

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED

04-26-10

04:59 PM

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)

**THE DIVISION OF RATEPAYER ADVOCATES'
MOTION TO HOLD IN ABEYANCE**

DIANA L. LEE
Staff Counsel

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Tel.: (415) 703-4342
Fax: (415) 703-4432
E-Mail: dil@cpuc.ca.gov

April 26, 2010

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)

**THE DIVISION OF RATEPAYER ADVOCATES'
MOTION TO HOLD IN ABEYANCE**

I. INTRODUCTION

Pursuant to Rule 1.1 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits the following Motion to Hold in Abeyance the "Application of PacifiCorp 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).¹ PacifiCorp's Application requests that the Commission: 1) establish a non-bypassable surcharge beginning January 1, 2011 to fund the removal of four PacifiCorp dams; 2) approved an accelerated depreciation schedule for the removal of the dams and related costs; and 3) authorize PacifiCorp to transfer the dams and related lands to an entity designated to remove the dams.

DRA respectfully requests that the Application be held in abeyance because the relief it seeks is premature. Alternatively, the Commission should grant DRA's request

¹ Notice of Application 10-03-015 first appeared in the Commission's Daily Calendar on March 25, 2010, so protests are due on April 26, 2010. Rule 2.6(a) of the Commission's Rules of Practice and Procedure.

to deny the Application without prejudice as set forth in DRA's concurrently filed protest. As discussed below, the dam removal cannot move forward unless California voters pass the Safe, Clean, and Reliable Drinking Water Supply Act of 2010 (Bond Measure), an \$11.14 bond measure that is on the November 2010 ballot, or California implements "other appropriate financing mechanisms" to fund the majority of the costs associated with the dam removal. The likelihood of either event occurring before next January is highly uncertain. Given the short time until the voters determine the fate of the Bond Measure, the Commission should hold the Application in abeyance until the source of funding for the majority of the dam removal costs is known.

Holding the Application in abeyance (assuming the Bond Measure passes) would result in a short delay in resolving the issues related to securing the customer contribution for the dam removal, to accelerated depreciation, and to the transfer of the dams and related land pursuant to Section 851 of the Public Utilities Code. Yet if the Commission grants the relief PacifiCorp requests now, and the Bond Measure fails to pass, and California does not otherwise secure the \$250 million taxpayer contribution needed to finance the dam removal, the Commission and parties, including PacifiCorp, will have wasted valuable resources considering PacifiCorp's Application that could have been better directed on more pressing issues. On the other hand, PacifiCorp has not identified any exigencies that would be jeopardized or otherwise placed at risk should the Commission hold the Application in abeyance until funding issues are resolved.

II. DISCUSSION

A. Background

1. Klamath Hydroelectric Settlement Agreement

PacifiCorp's Application seeks Commission authorization to implement three requirements of the Klamath Hydroelectric Settlement Agreement (KHSA),² an

² Exhibit PPL 104, Klamath Hydroelectric Settlement Agreement, February 18, 2010 (KHSA).

agreement executed February 18, 2010 among PacifiCorp and other stakeholders³ to remove four Klamath River dams that currently provide hydroelectric power to PacifiCorp ratepayers.⁴ The KHSA outlines a process that may culminate in the removal of the four dams beginning in 2020,⁵ assuming that the United States Secretary of the Department of the Interior (Secretary of the Interior) issues an affirmative determination that 1) the conditions of the KHSA have been satisfied; 2) that removal of the dams will advance will advance restoration of the Klamath Basin’s salmonid fisheries of the Klamath Basin; and 3) that removal is in the public interest, considering, among other things, the potential impacts on affected local communities and tribes.⁶ The KHSA specifies that the Secretary of the Interior will use “best efforts” to issue a determination regarding the removal of the dams by March 31, 2012.⁷

Among the KHSA conditions that must be met before the Secretary of the Interior can issue an affirmative determination regarding removal of the dams are:

- Passage of federal legislation materially consistent with the proposed legislation to implement the KHSA and the Klamath Basin Restoration Agreement;⁸
- Development of a plan to address any costs over the limits in the KHSA⁹
- Designation of a Dam Removal Entity that meets the requirements of the KHSA;¹⁰ and

³ There are more than three dozen parties to the settlement agreement, including the state of Oregon, the California Natural Resources Agency, the United States Department of the Interior, the Klamath and Yurok tribes, Humboldt County, and various irrigation districts. KHSA pp. 1-2.

⁴ Direct Testimony of Andrea L. Kelly (Kelly Testimony), pp. 1-2.

⁵ Kelly Testimony p. 6, citing KHSA §7.3.3, p. 48.

⁶ KHSA §3.3.1, p. 19.

⁷ KHSA §3.3, pp. 19-22.

⁸ KHSA § 3.3.4 A; p. 20. The Klamath Basin Restoration Agreement is a separate agreement to which PacifiCorp is not a party.

⁹ KHSA § 3.3.4 D; p. 21. The KHSA caps removal costs to California and Oregon at \$450 million. KHSA § 4.1.3, p. 25.

¹⁰ KHSA § 3.3.4 E; p. 21.

- Authorization by the states of California and Oregon to fund facilities removal.¹¹

The KHSA requires that PacifiCorp’s California customers contribute up to \$16 million (nominal dollars) toward the cost of removing the dams.¹² The KHSA envisions that the remaining cost of removing the dams would come from California taxpayers, who must contribute \$250 million either through passage of the Bond Measure or through “other appropriate financing mechanisms,”¹³ and from PacifiCorp’s Oregon customers, who would be required to contribute up to \$184 million.¹⁴

The KHSA requires that within 30 days of the effective date of the agreement:¹⁵

PacifiCorp shall request that the California Public Utilities Commission (“California PUC”) establish a non-bypassable customer surcharge (the “California Klamath Surcharge”) for PacifiCorp’s California customers to generate funds for the purpose of Facilities Removal. PacifiCorp shall request that the California PUC establish the California Klamath Surcharge so that it will collect an approximately equal amount each year that it is to be collected. PacifiCorp shall request that such surcharge assigns responsibility among the customer classes in an equitable manner. PacifiCorp shall also request that the California PUC set the California Klamath Surcharge so that it at no time exceeds two percent of the revenue requirements set by the California PUC for PacifiCorp as of January 1, 2010.¹⁶

The KHSA also requires that PacifiCorp request an accelerated depreciation schedule for its remaining investment in the four dams, along with the costs of relicensing and the settlement process.¹⁷ If the Commission grants PacifiCorp’s request

¹¹ KHSA § 3.3.4 C; p. 21.

¹² Kelly Testimony p. 4, citing KHSA Section 4.1.1, pp. 23-24.

¹³ KHSA §4.1.2 A, p. 25.

¹⁴ KHSA §4.1.1 D, p. 24.

¹⁵ The KHSA was executed February 18, 2010.

¹⁶ KHSA §4.1.1 B, p.23.

¹⁷ KHSA §4.5.2, p. 29.

for accelerated depreciation in this Application, PacifiCorp proposes that it would be implemented as part of a final decision in PacifiCorp's general rate case proceeding A.09-11-015.¹⁸ As required by the KHSA, PacifiCorp filed its Application on March 18, 2010.

2. Safe, Clean, and Reliable Drinking Water Supply Act of 2010

The California Legislature has proposed the "Safe, Clean, and Reliable Drinking Water Supply Act of 2010," (Bond Measure) which includes \$250 million for the cost of removing the four Klamath dams. That Bond Measure, which is a general obligation bond repaid from the state's general fund and backed by the full faith and credit of California,¹⁹ seeks voter approval of \$11.14 billion for a variety of projects to improve California's water infrastructure and to address ecosystem and water supply issues in California. Although the Bond Measure is supported by many businesses and agricultural interests,²⁰ environmental groups and others oppose its high cost and reliance on measures that are not environmentally sustainable.²¹ It is therefore unclear whether voters will approve the measure in November 2010.

According to pollster Ben Tulchin, who conducted a survey of voters in February 2010, the odds of the Bond Act passing are poor:

¹⁸ Application, p.7.

¹⁹ Safe, Clean and Reliable Drinking Water Supply Act of 2010, Regional Funding Information, Californian Department of Water Resources, November 2009, available at <http://www.water.ca.gov/news/newsreleases/2009/12212009regionbond.pdf>; "What is a California General Obligation Bond?" <http://www.buycaliforniabonds.com/faq.asp#8>

²⁰ The California Chamber of Commerce and Western Growers Association are among the supporters of the Bond Measure. <http://www.calchamber.com/headlines/infrastructureeducation/pages/12062007ts.aspx> <http://www.calchamber.com/headlines/pages/calchamberboardvotestosupportwaterbond.aspx>.

²¹ The Sierra Club and the California Planning and Conservation League are among the opponents of the Bond Measure. See <http://www.sierraclubcalifornia.org/elections.html>; <http://www.pcl.org/resourcecenter/waterbond.html>

"The challenge for backers of this bond is monumental. No statewide bond measure has ever won when a majority of voters opposed it at the outset."²²

PacifiCorp has acknowledged that it cannot predict the outcome of its request to remove the dams:

“Through a settlement signed in February 2010 with relicensing stakeholders, disposition of the relicensing process and a path toward dam transfer and removal by a third party may occur as an alternative to relicensing. Hydroelectric relicensing is a political and public regulatory process involving sensitive resource issues and uncertainties. We cannot predict with certainty the requirements (financial, operational or otherwise) that may be imposed by relicensing, the economic impact of those requirements, and whether new licenses will ultimately be issued or whether we will be willing to meet the relicensing requirements to continue operating our hydroelectric generating facilities.”²³

Thus, there appear to be significant risks to passage of the Bond Measure. If the Bond Measure fails, then California would be faced with the task of finding another source of funding the \$250 million that the KHSA allocated to California for the cost of dam removal. Unless that happens, the dam removal process will grind to a halt and the KHSA will terminate, because securing cost of removal is one of the conditions required before the Secretary of the Interior can issue the affirmative determination required in order to move forward with removal of the dams. More importantly, upon termination of the KHSA, FERC would be required to end PacifiCorp’s annual operating license renewals for the dams and resume relicensing proceedings.²⁴

²² <http://www.pcl.org/files/WaterBondPressRelease.pdf>

²³ PacifiCorp Form 10-K for the fiscal year ended December 31, 2009, p. 21.
http://www.midamerican.com/include/pdf/sec/20091231_89_pc_annual.pdf

²⁴ KHSA, “Appendix E,” “Elements for the Proposed Federal Legislation; Elements Related to the Klamath Hydroelectric Settlement Agreement,” pg. E-6, Q.

B. The Commission should hold in abeyance PacifiCorp’s request to begin collecting a non-bypassable rate surcharge, because it is premature.

PacifiCorp’s Application seeks Commission approval to begin collecting a non-bypassable rate surcharge totaling \$13.68 million from its California ratepayers beginning January 1, 2011. This represents California’s 8% share of the \$172 million customer contribution for removal of the dams.²⁵ According to PacifiCorp, beginning collection on January 1, 2011 would allow the money to be collected equally at the rate of approximately \$1.53 million per year over the next nine years before anticipated (assuming all the conditions set forth in the KHSA are met) dam removal begins. The Application states that consistent with the KHSA, this proposed surcharge would not exceed the 2% revenue requirement set by the Commission for PacifiCorp as of January 1, 2010.²⁶

The Commission should hold in abeyance PacifiCorp’s request for Commission approval to begin collecting the surcharge on January 1, 2011 as premature. As explained above, the ratepayers of California will be contributing only part of the funds required by the KHSA for dam removal. California must contribute \$250 million, either by passage of the \$11.14 billion bond act, or through “other appropriate financing mechanisms” in the event the Bond Measure fails. If California is unable to contribute \$250 million toward the cost of removing the dams, then one of the conditions required by the KHSA will not be met, and the dam removal and asset transfer cannot proceed.

The November election at which the fate of the Bond Measure will be decided is only seven months away. The Administrative Law Judge should grant DRA’s motion to hold the Application in Abeyance until the source of funding is identified. Alternatively, as requested in DRA’s concurrently filed protest, the Commission should deny the Application pending voter approval of the Bond Measure or until California secures other

²⁵ Although the KHSA caps the Customer Contribution at \$200 million, PacifiCorp calculates that less than that amount can be collected from customers if interest is included in the amount.

²⁶ Application, p. 4.

“appropriate financing mechanisms” in the event the Bond Measure fails. In the event that the Bond Measure passes, this would result in a relatively short delay to implement the non-bypassable surcharge. This would be a small price to pay to avoid the possibility of parties submitting additional testimony, participating in hearings and briefing, followed by a Commission decision, in the event that the Bond Measure is not approved and given the future uncertainty of securing “other appropriate financing mechanisms.” Equally important, PacifiCorp has not identified any need for the surcharge other than the contractual provisions of the KHSA, which will terminate without the funding. In this regard, PacifiCorp has not identified any harm or risk to any stakeholder by delaying the surcharge. Thus, the more prudent approach would be to consider PacifiCorp’s request to establish a non-bypassable surcharge to fund dam removal after the majority of the funding is secured.

This approach would be consistent with the KHSA, which requires PacifiCorp to submit its request to establish a non-bypassable surcharge within 30 days of execution of the KHSA, but recognizes that

the ... California PUC [] is a separate state agency that is not bound by this Settlement. Nothing in this Settlement expands, limits, or otherwise affects any authority of the respective commissions regarding the customer surcharges and trust accounts, recovery of net investment, or recovery of costs of ongoing operations or replacement power. Because the Parties cannot provide assurance that either commission will decide to or be allowed to implement any of the provisions for funding Facilities Removal, failure of a commission to do so is not a breach of this Settlement by any Party.²⁷

Holding in abeyance the request to establish a non-bypassable surcharge, pending resolution of a crucial funding issue, would allow the Commission to prudently and fairly allocate resources where they are most needed and without unnecessary risk of reversal.

²⁷ KHSA §4.8, p.30.

C. The Commission should hold in abeyance PacifiCorp's request for accelerated depreciation of the dams, because it is premature.

PacifiCorp requests approval for an accelerated depreciation of its remaining investment in the dams, and proposes to depreciate the net book value of its remaining investment in the dams on a straight-line basis over the anticipated remaining period of generation, which is expected to end as early as December 31, 2019.²⁸ It also requests accelerated depreciation of the cost of relicensing and settlement as reflected in PacifiCorp's General Rate Case Application over the same time period. PacifiCorp expects that the rate impact of the revised depreciation schedule as well as the addition to rate base of the relicensing and settlement cost is approximately \$330,000 per year.

As discussed in Section II B above, the Commission should hold this request in abeyance as premature. In addition to the fact that considering the request to allow accelerated depreciation after California's required funding has been secured is the most reasonable allocation of finite resources, allowing accelerated depreciation beginning January 1, 2010 in the event that California funding had not yet been secured would be more complicated to reverse in the event that the dam removal does not move forward than merely returning the surcharge to ratepayers. It would require the Commission to refund the accelerated portion of the depreciation paid by ratepayers to date. More to the point, PacifiCorp and its shareholders would not be disadvantaged or otherwise harmed by a delay because its settlement and relicensing costs are secure and accruing interest as booked to Allowance for Funds Used During Construction and shareholders will continue to recover normal depreciation. PacifiCorp has not identified any need for accelerated depreciation outside of the contractual provisions of the KHSA, which will terminate without the funding. Thus, it would be both prudent and fair to all stakeholders for the Commission to take the time and consider this Application only after the fate of the Bond Measure or the matter of alternative funding sources has been resolved.

²⁸ Application, p. 6.

D. The Commission should hold in abeyance PacifiCorp’s request to transfer the dams pursuant to Section 851 of the Public Utilities Code, because it is premature.

PacifiCorp seeks Commission authorization pursuant to Section 851 of the Public Utilities Code to transfer the dams and related property to the entity that will be designated to remove those dams. The requested authorization would be contingent on the accomplishment of milestones required in the KHSA, including the passage of federal legislation that limits PacifiCorp’s liability for removal of the dams, among other things; the affirmative determination by the Secretary of the Interior that dam removal costs will not exceed available funds, that removal of the dams will advance will advance restoration of the Klamath Basin’s salmonid fisheries of the Klamath Basin; and that removal is in the public interest; and the issuance by the Dam Removal Entity (DRE) of a Notice that all necessary permits haven been obtained, all contracts finalized, and the dams are ready for removal. Some of these events are likely to happen only in 2020, such as issuance of the DRE Notice, while others, such as the Secretary of the Interior’s determination, may happen as early as 2012.²⁹

Once again, it is premature for the Commission to authorize transfer of the dams and property pursuant to Section 851 of the Public Utilities Code until the fate of the Bond Measure is known, or until California secures “other appropriate financing mechanisms” for the \$250 million cost of dam removal it would be required to contribute pursuant to the KHSA. There will be ample time to consider issues related to the requested transfer of assets pursuant to Section 851 once the source of funding for dam remove is certain

E. Procedural matters

If DRA’s requested stay is granted, and the Bond Measure passes, DRA proposes the following schedule for moving forward:

²⁹ KHSA §3.3.1, p. 19; § 3.3.4, pp. 20-21; §7.4.1, p. 51.

Prehearing Conference	December 2, 2010 (30 days after November 2010 elections)
Scoping Memo	December 14, 2010
DRA and Interested Party Testimony	Due February 1, 2011
PacifiCorp Rebuttal Testimony	Due March 2, 2010
Evidentiary Hearings	March 16, 2010
Opening Briefs	April 18, 2010
Reply Briefs	April 29, 2010
Proposed Decision Issues	June 6, 2011
Comments on PD	Due June 24
Reply Comments on PD	Due July 1
Commission Order	July 7, 2011

III. CONCLUSION

DRA respectfully requests that PacifiCorp's Application be held in abeyance until after the Bond Measure has passed or California has secured alternative financing for its share of the dam removal costs. Alternatively, as described in DRA's concurrently filed Protest, the Commission should deny the Application without prejudice and direct PacifiCorp to file a new application after the Bond Measure has passed or California has secured alternative financing for its share of the dam removal costs.

Respectfully submitted,

/s/ DIANA L. LEE

Diana L. Lee
Staff Counsel

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-4342
Email: dil@cpuc.ca.gov

April 26, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of each document “**THE DIVISION OF RATEPAYER ADVOCATES’ MOTION TO HOLD IN ABEYANCE**” in **A.10-03-015 and A.09-11-015** by using the following service:

E-Mail Service: sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on, at San Francisco, California.

/s/ Albert Hill

Albert Hill