BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UE 219

In the Matter of PACIFICORP, dba PACIFIC POWER Application to Implement the Provisions of Senate Bill 76.	**REPLY BRIEF OF KLAMATH RIVER RENEWAL CORPORATION**

The Klamath River Renewal Corporation ("Renewal Corporation") respectfully submits its Reply Brief, responding to the Opening Briefs of Commission Staff ("Staff"), the Alliance of Western Energy Consumers and the Oregon Citizens' Utility Board (together, "AWEC/CUB"), and PacifiCorp.

I. INTRODUCTION.

The Commission must decide a straightforward question with one clear answer. The central issue is whether PacifiCorp *collected* amounts in excess of those needed or allowed, and the primary question before the Commission is what the legislature meant by amounts "collected" in ORS 757.736(9). The text and context of ORS 757.736 make clear that amounts "collected" refer only to the sums PacifiCorp received from its customers in payment of the surcharges. ORS 757.736(9) does not require a refund of the additional accrued interest because it was not an amount PacifiCorp "collected."

Staff and AWEC/CUB argue through misdirection and flawed reasoning that amounts "collected" also include interest earned on the surcharges after PacifiCorp collected and then deposited the money in interest-earning trust accounts. Staff reaches this result by importing language from two refund provisions in SB 76 other than the one that is at issue. ORS 757.736(9), at issue here, allows for a refund of amounts **collected** via surcharges imposed under that statute if a condition is met. In contrast, ORS 757.736(10) allows for a refund of **excess**

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amounts that remain in the trust accounts if one or more of the four dams are not removed, and ORS 757.738(4) allows for a refund if any **amounts remain in a trust account** after the trustee makes all payments necessary for the costs of removing the dams.

Staff treats the amounts covered by these three provisions as if they were the same; however, the language the legislature used is markedly different. As the Renewal Corporation showed in its Opening Brief, the legislature consistently used the term "collected" in ORS 757.736 to refer just to the money PacifiCorp actually receives from its customers from payment of the surcharges. It does not include interest earned on those funds after they were deposited in the trust accounts. That is consistent with the dictionary definitions of "collected" that Staff and AWEC/CUB rely on. By contrast, "amounts [that] remain in the trust accounts" would include the amounts PacifiCorp collected and any interest earned on those funds deposited in the trusts. Staff does use the term "collected" correctly when it states: "All amounts *collected* under the surcharges were to be remitted into the interest-bearing trust accounts created under ORS 757.738."[1] Amounts "collected" are only the sums PacifiCorp received from its customers *before* they were deposited in the trust accounts and earned interest.

Staff's argument would have the Commission revise the identification of amounts subject to refund under ORS 757.736(9) from amounts "collected" to "amounts [that] remain in the trust accounts," the term used in ORS 757.736(10) and 757.738(4). Basic principles of statutory construction, however, require the Commission to apply the language the legislature used in subsection (9) and not to insert the different language used elsewhere in SB 76, and to respect and give significance to the legislature's use of different terms in the same statute.

AWEC/CUB engage in a different misdirection. The principal argument of AWEC/CUB's Opening Brief is to prove a point that is not disputed: that the term "customer contribution" includes interest earned on the money PacifiCorp collected via the surcharge after

[1] Staff Opening Brief at 2 (emphasis added).

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it was deposited in the trust account.[2] AWEC/CUB blithely substitute the term "customer contribution" for "amounts collected" even though the terms are used very differently in the statute and "customer contribution" is not even used in ORS 757.736(9).

In addition, when they talk about the purported "cap" on the Oregon customer contribution, Staff and AWEC/CUB ignore the fact that the surcharges plus accrued interest were intended to create a customer contribution of $200 million *by December 31, 2019*. This "cap" is really a target to achieve by a certain date, which was the earliest date when dam removal was predicted to be possible. The parties to the KAP and KHSA[3] established this target in 2008 so sufficient funds would be available by 2020 to commence dam removal. It is absurd to suggest that SB 76 foreclosed either the accrual of additional interest as soon as that date passed or the use of additional interest to pay for dam removal when intervening facts delayed dam removal to 2023. In fact, the KHSA specifically requires the use of additional interest to pay for dam removal.

The additional interest that accrued between 2019 and 2024 can and should be used to pay the increased cost of dam removal that resulted from cost increases during that period. Removing the dams is an undisputed benefit to PacifiCorp's customers, and the delay in FERC approval that led to the accrual of additional interest also benefited PacifiCorp's customers by allowing low-cost power generation for three more years. Oregon law does not require that the additional accrued interest be refunded to PacifiCorp's customers. Disbursement of the additional accrued interest to the Renewal Corporation to help pay for dam removal is consistent with Oregon law, the KAP, and the KHSA.

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[2] AWEC/CUB Opening Brief at 1 ("This Opening Brief focuses primarily on the legal question of whether interest earned in the accounts created pursuant to ORS 757.738 … should be considered part of the total Oregon customer contribution toward the cost of removing the Klamath River Dams…").

[3] Terms defined in the Renewal Corporation's Opening Brief are used the same way in this brief.

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II. ARGUMENT.

A. Issues that are not in dispute.

At the outset, the Renewal Corporation notes that the following facts and issues are either expressly agreed to or not disputed:

- In 2008, the parties to the KAP assumed that dam removal could begin in 2020 and estimated that the Project would cost $450 million.
- ORS 757.736(7), the KAP, and the KHSA limit the surcharges levied on PacifiCorp's Oregon customers to the amount necessary to fund Oregon's share of the customer contribution, $184 million, by December 31, 2019.
- The customer contribution includes amounts PacifiCorp collected from its customers via the surcharge plus interest that accrued on those amounts in the trust accounts.
- The surcharges PacifiCorp collected from Oregon customers together with accrued interest through December 31, 2019 totaled approximately $184 million.
- The time required to obtain regulatory approval for dam removal delayed commencement of those activities from 2020 to 2023.
- The three-year delay increased the cost of dam removal from the original estimate of $450 million, if commenced in 2020, to approximately $503 million.
- The Renewal Corporation acted prudently to control the costs of dam removal notwithstanding the delay and increase in costs that were outside its control.
- Removing the Klamath dams is a benefit to PacifiCorp's customers.
- The only provision of law that may authorize the Commission to order a refund to customers in this case is ORS 757.736(9).
- In interpreting that statute, the Commission's primary task is to consider the text and context of the statute, where context includes other provisions of the same statute.

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B. The amounts PacifiCorp collected do not exceed those needed or allowed.

1. ORS 757.736(9) addresses amounts *collected* via the surcharge, which does not include interest earned in the trust accounts.

ORS 757.736(9) allows the Commission to order a refund if "amounts have been collected under this section in excess of those needed, or in excess of those allowed." The Renewal Corporation established in its Opening Brief that ORS 757.736 consistently uses the term "collected" to refer to the actual amounts PacifiCorp received from its customers via imposition of the surcharges.[4] The amounts collected were placed in a trust account where interest could accrue; however, the amounts collected are the "principal" and do not include any interest.

Because the legislature used the same term "collected" in different sections of SB 76, the Commission should conclude that the legislature intended the term to have the same meaning throughout.[5] Not only is this how the term "collected" is consistently used in the statute, it also comports with the dictionary definitions of the word cited by Staff and AWEC/CUB: "to receive, gather, or exact from a number of persons or sources;" and "to call for and obtain payment of."[6] The Commission should give this word of common usage its plain, natural, and ordinary meaning.[7] After PacifiCorp deposited the amounts it collected from customers into the trust accounts, they were then able to earn interest; however, the amounts *collected* did not include any interest.

Staff's Opening Brief improperly changes the focus from the subject of ORS 757.736(9), amounts *collected*, to the subject of two other refund provisions in SB 76, *amounts remaining in the trust accounts*, which are not at issue here. Throughout its brief, Staff addresses the question

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[4] Renewal Corporation Opening Brief at 8-12. The legislature used the term "collected" in the same way in another section of SB 76, ORS 757.738(2) ("a portion of the amounts *collected* under one surcharge may be deposited in the trust account established for amounts *collected* under the other surcharge." (emphasis added)).
[5] *Northwest Natural Gas Co. v. City of Gresham*, 359 Or. 309, 323, 374 P.3d 829 (2016).
[6] Staff Opening Brief at 8; AWEC/CUB Opening Brief at 13.
[7] *State ex rel. Dep't of Transp. v. Stallcup*, 341 Or. 93, 99, 138 P.3d 9 (2006).

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of whether the amounts *in the trust accounts* exceed what is needed or allowed. While that may suit Staff's desired result, it is not the question the Commission needs to address. For example, Staff states:

- "the *remaining amounts in the trust account* appear to be in excess of amounts allowed, and may also be in excess of what is needed."[8]
- "The *Remaining Funds in the Trust Accounts* are Likely in Excess of What is Allowed."[9]
- "Whether the *remaining funds in the trust accounts* are amounts in excess of what is allowed under this statute requires statutory interpretation to determine what the legislature intended."[10]

Throughout its Opening Brief, Staff is focused on "the remaining funds in the trust account," but that is not the subject of ORS 757.736(9). That section, which is the only refund provision that could apply here, is concerned with whether amounts "collected" exceed certain measures, not whether amounts "remaining in the trust accounts" exceed those measures. Because the legislature used these different terms in the same statute, it intended them to have different meanings.[11] The difference between these subjects is significant. Amounts "collected" include only the principal; amounts in the trust accounts include principal plus interest. In this case, the Commission must analyze whether the amounts PacifiCorp "collected" exceed what is needed or allowed and must decline Staff's invitation to apply that analysis to the amounts remaining in the trust account.[12]

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[8] Staff Opening Brief at 5 (emphasis added).
[9] Staff Opening Brief at 6 (emphasis added).
[10] Staff Opening Brief at 7 (emphasis added).
[11] *Northwest Natural Gas Co. v. City of Gresham*, 359 Or. 309, 323, 374 P.3d 829 (2016).
[12] *See* ORS 174.010 ("In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.").

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2. The amount of the "customer contribution" is not relevant to ORS 757.736(9).

AWEC/CUB also improperly change the focus from the subject of ORS 757.736(9), amounts *collected*, to another term that is not relevant to the issue presented, "customer contribution." They pose the primary legal question to be decided as "whether interest earned in the [trust] accounts … should be considered part of the total Oregon customer contribution."[13] And they answer that question in the affirmative: "the answer to these questions is that interest was very clearly intended to be included within Oregon customers' total contribution."[14] In so doing, AWEC/CUB set up a straw man they can easily shoot down, *because it is not disputed*. The Renewal Corporation states quite clearly in its Opening Brief that the "customer contribution" is made up of amounts PacifiCorp collected from its customers plus interest accrued in the trust account.[15] Nevertheless, AWEC/CUB devote over half of their Opening Brief to addressing this question, which is both undisputed and irrelevant to the issue before the Commission.

The issue here is whether PacifiCorp *collected* amounts that exceed the statutory requirements; the issue is not whether interest was intended to be included within the "customer contribution." Just because anticipated interest was considered in setting the amount of the surcharges over the years to hit the target for the Oregon customer contribution of $184 million by December 31, 2019, does not also mean that amounts "collected" *include* interest. Like Staff's substituting "amounts remaining in the trust account" for "amounts collected" in ORS 757.736(9), AWEC/CUB improperly substitute "customer contribution" for amounts "collected." AWEC/CUB's argument does not adequately address or show fidelity to the actual, applicable statutory language.

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[13] AWEC/CUB Opening Brief at 1.
[14] *Id.* at 2.
[15] Renewal Corporation Opening Brief at 9-10.

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3. The additional accrued interest does not exceed what is needed or was allowed.

Even if amounts "collected" included interest earned in the trust accounts — which they do not — the additional accrued interest does not exceed the amounts needed. There is no dispute that the Renewal Corporation needs approximately $503 million to complete dam removal. Even if an additional $45 million is made available under the terms of the MOA that Staff and AWEC/CUB discuss, increasing the available funding from $450 million to $495 million, the $4.9 million of additional accrued interest is still needed to close the gap to complete dam removal.

Nor does the additional accrued interest exceed what PacifiCorp was allowed to collect. The surcharges the Commission approved and PacifiCorp collected funded Oregon's share of the customer contribution *by December 31, 2019*; that is precisely what PacifiCorp was allowed to collect. The accrual of additional interest after that date was also allowed, as discussed next.

C. Authorizing disbursement of the additional accrued interest would not exceed a cap on the customer contribution.

Staff and AWEC/CUB argue that the Commission should deny the Renewal Corporation's request because disbursing the additional accrued interest would result in the Renewal Corporation's receiving more than $184 million, Oregon's share of the $200 million customer contribution. While their reasoning is convoluted, they appear to argue that *if* the Commission approves the Renewal Corporation's request, it would result in PacifiCorp's (retrospectively) having collected more than it was allowed because the additional interest accrued after December 31, 2019 would lead to a customer contribution of approximately $188.9 million ($184 million already disbursed plus additional accrued interest of approximately $4.9 million). They both rely on ORS 757.736(3) which provides: "The surcharges imposed under this section may not exceed the amounts necessary to fund Oregon's share of the customer contribution of $200 million identified in the agreement in principle." However, they both ignore a key term in the law.

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All of the authorities are clear that the Oregon customer contribution "cap" was intended to apply only to the amount of funds in the trust accounts as of December 31, 2019; it was not intended to be a cap for all time. ORS 757.736(7) provides that the surcharges were required to "be calculated based on a collection schedule that will fund, by December 31, 2019, Oregon's share of the customer contribution of $200 million identified in the agreement in principle." While ORS 757.736(3) does not include the term "by December 31, 2019," that subsection should be read consistently with ORS 757.736(7) for two reasons. First, subsection (3) refers to "Oregon's share of the customer contribution of $200 million *identified in the agreement in principle*." (Emphasis added.) The reference to the KAP should be understood to incorporate the assumption in the KAP that the $200 million customer contribution must be raised by the end of 2019 because the KAP's estimate of a customer contribution totaling $200 million was based on a "target date" of commencing dam removal in 2020.[16]

Second, subsection (3) of ORS 757.736 must be read in the context of the other provisions of the same law;[17] it should not be read "in a vacuum" and must be construed together with the other sections "in an attempt to produce a harmonious whole."[18] In particular, it must be read in conjunction with subsection (7), which Staff admits provides "persuasive context."[19] ORS 757.736(7) states that the surcharges were required to "be calculated based on a collection schedule that will fund, *by December 31, 2019*, Oregon's share of the customer contribution of $200 million identified in the agreement in principle." (Emphasis added.) Thus, the only cap in SB 76 on the Oregon customer contribution is that it must equal $184 million *by December 31, 2019.*

PacifiCorp did not collect more money than it was allowed because the amounts it collected plus interest accrued by December 31, 2019 equaled the Oregon customer contribution

[16] KAP, Sections VI(A) & VII(C); *see also* KHSA, Section 7.3.1.
[17] *State ex rel. Dep't of Transp. v. Stallcup*, 341 Or. 93, 99, 138 P.3d 9 (2006).
[18] *Lane County v. LCDC*, 325 Or. 569, 578, 942 P.2d 278 (1997).
[19] Staff Opening Brief at 9.

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of $184 million. That is the only cap on the customer contribution in ORS 757.736 and that is the only date that is relevant to the question of whether PacifiCorp collected more money than allowed.

CUB and AWEC would have the Commission rule that interest could not accrue once the Oregon trust account balances reached $184 million without triggering a refund obligation. That argument is short-sighted and ignores the facts underlying enactment of the law. The parties to the KAP projected in 2008 that the largest dam removal project in history could begin in 2020 and would cost a total of $450 million. It is absurd to argue those projections should be accorded pinpoint accuracy such that any amount of additional interest that accrued after December 31, 2019 cannot be applied to the Project. If the legislature intended that to be the case, it would have included a refund provision addressing only the accrual of additional interest. It did not do that; instead, ORS 757.738(4) permits a refund of amounts remaining in the trust account, including accrued interest, but only after the costs of dam removal are fully paid.

Nothing in the KAP, KHSA, or SB 76 establishes a maximum trust account balance of $200 million. Rather, these authorities require creating a $200 million fund by December 31, 2019, and do not require the refund of additional interest that accrues after that date. Indeed, Section 7.3.8(A) of the KHSA expressly provides that interest exceeding the amount projected may be used for dam removal. Moreover, that section establishes that the $200 million customer contribution is a floor, not a ceiling, in the event additional interest accrues: "Nothing in this paragraph will limit the Customer Contribution to less than $200,000,000."

The reason for a cap in the customer contribution was to protect PacifiCorp's customers from paying an unlimited amount for dam removal. That is why ORS 757.736(9) applies to amounts "collected." The cap was the amount of surcharges which, together with interest accrued, would total $184 million by December 31, 2019. And that is precisely what PacifiCorp's customers paid. Disbursing the additional accrued interest to the Renewal Corporation will not cause PacifiCorp's customers to pay any more than they have. In fact,

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refunding the additional accrued interest would cause their overall payment to be less than the legislature allowed. The statute does not require this result.

D. Even if ORS 757.736(9) were triggered, using the additional accrued interest for dam removal is for the benefit of PacifiCorp's customers.

Even if ORS 757.736(9) were triggered because amounts have been collected in excess of those needed or in excess of those allowed — which the Renewal Corporation disputes — ORS 757.736(9) allows the excess amounts to be used "for the benefit of customers" instead of being refunded to customers. The Renewal Corporation showed in its Opening Brief that removal of the dams is undeniably for the benefit of PacifiCorp's customers.[20] And the Commission established in Order No. 10-364 that dam removal is for the benefit of PacifiCorp's customers.

"Benefit of customers" is used in only two ways in SB 76. First, it is used in three provisions as an alternative to a refund.[21] This shows that "benefit of customers" in ORS 757.736(9) must mean something *other than* a refund. The only other time the term is used in SB 76, it refers to the "benefits and risks for customers of removing or relicensing Klamath River dams."[22] "Benefit of customers" in ORS 757.736(9) should be read consistently with this provision to mean the benefit to customers of removing the dams, which has already been conclusively established. Because of FERC's delay in approving dam removal, more interest accrued than was originally projected. The Renewal Corporation requests that it may use the additional accrued interest to offset the escalation of dam removal costs during that same period. Using this additional interest for dam removal does not negatively impact PacifiCorp's customers and is for the benefit of the Project, which is ultimately for the benefit of customers.

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[20] Renewal Corporation Opening Brief at 13.
[21] ORS 757.736(9) ("to refund these excess amounts to customers or to otherwise use these amounts for the benefit of customers"); ORS 757.736(10) ("excess amounts be refunded to customers or otherwise be used for the benefit of customers"); ORS 757.738(4) ("to refund those amounts to customers or to otherwise use the excess amounts for the benefit of customers.").
[22] ORS 757.736(1).

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Remarkably, Staff takes no position on whether using the additional accrued interest for dam removal would be for the benefit of customers.[23] While Staff attempts to establish the predicate to the Commission's authority to order a refund under ORS 757.736(9), it does not even address the "benefit of customers" issue, and so provides the Commission with no facts or argument to counter or refute the Renewal Corporation's showing.

AWEC/CUB also "do not challenge the previously identified benefits of removal of the Klamath River Dams…."[24] Nor do they want the Commission even to consider whether using the additional accrued interest for dam removal is for the benefit of customers.[25] Regardless, they offer three reasons why application of the additional accrued interest would not be for the benefit of customers. First, they assert that "the Legislature and the Commission have already determined that customers benefit from dam removal only up to Oregon's share of the total Customer Contribution…."[26] To the contrary, the Commission determined that dam removal provides a customer benefit because it removes the "significant risks to ratepayers" that relicensing the Klamath dams would pose and saves customers from potentially very large and uncapped costs. Neither the legislature nor the Commission ever fixed the value of that benefit as being equivalent to Oregon's share of the total customer contribution. Moreover, PacifiCorp's customers' payment towards dam removal has been capped as the legislature directed, at the amount necessary to fund Oregon's share of the total customer contribution as of December 31, 2019. Authorizing disbursement of the additional accrued interest will not cost PacifiCorp's Oregon customers another cent.

Second, AWEC/CUB assert that the benefit under ORS 757.736(9)(a) must be an economic benefit to PacifiCorp's customers *as customers*, not just as Oregon citizens, and that

[23] Staff Opening Brief at 14-15.
[24] AWEC/CUB Opening Brief at 2.
[25] AWEC/CUB Opening Brief at 11 ("the Commission should not spend this crucial time considering whether giving KRRC these excess funds is 'for the benefit of customers.'").
[26] *Id.* at 10.

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PacifiCorp's customers do not benefit "any more than anyone else."[27] This assertion ignores the substantial evidence and prior Commission determination that the avoidance of risk and other potential costs from dam relicensing provides an economic benefit to PacifiCorp's customers *as customers*.

Third, AWEC/CUB assert that PacifiCorp's customers are facing "rising costs for essentials, like food and rent, as well as rising utility bills" and the additional accrued interest should be "refunded to PacifiCorp's customers … to help alleviate the financial difficulties of increasing utility rates."[28] This argument gives no meaning to the statutory provision because "benefit of customers" must mean something *other than* a refund. While giving money to customers benefit them, that would not be the question before the Commission if the refund provision in ORS 757.736(9) were triggered. Rather, the only question would be whether use of the additional accrued interest to pay for dam removal is a customer benefit, and that question has already been answered in the affirmative by the Commission and is conceded by AWEC/CUB.

E. ORS 757.736(9) does not apply at this time.

As shown above, ORS 757.736(9) has not been triggered because PacifiCorp did not *collect* amounts that exceed those allowed or needed for dam removal. This section also appears not to apply at this time because it was intended to authorize refunds only during the period when the surcharges were imposed and collected, not after collections ceased. Staff discusses ORS 757.738(4) as part of the context relevant to interpreting ORS 757.736(9).[29] Reviewing that section and the other refund provisions in SB 76 together indicates that ORS 757.736(9) likely does not apply at this time.

[27] *Id.* at 10-11.
[28] *Id.* at 11.
[29] Staff Opening Brief at 11.

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SB 76 authorizes refunds in four circumstances that apply at different times. ORS 757.736(5) provides for a refund if PacifiCorp starts collecting surcharges in 2010 which the Commission approves, but a court determines on judicial review that the rates are not fair, just, and reasonable. The Commission approved the surcharges in 2010 and no party sought judicial review, so the time for application of that section has passed. ORS 757.736(10) allows for a refund if one or more of the four dams are not removed. That also does not apply here. ORS 757.738(4) allows for a refund "[i]f any amounts remain in a trust account … after the trustee makes all payments necessary for the costs of removing the Klamath River dams…." That section does not apply yet.

ORS 757.736(9) is the only provision that may apply at this time; however, a review of that section in the context of SB 76 shows that it likely applies only during the period that PacifiCorp was collecting the surcharges, from 2010 through 2019. If ORS 757.736(9) is triggered, it provides for two remedies. First, the Commission may direct the trustee to refund amounts that were over-collected or to use them for the benefit of customers.[30] Second, the Commission may "[a]djust future surcharge amounts as necessary to offset the excess amounts."[31] That remedy could be implemented only during the collection period.[32]

In interpreting ORS 757.736(9), the Commission must construe that section in the context of the other refund provisions in SB 76. The Commission must also reach an interpretation that gives effect to all provisions of the law,[33] and must construe ORS 757.736(9) together with the other sections of SB 76 "in an attempt to produce a harmonious whole."[34]

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[30] ORS 757.736(9)(a).
[31] ORS 757.736(9)(b).
[32] The reference to "at any time" in ORS 757.736(9) would refer to any time during the collection period.
[33] ORS 174.010 ("In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.").
[34] *Lane County v. LCDC*, 325 Or. 569, 578, 942 P.2d 278 (1997).

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Construing all of these refund provisions together, it appears that they apply to different time periods: ORS 757.736(5) applies at the time of approval of the initial surcharge; ORS 757.736(9) applies during the collection period; and ORS 757.736(10) and ORS 757.738(4) apply after the trustee has paid all costs to remove the dams. Thus, it appears that ORS 757.738(4) provides the only opportunity in this case for a refund *after* removal of all four dams has commenced. ORS 757.736(10) and ORS 757.738(4) are also the only refund provisions that would allow for a refund of interest because they apply to amounts *in the trust accounts* where the interest was earned. ORS 757.736(9) has no application in this case because the collection period ended in 2019, and it applies only to principal, not interest.

F. There are troubling administrative and fairness concerns about ordering a refund.

In its Opening Brief, PacifiCorp raises several "practical" problems that would arise if it the Commission ordered a refund of the additional accrued interest, including how such refunds could be made given that PacifiCorp does not hold the money, and whether it would be taxable income.[35] The Renewal Corporation agrees those concerns are valid.

In addition, there is a fairness issue associated with ordering a refund at this time. The surcharges were collected between March 2010 and November 2019, with the mid-point being approximately January 2015. A refund ordered in this case would be made approximately 10 years after that mid-point, and later if an appeal is filed. It is certain that the customers who paid the surcharges in 2010-2019 are not all the same as PacifiCorp's current customers, and that raises additional practical and fairness concerns. Some of the customers who paid the surcharges would not receive a refund, and a refund to new customers since 2019 would be a windfall.

CONCLUSION

For the foregoing reasons as well as those asserted in the Renewal Corporation's Opening Brief, the Commission should grant the Renewal Corporation's request to authorize

[35] PacifiCorp Opening Brief at 12-13.

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disbursement of the remaining accrued interest to the Renewal Corporation and to amend the Funding Agreement.

DATED: April 30, 2024

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