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DELIVERY VIA ELECTRONIC FILING

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Federal Energy Regulatory Commission
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Washington, D.C. 20426

Kimberly D. Bose
Secretary, Federal Energy Regulatory
Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: FERC Nos. P-2082; P-14803, NATDAM-OR00559, CA00323, CA00234,
CA00325; Response to Independent Board of Consultants' Recommendations**

Dear Director Capka and Secretary Bose:

The Klamath River Renewal Corporation (the "Renewal Corporation") respectfully provides these final responses to recommendations contained in the November 28, 2018 "Letter Report: Board of Consultants Mtg. No. 1." This letter is concurrently filed in the docket nos. P-2082-062 and P-14803-000 in support of the License Amendment and Transfer Application.¹ In Section VI below, the Renewal Corporation requests approval of that application and proposes next steps in the license surrender proceeding, docket nos. P-2082-063 and P-14803-001.

I. Board of Consultants' Review of License Amendment and Transfer Application

The Federal Energy Regulatory Commission (the "Commission" or "FERC") required an independent Board of Consultants (the "BOC") to review "all aspects of the dam removal process"² proposed by the Amended Klamath Hydroelectric Settlement Agreement ("KHSA").³ As its first task, the BOC was charged to "determine the adequacy of cost estimates, insurance, bonding, and

¹ "Joint Application for Approval of License Amendment and License Transfer," FERC Accession no. 20160923-5367 (hereinafter the "License Amendment and Transfer Application").

² Letter to Mark Sturtevant, PacifiCorp, and Mike Carrier, Renewal Corporation (Oct. 7, 2017); "Order Amending License and Deferring Consideration of Transfer Application" (Mar. 15, 2018), *PacifiCorp*, 162 FERC ¶ 61,236 (2018) (hereinafter "License Amendment Order"), Appendix, item 4. The License Amendment Order bifurcated the original license between the Klamath Hydroelectric Project No. 2082 (which now consists only of the East Side, West Side, Keno, and Fall Creek Developments) and the new Lower Klamath Project No. 14803 (which consists of the J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate Developments).

³ The Renewal Corporation attached the KHSA as Exhibit A, Attachment F to its June 23, 2017 response (FERC Accession no. 20170623-5103) to the Commission's April 24, 2017 Additional Information Request.

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the overall financial resources available to implement the [dam removal] plan”⁴ for the purpose of the Commission’s action on the License Amendment and Transfer Application. On November 28, 2018, the BOC issued its Report No. 1, including three recommendations for revising the Renewal Corporation’s Definite Plan (July 2018) (the “Definite Plan”).⁵ On December 12, 2018, the Renewal Corporation responded, accepting all recommendations.⁶ The Renewal Corporation satisfied Recommendation no. 3 by providing a copy of the Request for Proposals for the general contractor.⁷ On January 23, 2019, the Commission directed the Renewal Corporation to provide further responses on Recommendation nos. 1 and 2, relating to the updated cost estimate and cost overrun contingency (“January 23, 2019 Letter Order”).⁸ The Renewal Corporation requested an extension of time until July 29, 2019 to file these further responses.⁹ The Commission granted this request.¹⁰

In its Report no. 1, the BOC recommended that the Renewal Corporation develop a Plan B with respect to project costs in excess of the state cost cap specified in the KHSA. This recommendation relates to the Draft Risk Management Plan, which was included as Appendix A in the Definite Plan. The BOC also recommended an update to the cost estimate contained in the Estimate of Project Cost Report, which was included as Appendix P in the Definite Plan. Pursuant to its procedures,¹¹ the BOC held six informal meetings with the Renewal Corporation in 2019 to review work products responsive to these recommendations.¹²

The first such informal meeting was held on March 14, 2019 to review the revised construction cost estimate in detail. Based on this review, the BOC provided further guidance that AECOM, the Renewal Corporation’s technical consultant, used to refine the cost estimate.

A second informal meeting was held on March 25, 2019 to review the draft Project Agreement between the Renewal Corporation and the general contractor. Based on this review, the BOC provided comments regarding the risk, insurance, indemnification, and pricing elements of the draft Project Agreement.

⁴ Letter to Mark Sturtevant, PacifiCorp, and Mark Bransom, Renewal Corporation (May 22, 2018), “Approval of Independent Board of Consultants,” FERC Accession no. 20180522-3002, Attachment A, item 2.

⁵ The Renewal Corporation filed the Definite Plan on June 29, 2018 (FERC Accession no. 20180629-5018).

⁶ FERC Accession no. 20181212-5147.

⁷ The Renewal Corporation filed the RFP in its April 3, 2019 filing, and the updates are included in the updated data package provided to FERC on July 25, 2019.

⁸ FERC Accession no. 20190123-3007.

⁹ FERC Accession no. 20190404-5015.

¹⁰ FERC Accession no. 20190418-3064.

¹¹ “Independent Board of Consultants Procedures” (Aug. 28, 2018), FERC Accession no. 20180828-5110.

¹² Report no. 1 proposed an iterative review of certain information and analysis to be provided in response to its formal recommendations. The Renewal Corporation appreciates the BOC’s diligent work and thoughtful consideration of the information that was provided by the Renewal Corporation in response to the BOC’s information requests. Documents provided in response to the BOC’s information requests were submitted to the Division of Dam Safety on July 25, 2019, as an update to the data package provided to the BOC in advance of its formal meeting on October 24, 2018.

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A third informal meeting was held on May 2, 2019 to review the recommended insurance approach and indicative pricing for implementation of the proposed insurance program. Based on this review, the BOC provided comments on coverage levels and suggested benchmarking based on established insurance and cost-estimating guidelines.

A fourth informal meeting was held on June 6, 2019 to review a proposed plan for liability transfer and indemnification, the selection of a special corporate indemnitor, as well as preliminary pricing. The BOC discussed the information presented and requested further clarification about how risks will be allocated across the Renewal Corporation's various risk management tools. The Renewal Corporation provided additional information in response to this request.

A fifth informal meeting was held on July 9, 2019 to review AECOM's updated cost estimate and the proposed plan for indemnification. On July 17, 2019, the BOC provided the Renewal Corporation with a draft supplemental report. A sixth informal meeting was held on July 22, 2019 to review this report. On July 26, 2019, the BOC provided the Renewal Corporation with its "Letter Report: Supplement to Board of Consultants Mtg. No. 1" (July 29, 2019) ("Supplemental Report no. 1"). This report and the Renewal Corporation's responses are attached as Attachment A. The Renewal Corporation's responses are summarized in appropriate locations below. The Supplemental Report no. 1 also includes minutes of the BOC's informal meetings from March 14 through July 22, 2019.

II. Legal, Technical, and Financial Capacity of Renewal Corporation

In its License Amendment Order, the Commission stated that license transfer as proposed in the KHSA, for the sole purpose of decommissioning and dam removal, "raises unique public interest concerns" not present in an ordinary license transfer proceeding.

If a project is transferred to an entity that lacks the financial and operational capacity to complete these measures, and if the Commission can no longer hold the former licensee liable, the responsibility to decommission a project or restore project lands may fall to federal or state authorities. To prevent this, the Commission applies more scrutiny to [such a license transfer application].¹³

The Renewal Corporation accepts this heightened scrutiny. Through this filing as well as in its responses to prior Additional Information Requests ("AIRs")¹⁴ in this proceeding, the Renewal Corporation has demonstrated that it has the legal, technical, and financial capacity to manage these

¹³ License Amendment Order ¶ 51.

¹⁴ The Commission made two AIRs related to the License Amendment and Transfer Application, dated April 24, 2017 (FERC Accession no. 20170424-3020) and October 5, 2017 (FERC Accession no. 20171005-3005). In addition, the License Amendment Order and the January 23, 2019 Letter Order requested further information. The Renewal Corporation responded to the AIRs and related requests on June 23, 2017 (FERC Accession no. 20170623-5103), December 4, 2017 (FERC Accession no. 20171204-5131), June 28, 2018 (FERC Accession no. 20180629-5018), and April 3, 2019 (FERC Accession no. 20190404-5015).

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risks and complete Facilities Removal¹⁵ as proposed in the KHSA and Definite Plan; and that the transfer of the license for the Lower Klamath Project to the Renewal Corporation is in the public interest.

The Renewal Corporation is a California non-profit corporation in good standing. It has the legal capacity to be licensee.¹⁶ It also has the technical capacity. The Renewal Corporation has secured a best-in-industry team to perform all aspects of Facilities Removal.¹⁷ AECOM is the Renewal Corporation's technical representative, with unique expertise as a result of its having participated as a lead designer or advisor in every dam removal effort on the West Coast.¹⁸ As described below, Kiewit Infrastructure West Co. ("Kiewit") will perform design, construction, and mitigation activities; Resource Environmental Solutions LLC ("RES") is expected to operate as mitigation surety and as specialty corporate indemnitor; and Aon Risk Insurance Services West, Inc. ("Aon") will ensure that a comprehensive insurance and surety bond program is in place and consistent with the descriptions below.

Financial capacity is the gravamen of the heightened scrutiny in this license transfer proceeding. As the License Amendment Order states:

[T]he Amended Settlement Agreement provides that the Renewal Corporation will have three sources of funding for decommissioning, removal, and restoration of the Lower Klamath Project, totaling \$450,000,000: (1) \$184,000,000 from the Oregon Customer Surcharge; (2) \$16,000,000 from the California Customer Surcharge; and (3) \$250,000,000 from the California Bond Measure. These funds, known as the state cost cap, are the maximum monetary contributions available from the states of Oregon and California. The applicants have not identified any additional sources of funding if the cost of the measures required exceeds the state cost cap.¹⁹

The Renewal Corporation understands its obligations to comply with the license for the Lower Klamath Project if transfer is approved, and a license surrender order if issued. The Renewal Corporation understands that the state cost cap in the KHSA is not a limitation on such

¹⁵ KHSA defines this term to mean the "physical removal of all or part of each of the Facilities to achieve at a minimum a free-flowing condition and volitional fish passage, site remediation and restoration, including previously inundated lands, measures to avoid or minimize adverse downstream impacts, and all associated permitting for such actions."

¹⁶ See June 23, 2017 AIR Response, item 6. The Renewal Corporation is a "corporation" for purposes of 16 U.S.C. § 796(3) and has the legal capacity to be a "licensee" as defined in 16 U.S.C. § 796(5), subject to the review and approval of the Commission pursuant to 16 U.S.C. § 801. See also *Econ. Dev. Corp. of Augusta & Augusta Dev. Corp.*, 1 FERC ¶ 61,207 at 61,541 (1977) (license transfer to non-profit development corporation approved).

¹⁷ *Alcoa Power Generating Inc. Cube Yadkin Generation LLC*, 157 FERC ¶ 62,188, at ¶ 4 (2016) (finding transfer to be in public interest where transferee was affiliated with numerous companies with extensive expertise in operating and maintaining hydroelectric projects).

¹⁸ See "Informational Filing in Support of Joint Application for License Transfer and License Amendment" (Mar. 1, 2017), FERC Accession no. 20170301-5327, Attachment D-2.

¹⁹ License Amendment Order ¶ 55.

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compliance.²⁰ The Renewal Corporation understands that, upon acceptance of license transfer, it must manage the financial risks associated with license compliance.²¹

As discussed below, the Renewal Corporation has \$450 million in committed funds.²² The Renewal Corporation will manage these funds in a reasonable and prudent manner to complete Facilities Removal. These funds are sufficient to cover all estimated costs (including contingency and cash reserves) for construction, mitigation, and restoration activities. Kiewit has provided a Parent Company Guaranty, and it will secure surety bonds in an amount equal to the direct costs in the Project Agreement, to assure its performance. The Renewal Corporation and Kiewit will secure a comprehensive insurance program. The Renewal Corporation is engaging a special corporate indemnitor to address risks not otherwise resolved through these more typical instruments. And, the Renewal Corporation has a Plan B to seek additional funds if needed. The Renewal Corporation would secure such funds through the mechanisms established by the KHSA, with the affirmative support and assistance of PacifiCorp, the states of Oregon and California (collectively, the “States”), and other signatory parties.

In its 1995 Decommissioning Policy, the Commission addressed the risk that a project would be “abandoned” and become the unwanted financial or regulatory responsibility of a state.

Several commenters noted also that a licensee might seek to transfer an increasingly marginal project to a new licensee that lacked the financial resources to maintain it or close it down in an appropriate manner. Through that process, the former owner relieves itself of the responsibility, which then may fall to State authorities or, at least when Federal lands are involved, on other Federal agencies. While the Commission is aware of no widespread

²⁰ Commission, “Policy Statement on Hydropower Licensing Settlements,” 116 FERC ¶ 61,270, 62,088-62,089 (2006) (stating “[t]he Commission expects the required measure to be performed by the licensee, even if the cost exceeds the agreed-upon cap” and “[d]ollar figures agreed to by the parties are not absolute limitations” on the licensee’s license obligations in the absence of authorization from the Commission to the contrary) (quoting *Virginia Electric Power Company*, 110 FERC ¶ 61,241 at 10 (2005)); *Hawks West Hydro LLC*, 161 FERC ¶ 62,228, at *7 (2017) (staff did not recommend cost cap because licensee’s obligation to complete a measure required by a license is not limited to particular cost cap); *PacifiCorp*, 133 FERC ¶ 61,232, 62,316 (2010) (if a measure is required, the Commission expects a licensee to perform even if the cost exceeds agreed-upon cost caps in settlement agreement).

²¹ See *Fraser Papers Inc.*, 89 FERC ¶ 61,286, 61,896 (1999); *AER NY-Gen LLC*, 133 FERC ¶ 62,143, 64,317–64,318 (2010); *Menominee Company*, 74 FERC ¶ 61,023, 61,067–61,068 (1996). See, e.g., *Mead Corporation, Publishing Paper Division*, 72 FERC ¶ 61,027, 61,069 (1995) (stating where the Commission’s consideration and balancing of all public interest factors concludes the project is in the public interest, the Commission will offer the license to the applicant, even if there appear to be negative economic benefits because it is the applicant that must ultimately decide whether to accept the license and any financial risk that entails); *Hawks West Hydro LLC*, 161 FERC ¶ 62,228, at *19 (2017) (although the Commission found the project would cost more to operate than the Commission’s estimated cost of alternative power, the Commission pointed out that the applicant must decide on whether to accept the license and any financial risk that entails).

²² A detailed discussion of the source and availability of these funds, and the funding agreements pursuant to which the \$450,000,00 is committed to the Renewal Corporation is provided in the Renewal Corporation’s Dec. 4, 2017 AIR response, Attachment A, Response 13. Copies of the executed funding agreements have previously been provided to the Commission and are in the record of this proceeding.

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problems on this score, it agrees that transfer applications should be scrutinized to foreclose this sort of situation, and where warranted, other authorities should be consulted before transfers are approved.²³

Here, PacifiCorp and the States, among other parties, entered into an agreement to establish an orderly and safe process for removal of the Lower Klamath Project. PacifiCorp applied for and secured \$200 million in rate surcharges,²⁴ and the state of California dedicated another \$250 million in bond funds, to implement the agreement.²⁵ These funds are committed. The States and PacifiCorp have actively participated in implementation. The Renewal Corporation will manage the very risks raised by the License Amendment Order, as well as the Decommissioning Policy, through mechanisms that require the States' affirmative endorsement.

Before the Renewal Corporation will accept license transfer, the States and PacifiCorp must each be "assured that sufficient funding is available to carry out Facilities Removal," and that "their respective risks associated with Facilities Removal have been sufficiently mitigated consistent with [KHSa] Appendix L."²⁶ Thus, before license transfer is effective, the States will have assessed and accepted any risk that "then may fall to State authorities."²⁷

The Commission has a stated goal of resolving end-of-license responsibilities to the satisfaction of the successor agencies.

The Commission's goal is that generally matters of this type can and will be resolved to the *satisfaction of the successor agency* as part of the Commission's decommissioning process, obviating the need for any later other action. There could then be a *smooth transition to the new regime with a minimum of interruption*.²⁸

KHSA section 7.1 is tailor-made to fulfill this goal. Through this mechanism, the States will affirmatively endorse the license transfer, allowing the Commission to be assured of the sufficiency of the resources needed to protect the States' interests.

²³ Commission, "Project Decommissioning at Relicensing: Policy Statement," 60 Fed. Reg. 339, 345 (1995) ("Decommissioning Policy").

²⁴ Oregon S.B. 76 (2009, Section 4 (authorizing rate surcharges)) and Oregon Public Utility Commission ("OPUC"), Order No. 10-364 (2010), Order No. 16-218 (2016); California Public Utilities Commission ("CPUC"), Decision 11-05-002 (2011) and Decision 17-11-019 (2017). See March 1, 2017 Informational Filing, Attachment E; December 4, 2017 AJR Response, item 13 and Exhibit A.

²⁵ March 1, 2017 Informational Filing, Attachment G.

²⁶ KHSA section 7.1.4. See letter from the Renewal Corporation to the Commission (June 28, 2018), Question 5, to explain the standards and procedures that the States and PacifiCorp will follow under KHSA section 7.1.4. Further, having found that Facilities Removal is in the best interests of PacifiCorp's customers, the States' public utilities commissions (collectively "PUCs") require these very sign-offs to assure that Facilities Removal will be completed once started. See OPUC, Order no. 17-018, Appendix A (Funding Agreement section 14.1, requiring the Renewal Corporation to indemnify the state of Oregon as required by KHSA section 7.1.3); CPUC, Decision 17-11-059 at 18 (requiring compliance with KHSA section 7.1.4).

²⁷ Decommissioning Policy at 346.

²⁸ *Id.* (emphasis added).

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III. Final Response to Recommendation no. 1: “The BOC recommends that a Plan B be developed with regard to where additional funding would come from should the project costs exceed the state cost cap.”

As stated in its December 12, 2018 response, the Renewal Corporation agrees with this recommendation. This section describes Plan A and Plan B.

The Renewal Corporation provided a preliminary response to this recommendation on December 12, 2018. At that time, the Renewal Corporation anticipated a series of developments to update the Draft Risk Management Plan (June 2018) and to address the risk of cost overrun in project²⁹ implementation, among other risks.³⁰ The Renewal Corporation now attaches an Amended Risk Management Plan (Attachment B), which supersedes the prior plan. The developments anticipated in January 2019 have now occurred. The Renewal Corporation has engaged Kiewit as general contractor under a progressive design-build contract (the “Project Agreement”). Aon has structured an insurance and bond program and has provided indicative pricing. The Renewal Corporation is working with RES to serve as a mitigation surety and specialty corporate indemnitor. AECOM and Aon used separate methods to validate and update the risk register. AECOM updated the cost estimate. These developments are described below. Further, the Renewal Corporation has secured extensions of its funding commitments to allow up to four additional years to complete Facilities Removal.

The information in this section is also responsive to the January 23, 2019 Letter Order, which requests updates to the Draft Risk Management Plan to (a) describe insurance, bond, and indemnification coverages, (b) verify that these coverages will be in place before the commencement of decommissioning work, (c) establish the estimated date by which the Renewal Corporation expects that it will have reached agreement on a Guaranteed Maximum Price with Kiewit, and (d) describe how the project will be funded if the Facilities Removal extends beyond the expiration dates identified in the Funding Agreements.³¹

A. Plan A

The Draft Risk Management Plan (June 2018) described measures to manage the risk of cost overrun, among other risks. The Renewal Corporation has now completed certain measures, including the selection of Kiewit as Project Contractor, and has obtained indicative terms for or otherwise planned all other measures.

1. Project Contractor

The Renewal Corporation selected Kiewit as the general contractor to undertake final design specifications, development of a Guaranteed Maximum Price (“GMP”), site preparation,

²⁹ The “project” refers to Facilities Removal as proposed in the KHSA and described in the “Application for Surrender of License for Major Project and Removal of Project Works” (Sept. 23, 2016), FERC Accession no. 20160923-5370 (Surrender Application). The Definite Plan is the Renewal Corporation’s specific plan for Facilities Removal.

³⁰ See December 12, 2018 letter from the Renewal Corporation to David E. Capka, at 2-3.

³¹ January 23, 2019 Letter Order at 2.

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deconstruction, and mitigation and restoration measures. Kiewit has an exceptional track record completing large-scale and challenging civil projects of all types, including hydroelectric projects. As a recent example, it completed the emergency repair of the Oroville Dam, which involved reconstruction of the main and emergency spillways in less than 18 months, as well as extensive debris and sediment removal, access roads, and other work. Kiewit has substantial experience working with the states of California and Oregon and with PacifiCorp. Kiewit's qualifications are described in Attachment C.

Kiewit anticipates that it will complete a 60% design for the project by January 31, 2020. The target date for the GMP is February 15, 2020. Once 60% design has been achieved and after the GMP has been established, the Renewal Corporation will update relevant portions of the cost estimates. Kiewit has provided an indicative statement that, based on its pre-GMP due diligence to date, the Renewal Corporation has adequate financial capacity. See Attachment D.

The GMP will provide definitive market proof of the sufficiency of the overall project budget. It will be subject to adjustments only if final permit terms are materially more costly than draft permit terms, or costs otherwise increase due to circumstances outside of Kiewit's control. The Renewal Corporation will secure insurance against the occurrence of such uncontrollable circumstances, to the extent such insurance is commercially reasonable to obtain.³² In the past decade of experience with water resources projects, Kiewit has not exceeded a GMP in this manner.

2. Project Agreement

The Renewal Corporation and Kiewit have entered into a Project Agreement (Attachment E) that governs all aspects of Facilities Removal. The contract applies a delivery method known as "Progressive Design-Build." Under this method, Kiewit is responsible for design and construction activities (including mitigation and restoration), and for correcting any errors or omissions that arise through its or its subcontractors' fault.³³ Per Appendix 9 of the Project Agreement, Kiewit will secure an insurance package that assures recourse for insured events. And per Article 15 of the Project Agreement, Kiewit will indemnify the Renewal Corporation for events relating to Kiewit's fault and certain other events specified in the Project Agreement. Overall, by establishing a single point of accountability, this delivery method substantially reduces the risks of cost overrun relative to other methods conventionally used in civil works projects, such as Boston's Big Dig.³⁴ Among other things, it minimizes the risk of litigation between owner, contractor, subcontractors, and their respective insurers, which has routinely occurred under other methods in the absence of a single point of accountability.³⁵

³² See Project Agreement section 5.11.

³³ Hawkins Delafield & Wood, "Report on Risk Mitigation and Insurability for the Klamath Restoration Project" (Nov. 13, 2015) (Attachment F), Sections 2-4.

³⁴ As noted by the BOC, response strategies—in this case the proposed delivery method—that reduce the risk of significant changes and cost overrun are preferred, relative to other methods conventionally used in civil works projects to manage these risks, such as in the case of Boston's Big Dig. Report no.1 at 5.

³⁵ Hawkins Delafield & Wood, *supra*, Section 4.2. See also June 23, 2017 AIR Response, Item 3.

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3. Parent Guarantee and Surety Bonds

Under the Project Agreement, Kiewit will provide a Parent Company Guaranty for its performance. Under that guarantee, its parent, Kiewit Infrastructure Group, Inc. will perform or pay for performance if it defaults. The parent company has \$4.8 billion in revenue, no operational long-term debt, and a strong balance sheet that offers assurance that their projects will get completed. The executed Parent Company Guaranty is set forth as Attachment G.

Further, the Project Agreement requires Kiewit to secure performance, payment and maintenance bonds (surety bonds), prior to the commencement of any physical work, in an amount equal to the face value of the Project Agreement. The bond forms are attached to the Project Agreement as Transaction Form B (“Form of Performance Bond”); Transaction Form C (“Form of Payment Bond”), and Transaction Form D (“Form of Maintenance Bond”).

4. Insurance

The Renewal Corporation engaged Aon as its insurance advisor and broker. Aon is one of the world’s leading consultants in risk management, working across nations, industry sectors, and public and private clients. Its qualifications are described in Attachment H. Its Risk and Insurance Due Diligence Report (July 2019) is attached to the Amended Risk Management Plan (Attachment B thereto).

As consultant to the Renewal Corporation, Aon applied methods commonly used in insurance underwriting, including Project Enterprise Risk Assessment, to identify and quantify risk exposure associated with Facilities Removal. This method establishes the probability of an event, assesses claim cost exposure, and then simulates a year of claim costs. This process is repeated to generate 50,000 simulated results via a Monte Carlo simulation. This underwriting method complements and independently validates the separate analysis AECOM did to compile and update the risk register included in the Amended Risk Management Plan. As recommended by the BOC, Aon benchmarked its modeling against actualized risks in other dam removal and civil works projects.

Aon analyzed insurance options. It recommended a Contractor Controlled Insurance Program (“CCIP”). Relative to alternatives, a CCIP would provide greater insurance cost efficiencies given the long-tail nature of these claims, greater participation by minority and woman-owned business, avoidance of gaps in coverage, and avoidance of trigger and exhaustion issues associated with long-tail claims. Kiewit will secure the insurance package before Facilities Removal. The program will cover potential third-party losses at a 99.5% confidence level. As Aon’s modeling shows, this coverage will be sufficient to cover the largest expected risks and other project risks on each line of coverage.³⁶

³⁶ Risk and Insurance Due Diligence Report (July 2019), at 3.

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Largest Insurance Coverages in Renewal Corporation's Comprehensive Insurance Program³⁷

Insurance Type	Function	Amount
Umbrella Excess Liability	Commercial and general liability	\$200 million
Builder's Risk/Inland Marine	Physical loss and/or damage to covered property arising out of a covered cause of loss	Probable Maximum Loss
Pollution Liability	Pollution caused by construction or by site	\$100 million unknown pre-existing or new pollution incidents associated with the project site and pollution incidents resulting from the project work

Such contingent instruments are part of financial capacity under generally accepted accounting principles.³⁸ Consistent with those principles, the Nuclear Regulatory Commission credits such instruments in assuring capacity to decommission a nuclear powerplant.³⁹ The Commission has also relied upon such instruments to assure capacity for license compliance, including license surrender.⁴⁰

³⁷ *Id.* at 10-13.

³⁸ The Financial Accounting Standards Board ("FASB") provides guidance as to generally accepted accounting principles for preparation of financial statements, including guidance regarding any presumption that an entity is able to continue in business as a going concern. When conditions or events exist that raise substantial doubt about an entity's ability to continue as a going concern, the entity should consider whether its plans that are intended to mitigate the relevant conditions or events will alleviate the substantial doubt. FASB Subtopic 205-40, Update No. 2014-15 at 2 (Aug. 2014). The mitigating effect of management's plans may be considered as offsetting factors to the extent that (a) it is probable that the plans will be effectively implemented and, if so, (b) it is probable that the plans will mitigate the conditions or events that raise substantial doubt about the entity's ability to continue as a going concern. This guidance allows for taking financial assurances into consideration in assessing an entity's fiscal capacity to discharge its financial obligations.

³⁹ 10 C.F.R. §50.75(e)(1)(iii). Guarantee mechanisms accepted by the NRC include letters of credit, parent company guarantees, licensee self-guarantees, surety bonds, and insurance policies. 10 C.F.R. §72.30(e)(2).

⁴⁰ *St. Anthony Hydro LLC*, 146 FERC ¶ 62,048, 64,078 (Jan. 17, 2014) (requiring licensee to file documentation that it "has obtained a bond or equivalent financial instrument that ensures the licensee has the financial means necessary to implement the Financial Assurance Plan"); *Whitestone Power & Commc'ns*, 141 FERC ¶ 62,054, 64,130-64,131 (Oct. 19, 2012) ("licensee shall file . . . each year proof of the maintenance of a letter of credit, surety bond, or equivalent financial instrument, to cover the entirety of the cost of removing the project"); *Ocean Renewable Power Co. Maine, LLC*, 138 FERC ¶ 62,168, 64,575 (Feb. 27, 2012) (approving letter of credit covering entirety of costs of removing Phase I of hydrokinetic power project and requiring licensee to maintain a bond or equivalent financial

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5. Mitigation Surety and Specialty Corporate Indemnitor

The Renewal Corporation intends to engage RES for two functions: as surety for long-term management of restoration and mitigation measures, and as a specialty corporate indemnitor. RES's qualifications are described in Attachment I.

RES identified risks that could occur during and after Facilities Removal that are not otherwise covered by insurance or Kiewit's contractual indemnification. In the Amended Risk Management Plan, these are called "residual risks."⁴¹ RES identified and analyzed two categories of residual risks: (1) risks associated with long-term impacts to natural resources and (2) risks associated with impacts to property arising through no error in Kiewit's design or implementation. RES undertook this analysis in coordination with Aon and AECOM. The analysis and recommendations are described in the Amended Risk Management Plan,⁴² and RES's Summary of Risk and Liability Transfer Approach (July 12, 2019) is Attachment J.⁴³

The Renewal Corporation intends that RES will assume responsibility for long-term maintenance and adaptive management of mitigation measures. This includes conditions in the surrender order as well as post-surrender obligations under other permits. This responsibility is not limited by any cost cap.

Further, the Renewal Corporation and RES intend that a RES entity will function as specialty corporate indemnitor to provide an indemnification program protecting PacifiCorp and the states against loss or expense associated with the physical impacts of Facilities Removal. This program will cover risks which are not otherwise fully covered by the Project Agreement or the insurance and bond programs. As described in the Amended Risk Management Plan, RES will form a Local Impact Mitigation Fund to address claims (such as loss in groundwater production, or diminution in property values) that may arise without fault in Kiewit's performance. The Renewal Corporation has an obligation under KHSA Appendix L to address such claims, which it recognizes are outside of the Commission's jurisdiction,⁴⁴ The costs of the mitigation surety and

instruction throughout license term); *Eugene Water & Electric Board*, 155 FERC ¶ 62,242 (2016) (requiring licensee, within 60 days of license transfer, to obtain insurance to cover the cost of unexpected maintenance and repairs).

⁴¹ Residual Risks (i.e., risks not otherwise covered by insurance or contractual indemnification) include the risk of claims for matters which the likelihood of occurrence is remote, as well as matters for which the Renewal Corporation may not be held to be legally responsible. Thus, in a given case, the risk may be limited to defense and settlement costs incurred in response to non-meritorious claims.

⁴² Amended Risk Management Plan sections 3.4-3.5.

⁴³ A non-redacted version of Attachment J is being concurrently filed as Privileged Information pursuant to 18 C.F.R. § 388.112 because the document contains proprietary business information that reflects RES's process in assessing and mitigating risk.

⁴⁴ A licensee is liable for all damages occasioned to the property of others by the operation and maintenance of its project works pursuant to its license. 16 U.S.C. § 803(c). The extent to which any such claims are cognizable, and to the extent that they are not preempted, they are matters outside of the Commission's jurisdiction and are to be determined under applicable state law. See, e.g., *DiLaura v Power Auth. of State of NY*, 786 F.Supp. 241 (W.D.N.Y. 1991); *Skokomish Indian Tribe v. United States*, 410 F.3d 506, 519 (9th Cir. 2005); *United States v. S. Cal. Edison Co.*, 300 F.Supp.2d 964, 978 (E.D. Ca. 2004); see also, *Simmons v. Sabine River Auth.*, 732 F.3d 469 (5th Cir. 2013) (the

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indemnification are included in the Amended Estimate of Project Costs Report (July 2019), which is Attachment K hereto.

6. Operation and Maintenance Agreement

In Report no. 1, the BOC stated that the Operation and Maintenance Agreement (“O&M Agreement”) between PacifiCorp and the Renewal Corporation will go into effect upon license transfer.⁴⁵ After that event, PacifiCorp will continue to operate and maintain the Lower Klamath Project, at its cost,⁴⁶ until the Renewal Corporation is prepared to begin Facilities Removal in compliance with a license surrender order. If the Commission approves license surrender, and the Renewal Corporation accepts that order, PacifiCorp will be responsible for “decommissioning” the project,⁴⁷ defined as disconnecting project works from the grid and salvaging any useful equipment. During the period that PacifiCorp operates the project pursuant to the O&M Agreement, it will indemnify the Renewal Corporation “from, and against any loss, expense, cost, liability, damage, claim, fine or penalty resulting from or otherwise related to the operation, maintenance, replacement, restoration or repair of the Lower Klamath Project or any failure by PacifiCorp to observe and comply with the terms and conditions” of the O&M Agreement.⁴⁸

7. Extension of Funding Agreements

In Report no. 1, the BOC found that the Renewal Corporation’s funding agreements could expire prior to completion of Facilities Removal.

Both the Oregon and California Funding Agreements have expiration dates of January 31, 2022, and that the California Bond Measure has an expiration date of June 30, 2021, with exceptions for funds devoted to ongoing mitigation or monitoring activities. In response to FERC’s question about whether the funding sources would still be available if facilities removal extends beyond these dates, Renewal Corporation only stated that it would seek extensions from the states but provided no assurances that the states would be amendable to those extensions.⁴⁹

The January 23, 2019 Letter Order asks how the “project will be funded if the facilities removal extends beyond the expiration dates identified in the funding agreements.”⁵⁰

Federal Power Act preempts state property damage claims based in tort law where the alleged damage is the result of the licensee operating in compliance with a FERC-issued license).

⁴⁵ The O&M Agreement is Attachment A to the March 1, 2017 Informational Filing.

⁴⁶ O&M Agreement sections 5 and 6.

⁴⁷ As defined by section 1.4 of the KHSa “Decommissioning” means PacifiCorp’s physical removal from a facility of any equipment and personal property that PacifiCorp determines has salvage value, and physical disconnection of the facility from PacifiCorp’s transmission grid.

⁴⁸ See O&M Agreement section 14. See also October 5, 2017 AIR, item 12.

⁴⁹ Report no. 1 at 8.

⁵⁰ January 23, 2019 Letter Order at 2.

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The Renewal Corporation previously advised the Commission that it would secure extensions of these dates (if and as needed),⁵¹ and that post-completion activities can be funded under the express terms of each of its funding agreements into escrow accounts before funding deadlines occur.⁵² The Renewal Corporation has now secured extensions of all of its funding agreements. These extensions, as documented in Attachment L, are summarized in the following table. After construction and mitigation activities are completed, the Renewal Corporation will encumber funds as necessary for monitoring and continued operation of the mitigation measures in compliance with permit conditions.⁵³

Funding Agreement	Amount	Original Expiration	New Expiration
OPUC	\$184 million	1/31/22	12/31/24 (approved 5/21/19)
CPUC	\$16 million	1/31/22	12/31/24 (approved 7/10/19)
California Bond	\$249.5 million	7/1/20	7/1/25 (approved 12/5/18)

B. Plan B

The financial capacity of the Renewal Corporation is an integrated package consisting of the following elements: (1) \$450 million in committed funding; (2) use of Progressive Design-Build contract to assure a single point of accountability; (3) engagement of best-in-industry project team; (4) requirement of GMP before the Renewal Corporation's acceptance of license transfer; (5) insurance, bond, and indemnity program that provides many hundreds of millions of dollars of risk protection; (6) a project cost estimate at the industry standard P(80) level; and (7) cash and contingency reserves that exceed the industry standard P(80) level. As discussed below, the cash reserve will likely increase as the project proceeds, as current risks based on uncertainties are retired. Further, the States and PacifiCorp must agree to the sufficiency of the financial capacity before license transfer.

The Renewal Corporation has the financial capacity to move forward with Facility Removal, and to do so from a position of strength. However, like any licensee that is responsible to meet its license obligations, unforeseen and remote circumstances theoretically could arise that would require the Renewal Corporation, if the Commission approves license transfer, to raise additional funds. Facing these circumstances, how would the Renewal Corporation respond?

The Renewal Corporation would evaluate value-engineering opportunities.⁵⁴ This is a best practice in any complex construction project. Prior to construction, the Kiewit team will identify such opportunities to reduce costs and risks that could arise after construction begins, consistent with the project purpose and any permit terms for protection of environmental quality and public interest. The Renewal Corporation will examine these opportunities on an iterative basis as

⁵¹ Renewal Corporation, December 4, 2017 AIR Response, item 13. The Amended Project Costs Report includes \$21.5 million for post-construction monitoring and operation of mitigation measures.

⁵² *Id.*

⁵³ See October 5, 2017 AIR, item 13.

⁵⁴ KHSa section 7.2.1.A(5).

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construction proceeds. The Renewal Corporation has received authorization for such adjustments in Oregon's water quality certification and will seek such authorization in other permits.⁵⁵

Additionally, under KHSA sections 7.2.1.A(5) and 8.7, parties will meet and confer to address and resolve any such circumstances that could arise after license transfer or surrender (in this case, after construction begins). Further, while its financial capacity of \$450 million is created and limited by the state cost cap, the parties agree to "work jointly to identify potential partnerships to supplement funds generated pursuant to this Settlement."⁵⁶

In connection with the removal of the Edwards Project, the Commission approved a license transfer subject to future financial contributions to the transferee.⁵⁷ Similarly, for the removal of Penobscot Project, the Commission approved license transfer on the transferee's representation of expected philanthropic contributions.⁵⁸ Here, the Renewal Corporation almost certainly has all funds necessary for Facilities Removal; and, as Plan B, the States and other KHSA signatories will work with other parties to "identify potential partnerships to supplement funds" if necessary after license transfer. In sum, the Renewal Corporation reasonably expects to secure additional funds if necessary, taking into consideration the strength of the project team, and the active support of the States and other parties for completion of Facilities Removal as an essential step in restoration of the basin ecosystem. Finally, the Renewal Corporation may continue accruing interest on the customer funds in excess of the \$28 million assumed in the cost cap.⁵⁹

IV. Final Response to BOC Recommendation No. 2: "The BOC recommends that AECOM prepare another version of the Project's cost estimate."

In its Recommendation no. 2, the BOC recommended an update to the Project's cost estimate. Report no. 1 provides specific guidance on the update, including: the addition of line item cost estimates for project-specific insurance policies and a specialty corporate indemnitor; the application of a template (Chant's standard 28 Item Indirect Cost accounts or equivalent) to detail

⁵⁵ Oregon Department of Environmental Quality ("ODEQ"), "Clean Water Act Section 401 Certification for the License Surrender and Removal of the Lower Klamath Project" (Sept. 7, 2018), Condition 7 at 6 (authorizing a "Remaining Facilities and Operations Plan"). See also California State Water Resources Control Board ("SWRCB"), "Draft Water Quality Certification" (Sept. 23, 2018), Condition 6 at 28 ("Remaining Facilities"). Of course, the Renewal Corporation will expect to receive the Commission's approval of any such adjustment as specified in a license surrender order.

⁵⁶ KHSA section 7.3.8.B. The BOC also notes, in reference to this obligation, the "broad support in the state governments for the completion of the project." Supplement to Report no. 1 at 9.

⁵⁷ *Edwards Manufacturing Company, Inc.*, 84 FERC ¶ 61,227 (1998). The effectiveness of license transfer was subject to Condition A.1, providing for the State's notice that "Bath Iron Works Corporation has deposited \$2.5 million for Edwards Dam removal in the appropriate trust fund"; and subject to Condition A.4, providing that the State, pursuant to Section IX.B.5 of the Edwards Settlement Agreement, has "determined ... that there is adequate funding available to meet the State's obligations" for dam removal. *Id.* at 62,096.

⁵⁸ Penobscot River Trust, "Joint Application for Transfer of Project License, Great Works Project," FERC Accession no. 20081107-5068, paragraph 9 ("Statement of Financial Resources") (describing a second phase of fundraising for dam removal that would begin "... primarily when the projects are acquired").

⁵⁹ KHSA section 7.3.8.A.

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with respect to indirect costs; adjustments to percentages used to calculate overheads and profits; a breakdown of labor rates used in the cost estimate; further detail and modifications with respect to the estimates for equipment rates used in the cost estimate; a correlation of cost estimates with past cost experience; the inclusion of a critical path schedule to support the cost estimates; and further verification of certain non-dam related construction costs.⁶⁰ AECOM prepared the updated cost estimate consistent with the BOC's guidance provided in Report no. 1 and subsequently.

The Amended Estimate of Project Costs Report is Attachment K hereto. This report supersedes the prior version, which was Appendix P in the Definite Plan.

The updated cost estimate is \$433.7 million, inclusive of all expenditures to date; the future costs of planning, oversight, construction, and mitigation; the costs of insurance, bonds, and indemnification; and project contingencies discussed below.⁶¹ The estimate is based on AECOM's Monte Carlo simulations of scenarios.⁶² It reflects the P(80) standard, under which 80% of remaining project risks break against the project.⁶³ P(80) is a conservative industry standard used for complex construction projects.⁶⁴ The cost estimate is \$442 million under the P(95) standard, which is highly conservative, assuming 95% of project risks break against the project.⁶⁵ Each is under the state cost cap.

Under the P(80) standard, the Renewal Corporation has \$16.3 million as cash reserve relative to its cost cap, along with \$62.8 million as a risk contingency.⁶⁶ Under the P(95) standard, the Renewal Corporation has \$8 million as a cash reserve, along with \$7.4 million as a risk contingency.⁶⁷ As planning proceeds to GMP (February 2020), and if provided contingencies do not materialize, the corresponding financial benefit of greater certainty would be an increase in cash reserves. Thus, up to \$27.7 million P(80) or \$ or \$31.6 million P(95) will possibly move from contingency to cash reserve when this milestone is achieved.⁶⁸

Despite cost inflation, the updated estimate is roughly \$43 million less than the estimate in Appendix P of the Definite Plan. This is a result of risks being retired (e.g., risks related to engaging a Progressive Design-Build contractor), better defined as to probability (e.g., risks associated with wildfire), or assigned (e.g., risks to be assigned to RES), in various combinations.⁶⁹

V. Additional Matters Raised by January 23, 2019 Letter Order

⁶⁰ Report no. 1 at 8-11.

⁶¹ AECOM, Amended Estimate of Project Costs Report, Attachment E, "Cost Overview" at 2.

⁶² Amended Estimate of Project Costs Report at 26. *See* June 23, 2017 AIR Response at pp. 13-14; Dec. 4, 2017 AIR Response, Item 1.

⁶³ Cost Overview at 2.

⁶⁴ Amended Estimate of Project Costs Report at 63. *See* December 4, 2017 AIR Response, item 6.

⁶⁵ Cost Overview at 2.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 6.

⁶⁹ *Id.* at 5.

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The January 23, 2019 Letter Order raises two additional matters. First, the Commission asked about the implications if hatchery facilities capable of meeting the mitigation requirements of the KHSA are not operational by the time of removal of the Iron Gate Dam.⁷⁰ Removal of the Iron Gate Dam will not commence unless and until a hatchery facility capable of meeting the mitigation requirements of the KHSA is operational. This requirement is reflected in the Definite Plan and will be proposed as a condition of any license surrender order.

Second, the Commission asked for verification that the action proposed for the Commission's approval is full removal of the dams of the Lower Klamath Project. The Renewal Corporation verifies that. The "Full Removal" scenario described in the Amended Estimate of Project Costs Report is the proposed action. The "Partial Removal" alternative is proposed in the Definite Plan primarily for purposes of environmental review by all state and federal agencies. For instance, in its final water quality certification, ODEQ included a condition that the Renewal Corporation may submit a "Remaining Facilities and Operation Plan" after license surrender and before initiating the proposed action.⁷¹ The Renewal Corporation expects the California SWRCB may provide similar authorization, subject to the Commission's oversight.⁷² KRRC will comply with those requirements by identifying Project facilities that will not be removed or modified and including appropriate mitigation measures, if and as determined by the Commission.

VI. Sequence and Proposed Schedule

PacifiCorp and the Renewal Corporation requested that the Commission act on the License Amendment and Transfer Application before the license surrender application. This is to assure that the Renewal Corporation would be the sole licensee for license surrender, if both applications are approved.⁷³ Further, the joint applicants requested that the Commission allow the Renewal Corporation an extended period of 6 months after the order approving license transfer to submit proof of acceptance of license transfer.⁷⁴ While the Renewal Corporation initially sought action on the License Amendment and Transfer Application by December 2017, it subsequently withdrew that request in light of the time needed for complete responses to the information requests related to its financial capacity.⁷⁵

As the Commission has noted, the KHSA establishes a target date of December 31, 2019 for actions on both applications.⁷⁶ KRRC's implementation of the KHSA is time sensitive. While

⁷⁰ January 23, 2019 Letter Order at 3.

⁷¹ ODEQ, 401 Certification at 6.

⁷² SWRCB, Draft 401 Certification at 28.

⁷³ "Notice of Applications Filed with the Commission" (Nov. 10, 2016), FERC Accession no. 20161110-3055 at paragraph (k); "Notice of Application for Amendment and Transfer of License and Soliciting Comments, Motions to Intervene, and Protests" (Oct. 5, 2017), FERC Accession no. 20171005-3019, paragraph (o).

⁷⁴ License Amendment and Transfer Application at 18.

⁷⁵ December 3, 2017 AIR Response at 14 (item 14).

⁷⁶ October 5, 2017 AIR at 6-7 (item 14).

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securing an order on surrender by that date is no longer feasible, the Renewal Corporation respectfully proposes the following schedule for both proceedings.

A. Proposed Timeline

In entering into the KHSA, the parties concluded “that decommissioning, and removal of the [Lower Klamath Project] will help restore Basin natural resources, including anadromous fish, fisheries and water quality,” as an “important part of the resolution of longstanding, complex, and intractable conflicts over resources in the Klamath Basin.”⁷⁷ The KHSA secures critical benefits for the states of California and Oregon and their citizens, PacifiCorp and its customers, tribal nations, local governments, non-governmental organizations, irrigators, and other interested parties. The KHSA establishes “target” dates of January 1, 2020 for start of Facilities Removal, and December 31, 2020 for completion “at least to a degree sufficient to enable a free-flowing Klamath River allowing volitional fish passage.”⁷⁸ The agreement also contemplates the possibility of an extended schedule if necessary to secure regulatory approvals or for other reasons.⁷⁹

The Renewal Corporation respectfully requests that the Commission act on the license transfer and surrender applications, so that the Renewal Corporation (if authorized to proceed) may complete Facilities Removal by December 2022. That target date requires the start Facilities Removal and the commencement of pre-drawdown actions no later than May 2021.

⁷⁷ KHSA Section 1.1 “Recitals.”

⁷⁸ KHSA section 7.3.1

⁷⁹ KHSA section 7.3.6. Among other things, starting Facilities Removal after December 31, 2020 avoids a payment of \$27 million to PacifiCorp, as “Required Additional Value to Customers,” associated with the January 1, 2020 target. KHSA section 7.3.3.

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Proposed Timeline for KRRC's Actions Related to Facilities Removal

Date	Event	Explanation
February 2020	Execution by the Renewal Corporation of GMP amendment to Project Agreement; negotiated instruments for bonding and indemnification consistent with Amended Risk Management Plan.	
May - December 2021	Pre-drawdown construction actions.	These actions include: replacement of Yreka water system, hatchery modification, access improvements, and flood control improvements. ⁸⁰ These actions will require a seven-month period.
January – March 15, 2022	Reservoir drawdown.	Drawdown must occur during this limited period in order to protect fishery resources. ⁸¹
Mid-March - December 2022	Construction and mitigation actions.	The Renewal Corporation will complete these actions in an eight-month period following reservoir drawdown. ⁸²

B. Action on License Transfer

The License Amendment and Transfer Application was filed with the Commission on September 23, 2016.⁸³ Over the ensuing period, the Renewal Corporation has provided the

⁸⁰ Definite Plan at 221.

⁸¹ *Id.* at 81.

⁸² *Id.* at 305.

⁸³ The License Amendment and Transfer Application seeks to remove PacifiCorp as licensee of the Lower Klamath Project, with KRRC as the sole licensee for the purpose of dam removal. As the Commission recognized in the License Amendment Order, the KHSa “provides that PacifiCorp will not be a co-applicant or co-licensee for the Renewal Corporation’s surrender application.” *PacifiCorp*, 162 FERC ¶ 61,236, at ¶ 14 (2018). While the Commission

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Commission with detailed information regarding its legal, technical and financial capacity to assume the obligations of licensee of the Lower Klamath Project;⁸⁴ responses to AIRs from Commission Staff;⁸⁵ responses to information requested in the License Amendment Order;⁸⁶ and responses to BOC Report no.1⁸⁷ and its Supplemental Report no. 1. With this filing, the joint applicants have responded to all questions and recommendations received from the Commission and the BOC. Moreover, the Commission is informed by numerous interventions and public comments, both in favor of and in opposition to this application, that collectively augment the record of this proceeding.

Accounting for preparatory activities and the window for reservoir drawdown (January 1 to March 15 in a given year), the Renewal Corporation must start work in May 2021 if Facilities Removal is to be complete in 2022. In order to maintain this schedule, the Renewal Corporation respectfully requests that the Commission act on this application as soon as possible and turn its attention to the surrender application.

As acknowledged in the License Amendment and Transfer Application, Section 7.1.4. of the KHSA includes specific preconditions to Renewal Corporation's acceptance of license transfer.⁸⁸ Further, the Commission has recognized that approval of license transfer could include conditions subsequent. "If the Commission approves the [license] transfer, the approval order will specify what information PacifiCorp and the Renewal Corporation will need to provide and any conditions that will need to be satisfied before the transfer can take effect. After receipt of any additional information and satisfaction of conditions, FERC would issue a notice that the transfer is effective."⁸⁹

Acceptance of license transfer is subject to a standard condition that the transferee must hold fee title to the properties under the license. PacifiCorp will transfer and the Renewal Corporation will accept fee title to the properties that comprise the Lower Klamath Project, once the Renewal Corporation meets the requirements of KHSA section 7.1.4 and 7.6.4.D for protection of the States and PacifiCorp.

C. Commencement of License Surrender Proceeding

In its October 5, 2017 notice related to the license transfer, the Commission stated: "We are not requesting comments at this time on the surrender application. After receiving the applicants' supplemental filing regarding a decommissioning plan, the Commission will issue a notice requesting comments, protests, and motions to intervene in that proceeding."⁹⁰

correctly noted that the KHSA provides for a co-licensee arrangement upon mutual agreement, *see id.*; KHSA section 7.1.7(A), such proposal is not before the Commission for the purpose of dam removal.

⁸⁴ FERC Accession no. 20170301-5273.

⁸⁵ FERC Accession nos. 20170623-5103 and 20171204-5131.

⁸⁶ FERC Accession nos. 20180629-5017 and 20180629-5018.

⁸⁷ FERC Accession no. 20181213-5050.

⁸⁸ License Amendment and Transfer Application at 18.

⁸⁹ FERC Accession no. 20180522-3002, Attachment A, item 4.

⁹⁰ FERC Accession no. 20171005-3019, paragraph o.

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The Renewal Corporation has filed the Definite Plan, now amended with respect to the Estimate of Project Costs Report and the Risk Management Plan in the License Amendment and Transfer proceeding. In order to maintain the aforementioned schedule, and if the Commission does not have further AIRs regarding license transfer, the Renewal Corporation will file the Definite Plan in the surrender proceeding and respectfully requests that, upon receipt of this filing, the Commission Staff proceed with its notice and pre-decisional steps related to license surrender, including environmental review. This would be consistent with the Commission's May 22, 2018 letter order, which provided: "If the Commission approves the transfer, FERC will issue a public notice of the surrender application, soliciting comments, interventions, and protests."⁹¹ This would be helpful to the determination under KHSA section 7.1.4, as the basis for the Renewal Corporation's acceptance of license transfer.

Over the course of the [due-diligence period related to the Project Agreement and Liability Transfer Corporation], KRRC will continue to pursue and assess the terms and conditions of all necessary permits and approvals to implement the Definite Plan. This includes, without limitation, pending Water Quality Certifications, Endangered Species Act and National Historic Preservation Act consultations, and other regulatory requirements that are likely to influence or be embedded in FERC's surrender order. KRRC will assess the terms and conditions to be required by FERC in its surrender order to comply with the Federal Power Act, looking specifically to guidance provided by the BOC. The primary objective of these inquiries is to ascertain any potential inconsistencies of these regulatory requirements with the KHSA before KRRC's acceptance of the license transfer. The KRRC will keep PacifiCorp and the States informed about the status of these efforts.

Upon completion of its due diligence, KRRC will inquire of PacifiCorp and the States as to satisfaction with the progress in obtaining permits and approval.

PacifiCorp's and the States' assessment of this precondition will be iterative. PacifiCorp will consider, among other things, the status of permitting processes including feedback from permitting authorities, feedback from the BOC, best utility practices, and PacifiCorp's experience with dam removal projects.⁹²

VII. Conclusion

The Renewal Corporation has demonstrated that it has the legal, technical, and fiscal capacity to become licensee for the Lower Klamath Project, and that license transfer is in the public interest. The Renewal Corporation respectfully requests that the Commission approve the License Amendment and Transfer Application and take the further steps proposed above to act on the license surrender application.

⁹¹ FERC Accession No. 20180522-3022, Attachment A item 4.

⁹² June 28, 2018 AIR Response, Exhibit A item 5(b).

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Sincerely,



Markham A. Quehrn

Laura G. Zagar

Perkins Coie LLP

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Renewal Corporation

Attachments

- A. Board of Consultants, Supplemental Report no. 1 (July 29, 2019) and Response of Renewal Corporation
- B. AECOM, Amended Risk Management Plan (July 2019)
- C. Qualifications of Kiewit Infrastructure West Co.
- D. Letter from Jamie Wisenbaker, Senior Vice President, Kiewit Infrastructure West Co. to Laura Hazlett, Chief Financial Officer, Klamath River Renewal Corporation (July 19, 2019).
- E. "Project Agreement for Design, Construction, Demolition and Habitat Restoration Services in Connection with the Lower Klamath River Project Dams between The Klamath River Renewal Corporation and Kiewit Infrastructure West Co." (April 24, 2019)
- F. Hawkins Delafield & Wood, "Report on Risk Mitigation and Insurability for the Klamath Restoration Project" (November 13, 2015)
- G. Parent Company Guaranty
- H. Qualifications of Aon Risk Insurance Services West, Inc.
- I. Qualification of Resources Environmental Solutions, LLC
- J. RES, Summary of Risk and Liability Transfer Approach (July 12, 2019)
- K. AECOM, Amended Estimate of Project Costs Report (July 2019)
- L. Extensions of Funding Agreements

cc: Lower Klamath Project Independent Board of Consultants
Douglas Johnson, (D2SI) Portland Regional Engineer
Service List (FERC No. 2082-062 and 14803-000)