

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 171

In the Matter of)	
)	
PACIFIC POWER & LIGHT)	ORDER
)	
Klamath Basin Irrigator Rates.)	

DISPOSITION: MOTION FOR SUMMARY JUDGMENT
DISMISSED; MATTER REMANDED TO UE 170
FOR FURTHER PROCEEDINGS

Introduction

For almost 50 years, PacifiCorp has served irrigators located in the Klamath River Basin under historic contracts that provide rates below PacifiCorp’s general tariff schedules. Irrigators located within the federally-designated boundaries of the Klamath Project (On-Project Irrigators) buy power from PacifiCorp at rates established pursuant to a contract between PacifiCorp’s predecessor, the California-Oregon Power Company (Copco), and the United States Bureau of Reclamation. This contract (On-Project Contract) expires by its terms in April 2006. The Klamath Basin irrigators located outside the boundaries of the Klamath Reclamation Project (Off-Project Irrigators) buy power from PacifiCorp pursuant to a separate contract between Copco and an association representing irrigation customers. This second contract (Off-Project Contract) was executed April 30, 1956, but contains no express termination date.

As part of its general rate filing pending in docket UE 170, PacifiCorp proposes to move both the On-Project and Off-Project irrigators to standard tariff rates concurrent with the expiration of the On-Project Contract. To ensure this proposal is fully addressed, the Commission opened this docket, UE 171, to determine whether the Klamath River Basin irrigators should continue to be served under these historic contracts after April 2006.

The parties to this proceeding agreed that the issue presented was primarily a legal question best resolved through a motion for summary disposition. Accordingly, PacifiCorp filed a motion seeking a Commission order terminating the rates under the On-Project and Off-Project contracts, effective April 16, 2006. Eight parties filed a response to the motion. Those parties include organizations representing the On-Project irrigators—Klamath Water Users Association (KWUA), the Off-Project irrigators—Klamath Off-Project Water Users (KOPWU), as well as the United States Bureau of Reclamation and Fish and Wildlife Service (collectively referred to as the Bureau), WaterWatch of Oregon, the Hoopa Valley Tribe, Oregon Natural Resources

Defense Council, the Pacific Coast Federation of Fishermen's Association, and the Commission Staff (Staff).

FACTS

The following facts are undisputed:

1. In 1905, the Secretary of the Department of the Interior authorizes development of the Klamath Project (Project). The Project is to consist of a series of dams and distribution canals to facilitate agricultural irrigation and development of the Klamath River Basin.¹
2. In 1906, the Bureau of Reclamation begins construction on the Project's main canals and distribution system.
3. At this time, PacifiCorp's predecessor, Copco, is developing its own hydro-generation resources on the Klamath River in California. When informed that the government lacked funds to immediately build a dam to regulate the flow from Upper Klamath Lake, Copco offers to finance and construct the dam if the government grants Copco the right to operate the dam in the future.
4. Negotiations between Copco and the Department of the Interior eventually result in a 1917 contract (Link River Dam Contract). Copco agrees to supply power for pumping to irrigators on the Project at 7 mills per kWh.²
5. In 1951, Copco seeks authority to construct Project No. 2082, which includes the Big Bend Dam (now called J.C. Boyle) on the Klamath River below Keno, Oregon.
6. The Federal Power Commission ultimately issues the Project 2082 license, but requires Copco and the Secretary of the Interior to either amend the Link River Dam contract, or negotiate a new contract that:

[P]rovides for the storage in and the release of water from Upper Klamath Lake in Oregon, and the use thereof by [Copco] for the generation of electricity under terms and conditions substantially similar to those terms and conditions contained in the existing [Link River Dam] agreement, as amended.

The Federal Power Commission also required that the amended or new contract "cover a time period at least equivalent to the time period of this license[.]"³

¹ See Reclamation Act of 1902, 32 Stat. §388.

² See *Contract between the Secretary of the Interior and California-Oregon Power Co., Raising the Level of Upper Klamath Lake*, February 24, 1917.

7. During negotiations to renew the Link River Dam Contract, an organization representing irrigators insisted that Copco provide contract rates for irrigation and pumping to all customers located within the Klamath River Basin, including those located outside the Project boundaries.
8. Negotiations ultimately result in separate contracts for the on-project and off-project customers.
9. The On-Project Contract is entered between Copco and the Department of the Interior. Under this contract, Copco agrees to furnish electric power to On-Project irrigators at a rate of 0.6 cents per kWh.⁴ The contract is effective for a period of 50 years from the date of its approval by the Public Utility Commission of Oregon and the Public Utilities Commission of California, whichever occurs later.⁵
10. The Public Utility Commission of Oregon approves the On-Project Contract on March 9, 1956. The Public Utilities Commission of California approves the On-Project contract effective April 16, 1956.
11. The Off-Project Contract is executed between Copco and the Klamath Basin Water Users Protective Association. Under this agreement, Copco agrees to provide service to all Off-Project irrigators at a rate of 7.5 mills per kWh. The agreement contains no express termination date.
12. There is no record of the Public Utility Commission of Oregon expressly approving the Off-Project Contract; however, the rates established by this contract have been included in rates approved by the Public Utility Commission of Oregon since 1956.
13. PacifiCorp becomes a successor to the On-Project and Off-Project Contracts when it acquires Copco in 1961. Both contracts are 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."
14. Over the last five decades, PacifiCorp has provided electric service to the Klamath River Basin irrigators in Oregon at rates pursuant to the On-Project and Off-Project Contracts.
15. The Federal Energy Regulatory Commission (FERC) is currently reviewing PacifiCorp's application for the continued operation of its Klamath

³ *In the Matter of the California Oregon Power Company Upon Application for License*, 13 F.P.C. 1, 1954, WL 477779 (Jan. 28, 1954) at 4.

⁴ Article 5, Exhibit B.

⁵ Article 11 and 17.

Hydroelectric Project (FERC No. 2082). FERC is not expected to complete the relicensing proceeding prior to the expiration of PacifiCorp's current FERC license for the project.

16. In its general rate filing, UE 170, PacifiCorp asserts that the On-Project and Off-Project Contracts terminate in April 2006. After that date, PacifiCorp proposes charging the Klamath River Basin irrigators the same rates paid by other PacifiCorp irrigation customers. These tariffed rates charge customers approximately 73 mills per kWh.

CONCLUSIONS

The Commission initiated this docket to address the continuing validity of the rates contained in the On-Project and Off-Project Contracts after April 2006. Following an agreement by the parties that this issue was primarily a legal question, PacifiCorp filed a motion for summary disposition seeking the termination of rates contained in the On-Project and Off-Project Contracts, effective April 16, 2006.

Now that this issue has been further developed by the parties, we conclude that a ruling on the motion for summary disposition is unnecessary. PacifiCorp's request implicitly assumes that the Commission must first determine that the contract rates have expired before it can examine the underlying question as to what rates these irrigation customers should pay. No such requirement exists. The Commission's ratemaking power constitutes the broadest delegation of legislative authority. *Multnomah County v. Davis*, 35 Or App 521 (1978); *Pacific N.W. Bell v. Sabin*, 21 Or App 200 (1975). Utilities and customers cannot limit this power by private contract. *American Can Co., v. Davis*, 28 Or App 207, *rev den* 278 Or 393 (1977). Although the Commission previously approved the On-Project and Off-Project Contracts, we have the continuing authority and obligation to review the appropriateness of the rates contained in those contracts. *American Can Co., v. Davis*, 28 Or App at 224. Thus, regardless of the expiration term of either contract, this Commission has the duty to examine the rates contained therein and, upon a proper showing, modify them.

Accordingly, PacifiCorp's motion for summary judgment is dismissed. This matter should be remanded to UE 170 for further investigation. In this investigation, the Commission will address factual and legal issues, many of which were presented here, that are relevant to determining rates for irrigation customers currently served under the historic contracts. These issues include:

- The statutory standard applicable to the setting of electric rates for irrigators located within the Klamath River Basin.
- The appropriate rates PacifiCorp should charge the Klamath River Basin irrigators for electric service.

- The implementation of any rate change affecting these customers, including how and when these customers should be transitioned from the rates established in the historical contracts.

We deny the request, made by the Bureau and supported by KWUA and KOWPU, to delay action on this matter pending FERC's examination of this issue in the context of PacifiCorp's pending relicensing proceeding. We recognize the importance of the relicensing proceeding and the benefits all PacifiCorp customers realize from the company's Klamath Hydroelectric Project. We also acknowledge FERC's authority to issue an annual license, extending the terms and conditions of an existing license, to bridge the period between the lapse of an original license and the issuance of a new one.⁶ For the following reasons, however, we decline to wait for a decision that cannot resolve the issue of the retail rates charged to the Klamath River Basin irrigators.

First, there is no certainty that FERC will, as the Bureau suggests, issue an annual license that temporarily extends the On-Project Contract rates past the April 2006 termination date. In fact, FERC has twice declared that the rates PacifiCorp charges to its retail customers are not relevant to its relicensing review.⁷ Second, and more importantly, this Commission, not FERC, has jurisdiction over rates charged by PacifiCorp to its Oregon retail customers. Consequently, even if FERC extends the On-Project Contract rates, such action cannot relieve this Commission of the duty to review those rates under the *American Can* standard discussed above. Finally, as the Bureau concedes, the extension of any conditions through an annual license would affect only those rates paid by the On-Project irrigators, as the original license contained no provision addressing service to Off-Project irrigators. Thus, the deferral of the On-Project rate issue would not delay the review of the Off-Project rate. We believe that the rates of the Klamath River Basin irrigators should be determined through one, not two, regulatory processes.

⁶ See Section 15(a)(1) of the Federal Power Act

⁷ FERC made both statements as part of its initial review of PacifiCorp's request for a new license for the continued operation of the Klamath Hydroelectric Project. First, in rejecting a request submitted by the Department of the Interior seeking an assessment of impact on customers associated with the expiration of the contract rates, FERC stated: "We do not consider the rates PacifiCorp charges to its customers to be an appropriate issue for analysis in this proceeding." *Response to Additional Study Requests*, FERC No. P-2082-27, Oregon and California, March 16, 2005, p 16. Second, in rejecting a request by KWUA and the Department of the Interior to evaluate the environmental and economic consequences related to any increased power costs that would result from discontinuing the On-Project Contract, FERC stated: "[T]he rate that PacifiCorp charges its customers is not an appropriate issue for analysis in this proceeding." *Scoping of environmental issues for a new license for the Klamath Hydroelectric Project*, FERC No. P-2082-27, Oregon and California, dated May 17, 2005. We take official notice of the later document pursuant to OAR 860-014-0050(1)(a). Any party may explain or rebut the noticed fact within 15 days of the service date of this order. OAR 860-014-0050(2).

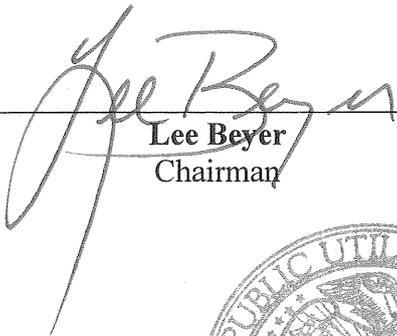
In summary, PacifiCorp has raised in its general rate filing the appropriateness of rates paid by the On-Project and Off-Project irrigators. This Commission has the authority and obligation to examine those rates and, upon a proper showing, modify the rates accordingly. Such action is not intended to undermine FERC's authority in its review of the Klamath relicensing proceeding. To the contrary, FERC has acknowledged that the rates for retail service provided by PacifiCorp in Oregon are subject to our jurisdiction, and the exercise of that authority will provide guidance to FERC in its inquiry of federal interests. For all these reasons, an investigation should immediately begin to examine the proper rates to be paid by the Klamath River Basin irrigators for electric service.

ORDER

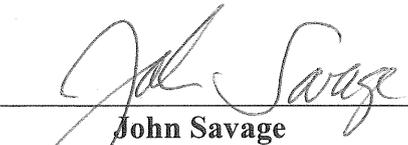
IT IS ORDERED that:

- 1) The motion for summary disposition, filed by PacifiCorp, is dismissed.
- 2) This matter is remanded to UE 170 for further proceedings, consistent with the terms of this order.
- 3) A prehearing conference shall be scheduled to identify issues and establish a schedule for necessary proceedings.

Made, entered, and effective JUN 06 2005



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 to a court pursuant to applicable law.