

ORDER NO. 21-242

ENTERED Jul 29 2021

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 219

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Requests Approval of the Property Transfer
Agreement for Lower Klamath Project
Property.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on July 27, 2021, 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:

on behalf of



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: July 27, 2021**

REGULAR X CONSENT _____ EFFECTIVE DATE July 28, 2021

DATE: July 16, 2021

TO: Public Utility Commission

FROM: John Crider

THROUGH: Bryan Conway and Michael Dougherty **SIGNED**

SUBJECT: PACIFICORP:
(Docket No. UE 219)
Requests Approval of the Property Transfer Agreement for Lower Klamath Project Property.

STAFF RECOMMENDATION:

The Public Utility Commission of Oregon (Commission) should approve PacifiCorp's (PacifiCorp or Company) Application for Approval of a Property Transfer Agreement with the Klamath River Renewal Corporation (KRRC) regarding the transfer of four hydroelectric dams located on the Klamath River and approximately 8,000 acres of real and personal property associated with the dams, subject to the conditions set forth herein.

DISCUSSION:

Issue

Whether the Commission should approve the Property Transfer Agreement between PacifiCorp and KRRC regarding the transfer from PacifiCorp to KRRC of four hydroelectric dams located on the Klamath River as well as approximately 8,000 acres of real and personal property associated with the dams.

Applicable Rule or Law

ORS 757.480(1) requires public utilities doing business in Oregon to obtain Commission approval prior to the sale, lease, assignment or disposal of property valued in excess of \$1 million that is necessary or useful in the performance of its duties to the public.

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OAR 860-027-0025 sets forth the information required in applications submitted to the Commission by a jurisdictional energy utility seeking the authority to sell, lease, assign, mortgage, merge, consolidate or otherwise dispose of or encumber its property. OAR 860-027-0025(1)(l) requires the applicant to show that the proposed transfer will be consistent with the public interest. The Commission has previously interpreted the phrase "consistent with the public interest" as used in this rule as a showing of no harm.¹

ORS 756.040(1) provides for general powers transferred to or vested in the Commission. The Commission shall represent the customers of any public utility and the public generally in all controversies respecting rates, valuations, service and all matters of which the Commission has jurisdiction. The statute includes that the Commission shall balance the interests of the utility investor and the consumer in establishing fair and reasonable rates.

Analysis

Background

The Klamath Hydroelectric Project is primarily located on the Klamath River in Klamath County, Oregon, and Siskiyou County, California. It includes seven hydroelectric developments—East Side, West Side, Fall Creek, J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate—and one non-generating development identified as Keno.² These developments are collectively identified by PacifiCorp as the “Larger Klamath Project.”³ The Company identifies a subset of these developments—the four mainstem Klamath River hydroelectric developments known as J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate—as the hydroelectric developments comprising the Lower Klamath Project.⁴ It is the Lower Klamath Project that is the subject of this property transfer.

¹ See, e.g., *In the Matter of the Application of Portland General Electric Company*, Order No. 99-730 at 7 (1999); *In the Matter of the Application of PacifiCorp*, Order No. 00-112 at 6 (2000).

² The East Side and West Side generating facilities use water diverted by the Link River Dam, which regulates the elevation of and releases of water from Upper Klamath Lake. See, in Docket No. UE 219, PPL/100, Brockbank/2. The Link River is upstream of Lake Ewauna and the Klamath River downstream.

³ PacifiCorp’s January 14, 2021 application at 3. Hereafter in this memorandum this application is denoted as “Application.” See also PacifiCorp’s description of elements comprising the Klamath Project, excerpted on page 2 of Order No. 10-364 in Docket No. UE 219.

⁴ Application at 4. The Lower Klamath Project also includes land associated with these hydroelectric developments. See Exhibit 1 of Application—the Property Transfer Agreement that is the subject of this filing—at 10 – 11.

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PacifiCorp and KRRC^{5, 6} are among the parties to the Klamath Hydroelectric Settlement Agreement (KHSA),⁷ as amended on April 6, 2016 and November 30, 2016.⁸ The KHSA provides a framework to decommission⁹ and remove the four mainstem hydroelectric developments comprising the Lower Klamath Project as part of a broader initiative to address resource issues in the Klamath basin.

Section 7.4.2 of the KHSA includes that “PacifiCorp shall transfer ownership of each Facility, including the underlying land for each Facility¹⁰...once the DRE¹¹ notifies PacifiCorp that all necessary permits and approvals have been obtained for removal of that facility, all contracts necessary for Facility Removal have been finalized, and Facility Removal is ready to commence.”

A required capability of the DRE is to “[a]ccept transfer of title to the Facilities for the express purpose of facilities removal.”¹²

The Oregon Legislature enacted Senate Bill (SB) 76, codified at ORS 757.732 through 757.744, in 2009. The purpose of this legislation was to facilitate removal of the Lower Klamath Project dams¹³ under the KHSA. PacifiCorp filed an application to implement the provisions of SB 76 on March 18, 2010, in UE 219. The application requested that

⁵ See; e.g., Section 7.1.3 on page 44 of the KHSA, included as Appendix A to Order No. 10-364 in Docket No. UE 219.

⁶ KRRC is a private non-profit 501(c)(3) corporation domiciled in California, having filed its Articles of Incorporation with California’s Secretary of State on February 29, 2016. These included that its charitable purposes were to “lessen the burdens of government by facilitating the implementation of the Klamath Hydroelectric Settlement Agreement...” See Exhibit 5 of Application at 1.

⁷ The KHSA was executed, on February 18, 2010, by 48 parties, including PacifiCorp, the states of Oregon and California, the U.S. Department of the Interior, the U.S. Departments of Commerce’s National Marine Fisheries Service, several Native American tribes; and irrigation, conservation, and fishing groups. See Application at 4.

⁸ Property Transfer Agreement at 1. PacifiCorp includes the Property Transfer Agreement as Exhibit 1 of Application.

⁹ Under the KHSA, “decommissioning” means “PacifiCorp’s physical removal from a facility of any equipment and personal property that PacifiCorp determines to have salvage value, and physical disconnection of the facility from PacifiCorp’s transmission grid.” See page 10 of Appendix A to Order No. 10-364 in UE 219 (page 4 of the KHSA).

¹⁰ The KHSA defines “facility” as the “Iron Gate Dam, Copco No. 1 Dam, Copco No. 2 Dam, and J.C. Boyle Dam and appurtenant works currently licensed to PacifiCorp.” See Amended Final KHSA, Section 1.4, available at: <http://www.klamathrenewal.org/wp-content/uploads/2020/03/2016.12.31-Executed-and-Amended-Final-KHSA.pdf>.

¹¹ “DRE” is an acronym for “Dam Removal Entity.” *Id.*

¹² Exhibit PPL/103, Brockbank/3. PacifiCorp included Exhibit 103, representing its summary of the KHSA, in the Company’s application filed March 18, 2010 in UE 219.

¹³ ORS 757.732(5) defines “Klamath River dam” as meaning the J.C. Boyle Dam located in Oregon and the Copco 1, the Copco 2, and the Iron Gate Dams located in California; i.e., the four hydroelectric developments comprising the Lower Klamath Project.

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the Commission “issue a disclaimer of jurisdiction under ORS 757.480, the Commission’s property transfer statute, over the transfer of the Project to the dam removal entity (“DRE”), due to preemption by SB 76.”¹⁴ The Company also requested that, “[i]n the alternative...the Commission approve the transfer of the Project under ORS 757.480, contingent upon: (1) satisfaction of the conditions precedent for the transfer outlined in the KHSA; and (2) filing by PacifiCorp of the information required by OAR 860-027-0025, the rule governing property transfer applications.”¹⁵

The Commission concluded SB 76 “does not direct [PacifiCorp] to make a filing regarding the transfer of the Klamath Dams¹⁶ to the DRE,”¹⁷ and that the transfer issue “is simply outside the scope of this proceeding.”¹⁸ The Commission noted that “there is some uncertainty regarding whether and when all conditions precedent to the transfer of the Klamath Dams will occur,” and verified the “presumption that the dams would be transferred to the DRE and that Pacific Power [PacifiCorp] has agreed to transfer the dams should all conditions precedent occur.”¹⁹

The Commission also stated that:

While we are responsible for implementing the explicit requirements of SB 76, we do not have the discretion to undertake additional actions to implement the KHSA that are not specifically authorized by the statute. Although the Klamath Dams must be transferred to the DRE to fully execute the KHSA, SB 76 does not address our approval of the transfer. In [the] absence of doing so, the property transfer statute, ORS 757.480 applies.²⁰

As PacifiCorp’s March 18, 2010, application in UE 219 did not satisfy the requirements of ORS 757.480, the Commission determined that it “cannot approve a property transfer, even on a conditional basis.”²¹ The Commission ordered that PacifiCorp “must file a request to transfer the Klamath Dams pursuant to ORS 757.480 at a later time.”²² The current filing represents this request.

¹⁴ PacifiCorp’s March 18, 2010 application in UE 219 at 2.

¹⁵ Ibid.

¹⁶ The Commission, citing PPL/100, Brockbank/11 in UE 219, defines “Klamath Dams” on page 3 of Order No. 10-364 as “the four mainstem hydroelectric dams in the Project: J.C. Boyle, Copco No. 1, Copco No. 2 and Iron Gate...”

¹⁷ Order No. 10-364 in Docket No. UE 219 at 28. The DRE was to become KRRC.

¹⁸ Ibid. at 28.

¹⁹ Ibid. at 29.

²⁰ Ibid. at 29.

²¹ Ibid. at 29.

²² Ibid. at 29.

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PacifiCorp's March 18, 2010, application in UE 219 included an outline of the Company's "four core principles that guided its [KHSA] negotiation strategy related to a path that could lead to dam removal."²³ These included:

1. Protect customers from uncertain costs of dam removal;
2. Transfer dams to a third party for removal;
3. Protect customers from liabilities of dam removal; and
4. Ensure that customers continue to benefit from the low-cost power of the dams until the dams are removed.²⁴

As above, a primary objective of transferring the Lower Klamath River Project, including associated lands and real property, from PacifiCorp to KRRC prior to removal of the Company's facilities is to reduce the risk exposure of the Company and its customers.²⁵ PacifiCorp is to receive, as consideration for its execution of the KHSA, "full protection from any liability arising from, relating to, or triggered by actions associated with Facilities Removal..."²⁶ Additionally, "[t]his liability protection shall become operative as it relates to any particular Facility upon transfer of title to that Facility from PacifiCorp to the DRE."²⁷

Implementation of the KHSA was delayed as a result of Congress not passing the necessary legislation envisioned in the agreement by December 2015. This triggered the KHSA's dispute resolution procedures, which resulted in certain amendments to the KHSA being executed on April 6, 2016, by the principal parties to the KHSA. The amended settlement established a process by which PacifiCorp's FERC license for the Lower Klamath Project would be transferred to a newly formed DRE (the Renewal Corporation) for the purpose of license surrender authorizing dam removal.²⁸ According to PacifiCorp, the amended settlement "relies upon FERC's existing authority under the Federal Power Act to review and approve such license transfer and surrender."²⁹

FERC approved, on July 16, 2020, a partial transfer of the Lower Klamath Project license from PacifiCorp to the Renewal Corporation, determining that "the public interest would best be served by approving a partial transfer of the license and requiring PacifiCorp to remain on as co-licensee."³⁰ Per PacifiCorp, this was in spite of FERC's

²³ Exhibit PPL/200, Kelly/10 in PacifiCorp's March 18, 2010 filing in UE 219

²⁴ *Ibid.* at 10 – 11. See also Application at 5 – 6.

²⁵ See; e.g., PPL/300, Scott/11 in Docket No. UE 219 at lines 8 – 9.

²⁶ Section 2.1.1(E)(i) of the KHSA, as at page 17 of Appendix A to Order No. 10-364 in UE 219.

²⁷ Section 2.1.1(E)(i)(c) of the KHSA, as at page 18 of Appendix A to Order No. 10-364 in UE 219.

²⁸ Application at 9.; Amended KHSA, available at: <http://www.klamathrenewal.org/wp-content/uploads/2020/03/2016.12.31-Executed-and-Amended-Final-KHSA.pdf>.

²⁹ Application at 9.

³⁰ *Ibid.* at 10 – 11.

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determination that it was “generally satisfied that the Renewal Corporation has the capacity to carry out its proposed decommissioning...”³¹

PacifiCorp, the State of Oregon, the State of California, KRRC, the Karuk Tribe, and the Yurok Tribe entered into a Memorandum of Understanding on November 16, 2020, (the “November 2020 MOA”).³² Under the November 2020 MOA, PacifiCorp will be removed from the license and the States, along with KRRC, will become co-licensees for the purpose of license surrender authorizing removal of the Lower Klamath Project dams.³³ Per PacifiCorp, “[t]o ensure commencement of the dam removal process, the [November 2020] MOA required that PacifiCorp and the [Klamath River] Renewal Corporation file an amended license surrender application (ALSA) with FERC to begin the environmental review process.”³⁴

Pursuant to the November 2020 MOA, PacifiCorp filed a new license transfer application with FERC on January 13, 2021. This application notified FERC that PacifiCorp and the Renewal Corporation did not accept FERC’s July 2020 Order that included PacifiCorp as a co-licensee but instead sought an order to remove PacifiCorp from the Lower Klamath Project license and approval of a transfer of the licenses to the Renewal Corporation and the States of California and Oregon as co-licensees, and FERC issuing a license surrender order consistent with Section 3(c) of the November 2020 MOA.³⁵ FERC issued its order approving the license transfer on June 17, 2021.³⁶

PacifiCorp filed an application in UE 219 on January 14, 2021 (“Application”), for Commission approval of a Property Transfer Agreement³⁷ with KRRC involving the transfer of the Lower Klamath Project from PacifiCorp to KRRC.³⁸ The agreement, dated as of January 13, 2021, defines the Lower Klamath Project as the four hydroelectric generating developments (J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate) and associated land³⁹ to be transferred from the Company to KRRC under the KHSA, as clarified by a Memorandum of Agreement (MOA) dated November 16,

³¹ Ibid. at 10 – 11.

³² Ibid. at 11 – 12. PacifiCorp included the November 2020 MOA as Exhibit 4 of Application.

³³ Ibid.

³⁴ Ibid. at 12.

³⁵ Ibid. at 12 – 13.

³⁶ 175 FERC ¶ 61,236 (June 17, 2021).

³⁷ PacifiCorp included the Property Transfer Agreement dated as of January 13, 2021 as Exhibit 3 of Application.

³⁸ PacifiCorp filed its Application as a property sale/disposition (UP) transaction, which was docketed as UP 415. The Company also filed on January 14, 2021, a motion to consolidate Dockets UP 415 and UE 219, which motion was granted on January 26, 2021, with UE 219 being the lead docket.

³⁹ Exhibit 1 of Application at 10 – 11 (Property Transfer Agreement at 5 – 6).

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2020,⁴⁰ located on the Klamath River and approximately 8,000 acres of real and personal property associated with the dams.

PacifiCorp asserts in its Application that “[u]nder the [November 2020] MOA and the KHSA, and consistent with the concept that the Company’s FERC license is inextricably tied to physical assets, PacifiCorp will transfer its property interests in the Lower Klamath Project to the Renewal Corporation once all anticipated FERC orders and state disposition approvals are secured.”⁴¹

PacifiCorp states in its Application that approving the transfer of the Lower Klamath Project to KRRC is “one of the remaining key steps to implement the KHSA.”⁴² The Company additionally asserts that the Property Transfer Agreement is a required step to implement the KHSA and “is in the public interest and will not harm customers.”⁴³

PacifiCorp asserts in its Application that transfer of the Lower Klamath Project is consistent with the Memorandum of Agreement (MOA) dated November 16, 2020,⁴⁴ which “sets forth commitments among PacifiCorp, the states of Oregon and California, the Renewal Corporation,⁴⁵ the Karuk Tribe, and the Yurok Tribe to fully implement the KHSA, consistent with SB 76 and Commission Order Nos. 10-325 and 10-364.”⁴⁶

Property Transfer Agreement Provisions

The purpose of the Property Transfer Agreement is to establish “the procedures, terms and conditions under which the parties agree to implement the KHSA relating to PacifiCorp’s transfer of the Parcel B Land and other property⁴⁷ to KRRC so that KRRC, along with the States, can accept the FERC license and KRRC can thereafter carry out Facilities Removal.”⁴⁸

The Property Transfer Agreement includes 18 primary sections over 42 pages⁴⁹ and numerous additional exhibits and schedules, including a secondary agreement

⁴⁰ Exhibit 1 of Application at 6 (Property Transfer Agreement at 1).

⁴¹ *Ibid.* at 13 – 14.

⁴² Application at 2.

⁴³ *Ibid.* at 2.

⁴⁴ PacifiCorp includes this MOA as Exhibit 4 of Application.

⁴⁵ The “Renewal Corporation” is KRRC.

⁴⁶ Application at 2. Each of the two Orders are in Docket No. UE 219.

⁴⁷ “Parcel B” property is referenced at Section 3.1(a)(i) of the Property Transfer Agreement, as well as being “more particularly described” in Exhibit A of the Property Transfer Agreement. Property excluded is noted in Section 3.1(b). Staff includes Section 3.1 below.

⁴⁸ Exhibit 1 of Application at 15 (Property Transfer Agreement at 10).

⁴⁹ Pages 6 – 47 of Application (Property Transfer Agreement pages 1 – 42).

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regarding the lease of certain properties in Siskiyou County, California by PacifiCorp to KRRC.⁵⁰

The Property Transfer Agreement includes a statement in Section 2.1(b) that the transfer consists of the following matters:

PacifiCorp will:

- (A) transfer to KRRC fee title to the Parcel B Land and all of its right, title and interests in all other Project Property, subject to a reservation of the PacifiCorp Easements;
- (B) deliver possession of the Project Property to KRRC in the condition required under this Agreement; and
- (C) grant to KRRC certain temporary easements over non-Parcel B Land to facilitate certain aspects of Facilities Removal.

KRRC will:

- (A) accept title to and possession of the Project Property, and
- (B) along with the State of California and the State of Oregon as provided in the MOA, accept the FERC License.⁵¹

Section 2.3 defines the Term of Agreement as being “effective as of the Effective Date and shall terminate upon the sooner of a) the Closing; or b) termination of this Agreement by either party following the occurrence of a Termination Event in accordance with Section 14.3.”

Section 3 of the Property Transfer Agreement concerns the Lower Klamath Project property to be transferred and details multiple transfers. Section 3.1(a) enumerates the property to be transferred, subject to Section 3.1(b), and includes:

- (i) Fee simple title to the approximately 8,000 acres of real property located in Klamath County, Oregon and Siskiyou County, California, referred to as “Parcel B property” in Section 7.6.1 of the KHSA and more particularly described in

⁵⁰ Exhibit 1 of Application at 51 – 186.

⁵¹ Exhibit 1 of Application at 16 (Property Transfer Agreement page 11).

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Exhibit A, including IGH⁵² but not including the Keno Land⁵³ (the “**Parcel B Land**”); and

(ii) All leases, licenses or other rights of use or occupancy (“**Use and Possession Agreements**”) relating to any land owned by any Person other than PacifiCorp but leased to or otherwise occupied or used by PacifiCorp or any of its Affiliates in connection with the ownership or operation of the Facilities, including the following at the J.C. Boyle hydroelectric facility:

- (A) property leased from the State of Oregon;
- (B) submerged lands; and
- (C) portions of the J.C. Boyle hydroelectric facility located on property owned by the United States of America (individually and collectively, as applicable, “**Occupied Third-Party Premises**”);

(iii) All easements, rights of way, licenses, privileges, strips, gores, rights and interests of any kind (including water, timber and mineral rights) appurtenant to or otherwise relating to the Parcel B Land, any Occupied Third-Party Premises or any Facilities (the “**Appurtenances**”);

(iv) All buildings, improvements, structures, utility infrastructure, and fixtures located on the Parcel B Land or, to the extent of PacifiCorp’s interest, located on Occupied Third-Party Premises or on any Appurtenances (the “**Improvements**”; the Parcel B Land, Occupied Third-Party Premises, Appurtenances, and Improvements are referred to collectively as the “**Real Property**”);

(v) All equipment, machinery, building systems, trade fixtures and other personal property located on the Parcel B Land or, to the extent of PacifiCorp’s interest, located on Occupied Third-Party Premises or any Appurtenances (the “**Equipment**”);

(vi) All licenses, certificates, authorizations, registrations, permits, consents and approvals called for by any Legal Requirement in connection with (i) the ownership, occupancy, use, maintenance or operation of any Real Property or Equipment as presently operated or as contemplated under the O&M Agreement or the KHSA (the “**Operating Permits**”), provided, however, that “Operating Permits” do not include the Removal Permits; and

⁵² “IGH” (Iron Gate Hatchery) is defined in Section 2.1(c). See Exhibit 1 of Application at 15 (Property Transfer Agreement at 10).

⁵³ “Keno Land” is defined at page 147 of Exhibit 1 of Application (Exhibit I of the Property Transfer Agreement). The Parties acknowledge in Section 2.1(c) that the Keno Land, while designated as part of the “Parcel B land” under the KHSA, is “not material to Facilities Removal.”

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(vii) All books, records, data, manuals, plans, specifications, manuals, Service Contracts and similar materials relating to the use, operation or ownership of the Real Property or the Equipment (the “**Records**”) required to be delivered pursuant to Section 4.4(bb), and any other personal or intangible property relating to the Real Property (the “**Intangibles**”); the Intangibles along with the Real Property, Equipment, Records and Operating Permits are referred to collectively as the “**Project Property**”).⁵⁴

Section 3.1(b) references excluded property. Included is decommissioned property; retained facilities; and the “easement interests in the Real Property reserved under the PacifiCorp Easements.”⁵⁵

Section 3.2 concerns particulars regarding property titles and title insurance.

Section 3.3 concerns particulars regarding property condition, and include that the “parties further acknowledge, however, that Pre-Existing Environmental Conditions are not KRRC’s responsibility. Accordingly, PacifiCorp shall deliver the Project Property to KRRC free of any Pre-Existing Environmental Conditions except as expressly provided for in Section 3.5.”⁵⁶

Section 3.4 concerns matters related to diligence and inspections.

Section 3.5 concerns Environmental Matters and requires that PacifiCorp “shall cause all Pre-Existing Environmental Conditions to be resolved, at its sole cost and expense, to the reasonable satisfaction of KRRC in consultation with the respective States.”⁵⁷ This section also requires that PacifiCorp, prior to commencing any activity to implement its proposed resolution of a Condition, shall provide to KRRC and the States for each such Condition, a written report containing:

- (i) its efforts to assess the scope of the condition,
- (ii) the results of such efforts,
- (iii) its proposed approach to resolving the condition,
- (iv) the legal and regulatory requirements applicable to the condition and the compliance of the proposed approach with such requirements, including any regulatory approvals required to be obtained,

⁵⁴ Exhibit 1 of Application at 17 – 18 (Property Transfer Agreement at 12 – 13). Emphasis here appears in the original.

⁵⁵ Exhibit 1 of Application at 18 (Property Transfer Agreement at 13).

⁵⁶ Exhibit 1 of Application at 19 (Property Transfer Agreement at 14).

⁵⁷ Ibid.

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- (v) any obligations or limitations relating to such approach that would survive the proposed resolution, including monitoring or institutional controls, and any effect they would have on the design or implementation of the Definite Plan and on the prospective uses of the Real Property following Facilities Removal as anticipated by the KHSA, and
- (vi) PacifiCorp's proposed schedule for performing any work, making any required regulatory filings, and receiving any required regulatory approvals.

PacifiCorp is to resolve all Pre-Existing Conditions in accordance with Section 3.5 prior to transfer of the FERC license, with the exception that, at Closing, PacifiCorp shall enter into an agreement with KRRC and the States with respect to all Pre-Existing Environmental Conditions not resolved in accordance with Section 3.5.

Section 4 concerns Closing and specifies conditions precedent to KRRC's Closing Obligations and precedent to PacifiCorp's Closing Obligations.

Section 5 concerns Post-Closing matters.

Section 6.1 concerns PacifiCorp's covenants and Section 6.2 KRRC's covenants.

Section 7 concerns PacifiCorp's and KRRC's respective representations and warranties.

Section 9 [Section 8 is reserved] concerns casualty and condemnation matters.

Section 10 concerns indemnification by PacifiCorp, indemnification by KRRC, and related procedures.

Section 11 concerns easements.

Section 12 concerns transfers and assignments.

Section 13 concerns disputes and the procedures to be utilized for their resolution.

Section 14 concerns defaults and remedies; Section 15 concerns notices; Section 16 concerns matters of survival; and Section 17 concerns confidentiality.

Section 18 concerns a number of miscellaneous matters, including governing law.

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Staff reviewed the Property Transfer Agreement and did not discover any clause or condition leading to concern. Staff submitted 13 data requests to PacifiCorp regarding aspects of its Application, the responses to which did not lead to any concern by Staff.

Public Interest Compliance

In support of the original 2010 agreement, the Company evaluated the costs and benefits of removal as compared to the alternative of relicensing the Klamath Hydroelectric Project. The cost/benefit analysis evaluated the Company's estimate of the remaining process costs involved in relicensing, the costs of protection, mitigation and enhancement (PM&E) measures understood to likely be required under the terms and conditions of a new FERC license for the project, as well as ongoing costs associated with operations and maintenance (O&M) of the facilities. These estimated costs were assessed against the ongoing generation benefits of the project as it would operate under a new license, considering increased instream flow requirements that were also prescribed by agencies during the relicensing proceeding and that would reduce generation from the project.

The Company evaluated the costs of implementing the KHSA, including the costs of the dam removal customer surcharges, measures to mitigate resource impacts of the Klamath facilities during the interim period between the execution of the settlement and facilities removal, as well as the costs of replacement power during the period when the facilities would otherwise have operated under a new FERC license.

Originally the costs of PM&E measures under a new license were estimated to be in excess of \$400 million⁵⁸, with these costs primarily driven by the costs associated with implementing upstream and downstream fish passages and other aquatic mitigation measures at each dam, needed to meet federal regulatory requirements. In addition, the increased instream flow requirements required by the license were anticipated to reduce annual generation from the project by approximately 20 percent.⁵⁹

In light of these significant costs and the reduced generation benefits of a relicensed project, dam removal under the KHSA was determined to be less costly to customers than the alternative of relicensing.

In response to further discovery, the Company notes that it has not updated its original cost/benefit analysis because the fundamental costs and protections have not changed in a way to warrant a new analysis. However, the Company does state that since 2010 several state and federal agencies have passed additional water quality standards that would very likely impose additional cost and operating restrictions on the relicensing

⁵⁸ See PacifiCorp response to OPUC DR 21.

⁵⁹ *Id.*

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option.⁶⁰ In addition, the Company notes that the cost of alternative energy sources has declined in comparison to the assumptions applied in the 2010 analysis.⁶¹ The Company states that while there is a possibility of additional cost under the KHSA and MOA, “the known escalation of customer costs and risks associated with dam relicensing continues to justify dam removal as the better and likely less expensive option to protect customers.”⁶²

Staff concludes that the original cost/benefit analysis remains valid, and still reflects a public interest in the removal of the dams as compared to the costs and risk of relicensing.

Summary of Costs

The original investment in the property to be transferred had a book value of \$14,452,770 (OR allocated) in 2010. The undepreciated value of the property as of March 31, 2021, was \$700,596.⁶³

The property is expected to be fully depreciated and transferred to the KRRC with no additional dollar consideration exchanged between parties. There should be no gains or losses on the transaction.

PacifiCorp Process in Other States

The successful license transfer also requires approval of property transfers in Wyoming, Idaho and California. As of this date, the California Public Utilities Commission staff has recommended approval of the application for a meeting on July 15, 2021; Idaho Public Utilities Commission staff has recommended approval of the application for an as-yet-unscheduled meeting; and the Wyoming Public Service Commission was to consider its staff’s recommended approval of the transfer at its July 8, 2021 meeting.

Conclusion

Staff finds that the Company’s original assessment of the cost and benefits of removal vs. relicensing remains valid, and that the dam removal offers no harm to ratepayers. Since the filing conforms to OAR 860-027-0025(1)(l) by showing the filing to be consistent with the public interest, and otherwise meets the requirements of ORS 757.480, Staff concludes that the Commission should approve the Property Transfer Agreement for Lower Klamath Project Property, subject to the following conditions:

⁶⁰ See PacifiCorp response to OPUC DR 22

⁶¹ Id.

⁶² Id.

⁶³ See PacifiCorp response to OPUC DR 24

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1. PacifiCorp shall notify the Commission in advance of any material change to this Agreement. Any changes to terms or conditions of the Property Transfer Agreement that alter the intent and extent of activities under the Agreement from those approved herein shall be submitted for approval in an application by the Company for a supplemental order (or other appropriate form) in this docket.
2. PacifiCorp shall notify the Commission when it has received all anticipated FERC orders.
3. PacifiCorp shall notify the Commission when Closing is completed.
4. PacifiCorp shall file in this docket any written report it provides to KRRC and the States regarding each Pre-Existing Environmental Condition, as such provision is required by Section 3.5(b). Each such written report is to be filed on the same date it is provided to KRRC and the States. Additionally, PacifiCorp is to file in this docket any updates to each report provided to KRRC and the States under Section 3.5(b).
5. PacifiCorp shall file in this docket the report it is to provide KRRC and the States regarding the status of its efforts to resolve the Pre-Existing Environmental Conditions under Section 3.5(c) of the Property Transfer Agreement. This report is to be filed on the same date it is provided to KRRC and the States.
6. PacifiCorp shall promptly file in this docket its agreement with KRRC and the States regarding all Pre-Existing Environmental Conditions not resolved in accordance with Section 3.5 as of Closing; i.e., the “Retained Environmental Obligations” contemplated in Section 3.5(d).

PROPOSED COMMISSION MOTION:

Approve, subject to the conditions set forth above, the Property Transfer Agreement between PacifiCorp and the Klamath River Renewal Corporation regarding the transfer of four hydroelectric dams located on the Klamath River as well as approximately 8,000 acres of real and personal property associated with these dams.

Klamath Property Transfer