

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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In the Matter of the Application of
PACIFICORP (U 901 E), 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 No. 10-03-015

(Filed March 18, 2010)

**REPLY OF PACIFICORP (U901E) IN SUPPORT OF PETITION TO MODIFY
DECISION 11-05-002**

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Consistent with the Administrative Law Judge’s September 20, 2016, electronic ruling, PacifiCorp respectfully submits this reply in support of its August 12, 2016, Petition to Modify Decision (D.) 11-05-002 (the Petition). To ensure an accurate record, this reply briefly addresses four arguments and factual misapprehensions filed in oppositions by Siskiyou County Water Users Association (SCWUA) and County of Siskiyou, Siskiyou County Flood Control and Water Conservation District, and Siskiyou Power Authority (Siskiyou County) (together with SCWUA, Respondents).

First, Respondents misapprehend the nature of the Petition and incorrectly argue that PacifiCorp’s request is more than ministerial.¹ But the Petition is, in fact, ministerial. The Petition neither seeks to increase the existing Klamath surcharge the California Public Utilities Commission (Commission) authorized in D.11-05-002 (the Decision) and amended in

¹ See, e.g., SCWUA Response at 6.

D.12-10-028, nor does it seek to impose a new customer surcharge. Indeed, the amended Klamath Hydroelectric Settlement Agreement (KHSA) does not modify the funding arrangements set out in the original settlement that the Commission considered when issuing the Decision. As authorized by the Decision, PacifiCorp will continue to collect the Klamath customer surcharge and remit the funds to the appropriate trust accounts that are administered by the California Public Utilities Commission, and the Petition does not seek to revise or enlarge those collections.² The Petition simply asks the Commission to conform certain reporting requirements applicable to PacifiCorp to the amended settlement.

Second, Respondents misapprehend the nature of the April 2016 amendments to the KHSA. The original settlement contemplated a dam decommissioning process that would not be administered under the Federal Energy Regulatory Commission's (FERC) rules governing license surrender and dam decommissioning. Instead, the original KHSA provided for Congressional ratification and significant federal agency oversight (e.g., the Secretary of Interior's determination that facilities removal was in the public interest). The amended KHSA now puts dam decommissioning within the established regulatory framework of the Federal Power Act as administered by FERC.

Contrary to Respondents' arguments,³ implementation of the amended KHSA will continue to have significant federal oversight via FERC's existing hydroelectric license transfer and surrender regulations. The amended KHSA does not guarantee that facilities removal will

² SCWUA erroneously argues that collected funds are being "held in trust by PacifiCorp." SCWUA Response at 5 (emphasis in original removed). SCWUA misunderstands the mechanics of the surcharge. Upon collection by PacifiCorp, the surcharge funds are remitted to two trust accounts administered by the Commission. PacifiCorp does not hold the funds in trust as SCWUA alleges.

³ See, e.g., SCWUA Response at 5 ("The Federal protections and involvement are now removed by the proposed changes and nothing new is proposed to take their place."); Siskiyou County Response at 3 (raising concerns about the elimination of the Secretary of the Interior's role in the facilities removal process).

occur. Instead, it provides that the ultimate decision regarding facilities removal will be made by FERC – the agency designated by Congress in the FPA to make such determinations.

Before facilities removal can begin, FERC must evaluate and approve applications to: (1) transfer PacifiCorp’s license for the Klamath Hydroelectric Project to the Klamath River Renewal Corporation (KRRC); and (2) allow KRRC to surrender the license and remove the transferred dams. FERC’s evaluation of the facilities removal proposal will include, among other things, consideration of costs, safety, and environmental impacts (including compliance with the environmental review requirements of the National Environmental Policy Act). FERC’s processes will provide an opportunity for participation by Respondents and other interested parties. In short, the amended KHSA provides Respondents with greater opportunities to participate in the dam removal decision than the original settlement did.

Third, Respondents misunderstand PacifiCorp’s request to delete Paragraph 13(d).⁴ PacifiCorp’s revisions to that paragraph will not eliminate the need for permits or other approvals. Paragraph 13 establishes when PacifiCorp must seek approval to transfer physical assets located in California to the KRRC under the Commission’s asset disposition laws. PacifiCorp proposes modifications to Paragraph 13, including subsection (d), to conform the timing of the asset disposition filings with the regulatory processes set out in the amended KHSA. KRRC, as the entity conducting facilities removal, will still be required to obtain all required permits and approvals before the work can begin. The proposed revision simply recognizes that PacifiCorp is not the proper party to report on regulatory progress for actions it will not undertake.

⁴ See Siskiyou County Response at 3.

Finally, expedited consideration of the Petition does not jeopardize PacifiCorp's customers.⁵ As noted above, the Petition does not seek to enlarge or otherwise revise the surcharge PacifiCorp is currently collecting; as such, the Petition has no impact whatsoever on customers.

As detailed above, Respondents' objections to the Petition are meritless, and PacifiCorp respectfully requests that the Commission approve the Petition on an expedited basis to allow for timely implementation of the amended KHSA.

Respectfully submitted this 22nd day of September, 2016.



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⁵ SCWUA Response at 4.