

December 21, 2021

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

RE: *PacifiCorp*
Docket No. ER 22-_____ -000

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act (“FPA”)¹, Part 35 of the Federal Energy Regulatory Commission’s (“Commission”) regulations,² and Order No. 714³ regarding electronic filing of tariff submittals, PacifiCorp hereby tenders for filing the following jurisdictional agreement:

Engineering and Procurement Agreement (“E&P Agreement”), between PacifiCorp Energy Supply Management (“PacifiCorp ESM”) and PacifiCorp Transmission, to be designated as PacifiCorp Rate Schedule No. 764.

As discussed further below, PacifiCorp respectfully requests the Commission accept this Engineering and Procurement Agreement effective February 19, 2022.

1. Background and Reason for Filing

PacifiCorp owns certain hydropower resources in southern Oregon and northern California—namely, Copco No. 1, Copco No. 2, Iron Gate, and J.C. Boyle (collectively, the “Lower Klamath Project”). The Lower Klamath Project, FERC Project No. 14803, is planned to be decommissioned by the States of California and Oregon and the Klamath River Renewal Corporation (“KRRC”) consistent with the Klamath Hydroelectric Settlement Agreement (“KHSA”).⁴ Pursuant to the terms of the KHSA, the Lower Klamath Project will be decommissioned upon: (1) approval by FERC of the KRRC’s pending license surrender application; and (2) transfer of the FERC license from PacifiCorp to the KRRC and the States of California and Oregon as co-licensees.⁵

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. Part 35 (2021).

³ *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008).

⁴ See, e.g. *PacifiCorp*, 162 FERC ¶ 61,236, P 10, n.10 (2018) (describing the KHSA); *PacifiCorp*, 175 FERC ¶ 61,236, P 22, n. 31 (2021) (same).

⁵ See *PacifiCorp*, 175 FERC ¶ 61,236, order addressing arguments on reh’g, 176 FERC ¶ 61,202 (2021) (order approving license transfer). Relatedly, PacifiCorp ESM has also proposed to decommission two other

In anticipation of the decommissioning of these hydropower resources, PacifiCorp ESM provided a Copco No. 2 Flood Risk Study report (“Study”), which identifies the possible flood levels estimated at the Copco No. 2 Hydroelectric Plant substation following decommissioning of the Facilities. PacifiCorp Transmission’s review of the Study determined that loss of the substation presented undue risk of possible long-term outage to customers served from the substation and requires the removal and relocation of the Copco No. 2 Hydroelectric Plant substation. To advance implementation of this scope of work, PacifiCorp ESM requested that PacifiCorp Transmission begin certain engineering and procurement activities prior to the execution of the definitive construction agreement contemplated in the Decommissioning Study.

The Commission is anticipated to render a decision on the Lower Klamath Project license surrender before December 31, 2022. Due to anticipated long-lead procurement and construction timelines associated with moving the substation, PacifiCorp ESM and PacifiCorp Transmission signed the E&P Agreement,⁶ whereby PacifiCorp Transmission will perform the engineering, design, and procurement work necessary to relocate the Copco No. 2 substation to a location outside the projected flood area to maintain the safety and reliability of the affected PacifiCorp transmission system. The E&P Agreement does not, however, authorize any party to commence decommissioning work on the Projects, nor does it impact any transmission service for such projects, which would be addressed consistent with PacifiCorp Transmission’s OATT.

The Commission has previously accepted the use of engineering and procurement agreements to facilitate eventual generator decommissioning. For example, in 2012, the Commission accepted an engineering and procurement agreement submitted by PacifiCorp in relation to the decommissioning of a coal-fired generating facility in Carbon County, Utah.⁷

Accordingly, PacifiCorp respectfully requests that the Commission accept the Engineering and Procurement Agreement, attached hereto, for filing.

2. Effective Date and Request for Waiver

In accordance with 18 C.F.R. § 35.3(a)(1), PacifiCorp respectfully requests that the Commission establish an effective date of February 19, 2022 or the E&P Agreement, which is 60 days after this filing.

hydropower resources in Southern Oregon – the East Side and West Side hydropower resources – as noted in its pending application for the relicensing of the Klamath Hydroelectric Project, FERC Project No. 2082. *PacifiCorp*, Klamath Hydro Project Relicensing Application, Docket No. P-2082 (Feb. 23, 2004). The East Side and West Side resources will be decommissioned upon approval by FERC, as part of its disposition of the pending relicensing application. The relicensing of the Klamath Project is being held in abeyance, pending the Commission’s disposition of the Lower Klamath Project. *See PacifiCorp*, 155 FERC ¶ 61,271 (2016).

⁶ PacifiCorp ESM and PacifiCorp Transmission have submitted a previous Engineering and Procurement agreement related to the Copco No. 2 project, which is currently pending in Docket No. ER22-245.

⁷ *PacifiCorp*, Letter Order, Docket No. ER12-1900-000 (July 27, 2012).

To the extent that any filing requirement in Part 35 of the Commission's regulations is not satisfied by this filing and the materials enclosed herewith, PacifiCorp respectfully requests waiver of such requirements.

3. Designation

PacifiCorp requests that the Engineering and Procurement Agreement be designated as PacifiCorp Rate Schedule No. 764.

4. Enclosure

The following enclosure is attached hereto:

Engineering and Procurement Agreement between PacifiCorp ESM and PacifiCorp Transmission, to be designated as PacifiCorp Rate Schedule No. 764.

5. Communications

All communications and correspondence regarding this filing should be forwarded to the following persons:

Karen Kruse
Deputy General Counsel
PacifiCorp
825 N.E. Multnomah, Suite 2000
Portland, OR 97232
(503) 813-5863
Karen.Kruse@PacifiCorp.com

Rick Vail
Vice President, Transmission
PacifiCorp
825 N.E. Multnomah, Suite 1600
Portland, OR 97232
(503) 813- 6938
Richard.Vail@PacifiCorp.com

6. Notice

Pursuant to 18 C.F.R. § 35.2(e), a copy of this filing is being served on the following:

Michael Wilding
VP, Energy Supply Management
PacifiCorp
825 N. E. Multnomah, Suite 600
Portland, OR 97232
(503) 813-5431
Michael.Wilding@PacifiCorp.com

Public Utility Commission of Oregon
P.O. Box 1088
Salem, OR 97308
PUC.FilingCenter@state.or.us

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
EnergyDivisionCentralFiles@cpuc.ca.gov

7. Conclusion

For the above reasons, PacifiCorp requests that the Commission accept this Engineering and Procurement Agreement for filing and grant the requested proposed effective date and grant waiver of any Commission regulations not addressed herein that the Commission may deem applicable to this filing.

Respectfully Submitted,

/s/ Karen Kruse

Karen Kruse
Deputy General Counsel
PacifiCorp

ENGINEERING AND PROCUREMENT AGREEMENT

THIS ENGINEERING AND PROCUREMENT AGREEMENT (“Agreement”) is made and entered into this 2nd day of December, 2021, by and between PacifiCorp, acting in its transmission function capacity (“Transmission Provider”), and PacifiCorp, acting in its energy supply management capacity (“Customer”). Customer and Transmission Provider each may be referred to individually as a “Party” or collectively as the “Parties.”

Recitals

A. Transmission Provider has an Open Access Transmission Tariff (“OATT”) on file with the Federal Energy Regulatory Commission (“FERC”) and provides various services to transmission and interconnection customers, including Customer, in accordance therewith.

B. Customer’s Copco No. 1 & No. 2, Iron Gate, and J.C. Boyle hydropower resources in southern Oregon and northern California (the “Lower Klamath Project”) are planned to be decommissioned by the Klamath River Renewal Corporation (“KRRC”) and the States of California and Oregon consistent with the Klamath Hydroelectric Settlement Agreement (“KHSa”). The Lower Klamath Project will be decommissioned upon: (1) approval by FERC of the KRRC’s pending license surrender application; and (2) transfer of the FERC license from PacifiCorp to the KRRC and the States of California and Oregon as co-licensees. Customer is in the process of planning the decommissioning of its East Side and West Side hydropower resources in southern Oregon, which are part of the “Klamath Project,” pursuant to the KHSa and Customer’s pending relicensing application for the Klamath Project before FERC. East Side and West Side will be decommissioned upon approval by FERC.

C. Customer provided a Copco 2 Flood Risk Study report which identifies the possible flood levels estimated at the Copco 2 Hydroelectric Plant substation following decommissioning of the Facilities.

D. The Transmission Provider’s review of the Flood Risk Study determined that loss of the substation presented undue risk of possible long-term outage to customers served from the Copco 2 Hydroelectric Plant substation and requires the removal and relocation of the substation.

E. In connection with the Flood Risk Study and the proposed decommissioning of the Lower Klamath Project Resources, East Side, and West Side resources (collectively, the “Facilities”), Customer requested that Transmission Provider assess the impact of such Flood Risk Study and decommissioning on the Transmission Provider’s system (the “Project”).

F. To advance the implementation of this scope of work, Customer requests that Transmission Provider begin certain activities relative to the Facilities prior to the execution of the definitive construction agreement contemplated in the Decommissioning Study (the “Construction Agreement”).

G. The Parties wish to set forth their agreement with respect to certain engineering and procurement services related to the Project, as specified herein.

NOW THEREFORE, in consideration of the promises and mutual obligations set forth in this Agreement, the Parties agree as follows:

Agreement

1. Definitions. Unless specifically defined herein, capitalized terms shall have the meaning as defined in the OATT.

2. Effective Date, Term and Termination. This Agreement shall be effective upon the later of the following: (1) the date of execution by both Parties or (2) the effective date established by FERC upon acceptance for filing. Notwithstanding that termination of the Agreement is subject to acceptance by FERC and the effectiveness of such termination shall be subject to FERC's acceptance of the termination, this Agreement shall remain in effect until ninety (90) days after the earliest of the following to occur:

- (a) Execution by the Parties of the Construction Agreement; or
- (b) Termination of the Agreement as provided in Section 10 of this Agreement.

Notwithstanding termination of this Agreement as provided herein, the provisions of this Agreement necessary to ensure payment of amounts due hereunder by one Party to the other Party shall continue in effect until each Party has satisfied its payment obligations to the other, if any.

3. Engineering and Procurement Services to Be Provided. Execution of this Agreement shall not obligate Transmission Provider to perform any construction work, acquire easements, or to undertake any other obligations not expressly set forth in this Agreement. In accordance with the terms of this Agreement and provided that Customer (a) is not in default under the terms of this Agreement, or (b) has not failed to comply with any prerequisites specified in the OATT, Transmission Provider shall commence the engineering services as further described herein ("Engineering Services") and the procurement services as further described herein ("Procurement Services").

Engineering Services shall mean the services set out in Exhibit A and shall also include such other services as Transmission Provider believes are reasonably necessary to engineer and design the Facilities. Engineering Services shall also include the services of any consultant or professional engineering firms that may be retained by the Transmission Provider.

Procurement Services shall mean the services set out in Exhibit A and shall also include such other services as Transmission Provider believes are reasonably necessary to specify, obtain bids, place purchase orders and otherwise to procure materials, equipment and contractors in connection therewith for the completion of the Facilities. The Engineering Services and Procurement Services shall be collectively referred to herein as the "Services."

4. Modification of Services. At Customer's request, the Services set out in Exhibit A have been defined prior to completion of the Construction Agreement. As a consequence, the Parties acknowledge and accept that the estimates and scope of Services described in Exhibit A are not binding on the part of Transmission Provider and that Exhibit A may require modification to reflect engineering requirements of the Facilities based on the results of the Construction Agreement. Such modifications shall include those deemed reasonably necessary by the Transmission Provider in preparation for the construction of the Facilities. Customer, and anyone claiming by, through or under Customer, hereby waives its right to recover from and

fully and irrevocably releases Transmission Provider from any and all claims, responsibility and/or liability that Customer may now have or hereafter acquire against Transmission Provider for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to such modifications.

5. Performance Standards. Each Party shall perform all its obligations under this Agreement in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice, and to the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in breach of this Agreement for compliance therewith. Notwithstanding anything in this Agreement to the contrary, in no event shall Transmission Provider be responsible under the terms of this Agreement for any delay in completion of the requested Services.

6. Access Rights. Upon reasonable notice and supervision by a Party, and subject to any required or necessary regulatory approvals, a Party (“Granting Party”) shall furnish at no cost to the other Party (“Access Party”) any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress to perform all its obligations under this Agreement.

7. Lands of Other Property Owners. If any part of the Facilities are to be installed on property owned by or under the control of persons other than Customer or Transmission Provider, Customer shall at its own expense use efforts to procure from such persons any property rights in fee, perpetual lease, or other property rights in a form acceptable to the Transmission Provider that are necessary to construct, operate, maintain, test, inspect, replace or remove the Facilities upon such property.

8. Project Costs. Customer shall be responsible to reimburse and pay Transmission Provider for all costs and expenses reasonably incurred by Transmission Provider in connection with providing the Services pursuant to this Agreement (“Project Costs”). Project Costs shall include all reasonable and documented costs, charges, and expenses incurred by Transmission Provider in connection with the performance of the Services, including all of Transmission Provider’s reasonable internal costs, overheads, third-party expenses, cost of supplies, and any other amounts owed to Transmission Provider under the terms of this Agreement, including without limitation, all reasonable costs incurred by Transmission Provider in performing the activities described in Exhibit A, and any additional costs incurred under Section 4 of this Agreement. Customer shall pay Transmission Provider for all Project Costs incurred, subject to the terms of this Agreement. Customer hereby authorizes Transmission Provider to incur Project Costs in an initial amount of up to two million dollars (\$2,000,000) (the “Authorized Amount”).

9. Payment of Estimated Project Costs. Upon execution of this Agreement, Customer shall tender to Transmission Provider prepayment of Project Costs in the amount of two hundred thousand dollars (\$200,000) (the “Prepayment”). Transmission Provider’s obligation to proceed with the Services shall be contingent upon receipt of the Prepayment. Transmission Provider shall notify Customer when it determines the Project Costs will exceed the Prepayment and shall specify the estimated amount by which such Project Costs will exceed the Prepayment.

10. Authorization of Additional Amounts for Project Costs. In the event that Transmission Provider determines Project Costs may exceed the Authorized Amount, Transmission Provider shall notify Customer and request that the Customer provide written approval authorizing such additional amounts for Project Costs within thirty (30) days of such notice. Transmission Provider's obligation to proceed with the Services associated with such additional amounts shall be contingent upon receipt of such approval, along with a prepayment in such additional amount. Customer shall be responsible for such Project Costs, as increased pursuant to such written authorization. If Customer does not authorize such additional amounts within such thirty (30) day period, this Agreement shall terminate after Transmission Provider gives Customer written notice and an additional fifteen (15) days to cure.

11. Right to Stop Work. Customer reserves the right, upon seven (7) days advance written notice to Transmission Provider, to require Transmission Provider at any time to stop all work by Transmission Provider pursuant to this Agreement. Upon issuance of any such stop-work order, Customer shall pay in accordance with section 12 below, the Project Costs Transmission Provider has incurred prior to the stoppage of work, including, without limitation, the costs incurred in connection with the cancellation of third-party contracts and any suspension or cancellation costs for equipment that is already ordered for the transmission system modifications to decommission the Facilities.

12. Billing. Transmission Provider shall provide Customer with an invoice listing services performed and amounts due hereunder, showing credit for any prepayment of Project Costs made by Customer. Customer shall pay amounts due within thirty (30) days of the invoice date. Any refund due from Transmission Provider shall be paid to Customer within thirty (30) days of the invoice date. If Customer disputes any portion of the amount due, Customer shall pay the total bill and shall designate the disputed portion.

13. Indemnification. Subject to the limitations contained in Section 14 below, the Parties shall at all times indemnify, defend, and hold the other Party harmless, from any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under this Agreement, except in the case of gross negligence or intentional wrongdoing by the indemnified party.

14. Remedies; Waiver; Warranty. Either Party may exercise any or all of its rights and remedies under this Agreement, the OATT and under any applicable laws, rules and regulations. Transmission Provider's liability for any action arising out of its activities relating to this Agreement shall be limited to the refund of amounts received hereunder. Under no circumstances shall either Party be liable for any of the other Party's economic losses, costs or damages, including but not limited to special, indirect, incidental, consequential, punitive, or exemplary damages. No provision of this Agreement or the OATT shall be deemed to have been waived unless such waiver is in writing signed by the waiving Party. No failure by any Party to insist upon the strict performance of any provision of this Agreement, the OATT or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach of such provision or of any other provision. No waiver of any provision of this Agreement or the OATT shall be deemed a waiver of any other provision of this Agreement, the OATT or a waiver of such provision with respect to any subsequent breach, unless expressly provided in writing. Transmission Provider warrants that the Services it performs hereunder

shall be consistent with Good Utility Practice. TRANSMISSION PROVIDER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND ALL SIMILAR WARRANTIES.

15. Force Majeure. Neither Party shall be subject to any liability or damages for failure to perform their respective obligations hereunder to the extent that such failure is due to causes beyond the control of the Party claiming force majeure protection, including but not limited to the following: (a) the operation and effect of any rules, regulations and orders promulgated by any commission, municipality, or governmental agency of the United States, or subdivision thereof; (b) restraining order, injunction or similar decree of any court; (c) war; (d) flood; (e) earthquake; (f) act of God; (g) sabotage; or (h) strikes or boycotts. The Party claiming force majeure protection under this provision shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible.

16. Assignment. Transmission Provider may at any time assign its rights and delegate its obligations under this Agreement, in whole or in part, including, without limitation, transferring its rights and obligations under this Agreement to any: (i) affiliate; (ii) successor in interest, or (iii) corporation or any other business entity in conjunction with a merger, consolidation or other business reorganization to which PacifiCorp is a party. Affiliate, as used herein, includes any entity in which Berkshire Hathaway Inc. owns more than a 5% interest, over which Berkshire Hathaway Energy exercises management control. Customer shall not assign its rights, nor delegate its obligations, under this Agreement without the prior written consent of Transmission Provider, and any attempted transfer in violation of this restriction shall be void.

17. Notice. Any notice required to be given hereunder shall be deemed to have been given when it is sent, with postage prepaid, by registered or certified mail, return receipt requested, or upon delivery if delivered by prepaid commercial courier service, to either of the Parties hereto at their respective addresses as follows:

To Customer:

VP, Energy Supply Management
PacifiCorp
825 NE Multnomah St, Suite 600
Portland, Oregon 97232
Telephone Number: (503) 813-5431

To Transmission Provider:

Brian Fritz
Director, Transmission
PacifiCorp
825 NE Multnomah St, Suite 1600
Portland, Oregon 97232
Telephone Number: (503) 813-7237

18. Governing Law. Except to the extent preempted by federal law, this Agreement shall in all respects be interpreted, and enforced in accordance with the laws of the State of Oregon without reference to rules governing conflicts of laws.

19. Relationship of Parties; No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create an agency relationship, association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability or inference of liability to any third party.

20. Severability. If any provision of this Agreement is held invalid or unenforceable for any reason by a court or governmental agency of competent jurisdiction, then the objectionable portions of the provision shall be stricken, and all other provisions of this Agreement shall remain unaffected and in force. The Parties shall be relieved of their obligations only to the extent necessary to eliminate the objectionable portions unless a court or governmental agency of competent jurisdiction holds that the invalidated provision is not separable from the remainder of this Agreement.

21. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE, OR TO REQUEST THE CONSOLIDATION OF, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

22. Exhibit Incorporated. The Exhibit A to this Agreement, attached hereto, is incorporated and made part of this Agreement.

23. Recitals, Headings. The recitals, headings, and subtitles in this Agreement are for the convenience of the Parties and are not to be used for its construction or interpretation.

24. Complete Agreement; Amendment. This Agreement sets forth the entire Agreement between the Parties on the subject matter of this Agreement and supersedes all prior Agreements of the Parties with respect to its subject matter. No amendment of any provision of this Agreement shall be effective unless set forth in a written document signed by authorized representatives of both Parties.

25. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed and delivered as of the Effective Date.

PACIFICORP, acting in its transmission function capacity (“Transmission Provider”)

By: /s/ Rick Vail

Name: Rick Vail

Title: VP, Transmission

PACIFICORP, acting in its energy supply management capacity (“Customer”)

By: /s/ Joseph Hoerner

Name: Joseph Hoerner

Title: SVP, Regional Grid Solutions

Exhibit A

E&P Agreement Scope

Transmission Provider

Engineering, design, permitting requirement determination and development of permitting documents associated with the expansion of the COPCO 2 230/115 kilovolt substation to accommodate the addition of 69 and 12.5 kilovolt service.

ENGINEERING AND PROCUREMENT AGREEMENT

THIS ENGINEERING AND PROCUREMENT AGREEMENT (“Agreement”) is made and entered into this 2nd day of December, 2021, by and between PacifiCorp, acting in its transmission function capacity (“Transmission Provider”), and PacifiCorp, acting in its energy supply management capacity (“Customer”). Customer and Transmission Provider each may be referred to individually as a “Party” or collectively as the “Parties.”

Recitals

A. Transmission Provider has an Open Access Transmission Tariff (“OATT”) on file with the Federal Energy Regulatory Commission (“FERC”) and provides various services to transmission and interconnection customers, including Customer, in accordance therewith.

B. Customer’s Copco No. 1 & No. 2, Iron Gate, and J.C. Boyle hydropower resources in southern Oregon and northern California (the “Lower Klamath Project”) are planned to be decommissioned by the Klamath River Renewal Corporation (“KRRC”) and the States of California and Oregon consistent with the Klamath Hydroelectric Settlement Agreement (“KHSa”). The Lower Klamath Project will be decommissioned upon: (1) approval by FERC of the KRRC’s pending license surrender application; and (2) transfer of the FERC license from PacifiCorp to the KRRC and the States of California and Oregon as co-licensees. Customer is in the process of planning the decommissioning of its East Side and West Side hydropower resources in southern Oregon, which are part of the “Klamath Project,” pursuant to the KHSa and Customer’s pending relicensing application for the Klamath Project before FERC. East Side and West Side will be decommissioned upon approval by FERC.

C. Customer provided a Copco 2 Flood Risk Study report which identifies the possible flood levels estimated at the Copco 2 Hydroelectric Plant substation following decommissioning of the Facilities.

D. The Transmission Provider’s review of the Flood Risk Study determined that loss of the substation presented undue risk of possible long-term outage to customers served from the Copco 2 Hydroelectric Plant substation and requires the removal and relocation of the substation.

E. In connection with the Flood Risk Study and the proposed decommissioning of the Lower Klamath Project Resources, East Side, and West Side resources (collectively, the “Facilities”), Customer requested that Transmission Provider assess the impact of such Flood Risk Study and decommissioning on the Transmission Provider’s system (the “Project”).

F. To advance the implementation of this scope of work, Customer requests that Transmission Provider begin certain activities relative to the Facilities prior to the execution of the definitive construction agreement contemplated in the Decommissioning Study (the “Construction Agreement”).

G. The Parties wish to set forth their agreement with respect to certain engineering and procurement services related to the Project, as specified herein.

NOW THEREFORE, in consideration of the promises and mutual obligations set forth in this Agreement, the Parties agree as follows:

Agreement

1. Definitions. Unless specifically defined herein, capitalized terms shall have the meaning as defined in the OATT.

2. Effective Date, Term and Termination. This Agreement shall be effective upon the later of the following: (1) the date of execution by both Parties or (2) the effective date established by FERC upon acceptance for filing. Notwithstanding that termination of the Agreement is subject to acceptance by FERC and the effectiveness of such termination shall be subject to FERC's acceptance of the termination, this Agreement shall remain in effect until ninety (90) days after the earliest of the following to occur:

- (a) Execution by the Parties of the Construction Agreement; or
- (b) Termination of the Agreement as provided in Section 10 of this Agreement.

Notwithstanding termination of this Agreement as provided herein, the provisions of this Agreement necessary to ensure payment of amounts due hereunder by one Party to the other Party shall continue in effect until each Party has satisfied its payment obligations to the other, if any.

3. Engineering and Procurement Services to Be Provided. Execution of this Agreement shall not obligate Transmission Provider to perform any construction work, acquire easements, or to undertake any other obligations not expressly set forth in this Agreement. In accordance with the terms of this Agreement and provided that Customer (a) is not in default under the terms of this Agreement, or (b) has not failed to comply with any prerequisites specified in the OATT, Transmission Provider shall commence the engineering services as further described herein ("Engineering Services") and the procurement services as further described herein ("Procurement Services").

Engineering Services shall mean the services set out in Exhibit A and shall also include such other services as Transmission Provider believes are reasonably necessary to engineer and design the Facilities. Engineering Services shall also include the services of any consultant or professional engineering firms that may be retained by the Transmission Provider.

Procurement Services shall mean the services set out in Exhibit A and shall also include such other services as Transmission Provider believes are reasonably necessary to specify, obtain bids, place purchase orders and otherwise to procure materials, equipment and contractors in connection therewith for the completion of the Facilities. The Engineering Services and Procurement Services shall be collectively referred to herein as the "Services."

4. Modification of Services. At Customer's request, the Services set out in Exhibit A have been defined prior to completion of the Construction Agreement. As a consequence, the Parties acknowledge and accept that the estimates and scope of Services described in Exhibit A are not binding on the part of Transmission Provider and that Exhibit A may require modification to reflect engineering requirements of the Facilities based on the results of the Construction Agreement. Such modifications shall include those deemed reasonably necessary by the Transmission Provider in preparation for the construction of the Facilities. Customer, and anyone claiming by, through or under Customer, hereby waives its right to recover from and

fully and irrevocably releases Transmission Provider from any and all claims, responsibility and/or liability that Customer may now have or hereafter acquire against Transmission Provider for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to such modifications.

5. Performance Standards. Each Party shall perform all its obligations under this Agreement in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice, and to the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in breach of this Agreement for compliance therewith. Notwithstanding anything in this Agreement to the contrary, in no event shall Transmission Provider be responsible under the terms of this Agreement for any delay in completion of the requested Services.

6. Access Rights. Upon reasonable notice and supervision by a Party, and subject to any required or necessary regulatory approvals, a Party (“Granting Party”) shall furnish at no cost to the other Party (“Access Party”) any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party, its agents (if allowed under the applicable agency agreement), or any Affiliate, that are necessary to enable the Access Party to obtain ingress and egress to perform all its obligations under this Agreement.

7. Lands of Other Property Owners. If any part of the Facilities are to be installed on property owned by or under the control of persons other than Customer or Transmission Provider, Customer shall at its own expense use efforts to procure from such persons any property rights in fee, perpetual lease, or other property rights in a form acceptable to the Transmission Provider that are necessary to construct, operate, maintain, test, inspect, replace or remove the Facilities upon such property.

8. Project Costs. Customer shall be responsible to reimburse and pay Transmission Provider for all costs and expenses reasonably incurred by Transmission Provider in connection with providing the Services pursuant to this Agreement (“Project Costs”). Project Costs shall include all reasonable and documented costs, charges, and expenses incurred by Transmission Provider in connection with the performance of the Services, including all of Transmission Provider’s reasonable internal costs, overheads, third-party expenses, cost of supplies, and any other amounts owed to Transmission Provider under the terms of this Agreement, including without limitation, all reasonable costs incurred by Transmission Provider in performing the activities described in Exhibit A, and any additional costs incurred under Section 4 of this Agreement. Customer shall pay Transmission Provider for all Project Costs incurred, subject to the terms of this Agreement. Customer hereby authorizes Transmission Provider to incur Project Costs in an initial amount of up to two million dollars (\$2,000,000) (the “Authorized Amount”).

9. Payment of Estimated Project Costs. Upon execution of this Agreement, Customer shall tender to Transmission Provider prepayment of Project Costs in the amount of two hundred thousand dollars (\$200,000) (the “Prepayment”). Transmission Provider’s obligation to proceed with the Services shall be contingent upon receipt of the Prepayment. Transmission Provider shall notify Customer when it determines the Project Costs will exceed the Prepayment and shall specify the estimated amount by which such Project Costs will exceed the Prepayment.

10. Authorization of Additional Amounts for Project Costs. In the event that Transmission Provider determines Project Costs may exceed the Authorized Amount, Transmission Provider shall notify Customer and request that the Customer provide written approval authorizing such additional amounts for Project Costs within thirty (30) days of such notice. Transmission Provider's obligation to proceed with the Services associated with such additional amounts shall be contingent upon receipt of such approval, along with a prepayment in such additional amount. Customer shall be responsible for such Project Costs, as increased pursuant to such written authorization. If Customer does not authorize such additional amounts within such thirty (30) day period, this Agreement shall terminate after Transmission Provider gives Customer written notice and an additional fifteen (15) days to cure.

11. Right to Stop Work. Customer reserves the right, upon seven (7) days advance written notice to Transmission Provider, to require Transmission Provider at any time to stop all work by Transmission Provider pursuant to this Agreement. Upon issuance of any such stop-work order, Customer shall pay in accordance with section 12 below, the Project Costs Transmission Provider has incurred prior to the stoppage of work, including, without limitation, the costs incurred in connection with the cancellation of third-party contracts and any suspension or cancellation costs for equipment that is already ordered for the transmission system modifications to decommission the Facilities.

12. Billing. Transmission Provider shall provide Customer with an invoice listing services performed and amounts due hereunder, showing credit for any prepayment of Project Costs made by Customer. Customer shall pay amounts due within thirty (30) days of the invoice date. Any refund due from Transmission Provider shall be paid to Customer within thirty (30) days of the invoice date. If Customer disputes any portion of the amount due, Customer shall pay the total bill and shall designate the disputed portion.

13. Indemnification. Subject to the limitations contained in Section 14 below, the Parties shall at all times indemnify, defend, and hold the other Party harmless, from any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under this Agreement, except in the case of gross negligence or intentional wrongdoing by the indemnified party.

14. Remedies; Waiver; Warranty. Either Party may exercise any or all of its rights and remedies under this Agreement, the OATT and under any applicable laws, rules and regulations. Transmission Provider's liability for any action arising out of its activities relating to this Agreement shall be limited to the refund of amounts received hereunder. Under no circumstances shall either Party be liable for any of the other Party's economic losses, costs or damages, including but not limited to special, indirect, incidental, consequential, punitive, or exemplary damages. No provision of this Agreement or the OATT shall be deemed to have been waived unless such waiver is in writing signed by the waiving Party. No failure by any Party to insist upon the strict performance of any provision of this Agreement, the OATT or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach of such provision or of any other provision. No waiver of any provision of this Agreement or the OATT shall be deemed a waiver of any other provision of this Agreement, the OATT or a waiver of such provision with respect to any subsequent breach, unless expressly provided in writing. Transmission Provider warrants that the Services it performs hereunder

shall be consistent with Good Utility Practice. TRANSMISSION PROVIDER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND ALL SIMILAR WARRANTIES.

15. Force Majeure. Neither Party shall be subject to any liability or damages for failure to perform their respective obligations hereunder to the extent that such failure is due to causes beyond the control of the Party claiming force majeure protection, including but not limited to the following: (a) the operation and effect of any rules, regulations and orders promulgated by any commission, municipality, or governmental agency of the United States, or subdivision thereof; (b) restraining order, injunction or similar decree of any court; (c) war; (d) flood; (e) earthquake; (f) act of God; (g) sabotage; or (h) strikes or boycotts. The Party claiming force majeure protection under this provision shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible.

16. Assignment. Transmission Provider may at any time assign its rights and delegate its obligations under this Agreement, in whole or in part, including, without limitation, transferring its rights and obligations under this Agreement to any: (i) affiliate; (ii) successor in interest, or (iii) corporation or any other business entity in conjunction with a merger, consolidation or other business reorganization to which PacifiCorp is a party. Affiliate, as used herein, includes any entity in which Berkshire Hathaway Inc. owns more than a 5% interest, over which Berkshire Hathaway Energy exercises management control. Customer shall not assign its rights, nor delegate its obligations, under this Agreement without the prior written consent of Transmission Provider, and any attempted transfer in violation of this restriction shall be void.

17. Notice. Any notice required to be given hereunder shall be deemed to have been given when it is sent, with postage prepaid, by registered or certified mail, return receipt requested, or upon delivery if delivered by prepaid commercial courier service, to either of the Parties hereto at their respective addresses as follows:

To Customer:

VP, Energy Supply Management
PacifiCorp
825 NE Multnomah St, Suite 600
Portland, Oregon 97232
Telephone Number: (503) 813-5431

To Transmission Provider:

Brian Fritz
Director, Transmission
PacifiCorp
825 NE Multnomah St, Suite 1600
Portland, Oregon 97232
Telephone Number: (503) 813-7237

18. Governing Law. Except to the extent preempted by federal law, this Agreement shall in all respects be interpreted, and enforced in accordance with the laws of the State of Oregon without reference to rules governing conflicts of laws.

19. Relationship of Parties; No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create an agency relationship, association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to either of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability or inference of liability to any third party.

20. Severability. If any provision of this Agreement is held invalid or unenforceable for any reason by a court or governmental agency of competent jurisdiction, then the objectionable portions of the provision shall be stricken, and all other provisions of this Agreement shall remain unaffected and in force. The Parties shall be relieved of their obligations only to the extent necessary to eliminate the objectionable portions unless a court or governmental agency of competent jurisdiction holds that the invalidated provision is not separable from the remainder of this Agreement.

21. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE, OR TO REQUEST THE CONSOLIDATION OF, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

22. Exhibit Incorporated. The Exhibit A to this Agreement, attached hereto, is incorporated and made part of this Agreement.

23. Recitals, Headings. The recitals, headings, and subtitles in this Agreement are for the convenience of the Parties and are not to be used for its construction or interpretation.

24. Complete Agreement; Amendment. This Agreement sets forth the entire Agreement between the Parties on the subject matter of this Agreement and supersedes all prior Agreements of the Parties with respect to its subject matter. No amendment of any provision of this Agreement shall be effective unless set forth in a written document signed by authorized representatives of both Parties.

25. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed and delivered as of the Effective Date.

PACIFICORP, acting in its transmission function capacity ("Transmission Provider")
By: **Rick Vail**
Digitally signed by Rick Vail
Date: 2021.12.02 07:28:20 -08'00'

Name: Rick Vail
Title: VP, Transmission

PACIFICORP, acting in its energy supply management capacity ("Customer")
By: **Joseph Hoerner**
Digitally signed by Joseph Hoerner
Date: 2021.11.15 07:51:12 -08'00'

Name: Joseph Hoerner
Title: SVP, Regional Grid Solutions

Exhibit A

E&P Agreement Scope

Transmission Provider

Engineering, design, permitting requirement determination and development of permitting documents associated with the expansion of the COPCO 2 230/115 kilovolt substation to accommodate the addition of 69 and 12.5 kilovolt service.

