



June 28, 2018

DELIVERY VIA ELECTRONIC FILING

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

**Re: Order Amending License and Deferring Consideration of Transfer Application;
Response to Information Request; Project Nos. 2082-062 and 14803-000**

Dear Secretary Bose:

On September 23, 2016, PacifiCorp and the Klamath River Renewal Corporation (“KRRC” or the “Renewal Corporation”) filed an application to amend the Klamath Hydroelectric Project license by moving the four lowermost dams on the Klamath River to a separate Lower Klamath Project license, and to transfer the Lower Klamath Project license from PacifiCorp to the KRRC. On March 15, 2018, the Federal Energy Regulatory Commission (“FERC” or “the Commission”) issued an “Order Amending License and Deferring Consideration of Transfer Application”¹ granting the application to amend the project license and deferring its decision on the proposed license transfer.² In deferring action on the transfer application, the March 15 Order requested additional information relevant to the Commission’s consideration of the transfer application, including additional information about the KRRC’s legal, technical, and financial capacity to safely remove project facilities and adequately restore project lands.

Regarding the questions posed in the March 15 Order, KRRC and PacifiCorp have conferred and determined that: (1) KRRC will solely respond to questions 1-4; and (2) KRRC and PacifiCorp will, in consultation with the states of Oregon and California (collectively “the States”), respond to question 5. The KRRC’s responses to questions 1-4 are being filed concurrently under a separate cover letter. The KRRC’s and PacifiCorp’s joint response to question 5 is attached as Exhibit A.

¹ See PacifiCorp, 162 FERC ¶ 61,236 (2018) (“March 15 Order”).

² PacifiCorp, supported by KRRC and other parties, requested a stay of the effective date of FERC’s order issuing the amendment. See Motion to Stay or, in the Alternative, Limited Request for Rehearing of PacifiCorp at 7-13, Attachment A, Project Nos. 2082-062 & 14803-000 (filed Apr. 16, 2018). PacifiCorp has not accepted that amendment. See *id.* at 2 n.1, 17 n. 40. The Commission granted the stay on June 18, 2018. See, *PacifiCorp*, 163 FERC ¶ 61,208 (2018). References in this letter to the term “Lower Klamath Project” are for convenience only and are not intended nor should be viewed as PacifiCorp’s acceptance of the Commission’s March 15 Order.

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Please direct requests for further information, if any, to the co-applicants and their counsel of record.

Respectfully submitted,

<p><i>/s/ Markham Quehrn</i> Markham Quehrn Counsel for Klamath River Renewal Corporation Perkins Coie 10885 N.E. Fourth Street, Suite 700 Bellevue, Washington 98004 (t) 425.635.1402 (f) 425.635.2402 (e) MQuehrn@perkinscoie.com</p>	<p><i>/s/ Hallie Meushaw</i> Hallie Meushaw Counsel for PacifiCorp Troutman Sanders 600 Peachtree Street, Suite 5200 Atlanta, Georgia 30308 (t) 404.885.3660 (f) 404.885.3900 (e) hallie.meushaw@troutmansanders.com</p>
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cc: P-2082-062 Service List
P-14803-000 Service List

Exhibit A
Response to March 15, 2018 Information Request 5 for License Transfer Application
Prepared by PacifiCorp and KRRC in Consultation with the States

The Klamath Hydroelectric Settlement Agreement, as amended (“KHSA” or “Amended Settlement Agreement”), carefully assigns responsibilities among PacifiCorp, the States, and the dam removal entity (the Klamath River Renewal Corporation, referred to as “KRRC” or “Renewal Corporation”). PacifiCorp and the States are responsible for contributing a fixed amount of funding for the dam removal project—\$200 million from PacifiCorp’s customers and \$250 million from California bond funding.¹ Taken together, this \$450 million represents PacifiCorp’s and the States’ total financial contribution under the KHSA.²

In consideration for the funding, the KRRC is required, among other obligations, to protect PacifiCorp and the States from certain liabilities associated with dam removal.³ Appendix L to the KHSA specifies the minimum insurance and bonding that the KRRC must obtain.⁴ Appendix L also obligates the KRRC to “contract with a special corporate indemnitor . . . to protect the States and PacifiCorp against any harm to persons, property, or the environment, or damages resulting from either Facilities Removal or Facility operation arising from, relating to, or triggered by actions associated with Facilities Removal[.]”⁵ This requirement is intended to provide for a sufficiently capitalized entity to cover liabilities or other costs that exceed the funding specified in the settlement.

The settlement provides controls to ensure that the KRRC has fulfilled its contractual obligations before a license transfer is finalized. Specifically, Section 7.1.4 states that the KRRC “must demonstrate to PacifiCorp’s and the States’ reasonable satisfaction that it has met the obligations in Appendix L” and other preconditions of license transfer listed in Section 7.1.4.

Question 5 in the Appendix of the March 15 Order asks the parties to provide further detail regarding the standards that will be applied to determine whether certain contractual preconditions have been satisfied. Speaking generally, these determinations will be iterative. As the KRRC refines its dam removal plan, the parties will have additional information to assess whether the contractual preconditions have been satisfied. The answers below reflect discussions among PacifiCorp, KRRC, and the States as to how they will determine the KRRC’s compliance with Sections 7.1.3 and 7.1.4 of the KHSA. The parties’ views will evolve as further information about the KRRC’s progress and the dam-removal process becomes available.

¹ See KSHA § 4.1.

² See KHSA § 4.1.3 (“The Customer Contribution and the California Bond Funding shall be the total state contribution[.]”); *see also* § 1.4 (“State Cost Cap” defined as “the collective maximum monetary contribution from the states of Oregon and California.[.]”)

³ See KHSA §§ 7.1.2(6) and 7.1.3.

⁴ KHSA § 7.1.2.(7) and Appendix L.

⁵ KHSA Appendix L, Part IV.

5. A detailed explanation of the basis for the determinations required to be made by PacifiCorp, the Renewal Corporation, and the States of California and Oregon, that the following conditions have been met:

- (a) The Renewal Corporation has met the requirements of section 7.1.3 of the Amended Settlement Agreement for indemnification of PacifiCorp and the States of Oregon, and California, and Appendix L of the Amended Settlement Agreement regarding contractor qualifications.**

The liability protections afforded by Section 7.1.3 of the KHSA are obligations owed by KRRC to PacifiCorp and the States. These obligations are in full force and effect and are binding on KRRC. Under Section 7.1.4(B) of the KHSA, PacifiCorp and the States must be satisfied that KRRC has the financial resources to fulfill these obligations as a condition precedent to KRRC's acceptance of the license. These resources include available funds and the other risk-management tools called out by Appendix L of the KHSA.

Over the course of the six-to-nine-month due-diligence period, KRRC will complete additional engineering; select a design-build contractor; negotiate a construction agreement with the contractor; establish a guaranteed maximum price for the work to be performed; implement its insurance programs; establish the requirements for all bid bonds, payment bonds, and the performance bond; and put in place a Liability Transfer Corporation ("LTC") consistent with Appendix L of the KHSA. These activities will be further informed by the Board Of Consultants ("BOC"). KRRC will keep PacifiCorp and the States informed about the status of these efforts. This includes fulfilling all, or substantially all, of the requirements of Appendix L. Upon completion of its due diligence, KRRC will inquire of PacifiCorp and the States if any further measures are required to satisfy the requirements of KHSA Section 7.1.3 and Appendix L regarding contractor qualifications.

PacifiCorp's and the States' assessment of whether the KRRC has satisfied its obligations under Section 7.1.3 will be iterative. PacifiCorp will consider, among other things, the KRRC's dam-removal plan, feedback from the BOC, best utility practices, and insights from permitting agencies including FERC staff. PacifiCorp's assessment will also be informed by its experience with dam-removal projects and internal insurance experts.

Any issues or concerns expressed by PacifiCorp or the States, and a proposed plan and schedule to address these matters, will be provided to FERC as necessary.

- (b) The Renewal Corporation has made sufficient and timely progress in obtaining necessary permits and approvals to effectuate facilities removal.**

Over the course of the six-to-nine-month due-diligence period, KRRC will continue to pursue and assess the terms and conditions of all necessary permits and approvals to implement the Definite Plan. This includes, without limitation, pending Water Quality Certifications, Endangered Species Act and National Historic Preservation Act consultations, and other regulatory requirements that are likely to influence or be embedded in FERC's surrender order. KRRC will assess the terms and conditions to be required by FERC in its surrender order to comply with the Federal Power Act, looking specifically to guidance provided by the BOC. The

primary objective of these inquiries is to ascertain any potential inconsistencies of these regulatory requirements with the KHSA before KRRC's acceptance of the license transfer. The KRRC will keep PacifiCorp and the States informed about the status of these efforts.

Upon completion of its due diligence, KRRC will inquire of PacifiCorp and the States as to satisfaction with the progress in obtaining permits and approval.

PacifiCorp's and the States' assessment of this precondition will be iterative. PacifiCorp will consider, among other things, the status of permitting processes including feedback from permitting authorities, feedback from the BOC, best utility practices, and PacifiCorp's experience with dam removal projects.

Any issues or concerns expressed by PacifiCorp or the States, and a proposed plan and schedule to address these matters, will be provided to FERC as necessary.

- (c) **PacifiCorp, the Renewal Corporation, and the States are each assured that their respective risks associated with facilities removal have been sufficiently mitigated consistent with Appendix L of the Amended Settlement Agreement.**

KRRC, PacifiCorp, and the States have a framework in place under the KHSA to manage the uncertainties and risk associated the Project. This includes the current and ongoing assessment of the cost to implement the Definite Plan relative to available resources. These cost estimates and contingencies will be better defined and assessed though ongoing due diligence over the next six to nine months, and will be informed by recommendations of the BOC.

KRRC's ongoing due diligence includes risk mitigation, additional engineering, and the selection of the design-builder to construct the project. Cost estimates and contingencies will be better defined by the negotiation of agreements with the design-builder to mitigate risk to KRRC and establish a guaranteed maximum price. Concurrent with these efforts, the comprehensive insurance programs will be refined to reflect risk allocation between KRRC and the design-builder, as well as other business and regulatory risks that may be able to be covered by insurance or an LTC. We also anticipate input from the BOC that will assist the parties in identifying and managing risk. When this due diligence is complete, supplemental information will be provided to FERC to further demonstrate KRRC's technical, legal, and financial capabilities to accept the license and execute the Definite Plan. Upon completion of its due diligence, KRRC will inquire of PacifiCorp and the States as to satisfaction with the progress in mitigating risk consistent with Appendix L.

PacifiCorp's and the States' assessment of this precondition will be similar to the assessment process identified in response to 5(a).

Any issues or concerns expressed by PacifiCorp or the States, and a proposed plan and schedule to address these matters, will be provided to FERC as necessary.

- (d) **PacifiCorp, the Renewal Corporation, and the States agree that no order of a court or the Commission is in effect that would prevent facilities removal.**

If the Commission approves the joint transfer application, KRRC, PacifiCorp, and the States will conduct a careful review of all relevant state and federal jurisdictions to determine if any order of a court or the Commission would prevent “Facilities Removal” as defined in the KHSA. This will include a review and assessment of any threatened or pending litigation and any matters still to be resolved by FERC. Under Section 7.1.4(F) of the KHSA, if KRRC, PacifiCorp, and the States conclude that no order of a court or the Commission, would prevent Facilities Removal, then KRRC will inform FERC that this contingency has been satisfied.