

June 28, 2018

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## **DELIVERY VIA ELECTRONIC FILING**

Kimberly D. Bose  
Secretary, Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

### **Re: Application of Surrender of License for Major Project and Removal of Project Works; Project Nos. 2082-063 and 14803-001**

Dear Secretary Bose:

On December 14, 2017, the Federal Energy Regulatory Commission's ("Commission") approved the Klamath River Renewal Corporation's ("KRRC") request for additional time to respond certain Requests for Additional Information ("AIRs") outstanding in the surrender proceeding.<sup>1</sup> Additional time was needed to complete ongoing technical analyses. Responses to these AIRs are now included and embedded in KRRC's plan for the Lower Klamath Project (the "Definite Plan"). The Definite Plan is being filed with the Commission today for the limited purpose of supporting KRRC and PacifiCorp's joint application to amend and transfer the license for the Lower Klamath Project, Project Nos. 2082-062 and 14803-000.

KRRC appreciates the Commission's willingness to afford KRRC additional time to complete and file the Definite Plan in support of the transfer application. Recent orders issued by the Commission in the transfer proceeding indicate that it is premature for the Commission to consider the Definite Plan in the context of KRRC's surrender application. For the reasons noted below, KRRC respectfully requests that the Commission defer consideration of the Definite Plan in this proceeding until after the Commission acts on the transfer application.

On March 15, 2018, the Commission issued an "Order Amending License and Deferring Consideration of Transfer Application" granting the application to amend the project license and deferring its decision on the proposed license transfer ("March 15 Order").<sup>2</sup> The Commission stated in this order that it needed to review the information provided in the Definite Plan before acting on the transfer application.<sup>3</sup> The Commission requested information relevant to KRRC's

<sup>1</sup> See *Request for Extension of Time*, letter order dated Dec. 14, 2017 ("December 14 Letter Order").

<sup>2</sup> See *PacifiCorp*, 162 FERC ¶ 61,236 (2018).

<sup>3</sup> Id. at ¶¶ 54, 72.

cost estimates for, and its plans to ensure the adequacy of funds to complete, the safe removal of project facilities.<sup>4</sup> The Commission also stated that it needed the results of an independent Board of Consultants (“BOC”) review of various aspects of the Definite Plan before it could act on the surrender application.<sup>5</sup> The scope of the BOC’s review encompasses all aspects of the proposed dam removal process and the financial ability of the KRRC to carry out the process.<sup>6</sup>

On May 22, 2018, the Commission approved the BOC.<sup>7</sup> Attachment A to the Commission’s May 22 approval (“Attachment A”) states the sequence of the BOC’s and the Commission’s actions. In Step 1 of Attachment A, the BOC may meet with PacifiCorp and KRRC. In Step 2, the BOC will provide a “Review of Definite Plan for Amendment/Transfer Decision.” Specifically, the BOC is called upon to review and provide recommendations regarding the adequacy of available funding and reasonableness of updated cost estimates for the most probable cost and maximum cost for implementation of the Definite Plan. The BOC is also called upon to review and provide recommendations regarding the adequacy of amounts and types of insurance coverage and bonding arrangements for dam removal, and to review and provide recommendations regarding other technical aspects of the Definite Plan to better define and understand the plans, schedules, specifications, staging, and sequencing for taking on the responsibilities for removal of the Lower Klamath Project. KRRC hopes that the BOC will convene to initiate this work on or before August 1, 2018. In Step 3, Commission staff may choose to meet with the BOC. In Step 4, the Commission will make a decision on the transfer application.

During this period, KRRC will engage a general contractor and secure insurance, performance bond, and indemnification on a known-price basis. These procurement actions by KRRC, together with the BOC recommendations, will provide the Commission with a greater level of detail of the various project elements proposed in the Definite Plan. In addition, KRRC will also continue other efforts towards fulfilling its contractual obligations to the States and PacifiCorp, including sufficient and timely progress towards, and funding for, facilities removal.

Per Attachment A Step 5, if the Commission approves the transfer application, the Commission will issue a public notice of the surrender application inviting comments, interventions, and protests, and the Commission will determine if there is a need to supplement prior Environmental Impact Statements. KRRC also proposes to file the Definite Plan in the surrender docket if the Commission approves the transfer application. By that time, the Definite Plan will have been revised in response to the BOC’s review in Steps 2 and 3 associated with the transfer application, as well as the KRRC’s procurement activities. KRRC will also file any outstanding

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<sup>4</sup> Id., Appendix, Additional Information Request No. 3.

<sup>5</sup> Id., Appendix, Additional Information Request No. 4.

<sup>6</sup> Id. at ¶¶ 61, 72.

<sup>7</sup> See, *PacifiCorp*, 163 FERC ¶ 61,208 (2018).

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AIRs in support of its license surrender application. In Step 6, the BOC will provide a “Review of the Definite Plan for Surrender Decision.”

KRRC and PacifiCorp appreciate the guidance the Commission provided in the March 15 Order and in the approved plan and schedule for BOC review of the Definite Plan as presented in Attachment A. Should the Commission wish to address the KRRC’s understanding of the guidance, or require any further information, please direct any such communication to the KRRC’s counsel of record. Thank you.

Respectfully submitted,

/s/

Markham Quehrn  
Perkins Coie, LLP  
Counsel for Klamath River Renewal Corporation

cc: P-2082-063 Service List  
P-14803-001 Service List