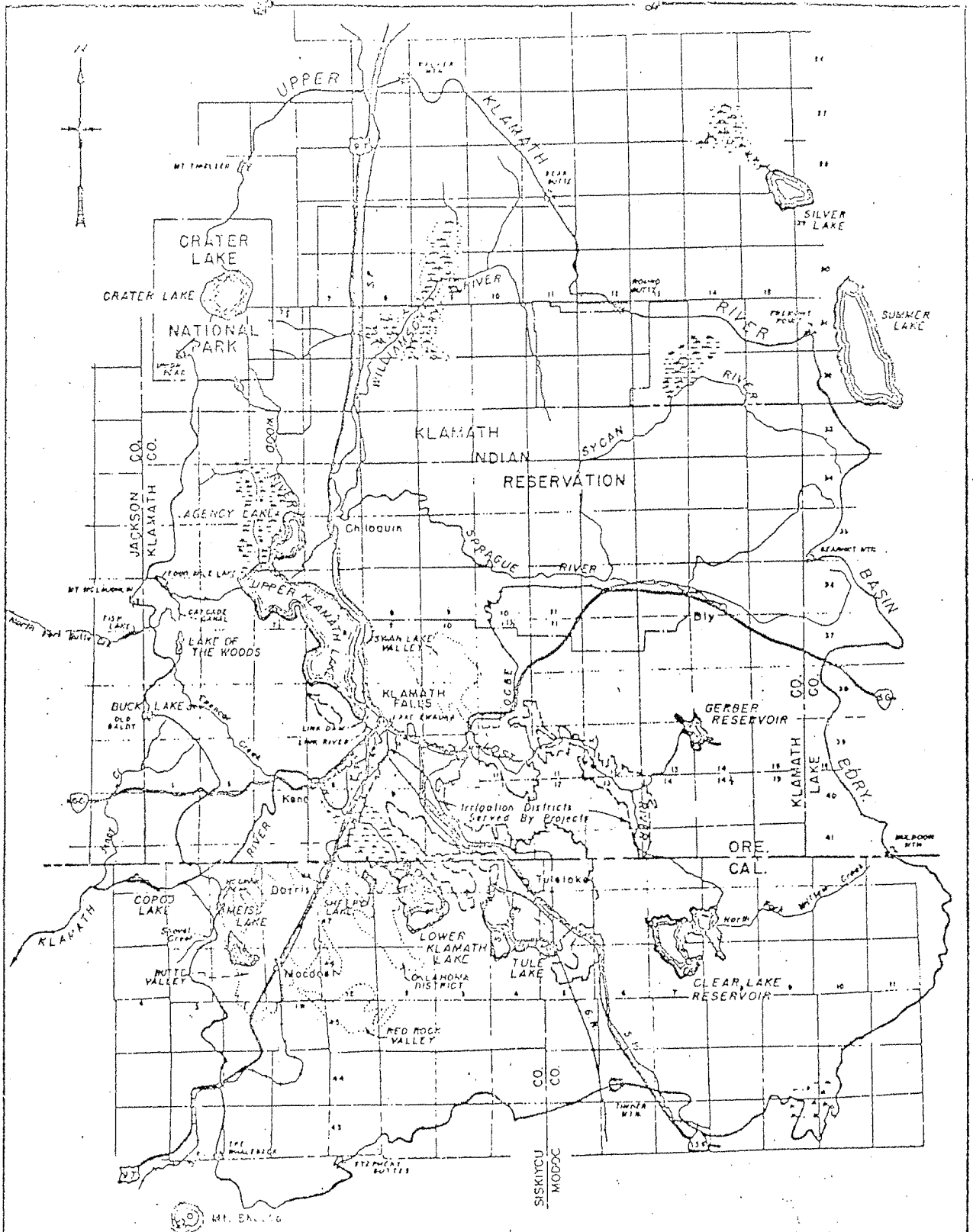


J. C. Boyle, Vice-President and
General Manager.

Paragraph (6), insert in the third line after the words "fifth year" the words "of continuous use."

Change paragraph (8) to read as follows:

"That the agricultural power pumping rate for all off-project users in the Upper Klamath River Basin, shall be 7-1/2 mills."



UPPER KLAMATH RIVER BASIN
OREGON - CALIFORNIA

BI

Decision No. 53659

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

| | |
|--|--|
| In the Matter of the Application of THE CALIFORNIA OREGON POWER COMPANY for approval of agreement with Klamath Basin Water Users Protective Association. | } } } Application No. 37918 } JCE gave copies to ASC, Files } } Copy to Delos Mills 12/7/59 |
|--|--|

Brobeck, Phleger & Harrison by Robert N. Lowry and Malcolm T. Dungan for applicant.

California Farm Bureau Federation by J. J. Deuel, Bert Buzzini and Joseph Q. Joynt; California Klamath River Commission by Bert A. Phillips and Robert B. Bond; Herald & News, Klamath Falls, Oregon, by R. W. Hubbell for News Editor, Max Wauchope; interested parties.

Harold T. Sipe for the Commission's staff.

O P I N I O N

By the above-entitled application, filed April 11, 1956, The California Oregon Power Company requests an order of the Commission authorizing it to carry out the terms of an agreement with the Klamath Basin Water Users Protective Association, dated November 3, 1955, providing, among other things, for reduced agricultural off-project pumping rates. A copy of the agreement is attached to the application and is marked Exhibit "B".

Applicant states that its reason for entering into this contract was to eliminate objection to the new Link River Dam contract with the U. S. Bureau of Reclamation which provided for special rates to certain customers, referred to as on-project users, engaged in pumping of Klamath River water for irrigation and drainage at lands of the Bureau's Klamath River Project. Applicant holds that the Link River Dam contract is of vital importance to it and states that it is seeking approval thereof under

Application No. 37724. Commission approval had been given thereto by an ex parte order, Decision No. 52809, dated March 27, 1956, but when the Commission learned of the above-mentioned opposition a public hearing was scheduled to determine whether Decision No. 52809 should be revoked, altered or amended in any particular.

Public Hearing

After due notice a consolidated hearing was held upon the above-entitled application and Application No. 37724 before Examiner M. W. Edwards on May 8, 1956, at Dorris, California. Applicant presented 5 exhibits and testimony by eleven witnesses in support of its request. The California Farm Bureau Federation appeared not as a protestant but as an interested party in the proceeding for the purpose of assisting the Commission in determining the need for special agricultural pumping rates in Scott and Shasta Valleys and it presented testimony through three witnesses. The Commission staff, through an electrical engineer, took an active part in the proceeding and cross-examined witnesses for the purpose of fully developing in the record the relevant facts for the Commission to consider in deciding this matter. The matter was submitted for Commission decision at the close of the day's hearing.

The Contract

The contract provides a special "Area Rate" of 7.5 mills per kwhr for agricultural power pumping to all off-project areas in the Upper Klamath River Basin. This special rate is to apply only to motors of 10 hp size or greater. The minimum charges are to be the same as those now provided in Applicant's Schedule No. 20 for a period of five years and, after the fifth year of continuous use, the minimum charges shall be one half of the first five-year rate. This rate is to be considered as a new rate and is proposed to affect all off-project pumps in the Basin, whether already in use or newly installed.

Position of the Klamath Basin Water
Users Protective Association

One witness stated that the position of the Association is that project and off-project users are in essentially the same position both as users of water and as consumers of electricity, and that the non-project irrigators should be placed in a position comparable to that which the project users would have under the Link River Dam contract. Moreover, by agreeing that return flows from off-project lands would be returned to the Klamath River above Kenó, they were also agreeing to make available additional amounts of water in the river at points where it could be used for generation of electricity. He also stated that their usage of water, like that of reclamation project irrigation, takes place at times when annual system peak loads do not occur.

Rate Levels

~~This contract is designed to give some rate relief to those~~
water users in the Upper Klamath River Basin who would not be eligible for the rate of 6 mills per kwhr under the renewed contract with the United States Bureau of Reclamation. It would reduce the disparity in rates between the on-project customers and off-project users who now take energy under Schedule No. 20. The parties agreed that the off-project users were not entitled to as low a rate as that under the Bureau contract because of the direct benefits received by the applicant under the contract.

The witnesses for the Farm Bureau pointed out the need for special agricultural rates in Scott and Shasta valleys. The Commission is aware of this need and at the same time recognizes the difference in the areas in that the drainage and return flows from Scott and Shasta Valleys return to the Klamath River below the hydro plants.

Revenue Effects

Applicant's Exhibit No. 2 shows that customers in the Upper Klamath River Basin on Schedule No. 20 in 1955 used 5,406,263 kwhr at a billing of \$78,335.80. Under the proposed contract the revenue would have been \$55,546.20 at rates proposed during the first five years and \$43,516.08 at rates proposed after five years.

The Commission has had considerable experience in designing and developing agricultural power rates on other utility systems operating in northern, central and southern California. The requests of California farmers generally for special rate treatment and for agricultural rates to meet competition, and the requirements of government agencies, have been considered over the period of the last twenty-five years or so by the Commission. The situation in the upper Klamath basin and in other parts of applicant's area appear now to be developing along lines experienced in the past in central California. The Commission has considered the level of Schedule No. 20 and has compared it with Schedule PA-1 of the Pacific Gas and Electric Company. Under Schedule PA-1 these customers would have been billed \$90,037.60. This computed billing is \$11,701.80 or 15 per cent greater than under Schedule No. 20.

Cost of Service

Applicant states that its approximate cost of energy is 4.54 mills per kwhr for production and 1.65 mills per kwhr for transmission. It did not indicate the added cost to distribute the energy or the customer costs, but stated that the proposed rate is 25 per cent more than the production and transmission cost and to that extent would contribute to other costs and other items allocable to that service. Applicant stated that a lowered pumping rate is believed to be justified to promote development of the area.

This production cost appears somewhat low and it is questionable whether it contains a full allocation of taxes and general and administrative expenses. Our analysis of applicant's 1955 annual

report indicates a unit production cost of 5.4 mills per kwhr sold, assuming a 6.0 per cent rate of return, and a transmission and distribution cost of 1.10 cents per kwhr. This total indicated cost of 1.64 cents per kwhr sold from applicant's distribution system is approximately 2 mills per kwhr higher than the average of 1.45 cents paid last year by these Schedule No. 20 customers.

Similar rough computations on the Pacific Gas and Electric Company for 1955 indicate a production cost of 8.5 mills per kwhr sold, a transmission and distribution cost of 1.04 cents per kwhr or a total unit cost of 1.89 cents per kwhr for delivery from the distribution system. These comparative cost statistics indicate that Pacific's production cost is about 57 per cent higher and delivered energy cost is about 15.2 per cent higher than applicant's.

Discussion

Based on this comparison it is apparent that from a cost standpoint agricultural power customers on Schedule No. 20 of the applicant are being treated as fairly as those on Schedule PA-1 of the Pacific Gas and Electric Company. In view of the Commission's familiarity with the position of the agricultural customers on the Pacific Gas and Electric System a logical conclusion is that the present level of Schedule No. 20 is reasonable for this class of service. Furthermore, a large portion of the agricultural development in California has taken place under rates which currently are some 15 per cent higher than applicant's.

While the contention is made that lower rates would help promote development of the area, the Commission has the duty to see that the agricultural rates do not burden the other classes of customers. In the Commission's opinion a flat rate as low as 7½ mills per kwhr for this agricultural power would burden the other classes and the present level of Schedule No. 20 should permit reasonable development of the area. While many organizations through witnesses placed statements in the record urging the Commission to grant the

lower rates, none were particularly concerned with this question of burden or considered the over-all economic effect of their action.

One principal disadvantage of a uniform rate per kw-hr is that it normally undercharges the low-load factor type of customer, unless there is a high protective minimum charge. Another disadvantage of the uniform rate is that it may overcharge the high-load factor customer. Under the proposed contract rates the minimum charges vary from \$14.40 per hp per calendar year down to \$5.40 depending on size of motor and number of years of service. In Schedule No. 20 the rates are of blocked form designed to eliminate these disadvantages and provide more equitable charges as between high- and low-load factor customers.

Exhibit No. 2 indicates a load factor of operation of about 18 per cent on the average for these Schedule No. 20 customers. The Commission is of the opinion that this load factor is generally on the low side. These customers could earn lower rates by improving their load factors with smaller pumps and irrigation ponds.

Apparently the parties anticipate a term for this contract of 39 years equivalent to the term of the Reclamation Bureau contract. Such term is undesirably long and seldom does the Commission approve contracts with terms in excess of five years. Furthermore the contract does not contain a clause as provided by Section X(A) of the Commission's General Order No. 96 stating that it shall at all times be subject to Commission jurisdiction.

Conclusion

This contract would result in creation of a rate disparity, which does not presently exist, between users in the Upper Klamath River Basin and users in other parts of the utility's system such as in Scott and Shasta Valleys. Such rate disparity would result in unreasonable discrimination. After considering the deficiencies in the contract with respect to a reasonable term and the low level of the proposed rate compared to the apparent full cost to render the

service, the Commission concludes that the application should be denied.

O R D E R

Public hearing having been held on the above-entitled application, the matter having been submitted and it being the opinion of the Commission that approval of the agreement with Klamath Basin Water Users Protective Association should be denied, therefore,

IT IS HEREBY ORDERED that the application of The California Oregon Power Company for an order of the Commission authorizing it to carry out the terms of an agreement with the Klamath Basin Water Users Protective Association, dated November 3, 1955, be and it is denied.

The effective date of this order shall be twenty days after the date hereof.

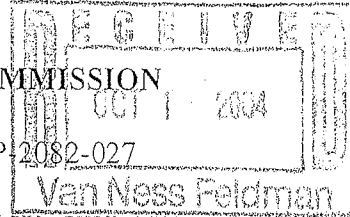
Dated at Los Angeles, California, this 29th day of August, 1956.

PETER E. MITCHELL
President
JUSTUS F. CRAEMER
RAY E. UNTEREINER
MATTHEW J. DOOLEY
REX HARDY
Commissioners

367
UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION



In the Matter of the Application of)
)
PACIFICORP)
)
For New Major License for the Klamath)
Project on the Klamath River in Southern)
Oregon and Northern California)

Docket No. P 2082-027
KLAMATH WATER USERS
ASSOCIATION
MOTION TO INTERVENE

MOTION TO INTERVENE

I. Motion to Intervene

The Klamath Basin Water Users Protective Association, d.b.a. Klamath Water Users Association, ("KWUA") hereby submits this motion to intervene ("Motion") in the above-captioned proceedings pursuant to Rule 214 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), and the Commission's Notice Application Accepted for Filing and Soliciting Motions to Intervene and Protests dated August 16, 2004. In support of this Motion, KWUA states as follows:

II. Correspondence

The names, titles and mailing addresses of the persons to whom service is to be made and to whom communications are addressed in this proceeding are:

Dan Keppen, President
Klamath Water Users Association
2455 Patterson Street, Suite 3
Klamath Falls, Oregon 97603

Richard G. Lorenz
J. Laurence Cable
Cable Huston Benedict Haagensen & Lloyd LLP
1001 S.W. Fifth Avenue, Suite 2000
Portland, Oregon 97204

Paul S. Simmons
Somach, Simmons & Dunn
Hall of Justice Building
813 Sixth Street, Third Floor
Sacramento, California 95814

KWUA requests that each of the above-named individuals be placed on the official Commission service list in order to assure timely responses and communications.

III. Background Information Regarding KWUA

KWUA is a nonprofit corporation comprised of approximately 20 public agencies, most of which are irrigation districts, and many individuals and businesses located in and around the Klamath River Basin. KWUA Members¹ receive water for irrigation through facilities constructed or improved by the United States Bureau of Reclamation (“Bureau”) as part of the Klamath Irrigation Project. Many of the Klamath Irrigation Project facilities are operated by KWUA Members in cooperation with the Bureau. Over 200,000 acres of farmland are irrigated by Klamath Irrigation Project facilities in both Southern Oregon and Northern California. The Klamath Irrigation Project was first authorized by the Secretary of the Interior in 1905, and therefore predates all of the hydroelectric facilities that are the subject of this proceeding.

IV. KWUA's Interest in this Proceeding

At issue in this proceeding is PacifiCorp’s application for a new license for the Klamath Hydroelectric Project, Commission Project No. 2082. PacifiCorp currently operates the Klamath Hydroelectric Project pursuant to a 50-year Commission license that expires on March 1, 2006. As a condition on its current license, the Commission required PacifiCorp to enter into a contract (“Contract”) with the Bureau that governs certain operational, water and power issues. The Contract

¹ For purposes of this Motion to Intervene, the “KWUA Members” includes entities who are contractors in the Klamath Irrigation Project and the individuals and entities to whom such entities provide irrigation or drainage service.

expires on April 16, 2006. Pursuant to the Contract, the Bureau and KWUA Members purchase electrical power from PacifiCorp at a specified rate.

The Commission imposed this condition in the current license in response to a mandatory condition submitted by the Department of Interior under § 4(e) of the Federal Power Act. The Department of Interior submitted this condition to compensate to the Bureau and the KWUA Members for certain benefits conferred upon PacifiCorp's hydroelectric project by the existence and operation of the Klamath Irrigation Project, including but not limited to water storage capacity benefits and increases in water quantity.

The Department of Interior submitted the power rate condition also in recognition of the fact that PacifiCorp's hydroelectric project essentially precludes the Bureau from developing its own hydroelectric resources on the Klamath River for the benefit of the KWUA Members. The Department of Interior has thoroughly documented for the Commission how agricultural activities within the Klamath Irrigation Project are dependent upon the extensive use of irrigation and drainage pumping. These pumps consume relatively large amounts of electrical power. At the time PacifiCorp applied for the original license for Project 2082, the Bureau was actively studying the construction of hydroelectric facilities pursuant to its authority under Reclamation law. The Department of Interior ultimately conceded that PacifiCorp may construct additional hydroelectric facilities on the Klamath River in lieu of power development by the Bureau, but only on the condition that PacifiCorp make power available to the Bureau and KWUA Members for so long as PacifiCorp is a licensee of hydroelectric projects on the Klamath River.

For the forgoing reasons, KWUA has a direct and substantial interest in ensuring that its Members continue to have access to an adequate supply of low-cost electrical power.

KWUA also has a direct and substantial interest in ensuring that its Members' access to adequate water supplies to meet their irrigation and domestic needs is not hampered by the future operation of the Klamath Hydroelectric Project. Many KWUA Members hold vested rights to appropriate and use water of the Klamath River for irrigation and domestic purposes. The environmental and operational aspects of PacifiCorp's license application could directly or indirectly affect water use throughout the Klamath River Basin.

V. KWUA's Position in the Proceeding

KWUA's position is that the Commission should reject the license application submitted by PacifiCorp for Project No. 2082 *unless the Commission once again requires, as a condition of the new license, that PacifiCorp renew its Contract with the Bureau with identical, or substantially similar, terms.* Alternatively, the Commission should reserve a quantity of power generated at the Klamath Hydroelectric Project that is sufficient to meet the irrigation and domestic requirements of KWUA's Members. KWUA opposes any conditions imposed by the Commission on the new license that would interfere with vested water rights held by KWUA Members or by the United States on behalf of the Klamath Irrigation Project.

Additionally, it is KWUA's position that if any temporary license is issued for Project No. 2082 pursuant to Section 15(a)(1) of the Federal Power Act and 18 C.F.R. § 16.18, such temporary license should continue to be conditioned upon the renewal of the Contract for the term of the temporary license.

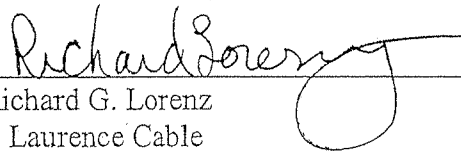
VI. KWUA's Motion Should Be Granted

The interests of KWUA and its Members, as set forth above, are directly affected by the outcome of this proceeding and cannot be adequately represented by any other party hereto. As such, intervention in the proceeding by KWUA is appropriate under 18 C.F.R. §§ 385.214(b)(2)(ii)(A)(B) and

(C). Alternatively, KWUA's participation in this proceeding is in the public interest and, therefore, KWUA's intervention is appropriate under 18 C.F.R. § 385.214(b)(2)(iii).

WHEREFORE, KWUA respectfully requests that the Commission grant KWUA's Motion to Intervene in the above captioned proceeding that that it be made a party hereto, with full rights. KWUA reserves the right to raise any additional issues affecting its interests that may come to light through the course of this proceeding.

Respectfully submitted,



Richard G. Lorenz

J. Laurence Cable

Cable Huston Benedict Haagensen & Lloyd, LLP

1001 SW Fifth Avenue, Suite 2000

Portland, Oregon 97204

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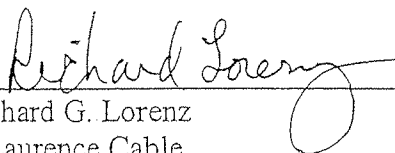
Email: lcable@chbh.com

Attorneys for KWUA

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing document on all persons designated via U.S. First Class Mail on the official service list compiled by the Secretary in these proceedings.

DATED Tuesday, October 12, 2004.



Richard G. Lorenz

J. Laurence Cable

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Attorneys for KWUA

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PACIFICORP)

KLAMATH HYDROELECTRIC PROJECT)

) Docket No. P-2082-027
)
)
)

**MOTION TO INTERVENE IN OPPOSITION
OF THE KLAMATH OFF-PROJECT WATER USERS, INC.**

Pursuant to the Commission's Notice of Filing dated August 16, 2004, and in accordance with Rules 211 and 214 of the Federal Energy Regulatory Commission's ("FERC") Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and .214, the Klamath Off-Project Water Users, Inc. ("Klamath Off-Project Water Users") respectfully submits this motion to intervene in opposition and protest. In support of this request, Klamath Off-Project Water Users states as follows:

1. The exact name and address of Klamath Off-Project Water

Users is:

Edward Bartell
Klamath Off-Project Water Users, Inc.
30474 Sprague River Road
Sprague River, OR 97639

The following individuals should be placed on the service list in this proceeding:

Melinda J. Davison
Matthew W. Perkins
Davison Van Cleve, P.C.
1000 S.W. Broadway, Suite 2460
Portland, Oregon 97205

PAGE 1 – MOTION TO INTERVENE IN OPPOSITION AND PROTEST OF
KLAMATH OFF-PROJECT WATER USERS

2. Klamath Off-Project Water Users is a nonprofit association of individuals and businesses in and around the Klamath River Basin. PacifiCorp (or the “Company”) provides electric service to Klamath Off-Project Water Users’ members in accordance with an April 30, 1956 agreement (the “Agreement”) between the Klamath Water Users Protective Association and The California Oregon Power Company (“Copco”). The Agreement took effect on May 1, 1956, and bears no expiration date. Klamath Off-Project Water Users’ members are distinct from other PacifiCorp customers in the Klamath River Basin in that they are not located on “Project Land” as defined in the “Upper Klamath River Basin Irrigation and Agricultural Drainage Pumping Service Tariff (For Users Not on Project Land)” (the “Off-Project Tariff”). The Off-Project Tariff implements the Agreement and provides the specific terms under which Klamath Off-Project Water Users’ members take electric service from the Company. The Off-Project Tariff, like the Agreement, took effect on May 1, 1956, and bears no expiration date.

3. On February 25, 2004, PacifiCorp filed an application (the “Application”) for a new license for the Klamath Hydroelectric Project (the “Project”). Although the rate provided in the Agreement and the Off-Project Tariff bear no expiration date, it is uncertain whether PacifiCorp’s Application will have some impact on that rate. Under these circumstances, Klamath Off-Project Water Users’ members have vital and unique interests in this proceeding, and no other party adequately represents those interests. It is in the public interest to allow Klamath Off-Project Water Users to intervene in this proceeding with full rights to participate as a party.

PAGE 2 – MOTION TO INTERVENE IN OPPOSITION AND PROTEST OF
KLAMATH OFF-PROJECT WATER USERS

4. Klamath Off-Project Water Users' participation in this proceeding will assist the Commission in its consideration of the Application. Furthermore, Klamath Off-Project Water Users' intervention in this proceeding will not unreasonably broaden the issues, burden the record, or delay this proceeding.

PROTEST

1. The impact of PacifiCorp's February 25, 2004 Application on PacifiCorp's tariff rate for Klamath Off-Project Water Users is uncertain. Klamath Off-Project Water Users is filing a general protest at this time in order to comply with the deadline established in the Commission's August 16, 2004 Notice. Klamath Off-Project Water Users' specific protest will be detailed at a later date, when the issues have evolved further.

2. Klamath Off-Project Water Users' members currently receive power from PacifiCorp in accordance with the Agreement and the Off-Project Tariff that implements the Agreement. The rate for the Off-Project Users is provided "[i]n consideration for an increased flow of water caused by the development of lands for agricultural purposes within the Upper Klamath River Basin" Agreement at 1. PacifiCorp has received the benefit cited under the Agreement since the Off-Project Tariff rate took effect and will continue to receive that benefit in the future. Neither the Agreement nor the Off-Project Tariff bear expiration dates. Hence, the rate should remain in effect under the new license.

WHEREFORE, Klamath Off-Project Water Users respectfully requests that the Commission: 1) grant leave to intervene in the above-entitled proceeding in accordance with 18 C.F.R. § 385.214; 2) add the above-listed individuals to the service list; 3) grant Klamath Off-Project Water Users party status with full rights to have notice to and rights of participation in any hearings held in connection with this proceeding; and 4) condition the issuance of a new license on PacifiCorp reaffirming the established rate for the members of the Klamath Off-Project Water Users, Inc.

DATED this 15th day of October, 2004.

Respectfully submitted,

/s/ Melinda J. Davison

Melinda J. Davison

Matthew W. Perkins

DAVISON VAN CLEVE, P.C.

1000 SW Broadway, Ste. 2460

Portland, OR 97205

(503) 241-7242

(503) 241-8160 (facsimile)

mail@dvclaw.com

Of Attorneys for Klamath Off-Project
Water Users, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Motion to Intervene in Opposition and Protest of Klamath Off-Project Water Users upon each of the parties on the service list compiled by the Secretary in this proceeding by causing the same to be mailed, postage-prepaid, through the U.S. Mail.

Dated at Portland, Oregon, this 15th day of October, 2004.

/s/ Melinda J. Davison
Melinda J. Davison

REQUEST NO. 2: Please provide all data, analyses, reports, studies or correspondence commissioned by or in the possession of KWUA regarding the alleged contribution of water by on or off-Project water users to Klamath River surface water flows, and/or to PacifiCorp's hydroelectric facilities on the Klamath River. Please include all drafts as well as final versions of the above-requested documents.

KWUA RESPONSE: KWUA objects to this data request on the grounds that it seeks material that does not bear upon, nor reasonably could lead to matters that bear upon, any issue in this proceeding. This proceeding involves a rate case filed by PacifiCorp, not a water adjudication hearing instituted by KWUA. Furthermore, a Briefing Schedule has been established in UE 171, and KWUA will provide its legal position in accordance with the Briefing Schedule. KWUA objects to any data requests that is not reasonably related to its legal position or that requires KWUA to respond prior to stating its legal position. This request is not commensurate with the needs of this case. This request is unreasonably cumulative, duplicative and overly broad. KWUA also objects to this request to the extent that it seeks materials protected by attorney/client privilege or materials that KWUA is otherwise obligated or entitled to keep confidential. KWUA objects to this request to the extent that its seeks public documents available from the United States Bureau of Reclamation, or documents that are in the possession of the applicant bearing the burden of proof in this proceeding: PacifiCorp.

Subject to, as limited by, and without waiving the foregoing objections, KWUA has no data, analyses, reports, studies or correspondence commissioned by KWUA regarding the alleged contribution of water by on or off-Project water users to Klamath River surface water flows.

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

DOCKET NO. UE 171

KOPWU'S RESPONSE TO WATERWATCH'S DATA REQUEST NO. 2

Data Request No. 2:

Please provide any draft or final data, analyses, reports, studies or correspondence commissioned by or in the possession of KOPWU regarding the alleged contribution of water by on- or off-Project water users to Klamath River surface water flows, and/or to PacifiCorp's hydroelectric facilities on the Klamath River.

Response to Data Request No. 2:

KOPWU objects to this request on the basis that it is overly broad, unduly burdensome, and vague. KOPWU objects to this request to the extent that it calls for information that is not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. KOPWU objects to this request to the extent that it calls for information that is subject to the attorney-client and/or work product privileges. Notwithstanding these objections, KOPWU responds as follows.

Please see the following document and sources of information:

- UKL TMDL Drainage document and attachment, which is publicly available at <http://www.deq.state.or.us/>
- Streamflow data for the Klamath River Basin, which is publicly available at <http://or.water.usgs.gov/>, <http://www.wrd.state.or.us/>, <http://nwis.waterdata.usgs.gov/or/nwis/dvstat>, and <http://www.usbr.gov/mp/kbao>

**PACIFIC POWER & LIGHT COMPANY
PARTIAL REQUIREMENTS SERVICE
1,000 KW OR LESS**

**OREGON
SCHEDULE 5**
Page 1

Available

In all territory served by Company in Oregon.

Applicable

To qualifying facilities with a generating design capacity of 1000 kW or less.

Monthly Billing

The Monthly Billing to the qualifying facility shall be the sum of the Basic Charge specified hereunder and the monthly billing for takings from Company, in accordance with the applicable schedule or schedules for the type of service received. All Monthly Billings shall be adjusted in accordance with Schedule 91.

Basic Charge

\$5.00 per month

Generation Credit (On-Peak)

Company, in accordance with the terms of a contract between the qualifying facility and Company, shall pay, for all separately metered kilowatt-hours of qualifying facility on-peak generation, 4.82 cents per kilowatt-hour. Peak hours are defined as 6:00 a.m. to 10:00 p.m., Monday through Saturday.

Generation Credit (Off-Peak)

Company, in accordance with the terms of a contract between the qualifying facility and Company, shall pay, for all separately metered kilowatt-hours of qualifying facility off-peak generation, 3.42 cents per kilowatt-hour. Off-peak hours are defined as 10:00 p.m. to 6:00 a.m., Monday through Saturday and all day Sunday.

Parallel Operation

Interconnection of a qualifying facility with Company's system will be permitted only under the terms of a contract between the qualifying facility and Company. Such contract shall include but not be limited to the following:

- (1) The qualifying facility shall indemnify and hold harmless the Company from any and all liability arising from the operation and interconnection of qualifying facility.
- (2) Qualifying facility shall provide a lockable disconnect switch to isolate qualifying facility's generation from Company's system. Such switch shall be accessible to Company and Company shall have the right to lock such disconnect switch open whenever necessary to maintain safe electrical operating conditions, or whenever the qualifying facility adversely affects Company's system.

(continued)

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| Issued: | September 18, 2001 | P.U.C. OR No. 35 |
| Effective: | With service rendered on and after October 10, 2001 | First Revision of Sheet No. 5-1 Canceling Original Sheet No. 5-1 |

Issued By

D. Douglas Larson, Vice President, Regulation

TF1 5-1.E

Advice No. 01-022

**PACIFIC POWER & LIGHT COMPANY
PARTIAL REQUIREMENTS SERVICE
1,000 KW OR LESS**

**OREGON
SCHEDULE 5
Page 2**

Parallel Operation *(continued)*

- (3) Qualifying facility shall provide an additional meter base adjacent to the delivery meter to measure the qualifying facility's total generation independently from the qualifying facility's load. For three-phase generation the qualifying facility will also provide a meter base for a kvar meter.

- (3) Except for the metering, qualifying facility shall own and maintain all facilities on the qualifying facility's side of a single point of delivery as specified by Company. Qualifying facility's system, including interconnecting equipment, shall meet the requirements of and be inspected and approved by state electrical inspector and any other public authority having jurisdiction before any connection is made to Company.

Unmetered Generation

If the qualifying facility does not desire to make sales to Company, then the requirement for separate metering of the generation shall be waived. Such generation may reduce the net delivery and billing to the qualifying facility by Company. The delivery meter will be of a type that will not reverse registration and the qualifying facility will not be compensated for unmetered incidental flows to Company.

Definitions

Qualifying Facility means either a cogeneration facility or small power production facility as defined hereunder:

- (a) **Cogeneration Facility** means a facility which produces electric energy and steam or other forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes through the sequential use of energy.

- (b) **Small Power Production Facility** means a facility which produces electric energy using as a primary energy source biomass, waste, renewable resources, or any combination thereof.

Rules and Regulations

Service hereunder is subject to the General Rules and Regulations contained in the Company's regularly filed and published tariff and to those prescribed by regulatory authorities.

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|------------|--|------------------------|
| Issued: | September 10, 2001 | P.U.C. OR No. 35 |
| Effective: | With service rendered on and after September 10, 2001 | Original Sheet No. 5-2 |

Issued By
D. Douglas Larson, Vice President, Regulation

PACIFIC POWER & LIGHT COMPANY
COST-BASED
SUPPLY SERVICE

OREGON
SCHEDULE 200
Page 1

Available

In all territory served by the Company in the State of Oregon.

Applicable

To Residential Consumers and Nonresidential Consumers who have elected to take this service or who have elected to take service under Schedules 212 or 213. This service may be taken only in conjunction with the applicable Delivery Service Schedule. Also applicable to Nonresidential Consumers who, based on the announcement date defined in OAR 860-038-270, do not elect to receive standard offer service under Schedule 220 or direct access service under the applicable tariff. In addition, applicable to some Large Nonresidential Consumers on Schedule 400 whose special contracts require prices under the Company's previously applicable Schedule 48T. For Consumers on Schedule 400 who were served on previously applicable Schedule 48T prices under their special contract, this service, in conjunction with Delivery Service Schedule 48, supersedes previous Schedule 48T.

Nonresidential Consumers who had chosen either service under Schedule 220 or who chose to receive direct access service under the applicable tariff may qualify to return to service under this Schedule after meeting the Returning Service Requirements and making a Returning Service Payment as specified in this Schedule.

Energy Charge

The Monthly Billing shall be the Energy Charge. For Schedule 41, Winter is defined as service rendered from December 1 through March 31; Summer is defined as service rendered April 1 through November 30.

| <u>Delivery Service Schedule No.</u> | | <u>Delivery Voltage</u> | | |
|--------------------------------------|-------------------------------------|-------------------------|----------------|---------------------|
| | | <u>Secondary</u> | <u>Primary</u> | <u>Transmission</u> |
| 4 | Per kWh | 0 - 500 kWh | 2.512¢ | |
| | | 501-1000 kWh | 3.026¢ | |
| | | > 1000 kWh | 3.796¢ | |
| 23 | First 3,000 kWh, per kWh | 4.069¢ | 4.325¢ | |
| | All additional kWh, per kWh | 2.935¢ | 3.121¢ | |
| 28 | First 20,000 kWh, per kWh | 3.408¢ | 3.292¢ | |
| | All additional kWh, per kWh | 3.309¢ | 3.196¢ | |
| 30 | First 20,000 kWh, per kWh | 3.353¢ | 3.233¢ | |
| | All additional kWh, per kWh | 3.334¢ | 3.215¢ | |
| 41 | Winter, first 100 kWh/kWh, per kWh | 4.935¢ | 4.705¢ | |
| | Winter, all additional kWh, per kWh | 3.269¢ | 3.117¢ | |

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| Issued: | August 20, 2003 | P.U.C. OR No. 35 |
| Effective: | With service rendered on and after January 1, 2004 | Sixth Revision of Sheet No. 200-1 Canceling Fifth Revision of Sheet No. 200-1 |

Issued By
D. Douglas Larson, Vice President, Regulation

PACIFIC POWER & LIGHT COMPANY
 COST-BASED
 SUPPLY SERVICE

OREGON
 SCHEDULE 200
 Page 2

Energy Charge (continued)

Delivery Service Schedule No.

| | | | | |
|----|---|--------|--------|--------|
| 41 | Summer, all kWh, per kWh | 3.269¢ | 3.117¢ | |
| 48 | Per kWh | 3.139¢ | 2.869¢ | 2.685¢ |
| 52 | For dusk to dawn operation, per kWh | 2.187¢ | | |
| | For dusk to midnight operation, per kWh | 2.187¢ | | |
| 53 | a) Utility operates and maintains system, per kWh | 0.935¢ | | |
| | b) Consumer operates and maintains system, per kWh | 0.935¢ | | |
| 54 | Per kWh | 1.608¢ | | |

| 15 | Type of Luminaire | Nominal Rating | Monthly kWh | Rate Per Luminaire |
|----|----------------------|----------------|-------------|--------------------|
| | Mercury Vapor | 7,000 | 76 | \$1.65 |
| | Mercury Vapor | 21,000 | 172 | \$3.74 |
| | Mercury Vapor | 55,000 | 412 | \$8.96 |
| | High Pressure Sodium | 5,800 | 31 | \$0.68 |
| | High Pressure Sodium | 22,000 | 85 | \$1.85 |
| | High Pressure Sodium | 50,000 | 176 | \$3.83 |

50 **A. Company-owned Overhead System**

Street lights supported on distribution type wood poles: Mercury Vapor Lamps.

| Nominal Lumen Rating | <u>7,000</u> | <u>21,000</u> | <u>55,000</u> |
|----------------------|--------------|---------------|---------------|
| Horizontal, per lamp | \$1.37 | \$3.11 | \$7.45 |
| Vertical, per lamp | \$1.37 | \$3.11 | |

Street lights supported on distribution type metal poles: Mercury Vapor Lamps.

| Nominal Lumen Rating | <u>7,000</u> | <u>21,000</u> | <u>55,000</u> |
|--|--------------|---------------|---------------|
| On 26-foot poles, horizontal, per lamp | \$1.37 | | |
| On 26-foot poles, vertical, per lamp | \$1.37 | | |
| On 30-foot poles, horizontal, per lamp | | \$3.11 | |
| On 30-foot poles, vertical, per lamp | | \$3.11 | |
| On 33-foot poles, horizontal, per lamp | | | \$7.45 |

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|------------|---|---|
| Issued: | August 28, 2003 | P.U.C. OR No. 35 |
| Effective: | With service rendered on and after September 1, 2003 | Second Revision of Sheet No. 200-2 Canceling First Revision of Sheet No. 200-2 |

Issued By
 D. Douglas Larson, Vice President, Regulation

Energy Charge (continued)

Delivery Service Schedule No.

B. Company-owned Underground System

| <u>Nominal Lumen Rating</u> | <u>7,000</u> | <u>21,000</u> | <u>55,000</u> |
|--|--------------|---------------|---------------|
| On 26-foot poles, horizontal, per lamp | \$1.37 | | |
| On 26-foot poles, vertical, per lamp | \$1.37 | | |
| On 30-foot poles, horizontal, per lamp | | \$3.11 | |
| On 30-foot poles, vertical, per lamp | | \$3.11 | |
| On 33-foot poles, horizontal, per lamp | | | \$7.45 |

| 51 | <u>Nominal Rating</u> | <u>Monthly kWh</u> | <u>Rate Per Luminaire</u> |
|----|-----------------------|--------------------|---------------------------|
| | 5,800 | 31 | \$0.89 |
| | 9,500 | 44 | \$1.25 |
| | 22,000 | 85 | \$2.43 |
| | 50,000 | 176 | \$5.02 |

Returning Service Requirements

For Nonresidential Consumers who have chosen service under Schedule 220, Standard Offer Supply Service or who have chosen Direct Access Delivery Service under the applicable tariff. A customer shall meet the Returning Service Requirements of this Schedule by making a request to the Company to receive service under this Schedule and agreeing to pay to the Company a Returning Service Payment that compensates for the increased cost of serving such returning customers due to an increase in market price as compared to the market price used in determining the Customer's applicable transition credit as specified under Schedule 294. Upon return to this Schedule, PacifiCorp will cease applying Schedule 294 to the returning customer receiving service under this Schedule and shall remove the customer's Schedule 294 credit from the transition adjustment balancing account.

Returning Service Payment, expressed in dollars, shall be the result of multiplying the expected remaining monthly usage times the difference between the forward market price at the time of the Customer's request to return to Schedule 200 and the forward market price used for determining the Schedule 294 Transition Adjustment, times 110 percent.

The Payment shall be based on the Customer's expected monthly usage and the Company's current forward energy market prices. The Customer's expected remaining usage shall be based on a pro rata share of the current month's usage and Customer's historical data for each remaining month of the period over which the Transition Adjustment was calculated. Customer's usage will be allocated

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| Issued: | August 28, 2003 | P.U.C. OR No. 35 |
| Effective: | With service rendered on and after September 1, 2003 | Third Revision of Sheet No. 200-3 Canceling Second Revision of Sheet No. 200-3 |

Issued By
 D. Douglas Larson, Vice President, Regulation

PACIFIC POWER & LIGHT COMPANY
COST-BASED
SUPPLY SERVICE

OREGON
SCHEDULE 200
Page 4

Energy Charge *(continued)*

into peak and off-peak periods by month using a predetermined peak/off-peak ratio for Customer's applicable Delivery Service Schedule.

The payment will be calculated by multiplying the monthly allocated peak- and off-peak usage by the difference between the forward market price at the time of the request and the forward market price used for the Schedule 294 Adjustment. The Returning Service Payment will only apply if the result of this calculation results in a positive number.

For the Consumer who chooses direct access service or Schedule 220, the Consumer will pay the Returning Service Payment to return to service under this schedule.

Upon receiving the calculated amount of the Returning Service Payment from the Company, Customer shall have until the close of business on that day to execute the agreement to pay the Returning Service Payment.

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|------------|---|---|
| Issued: | August 16, 2002 | P.U.C. OR No. 35 |
| Effective: | With service rendered on and after January 1, 2003 | First Revision of Sheet No. 200-4 Canceling Original Sheet No. 200-4 |

Issued By
D. Douglas Larson, Vice President, Regulation

TF1 200-4.E

Advice No. 02-024

PACIFIC POWER & LIGHT COMPANY
AGRICULTURAL PUMPING SERVICE
DELIVERY SERVICE

OREGON
SCHEDULE 41
Page 1

Available

In all territory served by the Company in the State of Oregon.

Applicable

To Consumers desiring service for irrigation and soil drainage pumping installations only and whose loads have not registered 1,000 kW or more, more than once in the preceding 18-month period and who are not otherwise subject to service on Schedule 47 or 48. Service furnished under this Schedule will be metered and billed separately at each point of delivery.

Monthly Billing

Except for November, the monthly billing shall be the sum of the Distribution Energy Charge, Transmission & Ancillary Services Charge, Reactive Power Charge plus applicable adjustments as specified in Schedule 90. For November, the billing shall be the sum of the Distribution Energy Charge, Transmission & Ancillary Services Charge, Basic Charge, Load Size Charge, Reactive Power Charge plus applicable adjustments as specified in Schedule 90.

| <u>Distribution Charge</u> | <u>Delivery Voltage</u> | |
|---|-------------------------|-----------|
| | Secondary | Primary |
| Basic Charge | | |
| Load Size ≤ 50 kW, or Single Phase Any Size | No Charge | No Charge |
| Three Phase Load Size 51 - 300 kW, per month | \$ 300.00 | \$ 200.00 |
| Three Phase Load Size > 300 kW, per month | \$1200.00 | \$ 700.00 |
| Load Size Charge | | |
| Single Phase Any Size, per kW Load Size | \$ 15.00 | \$ 10.00 |
| Three Phase ≤ 50 kW, per kW Load Size | \$ 15.00 | \$ 10.00 |
| Three Phase 51 - 300 kW, per kW Load Size | \$ 9.00 | \$ 5.00 |
| Three Phase > 300 kW, per kW Load Size | \$ 6.00 | \$ 4.00 |
| Single Phase, Minimum Charge, per month | \$ 50.00 | \$ 30.00 |
| Three Phase, Minimum Charge, per month | \$ 90.00 | \$ 50.00 |
| Distribution Energy Charge, per kWh | 3.579¢ | 0.656¢ |
| Reactive Power Charge, per kVar | 65.00¢ | 60.00¢ |
| <u>Transmission & Ancillary Services Charge</u> | | |
| Per kWh | 0.443¢ | 0.424¢ |

kW Load Size

For determination of the Basic Charge and the Load Size Charge, the kW load size shall be the average of the two greatest non-zero monthly demands established during the 12-month period, which includes and ends with the current billing month.

Monthly kW is the measured kW shown by or computed from the readings of the Company's meter, or by appropriate test, for the 15-minute period of the Consumer's greatest takings during the billing month; provided, however, that for motors 10 hp or less, the Monthly kW may, subject to confirmation by test, be determined from the nameplate hp rating and the following table:

(continued)

| | | |
|------------|------------------------------------|--|
| Issued: | July 21, 2004 | P.U.C. OR No. 35 |
| Effective: | With service rendered on and after | Fourth Revision of Sheet No. 41-1 |
| | August 23, 2004 | Canceling Third Revision of Sheet No. 41-1 |

Issued By
D. Douglas Larson, Vice President, Regulation

**PACIFIC POWER & LIGHT COMPANY
AGRICULTURAL PUMPING SERVICE
DELIVERY SERVICE**

**OREGON
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Page 2

kW Load Size (continued)

| If Motor Size Is: | Monthly kW is: |
|--------------------------|-----------------------|
| 2 hp or less | 2 kW |
| Over 2 through 3 hp | 3 kW |
| Over 3 through 5 hp | 5 kW |
| Over 5 through 7.5 hp | 7 kW |
| Over 7.5 through 10 hp | 9 kW |

In no case shall the Monthly kW be less than the average kW determined as:

$$\text{Average kW} = \frac{\text{kWh for billing month}}{\text{hours in billing month}}$$

Reactive Power Charge

The maximum 15-minute reactive takings for the billing month in kilovolt-amperes in excess of 40% of the Monthly kW.

Metering Adjustment

For a Consumer receiving service at secondary delivery voltage where metering is at primary delivery shall have all billing quantities multiplied by an adjustment factor of 0.9583.

For a Consumer receiving service at primary delivery voltage where metering is at secondary delivery voltage shall have all billing quantities multiplied by an adjustment factor of 1.0435.

Supply Service Options

A Small Nonresidential Consumer taking Delivery Service under this schedule shall specify a Supply Service Schedule 200, Schedule 210, Schedule 211, Schedule 212, Schedule 213, or Schedule 220, as appropriate and in accordance with the Applicable section of the specified rate schedule. A Large Nonresidential Consumer taking Delivery Service under this Schedule shall select Supply Service Schedule 200 or Schedule 220, as appropriate and in accordance with the Applicable section of the specified rate schedule. If Consumer elects to receive Supply Service from an ESS, Delivery Service shall be provided under Schedule 741, Direct Access Delivery Service.

Special Conditions

- 1) For new or terminating service, the Basic Charge and the Load Size Charge shall be prorated based upon the length of time the account is active during the 12-month period December through November; provided, however, that proration of the Basic Charge and the Load Size Charge will be available on termination only if a full Basic Charge and Load Size Charge was paid for the delivery point for the preceding year.

(continued)

| | | |
|------------|--|---|
| Issued: | October 1, 2004 | P.U.C. OR No. 35 |
| Effective: | With service rendered on and after November 1, 2004 | Second Revision of Sheet No. 41-2 Canceling First Revision of Sheet No. 41-2 |

Issued By
D. Douglas Larson, Vice President, Regulation

**PACIFIC POWER & LIGHT COMPANY
AGRICULTURAL PUMPING SERVICE
DELIVERY SERVICE**

**OREGON
SCHEDULE 41**
Page 3

Special Conditions *(continued)*

- 2) For new service or for reestablishment of service, the Company will require a written contract.
- 3) In the absence of a Consumer or Applicant willing to contract for service, the Company may remove its facilities.
- 4) Energy use may be carried forward and be billed in a subsequent billing month; provided, however, that energy will not be carried forward and be charged for at a higher rate than was applicable for the billing months during which the energy was used.

Term of Contract

Not less than three years.

Rules and Regulations

Service under this Schedule is subject to the General Rules and Regulations contained in the tariff of which this Schedule is a part and to those prescribed by regulatory authorities.

| | | |
|------------|--|-------------------------|
| Issued: | September 10, 2001 | P.U.C. OR No. 35 |
| Effective: | With service rendered on and after September 10, 2001 | Original Sheet No. 41-3 |

Issued By
D. Douglas Larson, Vice President, Regulation

TF1 41-3.E

Advice No. 01-020

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

| | | |
|-------------------------------|---|------------------------------|
| PacifiCorp |) | Docket No. P-2082-027 |
| Klamath Hydroelectric Project |) | |
| |) | KLAMATH WATER USERS |
| |) | ASSOCIATION MOTION TO STRIKE |
| |) | ANSWER OF PACIFICORP TO |
| |) | COMMENTS, PROTESTS AND |
| |) | MOTIONS TO INTERVENE |

MOTION TO STRIKE

The Klamath Water Users Association (“KWUA”) hereby respectfully requests that the Federal Energy Regulatory Commission (“Commission”) strike the Answer of PacifiCorp to Comments, Protests and Motions to Intervene filed with the Commission in the above-captioned docket on November 19, 2004 (“Answer”).

There are numerous grounds for striking the Answer. First, the Answer is irrelevant because PacifiCorp has not objected to the intervention of any party. Second, the Answer is beyond the scope of Rule 213 because it purports to address substantive legal issues wholly unrelated to any party’s right to intervene. Third, the Commission’s procedural rules do not permit an answer to a protest. Fourth, even if the subject matter of the Answer were relevant and within the scope of Rule 213, the Answer misrepresents the purpose and nature of KWUA’s Motion to Intervene. Fifth, the decisions cited by PacifiCorp actually *support* an allocation of power from Project 2082 for the benefit of the Klamath Irrigation Project in light of the Congressional approval of the Klamath River Basin Compact. Finally, the Answer misconstrues the Commission’s authority to condition any new license issued to PacifiCorp.

I. Background

On October 12, 2004, KWUA filed a Motion to Intervene in this proceeding. As required by Rule 214 of the Commission's Rules of Practice and Procedure, KWUA presented the Commission with a concise statement of KWUA's interest in the Project and KWUA's position with respect to PacifiCorp's license application.¹ Without repeating the Motion to Intervene, KWUA's interest involves a contract between PacifiCorp and the Bureau of Reclamation ("Bureau")² that provides low-cost power for the benefit of the Klamath Irrigation Project ("Contract").³ KWUA explained that its position in this proceeding is that the Contract should be extended for so long as PacifiCorp is the licensee of the Klamath Hydroelectric Project.

The Contract was required by the Commission as a condition on PacifiCorp's original license for Project 2082. KWUA's NEPA scoping comments include a short account of the historical origins of the Contract.⁴ In summary, the Bureau is broadly authorized by federal law to develop both water and power resources on behalf of its irrigation projects.⁵ The Bureau has already made it clear that the Klamath Irrigation Project depends on low-cost power.⁶ Thus, the Bureau was actively contemplating developing power resources when PacifiCorp applied for a license for Project 2082.⁷ Knowing that it would not be possible for both it and PacifiCorp to

¹ For reference, a copy of KWUA's Motion to Intervene is attached hereto as Exhibit A.

² As used in this Motion to Strike, the term "Bureau" is used to describe both the Bureau of Reclamation and the Department of Interior to the extent that it is acting on behalf of the Bureau.

³ A copy of the Contract is attached hereto as Exhibit B.

⁴ For the convenience of the Commission, a copy of these comments is attached hereto as Exhibit C.

⁵ See generally *Uncompahgre Valley Water Users Association v. Federal Energy Regulatory Commission*, 785 F.2d 269, 274 (10th Cir. 1986) ("The legislative history of the [Reclamation] Act . . . demonstrates that Congress intended to confer upon the Secretary such authority in those situations where the development of power is necessary and feasible for the pumping of water for irrigation in the implementation of the reclamation projects.") (Internal citations omitted.).

⁶ The Bureau informed the Commission that "this economy is largely dependent upon low cost power for pumping. Without low cost power, many thousands of acres in the project would be forced out of production." *Protest of the United States to the Application For License of the California-Oregon Power Company, Project No. 180*, June 1, 1951, p. 4.

⁷ At the time PacifiCorp applied for the original license for the JC Boyle facilities, the Bureau was actively studying development of its own hydroelectric power on the Klamath River. Here, the benefit to KWUA members would have

operate hydroelectric facilities on the Klamath River, the Bureau filed a protest against PacifiCorp's license application ("Protest").⁸

As a compromise urged by the Commission, the Bureau agreed to withdraw its Protest and allow PacifiCorp to proceed with its Project, but only if PacifiCorp agreed in return to supply the Klamath Irrigation Project with power at a price similar to what would have been offered by the Bureau. The Commission memorialized this agreement as a condition of the original license.⁹ From this context it is clear that PacifiCorp, the Bureau and the Commission all intended for the Contract to continue so long as Project 2082 physically impedes the Bureau from exercising its legal authority to develop power resources for the benefit for the Klamath Irrigation Project.

II. PacifiCorp's Answer is Irrelevant Given PacifiCorp's Decision not to Object to any Party Timely Moving for Intervention.

In the Answer, PacifiCorp states that it "does not object to the intervention of any party timely moving for intervention in this proceeding." Answer, p. 2. PacifiCorp apparently concedes, as it must, that KWUA has satisfied each of the criteria relevant to intervention in this proceeding. By PacifiCorp's own admission, therefore, the extensive legal arguments contained in PacifiCorp's so-called "Answer" are entirely irrelevant as to whether or not KWUA, or any other party, should be permitted to intervene. Thus, the arguments raised in PacifiCorp's Answer are untimely and unfairly prejudicial against KWUA and should be stricken from the record in this proceeding.

included a permanent supply of electricity at *or below* the cost of production. *See Reply Brief of the Secretary of the Interior*, October 17, 1952, p. 10 ("If power were developed by the Interior Department, it would be available for pumping, for financial aid to irrigation, and for sales to customers having preference rights under the reclamation laws.").

⁸ A copy of the Protest is attached hereto as Exhibit D.

⁹ A copy of the original licensing order is attached hereto as Exhibit E.

III. PacifiCorp's Answer Exceeds the Scope Permitted by Rule 213 by Engaging Solely in Legal Argument.

The contents of the Answer are governed by Rule 213(c).¹⁰ This rule provides that an answer must contain a clear and concise statement of disputed factual allegations and any law upon which the answer relies. This rule contemplates that an answer will address issues raised in the document being answered, but does not give the answering party *carte blanche* to brief its position on any topic it wishes to address. Instead of addressing the facts or law underlying KWUA's right to intervene, however, PacifiCorp improperly seeks to use its Answer to address certain "substantive issues." This is particularly egregious in light of the fact that no responsive filing may be made to an Answer without leave of the Commission.¹¹ In short, PacifiCorp's Answer seeks to take a bite at the substantive apple without allowing any other party the opportunity to respond in kind.

IV. Rule 213 Does Not Permit PacifiCorp to Answer a Protest.

PacifiCorp clearly states that the Answer is intended to address motions to intervene, comments and protests alike. The Commission's procedural rules forbid PacifiCorp from answering protests.¹² Because KWUA has stated that the license should not be granted absent certain conditions, KWUA's Motion to Intervene is in the nature of a protest. Other parties have directly filed protests—at least one concerning the continuation of a power contract.¹³ To the extent that PacifiCorp purports to "answer" protests, PacifiCorp's Answer should be stricken.

¹⁰ 18 CFR § 385.213(c).

¹¹ See 18 CFR § 385.213(a)(2) ("An answer may not be made to a protest, an answer, a motion for oral argument, or a request for rehearing, unless otherwise ordered by the decisional authority.")

¹² See 18 CFR § 385.213(a)(2)

¹³ See, e.g., MOTION TO INTERVENE IN OPPOSITION OF THE KLAMATH OFF-PROJECT WATER USERS, INC., filed with the Commission in this docket on October 15, 2004.

V. The Answer Misrepresents KWUA's Motion to Intervene.

Not only is PacifiCorp's Answer contrary to the Commission's Rules of Practice and Procedure, it also contains a number of misrepresentations about the nature and purpose of KWUA's Motion to Intervene.

A. KWUA has not yet presented its legal arguments.

KWUA's Motion to Intervene was narrowly tailored to satisfy the required showing for intervention. Nevertheless, PacifiCorp represents that "many of these pleadings not only seek intervention, but raise substantive issues pertaining to the relicensing of the Klamath Hydroelectric Project * * *." Answer, p. 2. PacifiCorp relies on this mischaracterization to justify submitting a legal brief under the guise of an answer. But KWUA's Motion to Intervene is not a legal brief, and it does not purport to set forth KWUA's substantive arguments as to why the Contract should be renewed.¹⁴ The simple truth is that KWUA has not raised any "substantive issues" for the Commission to resolve at this time, other than its right and ability to intervene. While PacifiCorp may certainly file an answer addressing KWUA's right to intervene, the Commission should not permit PacifiCorp to abuse that privilege.

B. Renewing the Contract would be in the public interest and best adapted to a comprehensive development plan.

For purposes of intervening in this proceeding, KWUA was not required to demonstrate how its position is in the public interest.¹⁵ Nevertheless, PacifiCorp criticizes KWUA for not advancing "any explanation of how their request for the Commission to require PacifiCorp to renew the 1956 Contract would meet [the public interest and comprehensive development]

¹⁴ The Commission is undoubtedly aware that, given the stakes, KWUA has much more to say about the Contract in the appropriate time and place.

¹⁵ Rule 214 provides that a party moving to intervene must state its position and the facts and law in support of its position. Although the moving party is required to demonstrate that its participation in the proceeding is in the public interest, this does not apply to its position. Furthermore, PacifiCorp has already stated that it does not object to KWUA's intervention—thus PacifiCorp apparently concedes that KWUA's intervention is in the public interest.

standards.” Answer, p. 6. No such justification was provided in the Motion to Intervene because such standards are not germane to intervention. Moreover, as discussed in more detail below, no such analysis of the public interest standard is required in order to renew the Contract because Congress clearly intended that the power generated from the waters of the Klamath River would be used to provide the lowest reasonable power rates for irrigation in the region.

Even if the Commission were to apply the public interest standard to the condition requested by KWUA, it is simply not in the public interest to introduce further economic hardship and environmental turmoil in the Klamath River Basin simply so PacifiCorp can retain a few more megawatts of power from one small hydroelectric project. It is not in the public interest to increase the power rates 25 times for geographically concentrated family farms and businesses that were invited by the federal government to settle the region based, in part, on the promise that low-cost power would be made available to them. The public interest would not be well-served by economic dislocation and increased unemployment in the state already suffering one of the highest unemployment rates in the nation.¹⁶ Nor is it in the public interest to waste \$50 million of federal cost-share funding allocated by Congress in 2002 for water conservation sprinkling equipment for the Klamath River Basin, which is essentially useless without low-cost power.¹⁷

Aside from the economic consequences of not renewing the Contract, the public would also be subject to potentially severe environmental impacts. For example, given the already intense competition for water in the region it is not in the public interest for the Klamath River

¹⁶ See, e.g., Brent Hunsberger, “Company Shopping, Oregon-Style,” *The Oregonian*, Dec. 5, 2004 (“Oregon’s unemployment rate has ranked among the nation’s highest for nearly three years * * *.”); Greg Hitt, “Bush Campaign May Get a Lift from Job Growth in Key States,” *The Wall Street Journal*, June 21, 2004 (“While 6,000 jobs were added in Oregon, the state’s unemployment rate was 6.8%, well above the national average of 5.6% and the second highest in the U.S.”)

Basin farmers to be forced to switch from power-intensive sprinkler irrigation to more water-intensive flood irrigation. Nor is it in the public interest to impede the flow of water to the National Wildlife Refuges, which is likely to happen if the Klamath Irrigation Project's pumping costs are dramatically increased. In short, the decision not to renew the Contract could significantly alter the precarious economic and environmental balance of the entire Klamath River Basin.

Renewing the Contract also is consistent with the "comprehensive development" standard of Section 10(a)(1). Section 10(a)(1) provides that any project licensed by the Commission shall "be best adapted to a comprehensive plan for improving or developing a waterway or waterways * * * for other beneficial public uses, *including irrigation* * * *." (Emphasis added). Terminating the Contract, which facilitates irrigation in the Klamath Irrigation Project, clearly is not the plan best adapted for other beneficial public uses "including irrigation." Thus, PacifiCorp's current license application is contrary to Section 10(a)(1).

C. KWUA does not seek to have the Commission "regulate" PacifiCorp's retail rates.

KWUA does not seek to have the Commission regulate PacifiCorp's retail rates. PacifiCorp argues that a renewal of the Contract "would require the Commission to regulate PacifiCorp's retail rates for power and energy applicable to a subset of PacifiCorp's retail customers." Answer, p. 8. As PacifiCorp is well aware, "rate regulation" involves scrutiny of all costs that a utility seeks to recover from its ratepayers to ensure that such costs are reasonable and prudent. *See generally*, Alfred E. Kahn, THE ECONOMICS OF REGULATION: PRINCIPLES AND INSTITUTIONS, 25 (1993). KWUA does not request, either directly or by implication, that

¹⁷ A description of the United States Department of Agriculture's Klamath Basin EQIP 2004 program is attached hereto as Exhibit F. This program funds water conservation equipment and presupposes the availability of low-cost power.

PacifiCorp submit and justify its costs, revenue requirements and/or rate designs to the Commission.

Contrary to PacifiCorp's characterization, all KWUA seeks through this relicensing process is the continuation of the Contract between PacifiCorp and the Bureau. One of the fundamental aspects to the Contract is the provision of low cost power. The price for power specified in the Contract was arrived at through private negotiations between the Bureau and PacifiCorp—and not through “rate regulation” by either the Oregon Public Utility Commission (“OPUC”) or this Commission. KWUA presumes that the price for the renewed term of the Contract would be negotiated in a similar manner.

Implicit in PacifiCorp's argument is the notion that PacifiCorp's relationship with its retail customers is the solely province of the OPUC. Again, a renewal of the Contract would not require the Commission to usurp or interfere with the OPUC's regulatory authority over PacifiCorp's retail rates. The OPUC would remain free either to approve the Contract and allow PacifiCorp to recover the costs as a reasonable and prudent expense for the privilege of owning and operating the Project, or to disallow the recovery of such expenditures through PacifiCorp's tariff rates and require PacifiCorp to internalize such costs within the corporation. In simple terms, the costs associated with renewing the Contract would be no different from the costs of any other license condition. Nothing in this process would require the Commission to regulate rates or to undermine the rate-setting authority of the OPUC.

D. KWUA does not seek an “amendment of the license” during any annual license period.

Contrary to PacifiCorp's representation, KWUA does not seek an amendment to the license during the term of any one-year license extension. PacifiCorp states that “KWUA's request that the Commission require an extension of the 1956 Contract through the duration of

any annual license, therefore, would require an amendment of the license.” Answer, p. 9.

PacifiCorp then proceeds to argue why such an amendment would “contravene well-established Commission policies and precedent and exceed the Commission’s authority and jurisdiction under the FPA.” *Id.*

In reality, it is PacifiCorp that improperly seeks to amend the license. Section 15(a)(1) of the Federal Power Act states that “the commission shall issue from year to year an annual license to the then licensee *under the terms and conditions of the existing license* until the property is taken over or a new license is issued as aforesaid.” (Emphasis added). As discussed above, one of the terms and conditions of the original license is that PacifiCorp shall renew the Contract “to cover a time period *at least equivalent to the time period of this license * * **” *Order Issuing License (Major) issued for Project No. 2082, January 28, 1954, ¶ A.* Thus, for any annual license issued by the Commission, the above quoted condition will require PacifiCorp to renew its Contract with the Bureau for at least that year covered by the annual license. Any other result would require the Commission either to ignore Section 15(a)(1) or to amend the original license condition.

PacifiCorp also asserts that because it has provided low cost power for 50 years, it has fully satisfied its obligation to the Bureau. PacifiCorp misinterprets the meaning of the 50-year term of the Contract. As quoted above, the actual license condition does not limit PacifiCorp’s obligation to 50 years but requires a contract with the Bureau “at least equivalent to the time period of this license.” There is no evidence that the Commission, the Bureau or even PacifiCorp ascribed any special significance to the 50-year term of the Contract aside from the fact that the original license was issued for a 50-year term. What the evidence does indicate, however, is that the Contract should continue so long as PacifiCorp is the licensee of the Project.

For example, PacifiCorp's contract with KWUA for the benefit of irrigators within the Klamath River Basin but outside of the Klamath Irrigation Project, which is not the result of a license condition, has no termination date.¹⁸

VI. The *New York Power Authority* Decisions Actually Support an Allocation of Power for the Klamath Irrigation Project.

- A. Congress has manifested its intent that the waters of the Klamath River shall be used to provide the lowest reasonable power rates for irrigation in the Klamath River Basin.

The thrust of PacifiCorp's Answer is that KWUA has not cited any federal law specifically requiring low-cost sales of power and energy to the Klamath Irrigation Project. KWUA has several responses to this accusation. First, PacifiCorp has grossly overstated the applicable legal standard. Second, KWUA did not cite the federal law in support of its power allocation as part of its Motion to Intervene because such a recitation is not germane to intervention. Third, KWUA *did* cite the federal law in support of its power allocation in its NEPA Scoping Comments—and will do so again herein.

The line of Commission decisions upon which PacifiCorp builds its legal argument culminates with *N.Y. Power Authority*, 109 FERC ¶ 61,092 (Oct. 28, 2004). In *N.Y. Power Authority*, the Massachusetts Municipal Wholesale Electric Company (“MMWEC”) sought to have the Commission renew a condition on the original license for the St. Lawrence Project requiring the licensee, the Power Authority of the State of New York (“New York”), to allocate a portion of project power to neighboring state utilities, including MMWEC. The Commission first held that it has the authority under the Federal Power Act to impose such a condition. The Commission then held that a renewal of the condition was warranted in light of the Congressional intent of such allocation reflected in Senate Joint Resolution 104. *See New York*

¹⁸ A copy of this contract between PacifiCorp and the KWUA is attached hereto as Exhibit G.

Power Authority, 105 FERC ¶ 61,102 (Oct. 23, 2003). Having found such Congressional intent to share the benefits of the project, the Commission was not required to weigh MMWEC's public interest arguments. *See id.*

On rehearing, however, the Commission reversed its prior licensing order requiring New York to allocate power to MMWEC. The Commission made this reversal because it discovered that Senate Joint Resolution 104 was never actually adopted by either house of Congress.

Without an official manifestation of Congressional intent, the Commission found that it was not required to allocate power from a licensed project. *See N.Y. Power Authority*, 109 FERC ¶ 61,092 (Oct. 28, 2004). The Commission also held that it would not be in the public interest under the circumstances of that case for the Commission to exercise its discretionary authority to require a continued power allocation. *See id.*

This proceeding is different because Congress *has* officially adopted an expression of its intent that the waters of the Klamath River shall be used to provide the lowest reasonable power rate for irrigation pumping in the Klamath River Basin. The Klamath River Basin Compact between the States of Oregon and California was ratified in 1957 ("Compact"),¹⁹ shortly after the Contract was first executed. Article IV, which is entitled "Hydroelectric Power," provides:

It shall be the objective of each state, in the formulation and the execution and the granting of authority for the formulation and execution of plans for the distribution and *use of the waters of the Klamath River Basin, to provide for the most efficient use of available power head and its integration with the distribution of water for other beneficial uses in order to secure the most economical distribution of water and lowest power rates which may be reasonable for irrigation and drainage pumping, including pumping from wells.*

(Emphasis added.) This language does not merely discuss power rates in the abstract, but specifically directs that the waters of the Klamath River shall be used to provide the lowest cost

power for irrigation in the region. Furthermore, the Compact was drafted and ratified immediately after PacifiCorp received its original license and executed the Contract with the Bureau. The Compact should be interpreted in light of the licensing and Contractual arrangements that existed as of 1957.

The Compact was approved by the United States Congress Act of August 30, 1957 (71 Stat. 497). The United States Supreme Court has recently confirmed that *an interstate compact that has been approved by Congress has the same legal status as a federal statute. See Virginia v. Maryland*, 540 U.S. 56, 66, 124 S. Ct. 598, 605 (2003) (“We interpret a congressionally approved interstate compact just as if we were addressing a federal statute. Congressional consent transforms an interstate compact into a law of the United States.”) (Internal citations and quotations omitted.) Thus, the Supreme Court mandates that the Compact be interpreted as a law of the United States requiring that the waters of the Klamath River be used to provide “the lowest power rates which may be reasonable for irrigation and drainage pumping.” Furthermore, the Compact should be accorded even greater weight than conventional federal legislation because it reflects the official intent of the States of Oregon and California as well as the United States Congress.

The Compact is a sufficient manifestation of Congressional intent. In its Answer, PacifiCorp represents that “even where the original license directed the licensee to allocate power, such condition will not continue under the new license unless federal law specifically requires an allocation of power.” Answer, p. 6. But PacifiCorp vastly overstates the standard articulated by the Commission and no such specific requirement is necessary. The first *N.Y. Power Authority* decision states that the license article requiring the continued power allocation “is not based on a statutory requirement, but on the Commission’s view of Congressional intent

¹⁹ A copy of the Compact is attached hereto as Exhibit H.

at the time of original licensing.” See *New York Power Authority*, 105 FERC ¶ 61,102 (Oct. 23, 2003) (Emphasis added). The Commission further held, *even in the absence of an explicit legislative directive*, “that Congress intended for the economic benefits of power from this particular project to be shared throughout the Northeastern United States.” *Id.* In this case, the Compact provides clear and direct evidence of Congressional intent, contemporaneous with the original licensing, that power generated from the Klamath River would be used to provide the lowest power rates that may be reasonable for irrigation and drainage pumping.

The Commission also should reject any suggestion by PacifiCorp that its standard retail rates are the lowest “reasonable” rate. The irrigators of the Klamath River Basin would be able to purchase power from PacifiCorp at the standard tariff rates even without the language of the Compact. Thus, such a reading of the Compact would render Article IV superfluous, in violation of the basic principles of statutory interpretation observed by the federal courts and this Commission. See generally *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“[A] cardinal principle of statutory construction [is] that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.”) Furthermore, the Commission already rejected a similar argument in *N.Y. Power Authority*. The Commission held that the requirement to sell power at the “lowest possible price” was not satisfied simply by selling power at market-based rates. See *New York Power Authority*, 105 FERC ¶ 61,102 (Oct. 23, 2003). Likewise in this case, the “lowest power rates which may be reasonable for irrigation and drainage pumping” requires something lower than standard tariff rates.

B. This case is directly analogous to a competing license application.

In *N.Y. Power Authority*, the Commission noted that one of the prior examples of the Commission allocating project power involved a competing license application. The Commission explained that it, “in the context of deciding between competing license applications for the same site, required the prevailing utility applicant to allocate project power as needed up to a specified amount to the competing utility applicant in whose service area the project was located.” 109 FERC ¶ 61,092; *see also City of Seattle and PUD No. 1 of Pend Oreille County, Wa.*, 26 FPC 463, 464 (1961). The Commission explained, in light of the competition to develop the hydroelectric resource, that “[i]t seems equitable, however, to give consideration here to the local interest of the area where the power resource is located, particularly since the area is one where the limited hydro-electric resource, once devoted to outside use, cannot be replaced with other energy sources except at a much greater cost.” *Id.*

The facts of this case are analogous to the *City of Seattle* decision because the Bureau and PacifiCorp were competing to develop a power project on the Klamath River. As discussed above, the historical record clearly reflects that, at the time that PacifiCorp applied for a license for Project 2082, the Bureau was keenly interested in developing its own power resources for the benefit the Klamath Irrigation Project. That is a major reason why the Bureau filed its Protest to PacifiCorp’s application—because the Bureau understood that two major hydroelectric projects could not coexist on the Klamath River.²⁰ The reason that the Bureau never formally filed an

²⁰ The Bureau explained to the Commission that:

Low cost power has been available for over 25 years by virtue of a contract between the United States and the California-Oregon Power Company. However, this contract terminates in 1967 and, if the water is not available at that time for the development of power either by the United States or the water users, the success or failure of a majority of the farmers with the project will depend entirely upon what rate the California-Oregon Power Company shall charge.

application with this Commission for its own project, or a competing license application for Project 2082, is because the Bureau simply is not required by the Federal Power Act to hold a Commission license. *See generally* 18 USC § 796(4)-(7) (federal agencies are not included within the definition of a “licensee.”)

At the Commission’s urging, the competition between the Bureau and PacifiCorp was resolved by granting a license to PacifiCorp subject to the obligation to provide low cost power to the Bureau for the benefit of the Klamath Irrigation Project. Now, however, PacifiCorp wishes to continue as the licensee but without providing any consideration to the Bureau or the Klamath Irrigation Project. Just as in the *City of Seattle* decision, it would be equitable for the Commission to give consideration to the local interests of the area where the power resource is located. So long as PacifiCorp remains the licensee on the Klamath River, and the Bureau’s power development authority remains unfulfilled, PacifiCorp should continue to adhere to its original agreement to provide the Klamath Irrigation Project with low cost power.

C. The Commission’s analysis of the public interest in *N.Y. Power Authority* is distinguishable.

In the final *N.Y. Power Authority* decision, the Commission removed a condition requiring New York to allocate power to MMWEC. The reason for this reversal was because the Commission discovered that Joint Senate Resolution 104 had not been adopted. With the requisite manifestation of Congressional intent, the Commission held that its authority to impose the condition was subject to its analysis of the public interest and comprehensive development standards. As an initial matter, the Commission need not apply the public interest standard to the condition requested by the KWUA in light of the Congressional intent set forth in the Compact.

Protest of the United States to the Application for License of the California-Oregon Power Company Project No. 180, June 1, 1951, p. 4 (emphasis added).

Even if the Commission were to apply the public interest standard, however, the fact that the public interest did not support continuing the condition in *N.Y. Power Authority* carries little or no weight with respect to the Commission's analysis of the public interest in this proceeding.

For example, one of the primary reasons why the Commission decided it was not in the public interest to allocate power to MMWEC was MMWEC's ability to develop its own generating resources and acquire its own power supplies on the open market. The Commission discussed how the independent system operators and regional transmission organizations of New England created since the original license was granted now "ensure[] that power is available on a non-discriminatory basis at the lowest possible cost." 109 FERC ¶ 61,092. The Commission further noted that "the lack of natural gas pipeline capacity into New England that existed when the original license was issued and which limited regional options for low-cost power has greatly diminished, and most of the increased demand for power is being served by merchant generators from gas-fired power plants." *Id.* In other words, the Commission noted that the allocation was an anachronism in light of the changing wholesale power markets.

The Commission's reasoning does not translate to this proceeding because, unlike MMWEC, the irrigators of the Klamath Irrigation Project are not in the business of buying and selling power. The irrigators have little or no access to the wholesale markets described by the Commission. Furthermore, the financial, technical and legal capacity of the Klamath River Basin irrigators to develop their own generating resources is not on par with MMWEC. In simple terms, there is a far greater need to renew the Contract in this case than there was to continue the low-cost power condition in the *N.Y. Power Authority* proceeding.

VII. The Answer Misrepresents the Scope of the Commission's Conditioning Authority

A. The Commission has the authority to require PacifiCorp to renew the Contract.

Much of PacifiCorp's brief is devoted to the proposition that the Commission lacks the legal authority to require a renewal of the Contract as a condition of the license. The Commission conclusively rejected this argument in *N.Y. Power Authority*, holding that "*the Commission has authority under the public interest and comprehensive development standards of Federal Power Act * * * sections 4(e) and 10(a)(1) to requires a licensee to allocate a portion of project power to another entity.*" 109 FERC ¶ 61,092 (Oct. 28, 2004) (Emphasis added.)

PacifiCorp also is incorrect in its assertion that the Commission lacks the authority to require PacifiCorp to enter into a contract with the Bureau. PacifiCorp supplies the following misquotation: The Commission "'cannot force [the licensee] to reach agreement with' a third party non-licensee." Answer, fn 18. What *JDJ Energy Co.*, actually says, however, is that the Commission "cannot force *a third party non-licensee* to reach agreement with the *licensee*." 101 FERC ¶ 61,059, p. 11 (Emphasis added). By transposing the words "licensee" and "third-party non-licensee," PacifiCorp has materially altered—and misrepresented—the decision. Ultimately, all that *JDJ Energy Co.* really says is that the Commission cannot exert conditioning authority over parties other than the licensee. In this case, just as in the case of the original license, the Commission may require PacifiCorp to renew the Contract so long as such renewal is acceptable to the Bureau.

B. The Federal Power Act authorizes and requires the Commission to consider PacifiCorp's prior actions.

PacifiCorp overstates its argument that the Commission cannot require a renewal of the Contract simply because this was a condition on the original license. Although the Commission

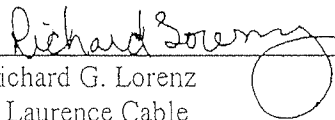
is not necessarily bound by conditions imposed on the original license, there is no question that such original conditions can provide the legal basis for new conditions. Section 15(a)(3)(B) of the Federal Power Act provides that when the applicant for a new license is the existing licensee, the Commission *shall* take into consideration “[t]he actions taken by the existing licensee related to the project which affect the public.” PacifiCorp is the existing licensee and the Contract, which clearly is related to the Project, has had a profound affect on the public. In short, the Commission may not turn a blind eye towards the Contract simply because it is issuing a “new” license.

VIII. Conclusion

KWUA respectfully requests that the Commission Strike PacifiCorp’s Answer as an untimely legal brief that is irrelevant to any party’s intervention and contrary to Rule 213. Furthermore, the Answer mischaracterizes the nature and purpose of KWUA’s Motion to Intervene by raising substantive issues not germane to KWUA’s right to intervene in this proceeding. The Answer also presents several legal arguments concerning the Commission’s conditioning authority that are either misleading or simply incorrect. Finally, the decision so heavily relied upon by PacifiCorp, *N.Y. Power Authority*, 109 FERC ¶ 61,092, actually supports an allocation of power to the Klamath Irrigation Project based on the Congressional intent reflected in the Compact.

DATE this 13th day of December, 2004.

Respectfully submitted,



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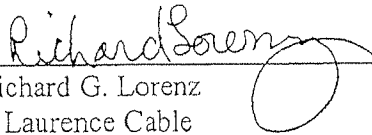
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CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing document on all persons designated via U.S. First Class Mail on the official service list compiled by the Secretary in these proceedings.

DATED Monday, December 13, 2004.



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FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, DC 20426

March 16, 2005

OFFICE OF ENERGY PROJECTS

Project No. 2082-027 – Oregon/California
Klamath Hydroelectric Project
PacifiCorp

Reference: Response to Additional Study Requests

To the Party Addressed:

In response to the Federal Energy Regulatory Commission's (Commission's) Notice of Tendering of Application, issued February 26, 2004, your organization requested that PacifiCorp conduct additional studies. The Commission received a total of 187 additional study requests (ASRs) from 22 entities (including some that represent multiple groups filing a single ASR letter).

We reviewed your ASRs for acceptability based on standards set forth in section 4.32(b)(7) of the Commission's regulations. We have required additional studies only when we determined that such studies would provide information necessary to form an adequate, factual basis for a complete analysis of the project on its merits.

The appendix to this letter (Appendix 1), *Responses to Additional Study Requests*, summarizes all 187 ASRs and indicates, for most study requests, the Commission staff's decision to adopt the request, adopt the request in part, or not adopt the request. In some instances, PacifiCorp has indicated that it plans to file study results that would address the ASRs. In those cases, we may revisit our determination regarding whether or not additional studies are needed after we review the study results that PacifiCorp will file. Our *Request for Additional Information*, issued February 17, 2005, describes 16 information requests, including studies, that PacifiCorp has been directed to respond to. These information requests will address many of the issues raised in the ASRs.

Where the Commission staff has adopted a study request in whole or in part, reference is made to the specific additional information request (AIR) that addresses that study request. Where Commission staff indicates in Appendix 1 that the study request has not been adopted, or only partially adopted, the staff's reasons are given.

If you have any questions, please contact John Mudre at the Commission at (202) 502-8902, or john.mudre@ferc.gov.

Sincerely,

Timothy J. Welch
Chief
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Enclosure: Appendix 1-Responses to Additional Study Requests

cc: Public Files
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APPENDIX 1

RESPONSES TO ADDITIONAL STUDY REQUESTS

RESPONSES TO ADDITIONAL STUDY REQUESTS (ASRs)
KLAMATH HYDROELECTRIC PROJECT (FERC NO. 2082-027)

| Entity ^a | Page# | Study Request | Staff Response |
|---------------------|-------|---|--|
| AW-1 | 9 | Determine a full range of passage alternatives including volitional options | Adopted in part. PacifiCorp provided an engineering analysis of available fish passage options for each development in section 7 of the Fish Resources Final Technical Report (FTR). In additional information request (AIR) AR-2, we asked PacifiCorp to follow through on its June 1, 2004 commitment to model anadromous fish production under a number of fish passage scenarios, which include combinations of volitional fish passage, trap and haul, and the absence of one or more dams. The requested evaluation includes a sensitivity analysis to determine the effects of a range of passage survival rates on adult returns under existing and restored habitat conditions. |
| AW-2 | 10 | Quantify the availability of spawning and rearing habitat upstream of Iron Gate dam and predict relative changes in population size under different project alternatives | Adopted (AIR AR-2). We asked PacifiCorp to provide a complete set of input and output from the EDT and KlamRAS models, including measures of habitat productivity and carrying capacity within and upstream of the project for existing and restored habitat conditions. |
| AW-3 | 11 | Quantify the flow needs (flow regimes, ramping rates, minimum flows, etc.) of flow-dependent resources such as hydropower, recreation, water quality, and aquatic organisms including resident native fish and anadromous fish appropriate for reintroduction | Adopted in part. In AIR AR-5, we asked PacifiCorp to complete its instream flow studies and to address most of the study elements that you have requested. We did not ask PacifiCorp to conduct instream flow studies downstream of the Link River, Keno, or Iron Gate dams because it has very limited control over flows in these reaches. In AIR AR-1, we asked PacifiCorp to evaluate the potential for using the limited storage that is available in the Copco 1 and Iron Gate reservoirs for short-term improvements to water quality by |

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| AW-4 | 12 | Quantify impacts including secondary effects on water quality on the Outstandingly Remarkable Values (ORVs); anadromous fisheries, free flow, water quality, river-based recreation, wildlife, scenery) of the Klamath Wild and Scenic River (WSR) below Iron Gate dam | <p>augmenting flows downstream of the project during critical periods. We did not ask PacifiCorp to model instream flows for anadromous fish within the project, which would best be addressed after a strategy for restoring anadromous fish has been developed.</p> <p>Adopted in part. Information provided by PacifiCorp in its license application, when coupled with the information that will be provided in response to our AIRs pertaining to anadromous fish (AR-1 and -2) and water quality (WQ-1, -2, -3, -4, and -5), will provide us with sufficient information to assess project-related effects on the ORVs of the Klamath River WSR under current and proposed operations, as well as under other alternatives that we may analyze.</p> |
| AW-5 | 14 | Describe and quantify the natural resources present and project impacts related to the Keno facility and the J.C. Boyle bypassed reach | <p>Adopted in part. PacifiCorp provided some information pertaining to natural resources of the Keno development and the J.C. Boyle bypassed reach in its first stage consultation document and in its license application. Our AIRs to PacifiCorp will supplement the information that we currently have when the responses are filed (see AIRs GN-1 and -2; WQ-2, -3, and -4). Our information requests (IRs) to the U.S. Bureau of Reclamation (USBR), Oregon Water Resources Department (OWRD), and Oregon Department of Fish and Wildlife (ODFW) should result in the submittal of additional information pertaining to natural resources at Keno reservoir. American Whitewater (AW) is not specific about what natural resource information should be provided. We conclude that, with the provision of the information we request, we will have sufficient information to conduct our analysis of the Keno development and the J.C. Boyle bypassed reach.</p> |

| Entity ^a | Page# | Study Request | Staff Response |
|------------------------------|----------------|--|---|
| AW-6 | 15 | Quantify the impacts of Iron Gate Hatchery operations on naturally produced wild salmonids in the Klamath River and identify and evaluate reasons for mitigation goal failures | Adopted, in part (AIR AR-3). We plan to evaluate approaches for reducing the impact of Iron Gate hatchery operations on naturally produced salmonids. In AIR AR-3, we ask PacifiCorp to evaluate eliminating coho and steelhead production in order to reduce impacts to naturally-produced fish of these species. |
| California Energy Commission | 7,8,10, 20, 21 | Many questions are posed regarding PacifiCorp's valuation of project energy and the cost of alternative power | The questions posed are not ASRs. We plan to conduct our own independent analysis of the energy and associated revenue produced by each project development. AIR DR-2 is designed, in part, to acquire information for our independent analysis. |
| CDFG-FR1 | 28 | Conduct additional fish assessment surveys in both riverine and reservoir habitats | Adopted in part. We reviewed the information regarding existing fish populations in riverine and reservoir habitats in project-influenced waters in the license application, supplemental studies filed after the license application, and other available sources, and concluded that we need additional information on fish populations for our analysis. AIR AR-4 is designed to address the identified information gaps. |
| CDFG-FR2 | 28 | Completion of instream flow study per previous Aquatics Work Group commitments | Adopted (AIR AR-5). Also, see our response to AW-3. |
| CDFG-FR3 | 29 | Completion of peaking impacts assessment per previous Aquatics Work Group commitments, to include bioenergetics study, drift sampling, and revising the analysis of streambed dewatering in the J.C. Boyle peaking reach | Adopted in part. In AIR AR-5, we asked PacifiCorp to file the results of its instream flow studies including the bioenergetics study and additional sampling of invertebrate drift. Regarding the request that PacifiCorp revise its wetted perimeter analysis, in its June 1, 2004, letter to the Commission, PacifiCorp agreed with the methodology used by the U.S. Department of the Interior (DOI) in its April 26, 2004, letter to the Commission to calculate the area of streambed that is dewatered in the peaking reach under current and proposed operations. DOI's calculations were made using wetted perimeter versus discharge |

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| CDFG-FR4 | 30 | Evaluate flow-dependent barriers downstream of Iron Gate dam | <p>data that is provided in table 6.7-1 of the Fish Resources FTR, which can be used to calculate the dewatered area for any change in flow between 300 and 3,000 cubic feet per second (cfs).</p> <p>Not adopted. Although PacifiCorp has a limited ability to augment flows during critical periods, USBR has much greater control over flows downstream of Iron Gate dam, and should have primary responsibility for determining appropriate seasonal flows in the lower Klamath River (see AIR AR-1).</p> |
| CDFG-FR5 | 30 | Expansion of juvenile outmigration reservoir survival and transit time study to include a multi-year coded wire tag mark and recapture study of young of year Chinook migration survival | <p>Not adopted. A study using coded wire tagged hatchery smolts as requested by the California Department of Fish and Game (CDFG) would require several years to complete, and the behavior of hatchery-reared fish may not be representative of naturally reared smolts. This type of long-term study may be more appropriately addressed in a basin-scale program such as the Conservation Implementation Program (CIP).</p> |
| CDFG-FR6 | 30 | Engage in a "meaningful" assessment of the full range of fish passage options, including dam decommissioning. Reconvene the Fish Passage Work Group, and finalize the KlamRAS and EDT parameterization and submit for peer review. | <p>Adopted in part (see responses to AW-1 and -2). We do not consider it necessary to submit the modeling results for peer review. We asked PacifiCorp to consult with stakeholders in developing its response to AIR AR-2 and to respond to any comments that are received. Furthermore, any party may file its comments on the modeling process directly with the Commission.</p> |
| CDFG-FR7 | 31 | Comprehensive evaluation of Iron Gate Hatchery operations and impacts | <p>CDFG's request is not a specific request for a study, but identifies issues that it considers should have been addressed under the current license in addition to recommended measures for any new license (see AIR AR-3 and our response to AW-6).</p> |
| CDFG-FR8 | 31 | Entrainment studies at California reservoir intakes | <p>Not adopted. In AIR AR-2, we asked PacifiCorp to model anadromous fish production under multiple fish</p> |

| Entity ^a | Page# | Study Request | Staff Response |
|---------------------|-------|---|--|
| CDFG-WQ1 | 8 | Model a full range of operational scenarios using current and potential project hydrology | <p>passage scenarios which include combinations of volitional fish passage, trap and haul, and the absence of one or more dams. Our fish passage analysis will include evaluation of the potential need for additional facilities to protect resident fish including the Endangered Species Act (ESA)-listed suckers. We note that PacifiCorp has posted a study report on its relicensing website (Desjardins and Markle, 2000) that provides information on the distribution and abundance of ESA-listed suckers in the project reservoirs, which we will use in our evaluation of entrainment risk for these species.</p> <p>Adopted in part. In AIR AR-5, we asked PacifiCorp to complete its instream flow studies and to address most of the study elements that stakeholders have suggested are needed to fully address the effects of project operations on aquatic resources. In its response to ASRs, filed with the Commission by letter dated June 1, 2004, PacifiCorp indicated that it is continuing to work collaboratively with stakeholders on several tasks relating to the development and implementation of instream flow studies for the project, including the discussion of modeling results as they relate to fisheries and other interrelated studies. Regarding your request that PacifiCorp conduct an Indicators of Hydraulic Alteration (IHA) analysis to assess the impacts of current project operations, this type of analysis has already been conducted by Huntington (2004) for the J.C. Boyle bypassed and peaking reaches, and was filed by the Klamath Tribes in their April 26, 2004, letter to the Commission.</p> |
| CDFG-WQ2 | 8 | Describe assumptions that were used to model water quality conditions under the without project scenario, particularly regarding nutrients, and calibrate the | <p>This request is not a request for a study but for a clearer description of some of the model assumptions and the need for additional calibration of water temperature</p> |

| Entity ^a | Page# | Study Request | Staff Response |
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| | | models for water temperature from November through February | elements of the model. In its June 1, 2004, letter to the Commission, PacifiCorp responded to CDFG's concerns, among others, about the water quality model (pages 36 through 40 of its Attachment B). We conclude that, with the information provided in the Water Resources FTR and PacifiCorp's June 1, 2004, letter, we have sufficient information to evaluate PacifiCorp's model results. |
| CDFG-WQ3 | 9 | Request additional water quality model runs and option for additional runs in the future. Specific runs requested include: Keno reservoir drawdown during periods with likely water quality impairment; relocation of Keno dam upstream; without project developments except Keno; without project developments and with restored water quality; and without California dams. | Adopted in part. We have asked PacifiCorp to provide the results of its ongoing water quality modeling efforts in AIRs WQ-1, WQ-3, AR-1 and AR-2. |
| CDFG-WQ4 | 10 | Provide a more complete description of proposed water quality measures and use the water quality model to predict associated benefits and impacts | The requested information is not a request for a study. We plan to ensure development of a complete record for this project, which will form a basis for our assessment of appropriate environmental measures for any new license that may be issued for this project. |
| CDFG-WQ5 | 10 | Develop a recommendation for a numeric water temperature objective for the Klamath River below Iron Gate dam | No details are provided regarding a study that would enable development of a numeric water temperature objective. In AIR AR-1, we asked PacifiCorp to consult with the agencies and tribes to develop temperature and DO objectives for enhancing all life stages of fall Chinook salmon and migratory life stages of coho salmon and steelhead trout downstream of Iron Gate dam. |
| CDFG-WQ6 | 10 | Investigate the location and fish use of thermal refugia, inventory cool water resources in the project area and develop measures to facilitate optimal access to and benefit of thermal refugia. Support and expand upon the geographic scope of thermal refugia-related studies currently being conducted by FWS and the Yurok | No details are given regarding the requested study or how PacifiCorp should "support and expand" on the ongoing efforts by others to address this issue. PacifiCorp described existing spring flow accretions and available thermal refugia within the project area in its June 1, 2004, letter responding to ASRs, and |

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| | | Tribe. | <p>included a BLM report on thermal refugia downstream of Iron Gate dam (Sutton et al., 2004) with its filing. The information provided in the license application and supplemental filings on the distribution and magnitude of spring and tributary inflows is sufficient for us to assess the potential benefits of restoring access to temperature refugia within the project area. Furthermore, in AIR AR-1 we asked PacifiCorp for information to evaluate the potential for using project storage or selective withdrawal to improve water temperatures downstream of Iron Gate dam for anadromous fish.</p> |
| Conservation Groups-1 | 34 | <p>Conduct a fish passage study to: (a) validate passage alternatives and modeling results; (b) determine the most effective technology available to provide fish passage; (c) identify regulatory and permitting requirements; (d) identify necessary modifications to facilities; (e) quantify costs associated with fish passage; (f) determine which stocks to use for reintroduction; (g) develop the sequence and timing of steps required to install fish passage and initiate reintroduction; (h) evaluate effects on resident fish; and (i) determine the role Iron Gate Hatchery should play in the passage/reintroduction program.</p> | <p>Adopted in part. In AIR AR-2, we asked PacifiCorp to follow through on its June 1, 2004 commitment to model adult returns of anadromous fish species under a number of fish passage scenarios, which include combinations of volitional fish passage, trap and haul, and the absence of one or more dams. We also asked PacifiCorp to provide the results of its ongoing efforts, which include a review of stock genetics, life history characteristics and possible sources of broodstock, modeling of anadromous fish production under different passage options, conducting a benefit risk analysis for all actions and options examined, identifying issues that outside parties will need to address to allow restoration to proceed, and identifying critical data gaps and uncertainties. We intend to use this information to assess potential restoration strategies.</p> |

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|-----------------------|-------|--|--|
| Conservation Groups-2 | 38 | Fully explore the merits of dam decommissioning as a fish passage option. Study to include information on the volume and size of sediments stored in project reservoirs, determine whether sediments contain toxics or other materials, determine downstream effects (positive and negative), identify the most effective engineering approach, quantify direct and indirect costs, and identify regulatory and permitting requirements. | Adopted in part. AIR WQ-2, reservoir sediment characterization, will enable us to assess the volume, size, and chemical aspects of sediment stored in project reservoirs. This information will allow us to determine if the reservoirs currently provide an important toxic retention function, whether resuspension of fine-grained sediments and contaminants could occur during proposed or recommended project structural and operational changes. Similar multi-purpose AIRs include WQ-5; and DR-1, -2, and -3. See also our response to AW-1 concerning our AIR AR-2. |
| Conservation Groups-3 | 42 | Determine the distribution and abundance of spawning lamprey and ammocoetes in the Klamath River and its tributaries in the project area, and assess the need to consider fish passage options that incorporate the requirements of lamprey species in their design requirements | Adopted in part. In its response to ASRs filed with the Commission by letter dated June 1, 2004, PacifiCorp reported results of lamprey sampling conducted in 2003. AIR AR-4 includes requests for additional assessment surveys in Fall, Spring, and Jenny creeks. In the Fish Resources FTR, PacifiCorp indicates that it is working with the Habitat Modeling Group to identify and model options for restoring passage for other anadromous species (such as Pacific lamprey). In AIR AR-2, we asked PacifiCorp to complete these ongoing efforts in consultation with the agencies and tribes and to file the results with the Commission. If passage of lamprey species is found to be warranted, passage requirements for these species could be incorporated into the final designs of any fish passage facilities that are constructed. |
| DOI-1 | 2-4 | Analyze a full range of reasonable operational scenarios | Adopted in part. We asked PacifiCorp to model a range of alternative operational scenarios. In AIR WQ-3, we request water quality model input and output files. In AIR AR-2, we ask PacifiCorp to follow through on its June 1, 2004 commitment to model the effects of multiple fish passage scenarios including the absence of one or more dams on water quality, |

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| DOI-2 | 2-10 | Interdisciplinary suitability assessment of project operations | <p>anomalous fish production, and project generation. In AIR AR-1, we ask PacifiCorp to evaluate the effects of alternative drawdown scenarios and selective withdrawal regimes on water quality, the incidence of fish diseases and related fish kills, and on project generation. In AIR AR-5, we ask PacifiCorp to: (a) complete its instream flow studies; (b) address the effects of several alternative ramping rates on aquatic and other flow-dependent resources in the J.C. Boyle peaking reach; and (c) describe facility or operating constraints that limit its ability to control ramping rates downstream of the J.C. Boyle and Iron Gate dams. We have not asked PacifiCorp to conduct instream flow studies downstream of the Link River, Keno and Iron Gate dams because PacifiCorp has very limited control over flows in these reaches.</p> <p>Adopted (AIRs AR-1, -2 and -5). As stated in our response to DOI-1, we asked PacifiCorp to evaluate a range of operational scenarios, and each request includes analysis of effects on other flow-dependent resources.</p> |
| DOI-3 | 2-14 | Multi-disciplinary study on effects of removing Keno dam and reservoir from the FERC-licensed project | <p>Adopted in part. PacifiCorp provided some information pertaining to natural resources of the Keno development in its first stage consultation document and in its license application. Our AIRs to PacifiCorp will supplement the information that we currently have when the responses are filed (see AIRs GN-1 and -2; WQ-2, -3, -4, and -5). Our IRs to USBR, OWRD, and ODFW should result in the submittal of additional information pertaining to natural resources at Keno reservoir. We conclude that, with the provision of the information we request, we will have sufficient information to conduct our analysis of the Keno development and whether it serves project purposes</p> |

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| DOI-4 | 2-19 | Multi-disciplinary determinations of project effects on the Klamath River downstream of Iron Gate dam, including information needed to conduct the WSR assessment and information needed to evaluate the ethnographic riverscape and the adequacy of PacifiCorp's proposed area of potential effects (APE) | and should remain part of the project. Adopted in part. See our response to AW-4. Our cultural analysis in the EIS will consider the appropriateness of the APE as proposed by PacifiCorp. If our analysis indicates that the APE should be revised to include locations where National Register-eligible resources (which could include natural resources contributing to the eligibility of a cultural resource) could be affected by project operations, we would also consider measures for identifying, if necessary, National Register-eligible resources in those locations so that they could be properly managed over the term of a new license. |
| DOI-5 | 2-22 | J.C. Boyle bypassed reach water quality modeling for a range of flow scenarios | Adopted in part. In AIR WQ-3, we have asked PacifiCorp to complete updates to its water quality model, and re-run previously modeled project alternatives. This would include alternative flows to the J.C. Boyle bypassed reach. |
| DOI-6 | 2-26 | Provide output from the complete set of water quality model runs | Adopted (AIR WQ-3). |
| DOI-7 | 2-29 | Model effects of project operation on water quality including temperature for Spring and Jenny creeks | PacifiCorp submitted the results of water quality monitoring conducted in Spring and Jenny creeks on December 16, 2004. We believe that this information will provide a sufficient foundation for our analysis of project effects on water quality in Spring and Jenny Creeks. |
| DOI-8 | 2-32 | Collect additional data to verify the sediment budget, including additional delta sampling, reservoir sampling to characterize surface and subsurface substrate size, and a pilot gravel augmentation study using tracer gravel observations | Adopted in part (AIRs WQ-2 and WQ-5). We have requested additional information to refine and verify sediment budget results. We have not asked for a pilot gravel augmentation study because we have not yet concluded that gravel augmentation is necessary. |
| DOI-9 | 2-38 | Conduct a scientifically rigorous, quantitative assessment of fish populations in riverine reaches | Adopted in part (AIR AR-4). See response to CDFG-FRI. |

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| DOI-10 | 2-44 | <p>affected by the project</p> <p>Fish passage evaluation study to include: entrainment, UKL survival and behavior, reservoir and facility survival, reservoir behavior, operations management to minimize impacts to survival and behavior, genetics, pathogen risk assessment, and habitat and project facilities scenario modeling (EDT and KlamRAS)</p> | <p>Adopted in part. PacifiCorp has proposed to use the EDT and KlamRAS models to evaluate fish passage alternatives and to identify critical uncertainties, and in AIR AR-2 we have asked them to follow through on their commitment to analyze a number of fish passage scenarios (see our responses to AW-1 and -2). We conclude that meaningful migration survival studies would require a minimum of 3 to 5 years to complete, and we plan to evaluate whether these long-term studies should be addressed through an adaptive management and/or basin-wide plan. PacifiCorp is conducting a review of stock genetics and life history characteristics of historical and current salmonid stocks in the basin, and we conclude that it is appropriate to defer any more detailed genetic and pathogen risk assessments until critical uncertainties regarding migration survival have been addressed. We do not conclude that additional studies on the entrainment rates of resident fish species are needed to address the potential benefits of installing fish passage or protective measures.</p> |
| DOI-11 | 2-61 | <p>(a) Evaluation of Iron Gate Hatchery performance and identification of methods to reduce adverse impacts on wild salmonids</p> <p>(b) Analyze use of warmer water for Chinook incubation to foster flexible release strategies beyond what is included in the Fish Resources FTR</p> <p>(c) Complete analysis of alternative water supplies for Iron Gate Hatchery</p> | <p>(a) Adopted in part (AIR AR-3). See our response to AW-6.</p> <p>(b) Adopted (AIR AR-3).</p> <p>(c) Not adopted. We will evaluate the potential need for any alternative water supplies for the Iron Gate Hatchery in the EIS. Based on our analysis, if additional information on alternative water supplies is</p> |

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| DOI-12 | 2-65 | Analyze and select a suitable flow regime for redband trout and other native fish in the riverine segments of the Klamath River, Spring Creek, and Jenny Creek | needed, it can be developed at a later time. Adopted in part (AIR AR-5). See our response to AW-3. |
| DOI-13 | 2-70 | Conduct a study to quantify fish stranding at ramping rates of 2, 4, and 9 inches per hour below each project facility; determine critical flow thresholds to avoid stranding fish in side channels; and synthesize analysis with effects on sediment and riparian resources | Adopted in part. PacifiCorp provided the results of fish stranding studies conducted in the J.C. Boyle peaking reach in the Fish Resources FTR, and we have asked them to provide the completed results of its instream flow study and peaking analysis, including an integrated analysis of effects on side channels and other flow-dependent resources, in AIR AR-5. In AIR GN-1(a) we asked PacifiCorp to provide GIS-compatible datasets that depict the high and low water levels of project-influenced water bodies, including streams and rivers. We plan to use this information in our analysis of ramping rates. |
| DOI-14 | 2-77 | Characterize the effects of peaking-related flow fluctuations on aquatic resources by comparing the areas of habitat dewatered in one-unit versus two-unit operation, completing ongoing bioenergetics analysis and drift sampling, and evaluating peaking effects on lamprey | Adopted in part. The wetted perimeter versus discharge data that is provided in table 6.7-1 through 6.7-4 of the Fish Resources FTR can be used to calculate the dewatered area in the J.C. Boyle peaking reach for any change in flow between 300 and 3,000 cfs. We will use this information to evaluate the area that is dewatered under a range of potential operations. In AIR AR-5, we have asked PacifiCorp to file the results of its instream flow studies including the bioenergetics study and additional sampling of invertebrate drift. Finally, studies evaluating peaking effects on lamprey in the J.C. Boyle peaking reach are not necessary, as surveys conducted by PacifiCorp indicate that lamprey are considerably more abundant in tributary streams than they are in the mainstem Klamath River. The mainstem river appears to provide limited habitat for larval lamprey, especially in the J.C. Boyle peaking reach, which has few accumulations of |

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| DOI-15 | 2-79 | Verify predicted results of direct oxygenation or re-aeration system on the biota of Iron Gate and Copco reservoirs, on downstream nutrient loading, and on intermediate hosts (i.e., polychaetes) for fish disease organisms (i.e., <i>C. shasta</i>) | <p>fine sediment that would provide suitable habitat for larval lamprey.</p> <p>Adopted in part. In AIR WQ-1, we asked PacifiCorp to evaluate the advantages and disadvantages associated with the two alternative dissolved oxygen (DO) enhancement approaches at the Iron Gate development, select a proposed approach based on this evaluation, and discuss the expected influence of the proposed approach on the DO regime of the Klamath River downstream of Iron Gate dam.</p> <p>PacifiCorp has not proposed an oxygenation or re-aeration system at the Copco development. In our EIS, we will assess whether releases from Copco reservoir meet applicable water quality standards and, if not, the nature of potential remedial measures.</p> <p>Without a specific proposal for oxygenation or re-aeration we are unable to assess any resultant changes in the overall suitability of habitat in the substrate of Iron Gate reservoir for polychaetes that serve as the intermediate host for <i>C. shasta</i>. However, we conclude that we can assess this potential effect with the information that we will obtain in response to AIR WQ-1.</p> |
| DOI-16 | 2-82 | Determine the distribution and abundance of lamprey species in the project area and the impacts of project water management operations on lamprey in the project area and below Iron Gate dam | <p>Adopted in part (AIR AR-4). See response to Conservation Groups-3. PacifiCorp has limited ability to manage the flow regime downstream of Iron Gate dam. However, our geomorphology AIR (WQ-5) should enable us to assess project influences on lamprey habitat downstream of Iron Gate dam.</p> |
| DOI-17 | 2-85 | Assess potential benefits to anadromous fisheries resulting from modified Iron Gate dam operations (reduce fall flows to promote cooling and increase spring flows to assist with smolt outmigration) | <p>Not adopted. See our response to CDFG-FR4.</p> |

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| DOI-18 | 2-88 | Analysis of project operation scenarios and riparian/wetland resources in the J.C. Boyle peaking and bypassed reaches | Adopted in part. We conclude that, with the information contained in the license application and with the additional information that we will receive in response to other AIRs (e.g., GN-1, WQ-5, and AR-5) we will have sufficient information to assess a reasonable range of project operations under a new license. |
| DOI-19 | 2-92 | Quantification of pre-project riparian maintenance flows in the J.C. Boyle bypassed reach | Not adopted. As indicated in section 4.4 of Scoping Document 1, our baseline for comparison is the project as currently licensed (the no-action alternative). See our response to DOI-18. |
| DOI-20 | 2-96 | Noxious weed inventory | Adopted in part. During the preparation of its license application, PacifiCorp conducted a noxious weed inventory. However, PacifiCorp did not provide information in its license application on some noxious weed species, which we have requested in AIR TR-1. Once we receive the response to this AIR, we will have sufficient information to conduct our EIS analysis of appropriate measures to control noxious weeds on project-influenced lands and waters. |
| DOI-21 | 2-99 | Complete cultural resource surveys within the APE | PacifiCorp indicated in its license application that field surveys of the Spring Creek diversion and various tributaries and access roads that were not included in the field inventory corridor (FIC) but that are included in the APE as proposed by PacifiCorp will be conducted in the summer of 2004. The results of this work were filed with the Commission by letter dated October 29, 2004, in a restricted distribution report (copies to the tribes, BLM, BIA, USBR, O-SHPO, and CA-SHPO). With this information and the additional information in the application and that which will be filed in response to our other AIRs, we conclude that there will be an adequate foundation for preparing our EIS, assessing the appropriateness of the proposed |

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| DOI-22 | 2-101 | Distribute ethnographic integration report | APE, and evaluating potential measures to manage archaeological resources in the APE. PacifiCorp filed the completed ethnographic integration report with the Commission on April 26, 2004. To protect confidential information, this report had a restricted distribution. |
| DOI-23 | 2-103 | Analyze the historic and prehistoric research designs with data gathered during the cultural resources fieldwork | Not adopted. The archaeological surveys conducted by PacifiCorp were designed to locate archaeological resources in the FIC, not to provide conclusive evaluations of the resources' eligibility for the National Register of Historic Places (National Register). The resultant report essentially concludes that all archaeological sites located during the survey are or may be eligible, but that further, intensive subsurface investigations would be needed to determine eligibility for most sites. PacifiCorp's report provides sufficient information concerning site types, their locations, and observable impacts to enable us to prepare our EIS and to evaluate potential measures to manage these resources. |
| DOI-24 | 2-105 | Supplement and finalize the historic properties management plan (HPMP) | Not a study request. The final HPMP will contain measures and procedures to be employed by PacifiCorp to resolve, through avoidance, minimization, or mitigation, project-related adverse effects on historic properties. The HPMP is being developed and implemented in consultation with the SHPOs, tribes, agencies, and other consulting parties. PacifiCorp filed a revised HPMP by letter to the Commission dated October 29, 2004. |
| DOI-25 | 2-107 | Conduct site specific geoarchaeological studies at the J.C. Boyle peaking reach. | Not adopted. In our EIS, we will analyze the effects of continued project operation on shoreline and riverbank stability and consider measures to reduce or avoid such effects wherever they may occur, including locations containing archaeological sites. |

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| DOI-26 | 2-109 | Study the effects on cultural resources should Keno reservoir be removed from Commission jurisdiction | Not adopted. The information about cultural resources presented in the application provides an adequate foundation for preparing our EIS and evaluating potential effects on cultural resources of removing Keno reservoir from the project. See our response to DOI-3. |
| DOI-27 | 2-111 | Complete a thorough analysis of impacts of the project facilities on aesthetics | Not adopted. In its license application, PacifiCorp provided sufficient information (when combined with information on the record for this proceeding and that we will receive in response to our AIRs) for us to assess project-related effects on aesthetic values, including consistency or non-consistency with BLM's aesthetic standards. Also see our response to AW-4. |
| DOI-28 | 2-113 | Assess the impacts on electrical service users due to decommissioning the East and West Side developments and the impacts associated with the expiration of the electrical service contract with electrical service users | Not adopted. We do not consider the rates that PacifiCorp charges its customers to be an appropriate issue for analysis in this proceeding. |
| DOI-29 | 2-117 | Tribal health study on the relationship between the decline of fish in the river and the health issues of Karuk tribal members | The Karuk Tribe filed a report with the Commission that addresses this issue on November 16, 2004 ("The effects of altered diet on the health of the Karuk People: a preliminary report." By K.M. Norgaard. August 2004). In addition, PacifiCorp's license application and other documents submitted for the record present ethnographic information for several tribes in the project area. In addition, we also plan to assess the influence of the project on downstream fisheries (see AIR AR-1, -2, and -3). Finally, we will consider the information provided by the Karuk Tribe in our January 12, 2005 tribal consultation meeting. This information will provide us with an adequate basis for understanding project effects on Karuk tribal members. |
| FS-1 | A2-1 | Model a full range of operational scenarios including existing operations, existing operations without load | Adopted in part (see our responses to CDFG-WQ1, -WQ3, and -WQ6 and DOI-1). Several of the |

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| | | <p>following, reservoirs drawn down to facilitate smolt outmigration, selective withdrawal to control water temperatures, more natural flows, optimization of operations for recreation and fish habitat. Methodology to include an IHA analysis and a spring flow accretion study.</p> | <p>operational scenarios identified in this ASR have already been modeled by PacifiCorp. PacifiCorp has already modeled flow and water quality conditions under existing conditions, run-of-river conditions, without Iron Gate dam, and without Iron Gate, Copco 1, and Copco 2 dams. We have not asked PacifiCorp to model draw-down of all reservoirs to increase velocities during smolt outmigration, which we believe could be deferred pending the results of fish tagging studies, both of which could be addressed in an adaptive management plan and/or in a basin-scale program such as the Conservation Implementation Program (CIP). We anticipate that PacifiCorp's instream flows studies will enable us to evaluate scenarios that would provide more natural flows and to address appropriate flows for recreation and fish habitat.</p> |
| FS-2 | A2-6 | <p>Refine water quality models by: (a) collecting additional data on channel geometry in the Lake Ewauna-Keno dam reach, reservoir sediment data from the Keno and J.C. Boyle reservoirs, and nutrients in the Copco and Iron Gate reservoirs and below Iron Gate dam; (b) quantifying and successfully calibrating the water quality models; and (c) modeling water quality conditions under a range of operational scenarios including simulated unimpaired flows and WSR flows (early 1980s for California and mid-1990s for Oregon). Modeling efforts to include evaluation of the effects of algal blooms on water quality conditions, aquatic macrophyte surveys, and algal growth studies.</p> | <p>Adopted in part. See our responses to CDFG-WQ2 and -WQ3. In AIR WQ-2 we requested additional data from PacifiCorp that should result in additional information on reservoir sediment. PacifiCorp filed its analysis of potential project effects on water quality aesthetics by letter to the Commission dated November 1, 2004. In AIR WQ-3 we have asked for input and output data files for modeling conducted to date, and in AIR AR-2 we have asked for water quality output for a range of fish passage scenarios.</p> |
| FS-3 | A2-15 | <p>Develop a sediment augmentation management plan</p> | <p>Not adopted. We have not yet determined that gravel augmentation is an appropriate environmental measure. It is therefore premature to require PacifiCorp to develop a sediment augmentation management plan.</p> |

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| FS-4 | A2-16 | Iron Gate Hatchery effectiveness and operation effects study | See our response to DOI-8. |
| FS-5 | A2-22 | Fish assessment and production in the lower Klamath River below Iron Gate dam | Adopted in part (AIR AR-3). See our response to AW-6. Adopted in part. PacifiCorp filed its report on <i>C. shasta</i> and the influence of this pathogen on fish populations from Keno to downstream of Iron Gate dam on September 29, 2004. We conclude that studies already performed by PacifiCorp, in combination with the information that we have requested in AIR WQ-5 and AR-1, -2, and -5, will allow us to evaluate the effects of the project on aquatic resources and potential measures to improve flow, water temperature, and passage conditions for both anadromous and resident species of fish. See our responses to AW-1, -2, and -3; CDFG-FR4 and -FR6; Conserv. Groups-1; and DOI-10. |
| FS-6 | A2-29 | Recreational flow analysis below Iron Gate dam | Not adopted. Minimum flow releases and ramping rates at Iron Gate dam are specified by USBR in accordance with the conditions of the 2000 Biological Opinion issued by NOAA-Fisheries. PacifiCorp has minimal ability to release flows sufficient for recreational boating during such times of the year when scheduled releases would enhance recreational boating opportunities. In our AIR AR-1, we have asked PacifiCorp to evaluate the use of project storage to enhance water temperatures downstream of Iron Gate dam for anadromous fish. The results of this evaluation, with information regarding recreational boating flows in the license application, could be used to assess PacifiCorp's ability to release recreational flows. See our response to AW-4. |
| FS-7 | A2-31 | Historic project influences on wild and scenic rivers | Adopted in part. See our response to AW-4. |

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| FS-8 | A2-32 | Visual assessment of river flows | Not adopted. In its license application, PacifiCorp has provided sufficient information on historical river flows below Iron Gate dam for us to assess project-related effects on aesthetic values when combined with information on the record for this proceeding and that which we will receive in response to our AIRs. We do not conclude that additional key observation points (KOPs) are needed to evaluate the aesthetic effects of various flow regimes downstream of Iron Gate dam. Also, see our response to AW-4. |
| FS-9 | A2-34 | Expansion of depth and scope of the socioeconomic analysis | Not adopted. We conclude that there is sufficient information available in the license application, along with other information filed during this proceeding and available from publicly accessible sources, to enable us to conduct our socioeconomic analysis. |
| IFR et al.-1 | 2 | Include a full evaluation of volitional fish passage strategies as mitigation for project impacts on anadromous fish populations | Adopted (AIR AR-2). |
| IFR et al.-2 | 5 | Iron Gate dam studies: (a) provide data for assessing impacts on nutrient load, ammonia, pH, and other water quality parameters; | (a) Not adopted. PacifiCorp conducted a number of studies to evaluate water quality throughout the project reaches and to assess project impacts on the water resources, including nutrient loading, ammonia, pH, and other water quality parameters. The results of these studies are presented in the license application. PacifiCorp plans to report on additional studies pertaining to nutrient cycling from Upper Klamath Lake to the mouth of the Shasta River (letter from PacifiCorp to the Commission dated June 1, 2004; pages B-32 and B-33). We conclude that the existing information, when supplemented with the results of the ongoing studies, will be sufficient to enable us to assess project influences on water quality. |

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| | | <p>(b) feasibility study on how Iron Gate and upstream dams might be managed or re-engineered to meet water quality standards;</p> <p>(c) feasibility study of relocation of Iron Gate dam upstream of its current location, including installation of mechanisms to pass water from lower in the reservoir water column; and</p> <p>(d) feasibility studies for decommissioning Iron Gate dam if water quality standards cannot be met.</p> | <p>(b) Adopted in part (AIRs WQ-1 and AR-1). Our AIRs focus on the Iron Gate and Copco 1 dams. When PacifiCorp provides its responses to our other AIRs, we should have sufficient information to evaluate the need for water quality protection and enhancement measures at other project dams.</p> <p>(c) Not adopted. No basis is provided as to why rebuilding Iron Gate dam at another location would offer advantages that could not be achieved by re-engineering the dam at its current location.</p> <p>(d) Adopted, in part. See our response to Conserv. Groups-2.</p> |
| Karuk Tribe-1 | 39 | Study nitrogen cycling and transport, including nitrogen budgets for project reservoirs | Not adopted. See our response to IFR et al.-2(a). |
| Karuk Tribe-2 | 42 | Improve water quality models by: (a) analyzing a full range of project and without-project scenarios; (b) incorporating nitrogen fixation information; (c) for scenarios with dam removal, use more realistic channel geometry; (d) calibrate the model for nutrients and benthic algae; and (e) improve calibration for temperature and DO | Adopted in part. See our responses to CDFG-WQ2, -WQ3, and FS-2. |
| Karuk Tribe-3 | 46 | Quantify the capacity of benthic algae in the river reaches to uptake nutrients and how that capacity has been altered by peaking and reservoir development | Adopted in part (AIRs GN-2 and WQ-3). PacifiCorp has committed to additional water quality and benthic algae sampling. These samples will be analyzed for species abundance, chlorophyll <i>a</i> , and ashed weight, and the results from this study will be used in conjunction with the water quality samples to assist in the interpretation of benthic algae influence and capacity to uptake nutrients. |

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| Karuk Tribe-4 | 50 | Develop a phased-in plan that accommodates fish passage to include: (a) conceptual design drawings, operation and maintenance costs; (b) reservoir hydraulics modeling to refine operations or structural changes to assist juvenile migration; (c) test releases of juvenile fish to monitor reservoir movement and collection efficiency; (d) test releases of adult fish to monitor migration patterns, times, survival, location and spawning success; (e) egg hatch box tests to determine survival from egg to fry; (f) a detailed fish pathogen study; and (g) spillway and entrainment survival tests | Adopted in part (see our response to AW-1 and -2 and DOI-10). As noted in our response to DOI-10, we conclude that migration survival studies would require a minimum of 3 to 5 years to complete, and we plan to evaluate whether these types of long-term studies would be more appropriately addressed in a basin-scale program such as the Conservation Implementation Program (CIP). |
| Karuk Tribe-5 | 55 | Evaluate the effects of water quality on fish pathogens and hosts | Not adopted. Fish Resources FTR Section 8 presents the results of studies on <i>C. shasta</i> and <i>M. speciosa</i> in the Klamath, and PacifiCorp filed an update of that study by letter dated September 29, 2004. To conduct field and laboratory studies to investigate the details of fish pathogen development and potential host geographical distribution as requested in this ASR goes beyond the scope of information necessary to complete our EIS. See our response to DOI-15. |
| Karuk Tribe-6 | 57 | Perform studies of ramping below Link River, J.C. Boyle and Keno dams, J.C. Boyle powerhouse, Copco 2, and Iron Gate to determine rates necessary to protect fish and aquatic resources, minimize bar and shoreline erosion, and protect riparian vegetation with differing irrigation scenarios | Adopted in part. In AIR AR-5, we asked PacifiCorp for the results of their completed peaking analysis for the J.C. Boyle peaking reach. When we receive PacifiCorp's response to AIR WQ-5 we should have sufficient information to assess existing and proposed flow regimes on bar and shoreline erosion. PacifiCorp has proposed relatively gradual ramp rates for the J.C. Boyle and Copco 2 bypassed reaches. Since ramping does not typically occur on a frequent basis in the bypassed reaches, additional ramping studies are not needed in these reaches. We have not asked PacifiCorp to evaluate ramping rates below the Link River, Keno and Iron Gate dams, since PacifiCorp has limited |

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| Karuk Tribe-7 | 62 | Conduct tribal health study on the relationship between the decline of fish in the river and the health issues of Karuk tribal members | control over discharges from these facilities and operations are currently subject to protective ramping rate restrictions. We do not have sufficient information regarding potential differing irrigation scenarios to assess any inter-relationships with project operations and riparian vegetation. See our responses to CDFG-FR3 and DOI-13, -14, and -18. See our response to DOI-29. |
| Karuk Tribe-8 | 65 | Address cultural and social impacts of reduced fisheries | Our EIS will analyze effects of continued project operation on fish and terrestrial resources, including those of concern to the tribes. Our EIS also will analyze the use of project lands for fishing and other activities. See our response to DOI-29. |
| Karuk Tribe-9 | 67 | Evaluate religious and spiritual impacts | See our responses to DOI-29 and Karuk Tribe-8. |
| Karuk Tribe-10 | 69 | Examine legal state and federal rights to trust-protected resources and values including public rights to flows in the river | Our EIS will be prepared in accordance with applicable provisions of the National Environmental Policy Act, Fish and Wildlife Coordination Act, Endangered Species Act, National Historic Preservation Act, and Clean Water Act. We consider issues pertaining to the allocation and administration of water rights to be appropriately addressed by applicable state agencies (SWRCB in California and OWRD in Oregon). |
| KFA and SRRC-1 | 32 | Model a full range of operational scenarios | Adopted in part. See our responses to CDFG-WQ1 and DOI-1. |
| KFA and SRRC-2 | 32 | Conduct interdisciplinary suitability assessment of project operations | Adopted. See our response to DOI-2. |
| KFA and SRRC-3 | 32 | Model J.C. Boyle bypassed reach water quality for a range of flow scenarios | Adopted in part. See our response to DOI-5. |
| KFA and SRRC-4 | 32 | Provide output from water quality models | Adopted (AIR WQ-3). |

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| KFA and SRRC-5 | 32 | Model effects of project operation on water quality including temperature for Spring and Jenny creeks | See our response to DOI-7. |
| KFA and SRRC-6 | 32 | Verify sediment budget, and develop testable hypothesis regarding the fate of sediment placed in the river during gravel augmentation | Adopted in part (AIRs WQ-5). See our response to DOI-8. |
| KFA and SRRC-7 | 32 | Determine the effects of ramping, and determine ramping rates necessary to protect fish and aquatic resources | Adopted (AIR AR-5). See our response to Karuk Tribe-6. |
| KFA and SRRC-8 | 32 | Fish assessment survey for the Link River, Keno, J.C. Boyle bypassed reach, J.C. Boyle peaking reach, and Spring and Jenny creeks | Adopted in part (AIR AR-4). See our responses to CDFG-FR1 and Conserv. Groups-3. |
| KFA and SRRC-9 | 33 | Analyze and select a suitable flow regime for redband trout and other native fish in the riverine segments of the Link River, Keno, J.C. Boyle bypassed reach, and J.C. Boyle peaking reaches | Adopted in part (AIR AR-5). See our response to AW-3. |
| KFA and SRRC-10 | 33 | Characterize the effects of peaking-related flow fluctuations on aquatic resources below project facilities | Adopted in part (AIR AR-5). See our responses to CDFG-FR3, DOI-13 and -14. |
| KFA and SRRC-11 | 33 | Study fish passage to determine a range of passage options for the entire suite of native organisms | Adopted (AIR AR-2). |
| KFA and SRRC-12 | 33 | Inventory noxious weeds | Adopted in part (AIR TR-1). See our response to DOI-20. |
| KFA and SRRC-13 | 33 | Analyze project operation scenarios and riparian/wetland resources in the J.C. Boyle peaking and bypassed reaches | Adopted in part (AIRs GN-1, WQ-5, and AR-5). See our response to DOI-18. |
| KFA and SRRC-14 | 33 | Quantify riparian maintenance flows in the J.C. Boyle bypassed reach | Adopted in part. We conclude that, with the information contained in the license application and with the additional information that we will receive in response to other AIRs (e.g., GN-1, WQ-5, and AR-5) we will have sufficient information to assess flows necessary to maintain riparian vegetation along the J.C. Boyle bypass reach. |

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| KFA and SRRC-15 | 33 | Complete cultural resource surveys within the APE | See our response to DOI-21. |
| KFA and SRRC-16 | 33 | Distribute ethnographic integration report | See our response to DOI-22. |
| KFA and SRRC-17 | 33 | Analyze the historic and prehistoric research designs with data gathered during the cultural resources fieldwork | Not adopted. See our response to DOI-23. |
| KFA and SRRC-18 | 33 | Supplement and finalize the HPMP | See our response to DOI-24. |
| KFA and SRRC-19 | 33 | Conduct site-specific geoarchaeological studies | Not adopted. See our response to DOI-25. |
| KFA and SRRC-20 | 34 | Study the effects on cultural resources should Keno reservoir be removed from FERC jurisdiction | Not adopted. See our response to DOI-26. |
| Klamath Tribes-1 | 14 | Quantify nutrient loads entering and leaving project reservoirs over at least one full year using weekly and biweekly sampling | Not adopted. See our response to IFR et al.-2(a). |
| Klamath Tribes-2 | 20 | Finish and refine water quality modeling to include quantifying boundary conditions and calibrations for nutrients, expand validation, and complete sensitivity analysis | Adopted in part. See our responses to CDFG-WQ2 and FS-2. |
| Klamath Tribes-3 | 31 | Quantify influences of project alterations of flow, water quality, and habitat on fish in the Klamath River | Adopted in part. We conclude that the studies already performed by PacifiCorp, in combination with the information that we have requested in AIRs GN-2 and AR-1, -2, and -5 will allow us to evaluate the effects of the project on aquatic resources and of potential measures to improve flow, water temperature, and passage conditions for both anadromous and resident fishes. |
| Klamath Tribes-4 | 35 | Anadromous fish reintroduction studies: fully develop the EDT and KlamRAS modeling tools, and develop a comprehensive inventory of anadromous salmonid stocks still present in the Klamath River basin. | Adopted (AIR AR-2). |

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| Klamath Tribes-5 | 37 | <p>Conduct a detailed study of alternatives including: (1) existing conditions; (2) project configuration and operations as proposed in the final license application; (3) Iron Gate dam removed with J.C. Boyle peaking operation in place; (4) Iron Gate, Copco 1, and Copco 2 dams removed and J.C. Boyle operated run-of-river; and (5) all mainstem Klamath dams removed. Include modeling of SLOM scenarios with fully calibrated water quality, nutrient, and EDT/KlamRAS models, quantification and contaminant screening of sediment volumes behind each dam, modeling of sediment routing, and development of a decision analysis framework.</p> | <p>Adopted in part (AIR AR-2). PacifiCorp provided the results of two SLOM scenarios (without Iron Gate dam and without Copco No. 1 and 2 dams) in its June 1, 2004, letter to the Commission. When we receive responses to AIRs WQ-2, and -5, we will be able to address sediment routing under various alternatives that we plan to assess. The Commission's decisions regarding project alternatives will be based on the record for this proceeding.</p> |
| Klamath Tribes-6 | 39 | <p>Prepare a revised socioeconomic study</p> | <p>Not adopted. We conclude that there is sufficient information available in the license application, along with other information filed during this proceeding and available from publicly accessible sources, to enable us to conduct our socioeconomic analysis (see our response to DOI-29).</p> |
| Klamath Tribes-supplemental request 1 | 4 and 7 | <p>Provide whatever historic research is available to explain why fish passage was not provided at the time that the Copco 1 and Copco 2 dams were constructed. The tribes contend that PacifiCorp's predecessor committed to the United States, California, and Oregon that it would "permit unobstructed passage of fish up the Klamath River." Also explain why PacifiCorp and its predecessors paid the United States compensation for the occupation of federal lands required for the project, but failed to provide compensation to the Klamath Tribes for the loss of anadromous fish.</p> | <p>Not a study request. We indicated in section 4.4 of Scoping Document 1 that our baseline of environmental conditions for comparison with other alternatives is the project as operated under the terms and conditions of the existing license. Interior, by letter dated July 22, 2004, filed copies of the existing license, as amended, as part of the record for this proceeding. As we indicate in AIR AR-2, we plan to assess a full range of anadromous fish passage options in our EIS.</p> |
| Klamath Tribes-supplemental request 2 | 5 | <p>Estimate what additional power revenues will occur after USBR implements the water bank provision in the 2002 NOAA-Fisheries Biological Opinion, which will provide 100,000 acre-feet of additional flow</p> | <p>Not adopted. We will consider project generation under proposed and recommended scenarios in our developmental analysis.</p> |

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| Klamath Tribes-supplemental request 3 | 5 | Estimate how much water could be saved in the Sprague River through the installation of state-of-the-art distribution facilities and the amount of power revenues that would be generated with the resulting increase in river flows | Not a study request. We do not consider it PacifiCorp's responsibility to assess how diversions from the Sprague River, a tributary to Upper Klamath Lake could be reduced. Although we can recognize in our EIS that the potential exists for reduction in diversions in the Sprague River, quantification of any such increase in available flows to the Klamath Hydroelectric Project would be speculative. |
| Klamath Tribes-supplemental request 4 | 5 | Develop a timetable for utilizing new power revenues from the USBR water bank and reduced Sprague River depletions, as well as existing power revenues, to finance both fish passage and the installation of state-of-the-art irrigation facilities in the Sprague drainage | Not a study request. The uncertainties associated with determining if and when USBR water bank releases and reductions in Sprague River diversions would occur make establishing the requested timetable relatively meaningless in the context of this relicensing proceeding. |
| Klamath Tribes-supplemental request 5 | 5 | Identify specific wetlands restoration, water quality improvements, and other methods for restoring native fish and estimate what financial contribution PacifiCorp can accept and what matching funds may be required from Congress and the irrigation community to achieve significant improvements in water quality, water quantity, and fish passage | Not adopted. We plan to ensure development of a complete record for this project, which will form a basis for our assessment of appropriate environmental measures for any new license that may be issued for this project. The Commission only has authority over a licensee. Our developmental analysis cannot assume that funding for appropriate environmental measures would come from sources other than PacifiCorp. |
| Klamath Tribes-supplemental request 6 | 6 | Describe in detail and estimate the cost of the most efficient method for assuring fish passage through the project, and project PacifiCorp's ability to cover these capital costs using power revenues under historic water flows | Adopted in part (see our response to AW-1). Our analysis of the merits of providing fish passage will include an assessment of the benefits, costs, and trade-offs associated with each passage scenario. |
| Klamath Tribes-supplemental request 7 | 6 | Determine the amount that depletion of Klamath River flows by the Klamath Irrigation Project would need to be reduced for fish passage to become economically justified in the new license. Assume that return flows carrying contaminated flows would be reduced by the same percentage. | See our response to the previous study request. The Commission has no authority to reduce diversions or return flows at the Klamath Irrigation Project. |

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| KRITFWC-1 | 31 | Flow study to determine minimum flow requirements for anadromous fish downstream of Iron Gate dam, including estimation of unimpaired flows | Not adopted. See our response to CDFG-FR4. |
| KRITFWC-2 | 35 | Continue the assessment of the past, current, and potential restored fish habitat and productivity under various volitional fish passage and trap and haul alternatives for spring and fall Chinook, steelhead, and coho. Complete the EDT modeling, input EDT productivity values into the KlamRAS model, and use KlamRAS outputs to compare relative success of anadromous species under each of the SLOM alternatives. | Adopted (AIR AR-2). |
| KRITFWC-3A | 38 | Complete water quality modeling to determine project effects under alternative dam removal scenarios | Adopted in part. See our responses to CDFG-WQ2 and FS-2. |
| KRITFWC-3B.a | 39 | Assess the effects of increased average temperatures in late summer and fall on fall Chinook adults, reproduction, rearing, and outmigration | Adopted in part. In AIR AR-1, we asked PacifiCorp to develop temperature and DO objectives for all life stages of fall Chinook salmon and migratory life stages of coho salmon and steelhead trout downstream of Iron Gate dam. In the same AIR, we also ask PacifiCorp to investigate the use of project storage and selective withdrawal to meet these objectives. |
| KRITFWC-3B.b | 39 | Analyze water quality effects of Keno dam on aquatic species including anadromous fish migration under dam removal alternatives or with modification to the hydrologic management regime at Keno dam | Adopted in part. See our response to CDFG-WQ3. |
| KRITFWC-3B.c | 39 | Determine nutrient budgets for each reservoir and translate to biological impacts on aquatic species | Not adopted. See our response to IFR et al.-2(a). |
| NCCFFF- I.A.1+B+C | S2 | Assess the efficacy of restoring anadromous fishery runs via partial or complete dam removal of all facilities below Upper Klamath Lake and returning historic river flows to all areas where water is presently diverted for power generation purposes | Adopted (AIR AR-2). |

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| NCCFFF-1.A.2 | S2 | Study environmental hazards and benefits related to removal of silt from within dams and any project facilities studied for removal | Adopted (AIR WQ-2). |
| NCCFFF-1.A.3 | S2 | Consider opportunities to reduce Iron Gate Hatchery operations of PacifiCorp and CDFG commensurate with the degree of anadromous fishery restoration success | Adopted (AIR AR-3). |
| NCCFFF-2.A | S3 | Study the potential benefits of installing water temperature control and diversion devices | Adopted (AIR AR-1). |
| NCCFFF-2.B+C | S3 | Study the potential for trading Klamath River for Shasta River water to benefit anadromous fish production | Not adopted. The suggested study would entail adjusting existing water rights, which is not within the Commission's jurisdiction. The Commission only has jurisdiction over licensees. This would not preclude PacifiCorp from participating in cooperative ventures with other stakeholders on the Shasta River. |
| NOAA-1 | A3-2 | Fish passage evaluation study to include: entrainment, reservoir and facility survival, reservoir behavior, operations management to minimize impacts on survival and behavior, hatchery operations and maintenance, genetics, and habitat and project facilities scenario modeling (EDT and KlamRAS) | Adopted in part (see our responses to DOI-10 and -11). |
| NOAA-2 | A3-6 | Model a full range of operational scenarios | Adopted in part. See our response to DOI-1. |
| NOAA-3 | A3-9 | Complete peaking impacts assessment per previous Aquatics Work Group commitments to include the bioenergetics study and additional sampling of macroinvertebrate drift | Adopted. In AIR AR-5, we asked PacifiCorp to file the results of these studies. See our responses to CDFG-FR3 and DOI-14. |
| NOAA-4 | A3-10 | Determine the effects of ramping and determine ramping rates necessary to protect fish and aquatic resources. Study to include quantification of stranding habitat, stranding surveys, and an evaluation of critical flow thresholds below each project to avoid stranding | Adopted in part. PacifiCorp provided the results of fish stranding studies conducted in the J.C. Boyle peaking reach in the Fish Resources FTR, and we have asked them to provide the completed results of their instream flow study and peaking analysis, including an |

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| | | of fish in side channels. | integrated analysis of effects on side channels and other flow-dependent resources, in AIR AR-5. We conclude that this information will be sufficient for us to evaluate the effects of alternative ramping rates in the J.C. Boyle peaking reach. PacifiCorp has proposed relatively gradual ramp rates for the J.C. Boyle and Copco 2 bypassed reaches. Since ramping does not typically occur on a frequent basis in the bypassed reaches, we do not conclude that additional ramping studies are needed in these reaches. We have not asked PacifiCorp to evaluate alternative ramping rates downstream of the Link River, Keno, and Iron Gate dams because they have very limited control over flows in these reaches, and conservative ramping rates are already in effect. See our response to DOI-13. |
| NOAA-5 | A3-15 | Determine suitable flow regimes in the riverine segments of the Klamath River and Spring and Jenny creeks in and below each project facility for anadromous salmonids and other native fish species | Adopted in part (AIR AR-5). See our response to AW-3. |
| NOAA-6 | A3-18 | J.C. Boyle bypassed reach water quality modeling for a range of flow scenarios | Adopted in part. In AIR WQ-3, we have asked PacifiCorp to complete updates to its water quality model, and re-run previously modeled project alternatives. This would include alternative flows to the J.C. Boyle bypassed reach. |
| NOAA-7 | A3-22 | Provide output from water quality models including water quality conditions upstream from the springs in the J.C. Boyle bypassed reach | Adopted (AIR WQ-3). |
| NOAA-8 | A3-24 | Independent scientific review of Iron Gate Hatchery | Adopted in part. In AIR AR-3 we ask PacifiCorp to evaluate aspects of Iron Gate Hatchery operations in consultation with NOAA-Fisheries and CDFG. The Commission can only require licensees to take specific actions. The formation of an independent scientific review committee would require participation by parties beyond PacifiCorp, and the Commission cannot |

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| ODEQ-1 | A1-2 | Water quality standards compliance study | <p>require the participation of others on such a committee. That would not preclude such a committee from being established by others. See our responses to AW-6 and DOI-11.</p> <p>Not adopted. PacifiCorp provided large amounts of water quality data in its license application and the Water Resources FTR, as well as supplemental filings with the Commission. In addition, raw water quality data that will enable us to assess compliance with applicable numerical water quality standards is available on PacifiCorp's relicensing web site. Also, see our response to IFR et al.-2.</p> |
| ODEQ-2 | A1-4 | Water quality protection, mitigation, and enhancement measures study | <p>Adopted in part. AIRs WQ-1 and AR-1 are designed to identify specific measures that would be used to better ensure compliance with applicable water quality standards. When PacifiCorp provides its response to these and our other AIRs, we should have sufficient information to evaluate the need for water quality protection and enhancement measures at all project-related facilities. Also see our response to DOI-15.</p> |
| ODEQ-3 | A1-7 | Complete the J.C. Boyle peaking study, and conduct additional sampling of macroinvertebrate drift in accordance with specific gear, sampling schedule, and sample processing methods recommended by ODEQ | <p>Adopted in part. In AIR AR-5, we asked PacifiCorp to file the results of its instream flow studies including the bioenergetics study and additional sampling of invertebrate drift. In its June 1, 2004, letter to the Commission, PacifiCorp indicated that drift sampling would be conducted in July 2004, and that sampling methods were being developed by its contractor, Mr. Craig Addley. We will review the adequacy of these sampling efforts after they have been filed with the Commission. Also, see our response to CDFG-FR3.</p> |

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| ODEQ-4 | A1-10 | Study project operations and hydrology. Evaluate effects of alternative ramp rates (including 2 inches per hour and 50 cfs per hour during load following operations at the J.C. Boyle development), minimum flows, run-of-river operation, and reservoir drawdown for fish passage on aquatic biota; conduct an IHA evaluation; locate and quantify accretion of spring flows; etc. | Adopted in part. See our responses to CDFG-WQ1 and -WQ6; DOI-1; and FS-1. In AIR AR-5, we asked PacifiCorp to provide the results of its instream flow studies to include modeling of existing conditions, proposed operations, run-of-river operations, and with ramping rates of 2 inches per hour and 6 inches per hour in the J.C. Boyle peaking reach. We did not request that PacifiCorp model a ramping rate of 50 cfs per hour, which we consider to be overly conservative based on the limited amount of fish stranding that was observed during PacifiCorp's studies in this reach. |
| ODEQ-5 | A1-13 | Study ramping rate impacts, including effects on fish stranding, gravel and cobble bar armoring and erosion, and riparian vegetation | Adopted in part (AIRs GN-1 and -2; WQ-5; and AR-5). PacifiCorp provided the results of fish stranding studies conducted in the J.C. Boyle peaking reach in the Fish Resources FTR, and we have asked it to provide the completed results of its instream flow study and peaking analysis, including an integrated analysis of effects on flow-dependent resources, in AIR AR-5 (see our responses to CDFG-FR3; DOI-13 and -18; NOAA-4; and Karuk Tribe-6). |
| ODEQ-6 | A1-18 | Determine suitable flow regimes in the riverine segments of the Klamath River and Spring and Jenny creeks in and below each project facility for anadromous salmonids and other native fish species | Adopted in part (AIR AR-5). See our response to AW-3 and CDFG-WQ1. |
| ODEQ-7 | A1-21 | Complete fish assessment survey of the Link River, Keno and J.C. Boyle bypassed reaches, and J.C. Boyle peaking reach | Adopted in part (AIR AR-4). See our responses to CDFG-FR1 and Conserv. Groups-3. |
| ODEQ-8 | A1-24 | Conduct entrainment and associated mortality study | Not adopted. See our response to CDFG-FR8. |
| ODEQ-9 | A1-27 | Perform fish passage study to evaluate the feasibility of resident and anadromous fish passage considering a full range of structural and operational modifications | Adopted (AIR AR-2). See our responses to AW-1 and -2; Conserv. Groups-1; DOI-10; and Karuk Tribe-4. |

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| ODEQ-10 | A1-29 | Evaluate proposed project boundary changes | Adopted in part. Ultimately, the Commission will determine whether adjustments to the project boundary are appropriate under a new license. Our AIRs are designed to provide sufficient information for the Commission to make this determination. See our responses to AW-5; CDFG-WQ3; Conserv. Groups-2; and DOI-3 and -26. |
| ODFW-1 | A2-18 | Conduct project operations and hydrology study (evaluate effects of alternative ramp rates, minimum flows, run-of-river operation, and reservoir drawdown for fish passage on aquatic biota; conduct an IHA evaluation; locate and quantify accretion of spring flows; etc.) | Adopted in part (AIRs WQ-3 and -4; AR-1, -2, and -5). See our responses to CDFG-WQ1 and -WQ6; DOI-1; FS-1; and ODEQ-4. |
| ODFW-2 | A2-26 | Conduct ramping rate impacts study, including effects on fish stranding, gravel and cobble bar armoring and erosion, and riparian vegetation | Adopted in part (AIRs GN-1 and -2; WQ-5; and AR-5). See our responses to Karuk Tribe-6, NOAA-4, and ODEQ-4. |
| ODFW-3 | A2-44 | Determine the effects of project peaking on aquatic resources below project facilities (revise wetted perimeter analysis, complete the bioenergetics study, and sample macroinvertebrate drift) | Adopted in part (AIR AR-5). See our responses to CDFG-FR3 and ODEQ-3. |
| ODFW-4 | A2-53 | Determine suitable flow regimes in the riverine segments of the Klamath River in and below each project facility for anadromous salmonids and other native fish species. Study to include: 2D analysis in the J.C. Boyle peaking reach; 1D calibration using both depth/velocity data sets; use of the geometric mean in habitat computation; proportional weighting of transects; inclusion of both cover and substrate; consultation on the use of depth calibration; modeling of the Keno reach; completion of bioenergetics modeling; conducting a peaking analysis, including the assessment of alternative ramping rates; development of instream flow regimes for anadromous fish within and downstream of the project; and discussion of | Adopted in part (AIR AR-5). See our response to AW-3. |

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| | | modeling results as they relate to fisheries and other flow-dependent resources | |
| ODFW-5 | A2-63 | Fish assessment survey of the Link River, Keno and J.C. Boyle bypassed reaches, and J.C. Boyle peaking reaches | Adopted in part (AIR AR-4). See our responses to CDFG-FR1 and Conserv. Groups-3. |
| ODFW-6 | A2-81 | Develop a phased-in plan that accommodates fish passage to include: (a) entrainment; (b) reservoir and facility survival; (c) reservoir behavior; (d) operations management to minimize impacts on survival and behavior; (e) genetics; (f) pathogen risk assessment; and (g) habitat and project facilities scenario modeling (EDT and KlamRAS) | Adopted in part (AIR AR-2). See our response to DOI-10. |
| ODFW-7 | A2-103 | Entrainment and associated mortality study | Not adopted. See our response to CDFG-FR8. |
| ODFW-8 | A2-113 | Characterize reservoir sediments, and complete bedload sampling and tracer gravel study | Adopted (AIRs WQ-2 and -5). See our response to DOI-8. |
| ODFW-9 | A2-121 | Conduct an analysis of transects in the J.C. Boyle bypassed and peaking reaches to evaluate potential riparian vegetation for a range of operational scenarios | Adopted in part (AIRs GN-1, WQ-5, and AR-5). See our response to DOI-18. |
| ODFW-10 | A2-131 | Conduct an angler preference survey for fishing flows, and compare angler response to peaking versus non-peaking flows | Not adopted. We conclude that the information in the license application provides us with an adequate understanding of angling opportunities. Along with the Recreational Flow Study, filed September 30, 2004, and information provided in response to our other AIRs, we should have sufficient information to assess project effects on recreational angling. |
| ODFW-11 | A2-139 | Complete the System Landscape Option Matrix (SLOM) analysis to evaluate the effects of removal of one or more facilities | Not adopted. See our responses to CDFG-FR6, Conserv. Groups-2, and Klamath Tribes-5. |
| ODFW-12 | A2-149 | Provide information on resources and protection, mitigation, and enhancement measures for facilities proposed to be excluded from the project (including Keno development and the J.C. Boyle bypassed reach) | Not a study request. See our response to ODEQ-10. |

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| OPUC | 2 | Provide documentation justifying the reasonableness of the annual value of power estimates used in Exhibit D, section 5.0, of the license application | Adopted (AIR DR-2). |
| PFMC | 2 | Begin analyses that seriously, and in detail, look at the relative costs and benefits of a variety of fish passage options, including full volitional up and downstream passage, and dam removal at some or all facilities | Adopted (AIR AR-2). See our response to Conserv. Groups-1. |
| Quartz Valley Indian Reservation-1 | 21 | Nitrogen cycling and transport study, including nitrogen budgets for project reservoirs | Not adopted. See our response to IFR et al.-2(a). |
| Quartz Valley Indian Reservation-2 | 25 | Improve water quality models by: (a) analyzing a full range of project and without-project scenarios; (b) incorporating nitrogen fixation information; (c) for scenarios with dam removal, use more realistic channel geometry; (d) calibrate the model for nutrients and benthic algae; and (e) improve calibration for temperature and DO | Adopted. See our responses to CDFG-WQ2 and -WQ3. |
| Quartz Valley Indian Reservation-3 | 29 | Quantify the capacity of benthic algae in the river reaches to uptake nutrients and how that capacity has been altered by peaking and reservoir development | Adopted in part (AIRs GN-2 and WQ-3). See our response to Karuk Tribe-3. |
| Resighini Rancheria-1 | 19 | Develop nitrogen nutrient budgets for each reservoir | Not adopted. See our response to IFR et al.-2(a). |
| Resighini Rancheria-2 | 23 | Improve water quality models by: (a) analyzing a full range of project and without-project scenarios; (b) incorporating nitrogen fixation information; (c) for scenarios with dam removal, use more realistic channel geometry; (d) calibrate the model for nutrients and benthic algae; and (e) improve calibration for temperature and DO | See our responses to CDFG-WQ2 and -WQ3. |
| Resighini Rancheria-3 | 3 | Quantify the capacity of benthic algae in the river reaches to uptake nutrients and how that capacity has been altered by peaking and reservoir development | Adopted in part (AIRs GN-2 and WQ-3). See our response to Karuk Tribe-3. |

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| SRCRMPG-1 | 2 | Study the potential for trading Klamath River for Shasta River water to benefit anadromous fish production, including water quality and biota effects of diverting 100 or 200 cfs from the Klamath River, upstream of Iron Gate dam, and evaluating the appropriateness of providing free electrical power for any associated pumping costs | Not adopted. See our responses to NCCFFF-2.B+C and DOI-28. |
| SWRCB-1 | 17 | Conduct entrainment study using tailrace sampling to quantify entrainment by species and season, and determine mortality rates | Not adopted. See our response to CDFG-FR8. |
| SWRCB-2 | 17 | Consult to resolve differences on approach, and complete ongoing instream flow studies | Adopted (AIR AR-5). See our response to AW-3. |
| SWRCB-3 | 17 | Hold a workshop, finalize the KlamRAS and EDT parameterization, and submit for peer review | Adopted in part (AIR AR-2). See our response to CDFG-FR6. |
| SWRCB-4 | 18 | Provide raw data to SWRCB, collect additional DO and nutrient data above and below Iron Gate dam, and prepare a study plan that includes mass-based nutrient cycling and flow through the project | Adopted in part (AIR GN-2). See our responses to IFR et al.-2(a) and ODEQ-1 and -2. |
| SWRCB-5 | 18 | Study the impact of the project on water temperature and designated beneficial uses of the Klamath River; develop proposed site-specific water quality objectives for Klamath River salmon, steelhead, and other species | Adopted in part. In AIR AR-1, we asked PacifiCorp to consult with the agencies and tribes to develop temperature and DO objectives for enhancing all life stages of fall Chinook salmon and migratory lifestyles of coho salmon and steelhead trout downstream of Iron Gate dam. In the same AIR, we also ask them to investigate the use of project storage and selective withdrawal to meet these objectives. Further, in AIR AR-2, we ask PacifiCorp to simulate water temperatures at several locations downstream of Iron Gate dam under several scenarios, which will help to define the effect that project reservoirs have on downstream water temperatures. We conclude that this information will enable us to analyze the effects of the project on water temperatures and the potential for improving temperature conditions downstream of the |

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| SWRCB-6 | 19 | Study, evaluate, and submit to SWRCB a full range of alternatives to reduce water temperature during the late summer/fall and increase water temperature during the spring/early summer | project. Adopted (AIR AR-1). |
| SWRCB-7 | 20 | Develop a list of studies and engineering reports that would be necessary to decommission any of the project facilities | Adopted in part. See our response to Conserv. Groups-2. |
| SWRCB-8 | 20 | Provide a copy of the report "Bathymetry and sediment classification of the Klamath hydropower project impoundments" (Eilers and Gubala, 2003) cited in the Water Resources FTR; collect additional core samples to determine whether reservoirs are trapping nutrients and organic materials; and analyze cores for the presence of metals and toxic materials | Eilers and Gubala (2003) is available on PacifiCorp's relicensing web site and we plan to enter this report in the record for this proceeding. With the information that we receive in response to AIR WQ-2, we should be able to better assess the amount and nature of sediment trapped in project reservoirs. |
| SWRCB-9 | 20 | Explain and document the assumptions used to model water quality under "without-project" conditions, compare results to Basin Plan water quality objectives, and conduct any additional model runs determined necessary by SWRCB and NCRWQCB staff | Adopted in part (AIR WQ-3). See our responses to CDFG-WQ2 and -WQ3. |
| SWRCB-10 | 20 | Develop and implement a study plan for additional sampling of attached algae to evaluate the impacts of peaking operations by comparing periphyton growth in the peaking reach to the river below Iron Gate dam | Adopted in part (AIR GN-2). PacifiCorp committed to collecting additional benthic algae samples in the peaking reach and downstream of Iron Gate dam (see page B-51 of PacifiCorp's June 1, 2004, letter to the Commission responding to ASRs). |
| SWRCB-11 | 20 | Additional fish tissue sampling or study if requested by SWRCB after results of sampling conducted to date are made available | PacifiCorp filed its report entitled "Screening level determination of chemical contaminants in fish tissue in selected project reservoirs" by letter to the Commission dated September 29, 2004. This report provides an adequate level of understanding of fish tissue contaminant levels to support our analysis. |
| SWRCB-12 | 20 | Provide results of <i>Ceratomyxa shasta</i> sampling | This report was filed by PacifiCorp on September 29, 2004. See our response to Karuk Tribe-5. |

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| SWRCB-13 | 20 | Prepare and conduct a study to demonstrate that project operations do not result in the entrainment of gases | Not adopted. PacifiCorp provided information on total dissolved gas concentrations downstream of project developments on pages 7-7 through 7-20 of the Water Resources FTR. We conclude that this information, along with the responses to our other AIRs, should provide us with sufficient information for us to analyze whether measures pertaining to total dissolved gases are warranted |
| SWRCB-14 | 20 | Provide a copy of the report "Sediment oxygen demand and nutrient release from sites in the Klamath hydropower project" (Eilers and Raymond, 2003) cited in the Water Resources FTR | Not a study request. We intend to request a copy of this report from PacifiCorp at a later date if it is not publicly available. |
| SWRCB-15 | 21 | Provide a complete analysis of the effects of the project on water quality objectives and on beneficial uses, and propose measures to avoid or mitigate for the impacts of the project | We plan to conduct a complete analysis of the effects of the project on water quality objectives and beneficial uses of project-influenced water. We will use information currently on the record, or that will be on the record for this proceeding when responses to our AIRs are received, for our analysis. We also plan to evaluate and recommend appropriate environmental measures that will protect and enhance water quality. |
| SWRCB-16 | 21 | Provide hydrographs that show the impact of proposed changes in peaking operations on whitewater boating and angling opportunities in the J.C. Boyle peaking reach, and provide appropriate methods to avoid, minimize, or mitigate for any impacts | Not adopted. We conclude that with information that is currently available regarding flows that support whitewater boating and angling opportunities, and information that we will receive in response to our AIRs (e.g., AIR WQ-4), we should be able to assess the influences of alternative project operations on recreational opportunities at the peaking reach. |
| SWRCB-17 | 21 | Prepare an operations model for use by SWRCB with 1 hour or smaller time steps and that incorporates reservoir elevations | Not adopted. In its June 1, 2004, letter to the Commission, PacifiCorp indicated that the RMA-2 portion of the existing water quality modeling framework is already available to examine project operations and effects on flow (including an hour time step and incorporation of reservoir elevations). In AIR WQ-3, we have asked PacifiCorp to provide input and |

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|---------------------|-------|---|--|
| SWRCB-18 | 21 | Work with the collaborative to analyze socioeconomic effects for a full range of project alternatives, including the cost of dam removal and the value of salmon and steelhead in a without project scenario | output data files for its water quality modeling runs, which should enable us to review the appropriateness of the modeled scenarios. We do not see the need for PacifiCorp to develop a new, non-proprietary operations model for SWRCB use, as requested, because we have not concluded that the existing updated model does not accurately portray existing and alternative project operations. Not adopted. See Klamath Tribes-6. |
| Yurok Tribe-1 | 3 | Model a full range of operational scenarios using existing water quality and other models. Provide project gage data to the stakeholders. | Adopted in part (AIRs WQ-1,-3, -4, and -5; AR-1, -2, and -5). See our responses to CDFG-WQ1 and -WQ3; DOI-1; and FS-1. |
| Yurok Tribe-2 | 6 | Develop nitrogen nutrient budgets for each reservoir | Not adopted. See our response to IFR et al.-2(a). |
| Yurok Tribe-3 | 10 | Improve water quality models by: (a) analyzing a full range of project and without-project scenarios; (b) incorporating nitrogen fixation information; (c) for scenarios with dam removal, use more realistic channel geometry; (d) calibrate the model for nutrients and benthic algae; and (e) improve calibration for temperature and DO | Adopted in part. See our responses to CDFG-WQ2 and -WQ3 and FS-2. |
| Yurok Tribe-4 | 15 | Quantify the capacity of benthic algae in the river reaches to uptake nutrients and how that capacity has been altered by peaking and reservoir development | Adopted in part (AIRs GN-2 and WQ-3). See our responses to Karuk Tribe-3 and SWRCB-10. |
| Yurok Tribe-5 | 19 | Effects of temperature alteration on anadromous fish below Iron Gate dam | Adopted in part (AIR AR-1). See our response to SWRCB-5. |
| Yurok Tribe-6 | 22 | Assessment of current habitat potential, restoration priorities, and engineering options for volitional passage (extend EDT analysis to rivers above Upper Klamath Lake, apply KlamRAS, and conduct sensitivity analysis) | Adopted (AIR AR-2) |

| Entity ^a | Page# | Study Request | Staff Response |
|---------------------|-------|--|--|
| Yurok Tribe-7 | 24 | Develop detailed information on all options to restore fish passage including full or partial project removal, to include costs and methods of dam removal, impacts on lost generation, sediments, and other factors | Adopted in part. In AIR AR-2, we asked PacifiCorp to follow through on its June 1, 2004 commitment to model adult returns of anadromous fish species under a number of fish passage scenarios which include combinations of volitional fish passage, trap and haul, and the absence of one or more dams. For each scenario we have asked for a schedule and estimate of the design, permitting, construction, and operation costs, and any effects on project generation. Finally, in AIR WQ-2 we asked PacifiCorp to provide available information on the quantity, grain size, and chemistry of sediments in the Keno, J.C. Boyle, Copco 1, and Iron Gate reservoirs. See our response to Conserv. Groups-2. |
| Yurok Tribe-8 | 26 | Determine the distribution and abundance of lamprey species within and immediately below the project area | Adopted in part (AIR AR-4). See our response to Conserv. Groups-3. |
| Yurok Tribe-9 | 28 | Expanded assessment of spring and yearling Chinook production: (a) assess the potential for artificially propagating spring Chinook and converting some production to yearling Chinook; (b) identify preferred broodstock for spring Chinook reintroduction; (c) develop a Genetic Management Plan for reintroduction of spring Chinook into the upper basin; (d) develop and implement strategies for artificially propagating spring Chinook; and (e) assess the potential effects on natural stocks from additional yearling production | Adopted in part (AIR AR-3). PacifiCorp provided an analysis of spring Chinook production capabilities at Iron Gate Hatchery and the Fall Creek rearing facility in the Fish Resources FTR, section 7.9. See our response to AW-6. |
| Yurok Tribe-10 | 34 | Assess and improve the accuracy of methods used to estimate the number of Chinook salmon released at Iron Gate Hatchery operations | Not adopted. In our environmental document we intend to evaluate the issue of hatchery funding and general production strategies that could reduce impacts to naturally-produced salmon and steelhead (e.g., elimination of coho and steelhead production and shifting from subyearling to yearling Chinook production). However, we believe that decisions on detailed hatchery practices such as the methods that are |

| Entity ^a | Page# | Study Request | Staff Response |
|---------------------|-------|--|---|
| Yurok Tribe-11 | 36 | Identify and develop alternatives to avoid or mitigate adverse effects on the Klamath Traditional Cultural Riverscape in an HPMP that encompasses an appropriate APE | <p>used to determine the number of fish that are released can be best addressed by CDFG, since they have the experience and authority for managing hatchery operations.</p> <p>Adopted in part. See our responses to DOI-4, -21, -23, and -24</p> |

The following is the full description of the entities requesting additional studies in this proceeding:

| | |
|----------------------------------|--|
| AW | American Whitewater (letter to the Commission dated April 26, 2004) |
| California Energy Commission | California Energy Commission (letter to the Commission dated April 26, 2004) |
| CDFG | California Department of Fish and Game (letter to the Commission dated April 23, 2004) |
| Conservation Groups | American Rivers, California Trout, Friends of the River, Trout Unlimited, and World Wildlife Fund (Conservation Groups) (letter to the Commission dated April 26, 2004) |
| DOI | U.S. Department of the Interior, Office of the Secretary (letter to the Commission dated April 26, 2004) |
| FS | U.S. Department of Agriculture, Forest Service (letter to the Commission dated April 21, 2004) |
| IFR et al. | Institute for Fisheries Resources, Pacific Coast Federation of Fisherman's Associations, Oregon Natural Resources Council, Friends of the River, Defenders of Wildlife, Northcoast Environmental Center, Water Watch of Oregon, Klamath Basin Audubon Society, and Headwaters (letter to the Commission dated April 25, 2004; with additional groups and individuals added by letter dated April 26, 2004) |
| Karuk Tribe | Karuk Tribe of California (letter to the Commission dated April 23, 2004) |
| KFA and SRRC | Klamath Forest Alliance and Salmon River Restoration Council (letter to the Commission dated April 23, 2004) |
| Klamath Tribes | Klamath Tribes (letter to the Commission dated April 23, 2004) |
| Klamath Tribes Supplemental | Klamath Tribes (letter to the Commission dated April 26, 2004) |
| KRITFWC | Klamath River Inter-Tribal Fish and Water Commission (letter to the Commission dated April 26, 2004) |
| NCCFFF | Northern California Council of the Federation of Fly Fishers (letter to the Commission dated April 23, 2004) |
| NOAA | U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (letter to the Commission dated April 23, 2004) |
| ODEQ | Oregon Department of Environmental Quality (letter to the Commission dated April 23, 2004) |
| ODFW | Oregon Department of Fish and Wildlife (letter to the Commission dated April 23, 2004) |
| OPUC | Oregon Public Utility Commission (letter to the Commission dated April 21, 2004) |
| PFMC | Pacific Fishery Management Council (letter to the Commission dated April 23, 2004) |
| Quartz Valley Indian Reservation | Quartz Valley Indian Reservation (letter to the Commission dated April 22, 2004) |
| Resighini Rancheria | Resighini Rancheria (letter to the Commission dated April 21, 2004) |
| SRCRMPG | Shasta River Coordinated Resources Management and Planning Group (letter to the Commission dated April 26, 2004) |
| SWRCB | State (California) Water Resources Control Board (letter to the Commission dated April 22, 2004) |
| Yurok Tribe | Yurok Tribe (letter to the Commission dated April 26, 2004) |

KLAMATH BASIN WATER USERS PROTECTIVE ASSOCIATION

P. O. BOX 430

KLAMATH FALLS, OREGON

October 28, 1955

Orig. to Document File

The California Oregon Power Company
Medford, Oregon

Attention: Mr. J. C. Boyle
Vice-President and General Manager

Dear Mr. Boyle:

The Executive Committee of the Board of Directors of the Klamath Basin Water Users Protective Association, met last night and discussed your letter of October 24, 1955, regarding proposed agricultural power pumping rates for the Upper Klamath River Basin, in connection with the proposed contract between the Department of the Interior and The California Oregon Power Company, for the operation of Link River Dam.

The conclusions at which the Committee arrived, are based upon the thinking of its five individual members, and upon reflections about the proposed reduced rates that have been received from eleven different members of the Board of Directors and from many individual off-project pumpers from Butte Valley and various locations scattered about the Basin, who have been contacted. The off-project pumpers are not at all happy about the proposed small discount on Schedule 20. They feel that such a little reduction still does not recognize their right to a rate which is equal to or at least competitive with that of the project users. The proposals of your letter will never get by our Board.

The Executive Committee is just as anxious as anyone to make arrangements about the contract and rates that are agreeable to all. It wishes to see the contract signed soon, and Copco's plans of development proceed. However, in order to get the approval of the Board of Directors, and to get opposition to the contract withdrawn, there must be further reduction in the on-peak pumping rate, and the Committee is proposing the following:

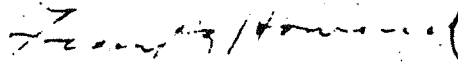
The California Oregon Power Company will make application to the Public Utility Commissions of Oregon and California for reductions of Agricultural power pumping rates in the Upper Klamath River Basin, and with the approval of the Commissions of the two states, will grant a five (5) mill off-peak rate for all agricultural drainage and irrigation pumpers in the Basin, and a ten (10) mill on-peak rate for all off-project agricultural pumpers in the Basin.

The on-peak pumping rate will apply from eight (8) A. M. to eight (8) P. M. of each day except Saturdays and Sundays.

The off-peak pumping rate will apply from eight (8) P. M. to eight (8) A. M. of each day and during the 24-hour period Saturdays and Sundays.

The above rates shall apply for the duration of the Contract between the Department of the Interior and The California Oregon Power Company.

Very truly yours,



Frank Z. Howard, President
Klamath Basin Water Users Protective Association

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 171

In the Matter of PacifiCorp's Klamath Basin
Irrigation Rates

**AFFIDAVIT OF KATHERINE A.
MCDOWELL**

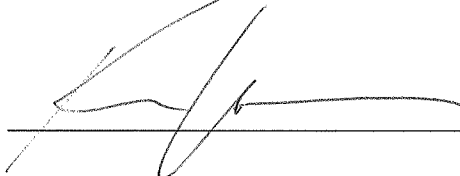
STATE OF OREGON)
) ss.
COUNTY OF MULTNOMAH)

I, Katherine A. McDowell, being first sworn do state:

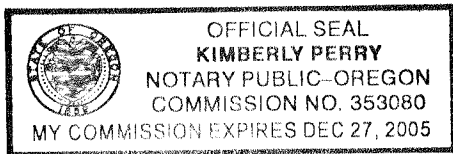
1. I am an attorney with the law firm of STOEL RIVES LLP and represent PacifiCorp in this matter. In this capacity, I have personal knowledge about the matters covered in this affidavit.
2. The documents attached hereto as Exhibit 16 were produced by Klamath Water Users Association ("KWUA") in its response to PacifiCorp's Data Requests to KWUA in this matter.

DATED: March 31, 2005.

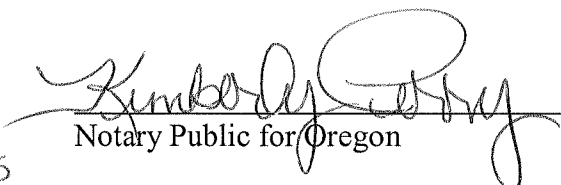
Katherine A. McDowell



SUBSCRIBED AND SWORN to before me this 31st day of March, 2005.



My commission expires: 12/27/05



Notary Public for Oregon

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

MANLEY W. EDWARDS, Examiner, presiding.

* * * * *

In the Matter of the Application of the CALIFORNIA OREGON POWER COMPANY, for authority to enter into contract with the United States of America for regulation of Link River Dam, etc.

Application No. 37724

In the Matter of the Application of the CALIFORNIA OREGON POWER COMPANY, for approval of agreement with Klamath Basin Water Users Protective Association.

Application No. 37918

APPEARANCES:

Brobeck, Phleger & Harrison by ROBERT N. LOWRY and MALCOLM T. DUNGAN, 111 Sutter Street, San Francisco 4, California, appearing for the California Oregon Power Company, Applicant.

J. J. DEUEL, BERT BUZZINI and JOSEPH Q. JOYNT, 2223 Fulton Street, Berkeley, California, appearing for the California Farm Bureau Federation, Interested Party.

Bert A. Phillips, Chairman, by ROBERT B. BOND, Executive Assistant, P. O. Box 1079, Sacramento 5, California, appearing for the California Klamath River Commission, Interested Party.

RICHARD W. HUBBELL, of the Herald & News, Klamath Falls, Oregon, appearing for the News Editor, Max Wauchope, Interested Party.

HAROLD T. SIPE, appearing for the Commission's staff.

* * * * *

1 DORRIS, CALIFORNIA, MAY 8, 1956, 1:00 P.M.

2 * * * * *

3 EXAMINER EDWARDS: The Commission will be in order.

4 The Commission is holding a hearing this afternoon
5 in the matter of the application of the California Oregon
6 Power Company, for authority to enter into contract with
7 the United States of America for regulation of Link River
8 Dam, et cetera, under Application No. 37724 and also in
9 the matter of the application of the California Oregon
10 Power Company, for approval of agreement with Klamath
11 Basin Water Users Protective Association, Application No.
12 37918.

13 Is it satisfactory, gentlemen, to consolidate these
14 matters for hearing purposes but not necessarily for
15 purpose of decision, is that satisfactory?

16 MR. LOWRY: Yes.

17 I would like to make the company's position clear.
18 The applicant filed for a decision in Application No.
19 37724, a separate and independent application from the
20 application of 37918 and we are of the opinion that the
21 two applications are separate and distinct applications
22 dealing with them and should have separate decisions in
23 the matter. We do not object to consolidating, however,
24 for hearing purpose only.

25 EXAMINER EDWARDS: Yes, separate decisions.

26 Any other statements? If not, that will be done.

1 a statement for the record prior to the consideration of
2 Application No. 37918.

3 EXAMINER EDWARDS: Does the Water Users, I mean the
4 Protective Association here have any statement they wish
5 to make before we open up?

6 MR. LOWRY: Mr. Examiner, we proposed to call the
7 President of the Water Users Association as a witness
8 for the applicant with respect to Application No. 37918.

9 EXAMINER EDWARDS: Very well, then you are ready to
10 proceed, Mr. Lowry.

11 Call your first witness.

12 MR. LOWRY: Mr. J. C. Boyle.

13 J. C. BOYLE, a witness called on behalf of the
14 Applicant, being first duly sworn, testified as
15 follows:

16 DIRECT EXAMINATION

17 EXAMINER EDWARDS: Be seated, sir, and state your
18 name and address for the record?

19 THE WITNESS: I am J. C. Boyle, 216 West Main Street,
20 Medford, Oregon.

21 MR. LOWRY: State your education and experience.

22 THE WITNESS: I was graduated from the University of
23 California in 1910, with a degree in Civil Engineering,
24 and immediately thereafter went to work for the Siskiyou
25 Electric Light and Power Company as Engineer in charge
26 of construction on Copco No. 1 Dam and Hydro Plant.
27 Since that time I have^{been} in charge of engineering, construction
28

1 and operation for the California Oregon Power Company
 2 and various predecessor companies. I have been manager
 3 of the Klamath District from 1922 to 1929, Assistant
 4 General Manager until 1931, and Vice President in charge
 5 of operations until October 1941 when I became Vice
 6 President and General Manager. I have been a member of
 7 the company's Board of Directors since May 24, 1938.

8 Q. What are your duties as Vice President and General
 9 Manager?

10 A. Under the general supervision and direction of the
 11 Board of Directors and of the President of the company,
 12 the General Manager supervises and directs all the
 13 general and ordinary business in operations of the company
 14 and is in charge of its property.

15 Q. Define the area known as the Upper Klamath River
 16 Basin?

17 A. The Upper Klamath River Basin is that area in
 18 Southern Oregon and Northern California in which the head
 19 waters of the Klamath River originate. Most of the basin
 20 is found in Klamath County, Oregon, and parts of the basin
 21 are in Siskiyou and Modoc Counties, California. A map
 22 of the Upper Klamath River Basin is attached as part of
 23 Exhibit B to Application No. 37724. A similar map is
 24 attached as Exhibit A to Application 37918.

25 Q. Will you please describe the company's hydroelectric
 26 facilities located in the Upper Klamath River Basin?

1 respect to Application No. 37724 relating to the contract
2 and the rates therein of the Bureau of Reclamation?

3 (No response)

4 EXAMINER EDWARDS: Very well, we will take a 5 minute
5 recess.

6 (Recess taken)

7 EXAMINER EDWARDS: The Commission will be in order.

8 Do you wish to offer these in evidence, these first
9 two exhibits?

10 MR. LOWRY: Yes, I would like to offer them.

11 EXAMINER EDWARDS: Any objection?

12 MR. BUZZINI: No objection.

13 EXAMINER EDWARDS: None appearing, they will be
14 received in evidence.

15 Are you ready to proceed to the next application,
16 Mr. Lowry?

17 MR. LOWRY: Mr. Boyle will now testify with respect
18 to Application No. 37918 which is the contract providing
19 for certain rates for off-project pumping in Upper Klamath
20 River Basin in California.

21 resumed DIRECT EXAMINATION

22 MR. LOWRY: Will you describe what the company seeks
23 in Application No. 37918?

24 THE WITNESS: In this application, the California
25 Oregon Power Company seeks approval of a letter agreement
26 between it and the Klamath Basin Water Users' Protective
28

1 Association respecting rates to be charged for off-project
2 agricultural pumping in the Upper Klamath River Basin in
3 California.

4 Q. Will you please describe this letter agreement?

5 A. This agreement is contained in a letter dated
6 November 3, 1955, from Frank Z. Howard, President, Klamath
7 Basin Water Users' Protective Association, to the company.
8 This agreement was accepted with modifications by the
9 company on November 22, 1955. A copy of the agreement is
10 attached as Exhibit B to Application No. 37918. By letter,
11 dated May 7, 1956, the President of the Water Users'
12 Association agreed to the modifications contained in our
13 acceptance of November 22, 1955.

14 MR. LOWRY: Mr. Examiner, I would like to have marked
15 for identification an exhibit consisting of a letter
16 dated May 7, 1956, addressed to Mr. Boyle, from Frank Z.
17 Howard, in which Mr. Howard accepts certain changes
18 described therein.

19 EXAMINER EDWARDS: Very well, I think we can identify
20 this as Exhibit No. 1 as under Application 37918.

21 MR. LOWRY: Is this letter, Exhibit 1 for identification,
22 a copy of a letter which you received from the President
23 of the Association accepting the modifications contained
24 in your acceptance of the proposal in the Association
25 letter of November 3, 1955?

26 THE WITNESS: Yes, it is.

1 Q. Will you describe what this letter agreement pro-
2 vides?

3 A. This agreement provides for a new scale of agricul-
4 tural pumping rates within that part of the Upper Klamath
5 River Basin not covered by the Bureau of Reclamation con-
6 tract with respect to which I have just testified. This
7 contracts provides for an energy rate of 7-1/2 mills
8 per kilowatt hours for pumps of 10 horsepower and over.
9 Minimum charges under this agreement for the first five
10 years of continuous use shall be those presently applic-
11 able under the applicant's Rate Schedule 20. After the
12 first five years of continuous service, the minimum charges
13 shall be one-half of such presently effective charges.

14 Q. What is the relationship between the contract with
15 the Water Users' Association and the contract with the
16 Federal Bureau of Reclamation with respect to which you
17 testified in Application No. 37724?

18 A. During the latter part of 1955, when the company
19 was negotiating with the Bureau of Reclamation for a
20 renewal or extension of its 1917 Link River Dam contract,
21 the company was approached by representatives of water
22 users in the Upper Klamath River Basin who would not be
23 eligible for the rates under the existing or renewed Bureau
24 contract, for the purpose of seeking a level of rates for
25 such off-project users that would reduce the disparity in
26 rates which the project users would receive under the

1 Bureau contract and those which the off-project users
2 would have to pay under our Rate Schedule 20.

3 After considerable negotiation with representatives
4 of the Klamath Basin Water Users' Protective Association,
5 it was agreed that off-project users were entitled in
6 fairness to a rate for agricultural pumping that was
7 somewhat similar to that afforded the project users under
8 the revised Bureau contract then under negotiation. It
9 was recognized that the off-project users were not
10 entitled to as low a rate as that under the Bureau con-
11 tract because of the direct benefits received by the
12 company under the Bureau contract.

13 As a consequence, it was agreed that an energy
14 rate 1-1/2 mills higher than that provided for in the
15 Bureau contract would contribute to some extent to a
16 reduction in the rate disparity which then existed between
17 project users and off-project customers taking service
18 under Rate Schedule 20.

19 Furthermore, the minimum charges under the
20 Association contract, for the first five years remain
21 unchanged from those now effective under Rate Schedule 20.
22 After five years, the minimum charges under the Associa-
23 tion contract will still be higher than those under
24 Schedule A of the Bureau contract. Since the rate reduc-
25 tion from 7 mills to 6 mills under the new Bureau contract
26 would not become effective/^{until} such contract had been approved

1 by both the California Commission and the Oregon
 2 Commissioner, it was agreed that applications seeking
 3 approval of the Association contract would be filed after
 4 the Bureau contract had been approved.

5 In effect, the Association contract was contingent
 6 upon prior approval by the regulatory commissions of the
 7 Bureau contract. If the Bureau contract had not been
 8 approved, the application for approval of the Association
 9 contract would not have been filed.

10 Q. Application No. 37918 states that Klamath Basin
 11 Water Users' Protective Association entered strenuous
 12 objection to execution of the new Link River Dam contract,
 13 and withdrew such objection only upon provision being
 14 made for off-project pumping rates.

15 Will you state what its objections to the new
 16 contract were?

17 A. Yes. The Water Users' Association was principally
 18 concerned about relative priorities of right to the use
 19 of water for purposes of irrigation and power, and about
 20 rates for power for pumping irrigation water in the Upper
 21 Klamath Basin.

22 As to the priority question, the Water Users'
 23 Association voiced objection over a period of several
 24 years, from the time the Big Bend No. 2 licenses were
 25 applied for until late in 1955. However, it was satisfied
 26 with an agreement entered into between the applicant and

1 the Klamath River Commissions of Oregon and California,
2 which provided that no Klamath water as defined in the
3 Link River Dam contract would be used for power purposes,
4 when needed for irrigation or domestic use on off-project
5 lands, upon the condition that all drainage and return
6 flows be returned to the Klamath River above Keno.

7 That agreement was made on October 31, 1955 and was
8 approved by the Federal Power Commission on February 28,
9 1956 by its inclusion in the license for the Big Bend
10 No. 2 project. On the question of pumping rates, the
11 Water Users' Association desired a rate which would improve
12 the economic feasibility of the irrigation of presently
13 irrigated off-project lands and also make possible either
14 the development of additional areas or the improvement of
15 existing supply so as to enable different types of crops
16 to be planted.

17 It was the position of the Association that project
18 and project users were in essentially the same position
19 both as users of water and as consumers of electricity,
20 and that the non-project irrigators should be placed in
21 a position comparable to that which the project users
22 would have under the Link River Dam --

23 MR. LOWRY: When you referred to project users, I
24 think you should have said off-project users.

25 Will you restate that?

26 THE WITNESS: I am sorry.

MR. LOWRY: I would like to call at this time, Mr. Frank Howard.

FRANK Z. HOWARD, a witness called on behalf of the Applicant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

EXAMINER EDWARDS: Be seated and state your name and address?

THE WITNESS: Frank Z. Howard, 1155 Lakeshore Drive, Klamath Falls.

MR. LOWRY: Will you state your principal occupation, Mr. Howard?

THE WITNESS: Civil Engineer.

Q. What is your position with the Klamath Basin Water Users' Protective Association?

A. I am President of that organization.

Q. Will you define or tell us what the Association is?

A. It is a organization of water users of the whole Klamath Basin and principally made up -- the present organizations are the Klamath Drainage District, Irrigation District, Improvement District in the large part.

Q. Does the activities of the Association include in its membership both on-project and off-project users of water?

A. Yes.

Q. Did you on behalf of the Association negotiate the contract providing for off-project rates by the

California Oregon Power Company which is the subject of Application No. 37918?

A. Yes.

Q. Would you state what the position of the Association is with respect to the rates proposed by the California Oregon Power Company in this proceeding?

A. Well, we think it is a very fair rate. In order to give the off-project pumpers more or less competition with the on-project pumpers and as I say, I think it is a very fair rate that we are requesting.

Q. You state that the rate is a fair rate, what advantage or what is the basis for your position in feeling that such a rate is desirable?

A. As I say, it puts the off-project pumper in competition -- able to compete with the on-project user on that particular rate. Of course, some mentioned the difference in the rate, but as I looked at it, we discussed it -- that difference was brought out probably by what we termed the difference in certain cost of water to on-project users and the man off-project who did not have to pay -- for instance, the on-project users has to pay the Government for certain water which the off-project does not have to pay.

Q. Do you, from the standpoint of the Association have a program of any sort respecting the development of water resources in the Klamath Basin?

MINUTES OF THE EXECUTIVE COMMITTEE OF THE KLAMATH
BASIN WATER USERS PROTECTIVE ASSOCIATION, HELD IN
THE BUREAU OF RECLAMATION ADMINISTRATION BUILDING,
AIRPORT, AT 1:30 P.M. THURSDAY, OCTOBER 20TH, 1955

The Executive Committee, in accordance with Article III, Section 2, of the By-Laws, met in Special session, at 1:30 P.M. Thursday, October 20th, 1955.

The meeting was called to order by Frank Z. Howard, Chairman.

Committee members present were: Frank Z. Howard, E. M. Mitchell, Dick Henzel, John A. Marshall and Frank L. King, Jr., and John L. Stewart, Jr., Secty.

Others present were: Mr. J. C. Boyle, Vice-President and General Manager of The California Oregon Power Company and Mr. Truman Runyan, Asst. Manager of the Klamath Falls Branch of The California Oregon Power Company; Mr. Nelson Reed Chairman of the Oregon Klamath River Commission.

The minutes of the previous meeting were read by the Secretary and on motion made, seconded and duly passed, were approved as read and ordered signed.

Letter from the Association to Mr. Boyle dated October 7th and his reply dated October 14th, were read by the Secretary. The first letter invited Mr. Boyle to meet with the Executive Committee and also asked for an answer to the following questions:

1. Do you agree to lower the pumping power rate under Schedule "B" of the original draft, from five (5) mills to four (4) mills and from three (3) mills to two (2) mills?
2. Will Copco submit to us a letter that it will not oppose the application of non-project users applying for a pumping rate of eight (8) mills, and if necessary, will Copco make the application?
3. Will Copco make us a proposal for an off-peak pumping rate for all irrigation and drainage users? Will this rate apply over a 24 hour load or for off-peak use only?

After general discussion on the contents of both letters and other important matters pertaining to the Bureau-Copco proposed draft of contract, Mr. Boyle answered the three questions above, as follows:

1. No. Bureau and Copco agreed that this rate was low and that it would be to time consuming to attempt to make any changes here.
- 2&3. Copco will make an application to the Public Utilities Commission for a 15% reduction in agricultural pumping power rates thru all rate brackets excepting the 6 mill bracket. In addition, they will apply for a 5 mill off-peak pumping rate for both Project and non-project pumpers. This will apply to all 10 horsepower motors and up. The off-peak period is from 9 P.M. to 8 A.M. and all day Saturdays and Sundays, but does not include holidays.

Mr. Boyle agreed to confirm in writing his answers to these questions.

The Committee stated that on receipt of Mr. Boyles letter, it would be re-produced and mailed to Association Board members for study. Further, that a meeting of the Board will be called to take final action on proposed draft of contract with approved changes.

Mr. Nelson Reed stated that the two River Commission have agreed on the compact in its final form. That 500 copies will be sent out to State and Federal agencies and 30 days will be given for comments. This Association will receive a copy.

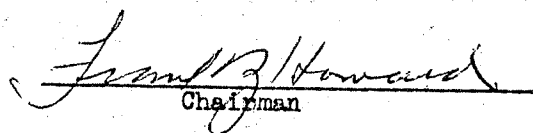
Bills and vouchers in the amount of \$27.50 were presented, audited by the Committee and on motion made, seconded and duly passed, checks in payment thereof were ordered drawn, as follows:

| | | | |
|-----|-------------------------|-------------------|---------|
| #87 | Smith-Bates Printing Co | Office Supp. | \$ 4.50 |
| #88 | John L. Stewart, Jr. | Serv. Secty-Treas | 23.00 |

There being no further business to come before the Board, on motion made, seconded and duly passed, meeting adjourned. Time 3:30 P.M.

ATTEST:


Secretary


Chairman

MINUTES OF THE EXECUTIVE COMMITTEE OF THE KLAMATH
BASIN WATER USERS PROTECTIVE ASSOCIATION, HELD IN
THE BUREAU OF RECLAMATION ADMINISTRATION BUILDING,
AIRPORT, AT 7:30 P.M. THURSDAY, OCTOBER 27TH, 1955

The Executive Committee, in accordance with Article III, Section 2, of the By-Laws, met in Special session, at 7:30 P.M. Thursday, October 27th, 1955.

The meeting was called to order by Frank Z. Howard, Chairman.

Committee members present were: Frank Z. Howard, Dick Henzel, John A. Marshall and Frank L. King, Jr., and John L. Stewart, Jr., Secretary.

Other person present was: Mr. Delos Mills, Chairman Butte Valley Water Resources Committee.

The minutes of the previous meeting were read by the Secretary and on motion made, seconded and duly passed, were approved as read and ordered signed.

General discussion was had on The California Oregon Power Company's proposed rate changes to Schedule #20, which was received as an enclosure to Mr. J. C. Boyle's letter dated October 24, 1955.

It was unanimously agreed that altho Copco's proposed 5 mill off-peak pumping rate for project and off-project pumpers plus a 15% reduction for off-project pumpers is a fair rate, it would be much better to ask Copco for the 5 mill off-peak rate plus a 10 mill and or 1¢ on peak rate for off-project pumpers and to be carried thru the calendar year.

This would make the rate for project pumpers, 6 mills on peak, 5 mills off-peak. Off-project pumpers 5 mill off-peak, 10 mills and/or 1¢ on peak.

These rates would make computations by Copco and the farmer much less confusing and no change to Schedule #20 would be necessary.

JLS Jr

In addition to asking Copco for an established rate as above, request that these rates be for 50 year period and/or for the duration of the contract the same as it is set forth in contract for on project water users.

Frank Howard and Dick Henzel consented to immediately compose a letter-

These rates would make computations by Copco and the farmer much less confusing and no change to Schedule #20 would be necessary.

In addition to asking Copco for an established rate as above, request that these rates be for 50 year period and/or for the duration of the contract the same as it is set forth in contract for on project water users.

Frank Howard and Dick Henzel consented to immediately compose a letter to The California Oregon Power Company setting forth the above and requesting another meeting with Mr. Boyle just as soon as Copco has had time to study contents of letter.

There being no further business to come before the Committee, on motion made, seconded and duly passed, meeting adjourned. Time 10 P.M.

ATTEST:

John L. Stewart Jr
Secretary

Frank Z. Howard
Chairman

MINUTES OF THE EXECUTIVE COMMITTEE OF THE KLAMATH BASIN WATER USERS PROTECTIVE ASSOCIATION, HELD IN FRANK Z. HOWARD'S OFFICE, WILLITS BUILDING, AT 10:00 AM, THURSDAY, NOVEMBER 3RD, 1955

The Executive Committee, in accordance with Article III, Section 2, of the By-Laws, met in Special session, at 10:00 A.M. Thursday, November 3, 1955.

The meeting was called to order by Frank Z. Howard, Chairman.

Committee members present were: Frank Z. Howard, Dick Henzel and John A. Marshall, and John L. Stewart, Jr., Secretary.

Others present were: Mr. J. C. Boyle, Vice President and General Manager of The California Oregon Power Company and Mr. Truman Runyan, Asst. Manager of the same company, Klamath Falls, Branch, and Mr. Delos Mills, President of the Butte Valley Water Development Association.

The minutes of the previous meeting were read by the Secretary and on motion made, seconded and duly passed, were approved as read and ordered signed.

During general discussion on power rates as pertains to off project pumpers, the following was unanimously agreed:

- 1. That The California Oregon Power Company and Klamath Basin Water Users Protective Association will file jointly, applications with the Public Utilities Commissions of Oregon and California for approval of power rates for off-project

pumpers, rates that have been approved by Copco and the Klamath Basin Water Users Protective Association.

Copco will prepare the forms that are required by each State.

2. That the applications stipulate that an area rate be approved, the area to be the Upper Klamath River Basin as shown on map marked Exhibit "A" to the applications.

3. That the applications support the map by stating the approximate number of acres of the approximate 200,000 acres in Oregon of off-project lands that have potential pump lands and potential gravity lands. That the same breakdown be made of the approximately 100,000 acres of off-project lands lying in Modoc and Siskiyou counties in California. The breakdown on acreage to be arrived at by a record survey.

4. That the area power rate be applied to pumps of 10 horsepower and up.

5. That the minimum annual change for the first five (5) years of continuous service shall be \$14.40 per horsepower for the first horsepower and \$10.80 per horsepower for excess horsepower as is now set out in Schedule #20, now in effect. After five (5) years of continuous service the minimum seasonal change shall be \$7.20 for the first horsepower and \$5.40 per horsepower for the excess HP.

6. That after power rates have been established for off-project pumpers and applications have been approved by the Public Utilities Commissions of Oregon and California, no change in power rates for the term of the contract between the Bureau of Reclamation and The California Oregon Power Company shall be submitted to the Commissions unless filed jointly by Copco and the Klamath Basin Water Users Protective Association.

7. That it had been determined that flat rates applied by horsepower would be more satisfactory to the water users off-project, than an off-peak rate and on peak rate for off-project pumpers.

Motion made, seconded and duly passed that meeting adjourn for lunch. Time 12:40 P.M.

Meeting reconvened at 1:30 P.M.

After further general discussion on power rates for off-project water users, Mr. Marshall stated that the committee had agreed at lunch (the two groups having eaten separately) that it was believed that a flat rate of 8 mills for 10 horsepower pumps to 49 horsepower pumps and a 7 mill rate for 50 horsepower pumps and up would be satisfactory to off-project water users.

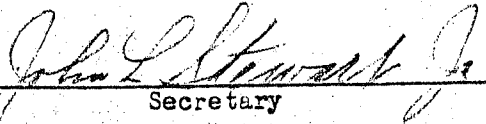
Mr. Boyle stated that if the Association would compose another letter to The California Oregon Power Company setting forth the points agreed upon and request that these rates be approved by his Company that immediately upon its receipt he would take it before his Board of Directors for their action.

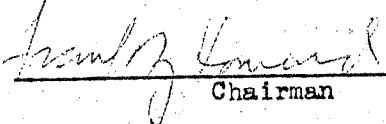
Stated also that letter be submitted in triplicate with acceptance paragraph for his signature if approved by his Board.

Mr. Howard stated that if Copco approves and returns a copy of the acceptance that he will immediately call a meeting of the Board of Directors of the Association and endeavor to get their approval and also action on submitting a letter to Mr. C. H. Spencer withdrawing all opposition to the contract between Copco and the Bureau and requesting that signing of contract not be delayed.

There being no further business to come before the Committee, on motion made, seconded and duly passed, meeting adjourned. Time 3:30 P.M.

ATTEST:


Secretary


Chairman

MINUTES OF KLAMATH BASIN WATER USERS PROTECTIVE ASSOCIATION,
HELD IN THE VETERANS MEMORIAL BUILDING, KLAMATH FALLS, ORE-
GON, NOVEMBER 28TH, 1955

The Board of Directors of the Klamath Basin Water Users Protective Association met in Special session in the Veterans Memorial Building, Klamath Falls Oregon, at 1:30 P.M. November 28th, 1955.

The meeting was called to order by Frank Z. Howard, President of the Board.

Present in answer to roll call were Directors: Frank Z. Howard, Dick Henzel, Frank L. King, Jr., Lloyd Gift, E. M. Mitchell, John A. Marshall, Ben Picket and W. P. Hooper.

Others present were: Nelson Reed and George Stevenson of the Oregon Klamath River Commission; Delos Mills, President of the Butte Valley Water Development Association and R. W. Hubbell of the Herald and News.

The minutes of the previous meeting were read by the Secretary and on motion made, seconded and duly passed, were approved as read and ordered signed.

Frank Howard read a prepared brief of Association accomplishments from the date of organization to the present with emphasis on work done on Bureau-Copco proposed contract and power rate for off-project pumpers.

The Secretary read letter containing 8 proposals sent to The California Oregon Power Company and which had been returned to Association with acceptance paragraph signed by Mr. J. C. Boyle, Vice President and General Manager, with two minor changes. (copies of this letter was sent to Board members prior to this meeting and copies of letter with acceptance paragraph signed will also be mailed to all concerned)/

After general discussion on letter and minor changes requested by Copco in accepting, the following action was taken:

Motion made by John A. Marshall, seconded by E. M. Mitchell, and unanimously passed that Association proposals to Copco in letter form with acceptance by Copco with two minor changes be and hereby are approved.

Motion made by W. P. Hooper, seconded by Lloyd Gift and unanimously passed that withdrawal of opposition to Bureau-Copco proposed contract, dated October 10, 1955, is hereby withdrawn and letter to that effect together with copy of signed agreement between Copco and the Klamath Basin Water Users Protective Association be forwarded immediately to Mr. C. H. Spencer, Regional Director, Bureau of Reclamation, Sacramento, California, and others concerned.

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Motion made by John A. Marshall, seconded by Frank L. King, Jr., and un-
animously passed that the Association stand the cost of gathering the necessary
facts and figures as set forth in proposal number four of letter to Copco dated
November 3, 1955.

Motion made by E. M. Mitchell, seconded by Dick Henzel and unanimously
passed that this Association hereby approves the completed compact between Oregon
and California and that this Association will appear and/or support the Klamath
River Commissions in public hearings and before the Oregon State Legislature and
the United States Congress.

The following member Districts and their representatives to this Association
during the year 1955, are:

Willow Valley Irrigation District
Meadows Drainage District
Van Brimmer Ditch Company

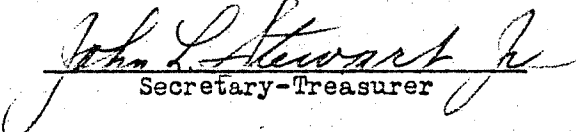
Lloyd Gift
W. P. Hooper
E. C. Lemler

Bills and vouchers in the amount of \$89.20 were presented, audited by the
Executive Committee and on motion made, seconded and duly passed, checks in payment
thereof were ordered drawn, as follows:

| | | |
|---------------------------------|---------------------|---------|
| #89 Klamath Irrigation District | Phone calls | \$ 4.80 |
| #90 Frank Z. Howard | Lunch reimbursement | 5.40 |
| #91 John L. Stewart, Jr | Serv. Secty-Treas | 79.00 |

There being no further business to come before the Board, on motion made by
W. P. Hooper, seconded by Lloyd Gift and duly passed, meeting adjourned.
Time 3:30 P.M.

ATTEST:


Secretary-Treasurer


President

KWVA 00247