

ORDER NO. 19-178

ENTERED May 23 2019

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UE 219

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Request to Amend the Duration of the  
Funding Agreement Between the Oregon  
Public Utility Commission and the Klamath  
River Renewal Corporation.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on May 21, 2019, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:



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**Nolan Moser**  
Chief Administrative Law Judge



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

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: May 21, 2019

REGULAR X CONSENT \_\_\_\_\_ EFFECTIVE DATE \_\_\_\_\_ N/A \_\_\_\_\_

DATE: May 8, 2019

TO: Public Utility Commission

FROM: Brian Fjeldheim *BF*

THROUGH: *F* Jason Eisdorfer and *MG* Marianne Gardner

SUBJECT: PACIFIC POWER: (Docket No. UE 219) Klamath River Renewal Corporation (KRRC) request to amend the duration of the OPUC/KRRC Funding Agreement.

**STAFF RECOMMENDATION:**

That the Public Utility Commission of Oregon (OPUC or Commission) approve execution of Amendment Number 1 to the Funding Agreement between the Commission and the Klamath River Renewal Corporation's (KRRC) attached hereto.

**DISCUSSION:**

Issue

Whether the Commission should approve execution of Amendment Number 1 to the Funding Agreement, which will amend the expiration date of the Funding Agreement to provide that it shall expire on the earlier of December 31, 2024 or the date the Klamath Hydroelectric Settlement Agreement (KHSA) terminates.

Applicable Law

ORS 757.736 (8) states that "except as provided in ORS 757.738 (2), all amounts collected under the surcharges imposed under this section shall be paid into the appropriate trust account established under ORS 757.738."

Under ORS 757.736 (11), Klamath River dam removal costs include:

- a) Physical removal of the dams;
- b) Site remediation and restoration;

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- 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 757.738 (3) 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).

With Order No. 17-018 in Docket No. UE 219, the Commission approved execution of a Funding Agreement with the KRRC as a mechanism for the disbursement of the customer surcharge trust funds as necessary to pay the costs of dam removal under ORS 757.738(3).

### Analysis

#### *Background*

In March of 2010, as part of the KHSA, Pacific Power (PacifiCorp or Company) began collecting two non-by-passable customer surcharges under the Company's Schedule 199 tariff. These surcharges are dedicated to solely funding the costs necessary to remove four PacifiCorp dams on the Klamath River and are remitted monthly to the State of Oregon.

KRRC is a California not-for-profit 501(c)(3) corporation and was formed in 2016 to be the sole dam removal entity (DRE) under the KHSA.

#### *Funding Agreement*

The current Funding Agreement was executed on January 24, 2017, and per its terms, will expire on the earlier of January 31, 2022, or the date the KHSA terminates. In light of subsequent developments, on April 17, 2019, KRRC submitted a request to amend Section 2 of the Funding Agreement by extending the expiration date to December 31, 2024. Per KRRC, the amendment is needed to accommodate completion of facilities removal per the terms of the KHSA. The KRRC notes that Phase 2 (development of definite plan, including preparation of procurement documents for final design, deconstruction and risk management and completion of regulatory actions) has advanced significantly. The KRRC must secure all regulatory approvals before proceeding with Phase 3 (Facilities Removal).

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PacifiCorp's and KRRC's joint license transfer application is currently under review by the Federal Energy Regulatory Commission (FERC) and KRRC plans to file updated plans and a progress report with FERC by July 29, 2019. KRRC notes that if FERC approves the license transfer, FERC must then act upon KRRC's separate license surrender application before KRRC can proceed with Phase 3.

Once the regulatory approvals are complete, KRRC projects that it will take more than a year to complete deconstruction and restoration activities at all four dam sites. KRRC noted that timing of reservoir drawdowns can only occur at specific times of the year. If dam removal efforts fall behind schedule and the window for reservoir drawdown is missed, KRRC will have to wait an additional year for their next drawdown opportunity.

### Conclusion

Based on consideration of KRRC's request, Staff finds the requested amendment to be reasonable and will not impact customer rates. Extension of the expiration date will not affect the amount of the funds collected under the Funding Agreement and Oregon's share of the customer contribution remains unchanged at \$184 million. Staff supports KRRC's request to extend the Funding Agreement expiration date to December 31, 2024. Included with this memo is Amendment Number One to the Funding Agreement, which amends the expiration terms in Section 2 of the agreement.<sup>1</sup>

### **PROPOSED COMMISSION MOTION:**

Approve execution of Amendment Number 1 to the Funding Agreement between the Commission and the KRRC, as attached, amending the expiration date of the Funding Agreement to provide that it shall expire on the earlier of December 31, 2024, or the date the Klamath Hydroelectric Settlement Agreement (KHSA) terminates.

PAC UE 219/KRRC

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<sup>1</sup> See Attachment A.

Funding Agreement Number 7810225

**AMENDMENT NUMBER 1  
TO FUNDING AGREEMENT**

This is amendment number 1 to the Funding Agreement (No. 7810225) between the State of Oregon, **Public Utility Commission of Oregon**, the “OPUC,” and the **Klamath River Renewal Corporation**, a California nonprofit public benefit corporation, hereinafter referred to as the “KRRC.”

1. This amendment shall become effective on the date this amendment has been fully executed by every party and, when required, approved by the Department of Justice.
2. The Funding Agreement is hereby amended as follows: language to be deleted or replaced is struck through; new language is underlined and bold.
  2. **Effective Date and Expiration.** This Agreement shall become effective on the date this Agreement is fully executed. This Agreement shall expire upon the earlier of ~~January 31, 2022~~, **December 31, 2024**, or the date the KHSA terminates (the “Expiration Date”).
3. Except as expressly amended above, all other terms and conditions of the original Funding Agreement are hereby ratified and confirmed and remain in full force and effect.

**THE PARTIES**, by execution of this Amendment, hereby acknowledge that each Party has read this Amendment, understands it, and agrees to be bound by its terms and conditions.

4. Signatures.

SIGNATURE PAGE TO FOLLOW

**Klamath River Renewal Corporation**

**STATE OF OREGON**, acting by and through its  
Public Utility Commission of Oregon

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(printed)

Name: \_\_\_\_\_  
(printed)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED**

(If required)

By: \_\_\_\_\_

KRRC's Legal Counsel

Date: \_\_\_\_\_