

**A-Engrossed**  
**Senate Bill 76**

Ordered by the Senate February 13  
Including Senate Amendments dated February 13

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski)

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Directs Public Utility Commission to determine depreciation schedules for Klamath River dams based on assumption that dams will be removed in 2020. [*Requires affected public utilities to use depreciation schedules to establish rates and tariffs for recovery of undepreciated amounts prudently invested by public utility in Klamath River dams.*] **Directs commission to allow affected public utility to recover undepreciated amounts by imposing rates and tariffs.**

Directs Public Utility Commission to require affected public utility to collect surcharges from customers for purpose of recovering costs incurred by public utility for removal of Klamath River dams. Imposes limit on amounts collected as surcharges. **Requires commission to hold public hearing on imposed surcharges. Provides for direct review by Supreme Court if person challenges order issued pursuant to public hearing.** Provides that if commission determines that Klamath River [*dam*] **dams** will not be removed, commission may terminate collection of all or part of surcharges and direct refund of amounts collected or use of amounts collected for benefit of customers.

Directs Public Utility Commission to allow affected public utility to include in rates and tariffs costs that are prudently incurred by utility by reason of changes in operation of Klamath River dams before removal of dams, or for replacement power after dams are removed.

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to Klamath River dams; and declaring an emergency.

3       Whereas the Klamath Agreement in Principle was signed November 13, 2008, by the states of  
4 Oregon and California, by the United States Department of the Interior and by PacifiCorp, and it  
5 is anticipated that a final agreement will be entered into by these and other parties; and

6       Whereas the Klamath Agreement in Principle states that it is the preliminary view of this state  
7 and the United States Department of the Interior that the potential benefits of the removal of dams  
8 on the Klamath River for fisheries, water and other resources outweigh the potential costs of that  
9 removal; and

10       Whereas it is anticipated that, subject to final analysis and confirmation by the Secretary of the  
11 Interior and review by the states of Oregon and California, the Klamath Agreement in Principle and  
12 the final agreement will together set forth a framework for action based on the preliminary view  
13 that removal of dams on the Klamath River is in the public interest; and

14       Whereas to facilitate the removal of the Klamath River dams, the Public Utility Commission  
15 must set rates that allow PacifiCorp to recover Oregon's fair share of PacifiCorp's undepreciated  
16 investment in the dams, to recover the funds necessary to pay additional costs that PacifiCorp may  
17 incur from changes in operation of the dams prior to removal and to pay for replacement resources  
18 following removal; and

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 Whereas to facilitate removal of the dams, the Public Utility Commission must establish a sur-  
2 charge to provide funds necessary to cover costs associated with removal of the dams; and

3 Whereas the public interest requires that the Public Utility Commission hold a hearing to de-  
4 termine whether the imposition of surcharges under the terms of the final agreement results in rates  
5 that are fair, just and reasonable; now, therefore,

6 **Be It Enacted by the People of the State of Oregon:**

7 **SECTION 1. Sections 2 to 7 of this 2009 Act are added to and made a part of ORS chapter**  
8 **757.**

9 **SECTION 2. Definitions. As used in sections 2 to 7 of this 2009 Act:**

10 (1) **“Agreement in principle” means the agreement signed November 13, 2008, by the**  
11 **states of Oregon and California, by the United States Department of the Interior and by**  
12 **PacifiCorp.**

13 (2) **“Allocated share” means the portion of PacifiCorp’s costs assigned to this state under**  
14 **the interjurisdictional cost allocation methodology used by the Public Utility Commission for**  
15 **the purpose of establishing rates for PacifiCorp.**

16 (3) **“Customers” means the Oregon retail electricity customers of PacifiCorp.**

17 (4) **“Final agreement” means a successor agreement to the agreement in principle.**

18 (5) **“Klamath River dam” means the J.C. Boyle Dam located in Oregon, the Copco 1 Dam**  
19 **located in California, the Copco 2 Dam located in California or the Iron Gate Dam located in**  
20 **California.**

21 **SECTION 3. Recovery of investment in Klamath River dams. (1) Not more than six**  
22 **months after the execution of a final agreement, the Public Utility Commission shall deter-**  
23 **mine a depreciation schedule under ORS 757.140 for each Klamath River dam based on the**  
24 **assumption that the dam will be removed in 2020. The commission may change a depreciation**  
25 **schedule determined under this section at any time if removal of a dam will occur during a**  
26 **year other than 2020.**

27 (2) **The commission shall use the depreciation schedules prepared under this section to**  
28 **establish rates and tariffs for the recovery of Oregon’s allocated share of undepreciated**  
29 **amounts prudently invested by PacifiCorp in a Klamath River dam. Amounts recoverable**  
30 **under this section include, but are not limited to:**

31 (a) **Return of investment and return on investment;**

32 (b) **Capital improvements required by the United States or any state for continued oper-**  
33 **ation of the dam until dam removal;**

34 (c) **Amounts spent by PacifiCorp in seeking relicensing of the dam before the effective**  
35 **date of this 2009 Act;**

36 (d) **Amounts spent by PacifiCorp for settlement of the issues of relicensing or removal**  
37 **of the dam; and**

38 (e) **Amounts spent by PacifiCorp for the decommissioning of the dam in anticipation of**  
39 **the dam’s removal.**

40 (3) **If any amount specified under subsection (2) of this section has not been recovered**  
41 **by PacifiCorp before a dam is removed, the Public Utility Commission shall allow recovery**  
42 **of that amount by PacifiCorp in PacifiCorp’s rates and tariffs. The commission shall allow**  
43 **the recovery without an amortization schedule if the impact of the recovery does not exceed**  
44 **one-half of one percent of PacifiCorp’s annual revenue requirement. If the impact exceeds**  
45 **one-half of one percent of PacifiCorp’s annual revenue requirement, the commission may**

1 establish an amortization schedule that limits the annual impact to one-half of one percent  
2 of PacifiCorp's annual revenue requirement.

3 **SECTION 4. Surcharges for funding costs of removing Klamath River dams.** (1) Not more  
4 than 30 days after the execution of a final agreement, PacifiCorp must file a copy of the final  
5 agreement with the Public Utility Commission along with full and complete copies of all an-  
6 alyses or studies that relate to the rate-related costs, benefits and risks for customers of  
7 removing or relicensing Klamath River dams and that were reviewed by PacifiCorp during  
8 the decision-making process that led to PacifiCorp's entering into the final agreement.

9 (2) PacifiCorp must include with the filing made under subsection (1) of this section  
10 tariffs for the collection of two nonbypassable surcharges from its customers for the purpose  
11 of paying the costs of removing Klamath River dams. Notwithstanding the commission's  
12 findings and conclusions under subsection (4) of this section, the commission shall require  
13 PacifiCorp to begin collecting the surcharges on the date that the filing is made under sub-  
14 section (1) of this section, or on January 1, 2010, whichever is later, and PacifiCorp shall  
15 continue to collect the surcharges pending a final decision on the commission's order under  
16 subsection (4) of this section. The surcharges imposed under this section shall be:

17 (a) A surcharge for the costs of removing the J.C. Boyle Dam; and

18 (b) A surcharge for the costs of removing the Copco 1 Dam, the Copco 2 Dam and the  
19 Iron Gate Dam.

20 (3) The surcharges imposed under this section may not exceed the amounts necessary  
21 to fund Oregon's share of the customer contribution of \$200 million identified in the agree-  
22 ment in principle. In addition, the total amount collected in a calendar year under both  
23 surcharges may not exceed more than two percent of PacifiCorp's annual revenue require-  
24 ment as determined in PacifiCorp's last case under ORS 757.210 decided by the commission  
25 before January 1, 2010.

26 (4) Not more than six months after a filing is made under subsection (1) of this section,  
27 the commission shall conduct a hearing under ORS 757.210 on the surcharges imposed under  
28 this section, and shall enter an order setting forth findings and conclusions as to whether  
29 the imposition of surcharges under the terms of the final agreement results in rates that  
30 are fair, just and reasonable.

31 (5) Notwithstanding ORS 183.482 (1), jurisdiction for judicial review of any appeal of an  
32 order entered under subsection (4) of this section is conferred on the Supreme Court, and a  
33 person seeking judicial review of the order must file a petition for review with the Supreme  
34 Court in the manner provided by ORS 183.482. ORS 183.482 (3) does not apply to an order  
35 entered under subsection (4) of this section. If a petition for review is filed, the surcharges  
36 imposed under the terms of the final agreement shall remain in effect pending a final deci-  
37 sion on the petition, but shall be refunded if the rates resulting from the surcharges are  
38 finally determined not to be fair, just and reasonable. A petition filed under this subsection  
39 must indicate on its face that the petition is filed pursuant to this subsection.

40 (6) The commission may not use any commercially sensitive information provided to the  
41 commission in a filing made under subsection (1) of this section for any purpose other than  
42 determining whether the imposition of surcharges under the terms of the final agreement  
43 results in rates that are fair, just and reasonable. Notwithstanding ORS 192.410 to 192.505,  
44 the commission may not release commercially sensitive information provided to the com-  
45 mission under this section, and shall require any person participating in a proceeding relat-

1 ing to the surcharge to sign a protective order prepared by the commission before allowing  
2 the participant to obtain and use the information.

3 (7) The surcharges imposed under this section must be of a specified amount per kilowatt  
4 hour billed to retail customers, as determined by the commission. The amount of each sur-  
5 charge shall be calculated based on a collection schedule that will fund, by December 31, 2019,  
6 Oregon's share of the customer contribution of \$200 million identified in the agreement in  
7 principle. To the extent practicable, the commission shall set the surcharges so that total  
8 annual collections of the surcharges remain approximately the same during the collection  
9 period. The commission may change the collection schedule if a Klamath River dam will be  
10 removed during a year other than 2020.

11 (8) Except as provided in section 5 (2) of this 2009 Act, all amounts collected under the  
12 surcharges imposed under this section shall be paid into the appropriate trust account es-  
13 tablished under section 5 of this 2009 Act.

14 (9) If the commission determines at any time that amounts have been collected under  
15 this section in excess of those needed, or in excess of those allowed, the commission must:

16 (a) Direct the trustee of the appropriate trust account under section 5 of this 2009 Act  
17 to refund these excess amounts to customers or to otherwise use these amounts for the  
18 benefit of customers; or

19 (b) Adjust future surcharge amounts as necessary to offset the excess amounts.

20 (10) If one or more Klamath River dams will not be removed, the commission shall direct  
21 PacifiCorp to terminate collection of all or part of the surcharges imposed under this section.  
22 In addition, the commission shall direct the trustee of the appropriate trust account under  
23 section 5 of this 2009 Act to apply any excess balances in the accounts to Oregon's allocated  
24 share of prudently incurred costs to implement Federal Energy Regulatory Commission re-  
25 licensing requirements. If any excess amounts remain in the trust accounts after that ap-  
26 plication, the Public Utility Commission shall order that the excess amounts be refunded to  
27 customers or otherwise be used for the benefit of customers in accordance with Public  
28 Utility Commission rules and policies.

29 **SECTION 5. Surcharge trust accounts.** (1) The Public Utility Commission shall establish  
30 a separate trust account for amounts generated by each of the two surcharges imposed un-  
31 der section 4 of this 2009 Act. The commission shall establish the trust accounts as  
32 interest-bearing accounts with an agency of the United States identified in the final agree-  
33 ment, or in a depository that is qualified under ORS 295.001 to 295.108 to receive public funds.  
34 The commission may authorize transfer of funds from one trust account to another as nec-  
35 essary to fund removal of the Klamath River dams.

36 (2) If an agreement is entered into under section 7 (2) of this 2009 Act, the parties to the  
37 agreement may agree that a portion of the amounts collected under one surcharge may be  
38 deposited in the trust account established for amounts collected under the other surcharge.

39 (3) Upon request of an agency of the United States, or upon request of the designee of  
40 an agency of the United States, the commission shall require the trustee of the appropriate  
41 trust account established under this section to transfer to the agency or designee the  
42 amounts that are necessary to pay the costs of removing the Klamath River dams.

43 (4) If any amounts remain in a trust account established under this section after the  
44 trustee makes all payments necessary for the costs of removing the Klamath River dams,  
45 the commission shall direct the trustee of the account to refund those amounts to customers

1 or to otherwise use the excess amounts for the benefit of customers.

2 **SECTION 6. Recovery of other costs incurred by PacifiCorp.** Pursuant to ORS 757.210,  
3 the Public Utility Commission shall allow PacifiCorp to include in its rates and tariffs this  
4 state's allocated share of any costs that are prudently incurred by PacifiCorp from changes  
5 in operation of Klamath River dams before removal of the dams, or that are prudently in-  
6 curred for replacement power after the dams are removed, that are not otherwise recovered  
7 under sections 3 and 4 of this 2009 Act.

8 **SECTION 7. Agreement to apportion costs and to establish and administer trust fund.** (1)  
9 The State of Oregon may enter into an agreement with representatives of the State of  
10 California, either as part of a final agreement or by separate agreement, that establishes  
11 each state's share of the customer contribution of \$200 million identified in the agreement  
12 in principle.

13 (2) The Public Utility Commission may enter into an agreement with representatives of  
14 the State of California to establish and administer the trust accounts authorized under sec-  
15 tion 5 of this 2009 Act and to ensure that trust account moneys are disbursed for dam re-  
16 moval costs that are necessary and appropriate.

17 **SECTION 8.** The section captions used in this 2009 Act are provided only for the con-  
18 venience of the reader and do not become part of the statutory law of this state or express  
19 any legislative intent in the enactment of this 2009 Act.

20 **SECTION 9.** This 2009 Act being necessary for the immediate preservation of the public  
21 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect  
22 on its passage.