

**BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON**

**UE-171**

In the Matter of the Request of	)	
	)	
	)	OREGON NATURAL RESOURCES
	)	COUNCIL'S REPLY BRIEF
PACIFIC POWER & LIGHT	)	
(PACIFICORP)	)	
	)	
Klamath Basin Irrigation Rates	)	
_____	)	

Oregon Natural Resources Council (“ONRC”) hereby respectfully submits this Reply in further support of our request to the Commission to grant PacifiCorp’s Motion for Summary Disposition in this proceeding, or in the alternative, rule that contract rates terminate immediately because they are not just and reasonable.

**I. ARGUMENT**

**A. Conditions in the Original and/or Speculations on Conditions in Future Licenses for the Klamath Hydroelectric Project Are Irrelevant to this Proceeding.**

The Commission created UE 171 out of UE 170 specifically to address the issue of “whether [Klamath Basin] irrigators should continue to be served under these historic contracts, or whether they should be treated like other irrigation customers and served under standard irrigation tariffs.” *In re Pacific Power & Light*, UE 170 & UE 171, Order No. 05-134 (OPUC March 17, 2005) at 5. In its order, the Commission makes no mention of consideration of claims related to conditions in any Federal Energy Regulatory Commission (“FERC”) license. Order No. 05-134 is clear that UE 171 will focus on the question of the contracts themselves as a matter of Oregon law and public policy.

However, in their separate Responses the Bureau of Reclamation and Fish & Wildlife Service (“Reclamation”) and Klamath Water Users Association (“KWUA”) argue that conditions in the current license for the Klamath Hydroelectric Project, or license conditions both parties speculate may be required in the future, or matters currently pending before the FERC somehow pre-empt or should interfere with the Commission’s authority to rule in this proceeding. Reclamation Response at 2, KWUA Response at 2. Whether or not these contracts arose from negotiations ordered by conditions in a federal license to operate the Klamath River dams, or from some other source, is irrelevant. They are contracts between customers and a utility within Oregon, and as such the Commission has the power and the duty to ensure that the contract rates are just, reasonable, and non-discriminatory. *See* generally OPUC Staff’s Response. Nothing in the arguments presented by Reclamation or KWUA justifies abandoning the Commission’s responsibility to exercise its judgment in this matter, or refutes the arguments presented by Commission staff. *Id.* Moreover, PacifiCorp’s Motion has made it clear that FERC has already stated that this issue is best resolved outside the FERC proceeding: “We do not consider the rates that PacifiCorp charges its customers to be an appropriate issue for analysis in this proceeding.” PacifiCorp Motion at 16. Therefore, the Commission should reject requests to defer ruling on this matter.

**B. The Original License for the Klamath Hydroelectric Project Does Not Require Perpetual Discriminatory Tariffs for Klamath Irrigators.**

Despite KWUA’s claims to the contrary, the specific discriminatory tariffs for Klamath irrigators provided by the terms of the 1956 USBR contract are not mentioned in the original license for the Klamath Hydroelectric Project and thus can not be considered

an “express condition.” KWUA Response at 2 and *In the Matter of the California Oregon Power Company Upon Application for License*, 13 F.P.C. 1, 1954 WL 47779 (January 28, 1954), Exhibit B. Instead, the license provided for the re-negotiation of an agreement for the operation of Link River Dam with a contract period not less than the period of the license. *Id.* It is indisputable that PacifiCorp will have fully satisfied this condition of the license upon expiration of the 1956 USBR contract.

In addition, the original license contemplated that the terms of the contract to operate Link River Dam would not be set in stone forever, but open to modification:

35(d) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of Link River Dam, the consideration and benefits, set forth in the Link Dam Agreement, as amended, are reasonable and adequate during the term of the agreement. Upon termination of the Link Dam Agreement other reasonable annual charges may be fixed with the approval of the Secretary of Interior for the use of Link Dam under this license and the charges may be further readjusted from time to time, as provided in the first provision of 10(e) of the [Federal Power] Act. *Id.* at 10.

In a later amendment to the original order, the Federal Power Commission (“FPC”) altered the wording of Section 35(d), but reiterated the flexible nature of the contract: “[I]n the event such charges become unreasonable they may be readjusted from time to time as provided by section 10(e) of the Act.” *In the Matter of the California Oregon Power Company Supplemental Opinion and Order Amending Order Issuing License*, 15 F.P.C. 14 WL 54507 (February 28, 1956) KWUA Response, Exhibit D at 6. Therefore, whether or not any new annual or permanent license or for the Klamath Hydroelectric Project is anticipated, there is no reasonable basis for concluding that the original license somehow required or the FPC contemplated requiring permanent discriminatory tariffs for Klamath irrigators beyond the expiration of the 1956 USBR contract.

**C. Tariffs Under the USBR and UKRB Contracts Clearly Promote Wasteful and Excessive Energy and Water Use Contrary to the Public Interest.**

Recently filed KOPWU Direct Testimony in UE-170 supports ONRC's statements in previous UE 170 and UE 171 filings that the discriminatory tariffs enjoyed by irrigators in the Klamath lead to wasteful and excessive use of power and water.

KOPWU's Direct Testimony states:

As shown in the table below, the usage of the Off-Project irrigators tends to be higher on a per customer basis than either the current Schedule 41 customers, or the On-project irrigators. For example, Off-Project irrigators' average use per customer is almost four times greater than Schedule 41 usage, and twice as much as On-project irrigators. UE 170, KOPWU Direct Testimony of Kathryn E. Iverson (May 9, 2005) at 6-7.

The table referenced shows that the Off-Project irrigators use an average of 75.79 MWh per customer while On-Project irrigators use an average of 39.24 MWh per customer non-Klamath (Schedule 41) irrigators use only 19.63 MWh per customer. *Id.* at 7.

It is reasonable to assume that irrigators using two to four times the amount of electricity to pump water as other irrigators in Oregon – irrigators generally growing similar crops and using similar irrigation techniques on similar soils – are making shockingly inefficient use of energy and water. This testimony further bolsters the findings of a report economic report on the special Klamath tariffs by William K. Jaeger, associate professor of agricultural and resource economics and Extension agricultural and resource policy specialist, Oregon State University, which anticipates conservation of energy and water if Klamath irrigators change to standard tariffs. *Energy Pricing and Irrigated Agriculture in the Upper Klamath Basin*, WaterWatch Response, Exhibit 1.

Conservation of both energy and water is in the public interest and weighs in favor of bringing the Klamath irrigators to standard tariff.

**D. Conservation and Fairness Considerations Support Termination of the Historical Contract Rates and Adoption of the Standard Tariff**

Wasteful water use in the Klamath Basin has had dire consequences for rural communities and cultures throughout southern Oregon and along the Oregon Coast, crippling a once-hardy salmon-bearing river, leaving national wildlife refuge waterfowl populations high and dry, and severely impairing recreational, tribal, and commercial fishing economies in the western and southern regions of the state. Ironically, many of the communities most impacted by the resource degradation in the Klamath are the same communities that must pay more in their monthly utility bills to support the Klamath irrigators' accustomed practice of using two to four times the amount of energy and water per customer as irrigators elsewhere in the state. Without question, this state of affairs is neither reasonable nor just.

When taking into consideration the broad and profound economic and environmental consequences of the continuation or termination of the USBR and UKRB contracts and the discriminatory tariffs provided by these expiring agreements, ONRC respectfully requests that the Commission balance these considerations with the impartial conclusions of the Oregon State University economic report on the discriminatory Klamath tariffs, which stated:

[M]ost of the irrigated lands in the Upper Klamath Basin (and in the Pacific Northwest) will be lost if the Klamath River (Klamath) is not protected. The Klamath River is a major source of water for the Pacific Northwest. The Klamath River is a major source of water for the Pacific Northwest. The Klamath River is a major source of water for the Pacific Northwest.

production and would  
continue to  
irrigate under energy prices and fees currently paid by farmers in other parts of  
Oregon or northern California. Indeed, the viability of agriculture in the region  
does not depend on the current low energy prices, although these prices provide  
significant financial benefits to landowners and owner-operators in the region. *Id*  
at 9.

## II. CONCLUSION

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

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OREGON NATURAL RESOURCES COUNCIL

By \_\_\_\_\_

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## CERTIFICATE OF SERVICE

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

Dated: May 12th, 2005

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