

Note: This version of the draft summary and bill (LC 946) contains amendments that the Governor's office intends to offer at the beginning of the 2009 legislative session.

DRAFT

LC 946 Summary

LC 946 is designed to implement the Klamath Agreement in Principle signed November 13, 2008, by the States of Oregon and California, the US Department of the Interior, and PacifiCorp, and the anticipated Final Agreement among these same parties. This agreement sets forth a framework for the removal of dams on the Klamath River in 2020 upon a final determination that the benefits of dam removal outweigh the costs.

LC 946, as revised with the Governor's amendments, addresses several key components of the Klamath Agreement in Principle.

Section 1 explains how LC 946 will be codified in the Oregon Revised Statutes.

Section 2 contains definitions.

Section 3 directs the Public Utility Commission to accelerate rate recovery of PacifiCorp's capital investment in the dams. This section directs Commission action within six months of the execution of a Final Agreement. This section is designed to ensure that Oregon's share of the costs of dams is fully paid before the dams are removed. If capital costs remain at the time of dam removal, the Commission shall allow full recovery at that time, subject to a cap of one-half of one percent of PacifiCorp's annual revenue requirement.

Section 4 directs the Public Utility Commission to order two rate surcharges to cover the costs of dam removal, one for the J.C. Boyle Dam and the other for the Copco 1, Copco 2, and Iron Gate Dams. This section requires implementation of the surcharges within six months of execution of a Final Agreement. The surcharges are subject to two caps. First, the total amount collected annually under the surcharges cannot exceed two percent of PacifiCorp's annual revenue requirement. Second, the total amount collected cannot exceed Oregon's apportioned share of a \$200 million customer contribution cap. If surcharge amounts collected are in excess of what is needed for dam removal, this section allows these amounts to be used for the benefit of customers or refunded to them. If a dam is not removed, this section allows the amounts to be used for Oregon's share of dam relicensing costs as required by the FERC and, if balances remain, used for the benefit of customers or refunded to them.

Section 5 directs the Public Utility Commission to establish interest bearing trust accounts for the surcharges. The section authorizes the Commission to direct the trustee to pay the costs of dam removal. If balances remain in the trust accounts after dam

removal, the Commission will direct that they be used for the benefit of customers or refunded to them.

Section 6 directs the Public Utility Commission to permit rate recovery of Oregon's share of PacifiCorp's prudently incurred costs related to: (1) changes in operation of the Klamath dams before dam removal; and (2) replacement power costs after dam removal.

Section 7 authorizes the State of Oregon to enter into an agreement with the State of California to apportion responsibility for the costs of dam removal. The section also authorizes the Public Utility Commission to enter into agreements with California representatives related to implementation and operation of trust accounts.

Section 8 directs the Public Utility Commission to require PacifiCorp to submit a study, the scope of which the Commission defines, addressing the rate-related costs, benefits and risks of removing or relicensing the Klamath dams. The section also requires the Commission to hold a proceeding on the study, receive comments from all interested parties and issue a report to the Governor. The section protects commercially sensitive information included in the study against public disclosure.

LC 694 Amendments

Directs Public Utility Commission to determine and establish rates using 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 Public Utility Commission to require affected public utility to collect surcharges from customers for purpose of recovering funding costs incurred by public utility for removal of Klamath River dams. Imposes limit on amounts collected as surcharges. Provides that if the federal government or the States of Oregon or California commission determines that a Klamath River dam will not be removed, commission may terminate collection of all or part of surcharges, apply balances to dam relicensing costs or and order that excess amounts be direct-refunded to or used 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 this state's allocated share of costs that are prudently incurred by utility by reason of changes in operation of Klamath River dams before removal of the dams, or for replacement power after dams are removed.

Whereas, the benefits for fisheries, water and other resources may outweigh the potential costs of removal of dams on the Klamath River is necessary to restore, increase, and maintain fish population on the river;

and

Whereas, the Klamath Agreement in Principle signed November 13, 2008, by the States of Oregon and California and the US Department of the Interior and the affected public utility, and the anticipated Final Agreement among these same parties, set forth a framework for removal of dams on the Klamath River in 2020 upon a determination that the benefits of dam removal outweigh the costs; and

Whereas, to facilitate potential removal the Public Utility Commission must set rates that allow a public utility that uses the dams to serve its Oregon customers to recover Oregon's fair share of the amounts that represent the utility's undepreciated investment in the dams, and to recover the funds necessary to cover the costs for removal of the dams, and to recover the funds necessary to pay additional costs that the utility may incur from changes in operation of the dams prior to removal and for replacement resources following removal; and

Whereas, to facilitate potential removal, the Public Utility Commission must establish a surcharge to provide funds necessary to cover costs associated with removal of the dams;
now, therefore

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

SECTION 2. Definitions. As used in sections 2 to 8 of this 2009 Act:

(1) <<Affected public utility>> means a public utility that generates electricity using Klamath River dams for the purpose of serving the customers of the public utility.

(2) <<Customers>> means the Oregon retail electricity customers of an affected public utility.

(3) <<Klamath River dam>> means the J.C. Boyle Dam, located in Oregon, or the Copco 1 Dam, the Copco 2 Dam or the Iron Gate Dam, located in California.

(4) <<Allocated share>> means the portion of the affected public utility's costs assigned to a state under the inter-jurisdictional cost allocation methodology used by the Public Utility Commission for the purpose of establishing rates for the utility.

(5) <<Final agreement>> means the successor agreement to the AIP, to which the State of Oregon and the affected public utility are parties. Agreement in Principle, signed November 13, 2008 by the States of Oregon and California and the US Department of the Interior and the affected public utility, setting forth a framework for removal of dams on the Klamath River in 2020 upon a determination that the benefits of dam removal outweigh the costs.

SECTION 3. Recovery of investment in Klamath River dams. (1) Within six months after the execution of a final agreement, tThe Public

Utility Commission shall determine under ORS 757.140 a depreciation schedule for each Klamath River dam based on the assumption that the dam will be removed in 2020. The commission may change a depreciation schedule prepared under this section at any time if the commission finds that removal of a dam will occur ~~earlier or later~~ than 2020.

(2) ~~The Public Utility Commission~~ An affected public utility shall use the depreciations schedules prepared under this section to establish rates and tariffs for the recovery of this state's allocated share of undepreciated amounts prudently invested by the public utility in a Klamath River dam. Amounts recoverable under this section include:

- (a) Return on the investment;
- (b) Capital improvements required by the United States or any state for continued operations of the dam;
- (c) Amounts spent by the public utility in seeking relicensing of the dam before the effective date of this 2009 Act;
- (d) Amounts spent by the public utility ~~for~~ under a settlement of the issues of relicensing or ~~decommissioning~~ removal of the dam; and
- (e) Amounts spent by the public utility for decommissioning of the dam in anticipation of the dam's removal.

(3) If ~~all~~ any amounts specified under subsection (2) ~~has~~ have not been recovered by ~~the~~ an affected utility before a dam is removed, the commission shall allow recovery of ~~that~~ these amounts by the public utility in the public utility's rates and tariffs without an amortization schedule if the impact of the allowed recovery does not exceed one-half of one percent of the public utility's annual revenue requirement. If the impact exceeds one-half of one percent of the public utility's annual revenue requirement, the commission may establish an amortization schedule that limits the annual impact to one-half of one percent of the public utility's annual revenue requirement.

SECTION 4. Recovery of Funding costs of removing Klamath River dams; surcharges. (1) Within six months after the execution of a final agreement, ~~t~~The Public Utility Commission shall require ~~the~~ an affected public utility to collect two non-bypassable surcharges from its customers to fund for the purpose of recovering the costs incurred by the public utility for removal of Klamath River dams, as follows:

- (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.

(2) The surcharges required under this section shall be a specified amount per kilowatt hour billed to retail customers, as determined by the commission. Subject to subsection (3) of this section, the amount of each surcharge shall be calculated based on an amortization collection schedule beginning on the date the surcharge is first collected, and ending on December 31, ~~2020~~ 2019. The commission may change the

~~amortization~~collection schedule if the commission finds that a Klamath dam hydroelectric facility will be removed earlier or later than 2020.

(3) The commission shall set the amount of the surcharges under this section to ensure that: (i) the total amount collected in a calendar year under both surcharges does not exceed more than two percent of an affected public utility's gross annual revenue requirement from rates as determined in by the public utility's last general rate case under ORS 757.210 for the public utility decided by the commission before January 1, 2010; and (ii) the total amount collected does not exceed Oregon's apportioned share of within \$200 million, which share shall be set forth determined in an agreement between the States of Oregon and California as authorized in section 7 of this 2009 Act.

(4) ~~The commission shall require an affected public utility to equalize levelize, to the extent practicable, the surcharges over the anticipated collection period so that total, annual collections under the surcharges remain generally the same. imposed on a customer so that the customer pays the same amount for each surcharge in each calendar year.~~

(5) All amounts collected under the surcharges imposed under this section shall be paid into the appropriate trust account established under section 5 of this 2009 Act.

(6) 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 may:

(a) Direct the trustee of the appropriate trust account under section 5 of this 2009 Act to refund these excess amounts to the customers from which the amounts were collected, or to otherwise use these excess amounts for the benefit of the customers from which the amounts were collected; or

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

(7) ~~If the federal government or the States of Oregon or California commission determines at any time that a Klamath River dam will not be removed, the commission may terminate collection of the all or part of the surcharges under this section, and direct the trustee of the appropriate trust account under section 5 of this 2009 Act to apply balances to the affected public utility's allocated share of prudently incurred costs to implement Federal Energy Regulatory Commission relicensing requirements or, if balances remain after funding relicensing requirements, order that these balances be refunded the amounts in the trust account to the customers from which the amounts were collected or to otherwise used these amounts for the benefit of these customers.~~

SECTION 5. Recovery of Funding costs of removing Klamath River dams; trust accounts. (1) The Public Utility Commission shall establish a separate trust account for amounts generated by each of the two surcharges imposed under section 4 of this 2009 Act. The commission

shall establish the trust accounts as interest-bearing accounts in a depository that is qualified under ORS 295.001 to 295.108 to receive public funds. The initial percentage of surcharge amounts to be paid into each trust account shall be specified in the agreement authorized in section 7 of this 2009 Act. The commission may authorize transfer of funds from one trust account to another as necessary to fund removal of the J.C. Boyle Dam and the Klamath River Dams located in California.

(2) 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.

(3) If any amounts remain in a trust account established under this section after the trustee makes all payments necessary for the costs of removing Klamath River dams, the commission shall direct the trustee of the account to refund those amounts to the customers from which the amounts were collected, or to otherwise use the excess amounts for the benefit of the customers, ~~from which the amounts were collected.~~

SECTION 6. Recovery of other costs incurred by affected public utilities. The Public Utility Commission shall allow ~~the~~ affected public utility to include in its rates and tariffs this state's allocated share of any costs that are prudently incurred by ~~the~~ affected public utility from changes in operation of Klamath River dams before removal of the dams, or that are prudently incurred for replacement power after the dams are removed, that are not otherwise recovered under sections 3 and 4 of this 2009 Act.

SECTION 7. Agreements to aApportionment of costs and to establish and administer trust fundwith California residents. (1) The State of Oregon Public Utility Commission may enter into an agreement with representatives of the State of California to apportion the costs of dam removal fairly between Oregon and residents of California and ~~residents of this state that are customers of an affected public utility.~~

(2) The Public Utility Commission may enter into an agreements with representatives of the State of California to establish and administer the trust accounts authorized under section 5 of the 2009 Act.

SECTION 8. Study by affected public utilities; report by Public Utility Commission. (1) Upon the execution of a final agreement, tThe Public Utility Commission shall require the affected public utilities to submit a study showing the rate-related costs, benefits and risks for retail electric customers of removing or relicensing the Klamath River dams, based on one or more sets of assumptions specified by the commission.

(2) Upon submission of the study required by this section, the commission shall conduct a proceeding for the purpose of receiving comments on the study from the commission's staff and other interested persons.

(3) After completion of the proceeding required under subsection (2) of this section, the commission shall issue a report on the study and the comments received in the proceeding. On or before December 31, 2010, the commission shall provide its report, and a copy of the record in the proceeding, to the Governor.

(4) The commission may not use any commercially sensitive information provided to the commission in the study required by this section for any purpose other than determining the rate-related costs, benefits and risks for ~~retail electric~~ customers of removing or relicensing the Klamath River dams. Notwithstanding ORS 192.410 to 192.505, the commission may not release commercially sensitive information provided to the commission in the study required by this section, and shall require any person participating in the proceeding to sign a protective order prepared by the commission before allowing the participant to obtain and use the information.

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