

Decision 12-10-028 October 25, 2012

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 GRANTING PACIFICORP'S REQUEST TO
MODIFY DECISION 11-05-002 IN ORDER TO REVISE THE
KLAMATH SURCHARGE RATE AND PERIOD OVER WHICH SUCH
SURCHARGE IS COLLECTED**

TABLE OF CONTENTS

Title	Page
DECISION GRANTING PACIFICORP’S REQUEST TO MODIFY DECISION 11-05-002 IN ORDER TO REVISE THE KLAMATH SURCHARGE RATE AND PERIOD OVER WHICH SUCH SURCHARGE IS COLLECTED	1
1. Summary	2
2. Background.....	2
2.1. Limited Scope of the Current Proceeding	5
3. Procedural Requirements Under Rule 16.4	5
4. Requested Modification to Number of Years Over which Surcharge is Collected and Resulting Change to Surcharge Rate	6
5. Interested Parties Positions	7
6. Discussion	10
6.1. Modification of D.11-05-002	10
7. Comments on Proposed Decision	19
8. Assignment of Proceeding	19
Findings of Fact.....	19
Conclusions of Law	24
ORDER	26
 ATTACHMENT A – Modifications to Decision 11-05-002	
ATTACHMENT B – Decision 11-05-002 as Modified by Decision 12-10-028	

**DECISION GRANTING PACIFICORP'S REQUEST TO
MODIFY DECISION 11-05-002 IN ORDER TO REVISE THE
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1. Summary

Due to the delayed institution of the Klamath surcharge and PacifiCorp's need to collect a required amount of Klamath surcharge by December 31, 2019 and for the reasons discussed herein, the Commission grants PacifiCorp's requested modifications to Decision (D.) 11-05-002. In particular, this decision authorizes PacifiCorp to revise its Klamath surcharge to collect \$13.76 million over a period of less than eight years from its California customers. We also authorize PacifiCorp's requested modifications to D.11-05-002, and make further modifications required to conform PacifiCorp's requested modifications with the balance of D.11-05-002.

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 two percent 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. In D.11-05-002, we also recognized that the Klamath Klamath surcharge rate may be revised and provided that a change in the Klamath surcharge rate must be

requested through an application, with notice to all parties of record in this proceeding.

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

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, which was subsequently approved by the Commission's Staff. 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. On February 10 and 13, 2012, respectively, the County of Siskiyou and the Division of Ratepayer Advocates (DRA) filed responses to the petition. On February 23, 2012, PacifiCorp filed a reply to these responses.

On May 18, 2012, the assigned Administrative Law Judge (ALJ) issued a ruling which stated that PacifiCorp's request would be treated as an application to modify D.11-05-002,¹ as required by OP 7 of that decision.

¹ As PacifiCorp's petition to modify is treated as an application to modify, is referred to throughout this decision as a "request."

A prehearing conference (PHC) was held on June 19, 2012 to discuss the scope of the proceeding and develop a procedural timetable for the management of the proceeding. In addition to existing Parties to Application 10-03-015,² Siskiyou County Water Users Association and Rich Marshal (jointly referred to as SCWUA) were granted Party Status.

An Assigned Commissioner's Scoping Memo and Ruling Regarding Petition to Modify Decision 11-05-002 (Scoping Memo) was issued on June 29, 2012. Pursuant to the Scoping Memo, no hearings would take place, and the record would consist of documents filed to date as well as Opening and Reply Briefs. Pursuant to the Scoping Memo, the scope of this proceeding is limited to: 1) Whether the period over which the Klamath surcharge is amortized should be revised; and 2) As a result of that change, whether the amount of the Klamath surcharge should be revised. All other issues raised by interested parties, including but not limited to any possible delay in achievement of project milestones, are not within the scope of the current proceeding.

Opening Briefs were filed on July 10, 2012 by DRA; PacifiCorp; County of Siskiyou; SKWUA; jointly by PCFFA, IFR, and the Karuk tribe; and jointly by AR, CT, and TU. Reply Briefs were filed on July 20, 2012 by PacifiCorp; County of Siskiyou; SKWUA; jointly by PCFFA, IFR, and the Karuk tribe; and jointly by AR, CT, and TU.

We affirm all rulings made by the assigned ALJ and Commissioner herein.

² DRA, County of Siskiyou (including Siskiyou County Flood Control and Water Conservation District and Siskiyou Power Authority), Karuk Tribe, Yurok Tribe, Klamath Water Users Association (KWUA), Pacific Coast Federation of Fishermen's Associations (PCFFA), Institute for Fisheries Resources (IFR), American Rivers (AR), California Trout (CT), and Trout Unlimited (TU).

2.1. Limited Scope of the Current Proceeding

Pursuant to both the assigned ALJ's May 18, 2012 ruling, statements by the assigned ALJ at the PHC, and the Scoping Memo, the scope of the current proceeding is limited to:

1. Whether the period over which the Klamath surcharge is amortized should be revised; and
2. As a result of that change, whether the amount of the Klamath surcharge should be revised.

If parties addressed anything outside the scope of this proceeding, it is not considered in the current proceeding.

3. Procedural Requirements Under Rule 16.4

Rule 16.4 governs the process for the filing and consideration of petitions for modification. Rule 16.4(b) requires that a petition for modification concisely state the justification for the proposed relief and to propose specific wording for all requested modifications. PacifiCorp's request contained a concise but thorough statement of justification for the proposed modifications related to the time period over which the Klamath surcharge would be collected, pursuant to OP 1 of D.11-05-002. Even though PacifiCorp complied with the letter of Rule 16.4 by providing specific working changes to selected ordering paragraphs of D.11-05-002, we find that further revisions to D.11-05-002 are necessary to conform PacifiCorp's requested modification with the remainder of D.11-05-002. We discuss these further modifications in Section 6.1 herein.

Rule 16.4(d) states if more than one year has elapsed since the effective date of the decision, then the petition must explain why it could not have been presented within one year of the effective date of the decision. PacifiCorp filed its Petition within one year, and is therefore in compliance with this rule.

We conclude that PacifiCorp's request has complied with the procedural requirements of Rule 16.4 regarding the requested modifications related to OP 1 of D.11-05-002.

4. Requested Modification to Number of Years Over which Surcharge is Collected and Resulting Change to 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, PacifiCorp 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 Klamath 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 Klamath surcharge rate authorized in D.11-05-002 equates to \$1.53 million per year, or an increase in residential customer rates of \$19.32 per year. 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 Klamath 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 Klamath 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 Klamath surcharge rate would be increased from 0.179 to 0.202 cents per kilowatt hour (kWh). PacifiCorp calculates that the Klamath surcharge rate revision will increase the bill of an average residential customer using 900 kWhs per month by approximately \$0.21 per month.³ The increase in the Klamath 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 eight-year period.

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

PacifiCorp's requested modifications to D.11-05-002 would result in the Klamath surcharge being within several hundred dollars of the two percent cap required by the KHSA and adopted by the Commission in OP 6 of D.11-05-002.

5. Interested Parties Positions

DRA, SCWUA, and the County of Siskiyou recommend that the Commission deny PacifiCorp's requests to shorten the recovery period and increase the amount of the Klamath surcharge. DRA specifically refers to the fact

³ The Klamath surcharge rate authorized in D.11-05-002 translates into an average bill increase of about \$1.61/month. The requested modification would translate into an average bill increase of \$1.82/month (\$1.61 + \$0.21).

that the required federal legislation related to the Klamath River Project has not been passed, the California Bond measure has been delayed again until November 2012, that the Affirmative Determination of the Secretary of the Interior has not been issued, and that necessary permits for the Klamath River Project have not been received. SCWUA and the County of Siskiyou also reference the delay in the California Bond vote.

DRA states that there is no compelling evidence that the conditions required by the KHSA have been met, which indicates an uncertain future for the KHSA. DRA also references Section 4.3 of the KHSA, which it contends, requires that a change in the Klamath surcharge may only occur after the Secretary of the Interior's Affirmative Determination is issued. DRA also states that even though \$0.21 per month increase does not appear material, it still is material in the still struggling economy.

The County of Siskiyou states that PacifiCorp's request should be denied because it is an imposition on ratepayers and because of uncertainties regarding progress toward KHSA milestones. The County of Siskiyou also references a petition filed by the Hoopa Valley Tribe with the Federal Energy Regulatory Commission (FERC), seeking a declaratory order that would effectively set aside the KHSA, and posits the question of how the Commission can approve an increase in the Klamath surcharge when, from its point of view, the entire KHSA may be rendered moot by impending FERC action. The County of Siskiyou recommends that PacifiCorp be required to negotiate revisions to the KHSA with other signatories to the KHSA, and only return to the Commission when a clear path to implementing the KHSA has been established. The County of Siskiyou reiterates this position in its Reply Brief, and also contends that PacifiCorp's proposed increase in the Klamath surcharge rate and revision to the amortization

period over which it is collected, will not result in the collection of the required amount of funds pursuant to the KHSA by December 31, 2019. The County of Siskiyou also asserts that PacifiCorp will not be able to increase its Klamath surcharge further, given that the proposed increase would bring the Klamath surcharge so close to the two percent cap required by the KHSA.

SCWUA states that dam removal is remote; and is also concerned that, pursuant to D.11-05-002, PacifiCorp is required to transfer surcharge funds by the 15th of each month, giving PacifiCorp the use of that money for 15 days, which adds up to four years over the life of the surcharge. SCWUA wonders why the funds cannot be transferred immediately in our electronic age. In its Reply Brief, SCWUA supports the various points made by DRA and the County of Siskiyou in their Opening Briefs, by arguing that the lack of progress towards KHSA milestones and the Hoopa Valley Tribe petition before the FERC support rejection of PacifiCorp's requested modifications.

PCFFA, IFR, and the Karuk tribe jointly support what they state is a minor adjustment to rates that is timely, proven, and warranted. AR, CT, and TU also support PacifiCorp's request. PCFFA, IFR, and the Karuk tribe state that the delay in creating the Trusts was outside PacifiCorp's control, and that it would be much better for ratepayer to make an adjustment now rather than later, since funds collected now would earn interest for a longer period than funds collected later. PCFFA, IFR, and the Karuk Tribe also state that speculation regarding the target start date for dam removal is outside the scope of the current request. Both PCFFA, IFR, and the Karuk Tribe, and AR, CT, and TU rebut the various concerns raised by DRA, the County of Siskiyou, and SCWUA, finding many of them outside the scope of the current proceeding. AR, CT, and TU believe that the Commission should disregard arguments by these parties that are outside the

scope of the current proceeding, such as uncertainty about progress towards KHSA implementation and the proposal that transfers of the Klamath surcharge funds to the trusts should occur on a daily basis. PCFFA, IFR, and the Karuk Tribe state that progress has been made towards achievement of KHSA milestones, such as introduction of federal legislation, and preparation of analysis and documentation required by the National Environmental Policy Act and California Environmental Quality Act, for the Secretary of the Interior's Determination. AR, CT, and TU also believe the County of Siskiyou does not provide accounting data to substantiate its statement that it will be impossible to collect the Klamath in surcharge in time, and that Section 4.3 of the KHSA does not affect the Commission's ability to adjust the Klamath surcharge independent of the Secretarial Determination.

6. Discussion

6.1. Modification of D.11-05-002

Pursuant to the KHSA, PacifiCorp must recover \$16 million from its California ratepayers by December 31, 2019. In an effort to reduce the amount actually collected from customers, PacifiCorp was authorized to collect \$13.76 million over the next nine years, earning interest on the balance collected. By earning this interest on the balance collected, PacifiCorp is able to reduce the amount actually collected from ratepayers. If PacifiCorp does not collect \$13.76 million by December 31, 2019, it will not earn enough interest to make up the difference between the \$13.76 million collected and the \$16 million required by the KHSA. We also note that PacifiCorp is not requesting a change to the total amount of the surcharge to be collected from its customers, \$13.76 million, but only to the period over which it is collected. Since that amount is collected over a shorter period of time, the Klamath surcharge rate

will increase, but the total amount paid by ratepayers over the now approximately eight years will not exceed the currently authorized total Klamath surcharge of \$13.76 million.

While DRA shows that the economy in PacifiCorp territory is struggling, it does not show that it would be a financial hardship for these customers to pay an additional \$0.21 per month (on average) in their electric bills. As discussed in D.11-05-002, if the KHSA is not implemented, these ratepayers would be exposed to paying the uncertain costs of relicensing, litigation, and decommissioning of the four dams.⁴ We also note that, due to the delay in institution of the trusts, these same customers did not have to pay for the authorized Klamath surcharge for eight months that they otherwise would have paid. The County of Siskiyou is concerned with how close PacifiCorp's request would bring the authorized Klamath surcharge to the two percent cap, and that based on the time remaining prior to December 31, 2019, PacifiCorp will not be able to collect the required \$13.76 million by the KHSA due date of December 31, 2019. The County of Siskiyou's criticisms provide no alternatives besides revisiting the KHSA itself, and the notion that breaches of the KHSA will occur.

We appreciate DRA, SCWUA's and the County of Siskiyou's concerns and suggestions regarding other related issues, such as achievement of milestones, revisions to the deposit date of the Klamath surcharge, revisions to the KHSA, and a petition to FERC to set aside the KHSA, but as stated in the Scoping Memo and as discussed at the PHC, this proceeding is limited to whether the period over which the surcharge is collected and the amount of the surcharge should be

⁴ D.11-05-002 at 12.

changed, assuming no other changes to D.11-05-002. While properly outside the scope of the current proceeding, even if we were to look at these concerns regarding the achievement of milestones in order to determine whether to grant PacifiCorp's request, these concerns would not change our conclusion. As to SCWUA's suggestion that the deposit date of the Klamath surcharge should be revised, that has nothing to do with whether or not PacifiCorp should collect the authorized total surcharge of \$13.76 million over a shorter period of time.

Contrary to DRA's assertions, significant progress has been made in the implementation of the KHSA to date. For example, on November 10, 2011 legislation that would implement both the KHSA and Klamath Basin Restoration Agreement was introduced in the United States Senate and House of Representatives and on September 21, 2011 the Department of the Interior released a Draft Environmental Impact Statement/Environmental Impact Report and related scientific/technical reports as a preliminary step in reaching the Secretarial Determination. Further, the milestone of obtaining permits and approvals was not one that was expected to be met at this time. Also, as stated in D.11-05-002, we 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."⁵ That decision also made the surcharge subject to refund to allow for the possibility that dam removal might not occur. In short, our prior decision recognized that there were some uncertainties

⁵ See D.11-05-002 at 10.

relating to dam removal, but that, for the reasons explained therein, it is better to proceed with surcharge collection.

None of the facts referred to by the parties show any more uncertainty about dam removal than at the time of our prior decision. Accordingly, the Klamath surcharge should be modified in order for PacifiCorp to collect \$13.76 million in order to support the anticipated KHSA removal start date. Similarly, suggesting that the terms of the KHSA be reconsidered or that the KHSA might be set aside are not alternatives to PacifiCorp's proposed revisions to the Klamath surcharge rate or recovery period. In our prior decision, we determined that it was in ratepayer's interest for us to proceed with our part in implementing the KHSA. Nothing stated by the parties shows any reason to depart from that approach.

We disagree with DRA's concern that Section 4.3 of the KHSA requires that revisions to the KHSA surcharge only occur after a Secretarial Determination is made. Section 4.3 of the KHSA states:

Upon review of the Secretarial Determination described in Section 3 of this Settlement, or as appropriate thereafter (such as, for example, in the event of a significant change in the relative revenues between California and Oregon), the States shall consult with each other, PacifiCorp, and the Federal Parties regarding adjustments to the California Klamath Surcharge or Oregon Klamath Surcharges necessitated by or appropriate considering the Secretarial Determination or other circumstances. Following such consultation, PacifiCorp will request that the California PUC and Oregon PUC adjust the Klamath Surcharges to be consistent with the recommendations developed through the consultation. Any adjustment shall not alter the maximum level of the Customer Contribution or State Cost Cap.

The first sentence does not limit when the Commission, which is not a party to the KHSA, can adjust the California Klamath surcharge. Rather, it requires several of the parties to the KHSA to consult with each other after the Secretarial Determination and possibly at other times thereafter, to discuss whether the Secretarial determination, or other circumstances, makes it advisable to adjust the surcharge. The next two sentences then: 1) describe what PacifiCorp must do thereafter if those parties determine that the surcharge should be revised; and 2) reiterate, that several limits provided by the KHSA must still remain in effect.

Thus, the purpose of this section is to ensure that once the Secretarial Determination has been made, the relevant parties will meet to discuss whether it is necessary or appropriate to adjust the surcharge, and if so, to make sure that the appropriate action is taken.

This section evinces no intent to prevent the Commission, which is not a party to the KHSA, from adjusting the California Klamath surcharge at an earlier time, due to the fact that intervening events have made some of the assumptions underlying the Commission's own prior decision no longer accurate.

As discussed in Section 2 above, since the trusts required by the KHSA and D.11-05-002 were not established until January 2012, and PacifiCorp was not authorized to collect the Klamath surcharge until the trusts were created, PacifiCorp was not able to collect the Klamath surcharge until January of 2012, approximately eight months after the issuance of D.11-05-002 and one year after the assumed date upon which the Klamath surcharge was based.

Since: (i) the delay in collecting the authorized surcharge was out of PacifiCorp's control; (ii) the concerns raised by interested parties are outside the scope of the current proceeding; (iii) PacifiCorp's requested revision to the

Klamath surcharge is within the two percent limit required by the KHSA; and (iv) PacifiCorp is required pursuant to the KHSA to collect \$13.76 million from California customers by December 31, 2019, the Commission authorizes PacifiCorp's proposed modifications to D.11-05-002 as shown in Attachment A to this decision. Because of the need to collect the already authorized total amount of \$13.76 million over a shorter period of time, it is just and reasonable to change the amount of the monthly Klamath surcharge. We authorize PacifiCorp to collect the Klamath surcharge over less than eight years and to revise the amount collected each month from its California customers, within the two percent cap required pursuant to OP 6 of D.11-05-002.

We therefore grant PacifiCorp's request, and require PacifiCorp to file a Tier 1 advice letter to institute the revised collection period and Klamath surcharge amount, as well as revise all affected tariff sheets. In particular, we grant PacifiCorp requested modification to OP 1 of D.11-05-002 (see Attachment A to this decision), as follows:

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

These modifications, the authorized Klamath surcharge will be within several hundred dollars of the two percent cap.

In order to conform PacifiCorp's requested revision to OP 1 of D.11-05-002, we also modify Sections 1, 5, and 6, Finding of Fact (FOF) 9 and Conclusions of Law (COL) 1, 4, and 10; and add new FOF 10 and COL 9 (see Attachment A to this decision) as follows:

1. Page 2, Section 1, top of paragraph should now read:
This decision approves the request by PacifiCorp, an

Oregon Company, for: 1) a surcharge of \$13.76 million collected [over a period of less than eight](#) years; 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.

2. Pages 12-13, Section 5, first two paragraph should now read: PacifiCorp proposes to spread the estimated \$13.76 million surcharge equally [over a period of less than eight-years](#) resulting in annual collections of approximately ~~\$1.53~~ [1.73](#) million/year, which translates into [an average](#) bill increase of about ~~\$1.61~~ [1.82](#)/month for the average residential customer.⁶ In support of its request to collect the proposed surcharge [over a period of less than eight years](#), PacifiCorp states that the KHSA has a target start date for removal of the Klamath assets of January 1, 2020.⁷ Additionally, by collecting the surcharge [over a period of less than eight 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.⁸ [The California Copco I and II/Iron Gate Dams Trust Accounts were not established until January 2012, approximately eight months after the issuance of D.11-05-002. Given the amount of time it took to establish the California Copco I and II/Iron Gate Dams Trust Accounts, PacifiCorp should collect the surcharge over a period of less than eight years.](#)

⁶ Application (A.) 10-03-015 at 4-5, [and the Petition of PacifiCorp for Modification of Decision 11-05-002 and Expedited Request for Consideration.](#)

⁷ KHSA at Section 7.3.1 and A.10-03-015 at 4.

⁸ A.10-03-015 at 2 and KHSA at Section 4.1.1.E.

3. Page 14, Section 5, top of third full paragraph should now read: We find that it is essential that the surcharge of \$13.76 million be collected over a period of less than eight years, not to exceed the two percent limit of the authorized annual revenue requirement as of January 1, 2010, in order to support the anticipated KHSA removal start date, and to accrue sufficient interest to make up the difference between the surcharge collected from California customers and the amount allocated to PacifiCorp's California customers by the KHSA. By collecting the surcharge over a period of less than eight years, there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates.
4. Page 16, Section 5, middle of page should now read: Within 30 days of the latter of (i) the Energy Division's determination of compliance, and (ii) Commission staff notification of the California Klamath Trust Accounts establishment, PacifiCorp must begin collecting the surcharge from its California customers, and collect such surcharge over a period of less than eight years.

5. Pages 17-18, Section 6, should now read: Since the surcharge will be collected over a number of years, is being collected for a specific purpose, and will not begin to be needed [until after December 31, 2019](#), these funds need to be held separately from other PacifiCorp funds, in order to ensure these funds are available for their authorized purpose.
6. Page 29, FOF 9 should now read: In order for PacifiCorp to collect sufficient surcharge funds for the DRE to begin removal of the Klamath assets proposed in the KHSA in a timely fashion and to accrue sufficient interest on the surcharge funds to make up the difference between the collected customer surcharge and the amount required by the KHSA, the surcharge must be recovered [over a period of less than eight years](#).
7. Page 30, FOF 10 should be added as follows and the balance renumbered: The California Copco I and II/Iron Gate Dams Trust Accounts were not established until January 2012, approximately eight months after the issuance of D.11-05-002.
8. Page 30, COL 1 should now read: The proposed surcharge of \$13.76 million collected [over a period of less than eight years](#) from PacifiCorp's California customers should be authorized.
9. Page 31, COL 4 should now read: By collecting the surcharge [over a period of less than eight years](#), there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates.
10. Page 32, COL 9 should be added as follows and the balance renumbered: The surcharge should be collected over a period of less than eight years, given the amount of time it took to establish the California Copco I and II/Iron Gate Dams Trust Account.
11. Page 32, COL 10 should now read: By collecting the surcharge [over a period of less than eight years](#), there is time for interest to accrue on the amount collected, which

is intended to allow California ratepayers to pay less in rates.

7. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Opening comments were filed on October 11, 2012 by DRA; PacifiCorp; jointly by AR, CT, and TU; and jointly by PCFFA, IFR, and the Karuk Tribe. On October 16, 2012, reply comments were filed jointly by AR, CT, and TU. Comments have been considered herein.

8. 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 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 two percent 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.

2. In D.11-05-002, we recognized that the Klamath Klamath surcharge rate may be revised and provided that a change in the Klamath surcharge rate must be requested through an application, with notice to all parties of record in this proceeding.

3. Pursuant to OP 3 of D.11-05-002, PacifiCorp had to wait until the trust accounts were established before implementing the Klamath surcharge.

4. Pursuant to OP 6 of D.11-05-002, revisions to the Klamath surcharge must limit the surcharge to two percent of the authorized annual revenue requirement as of January 1, 2010.

5. PacifiCorp's request complies with the two percent cap requirement.

6. Pursuant to OPs 7 of D.11-05-002, the Klamath surcharge rate may be revised through an application, with notice to all parties of record in the proceeding.

7. On June 6, 2011, in compliance with D.11-05-002, PacifiCorp filed AL 444-E to implement the Klamath Dam Removal Surcharge in rates. The Commission staff approved AL 444-E.

8. 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.

9. On January 13, 2012, PacifiCorp filed a petition for modification of D.11-05-002. PacifiCorp 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.

10. On May 18, 2012, the assigned ALJ issued a ruling which stated that PacifiCorp's request would be treated as an application to modify D.11-05-002, as required by OP 7 of that decision.

11. The scoping memo established that the scope of this proceeding is limited to: 1) Whether the period over which the Klamath surcharge is amortized should be revised; and 2) As a result of that change, whether the amount of the Klamath

surcharge should be revised. All other issues raised by interested parties, including but not limited to any possible delay in achievement of project milestones, is not within the scope of the current proceeding.

12. The concerns raised by DRA, the County of Siskiyou, and SCWUA that are outside the scope of the current proceeding include but are not limited to:

- a. Lack of achievement towards milestones required by the KHSA, such as passing of federal legislation and the California Bond measure, issuance of the Affirmative Determination of the Secretary of the Interior and necessary permits;
- b. Occurrence of events that may affect achievement of the KHSA, such as the filing of a petition by the Hoopa Valley Tribe with FERC which seeks a declaratory order that would effectively set aside the KHSA;
- c. A request that PacifiCorp be required to negotiate revisions to the KHSA with other signatories to the KHSA; and
- d. A request to modify D.11-05-002, so that instead of requiring PacifiCorp to transfer surcharge funds by the 15th of each month, it would require PacifiCorp to transfer surcharge fund as soon as they are received.

13. As discussed in D.11-05-002, if the KHSA is not implemented, PacifiCorp's ratepayers would be exposed to paying the uncertain costs of relicensing, litigation, and decommissioning of the four dams.

14. Significant progress has been made in the implementation of the KHSA to date. For example, on November 10, 2011 legislation that would implement both the KHSA and Klamath Basin Restoration Agreement was introduced in the United States Senate and House of Representatives and on September 21, 2011 the Department of the Interior released a Draft Environmental Impact Statement/Environmental Impact Report and related scientific/technical reports

as a preliminary step in reaching the Secretarial Determination. The milestone of obtaining permits and approvals was not one that was expected to be met at this time.

15. As stated in D.11-05-002, we 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.” That decision also made the surcharge subject to refund to allow for the possibility that dam removal might not occur. In short, our prior decision recognized that there were some uncertainties relating to dam removal, but that, for the reasons explained therein, it is better to proceed with surcharge collection.

16. None of the facts referred to by the parties show any more uncertainty about dam removal than at the time of our prior decision.

17. In our prior decision, we determined that it was in ratepayer’s interest for us to proceed with our part in implementing the KHSA. Nothing stated by the parties shows any reason to depart from that approach.

18. Pursuant to Rule 16.4, PacifiCorp’s request contained a concise but thorough statement of justification for the proposed modifications related to the time period over which the Klamath surcharge would be collected, pursuant to OP 1 of D.11-05-002, and was filed within one year after the issuance of D.11-05-002.

19. PCFFA, IFR, and the Karuk Tribe state that progress has been made towards achievement of KHSA milestones, such as introduction of Federal legislation, and preparation of analysis and documentation required by the National Environmental Policy Act and California Environmental Quality Act, for the Secretary of the Interior’s Determination.

20. DRA, the County of Siskiyou, and SCWUA support denial of PacifiCorp's request.

21. PCFFA, IFR, the Karuk Tribe, AR, CT, and TU support adoption of PacifiCorp's request.

22. The currently authorized Klamath surcharge rate was calculated assuming an effective date of January 1, 2011.

23. As a result of the passage of time between the issuance of D.11-05-002 and the creation of the trust accounts in January 2012, and since PacifiCorp was not authorized to collect the Klamath surcharge until the trusts were created, PacifiCorp was not able to collect the Klamath surcharge until January of 2012, approximately eight months after the issuance of D.11-05-002 and one year after the assumed date upon which the Klamath surcharge was based.

24. Pursuant to the KHSA, PacifiCorp must recover \$16 million from its California ratepayers by December 31, 2019. In an effort to reduce the amount actually collected from its customers, PacifiCorp was authorized, in D.11-05-002, to collect \$13.76 million over the next nine years, earning interest on the balance collected. By earning this interest on the balance collected, PacifiCorp is able to reduce the amount actually collected from ratepayers.

25. If PacifiCorp does not collect \$13.76 million by December 31, 2019, it will not earn enough interest to make up the difference between the \$13.76 million collected and the \$16 million required by the KHSA.

26. PacifiCorp is not requesting a change to the total amount of the surcharge to be collected over the time period of \$13.76 million, but to the years over which it is collected and the amount of the monthly Klamath surcharge (which does not change the total authorized amount collected of \$13.76 million). Since that amount would be collected over a shorter period of time, the Klamath surcharge

rate would increase, but the total amount paid by ratepayers over the now approximately eight years will not change.

27. PacifiCorp's requested modifications to D.11-05-002 would result in the Klamath surcharge being within several hundred dollars of the two percent cap required by the KHSA and adopted by us in OP 6 of D.11-05-002.

28. Section 4.3 of the KHSA does not limit when the Commission, which is not a party to the KHSA, can adjust the California Klamath surcharge.

Conclusions of Law

1. We should affirm all rulings made by the assigned Commissioner and assigned ALJ in this proceeding.

2. PacifiCorp complied with Rule 16.4 by providing specific working changes to selected ordering paragraphs of D.11-05-002 and filed its Petition within one year of the issuance of D.11-05-002.

3. Since: (a) the delay in collecting the authorized surcharge was out of PacifiCorp's control; (b) PacifiCorp is required pursuant to the KHSA to collect \$13.76 million from California customers by December 31, 2019; and (c) PacifiCorp's proposed revised Klamath surcharge is within the two percent cap, the Commission should grant PacifiCorp's request to modify D.11-05-002 as shown in Attachment A to this decision; collect the Klamath surcharge over less than eight years; and revise the amount collected each month from its California customers, within the two percent annual cap required pursuant to OP 6 of D.11-05-002 and Section 4.1.1.B of the KHSA.

4. Section 4.3 of the KHSA does not limit when the Commission, which is not a party to the KHSA, can adjust the California Klamath surcharge.

5. While DRA shows that the economy in PacifiCorp territory is struggling, it does not show that it would be a financial hardship for these customers to pay an additional \$0.21 per month (on average) in their electric bills.

6. Because of the need to collect the already authorized total amount of \$13.76 million over a shorter period of time, it is just and reasonable to change the amount of the monthly Klamath surcharge.

7. Suggesting that the terms of the KHSA be reconsidered or that the KHSA might be set aside, are not alternatives to PacifiCorp's proposed revisions to the Klamath surcharge rate or recovery period.

8. While properly outside the scope of the current proceeding, even if we were to look at the parties concerns regarding the achievement of milestones in order to determine whether to grant PacifiCorp's current request, these concerns would not change our conclusion.

9. SCWUA's suggestion that the deposit date of the Klamath surcharge should be revised has nothing to do with whether or not PacifiCorp should collect the authorized total surcharge of \$13.76 million over a shorter period of time.

10. Due to the delay in institution of the trusts, PacifiCorp's California customers did not have to pay for the authorized Klamath surcharge for eight months that they otherwise would have paid.

11. Because the purpose of Section 4.3 of the KHSA is to ensure that certain adjustments are made, after consultation among the relevant parties to the KHSA after the Secretarial Determination, this section evinces no intent to prevent the Commission, which is not a party to the KHSA, from adjusting the California Klamath surcharge at an earlier time, due to the fact that intervening events have

made some of the assumptions underlying the Commission's own prior decision, no longer accurate.

12. PacifiCorp's requested modification to OP 1 of D.11-05-002 should be granted as set forth in the Ordering Paragraphs.

13. Further modifications to D.11-05-002 should be made, as set forth in the Ordering Paragraphs.

14. The modified D.11-05-002, printed in its entirety as Attachment B, should be cited as "Decision 11-05-002, as modified by Decision 12-10-028."

15. PacifiCorp's should file a Tier 1 advice letter to institute the revised Klamath collection period, Klamath surcharge rate, and all affected tariff sheets.

O R D E R

IT IS ORDERED that:

1. PacifiCorp's January 13, 2012 Petition to Modify Decision 11-05-002 is granted as set forth in this Ordering Paragraph (OP) and in OPs 2-5 below. We grant PacifiCorp authority to collect the Klamath surcharge over less than eight years and revise the Klamath surcharge amount collected each month from its California customers within the two percent annual cap required pursuant to OP 6 of Decision 11-05-002 and Section 4.1.1.B of the Klamath Hydroelectric Settlement Agreement.

2. We modify Ordering Paragraph 1 of Decision 11-05-002 as shown in Attachment A to this decision as follows:

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

3. In order to conform PacifiCorp's requested modification to Ordering Paragraph 1 of Decision 11-05-002, we also modify Sections 1, 5, and 6, Finding of Fact (FOF) 9 and Conclusions of Law (COL) 1, 4, and 10; and add new FOF 10 and COL 9 (shown in Attachment A) as follows:

- a. Page 2, Section 1, top of paragraph must now read: This decision approves the request by PacifiCorp, an Oregon Company, for: 1) a surcharge of \$13.76 million collected over a period of less than eight years; 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.
- b. Pages 12-13, Section 5, first two paragraphs must now read: PacifiCorp proposes to spread the estimated \$13.76 million surcharge equally over a period of less than eight-years resulting in annual collections of approximately \$1.73 million/year, which translates into an average bill increase of about \$1.82/month for the average residential customer.⁹ In support of its request to collect the proposed surcharge over a period of less than eight years, PacifiCorp states that the Klamath Hydroelectric Settlement Agreement (KHSA) has a target start date for removal of the Klamath assets of January 1, 2020.¹⁰ Additionally, by collecting the surcharge over a period of less than eight 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

⁹ A.10-03-015 at 4-5, and the Petition of PacifiCorp for Modification of Decision 11-05-002 and Expedited Request for Consideration.

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

reduced.¹¹ The California Copco I and II/Iron Gate Dams Trust Accounts were not established until January 2012, approximately eight months after the issuance of D.11-05-002. Given the amount of time it took to establish the California Copco I and II/Iron Gate Dams Trust Accounts, PacifiCorp should collect the surcharge over a period of less than eight years.

- c. Page 14, Section 5, top of third full paragraph must now read: We find that it is essential that the surcharge of \$13.76 million be collected over a period of less than eight years, not to exceed the two percent limit of the authorized annual revenue requirement as of January 1, 2010, in order to support the anticipated KHSA removal start date, and to accrue sufficient interest to make up the difference between the surcharge collected from California customers and the amount allocated to PacifiCorp's California customers by the KHSA. By collecting the surcharge over a period of less than eight years, there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates.
- d. Page 16, Section 5, middle of page must now read: Within 30 days of the latter of (i) the Energy Division's determination of compliance and (ii) Commission staff notification of the California Klamath Trust Accounts establishment, PacifiCorp must begin collecting the surcharge from its California customers, and collect such surcharge over a period of less than eight years.
- e. Page 17-18, Section 6, must now read: Since the surcharge funds will be collected over a number of years, is being collected for a specific purpose, and will not begin to be needed until after December 31, 2019, these funds need to be held separately from other PacifiCorp

¹¹ A.10-03-015 at 2 and KHSA at Section 4.1.1.E.

funds, in order to ensure these funds are available for their authorized purpose.

- f. Page 29, FOF 9 must now read: In order for PacifiCorp to collect sufficient surcharge funds for the DRE to begin removal of the Klamath assets proposed in the KHSA in a timely fashion and to accrue sufficient interest on the surcharge funds to make up the difference between the collected customer surcharge and the amount required by the KHSA, the surcharge must be recovered over a period of less than eight years.
- g. Page 30, FOF 10 must be added as follows and the balance renumbered: The California Copco I and II/Iron Gate Dams Trust Accounts were not established until January 2012, approximately eight months after the issuance of D.11-05-002.
- h. Page 30, COL 1 must now read: The proposed surcharge of \$13.76 million collected over a period of less than eight years from PacifiCorp's California customers should be authorized.
- i. Page 31, COL 4 must now read: By collecting the surcharge over a period of less than eight years, there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates.
- j. Page 32, COL 9 must be added as follows and the balance renumbered: The surcharge should be collected over a period of less than eight years, given the amount of time it took to establish the California Copco I and II/Iron Gate Dams Trust Account.
- k. Page 32, COL 10 must now read: By collecting the surcharge over a period of less than eight years, there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates.

4. PacifiCorp is authorized to file, within 60 days of the effective date of this decision, a Tier 1 advice letter to revise its tariffs to change the Klamath surcharge rate to reflect the revised Klamath collection period authorized in Ordering Paragraph (OP) 1 of this decision, subject to the two percent annual cap required by OP 6 of D.11-05-002. PacifiCorp must include with its advice letter workpapers showing that the revised Klamath surcharge rate is consistent with that two percent annual cap.

5. The modified Decision 11-05-002 printed in its entirety as Attachment B, must be cited as "Decision 11-05-002, as modified by Decision 12-10-028."

6. All rulings are affirmed.

7. Application 10-03-015 is closed.

This order is effective today.

Dated October 25, 2012, at Irvine, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

ATTACHMENT A
Modifications to Decision 11-05-002

1. Ordering Paragraph 1 now reads: Pursuant to the Klamath Hydroelectric Settlement Agreement PacifiCorp is authorized to institute a Klamath surcharge, to collect \$13.76 million over a period of less than eight years from its California customers.
2. Page 2, Section 1, top of paragraph now reads: This decision approves the request by PacifiCorp, an Oregon Company, for: 1) a surcharge of \$13.76 million collected [over a period of less than eight](#) years; 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.
3. Pages 12-13, Section 5, first two paragraphs now read: PacifiCorp proposes to spread the estimated \$13.76 million surcharge equally [over a period of less than eight-years](#) resulting in annual collections of approximately ~~\$1.53~~ 1.73 million/year, which translates into an average bill increase of about ~~\$1.61~~ [1.82](#)/month for the average residential customer.¹ In support of its request to collect the proposed surcharge [over a period of less than eight years](#), PacifiCorp states that the KHSA has a target start date for removal of the Klamath assets of January 1, 2020.² Additionally, by collecting the surcharge [over a period of less than eight 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.³ [The California Copco I and II/Iron Gate Dams Trust Accounts were not established until January 2012, approximately eight months after the issuance of D.11-05-002. Given the amount of time it took to establish the California Copco I and II/Iron Gate Dams Trust Accounts, PacifiCorp should collect the surcharge over a period of less than eight years.](#)

¹ A.10-03-015 at 4-5, [and the Petition of PacifiCorp for Modification of Decision 11-05-002 and Expedited Request for Consideration.](#)

² KHSA at Section 7.3.1 and A.10-03-015 at 4.

³ A.10-03-015 at 2 and KHSA at Section 4.1.1.E.

4. Page 14, Section 5, top of third full paragraph now reads: We find that it is essential that the surcharge of \$13.76 million be collected [over a period of less than eight years](#), not to exceed the two percent limit of the authorized annual revenue requirement as of January 1, 2010, in order to support the anticipated KHSA removal start date, and to accrue sufficient interest to make up the difference between the surcharge collected from California customers and the amount allocated to PacifiCorp's California customers by the KHSA. By collecting the surcharge [over a period of less than eight years](#), there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates.
5. Page 16, Section 5, middle of page now reads: Within 30 days of the latter of (i) the Energy Division's determination of compliance, and (ii) Commission staff notification of the California Klamath Trust Accounts establishment, PacifiCorp must begin collecting the surcharge from its California customers, and collect such surcharge [over a period of less than eight years](#).
6. Pages 17-18, Section 6, now reads: Since the surcharge will be collected over a number of years, is being collected for a specific purpose, and will not begin to be needed [until after December 31, 2019](#), these funds need to be held separately from other PacifiCorp funds, in order to ensure these funds are available for their authorized purpose.
7. Page 29, Finding of Fact 9 now reads: In order for PacifiCorp to collect sufficient surcharge funds for the DRE to begin removal of the Klamath assets proposed in the KHSA in a timely fashion and to accrue sufficient interest on the surcharge funds to make up the difference between the collected customer surcharge and the amount required by the KHSA, the surcharge must be recovered [over a period of less than eight years](#).
8. Page 30, Finding of Fact 10 is added as follows and the balance renumbered: The California Copco I and II/Iron Gate Dams Trust Accounts were not established until January 2012, approximately eight months after the issuance of D.11-05-002.
9. Page 30, Conclusion of Law 1 now reads: The proposed surcharge of \$13.76 million collected [over a period of less than eight years](#) from PacifiCorp's California customers should be authorized.
10. Page 31, Conclusion of Law 4 now reads: By collecting the surcharge [over a period of less than eight years](#), there is time for interest to accrue on the

amount collected, which is intended to allow California ratepayers to pay less in rates.

11. Page 32, Conclusion of Law 9 is added as follows and the balance renumbered: The surcharge should be collected over a period of less than eight years, given the amount of time it took to establish the California Copco I and II/Iron Gate Dams Trust Account.
12. Page 32, Conclusion of Law 10 now reads: By collecting the surcharge over a period of less than eight years, there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates.

(END OF ATTACHMENT A)

ATTACHMENT B
Decision 11-05-002 as modified by
Decision 12-10-028

A.10-03-015 ALJ/SMW/gd2

ALJ/SMW/avs

Date of Issuance 5/6/2011

Decision 11-05-002 May 5, 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 11-05-002, AS MODIFIED BY DECISION 12-10-028
DECISION APPROVING A RATE INCREASE FOR PACIFICORP PURSUANT
TO THE KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT**

TABLE OF CONTENTS

DECISION APPROVING A RATE INCREASE FOR PACIFICORP PURSUANT TO THE KLAMATH HYDROELECTRIC SETTLEMENT AGREEMENT 2

1. Summary 2

2. Background..... 2

3. Should The Commission Require Pacificorp To File A New Application At A Later Date, After Selected Conditions Are Met?..... 9

4. Should The Commission Authorize A Surcharge To Recover The Costs Of Removing The Klamath Assets? 11

5. How Should A Surcharge Be Recovered?..... 13

6. How Should Surcharge Funds Be Administered? 17

7. How Should The Klamath Assets Be Depreciated?..... 20

8. How Should Khsa Assets Be Disposed Of? 22

9. Should Pacificorp Report On The Status Of The Khsa?..... 26

10. Comments On The Proposed Decision 29

11. Assignment Of Proceeding 29

FINDINGS OF FACT 29

CONCLUSIONS OF LAW..... 31

ORDER 38

Attachment A - List Of Testimony And Exhibits Entered Into Record In A.10-03-015

DECISION 11-05-002, AS MODIFIED BY DECISION 12-10-028
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 a period of less than eight years](#); 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. Approval of these requests will allow PacifiCorp to fulfill requirements of the Klamath Hydroelectric Settlement Agreement that affect its California customers. PacifiCorp must also file a separate Tier 3 advice letters at later dates requesting authority to transfer the Klamath River Project assets. On an annual basis, PacifiCorp must file a Status Report as an information only filing which identifies the status of key milestones in achieving the goals of the Klamath Hydroelectric Settlement Agreement. This proceeding remains open.

2. Background

The Federal Energy Regulatory Commission (FERC) licenses each non-federal hydropower project.¹ The Klamath Hydroelectric Project, which includes four PacifiCorp owned dams as well as related plant (Klamath assets), received its original license in 1954. The Klamath assets are located in the Klamath Basin, which consists of the lands tributary to the Klamath River,

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.

straddling southern Oregon and northern California. PacifiCorp serves approximately 555,000 customers in Oregon and 45,000 customers in California.² PacifiCorp's Klamath assets complied with laws applicable at the time of their original licensing at both the state and federal level. There are now many laws that did not exist in 1954, which the Klamath assets would have to comply with in order to be granted a new license.³ Prior to the Klamath Hydroelectric Settlement Agreement (KHSA), the FERC Final Environmental Impact Statement found that the Klamath assets would require substantial modifications to be in compliance with current law and the requirements of a new FERC license.⁴

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.

² In addition to serving customers in California and Oregon, PacifiCorp provides service in the states of Utah, Washington, Idaho and Wyoming.

³ 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).

⁴ Exhibit CG-1R at 8-11.

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.⁵ 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 physically 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 relicensing, the Klamath assets be transferred to a trustee who would be

⁵ Exhibit PPL-100 at 4.

responsible for their removal, after selected milestones are met. Pursuant to the KHSA, the first source of funding for removal would be from PacifiCorp's California and Oregon customers,⁶ 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 target start of removal in 2020. The KHSA also proposes that, in order for the Klamath assets to be completely depreciated by the estimated removal 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 this Commission.

On March 18, 2010, PacifiCorp did just that when it filed this application, in which it requests, pursuant to the KHSA: 1) authorization to institute a surcharge of \$13.76 million; 2) institution of the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Dam Trust Account⁷ (California Klamath Trust Accounts) for the deposit of the surcharge; 3) authorization to depreciate the rate base of the Klamath assets and to amortize the relicensing and settlement costs associated with the Klamath River Project on an accelerated basis; and 4) authority to transfer the Klamath River Project assets

⁶ KHSA Section 4.1.2.A states that the difference between: i) the surcharges collected from both Oregon and California customers; and ii) the actual cost to complete removal of the Klamath assets, would be funded with a California bond or another appropriate California financing mechanism, not to exceed \$250 million.

⁷ 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.

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 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 ALJ hold A.10-03-015 in abeyance until after the *Safe, Clean, and Reliable Drinking Water Supply Act of 2010* (Bond Measure)⁸ 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,⁹ Pacific Coast

⁸ The Bond Measure was originally scheduled to be part of the November 2010 ballot as Proposition 18. However, on August 9, 2010, the State Legislature voted to postpone the vote to the November 2012 ballot.

⁹ 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

Footnote continued on next page

Federation of Fisherman's Association,¹⁰ Trout Unlimited,¹¹ California Trout,¹² American Rivers,¹³ the Karuk Tribe,¹⁴ the Yurok Tribe,¹⁵ and the Klamath Water Users Association.¹⁶ The Institute of Fisheries Resources, Pacific Coast

salmon runs to the Klamath River that it states have been damaged by the impacts of the Klamath assets on the Klamath River.

¹⁰ 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.

¹¹ 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.

¹² 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.

¹³ 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.

¹⁴ 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.

¹⁵ 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 offices are all within the PacifiCorp service area. The Yurok Tribal membership depends on the fish of the Klamath River for their livelihood, culture, and way of life.

¹⁶ 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.

Federation of Fisherman's Association, Trout Unlimited, California Trout, and American Rivers, are collectively referred to as Conservation Groups.¹⁷

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, November 1, December 2, and December 29, 2010, and February 1, March 1, and April 1, 2011, 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

¹⁷ 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.

November 17, 2010 and Reply Briefs were filed on November 24, 2010 by PacifiCorp, DRA, and Conservation Groups.

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

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 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.¹⁸

With regards to the KHSA as a whole, the Conservation Groups, all of whom are parties to this proceeding as well as signatories to the KHSA, approve of the KHSA.¹⁹

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.²⁰ In evidentiary hearings, DRA witness Mark Loy responded to questions regarding the above statement, and agreed that no parties to the current case are opposed the KHSA, and even though

¹⁸ Exhibit DRA-001R at 2 and 14.

¹⁹ CG-1R at 5.

²⁰ Exhibit DRA-001R at 9.

attempted, he had not been able to contact other signatories to the KHSA to determine the other signatories' positions.²¹

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.²²

DRA presented no evidence in testimony regarding its request to dismiss the current application that would have us reconsider the assigned Commissioner's original ruling not to do so. The KHSA is supported by the Conservation Groups and PacifiCorp, both of whom are signatories to the KHSA and parties to the current case. Also, since the customer surcharge is the first source of funding pursuant to the KHSA, and California bond funding will only be used to the extent if any, that the cost of removal exceeds the Oregon and California customer contributions,²³ there is no reason to hold up consideration of the reasonableness of the customer surcharge. Indeed, by its nature, the ratepayer surcharge must be collected over a period of time before the funds are needed, while the State of California's share of the funding need not be collected over time. This is another reason why we decline to delay our consideration of PacifiCorp's application until the State of California's share has been secured.

²¹ RT 46-47.

²² RT 99-100.

²³ Exhibit PPL-105 at 7-8 and KHSA Section 4.1.

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."²⁴

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?

Pursuant to Section 4.1.1 of the KHSA, 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. PacifiCorp's proposed total 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 \$450 million cap on the total removal cost, 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. More specifically, PacifiCorp references the benefit of cost protection

²⁴ Conservation Group Opening Brief at 16.

regarding dam removal cost, and the avoidance of the risks of possible litigation due to controversies in the Klamath Basin region regarding the operation of the dam's and FERC relicensing costs.

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.²⁵

We find that authorization of the proposed surcharge pursuant to the terms of the KHSA provides the most cost effective method of collecting the 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, the KHSA may be terminated,²⁶ and ratepayers would then be exposed to an uncertain amount of costs in addressing what to do with PacifiCorp's Klamath assets.

²⁵ Exhibit CG-1R at 5-15.

²⁶ KHSA at Section 8.11.1.D.

5. How Should a Surcharge be Recovered?

PacifiCorp proposes to spread the estimated \$13.76 million surcharge equally [over a period of less than eight years](#) resulting in annual collections of approximately \$1.73 million/year, which translates into [an average](#) bill increase of about \$1.82/month for the average residential customer.²⁷ In support of its request to collect the proposed surcharge [over a period of less than eight years](#), PacifiCorp states that the KHSA has a target start date for removal of the Klamath assets of January 1, 2020.²⁸ Additionally, by collecting the surcharge [over a period of less than eight 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.²⁹ [The California Copco I and II/Iron Gate Dams Trust Accounts were not established until January 2012, approximately eight months after the issuance of D.11-05-002. Given the amount of time it took to establish the California Copco I and II/Iron Gate Dams Trust Accounts, PacifiCorp should collect the surcharge over a period of less than eight years.](#)

PacifiCorp requests that the rate design of its proposed surcharge be based on an allocation among customers classes based on each class's share of generation revenues, which PacifiCorp believes is equitable.³⁰ Conservation Groups support PacifiCorp's proposed surcharge allocation methodology.³¹

²⁷ A.10-03-015 at 4-5, [and the Petition of PacifiCorp for Modification of Decision 11-05-002 and Expedited Request for Consideration](#).

²⁸ KHSA at Section 7.3.1 and A.10-03-015 at 4.

²⁹ A.10-03-015 at 2 and KHSA at Section 4.1.1.E.

³⁰ Exhibit PPL-200 at 8-9 and A.10-03-015 at 5.

³¹ Conservation Group Opening Brief at 17.

DRA initially recommended 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.³² In its Opening Brief, DRA does not oppose PacifiCorp's proposed Klamath surcharge rate design allocation method, but only if dam removal begins in 2020.³³

It is impossible to determine at this time whether dam removal will actually begin in 2020, however, that is the planned date. In order to ensure that sufficient funds are available to pay for dam removal as it occurs, it is necessary to begin collecting the surcharge well before the estimated date for beginning dam removal.

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 the annual surcharge revenue will not exceed 2% of the authorized annual 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, or to fund relicensing of the Klamath assets.³⁴

³² Exhibit DRA-001R at 3.

³³ DRA Opening Brief at 14.

³⁴ A.10-03-015 at 6 and KHSA at Section 4.4.3.

PacifiCorp did not propose in what forum it would request any future adjustment to or refund of the surcharge.³⁵

We find that it is essential that the surcharge of \$13.76 million be collected **over a period of less than eight years**, not to exceed the 2% limit of the authorized annual revenue requirement as of January 1, 2010, in order to support the anticipated KHSA removal start date, and to accrue sufficient interest to make up the difference between the surcharge collected from California customers and the amount allocated to PacifiCorp's California customers by the KHSA. By collecting the surcharge **over a period of less than eight years**, there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates. 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 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 pay more in order to have sufficient funds by the target start date of removal. In addition, beginning the surcharge closer to the target start of removal would require a higher monthly surcharge just to accrue the same principal amount by the target start 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

³⁵ Exhibit PPL-200 at 8.

revenue allocations. In order to be consistent with the calculation of the surcharge limit of 2%, which is based on an authorized figure as of January 1, 2010, the allocation of the surcharge among customer classes adopted herein should also be based on the authorized inputs (in this case the authorized allocation of generation revenues) as of January 1, 2010. As shown in Exhibit PPL-201, the resulting surcharge revenue requirement for each class will be collected from customers within that class based on the number of kilowatt hours consumed. Within 30 days after this decision is issued, PacifiCorp must file a Tier 1 advice letter requesting approval of revised tariff sheets that add the surcharge ordered herein. However, the surcharge will not be effective until the Energy Division determines that the filed tariff changes are in compliance with this decision and Commission staff informs the assigned ALJ and service list of the current proceeding that the California Klamath Trust Accounts have been established. Within 30 days of the latter of (i) the Energy Division's determination of compliance and (ii) Commission staff notification of the California Klamath Trust Accounts establishment, PacifiCorp must begin collecting the surcharge from its California customers, and collect such surcharge [over a period of less than eight years](#).

The surcharge authorized herein together with the interest accrued, is refundable if the KHSA is terminated, protecting ratepayer funds from being used for purposes other than the benefit of ratepayers. The amount of the surcharge may also be revised, which will 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.³⁶ Any consideration of how to refund the surcharge or any 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 refunded or revised.

6. How should Surcharge Funds be Administered?

Pursuant to Section 4.2.2 of the KHSA, PacifiCorp requests that the Commission create the interest bearing California Klamath Trust Accounts and appoint a trustee. PacifiCorp would remit the funds to the trustee, who would hold and manage the funds in the California Klamath Trust Accounts, and disburse funds from the California Klamath Trust Accounts to the Dam Removal Entity (DRE) as required by the trustee instructions and the KHSA, for dam removal. The Commission would establish the trust accounts and be the trustor. Interest earned on the surcharge collected in the California Klamath Trust Accounts would go towards funding the California customer portion of the removal cost pursuant to the KHSA.³⁷ Pursuant to Section 4.2.2.A of the KHSA, the California Klamath Trust Accounts should be set up so that the surcharge funds are not considered taxable revenues to PacifiCorp. 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

³⁶ KHSA at Section 4.1.1.C, E.

³⁷ A.10-03-015 at 2.

PacifiCorp stated that the Commission's Legal Division had indicated that it would assist in this process if the Commission ordered the trusts to be set up.³⁸

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, **is** being collected for a specific purpose, and will not begin to be needed **until after December 31, 2019**, these funds need 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 1701³⁹ and consistent with the KHSA, the Commission will direct its Executive Director to create the California Klamath Trust Accounts as discussed herein, and appoint a trustee to manage and administer the California Klamath Trust Accounts, in which the surcharge ordered herein will be deposited. The Executive Director may select the California State Treasurer as the trustee.

Once the Energy Division determines that the filed tariff changes are in compliance with this decision and Commission staff informs the assigned ALJ and service list of the current proceeding that the California Klamath Trust Accounts have been established, PacifiCorp will start collecting the surcharge ordered herein. Thereafter, PacifiCorp must remit surcharge funds that it collects on a monthly basis to the trustee no later than the 15th day of the following calendar month. Consistent with the KHSA, 75% of the surcharge

³⁸ RT 20-21.

³⁹ <http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=9979219881+0+0+0&WAISaction=retrieve>.

funds collected should be deposited to the California Copco I and II/Iron Gate Dams Trust Account and 25% of the surcharge funds collected should be deposited to the California J.C. Boyle Dam Trust Account.

In its Reply Comments, PacifiCorp cited opinions in several court cases in support of its contention that the surcharge funds would not constitute taxable gross income to PacifiCorp.⁴⁰ For example, in *Illinois Power Co. v. Commissioner*,⁴¹ the United States Court of Appeals for the Seventh Circuit (Seventh Circuit) states that if the taxpayer had been ordered to place the revenues at issue in a trust account for the benefit of its ratepayers, then such revenues would not be considered income to the taxpayer. The Seventh Circuit went on to state that “The underlying principle is that the taxpayer is allowed to exclude from his income money received under an unequivocal contractual, statutory, or regulatory duty to repay it, so that he really is just the custodian of the money.”⁴² The Seventh Circuit relied, in part, on the opinion of the United States Court of Appeals for the Ninth Circuit in *Mutual Tel. Co. v. United States*,⁴³ which found that if the funds were not received “under a claim of right and without restriction as to its disposition” the funds were not taxable income.⁴⁴ In the current case, pursuant to the KHSA and our opinion herein, PacifiCorp is only the custodian of the funds from the date of collection to deposit with the trustee, and cannot,

⁴⁰ PacifiCorp Reply Comments at 3-4.

⁴¹ 792 F.2d 683 (7th Cir. 1986).

⁴² 792 F.2d at 689.

⁴³ 204 F.2d 160, 161 (9th Cir. 1953).

⁴⁴ 204 F.2d at 161.

by its regulatory and contractual duty, dispose of it in any other way than deposit with the trustee.

In any event, there will be no net tax effect on PacifiCorp, because if the receipt of the surcharge funds is considered taxable income, the payment to the trustee would be an equal and offsetting business expense. We are therefore satisfied that the surcharge funds will not be taxable income to PacifiCorp.

7. How should the Klamath Assets be Depreciated?

PacifiCorp requests approval of an accelerated depreciation schedule to depreciate Klamath assets and amortize the relicensing and settlement process costs on a straight-line basis over the same period as the surcharge.⁴⁵ This is consistent with the provisions of the KHSA which contemplates fully depreciating each Klamath asset based on the assumption that each of the assets will be removed in 2020, and that the depreciation schedule should be changed at any time if removal of an asset will occur in a year other than 2020.⁴⁶ In support of its request, PacifiCorp states that the Commission has already approved this adjustment to implement PacifiCorp's proposed accelerated depreciation for the Klamath assets and amortization of the relicensing and settlement process costs 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 remaining lives of the Klamath assets change, the Commission

⁴⁵ A.10-03-015 at 6-7.

⁴⁶ KHSA at Section 4.5.2.

can adjust the depreciation lives of the Klamath assets in a future GRC, to ensure that customers do not overpay the depreciation allowance.⁴⁷

The Conservation Groups support PacifiCorp's request,⁴⁸ 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.⁴⁹

If the Commission does authorize accelerated depreciation of the Klamath assets in the current case, DRA recommends that the period over which the assets are depreciated should be extended from nine to 18 years, to reflect 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 amortize the relicensing and settlement process costs and recover depreciation on KHSA assets over a shorter length of time than the original useful life of the assets, so that they will be completely depreciated by the target date for dam removal of 2020. We see no reason to change our previous order. DRA's argument here is essentially the same reasoning it used to support (i) rejection of the surcharge, or (ii) extension of recovery of the surcharge over a longer period of time, proposals 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

⁴⁷ Exhibit PPL-203 at 2-3.

⁴⁸ Conservation Groups Opening Brief at 18.

⁴⁹ Exhibit DRA-001R at 13.

for the Klamath assets and amortization of the relicensing and settlement process costs.

We also require PacifiCorp to adjust the depreciation of the Klamath assets and amortization of the relicensing and settlement process costs in any GRC application, if, in the future, the anticipated remaining life of the Klamath assets change. PacifiCorp must also identify the annual and cumulative balance of accelerated depreciation on the Klamath assets and amortized relicensing and settlement processing costs in all future GRC applications, until the Klamath assets are totally depreciated and the costs amortized.

8. How Should KHSA Assets be Disposed of?

PacifiCorp requests authorization, pursuant to Public Utilities (Pub. Util.) Code § 851 (Section 851) to transfer the Klamath assets at a later date to a DRE, conditioned upon completion of specific milestones set forth in the KHSA. PacifiCorp requests the authorization to transfer be accomplished via a separate Tier 1 advice letter confirming the attainment of the milestones listed below.⁵⁰ 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 to KHSA implementation as a whole.

PacifiCorp requests that the milestones include:⁵¹

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

⁵⁰ A.10-03-015 at 7-9.

⁵¹ A.10-03-015 at 7-8.

- 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 States 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 KHSA; and
- 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 (i) grant PacifiCorp conditional approval of its request for the transfer of Klamath assets, provided PacifiCorp files an annual status report on the risks, uncertainties and milestones identified in the KHSA and elsewhere, and (ii) require PacifiCorp to file a Section 851 application 60 days prior to a Klamath asset transfer.⁵² 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.⁵³

⁵² Exhibit DRA-001R at 12.

⁵³ DRA Opening Brief at 16-17.

Conservation Groups support PacifiCorp's Section 851 request, and believe that DRA's request for further review is duplicative and unnecessary to protect PacifiCorp's ratepayers.⁵⁴

In their Reply Comments, PacifiCorp⁵⁵ and the Conservation Groups⁵⁶ state that the inclusion of milestone d listed above may conflict with the timely removal of the Klamath assets, and that only milestones a, b, and c should be fulfilled and milestone d be expected to be fulfilled within six months, before PacifiCorp may file a Tier 3 advice letter requesting disposition of the Klamath assets.

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, a more detailed review of the request for transfer is required. During this time, events may occur that affect disposition of the Klamath assets. We find, though, that since the Commission has performed a review of PacifiCorp's KHSA requests in the current proceeding, it and the parties will only need to review events that occur subsequent to this proceeding in regards to whether the Klamath assets should be transferred or not. We find that this limited review can be performed in a Tier 3 advice letter review, which balances the need for a limited review with PacifiCorp's request for a quicker final approval of the transfer 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

⁵⁴ Conservation Groups Opening Brief at 19 and Conservation Group Reply Brief at 6.

⁵⁵ PacifiCorp Reply Comments at 5.

⁵⁶ Conservation Groups Reply Comments at 1.

resolve the disposition of the Klamath assets, as well as our finding that a review, albeit a limited review of events that occur subsequent to the issuance of this decision should be performed, we approve herein the later transfer of the Klamath assets to the DRE, subject to PacifiCorp's compliance with the conditions noted below and the Commission's determination by resolution that those conditions have been met. We therefore require PacifiCorp to file a Tier 3 advice letter to request authority to dispose of each individual Klamath asset after milestones a - c listed above are met, all permits, approvals, and contracts other than those granted by this Commission regarding the specific Klamath asset have been received, and the transfer of the specific Klamath asset is expected to occur within six months. We have modified milestone d listed above, since inclusion of milestone d as originally requested by PacifiCorp would create a circular requirement, where achievement of milestone d would be required to request our approval for the transfer, but milestone d would not be achieved until Commission approval is granted. We have therefore modified milestone d, to eliminate both the requirement for this Commission's approval and the requirement for the DRE notice, which also appears to require advance approval by this Commission. As thus revised condition d will require a showing that:

- d. All necessary permits and approvals have been obtained for the removal of a main stem dam, except for the approval of the California Public Utilities Commission; all contracts necessary for that facility's removal have been finalized and that facility's removal is ready to commence within 6 months; and the DRE is prepared to issue the DRE Notice, as defined in Section 7.4.1 of the KHSA, after receipt of this Commission's approval of the transfer of the facility.

While we incorporate PacifiCorp's suggestion that the advice letter can be filed at a time when dam removal is expected to begin within six months, we

decline to delete the requirement that all other permits are in hand and that all contracts have been finalized before PacifiCorp files the advice letter. The Commission wants to be sure that at the time it authorizes the actual transfer of the Klamath Assets to the DRE, the dam removal will occur and is not subject to the risk that some other approval will not be obtained. Use of a Tier 3 advice letter should require much less time to process than an application, while providing all parties the opportunity to provide input on the process and the Commission to perform a more informed review to determine PacifiCorp's compliance with all applicable 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 Commission with a comprehensive update on the progress of implementation of the KHSA.⁵⁷ 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.⁵⁸

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

⁵⁷ PacifiCorp Opening Brief at 23.

⁵⁸ Exhibit DRA-001R at 14.

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.⁵⁹

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 goals of the KHSA. We therefore require PacifiCorp to file a Status Report as an information only filing with the Energy Division on an annual basis beginning May 1, 2012, and serve this Status Report on the service list of the current proceeding. At a minimum, the Status Report must address:

- a. All items listed in Exhibit 2 to Exhibit PPL-104;
- b. The enactment of conforming federal legislation;
- c. The enactment of California legislation to authorize the issuance of a California Bond;
- d. 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;
- e. An Affirmative Determination by the United States Secretary of the Interior determining that the costs of dam removal will not exceed available funds, removal of the

⁵⁹ Exhibit CG-01R at 15-16.

- 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 KHSA;
- f. A list of all necessary permits, approvals, and contracts for removal of the Klamath assets and the date PacifiCorp receives, or expects to receive each;
 - g. The Interior Secretary's determination to proceed with dam removal;
 - h. The concurrence of Oregon and California in that determination and designation of a DRE;
 - i. The securing of California state funds through a California Bond or other form of state funding;
 - j. The DRE's development of a detailed plan to effect dam removal consistent with budget and liability controls;
 - k. The securing of all permits and funding necessary to perform the detailed plan;
 - l. The amount of surcharge revenue collected in California by year and cumulatively;
 - m. Both the amounts of interest accrued on the balances in the California Klamath Trust Accounts since the last Status Report and the cumulative total of interest earned to date;
 - n. Whether the combined total of surcharge collected and interest earned to date is expected to equal \$16 million by the start of dam removal;
 - o. Based on the surcharge collected and interest earned to date, what adjustment, if any, should be made to the surcharge if it appears that there will be either more or less than \$16 million by the start of dam removal;
 - p. Any other items that bear on the probability, schedule, and cost of implementing the KHSA; and
 - q. Any other significant events related to the KHSA that have occurred in the past 12 months.

Since PacifiCorp will now be required to file and serve an annual Status Report, we will no longer require PacifiCorp to file and serve the monthly status

report it has been filing during the processing of this application. 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 on the 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 February 22, 2010. Opening and Reply Comments were filed by PacifiCorp, DRA, and the Conservation Groups on March 14, 2011 and March 21, 2011, respectively. Comments received have been addressed throughout this decision as needed.

11. Assignment of Proceeding

Michael 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. DRA presented no evidence in testimony regarding its request to dismiss the current application that would have us reconsider the assigned Commissioner's original ruling not to do so.

7. The KHSA is supported by the Conservation Groups and PacifiCorp, both of whom are signatories to the KHSA and parties to the current case.

8. 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.

9. In order for PacifiCorp to collect sufficient surcharge funds for the DRE to begin removal of the Klamath assets proposed in the KHSA in a timely fashion and to accrue sufficient interest on the surcharge funds to make up the difference between the collected customer surcharge and the amount required by the KHSA, the surcharge must be recovered [over a period of less than eight years](#).

10. The California Copco I and II/Iron Gate Dams Trust Accounts were not established until January 2012, approximately eight months after the issuance of D.11-05-002.

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

12. Pursuant to the KHSA, the surcharge paid by customers is the first source of funding for the KHSA, and the California bond funding is a source of funding that will only be used to the extent if any, that the cost of removal exceeds the Oregon and California customer contributions.

13. DRA did not consult with any member of Congress regarding introduction of federal legislation to implement the KHSA 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.

14. Pursuant to D.10-09-020, PacifiCorp is already authorized to recover depreciation and amortization related to the Klamath River Project assets over a shorter length of time.

15. 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 a period of less than eight years** from PacifiCorp's California customers should be authorized.

2. Since the customer surcharge is the first source of funding pursuant to the KHSA, and California bond funding will only be used to the extent if any, that the cost of removal exceeds the Oregon and California customer contributions,

there is no reason to hold up consideration of the reasonableness of the customer surcharge while approval of California Bond funding is pending.

3. By its nature, the ratepayer surcharge must be collected over a period of time before the funds are needed, while the State of California's share of the funding need not be collected over time.

4. By collecting the surcharge [over a period of less than eight years](#), there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates than they otherwise would.

5. 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.

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

7. Within 30 days of this decision being issued, PacifiCorp should file a Tier 1 advice letter requesting approval of revised tariffs, adding the surcharge authorized herein. PacifiCorp should not collect this surcharge until the Commission's Energy Division has determined that the revised tariffs are in compliance with this decision, and Commission staff has informed the assigned ALJ and service list of the current proceeding that the California Klamath Trust Accounts have been established. Within 30 days of the latter of (i) the Energy Division's determination of compliance and (ii) Commission staff notification of the California Klamath Trust Accounts establishment, PacifiCorp should begin collecting the surcharge from its California customers.

8. PacifiCorp's proposed method of allocating the surcharge to customer classes, using the authorized allocation of generation revenues as of January 1, 2010, as discussed in Section 5 of this decision, is reasonable and

should be adopted. The resulting surcharge revenue requirement for each class should be collected from customers within that class based on the number of kilowatt hours consumed.

9. The surcharge should be collected over a period of less than eight years, given the amount of time it took to establish the California Copco I and II/Iron Gate Dams Trust Account.

10. By collecting the surcharge over a period of less than eight years, there is time for interest to accrue on the amount collected, which is intended to allow California ratepayers to pay less in rates.

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

12. Consideration of how to revise the Klamath surcharge, or use it to benefit customers through a means other than implementation of the KHSA, 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, subject to the annual limit on surcharge revenue of 2% of the authorized annual revenue requirement as of January 1, 2010.

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

14. Surcharge funds collected from California customers should not be taxable income to PacifiCorp.

15. Once PacifiCorp begins collecting the surcharge, PacifiCorp should remit the surcharge on a monthly basis to the trustee, no later than the 15th day of the following calendar month.

16. Consistent with the KHSA, 75% of the surcharge funds collected should be deposited to the California Copco I and II/Iron Gate Dams Trust Account and 25% of the surcharge funds collected should be deposited to the California J.C. Boyle Dam Trust Account.

17. D.10-09-020 authorized accelerated depreciation for Klamath assets and amortization for relicensing and settlement process costs.

18. PacifiCorp should identify the annual and cumulative balance of accelerated depreciation on the Klamath assets and the relicensing and settlement process costs in all future GRC applications, until the Klamath assets are totally depreciated and the costs totally amortized.

19. 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.

20. Since the Commission has performed a review of PacifiCorp's KHSA requests in the current proceeding, it and the parties will only need to review events that occur subsequent to this proceeding in regards to whether the Klamath assets should be transferred or not. This limited review can be performed in a Tier 3 advice letter review. Use of a Tier 3 advice letter should require much less time to process than an application, while providing all parties the opportunity to provide input on the process and the Commission to perform

a more informed review to determine PacifiCorp's compliance with all applicable requirements closer to the time of disposition.

21. The inclusion of milestone d as a criterion for transfer of the Klamath assets as originally requested by PacifiCorp would create a circular requirement, where achievement of the requested milestone d would be required to request our approval for the transfer, but this milestone d would not be achieved until Commission approval is granted. Since the only item making this criterion circular is the authority granted by the Commission, instead of completely omitting the requested milestone d, we modify it so that the remaining parts of the criteria, which provide valuable information regarding whether the Klamath assets should be transferred, remain.

22. While we incorporate PacifiCorp's suggestion that the advice letter can be filed at a time when dam removal is expected to begin within six months, we decline to delete the requirement that all other permits are in hand and that all contracts have been finalized before PacifiCorp files the advice letter. The Commission wants to be sure that at the time it authorizes the actual transfer of the Klamath assets to the DRE that dam removal will occur and is not subject to the risk that some other approval will not be obtained.

23. PacifiCorp should file a Tier 3 advice letter to request authority to dispose of each Klamath asset after the milestones listed below are met. These milestones are:

- 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 States 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 KHSA; and
- d. All necessary permits and approvals have been obtained for the removal of a main stem dam, except for the approval of the California Public Utilities Commission; all contracts necessary for that facility's removal have been finalized and that facility's removal is ready to commence within 6 months; and the DRE is prepared to issue the DRE Notice, as defined in Section 7.4.1 of the KHSA, after receipt of this Commission's approval of the transfer of the facility.

24. PacifiCorp should file a Status Report as an information only filing with the Energy Division on an annual basis, and serve this Status Report on the service list of this 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.

25. As of the date of this decision, PacifiCorp should no longer file and serve the monthly status report it has been providing during the processing of A.10-03-015.

26. The annual 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 enactment of California legislation to authorize the issuance of a California Bond;
- d. 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;
- e. An Affirmative Determination by the United States 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 KHSA;
- f. A list of all necessary permits, approvals, and contracts for removal of the Klamath assets and the date PacifiCorp receives, or expects to receive each;
 - g. The Interior Secretary's determination to proceed with dam removal;
 - h. The concurrence of Oregon and California in that determination and designation of a DRE;
 - i. The securing of California state funds through a California Bond or other form of state funding;
 - j. The DRE's development of a detailed plan to effect dam removal consistent with budget and liability controls;
 - k. The securing of all permits and funding necessary to perform the detailed plan;
 - l. The amount of surcharge revenue collected in California by year and cumulatively;
 - m. Both the amounts of interest accrued on the balances in the California Klamath Trust Accounts since the last Status Report and the cumulative total of interest earned to date;
 - n. Whether the combined total of surcharge collected and interest earned to date is expected to equal \$16 million by the start of dam removal;
 - o. Based on the surcharge collected and interest earned to date, what adjustment, if any, should be made to the surcharge if it appears that there will be either more or less than \$16 million by the start of dam removal;
 - p. Any other items that bear on the probability, schedule, and cost of implementing the KHSA; and
 - q. Any other significant events related to the KHSA that have occurred in the past 12 months.
27. Application 10-03-015 should remain open.

ORDER

IT IS ORDERED that:

1. Pursuant to the Klamath Hydroelectric Settlement Agreement, PacifiCorp is authorized to institute a Klamath surcharge, to collect \$13.76 million **over a period of less than eight years** from its California customers.
2. PacifiCorp must allocate the \$13.76 million Klamath surcharge to customer classes, based on each customer class's authorized allocation of generation revenues as of January 1, 2010. The resulting surcharge revenue requirement for each class must be collected from customers within that class based on the number of kilowatt hours consumed.
3. Within 30 days after the effective date of this decision, PacifiCorp is authorized to file a Tier 1 advice letter requesting approval of revised tariffs adding the Klamath surcharge authorized herein. PacifiCorp must not collect the surcharge until the California Public Utilities Commissions (Commission) Energy Division has determined that the revised tariffs are in compliance with this decision, and the Commission staff has informed the assigned Administrative Law Judge and service list of the current proceeding by letter that the California Copco I and II/Iron Gate Dams Trust Account and the California J.C. Boyle Dam Trust Account, both of which are interest bearing, have been established.
4. Within 30 days of the latter of (i)the California Public Utilities Commission's (Commission) Energy Division's determination that the revised tariffs are in compliance with this decision and Commission staff has informed the assigned Administrative Law Judge and service list of the current proceeding by letter that the California Copco I and II/Iron Gate Dams Trust Account and

the California J.C. Boyle Dam Trust Account have been established, PacifiCorp must then start collecting the Klamath surcharge.

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

6. The amount of the Klamath surcharge may be revised, subject to the annual limit on surcharge revenue of 2% of the authorized annual revenue requirement as of January 1, 2010.

7. Consideration of how to revise the Klamath surcharge, or use it to benefit customers through a means other than implementation of the Klamath Hydroelectric Settlement Agreement, must be requested through an application, with notice to all parties of record in the current proceeding.

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

9. The California Public Utilities Commission directs its Executive Director to create the interest bearing California Copco I and II/Iron Gate Dams Trust Account and the interest bearing 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.

10. Once PacifiCorp begins collecting the surcharge, PacifiCorp must remit all Klamath surcharge funds to the trustee on a monthly basis, no later than the 15th day of the following calendar month, 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. Consistent with the Klamath Hydroelectric Settlement Agreement, 75% of the surcharge funds collected must be deposited to the California Copco I and II/Iron Gate Dams Trust Account and 25% of the surcharge funds collected must be deposited to the California J.C. Boyle Dam Trust Account.

11. PacifiCorp is required to adjust the depreciation of the Klamath Hydroelectric Project assets and amortization of relicensing and settlement process costs in any General Rate Case application, if, in the future, the anticipated useful lives of the Klamath Hydroelectric Project assets changes.

12. PacifiCorp must identify the annual and cumulative balance of accelerated depreciation on the Klamath Hydroelectric Project assets and amortized relicensing and settlement process costs in all future General Rate Case applications, until the Klamath Hydroelectric Project assets are totally depreciated and the costs totally amortized.

13. PacifiCorp must file a Tier 3 advice letter to request authority to dispose of each Klamath Hydroelectric Project asset after the milestones listed below are met. These milestones are:

- 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 States 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. All necessary permits and approvals have been obtained for the removal of a main stem dam, except for the approval of the California Public Utilities Commission; all contracts necessary for that facility's removal have been finalized and that facility's removal is ready to commence within 6 months; and the DRE is prepared to issue the DRE Notice, as defined in Section 7.4.1 of the KHSA, after receipt of this Commission's approval of the transfer of the facility.

14. PacifiCorp must file a Status Report as an information only filing with the Commission's Energy Division on an annual basis, and serve this Status Report on the service list of Application 10-03-015, due May 1st of each year, starting on May 1, 2012.

15. The annual 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 enactment of California legislation to authorize the issuance of a California Bond;
- d. 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;
- e. An Affirmative Determination by the United States 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 KHSA;
- f. A list of all necessary permits, approvals, and contracts for removal of the Klamath assets and the date PacifiCorp receives, or expects to receive each;

- g. The Interior Secretary's determination to proceed with dam removal;
- h. The concurrence of Oregon and California in that determination and designation of a Dam Removal Entity;
- i. The securing of California state funds through a California Bond or other form of state funding;
- j. The Dam Removal Entity's development of a detailed plan to effect dam removal consistent with budget and liability controls;
- k. The securing of all permits and funding necessary to perform the detailed plan;
- l. The amount of surcharge revenue collected in California by year and cumulatively;
- m. Both the amounts of interest accrued on the balances in the California Copco I and II/Iron Gate Dams Trust Account and the J.C. Boyle Dam Trust Account since the last Status Report and the cumulative total of interest earned to date;
- n. Whether the combined total of surcharge collected and interest earned to date is expected to equal \$16 million by the start of dam removal;
- o. Based on the surcharge collected and interest earned to date, what adjustment, if any, should be made to the surcharge if it appears that there will be either more or less than \$16 million by the start of dam removal;
- p. Any other items that bear on the probability, schedule, and cost of implementing the Klamath Hydroelectric Settlement Agreement; and
- q. Any other significant events related to the Klamath Hydroelectric Settlement Agreement that have occurred in the past 12 months.

16. As of the date of this decision, PacifiCorp need no longer file and serve the monthly status report it has been providing during the processing of Application 10-03-015.

17. Application 10-03-015 remains open.

This order is effective today.

Dated May 5, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK FERRON

Commissioners

Attachment A

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

(ATTACHMENT A)

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)

(END OF ATTACHMENT B)