

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 170

In the Matter of)	
)	
PACIFIC POWER & LIGHT (dba PacifiCorp))	ORDER
)	
Request for a General Rate Increase in the)	
Company's Oregon Annual Revenues)	
(Klamath River Basin Irrigator Rates).)	

DISPOSITION: TRANSITIONAL RATES ESTABLISHED FOR
KLAMATH BASIN IRRIGATORS

SUMMARY

For almost 100 years, PacifiCorp has provided discounted power for the drainage and irrigation of land in the Klamath Basin. In exchange, PacifiCorp received the right to regulate the flow of water to its hydroelectric plants located on the Klamath River, and to construct additional hydroelectric facilities. The discounted irrigation rates benefited all of PacifiCorp’s customers by allowing the utility to efficiently operate its hydroelectric plants, reducing its overall power costs.

With the expiration of PacifiCorp’s obligation to provide discounted rates to a majority of these irrigators, we must determine the rates that are just and reasonable for these customers. Given the unique and historical link between irrigation and hydroelectric development in the Klamath Basin, we find that the region’s irrigators are entitled to establish that a mutually beneficial relationship continues to exist and seek a rate credit for any quantifiable benefits provided.

In this order, we establish a procedure by which the irrigators may further develop and refine methodologies to quantify whether the provision of inexpensive power for drainage and irrigation in the Klamath Basin continues to benefit PacifiCorp and its customers. We identify certain parameters to be included in such analysis, and encourage PacifiCorp and others to assist the irrigators in this effort.

In the interim, we begin a transition to move the irrigators from the historical rates to PacifiCorp’s general irrigation tariffs. We implement the rate mitigation provisions of recently enacted Senate Bill 81, and exercise our own authority to ensure the irrigators receive a full seven year transition period to cost-based rates.

As a result of our decision, the Klamath Basin irrigators' rates will increase an average of 34 percent. Rates for governmental pumping will increase an average of 44 percent. Even with these increases, the irrigation rates for Klamath Basin irrigators will be substantially less than those paid by other irrigators served by PacifiCorp. For example, irrigators operating within and around the Klamath Project will pay first year transition base rates of 0.82 and 0.99 cents per kWh, respectively, compared to the cost-based rate of 6.98 cents per kWh. Due to the operation of the protocol governing PacifiCorp's multi-state allocation of costs and the provisions of SB 81, the revenue shortfall associated with this mitigation results in an approximate \$1.7 million rate increase for PacifiCorp's Oregon ratepayers.

Procedural Background

On November 12, 2004, PacifiCorp filed Advice No. 04-018, an application for a general rate increase. As part of its filing, PacifiCorp proposed to change rates paid by Klamath Basin irrigators, who are currently served under two historic contracts that provide rates significantly below those paid by other irrigators. PacifiCorp seeks to move these irrigators to standard tariff rates concurrent with the April 16, 2006, expiration date of one of the contracts.

Organizations representing the irrigation customers and other interested parties intervened in the rate proceeding and participated in activities related to this issue. The following entities had party status in these proceedings: PacifiCorp, Klamath Water Users Association (KWUA); Klamath Off-Project Water Users (KOPWU); United States Bureau of Reclamation and U.S. Fish and Wildlife Service (collectively, Bureau); Oregon Natural Resources Council, WaterWatch of Oregon, and Pacific Coast Federation of Fishermen's Associations (collectively, ONRC, *et al.*); the Hoopa Valley Tribe; the Yurok Tribe; and Public Utility Commission of Oregon Staff (Staff).

Following a suspension and investigation of the rate filing, we approved new rate schedules for PacifiCorp in Order No. 05-1050. In that order, we did not substantively address rates for the Klamath Basin irrigators. Agreeing with the parties that the rate review for these customers need not be completed prior to the expiration date of one of the historic contracts, we adopted the current historic contract rates, set forth in PacifiCorp's Schedule 33, as interim rates for purposes of setting PacifiCorp's revenue requirement. *See* Order No. 05-1050 at 13. We further explained that, once a decision is made regarding the rates for the Klamath Basin irrigators, PacifiCorp would spread any revenue requirement impact arising from that decision to other customer classes through a revenue-neutral adjustment to its rate spread/rate designs.

On January 17, 2006 and February 6, 2006, parties filed simultaneous opening and reply testimony, respectively. On February 16 and 17, 2006, Michael Grant, Chief Administrative Law Judge, held an evidentiary hearing during which parties cross-examined witnesses. On March 6, 2006 and March 13, 2006, the parties filed opening and reply briefs, respectively. Oral argument was held before the Commission on March 15, 2006.

Outstanding Motions

Subsequent to oral arguments, KWUA and KOPWU filed separate evidentiary motions. Because an Administrative Law Judge ruling on the motions would have been issued shortly before the issuance of this order, we decided it was more expeditious to rule on the motions as part of this order. We address each motion in turn.

1. Motion to Reopen Record/Take Official Notice

KWUA seeks to re-open the record to allow consideration of a recent filing by PacifiCorp, in a matter related to its pending hydropower relicensing proceeding with the Federal Energy Regulatory Commission (FERC). KWUA contends that this document, entitled “Answer of PacifiCorp to Comments Regarding Readjustment of Annual Charges for the Use of a Government Dam,” contains statements that are directly related to these proceedings and should be included in the evidentiary record. Because PacifiCorp made the filing on March 20, 2006, KWUA contends it was not possible for the Commission to receive PacifiCorp’s filing prior to the close of evidentiary hearings in this proceeding. In the alternative, KWUA asks that the Commission take official notice of PacifiCorp’s representation to FERC.

PacifiCorp and Staff object to KWUA’s motion. Both parties contend that the introduction of additional evidence at this time may require additional hearings that will prevent a timely final order. PacifiCorp also contends that its filing with FERC is not relevant to these proceedings.

ORS 756.558(1) governs the introduction of evidence after the record has closed. That statute prohibits the taking of new evidence except upon a Commission order and “a reasonable opportunity of the parties to examine any witnesses with reference to the additional evidence and otherwise rebut and meet such additional evidence.” We agree with PacifiCorp that the time needed to allow other parties the opportunity to examine and rebut this new evidence would delay the issuance of this order.

While the Commission has delayed the issuance of other orders when necessary to obtain and review critical information, we will not extend this proceeding for consideration of the document identified here. Although the Commission requested the parties to address the relationship between our authority to set retail rates for PacifiCorp’s irrigation customers and FERC’s relicensing proceeding, the document KWUA seeks to introduce provides no relevant clarification on that matter. Rather, it merely presents the arguments of one party in an official proceeding that has not yet been resolved. Due to this fact, and in the interest of the timely conclusion of these proceedings, KWUA’s request to re-open the record or to take official notice is denied.

2. Motion to Strike

KOPWU seeks to strike an attachment to ONRC, *et al.*'s reply brief. The attachment, entitled Exhibit 1, is a copy of the complete response filed by WaterWatch in response to a data request by KOPWU. KOPWU introduced portions of the response at hearing, but now objects to ONRC, *et al.*'s attempt to submit the entire response after the evidentiary record has been closed.

ONRC, *et al.* responds that Exhibit 1 is necessary to clarify the record. ONRC, *et al.* contends that KOPWU misled the Commission by offering only portions of the response when it introduced it as evidence at hearing. ONRC, *et al.* claims that it did not grasp the implications of KOPWU's actions until after the filing of opening briefs, and attached Exhibit 1 to its reply brief to ensure the Commission had a complete record.

As discussed above, once the evidentiary record has been closed, new evidence may not be admitted except upon Commission order and an opportunity for rebuttal. Therefore, in order to admit Exhibit 1 in its entirety, ONRC, *et al.* must first file a motion to re-open the record. As with KWUA's motion above, the Commission would then have the opportunity to weigh the importance of the additional evidence against any delays that its introduction may cause.

ONRC, *et al.*'s reliance on the Commission's evidentiary rule of completion is misplaced. That rule, set forth in OAR 860-014-0060(2)(b), provides that, when a party seeks to introduce a partial exhibit, other parties must "be afforded an opportunity to examine the exhibit and to offer in evidence other portions of the exhibit found to be relevant." That requirement has been satisfied, as ONRC, *et al.* was afforded that opportunity during the evidentiary hearing, and by its own admission agreed to the admission of the partial exhibit submitted by KOPWU. Allowing the parties to continue arguing evidentiary issues after the record has been closed violates the principles of administrative efficiency and fairness. Due to this, and the foregoing, KOPWU's motion to strike is granted.

FINDINGS OF FACT

Based on the record in these proceedings, we make the following findings of fact:

Klamath Basin

The Klamath Basin is located in southern Oregon and northern California and encompasses the area drained by the Klamath River and its tributaries. The Klamath River begins at Upper Klamath Lake near Klamath Falls, Oregon, and flows to the southwest, entering the Pacific Ocean south of Crescent City, California.

Until the early 1900s, much of the Klamath Basin was covered with vast lakes and marshes. In 1905, the Secretary of the Department of the Interior authorized development of the Klamath Irrigation Project (Klamath Project) to drain and reclaim lands, to divert water for irrigation, and to control flooding. Shortly thereafter, the

Bureau began draining the basin's lakes and marshes and, through a network of dams and distribution canals, transformed the landscape into farmland and pasture.

Today, the Klamath Project uses waters of the interrelated Lost River and Klamath River Basins, including water controlled at Upper Klamath Lake through the Link River Dam. Water diverted into the project canals irrigates over 200,000 acres, on which farmers and ranchers produce crops and livestock. The Klamath Project is designed to efficiently use and circulate large amounts of water. The project consists of many flow-regulating structures and pumps, as well as hundreds of miles of irrigation and drainage canals, laterals, and ditches. Water in excess of the needs of irrigators is stored in regulating reservoirs, or returned back to the Klamath River.

The Klamath Project does not occupy all lands within the Upper Klamath Basin. Private landowners and irrigation districts have developed peripheral areas for agricultural uses. These so-called Off-Project lands are located primarily in the Sprague, Williamson, and Lost Rivers sub-basins, as well as areas adjacent to Upper Klamath Lake and the west side of the Klamath River. In addition to diverting waters from the Klamath River and Lost River systems, Off-Project irrigators also pump ground water for irrigation.

Hydroelectric Facilities

PacifiCorp operates seven hydroelectric facilities along the Klamath River. As currently configured, the Klamath Hydroelectric Project has a total nameplate capacity of 151 MW and an average annual production of approximately 85 aMW.

The uppermost facility is the Link River Dam, located at the outlet of Upper Klamath Lake. The Link River Dam was constructed by PacifiCorp's predecessor, California Oregon Power Company (Copco), under a 1917 contract with the Department of the Interior. Under the contract, Copco agreed to finance and construct a dam to regulate the Upper Klamath Lake in exchange for the right to operate the dam in the future. Copco also agreed to maintain the lake at specified elevations for irrigation purposes and furnish water to the irrigators, and was allowed to use surplus water to generate electricity. Copco agreed to supply electricity to the United States and the irrigators at fixed rates for the purpose of pumping of irrigation and drainage water.

In 1951, Copco sought authority to construct additional hydropower facilities on the Klamath River. In 1954, the Federal Power Commission (FPC) authorized construction of the resources, but required Copco and the Secretary of the Interior to either amend the Link River Dam contract, or negotiate a new long term contract that extended the fixed rates for irrigation.

During negotiations to renew the Link River Dam Contract, irrigators insisted that Copco provide contract rates for irrigation and pumping to all customers located within the Klamath River Basin, including the Off-Project irrigators located outside the Project boundaries. Negotiations ultimately resulted in separate contracts for

the On-Project and Off-Project irrigators. The On-Project Contract, entered between Copco and the Department of the Interior, required Copco to furnish electric power to On-Project irrigators at a rate of 0.6 cents per kWh. In addition, Copco was required to provide electric power to the federal government for the removal of water from the Tule Lake and Lower Klamath Lake at 0.5 cents per kWh on-peak, and 0.3 cents per kWh off-peak. The contract, which expires on April 16, 2006, was approved by this Commission on March 9, 1956.

The Off-Project Contract, executed between Copco and an association representing Klamath Basin irrigators, required Copco to provide service to Off-Project irrigators at a rate of 0.75 cents per kWh. The agreement contains no express termination date. While there is no record of this Commission approving the Off-Project Contract, PacifiCorp has provided service to Off-Project irrigators at these rates since 1956.

In 1957, Oregon, California, and the United States executed the Klamath River Basin Compact (Compact). The Compact, enacted in 1957 and codified in ORS chapter 542, is intended to “facilitate and promote the orderly, integrated and comprehensive development, use, conservation and control” of the Klamath River for various uses. These uses include the protection of fish and wildlife, hydroelectric development, irrigation, and flood control. Article IV of the Compact specifically addresses hydroelectric development:

HYDROELECTRIC POWER

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 water of the Klamath River Basin, to provide for the most efficient use of available power head and its economic integration with the distribution of water for other beneficial uses in order to secure the most economical distribution and use of water and lowest power rates which may be reasonable for irrigation and drainage pumping, including pumping from wells.

PacifiCorp became a successor to the On-Project and Off-Project Contracts when it acquired Copco in 1961. Both contracts were incorporated in PacifiCorp’s Oregon tariffs as Schedule 33, which sets rates for the Klamath River Basin irrigators at the level “specified by applicable contract.” Other irrigation customers in Oregon served by PacifiCorp receive service under Schedule 41, which contains the generally applicable cost-based rate, on average, of 6.98 cents per kWh.

Under Schedule 33, PacifiCorp currently serves approximately 1,400 On-Project irrigators and 700 Off-Project irrigators. These irrigators’ average use is greater than the average use of irrigators served under Schedule 41. While the average Schedule 41 customer uses 19.63 MWh, the average On-Project and Off-Project customer uses 39.24 MWh and 75.79 MWh, respectively.

PacifiCorp's hydroelectric production from its facilities on the Klamath River depends primarily upon the amount, timing, and predictability of water flow. Natural stream flows in the Upper Klamath Basin vary from month to month and year to year. At many times during the winter months, water flows exceed capacity, resulting in water being spilled past the hydropower facilities. In the summer months, flow is greatly diminished due to the lack of rain, but supplemented with releases of stored water in the Upper Klamath Lake.

In recent years, PacifiCorp's ability to operate its hydroelectric facilities has been limited by competing demands for water in the Klamath Basin and requirements imposed by federal law. In 1997, the Bureau recognized these limitations in a temporary modification to the On-Project contract:

[I]t has become evident that the water supply in the Klamath Basin cannot always meet the needs of the species listed pursuant to the Endangered Species Act (ESA), Tribal trust resources, irrigated agriculture, and wildlife refuges. As a result, PacifiCorp's ability to exercise its discretion in operating Link River Dam for power purpose has been restricted. In addition, the most recent listing of the Coho salmon under the ESA has caused Reclamation to review its Klamath Project operations.

The FERC is currently reviewing PacifiCorp's application for the continued operation of its Klamath Hydroelectric Project No. 2082. PacifiCorp's current license for the Project expired on March 1, 2006.

DISCUSSION

I. What are the appropriate rates PacifiCorp should charge the Klamath Basin irrigators for electric service?

Applicable Law

In this proceeding, we have previously confirmed our authority to examine the rates paid by the Klamath Basin irrigators. In Order No. 05-726, we explained that this Commission’s broad ratemaking power cannot be limited by private contract. *See American Can Co. v. Davis*, 28 Or App 207, *rev den* 278 Or 393 (1977). Thus, while the Commission had previously approved the On-Project and Off-Project Contracts, we have the continuing authority and obligation to review the appropriateness of the contract rates and modify them upon a proper showing.¹

We also previously determined that our examination of the rates in this proceeding is governed by the “just and reasonable” standard set forth in ORS chapters 756 and 757. In Order No. 05-1202, we concluded that this standard, used to set rates for all other customers in Oregon, also applied to establishing rates to be paid by the Klamath Basin irrigators.

Before us now is the question whether the current rates paid by the Klamath Basin irrigators are justifiable under the just and reasonable standard. To be just and reasonable, rates must be cost-based and non-discriminatory. No utility may collect from any customer more or less compensation for any service than is collected from any other customer receiving “like and contemporaneous service under substantially similar circumstances.” ORS 757.310(1)(b); *see also, Publishers Paper Co. v. Davis*, 28 Or App 189, 196 (1977).

To approve a rate different than PacifiCorp’s standard irrigation tariff set forth in Schedule 41, we must find a substantial and reasonable basis for establishing a separate rate classification for Klamath Basin irrigators. Under ORS 757.230(1), the Commission “may authorize classifications or schedules of rates applicable to individual customers or groups of customers.”² The Commission has broad authority under ORS 757.230 and may “use any economic justification—so long as it is a reasonable one—in the creation of customer classes.” *In re Portland General Electric and PacifiCorp*, UE 101/DR 10, Order No. 97-408 at 6.

¹ For this reason, we reject the Off-Project’s renewed argument that the Commission may not modify the Off-Project rates because the agreement applicable to those customers contains no expiration date.

² ORS 757.230(1) further provides that “such classification may take into account the quantity used, the time when used, the purpose for which used, the existence of price competition or a service alternative, the services being provided, the conditions of service and any other reasonable consideration.”

Summary of Arguments

PacifiCorp, Staff, ONRC, *et al.*, and the Hoopa Valley Tribe contend that the discounted electric rates provided under historic contracts to the On-Project and Off-Project irrigators are not “just and reasonable” under ORS chapters 756 and 757. The parties point out that these rates, which are less than one-tenth of the rates paid by other irrigators, fail to cover PacifiCorp’s cost of service. As a result, the parties continue, other PacifiCorp customers subsidize the Klamath Basin irrigators by approximately \$10 million per year, thus discriminating against other irrigation customers and imposing additional costs on other customers, including residential and business customers. ONRC, *et al.* and Hoopa Valley Tribe also contend that these subsidized power rates encourage increased energy usage and water consumption that adversely affects the environmental health of the Klamath River Basin to the detriment of tribal communities and commercial fishing activities.

According to PacifiCorp, Staff, ONRC, *et al.*, and the Hoopa Valley Tribe, the Klamath Basin irrigators should be served under Schedule 41, which the Commission has previously determined to be “just and reasonable” for agricultural pumping loads under 1,000 kWh.³ The parties assert that the Klamath Basin irrigators are similarly situated to other irrigation customers served by PacifiCorp in Oregon, noting that they also use power for irrigated agriculture and have similar power usage distributions. The parties contend that there is no substantial difference between power used for agricultural and irrigation purposes in Medford, the Willamette Valley, or the Klamath Basin. They argue, therefore, that the current On- and Off-Project rates are not just and reasonable, are discriminatory, and cannot be justified under Oregon’s rate setting statutes.

KWUA, KOPWU and the Bureau⁴ claim that there is a substantial and reasonable basis for establishing a separate rate classification for Klamath Basin irrigators. While the parties present varying rationales, collectively they raise two fundamental arguments to justify a lower rate. First, these parties contend that Klamath Basin irrigators have different usage characteristics than other irrigators in PacifiCorp’s service territory. They contend that On-Project and Off-Project customers are less costly to serve, and that the On-Project irrigators’ end use of power is different than other Schedule 41 customers. Second, they argue that irrigation and hydropower are interdependent in the Klamath Basin, a fact they contend is reflected in the Klamath Basin Compact. These parties claim that, due to this interdependence, the Klamath Basin irrigators provide quantifiable operational benefits to PacifiCorp’s system, primarily in terms of increased flows and control and storage of water.

We more fully describe below the irrigators’ two primary arguments in support of a separate rate classification. Each summary is followed by a review of the other parties’ opposition to each proposal, and Commission resolution.

³ PacifiCorp notes that one Klamath Basin irrigator has a load size of 1,000 kWh or greater and should be served under Schedule 48.

⁴ As the Bureau correctly points out, the rates at issue also apply to federal agencies in their use of power for irrigation and drainage purposes within the Klamath Project.

A. Usage Characteristics

Irrigators' Arguments

KWUA, KOPWU and the Bureau contend that the Klamath Basin irrigators are entitled to a separate rate classification because they use more electric power on average than other irrigation customers. This increased use, the parties argue, decrease PacifiCorp's delivery-related costs for the Klamath Basin irrigators. Using PacifiCorp's cost of service studies, KWUA calculates this cost differential for On-Project customers to be approximately 1.6 cent per kWh less than other Schedule 41 customers.

KWUA also contends that there are significant differences in the end-use of power between the On-Project irrigators and Schedule 41 customers. KWUA claims that the On-Project irrigators require a significant amount of power to operate the Project, which involves pumping and circulating of large quantities of water for irrigation and returning unused water to the Klamath River. KWUA argues that this increased use, required for the operation of the Project, provides a legitimate basis for treating the On-Project irrigators as a separate customer class under ORS 757.230(1).

Non-Irrigators' Arguments

PacifiCorp, ONRC, *et al.*, the Hoopa Valley Tribe and Staff counter that purported differences in average usage and end-use of power are not a valid basis for a separate customer classification. PacifiCorp contends that the Commission must look beyond a simple comparison of average cost differences and examine whether any differences in general use characteristics actually exist. In that respect, PacifiCorp contends that no service characteristics exist, as the Klamath Basin irrigation customers, like Schedule 41 customers, take service for agricultural pumping, the majority of their usage occurs in the summer, nearly all take service at secondary distribution voltage, and the aggregate load factors are between 12 and 13 percent.

Staff also contends that the Klamath Basin irrigators' higher use of electricity is simply explained by the price elasticity of demand. Assuming the existence of a negatively sloping demand curve for electricity, Staff states that the higher consumption by the Klamath irrigators is significantly linked to the very low price they pay for electricity.

Commission Resolution

We reject the irrigators' argument that their (the Klamath Basin irrigators') higher average power usage provides a basis for a separate rate classification. A comparison of average use for Schedule 33 and Schedule 41 customers is misleading and ignores the variance in individual customer usage within each schedule. Both rate schedules serve a wide range of customers, from those that consume little or no energy to others that consume over 1,000 MWh per year. A comparison of the average usage for customers served under these two schedules does not demonstrate that the cost of serving each Klamath Basin irrigator is lower than the cost of serving each Schedule 41 customer.⁵

In addition, the irrigators' proposal, if adopted, would discriminate between customers with substantially similar service characteristics. If separate rates were adopted for a subgroup of customers based solely on geographic location and differences in average customer usage, similarly sized irrigation customers in Medford and Klamath would pay different rates, despite no differences in load characteristics. In fact, a large irrigation customer in Medford would pay a higher per-unit rate than a smaller Klamath Basin irrigator—a result contrary to the irrigators' premise that higher-use customers should pay a lower per-unit rate for delivery related costs than lower-use customers.

The irrigators also fail to recognize that Schedule 41 currently accommodates irrigation customers that consume higher than average amounts of electricity. As PacifiCorp points out, basic charges and load size charges under Schedule 41 vary according to customer usage. Thus, irrigators that consume higher amounts of electricity pay a lower per-unit cost than customers that consume less.

We are not persuaded by KWUA's claim that the On-Project irrigators should be treated as a separate class because they use power for the operation of the Project. As further discussed below, we acknowledge the uniqueness of the Project and further discuss whether its collective activities may provide value to PacifiCorp's hydroelectric projects. However, like other Schedule 41 customers, the On-Project customers, as well as the Off-Project customers, individually use power to pump water and operate sprinklers for the purpose of irrigating crops and draining land. Accordingly, we conclude that there are no service differences that warrant a separate rate classification for the Klamath Basin irrigators.

⁵ We agree with Staff that the higher average consumption by the Klamath irrigators is influenced by the low price they pay for electricity. If the On-Project and Off-Project customers were moved to standard tariff rates, economic theory would suggest that their consumption would decrease.

B. Quantifiable Benefits

Irrigators' Arguments

KWUA, KOPWU, and the Bureau contend that an interdependent relationship exists between the drainage and irrigation of the Klamath Basin and the operation of PacifiCorp's hydroelectric facilities. The parties assert that discounted electric rates are necessary for the proper irrigation and drainage of lands, both within and adjacent to the Project, and that such activities benefit PacifiCorp and its customers by allowing a more efficient operation of the Klamath hydroelectric facilities and increased peaking capacity. The irrigators maintain that this interdependent relationship is recognized in the historical agreements between PacifiCorp, the federal government and the irrigators, as well as Klamath River Basin Compact. Because of this interdependence, the parties contend that the Klamath Basin irrigators provide quantifiable operational benefits to PacifiCorp's hydropower facilities.

KWUA, KOPWU and the Bureau introduced substantial evidence in an effort to quantify this benefit for ratemaking purposes. For clarification, we separately address the purported benefits provided by the On-Project and Off-Project irrigators.

On Project

KWUA and the Bureau identified three specific sources of flow benefits provided by On-Project irrigators: (1) The introduction of water from the Lost River Basin; (2) The return flow of water in excess of the Project's needs to the Klamath River; and (3) The storage and withdrawal of water, primarily in Upper Klamath Lake, that results in Klamath River flows greater than could otherwise occur at certain times of the year.

To quantify On-Project benefits, KWUA compared inflows to Upper Klamath Lake to the flow of water at Keno Dam, with consideration of the Project's water use. To recognize the fact that the Project has water rights senior to those of PacifiCorp, KWUA adjusted (reduced) the Upper Klamath Lake inflow by amounts estimated to equal the Project's consumptive use of water. KWUA accomplished this by the use of crop acreage and established evapotranspiration⁶ coefficients. KWUA completed its calculations by comparing the adjusted inflow data to the flow at Keno Dam. According to KWUA, when flow at Keno is greater than the adjusted net Upper Klamath Lake inflow, the operation of the Project has resulted in increased flow available for potential generation. KWUA estimated that the additional water to the Klamath River from the Project is approximately 261,000 acre-feet per average water year.

KWUA maintains that these increased flows have a direct monetary value to PacifiCorp. Using average monthly flow volumes, KWUA converted the incremental

⁶ Usually abbreviated as ET, evapotranspiration is an estimate of how much water is needed for agricultural land, taking into account both evaporation and plant use.

water supply into energy value using current forward prices. Assuming all additional water is used for generation, KWUA estimated that this water has an annual value to PacifiCorp of \$10.8 million. KWUA recommends that one-half of this value—\$5.4 million or 6.4 cents per kWh—be credited to the On-Project customers. Alternatively, KWUA suggests the benefit be recognized by setting the On-Project irrigators' equal to PacifiCorp's cost of generation at the Klamath Hydroelectric Project. KWUA calculates the generation costs of these facilities to be approximately 1.5 cents per kWh.

Off-Project

KOPWU identified two sources of flow benefits provided by Off-Project irrigators: (1) The increase of flows through pumping of ground water for irrigation; and (2) The draining of former marshland and open water areas. KOPWU maintains that water pumped from the groundwater aquifer for irrigation either augments return flow or decreases surface withdrawals from the Klamath River. Similarly, KOPWU claims drained lands increase water flow because those lands used more water in their natural wetland condition through evaporation and increased consumption of water by wetland plants.

To quantify the increased water supply produced by groundwater irrigation, KOPWU estimated the amounts and locations of groundwater-supplied Off-Project lands. It then developed an irrigation water budget for those lands to quantify the groundwater-derived return flows that ultimately increase the water supply to the Klamath River. KOPWU estimates Off-Project irrigators pump approximately 120,000 acre-feet of groundwater and return at least 73,000 acre-feet to the Klamath River system.

To assess the increased water supply produced by drainage of lands, KOPWU estimated the amounts of Off-Project irrigated lands that were former marsh and open water areas, then quantified the amounts of evapotranspiration associated with those lands in their pre-development and post-development conditions. KOPWU estimates that the drainage of the Off-Project lands increases flows in the Klamath River by approximately 58,000 acre-feet.

KOPWU contends that the increased water from pumping of water for agricultural irrigation and drainage purposes on Off-Project lands allows PacifiCorp to generate an additional 81,000 MWh annually. Valuing this additional generation, using PacifiCorp's 30-year average power price of \$68.86 per MWh, KOPWU estimated the annual benefit to PacifiCorp to be approximately \$5.6 million.

Non-Irrigators' Arguments

PacifiCorp, ONRC, *et al.*, the Hoopa Valley Tribe and Staff dispute the claims that the Klamath Basin irrigators provide compensable value to PacifiCorp's hydropower facilities. These parties raise numerous arguments challenging the underlying premise of the claim, the methodologies employed to quantify the benefits, and assumptions and calculations used by the irrigators.

At the outset, PacifiCorp and Staff contend that increased flows from irrigation activities are not a benefit that should be considered in retail ratemaking. They point out that other regulated Oregon electric utilities do not compensate upstream irrigators for increased stream water flows. Staff and PacifiCorp do not believe a utility should provide credits or discounts to a group of customers to compensate them for undertaking activities required by their normal agricultural operations.

Next, PacifiCorp, ONRC, *et al.*, the Hoopa Valley Tribe and Staff contend that the irrigators' methodologies to quantify benefits are fundamentally flawed. First, the parties claim that KWUA and KOPWU overstate return flows because they ignore the irrigators' significant diversions and use of water. The parties point out that even KWUA's analysis shows that the Project diverts significantly more water from the Klamath River system than it returns. Second, they contend the assumption that the irrigators should receive compensation for return flows that reenter the Klamath River is contrary to Oregon water law. The parties explain that all excess and unused waters belong to the public. Because the irrigators have no legal rights in water they do not use for a beneficial purpose, the parties contend these irrigators have no claim to compensation for any subsequent use of the water for hydropower generation.

In addition, PacifiCorp contends that KWUA's estimates of the Project's consumptive use are overstated and unreliable. PacifiCorp argues that KWUA's calculations fail to recognize that some of the consumptive use is satisfied by almost 60,000 acre feet of rain that falls annually on Project lands. PacifiCorp further criticizes the consumptive use analysis for failing to adjust for limitations—both legal and physical—on the Project's ability to divert water.

Addressing the Off-Project irrigators' claims of increased flow resulting from groundwater pumping, PacifiCorp and ONRC, *et al.*, argue that KOPWU's methodology fails to recognize the well documented hydrologic connection between the groundwater aquifer and surface flows in the Klamath Basin. These parties maintain that, due to this connection, groundwater pumping diminishes, rather than enhances, river flows. ONRC, *et al.*, also contend that KOPWU failed to properly account for evaporation resulting from irrigation conveyances and practices that can cumulatively add up to significant water losses.

In addition, PacifiCorp and ONRC, *et al.*, assert there are flaws in KOPWU's estimates of increased water made available through drainage of natural wetlands. The parties believe that, due to a number of mathematical and hydrologic

errors, KOPWU over-estimates the amount of wetland evaporation that naturally occurred, then under-estimates evaporative losses from croplands.

Finally, PacifiCorp, ONRC, *et al.*, and the Hoopa Valley Tribe contend that the irrigators' analyses are incomplete because they fail to consider whether any purported increases in flow can actually be used to generate electricity. The parties note that KWUA's estimated 261,000 acre feet of increased flow does not reflect any adjustment to account for flows that must be spilled and are unusable for power production. Instead, KWUA simply counted "every single drop" of assumed increase in flow as being used for power generation. Similarly, KOPWU does not account for times when increased flow occurs during high run-off periods that have little or no hydroelectric generation value. Because a significant amount of the purported increase in flow occurs during high water periods or other times when spills are legally required, the parties contend that the irrigators have significantly overestimated the benefit from purported increases in flow between Upper Klamath Lake and Keno. Moreover, PacifiCorp and ONRC, *et al.*, emphasize that, because the return flows are not predictable, they are often not useable for hydropower generation and can cause water management problems.

Commission Resolution

Rate credits are a common regulatory tool used to compensate customers for the value they add to a utility's system. For example, the Commission has authorized PacifiCorp to extend rate credits or compensation to customers that add value to the system through curtailing loads, producing excess electricity, or purchasing renewable energy.⁷

The concept of providing rate credits to upstream water users is unprecedented, and this Commission has not previously addressed circumstances as unique as those existing in the Klamath Basin. With the coordinated assistance of the federal government, approximately 2,000 irrigators drain and irrigate over 200,000 acres of land located within and adjacent to the Klamath Project. Through an extensive and integrated system of flow regulating structures and hundreds of miles of canals, these irrigators pump, divert and circulate water for irrigation, and return water to the Klamath River for electric generation purposes.

Under agreements with the federal government and the irrigators, PacifiCorp has provided discounted power for the drainage and irrigation of land in the Klamath Basin for almost 100 years. In exchange, PacifiCorp received the right to regulate the flow of water to its hydroelectric plants located on the Klamath River, and to construct additional hydroelectric facilities. These agreements benefited all of PacifiCorp's customers by allowing the utility to efficiently operate its hydroelectric plants and provide additional peaking capacity, thereby reducing its overall power costs.

⁷ See, e.g., Oregon Schedules 71, 72 and 73.

Furthermore, the Klamath River Basin Compact recognizes the interdependence between irrigation and hydroelectric development within this region.

In light of this historical link between irrigation and hydroelectric development in the Klamath Basin, we find that the region's irrigators should be given the opportunity to establish that a mutually beneficial relationship continues to exist. While PacifiCorp's obligation to provide inexpensive electricity soon terminates, the irrigators contend that their pumping of groundwater and irrigation water management practices—made possible only through the use of discounted electricity—provide quantifiable operational benefits to PacifiCorp's hydroelectric system. To the extent this assertion can be established, the Klamath Basin irrigators should receive an appropriate rate credit to ensure the continuation of these actions that benefits all PacifiCorp's customers.

The more difficult task is quantifying the value provided by the irrigators for purposes of establishing whether a rate credit is justified. Any rate credit, obviously, necessitates an accurate quantification of the value provided. Unfortunately, as we have learned here, measuring purported benefits from the Klamath Basin irrigators is a complex matter requiring a detailed understanding about the relationship among the Klamath Basin's climate and hydrology, the irrigators' use and management of groundwater and surface flows, and PacifiCorp's operational capabilities of its hydroelectric facilities.

The irrigators have collected extensive data on these matters and proposed methodologies to measure and price this purported value. However, they themselves acknowledge their efforts could be refined with further investigation. PacifiCorp offered no competing methodology. Rather, PacifiCorp admits that the irrigators likely provide some benefit, but questions the ability to quantify any such benefit for purposes of ratemaking. PacifiCorp also joins other parties and criticizes the appropriateness and accuracy of many assumptions and calculations contained in the irrigators' proposals.

We appreciate the irrigators' significant efforts to gather this information and develop methodologies for our consideration. We have learned a significant amount about the relationship between irrigation and hydropower in the Klamath Basin. We find that there is insufficient evidence in this record, however, to support the proposed rate credits. We need more information about the Klamath Basin, the irrigators, and PacifiCorp's hydropower facilities in order to conclusively quantify value and establish any appropriate credit. Moreover, we share some of the concerns raised by PacifiCorp and other parties about the irrigators' proposed methodologies, as well as the underlying assumptions and calculations contained therein.

We need not, however, make a final decision finalizing the rates to be charged the Klamath Basin irrigators in this order. As KWUA indicates, Senate Bill 81 (SB 81), passed by the 2005 Oregon Legislative Assembly, requires this Commission to mitigate any rate increase resulting from the transition of the Klamath Basin irrigators to PacifiCorp's generally applicable tariffs. *See*, ORS 757.227. As further discussed below, increasing the current Schedule 33 rates by the maximum allowed under SB 81 for the

next two years yields rates less than those proposed by the irrigators. Consequently, there is additional time to improve and refine the calculations of the benefits provided by the Klamath Basin irrigators.

Accordingly, we will begin the process to transition the Klamath Basin irrigators to generally applicable cost-based rates, and direct PacifiCorp to file tariffs consistent with our decisions set forth in Section II below. During the initial phase of this transition, the Klamath Basin irrigators will have the opportunity to further develop and refine methodologies to quantify whether the provision of inexpensive power for drainage and irrigation in the Klamath Basin benefits PacifiCorp and its customers. We encourage PacifiCorp, Staff, and the other parties to this proceeding to work cooperatively with the irrigators in this effort.

The irrigators may then present this information and request an appropriate credit during a future proceeding to review an annual adjustment filing by PacifiCorp to further transition rates to standard tariffs. The Commission may suspend the annual filing for investigation, or allow the adjustment to go into effect subject to refund, to ensure sufficient time to consider the evidence provided. During any such evaluation, the evidentiary burdens will remain unchanged from this proceeding. While PacifiCorp will bear the burden of persuasion as to the reasonableness of any rate change, the irrigators will bear the burden of producing evidence to establish that a rate credit is justified. *See* ORS 757.210; *In Re Northwest Natural*, Order No. 99-697.

To assist a future valuation proceeding, we take this opportunity to identify three essential features that must be included in any quantification of benefits to justify a rate credit. First, any analysis must acknowledge that we are setting rates on a going forward basis. Because other customers will be required to absorb any costs resulting from a rate credit, benefits must be quantified on a prospective basis. In other words, for a rate credit to be justified, the Commission must find that the provision of discounted electric rates to the Klamath Basin irrigators will continue to provide value to all of PacifiCorp's customers. That is, evidence must demonstrate that the amount of operational benefits to PacifiCorp's system exceeds that which would occur if Klamath Basin irrigators were charged standard tariff rates.

Second, any analysis of benefits must consider all factors that impact the Klamath River stream flow, including the irrigators' use of water for irrigation. While the irrigators may lawfully be entitled to the beneficial use of this water, the potential impact that these diversions may have on PacifiCorp's hydroelectric system cannot be ignored. Again, the question is one of ratemaking, not water law.⁸ The Commission must examine the entire relationship between discounted electric rates and the effects those rates have on PacifiCorp's operation of its downstream hydroelectric facilities. No

⁸ For similar reasons, questions as to the irrigators' legal rights to water that re-enters the Klamath River are immaterial to this exercise. The irrigators seek compensation not for the water that has returned to public ownership, but rather for the water management practices that purportedly benefit PacifiCorp's system by increasing and regulating the flow of the Klamath River.

benefit can be found if the net result of the irrigators' use of discounted electricity actually depletes stream flow and reduces generation capability.

Finally, the mere presence of increased return flows does not, in and of itself, establish a quantifiable benefit. Any analysis must also establish that the augmented flows can actually be used to generate electricity, and provide a reasonable valuation of that electricity. Increased flows that occur during high run-off periods have little or no hydroelectric generation value. Similarly, unpredictable flows often are not useable and may cause water management problems. A proper examination of potential benefits must accurately reflect these and other limitations to PacifiCorp's generation capabilities and use of any electricity produced.

II. If any rate change affecting these customers is implemented, how and when should these customers be transitioned from the rates established in the historical contracts?

Having determined to transition the Klamath Basin irrigators from the rates contained in the historic contracts, we must now address how to implement these rate changes. No party challenges the reasonableness of the rates contained in PacifiCorp's generally applicable irrigation tariff. Given the significant rate increase that would result from a move from the contract rates to the cost-based rates, however, the irrigators contend that the Commission must mitigate the impact of any such transition.

Applicable Law

This Commission has broad ratemaking authority to ensure that rates charged to customers are fair, just, and reasonable. *See* ORS 756.040. Under this authority, the Commission may mitigate the impact of rate changes to help avoid rate shock. *See* Order No. 01-988. When allocating a utility's revenue requirement among customer classes, the Commission has often adopted a policy of gradualism to avoid a substantial rate increase for a particular customer class. For example, in *Re Pacific Northwest Bell*, Order No. 90-920, the Commission had to allocate a telephone company's revenue requirement between non-basic services, such as long distance, and basic services. Because non-basic services were traditionally priced above cost in order to subsidize basic services, the Commission implemented transitional rates rather than an immediate change to cost-based pricing, in an effort to avoid rate shock.

In addition to this discretionary authority, SB 81, noted above, requires the Commission to mitigate rate increases caused by a change from rates set in contract to those contained in a utility's generally applicable cost-based tariff. The provisions of SB 81 require a utility to provide a rate credit for seven years to ensure that any such rate increase does not exceed 50 percent per year. The relevant provisions of ORS 757.227 provide:

(2) The Public Utility Commission shall require that an electric company mitigate a rate increase payable by a class of customers [defined to include the Klamath Basin irrigators] if:

(a) The increase results from a transition to an electric company's general applicable cost based rate from rates established under contracts [defined to include the On-Project and Off-Project agreements]; and

(b) The increase in the cost of electricity to that class of customers by reason of the transition will exceed 50 percent during the first 12 calendar months after the transition occurs.

(3) The commission shall require an electric company to mitigate a rate increase under this section by means of a schedule of rate credits for the class of customers [defined to include the Klamath Basin irrigators]. The rate credits provided by an electric company under the schedule shall automatically decrease each year to the lowest credit necessary to avoid a rate increase that is greater than 50 percent in any subsequent year. Rate credits under this section may not be provided for more than seven years after the transition occurs.

(4) For the purpose of determining the increase in cost of the electricity to a class of customers by reason of a transition described in subsection (2)(a) of this section, the commission shall:

(a) Include the total charges for electricity service, including all special charges and credits other than the rate credit provided under this section; and

(b) Exclude any local taxes or fees paid by the class of customers.

Positions of the Parties

There is no dispute that the rate mitigation provisions of ORS 757.227 apply if the Klamath Basin irrigators are moved from the historical contract rates to PacifiCorp's generally applicable cost-based rate schedules. The parties further agree that these rate mitigation provisions apply to existing metering points at which service is now provided under the On-Project and Off-Project contract rates. This would be the case even for new customers that take service at currently existing metering points. In addition, that the cost-based rate should be based only on energy-only charges, and not include energy demand charges, at least during the transition period.

The parties disagree, however, as to how rates during the transition period should be calculated and, consequently, present different formulas to determine the transitional rates. The primary dispute centers on the rate to which the 50 percent cap applies. On one hand, the irrigators contend that the Commission should use the Schedule 33 rates as adjusted by all applicable special charges and credits. KOPWU explains that the Klamath Basin irrigators' rates are currently subject to three adjustment schedules:

Schedule 91 – Low Income Bill Payment Assistance Fund
 Schedule 98 – Bonneville Power Administration (BPA) Exchange Credit
 Schedule 290 – Public Purpose Charge

Because ORS 757.227(4)(a) requires inclusion of all “special charges and credits,” KWUA and KOPWU contend that the adjustments must be included to ensure that the Klamath Basin irrigators do not experience a bill increase greater than 50 percent in a given year.

On the other hand, PacifiCorp and Staff contend that the Commission should use the Schedule 33 rates without adjustment. According to PacifiCorp, the highlighted language referring to “all special charges and credits” does not include the BPA exchange credit, and that the BPA credit must be excluded to ensure that this federal benefit is not diluted to qualified customers receiving it. PacifiCorp maintains that this is consistent with Commission practice, adding that the effects of the BPA credit have not been included in determining rate spread and rate design in the company's recent general rate cases. Staff contends that the irrigators' methodology circumvents the intent of the legislation to provide the Klamath Basin irrigators a seven-year transition period to standard tariffs.

The two proposals yield significantly different transitional rates, primarily due to the size of the BPA credit. This credit, provided to qualifying Schedule 33 customers, is currently 0.488 cents per kWh.⁹ The following chart compares the

⁹ Certain Schedule 33 customers, including the federal agencies and a golf course, are not qualifying customers for the BPA credit because they do not use electricity for agricultural pumping.

transitional rates, expressed in cents per kWh, for both the On-Project and Off-Project irrigators under the two proposals:

YEAR	Irrigators' Proposal		PacifiCorp's and Staff's Proposal ¹⁰	
	On-Project	Off-Project	On-Project	Off-Project
Current Rate	0.16	0.32	0.6	0.75
2006	0.24	0.48	0.9	1.13
2007	0.37	0.71	1.35	1.69
2008	0.55	1.07	2.03	2.53
2009	0.83	1.61	3.04	3.80
2010	1.24	2.41	4.56	5.70
2011	1.86	3.62	6.83	8.54
2012	2.79	5.42	10.25	12.81

Commission Resolution

In analyzing ORS 757.227, we use the method set forth in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12 (1993). We begin with the text and context of the statute, using rules of construction of statutory text. If the intent of the legislature is not clear from that inquiry, we then examine legislative history. If that too fails, we then turn to general maxims of statutory construction. *See id.*

The statute first defines the triggering event to determine whether a customer qualifies for the rate credit. The trigger is two-fold: First, the increase in rates must result from a change to a utility's generally applicable cost-based rate from rates established under long-term contracts. Second, the increase in the "cost of electricity" must be more than 50 percent during the first year after the transition occurs. *See* ORS 757.227(2)(a) and (b). Next, the statute provides for a "rate" credit to avoid a "rate" increase that is greater than 50 percent in any subsequent year. Such "rate" credits are limited to a seven year transition period. *See id.* at (3). Then, the statute defines how the Commission must determine the increase in the "cost of electricity" to a class of customers. *See id.* at (4).

The parties dispute the interpretation of the "rate" in subsection (3) that is subject to a cap of a 50 percent increase per year. KWUA and KOPWU appear to argue that the "rate" in section (3) is the same as the "cost of electricity" defined in subsection (4), as including the "total charges for electricity service, including all special charges and credits other than the rate credit" provided by ORS 757.227. In essence, the "cost of electricity" is the actual amount paid by the customer for the electricity after adjusting for any credits and charges. The irrigators' reading that equates "cost of electricity" with "rate" is a plausible interpretation, considering the parallel structure

¹⁰ The proposals offered by PacifiCorp and Staff differ with respect to the post-calculations treatment of credits and charges, as well as adjustments to the BPA credit. These differences are further addressed below.

between the 50 percent increase in the cost of electricity trigger in subsection (2), and the 50 percent cap on the annual increase in rates in subsection (3). *See Davis v. Wasco IED*, 286 Or 261, 272 (1979) (“whenever possible the court should construe together statutes on the same subject as consistent with and in harmony with each other”).

Under PacifiCorp’s and Staff’s proposal, the “rate” subject to the cap refers to the base rate charged for electricity, and does not include all of the charges and credits that are used to calculate the “cost of electricity.” This interpretation is also plausible. The law refers separately to the “cost of electricity” and the “rate,” implying two different meanings. *See Premier West Bank v. GSA Wholesale, LLC*, 196 Or App 640, 651-52 (2004) (“Ordinarily, when the legislature has used different terms in related statutes, we infer that it intended different meanings.”). Under this interpretation, the rates subject to the cap in subsection (3) would refer strictly to the gross rates, and would not include the charges and credits as set forth in subsection (4) that would be included to determine whether the trigger is met under subsection (2).

Given the two plausible interpretations, we refer to legislative history. That examination supports the latter reading of the statute: The rate should be increased each year, without consideration of special charges and credits. During floor speeches in both the Senate and the House, legislators addressed the rate mitigation for Klamath Basin irrigators. In the Senate, Senator Whitsett discussed the history underlying the contract rate and explained that, under the bill, the rate will be increased to reach the “full market tariff on the 7th year.” *See Floor Statement, Oregon State Senate, SB 81, July 11, 2005, 10:10* (statement of Doug Whitsett, State Senator). Senator Whitsett concluded that “this measure will simply prevent the Commission from increasing the rate more than 50 percent per year.” *See id.* at 14:00. In the House, Representative Garrard similarly referred to “rates” and not customer bills nor the cost of electricity. *See Floor Statement, Oregon House of Representatives, SB 81, June 2, 2005, 1:34:30* (statement of Bill Garrard, State Representative).

Both legislators assumed that annual 50 percent increases for seven years would result in the full tariff rate. Under KWUA’s and KOPWU’s proposed calculations, On-Project and Off-Project irrigator rates would be only 40 percent and 70 percent, respectively, of the standard rates after seven years, falling well short of the result intended by the legislators. Moreover, because the rate credits may not extend beyond seven years, these irrigators would again be faced with a substantial rate increase to cost-based rates that the legislature sought to avoid. Statements by legislators weigh heavily in our interpretation of ORS 757.227. *See Errand v. Cascade Steel Rolling Mills*, 320 Or 509, 521-24 (1995) (discussing various views of witnesses and upholding views expressed by two legislators); *Eslamizar v. American States Ins Co*, 134 Or App 138, 145 n 3, *rev den* 322 Or 228 (1995) (legislative history is useful to the extent that it supports a plausible reading of the text itself).

Based on the legislative history, we conclude that the Legislative Assembly intended that the “rates” subject to the 50 percent cap must be considered separately from the “cost of electricity” used to determine whether the mitigation provisions are triggered. We find support for this interpretation in the language of the

statute, which distinguishes between the term “cost of electricity,” used in subsection (2) and defined in subsection (4), and the term “rates,” used in subsection (3). *See PGE v. BOLI*, 317 Or at 611 (“use of the same term throughout a statute indicates that the term has the same meaning throughout the statute”). By using different terms, the legislature indicated that there is a difference in the treatment of rates and the cost of electricity; therefore, rates subject to the 50 percent cap are not subject to calculation including “special charges and credits.”

We reject KOPWU’s statement that a customer-by-customer approach should be taken in calculating rates. The text of the statute refers to “a class of customers.” *See OAR 757.227(2)*.

Applying ORS 757.227 to the case at hand, we first determine the cost of electricity, using special credits and charges, to determine whether the Klamath Basin irrigators are eligible for the rate credit set forth in ORS 757.227(3). Finding that the mitigation provision is triggered, we next determine the transitional rate by increasing the irrigators’ base rate by 50 percent. This calculation yields the maximum first year transitional rates allowed under ORS 757.227. These rates, expressed in cents per kWh, are as follows:

On-Project	Off-Project	On-Peak Gov’t Pumping	Off-Peak Gov’t Pumping
0.90	1.13	0.75	0.45

We note that increasing the base rates for On-Project and Off-Project irrigators by the maximum allowable 50 percent each year will result in rates that exceed the Schedule 41 base rate in the seventh year. Similar calculations for base rates for on-peak and off-peak government pumping also exceed the Schedule 41 base rates in the seventh and eighth year, respectively. While such rates are permissible under ORS 757.227, we acknowledge the apparent intent under SB 81 to provide a full seven year glide path to adjust the Klamath Basin irrigators’ contract rates to standard irrigation tariffs. Accordingly, we exercise our discretion and further mitigate rates for these irrigators to fulfill that objective.

To accomplish this, we first identify the target Schedule 41 base rate. Like the current Schedule 33 rates, Schedule 41 rates are subject to the BPA credit, the public purpose charge, and the low income assistance charge. In addition, Schedule 41 rates are subject to additional adjustments not applicable to Schedule 33, including a power cost adjustment mechanism (Schedule 95) and a Senate Bill 1149 surcharge (Schedule 292). For our purposes here, we conclude that a comparable Schedule 41 base rate excludes those adjustments common to Schedule 33, but not others. Using the revenues from net rates and annual megawatt hours reported in PacifiCorp’s compliance filing in UE 170, Advice No. 05-013, we calculate the average Schedule 41 base rate to be 6.98 cents per kWh.

Next, we determine the amount of rate increase that is necessary to transition the Klamath Basin irrigators to this target rate in eight years. The required rate increase will vary among the On-Project, Off-Project, and Governmental pumping customers. This average annual rate change required for this transition, plus the resulting first year transition rates expressed in cents per kWh, are set forth below by customer type:

	On-Project	Off-Project	On-Peak Gov't Pumping	Off-Peak Gov't Pumping
Rate Increase	35.9%	32.2%	39.0%	48.2%
Year One Rate	0.815	0.991	0.695	0.445

These rate increases, less than the 50 percent maximum increase allowable under ORS 757.227, will steadily move the Klamath Basin irrigators, over a seven year transition period, from their applicable historic base rates to the uniform cost-based rate charged to other irrigators served by PacifiCorp.

We recognize that the Schedule 41 base rate is not a fixed target. While that current rate is 6.98 cents per kWh, there is no guarantee that the rate will remain constant during the seven-year transition period. Indeed, in its recent rate filing, PacifiCorp proposes to increase the Schedule 41 rates by almost 20 percent.¹¹ Consequently, any change to Schedule 41 rates will require the adoption, at the next annual adjustment to the Klamath irrigators' rate, of a new transition rate aimed at moving the irrigators to the new rate Schedule 41 at the end of the seven-year period. Any such adjustment, obviously, will modify the percentage of the annual increase in base rates. In no event, however, may the increase in rates to the Klamath Basin irrigators exceed 50 percent in any year. *See* ORS 757.227(3).¹²

To determine the total cost of electricity to be charged to the irrigators, PacifiCorp must finally adjust these transition rates by the applicable charges and credits, which consist of the BPA credit, the public purpose charge, and the low income assistance charge. Because the BPA credit for current Schedule 33 customers is less than for Schedule 41 customers, we adopt PacifiCorp's proposal to increase this credit by 0.08

¹¹ Any party may object to this fact within 15 days of this order. *See* OAR 860-014-0050(2).

¹² The possibility exists that, if Schedule 41 rates increase, this 50 percent cap may preclude the Commission from adopting annual rate increases that are large enough to move the Klamath Basin irrigators to cost-based rates within the seven-year transition period. Upon the termination of that cap in the eighth year, the Commission will have the option to either move the irrigators directly to existing Schedule 41 rates or adopt new rate mitigation measures

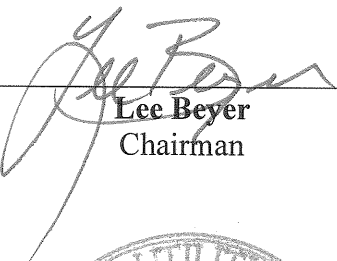
cents per kWh for seven years or until the Klamath Basin irrigators' credit is equivalent to the credit applied to other irrigators, whichever comes first. In addition, we further adopt PacifiCorp's proposed transition of the Klamath Basin irrigators' annual horsepower minimum charges, as modified to reflect the percentage increases applied to the base energy rate.

Due to the operation of PacifiCorp's multi-state allocation protocol and the provisions of SB 81, the parties agree that the revenue shortfall associated with the rate mitigation should be spread equally among PacifiCorp's other Oregon customers. This results in an approximate \$1.7 million rate increase for Oregon ratepayers. The increase should be spread among all customer classes on an equal percentage of revenue basis.

ORDER

IT IS ORDERED that PacifiCorp shall file revised tariffs consistent with the conclusions of this order, to be effective on April 17, 2006.

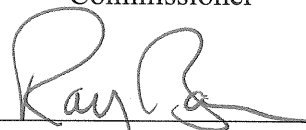
Made, entered, and effective APR 12 2006.



Lee Beyer
Chairman



John Savage
Commissioner



Ray Baum
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.