

## SENATE AMENDMENTS TO SENATE BILL 76

By COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

February 13

1 On page 1 of the printed bill, delete lines 3 through 12 and insert:

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

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

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

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

18 “Whereas to facilitate removal of the dams, the Public Utility Commission must establish a  
19 surcharge to provide funds necessary to cover costs associated with removal of the dams; and

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

23 Delete lines 14 through 23 and insert:

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

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

27 “(1) ‘**Agreement in principle**’ means the agreement signed November 13, 2008, by the  
28 states of Oregon and California, by the United States Department of the Interior and by  
29 PacifiCorp.

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

33 “(3) ‘**Customers**’ means the Oregon retail electricity customers of PacifiCorp.

34 “(4) ‘**Final agreement**’ means a successor agreement to the agreement in principle.

35 “(5) ‘**Klamath River dam**’ means the J.C. Boyle Dam located in Oregon, the Copco 1 Dam

1 located in California, the Copco 2 Dam located in California or the Iron Gate Dam located in  
2 California.

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

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

13 **“(a) Return of investment and return on investment;**

14 **“(b) Capital improvements required by the United States or any state for continued op-**  
15 **eration of the dam until dam removal;**

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

18 **“(d) Amounts spent by PacifiCorp for settlement of the issues of relicensing or removal**  
19 **of the dam; and**

20 **“(e) Amounts spent by PacifiCorp for the decommissioning of the dam in anticipation of**  
21 **the dam’s removal.**

22 **“(3) If any amount specified under subsection (2) of this section has not been recovered**  
23 **by PacifiCorp before a dam is removed, the Public Utility Commission shall allow recovery**  
24 **of that amount by PacifiCorp in PacifiCorp’s rates and tariffs. The commission shall allow**  
25 **the recovery without an amortization schedule if the impact of the recovery does not exceed**  
26 **one-half of one percent of PacifiCorp’s annual revenue requirement. If the impact exceeds**  
27 **one-half of one percent of PacifiCorp’s annual revenue requirement, the commission may**  
28 **establish an amortization schedule that limits the annual impact to one-half of one percent**  
29 **of PacifiCorp’s annual revenue requirement.**

30 **SECTION 4. Surcharges for funding costs of removing Klamath River dams.** (1) Not  
31 more than 30 days after the execution of a final agreement, PacifiCorp must file a copy of  
32 the final agreement with the Public Utility Commission along with full and complete copies  
33 of all analyses or studies that relate to the rate-related costs, benefits and risks for cus-  
34 tomers of removing or relicensing Klamath River dams and that were reviewed by PacifiCorp  
35 during the decision-making process that led to PacifiCorp’s entering into the final agree-  
36 ment.

37 **“(2) PacifiCorp must include with the filing made under subsection (1) of this section**  
38 **tariffs for the collection of two nonbypassable surcharges from its customers for the purpose**  
39 **of paying the costs of removing Klamath River dams. Notwithstanding the commission’s**  
40 **findings and conclusions under subsection (4) of this section, the commission shall require**  
41 **PacifiCorp to begin collecting the surcharges on the date that the filing is made under sub-**  
42 **section (1) of this section, or on January 1, 2010, whichever is later, and PacifiCorp shall**  
43 **continue to collect the surcharges pending a final decision on the commission’s order under**  
44 **subsection (4) of this section. The surcharges imposed under this section shall be:**

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

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

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

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

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

23       “(6) The commission may not use any commercially sensitive information provided to the  
24 commission in a filing made under subsection (1) of this section for any purpose other than  
25 determining whether the imposition of surcharges under the terms of the final agreement  
26 results in rates that are fair, just and reasonable. Notwithstanding ORS 192.410 to 192.505,  
27 the commission may not release commercially sensitive information provided to the com-  
28 mission under this section, and shall require any person participating in a proceeding relat-  
29 ing to the surcharge to sign a protective order prepared by the commission before allowing  
30 the participant to obtain and use the information.

31       “(7) The surcharges imposed under this section must be of a specified amount per kilo-  
32 watt hour billed to retail customers, as determined by the commission. The amount of each  
33 surcharge shall be calculated based on a collection schedule that will fund, by December 31,  
34 2019, Oregon’s share of the customer contribution of \$200 million identified in the agreement  
35 in principle. To the extent practicable, the commission shall set the surcharges so that total  
36 annual collections of the surcharges remain approximately the same during the collection  
37 period. The commission may change the collection schedule if a Klamath River dam will be  
38 removed during a year other than 2020.

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

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

44       “(a) Direct the trustee of the appropriate trust account under section 5 of this 2009 Act  
45 to refund these excess amounts to customers or to otherwise use these amounts for the

1 benefit of customers; or

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

3 “(10) If one or more Klamath River dams will not be removed, the commission shall di-  
4 rect PacifiCorp to terminate collection of all or part of the surcharges imposed under this  
5 section. In addition, the commission shall direct the trustee of the appropriate trust account  
6 under section 5 of this 2009 Act to apply any excess balances in the accounts to Oregon’s  
7 allocated share of prudently incurred costs to implement Federal Energy Regulatory Com-  
8 mission relicensing requirements. If any excess amounts remain in the trust accounts after  
9 that application, the Public Utility Commission shall order that the excess amounts be re-  
10 funded to customers or otherwise be used for the benefit of customers in accordance with  
11 Public Utility Commission rules and policies.

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

19 “(2) If an agreement is entered into under section 7 (2) of this 2009 Act, the parties to  
20 the agreement may agree that a portion of the amounts collected under one surcharge may  
21 be deposited in the trust account established for amounts collected under the other sur-  
22 charge.

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

27 “(4) If any amounts remain in a trust account established under this section after the  
28 trustee makes all payments necessary for the costs of removing the Klamath River dams,  
29 the commission shall direct the trustee of the account to refund those amounts to customers  
30 or to otherwise use the excess amounts for the benefit of customers.

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

37 “SECTION 7. Agreement to apportion costs and to establish and administer trust fund.  
38 (1) The State of Oregon may enter into an agreement with representatives of the State of  
39 California, either as part of a final agreement or by separate agreement, that establishes  
40 each state’s share of the customer contribution of \$200 million identified in the agreement  
41 in principle.

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

- 1 Delete pages 2 and 3.
- 2 On page 4, delete lines 1 through 8.
- 3 In line 9, delete "9" and insert "8".
- 4 In line 12, delete "10" and insert "9".
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