

Docket No. A.10-\_\_\_\_\_  
Exhibit No. PPL/200  
Witness: Andrea L. Kelly

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

PACIFICORP

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Direct Testimony of Andrea L. Kelly

March 2010

1 **Introduction**

2 **Q. Please state your name, business address and position with PacifiCorp**  
3 **(“Company”).**

4 A. My name is Andrea L. Kelly. My business address is 825 NE Multnomah Street,  
5 Suite 2000, Portland, Oregon 97232. I am employed by PacifiCorp as Vice  
6 President of Regulation.

7 **Qualifications**

8 **Q. Briefly describe your educational background and business experience.**

9 A. I hold a Bachelor’s degree in Economics from the University of Vermont and an  
10 MBA in Environmental and Natural Resource Management from the University  
11 of Washington. After graduate school, I joined the Staff of the Washington  
12 Utilities and Transportation Commission. In 1995, I became employed by  
13 PacifiCorp as a Senior Pricing Analyst in the Regulation Department and  
14 advanced through positions of increasing responsibility. From 1999 through  
15 2005, I led major strategic projects at PacifiCorp including the Multi-State  
16 Process and the regulatory approvals for the Mid-American-PacifiCorp  
17 transaction. In March 2006, I was appointed Vice President of Regulation.

18 **Q. Have you been personally involved in the negotiations related to the Klamath**  
19 **Hydroelectric Settlement Agreement?**

20 A. Yes. I have been part of PacifiCorp’s core negotiating team for the past two  
21 years.

22 **Q. Have you appeared as a witness in previous regulatory proceedings?**

23 A. Yes, I have appeared as a witness on behalf of PacifiCorp in the states of

1 California, Idaho, Oregon, Utah, Washington, and Wyoming. In addition, I  
2 sponsored testimony in various proceedings as a member of the Washington  
3 Commission Staff.

4 **Purpose and Overview of Testimony**

5 **Q. What is the purpose of your testimony?**

6 A. My testimony provides an overview of the requirements set forth in the Klamath  
7 Hydroelectric Settlement Agreement<sup>1</sup> (“KHSA”) with regard to rate-related issues  
8 associated with implementation of the KHSA. As described in detail in the  
9 testimony of Company witness Mr. Dean S. Brockbank, the KHSA provides a  
10 framework for removal of four PacifiCorp dams located on the Klamath River  
11 (“Project”) no earlier than 2020, contingent on Congressional approval and a  
12 scientific assessment by the Interior Department confirming that the removal is in  
13 the public interest. Specifically, my testimony provides:

- 14 • An overview of the purpose of this filing and the actions requested of the  
15 California Public Utilities Commission (“Commission”) in this application,
- 16 • A description of the Company’s general approach to the negotiation of the  
17 KHSA, including the Company’s four negotiating principles,
- 18 • The calculation of the Klamath dam removal surcharge and a demonstration  
19 that the surcharge is calculated consistently with the terms of the KHSA,
- 20 • A discussion of the change in the depreciation life of the net investment  
21 related to the Project,

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<sup>1</sup> A full copy of the KHSA is attached to the testimony of Company witness Dean S. Brockbank as Exhibit PPL/104.

- 1           • The results of PacifiCorp’s primary economic analysis comparing the costs of  
2           the KHSA with the potential costs of relicensing.

3   **Purpose of Application**

4   **Q.    What is the purpose of this application?**

5   A.    PacifiCorp is asking the Commission to authorize three discrete, yet inter-related,  
6        items that are required to facilitate implementation of the KHSA. First,  
7        PacifiCorp seeks approval to implement a rate surcharge to begin collection of  
8        California’s share of a dam removal trust. Second, PacifiCorp seeks approval to  
9        establish an accelerated depreciation schedule that will depreciate the rate base  
10       associated with the Project on a straight-line basis over the expected period of  
11       generation, which is planned to end on December 31, 2019. Third, PacifiCorp  
12       seeks conditional approval to transfer the Project and related lands to the entity  
13       that will remove the dams. As discussed later in my testimony, this approval will  
14       be conditioned on the achievement of specific milestones for each of the  
15       mainstem dams outlined in the KHSA.

16   **PacifiCorp’s Approach to Settlement**

17   **Q.    Please provide an overview of PacifiCorp’s approach to the negotiations that**  
18       **led to the execution of the KHSA.**

19   A.    As discussed in detail in the testimony of Mr. Brockbank, the process leading up  
20        to the execution of the KHSA began in 2000. It has been a complex and  
21        challenging process that is interwoven into longstanding and contentious issues in  
22        the Klamath Basin. Throughout these negotiations, the federal government and  
23        the states of Oregon and California have expressed a strong policy preference that

1 the dams on the Klamath river be removed. In response, PacifiCorp outlined four  
2 core principles that guided its negotiation strategy related to a path that could lead  
3 to dam removal:

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

9 Approximately two years ago, there was a turning point in the negotiations  
10 that ultimately resulted in an Agreement in Principle in November 2008 and then  
11 the KHSA in February 2010.

12 **Q. Does the KHSA deliver the Company's four core principles?**

13 A. Yes. The terms of the KHSA deliver each of these elements for the benefit of  
14 PacifiCorp's customers. As such, the KHSA provides a more certain and less  
15 risky path forward for customers, as well as protections associated with the  
16 Secretarial Determination as to whether dam removal should proceed.

17 **Q. How does the KHSA protect customers from uncertain costs of dam**  
18 **removal?**

19 A. The KHSA contains a \$200 million cap on the customer contribution to the costs  
20 of dam removal. Section 4.1.1.C of the KHSA states:

21 The Parties agree that the total amount of funds to be collected pursuant to  
22 the Oregon Klamath Surcharges and the California Klamath Surcharge  
23 shall not exceed \$200,000,000 (in nominal dollars); these funds shall be  
24 referred to as the "Customer Contribution." (KHSA, p. 24)

25 **Q. How does the KHSA ensure that the dams will be transferred to a separate**  
26 **entity for removal?**

27 A. The KHSA requires as a condition precedent that the Secretary of Interior

1 designate a dam removal entity which would be responsible for undertaking dam  
2 removal. The KHSA provides:

3 **“Dam Removal Entity” or “DRE”** means an entity designated by the  
4 Secretary that has the legal, technical, and financial capacities set forth in  
5 Section 7.1. The Secretary may designate Interior to be the DRE.  
6 (KHSA, p. 4)

7 **Q. How does the KHSA protect customers from the liabilities of dam removal?**

8 A. Another condition precedent for dam removal is the passage of federal legislation  
9 that provides liability protection for PacifiCorp and its customers. Section 2.1.1.E  
10 states:

11 In consideration for PacifiCorp executing the Settlement, the legislation  
12 that Parties will support, in accordance with Section 2.1.1.A and 2.1.1.B,  
13 shall:

14 i. Provide PacifiCorp with full protection from any liability arising  
15 from, relating to, or triggered by actions associated with Facilities  
16 Removal with provisions that are materially consistent with the  
17 following:

18 a. Notwithstanding any other federal, state, local law or  
19 common law, PacifiCorp shall not be liable for any harm to  
20 persons, property, or the environment, or damages resulting  
21 from either Facilities Removal or Facility operation arising  
22 from, relating to, or triggered by actions associated with  
23 Facilities Removal, including but not limited to any  
24 damage caused by the release of any material or substance,  
25 including but not limited to hazardous substances.

26 b. Notwithstanding Section 10(c) of the Federal Power Act,  
27 this protection from liability preempts the laws of any state  
28 to the extent such laws are inconsistent with the  
29 Authorizing Legislation, except that the Authorizing  
30 Legislation shall not be construed to limit any otherwise  
31 available immunity, privilege, or defense under any other  
32 provision of law.

33 c. This liability protection shall become operative as it relates  
34 to any particular Facility upon transfer of title to that  
35 Facility from PacifiCorp to the DRE. (KHSA, p. 11-12)

1 **Q. How does the KHSA ensure that customers continue to benefit from the low-**  
2 **cost power of the dams until the dams are removed?**

3 A. The KHSA targets a removal date no earlier than 2020, providing at least 10 years  
4 of continued operation of the facilities. Specifically, Section 7.3.3 states:

5 The Parties agree that PacifiCorp may continuously operate the Facilities  
6 subject to the ICP and Non-ICP Interim Measures identified in  
7 Appendices C and D to this Settlement and generate electricity at the  
8 Facilities through December 31, 2019. (KHSA, p. 48)

9 In addition, Section 7.4.2 provides:

10 PacifiCorp shall transfer ownership of each Facility, including the  
11 underlying land for each Facility in accordance with Section 7.6.4 (except  
12 for the Keno Development, which shall be disposed in accordance with  
13 Section 7.5), once the DRE notifies PacifiCorp that all necessary permits  
14 and approvals have been obtained for removal of that Facility, all contracts  
15 necessary for Facility Removal have been finalized, and Facility Removal  
16 is ready to commence. (KHSA, p. 51)

17 **Q. Were there any other key considerations for PacifiCorp as it negotiated the**  
18 **terms of the KHSA?**

19 A. Yes. PacifiCorp negotiated the terms of the KHSA in a manner that resulted in a  
20 fair and balanced outcome to customers and other stakeholders. Under  
21 relicensing, the status quo for the Project just isn't an option. As discussed by Mr.  
22 Cory E. Scott, significant capital investments and other obligations will be  
23 required as a condition of relicensing. As such, the costs to customers under the  
24 KHSA were compared against a baseline relicensing scenario throughout the  
25 negotiations. This analysis ensured that customers would be expected to be no  
26 worse off under the KHSA as compared to a conservative estimate of relicensing  
27 costs. This analysis, combined with the significant risk-reducing elements of the

1 KHSA, ensures that the KHSA is in the public interest.

2 **Dam Removal Surcharge**

3 **Q. What are the KHSA requirements of PacifiCorp with respect to the dam**  
4 **removal surcharge?**

5 A. Section 4.1.1 of the KHSA states:

6 B. Within 30 days of the Effective Date, PacifiCorp shall request that the  
7 California Public Utilities Commission (“California PUC”) establish a  
8 non-bypassable customer surcharge (the “California Klamath Surcharge”) for  
9 PacifiCorp’s California customers to generate funds for the purpose of  
10 Facilities Removal. PacifiCorp shall request that the California PUC  
11 establish the California Klamath Surcharge so that it will collect an  
12 approximately equal amount each year that it is to be collected.  
13 PacifiCorp shall request that such surcharge assigns responsibility among  
14 the customer classes in an equitable manner. PacifiCorp shall also request  
15 that the California PUC set the California Klamath Surcharge so that it at  
16 no time exceeds two percent of the revenue requirements set by the  
17 California PUC for PacifiCorp as of January 1, 2010. (KHSA, p. 23-24)

18 and

19 C. The Parties agree that the total amount of funds to be collected  
20 pursuant to the Oregon Klamath Surcharges and the California Klamath  
21 Surcharge shall not exceed \$200,000,000 (in nominal dollars); these funds  
22 shall be referred to as the “Customer Contribution.” (KHSA, p. 24)

23 and

24 E. PacifiCorp shall request that the California PUC establish a surcharge  
25 so that the amount collected under the California Klamath Surcharge is  
26 8% (a maximum of approximately \$16,000,000) of the Total Customer  
27 Contribution. The trustee of the California Klamath Surcharge shall apply  
28 75% of the total California Klamath Surcharge amount collected to the  
29 California Copco I and II/Iron Gate Dams Trust Account and 25% of the  
30 total California Klamath Surcharge amount collected to the California J.C.  
31 Boyle Dam Trust Account. (KHSA, p. 24)

32 **Q. Does the KHSA provide for an initial surcharge targeting collection below**  
33 **the \$200 million cap?**

34 A. Yes. Section 7.3.2.A of the KHSA set the initial targeted surcharge collection at  
35 \$172 million, well under the \$200 million cap. This target was based on an

1 analysis undertaken during negotiations that collected the surcharge over a ten-  
2 year period and assumed a 3.5 percent interest rate on the trust balance. The  
3 analysis is attached to the KHSA as Appendix H.

4 **Q. Is the surcharge proposed by PacifiCorp consistent with the requirements of**  
5 **the KHSA?**

6 A. Yes.

7 **Q. Please explain.**

8 A. Exhibit PPL/201 sets forth the detailed calculations related to California's share  
9 of the dam removal surcharge. First, California's 8 percent share of the \$172  
10 million target is calculated to be \$13.76 million. Second, because this application  
11 requests a January 1, 2011 effective date, the \$13.76 million is spread equally  
12 over a 9-year period resulting in an annual collection rate of approximately \$1.53  
13 million per year. As reflected in the tariff, the Commission and the Company will  
14 need to monitor the collections under the surcharge tariff given variations in load  
15 forecasts, and may need to adjust the cents per kilowatt hour rate in the future.  
16 Third, the annual collection rate is compared against PacifiCorp's revenue  
17 requirement in California as of January 1, 2010 to ensure that the annual  
18 collection rate does not exceed 2 percent.

19 **Q. How does PacifiCorp propose to assign responsibility among the customer**  
20 **classes in an equitable manner?**

21 A. PacifiCorp proposes to allocate the surcharge among customer classes based on  
22 each class' share of generation revenues, while ensuring that the impact on each  
23 customer class does not exceed 2 percent and is not less than 1.5 percent. This

1 proposal recognizes that the dam removal surcharge is a generation-related cost,  
2 while mitigating disparity among the classes.

3 **Q. What is the impact of the surcharge on an average residential customer?**

4 A. The surcharge will increase an average customer's monthly bill by approximately  
5 \$1.61 per month, or \$19.32 per year.

6 **Q. Has the Company requested a similar surcharge to collect Oregon  
7 customers' share of the dam removal surcharge?**

8 A. Yes. The Company filed concurrently in both Oregon and California. Legislation  
9 was passed in the 2009 Oregon legislative session that allows the surcharge to go  
10 into effect immediately upon filing, subject to refund. The Public Utility  
11 Commission of Oregon will review the reasonableness of the surcharge over a  
12 180-day period.

13 **Q. Please explain how the proceeds of the surcharge tariff will be handled.**

14 A. PacifiCorp's role is to collect the surcharge on customers' bills and then remit the  
15 proceeds to the California trust accounts on a monthly basis.

16 **Q. Who has responsibility for establishing and managing the trusts?**

17 A. The Commission has the responsibility for establishing the trust, at the request of  
18 the State of California. The trusts will be managed by an agency of the State of  
19 California, with specific trustee instructions that are to be developed in  
20 consultation with the federal government and the State of Oregon. The  
21 management of the trust is described in Section 4.2.2 and 4.2.4 of the KHSA.

1 **Q. Will PacifiCorp have any control over the disposition of the trust funds?**

2 A. No, although PacifiCorp will cooperate with the Commission and the State of  
3 California to implement contingency plans, as needed.

4 **Q. Does the KHSA provide contingencies for the trust funds if future  
5 circumstances change?**

6 A. Yes. Section 4.4 of the KHSA outlines specific contingency plans in the event  
7 that (1) excess funds remain in the trust accounts after dam removal, or (2) one or  
8 more dams are not removed. In all events, the Commission retains the authority  
9 to ensure that the funds are used for the benefit of customers, including possible  
10 refund.

#### 11 **Depreciation Schedule**

12 **Q. What are the KHSA requirements of PacifiCorp with respect to the  
13 depreciation life of the Project?**

14 A. Section 4.5.2 of the KHSA states:

15 PacifiCorp shall request, and each non-Federal Party shall support the  
16 request, that the California PUC conduct one or more proceedings to  
17 implement the following:

18 A. That the California PUC determine a depreciation schedule for each  
19 Facility based on the assumption that the Facility will be removed in 2020,  
20 and change that depreciation schedule at any time if removal of the  
21 Facility will occur in a year other than 2020; (KHSA, p. 29)

22 **Q. How does PacifiCorp propose to depreciate the remaining investment in the  
23 Project?**

24 A. The Company proposes to depreciate the net book value on a straight-line basis  
25 over the expected period of generation from the Project, which could end as early  
26 as December 31, 2019.

1 **Q. Will this apply to new additions as well as any retirements which occur**  
2 **between now and then?**

3 A. Yes. The net book value would be adjusted each month to reflect the impact on  
4 net book value of additions, retirements and any associated net salvage. This  
5 would then adjust the straight-line depreciation over the remaining periods.  
6 Significant capital additions are not anticipated under the KHSA.

7 **Q. How does the Company propose to recover the hydro relicensing and**  
8 **settlement process costs related to the Project?**

9 A. The Company proposes to amortize these costs on the same straight-line basis as  
10 outlined for the net book value of the facilities.

11 **Q. Are there any costs for decommissioning of Project facilities for which**  
12 **customers would bear the costs?**

13 A. Yes. As discussed by Mr. Scott, under both relicensing and the KHSA, the  
14 Company will decommission the East Side and West Side facilities.

15 **Q. How will the Company recover the costs of decommissioning the East Side**  
16 **and West Side facilities?**

17 A. In the last depreciation study, the Company established a small hydro  
18 decommissioning reserve. The costs to decommission East Side and West Side  
19 would be charged against that reserve, and the reserve balance would be evaluated  
20 and the accrual adjusted during the next depreciation study.

21 **Q. How will this change to the depreciation life be reflected in rates?**

22 A. The Company has a general rate case pending in Docket A.09-11-015. The  
23 Company's rate case includes an adjustment that reflects the shorter depreciation

1 lives, as well as the addition to rate base of the relicensing and settlement process  
2 costs. This adjustment increases California's revenue requirement by  
3 approximately \$330,000. The effective date of the rate change in the general rate  
4 case is also January 1, 2011.

5 **PacifiCorp's Economic Analysis**

6 **Q. Please describe PacifiCorp's general approach to the economic analysis**  
7 **supporting its decision to enter into the KHSA.**

8 A. As mentioned above, PacifiCorp compared the cost to customers of the KHSA  
9 with the costs to customers under a conservative relicensing scenario. However,  
10 as discussed in the testimony of Mr. Scott, the costs to customers of relicensing  
11 are highly uncertain. As such, the Company developed a baseline relicensing case  
12 against which the economics of the KHSA were compared. The baseline  
13 relicensing case relies heavily on the costs and data developed as part of the  
14 Federal Energy Regulatory Commission ("FERC") Final Environmental Impact  
15 Statement ("FEIS"). Again, Mr. Scott describes in detail how these baseline cost  
16 estimates were developed and why the cost estimates should be viewed as  
17 conservative given the significant uncertainty that remains related to relicensing.

18 **Q. How was the analysis structured?**

19 A. The analysis evaluated the Present Value Revenue Requirement ("PVRR") of the  
20 stream of costs under the KHSA and compared it against the PVRR of the stream  
21 of costs under the baseline relicensing scenario. The analysis covered a 44-year  
22 period beginning in 2010 – this equates to a 40-year license beginning in 2013.

1 **Q. What did the analysis assume with respect to the costs of replacement**  
2 **power?**

3 A. In both scenarios, the Company assumed that lost generation would be replaced  
4 with renewable, non-carbon emitting resources. This was accomplished through  
5 the use of a forward price curve that contained a “carbon adder” as a reasonable  
6 proxy for the cost of renewable replacement power. I would also note that there is  
7 lost generation under the baseline relicensing scenario due to operating  
8 restrictions that were included in the FERC FEIS.

9 **Q. How did the Company use the analysis to inform its negotiation strategy?**

10 A. As mentioned above, the Company was willing to agree to a set of financial  
11 commitments under the KHSA that did not exceed the conservative cost estimates  
12 in the baseline relicensing scenario. However, it was also important to the  
13 durability of the KHSA that the other settlement parties viewed the overall result  
14 as fair and balanced. If the PVRR of the KHSA was significantly below the  
15 baseline relicensing case, this durability would have been threatened.

16 **Q. Does the KHSA result in a fair and balanced outcome to PacifiCorp’s**  
17 **customers?**

18 A. Yes. Based on the results of this conservative analysis, the KHSA results in a  
19 PVRR that is below the cost of relicensing. More importantly customers are  
20 protected from the risks and liabilities that exist absent an agreement among the  
21 parties. These risks include: (1) far higher costs under final terms and conditions  
22 for relicensing; (2) the inability to secure state and federal approvals for  
23 relicensing; (3) continued litigation related to endangered species act

1 requirements and water quality issues; and (4) early shut-down and removal of the  
2 project. In the end, the terms of the KHSA allow the Company to respond to the  
3 policy preferences of the federal government, and the states of Oregon and  
4 California favoring removal of the Project, while protecting its customers for the  
5 long term in respect to economic impact and risks.

6 **Q. Does the Company's testimony and analysis in support of this application**  
7 **demonstrate that customers are better off under the KHSA than they**  
8 **otherwise would be?**

9 A. Yes. This also supports the Company's request for a Commission finding that the  
10 Company has met the requirements of Section 851 of the California Public  
11 Utilities Code based on the best available information.

12 **Q. You earlier indicated that the Company was requested that the Section 851**  
13 **approvals would be contingent on the satisfaction of several conditions**  
14 **precedent. Please explain.**

15 A. I have been advised by legal counsel that it would be appropriate to proceed in  
16 this manner, given the circumstances. The Company proposes the following  
17 conditions precedent:

- 18 • the passage of federal legislation which contain provisions that are materially  
19 consistent with Section 2.1.1.A of the KHSA;
- 20 • the availability of sufficient funds to cover the estimated costs of dam  
21 removal, provided by both the states of California and Oregon, as set forth in  
22 Section 4.1 of the KHSA;

- 1 • an Affirmative Determination by the Secretary of the U.S. Department of the  
2 Interior determining that: (i) the costs of dam removal will not exceed  
3 available funds; (ii) removal of the dams will advance restoration of the  
4 salmonid fisheries of the Klamath Basin; and (iii) removal of the dams is in  
5 the public interest, as required in Section 3 of the KHSA; and
- 6 • the issuance by the Dam Removal Entity (“DRE”) of the DRE Notice, as  
7 defined in Section 7.4.1 of the KHSA, at such time as all necessary permits  
8 and approvals have been obtained for the removal of a particular dam  
9 (“Facility”), all contracts necessary for Facility Removal have been finalized,  
10 and Facility Removal is ready to commence.

11 **Q. What would be the procedural vehicle for the Commission to confirm that**  
12 **the conditions have been met prior to the transfer of the facilities?**

13 A. As set forth in the Application, the DRE may complete the process of obtaining  
14 all the necessary permits and approvals for each of the four main stem Facilities at  
15 different times. Accordingly, PacifiCorp seeks separate authority to transfer each  
16 Facility upon the filing of a compliance Advice Letter confirming that all the  
17 conditions precedent for transfer of each Facility have been completed. In  
18 addition to the four main stem dams, PacifiCorp also seeks authorization to  
19 transfer other Project assets to the DRE and the states of Oregon and California,  
20 pursuant to the KHSA. Under the terms of the KHSA, the transfer of the Keno  
21 dam, the PacifiCorp Hatchery Facilities, and specified Klamath Hydroelectric

1 Project lands to said entities are to occur upon the issuance by the DRE of a DRE

2 Notice for a particular main stem dam associated with such assets.<sup>2</sup>

3 **Q. Does this conclude your testimony?**

4 A. Yes.

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<sup>2</sup> See Sections 7.4 and 7.6 of the KHS.A.