

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

Project Nos. 2082-062 and 14803-000—  
Oregon and California  
Klamath and Lower Klamath Projects  
PacifiCorp, and  
Klamath River Renewal Corporation

October 5, 2017

Ms. Sarah Kamman  
Vice President and General Counsel  
PacifiCorp  
825 NE Multnomah Street, Suite 2000  
Portland, OR 97232

Mr. Michael Carrier, President  
Klamath River Renewal Corporation  
423 Washington Street, 3rd Floor  
San Francisco, CA 94111

Subject: Second Additional Information Request

Dear Ms. Kamman and Mr. Carrier:

This letter concerns your application filed September 23, 2016, and supplemented on March 1, 2017, and June 23, 2017, to amend and partially transfer certain facilities from the Klamath Project to the proposed Lower Klamath Project. On April 24, 2017, Commission staff requested some additional information about your application. You filed a response to this request on June 23, 2017. Based on your response, and upon further review of your application, we need some additional information in order to complete our review. Under section 4.32(g) of the Commission's regulations, you have 60 days from the date of this letter to provide the information we request in the enclosed Schedule A. If you cannot provide a particular response by this due date, please include a schedule for filing that response in your reply.

The Commission strongly encourages electronic filing. Please file the requested information using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In

lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Please put the docket numbers, P-2082-062 and P-14803-000, on the first page of your response.

Thank you for your cooperation. If you have any questions regarding this matter, please contact Diana Shannon at [diana.shannon@ferc.gov](mailto:diana.shannon@ferc.gov) or 202-502-6136.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Hocking". The signature is fluid and cursive, with the first name "Steve" and last name "Hocking" clearly distinguishable.

Steve Hocking, Chief  
Environmental & Project Review Branch  
Division of Hydropower Compliance and  
Administration

Enclosure: Schedule A

### **ADDITIONAL INFORMATION**

1. In your June 23, 2017 response to Commission staff's April 24, 2017 additional information request, you provide an updated "most probable cost estimate" for the full removal alternative as shown on page 8 of the U.S. Department of the Interior's Detailed Plan, prepared by Interior's Bureau of Reclamation (Reclamation) and included as Exhibit E.3 to PacifiCorp's and the Renewal Corporation's September 23, 2016 surrender application for the Lower Klamath Project facilities. The analysis in support of this updated cost estimate suggests that the most probable cost estimate has decreased from \$291,600,000 to \$274,350,000. However, Reclamation's cost range analysis indicates that the "maximum cost estimate" for the full removal alternative could be as high as \$493,100,000. Please provide an updated estimate for this maximum cost amount. Please also quantify and provide the probability that the most probable and maximum cost estimates will occur.
2. Commission staff must ensure that the most probable and maximum cost estimates are reasonable. Please obtain the services of a fully independent third party or parties to assess the most probable and maximum cost estimates and the assumptions made to calculate those estimates. The third party or parties may include civil dam engineers and aquatic and terrestrial biologists who have experience with dam removal and restoration activities. Please provide a report prepared and certified by the third party or parties and the resumes or CVs listing the third party or parties' qualifications.
3. Please provide a detailed explanation of how the Renewal Corporation would provide or obtain the necessary funds to decommission and remove the Lower Klamath Project facilities in the event that funds equal to or greater than the maximum cost estimate for the full removal alternative are required.
4. For the amendment and transfer application, PacifiCorp and the Renewal Corporation filed both a public version and a non-public version of the application, with CEII redacted from the public version. For the surrender application, you filed only a public version, with CEII redacted. As a result, the only copy of the Detailed Plan in the Commission's official record for the proceeding is the redacted public version. Please file a non-redacted version of the Detailed Plan in accordance with the procedures for confidential treatment in 18 CFR 388.112 (2017).
5. On page 14 of your response, you state that your contractor is preparing a risk register and risk management plan. Please provide copies of these documents.

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6. On pages 17-18 of your response, you state that the Renewal Corporation “will retain the risk of any delays caused by uncontrollable circumstances (such as changes in law, force majeure, the discovery of cultural resources, and dam conditions unknown at the time the contract is entered into); any work scope changes directed by KRRC; and the inaccuracy of any information provided by KRRC to the project contractor that formed the basis of the decommissioning plan and that could not reasonably be verified by the project contractor.” You further state that the project budget will include an appropriate contingency reserve for these retained risks, and that the Renewal Corporation will determine the amount of the reserve in consultation with its consultants and professional advisors. Please provide additional information about the projected amount of this contingency reserve. If it is less than the amount needed to provide up to Reclamation’s maximum cost amount of \$493,100,000, please provide a detailed explanation of your reasons for providing a reserve of less than that amount.

7. In your response at pages 20-22, you list a number of different insurance policies purchased or to be purchased by either the Renewal Corporation or the project contractor, as appropriate. Most of these policies are not yet in effect. Please provide information on the amounts of each type of insurance that will be purchased, when you expect to purchase the policies, when the coverage will begin, and whether the insurance policies will be purchased by the Renewal Corporation, the project contractor, or both entities. Please provide a copy of each policy or a schedule for providing each policy, as applicable.

8. In your response, you indicate that the Renewal Corporation currently has in place a Commercial General Liability policy of \$1 million, an Umbrella Liability Policy of \$5 million, and Directors and Officers Liability Insurance of \$1 million. You state that the sufficiency of these policies will be reviewed on a not-less-than annual basis relative to the then-current stage of project implementation. Please provide information on the planned amounts of these policies that will be in place when decommissioning and dam removal activities are scheduled to begin.

9. To ensure the proposed insurance and bonding coverage are sufficient, please obtain the services of a fully independent third party or parties to evaluate preliminary coverage amounts and exclusions for each insurance policy. The third party or parties may be an insurance broker or a consulting company that has expertise advising clients with regard to insurance scope and quantity of coverage. Please provide a report prepared and certified by the third party or parties and the resumes or CVs listing the third party or parties’ qualifications.

10. You state that the project contractor will furnish a conventional performance bond from a financially sound surety company, and may be asked to provide a parent company guaranty or to furnish a standby letter of credit securing

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performance of the project agreement. Please provide additional information on the projected amounts and types of these arrangements, and file copies of these instruments or a schedule for providing these instruments along with a certified statement by a fully independent third party or parties that the performance bond is consistent with industry standards. In addition, please provide information on whether the Renewal Corporation will provide a performance bond covering the retained risks discussed in item 6 above, and if so, the planned amount of the bond.

11. You state on page 23 that, in entering into the project agreement, the Renewal Corporation will comply with the requirements of Appendix L to the Amended KHSA to identify and contract with a specialty corporate indemnitor, or “Liability Transfer Corp.,” to protect the states of California and Oregon and PacifiCorp from certain potential liabilities from actions associated with Lower Klamath Project facilities removal, including damage caused by the release of any material or substance, including hazardous substances, not covered contractually or by insurance. Please provide a more complete discussion of the purpose and function of the Liability Transfer Corp. In addition, Appendix L to the Amended KHSA provides that the dam removal entity (i.e., the Renewal Corporation) “may also transfer its ownership of the Facilities and Parcel B Lands, in whole or in part, to that entity [i.e., the Liability Transfer Corp.]” In general, project facilities under a Commission license cannot be transferred to a third party without prior Commission approval. Please provide an explanation of whether the Renewal Corporation intends to transfer ownership of the facilities to a Liability Transfer Corp. and, if so, at what point in the transfer or removal process this would occur and, depending on the timing, whether prior Commission approval would be sought.

12. You state on page 36 of your response that the Renewal Corporation has the legal and financial ability and resources to develop, transmit, and distribute power, and to operate the project for the foreseeable future, and that the information provided with the amendment and transfer application, as supplemented by your March 1, 2017 filing, fully establishes the Renewal Corporation’s qualifications to hold the license and to operate the project for the foreseeable future. You ask us to advise you of any specific deficiencies with respect to these qualifications, so you may fully and promptly address them.

Our concern about the Renewal Corporation’s qualifications to hold the license and operate the project stems from the nature and provisions of the Amended KHSA. In your amendment and transfer application, you request removal of the facilities comprising the Lower Klamath Project from the license for the Klamath Project No. 2082, and transfer of the removed facilities to the Renewal Corporation. After the transfer is effective, the Renewal Corporation then

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proposes to surrender the license and remove the Lower Klamath Project dams. In your amendment and transfer application, you state (on page 8) that the Renewal Corporation “was created and exists for the express and exclusive purpose, subject to its becoming the licensee for the Lower Klamath Project, of conducting removal of the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments.” You also request (at page 18) that the Commission act on the amendment and transfer application by December 31, 2017.

If the Commission were to approve your amendment and transfer request, depending on the conditions in the Commission’s order, the amendment and transfer could possibly take effect before the Commission has completed its review of the application for license surrender and dam removal. The Commission cannot lawfully presume that the surrender and dam removal application will be approved. Under the terms of the Amended KHSA and the planned Operations and Maintenance Agreement between PacifiCorp and the Renewal Corporation, PacifiCorp’s authorization to operate the Lower Klamath Project and consequently, its responsibility to provide funding for project operation, are scheduled to end on December 31, 2019. In the event that the Commission has not acted on the surrender application by that date, or if the Commission were to ultimately determine that the surrender application should not be approved, what authority and funding would the Renewal Corporation have to continue to operate the project for the foreseeable future under those circumstances?

13. Under the California Grant Agreement, funding for deconstruction and decommissioning is only available through June 30, 2021. However, the Detailed Plan states that restoration monitoring activities could occur for 5 years after dam removal, which under the Amended KHSA is intended to be completed by December 31, 2020. Therefore, restoration monitoring activities could continue until December 31, 2025, and any funding after June 30, 2021, would have to come from the Oregon and California Customer Surcharges. Please provide a breakdown showing the funding that will be available during the following phases: (1) dam removal; (2) restoration; and (3) post-dam removal monitoring. The breakdown should state when the Renewal Corporation anticipates spending the funding and whether the funding will come from the Grant Agreement or the Oregon and California Customer Surcharges. Also, please provide a copy of the California Customer Surcharge Agreement when it is available.

14. On page of 18 the September 23, 2016 Transfer Application, you ask that the Commission act on the transfer application by December 31, 2017. However, Exhibit 4 of the Amended KHSA (which was filed in your May 6, 2016 request for stay; September 23, 2016 transfer and surrender applications; and June 23,

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2017 response to staff's additional information request) indicates a target date for Commission action on both the transfer and the surrender application by December 31, 2019. Please explain why you request Commission action on the transfer application by December 31, 2017.