

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF ROCKY MOUNTAIN)	CASE NO. PAC-E-21-01
POWER'S APPLICATION FOR APPROVAL)	
OF THE TRANSFER OF THE LOWER)	
KLAMATH HYDROELECTRIC PROJECT)	ORDER NO. 35097
GENERATING FACILITIES)	

On January 14, 2021, PacifiCorp, dba Rocky Mountain Power (“Rocky Mountain Power” or “Company”) applied to the Commission for approval of the Property Transfer Agreement (“Transfer Agreement”) between the Company and the Klamath River Renewal Corporation (“Renewal Corporation”). The Company requested the Commission determine that the property disposition is in the public interest by July 15, 2021.

On February 18, 2021, the Commission issued a Notice of Application and Modified Procedure, setting deadlines for interested persons to comment on the Application and for the Company to reply. Order No. 34928. Staff filed the only comments. The Company did not reply.

Having reviewed the record, we approve the Company’s Application to transfer property to the Renewal Corporation.

THE APPLICATION

The Transfer Agreement provides for transfer of four hydroelectric dams—J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate (collectively, “Lower Klamath Project”)—from the Company to the Renewal Corporation, along with approximately 8,000 acres of real property and personal property associated with the dams. Application at 1. The Company stated that approval of the Transfer Agreement is necessary for dam removal to begin. *Id.* at 16. The Company stated 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.” *Id.*

The Company stated 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. *Id.* at 2. The Lower Klamath Project has been operating on annual licenses from the Federal Energy Regulatory Commission (“FERC”) since the original license issued in 1954 expired in 2006. *Id.* at 4.

The Klamath Hydroelectric Settlement Agreement (“KHSA”) was executed by the Company and 48 parties, including the states of Oregon and California, the U.S. Department of Interior, the U.S. Department of Commerce’s National Marine Fisheries Service, several Native American tribes, and irrigation, conservation, and fishing groups in 2010. *Id.* at 4-5. The KHSA provides \$450 million in public funds to cover the costs of dam removal. *Id.* at 5. The Company will collect \$200 million from Oregon and California customers through dam removal surcharges, and the remaining \$250 million would be funded through California bond funding. *Id.* at 5, 7. The Public Utility Commission of Oregon and the California Public Utilities Commission approved the KHSA surcharges. *Id.* at 7. The Company has not requested dam removal cost recovery from Idaho customers. *Id.*

The KHSA was amended in 2016 because of Congressional inaction. *Id.* at 7-8. Rather than relying on Congressional action, the amended KHSA established a process to transfer the Company’s FERC license for the Lower Klamath Project to the Renewal Corporation, which would then surrender the FERC license. *Id.* at 8. The amended KHSA relies on the FERC’s authority under the Federal Power Act to review and approve the license transfer and surrender. *Id.* In July 2020, FERC approved a partial transfer of the Lower Klamath Project license from the Company to the Renewal Corporation but required PacifiCorp to remain as a co-licensee. *Id.* at 10. To satisfy the Company’s internal requirements regarding the KHSA and to satisfy the FERC’s concerns, the Company, the states of Oregon and California, the Renewal Corporation, the Karuk Tribe, and Yurok Tribe entered a memorandum of agreement, which removes PacifiCorp from the FERC license and makes the states and the Renewal Corporation co-licensees. *Id.* at 10-11. A new license transfer application was submitted to the FERC on January 13, 2021.¹ *Id.* at 11.

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.² *Id.* at 12-13. The Company seeks state approvals of its Transfer Agreement with the Renewal Corporation so property transfer can occur when the license transfer is accepted. *Id.* at 13. Under the Federal Power Act, a license transferee must show it holds fee title to the properties subject to the license before the license transfer can be effective. *Id.*

¹ On June 17, 2021, the FERC approved the license transfer from the Company to the Renewal Corporation. 175 FERC ¶ 61,236.

² *See id.*

The Company described the Renewal Corporation’s budget, including contingency reserve, for dam removal and restoration work, and compliance with the FERC requirements for additional assurances in case of cost overruns. *Id.* at 14-15. The Company also described agreements related to easements, hatcheries, conditions precedent, and environmental conditions in the Transfer Agreement. *Id.* at 16-17.

The Company requested approval under *Idaho Code* § 61-328. *Id.* at 17-25.

STAFF COMMENTS

On May 19, 2021, Staff filed comments recommending Commission approval of the transfer of the Lower Klamath Project to the Renewal Corporation.

Staff reviewed the proposed transfer under *Idaho Code* § 61-328(3).³ Staff noted that the proposed transfer was in the public interest because it will be lower cost and lower risk than trying to relicense the Lower Klamath Project. Additionally, the proposed transfer will not impact the Company’s ability to serve Idaho customers or affect rates of Idaho customers.⁴

Staff recommended that prudence of additional capital and accounting treatment be determined as appropriate in future general rate cases. Staff noted the Company is not currently seeking authorization for any accounting treatment or cost recovery associated with the proposed transfer. Since the removal fund is being funded by Oregon and California ratepayers and California bonds, removal costs will not be recovered from Idaho customers. However, any remaining plant balance after the transfer will be booked as a regulatory asset and amortized over its remaining depreciable life. Staff recommended that recovery of any remaining plant balances be determined in the Company’s next general rate case.⁵ Staff also recommended the Company provide the Commission bi-annual reports on the status of the license transfer with FERC and provide updates and information on any additional capital projects for the Lower Klamath Project.

Staff reviewed the Company’s economic analysis of the Lower Klamath Project and believed it is reasonable. Staff noted the analysis supports the Company’s decision and protects Idaho customers’ interest because rates will not increase because of the proposed transfer. Staff based its recommendation on the Company’s Present Value Revenue Requirement (“PVR”)

³ Staff did not recommend the Commission hold a telephonic hearing as is generally required by *Idaho Code* § 61-328(2) because the property proposed to be transferred to the Renewal Corporation is not “located in the state [of Idaho]” as required by the statute.

⁴ *Idaho Code* § 61-328(3)(c) is inapplicable to this analysis since the Renewal Corporation in the proposed transfer is not planning to operate the Lower Klamath Project hydroelectric dams.

⁵ On May 28, 2021, the Company filed a general rate case. *See* Case No. PAC-E-21-07.

analysis that the Company has used to determine prudence in several prior cases. The PVRR compared costs and benefits of two scenarios for the Lower Klamath Project over a 44-year period: (1) relicensing the hydroelectric dams; and (2) decommissioning the hydroelectric dams through the KHSA. The results of the PVRR analysis showed approximately a \$3 million benefit in support of decommissioning. Staff did note the analysis was performed in 2010 using the best available information, including a relicensing scenario from the FERC's 2007 Environmental Impact Statement and information in the KHSA. Staff stated some of the costs and benefits included in the analysis were (1) potential protection, mitigation, and enhancement measure costs required to relicense; (2) reduction in energy output for both scenarios; (3) replacement renewable energy for both scenarios; and (4) dam removal surcharges recovered from Oregon and California customers.

Staff suggested that although the PVRR analysis was done more than ten years ago, it was likely conservative. Staff cited the decreased costs of replacement renewable energy, which would add to the benefits of the KHSA in the PVRR. Staff also cited increased costs of relicensing due to additional construction costs or mandatory environmental mitigation measures.

COMMISSION FINDINGS AND DECISION

The Commission has jurisdiction over this matter under Title 61 of the Idaho Code. *Idaho Code* § 61-501 gives the Commission the power to “supervise and regulate public utilities in the state.” Additionally, the Company is an electrical corporation under *Idaho Code* § 61-119 and a public utility under *Idaho Code* § 61-129.

The Commission is sensitive to economic conditions affecting the Company's customers in Idaho. It is our responsibility to balance customers' desires for affordable electricity with the supply of reliable energy. We agree that relicensing the Lower Klamath Project hydro facilities comes with risks and could cost customers more than decommissioning. Therefore, we approve the Company's Application to transfer the Lower Klamath Project to the Renewal Corporation.

Idaho Code § 61-328 does not strictly apply to this case because the property the Company requests to transfer is not located in Idaho. However, *Idaho Code* § 61-328 provides a useful framework for reviewing the proposed transfer. Relying on the *Idaho Code* § 61-328(3)(a) and (b), we find the proposed transfer of the Lower Klamath Project to the Renewal Corporation is consistent with the public interest and will not cause rates to increase.

Decommissioning will benefit customers when compared to relicensing. The PVRR analysis, while over ten years old, showed present benefits in favor of decommissioning. Since the PVRR was conducted, the benefits favoring decommissioning and removal have likely increased. Since the PVRR, renewables and natural gas have become more prominent in the Company's Integrated Resource Plans, suggesting that lost generation capacity from the Lower Klamath Project can be replaced cost effectively when compared to the known and unknown risks of relicensing. At the same time, the risks and associated costs of relicensing the Lower Klamath Project hydro facilities have continually increased.

We find the solution agreed to by the Company and stakeholders is reasonable given the alternatives. The Transfer Agreement allows for removal of the hydro facilities and satisfies the opponents of relicensing. It also reduces future financial risk for the Company and its customers.

While the KHSA was funded by customers in Oregon and California and by California bonds, we find that any remaining plant balance after the transfer should be booked as a regulatory asset and amortized over its remaining depreciable life. Recovery of these remaining plant balances will be determined in a future general rate case. Finally, the Company shall provide the Commission bi-annual reports on the status of the license transfer with the FERC and provide updates and information on any additional capital projects for the Lower Klamath Project.

ORDER

IT IS HEREBY ORDERED that the Company's Application for approval of the Transfer Agreement is approved.

IT IS FURTHER ORDERED that after the transfer, any remaining plant balances should be booked as a regulatory asset and amortized over its remaining depreciable life. Recovery of these remaining plant balances will be determined in future general rate cases.

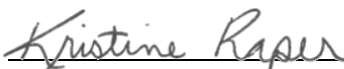
IT IS FURTHER ORDERED the Company shall file with the Commission bi-annual reports on the status of the license transfer with the FERC and provide updates and information on any additional capital projects for the Lower Klamath Project.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order about any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code § 61-626.*

DONE by order of the Idaho Public Utilities Commission at Boise, Idaho this 8th day
of July 2021.



PAUL KJELLANDER, PRESIDENT



KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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