ORDER NO. 26-106

ENTERED Apr 01 2026

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: APPLICATION DENIED; FUNDS TO BE DISBURSED TO CUSTOMERS

I. BACKGROUND

A. Dam Removal Proceedings

This proceeding involves the Klamath Dam Removal Project and its nearly two decades of history. We summarize that history here in brief.

In 2004, PacifiCorp, dba Pacific Power, filed an application with the Federal Energy Regulatory Commission (FERC) seeking to renew its operating license for six dams located on the mainstem of the Klamath River. Multiple state, federal, and Tribal resource agencies intervened in that proceeding, arguing for dam removal rather than relicensing. The parties entered into negotiations and, in 2008, the Klamath Agreement in Principle (AIP) resulted. In the AIP, PacifiCorp, Oregon, California, and the United States Department of the Interior agreed to a framework for removal of four of the dams: J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate (collectively, the Klamath Dams).

The AIP contemplated that PacifiCorp would collect funds through customer surcharges but then transfer the collected amounts to trust accounts outside of the company's control. To effectuate this plan, the Oregon legislature passed Senate Bill (SB) 76 in 2009. Among other things, SB 76 gave the Commission authority to create the surcharges contemplated in the AIP. In doing so, the legislature preserved the Commission's traditional ratemaking authority, and, in particular, explicitly provided for the Commission to review the prudence of the project and the proposed surcharges.

Both SB 76 and the AIP contemplated that stakeholders would negotiate and produce a more detailed agreement which, ultimately, they did. In 2010, numerous parties, including PacifiCorp and the states of California and Oregon, entered into the Klamath Hydroelectric Settlement Agreement (KHSA). The AIP and the KHSA both targeted 2020 as the beginning of dam removal operations.

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

Both the AIP and the KHSA contemplated that PacifiCorp would transfer the Klamath Dams to a separate Dam Removal Entity before dam removal began. This was originally going to be done pursuant to federal legislation. When the federal legislation did not materialize, applicants sought approval from FERC. FERC declined to do this; instead, it ultimately allowed the Klamath River Renewal Corporation (KRRC or Renewal Corporation) to become a co-licensee with PacifiCorp instead of the sole licensee for the projects.

This was a significant change to the procedure contemplated in the KHSA, so PacifiCorp issued a notice under the KHSA of a potential termination event. This process resulted in the company, the Renewal Corporation, the states of Oregon and California, the Yurok Tribe, and the Karuk Tribe entering into a memorandum of agreement (the 2020 MOA), which provided that the states of California and Oregon instead of PacifiCorp would become co-licensees with the Renewal Corporation, and that each of the states and PacifiCorp would contribute $15 million each to a $45 million contingency fund and share any additional cost overruns equally. FERC accepted this and approved transfer of the license in 2021, then license surrender in 2022.

Decommissioning of the Copco No. 2 Dam began in 2023 and decommissioning of the other three dams in 2024. By October 2024, the removal phase of the Project was complete, and free-flowing water conditions had been restored at the former Klamath Dam sites.

B. Trust Accounts and Accrued Interest

SB 76 directed PacifiCorp to file tariffs for two customer surcharges: one for Oregon's share of the costs of removing the J.C. Boyle Dam and a second 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. The statute specified 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."[1] After Commission approval, the two surcharges became effective in March 2010.

The Commission has already authorized disbursement of the originally contemplated $184 million from the trust accounts. However, because dam removal began later than originally anticipated, the funds remained in interest-bearing accounts longer than anticipated and accrued more interest than expected. As of April 2023, roughly $4.7 million remained in the Oregon Klamath Dam trust accounts. It is those funds that PacifiCorp and the Renewal Corporation now seek to access for dam removal purposes. Specifically, they seek disbursement of $2.32 million of accrued interest. PacifiCorp and the Renewal Corporation seek to hold the remaining amounts in trust pending any future requests or until the Project is complete.

C. Legal Framework, Previous Request for Disbursement, and Current Request

ORS 757.736(9), passed as a component of SB 76, states:

> (9) 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 (Surcharge trust accounts related to the removal of the Klamath River dams) to refund these excess amounts to customers or to otherwise use these amounts for the benefit of customers[.]

In June 2023, the Renewal Corporation requested that the Commission disburse the remaining amounts held in trust. The Commission ordered briefing on the preliminary issue of whether the accrued interest remaining in the accounts constituted amounts "collected * * * in excess of those needed [or] allowed" under ORS 757.736(9).

In March 2024, the Commission determined that the accrued interest remaining in the trust accounts constituted "excess funds under ORS 757.736(9)."[2] The Commission therefore concluded that the remaining amounts "must either be refunded to customers or

[1] ORS 757.736(7).
[2] Order No. 24-154 at 4.

otherwise used for the benefit of customers."[3] In that order, however, the Commission "invite[d]" the Renewal Corporation "to supplement its request explaining in more detail how its use of the funds would benefit customers under ORS 767.736(9)(a)."[4]

On July 2, 2025, PacifiCorp and the Renewal Corporation filed for authorization to disburse $2.2 million from the trust accounts, arguing that to do so would be for the benefit of customers. PacifiCorp and the Renewal Corporation further state that disbursing interest as requested would remove the need for PacifiCorp to seek recovery of the $2.32 million in Oregon rates. A schedule was set, and the parties subsequently filed testimony in support of and opposing the request. A hearing was waived and the parties filed opening and closing briefs.

II. POSITIONS OF THE PARTIES

A. PacifiCorp and the Renewal Corporation

PacifiCorp and the Renewal Corporation argue that disbursement would be consistent with ORS 757.736(9)(a). First, they argue that disbursement ensures that the Renewal Corporation can complete the dam removal project, which "the Commission approved as the alternative to an extremely high-risk and high-cost relicensing process, and which provides both tangible and intangible benefits to Oregon customers."[5] They state that, in October 2024, salmon and other anadromous fish began to pass upstream of the former dam sites and spawn in the Klamath River for the first time in over 100 years; and a year later, Chinook salmon successfully navigated the former dam sites and reached the Upper Klamath Lake and its tributaries again for the first time in over a century. As a result, they state, there is the prospect that those fisheries will be restored, benefiting Tribal nations that rely on the Klamath River.

PacifiCorp and the Renewal Corporation argue that the project costs are finite; the Renewal Corporation has already fully paid its dam contractor, Kiewit. The Renewal Corporation's primary restoration contractor, Resource Environmental Solutions, is under a fixed-price contract, protecting the Renewal Corporation from the risk of unexpected cost increases during restoration.

Second, PacifiCorp and the Renewal Corporation argue that disbursement of the interest funds would result in lower rates for customers. They argue that the $45 million contingency fund is recoverable in rates as a prudent and necessary expenditure. In support, they state that ORS 757.734(2)(d) provides for recovery of amounts prudently

[3] *Id.* at 6.
[4] *Id.*
[5] KRRC Opening Brief at 12.

spent to settle issues of dam removal and relicensing and confirms that the surcharge limit does not apply to PacifiCorp's contingency fund commitments that were made pursuant to a settlement. Accordingly, they argue, using the trust accounts to fund the Oregon-allocable share of the contingency fund would prevent PacifiCorp from needing to recover those amounts in rates.

PacifiCorp and the Renewal Corporation further argue that disbursement of the funds would create intergenerational equity in PacifiCorp's rates. The Commission originally evaluated the costs and benefits of the dam removal project under the assumption that they would stop generating power in 2020. In actuality, they generated power until 2023 and 2024. PacifiCorp and the Renewal Corporation state that the benefit to customers from this continued operation was $17.16 million. In light of the rate reduction from the continued operation of the dams, they state, it is reasonable and appropriate to allow disbursement to help pay for this customer benefit.

Finally, PacifiCorp and the Renewal Corporation argue that the surcharge limit in SB 76 does not prevent the Commission from approving recovery outside of the surcharges for prudently incurred costs. SB 76, they argue, limits only the *surcharges* imposed under the legislation and says nothing about the Commission's general authority to review utility expenses and approve recovery in a rate case.

B. Staff

Staff argues that PacifiCorp's and the Renewal Corporation's assertion that they can recover for expenditures from the $45 million contingency fund in rates is flawed. Staff states that this is only true if it defers the costs of the payment for later collection in rates. Staff states that it is not clear that these costs meet the requirements for a deferral—*i.e.*, that they are extenuating in nature or substantial and significant.

Staff then argues that even if the Commission were to approve the deferral of costs, PacifiCorp bears the burden of proof to establish such a charge and must show that charging customers for dam removal liability in excess of the $184 million contribution the customers already made is fair, just, and reasonable.

Staff also argues that PacifiCorp's and the Renewal Corporation's arguments that PacifiCorp customers benefit from completion of the project and restoration of the Klamath River are not persuasive. It states that the statute says that those funds could be used for a refund to customers or to benefit customers; but "[i]n light of the legislature's clear intent to limit the PacifiCorp's Oregon customers' liability for dam removal costs,

the argument customers benefit if excess trust account funds are dispersed to ensure dam removal is successful makes little sense."[6]

C. CUB and AWEC

CUB and AWEC (collectively, the Consumer Advocates) argue that there is a statutory cap that prohibits paying more for dam removal costs than the surcharges already funded. The Consumer Advocates cite to ORS 757.736(3) which mandates a cap on the amount collected by the surcharges where the total collection may not exceed Oregon's share of $200 million. Of the $200 million allocated to dam removal under the statute, they say, the KHSA then capped Oregon customers' share of the cost at $184 million. To hold otherwise, the Consumer Advocates argue, would effectively nullify the cap on the surcharges. It also argues that if the legislature had intended for consumers to pay more for dam removal than the surcharge amounts, it would have said so explicitly.

They further argue that the phrase "for the benefit of customers" precludes using additional funds for dam removal—because "a word is known by the company it keeps," the benefit to customers must be similar in nature to a refund.[7]

The Consumer Advocates additionally argue that customers benefit from cost certainty and that cost certainty was critical to the bargain struck by the Commission in approving the dam removal project. Charging additional money for dam removal would "upend the basis of the Commission decision" that the KHSA is in the best interests of customers.[8]

Finally, the Consumer Advocates argue that the benefits of low-cost hydropower do not justify the disbursement. It states that the statute does not address the impact of a delay in dam removal nor provide that if customers benefit from a delay, the Commission can distribute funds above the cap.

In their closing brief, the Consumer Advocates additionally argue that the money in question is not necessary to complete dam removal and restoration activities and, in fact, would go to *reimburse* PacifiCorp for money already spent.

Also in their closing brief, the Consumer Advocates argue that allowing recovery of the full amount PacifiCorp seeks would be retroactive ratemaking. Instead, they state, the maximum amount that could be disbursed as a refund to PacifiCorp is only approximately 27 percent of $2.32 million, or approximately $623,000. That amount is the share of the $2.32 million allocated to Oregon under currently existing

[6] Staff Opening Brief at 11.
[7] Consumer Advocate Joint Opening Brief at 9.
[8] *Id.* at 10.

interjurisdictional cost allocation protocols; they state PacifiCorp cannot merely "consider" the $2.32 million they seek to recover as the portion allocated to Oregon.

III. DISCUSSION

We find that the language "for the benefit of customers" does not encompass additional dam removal and restoration work. We therefore deny PacifiCorp's and KRRC's request to disburse $2.32 million of interest funds from the trust account. Further, because we deny that request, we order the excess funds in the trust account credited back to customers as the statute contemplates.

In making this determination, we emphasize that we believe the cost cap created by the statute was the amount determined by the legislature to be reasonable for dam removal. In 2009, Oregon enacted SB 76 to codify the State's obligations under the AIP and the then forthcoming KHSA. 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. Later, the 2020 MOA set forth $45 million as a contingency fund, contributed to by Oregon, California, and PacifiCorp.

This case arose because interest in the trust accounts accrued beyond the amount initially anticipated. ORS 757.736(9)(a) states that the trustee should be directed "to refund these excess amounts to customers or to otherwise use these amounts for the benefit of customers." We have already determined that the amounts in question are excess amounts.[9] KRRC and PacifiCorp argue that dam removal and restoration activities constitute a benefit to customers. But we agree with Staff and the Consumer Advocates that the legislature—as evidenced by the language of the statute—contemplated something more than dam removal and restoration when it referred to using excess funds for the benefit of customers. Instead, the benefit to customers should be akin to a refund, such as offsetting a generally applicable surcharge. That is consistent with the principle, cited by the Consumer Advocates, that a word is known by the company it keeps.[10]

As such, we do not read the language "for the benefit of customers" as an off-ramp to the cost cap. Moreover, we believe that if the legislature intended to create such an off-ramp, it would have done so explicitly. Accordingly, we find that the logical reading of

[9] Order No. 24-154 (2024).
[10] *See McDonnell v. United States*, 579 US 550, 569 (2016).

ORS 757.736(9)(a) precludes use of excess funds for dam removal and restoration purposes.

PacifiCorp and KRRC argue that because customers received the benefits of low-cost hydropower due to the delay in dam removal, "it is reasonable for customers to pay the Project cost increases associated with this delay" under ORS 757.736(9)(a).[11] However, as the Consumer Advocates point out, that logic amounts to a retroactive surcharge for customers' past power consumption, which was not contemplated by the statute.

For the foregoing reasons, we do not authorize disbursement of the funds in question to the Renewal Corporation. Instead, we order that they be returned to customers. PacifiCorp is to submit a proposal detailing how the funds can be equitably returned to customers no later than May 15, 2026.

IV. ORDER

IT IS ORDERED that:

1. The joint request to authorized disbursement of funds filed by Klamath River Renewal Corporation and PacifiCorp, dba Pacific Power, is denied.

2. PacifiCorp, dba Pacific Power, is to submit a proposal detailing how the funds can be returned to customers as a bill credit no later than May 15, 2026.

Made, entered, and effective Apr 01 2026.

Les Perkins
Commissioner

Karin Power
Commissioner

[11] PAC/700, Hemstreet/22.

Chair Tawney, dissenting:

I write in dissent to express my view that the dam removal and restoration activities identified by PacifiCorp and the Renewal Corporation are for the benefit of customers and, therefore, that it would be proper to disburse the funds in question to PacifiCorp.

We were previously asked to interpret ORS 757.736(9) to determine whether the interest funds in question in this proceeding were "excess" amounts that needed to be "refund[ed] to customers or [] otherwise use[d] for the benefit of customers." We determined that the funds in question were excess amounts; the only remaining question is whether those funds will be used for the benefit of customers. My colleagues find that PacifiCorp's and the Renewal Corporation's proposed use would not be; I disagree.

As the majority opinion discusses, the history of the Klamath Dam removal project is complex and spans nearly twenty years. A key event occurred in 2020, when FERC rejected the bargain that had been reached in the KHSA and declined to allow the Renewal Corporation to become the sole licensee for the project. At that point, the parties to the agreement were at a crossroads. They had to decide whether to unwind the KHSA, at significant expense, and allow the dams to go forward under an uncertain future. This would have placed cost risk and uncertainty on PacifiCorp and by extension, Oregon ratepayers. It would also put the desired outcome of responsible dam removal in the near future at significant risk.

Instead, the parties pivoted and agreed to the 2020 MOA. It brought new, non-ratepayer funds to the table and rebalanced risks so that the parties could continue forward and meet FERC's requirements. The MOA was a creative solution that addressed the changed reality the project was operating in.

Unsurprisingly, as a result of delay during a period of extraordinary inflation, costs for the project also increased. But it does not appear that costs increased due to poor foresight or mismanagement, despite the unique nature of the project. While the record here focuses on the costs of environmental remediation, there is no evidence that these costs specifically are driving the overall cost overrun beyond the 2008 estimates. They are simply the last costs to be paid and thus are incurred after the budget has been exhausted. Many different costs changed throughout the project lifecycle, including the requirement to procure additional liability instruments to satisfy FERC. PacifiCorp and the Renewal Corporation presented evidence that the revised budget represented a 12.8 percent increase compared to 20 percent inflation over the same time period.[12] And

[12] KRRC/100, Hazlett/8.

further, the work done by the Renewal Corporation to manage the costs and risks of the project has proven successful; the dams were successfully removed and environmental restoration appears to be well under way at a total cost that is still less than outer bounds set by the 2020 MOU.

Oregon customers have benefited from both dam removal and from the certainty created by the 2020 MOA that, ultimately, led to the project continuing to completion and spending beyond the original budget. Using the excess funds in the trust account, which are themselves a product of the delay and relatively high interest rates, to cover that contingency would be administratively efficient, allowing the Commission and stakeholders to focus on future issues. It would also encourage future creative problem solving when hard policy challenges run into extraordinarily changed circumstances. These are both benefits to customers.

I further note that parties in this case observe that FERC would not allow PacifiCorp to limit its risk and cost but seek to avoid customers participating in addressing FERC's requirements and argue customers continue to enjoy capped risk through a relatively narrow reading of legislation. This imbalance casts a long shadow over future negotiated solutions to hard problems. I believe it is in customers' interest to contribute to adapting efficiently and effectively to changed circumstances and would find this a beneficial use of the excess funds.

Accordingly, I dissent from the majority opinion offered by my colleagues.

Letha Tawney

Letha Tawney
Chair

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.