

House Bill 3461

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

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 **as introduced**.

Requires surcharges imposed under Klamath River dam agreement to be applied equally to all customer classes. Requires PacifiCorp to revise amount of surcharge to account for growth or diminution of customer load.

Requires PacifiCorp to refund to individual customers all amounts collected in excess of what is necessary to fund Klamath River dam removal or collected inappropriately, or all amounts collected if rates are found to be not fair.

Requires PacifiCorp to terminate collection of surcharges if one or more Klamath River dams are not removed. Requires PacifiCorp to terminate collection of surcharge and to refund collected surcharges to customers if California does not provide funds required by Klamath River dam final agreement prior to January 1, 2013.

A BILL FOR 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)] **(12)** 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.

The total surcharges assessed to customers shall be spread to all customer classes on an equal percentage basis, so that each customer class receives the same percentage increase.

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.

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

6 (5) Notwithstanding ORS 183.482 (1), jurisdiction for judicial review of any appeal of an order
7 entered under subsection (4) of this section is conferred on the Supreme Court, and a person seeking
8 judicial review of the order must file a petition for review with the Supreme Court in the manner
9 provided by ORS 183.482. ORS 183.482 (3) does not apply to an order entered under subsection (4)
10 of this section. If a petition for review is filed, the surcharges imposed under the terms of the final
11 agreement shall remain in effect pending a final decision on the petition, but shall be refunded if the
12 rates resulting from the surcharges are finally determined not to be fair, just and reasonable. A
13 petition filed under this subsection must indicate on its face that the petition is filed pursuant to
14 this subsection.

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

22 (7) The surcharges imposed under this section must be of a specified amount per kilowatt hour
23 billed to retail customers, as determined by the commission. The amount of each surcharge shall be
24 calculated based on a collection schedule that will fund, by December 31, 2019, Oregon's share of
25 the customer contribution of \$200 million identified in the agreement in principle. *[To the extent*
26 *practicable,]* The commission shall set the surcharges so that total annual collections of the sur-
27 charges remain *[approximately]* the same during the collection period. **The commission shall re-**
28 **quire that PacifiCorp revise the surcharge amount to account for growth or diminution of**
29 **the customer load.** The commission *[may]* **shall** change the collection schedule **or terminate the**
30 **collection** if *[a]* **any of the Klamath River [dam] dams** will be removed during a year *[other]* **later**
31 **than 2020, or if the commission determines that a Klamath River dam will not be removed**
32 **at all.**

33 (8) Except as provided in ORS 757.738 (2), all amounts collected under the surcharges imposed
34 under this section shall be paid into the appropriate trust account established under ORS 757.738.
35 **All amounts collected in excess of what is necessary to fund Klamath River dam removal or**
36 **that are collected inappropriately must be refunded to customers. Refunds will be issued in**
37 **the event of a finding that rates resulting from the surcharge are not fair, just or reason-**
38 **able, as provided in subsections (5), (9) and (10) of this section. To the extent practicable, the**
39 **amounts collected must be refunded to customers based upon the amounts paid by individual**
40 **customers. To facilitate refunds, PacifiCorp shall, at a minimum, track the contributions to**
41 **the trust account on a customer class basis and track the contributions of individual indus-**
42 **trial class customers.**

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

45 (a) Direct the trustee of the appropriate trust account under ORS 757.738 to refund these excess

1 amounts to customers [*or to otherwise use these amounts for the benefit of customers*] **as provided in**
 2 **subsection (8) of this section;** or

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

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

13 **(11) If, prior to January 1, 2013, the State of California does not provide its portion of**
 14 **funds as required by the final agreement, as described in section 4.1.2 of the Klamath Hy-**
 15 **droelectric Settlement Agreement, the commission shall direct PacifiCorp to terminate col-**
 16 **lection of the surcharge and refund to customers all amounts collected.**

17 [(11)] (12) For the purposes of subsection (2) of this section, “the costs of removing Klamath
 18 River dams” includes costs of:

- 19 (a) Physical removal of the dams;
- 20 (b) Site remediation and restoration;
- 21 (c) Avoiding downstream impacts of dam removal;
- 22 (d) Downstream impacts of dam removal;
- 23 (e) Permits that are required for the removal;
- 24 (f) Removal and disposal of sediment, debris and other materials, if necessary; and
- 25 (g) Compliance with environmental laws.

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

27 757.738. (1) The Public Utility Commission shall establish a separate trust account for amounts
 28 generated by each of the two surcharges imposed under ORS 757.736. The commission shall establish
 29 the trust accounts as interest-bearing accounts with an agency of the United States identified in the
 30 final agreement, or in a depository that is qualified under ORS 295.001 to 295.108 to receive public
 31 funds. The commission may authorize transfer of funds from one trust account to another as neces-
 32 sary to fund removal of the Klamath River dams.

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

36 (3) Upon request of an agency of the United States, or upon request of the designee of an agency
 37 of the United States, the commission shall require the trustee of the appropriate trust account es-
 38 tablished under this section to transfer to the agency or designee the amounts that are necessary
 39 to pay the costs of removing the Klamath River dams as described in ORS 757.736 [(11)] (12).

40 (4) If any amounts remain in a trust account established under this section after the trustee
 41 makes all payments necessary for the costs of removing the Klamath River dams as described in
 42 ORS 757.736 [(11)] (12), the commission shall direct the trustee of the account to refund those
 43 amounts to customers [*or to otherwise use the excess amounts for the benefit of customers*].