

ORDER NO.

18 257

ENTERED

JUL 03 2018

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UE 219

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Revisions to Schedule 199, Klamath Dam  
Removal Surcharges.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on July 3, 2018, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.



BY THE COMMISSION:

A handwritten signature in blue ink, appearing to read "mll mt", is written over a horizontal line.

Michael Grant  
Chief Administrative Law Judge

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

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ITEM NO. CA6

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT

PUBLIC MEETING DATE: July 3, 2018

REGULAR \_\_\_\_\_ CONSENT X EFFECTIVE DATE July 6, 2018

DATE: June 25, 2018

TO: Public Utility Commission

FROM: Lance Kaufman



THROUGH: Jason Eisdorfer and John Crider

SUBJECT: PACIFIC POWER: (Docket No. UE 219) Revision to Schedule 199  
Klamath Dam Removal Surcharges.

**STAFF RECOMMENDATION:**

Staff recommends the Commission approve Pacific Power ("PacifiCorp" or "Company") Klamath Dam Removal Surcharge update effective for service on and after July 6, 2018 on less than statutory notice.

**DISCUSSION:**

Issue

Whether the Commission should require any change to PacifiCorp's Schedule 199 Klamath Dam Removal surcharges.

Applicable Law

The Commission must require PacifiCorp to collect monies from customers to pay for Oregon's share of the customer contribution towards the costs for removal of the Klamath River dams as set forth in ORS 757.736. Under this statute, PacifiCorp was directed to file tariffs for the collection of two non-bypassable surcharges of a specified amount per kilowatt hour billed to its retail customers for the purpose of paying the costs of removing four Klamath River dams. One surcharge is for the cost of removing the J.C. Boyle Dam, and the other surcharge is for the costs of removing the Copco 1 and 2 Dams and the Iron Gate Dam. The surcharges may not exceed the amounts necessary to fund Oregon's share of the customer contribution of \$200 million (calculated as \$184 million). The maximum level of surcharges collected in a calendar year is limited

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to two percent of PacifiCorp's annual revenue requirement as determined in PacifiCorp's last rate case decided prior to January 1, 2010. (ORS 757.736(3)). Per ORS 757.736(7), to the extent practicable, the Commission sets the surcharges so that total annual collections remain approximately the same during the collection period, account for changes in energy usage and account for changes in interest rates on the collected funds over the collection period. The Commission may change the collection schedule if a dam will be removed in a year other than 2020.

Contributions are paid into trust accounts established by the Commission and may be distributed as provided in ORS 757.738.

At any time, if the Commission determines that surcharge collections exceed those needed or allowed, the Commission must direct the trust account trustee to refund excess amounts to customers, to otherwise use the amounts to benefit customers, or to adjust future surcharge amounts.<sup>1</sup> If one or more of the Klamath Dams will not be removed, ORS 757.736(10) specifies the actions the Commission must take for distribution of the collection fund.

In Docket No. UE 219, Order No. 10-364, at 17-18, the Commission determined that the surcharges in Schedule 199 are fair, just and reasonable, and ordered that no less than thirty days after the Company's annual Transition Adjustment Mechanism ("TAM") filing, Staff, the Company, and other interested parties review the status of surcharge collections to determine if the calculation of Schedule 199 surcharges should be revised. If revisions were required, then the Company would be required to file a revised tariff within 60 days of the TAM filing, to be effective 30 days from the tariff filing.

Tariff revisions may be made by filing revised sheets with the information required under the Commission's administrative rules, including OAR 860-022-0025. OAR 860-022-0025(2) specifically requires that each energy utility changing existing tariffs or schedules must include in its filing a statement plainly indicating the increase, decrease, or other change made with the filing, the number of customers affected by the proposed change and the resulting change in annual revenue; and the reasons or grounds relied upon in support of the proposed change.

Filings that propose any change in rates, tolls, charges, rules, or regulations must be filed with the Commission at least 30 days before the effective date of the change. ORS 757.220; OAR 860-022-0015. Tariff filings to be effective on less than 30 days following

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<sup>1</sup> ORS 757.736(9).

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notice of the change may be authorized with a waiver of less than statutory notice pursuant to ORS 757.220 and OAR 860-022-0020.

### Analysis

#### *Background*

The initial Klamath Agreement in Principle ("KAP") was signed November 13, 2008, by the states of Oregon and California, the United States, and by PacifiCorp. The KAP was followed by the Klamath Hydroelectric Settlement Agreement ("KHSA"), which was effective on February 18, 2010. The agreement set in place a process for the ultimate removal of four dams<sup>2</sup> on the Klamath River (hereinafter "Klamath Dams").

In response to the KAP, the 2009 Oregon Legislature passed Senate Bill 76 ("SB 76"),<sup>3</sup> which prescribes various actions, with specific timeframes, that must be taken by PacifiCorp and the Commission to implement the final agreement. The Oregon Legislature subsequently passed House Bill 3461 that enabled the Commission to direct the Klamath Dam removal funds to the Oregon State Treasury (OST) for the potential of earning higher rates of interest.<sup>4</sup>

In February 2016, a second KAP was executed by the parties to the first KAP, indicating their intent to negotiate an amended KHSA. The KHSA was amended (Amended KHSA) on April 6, 2016, and November 30, 2016. The Amended KHSA contemplates that dam removal will be conducted by a private dam removal entity – the Klamath River Renewal Corporation (KRRC). Consistent with the Amended KHSA, PacifiCorp and KRRC have filed an application the Federal Energy Regulatory Commission (FERC) seeking to transfer PacifiCorp's license for the Klamath Dams to the KRRC. The KRRC has also filed an application with FERC seeking approval to surrender the license for, and remove, the Klamath Dams. PacifiCorp's and the KRRC's applications are currently pending before FERC.

The Amended KHSA retains the same funding mechanisms set out in the original settlement. Specifically, Section 2.2, of the Amended KHSA provides that each party shall support implementation of SB 76.

The Klamath dam removal surcharges have been set as follows. On March 18, 2010, PacifiCorp filed Schedule 199, Klamath Dam Removal Surcharges, as required by SB 76, along with the workpapers necessary for Staff to perform an analysis of whether

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<sup>2</sup> Specifically, the dams are known as J.C. Boyle, Copco No. 1 and No. 2, and Iron Gate.

<sup>3</sup> Codified as ORS 757.732 – 757.744.

<sup>4</sup> Codified as ORS 757.738(1)(c).

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the surcharge rates comply with the applicable statutes.<sup>5</sup> As also required, the tariff rates went into effect on the day they were filed, as the tariff was filed subsequent to January 1, 2010.

The surcharges resulted in an overall increase in rates of 1.7 percent, based on the annual revenue requirement and given the rates in effect as of January 1, 2010. The 1.7 percent is less than the two percent cap specified in section ORS 757.736(3). In any year, the surcharges collected cannot exceed \$19.06 million.<sup>6</sup> This value is two percent of PacifiCorp's revenue requirement as determined by the Commission in the most recent case concluded prior to January 1, 2010.<sup>7</sup>

At the May 8, 2012, public meeting, the Commission adopted the Staff recommendation not to raise the surcharges in 2012, and directed \$30 million of the surcharge fund monies to be deposited in the OST's Oregon Intermediate Term Pool (OITP). After working extensively with Treasury, the transfer of funds to the OITP took place in September 2012. The interest earned through the OITP has been significantly greater than previously achieved through the short term fund alternative.

On May 21, 2013, the Commission adopted the Staff recommendation to raise the surcharges in 2013, consistent with Advice Filing No. 13-010. With an Oregon State Treasury short-term fund (OSTF) interest rate of 0.57 percent and an OITP of 2.5 percent, the proposed change increased the annual surcharge by \$1.7 million and ensured the attainment of \$184 million target. The average residential consumer using 900 kWh a month had a bill impact of \$0.11 per month as a result of this change.

On June 10, 2014, the Commission, in Order No. 14-211, adopted the Staff recommendation not to raise the surcharges in 2014. At the June 23, 2015, public meeting, the Commission again adopted the Staff recommendation not to raise the surcharges in 2015, as stated in Order No. 15-201.

At the June 7, 2016, Regular Public Meeting, the Commission adopted the Staff recommendation to raise the surcharges to its maximum level authorized by law. The Commission issued Order No. 16-218, approving the PacifiCorp advice filing 16-08, for rates effective July 1, 2016.

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<sup>5</sup> ORS 757.736(7) requires that the amount of each surcharge shall be calculated based on a collection schedule that will fund, by December 31, 2019, Oregon's share of the customer contribution of the \$200 million identified in the KAP. Oregon's share is \$184 million including interest.

<sup>6</sup> \$19,061,680 is the maximum annual surcharge that may be collected under ORS 757.736(3).

<sup>7</sup> ORS 757.736(3).

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At the June 13, 2017, Regular Public Meeting, the Commission adopted the Staff recommendation to maintain the surcharge with no change. The Commission issued Order No. 17-217, adopting Staff's recommendation.

*Disbursements from Trust Accounts*

Following the Commission's approval on August 30, 2016,<sup>8</sup> ODFW and the Commission executed an Interagency Agreement to govern the disbursement of trust funds to ODFW for purposes of providing funds to the KRRC. ODFW then executed a grant agreement with the KRRC in October 2016 to cover certain initial costs. Pursuant to these agreements, \$308,369.00 of the Oregon customer contribution was disbursed and provided to the KRRC.

On January 24, 2017, the Commission approved a Funding Agreement with the KRRC, establishing a structure for additional disbursements of the Oregon customer contribution. Under the Funding Agreement, customer contribution funds may be disbursed to KRRC in one of three funding phases: Phase 1, which encompasses funding for the start-up costs of the KRRC, evaluation of risk mitigation such as insurance for the dam removal activities, certain regulatory actions and preparation work for the KRRC's Definite Plan, a requirement under the KHSRA; Phase 2, which encompasses funding for the development of the Definite Plan, including preparation of procurement documents for final design, deconstruction and risk management and completion of regulatory actions; and Phase 3, which consists of funding for the Facilities Removal through deconstruction and restoration. Since the Funding Agreement was executed, an additional \$27,156,862 has been disbursed for Phase 1 and Phase 2 activities.

Staff is actively reviewing the KRRC's policies, procedures, financial records, and operations to ensure that customer funds are prudently managed and spent.

*Current Review of Surcharge Rate Levels*

On June 19, 2018, representatives from interested parties held a conference call to review the surcharge. The parties included Staff, PacifiCorp, and the Oregon Water Resources Department.

Based on the Treasury interest rate statements provided by Staff, the Company evaluated the Schedule 199 surcharge rates. With no change to the current level of surcharge rates, the total annual surcharge collection for calendar 2019 is projected to be \$19,740,518. This value exceeds the two percent cap specified in ORS 757.736(3). PacifiCorp has filed rate changes to reduce the collection to \$19,061,680 to meet the

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<sup>8</sup> Docket No. UE 219, Order No. 16-330.

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two percent cap, with an application for less than statutory notice. The total surcharge collection (interest adjusted) projected at the proposed surcharge rate is \$184,180,476. This value is calculated as the sum of the actual collection with interest from March 2010 to February 2018, and the forecast collection with interest from March 2018 through December 2019. For reference, the worksheets calculating these amounts are provided by the Company and attached to Advice No. 18-004.

At the June 19, 2018, conference call, Staff proposed to change in the surcharge rate levels to comply with the two percent cap. No parties on the call disagreed. Staff also noted that KRRC is beginning to withdraw substantial monies from the trust accounts. This will result in less interest than forecasted. Because of this PacifiCorp may fall short of the funds necessary. Staff has asked PacifiCorp to consider the impacts of KRRC withdrawals on the fund balances and to propose extending the surcharge collection beyond December 31, 2019 if necessary.

Staff circulated this memo to the Docket No. UE 219 service list and no comments were received in response. The Company has reviewed this memo and has no areas of concern.

#### Conclusion

Staff finds that Advice No. 18-004 should be approved with proposed rates effective for service on and after July 6, 2018. Staff supports approving the advice filing that will reduce the surcharges on less than statutory notice.

#### **PROPOSED COMMISSION MOTION:**

Approve PacifiCorp Advice No. 18-004 effective for service on and after July 6, 2018 on less than statutory notice.

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