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

In the Matter of:)	
)	
The Application of PACIFICORP (U 901 E),)	Application No. 10-03-015
an Oregon Company, for an Order Authorizing)	(Filed March 18, 2010)
a Rate Increase Effective January 1, 2011, and)	
Granting Conditional Authorization to Transfer)	ALJ Assigned:
Assets, Pursuant to the Klamath Hydroelectric)	Seaneen McCarthy Wilson
Settlement Agreement)	

JOINT PREHEARING CONFERENCE STATEMENT

SUBMITTED BY

**PACIFIC COAST FEDERATION OF FISHERMEN’S ASSOCIATIONS,
THE INSTITUTE FOR FISHERIES RESOURCES,
AND THE KARUK TRIBE**

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Dated: May 17, 2010

Attorneys for Pacific Coast Federation of
Fishermen’s Associations and Institute for
Fisheries Resources

PREHEARING CONFERENCE STATEMENT

I. Statement of Interests

The Pacific Coast Federation of Fishermen's Associations (PCFFA) and the Institute for Fisheries Resources (IFR) have both earlier filed Motions for Party Status in this case as of May 10, 2010. The Karuk Tribe filed its Motion for Party Status on May 13, 2010. Our respective interests, however, are limited to the issues of this docket, and do not extend to those broader issues of the *General Rate Case* also filed by PacifiCorp as CPUC Docket No. A.09-11-015.

We therefore do not anticipate filing any testimony, seeking Party status or taking any active part in the proceedings that are exclusively the province of the *General Rate Case* in CPUC Docket No. A.09-11-015 alone, should these two cases be combined in some way, but will address only those issues related to the implementation of the Klamath Hydroelectric Settlement Agreement (KHSA) that are raised in this CPUC Docket No. A.10-03-015. With that understanding, we have no objection to combining those two cases for purposes of Public Participation Hearings or otherwise, in the interests of judicial economy.

II. Timing and Scheduling

In the Administrative Law Judge's *Ruling Setting a Prehearing Conference* dated April 22, 2010, it was requested that the parties at the prehearing conference "also be prepared to discuss the various pieces of legislation and permission from other agencies that are required by the KHSA...." To that end we file the following comments:

A. The Impending California Bond Measure Vote Is No Basis for Delay: The Division of Ratepayer Advocates (DRA) has filed both a *Protest* and a *Motion* asking that this entire case be held in abeyance until after the November 2010 vote on the Safe, Clean and Reliable Drinking Water Supply Act of 2010 (the "Bond Measure"). This pending vote is no basis for delay, and we agree with PacifiCorp that such a delay would be unwise, inefficient, as well as detrimental to PacifiCorp ratepayers, for at least the following reasons:

- (1) Reducing the total amount of time over which the Klamath surcharge account must be amortized between now and 2020 only increases the total monthly amount that must be

eventually collected from each California PacifiCorp ratepayer (as well as reducing offsetting interest), unnecessarily adding to the customer rate increase impacts.

- (2) The KHSA – and in particular the Secretarial Decision to be made by the Secretary of Interior by March 31, 2012 – *does not depend upon passage of that Bond Measure to move forward*. The DRA is mistaken in its reading of the KHSA when it asserts that Bond Measure passage is a mandatory pre-condition, or its failure an absolute bar, to the KHSA’s continuation. Actually, the California Bond Measure may not even ultimately be necessary for dam removal, depending on how much dam removal ultimately costs. The Bond Measure simply contains a cautionary provision for up to \$250 million in additional backup funds *if needed* for dam removal costs that ultimately exceed the PacifiCorp \$200 million *initial* contribution. If the cost estimates for dam removal ultimately come in below \$200 million, then these Bond Measure “backup funds” may never in fact be needed, and passage (or non-passage) of the Bond Measure would be irrelevant to ultimate dam removal success.¹
- (3) The KHSA itself states that the Secretarial Determination (and other aspects of KHSA implementation) may proceed *even if the California Bond Measure does not pass*, so long as such funds as may actually be required (if any) are made “Timely available” – i.e, *by the dam removal target year of 2020*.² There are any number of ways this additional

¹ It is highly unlikely that final dam removal costs will be anywhere near the \$450 million total being set aside, in an excess of caution, to provide for those expenses. Costs of actual dam removal can only at present be estimated until a Detailed Plan has been produced pursuant to the KHSA and based on the NEPA analysis now underway, but all but one existing study to date estimating dam removal costs pegs the total costs of Klamath Hydroelectric Project dam removal at well under the initial \$200 million being provided by PacifiCorp and funded by the Klamath ratepayer surcharge. For instance, FERC Staff, in FERC’s *Final Environmental Impact Statement for the Hydropower License of the Klamath Hydroelectric Project* (“FERC Final EIS”), issued Nov. 2007, cited the three prior studies with total Klamath dam removal cost estimates as ranging from \$37.5 to \$102.4 million, and FERC Staff itself concluded that the total costs of dam removal would most likely be about \$79.9 million (FERC Final EIS, pg. 4-6, at Table 4-4).

² The latter portion of KHSA Section 3.3.4 reads in relevant part as follows:

“However, if the conditions [have been met, including establishing the Customer Contribution] but California Bond Funding required by Section 4.1.2 has not been approved, in whole or in part, the *Secretary may still make an Affirmative Determination* so long as one of the following additional conditions is met:

- (1) Based on the Detailed Plan, the Secretary finds that the Customer Contribution and any approved California Bond Funding will be sufficient to accomplish Facilities Removal; or,

California contribution – *if it is even ultimately needed* – could be provided for over the next ten years.³ None should operate as an artificially imposed CPUC pre-condition for collection of the separately required customer surcharge.

- (4) This Klamath ratepayer surcharge proceeding should remain in step with a precisely parallel proceeding to approve a similar Klamath dam removal surcharge for PacifiCorp customers in Oregon, which is already well underway as Oregon PUC Docket No. UE-219 (see schedule below). In the interests of efficiency, it should also be kept in step with the current *General Rate Case* PacifiCorp has already filed in California as CPUC Docket No. A. 09-11-015, particularly since this case will affect overall rates. Requiring a separate track for this closely related proceeding – as suggested by the DRA -- is, in fact, itself redundant and duplicative.
- (5) Over the next ten years, until dam removal can be fully accomplished in 2020, there will be many more requirements, permits and pre-conditions to be met. This is to be expected in any dam removal project. There is no point in delaying this completely independent proceeding on account of *any* of these later pre-conditions. Indeed, resolving this California Klamath dam removal surcharge process now, rather than simply leaving it all in abeyance as the DRA proposes, actually removes some of those future KHSA implementation uncertainties and helps to speedily implement its provisions.

If at *any* time, after CPUC authorization of the collection of the Klamath dam removal surcharge, the KHSA Settlement collapses or becomes impossible to implement, the correct remedy is simply for the PUC to require refunding of the surcharges to PacifiCorp’s customers at

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- (2) If the Secretary finds that the Customer Contribution and any approved California Bond Funding may not be sufficient to accomplish Facilities Removal, the Secretary has received satisfactory assurances from the State of California that the California Bond Funding pursuant to Section 4.1.2.A necessary to effect Facilities Removal will be Timely available.” (emphasis added)

KHSA Sec. 1.4 says that “‘Timely’ or ‘Timeliness’ means performance of an obligation by the deadline established in the applicable provision of this Settlement...” which for dam removal means by January 1, 2020.

³ For instance, any California contribution ultimately needed might be met by the Legislature from General Funds, or by a much later bond measure, or from the sale of already authorized, but still in fact unsold, watershed conservation bonds being held in reserve by the State Treasurer. There are several billion dollars in already voter approved -- *but still unsold* – conservation and watershed restoration bonds now in reserve, according to a recent report by the California State Treasurer (see for instance www.treasurer.ca.gov/bonds/debt/201004/authorized.pdf). It may well be that, if the Bond Measure fails, these *already authorized* but unsold prior conservation and watershed restoration bonds could fill the need.

that time. This remedy is more than adequate to protect ratepayers against any unforeseen future KHSA failures.

B. Avoiding Conflicts with the Parallel Oregon PUC Proceeding: There is a precisely parallel Oregon PUC case opened as OPUC Docket No. UE-219 regarding the implementation of a Klamath dam removal surcharge in Oregon pursuant to the Klamath Hydropower Settlement Agreement (KHSA), and that also implements Oregon Senate Bill SB 76, which was passed in mid-2009 and which authorized and set up that Klamath surcharge collection process in Oregon. Because of the pre-authorization effect of SB 76, these Klamath surcharges are already being collected in Oregon with the filing of a special tariff on February 18, 2010, subject to OPUC oversight and control and whatever conditions the OPUC may impose in that case.

PacifiCorp, PCFFA/IFR, the Karuk Tribe and most of the other parties to this California proceeding also are Parties in the Oregon case, and thus have duties and obligations to meet in that parallel Oregon PUC proceeding. It is important, therefore, that the ALJ in this case be aware of that Oregon PUC schedule, and that the parties avoid conflicts with that Oregon PUC schedule as much as possible in setting the schedule for this parallel California PUC case at the May 19th Prehearing Conference.

The current schedule in Oregon PUC Case Docket No. UE-219 is as follows:

Testimony by Staff and Interveners due	May 26, 2010
Reply testimony by PacifiCorp due	June 21, 2010
ALJ Evidentiary Hearing	July 12, 2010
Briefs on Depreciation Rates due	July 20, 2010
Simultaneous Opening Briefs on surcharge issues due	August 9, 2010
Simultaneous Reply Briefs on surcharge issues due	August 18, 2010
Commission Decision on depreciation rate issues entered	August 18, 2010
Commission Decision on surcharge issues entered	September 16, 2010

Reasonable efforts to avoid conflicts in this case schedule with the above calendar for the parallel Oregon PUC case would be much appreciated by all the Party-Interveners in this case.

Respectfully submitted, this May 17th, 2010.

/s/ Glen H. Spain

Glen H. Spain, Esq., General Counsel for
Pacific Coast Federation of Fishermen's Associations
and the Institute for Fisheries Resources

/s/ Craig Tucker

Craig Tucker, Representative
For the Karuk Tribe

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CERTIFICATE OF SERVICE

I, *Glen H. Spain*, hereby certify that I am over the age of 18, and that I have this day served a copy of JOINT PREHEARING CONFERENCE STATEMENT SUBMITTED BY PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS, THE INSTITUTE FOR FISHERIES RESOURCES AND THE KARUK TRIBE on all known parties to this proceeding as shown on the most recent PUC Docket Service List in this docket, either by: (1) email with electronic documents attached to the Party's designated email address, or; (2) if no email address appears for a Party on the most current Service List as of this date, or the Party has requested paper service only, then by first class U.S. mail, postage pre-paid, to the postal address for the party shown on the current Service List.

Executed on May 17th, 2010, at Eugene, OR.

/s/ *Glen H. Spain*
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