

March 18, 2010

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

Oregon Public Utility Commission
550 Capitol Street NE, Ste 215
Salem, OR 97301-2551

Attention: Filing Center

**RE: Application to Implement the Provisions of Senate Bill 76
Docket UE- _____**

PacifiCorp d.b.a. Pacific Power (“Company”) hereby submits its Application to Implement the Provisions of Senate Bill 76 (“Application”). A signed original letter and five (5) copies, with associated compact discs, will be provided via overnight delivery. This filing is made simultaneously with Advice No. 10-008 (Schedule 199 – Klamath Dam Removal Surcharges).

The purpose of this filing, along with separately filed Advice No. 10-008, is to implement three provisions of Senate Bill 76 (“SB 76”). First, ORS 757.736(1) requires that the Company file a copy of the final agreement, the Klamath Hydroelectric Settlement Agreement (“KHSA”) along with certain analyses and studies not more than 30 days after execution of the final agreement. The final agreement was executed on February 18, 2010. Second, ORS 757.736(2) requires the Commission to allow PacifiCorp to collect two surcharges from its customers for the purpose of funding the costs for removal of Klamath River dams (J. C. Boyle Dam, Copco 1 Dam, Copco 2 Dam, and Iron Gate Dam), and directs the Commission to determine within six months of this filing whether these surcharges result in rates that are fair, just and reasonable. Third, ORS 757.734(1) requires the Commission to determine a new depreciation schedule for the Klamath Project, based upon the assumption that the dams will be removed in 2020.

With the application, the PacifiCorp submits direct testimony of Company witnesses Dean S. Brockbank, Andrea L. Kelly and Cory E. Scott.

It is respectfully requested that all communications related to this filing be addressed to:

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Oregon Public Utility Commission
March 18, 2010
Page 2

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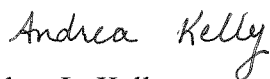
Additionally, PacifiCorp respectfully requests that all data requests regarding this matter be addressed to:

By E-mail (preferred): datarequest@pacificorp.com

By regular mail: Data Request Response Center
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, OR 97232

Please direct informal correspondence and questions regarding this filing to Joelle Steward, Regulatory Manager at (503) 813-5542.

Sincerely,



Andrea L. Kelly
Vice President, Regulation

Enclosures

cc: Bob Jenks, Citizens' Utility Board of Oregon
Melinda Davison, Industrial Customers of Northwest Utilities
David Hatton, Oregon Department of Justice

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE _____

In the Matter of PacifiCorp's Application to
Implement Provisions of Senate Bill 76.

**PACIFICORP'S APPLICATION TO
IMPLEMENT PROVISIONS OF
SENATE BILL 76**

I. INTRODUCTION

1
2 Pursuant to Senate Bill ("SB") 76,¹ PacifiCorp (the "Company") submits this
3 Application to Implement Provisions of Senate Bill 76 ("Application") to the Public Utility
4 Commission of Oregon ("Commission"). With this Application, and concurrently filed
5 Advice No. 10-008, PacifiCorp seeks to implement three provisions of SB 76.

6 First, the Application complies with the requirement of ORS 757.736(1) that
7 within 30 days of the execution of the final agreement signed by the states of Oregon and
8 California, the United States Department of the Interior ("DOI") and PacifiCorp on
9 February 18, 2010 (also known as the Klamath Hydroelectric Settlement Agreement or
10 "KHSA", PacifiCorp file a copy of the KHSA with the Commission, along with certain
11 studies and analyses relating to removing or relicensing the Klamath Hydroelectric Project
12 ("Project").

13 Second, the Application and Advice No. 10-008 implement the requirement of
14 ORS 757.736(2) that, with the KHSA filing, the Company include tariffs with immediate
15 effective dates for the collection of two nonbypassable surcharges for the costs of removing
16 the Project dams. Consistent with the requirements of ORS 757.736(4), the Company asks
17 the Commission to hold a hearing under ORS 757.210 and determine within six months, or

¹ SB 76 is codified at 757.732 through 757.744.

1 by September 18, 2010, that the surcharges result in rates that are fair, just, and reasonable.
2 The Company requests that this order include a provision that the refund condition now
3 included in Schedule 199 be removed once the Commission's order has become final.

4 Third, the application implements ORS 757.734, which requires the Commission
5 to determine a new depreciation schedule for the Project, based on the assumption that the
6 dams will be removed in 2020. The Company requests that the Commission determine the
7 depreciation schedule within six months of execution of the KHSA, or by August 18, 2010,
8 pursuant to ORS 757.734(1). The change in the depreciation schedule would be effective
9 January 1, 2011, and reflected in rates through the Company's pending general rate case,
10 Docket UE 217.

11 Additionally, PacifiCorp requests that the Commission issue a disclaimer of
12 jurisdiction under ORS 757.480, the Commission's property transfer statute, over the
13 transfer of the Project to the dam removal entity ("DRE"), due to preemption by SB 76. In
14 the alternative, the Company requests that the Commission approve the transfer of the
15 Project under ORS 757.480, contingent upon: (1) satisfaction of the conditions precedent
16 for the transfer outlined in the KHSA; and (2) filing by PacifiCorp of the information
17 required by OAR 860-027-0025, the rule governing property transfer applications.

18 This Application is supported by the testimony of Company witnesses Mr. Dean
19 S. Brockbank, Ms. Andrea L. Kelly, and Mr. Cory E. Scott.

20 **II. BACKGROUND**

21 **A. Agreement in Principle**

22 On November 13, 2008, the states of Oregon and California, the DOI, and
23 PacifiCorp ("Parties") entered into the Klamath Agreement in Principle ("AIP"). The AIP

1 stated that it was the preliminary view of the United States, Oregon, and California that the
2 potential benefits of removing the Project outweighed the potential costs of the removal.
3 The AIP provided a framework for the planned transfer of the dams from PacifiCorp to the
4 DRE designated by the United States government. Final authority for dam removal would
5 be determined by the United States by March 31, 2012, after an analysis and confirmation
6 of the view that the benefits outweighed the potential costs of dam removal. The target
7 date for initiation of removal was 2020. The Parties agreed to negotiate a final agreement
8 as soon as possible.

9 **B. Senate Bill 76**

10 On July 14, 2009, the Oregon legislature passed SB 76. The statute requires
11 PacifiCorp to file a copy of the KHSA with the Commission within 30 days after execution
12 of the final agreement, along with copies of certain studies and analyses relating to
13 removing or relicensing Project dams. ORS 757.736(1).

14 PacifiCorp must include with the filing “tariffs for the collection of two
15 nonbypassable surcharges from its customers for the purpose of paying the costs of
16 removing Klamath River dams.” ORS 757.736(2). Within six months of the Company’s
17 filing of the final agreement, analyses, and tariffs, the Commission must conduct a hearing
18 under ORS 757.210 and enter an order setting forth its decision on whether the imposition
19 of the surcharges results in fair, just, and reasonable rates. ORS 757.736(4).

20 SB 76 also requires the Commission to determine an accelerated depreciation
21 schedule for the Project within six months of execution of the KHSA. ORS 757.734(1).
22 Additional discussion of the requirements of SB 76 and how the Company’s filing
23 complies with these requirements is found at PPL/200, Kelly/4-6.

1 An inventory of non-confidential analyses and studies included in this filing is
2 provided by Mr. Scott in Exhibit PPL/303. Ms. Kelly testifies as to the Company’s
3 primary economic analysis, a summary of which is provided in Confidential Exhibit
4 PPL/202. In addition, Mr. Scott’s testimony presents the estimated costs to customers
5 under a baseline relicensing scenario and under the KHSA.

6 **B. The Surcharges Proposed by the Company Meet the Requirements of SB 76**
7 **and Result in Rates that are Fair, Just, and Reasonable.**

8 Under SB 76, PacifiCorp is required to file with the Commission tariffs for the
9 collection of two nonbypassable surcharges from its customers for the purpose of paying
10 the costs of removing Klamath River dams. ORS 757.736(2). The Commission shall
11 require PacifiCorp to begin collecting these surcharges on the date of this filing. *Id.*
12 Consistent with SB 76, Schedule 199 in Advice No. 10-088 will go into effect on March
13 18, 2010.

14 Under ORS 757.736(4), the Commission shall conduct a hearing under ORS
15 757.210 to determine whether the surcharges under the terms of the KHSA result in rates
16 that are fair, just, and reasonable. The “fair, just and reasonable” standard, commonly
17 referred to as the “just and reasonable” standard, defines the broad legislative standard
18 under which the Oregon Commission sets rates. *Multnomah County v. Davis*, 35 Or App
19 521, 526 (1978). The standard, which is “well-established and universally recognized,” is
20 derived from numerous statutory provisions, including ORS 756.040 and ORS 757.210(1).
21 *In re PacifiCorp*, Order No. 05-1202 at 2, 4. The Commission has previously found that its
22 duty under the just and reasonable standard is to “balance the interest of the customer and
23 the utility under ORS 756.040.” *In re Portland General Electric Co.*, Order No. 08-487 at
24 63. Under ORS 756.040, the Commission evaluates whether the overall rates are just and

1 reasonable, not the reasonableness of the methodologies or theories used to calculate the
2 rates. *Id.* at 7.

3 The Commission should find in this case that Schedule 199 results in rates that are
4 fair, just, and reasonable. As described in Ms. Kelly's testimony, the surcharges contained
5 in Schedule 199 meet the requirements of SB 76. PPL/200, Kelly/7-9. The surcharges also
6 result in a relatively modest overall rate change of 1.6 percent. PPL/200, Kelly/7. The
7 Commission found that the Company's rates were fair, just and reasonable less than two
8 months ago, on January 26, 2010. *Re PacifiCorp Request for a General Rate Revision*,
9 Docket UE 210, Order No. 10-022 (Jan. 26, 2010). Therefore, this modest increase, which
10 results directly from a statutory directive, results in overall rates that are fair, just and
11 reasonable.

12 Moreover, the surcharges are required to implement the KHSA, an agreement
13 PacifiCorp negotiated for the benefit of customers. In addition, the economics of the
14 KHSA, including the dam removal surcharge, compare favorably with the cost of
15 relicensing, especially when considering the risks associated with relicensing. Although
16 SB 76 does not require the Company to show such benefits in order for the Commission to
17 find that rates resulting from the surcharges are fair, just and reasonable, these facts provide
18 added support for this finding. Further discussion of the reasonableness of the surcharges
19 can be found throughout the testimony of Ms. Kelly.

20 Schedule 199 proposed in Advice No. 10-008 is subject to refund pending the
21 Commission's final decision on whether the surcharges result in rates that are fair, just, and
22 reasonable, as required by ORS 757.736(2). The Company requests that a Commission
23 order finding that the rates are fair, just, and reasonable include a provision removing the

1 refund condition included in Schedule 199 after the period for filing a petition for judicial
2 review has expired or, if a petition is filed, after rates resulting from the surcharge are
3 finally determined to be fair, just and reasonable. Exhibit PPL/201 contains a draft of
4 Schedule 199 without the refund provision, which the Company will file upon a final
5 determination that rates resulting from the surcharges are fair, just, and reasonable.

6 **C. The Company's Proposed Depreciation Schedule for the Remaining**
7 **Investment in the Project and Other Eligible Costs is Consistent with ORS**
8 **757.734.**

9 Under ORS 757.734, within six months of execution of the Final Agreement, the
10 Commission shall determine a depreciation schedule for each of the four dams based on the
11 assumption that the dams will be removed in 2020. ORS 757.734(1). The Commission
12 shall use the depreciation schedules to establish rates and tariffs for the recovery of
13 Oregon's share of the Company's undepreciated amounts prudently invested in a dam. *Id.*
14 Amounts that are recoverable include, but are not limited to, both return of and return on
15 investment, capital improvements required by the government for continued operation of
16 the dam until dam removal, relicensing costs before July 14, 2009, relicensing or removal
17 settlement costs, and decommissioning costs. ORS 757.734(2).

18 The Company proposes to depreciate the net book value of the Company's
19 remaining investment in the Project and other costs eligible for recovery under ORS
20 757.734(2) on a straight-line basis through December 31, 2019. Ms. Kelly's testimony
21 explains the Company's proposed change to the depreciation schedule in further detail.

22 Although the Company is requesting determination of a depreciation schedule in
23 this proceeding because such a determination is required by SB 76, PacifiCorp it is not
24 requesting that the depreciation schedule be reflected in rates in this case. The Company

1 has requested recovery of the accelerated depreciation expense that would result from the
2 Commission's adoption of the Company's proposed depreciation schedule, and recovery of
3 costs associated with the relicensing and settlement process, in its pending rate case,
4 Docket UE 217. Docket UE 217, PPL/1100, Dalley/25; PPL/600, Brockbank/16.

5 **D. SB 76 Preempts Commission Approval Under ORS 757.480.**

6 Under ORS 757.480, a utility must obtain the Commission's approval prior to
7 disposing of any part of the property of the utility necessary or useful in the performance of
8 its duties in excess of \$100,000. In this case, however, SB 76 governs the transfer of the
9 Project from PacifiCorp to the DRE. The Oregon legislature found that, subject to DOI's
10 final analysis and confirmation and review by Oregon and California, the AIP and KHSA
11 will set forth a framework for action based on the preliminary view that removal of the
12 Project is in the public interest. *See* Preamble to SB 76. The KHSA provides for the
13 transfer of the Project to the DRE for removal. Therefore, the legislature has already made
14 a finding that, subject to conditions unrelated to actions by this Commission, transfer and
15 removal of the Project is in the public interest and should be implemented. As a result, the
16 Commission could not find that transfer is contrary to the public interest and disapprove the
17 transfer under ORS 757.480 without acting inconsistently with SB 76. *See* ORS 174.020
18 (stating that when a specific and a general statute are inconsistent, the specific statute
19 controls). SB 76, rather than ORS 757.480, governs the transfer of the Project from
20 PacifiCorp to the DRE.

21 The Company requests that the Commission issue a finding of law disclaiming
22 the Commission's jurisdiction over approval of the transfer of the Project that would
23 otherwise be required under ORS 757.480. In the alternative, the Company requests that

1 the Commission approve the transfer of the Project under ORS 757.480, contingent upon:
2 (1) satisfaction of the conditions precedent for the transfer outlined in the KHSA; and (2)
3 filing by PacifiCorp of the information required by OAR 860-027-0025.

4 IV. CONCLUSION

5 To implement the requirements of SB 76, PacifiCorp respectfully requests that the
6 Commission take the following actions:

7 1. Acknowledge that PacifiCorp has satisfied the requirements of ORS
8 757.736(1) regarding the filing of the KHSA and related analyses and studies;

9 2. Within six months of this filing, or by September 18, 2010, determine that
10 the surcharges result in rates that are fair, just, and reasonable and include in an order
11 finding that the surcharges result in fair, just, and reasonable rates a provision removing the
12 refund condition in Schedule 199 once the Commission's order has become final;

13 3. Within six months of execution of the KHSA, or by August 18, 2010,
14 establish the depreciation schedule proposed by PacifiCorp; and

15 4. Issue a disclaimer of jurisdiction over the transfer of the Project to the DRE,
16 due to preemption by SB 76, or approve the transfer of the Project under ORS 757.480,
17 contingent upon: (1) satisfaction of the conditions precedent for the transfer outlined in the
18 KHSA; and (2) filing by PacifiCorp of the information required by OAR 860-027-0025.

Respectfully submitted,

DATED: March 18, 2010.



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