

155 FERC ¶ 61,271  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

PacifiCorp

Project No. 2082-027

ORDER HOLDING RELICENSING PROCEEDING IN ABEYANCE

(Issued June 16, 2016)

1. On May 6, 2016, PacifiCorp filed a motion requesting that the Commission hold in abeyance the relicensing proceeding for its Klamath Hydroelectric Project No. 2082 (Klamath Project), and that the Commission act on its request by July 1, 2016. As discussed below, we grant PacifiCorp's motion.

**Background**

2. The 169-megawatt Klamath Project is located principally on the Klamath River in Klamath County, Oregon, and Siskiyou County, California.<sup>1</sup> The project consists of one non-generating development and seven hydroelectric developments, including the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments. The Commission's predecessor, the Federal Power Commission, issued the original license for the project in 1954.<sup>2</sup> That license expired in 2006, and the project has been operating under annual license since that time.

3. On February 25, 2004, PacifiCorp filed an application for a new license for the project. In November 2007, Commission staff issued a final Environmental Impact Statement on the application.

4. In November 2008, the States of California and Oregon (States), U.S. Department of the Interior (Interior), U.S. Department of Commerce (Commerce), and PacifiCorp

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<sup>1</sup> One development is located on Fall Creek, a tributary to the Klamath.

<sup>2</sup> *California Oregon Power Co.*, 13 FPC 1 (1954). Later orders incorporated the other Klamath River developments into the license.

developed a framework for the potential removal of the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments. In February 2010, PacifiCorp and 47 other parties, including the States, Interior, and the National Marine Fisheries Service (NMFS), executed the Klamath Hydroelectric Settlement Agreement (Settlement Agreement), which provided for the removal of the four developments by federal legislation and action by the Secretary of the Interior.

5. Because Congress did not timely enact legislation for dam removal, in January 2016 the Settlement Agreement's dispute resolution procedures triggered. Following several dispute resolution meetings, the States, Interior, Commerce, and PacifiCorp proposed amendments to the Settlement Agreement that would achieve dam removal through the Commission's license transfer and surrender processes.

6. On April 6, 2016, the Governors of the States, Interior, NMFS, the Yurok Tribe, and the Karuk Tribe executed the Amended Klamath Hydroelectric Settlement Agreement (Amended Settlement Agreement).<sup>3</sup> The Amended Settlement Agreement provides that PacifiCorp and a new entity, the Klamath River Renewal Corporation (Renewal Corporation), will jointly file on or around July 1, 2016, an application to transfer the four developments to the Renewal Corporation. Also on or around July 1, 2016, the Renewal Corporation will file an application with the Commission to surrender and remove the four dams, and applications for water quality certifications under section 401 of the Clean Water Act for dam removal with the California State Water Resource Control Board (California Water Board) and Oregon Department of Environmental Quality (Oregon DEQ).

7. PacifiCorp's request that the Commission issue an order holding the relicensing proceeding in abeyance is in accordance with the Amended Settlement Agreement.

### **PacifiCorp's Motion**

8. PacifiCorp requests that the Commission act on its motion in an expedited manner and suspend the relicensing proceeding in anticipation of the applications that will be filed for the transfer and surrender of the Klamath Project license. PacifiCorp states that suspending the relicensing proceeding is necessary to preserve the record if PacifiCorp returns to relicensing.

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<sup>3</sup> PacifiCorp attached the Amended Settlement Agreement to its May 6, 2016 motion, for informational purposes. PacifiCorp states that American Rivers, California Trout, Trout Unlimited, and Sustainable Northwest have also signed the agreement, and that other signatories to the original agreement have until December 31, 2016, to do so.

9. Further, PacifiCorp states that suspending the relicensing proceeding by July 1, 2016, is critical to implementation of the Amended Settlement Agreement. The company explains that holding relicensing in abeyance will allow PacifiCorp to withdraw its Clean Water Act section 401 water quality certification applications for relicensing the project, and that, otherwise, PacifiCorp and other entities would potentially have to participate in water quality certification proceedings for both the relicensing of the project and dam removal. PacifiCorp adds that, if the Commission does not suspend relicensing by July 1, 2016, under the Amended Settlement Agreement, the company will ask California Water Board and Oregon DEQ to suspend the water quality certification proceedings. Finally, it states that, if the water quality certifications are neither withdrawn nor suspended, PacifiCorp and other parties to the Amended Settlement will be relieved of their obligation to support the agreement and may advance potentially conflicting positions in different forums.

### **Answers and Comments**

10. American Rivers, California Trout, Sustainable Northwest, and Trout Unlimited jointly filed a timely answer in support of PacifiCorp's motion. California Water Board also filed a timely answer supporting the motion and asserting that, until the Commission suspends the relicensing proceeding, it will continue to expend resources to analyze whether and with what conditions to issue a water quality certification for relicensing the project.

11. Siskiyou County and Siskiyou County Flood Control and Water Conservation District (collectively, Siskiyou County) filed a timely answer in opposition to PacifiCorp's motion, arguing that PacifiCorp offers no justification for considering its motion on an expedited basis. The County asserts that PacifiCorp's request for expedited action is based on a schedule for dam removal that PacifiCorp and dam removal proponents developed among themselves to limit public review. The County states that it is concerned about the expedited approval of the proposal to transfer the four developments to the Renewal Corporation, which may not have the means to provide effective mitigation of unforeseen impacts. Thus, the County asks the Commission to proceed on a realistic timeline to allow for public participation, and to thoroughly consider the proposal to transfer the license to the Renewal Corporation and the effects of dam removal. Danny Hull, an area resident, filed comments in opposition to the proposed dam removal.

12. Interior and NMFS jointly filed comments in support of PacifiCorp's motion, reiterating PacifiCorp's statement that granting the motion is a necessary procedural step to allow the parties to implement certain elements of the Amended Settlement Agreement. In addition, the agencies provided information in response to Siskiyou County's comments on public participation and the adequacy of the scientific analysis of dam removal.

**Discussion**

13. Given the circumstances of the case, and the complex nature of the proposals the settling parties plan to make to the Commission, PacifiCorp's request to suspend the relicensing proceeding for the Klamath Project is reasonable. Requiring the parties, other stakeholders, and Commission staff to simultaneously proceed with both a relicensing proceeding and a transfer and surrender proceeding would be burdensome and an inefficient use of resources. Therefore, we will hold the relicensing proceeding in abeyance, pending our determination on the license transfer and surrender applications that the Amended Settlement Agreement provides will be filed with the Commission on or around July 1, 2016.

14. Our suspension of relicensing neither expedites nor affects any future Commission decision on applications for the transfer and surrender of the project license, which are not currently before us. If and when we receive complete applications to transfer and surrender the project license, Commission staff will issue notice of those applications to invite public participation and will consider the merits of the proposals as required by the Federal Power Act and other applicable federal statutes.

**The Commission orders:**

PacifiCorp's May 6, 2016 motion to hold in abeyance the processing of the relicense application for the Klamath Hydroelectric Project No. 2082 is granted.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.