ITEM NO. 2

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 30, 2016

REGULAR X **CONSENT** ____ **EFFECTIVE DATE** N/A

DATE: August 25, 2016

TO: Public Utility Commission

FROM: Lance Kaufman LK

THROUGH: Jason Eisdorfer and Marc Hellman

SUBJECT: PACIFICORP: (Docket No. UE 219/Order No. 10-364) Approval of the Inter-Agency Agreement with Oregon Department of Fish and Wildlife, authorization of the transfer of up to $320,000 initial disbursement of customer surcharge trust funds as necessary to pay the Phase 1A costs of removing the Klamath River dams pursuant to ORS 757.738(3).

STAFF RECOMMENDATION:

That the Commission approve execution of an Inter-Agency Agreement (IAA) with Oregon Department of Fish and Wildlife (ODFW) and authorize the transfer of up to $320,000 under the IAA for an initial disbursement of customer surcharge trust funds in proportion to the current portfolio balance as necessary to pay the Phase 1A costs of removing the Klamath River dams pursuant to ORS 757.738(3).

DISCUSSION:

Issue

1. Whether the Commission should approve execution of the IAA with ODFW as a mechanism for an initial disbursement of customer surcharge trust funds as necessary to pay the Phase 1A costs of removing the Klamath River dams pursuant to ORS 757.738(3).

2. Whether and how the Commission should authorize the transfer of up to $320,000.00 under the IAA for an initial disbursement of customer surcharge trust funds as necessary to pay the Phase 1A costs.

Applicable Law
Under ORS 757.736(2)(a), PacifiCorp was directed to file tariffs for two customer surcharges: one surcharge for the costs of removing the J.C. Boyle Dam on the Klamath River in Oregon and a second surcharge for the costs of removing the Copco 1 and 2 Dams and the Iron Gate Dam on the Klamath River in California. PacifiCorp filed Schedule 199 for this purpose in 2010. In Commission Order No. 10-364, Docket No. UE 219, the Commission determined that the Klamath Hydroelectric Settlement Agreement (KHSA) surcharges in Schedule 199 are fair, just, and reasonable. The Commission further adopted an annual review process to ensure the surcharges are correctly calculated to collect an amount that, with interest, will constitute Oregon's share of the $200 million customer contribution for Klamath River dam removal by December 31, 2019, as required by ORS 757.736(7).

Under ORS 757.736(2), the customer surcharge is collected "for the purpose of paying the costs of removing Klamath River dams as described in [ORS 757.736(11)]." ORS 757.736(11) in turn states:

> For the purposes of subsection (2) of this section, "the costs of removing Klamath River dams" includes costs of:
> (a) Physical removal of the dams;
> (b) Site remediation and restoration;
> (c) Avoiding downstream impacts of dam removal;
> (d) Downstream impacts of dam removal;
> (e) Permits that are required for the removal;
> (f) Removal and disposal of sediment, debris and other materials, if necessary; and
> (g) Compliance with environmental laws.

ORS 757.736(8) provides that the amounts collected in customer surcharges are to be paid into a trust account established by the Commission under the parameters of ORS 757.738. If amounts collected are in excess of funds needed or allowed, the Commission must take appropriate action under ORS 757.736(9). The Commission has a fiduciary responsibility to ensure that trust account moneys are disbursed for dam removal costs as necessary. The process for the Commission to disburse trust funds is established in ORS 757.738(3), which states:

> Upon request of an agency of the United States, or upon request of the designee of an agency of the United States, the commission shall require the trustee of the appropriate trust account established under this section to transfer to the agency or designee the amounts that are necessary to

pay the costs of removing the Klamath River dams as described in ORS 757.736 (11).

Under ORS 190.110, state agencies may enter into agreements with other state agencies for the performance of any or all functions and activities that the parties to the agreement, its officers, or agents have the authority to perform.

Discussion and Analysis

PacifiCorp currently operates the Klamath Hydroelectric Project under a license issued by the Federal Energy Regulatory Commission (FERC), License No. 2082. The Klamath Hydroelectric Project includes four hydroelectric dams on the Klamath River known as the J.C. Boyle, Copco 1 and 2, and Iron Gate dams. PacifiCorp's project license expired in 2006, but FERC has, as standard practice, allowed the project to continue operating on an annual basis while the Company's application to relicense the project is pending.

Among other issues affecting the Klamath River Upper and Lower basins, the Klamath Hydroelectric Project blocks anadromous fish passage upstream. During settlement discussions in 2008 on the Company's application to relicense the Project with various parties concerned about the effects of the Project, PacifiCorp, the federal Department of the Interior, the states of Oregon and California reached an Agreement in Principal (AIP) for the removal of the dams. Other interested parties joined the discussions and the parties formalized the AIP in the KHSA, which took effect February 18, 2010. The KHSA establishes a process for the decommissioning and removal of the four hydro-electric dams on the Klamath River (Klamath River dam removal) in 2020. Under the KHSA, the Secretary of the Interior was to evaluate and develop a detailed plan for Klamath River dam removal. A dam removal entity (DRE) is to perform the work of dam removal.

A $450 million state cost cap was established for funding dam removal activity, with an amount not to exceed $200 million collected through a surcharge from PacifiCorp customers in Oregon (up to $184 million) and California (up to $16 million). The State of Oregon is providing 92 percent of the total customer contributions and the State of California is providing 8 percent of the total customer contributions. The State of California will contribute the remaining $250 million of the state cost cap through a bond issue.

In 2009, in anticipation of the execution of the KHSA, the State of Oregon enacted Senate Bill 76. Codified at ORS 757.732 to ORS 757.744, Senate Bill 76 prescribes various actions, with specific timeframes, that must be taken by PacifiCorp and the Commission to implement the KHSA. Pursuant to ORS 757.736(2), on March 18, 2010, PacifiCorp filed Schedule 199, Klamath Dam Removal Surcharges. The surcharges consist of two non-bypassable surcharges, one for the J.C. Boyle dam, and the other for the remaining three dams, Copco 1 and 2, and Iron Gate. 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. In any year, the surcharges collected cannot exceed $19,061,680 per ORS 757.736(3). 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.

In Commission Order No. 10-364, Docket No. UE 219, the Commission determined that the KHSA surcharges in Schedule 199 are fair, just, and reasonable. The Commission established an annual review process to ensure the surcharges are correctly calculated to collect Oregon's share of the customer contribution by December 31, 2019. Rates have since been reviewed on an annual basis, with interested parties meeting to reassess the surcharge revenues, interest rates, updated load forecasts, and fund balances and to discuss other issues related to the annual surcharge review. In June 2016, annual revisions to Schedule 199 that raised the surcharges to the statutory cap were approved in Order No. 16-218.

The Commission established a trust account in 2010 with Wells Fargo Bank serving as trustee, and entered a letter agreement with PacifiCorp regarding deposits of the customer contributions into trust. In 2011, ORS 757.738(1) was amended to allow the Commission to direct the funds to the Oregon State Treasury (OST) for the potential of earning higher rates of interest.

For the KHSA, congressional authorization was needed to fully implement the terms of the agreement. When Congress did not act, the parties to the KHSA met to confer on moving forward without Congressional action. After an agreement in principal was reached, amendments to the KHSA took effect April 6, 2016.

The KHSA continues to provide that each party shall support implementation of SB 76. Under the amended KHSA, the state cost cap and state funding mechanisms in Section 4 remain in place, with a reduced role in dam removal activity by the federal agencies involved. As provided in Section 7, the DRE will file a joint application with PacifiCorp to remove the four hydroelectric dams from the FERC license, re-designate the dams and associated facilities with a new project number under a license to be held by the DRE. The DRE will file a concurrent application to surrender and remove the dam facilities, with the original target date of 2020. The DRE will develop a definite plan for removal of the Klamath River dams. The states of Oregon and California will enter grant agreements with the DRE to transfer the customer contributions for payment of the cost of dam removal. The Secretary of the Interior designates ODFW in Section 3 of the

KHSA as the Secretary's designee with authority under ORS 757.738(3) to request a transfer of Oregon's trust funds holding the customer surcharges as necessary to pay for the cost of dam removal, hold the disbursed funds, and transfer the funds to the DRE.

Customer contributions for the Klamath Dam removal are expected to be disbursed over several distinct funding phases. The first phase of funding, Phase 1A, provides for a relatively small amount for the purpose of funding initial startup expenses.

To serve as the DRE, the Klamath River Renewal Corporation (KRRC), a domestic nonprofit public benefit corporation, was incorporated in California following amendment of the KHSA, and is now a signatory to the KHSA. Two members were appointed to the initial board of directors, one by the governor of Oregon, the other by the governor of California. The board adopted by-laws in July 2016 that allow for the appointment of three additional members by the Governor of Oregon, four additional members by the Governor of California, one member each appointed by the Yurok Tribe, Karuk Tribe and Klamath Tribes, one member appointed by the entities listed in part A of exhibit 1 to the by-laws (signatories of the KHSA), and one member appointed by the entities listed in part b of exhibit 1 to the by-laws (other signatories of the KHSA).

Attached is an unexecuted Interagency Agreement (IAA) between ODFW and the Commission to govern the disbursement of trust funds to ODFW for purposes of providing funds toward Phase 1A project costs. The IAA establishes procedures for ODFW to request that the Public Utility Commission (PUC) disburse up to $320,000 to ODFW. These funds will contribute to three months of startup expenses. The Phase 1A budget will be finalized in a grant agreement between ODFW and the KRRC, and is expected to cover costs for professional services (legal, technical, interim staff assistance) for initial formation, funding arrangements and initial development of regulatory filings; travel; office expense and services; insurance (directors' and officers' liability, general liability) and initial salary and benefits to compensate KRRC officers, directors and trustees. The IAA provides that ODFW, by submitting a request for disbursement to the PUC, represents that the KRRC has submitted a detailed budget for Phase 1A consisting solely of expenses necessary to pay the costs of removing the Klamath River dams, and that ODFW will require the KRRC to apply the funds disbursed from the trust accounts only to eligible Phase 1A project costs. The IAA also requires ODFW to obligate the KRRC to return any misexpended or unexpended trust funds that were disbursed under the grant agreement. And, ODFW must require the KRRC to provide ODFW and the PUC with a final report accounting for all expenditures of grant funds.

We note that the future funding phases are currently anticipated to proceed as follows: Phase 1B is expected to encompasses any unfunded Phase 1A activity, ongoing operational expenses and professional services (legal, technical) for development of a risk management package; review of regulatory filings; development of state water quality certification applications; FERC informational filings; FERC application for transfer; FERC application for surrender; operating agreement with PacifiCorp and decommissioning plan. Such activities are to be completed during the 2016/2017 time period per Exhibit 4 to the KHSA. Phase Two is expected to consist of 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 Three is expected to involve the Facilities Removal through deconstruction and restoration.

Once the KRRC has established operations under Phase 1A, the parties involved will have the opportunity to identify the appropriate state agencies to be involved on an ongoing basis, and to assess and develop appropriate funding mechanisms for Phase 1B activity, as well as the later phases. PUC Staff anticipates presenting supporting documentation for Phase 1B funding for the necessary approvals to the commission in one to two months, with a presentation to follow for Phase 2 in three to four months.

Staff finds the Phase 1A fund disbursement to be in customers' interests and consistent with the Commission's obligation to disburse trust funds at the request of ODFW under ORS 757.738(3). At this point, the Commission is not being asked to commit to terms or monetary disbursements beyond that contemplated in the attached IAA. And, this Agreement is short-term and expires the earlier of November 30, 2016 or the date the KHSA terminates. As noted above, the Commission will have the opportunity to review any additional agreements that provide for additional disbursements to fund the dam removal process.

Oregon Customer Contributions are currently held in the Oregon State Treasury's Oregon Intermediate Term Pool (OITP) and Oregon State Treasury short-term fund (OSTF). The OITP has a higher annual growth rate than the OSTF, but is also subject to greater volatility, and the potential loss of some principal. As final disbursement of Oregon Customer Contributions draws near, the weighting of the portfolio should shift towards the more stable OSTF. Due to the small size of disbursement and the length of time remaining for the project, Staff recommends that the Phase 1A disbursement be drawn from the OITP and OSTF in proportion to the current portfolio balance.

Conclusion
Staff recommends that the Commission approve the Interagency Agreement and authorize disbursement of up to $320,000 to ODFW under its terms. Staff also

recommends that the disbursement be drawn from the OITP and OSTF in proportion to the current portfolio balance.

PROPOSED COMMISSION MOTION:

Approve the Interagency Agreement and Authorize disbursement of up to $320,000 to ODFW under the terms of the IAA of customer surcharge trust funds as necessary to pay the Phase 1A costs of removing the Klamath River dams and drawn in proportion to the current portfolio balance.

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