

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



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In the Matter of the Application of PACIFICORP (U 901 E), an Oregon Company, for an Order Authorizing a Rate Increase Effective January 1, 2011 and Granting Conditional Authorization to Transfer Assets, pursuant to the Klamath Hydroelectric Settlement Agreement.

Application No. 10-03-015
(Filed March 18, 2010)

REPLY BRIEF OF PACIFICORP (U901E)

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Pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission or CPUC) and the Assigned Commissioner's Scoping Memo and Ruling,¹ dated June 29, 2012, PacifiCorp, d.b.a. Pacific Power, respectfully submits its Reply Brief in response to the submitted opening briefs addressing its Application² to revise the Commission's Decision (D.)11-05-002,³ with respect to the authorized surcharge PacifiCorp may collect pursuant to the Klamath Hydroelectric Settlement Agreement (KHSA). This Reply Brief is timely filed and served consistent with the Assigned Commissioner's Scoping Memo and Ruling.

¹ Assigned Commissioner's Scoping Memo and Ruling Regarding Petition to Modify Decision 11-05-002, June 29, 2012 (Assigned Commissioner's Scoping Memo and Ruling).

² Administrative Law Judge's Ruling Treating Petition for Modification as an Application and Setting Prehearing Conference, May 18, 2012 (ALJ Ruling).

³ Decision Approving A Rate Increase for PacifiCorp Pursuant to the Klamath Hydroelectric Settlement Agreement, D.11-05-002, issued May 6, 2011 (D.11-05-002 or Decision).

I. SCWUA MISUNDERSTANDS THE MECHANICS OF KLAMATH TRUST ACCOUNTS

In its Opening Brief, Siskiyou County Water Users Association (SCWUA) demonstrates its misunderstanding of the Klamath trust accounts. First, SCWUA appears to question the Commission's establishment of the trust accounts as it states that "PacifiCorp *alleges* that the accounts were established in January of this year."⁴ However, the Commission's Energy Division served a letter on January 3, 2012, informing those on the service list that the Commission, through its Executive Director, had created the trust accounts. Even if parties new to the proceeding did not receive the notice, the Administrative Law Judge's Ruling confirmed the creation of the trust accounts stating that "[o]n 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."⁵

Second, SCWUA recommends that "[t]he funds should be transferred to the trust accounts on a daily received basis."⁶ Requiring PacifiCorp to make daily transfers of the funds would be costly and administratively burdensome.⁷ By transferring funds on a monthly basis no later than the 15th day of the following calendar month, PacifiCorp is transferring funds in compliance with D.11-05-002.⁸ Not only has the issue of the administration of the surcharge

⁴ Opening Brief of the Siskiyou County Water Users Association at 3 (SCWUA Opening Brief).

⁵ Administrative Law Judge's Ruling Treating Petition for Modification as an Application and Setting Prehearing Conference at 2, May 18, 2012 (Administrative Law Judge's Ruling).

⁶ SCWUA Opening Brief at 3.

⁷ As there are two trust accounts, two wire transfers would be required each day. The outgoing and incoming fee for each wire transfer is approximately \$13 and does not include additional necessary administrative costs. The increase in wire transfer fees for daily transfers could be up to \$9,200 per year. This sum would exceed the interest the collected surcharge funds earned in the trust accounts unless the trust funds were earning interest at an annual rate of 14 percent--well in excess of any reasonably foreseeable market rate. While the procedures for funding the trust were established in the underlying decision, and are beyond the scope of this phase of the case, PacifiCorp offers this explanation to demonstrate that the suggestion of SCWUA is wholly impractical and counterproductive.

⁸ D.11-05-002 at OP. 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

funds been reviewed and ruled upon by the Commission, but this issue is also beyond the scope of the immediate proceeding, which has been 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.⁹

II. SISKIYOU COUNTY CONFUSES THE KBRA FOR THE KHSA AND SETTLEMENT PARTIES HAVE NOT NEGOTIATED OR CONSIDERED AMENDMENTS TO THE KHSA

In its Opening Brief, Siskiyou County¹⁰ suggests that the Klamath settlement needs to be reconsidered and renegotiated and that “settlement parties had been exchanging draft amendments to the settlement agreement for that very purpose, although even those negotiations appear to have stalled.”¹¹ Siskiyou County recommends that the “Commission should insist that PacifiCorp continue the ongoing negotiations to revise the Klamath Settlement and return to the Commission only when a clear and realistic path to implementing the KHSA has been reestablished.”¹² Neither PacifiCorp nor other KHSA parties have considered or negotiated amendments to the KHSA. All parties to the KHSA remain committed to implementing the settlement as agreed and no party has expressed any change in its support for the settlement.

PacifiCorp believes that Siskiyou County is confusing the Klamath Basin Restoration Agreement (KBRA) and the Klamath Hydroelectric Settlement Agreement (KHSA). The KBRA is a settlement agreement among many diverse parties that seeks to resolve long-standing

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.”

⁹ Assigned Commissioner's Scoping Memo and Ruling at 3.

¹⁰ “Siskiyou County” includes the County of Siskiyou, Siskiyou County Flood Control and Water Conservation District, and Siskiyou Power Authority.

¹¹ Opening Brief of County of Siskiyou, Siskiyou County Flood Control and Water Conservation District, and Siskiyou Power Authority to Petition of PacifiCorp (U901E) for Modification of Decision 11-05-002 and Expedited Request for Consideration, filed July 10, 2012, at 5 (Siskiyou County Opening Brief).

¹² Siskiyou County Opening Brief at 3.

resource disputes in the Klamath Basin outside the scope of the relicensing of PacifiCorp's Klamath Hydroelectric Project.¹³ Because the KBRA does not address issues directly relevant to the relicensing and continued operation of the Klamath Hydroelectric Project, PacifiCorp is not a party to the KBRA.

Siskiyou County states that the Klamath Basin Coordinating Council (KBCC) "had been meeting regularly every two to three months to address matters related to implementation of the KHSA."¹⁴ However, the KBCC is charged with oversight of the KBRA, not the KHSA, and the KBCC has no bearing on the KHSA.¹⁵ In its capacity of providing for consultation among KBRA parties, the KBCC has considered amendments to the KBRA. However, these possible amendments have been related to the KBRA only and not to the KHSA. This distinction has apparently confused Siskiyou County and resulted in its erroneous conclusion that the KHSA is being renegotiated.

III. THE KHSA WAS SPECIFICALLY DRAFTED TO PREVENT DELAYS IN ACHIEVING THE MILESTONES CONTAINED IN THE KHSA FROM DELAYING THE 2020 FACILITIES REMOVAL DATE

The Division of Ratepayer Advocates (DRA) expresses concern over the lack of progress with the milestones set forth in the KHSA and believes that "with every passing day, it is more and more unlikely that the Klamath Hydroelectric Settlement Agreement is going to be implemented in time for removal of all four dams to start by January 1, 2020."¹⁶ Because parties

¹³ See Klamath Basin Restoration Agreement available at <http://klamathriverrestoration.org/kbra-summary.html>.

¹⁴ Siskiyou County Opening Brief at fn. 8.

¹⁵ See Klamath Basin Coordinating Council Protocols, adopted Oct. 7, 2010, available at <http://216.119.96.156/Klamath/Protocols2010-10-7.pdf>; "The Klamath Basin Coordinating Council (KBCC) is the coordinating body for all Parties to the Klamath Basin Restoration Agreement (Restoration Agreement). Its purpose is to coordinate continued collaboration, cooperation, and consultation among Parties and others in the implementation of the Restoration Agreement, including related provisions of the Klamath Hydroelectric Settlement Agreement... The KBCC provides general oversight and administration, including activity and program coordination, information sharing, priority setting, fund seeking, and dispute resolution related to implementation of the Restoration Agreement."

¹⁶ Opening Brief of the Division of Ratepayer Advocates at 5-7 (DRA Opening Brief).

to the KHSA were particularly concerned with achieving a 2020 date for facilities removal, the KHSA was specifically drafted to ensure that the targeted 2020 facilities removal date would not be impacted as a result of delays in achieving the interim milestones contained in the agreement. As the KHSA is drafted, there is no direct linkage between any of the KHSA milestones and the facilities removal date. This provided additional certainty to the KHSA parties regarding the timing of the facilities removal.

DRA and SCWUA would like the Commission to believe that delays with respect to KHSA milestones, such as the passage of federal legislation, a vote on the California water bond measure and the Secretarial Determination, will have serious implications on the implementation of the KHSA and will mean that dam removal will become more remote.¹⁷ However, the 2020 date for facilities removal remains entirely feasible. There are nearly eight years between now and 2020. Given this substantial amount of time, a delay in federal legislation, or even a potential delay in funding from the State of California, does not immediately threaten the anticipated 2020 facilities removal date.

Further, the U.S. Department of the Interior and the State of California have recently communicated with PacifiCorp confirming that it is their view that PacifiCorp remains contractually bound under the KHSA to transfer the Klamath facilities in 2020 should the Secretary of the Interior determine to proceed with facilities removal following the passage of federal legislation. The U.S. Department of the Interior has already completed a detailed plan for facilities removal – which is a component of the Secretarial Determination – and has completed numerous engineering and environmental studies related to facilities removal that will be necessary for planning and permitting purposes. Accordingly, the roughly eight-year time period between now and 2020 appears adequate to obtain necessary legislation, funding and permits to

¹⁷ DRA Opening Brief at 5-6; SCWUA Opening Brief at 3-4.

allow for facilities removal to proceed on schedule. All parties to the KHSA continue to be committed to implementing the settlement with the understanding that the legislative process and timing is controlled by Congress and not the parties, and no party to the KHSA has dropped support for the settlement.

IV. CONCLUSION

PacifiCorp respectfully requests that the Commission grant the relief requested in its Application, specifically:

1) modify Ordering Paragraph 1 of D.11-05-002 to allow PacifiCorp to collect \$13.76 million from its California customers over a period of less than eight years, instead of the prescribed period of nine years;

2) accord expedited consideration to its Application in order that the revised surcharge rate takes effect by August 15, 2012; and

3) require PacifiCorp to file a Tier 1 advice letter compliance filing to be effective on the date filed so that PacifiCorp may begin collecting the increased surcharge rate in a timely manner and thereby allow the requirements of the KHSA to be met.

Respectfully submitted this July 20, 2012 at San Francisco, California.

By /s/ Michael B. Day
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