ROCKY MOUNTAIN POWER
A DIVISION OF PACIFICORP

1407 W. North Temple, Suite 330
Salt Lake City, Utah 84116

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IDAHO PUBLIC
UTILITIES COMMISSION

January 14, 2021

VIA ELECTRONIC DELIVERY

Jan Noriyuki
Commission Secretary
Idaho Public Utilities Commission
11331 W. Chinden Blvd
Building 8 Suite 201A
Boise, ID 83714

PAC-E-21-01

Re: IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER FOR APPROVAL OF THE TRANSFER OF THE LOWER KLAMATH HYDROELECTRIC PROJECT GENERATING FACILITIES

Dear Ms. Noriyuki:

Please find for filing Rocky Mountain Power's application along with supporting testimony and exhibits of Mr. Timothy J. Hemstreet in the above-referenced matter.

Informal inquiries may be directed to Ted Weston, Idaho Regulatory Manager at (801) 220-2963.

Very truly yours,

Joelle Steward

Joelle R. Steward
Vice President of Regulation

Enclosures

Adam Lowney (ISB#10456)
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Attorney for Rocky Mountain Power

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER FOR APPROVAL OF THE TRANSFER OF THE LOWER KLAMATH HYDROELECTRIC PROJECT GENERATING FACILITIES	))))))))	**CASE NO. PAC-E-21-01** **APPLICATION**

APPLICATION OF ROCKY MOUNTAIN POWER FOR APPROVAL OF THE TRANSFER OF THE LOWER KLAMATH HYDROELECTRIC PROJECT GENERATING FACILITIES

Comes now PacifiCorp, d/b/a Rocky Mountain Power ("Rocky Mountain Power" or "Company") pursuant to I.C. § 61-328 hereby submits this application to the Idaho Public Utilities Commission ("Commission"). Rocky Mountain Power respectfully requests an order approving the Property Transfer Agreement ("Transfer Agreement") between the Company and the Klamath River Renewal Corporation ("Renewal Corporation") with a determination that the property disposition is in the public interest. The Transfer Agreement provides for transfer from the Company to the Renewal Corporation of four hydroelectric dams, J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate (collectively, the "Lower Klamath Project"), as well as approximately 8,000 acres of real and personal property associated with the dams. The Company requests approval of this application within six months, on or before July 15, 2021.

The transfer of the Lower Klamath Project to the Renewal Corporation is in the public interest because it is lower cost and lower risk than relicensing the dams. Accordingly, the transfer will not adversely impact the Company's ability to provide service to Idaho customers or increase the Company's rates. The Company's quantitative and qualitative analysis demonstrates that the transfer of the Lower Klamath Project, under the terms of the Klamath Hydroelectric Settlement Agreement ("KHSA"), is lower cost than relicensing the dams based on the Company's assessment of the likely mitigation requirements that would have been imposed had the Company pursued relicensing. Moreover, the KHSA provides critical protections designed to shield customers from the potential for escalating costs and liabilities associated with dam removal. Taken together, the framework for transfer of the Lower Klamath Project set forth in the KHSA is in the public interest and should be approved.

In support of this Application, Rocky Mountain Power states as follows:

I. NAME AND ADDRESS OF THE APPLICANT

1. Rocky Mountain Power, a division of PacifiCorp, an Oregon Corporation, whose address is 1407 West North Temple, Suite 320 Salt Lake City, Utah 84116, is authorized to do and is doing business in the state of Idaho. The Company provides retail electric service to approximately 84,000 customers in the state and is subject to the jurisdiction of the Commission. The Company's retail certificated service territory encompasses portions of Fremont, Madison, Teton, Clark, Jefferson, Lemhi, Oneida, Bannock, Franklin, Caribou, Butte, Bingham, Bear Lake and Bonneville counties. Rocky Mountain Power is a public utility in the state pursuant to Idaho Code § 61-129.

2. Formal correspondence and requests for additional information regarding this matter should be addressed to:

By email (preferred): datarequest@pacificorp.com

By regular mail:

Data Request Response Center
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, Oregon 97232

With copies to:

Ted Weston
Idaho Regulatory Affairs Manager
1407 W. North Temple, Suite 330
Salt Lake City, Utah 84116
Telephone: (801) 220-2963
Fax: (801) 220-2798
Email: ted.weston@pacificorp.com

John Hutchings
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Rocky Mountain Power
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Salt Lake City, Utah 84116
Email: john.hutchings@pacificorp.com

Informal inquiries related to this Application should be directed to Ted Weston, Idaho Regulatory Affairs Manager, at (801) 220-2963.

II. SUPPORTING TESTIMONY

3. Rocky Mountain Power's filing consists of an Application for approval of the transfer of the Lower Klamath Project, which is supported by pre-filed written direct testimony and exhibits from Mr. Timothy J. Hemstreet describing the Lower Klamath Project and explaining why the disposition of the dams is in the public interest.

III. BACKGROUND

4. The Klamath Hydroelectric Project, located primarily on the Klamath River in Klamath County, Oregon and Siskiyou County, California, includes seven hydroelectric

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III. BACKGROUND

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developments—East Side, West Side, Fall Creek, J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate—and one non-generating development, Keno ("Larger Klamath Project"). The Federal Energy Regulatory Commission ("FERC") originally licensed the Larger Klamath Project in 1954 as license P-2082.[1] This original license expired in 2006. Since that time, the Company has operated the project under annual licenses.[2]

A. The KHSA

5. In 2004, the Company filed an application with FERC to relicense the Larger Klamath Hydroelectric Project.[3] In 2007, FERC Staff issued a final Environmental Impact Statement ("EIS") for the relicensing application, which ultimately recommended relicensing with mandatory conditions to provide for fish passage improvements at the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments.[4] The Company determined that these protection, mitigation, and enhancement ("PM&E") measures would reduce power generation for the Lower Klamath Hydroelectric Project and increase the costs of a new license.

6. Concurrent with the relicensing process, the Company engaged in relicensing settlement talks with a wide range of parties to address the complex resource management issues in Oregon and California raised in the relicensing process. After many years of settlement negotiations, on February 18, 2010, the KHSA was executed by 48 parties, including the Company; the states of Oregon and California (collectively, the "States"); the U.S. Department of the Interior ("Interior"); the U.S. Department of Commerce's National Marine Fisheries Service ("NMFS");

[1] *In the Matters of the California Oregon Power Co.*, 13 F.P.C. 1 (Jan. 28, 1954). On June 16, 1961, the license was transferred to Pacific Power and Light Company, *The California Oregon Power Co. and Pacific Power & Light Co.*,25 F.P.C. 1154 (June 16, 1961), and then to PacifiCorp on November 23, 1988. *PacifiCorp, d.b.a. Pacific Power and Light Co. & PC/UP&L Merging Corp.*, 45 FERC ¶ 62,146 (Nov. 23, 1988).
[2] *Order Approving Partial Transfer of License, Lifting Stay of Order Amending License, and Denying Motion for Clarification and Motion to Dismiss*, 172 FERC ¶ 61,062, at ¶ 2 (July 16, 2020); *see also* 16 U.S.C. § 808(a)(1).
[3] 172 FERC 61,062 at ¶ 3.
[4] *Id.* at ¶ 3.

several Native American tribes; and irrigation, conservation, and fishing groups.

7. The KHSA provides a framework to decommission and remove the four mainstem hydroelectric developments comprising the Lower Klamath Project—J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate—and sets forth requirements related to their operation until removal.[5] To facilitate dam removal, the KHSA requires the Company to transfer the Lower Klamath Project developments to a Dam Removal Entity ("DRE") once each facility is decommissioned[6] and ready for removal.[7] Initially, this transfer was contingent on several conditions, including Congressional approval and authorization of the KHSA and a companion settlement agreement, the Klamath Basin Restoration Agreement (that addressed broader Klamath Basin resource issues) and a scientific assessment by the Secretary of Interior confirming that dam removal is in the public interest.[8] The KHSA also conditioned removal upon federal legislation to authorize implementation of the KHSA and provide liability protection for the Company and its customers.

8. The KHSA provides $450 million in public funds to cover the costs of dam removal.[9] The Company would collect $200 million from Oregon and California customers through dam removal surcharges,[10] and California bond funding would supply the remaining $250 million.[11]

9. The Company relied on four core principles when negotiating the KHSA: (1) protect customers from uncertain costs of removal of the Klamath dams; (2) transfer the dams to

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[5] KHSA § 1.2.

[6] Under the KHSA, "decommissioning" means "PacifiCorp's physical removal from a facility of any equipment and personal property that PacifiCorp determines has salvage value, and physical disconnection of the facility from PacifiCorp's transmission grid." The term does not refer to dam removal activities. *See* KHSA Definitions section.

[7] KHSA § 7.4.2.

[8] *See* KHSA § 7.4.1.

[9] *Id.*

[10] KHSA § 4.1.1.

[11] KHSA § 4.1.2. In 2014, California voters passed Proposition 1, a water bond that included $250 million for implementation of the KHSA.

a third party for removal; (3) protect customers from liabilities of dam removal; and (4) ensure that customers continue to benefit from the low-cost power of the dams until the dams are removed. The KHSA addressed these principles in several ways. First, the $200 million cap on customer contributions protected customers from any uncertain costs associated with dam removal. Second, the KHSA reduced risk by transferring ownership of the Lower Klamath Project dams to a DRE that would be solely responsible for designing and conducting dam removal. Third, the passage of federal legislation enacting the KHSA would provide liability protection to further reduce risk once the Company transferred ownership of the properties to the DRE. Finally, the Company committed to operating the dams until at least 2020, allowing customers to benefit from low-cost power from the facilities while dam removal surcharges were collected.

10. At the time the Company entered the KHSA in 2010, the Company estimated the cost of relicensing the dams and implementing the required PM&E measures would be at least $400 million in capital, and $60 million in operations and maintenance ("O&M") costs over a 40-year license term. These projected costs were conservative, and it was understood they could go much higher considering the risks of escalating PM&E costs, litigation, and the risk that the project could not successfully be relicensed (thereby potentially exposing customers to the costs and risks of dam removal).

11. Conversely, under the KHSA, the Company's costs for dam removal would be capped at $200 million with an additional amount (approximately $70 million) in O&M costs to manage hatchery operations, monitor and improve water quality, and enhance the aquatic habitat for threatened species until decommissioning. The Company's Present Value Revenue Requirement ("PVRR") analysis of the alternatives showed that dam removal under the KHSA was more beneficial to customers than the uncapped and unknown costs and risks of relicensing.

12. Both the Public Utility Commission of Oregon ("OPUC") and the California Public Utilities Commission ("CPUC") approved the surcharges contemplated by the KHSA, allowing the full $200 million contribution towards dam removal to be collected from customers in those states.[12] Since the OPUC and CPUC authorized the dam removal surcharges in 2010, the Company has collected surcharge funds and deposited these funds into four separate interest-bearing accounts, two for each state, each managed by a trustee appointed by either the CPUC or the OPUC.[13]

13. The Company has now collected the authorized surcharges in both states. As of December 31, 2020, the four trust accounts contain a total of $106,629,265 reflecting total customer surcharge collections of $187,840,579 net earnings of $15,772,649 and disbursements to the Renewal Corporation of $96,983,963 which funded engineering and planning related to dam removal.

14. Consistent with the terms of the KHSA, which provided that dam removal costs would be collected from California and Oregon customers, the Company has not requested dam removal costs from Idaho customers.

B. The KHSA Amendments.

15. Implementation of the KHSA was delayed because Congress did not pass the necessary legislation by December 2015, which triggered a potential termination of the settlement. Consequently, in January 2016, the KHSA's dispute resolution procedures were triggered,

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[12] *In the Matter of PacifiCorp, dba Pacific Power, Application to Implement the Provisions of Senate Bill 76*, Docket UE 219, Order No. 10-364 (Sept. 16, 2010), corrected by Errata Order No. 10-390 (Oct. 11, 2010); *In the Matter of the Application of PacifiCorp (U901E), an Oregon Company, for an Order Authorizing a Rate Increase Effective January 1, 2011 and Granting Conditional Authorization to Transfer Assets, pursuant to the Klamath Hydroelectric Settlement Agreement*, CPUC Application 10-03-015, *Decision Approving a Rate Increase for PacifiCorp Pursuant to the Klamath Hydroelectric Settlement Agreement*, Decision 11-05-002 (Mar. 5, 2011).
[13] *See* KHSA §§ 4.2.1 & 4.2.2.

Resulting in proposed limited amendments to the KHSA.[14] The amendments were executed on April 6, 2016, by the principal parties to the KHSA, including the Company, the States, Interior, NMFS, the Yurok Tribe, and the Karuk Tribe.[15]

16. The KHSA, as amended, retained the core customer protections of the original settlement while charting a new procedural course for dam removal. Rather than relying on federal legislation, the amended settlement established a process by which the Company's FERC license for the Lower Klamath Project would be transferred to a newly formed DRE (the Renewal Corporation) for the purpose of license surrender authorizing dam removal. The amended settlement relies upon FERC's existing authority under the Federal Power Act to review and approve such license transfer and surrender. As was the case in the original settlement, the lands associated with the project will be transferred to the respective states once dam removal is complete so the property can be used to benefit the public in other ways such as habitat conservation or recreation.[16]

17. The parties worked diligently to implement the amended settlement. In March 2016, the Renewal Corporation was incorporated for the exclusive purpose of accepting the transfer and conducting the removal of the Lower Klamath Project dams. The Renewal Corporation is a public benefit corporation organized under the laws of California. Consistent with its bylaws, the Renewal Corporation has a fully functioning independent board of directors. The directors have considerable technical, legal, and political experience in water issues,

[14] KHSA § 8.11.3.
[15] Other signatories to the amendments are the California Department of Fish and Wildlife; the California Natural Resources Agency; the Oregon Department of Environmental Quality; the Oregon Department of Fish and Wildlife; the Oregon Water Resources Department; Humboldt County, California; American Rivers; California Trout; the Institute for Fisheries Resources; Northern California Council, Federation of Fly Fishers; Pacific Coast Federation of Fishermen's Association; Trout Unlimited; and Sustainable Northwest.
[16] KHSA § 7.6.4.D.

environmental planning, and the Klamath Basin.[17]

18. On September 23, 2016, and later supplemented, the Company and the Renewal Corporation filed a license amendment and transfer application with FERC to: "(1) amend the Klamath Project license to administratively remove the [Lower Klamath Project] to be decommissioned and place those developments into a new license that would become the Lower Klamath Project; and (2) transfer the license for the Lower Klamath Project from the Company to [the Renewal Corporation]."[18] In a concurrent filing with FERC, the Renewal Corporation applied to surrender the Lower Klamath Project license and remove the four dams.[19]

19. On March 15, 2018, FERC approved the proposed amendment to separate the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments from the existing FERC license and transfer them into a new license created for the Lower Klamath Project under license No. 14803.[20] At the same time, FERC deferred a ruling on the pending request to transfer the license to the Renewal Corporation, and instead solicited additional financial, insurance, and risk management information to inform its assessment of the Renewal Corporation's capacity to become the FERC licensee for the Lower Klamath Project.[21]

C. FERC's July 2020 Order

20. Following the filing of the 2016 Application and FERC's March 2018 Order, the Renewal Corporation—with the assistance of the Company and the States—developed and provided significant information to FERC regarding the legal, technical, and financial capacity of the Renewal Corporation to accept the new license and to decommission and remove the facilities.

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[17] *See* Renewal Corporation Bylaws § 3.1.

[18] *Approving Partial Transfer of License, Lifting Stay of Order Amending License, and Denying Motion for Clarification and Motion to Dismiss*, 172 FERC ¶ 61,062, at ¶ 6 (July 16, 2020). The other four developments—East Side, West Side, Keno, and Fall Creek—are still under license P- 2082.

[19] *Id.*

[20] *Id.* at ¶ 9.

[21] *Id.*

21. Based on the information provided to FERC regarding the Renewal Corporation's capacity, on July 16, 2020, FERC approved a partial transfer of the Lower Klamath Project license from the Company to the Renewal Corporation (the "July 2020 Order").[22] FERC determined that it was "generally satisfied that the Renewal Corporation has the capacity to carry out its proposed decommissioning . . . ."[23] But rather than approving a full transfer of the license, FERC determined that, "the public interest would be best served by approving a partial transfer of the license and requiring PacifiCorp to remain on as co-licensee."[24] FERC observed that by remaining a co-licensee, the Company "not only can provide legal and technical expertise, as the parties envisioned, but can also provide further assurance that there will be sufficient funding to carry out decommissioning, should we approve the surrender application."[25]

22. FERC acknowledged that its conclusion to authorize only a partial transfer of the Lower Klamath Project license "represents a significant change from what the parties envisioned" since the KHSA required a full transfer of the license to the Renewal Corporation for purposes of dam removal.[26] FERC also recognized that the parties to the KHSA "may elect to amend their arrangement" to provide resources "sufficient to cover the costs of decommissioning."[27]

D. The November 2020 Memorandum of Agreement

23. Because PacifiCorp concluded that the July 2020 Order conflicted with the KHSA by not allowing the Company to be fully discharged from the license, the KHSA's dispute resolution mechanisms were, once again, triggered.[28] The Company engaged with parties to

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[22] *Order Approving Partial Transfer of License, Lifting Stays of Order Amending License, and Denying Motion for Clarification and Motion to Dismiss*, 172 FERC ¶ 61,062 (July 16, 2020).
[23] *Id.* at ¶ 71.
[24] *Id.*
[25] *Id.*
[26] *Id.* at 46.
[27] *Id.*
[28] KHSA § 8.11.

determine how to resolve the conflicts between the KHSA and the July 2020 Order. On November 17, 2020, the Company, the States, the Renewal Corporation, the Karuk Tribe, and the Yurok Tribe entered into a Memorandum of Agreement ("MOA") to implement the KHSA while satisfying FERC's public interest considerations as stated in the July 2020 Order.[29] Under the MOA, PacifiCorp will be removed from the license and the States, along with the Renewal Corporation, will become co-licensees for the purpose of license surrender authorizing removal of the Lower Klamath Project dams.[30]

24. To ensure commencement of the dam removal process, the MOA required that the Company and the Renewal Corporation file an amended license surrender application ("ALSA") with FERC to begin the environmental review process.[31] The ALSA, which was filed on November 17, 2020, updates the Renewal Corporation's 2016 surrender application with a detailed design for achieving a free-flowing river, volitional fish passage, site remediation, and restoration.[32] The ALSA also asks FERC to commence a technical review of the dam removal proposal, including evaluations under the National Environmental Policy Act, the Endangered Species Act, and other federal resource laws. On December 16, 2020, FERC provided general notice of the ALSA and invited protests, comments, and interventions.[33]

25. Pursuant to the MOA, a new license transfer application was filed on January 13, 2021.[34] The license transfer application notified FERC that the Company and the Renewal

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[29] MOA at 1.
[30] *Id.* at 3.
[31] *Id.* at 2.
[32] Amended Application for Surrender of License for Major Project and Removal of Project and Removal of Project Works, Dockets P-14803-001, P-2082-063 (Nov. 17, 2020) at http://www.klamathrenewal.org/wp-content/uploads/2020/11/Klamath-Amended-Surrender-Application-2020-11-17.pdf.
[33] FERC, Notice of Application for Surrender of License, Soliciting Comments, Motions to Intervene, and Protests, Dockets P-14803-001, P-2082-063 (Dec. 16, 2020).
[34] Joint Application for Approval of License Transfer and Request for Expedited Review and Other Relief, Docket P-14803 (Jan. 13, 2021).

Corporation are not accepting the July 2020 Order that included the Company as a co-licensee but instead seek an order to remove PacifiCorp from the Lower Klamath Project license and approve a transfer of the license to the Renewal Corporation and the States as co-licensees, in connection with FERC's issuing a license surrender order consistent with the MOA section 3(c).

26. By removing PacifiCorp and adding the States as co-licensees with the Renewal Corporation, the MOA is intended to address the public interest concerns that caused FERC, in the July 2020 Order, to approve only a partial license transfer. Specifically, the role of the States as co-licensees together with contingency funding pledges in the MOA are intended to provide FERC the assurances it requires to approve a license transfer.

27. Once the new license transfer application is approved by FERC, the MOA requires that within 30 days of issuance of a final license surrender order by FERC, the States and the Renewal Corporation will accept the license transfer order making the Renewal Corporation and States co-licensees for the Lower Klamath Project. This must occur unless the States and PacifiCorp, in consultation with Karuk and Yurok Tribes, mutually agree to reject the license surrender order on the basis that the terms of the order, including terms of any federal agency consultation concerning the order, are significantly outside the norm for FERC orders involving major project construction or deconstruction in a manner that creates significant financial risk to the States or PacifiCorp.[35] This approach maintains the KHSA's foundational license transfer structure (which provides significant liability protection benefits for PacifiCorp) while addressing FERC's concerns regarding adequate assurances that the project is supported by appropriate entities and commitments.

28. Under the MOA and the KHSA, and consistent with the concept that the FERC

[35] MOA at 3.

license is inextricably tied to physical assets, the Company will transfer its property interests in the Lower Klamath Project to the Renewal Corporation once all anticipated FERC Orders and State disposition approvals are secured.[36]

29. The Company and the Renewal Corporation have negotiated a Transfer Agreement to effectuate the property transfer provisions of the KHSA as implemented by the MOA. Under the MOA, PacifiCorp agreed to file applications before this Commission and other public utility commissions to approve the Transfer Agreement. This application is in fulfillment of that obligation.[37]

30. PacifiCorp also agreed concurrently to file a license transfer application at FERC, consistent with the MOA. This alignment in regulatory reviews is necessary to implement the KHSA, and specifically the requirement that the Renewal Corporation and the States accept license transfer before commencing dam removal. The Company is seeking state approvals of the Transfer Agreement, so that property transfer to the Renewal Corporation is ready to occur when the Renewal Corporation and States accept license transfer. Under the Federal Power Act, an applicant for license transfer must show that it holds fee title to the properties subject to the license, as a precondition for the license transfer to be effective.[38]

31. The MOA includes a schedule in Exhibit A designed to ensure that all necessary regulatory approvals are obtained expeditiously. This is critical because the Renewal Corporation has determined that the costs will increase if dam removal is delayed.[39] For this reason, PacifiCorp is seeking approval of this application within six months.

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[36] *Id.* at 4.
[37] *Id.*
[38] 18 C.F.R. § 9.3(a).
[39] ALSA Exhibit D-1, Section 2.6 (estimating annual cost escalation of 4 percent) at http://www.klamathrenewal.org/wp-content/uploads/2020/11/Klamath-ALSA-Exhibit-D.pdf

32. The Renewal Corporation's current budget shows that, with a high degree of certainty, dam removal can be completed within the funds available under the KHSA. The Renewal Corporation has negotiated guaranteed maximum price contracts with experienced, best-in-class firms (Kiewit Infrastructure West and Resource Environmental Solutions, Inc.) for all dam removal and restoration work. Those contracts are based on detailed project designs and are backed by parent company guarantees. The Renewal Corporation has also developed a comprehensive risk mitigation program, including insurance, broad indemnifications, and liability transfer mechanisms. The Renewal Corporation's current budget also includes a $35.1 million contingency fund supported by a comprehensive risk register. That reserve, combined with an additional $15 million built into the guaranteed maximum price contracts, provide combined contingency coverage over $50 million.[40]

33. An independent Board of Consultants ("BOC"), convened at FERC's direction, has reviewed the Renewal Corporation's budget, guaranteed maximum price contracts for dam removal and restoration, and insurance/risk mitigation program. The BOC found that the Renewal Corporation's cost estimate for the Project "meets or exceeds" cost estimation standards applicable to the hydropower industry.[41] The Board of Consultants also determined that the "[c]osts and contingencies appear to be reasonable and have a high likelihood of being adequate given the PDB [progressive-design-build] contracting model, the choice of a proven, competent contractor and proposed Risk Management Plan."[42] And in the July 2020 Order, FERC found that the BOC had "thoroughly examined … concerns [about the Renewal Corporation's capacity] and found the

[40] ALSA Exhibit D, pg. D-2 at http://www.klamathrenewal.org/wp-content/uploads/2020/11/Klamath-ALSA-Exhibit-D.pdf
[41] *Letter Report: Board of Consultants Mtg. No. 1* at 3-4 (December 12, 2018), https://elibrary.ferc.gov/eLibrary/filelist?document_id=14728045&accessionnumber=20181212-5147.
[42] *Letter Report: Supplement to Board of Consultants Mtg. No. 1* at 5 (July 29, 2019), available as Attachment A at: https://elibrary.ferc.gov/eLibrary/filelist?document_id=14788704&accessionnumber=20190729-5039

Renewal Corporation's financing, insurance, and contingencies to be appropriate for what it proposes to do."[43] FERC concluded that it was "generally satisfied that the Renewal Corporation has the capacity to carry out its proposed decommissioning,"[44] including financial capacity based on the $450 million of funds committed under the KHSA.

34. Nevertheless, to satisfy FERC's expressed desire for additional "assurances" and provide a clear and definitive commitment of resources that will ensure the successful completion of dam removal, the MOA provides additional financial commitments if dam removal costs exceed the KHSA cost cap.[45] Under the MOA, PacifiCorp and the States each pledge an additional, fixed amount of $15 million to a $45 million contingency fund, to be utilized only in the unlikely event the $450 million available to the Renewal Corporation needs to be augmented to ensure completion of dam removal.[46] Should cost overruns deplete the fixed contingency fund, then such unlikely costs shall be shared equally by the Company and the States.[47]

35. The Company is not seeking authorization for any accounting treatment or cost recovery associated with any potential contingency funding contemplated by the MOA at this time. In the unlikely event that contingency funding is necessary, the Company will consider whether and how to make any necessary request before the Commission. In addition, any remaining plant balance at the time of the transfer will be moved to a regulatory asset and will continue depreciating over the current life prior to the next general rate case. The recovery period for the remaining balance, if any, will be determined at the time of the next general rate case.

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[43] July 2020, 172 FERC ¶ 61,062 Order at ¶ 71.
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*

E. The Transfer Agreement

36. The Transfer Agreement governs the conveyance of the Lower Klamath Project to the Renewal Corporation so that dam removal may begin. The Transfer Agreement provides for PacifiCorp's reservation of easements for all transmission, distribution, service, substation, and communications assets required to preserve the safe and reliable function of the utility system after the land upon which the assets are located is transferred to the Renewal Corporation. The Transmission Facility Easement Area is designed to aid vegetation management and fire prevention by establishing a 100-foot buffer from Company facilities including conductors. The Company may also remove trees outside the 100-foot buffer if those trees present a threat of contact with Company facilities. The reservation of easement interests includes access rights and other rights necessary for the Company to protect and manage its reserved facilities and easement areas in perpetuity.

37. The Transfer Agreement also anticipates the grant of a Fall Creek Hatchery leasehold interest. The approximately four acres of land subject to the Fall Creek lease are currently occupied by a non-functional hatchery originally established with the development of the Copco No. 1 dam that will be rehabilitated by the Renewal Corporation and the State of California in satisfaction of section 7.6.6 of the KHSA. Other, immaterial grants are anticipated in the Transfer Agreement including temporary construction easements over certain lands not conveyed to the Renewal Corporation. Surveys and potential modifications to easements are anticipated to accommodate dam removal activity but such modifications are limited to those that pose no material threat to the reliability of the transmission facilities.[48]

[48] Section 11.3 of Transfer Agreement.

38. The Transfer Agreement contains a set of conditions precedent to closing in Sections 4.2 (Renewal Corporation's) and 4.3 (PacifiCorp's) including that: a FERC Surrender Order has issued and has not been rejected; a FERC License Transfer Order has issued; all required state utility commission property transfer approvals are obtained; and that other permitting and financial matters are completed such that the Renewal Corporation is ready to take title to the facilities and associated lands and implement dam removal.

39. PacifiCorp also agreed to address specified environmental conditions that currently exist on lands that will be conveyed to the Renewal Corporation, and for which PacifiCorp already has responsibility for addressing based on its status as the property owner. These pre-existing site conditions were identified during environmental site assessments conducted by the Renewal Corporation as part of its site due diligence. The Renewal Corporation's contractors estimate that the cost of mitigating the pre-existing environmental conditions ranges from $4.2 million (low) to $31.5 million (high). The risk associated with this obligation is mitigated partly by the establishment of a finite list of pre-existing environmental conditions identified on Exhibit C to the Transfer Agreement. This obligation is further mitigated by a "reasonable satisfaction" standard as reflected in Section 3.5 of the Transfer Agreement and in Exhibit F to the Transfer Agreement – the Form of Post-Closing Environmental Resolution Agreement.

40. The Transfer Agreement contains a number of other provisions that are typical to land transfer transitions or that anticipate the continued technical coordination between the Company and the Renewal Corporation.

IV. LEGAL STANDARD

41. Idaho Code § 61-328(1) requires the Company to obtain Commission approval before transferring property used in the generation of electric power to the public. As relevant here,

in order to approve a property transfer, I.C. § 61-328(3) requires that the Commission determine: "(a) That the transaction is consistent with the public interest; [and] (b) That the cost of and rates for supplying service will not be increased by reason of such transaction[.]"[49] Here, transferring the Lower Klamath Project pursuant to the KHSA is lower cost and lower risk than pursuing a new FERC license or simply surrendering the license and removing the facilities without the customer protection benefits of the KHSA. Therefore, the property transfer will not increase rates and is in the public interest.

A. The KHSA advances the public interest and does not harm customers.

42. Relicensing the Lower Klamath Project or surrendering the license and removing the dams would have exposed the Company and customers to substantial costs, risks, and liabilities. To mitigate these risks and limit customers' exposure to uncertain and potentially escalating costs, the Company instead pursued a settlement that ultimately resulted in the execution of the KHSA in 2010. The KHSA provides a framework for removal of the Lower Klamath Project, while providing robust customer protections.

43. The KHSA benefits customers by providing a more certain and less risky path forward. As discussed above, when negotiating the KHSA, the Company sought to ensure that the settlement: (1) protected customers from uncertain costs of dam removal; (2) transferred dams to a third party for removal; (3) protected customers from liabilities of dam removal; and (4) ensured that customers continue to benefit from the low-cost power of the dams until the dams are removed. The KHSA achieves each of these objectives.

44. Before executing the KHSA in 2010, the Company undertook a comprehensive

[49] I.C. § 61-328(3)(c) also requires a finding, "That the applicant for such acquisition or transfer has the bona fide intent and financial ability to operate and maintain said property in the public service." This provision is not directly relevant here because the Company is not acquiring the property and the Renewal Corporation is not acquiring the property for purposes of providing utility service.

economic analysis that examined the relative costs and risks associated with continuing to pursue relicensing or entering into the KHSA and transferring the dams so that they could eventually be removed by the dam removal entity. The costs to customers under the KHSA were compared against a baseline relicensing scenario reflecting the terms and conditions that would be imposed on future project operations, as informed from the extensive relicensing record developed at that time. This analysis ensured that customers would be no worse off under the KHSA as compared to a conservative estimate of relicensing costs. This analysis, combined with the significant risk-reducing elements of the KHSA, ensures that the KHSA is in the public interest.

45. To estimate the costs of relicensing, the Company relied on the costs and data developed as part of the 2007 FERC EIS, which represented the best estimate of the PM&E measures likely to be required in a new license. The Company also included costs associated with measures potentially necessary to comply with water quality standards and requirements that would be imposed on the project, consistent with then-existing water quality standards and requirements developed by the States.

46. The Company's estimated relicensing costs were in excess of $400 million in capital costs and $60 million in O&M costs over a 40-year license term. The majority of the capital costs would result from implementing aquatic resource PM&E measures, including the fish passage conditions that would be contained in a new FERC Project license. Furthermore, the Company would need to expend additional funds for terrestrial resource, recreational resource, land use, and cultural PM&E measures. Because the costs related to water quality requirements are uncertain, the Company based costs for such measures on those explored during the relicensing proceeding to address project-related water quality effects.

47. The Company's baseline relicensing case was conservative. This scenario was

based on cost estimates developed during the relicensing proceeding that preceded the 2010 KHSA and the subsequent adoption of stringent new water quality standards for the Klamath River by California and Oregon.[50] Accordingly, the final terms and conditions for relicensing could be higher than the Company's estimates.

48. The relicensing scenario evaluated by the Company included a 20 percent reduction in the energy that could be produced from the Lower Klamath Project as a result of additional instream flow requirements. The Company assumed that lost generation would be replaced with renewable, non-carbon emitting resources.

49. The Company also evaluated the costs of settlement under the KHSA. The Company estimated capital costs to be approximately $9 million and O&M costs to be approximately $70 million. The estimated capital costs reflect the costs of interim water quality improvements and hatchery improvements. The O&M costs reflect increased funding related to hatcheries; restoration and study funding; lands and cultural resources funding; aquatic habitat enhancement; water quality monitoring and improvement measures; and implementation and management costs.

50. In addition, costs under the KHSA scenario included the cost of renewable replacement power, based on the assumption that generation at the Lower Klamath Project would cease effective December 31, 2020. The settlement costs also included $3 million to decommission the East Side and West Side developments and dam removal customer surcharges set to raise

[50] In March 2010, the California State Water Quality Control Board adopted the North Coast Regional Water Quality Control Board's Final Staff Report for the Klamath River Total Maximum Daily Loads (TMDLs) Addressing Temperature, Dissolved Oxygen, Nutrient, and Microcystin Impairments in California, the Proposed Site Specific Dissolved Oxygen Objectives for the Klamath River in California, and the Klamath River and Lost River Implementation Plans. In December 2010, the Oregon Department of Environmental Quality adopted the Upper Klamath and Lost River Subbasins Total Maximum Daily Load (TMDL) and Water Quality Management Plan (WPMP). The TMDL requirements of both states would impose additional operational limitations and water quality compliance costs on the operation of the Klamath Hydroelectric Project.

$200 million, which was recovered from the Company's Oregon and California customers.

51. To evaluate the costs and benefits of continuing with relicensing the Lower Klamath Project as compared with the costs and benefits of entering into the KHSA, the Company compared the PVRR of relicensing to the PVRR of the KHSA over a 44-year period beginning in 2010, which reflected a 40-year license beginning in 2013. The economic analysis showed that the KHSA resulted in a PVRR that is less than the cost of relicensing.

52. In addition to evaluating the costs of relicensing and settlement under the KHSA, the Company also evaluated risks to customers under each scenario. Without the KHSA to facilitate removal of the dams, customers would be exposed to additional risks and liabilities related to relicensing. For example, there is a risk that costs for PM&E measures would escalate once the measures are designed and constructed. In addition, the Company may be required to implement additional PM&E measures, specifically those necessary to provide for the passage of fish through the Lower Klamath Project should the fishways prescribed by federal agencies fail to accomplish this objective adequately, and to comply with continually evolving water quality standards to remedy impaired water quality in the Klamath basin. The Company would also be exposed to the risk that it may not be able to secure approvals for relicensing and it could be required to decommission and remove the Project without cost and risk protections. Finally, the Company would likely incur additional costs resulting from continued litigation related to environmental issues and an ongoing relicensing proceeding. The KHSA protects the Company's customers from all these risks.

53. The KHSA, as amended, and the MOA preserve the settlement outcomes reflected in the settlement reached in 2010 and the Company's rationale for pursuing a settlement that results in dam removal. The commitment in the MOA that the States will become co-licensees with the

Renewal Corporation responds to FERC's concerns. While the MOA does provisionally commit additional funds to the dam removal process, the parties to the MOA have mutually agreed that these funds will likely be unnecessary.[51] Even with these additional, contingent financial commitments, relicensing remains a much more costly and risky alternative than dam removal under the KHSA. Moreover, this responsibility for additional funding is shared by both the States and the Company. The cost-sharing mechanisms of the MOA show the Company's commitment to mitigate the risks associated with the dam removal process while ensuring that removal occurs in a timely and orderly fashion.

54. Significantly, the Renewal Corporation's current budget shows that dam removal can be completed within the funds available under the KHSA (including over $50 million in contingency funding coverage), and that the additional contingency funding provided for in the MOA will likely not be needed. As noted above, both the BOC and FERC have expressed confidence in the Renewal Corporation's ability to complete the project within the funds available under the KHSA.[52]

55. This transfer of the Lower Klamath Project to the Renewal Corporation culminates a regulatory process that started over ten years ago. The Company has already collected all of the surcharges associated with dam removal and has concurrently depreciated the book value of the Lower Klamath Project over that same time period. The Company has reflected the removal and replacement of the Lower Klamath Project in its integrated resource plans for many years, ensuring that there are no reliability or customer service issues associated with removal of the dams.

56. Furthermore, the property transfer (as a required step to implement the KHSA) will

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[51] MOA at 4 ("The Implementing Agreement Parties believe that funding for Facilities Removal beyond the [Amended] KHSA State Cost Cap is unlikely to be needed. . . .").

[52] *Letter Report: Board of Consultants Mtg. No. 1* (November 28, 2018) and *Letter Report: Supplement to Board of Consultants Mtg. No. 1* (July 29, 2019); July 2020 Order, 172 FERC ¶ 61,062 at ¶ 71.

reduce Rocky Mountain Power's risks and liabilities by eliminating the Company's need to relicense the Lower Klamath Project. Since the KHSA was executed in 2010, the risks of higher costs associated with relicensing have only increased while the plans and estimated costs for decommissioning and removal have become more concrete and reliable. For example, since the execution of the KHSA, the California State Water Resources Control Board and Oregon Department of Environmental Quality have adopted stringent new water quality standards for the Klamath River that would substantially increase operation costs if applied to the Lower Klamath Project dams.[53] Additionally, deteriorating anadromous fish returns in the Klamath Basin, similar to those experienced elsewhere on the West Coast, continue to exacerbate natural resource conflicts in the basin, and create challenges for Tribal communities that depend on the Klamath River and its aquatic resources. These deteriorating conditions imperil the Company's ability to secure a long-term license for the project.

57. The States' strong support of dam removal has increased the uncertainty of relicensing, considering the States' significant role in the relicensing process. At the same time, the ALSA that the Company and the Renewal Corporation recently submitted to FERC describes a detailed scope of work for decommissioning the Lower Klamath Project based on completed project removal design of 60 percent and a record incorporating information gleaned from years of technical, environmental, and regulatory analysis. Taken together, the KHSA and the MOA outline an attainable scope of work, schedule, and cost estimate for dam removal.

[53] In March 2010, the California State Water Quality Control Board adopted the North Coast Regional Water Quality Control Board's Final Staff Report for the Klamath River Total Maximum Daily Loads (TMDLs) Addressing Temperature, Dissolved Oxygen, Nutrient, and Microcystin Impairments in California, the Proposed Site Specific Dissolved Oxygen Objectives for the Klamath River in California, and the Klamath River and Lost River Implementation Plans. In December 2010, the Oregon Department of Environmental Quality adopted the Upper Klamath and Lost River Subbasins Total Maximum Daily Load (TMDL) and Water Quality Management Plan (WPMP). The TMDL requirements of both states would impose additional operational limitations and water quality compliance costs on the operation of the Klamath Hydroelectric Project.

58. As demonstrated above, Commission approval of this Transfer Application will cause no harm to Idaho customers. The Renewal Corporation is fully qualified to accept the Lower Klamath Project developments and remove the dams. Moreover, the transfer will reduce the risk of further costs to the Company and its customers associated with the Lower Klamath Project and dam removal while advancing public policy goals. Approval of this application within six months will allow the Transfer Agreement to take effect according to its terms upon FERC's approval of the ALSA and the license transfer application.

B. The majority of dam removal costs will be paid by Oregon and California.

59. Since the KHSA was executed in 2010, the Company's Idaho rates have included the operational costs and benefits of the Lower Klamath Project and reflected accelerated depreciation of the dams. But Idaho customers have not paid the incremental costs associated with dam removal under the KHSA; rather, the Company's Oregon and California customers have provided \$200 million towards the costs of dam removal, and California has contributed \$250 million in bond funding. The \$450 million in dam removal funds already collected from Oregon and California are expected to cover most, if not all, the costs of removing the dams. Therefore, the benefits of the KHSA to Idaho customers are even greater than are reflected in the Company's economic analysis given Idaho customers receive the benefits of the KHSA without paying incremental costs for dam removal.

V. CONCLUSION

60. Approval of this application within six months will allow the Transfer Agreement to take effect according to its terms after the conditions of closing in the Agreement are met, including FERC approval of the ALSA and FERC approval of the license transfer application. The Company respectfully requests a Commission order (1) approving the Transfer Agreement based

on the finding that it will not harm the Company's customers and is consistent with the public interest; and (2) granting other such relief as the Commission deems necessary and proper.

Respectfully submitted this 14th day of January 2021.

______/s/__________

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