

**Enrolled**  
**House Bill 3461**

Sponsored by Representative WHISNANT, Senator WHITSETT (at the request of Industrial Customers of Northwest Utilities)

CHAPTER .....

AN ACT

Relating to Klamath River dams; amending ORS 757.736 and 757.738.

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

**SECTION 1.** ORS 757.736 is amended to read:

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

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

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

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

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

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

(5) Notwithstanding ORS 183.482 (1), jurisdiction for judicial review of any appeal of an order entered under subsection (4) of this section is conferred on the Supreme Court, and a person seeking judicial review of the order must file a petition for review with the Supreme Court in the manner provided by ORS 183.482. ORS 183.482 (3) does not apply to an order entered under subsection (4)

of this section. If a petition for review is filed, the surcharges imposed under the terms of the final agreement shall remain in effect pending a final decision on the petition, but shall be refunded if the rates resulting from the surcharges are finally determined not to be fair, just and reasonable. A petition filed under this subsection must indicate on its face that the petition is filed pursuant to this subsection.

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

(7) The surcharges imposed under this section must be of a specified amount per kilowatt hour billed to retail customers, as determined by the commission. The amount of each surcharge shall be calculated based on a collection schedule that will fund, by December 31, 2019, Oregon's share of the customer contribution of \$200 million identified in the agreement in principle. To the extent practicable, the commission shall set the surcharges so that total annual collections of the surcharges remain approximately the same during the collection period, **and, when setting the rate for the surcharges, the commission shall account for the actual and expected changes in energy usage over the collection period and account for the actual and expected changes in interest rates on the collected funds over the collection period.** The commission may change the collection schedule if a Klamath River dam will be removed during a year other than 2020.

(8) Except as provided in ORS 757.738 (2), all amounts collected under the surcharges imposed under this section shall be paid into the appropriate trust account established under ORS 757.738.

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

(a) Direct the trustee of the appropriate trust account under ORS 757.738 to refund these excess amounts to customers or to otherwise use these amounts for the benefit of customers; or

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

(10) If one or more Klamath River dams will not be removed, the commission shall direct PacifiCorp to terminate collection of all or part of the surcharges imposed under this section. In addition, the commission shall direct the trustee of the appropriate trust account under ORS 757.738 to apply any excess balances in the accounts to Oregon's allocated share of prudently incurred costs to implement Federal Energy Regulatory Commission relicensing requirements. If any excess amounts remain in the trust accounts after that application, the Public Utility Commission shall order that the excess amounts be refunded to customers or otherwise be used for the benefit of customers in accordance with Public Utility Commission rules and policies.

(11) For the purposes of subsection (2) of this section, "the costs of removing Klamath River dams" includes costs of:

(a) Physical removal of the dams;

(b) Site remediation and restoration;

(c) Avoiding downstream impacts of dam removal;

(d) Downstream impacts of dam removal;

(e) Permits that are required for the removal;

(f) Removal and disposal of sediment, debris and other materials, if necessary; and

(g) Compliance with environmental laws.

**SECTION 2.** ORS 757.738 is amended to read:

757.738. [(1) *The Public Utility Commission shall establish a separate trust account for amounts generated by each of the two surcharges imposed under ORS 757.736. The commission shall establish the trust accounts as interest-bearing accounts with an agency of the United States identified in the final agreement, or in a depository that is qualified under ORS 295.001 to 295.108 to receive public*

*funds. The commission may authorize transfer of funds from one trust account to another as necessary to fund removal of the Klamath River dams.]*

**(1)(a) The Public Utility Commission shall establish a separate trust account for amounts generated by each of the two surcharges imposed under ORS 757.736. The commission shall establish the trust accounts as interest-bearing accounts:**

**(A) With an agency of the United States identified in the final agreement;**

**(B) In a depository that is qualified under ORS 295.001 to 295.108 to receive public funds;**  
**or**

**(C) With the State Treasurer, to be invested as provided in ORS 293.701 to 293.820.**

**(b) The commission may establish each of the two trust accounts with a different trustee among those listed in paragraph (a) of this subsection.**

**(c) The commission may authorize transfer of funds from one trust account to another as necessary to fund removal of the Klamath River dams.**

(2) If an agreement is entered into under ORS 757.742 (2), the parties to the agreement may agree that a portion of the amounts collected under one surcharge may be deposited in the trust account established for amounts collected under the other surcharge.

(3) Upon request of an agency of the United States, or upon request of the designee of an agency of the United States, the commission shall require the trustee of the appropriate trust account established under this section to transfer to the agency or designee the amounts that are necessary to pay the costs of removing the Klamath River dams as described in ORS 757.736 (11).

(4) If any amounts remain in a trust account established under this section after the trustee makes all payments necessary for the costs of removing the Klamath River dams as described in ORS 757.736 (11), the commission shall direct the trustee of the account to refund those amounts to customers or to otherwise use the excess amounts for the benefit of customers.

**Passed by House May 3, 2011**

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

**Passed by Senate May 26, 2011**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2011

**Approved:**

.....M,....., 2011

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2011

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Kate Brown, Secretary of State