STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

F I L E D
02-22-11
03:53 PM

February 22, 2011

Agenda ID #10179
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 10-03-015

This is the proposed decision of Administrative Law Judge (ALJ) Wilson, previously designated as the presiding officer in this proceeding. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Upon the request of any Commissioner, a Ratesetting Deliberative Meeting (RDM) may be held. If that occurs, the Commission will prepare and publish an agenda for the RDM 10 days beforehand. When the RDM is held, there is a related ex parte communications prohibition period. (See Rule 8.2(c)(4).)

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Wilson at smw@cpuc.ca.gov and assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:avs

Attachment

Decision **PROPOSED DECISION OF ALJ WILSON** **(Mailed 2/22/2011)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of PacifiCorp (U901E), an Oregon Company, for an Order Authorizing a Rate Increase Effective January 1, 2011 and Granting Conditional Authorization to Transfer Assets, pursuant to the Klamath Hydroelectric Settlement Agreement.	Application 10-03-015 (Filed March 18, 2010)

DECISION APPROVING A RATE INCREASE FOR PACIFICORP PURSUANT TO THE KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT

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DECISION APPROVING A RATE INCREASE FOR PACIFICORP PURSUANT TO THE KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT

1. Summary

This decision approves the request by PacifiCorp, an Oregon Company, for: 1) a surcharge of $13.76 million collected over nine years; 2) institution of two trust accounts for the deposit of the surcharge; and 3) depreciation of the rate base and amortization of the relicensing and settlement costs associated with the Klamath River Project on an accelerated basis; all of which are elements of the Klamath Hydroelectric Settlement Agreement. PacifiCorp, an Oregon Company, must also file a separate Tier 3 advice letter at a later date requesting authority to transfer the Klamath River Project assets. On an annual basis, PacifiCorp, an Oregon Company, must file a Status Report as a compliance filing in this docket which identifies the status of key milestones of the Klamath Hydroelectric Settlement Agreement. Approval of these requests will allow PacifiCorp, an Oregon Company, to fulfill requirements of the Klamath Hydroelectric Settlement Agreement that affect its California customers and the California Public Utilities Commission. This proceeding is closed.

2. Background

The Federal Energy Regulatory Commission (FERC) licenses each non-federal hydropower project.[1] The Klamath Hydroelectric Project (Klamath assets), which includes four PacifiCorp, an Oregon Company, (PacifiCorp) owned dams as well as related plant, received its original license in 1954. The

[1] Pursuant to the Federal Power Act Part I, 16 U.S.C. §§ 791 et seq. Such a license has a term of not more than 50 years, subject to renewal. FERC must assure that the project will comply with laws applicable at the time the new license is authorized.

Klamath assets are located in the Klamath Basin, which consists of the lands tributary to the Klamath River, straddling southern Oregon and northern California. PacifiCorp serves approximately 555,000 customers in Oregon and 45,000 customers in California. PacifiCorp's Klamath assets complied with laws applicable at that time at both the state and federal level. There are now many laws that did not exist in 1954, which PacifiCorp facilities would have to comply with in order to be granted a new license.[2] Prior to the Klamath Hydroelectric Settlement Agreement (KHSA), the California State Water Resources Control Board had already determined that the Klamath assets would require substantial modifications to be in compliance with current law.[3]

For many years, the Klamath assets have been at the center of controversy in the Klamath Basin, with numerous entities calling for the removal of the dams. Native American tribes, environmental groups, and organizations that promote the conservation and health of fish, have protested and filed lawsuits, complaining that the Klamath assets threaten, among other things, water quality and the health and availability of local species of fish, such as Klamath River salmon. For example, these fish require cold clean water with sufficient oxygen in order to survive and spawn, and these groups have stated that the dams affect the natural flow of the river, which reduces the flushing of spawning gravel downstream, and causes the water temperature to rise and toxic algae to bloom, threatening the survival of the fish.

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[2] These laws include but are not limited to the: Clean Water Act (1972); Endangered Species Act (1973); National Environmental Policy Act (1969); Coastal Zone Management Act (1972); and, Forest Land Planning and Management Act (1976).

[3] Exhibit CG-1R at 9.

In December 2000, prior to the 2006 expiration of its FERC license to operate the Klamath assets, PacifiCorp filed its Notice of Intent to begin the relicensing process, which could take anywhere from eight to 30 years to resolve.[4] After starting the FERC relicensing process, PacifiCorp met with stakeholders in the Klamath Basin to discuss relicensing of and possible alternatives to relicensing of the Klamath assets, such as removal of the dams, as well as the costs of the various alternatives. Parties also discussed how to resolve numerous related controversies within the Klamath Basin, such as how to address water conservation, water quality, irrigation, hydropower, and restoration of fisheries and wildlife habitats, all of which have been the subject of litigation for many years.

After years of negotiation, in February 2010, PacifiCorp and over 40 federal, state, county, tribal, irrigation, conservation, and fishing organizations, including the states of California and Oregon, executed a final KHSA, which provides an economical framework for resolution of many long-standing and contentious issues faced in the Klamath Basin. By removing the Klamath assets pursuant to the KHSA, the cost to ratepayers of resolving issues in the Klamath Basin is capped, protecting ratepayers from the unknown cost of relicensing the dams; and, the water of the Klamath River will be able to flow freely downstream, allowing spawning gravel downstream to be flushed clean and the water temperature to return to normal.

In part, as it relates to PacifiCorp's California ratepayers, the KHSA proposes that, instead of pursuing the unknown cost of and timeline of

[4] Exhibit PPL-100 at 4.

relicensing, the Klamath assets be transferred to a trustee who would be responsible for their removal, after selected milestones are met. Pursuant to the KHSA, the primary source of funding for removal would be from PacifiCorp's California and Oregon customers, the customer cost would be capped, and the funds collected from customers would be held in trust over the period between authorization of the funding and the start of removal in 2020. The KHSA also proposes that, in order for the Klamath assets to be completely depreciated by the estimated removal start date of 2020, depreciation of the Klamath assets be accelerated over the same period that the funding is proposed to be collected. In order to fulfill the requirements of the KHSA, PacifiCorp must request authority from California.

On March 18, 2010, PacifiCorp did just this when it filed this application, in which it requests authorization, pursuant to the KHSA, to: 1) institute a surcharge of $13.76 million; 2) institute the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Dam Trust Account[5] (California Klamath Trust Accounts) for the deposit of the surcharge; 3) depreciate the rate base, and amortize the relicensing and settlement costs associated with the Klamath River Project on an accelerated basis; and 4) transfer the Klamath River Project assets to an entity designated to remove the dams in question. These specific elements are designed to implement the ratemaking and regulatory requirements of the KHSA as they relate to PacifiCorp's California

[5] KHSA at Section 4.2.2(a) – These two trust accounts are named after PacifiCorp owned dams in the Klamath Basin. The California J.C. Boyle Dam Trust Account would hold 25% of the surcharge funds collected from PacifiCorp's California customers, and the California Copco I and II/Iron Gate Dams Trust Account would hold 75% of the surcharge funds collected from PacifiCorp's California customers.

ratepayers, and to allow the Klamath assets to be removed and the KHSA to come to fruition.

On April 26, 2010, the Division of Ratepayer Advocates (DRA) filed a *Motion to Hold in Abeyance* (Motion), requesting that the assigned Administrative Law Judge (ALJ) hold Application (A.) 10-03-015 in abeyance until after the *Safe, Clean, and Reliable Drinking Water Supply Act of 2010* (Bond Measure) had been voted on by the California voters in the November 2010 election; or the state of California finds another source of funding for the cost of removal allocated to the state in the KHSA. On that same day, a protest to the application was filed by DRA, requesting that A.10-03-015 be either denied without prejudice and PacifiCorp directed to file a new application after California financing had been secured, or that DRA's Motion be approved. PacifiCorp filed a response to the Motion and a reply to the protest on May 6, 2010.

On May 19, 2010, a prehearing conference (PHC) took place in San Francisco to establish the service list for the proceeding, discuss the scope of the proceeding, and develop a procedural timetable for the management of the proceeding. At the PHC, the assigned ALJ granted party status to The Utility Reform Network (TURN), Institute of Fisheries Resources,[6] Pacific Coast Federation of Fisherman's Association,[7] Trout Unlimited,[8] California Trout,[9]

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[6] Institute of Fisheries Resources is a California non-profit salmon and marine conservation organization, loosely affiliated with the pacific Coast Federation of Fishermen's Associations, which has been working for a number of years to restore salmon runts to the Klamath River that it states have been damaged by the impacts of the Klamath assets on the Klamath River.

[7] The Pacific Coast Federation of Fishermen's Associations is a California non-profit organization that is the largest trade organization of commercial fishing families on the west coast, many of whose member groups and members are PacifiCorp customers.

American Rivers,[10] the Karuk Tribe,[11] the Yurok Tribe,[12] and the Klamath Water Users Association.[13] The Institute of Fisheries Resources, Pacific Coast Federation of Fisherman's Association, Trout Unlimited, California Trout, and American Rivers, are collectively referred to as Conservation Groups.[14]

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[8] Trout Unlimited is a national coldwater fish conservation organization with over 140,000 members nationwide, including approximately 9,000 members in California. Trout Unlimited is a non-profit corporation whose mission is to conserve, protect, and restore North America's trout and salmon fisheries and their water sheds.

[9] California Trout is a statewide organization whose purpose is to protect and restore California's wild trout, native steelhead, and their habitats. California Trout has approximately 7,000 members, and fifty affiliate local angling clubs representing approximately 10,000 more persons.

[10] American Rivers is a non-profit conservation organization whose mission is to restore and protect the nation's rivers for the benefit of fish, wildlife, and people. American Rivers has approximately 30,000 members nationwide and approximately 5,000 members in California.

[11] The Karuk Tribe is a federally recognized Indian Tribe. The Karuk Tribe is a PacifiCorp ratepayer with a vested interest in both maintaining affordable power rates and a reliable power supply, as well as the restoration of Klamath River fisheries which the Karuk Indians have relied on for time beyond record.

[12] The Yurok Tribe is a federally recognized tribe having 5,579 members located along the Klamath River. Tribal headquarters, housing, schooling, police, court, watershed, fisheries, cultural, and Yurok EPA offices are all within the PacifiCorp service area. The Yurok Tribal membership depend on the fish of the Klamath River for their livelihood, culture, and way of life.

[13] The Klamath Water Users Association is a non-profit corporation organized to preserve, protect, and defend the water and power rights of landowners of the Klamath Basin, and to promote wise management of resources. Members of the Klamath Water Users Association, who are also customers of PacifiCorp, include irrigation districts and similar public and quasi-public agencies in Oregon and California, who receive water through the Klamath Reclamation Project in the Upper Klamath Basin.

[14] The Conservation Groups have intervened in past Commission proceedings regarding PacifiCorp, and have more recently intervened in PacifiCorp's application to the FERC for relicensing of the Klamath assets.

The *Assigned Commissioner's Ruling and Scoping Memo* (Scoping Memo) issued on June 18, 2010, set forth the procedural schedule, assigned the presiding officer, and addressed the scope of this proceeding and other procedural matters following the PHC. The Scoping Memo also confirmed the preliminary determination of ratesetting and the necessity for hearings. In the Scoping Memo, the assigned Commissioner denied DRA's motion to hold A.10-03-015 in abeyance and its request to dismiss A.10-03-015 and require PacifiCorp to file a new application after California state funding has been secured. We confirm his ruling herein.

On July 9, 2010, a workshop was held in San Francisco to discuss the background and details of the KHSA. Status Reports filed by PacifiCorp on July 1, July 30, August 31, October 1, and November 1, 2010 addressed progress made by PacifiCorp regarding the formation of the requested trust accounts, development of trustee instructions, and the receipt of permissions required for the proposed surcharge revenues to be deemed tax-free.

On July 30, 2010, PacifiCorp served its supplemental testimony. On September 10, 2010, DRA and the Conservation Groups each served testimony. On October 6, 2010, PacifiCorp served its rebuttal testimony. Evidentiary hearings were held on October 18, 2010. Opening Briefs were filed on November 17, 2010 and Reply Briefs were filed on November 24, 2010 by PacifiCorp, DRA, and Conservation Groups. The proceeding was submitted on November 24, 2010.

3. Should the Commission Require PacifiCorp to File a New Application at a Later Date, After Selected Conditions are Met?

As it did in its protest, DRA again recommended in its testimony that the Commission require PacifiCorp to file a new application after several conditions,

are met, including: 1) approval of a bond measure or alternative source of funding for the State of California's share of the KHSA costs; 2) passage of federal legislation required by the KHSA; and 3) approval by the Internal Revenue Service of the trust funds PacifiCorp requested be set up.[15] DRA supports its position by stating that "a formidable army of parties" are opposed to the KHSA and the bond measure, which DRA states could result in the termination of the KHSA.[16] In evidentiary hearings, DRA witness Mark Loy responded to questions regarding this statement, and agreed that no parties to the current case are opposed the KHSA, and even though attempted, he had not been able to contact signatories to the KHSA.[17]

In response to questions regarding who he had spoken with to determine that there was no sponsor for the federal legislation required by the KHSA, Witness Loy stated that he had not consulted with any member of Congress regarding their consideration of introduction of such federal legislation, and in particular, had not consulted any member of the California or Oregon Federal delegations or their staffs, whose districts encompass the Klamath Basin.[18]

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[15] Exhibit DRA-001R at 2 and 14.

[16] Exhibit DRA-001R at 9.

[17] RT 46-47.

[18] RT 99-100.

As discussed in the Scoping Memo, DRA's motion to hold A.10-03-015 in abeyance and its request to dismiss the current application were denied. DRA presented no evidence regarding these issues in testimony that would have us reconsider the assigned Commissioner's original ruling. In particular, since the customer surcharge is the primary source of funding pursuant to the KHSA, and California bond funding is a secondary source and will only be used if the cost of removal exceed the Oregon and California customer contributions,[19] there is no reason to hold up consideration of the reasonableness of the customer surcharge. And, although DRA states there is no evidence of a sponsor for the federal legislation required to implement the KHSA, that does not mean there will never be a sponsor, especially since DRA did not consult with federal legislators from California and Oregon that would be most interested in this proposed legislation. As quoted in Conservation Groups' Opening Brief, Carl Sagan stated it eloquently, the "absence of evidence is not evidence of absence."[20]

Therefore, we see no reason to disturb our prior ruling which denied DRA's motion to hold in abeyance this proceeding or to dismiss the current application.

4. Should the Commission Authorize a Surcharge to Recover the Costs of Removing the Klamath Assets?

PacifiCorp requests that the Commission establish a non-bypassable refundable rate surcharge to collect $13.76 million from its California customers to fund the removal of the Klamath assets.[21] PacifiCorp's proposed total

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[19] Exhibit PPL-105 at 7-8 and KHSA at Section 4.1.2.A.

[20] Conservation Groups Opening Brief at 16.

[21] KHSA at Section 4.1.1.B. and A.10-03-015 at 2.

surcharge estimate of $13.76 million represents California ratepayer's approximately 8% share of customer contributions (Oregon and California customers combined) and an approximately 3% share of the total removal cost (capped at $450 million) settled upon in the KHSA.

PacifiCorp states that the surcharge and the terms of the KHSA provide significant benefits to PacifiCorp's customers, in particular the cost cap which protects ratepayers from the uncertain costs of relicensing, litigation, decommissioning, and removal that customers may be responsible for absent the KHSA. In particular, PacifiCorp references cost protection regarding dam removal cost, liability associated with dam removal, FERC relicensing costs, and possible litigation due to controversies in the Klamath Basin region regarding the operation of the dams as benefits of the KHSA.

The Conservation Groups agree with PacifiCorp's recommendation, stating that implementation of the KHSA will provide substantial benefits to ratepayers in comparison to the alternative of relicensing the Klamath assets. In support of its position, the Conservation Groups state that the cost of removal was established based on the terms of the KHSA and is shared among a number of parties, while in the case of relicensing, the total cost, including such items as compliance with water quality certifications, legal costs, and possible decommissioning, would most likely be borne alone by PacifiCorp and its ratepayers.[22]

We find that authorization of the proposed surcharge pursuant to the terms of the KHSA provides the most cost effective method of collecting the

[22] Exhibit CG-1R at 5-15.

funds necessary to resolve conflicts over resources in the Klamath Basin. Through the use of the KHSA cost cap, ratepayers are protected from the uncertain costs of relicensing, litigation, and decommissioning that customers may be responsible for sans the KHSA. If the KHSA surcharge is not instituted, ratepayers would be exposed to an uncertain amount of costs in addressing what to do with PacifiCorp's Klamath assets.

5. How Should a Surcharge be Recovered?

PacifiCorp proposes to spread the estimated $13.76 million surcharge equally over an approximately nine-year period resulting in annual collections of approximately $1.53 million/year, which translates into a per customer amount of about $1.61/month. In support of its request to collect the proposed surcharge over nine years, PacifiCorp states that the KHSA has a target start date for removal of the Klamath assets of January 1, 2020.[23] Additionally, by collecting the surcharge over nine years and collecting interest on the balance of those funds, the difference between the estimated cost allocable to California customers ($16 million) and what PacifiCorp is actually charging the ratepayers ($13.76 million) is reduced.[24]

PacifiCorp requests that the rate design of its proposed surcharge be based on an allocation among customers classes based on each classes share of

[23] KHSA at Section 7.3.1 and A.10-03-015 at 4.

[24] A.10-03-015 at 2 and KHSA at Section 4.1.1.E.

generation revenues, which PacifiCorp believes is equitable.[25] Conservation Groups support PacifiCorp's proposed surcharge allocation methodology.[26]

DRA recommends that, if a surcharge is instituted, it be recovered over 18 years, in order to: 1) reflect what it considers the risks and uncertainties identified in the KHSA and elsewhere that may result in the United States Secretary of the Interior terminating the KHSA; and 2) safeguard against overcollection of surcharge revenues from PacifiCorp's California customers in order to minimize ratepayer exposure to any unrealized costs.[27] As discussed in evidentiary hearings, Witness Loy was unable to contact signatories to the KHSA to gauge how important the timing of the proposed start of removal is to the success of the KHSA.[28] DRA does not oppose PacifiCorp's proposed surcharge rate design allocation method, but only if dam removal began in 2010.[29]

PacifiCorp states that the surcharge amount collected from California customers may have to be adjusted in the future to reflect variations in load forecasts, but will not exceed 2% of the authorized revenue requirement as of January 1, 2010. PacifiCorp also proposes that if there are funds remaining in the trust accounts after removal of the Klamath assets or if the KHSA does not come to fruition, these funds must be used for the benefit of customers through refunds, the funding of beneficial programs associated with the Klamath assets,

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[25] Exhibit PPL-200 at 8-9 and A.10-03-015 at 5.

[26] Conservation Groups Opening Brief at 17.

[27] Exhibit DRA-001R at 3.

[28] RT 46-47.

[29] DRA Opening Brief at 14.

or to fund relicensing of the Klamath assets.[30] PacifiCorp did not propose in what forum it would request any future adjustment to or refund of the surcharge.[31]

We find that it is essential that the surcharge of $13.76 million be collected over nine years, not to exceed 2% of the authorized revenue requirement as of January 1, 2010, in order to support the KHSA removal start date, and to accrue sufficient interest to make up the difference between the surcharge collected from customers and the amount allocated by the KHSA. By collecting the surcharge over nine years, there is time for interest to accrue on the amount collected, which allows California ratepayers to pay less in rates while still collecting sufficient funds to meet the requirements of the KHSA. Any other option for collecting the surcharge would either result in not having sufficient funds at the target start date for removal of the Klamath assets or require ratepayers to pay more of the actual cost attributable to California customers. For example, if the ratepayers were to pay the surcharge beginning at a date closer to the target start of removal of the Klamath assets, there would be less time for interest to accrue on the surcharge collected, which would result in California ratepayers having to paying more than they would have otherwise in order to have sufficient funds by the target start date of removal.

PacifiCorp's proposed rate design methodology, which allocates the surcharge to customer classes based on authorized generation revenues is reasonable and is adopted herein, because it is based on already authorized revenue allocations. Within one month after this decision is issued, PacifiCorp

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[30] A.10-03-015 at 6.

must file a Tier 1 advice letter in order to request revised tariff sheets that include the surcharge ordered herein.

The surcharge adopted herein is refundable if the KHSA is terminated, protecting ratepayer funds from being used for purposes other than to the benefit of ratepayers. The amount of the surcharge may also be revised, which would protect both ratepayers and PacifiCorp. If PacifiCorp collects too much money, a reduction in the surcharge amount may be requested, protecting ratepayers from being overcharged. If PacifiCorp does not collect enough funds, an increase in the surcharge amount within the 2% limit discussed above may be requested. Any consideration of how to refund the surcharge or a revision to the amount of the surcharge must be requested through an application, with notice to all parties of record in the current proceeding, in order for all interested parties to have an opportunity to weigh in on how the funds should be revised or refunded. A request for more funds may not exceed the amount authorized herein.

6. How Should Surcharge Funds be Administered?

Pursuant to Section 4.2.2 of the KHSA, PacifiCorp requests that the Commission create the California Klamath Trust Accounts and appoint a trustee, in which PacifiCorp would: 1) remit to, hold in and disburse surcharge funds from; 2) collect the rate surcharge funds in; and 3) collect tax free interest on the balance of funds. PacifiCorp also requests that these accounts be managed and administered by an agency of the state of California.[32] Interest earned on the

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[31] Exhibit PPL-200 at 8.

[32] A.10-03-015 at 5-6.

surcharge collected in the California Klamath Trust Accounts would go towards funding the California customer portion of the removal cost pursuant to the KHSA.[33]

In regards to the creation of the trusts, PacifiCorp also requested that the Commission direct its Executive Director to take the steps necessary to create the California Klamath Trust Accounts as provided for in the KHSA. Witness Andrea L. Kelly for PacifiCorp stated that the Commission's Legal Division had indicated that it would assist in this process if ordered to in the current proceeding.[34]

Conservation Groups support PacifiCorp's request, stating that the trusts are necessary to assure that the surcharge funds collected are held in trust pending accomplishment of the conditions required by the KHSA.

Since the surcharge will be collected over a number of years and is being collected for a specific purpose that will not occur for nine years, these funds needs to be held separately from other PacifiCorp funds, in order to ensure these funds are available for their authorized purpose.

Therefore, pursuant to our authority under Pub. Util. Code 1701[35] and consistent with the KHSA, the Commission will direct its Executive Director to create the California Klamath Trust Accounts and appoint a trustee that is an agency of the state of California, to manage and administer the California Klamath Trust Accounts, in which the surcharge ordered herein will be collected.

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[33] A.10-03-015 at 2.

[34] RT 20-21.

[35] http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=9979219881+0+0+0&WAISaction=retrieve.

Subject to the Energy Division's determination that the filed tariff changes are in compliance with this decision, PacifiCorp may then start collecting the surcharge ordered herein. Because it is likely that this date will occur before a trustee has been appointed, PacifiCorp must initially hold surcharge funds it collects in an interest bearing bank account that is separate from all other PacifiCorp bank accounts, until it is informed by the Commission that a trustee has been appointed and is able to receive funds.

When the trustee has been appointed and is able to receive funds, PacifiCorp must remit all surcharge funds that is has collected to date as well as all interest earned, to the trustee. Thereafter, PacifiCorp must remit surcharge funds that it collects on a monthly basis, to the trustee no later than the 15th day of each calendar month.

7. How Should the Klamath Assets be Depreciated?

PacifiCorp requests approval of an accelerated depreciation schedule to depreciate Klamath assets on a straight-line basis over the same period as the surcharge,[36] in order to match collection of the surcharge against the expected remaining life of the Klamath assets, assuming implementation of dam removal pursuant to the KHSA by 2020. In support of its request, PacifiCorp states that the Commission has already approved a deprecation adjustment to implement PacifiCorp's proposed accelerated deprecation for the Klamath assets as part of the settlement adopted in PacifiCorp's recent General Rate Case (GRC) decision, D.10-09-010. PacifiCorp goes on to state that if the anticipated useful life of the Klamath assets change, the Commission can adjust the depreciation lives of the

[36] A.10-03-015 at 6-7.

Klamath assets in a future GRC, to ensure that customers do not overpay the depreciation allowance.[37]

The Conservation Groups support PacifiCorp's request,[38] while DRA believes that it is premature to begin depreciating Klamath assets at an accelerated rate at this time. DRA's concerns regarding accelerated depreciation are similar to the concerns it has with the surcharge – the risk of the KHSA being terminated at some point in the future.[39]

If the Commission does authorize accelerated depreciation of the Klamath assets in the current case, DRA recommends that the period which the assets are depreciated over should be extended from nine to 18 years, to reflect what it what it considers the risks and uncertainties identified in the KHSA and elsewhere that may result in termination of the KHSA.

Pursuant to D.10-09-020, PacifiCorp is already authorized to recover depreciation on KHSA assets over a shorter length of time than the useful life of the assets. We see no reason to change our previous order. DRA's proposal consists of essentially the same reasoning it uses to support rejection of the surcharge as well as extension of recovery of the surcharge over a longer period of time, which we have already rejected, as discussed in Sections 3 through 5 of this decision. We therefore affirm D.10-09-020 regarding the depreciation authorized for the Klamath assets.

We also require PacifiCorp to adjust the depreciation of the Klamath assets in its GRC application, if, in the future, the anticipated useful life of the Klamath

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[37] Exhibit PPL-203 at 2-3.

[38] Conservation Groups Opening Brief at 18.

[39] Exhibit DRA-001R at 13.

assets change. PacifiCorp must also identify the annual and cumulative balance of accelerated depreciation on the Klamath assets in all future GRC applications, until the Klamath assets are totally depreciated.

8. How Should KHSA Assets be Disposed Of?

PacifiCorp's request for Pub. Util. Code § 851 authorization[40] (Section 851) to transfer the Klamath assets at a later date is conditioned upon completion of specific milestones set forth in the KHSA, and will be implemented via a separate advice letter confirming the attainment of the milestones listed below.[41] PacifiCorp states that delaying Section 851 approval to a later date as part of a separate application would create another regulatory precondition of the KHSA, which may heighten uncertainty of KHSA implementation as a whole.

The milestones include:[42]

a. The passage of federal legislation which contain provisions that are materially consistent with Section 2.1.1.A of the KHSA;

b. The availability of sufficient funds to cover estimated costs of dam removal, provided by California and Oregon customers, as set forth in Section 4.1 of the KHSA;

c. An Affirmative Determination by the United Stated Secretary of the Interior determining that the costs of dam removal will not exceed available funds, removal of the dams will advance restoration of the salmon fisheries of the Klamath basis, and removal of the dams is in the public interest as required in Section 3 of the KHSA; and

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[40] See Resolutions ALJ-186, ALJ-202, ALJ-244, and Pub. Util. Code § 851.

[41] A.10-03-015 at 7-9.

[42] A.10-03-015 at 7-8.

d. The issuance by the Dam Removal Entity (DRE) of the DRE Notice, as defined in Section 7.4.1 of the KHSA, at such time as all necessary permits and approvals have been obtained for the removal of a main stem dam, all contracts necessary for facility removal have been finalized, and facility removal is ready to commence.

DRA recommends that the Commission grant PacifiCorp conditional approval of its request for the transfer of Klamath assets, provided PacifiCorp files a an annual status report on the risks, uncertainties and milestones identified in the KHSA and elsewhere, and require PacifiCorp to file a Section 851 application 60 days prior to a Klamath asset transfer.[43] This is due to DRA's concern that there are significant risks that the KHSA will be terminated or the terms and conditions of the KHSA altered. DRA also states that decision makers are entitled to information regarding KHSA related events that occur subsequent to this proceeding, before authorizing the transfer of Klamath assets.[44]

Conservation Groups support PacifiCorp's Section 851 request, and believes that DRA's request for further review is duplicative and unnecessary to protect PacifiCorp's ratepayers.[45]

The Section 851 pilot program[46] allows utilities to request authorization for the sale of utility assets via an advice letter filing, which takes less time and effort on the part of the utility, interested parties, and the Commission to process. The alternative is for a utility to file an application requesting authority to dispose of

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[43] Exhibit DRA-001R at 12.

[44] DRA Opening Brief at 16-17.

[45] Conservation Groups Opening Brief at 19 and Conservation Groups Reply Brief at 6.

utility assets. The Commission has the authority to require a utility to file an application if the transaction warrants a more comprehensive review that would be provided through a formal Section 851 application.[47]

Even with the accomplishment of the four milestones in the KHSA, further review by the Commission is necessary, given the amount of time that will pass between the current decision and disposition of the Klamath assets, as well as the controversial nature of the issues addressed by the KHSA. During this time, events may occur that affect disposition of the Klamath assets. In an effort to balance PacifiCorp's request for a quicker and less detailed Tier 1 advice letter filing and DRA's recommendation of a new application to resolve the disposition of the Klamath assets, we require PacifiCorp to file a Tier 3 advice letter to request authority to dispose of the Klamath assets after the milestones listed in Section 7.1 of this decision are met. In this way, PacifiCorp, interested parties, and the Commission may consider events that occur subsequent to issuance of this decision resulting in a more informed review of the reasonableness of the transactions and determine their compliance with all applicable regulations and requirements, closer to the time of disposition.

9. Should PacifiCorp Report on the Status of the KHSA?

PacifiCorp proposes that it provide an annual report filed with the Commission on May 1st of each year that identifies the status of key milestones of the KHSA, including those listed in Exhibit 2 to Exhibit PPL-104 titled *Sequence of Performance Chart*. PacifiCorp states that this information would provide the

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[46] See Resolutions ALJ-244.

[47] See Resolution ALJ-244 at 1-2, in particular, Item 10.

Commission with a comprehensive update on the progress of implementation of the KHSA.[48] DRA agrees that PacifiCorp should file an annual status report, but recommends that the content include a discussion of the risks, uncertainties, and milestones identified in the KHSA and elsewhere.[49]

Alternatively, the Conservation Groups recommend that PacifiCorp submit a semi-annual report on KHSA implementation (served on all parties to the current proceeding) that addresses, at a minimum: 1) enactment of conforming federal legislation; 2) the Interior Secretary's determination to proceed with dam removal; 3) designation of a DRE; 4) concurrence of Oregon and California in that determination and designation; 5) securing of state funds through rates and California Bond as needed to perform dam removal up to $450 million; 6) DRE's development of a detailed plan to effect dam removal consistent with budget and liability controls; 7) securing of all permits and funding necessary to perform the detailed plan; and 8) any other items that in PacifiCorp's judgment bear on the probability, schedule, and cost of implementing the KHSA.[50]

We find that, given the extended time over which the KHSA implementation will take place, the multiple events that are proposed to take place, and the timing of those events, it is important for parties to be kept informed of the progress towards achievement of the KHSA. We therefore require PacifiCorp to file a Status Report as a compliance filing in this docket on an annual basis, and serve this Status Report on the service list of the current

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[48] PacifiCorp Opening Brief at 23.

[49] Exhibit DRA-001R at 14.

[50] Exhibit CG-01R at 15-16.

proceeding. At a minimum, the Status Report must address all items listed in Exhibit 2 to Exhibit PPL-104, the items listed in Section 8.1 of this decision, related legislation, amount of surcharge revenue collected in California by year and cumulatively, and any other events related to the KHSA that have occurred in the past 12 months.

Requiring a report on an annual basis will provide important and time sensitive information to stakeholders. By doing so, all stakeholders in the current case, as well as the Commission, will remain informed regarding progress of the KHSA, and be able to act promptly on events as necessary.

10. Comments of Proposed Decision

As provided by Rule 14.3 of our Rules of Practice and Procedure and Pub. Util. Code § 311(g) (1), the draft decision of the ALJ in this matter was mailed to the parties on _____. Comments were filed on _____.

11. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

Findings of Fact

1. In January 2008, PacifiCorp and over 40 federal, state, county, tribal, irrigation, conservation, and fishing organizations started focused negotiations that resulted in the a final KHSA executed by the parties involved in February 2010.

2. On March 18, 2010, PacifiCorp filed this application, in which it requests authorization, pursuant to the KHSA, to: 1) institute a surcharge of $13.76 million; 2) institute the California Klamath Trust Accounts for the deposit of the surcharge; 3) depreciate the rate base, and amortize the relicensing and settlement costs associated with the Klamath River Project on an accelerated

basis; and 4) transfer the Klamath River Project assets to an entity designated to remove the dams in question.

3. On April 26, 2010, DRA filed a Motion requesting that the assigned ALJ hold A.10-03-015 in abeyance until after the Bond Measure is voted on by the California voters or the state of California finds another source of funding for the cost of removal allocated to the state in the KHSA.

4. On April 26, 2010, DRA filed a protest to the application requesting that A.10-03-015 be either denied without prejudice and PacifiCorp directed to file a new application after California financing had been secured, or that DRA's Motion be approved.

5. Both DRA's Motion and protest were denied by the assigned Commissioner in his Scoping Memo.

6. Through the use of the KHSA cost cap, ratepayers are protected from the uncertain costs of relicensing, litigation, and decommissioning that customers may be responsible for sans the KHSA. If the KHSA surcharge is not instituted, ratepayers would be exposed to an uncertain amount of costs.

7. In order for PacifiCorp to have a sufficient amount funds in time to begin removal of the Klamath assets proposed in the KHSA and to accrue sufficient interest to make up the difference between collected customer surcharge and the amount required by the KHSA, the surcharge must be recovered over nine years.

8. PacifiCorp's proposed rate design method of allocating the surcharge to customer classes is based on authorized generation revenues.

9. Pursuant to the KHSA, California bond funding is a secondary source of funding and that the surcharge paid by customers is the primary source of funding for the KHSA.

10. DRA did not consult with any member of Congress regarding introduction of federal legislation and in particular, did not consult with any member of the California or Oregon Federal delegations or their staffs, whose districts encompass the Klamath Basin.

11. Pursuant to D.10-09-020, PacifiCorp is already authorized to recover depreciation on KHSA assets over a shorter length of time.

12. The Section 851 pilot program allows utilities to request authorization for the sale of utility assets via an advice letter filing, which takes less time and effort on the part of the utility, interested parties, and the Commission to process. The alternative is for a utility to file an application requesting authority to dispose of utility assets.

13. Pursuant to the Section 851 pilot program, the Commission has the authority to require a utility to file an application if the transaction warrants a more comprehensive review that would be provided through a formal Section 851 application.

14. Given the extended time over which the KHSA process takes place, it is important for parties to be kept informed of the progress towards achievement of the terms of the KHSA.

Conclusions of Law

1. The proposed surcharge of $13.76 million collected over nine years, not to exceed 2% of the authorized generation revenue as of January 1, 2010, from PacifiCorp's California customers should be authorized.

2. The denial of DRA's motion to hold in abeyance and protest to dismiss the current application should be confirmed.

3. Within one month of this decision being issued, PacifiCorp should file a Tier 1 advice letter requesting authorization of revised tariffs, showing the

proposed surcharge. PacifiCorp should not collect such surcharges until such revised tariffs are filed.

4. PacifiCorp's proposed method of allocating the surcharge to customer classes, based on authorized generation revenues, is reasonable and should be adopted.

5. The surcharge ordered herein should be refundable to California customers, and should be used only for the benefit of ratepayers through customer refunds, the funding of beneficial programs associated with the Klamath assets, or to fund relicensing of the Klamath assets.

6. Consideration of how to refund the surcharge or a revision to the amount of the surcharge should be requested through an application, with notice to all parties of record in the current proceeding. The amount of the surcharge may be revised, up to the 2% of authorized generation revenues as of January 1, 2010 limit.

7. Even though there may not currently be a sponsor for the federal legislation required by the KHSA, that does not mean there will never be a sponsor for such legislation.

8. Pursuant to our authority under Pub. Util. Code § 1701 and consistent with the KHSA, the Commission should direct its Executive Director to create the California Klamath Trust Accounts and appoint a trustee to manage and administer the California Klamath Trust Accounts, in which the surcharge ordered herein should be held.

9. The trustee to the California Klamath Trust Accounts should be an agency of the state of California.

10. Within one month after this decision is issued, PacifiCorp should file a Tier 1 advice letter requesting authorization of revised tariffs, reflecting the

proposed surcharge ordered herein. Subject to the Energy Division's determination that the filed tariff changes are in compliance with this decision, PacifiCorp may then start collecting the surcharge.

11. PacifiCorp should initially collect and hold the surcharge that it collects from California customers in an interest bearing bank account separate from all other PacifiCorp bank accounts, until it is informed by the Commission that the California Klamath Trust Accounts have been created and a trustee has been appointed and is able to receive surcharge funds.

12. When the California Klamath Trust Accounts have been created and a trustee has been appointed and is able to receive funds, PacifiCorp should remit all surcharge funds that is has collected to date as well as all interest earned, to the trustee to be deposited in the California Klamath Trust Accounts, pursuant to the KHSA. Thereafter, PacifiCorp should remit the surcharge ordered herein that it collects, on a monthly basis, to the trustee no later than the 15th day of each calendar month.

13. D.10-09-020 authorized accelerated depreciation for Klamath assets.

14. PacifiCorp should be required to adjust the depreciation of the Klamath assets in its GRC application, if, in the future, the anticipated useful life of the Klamath assets changes.

15. PacifiCorp should identify the annual and cumulative balance of accelerated depreciation on the Klamath assets in all future GRC applications, until the Klamath assets are totally depreciated.

16. Further review of PacifiCorp's request to dispose of the Klamath assets is necessary, given the amount of time that will pass between the current decision and disposition of the Klamath assets, as well as the controversial nature of the issues addressed by the KHSA.

17. PacifiCorp should file a Tier 3 advice letter to request authority to dispose of the Klamath assets after the milestones listed below are met. The milestones include:

a. The passage of federal legislation which contain provisions that are materially consistent with Section 2.1.1.A of the KHSA;

b. The availability of sufficient funds to cover estimated costs of dam removal, provided by California and Oregon customers, as set forth in Section 4.1 of the KHSA;

c. An Affirmative Determination by the United Stated Secretary of the Interior determining that the costs of dam removal will not exceed available funds, removal of the dams will advance restoration of the salmon fisheries of the Klamath basis, and removal of the dams is in the public interest as required in Section 3 of the KHSA; and

d. The issuance by the DRE of the DRE Notice, as defined in Section 7.4.1 of the KHSA, at such time as all necessary permits and approvals have been obtained for the removal of a main stem dam, all contracts necessary for facility removal have been finalized, and facility removal is ready to commence.

18. PacifiCorp should file a Status Report as a compliance filing in this docket on an annual basis, and serve this Status Report on the service list of the current proceeding on an annual basis, due May 1st of each year. The filing of this compliance filing should not reopen the record of this proceeding.

19. This Status Report should address, at a minimum, events regarding and progress toward achievement of:

a. All items listed in Exhibit 2 to Exhibit PPL-104;

b. The enactment of conforming federal legislation;

c. The Interior Secretary's determination to proceed with dam removal;

d. The designation of a DRE;

e. The concurrence of Oregon and California in that determination and designation;

f. The securing of California state funds through a California Bond or other form of state funding;

g. The DRE's development of a detailed plan to effect dam removal consistent with budget and liability controls;

h. The securing of all permits and funding necessary to perform the detailed plan;

i. The amount of surcharge revenue collected in California by year and cumulatively; and

j. Any other items that bear on the probability, schedule, and cost of implementing the KHSA, and related legislation.

20. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Pursuant to the Klamath Hydroelectric Settlement Agreement, PacifiCorp, an Oregon Company, is authorized to institute a Klamath surcharge, to collect $13.76 million over nine years, not to exceed 2% of the authorized generation revenue as of January 1, 2010, from its California customers.

2. Within one month after this decision is issued, PacifiCorp, an Oregon Company, must file a Tier 1 advice letter requesting authorization of revised tariffs, reflecting the authorized Klamath surcharge. This advice letter will be effective on filing, subject to the Energy Division's determination that the filed tariff changes are in compliance with this decision, PacifiCorp may then start collecting the Klamath surcharge.

3. PacifiCorp, an Oregon Company is authorized to allocate the $13.76 million Klamath surcharge to customer classes, based on authorized generation revenues as of January 1, 2010.

4. The $13.76 million Klamath surcharge is refundable to California customers, and must be used only for the benefit of ratepayers, through customer refunds, the funding of beneficial programs associated with the Klamath assets, or to fund relicensing of the Klamath Hydroelectric Project assets.

5. The amount of the Klamath surcharge may be revised, up to the 2% of authorized generation revenue as of January 1, 2010 limit.

6. Consideration of how to revise or refund the Klamath surcharge must be requested through an application, with notice to all parties of record in the current proceeding.

7. The Division of Ratepayer Advocate's *Motion to Hold in Abeyance* is denied.

8. The California Public Utilities Commission shall direct its Executive Director to create the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Dam Trust Account, and appoint a trustee to manage the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Dam Trust Account, in which the Klamath surcharge must be held and administered.

9. The trustee to the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Dam Trust Account must be an agency of the state of California.

10. PacifiCorp, an Oregon Company, must initially hold the Klamath surcharge that it collects from California customers in an interest bearing bank account that is separate from all other PacifiCorp bank accounts, until it is informed by the California Public Utilities Commission that the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Dam

Trust Account have been created, and a trustee has been appointed and is able to receive Klamath surcharge funds.

11. When the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Dam Trust Account have been created and the trustee has been appointed and is able to receive funds, PacifiCorp, an Oregon Company, must remit all Klamath surcharge funds that is has collected to date as well as all interest earned, to the trustee to be deposited in the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Dam Trust Account, pursuant to the Klamath Hydroelectric Settlement Agreement. Thereafter, PacifiCorp must remit the Klamath surcharge funds that it collects, on a monthly basis, to the trustee, no later than the 15th day of each calendar month.

12. PacifiCorp, an Oregon Company is required to adjust the depreciation of the Klamath Hydroelectric Project assets in its General Rate Case application, if, in the future, the anticipated useful life of the Klamath Hydroelectric Project assets changes.

13. PacifiCorp, an Oregon Company, must identify the annual and cumulative balance of accelerated depreciation on the Klamath Hydroelectric Project assets in all future General Rate Case applications, until the Klamath Hydroelectric Project assets are totally depreciated.

14. PacifiCorp, an Oregon Company, must file a Tier 3 advice letter to request authority to dispose of the Klamath Hydroelectric Project assets after the milestones listed below are met. The milestones include:

a. The passage of federal legislation which contain provisions that are materially consistent with Section 2.1.1.A of the Klamath Hydroelectric Settlement Agreement;

b. The availability of sufficient funds to cover estimated costs of dam removal, provided by California and Oregon , as set forth in Section 4.1 of the Klamath Hydroelectric Settlement Agreement;

c. An Affirmative Determination by the United Stated Secretary of the Interior determining that the costs of dam removal will not exceed available funds, removal of the dams will advance restoration of the salmon fisheries of the Klamath basin, and removal of the dams is in the public interest as required in Section 3 of the Klamath Hydroelectric Settlement Agreement; and

d. The issuance by the Dam Removal Entity of the Dam Removal Entity Notice, as defined in Section 7.4.1 of the Klamath Hydroelectric Settlement Agreement, at such time as all necessary permits and approvals have been obtained for the removal of a main stem dam, all contracts necessary for facility removal have been finalized, and facility removal is ready to commence.

15. PacifiCorp, an Oregon Company, must file a Status Report as a compliance filing in Application (A.) 10-03-015 on an annual basis, and serve this Status Report on the service list of A.10-03-015 on an annual basis, due May 1st of each year. The filing of this compliance filing will not reopen the record of this proceeding.

16. The Status Report must address, at a minimum, events regarding and progress toward achievement of:

a. All items listed in Exhibit 2 to Exhibit PPL-104;

b. The enactment of conforming federal legislation;

c. The Interior Secretary's determination to proceed with dam removal;

d. The designation of a Dam Removal Entity;

e. The concurrence of Oregon and California in that determination and designation;

f. The securing of California state funds through a California Bond or other form of state funding;

g. The Dam Removal Entity's development of a detailed plan to effect dam removal consistent with budget and liability controls;

h. The securing of all permits and funding necessary to perform the detailed plan;

i. The amount of surcharge revenue collected in California by year and cumulatively; and

j. Any other items that bear on the probability, schedule, and cost of implementing the Klamath Hydroelectric Settlement Agreement, and related legislation.

17. Application 10-03-015 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Attachment A

List of Testimony and Exhibits Entered into Record in A.10-03-015

Exhibit No.	Sponsor/Witness	Description
Party – PacifiCorp		
PPL-100	Dean S. Brockbank	Direct Testimony
PPL-101	Dean S. Brockbank	Map of Klamath Project
PPL-102	Dean S. Brockbank	Klamath Chronology
PPL-103	Dean S. Brockbank	Summary of KHSA
PPL-104	Dean S. Brockbank	Klamath Hydroelectric Settlement Agreement
PPL-105	Dean S. Brockbank	Rebuttal Testimony
PPL-200	Andrea L. Kelly	Direct Testimony
PPL-201	Andrea L. Kelly	Proposed Schedule 199 – Klamath Dam Removal Surcharge and supporting calculations
PPL-202	Andrea L. Kelly	Supplemental Testimony
PPL-203	Andrea L. Kelly	Rebuttal Testimony
PPL-300	Cory E. Scott	Direct Testimony
PPL-301	Cory E. Scott	Klamath Document Inventory
Party - Division of Ratepayer Advocates		
DRA-001	Mark Loy	Direct Testimony
DRA-001R	Mark Loy	Direct Testimony - Revised
DRA-002	Mark Loy	Errata to Direct Testimony
Party – American Rivers, California Trout, Trout Unlimited, Pacific Coast Federation of Fishermen's Associations, and Institute for Fisheries Resources		
CG-1	Steve Rothert	Direct Testimony
CG-1R	Steve Rothert	Direct Testimony - Revised
CG-2	Steve Rothert	Errata to Direct Testimony

(END OF ATTACHMENT A)

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a hard copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the hard copy of the filed document is current as of today's date.

Dated February 22, 2011, at San Francisco, California.

/s/ ANTONINA V. SWANSEN
Antonina V. Swansen

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

* *

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.

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