

**PROPOSED AMENDMENTS TO
SENATE BILL 76**

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,
3 2008, by the states of Oregon and California, by the United States Depart-
4 ment of the Interior and by PacifiCorp, and it is anticipated that a final
5 agreement will be entered into by these and other parties; and

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

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

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

22 “Whereas to facilitate removal of the dams, the Public Utility Commis-

1 sion must establish a surcharge to provide funds necessary to cover costs
2 associated with removal of the dams; and

3 “Whereas the public interest requires that the Public Utility Commission
4 hold a hearing to determine whether the imposition of surcharges under the
5 terms of the final agreement results in rates that are fair, just and reason-
6 able; now, therefore,”.

7 Delete lines 14 through 23 and insert:

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

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

11 **“(1) ‘Agreement in principle’ means the agreement signed Novem-
12 ber 13, 2008, by the states of Oregon and California, by the United
13 States Department of the Interior and by PacifiCorp.**

14 **“(2) ‘Allocated share’ means the portion of PacifiCorp’s costs as-
15 signed to this state under the interjurisdictional cost allocation
16 methodology used by the Public Utility Commission for the purpose
17 of establishing rates for PacifiCorp.**

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

20 **“(4) ‘Final agreement’ means a successor agreement to the agree-
21 ment in principle.**

22 **“(5) ‘Klamath River dam’ means the J.C. Boyle Dam located in
23 Oregon, the Copco 1 Dam located in California, the Copco 2 Dam lo-
24 cated in California or the Iron Gate Dam located in California.**

25 **“SECTION 3. Recovery of investment in Klamath River dams. (1)
26 Not more than six months after the execution of a final agreement,
27 the Public Utility Commission shall determine a depreciation schedule
28 under ORS 757.140 for each Klamath River dam based on the assump-
29 tion that the dam will be removed in 2020. The commission may
30 change a depreciation schedule determined under this section at any**

1 time if removal of a dam will occur during a year other than 2020.

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

7 “(a) Return of investment and return on investment;

8 “(b) Capital improvements required by the United States or any
9 state for continued operation of the dam until dam removal;

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

12 “(d) Amounts spent by PacifiCorp for settlement of the issues of
13 relicensing or removal of the dam; and

14 “(e) Amounts spent by PacifiCorp for the decommissioning of the
15 dam in anticipation of the dam’s removal.

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

26 “SECTION 4. Surcharges for funding costs of removing Klamath
27 River dams. (1) Not more than 30 days after the execution of a final
28 agreement, PacifiCorp must file a copy of the final agreement with the
29 Public Utility Commission along with full and complete copies of all
30 analyses or studies that relate to the rate-related costs, benefits and

1 risks for customers of removing or relicensing Klamath River dams
2 and that were reviewed by PacifiCorp during the decision-making
3 process that led to PacifiCorp's entering into the final agreement.

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

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

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

18 “(3) The surcharges imposed under this section may not exceed the
19 amounts necessary to fund Oregon's share of the customer contribu-
20 tion of \$200 million identified in the agreement in principle. In addi-
21 tion, the total amount collected in a calendar year under both
22 surcharges may not exceed more than two percent of PacifiCorp's an-
23 nual revenue requirement as determined in PacifiCorp's last case un-
24 der ORS 757.210 decided by the commission before January 1, 2010.

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

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

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

24 **“(7) The surcharges imposed under this section must be of a speci-**
25 **fied amount per kilowatt hour billed to retail customers, as deter-**
26 **mined by the commission. The amount of each surcharge shall be**
27 **calculated based on a collection schedule that will fund, by December**
28 **31, 2019, Oregon’s share of the customer contribution of \$200 million**
29 **identified in the agreement in principle. To the extent practicable, the**
30 **commission shall set the surcharges so that total annual collections**

1 of the surcharges remain approximately the same during the collection
2 period. The commission may change the collection schedule if a
3 Klamath River dam will be removed during a year other than 2020.

4 “(8) Except as provided in section 5 (2) of this 2009 Act, all amounts
5 collected under the surcharges imposed under this section shall be paid
6 into the appropriate trust account established under section 5 of this
7 2009 Act.

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

11 “(a) Direct the trustee of the appropriate trust account under sec-
12 tion 5 of this 2009 Act to refund these excess amounts to customers
13 or to otherwise use these amounts for the benefit of customers; or

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

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

28 “SECTION 5. Surcharge trust accounts. (1) The Public Utility
29 Commission shall establish a separate trust account for amounts
30 generated by each of the two surcharges imposed under section 4 of

1 this 2009 Act. The commission shall establish the trust accounts as
2 interest-bearing accounts with an agency of the United States identi-
3 fied in the final agreement, or in a depository that is qualified under
4 ORS 295.001 to 295.108 to receive public funds. The commission may
5 authorize transfer of funds from one trust account to another as nec-
6 essary to fund removal of the Klamath River dams.

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

11 “(3) Upon request of an agency of the United States, or upon re-
12 quest of the designee of an agency of the United States, the commis-
13 sion shall require the trustee of the appropriate trust account
14 established under this section to transfer to the agency or designee the
15 amounts that are necessary to pay the costs of removing the Klamath
16 River dams.

17 “(4) If any amounts remain in a trust account established under
18 this section after the trustee makes all payments necessary for the
19 costs of removing the Klamath River dams, the commission shall di-
20 rect the trustee of the account to refund those amounts to customers
21 or to otherwise use the excess amounts for the benefit of customers.

22 “SECTION 6. Recovery of other costs incurred by PacifiCorp. Pur-
23 suant to ORS 757.210, the Public Utility Commission shall allow
24 PacifiCorp to include in its rates and tariffs this state’s allocated share
25 of any costs that are prudently incurred by PacifiCorp from changes
26 in operation of Klamath River dams before removal of the dams, or
27 that are prudently incurred for replacement power after the dams are
28 removed, that are not otherwise recovered under sections 3 and 4 of
29 this 2009 Act.

30 “SECTION 7. Agreement to apportion costs and to establish and

1 administer trust fund. (1) The State of Oregon may enter into an
2 agreement with representatives of the State of California, either as
3 part of a final agreement or by separate agreement, that establishes
4 each state's share of the customer contribution of \$200 million identi-
5 fied in the agreement in principle.

6 “(2) The Public Utility Commission may enter into an agreement
7 with representatives of the State of California to establish and ad-
8 minister the trust accounts authorized under section 5 of this 2009 Act
9 and to ensure that trust account moneys are disbursed for dam re-
10 moval costs that are necessary and appropriate.”.

11 Delete pages 2 and 3.

12 On page 4, delete lines 1 through 8.

13 In line 9, delete “9” and insert “8”.

14 In line 12, delete “10” and insert “9”.

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