



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of PacifiCorp for an Order Authorizing a General Rate Increase and Implementation of an Energy Cost Adjustment Clause and a Post Test-Year Adjustment Mechanism.

Application 05-11-022

Order Instituting Investigation of the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of PacifiCorp.

Investigation 06-02-002

**MOTION OF THE DIVISION OF RATEPAYER ADVOCATES
TO STRIKE PORTIONS OF THE TESTIMONY OF
THE KLAMATH WATER USERS ASSOCIATION AND
THE UNITED STATES BUREAU OF RECLAMATION AND
UNITED STATES FISH AND WILDLIFE SERVICES**

I. INTRODUCTION

The United States Bureau of Reclamation and United States Fish and Wildlife Services (collectively, the Bureau) and the Klamath Water Users Association (KWUA) served testimony on June 23, 2006 that purports to address issues related to allocation and rate design in PacifiCorp's currently pending General Rate Case. The testimony asserts that because users of the Klamath Irrigation Project return water to the Klamath River, those irrigators should pay a lower rate for electricity than the rate paid by PacifiCorp's other California irrigation customers.¹ KWUA argues that its members

¹ Testimony of Cecil Lesley, Bureau of Reclamation, pp. 1, 6-7 (served June 22, 2006) (Lesley Testimony); Prepared Direct Testimony of Marc E. Van Camp (Allocation and Rate Design Phase), KWUA, pp.2-18 (served June 23, 2006) (Van Camp Testimony); Prepared Direct Testimony of Donald W.Schoenbeck (Allocation and Rate Design Phase), KWUA, pp. 2:20-10 (served June 23, 2006) (Schoenbeck Testimony).

provide “quantifiable benefits to PacifiCorp that are generally unique to their customer class and are not reflected in current rates.”² DRA moves to strike that part of the KWUA and Bureau testimony that attempts to take a second bite of the apple on the issue of system benefits.

In an earlier phase of this proceeding, KWUA, the Bureau, and PacifiCorp asked the Commission to approve a settlement that (1) proposed a transition rate that over a four year period gradually increases the Klamath irrigators’ rates to the same rate as other irrigators pay and (2) limited responsibility for the shortfall created by the transition rate to PacifiCorp’s California ratepayers. DRA argued that any continued subsidy to the Klamath irrigators should be shared by PacifiCorp ratepayers in other states, on the ground that ratepayers in all six states had enjoyed benefits of the hydroelectric licenses related to the Klamath Irrigation project. The Commission rejected that position, and Decision (D.) 06-4-034 approved a settlement with a transition rate funded solely by PacifiCorp’s California ratepayers.

KWUA and the Bureau, having earlier proposed a transition rate funded solely by California ratepayers, now argue that the irrigators provide a system benefit. If in fact the irrigators provide a system benefit, then costs associated with that benefit should not be limited to PacifiCorp’s California ratepayers. KWUA’s and the Bureau’s position about “system benefits” is at odds with their earlier support of a recommendation that forced California ratepayers to assume full responsibility for the short fall resulting from the transition rate. The Commission should therefore strike those parts of the testimony that claim the irrigators provide a benefit to PacifiCorp’s system.

II. DISCUSSION

A. Background

Until April 16, 2006, PacifiCorp served Klamath irrigators pursuant to a 1956 contract between PacifiCorp³ and the United States Bureau of Reclamation. The terms of

² Schoenbeck Testimony, p. 3:14-16.

³ The 1956 contract was executed by PacifiCorp’s predecessor in interest, the California Oregon Power

the 1956 contract provided that for 50 years from the effective date of the contract, PacifiCorp would sell Klamath irrigators powers at a discount in exchange for the ability to operate the Link River Dam and control the flow of the upper Klamath Lake. Klamath irrigators purchased power for the last 50 years at contract rates that ranged from 0.03 cents and to 0.06 cents per kWh, rates which were the same or lower rates as Klamath irrigators paid under an earlier 1917 contract. PacifiCorp's other agricultural customers served under tariff PA-20 pay about 7.9 cents per kWh.⁴ The 1956 contract expired on April 16, 2006.⁵

PacifiCorp, KWUA, and the USBR presented a joint recommendation at a January 30, 2006 prehearing conference that requested a transition rate under which the Klamath irrigators would, for the next four years, continue to pay substantially less than other agricultural irrigators in PacifiCorp's service territory. The joint recommendation assumed that "other California customers of PacifiCorp would pay rates during the transition period sufficient to cover the differential between the phase-in rates and full tariff rate levels..."⁶ The Commission adopted an expedited schedule limited to the issue of the transition rate that the irrigators should pay, followed by two days of hearings in March, and oral arguments instead of briefs.

The Commission granted the request for a transition rate for Klamath irrigators funded by California ratepayers and preserved the opportunity for Klamath irrigators to present evidence in support of an alternate tariff classification or rate level as compared to other irrigation customers.

"KWUA and Interior may argue in this proceeding that
PacifiCorp's PA-20 tariff is not the appropriate tariff

Company, or Copco.

⁴ PacifiCorp filed an advice letter at the CPUC on January 4, 2006, stating its intention to serve the Klamath irrigators at the rates provided in PA-20, beginning April 17, 2006. The Klamath Water Users Association and the USBR protested the advice letters on January 14, and PacifiCorp filed a response on January 24.

⁵ The Klamath irrigators, including the USBR, argued unsuccessfully at FERC that PacifiCorp was required to continue serving them at the same rate even after expiration of the 1956 contract.

⁶ D.06-04-034, Appendix A, p. 1.

applicable to Klamath Irrigation Project customers and may present proposals for a separate tariff classification. To the extent that KWUA is successful in establishing a separate tariff classification, we may revisit the transition plan being approved in this order to assess the need to modify the transition plan.”⁷

DRA, KWUA and the Bureau served their testimony on rate design and cost allocation on June 23.⁸ DRA, the Oregon Natural Resources Council, the Pacific Fisherman’s Association, the California Farm Bureau and PacifiCorp served their testimony rebuttal testimony on July 14.

B. The testimony of KWUA and the Bureau about system benefits is inconsistent with their earlier position that California ratepayers should pay the shortfall resulting from the transition rate.

DRA argued in an earlier phase of this proceeding that responsibility for any transition rate for the Klamath irrigators should be shared by PacifiCorp ratepayers in other states. DRA’s rationale was based on cost causation: since ratepayers outside of California enjoyed the benefits of the hydroelectric licenses related to the Klamath Irrigation project, they should pay the transition rate even though the benefits related to the hydroelectric licenses terminated with the expiration of the contract.

PacifiCorp, KWUA, and the Bureau contested DRA’s position. PacifiCorp argued that while the Klamath irrigators no longer provided a system benefit that would justify allocating costs to non-California ratepayers,⁹ a transition rate was justified in order to protect the irrigators from rate shock. KWUA and the Bureau made similar arguments about the enormous economic dislocation that would result in the absence of a transition rate, while carefully reserving the right to argue that their “unique historical, operational

⁷ Decision 06-06-034, Ordering Paragraph (OP) 4. pp. 19-20.

⁸ DRA served testimony on results of operations, revenue requirement and its results of examination on June 16. DRA and PacifiCorp filed a joint motion on July 7 asking that the Commission adopt their proposed settlement on those issues. That motion is still pending but is currently unopposed.

⁹ Exhibit (Ex.) 2, PacifiCorp/Lively, pp. 4:22-5:2.

and legal circumstances” justified a different rate.¹⁰ KWUA and the Bureau opposed DRA’s position that the transition rate shortfall, which resulted from system benefits provided by the Klamath irrigators, be shared by other PacifiCorp ratepayers as well as those in California.

The KWUA now considers in its testimony “whether there are benefits to hydropower generation on the Klamath River resulting from the development and operation of the Klamath Irrigation Project facilities, and the nature of any such benefits”¹¹ and concludes that Klamath irrigators provide system benefits that can be quantified.¹² If in fact the Klamath irrigators provide quantifiable system benefits, then the costs of those benefits, such as the transition rate, should be shared by PacifiCorp’s other ratepayers.

D.06-04-034 recognized the right of KWUA and the Bureau to “argue in this proceeding that PacifiCorp’s PA-20 tariff is not the appropriate tariff applicable to Project customers and [to] present proposals for a separate tariff classification in this proceeding.”¹³ That right should not be construed to present testimony that is inconsistent with their earlier position that California ratepayers should pick up the entire deficit related to the transition rate. If the Klamath irrigators have evidence that costs to serve them differ from the costs to serve other PA-20 customers, that would be appropriately within the scope of this phase of the proceeding. Presenting evidence about “system benefits,” which would have supported DRA’s recommendation that the transition rate shortfall be shared with other PacifiCorp ratepayers, is not.

¹⁰ Ex. 9, KWUA/Kandra, p. 5:3-11; see also D.06-04-034, Appendix A, p. 2: “The KWUA and DOI may, in the context of this GRC, argue that rate schedule PA-20 is not appropriate and present proposals for creation of a separate tariff for application to Project Customers and may, in that process, present evidence and argument regarding the cost of such service and benefits provided by Project Customers”

¹¹ KWUA /Van Camp Testimony, p. 2.

¹² KWUA /Van Camp Testimony, p. 2. The Klamath irrigators are arguing in Oregon as well that they provide a system benefit. See generally Oregon Public Utilities Commission Orders Nos. 05-1202 and 06-172, served in this docket by Pacific Coast Federation of Fishermen’s Association on July 13, 2006 along with a request for judicial notice.

¹³ D. 06-04-034, p. 8 and OP 4, pp.19-20.

DRA accordingly moves to strike: the testimony of Mr. Schoenbeck beginning at page 2, line 23 through page 10; the testimony of Mr. Van Camp beginning at page 2 through page 18; and the testimony of Mr. Lesley beginning on page 6, starting with the Question “Why should the Klamath Reclamation Project receive a reduced power rate?” through the end of page 7.

III. CONCLUSION

For all the foregoing reasons, DRA respectfully requests that the Commission strike the testimony of KWUA and the Bureau to the extent that the testimony argues that the Klamath Irrigators provide a system benefit. D.06-04-034 allowed KWUA and Interior to argue in this proceeding that “PacifiCorp’s PA-20 tariff is not the appropriate tariff applicable to Klamath Irrigation Project customers” and “to present proposals for a separate tariff classification,” but not to reverse its position on system benefits.

It would be inconsistent with the transition rate plan to allow KWUA and the Bureau to argue now that the Klamath Irrigators provide a system benefit to PacifiCorp, when just a few months ago they took the position that responsibility for the transition rate should be limited to California ratepayers. Even worse, it would be unfair to PacifiCorp’s California ratepayers whose rates will increase because of the transition rate.

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Respectfully submitted,

/s/ DIANA L. LEE

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July 19, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**MOTION OF THE DIVISION OF RATEPAYER ADVOCATES TO STRIKE PORTIONS OF THE TESTIMONY OF THE KLAMATH WATER USERS ASSOCIATION AND THE UNITED STATES BUREAU OF RECLAMATION AND UNITED STATES FISH AND WILDLIFE SERVICES**” in **A.05-11-022, et al.**, by using the following service:

E-Mail Service: sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **July 19, 2006** at San Francisco, California.

/s/ REBECCA ROJO

Rebecca Rojo

N O T I C E

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A.05-11-022 – E—MAIL ADDRESS

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