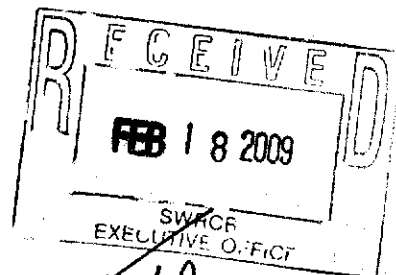


THEODORE R. KULONGOSKI
GOVERNOR



JW



February 13, 2009

AWR
Cy: Bd
DR
JB

Dorothy R. Rice, Executive Director
State Water Resources Control Board
PO Box 2000
Sacramento, CA 95812-2000

By Electronic Delivery and
First-Class Mail

Re: Notice of Preparation and of Scoping Meetings for an Environmental Impact Report for
§ 401 Water Quality Certification of the Klamath Hydroelectric Project;
Request for Extension of Public Comment Period

Dear Ms. Rice:

As you know, Governor Ted Kulongoski of Oregon is a signatory to the Agreement in Principle (AIP) with Governor Schwarzenegger, the US Department of Interior, and PacifiCorp establishing a framework for dam removal and interim measures at the company's Klamath Hydroelectric Project. One purpose among many of the AIP and the final agreement under negotiation is to enable restoration of water quality and fisheries in the Klamath River Basin, in a manner that respects and complies with applicable state and federal resource laws.

The State of Oregon joins the request of other basin stakeholders that the State Water Resources Control Board further extend the deadline for submission of scoping comments under CEQA regarding PacifiCorp's pending § 401 application. It is our view that significant progress is being made toward the objective of completing a final Klamath agreement by June 30, 2009. That progress includes the introduction of Senate Bill 76 in the Oregon Legislature, which legislation will authorize funding for dam removal consistent with the AIP. A copy of the bill is attached for your information. The bill was passed out of the Senate Energy and Natural Resources Committee on February 10, 2009, and is now scheduled for consideration by the full Senate as early as next week.

I would also note the status of the § 401 application for relicensing of the Klamath Project before the Oregon Department of Environmental Quality. On February 6, 2009, PacifiCorp withdrew its previous pending application and submitted a new request for § 401 certification of the Oregon portions of the project. This establishes a new date of February 6, 2010, under 33 U.S.C § 1341, before ODEQ must act on the § 401 application and before the Federal Energy Regulatory Commission may proceed with licensing.

Dorothy R. Rice
February 13, 2009
Page Two

In light of this calendar for § 401 certification on the relicensing proposal, and the significant progress underway on the dam removal alternative to relicensing, I respectfully suggest that the Board and the public will be served not prejudiced by a further extension of the CEQA process.

Sincerely,



Michael Carrier
Natural Resources Policy Director

MC:jb
Enclosure

Senate Bill 76

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Directs Public Utility Commission to determine depreciation schedules for Klamath River dams based on assumption that dams will be removed in 2020. Requires affected public utilities to use depreciation schedules to establish rates and tariffs for recovery of undepreciated amounts prudently invested by public utility in Klamath River dams.

Directs Public Utility Commission to require affected public utility to collect surcharges from customers for purpose of recovering costs incurred by public utility for removal of Klamath River dams. Imposes limit on amounts collected as surcharges. Provides that if commission determines that Klamath River dam will not be removed, commission may terminate collection of all or part of surcharges and direct refund of amounts collected or use of amounts collected for benefit of customers.

Directs Public Utility Commission to allow affected public utility to include in rates and tariffs costs that are prudently incurred by utility by reason of changes in operation of Klamath River dams before removal of dams, or for replacement power after dams are removed.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1

2 Relating to Klamath River dams; and declaring an emergency.

3

Whereas the removal of dams on the Klamath River is necessary to restore, increase and

4

maintain fish population in the river; and

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Whereas to facilitate removal, the Public Utility Commission must set rates that allow a public utility that uses the dams to serve its Oregon customers by recovering Oregon's fair share of the amounts that represent the utility's undepreciated investment in the dams, recovering the funds necessary to cover the costs for removal of the dams and recovering the funds necessary to pay additional costs that the utility may incur from changes in operation of the dams prior to, and replacement resources following, removal; and

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Whereas to facilitate removal, the Public Utility Commission must establish a surcharge to provide funds necessary to cover costs associated with removal of the dams; now, therefore,

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Be It Enacted by the People of the State of Oregon:

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SECTION 1. Sections 2 to 8 of this 2009 Act are added to and made a part of ORS chapter 757.

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SECTION 2. Definitions. As used in sections 2 to 8 of this 2009 Act:

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(1) "Affected public utility" means a public utility that generates electricity using a Klamath River dam for the purpose of serving the customers of the public utility.

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(2) "Customers" means the Oregon retail electricity customers of an affected public utility.

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(3) "Klamath River dam" means the J.C. Boyle Dam, located in Oregon, or the Copco 1 Dam, the Copco 2 Dam or the Iron Gate Dam, located in California.

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SECTION 3. Recovery of investment in Klamath River dams. (1) The Public Utility Com-

NOTE: Matter in boldfaced type in an amended section is new; matter [italic and bracketed] is existing law to be omitted. New sections are in boldfaced type.

1 mission shall determine a depreciation schedule for each Klamath River dam based on the
2 assumption that the dam will be removed in 2020. The commission may change a depreciation
3 schedule prepared under this section at any time if the commission finds that removal of a
4 dam will occur earlier or later than 2020.

5 (2) An affected public utility shall use the depreciation schedules prepared under this
6 section to establish rates and tariffs for the recovery of undepreciated amounts prudently
7 invested by the public utility in a Klamath River dam. Amounts recoverable under this sec-
8 tion include:

9 (a) Return on the investment;

10 (b) Capital improvements required by the United States for continued operations of the
11 dam;

12 (c) Amounts spent by the utility in seeking relicensing of the dam before the effective
13 date of this 2009 Act;

14 (d) Amounts spent by the public utility under a settlement of the issues of relicensing
15 or decommissioning of the dam; and

16 (e) Amounts spent by the public utility for decommissioning of the dam in anticipation
17 of the dam's removal.

18 (3) If all amounts specified under subsection (2) of this section have not been recovered
19 by an affected utility before a dam is removed, the commission shall allow recovery of those
20 amounts by the public utility in the public utility's rates and tariffs without an amortization
21 schedule.

22 **SECTION 4. Recovery of costs of removing Klamath River dams; surcharges.** (1) The
23 Public Utility Commission shall require an affected public utility to collect two surcharges
24 from its customers for the purpose of recovering the costs incurred by the public utility for
25 removal of Klamath River dams, as follows:

26 (a) A surcharge for the costs of removing the J.C. Boyle Dam; and

27 (b) A surcharge for the costs of removing the Copco 1 Dam, the Copco 2 Dam and the
28 Iron Gate Dam.

29 (2) The surcharges required under this section shall be a specified amount per kilowatt
30 hour, as determined by the commission. Subject to subsection (3) of this section, the amount
31 of each surcharge shall be calculated based on an amortization schedule beginning on the
32 date the surcharge is first collected and ending on December 31, 2020. The commission may
33 change the amortization schedule if the commission finds that a hydroelectric facility will
34 be removed earlier or later than 2020.

35 (3) The commission shall set the amount of the surcharges under this section to ensure
36 that the total amount collected in a calendar year under both surcharges does not exceed
37 more than two percent of an affected public utility's gross annual revenue from rates as
38 determined by the last general rate case for the public utility decided by the commission
39 before January 1, 2010.

40 (4) The commission shall require an affected public utility to equalize, to the extent
41 practicable, the surcharges imposed on a customer so that the customer pays the same
42 amount for each surcharge in each calendar year.

43 (5) All amounts collected under the surcharges imposed under this section shall be paid
44 into the appropriate trust account established under section 5 of this 2009 Act.

45 (6) If the commission determines at any time that amounts have been collected under

1 this section in excess of those needed, or in excess of those allowed, the commission may:

2 (a) Direct the trustee of the appropriate trust account under section 5 of this 2009 Act
 3 to refund to the customers from which the amounts were collected, or to otherwise use the
 4 excess amounts for the benefit of the customers from which the amounts were collected; or

5 (b) Adjust future surcharge amounts as necessary to offset the excess amounts.

6 (7) If the commission determines at any time that a Klamath River dam will not be re-
 7 moved, the commission may terminate collection of all or part of the surcharges under this
 8 section and direct the trustee of the appropriate trust account under section 5 of this 2009
 9 Act to refund the amounts in the trust account to the customers from which the amounts
 10 were collected or to otherwise use those amounts for the benefit of those customers.

11 SECTION 5. Recovery of costs of removing Klamath River dams; trust accounts. (1) The
 12 Public Utility Commission shall establish a separate trust account for amounts generated by
 13 each of the two surcharges imposed under section 4 of this 2009 Act. The commission shall
 14 establish the trust accounts as interest-bearing accounts in a depository that is qualified
 15 under ORS 295.001 to 295.108 to receive public funds.

16 (2) Upon request of an agency of the United States, or upon request of the designee of
 17 an agency of the United States, the commission shall require the trustee of the appropriate
 18 trust account established under this section to transfer to the agency or designee the
 19 amounts that are necessary to pay the costs of removing the Klamath River dams.

20 (3) If any amounts remain in a trust account established under this section after the
 21 trustee makes all payments necessary for the costs of removing Klamath River dams, the
 22 commission shall direct the trustee of the account to refund those amounts to the customers
 23 from which the amounts were collected, or to otherwise use the excess amounts for the
 24 benefit of the customers from which the amounts were collected.

25 SECTION 6. Recovery of other costs incurred by affected public utilities. The Public
 26 Utility Commission shall allow an affected public utility to include in its rates and tariffs any
 27 costs that are prudently incurred by an affected public utility from changes in operation of
 28 Klamath River dams before removal of the dams, or that are prudently incurred for re-
 29 placement power after the dams are removed, that are not otherwise recovered under
 30 sections 3 and 4 of this 2009 Act.

31 SECTION 7. Apportionment of costs with California residents. The Public Utility Com-
 32 mission may enter into an agreement with representatives of the State of California to ap-
 33 portion costs fairly between residents of California and residents of this state that are
 34 customers of an affected public utility.

35 SECTION 8. Study by affected public utilities; report by Public Utility Commission. (1)
 36 The Public Utility Commission shall require affected public utilities to submit a study show-
 37 ing the costs, benefits and risks for customers of removing or relicensing the Klamath River
 38 dams, based on assumptions specified by the commission.

39 (2) Upon submission of a study required by this section, the commission shall conduct a
 40 proceeding for the purpose of receiving comments on the study from the commission's staff
 41 and other interested persons.

42 (3) After completion of a proceeding required under subsection (2) of this section, the
 43 commission shall issue a report on the study and the comments received in the proceeding.
 44 On or before December 31, 2010, the commission shall provide the report, and a copy of the
 45 record in the proceeding, to the Governor.

1 (4) The commission may not use any commercially sensitive information provided to the
2 commission in the study required by this section for any purpose other than determining the
3 costs, benefits and risks for retail electric customers of removing or relicensing the Klamath
4 River dams. Notwithstanding ORS 192.410 to 192.505, the commission may not release com-
5 mercially sensitive information provided to the commission in the study required by this
6 section, and shall require any person participating in a proceeding to sign a protective order
7 prepared by the commission before allowing the participant to obtain and use the informa-
8 tion.

9 SECTION 9. The section captions used in this 2009 Act are provided only for the con-
10 venience of the reader and do not become part of the statutory law of this state or express
11 any legislative intent in the enactment of this 2009 Act.

12 SECTION 10. This 2009 Act being necessary for the immediate preservation of the public
13 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
14 on its passage.
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