

Enrolled
Senate Bill 76

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CHAPTER

AN ACT

Relating to Klamath River dams; and declaring an emergency.

Whereas the Klamath Agreement in Principle was signed November 13, 2008, by the states of Oregon and California, by the United States Department of the Interior and by PacifiCorp, and it is anticipated that a final agreement will be entered into by these and other parties; and

Whereas the Klamath Agreement in Principle states that it is the preliminary view of this state and the United States Department of the Interior that the potential benefits of the removal of dams on the Klamath River for fisheries, water and other resources outweigh the potential costs of that removal; and

Whereas it is anticipated that, subject to final analysis and confirmation by the Secretary of the Interior and review by the states of Oregon and California, the Klamath Agreement in Principle and the final agreement will together set forth a framework for action based on the preliminary view that removal of dams on the Klamath River is in the public interest; and

Whereas to facilitate the removal of the Klamath River dams, the Public Utility Commission must set rates that allow PacifiCorp to recover Oregon's fair share of PacifiCorp's undepreciated investment in the dams, to recover the funds necessary to pay additional costs that PacifiCorp may incur from changes in operation of the dams prior to removal and to pay for replacement resources following removal; and

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

Whereas the public interest requires that the Public Utility Commission hold a hearing to determine whether the imposition of surcharges under the terms of the final agreement results in rates that are fair, just and reasonable; now, therefore,

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

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

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

(1) "Agreement in principle" means the agreement signed November 13, 2008, by the states of Oregon and California, by the United States Department of the Interior and by PacifiCorp.

(2) "Allocated share" means the portion of PacifiCorp's costs assigned to this state under the interjurisdictional cost allocation methodology used by the Public Utility Commission for the purpose of establishing rates for PacifiCorp.

- (3) "Customers" means the Oregon retail electricity customers of PacifiCorp.
- (4) "Final agreement" means a successor agreement to the agreement in principle.
- (5) "Klamath River dam" means the J.C. Boyle Dam located in Oregon, the Copco 1 Dam located in California, the Copco 2 Dam located in California or the Iron Gate Dam located in California.

SECTION 3. Recovery of investment in Klamath River dams. (1) Not more than six months after the execution of a final agreement, the Public Utility Commission shall determine a depreciation schedule under ORS 757.140 for each Klamath River dam based on the assumption that the dam will be removed in 2020. The commission may change a depreciation schedule determined under this section at any time if removal of a dam will occur during a year other than 2020.

(2) The commission shall use the depreciation schedules prepared under this section to establish rates and tariffs for the recovery of Oregon's allocated share of undepreciated amounts prudently invested by PacifiCorp in a Klamath River dam. Amounts recoverable under this section include, but are not limited to:

- (a) Return of investment and return on investment;
- (b) Capital improvements required by the United States or any state for continued operation of the dam until dam removal;
- (c) Amounts spent by PacifiCorp in seeking relicensing of the dam before the effective date of this 2009 Act;
- (d) Amounts spent by PacifiCorp for settlement of the issues of relicensing or removal of the dam; and
- (e) Amounts spent by PacifiCorp for the decommissioning of the dam in anticipation of the dam's removal.

(3) If any amount specified under subsection (2) of this section has not been recovered by PacifiCorp before a dam is removed, the Public Utility Commission shall allow recovery of that amount by PacifiCorp in PacifiCorp's rates and tariffs. The commission shall allow the recovery without an amortization schedule if the impact of the recovery does not exceed one-half of one percent of PacifiCorp's annual revenue requirement. If the impact exceeds one-half of one percent of PacifiCorp's annual revenue requirement, the commission may establish an amortization schedule that limits the annual impact to one-half of one percent of PacifiCorp's annual revenue requirement.

SECTION 4. Surcharges for funding costs of removing Klamath River dams. (1) Not more than 30 days after the execution of a final agreement, PacifiCorp must file a copy of the final agreement with the Public Utility Commission along with full and complete copies of all analyses or studies that relate to the rate-related costs, benefits and risks for customers of removing or relicensing Klamath River dams and that were reviewed by PacifiCorp during the decision-making process that led to PacifiCorp's entering into the final agreement.

(2) PacifiCorp must include with the filing made under subsection (1) of this section tariffs for the collection of two nonbypassable surcharges from its customers for the purpose of paying the costs of removing Klamath River dams as described in subsection (1) of this section. Notwithstanding the commission's findings and conclusions under subsection (4) of this section, the commission shall require PacifiCorp to begin collecting the surcharges on the date that the filing is made under subsection (1) of this section, or on January 1, 2010, whichever is later, and PacifiCorp shall continue to collect the surcharges pending a final decision on the commission's order under subsection (4) of this section. The surcharges imposed under this section shall be:

- (a) A surcharge for the costs of removing the J.C. Boyle Dam; and
- (b) A surcharge for the costs of removing the Copco 1 Dam, the Copco 2 Dam and the Iron Gate Dam.

(3) The surcharges imposed under this section may not exceed the amounts necessary to fund Oregon's share of the customer contribution of \$200 million identified in the agree-

ment in principle. In addition, the total amount collected in a calendar year under both surcharges may not exceed more than two percent of PacifiCorp's annual revenue requirement as determined in PacifiCorp's last case under ORS 757.210 decided by the commission before January 1, 2010.

(4) Not more than six months after a filing is made under subsection (1) of this section, the commission shall conduct a hearing under ORS 757.210 on the surcharges imposed under this section, and shall enter an order setting forth findings and conclusions as to whether the imposition of surcharges under the terms of the final agreement results in rates that are fair, just and reasonable.

(5) Notwithstanding ORS 183.482 (1), jurisdiction for judicial review of any appeal of an order entered under subsection (4) of this section is conferred on the Supreme Court, and a person seeking judicial review of the order must file a petition for review with the Supreme Court in the manner provided by ORS 183.482. ORS 183.482 (3) does not apply to an order entered under subsection (4) of this section. If a petition for review is filed, the surcharges imposed under the terms of the final agreement shall remain in effect pending a final decision on the petition, but shall be refunded if the rates resulting from the surcharges are finally determined not to be fair, just and reasonable. A petition filed under this subsection must indicate on its face that the petition is filed pursuant to this subsection.

(6) The commission may not use any commercially sensitive information provided to the commission in a filing made under subsection (1) of this section for any purpose other than determining whether the imposition of surcharges under the terms of the final agreement results in rates that are fair, just and reasonable. Notwithstanding ORS 192.410 to 192.505, the commission may not release commercially sensitive information provided to the commission under this section, and shall require any person participating in a proceeding relating to the surcharge to sign a protective order prepared by the commission before allowing the participant to obtain and use the information.

(7) The surcharges imposed under this section must be of a specified amount per kilowatt hour billed to retail customers, as determined by the commission. The amount of each surcharge shall be calculated based on a collection schedule that will fund, by December 31, 2019, Oregon's share of the customer contribution of \$200 million identified in the agreement in principle. To the extent practicable, the commission shall set the surcharges so that total annual collections of the surcharges remain approximately the same during the collection period. The commission may change the collection schedule if a Klamath River dam will be removed during a year other than 2020.

(8) Except as provided in section 5 (2) of this 2009 Act, all amounts collected under the surcharges imposed under this section shall be paid into the appropriate trust account established under section 5 of this 2009 Act.

(9) If the commission determines at any time that amounts have been collected under this section in excess of those needed, or in excess of those allowed, the commission must:

(a) Direct the trustee of the appropriate trust account under section 5 of this 2009 Act to refund these excess amounts to customers or to otherwise use these amounts for the benefit of customers; or

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

(10) If one or more Klamath River dams will not be removed, the commission shall direct PacifiCorp to terminate collection of all or part of the surcharges imposed under this section. In addition, the commission shall direct the trustee of the appropriate trust account under section 5 of this 2009 Act to apply any excess balances in the accounts to Oregon's allocated share of prudently incurred costs to implement Federal Energy Regulatory Commission relicensing requirements. If any excess amounts remain in the trust accounts after that application, the Public Utility Commission shall order that the excess amounts be refunded to customers or otherwise be used for the benefit of customers in accordance with Public Utility Commission rules and policies.

(11) For the purposes of subsection (2) of this section, “the costs of removing Klamath River dams” includes costs of:

- (a) Physical removal of the dams;
- (b) Site remediation and restoration;
- (c) Avoiding downstream impacts of dam removal;
- (d) Downstream impacts of dam removal;
- (e) Permits that are required for the removal;
- (f) Removal and disposal of sediment, debris and other materials, if necessary; and
- (g) Compliance with environmental laws.

SECTION 5. Surcharge trust accounts. (1) The Public Utility Commission shall establish a separate trust account for amounts generated by each of the two surcharges imposed under section 4 of this 2009 Act. The commission shall establish the trust accounts as interest-bearing accounts with an agency of the United States identified in the final agreement, or in a depository that is qualified under ORS 295.001 to 295.108 to receive public funds. The commission may authorize transfer of funds from one trust account to another as necessary to fund removal of the Klamath River dams.

(2) If an agreement is entered into under section 7 (2) of this 2009 Act, the parties to the agreement may agree that a portion of the amounts collected under one surcharge may be deposited in the trust account established for amounts collected under the other surcharge.

(3) Upon request of an agency of the United States, or upon request of the designee of an agency of the United States, the commission shall require the trustee of the appropriate trust account established under this section to transfer to the agency or designee the amounts that are necessary to pay the costs of removing the Klamath River dams as described in section 4 (11) of this 2009 Act.

(4) If any amounts remain in a trust account established under this section after the trustee makes all payments necessary for the costs of removing the Klamath River dams as described in section 4 (11) of this 2009 Act, the commission shall direct the trustee of the account to refund those amounts to customers or to otherwise use the excess amounts for the benefit of customers.

SECTION 6. Recovery of other costs incurred by PacifiCorp. Pursuant to ORS 757.210, the Public Utility Commission shall allow PacifiCorp to include in its rates and tariffs this state’s allocated share of any costs that are prudently incurred by PacifiCorp from changes in operation of Klamath River dams before removal of the dams, or that are prudently incurred for replacement power after the dams are removed, that are not otherwise recovered under sections 3 and 4 of this 2009 Act.

SECTION 7. Agreement to apportion costs and to establish and administer trust fund. (1) The State of Oregon may enter into an agreement with representatives of the State of California, either as part of a final agreement or by separate agreement, that establishes each state’s share of the customer contribution of \$200 million identified in the agreement in principle.

(2) The Public Utility Commission may enter into an agreement with representatives of the State of California to establish and administer the trust accounts authorized under section 5 of this 2009 Act and to ensure that trust account moneys are disbursed for dam removal costs that are necessary and appropriate.

SECTION 8. Disclaimers. (1) Sections 2 to 8 of this 2009 Act do not authorize the expenditure of any public moneys for removal of Klamath River dams.

(2) Sections 2 to 8 of this 2009 Act do not create a cause of action against the State of Oregon or against any of the officers, employees or agents of the state and may not be used as the basis for an assertion of liability on the part of the State of Oregon or of any officers, employees or agents of the state.

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

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

Passed by Senate February 17, 2009

Repassed by Senate June 22, 2009

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Secretary of Senate

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President of Senate

Passed by House June 12, 2009

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Speaker of House

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

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Secretary of State