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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)

ADMINISTRATIVE LAW JUDGE'S RULING TREATING PETITION FOR MODIFICATION AS AN APPLICATION AND SETTING PREHEARING CONFERENCE

1. Summary

PacifiCorp's petition for modification of Decision 11-05-002 in Application 10-03-015 filed on January 13, 2012, is hereby treated as an application and a Prehearing Conference is set for June 19, 2012. The Commission intends to limit the scope of this proceeding to the issues raised in PacifiCorp's petition for modification, which include whether the period over which the Klamath surcharge is amortized should be revised and as a result of that change, whether the amount of the Klamath surcharge should be revised. PacifiCorp is also required to provide notice of its rate increase request.

2. Background

In Decision (D.) 11-05-002, the Commission approved PacifiCorp's request, for: 1) a surcharge of $13.76 million collected over nine years, not to exceed the 2% limit of the authorized annual revenue requirement as of January 1, 2010;

2) institution of two trust accounts for the deposit of the surcharge; and 3) depreciation of the rate base of the Klamath River Project assets, and amortization of the relicensing and settlement costs associated with the Klamath River Project, on an accelerated basis. These requests were approved to allow PacifiCorp to fulfill requirements of the Klamath Hydroelectric Settlement Agreement (KHSA) that affect its California customers.

Pursuant to Ordering Paragraph (OP) 3 of D.11-05-002, PacifiCorp had to wait until the trust accounts were established before implementing the Klamath surcharge. D.11-05-002 also recognized that the Klamath surcharge rate may be revised and provided that a change in the surcharge rate must be requested through an application, with notice to all parties of record in this proceeding.[1]

On June 6, 2011, in compliance with D.11-05-002, PacifiCorp filed Advice Letter (AL) 444-E to implement the Klamath Dam Removal Surcharge in rates. The Commission approved AL 444-E effective July 6, 2011. On January 3, 2012, the Commission formally notified PacifiCorp that the trust accounts had been established, and on January 10, 2012, PacifiCorp began collecting the surcharge.

On January 13, 2012, PacifiCorp timely filed a petition for modification of D.11-05-002, in which it requests that the $13.76 million Klamath surcharge it was authorized to collect in D.11-05-002 be recovered over less than eight years instead of the currently authorized nine years, in order to collect the entire authorized amount by December 31, 2019.

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[1] See D.11-05-002 at OP 7.

On February 10 and 13, 2012, respectively, the County of Siskiyou (Siskiyou) and the Division of Ratepayer Advocates (DRA) filed responses to the petition. On February 23, 2012, PacifiCorp filed a reply to these responses.

3. Requested Modification to Number of Years over Which Surcharge is Collected and Surcharge Rate

In particular, PacifiCorp requests modification to OP 1 of D.11-05-002, as follows:

> "Pursuant to the Klamath Hydroelectric Settlement Agreement PacifiCorp is authorized to institute a Klamath surcharge, to collect $13.76 million over ~~nine years~~ a period of less than eight years from its California customers."

By so doing, it would adjust the Klamath surcharge so that it is able to collect the $13.76 million Klamath surcharge by December 31, 2019, as required by the KHSA.

The currently authorized surcharge rate was calculated assuming an effective date of January 1, 2011. However, the decision authorizing the surcharge was not issued until May 6, 2011. The surcharge rate authorized in D.11-05-002 equates to $1.53 million per year, for an average of $19.32 per year for increase in residential customer. Furthermore as a result of the passage of time between the issuance of D.11-05-002 and the creation of the trust accounts, PacifiCorp states that approximately eight months of potential surcharge collection have been lost. PacifiCorp calculates that the current surcharge rate, as authorized in D.11-05-002, will be insufficient to collect $13.76 million by December 31, 2019. Specifically, PacifiCorp estimates a total deficit in collections from customers of $1.57 million if the time over which the surcharge is collected is not revised.

PacifiCorp requests that an adjustment to the surcharge rate, based on the revised number of years over which the surcharge is collected, be applied to all rate schedules effective April 1, 2012, to make up the estimated surcharge shortfall. For residential services, the surcharge rate would be increased from 0.179 to 0.202 cents per kilowatt-hour (kWh). PacifiCorp calculates that the surcharge rate revision will increase the bill of an average residential customer using 900 kWh per month by approximately $0.21 per month. The increase in the surcharge rate will result in the $13.76 million being collected equally over a period of less than eight years (93 months), which will result in an annual collection rate of approximately $1.73 million per year over the nearly 8-year period.

PacifiCorp has compared the annual surcharge collections at the proposed surcharge rate against its revenue requirement in California as of January 1, 2010 of $86.6 million and confirmed that the annual surcharge collections do not exceed 2 %.

4. Responses to Petition

Siskiyou recommends that the Commission reject the petition, due to its concerns with what it considers the lack of progress in implementing the KHSA and the uncertainty as to whether it will ever go forward. In particular, Siskiyou references several conditions required by the KHSA which have to come to fruition, including: 1) enactment of federal legislation to implement the settlement; 2) authorization of funding by the State of California; and 3) agreement on terms to transfer the Keno facility to the United States Department of the Interior. Siskiyou alternatively recommends that the Commission should consider revisiting the propriety of the authorized surcharge, and encourage the Klamath parties to proceed with amendments to

the KHSA that will rearrange the sequencing of conditions and events so that California ratepayers are not called upon for financial contributions until the other prerequisites to moving forward with the settlement agreements demonstrate a certainty of realization.

DRA requests that the Commission deny the petition, and require PacifiCorp to file an application if it wishes to revise the surcharge. DRA posits that since D.11-05-002 was issued four months after the January 1, 2011 start date used by PacifiCorp to determine the surcharge, it was entirely foreseeable that it would take additional time to establish trust accounts, so PacifiCorp should not have waited so long to file its petition. DRA goes on to state that D.11-05-002 specifically orders PacifiCorp that a revision to the Klamath surcharge can be requested through an application, and that PacifiCorp has presented no compelling evidence in its petition that the Commission should truncate the nine-year period envisioned by the Commission for collecting the surcharge from PacifiCorp ratepayers.

As with Siskiyou, DRA is concerned about what it considers the uncertainty of KHSA conditions that have yet to be achieved, including but not limited to: 1) passage of federal legislation to implement the KHSA and the Klamath Basin Restoration Agreement; (2) development of a plan to address any costs over the limits in the KHSA; (3) designation of a dam removal entity; and (4) authorization by California and Oregon to fund facilities removal.

DRA continues to support removal of the Klamath dams pursuant to the KHSA, but recognizes the uncertainty regarding whether the December 31, 2019 removal date will be achieved, and therefore questions whether there is any need now to revise the 9-year period for collecting the surcharge. Given these uncertainties and what it considers the small cost risks, DRA recommends that

the Commission deny the petition at this time. If in the future, it appears necessary to adjust the collection of the surcharge, D.11-05-002 provides that PacifiCorp can file an application requesting such relief.

5. Discussion

5.1 Petition to Modify D.11-05-002

As required by OP 7 of D.11-05-002, revisions to the Klamath surcharge rate are to be requested through an application. Since PacifiCorp's requested revision to OP 1 of D.11-05-002 would change the surcharge amount, PacifiCorp should have made such a request through an application. However, rather than requiring PacifiCorp to withdraw the current Petition and re-file its request as an application, and in an effort to proceed efficiently yet thoroughly with PacifiCorp's request while still addressing proper procedures, we will treat PacifiCorp's petition like an application, and set a Prehearing Conference for June 19, 2012, in order to give interested parties an opportunity to fully participate in the Commissions review of PacifiCorp's request.

5.2 Limited Scope of Proceeding

The Commission intends to limit the scope of this proceeding to the issues raised in PacifiCorp's petition for modification, which include whether the period over which the Klamath surcharge is amortized should be revised and as a result of that change, whether the amount of the Klamath surcharge should be revised.

Since Siskiyou's request to revisit other issues regarding the KHSA is outside the scope of the PacifiCorp's petition for modification, Siskiyou's request to revisit these issues is denied. More specifically, and by way of example, I note that D.11-05-002 rejected arguments that the collection of the surcharge should be delayed until "1) approval of a bond measure or alternative source of funding for

the State of California's share of the KHSA costs; [and] 2) passage of federal legislation required by the KHSA."[2] Therefore, I anticipate that the scope of the further proceeding will not include consideration of whether the fact that those events have not yet come to pass are a reason to reverse our prior determination that a surcharge of $13.76 million should be collected in order to support the anticipated KHSA removal start date.[3]

Even though PacifiCorp's request would not increase the total authorized surcharge amount of $13.76 million, it would increase the monthly surcharge amount paid by ratepayers. Therefore, we will require PacifiCorp to provide the notices required by Rule 3.2 of the Commission's Rules of Practice and Procedure. The deadline for providing these notices shall be measured as if PacifiCorp had filed an application on the date of this ruling. With regard to the customer notice required by Rule 3.2(d), PacifiCorp's notice should include, but not be limited to, details of the request, and a comparison of the original authorized monthly Klamath surcharge to the requested increased monthly Klamath surcharge. PacifiCorp must file proof of such notices in the current docket pursuant to Rule 3.2(e).

IT IS RULED that:

1. Instead of requiring PacifiCorp to withdraw the current Petition to Modify Ordering Paragraph 1 of Decision 11-05-002 and re-file its request as an application in compliance with Ordering Paragraph 7 of Decision 11-05-002, and in an effort to proceed efficiently yet thoroughly with PacifiCorp's request while

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[2] *See* D.11-05-002 at 9.

[3] *See* D.11-05-002 at 14-15.

still affording proper procedures, PacifiCorp's petition should be treated like an application, and a Prehearing Conference set for June 19, 2012, in order to give interested parties an opportunity to fully participate in the Commissions review of PacifiCorp's request.

2. The scope of this proceeding will be limited to the issues raised in PacifiCorp's petition for modification, which include whether the period over which the Klamath surcharge is amortized should be revised and as a result of that change, whether the amount of the Klamath surcharge should be revised.

3. The County of Siskiyou's request to revisit other issues regarding the Klamath Hydroelectric Settlement Agreement that are outside the scope of the current petition for modification is denied.

4. We require PacifiCorp to provide the notices required by Rule 3.2 of the Commission's Rules of Practice and Procedure. The deadline for providing these notices must be measured as if PacifiCorp had filed an application on the date of this ruling.

5. With regard to the customer notice required by Rule 3.2(d), PacifiCorp's notice must include, but not be limited to, details of the request, and a comparison of the original authorized monthly Klamath surcharge to the requested increased monthly Klamath surcharge.

6. PacifiCorp must file proof of all notices issued in the current docket pursuant to Rule 3.2(e).

7. Application 10-03-015 remains open to address PacifiCorp's petition for modification of Decision 11-05-002, which is being treated as an application.

Dated May 18, 2012, at San Francisco, California.

/s/ SEANEEN M. WILSON
Seaneen M. Wilson
Administrative Law Judge