ORDER NO. 24-154

ENTERED May 29 2024

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.	ORDER

DISPOSITION: REQUEST TO AUTHORIZE DISBURSEMENT OF FUNDS AND AMEND FUNDING AGREEMENT DENIED.

I. INTRODUCTION

In this order, we deny the request of Klamath River Renewal Corporation (KRRC) to disburse the accrued interest in the Oregon trust account and to amend the funding agreement. We find that the statute does not allow us to disburse interest from the trust accounts above $184 million unless it is to be used for the benefit of customers. And, as discussed below, we do not have sufficient information at this time to make a determination as to whether those funds would be used for the benefit of customers.

II. BACKGROUND

A. General

On June 1, 2023, the KRRC submitted a disbursement request asking that approximately $4.7 million in interest be disbursed to it from the trust accounts. The Alliance of Western Energy Consumers (AWEC) and the Oregon Citizens' Utility Board (CUB) objected. Subsequently, on November 13, 2023, KRRC requested an order to amend the funding agreement; AWEC and CUB again objected. On December 7, 2023, the Administrative Law Judge convened a prehearing conference in this proceeding and a schedule was adopted. This schedule included a workshop on whether the funds in question would or could be used for the benefit of customers, a second prehearing conference for the parties to present on the results of the workshop, and a briefing schedule. Subsequently on February 13, 2024, the procedural schedule was suspended and on February 29, 2024, a revised briefing scheduled was issued. KRRC, PacifiCorp, dba Pacific Power, AWEC, CUB, and Staff of the Public Utility Commission of Oregon

participated as parties in this phase of this proceeding. The Yurok Tribe, Karuk Tribe, Trout Unlimited, CalTrout, and the Pacific Coast Federation of Fishermen's Associations filed comments in support of PacifiCorp and KRRC.

PacifiCorp operates the Klamath Hydroelectric Project, which long included four hydroelectric dams on the Klamath River, known as the J.C. Boyle, Copco 1 and 2, and Iron Gate dams. The J.C. Boyle dam was located in Oregon; the other three dams in California. In 2008, various parties concerned about the effects of relicensing the project with the Federal Energy Regulatory Commission (FERC) reached an Agreement in Principle (AIP) for the removal of the dams in lieu of relicensing.[1] The AIP was later formalized in the Klamath Hydroelectric Settlement Agreement (KHSA) which first took effect on February 18, 2010.[2]

Under the terms of the AIP and the KHSA, a $450 million multi-state cost cap was established for funding dam removal activity, with an amount not to exceed $200 million collected through a surcharge from PacifiCorp customers in Oregon and California. Specifically, PacifiCorp's Oregon customers would pay up to 92 percent, or $184 million, and PacifiCorp's California customers were to pay up to 8 percent, or $16 million for dam removal. The State of California agreed to contribute the remaining $250 million of the $450 million state cost cap through a bond issue.[3]

In 2009, the State of Oregon enacted Senate Bill 76 (ORS 757.732 through ORS 757.744) to codify the State's obligations under the AIP and the then forthcoming KHSA.[4] ORS 757.736(2) directed PacifiCorp to file tariffs for two customer surcharges: one surcharge for Oregon's share of the costs of removing the J.C. Boyle Dam and a second surcharge for Oregon's share of the costs of removing the Copco 1 and 2 Dams and the Iron Gate Dam. Together, the two customer surcharges were to fund Oregon's $184 million share of the $200 million state customer contribution and were to be deposited in interest-bearing accounts.[5] The Commission was required to conduct a hearing and enter an order within six months "setting forth findings and conclusions as to whether the imposition of surcharges under the terms of the final agreement results in rates that are fair, just and reasonable."[6] The Commission, in Order No. 10-364, found the surcharges were fair, just and reasonable.

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[1] Order No. 10-364 at 3 (Sept. 16, 2021), corrected by Order No. 10-390 (Oct. 10, 2010).
[2] Order No. 10-364 at 4.
[3] *Id.*
[4] Or Laws 2009, ch 690.
[5] Or Laws 2009, ch 690, § 4(3), 5(1).
[6] ORS 757.736(4).

The surcharges were collected between March 18, 2010, and November 6, 2019. They were deposited in interest bearing accounts. Now, pursuant to a funding agreement the Oregon Public Utility Commission entered into with KRRC, a total of $184 million has been disbursed from the trust accounts to KRRC. Approximately $4.7 million in accrued interest remains in the trust accounts and continues to accrue interest. KRRC has asked that the $4.7 million be disbursed to it for further dam removal activities. Other parties object, citing ORS 757.736(9), which reads as follows:

> If the commission determines at any time that amounts have been collected under this section in excess of those needed, or in excess of those allowed, the commission must:
>
> a) Direct the trustee of the appropriate trust account under ORS 757.738 to refund these excess amounts to customers or to otherwise use these amounts for the benefit of customers; or
>
> b) Adjust future surcharge amounts as necessary to offset the excess amounts.

Subsection (b) cannot be applied because the surcharge schedule has already been canceled. The key question to be addressed in this phase of the proceeding, then, is whether the $4.7 million in interest in the trust accounts—above the $184 million that has already been disbursed—constitutes funds in excess of those allowed that must, under subsection (a), be refunded to customers or otherwise used for the benefit of customers.

B. Position of KRRC and PacifiCorp

KRRC and PacifiCorp both argue that the interest funds in question do not constitute "excess" funds under the statute and therefore do not need to be refunded to customers. KRRC and PacifiCorp argue that the term "collected" is specifically used in the statute to refer to the surcharges levied on customers, *not* to interest that accumulated on that money. Therefore, when ORS 757.736(9) refers to "amounts [that] have been collected" it is referring specifically to amounts collected through the surcharges, rather than the total of surcharge plus interest. Given that, KRRC argues that the funds should be disbursed for dam removal purposes. It asks that the Commission amend the funding agreement to make that explicit. The agreement would read (new text in underline):

> The Parties understand and agree that 92[percent] of the Customer Contribution funds for the Project will be disbursed from the Oregon Trust, <u>including any accrued interest</u>, except however, in no event will the

total funding from the Oregon Trust and the California Trust exceed $200 million as stated in nominal dollars at the time of collection.

C. Position of CUB/AWEC and Commission Staff

CUB/AWEC and Commission Staff oppose disbursing the additional interest funds to KRRC and amending the funding agreement, arguing instead that excess funds were collected under ORS 757.736(9). They argue that the legislature was clear that the $184 million to be collected from Oregon customers was a combination of customer contributions and interest, and thus that the ceiling is on interest as well as on customer contributions. Staff notes specific provisions dealing with interest, such as the fact that the Commission was directed to establish a separate trust account for amounts generated by each of the two surcharges in "interest-bearing accounts." Similarly, ORS 757.736(7) reads that in setting the surcharges, the Commission was to "account for the actual and expected changes in interest rates on the collected funds over the collection period." They argue that the provision would be meaningless if the cap on allowable collected funds did not include interest as well as customer contributions.

III. DISCUSSION

We find that the funds in question are excess funds under ORS 757.736(9). We therefore do not authorize disbursement of the funds nor amend the funding agreement. Under ORS 757.736(9), we must then determine whether and how the funds should be refunded to customers or, alternatively, how the funds can be utilized to be considered a benefit of customers—a determination we are not prepared to make at this time.

To discern legislative intent, we give primary weight to the text of the statute itself, with appropriate additional weight accorded to any legislative history.[7] The text of the statute is "the best evidence of legislative intent."[8] Here, the text of the statute is silent as to what happens to accumulated interest. However, the logical reading of several statutory provisions combined with the statutory context demonstrates that interest is included under the $184 million contribution cap.

First, the legislation requires deposit of each of the two surcharges in "interest-bearing accounts."[9] Second, in setting the surcharges, the Commission was required to "account for the actual and expected changes in interest rates on the collected funds over the

[7] ORS 174.020; *City of Portland v. Bartlett*, 369 Or 606, 610 (2022); *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009).
[8] *Morrow and Morrow*, 191 Or App 354, 357 (2004).
[9] *Former* ORS 757.738(1) (2009).

collection period."[10] Thus, it was never contemplated that the surcharges would collect $184 million—it was contemplated that the surcharges would be set so that, as near as could be figured, the customer contributions *plus interest* would equal $184 million.

Legislative history supports that interpretation. In the Senate Floor Debate, Senator Doug Whitsett stated:[11]

> The State Treasurer expects and assures us that they will be able to achieve much higher investment returns, *thereby reducing the overall cost to PacifiCorp ratepayers*. The bill also directs the Oregon Public Utility Commission to account for actual and expected changes in energy usage over time and to account for actual and expected changes in interest rates on the collected funds when setting the surcharge rate. The bill simply makes the charges more fair to PacifiCorp customers. SB 76 required PacifiCorp to accumulate a total of $184 million from Oregon ratepayers. *Over time, House Bill 3461A will reduce the amount that the ratepayers must pay into the accounts by increasing the investment returns on those accounts.*

PacifiCorp and KRRC do not disagree that the $184 million total was meant to take into account both the surcharges and the interest but argue that use of the word "collected" means that only the surcharges are subject to refund if over-collected. This argument has some intuitive appeal. We recognize that these funds could be considered an unanticipated windfall, like the power cost savings KRRC suggests customers have enjoyed, that result from the unanticipated pace of the Federal Energy Regulatory Commission's regulatory process. If the funds had been transferred immediately, the interest would have accrued to KRRC and this question may not have been raised. Despite this, we do not find it to be the best reading of the statute given the context and legislative history. We question whether the legislature would have required adjustment of the surcharge to take into account interest rates if it did not intend amounts above $184 million to be refunded whether they consist of surcharge *or* interest. Given this, we do not believe the word "collected" must refer only to surcharges—funds are "collected" whether through surcharge or interest. It does not then make sense that interest would not be considered in determining whether excess funds were collected—all are intended to accumulate to the total $184 million contribution from Oregon ratepayers. Accordingly, we can neither order disbursement of the money nor amend the funding agreement as KRRC requests.

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[10] ORS 757.736(7).

[11] Audio Recording, Senate Floor Debate, HB 3461, May 26, 2011, audio file at 07:54:32 (statement of Sen Doug Whitsett) (Emphasis added).

Under ORS 757.736(9)(a), as excess funds, the $4.7 million at issue here must either be refunded to customers or otherwise used for the benefit of customers. While the briefs did touch on the questions of what could constitute use for the benefit of customers, this is a factually intensive inquiry and we do not have the information necessary to make a final decision on that issue.

Based upon our conclusion not to disburse the excess contributions, the Memorandum of Agreement provides that PacifiCorp and the states of Oregon and California will be jointly obligated to provide up to $45 million for dam removal project. As the project continues under the funding of the Memorandum of Agreement, we invite KRRC to supplement its request explaining in more detail how its use of the funds would benefit customers under ORS 757.736(9)(a).

IV. ORDER

IT IS ORDERED that Klamath River Renewal Corporation's request to authorize disbursement of funds and to amend the funding agreement is denied.

Made, entered, and effective May 29 2024.

Megan W. Decker
Chair

Letha Tawney
Commissioner

Les Perkins
Commissioner

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 Court of Appeals in compliance with ORS 183.480 through 183.484.