

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

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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 nine 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, straddling southern Oregon and northern California. PacifiCorp serves

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.

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 nine-year period resulting in annual collections of approximately \$1.53 million/year, which translates into a bill increase of about \$1.61/month for the average residential customer.²⁷ In support of its request to collect the proposed surcharge over nine 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 nine 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

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

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

²⁷ A.10-03-015 at 4-5.

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.

customers in order to minimize ratepayer exposure to any unrealized costs.³² In its Opening Brief, DRA does not oppose PacifiCorp's proposed 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 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 nine 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

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.

³⁵ Exhibit PPL-200 at 8.

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 nine 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 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 nine 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.

³⁶ KHSA at Section 4.1.1.C, E.

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 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.

³⁷ A.10-03-015 at 2.

³⁸ RT 20-21.

Since the surcharge will be collected over a number of years, are being collected for a specific purpose, and will not begin to be needed for nine years, 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 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

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

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, 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.

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.

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 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

⁴⁵ A.10-03-015 at 6-7.

⁴⁶ KHSA at Section 4.5.2.

⁴⁷ Exhibit PPL-203 at 2-3.

⁴⁸ Conservation Groups Opening Brief at 18.

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 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

⁴⁹ Exhibit DRA-001R at 13.

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;
- 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

⁵⁰ A.10-03-015 at 7-9.

⁵¹ A.10-03-015 at 7-8.

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 a 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

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

⁵² Exhibit DRA-001R at 12.

⁵³ DRA Opening Brief at 16-17.

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.

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 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 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

⁵⁷ PacifiCorp Opening Brief at 23.

⁵⁸ Exhibit DRA-001R at 14.

⁵⁹ Exhibit CG-01R at 15-16.

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 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 nine years.

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

11. 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.

12. 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.

13. 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.

14. 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 nine 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 nine 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. 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. By collecting the surcharge over nine 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. 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.

11. 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.

12. 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.

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

14. 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.

15. 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.

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

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.
26. 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 nine 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 Commissions (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)