

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 provisions of Oregon Senate Bill 76
7 (“SB 76”), ORS 757.732 et seq., and the Klamath Hydroelectric Settlement
8 Agreement (“KHSA”) implemented through this filing. As described in detail in
9 the 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 Public Utility Commission of Oregon (“Commission”) in this application,
- 16 • A summary of the relevant provisions of SB 76, ORS 757.732 et seq,
- 17 • A demonstration that the Klamath dam removal surcharges result in fair, just
18 and reasonable rates because the surcharges are calculated consistently with
19 ORS 757.736 and the KHSA, and result in a relatively modest overall rate
20 increase of 1.6 percent,
- 21 • A demonstration that the Klamath dam removal surcharges result in fair, just
22 and reasonable rates because the surcharges are required to implement the
23 KHSA, an agreement PacifiCorp negotiated for the benefit of customers,

- 1 • A demonstration that the Klamath dam removal surcharges result in fair, just
2 and reasonable rates because the surcharges are required to implement the
3 KHSA, the economics of which compare favorably to the potential costs of
4 relicensing, and
- 5 • An explanation of the new, accelerated depreciation schedule for the Klamath
6 dams, mandated by ORS 757.734 and the KHSA.

7 **Purpose and Overview of Application**

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

9 A. This filing, along with PacifiCorp's concurrently filed Advice No. 10-008,
10 implements three key aspects of SB 76. First, the application complies with the
11 requirement of ORS 757.736(1) that within 30 days of the execution of the
12 KHSA, PacifiCorp file a copy of the KHSA with the Commission, along with
13 with certain studies and analyses relating to dam removal and relicensing.
14 Second, the application and Advice No. 10-008 implement the requirement of
15 ORS 757.736(2) that, with the KHSA filing, the Company include tariffs with
16 immediate effective dates for the collection of two dam removal surcharges.
17 Consistent with the requirements of ORS 757.736(4), the application asks the
18 Commission to determine within six months that the surcharges result in rates that
19 are fair, just and reasonable. Third, the application implements ORS 757.734,
20 which requires the Commission to set a new depreciation schedule for the
21 Klamath dams, based on the assumption that the dams will be removed in 2020.

1 **Q. How does the application address the eventual transfer of the Klamath dams**
2 **and related lands to the entity that will remove the dams?**

3 A. The application asks that the Commission recognize that SB 76 has preempted the
4 operation of the Commission property transfer statute, ORS 757.480. In the
5 alternative, the application requests that the Commission approve the transfer
6 under the statute contingent upon satisfaction of the conditions precedent for the
7 transfer in the KHSA.

8 **Summary of Relevant Sections of SB 76**

9 **Q. When was SB 76 enacted?**

10 A. The Oregon Legislature enacted SB 76 on July 14, 2009.

11 **Q. Please summarize the key provisions of SB 76 relating to the requirement for**
12 **filing the KHSA and supporting documents.**

13 A. ORS 757.736(1) requires PacifiCorp to file a copy of the Final Agreement with
14 the Commission within 30 days after execution. The KHSA is attached to the
15 testimony of Mr. Brockbank as Exhibit PPL/104. The KHSA was signed on
16 February 18, 2010, so PacifiCorp's application is timely under the statute.

17 ORS 757.736(1) also requires the Company to file concurrently with the
18 KHSA copies of "all analyses or studies that relate to the rate-related costs,
19 benefits and risks for customers of removing or relicensing Klamath River dams
20 that were reviewed by PacifiCorp during the decision-making process that led to
21 PacifiCorp's entering into the final agreement." ORS 757.736(1). An inventory
22 of non-confidential analyses and studies included in this filing is provided by
23 Company witness Mr. Cory E. Scott as Exhibit PPL/303. I testify as to the

1 Company's primary economic analysis, a summary of which is provided in
2 Confidential Exhibit PPL/202. In addition, Mr. Scott's testimony presents the
3 estimated costs to customers under a baseline relicensing scenario and under the
4 KHSA.

5 **Q. Please summarize the provisions of SB 76 related to the dam removal**
6 **surcharges.**

7 A. Under ORS 757.736(2), PacifiCorp must include with the KHSA filing "tariffs for
8 the collection of two nonbypassable surcharges from its customers for the purpose
9 of paying the costs of removing Klamath River dams." One surcharge shall be for
10 the costs of removing the J.C. Boyle Dam and one surcharge shall be for the costs
11 of removing the other three dams. *Id.* The Commission shall require PacifiCorp
12 to begin collecting the surcharges on the date of the filing of the KHSA. The
13 surcharges are subject to refund if the Commission or Oregon Supreme Court
14 finds that the surcharges result in rates that are not just, fair, and reasonable.
15 ORS 757.736(2),(4). Within six months of the Company's filing of the Final
16 Agreement, analyses, and tariffs, the Commission must conduct a hearing under
17 ORS 757.210 and enter an order setting forth its decision on whether the
18 imposition of the surcharges results in just, fair, and reasonable rates. ORS
19 757.736(4).

20 **Q. Does SB 76 dictate certain aspects of the calculation and amount of the dam**
21 **removal surcharges?**

22 A. Yes. The surcharges may not exceed Oregon's share of the customer contribution
23 of \$200 million. ORS 757.736(3). The total amount collected in a calendar year

1 for both surcharges may not exceed more than two percent of the Company's
2 revenue requirement determined in the Company's last rate proceeding under
3 ORS 757.210 decided before January 1, 2010 and must be of a specified amount
4 per kilowatt hour billed to retail customers. The surcharges should be calculated
5 so that the total annual collections of the surcharges remain approximately the
6 same during the collection period. *Id*; ORS 757.736(7). The Commission shall
7 establish a trust account for amounts generated by the surcharges. ORS
8 757.738(1).

9 **Q. How does SB 76 address the acceleration of the depreciation schedule for the**
10 **Project?**

11 A. ORS 757.734 requires the Commission to determine a new depreciation schedule
12 for the Project, based on the assumption that the dams will be removed in 2020.
13 The Commission is required to determine this new depreciation schedule within
14 six months of the signing of the KHSA. This is a slightly quicker timeline than
15 the timeline for review of the surcharges because the six-month window runs
16 from the execution of the KHSA, not the filing of the KHSA. However, the new
17 depreciation rate would be effective on January 1, 2011, as reflected in the
18 Company's pending general rate case, Docket UE 217 ("UE 217").

19 **Fair, Just and Reasonable: Calculation and Amount of Dam Removal Surcharges**

20 **Q. Has the Company filed a tariff with an immediate effective date for the**
21 **collection of two dam removal surcharges concurrently with this application?**

22 A. Yes. In Advice 10-008, the Company filed Schedule 199, with an effective date
23 of March 18, 2010.

1 **Q. Please describe Schedule 199.**

2 A. Schedule 199 includes two dam removal surcharges, one for the J.C. Boyle dam
3 and the other for the Copco 1, Copco 2 and Iron Gate dams. Together the
4 surcharges result in an overall average increase to Oregon rates of approximately
5 1.6 percent.

6 **Q. Does Schedule 199 contain a refund provision?**

7 A. Yes. The tariff states that it shall remain in effect “pending review by the
8 Commission as to whether the imposition of surcharges under the KHSA results
9 in rates that are fair, just and reasonable or during any period of judicial review of
10 such a finding. If the rates resulting from these surcharges are finally determined
11 not to be fair, just and reasonable the surcharges shall be refunded pursuant to
12 ORS 757.736, Subsection (5).”

13 **Q. Does your testimony sponsor a revision to Schedule 199 that removes this
14 refund condition?**

15 A. Yes. Exhibit PPL/201 revises Schedule 199 to remove the refund condition. As a
16 part of this application, the Company is requesting that the Commission allow
17 Schedule 199 to go into effect without the refund condition upon a final
18 determination under ORS 757.736(4) that the dam removal surcharges result in
19 rates that are fair, just and reasonable.

20 **Q. Please explain the calculation of the surcharges contained in Schedule 199.**

21 A. Section 7.3.2.A of the KHSA set the initial targeted surcharge collection at \$172
22 million, well under the \$200 million cap set by ORS 757.736(3) and the KHSA.
23 This target was based on an analysis undertaken during negotiations that collected

1 the surcharges over a ten-year period and assumed a 3.5 percent interest rate on
2 the trust balance. The analysis is attached to the KHSAs as Appendix H.

3 Ultimately, the Commission will decide how to invest the proceeds in the trust
4 account for the benefit of customers. Schedule 199 calculates the surcharges
5 based on a collection schedule that will fund, by December 31, 2019, Oregon's 92
6 percent share of the target contribution.

7 **Q. Are the surcharges proposed by PacifiCorp consistent with the requirements**
8 **of ORS 757.736 and the KHSAs?**

9 A. Yes.

10 **Q. Please explain.**

11 A. Exhibit PPL/201 sets forth the detailed calculations related to Oregon's share of
12 the dam removal surcharges. First, Oregon's 92 percent share of the \$172 million
13 target is calculated to be \$158.24 million. Second, this amount is spread equally
14 over the collection period beginning on March 18, 2010, resulting in an annual
15 collection rate of approximately \$16.16 million per year. This approach complies
16 with ORS 757.736(7) directing the Commission to set the surcharges so that the
17 total annual collections of the surcharges remain approximately the same during
18 the collection period. As reflected in the tariff, the Commission and the Company
19 will need to monitor the collections under the surcharge tariff given variations in
20 load forecasts and may need to adjust the cents per kWh rate in the future. Third,
21 under ORS 757.736(3), the annual collection rate is compared against
22 PacifiCorp's revenue requirement in Oregon as of January 1, 2010 to ensure that
23 the annual collection rate does not exceed 2 percent.

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

3 A. PacifiCorp proposes to allocate the surcharges among customer classes based on
4 each class' share of generation revenues, while ensuring that the impact on each
5 customer class does not exceed 2 percent and is not less than 1.5 percent. This
6 proposal recognizes that the dam removal surcharges are a generation-related
7 cost, while mitigating disparity among the classes.

8 **Q. What is the impact of the surcharges on an average residential customer?**

9 A. The surcharges will increase an average customer's monthly bill by
10 approximately \$1.24 per month, or \$14.88 per year.

11 **Q. Has the Company requested a similar surcharge to collect California**
12 **customers' share of the dam removal fund?**

13 A. Yes. The Company filed concurrently in both Oregon and California.

14 **Q. Please explain how the proceeds of Schedule 199 will be handled.**

15 A. PacifiCorp's role is to collect the surcharges on customers' bills and then remit
16 the proceeds to the Oregon trust accounts on a monthly basis.

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

18 A. The Commission is required to establish these trust accounts under ORS
19 757.738(1). The trusts will be managed by the Commission, with specific trustee
20 instructions that are to be developed in consultation with the federal government
21 and the state of California. The management of the trust is described in Section
22 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 Oregon to implement contingency plans, as needed.

4 **Q. Do SB 76 and the KHSA provide contingencies for the trust funds if future
5 circumstances change?**

6 A. Yes. ORS 757.736 (9)-(10), 757.738(4) and Section 4.4 of the KHSA outline
7 specific contingency plans in the event that (1) excess funds remain in the trust
8 accounts after dam removal, or (2) one or more dams are not removed. In all
9 events, the Commission retains the authority to ensure that the funds are used for
10 the benefit of customers, including possible refund.

11 **Fair, Just and Reasonable: KHSA Negotiated for Benefit of Customers**

12 **Q. Please provide an overview of PacifiCorp's approach to the negotiations that
13 led to the execution of the KHSA.**

14 A. As discussed in detail in the testimony of Mr. Brockbank, the process leading up
15 to the execution of the KHSA began in 2000. It has been a complex and
16 challenging process that is interwoven into longstanding and contentious issues in
17 the Klamath Basin. Throughout these negotiations, the federal government and
18 the states of Oregon and California have expressed a strong policy preference that
19 the dams on the Klamath River be removed. In response, PacifiCorp outlined
20 four core principles that guided its negotiation strategy related to a path that could
21 lead to dam removal:

- 22 1. Protect customers from uncertain costs of dam removal
23 2. Transfer dams to a third party for removal
24 3. Protect customers from liabilities of dam removal

1 4. Ensure that customers continue to benefit from the low-cost power of the
2 dams until the dams are removed

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

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

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

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

13 A. The KHSA contains a \$200 million cap on the customer contribution to the costs
14 of dam removal, codified at ORS757.736 (3). Section 4.1.1.C of the KHSA
15 states:

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

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

22 A. The KHSA requires as a condition precedent that the Secretary of Interior
23 designate a dam removal entity which would be responsible for undertaking dam
24 removal. The KHSA provides:

25 **"Dam Removal Entity"** or **"DRE"** means an entity designated by the
26 Secretary that has the legal, technical, and financial capacities set forth in

1 Section 7.1. The Secretary may designate Interior to be the DRE.
2 (KHSA, p. 4)

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

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

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

- 10 i. Provide PacifiCorp with full protection from any liability arising
11 from, relating to, or triggered by actions associated with Facilities
12 Removal with provisions that are materially consistent with the
13 following:
- 14 a. Notwithstanding any other federal, state, local law or
15 common law, PacifiCorp shall not be liable for any harm to
16 persons, property, or the environment, or damages resulting
17 from either Facilities Removal or Facility operation arising
18 from, relating to, or triggered by actions associated with
19 Facilities Removal, including but not limited to any
20 damage caused by the release of any material or substance,
21 including but not limited to hazardous substances.
- 22 b. Notwithstanding Section 10(c) of the Federal Power Act,
23 this protection from liability preempts the laws of any state
24 to the extent such laws are inconsistent with the
25 Authorizing Legislation, except that the Authorizing
26 Legislation shall not be construed to limit any otherwise
27 available immunity, privilege, or defense under any other
28 provision of law.
- 29 c. This liability protection shall become operative as it relates
30 to any particular Facility upon transfer of title to that
31 Facility from PacifiCorp to the DRE. (KHSA, p. 11-12)

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

34 A. The KHSA targets a removal date no earlier than 2020, providing at least 10 years

1 of continued operation of the facilities. Specifically, Section 7.3.3 states:

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

6 In addition, Section 7.4.2 provides:

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

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

16 A. Yes. PacifiCorp negotiated the terms of the KHSA in a manner that resulted in a
17 fair and balanced outcome to customers and other stakeholders. Under
18 relicensing, the status quo for the Project just isn't an option. As such, the costs
19 to customers under the KHSA were compared against a baseline relicensing
20 scenario throughout the negotiations. This analysis ensured that customers would
21 be expected to be no worse off under the KHSA as compared to a conservative
22 estimate of relicensing costs. This analysis, combined with the significant risk-
23 reducing elements of the KHSA, ensures that the KHSA is in the public interest.

1 **Fair, Just and Reasonable: KHSA is in the Economic Interest of Customers**

2 **Q. Does the Company's economic analysis demonstrate that the dam removal**
3 **surcharges result in rates that are fair, just and reasonable because, among**
4 **other reasons, Oregon customers are better off under the KHSA than they**
5 **otherwise would be?**

6 A. Yes.

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

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

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

20 A. The analysis evaluated the Present Value Revenue Requirement ("PVRR") of the
21 stream of costs under the KHSA and compared it against the PVRR of the stream
22 of costs under the baseline relicensing scenario. The analysis covered a 44-year

1 period beginning in 2010 – this equates to a 40-year license beginning in 2013.

2 The results of this analysis are summarized in Confidential Exhibit PPL 202.

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

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

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

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

18 **Q. Does the KHSA result in a fair and balanced outcome to PacifiCorp’s**
19 **Oregon customers?**

20 A. Yes. Based on the results of this conservative analysis, the KHSA results in a
21 PVRR that is below the cost of relicensing on a system and Oregon allocated
22 basis. More importantly, customers are protected from the risks and liabilities
23 that exist absent an agreement among the parties. These risks include: (1) far

1 higher costs under final terms and conditions for relicensing; (2) the inability to
2 secure state and federal approvals for relicensing; (3) continued litigation related
3 to endangered species act requirements and water quality issues; and (4) early
4 shut-down and removal of the project. In the end, the terms of the KHSA allow
5 the Company to respond to the policy preferences of the federal government, and
6 the states of Oregon and California favoring removal of the Project, while
7 protecting its customers for the long term in respect to economic impact and risks.

8 **Accelerated Depreciation Schedule**

9 **Q. How does PacifiCorp propose to depreciate the remaining investment in the**
10 **Project?**

11 A. Consistent with ORS 757.734(1), the Company proposes to depreciate the net
12 book value on a straight-line basis over the expected period of generation from
13 the Project, which could end as early as December 31, 2019.

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

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

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

22 A. The Company proposes to amortize these costs on the same straight-line basis as
23 outlined for the net book value of the facilities. These costs are addressed in the

1 testimony of Mr. Brockbank, PPL/600, in UE 217.

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

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

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

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

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

13 A. As mentioned earlier, the Company has a general rate case pending in UE 217.
14 Consistent with ORS 757.734(2), the Company's rate case includes an adjustment
15 sponsored by Company witness R. Bryce Dalley, PPL/1100, that reflects the
16 shorter depreciation lives, as well as the addition to rate base of the relicensing
17 and settlement process costs. The effective date of the rate change in the general
18 rate case is January 1, 2011.

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

20 A. Yes.