

Docket No. A.10-03-015
Exhibit No. PPL/105
Witness: Dean S. Brockbank

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

PACIFICORP

Rebuttal Testimony of Dean S. Brockbank

October 2010

1 **Introduction**

2 **Q. Are you the same Dean S. Brockbank who submitted direct testimony in this**
3 **proceeding?**

4 A. Yes.

5 **Purpose and Overview of Rebuttal Testimony**

6 **Q. What is the purpose of your rebuttal testimony?**

7 A. My rebuttal testimony responds to the testimony of the Division of Ratepayer
8 Advocates (DRA) recommending that the Commission effectively reject this
9 application and order PacifiCorp to file a new application after three conditions
10 are met: (1) California voters approve a general obligation bond measure or
11 alternative funding for California's share of costs has otherwise been secured; (2)
12 Congress passes Authorizing Legislation giving federal parties the necessary
13 authority to carry out federal obligations under the Klamath Hydroelectric
14 Settlement Agreement (KHSA); and (3) the Internal Revenue Service (IRS)
15 formally approves of the dam removal trust funding with tax deductible
16 contributions and tax free earnings.

17 Specifically, my rebuttal testimony:

- 18 • Demonstrates that DRA has not presented any new evidence that would cause
19 the Commission to change the decision it reached in its Scoping Memo and
20 Ruling of Assigned Commissioner denying DRA's Motion to Hold in
21 Abeyance and request to dismiss this application;
- 22 • Explains how DRA's recommendations are based on incorrect readings and
23 interpretations of key provisions of the KHSA; and

- 1 • Summarizes the provisions of the KHSA that will protect PacifiCorp’s
2 California customers in the event that circumstances change over time during
3 the implementation of the KHSA.

4 **Key Provisions of the KHSA**

5 **Q. DRA provides a list of conditions that must be met before the Secretary of**
6 **the Interior can issue an Affirmative Determination regarding the removal of**
7 **the dams. Are those conditions consistent with the terms of the KHSA?**

8 A. Yes, with two clarifications. First, in addition to the conditions listed by DRA, an
9 additional condition exists that requires the Secretary of the Interior and
10 PacifiCorp to agree upon acceptable terms of transfer of the Keno facility in
11 Oregon to the Department of the Interior. Second, the necessary precondition
12 regarding state funding allows the Secretary to issue a Determination if the bond
13 measure has not been approved provided that: (1) the Customer Contribution (i.e.,
14 the funds available from Oregon and California customer surcharges) plus any
15 other available California funding is sufficient to accomplish dam removal; or (2)
16 the Secretary has received satisfactory assurances from the state of California that
17 bond funding necessary to effect dam removal will be available in a timely
18 manner.¹

19 **Q. DRA asserts in its testimony that the Secretary of the Interior is authorized**
20 **to unilaterally terminate the KHSA. Is this accurate?**

21 A. No. In the event that any party to the KHSA believes that a potential termination
22 event has occurred, that party must first provide notice of such event. The parties

¹ KHSA §3.3.4, p. 21.

1 then engage in a meet and confer process whereby they consider whether to deem
2 the event to conform to the KHSA, or adopt a mutually agreeable amendment to
3 the KHSA. If these procedures do not resolve the potential termination event, the
4 Federal Parties, the States, and PacifiCorp may agree to an amendment, or deem
5 the event to conform to the KHSA. It is only after both processes fail that the
6 KHSA terminates.²

7 **Q. Please describe how the parties to the KHSA are working together to meet**
8 **the conditions necessary for the Secretary of the Interior to issue an**
9 **Affirmative Determination.**

10 A. The parties to the agreements are working collaboratively to advance the
11 settlement and satisfy each of the conditions necessary for the Secretary to issue a
12 Determination. Many of these conditions require actions or agreements by or
13 among the parties – such as the designation of the Dam Removal Entity, terms of
14 transfer for Keno, and a plan to address excess costs of dam removal, should that
15 be necessary. I am confident that those conditions can be met since the parties
16 have already demonstrated an ability to work through difficult issues by virtue of
17 signing the KHSA.

18 Enacting federal legislation and obtaining the necessary funding for dam
19 removal through the customer surcharges and the bond funding requires much
20 broader support for the KHSA and will no doubt be challenging. However, as the
21 necessary preconditions to the Determination are achieved, the certainty of the
22 settlement will be strengthened and the risk that the remaining conditions may not

² KHSA §8.11, pp.62-66.

1 be met will be reduced. Likewise, the failure to accomplish necessary
2 preconditions, such as the establishment of funding through the customer
3 surcharge, would likely increase the risk that other preconditions cannot be
4 attained. For this reason, PacifiCorp, like other supporters of the KHSA, believes
5 that it is both necessary and appropriate for the Commission to approve the
6 customer surcharge in this proceeding in order to demonstrate the continued
7 support of the state of California for the KHSA and to build momentum that will
8 assist in the accomplishment of the remaining conditions.

9 **Q. Have any of the conditions necessary for the Secretary of the Interior to issue**
10 **an Affirmative Determination been met?**

11 A. Yes. One of the most significant conditions has already been satisfied by virtue
12 of the Public Utility Commission of Oregon's recent issuance of an order
13 affirming the collection of surcharges for Oregon customers to fund their share of
14 facilities removal.³ It is important for California to keep pace with the
15 implementation steps already underway in Oregon.

16 **Q. Are you aware of a “formidable army of parties fervently opposed to both**
17 **the KHSA and the Bond Measure” as claimed by DRA?**

18 A. No. PacifiCorp is aware that Siskiyou County has not signed the KHSA and
19 certain off-project irrigation groups and environmental organizations in the
20 Klamath Basin oppose the KBRA, but is not aware of parties that oppose both the
21 KHSA and the proposal to fund dam removal through a California bond measure.
22 It should also be noted that, at this time, DRA is the only party in this proceeding

³ See *Re PacifiCorp Application to Implement the Provisions of Senate Bill 76*, Public Utility Commission of Oregon, Docket UE 219, Order No. 10-364 (September 16, 2010).

1 opposing the creation of the surcharge to implement the KHSA. It is a fair
2 conclusion that the absence of these parties illustrates that such opposition is
3 neither as numerous nor as strident as DRA's testimony suggests. However,
4 PacifiCorp is also aware of the existence of nearly 40 parties that support the
5 KHSA, including the state of California, and other parties that support the KHSA
6 but are not parties to the agreement.

7 **Q. Do you agree with the statement provided in PacifiCorp's 10-K filing that the**
8 **Company cannot predict with certainty the requirements that may be**
9 **imposed by relicensing, the economic impact of those requirements, whether**
10 **a license will ultimately be issued or whether PacifiCorp will be willing to**
11 **meet the relicensing requirements to continue operating the hydroelectric**
12 **facilities?**

13 A. Yes. The Company has sought to limit the uncertainty and risks related to
14 relicensing of the facilities for its customers by entering into the KHSA. Through
15 the defined customer cost cap and protection from liability associated with
16 potential dam removal, the KHSA limits uncertainty related to the continued
17 operation of the facilities prior to removal.

18 **Q. DRA cites Section 4.4.3 of the KHSA for the proposition that customers**
19 **would automatically be refunded any and all trust funding, including**
20 **earnings, in the event that the KHSA terminates. Do you agree with this**
21 **assertion?**

22 A. No. Section 4.4.3 of the KHSA actually describes the disposition of unused funds
23 *following* Facilities Removal. Moreover, that same section states that non-Federal

1 Parties shall request that the Commission order those excess amounts to be
2 refunded to customers or *otherwise used for the benefit of the customers*. In other
3 words, the non-Federal Parties could potentially request the Commission to order
4 utilization of the unused funds for some use beneficial to customers other than a
5 refund.

6 **Q. Please explain how funds collected *prior to Facilities Removal* would be dealt
7 with in the event the KHSA was terminated.**

8 A. Pursuant to Section 4.4.4 B of the KHSA, PacifiCorp is required to request the
9 Commission to direct PacifiCorp (1) to terminate all or part of the surcharge; and
10 (2) to direct the trustee to apply any excess balances in the California Klamath
11 Trust Account to California's share of prudently incurred costs to implement
12 FERC relicensing requirements and, that if any excess amount remains in the trust
13 accounts after that application, that the Commission order that the excess amounts
14 be refunded to customers or otherwise used for the benefit of customers. In other
15 words, termination of the KHSA would result in discontinuation of the surcharge
16 and use of any funds collected prior to termination, in the first instance, would be
17 used to offset the cost of relicensing. This would avoid a circumstance where a
18 rate refund might occur at the same time as a rate increase is implemented to fund
19 relicensing. It would also allow California customers to "buy down" the amount
20 of new rate base related to the implementation of relicensing requirements on the
21 Klamath facilities.

1 **Q. Based upon the two scenarios previously discussed, do you perceive any risk**
2 **that funds collected through the surcharge would not benefit customers?**

3 A. No. As previously described, funds collected through the surcharge will
4 ultimately be used to benefit customers. This is the case regardless of whether the
5 dam removal process does not go forward due to failure of California to provide
6 funding through a bond measure or other appropriate financing mechanism (or
7 some other reason), or in the event that excess surcharge funds remain after the
8 dam removal process. In all events, the Commission retains the authority to
9 ensure that the funds are used for the benefit of customers, including possible
10 refund. As such, there is no risk that funds collected through the proposed
11 surcharge would not benefit customers.

12 **Q. DRA indicates that it “fully supports the KHSA,” but then opposes**
13 **PacifiCorp’s surcharge request “given the likelihood that the KHSA**
14 **surcharge may ultimately be refunded.” DRA then cites failure in “securing**
15 **the principle funding sources” as one of those risks and as a potential cause**
16 **of termination of the KHSA. How do you respond?**

17 A. It is contradictory for DRA to claim to “fully support” the KHSA while
18 simultaneously opposing one of the principal funding sources upon which the
19 success of the KHSA is reliant. DRA states that “without securing the principle
20 [sic] funding sources and without legislation legalizing essential provisions of the
21 KHSA, the KHSA cannot proceed and will probably be terminated.” The KHSA
22 identifies the customer contribution as the principal funding source for dam
23 removal by specifying that any bond funding will be used to fund the difference

1 between the customer contribution and the actual cost to complete dam removal.⁴
2 Thus, the customer contribution through the surcharge is the primary source for
3 dam removal funding, with bond funding necessary only if the actual cost of dam
4 removal exceeds the customer contribution. However, while DRA argues that
5 failure to obtain funding is a significant risk to successful implementation of the
6 KHSA – which it claims to support – DRA then takes a position which directly
7 undermines the KHSA by recommending that the surcharge funding be withheld.

8 **Q. Do you agree with DRA’s statement that the Secretary of the Interior will be**
9 **obligated to terminate the KHSA if voters do not approve the bond measure**
10 **in November 2012?**

11 A. No. As explained above, the Secretary of the Interior cannot unilaterally
12 terminate the KHSA, and failure of the bond measure by itself will not obligate
13 the Secretary to seek termination since it is possible for an Affirmative
14 Determination to be issued without approval of the bond measure. In addition,
15 the state of California has the unilateral ability to identify an alternate source of
16 funding in the event that funding is needed in excess of \$200 million.

17 **Q. DRA states that “...the KHSA calls for the decommissioning and removal of**
18 **dams and other construction. These contractual provisions cannot be**
19 **performed without the \$250 million (versus the \$16 million being requested**
20 **in the surcharge) as provided for in the \$11 billion Bond Measure.” Do you**
21 **agree?**

22 A. No. The cost of dam removal has yet to be determined. The Department of the

⁴ KHSA §4.1.2.A, p. 24.

1 Interior, through the Secretarial Determination study process, is developing a
2 detailed plan for removal of the facilities, which will include a detailed statement
3 of the estimated costs of removal.⁵ Until the detailed plan is developed, the costs
4 of dam removal remain uncertain and it is unclear if the \$250 million bond
5 measure, or a bond measure at a lesser amount, will be necessary.

6 **Q. DRA states that “[g]iven the absence of any sponsors for the authorizing**
7 **federal legislation, it is imprudent and unfair to authorize the Klamath**
8 **surcharge.” Do you agree?**

9 A. No. Enacting federal legislation is a time-consuming process and obtaining this
10 endorsement from Congress for the KHSA will, in part, be based upon the ability
11 of the parties to the KHSA to demonstrate successful implementation of portions
12 of the agreement prior to the passage of such legislation. As stated above,
13 PacifiCorp and the parties to the agreement are working diligently to implement
14 the provisions of the settlement. Obtaining federal legislation will likely be made
15 more difficult should key provisions of the settlement not requiring federal
16 legislation, such as the California portion of the surcharge, fail to be enacted.

17 In addition, customers are fully protected by virtue of the fact that the
18 Commission can ensure that any funds collected from customers as a result of the
19 surcharge are used to benefit PacifiCorp’s customers in its California service
20 territory, whether dam removal proceeds or relicensing proceedings recommence.

⁵ KHSA §3.3.2, p. 19.

1 **Q. How do you respond to DRA's proposed condition related to actions by the**
2 **IRS related to the dam removal trust fund?**

3 A. DRA's testimony does not discuss this issue at all. It is also a puzzling condition
4 to impose since, under Section 4.2.2 of the KHSA, it is the responsibility of the
5 state of California to request that this Commission establish the trust accounts into
6 which PacifiCorp will deposit the surcharge collections. It is not the
7 responsibility of PacifiCorp to establish or manage the trust funds, merely to remit
8 proceeds into the funds. PacifiCorp is working with the Commission to facilitate
9 information exchange with the state of Oregon, given that the state of Oregon has
10 already established its trust accounts and PacifiCorp has been remitting funds into
11 the accounts since July 2010. This has been accomplished without the need for
12 any action by the IRS.

13 **Q. Does this conclude your rebuttal testimony?**

14 A. Yes.