



August 28, 2018

DELIVERY VIA ELECTRONIC FILING

David E. Capka, P.E.
Director, Division of Dam Safety and Inspections
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**RE: Independent Board of Consultants Procedures ("BOC"); FERC Nos. P-2082, P-14803,
NATDAM-OR00559, CA00323, CA00234, CA00325**

Dear Director Capka:

Attached for your reference and information is a guidance document KRRC is providing to the BOC as a means to comply with the procedures specified in the Commission's letter of May 22, 2018 and with applicable FERC rules. Please let us know if you have any further direction that you would like us to provide to the BOC in connection with these procedures. Thank you.

Sincerely,

/s/ Mark Bransom
Mark Bransom
Chief Executive Officer
Klamath River Renewal Corporation

Enclosure

cc: Dustin Till (PacifiCorp)
Douglas Johnson, (D2SI) Portland Regional Engineer
Board of Consultants
Service List (P-2082-062; P- 14803-000)

KLAMATH RIVER RENEWAL CORPORATION, LOWER KLAMATH PROJECT
PROCEDURES FOR BOARD OF CONSULTANTS

A. GENERAL INFORMATION:

1. Federal Energy Regulatory Commission (“FERC”) Board of Consultants (“BOC”)
Reference: P-2082, P-14803 NATDAM-OR00559, CA00323, CA00234, CA00325.
The BOC was approved by FERC on May 22, 2018. The BOC shall remain in effect through the design and any approved dam removal process.
2. BOC Purpose: FERC uses Independent Boards of Consultants, a group of technical experts, to provide expert oversight on unique or complex projects. Board members are selected based on their technical expertise in relation to issues at a specific project. In this instance, FERC directed KRRC to convene a BOC to review and assess aspects of the Definite Plan¹ and the dam removal process for the Lower Klamath Project, FERC No. 14803. The FERC directive to convene the BOC (“FERC Directive”) is attached as Exhibit A.
3. BOC Members:
Mr. James E. Borg, P.E.
Mr. Ted Chant, P.E.
Mr. Steven Coombs (proposed)
Dr. R. Craig Findlay, Ph.D., P.E., G.E.
Mr. Dan Hertel, P.E.
Dr. MaryLouise Keefe, Ph.D.
4. Licensee:
PacifiCorp
Mr. Mark A. Sturtevant
Managing Director, Hydro Resources
PacifiCorp Energy
825 N.E. Multnomah, Suite 1500
Portland, OR 97232
Phone: 503-813-6680
Email: mark.sturtevant@pacificorp.com

¹ “Definite Plan” refers to the KRRC’s plan to implement the Klamath Hydroelectric Settlement Agreement (as amended) by the removal of four hydroelectric developments: J.C. Boyle, Copco No. 1, Copco No. 2, Iron Gate, for the purpose of achieving a free-flowing condition and volitional fish passage in the Klamath River. The Definite Plan was filed with FERC on June 29, 2018 (P-2082-062/P-14803-000; FERC Accession No 20180629-5018).

5. Applicant/License Transferee:

Klamath River Renewal Corporation ("KRRC")
Mr. Mark Bransom
Chief Executive Officer
Klamath River Renewal Corporation
2001 Addison St. Suite 300 Office 317
Berkeley, CA 94704
Phone: 510.914.4199
Email: mark@klamathrenewal.org

6. Responsibility to Respond to FERC's BOC Directives:

KRRC has assumed primary responsibility for responding to the FERC Directive. PacifiCorp will coordinate with KRRC and the BOC to allow the BOC's work to be performed and completed consistent with the FERC Directive. Except as may otherwise be expressly provided by PacifiCorp, all responses, statements of fact, views, opinions, interpretations, and other communications as may be provided by KRRC to the BOC in response to the FERC Directive are solely and exclusively attributable to the KRRC, are based on facts and information that are known to the KRRC, and are not attributable to PacifiCorp or any other party.

B. BOC ORGANIZATION, GOVERNANCE AND RESPONSIBILITIES:

1. BOC Composition: The BOC is comprised of such members as are approved by FERC, from time to time, with experience in the following areas:

- a. Civil engineering (with specialized experience in dam construction and removal of both concrete and embankment dams).
- b. Civil engineering (with specialized experience in hydrology, hydraulics, and stream diversion).
- c. Geotechnical engineering.
- d. Aquatic and terrestrial biology.
- e. Heavy civil construction cost estimation with experience in dam removal and restoration activities.
- f. Insurance coverage and bonding for large and complex civil construction projects.

2. BOC Independence: The independence of BOC members is determined in relation to criteria established by 18 C.F.R § 12.31(a). At no time during a board member's tenure on the BOC may a member be retained by either PacifiCorp or KRRC as a consultant (other than as a BOC member), or as an employee of PacifiCorp or KRRC (or any of their affiliates) or an agent acting on behalf of PacifiCorp or KRRC (or any of their affiliates).

3. BOC Conduct: The BOC shall conduct its business in compliance with the FERC Directive, the Commission's rule governing the submittal, designation, handling, sharing, and dissemination of Critical Energy/Electric Infrastructure Information (see Exhibit B), and the Commission's *ex-parte* rule (as it relates and applies to communication with FERC) (see Exhibit C). The BOC shall also conduct its business in accordance with the following general principles:

- a. BOC members shall not hold financial interests that conflict with the conscientious performance of their duties on the BOC;
- b. BOC members shall not engage in financial transactions using nonpublic information obtained in the course of their work, or allow the improper use of such information to further any private interest;
- c. BOC members shall not solicit or accept any gift or other item of monetary value from any person or entity doing business with the BOC, or conducting activities under the purview of the BOC, or whose interests may be substantially affected by the performance or nonperformance of the BOC's duties;
- d. BOC members shall put forth honest effort in the performance of their duties;
- e. Individual BOC members shall make no unauthorized commitments of any kind purporting to bind the BOC;
- f. BOC members shall act impartially and not give preferential treatment to any organization or individual (i) doing business with the BOC, (ii) conducting activities under the purview of the BOC, or (iii) whose interests may be substantially affected by the performance or nonperformance of the BOC's duties;
- g. BOC members shall adhere to all laws and regulations that pertain to their work;
- h. BOC members shall avoid any actions that would cause their work not to be, or create the appearance that their work is not, fair and impartial; and
- i. BOC members shall promptly disclose to FERC any facts or circumstances that may come to their attention during the course of their work that gives rise to a conflict of interest, or appearance thereof, or otherwise may influence, or appear to influence, their independence or impartiality.

4. BOC Chair:

4.1. The BOC shall appoint a chair who shall oversee the conduct of BOC business and who shall be the primary point of contact for internal and external communications. The chair shall be appointed by the BOC by affirmation of a majority of the BOC members. Responsibilities of the chair shall include, but are not necessarily limited to, the following:

- a. The chair shall convene Formal Meetings of the BOC, as requested by KRRC.
- b. At the end of a Formal Meeting, the chair (or his or her designee) shall provide a verbal presentation of the BOC's conclusions, recommendations, and answers to the questions posed in advance of the meeting.
- c. Within two weeks of the conclusion of a Formal Meeting, the chair (or his or her designee) shall provide KRRC with a copy of the BOC's Formal Meeting Report.
- d. The chair shall convene Informal Meetings of the BOC, if and as requested by the chair, KRRC, or other BOC members.
- e. The chair may seek clarification of any matters related to the scope, extent, timeliness or any other aspect of the BOC's work. Requests for clarification may include, without limitation, clarification of the specific responsibilities or tasks to be performed by the BOC, and the extent to which any given responsibility or task requires the attention of the BOC as a whole, or if such task or responsibility can be delegated to an individual member or members of the BOC. Requests for any such clarification should be submitted to the KRRC's designated representative in writing.
- f. The chair may seek, on behalf of the BOC, additional information as to any matter that is before the BOC. Requests for additional information should be submitted to KRRC in writing.
- g. The chair shall facilitate such other actions and inquiries as may be necessary or convenient to the work of the BOC.

4.2. The BOC chair shall serve for a term of six months, unless that term is extended by affirmation of a majority of the BOC members. A BOC chair may, at his or her option, elect to step down from that position at any time and for any reason, effective upon the selection of a new chair by affirmation of a majority of the BOC members.

5. BOC Member Responsibilities:

5.1. BOC members shall attend all Formal Meetings of the BOC unless a member has made arrangements (in advance of the meeting) to be excused from a Formal Meeting, or has been advised by the chair in advance of the Formal Meeting that his or her presence is not required.

5.2. BOC members are each individually responsible for performing their own work, reflective of their best professional and independent judgment, and to provide such written conclusions, recommendations, and answers to the questions as they may be called upon to make in the context of any one or more reports.

5.3. Individual BOC members may communicate among themselves, as frequently and in any manner as may be necessary or convenient to the work of the BOC. All written communications among BOC members shall be retained by BOC members and maintained in a separate file designated "FERC BOC Records."

5.4. Individual BOC members are encouraged, on an as needed basis, to seek clarification from the BOC chair of any matters related to the scope, extent, timeliness or any other aspect of their work. Individual BOC members are also encouraged to request that the chair obtain any additional information needed to undertake or complete his or her work.

5.5. During the course of any contested on-the-record proceeding, all communication with FERC pertaining to the substance of their work is subject to the FERC *ex parte* rule and therefore must be in writing, on the record, and filed in the public records of the relevant FERC proceedings (see Exhibit C). Any questions concerning the FERC *ex parte* rule, or the manner and method of appropriate communications with FERC, should be referred to the chair of the BOC.

C. FORMAL MEETINGS:

1. When Required: Formal Meetings are required in response to the FERC Directive and as otherwise requested by KRRC to review and assess aspects of the Definite Plan and the dam removal process. Formal Meetings will generally be scheduled to coincide with important milestones for the initial review, design, investigations, and analyses.

2. Convening Formal Meetings:

2.1. The BOC chair shall convene a Formal Meeting upon a written request from the KRRC's designated representative. KRRC's request [via email or other assured form of delivery] shall include a data package from KRRC that contains (as appropriate) the following information:

- a. An agenda for the meeting;
- b. A statement of the specific level of review the BOC is expected to provide;
- c. A list of the items to be reviewed and discussed with the BOC;
- d. Investigations, engineering analyses and reports, design drawings and specifications to be reviewed by the BOC, as appropriate;
- e. A list of questions to be answered by the BOC, if any (including, but not limited to, any comments or questions provided by FERC staff for BOC review and consideration);
- f. A discussion of significant events in the investigation or design that have occurred since the last BOC meeting (if any); and

- g. A list documenting BOC recommendations, the current status and outcome of those recommendations, and the BOC report in which the recommendations were made, as appropriate.

2.2. KRRC shall be responsible for preparing and distributing the data package at least two weeks prior to a Formal Meeting, and shall provide one copy to the D2SI-PRO Regional Engineer and three copies to the Director, D2SI, Washington DC. KRRC shall provide a meeting room and make such other logistical arrangements for Formal Meetings as requested by the BOC chair.

3. Attendees:

3.1. It is anticipated that Formal Meetings will be attended by members of the BOC, KRRC, PacifiCorp, consultants, and FERC staff. The name and affiliation of all invited attendees shall be stated in the agenda for the meeting.

3.2. If FERC staff choose to attend a Formal Meeting during the course of any contested on-the-record proceeding, then the Formal Meeting will be publicly noticed by KRRC by filing this notice in the appropriate FERC docket and serving all Parties of Record as required by the Commission's rules. This notice shall serve as an invitation to Parties of Record to attend the Formal Meeting identified in the notice, subject to signing a Non-Disclosure Agreement due to the Critical Energy Infrastructure Information material that may be discussed. Parties of Record invited to attend a Formal Meeting are invited to listen but will not be granted speaking privileges.

4. Rules of Order and Conduct:

4.1. The chair of the BOC may, from time to time, adopt such rules of order and conduct for Formal Meetings as the chair determines to be necessary for the orderly and efficient conduct of BOC business. Arrangements may be made by the chair of the BOC, on a case-by-case basis, for telephonic participation in Formal Meetings, but participants are generally expected to attend in person.

4.2. The chair of the BOC may designate staff (provided by KRRC) to keep meeting minutes, and in such case, the minutes of the Formal Meeting will be circulated to all members of the BOC for review and approval. Approved Formal Meeting minutes shall be retained by the BOC chair in a separate file designated "FERC BOC Records." In lieu of meeting minutes, the chair may direct staff (provided by KRRC) to record (by audio tape or similar medium) Formal Meetings, and such recordings shall be retained by the BOC chair in a separate file designated "FERC BOC Records."

5. Subject Matter:

5.1. Matters to be considered by the BOC at Formal Meetings include the following:

- a. Adequacy of available funding and reasonableness of updated cost estimates for the most probable cost and maximum cost for the full removal alternative, and the assumptions made to calculate those estimates;
- b. Adequacy of amounts and types of insurance coverage and bonding arrangements for dam removal;
- c. Plans for river diversion and care of water during removal activities;
- d. Project documents including the Potential Failure Mode Analyses, Part 12D Independent Consultant Inspection Reports and the Supporting Technical Information Documents, to understand project specific aspects that could be significant to the dam removal process;
- e. Dam removal schedules, plans and specifications, staging sequence, and supporting engineering studies, including geotechnical, hydrologic/hydraulic, and structural;
- f. Project operations before, during, and after dam removals;
- g. Current operating condition of project water retaining features and any potential complications during staged removal process;
- h. Sequencing of dam removals to maintain project safety;
- i. Ability during all phases of dam removal for the project to safely pass flood flows;
- j. The safety of any portions of the water retaining structures or portions of other appurtenant features that may remain in place following dam removal;
- k. Monthly construction reports, provided to the BOC and FERC for review by the 10th day of the following month, during the dam removal process when any work is ongoing;
- l. Any additional information or analysis requested by the BOC; and
- m. Such other matters requested by FERC or KRRC in connection with the review and assessment of the Definite Plan and the dam removal process.

5.2. KRRC will consult with the chair of the BOC to determine the most orderly and efficient schedule and sequencing for this work, consistent with the FERC Directive and any further direction that FERC may provide with respect to these matters.

6. Location of Formal Meetings: The location of Formal Meetings may be determined by the chair of the BOC to facilitate the participation and convenience of the attendees. In making this decision, the chair may give priority to the convenience and needs of attendees, in the following order: BOC members, FERC staff (if attending), KRRC, PacifiCorp, consultants, Parties of Record to contested on-the-record proceedings.

7. Reports: Within two weeks of a Formal Meeting, the BOC will provide KRRC with the BOC's Formal Meeting Report. Formal Meeting Reports shall conform with FERC Engineering Guidelines (as applicable) and such other guidance as FERC may provide with respect to a given subject matter. Subject to any applicable requirements established by FERC, each Formal Meeting Report shall contain the following information:
- a. A clear statement of subject matter of the Formal Meeting Report, and a discussion specific level of review the BOC provided in the preparation of the Formal Meeting Report.
 - b. The names of the primary authors of the Formal Meeting Report, together with a summary of the expertise of the author with respect to the subject matter of the Formal Meeting Report.
 - c. An executive summary of the report, inclusive of any findings, conclusions, recommendations, and the answers to any questions that are addressed in the Formal Meeting Report.
 - d. A discussion of facts, data, studies, analyses or other information relied upon by the BOC in the preparation of the Formal Meeting Report.
 - e. A discussion of any analyses undertaken by the BOC members, including any methodologies, techniques, models, or other analytical tools used or relied upon by the BOC, and any key assumptions, theories, hypotheses, opinions or other citations that are necessary to an understanding of the Formal Meeting Report.
 - f. A clear statement of the BOC's conclusions and recommendations, referencing any key findings or results of analyses contained in the Formal Meeting Report that support the BOC's conclusions and recommendations.
 - g. A summary of any dissenting views or conclusions of any one or more BOC members, and a list of any questions or issues that may be material to the BOC's findings and conclusions that remain unresolved or are to be determined by further review and analyses.
 - h. A bibliography of all references and materials relied upon in the preparation of the Formal Meeting Report (to the extent not included in the data packages received by the BOC or otherwise noted in the Formal Meeting Report).
8. Final Meeting and Report: The final BOC Formal Meeting shall be held one month after completion of the removal of all dams and appurtenant structures. The final Formal Meeting Report shall assess the completed dam removal process.

D. INFORMAL MEETINGS:

1. Informal Meeting: An "informal meeting" is a reference to a meeting (in person or telephonic) between a BOC member and a third party (i.e., non-BOC member) undertaken for the purpose of conducting the business of the BOC. As noted above,

individual BOC members may communicate among themselves, as frequently and in any manner as may be necessary or convenient to the work of the BOC. These communications and deliberations *among BOC members* are not Informal Meetings and are not subject to the guidance provided herein for Informal Meetings.

2. As Needed: Informal meetings of the BOC may be called by the chair of the BOC, or requested by KRRC, if and as needed to facilitate the work of the BOC. Informal Meetings may be held by telephone or in person. Informal meetings are encouraged as a means to respond to BOC information requests (e.g., making personnel available to BOC to answer any questions; site visits) or to address procedural or other administrative matters that may arise in connection with the BOC's work.
3. Meeting Attendees: Informal Meetings should be limited to the participants that are necessary to conduct the business of the meeting. The chair of the BOC need not attend unless his or her attendance is necessary to conduct the business of the meeting. Attendees shall be limited to one or more BOC members, KRRC, PacifiCorp, and their consultants. During the course of any contested on-the-record proceeding, FERC will not be invited to participate in an Informal Meeting and any necessary and related communications with FERC will be conducted in compliance with the FERC *ex parte* rule (see Exhibit C).
4. Reports/Documentation: No formal documentation of an Informal Meeting is required. However, BOC members that participate in an Informal Meeting should record the date of the meeting, the names of the meeting attendees, and a summary of what was discussed and any action taken as a result of the meeting. These records are to be retained by BOC members that participated in the meeting and maintained in separate files designated "FERC BOC Records."
5. Contract Administration: Any issues that may arise with respect to contract administration are matters to be addressed by the BOC member that is the contracting party and KRRC. These matters are not matters that come before the BOC, are not Informal Meetings, and are to be addressed in accordance with the terms, conditions and procedures provided by the relevant contracts.

E. COMMUNICATIONS PROTOCOLS:

1. Generally: Except as otherwise provided by these guidelines or in any FERC directive, the primary point of contact between the BOC and KRRC shall be the chair of the BOC and KRRC's CEO (or his designated representative). Other than Formal Meetings, Informal Meetings or communications of a procedural or administrative nature, all communications between the BOC and KRRC should be in writing (or in electronic form) delivered to such address as the chair of the BOC and KRRC's CEO (or his designated representative) shall provide the other for purposes of such communications.

2. Public Communications:

2.1. Except for the participation of Parties of Record to contested on-the-record proceedings in Formal Meetings under the circumstances noted above, the meetings of the BOC are closed to the public and, except and only as otherwise provided by these "Procedures for Board of Consultants," BOC members may not communicate with any third party concerning matters pending before the BOC. The chair of the BOC shall forward any requests for information or communications received from the public to FERC. Any response to these requests will be made by the BOC only if and as directed by FERC.

2.2. Within two weeks from receipt of the BOC Formal Meeting Report, KRRC shall file the Formal Meeting Report (and any accompanying information) with FERC and this information (exclusive of CEII--see Exhibit B) will be available to the public in the appropriate FERC docket.

F. MISCELLANEOUS:

1. Construction and Interpretation: This "Board of Consultants Procedures" is a guidance document. This document has no legal force or effect, and is subject and subordinate to all applicable laws (including, but not limited to, the Federal Power Act and all rules promulgated thereunder, and any one or more directives as may be provided by FERC from time to time). If the BOC has any questions concerning the rules and procedures that govern its conduct, the BOC is advised to submit any such questions directly to FERC.
2. Amendments: At the request of the chair of the BOC, at the direction of FERC, or on its own initiative, this "Procedures for Board of Consultants" may be amended, from time to time, by KRRC in order to facilitate the work of the BOC and to maintain consistency with any FERC directives.

Exhibit A

FEDERAL ENERGY REGULATORY COMMISSION
Office of Energy Projects
Division of Dam Safety and Inspections - Headquarters Office
888 First Street, N.E., Routing Code: PJ-13
Washington, D.C. 20426

May 22, 2018

In reply refer to:
P-2082, P-14803
NATDAM-OR00559,
CA00323, CA00234,
CA00325

Mr. Mark A. Sturtevant
Managing Director, Hydro Resources
PacifiCorp Energy
825 N.E. Multnomah, Suite 1500
Portland, OR 97232

Mr. Mark Bransom
Executive Director
Klamath River Renewal Corporation
423 Washington Street, 3rd Floor
San Francisco, CA 94111

Subject: Approval of independent Board of Consultants (BOC) for the Klamath Project
No. 2082 and the Lower Klamath Project No. 14803.

Dear Mr. Sturtevant and Bransom:

Mr. Bransom's March 22, 2018, letter requests approval of Mr. Dan Hertel, P.E., Mr. James E. Borg, P.E., Dr. R. Craig Findlay, Ph.D., P.E., G.E., Dr. MaryLouise Keefe, Ph.D., Mr. Ted Chant, P.Eng., and Mr. Robert D. Muncil, ARM, as members of the BOC for the removal of John C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate Developments from the Klamath Project No. 2082 and Transfer of the Developments to the Lower Klamath Project No. 14803, Proposed Transfer of the Lower Klamath Project No. 14803 from PacifiCorp to the Klamath River Renewal Corporation, and Proposed Surrender and Removal of the Lower Klamath Project¹.

¹ On March 15, 2018, the Commission issued an Order Amending License and Deferring Consideration of Transfer Application. *PacifiCorp*, 162 FERC ¶ 61,236 (2018). The order administratively removed these four developments from the license for P-2082 and transferred them to the license for P-14803, with PacifiCorp remaining the

The proposed members are approved.

The BOC shall review and assess all aspects of the proposed dam removal process and the financial ability of the Klamath River Renewal Corporation (Renewal Corporation) to carry out the process, including the additional information required in the Appendix to the Commission's March 15, 2018 order:

- 1) Adequacy of available funding and reasonableness of updated cost estimates for the most probable cost and maximum cost for the full removal alternative, and the assumptions made to calculate those estimates;
- 2) Adequacy of amounts and types of insurance coverage and bonding arrangements for dam removal;
- 3) Plans for river diversion and care of water during removal activities;
- 4) Project documents including the Potential Failure Mode Analyses, Part 12D Independent Consultant Inspection Reports and the Supporting Technical Information Documents, to understand project specific aspects that could be significant to the dam removal process;
- 5) Dam removal schedules, plans and specifications, staging sequence, and supporting engineering studies, including geotechnical, hydrologic/hydraulic, and structural;
- 6) Project operations before, during, and after dam removals;
- 7) Current operating condition of project water retaining features and any potential complications during staged removal process;
- 8) Sequencing of dam removals to maintain project safety;
- 9) Ability during all phases of dam removal for the project to safely pass flood flows;
- 10) The safety of any portions of the water retaining structures or portions of other appurtenant features that may remain in place following dam removal;
- 11) Monthly construction reports, provided to the BOC and FERC for review by the 10th day of the following month, during the dam removal process when any work is ongoing; and
- 12) Any additional information or analysis requested by the BOC.

In addition to the BOC operation procedures identified below, staff will utilize the

licensee for both projects pending future Commission action on the proposed joint application for transfer of the Lower Klamath Project from PacifiCorp to the Renewal Corporation. On April 16, 2018, PacifiCorp filed a motion to stay, or, in the alternative, a limited request for rehearing of the Commission's March 15, 2018 Order until the Commission acts on the requested license transfer. The stay request is currently pending.

plan and schedule provided in Attachment A to this document in order to ensure compliance with the Commission's ex parte rule in dealing with the BOC.

The BOC typically operates as follows:

1. Formal BOC meetings will be scheduled to review and assess all financial and technical areas. The meetings should be scheduled at important milestones for the initial review, design, investigations, and analyses. It is anticipated that the meetings will be attended by members of the BOC, PacifiCorp, Renewal Corporation, consultants, and the Commission staff.
2. At least two weeks prior to each BOC meeting, PacifiCorp and/or the Renewal Corporation, as appropriate, shall provide to the distribution list below a data package that contains:
 - a) An agenda for the meeting;
 - b) A statement of the specific level of review the BOC is expected to provide;
 - c) A list of the items to be reviewed and discussed with the BOC;
 - d) Investigations, engineering analyses and reports, design drawings and specifications to be reviewed by the BOC, as appropriate;
 - e) A list of questions to be answered by the BOC, if any;
 - f) A discussion of significant events in the investigation or design that have occurred since the last BOC meeting; and
 - g) A list documenting BOC recommendations, the current status and outcome of those recommendations, and the BOC report in which the recommendations were made.

The data package, as well as all project related correspondence, should be distributed as follows:

- a) One copy to each BOC member;
 - b) One copy to the D2SI-PRO Regional Engineer;
 - c) Three copies to the Director, D2SI, Washington DC; and
 - d) If the documents are not eFiled, an additional copy should be submitted to the D2SI-PRO Regional Engineer.
3. At the end of each BOC meeting, the BOC shall verbally present its conclusions, recommendations, and answers to the questions posed. Within two weeks, the BOC shall provide PacifiCorp and/or the Renewal Corporation with a copy of the BOC meeting report. Within two weeks from receipt of the BOC meeting report, PacifiCorp and/or the Renewal Corporation should distribute the report and a plan and schedule to comply with the BOC's recommendations or a statement identifying a plan to resolve any issue(s). In

the event the BOC's recommendations are not implemented, detailed reasons for not doing so should be provided. FERC staff may require additional action after staff reviews the above information. The BOC report and PacifiCorp's and/or Renewal Corporation's plan and schedule should be distributed as follows:

- a) One copy to the D2SI-PRO Regional Engineer;
 - b) Three copies to the Director, D2SI, Washington DC;
 - c) If the documents are not eFiled, an additional copy should be submitted to the D2SI-PRO Regional Engineer.
4. The BOC shall remain in effect through the design and any approved dam removal process.
 5. The final BOC meeting must be held one month after completion of any approved removal of all dams and appurtenant structures. The final report shall assess the completed dam removal process. Within 45 days of the date of the final BOC report, copies of the report shall be distributed as in Item 3, above.
 6. As noted above, modified procedures will be followed in this proceeding as provided in Attachment A.

If you have any questions regarding this letter, please call me at 202-502-6314.

Sincerely,



David E. Capka, P.E.
Director
Division of Dam Safety and Inspections

Attachment A

The following plan and schedule address the applicability of the Commission's ex parte rule to the Commission-required Board of Consultants (BOC) for the joint license amendment and transfer application (Project Nos. 2082 and 14803) and surrender application (Project No. 14803).

1. FERC approval of the project BOC members.

The BOC can begin meeting with PacifiCorp and the Klamath River Renewal Corporation, as needed. However, FERC staff will not participate in BOC meetings at this time.

2. BOC Review of Definite Plan for Amendment/Transfer Decision

After PacifiCorp and the Renewal Corporation file the Definite Plan (expected July 2018) and the BOC meets to determine the adequacy of cost estimates, insurance, bonding, and the overall financial resources available to implement the plan. FERC staff will provide the BOC with any comments or questions on the plan. The BOC will then submit a report with its findings to PacifiCorp and the Renewal Corporation, addressing all FERC staff comments and questions, and providing its independent views and recommendations regarding all aspects of the adequacy of cost estimates, insurance, bonding, and the overall financial resources available to implement the plan. PacifiCorp and the Renewal Corporation will file the report with FERC, addressing how they propose to implement the BOC's recommendations and explaining how they propose to address any recommendations not adopted.

3. FERC Decision to Participate in BOC Meetings

FERC staff may choose to meet with the BOC at this point to discuss the Definite Plan and the BOC's report/findings regarding cost estimates and financial adequacy. Any meeting would be publicly noticed and all parties invited to attend, subject to signing a Non-Disclosure Agreement (NDA) due to the Critical Energy Infrastructure Information material that may be discussed. Parties are welcome to listen but will not be granted speaking privileges.

4. FERC Decision on Amendment/Transfer Application

FERC will issue an order addressing the joint license amendment and transfer application (Project Nos. 2082 and 14803). If the Commission approves the 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 needed additional information and satisfaction of conditions, FERC would issue a notice that the transfer is effective. If the Commission denies the transfer application, it will request comments from the parties regarding next steps.

5. FERC Public Notice of Surrender Application

If the Commission approves the transfer, FERC will issue a public notice of the surrender application inviting comments, interventions, and protests. Based on comments, FERC may seek additional information. FERC will also determine if there is a need to supplement prior Environmental Impact Statements.

6. BOC Review of Definite Plan for Surrender Decision

The BOC would meet to determine the engineering, public safety, and environmental adequacy of the dam removal plans and proposed environmental mitigation. FERC anticipates meeting with the BOC at this time and would issue public notice of all meetings, invite intervenors to attend subject to an NDA, and follow the same procedures discussed above. Again, intervenors would be welcome to listen but would not be granted speaking privileges.

7. FERC Decision on Surrender Application

FERC will issue an order addressing the surrender application (Project No. 14803). If the Commission approves the surrender application, the surrender order will specify the conditions that will have to be satisfied before the surrender will be considered effective. After all conditions are satisfied, FERC will issue a notice that the surrender is effective. If the Commission denies the surrender application, it will request comments from the parties regarding next steps.

8. BOC Review of Ongoing Construction and Mitigation Work

If the Commission approves the surrender, the Renewal Corporation will begin implementing the terms of the surrender order. The BOC would continue meeting, as needed, to review the technical engineering and environmental issues associated with dam removal. FERC staff will participate at this point without providing public notice, given that the matters discussed will be related to compliance with a Commission order and not the merits of the surrender application.

Exhibit B

Federal Energy Regulatory Commission

§ 388.113

(c) *Effect of privilege or CEII claim.* (1) For documents filed with the Commission:

(i) The documents for which privileged or CEII treatment is claimed will be maintained in the Commission's document repositories as non-public until such time as the Commission may determine that the document is not entitled to the treatment sought and is subject to disclosure consistent with §§ 388.108 or 388.113 of this chapter. By treating the documents as non-public, the Commission is not making a determination on any claim of privilege or CEII status. The Commission retains the right to make determinations with regard to any claim of privilege or CEII status, and the discretion to release information as necessary to carry out its jurisdictional responsibilities.

(ii) The request for privileged or CEII treatment and the public version of the document will be made available while the request is pending.

(2) For documents submitted to Commission staff. The notification procedures of paragraphs (d), (e), and (f) of this section will be followed before making a document public.

(d) *Notification of request and opportunity to comment.* When a FOIA or CEII requester seeks a document for which privilege or CEII status has been claimed, or when the Commission itself is considering release of such information, the Commission official who will decide whether to release the information or any other appropriate Commission official will notify the person who submitted the document and give the person an opportunity (at least five calendar days) in which to comment in writing on the request. A copy of this notice will be sent to the requester.

(e) *Notification before release.* Notice of a decision by the Commission, the Chairman of the Commission, the Director, Office of External Affairs, the General Counsel or General Counsel's designee, a presiding officer in a proceeding under part 385 of this chapter, or any other appropriate official to deny a claim of privilege, in whole or in part, or to make a limited release of CEII, will be given to any person claiming that the information is privileged or CEII no less than 5 calendar days be-

fore disclosure. The notice will briefly explain why the person's objections to disclosure are not sustained by the Commission. A copy of this notice will be sent to the FOIA or CEII requester.

(f) *Notification of suit in Federal courts.* When a FOIA requester brings suit to compel disclosure of information for which a person has claimed privileged treatment, the Commission will notify the person who submitted the documents of the suit.

[Order 769, 77 FR 65476, Oct. 29, 2012]

§ 388.113 Accessing critical energy infrastructure information.

(a) *Scope.* This section governs access to critical energy infrastructure information (CEII). The rules governing submission of CEII are contained in 18 CFR 388.112(b). The Commission reserves the right to restrict access to previously filed documents as well as Commission-generated documents containing CEII.

(b) *Purpose.* The procedures in this section are available at the requester's option as an alternative to the FOIA procedures in § 388.108 where the information requested is exempted from disclosure under the FOIA and contains CEII.

(c) *Definitions.* For purposes of this section:

(1) *Critical energy infrastructure information* means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:

(i) Relates details about the production, generation, transportation, transmission, or distribution of energy;

(ii) Could be useful to a person in planning an attack on critical infrastructure;

(iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and

(iv) Does not simply give the general location of the critical infrastructure.

(2) *Critical infrastructure* means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

(d) *Accessing critical energy infrastructure information.* (1) An Owner/operator

of a facility, including employees and officers of the owner/operator, may obtain CEII relating to its own facility directly from Commission staff without going through the procedures outlined in paragraph (d)(4) of this section. Non-employee agents of an owner/operator of such facility may obtain CEII relating to the owner/operator's facility in the same manner as owner/operators as long as they present written authorization from the owner/operator to obtain such information.

(2) An employee of a federal agency acting within the scope of his or her federal employment may obtain CEII directly from Commission staff without following the procedures outlined in paragraph (d)(4) of this section. Any Commission employee at or above the level of division director or its equivalent may rule on federal agency representatives' requests for access to CEII.

(3) A landowner whose property is crossed by or in the vicinity of a project may receive detailed alignment sheets containing CEII directly from Commission staff without submitting a non-disclosure agreement as outlined in paragraph (d)(4) of this section. A landowner must provide Commission staff with proof of his or her property interest in the vicinity of a project.

(4) If any other requester has a particular need for information designated as CEII, the requester may request the information using the following procedures:

(i) File a signed, written request with the Commission's CEII Coordinator. The request must contain the following: Requester's name (including any other name(s) which the requester has used and the dates the requester used such name(s)), title, address, and telephone number; the name, address, and telephone number of the person or entity on whose behalf the information is requested; a detailed statement explaining the particular need for and intended use of the information; and a statement as to the requester's willingness to adhere to limitations on the use and disclosure of the information requested. A requester shall provide his or her date and place of birth upon request, if it is determined by the CEII Coordinator that this information is

necessary to process the request. Unless otherwise provided in Section 113(d)(3), a requester must also file an executed non-disclosure agreement.

(ii) A requester who seeks the information on behalf of all employees of an organization should clearly state that the information is sought for the organization, that the requester is authorized to seek the information on behalf of the organization, and that all the requesters agree to be bound by a non-disclosure agreement that must be executed by and will be applied to all individuals who have access to the CEII.

(iii) After the request is received, the CEII Coordinator will determine if the information is CEII, and, if it is, whether to release the CEII to the requester. The CEII Coordinator will balance the requester's need for the information against the sensitivity of the information. If the requester is determined to be eligible to receive the information requested, the CEII Coordinator will determine what conditions, if any, to place on release of the information.

(iv) If the CEII Coordinator determines that the CEII requester has not demonstrated a valid or legitimate need for the CEII or that access to the CEII should be denied for other reasons, this determination may be appealed to the General Counsel pursuant to § 388.110 of this Chapter. The General Counsel will decide whether the information is properly classified as CEII, which by definition is exempt from release under FOIA, and whether the Commission should in its discretion make such CEII available to the CEII requester in view of the requester's asserted legitimacy and need.

(v) Once a CEII requester has been verified by Commission staff as a legitimate requester who does not pose a security risk, his or her verification will be valid for the remainder of that calendar year. Such a requester is not required to provide detailed information about him or herself with subsequent requests during the calendar year. He or she is also not required to file a non-disclosure agreement with subsequent requests during the calendar year because the original non-disclosure agreement will apply to all subsequent releases of CEII.

(vi) If an organization is granted access to CEII as provided by paragraph (d)(4)(iii) of this section, and later seeks to add additional individuals to the non-disclosure agreement, the names of these individuals must be sent to the CEII Coordinator with certification that notice has been given to the submitter. Any newly added individuals must execute a supplement to the original non-disclosure agreement indicating their acceptance of its terms. If there is no written opposition within five (5) days of notifying the CEII Coordinator and the submitter concerning the addition of any newly-named individuals, the CEII Coordinator will issue a standard notice accepting the addition of names to the non-disclosure agreement. If the submitter files a timely opposition with the CEII Coordinator, the CEII Coordinator will issue a formal determination addressing the merits of such opposition.

(e) Fees for processing CEII requests will be determined in accordance with 18 CFR 388.109.

[Order 630, 68 FR 9870, Mar. 3, 2003, as amended by Order 630-A, 68 FR 40460, Aug. 6, 2003; Order 649, 69 FR 48391, Aug. 10, 2004; Order 662, 70 FR 37036, June 28, 2005; 71 FR 58276, Oct. 3, 2006; 72 FR 63085, Nov. 14, 2007; Order 760, 77 FR 65477, Oct. 29, 2012]

PART 389—OMB CONTROL NUMBERS FOR COMMISSION INFORMATION COLLECTION REQUIREMENTS

AUTHORITY: 44 U.S.C. 3501–3520.

§ 389.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This part displays Office of Management and Budget (OMB) control numbers assigned to information collection requirements. This part aids in fulfilling the requirements of the Paperwork Reduction Act to display current OMB control numbers for these information collection requirements. The Commission also displays OMB control numbers on its Web site, www.ferc.gov. For the most current information, interested persons should consult the Commission's Web site

under "Documents and Filings" and then "Information Collections" or directly at <http://www.ferc.gov/docs-filing/info-collections.asp>.

(b) Display.

18 CFR Part or section	OMB Control number
2.19	1902-0058, 1902-0115
2.20	1902-0170
2.59	1902-0128
2.400	1902-0075
4.51	1902-0073
4.32	1902-0073, 1902-0115
4.33	1902-0073
4.35	1902-0058, 1902-0115, 1902-0073, 1902-0145
4.36(a)	1902-0073, 1902-1045
4.36(b)	1902-0058, 1902-0115, 1902-0145
4.36(c)	1902-0058, 1902-0115, 1902-0073
4.40	1902-0058
4.41	1902-0058
4.50	1902-0058
4.51	1902-0058
4.61	1902-0115
4.71	1902-0115
4.81	1902-0073
4.81(b)(5)	1902-0145
4.82	1902-0073
4.84	1902-0073
4.92	1902-0115
4.95	1902-0115
4.96	1902-0115
4.102	1902-0115
4.104	1902-0115
4.107	1902-0115
4.108	1902-0115
4.201	1902-0058, 1902-0115
4.202	1902-0058, 1902-0115
4.301	1902-0058, 1902-0115
4.303	1902-0058, 1902-0115
5.2	1902-0058, 1902-0115
5.3(c)(1)	1902-0058, 1902-0115
5.3(c)(2)	1902-0058, 1902-0115
5.3(d)(1)	1902-0058, 1902-0115
5.4	1902-0058, 1902-0115
5.5	1902-0058, 1902-0115
5.6	1902-0058, 1902-0115
5.11	1902-0058, 1902-0115
5.13	1902-0058, 1902-0115
5.15(b)	1902-0058, 1902-0115
5.15(c)	1902-0058, 1902-0115
5.15(d)	1902-0058, 1902-0115
5.15(e)	1902-0058, 1902-0115
5.15(f)	1902-0058, 1902-0115
5.16	1902-0058, 1902-0115
5.17	1902-0058, 1902-0115
5.18	1902-0058, 1902-0115
5.18(d)	1902-0058, 1902-0115
5.20	1902-0058, 1902-0115
5.21	1902-0058, 1902-0115
5.23(b)	1902-0058, 1902-0115
5.27	1902-0058, 1902-0115
6.1	1902-0088
8.1	1902-0058, 1902-0115
8.2	1902-0058, 1902-0115
8.11	1902-0108
9	1902-0069
11.1(d)(4)	1902-0136
11.3(c)	1902-0136
11.4(d)	1902-0136
11.6(f)	1902-0136
11.16	1902-0087
16.4	1902-0058, 1902-0115

CRITICAL ENERGY/ ELECTRIC INFRASTRUCTURE INFORMATION

GENERAL NON-DISCLOSURE AGREEMENT

1. These provisions govern the use of Critical Energy / Electric Infrastructure Information (CEII) provided to an individual who files a request for access to CEII pursuant to 18 C.F.R. § 388.113.
2. Definitions - For purposes of these provisions:
 - a. The term "CEII Coordinator" refers to the Federal Energy Regulatory Commission (Commission) official designated as the CEII Coordinator, with delegated authority under 18 C.F.R. § 375.313 to make determinations with respect to requests for CEII and make determinations as to whether particular information fits within the definition of CEII.
 - b. The terms "non-disclosure agreement" and "NDA" mean this agreement by which requesters certify their understanding that access to CEII is provided pursuant to the terms and restrictions of these provisions, and that such requesters have read the provisions and agree to be bound by them.
 - c. The term "Recipient" means someone who is approved to receive CEII in accordance with the provisions of 18 C.F.R. § 388.113.
3. A Recipient may only discuss CEII with another authorized Recipient of the identical CEII. A Recipient may check with the CEII Coordinator to determine whether another individual is an authorized Recipient of the identical CEII.
4. If any Recipient submits information to the Commission that includes CEII obtained under these provisions, the portions of the filing containing CEII must be submitted in accordance with 18 C.F.R. § 388.113(d)(1).
5. A Recipient of CEII may use CEII as foundation for advice provided to others, but may not disclose CEII to another individual unless that individual is an authorized Recipient of the identical CEII.
6. A Recipient may only use CEII for the purpose for which it was requested and must not use CEII for an illegal or illegitimate purpose.

Initials: _____

Date: _____

7. All CEII shall be maintained by the Recipient in a secure place in a manner that would prevent unauthorized access. Access to those materials shall be limited to other authorized Recipients of the identical material. Recipients may make copies of CEII, but such copies become CEII and are subject to these same restrictions. Recipients may make notes of CEII, which shall be treated as CEII, if they contain CEII.
8. CEII provided pursuant to the agreement is not subject to release under either the Freedom of Information Act or other Sunshine Laws.
9. Recipients must return CEII to the CEII Coordinator or destroy CEII within fifteen days of a written request by the CEII Coordinator to do so, except that CEII notes may be retained in accordance with Paragraph 7, above. Within such time period, each Recipient, if requested to do so, shall also submit to the CEII Coordinator an affidavit stating that, to the best of his or her knowledge, all CEII has been returned or destroyed and that CEII notes have either been returned, destroyed or are being maintained by Recipient in accordance with Paragraph 7.
10. The Recipient is obligated to protect the CEII, even after designation period has lapsed, until the CEII Coordinator determines the information should no longer be designated as CEII under 18 C.F.R. § 388.113(e)(2), or a court of competent jurisdiction finds that the information does not qualify as CEII.
11. The recipient must promptly notify the Commission if any conditions, such as a change in employment, have occurred.
12. The Commission may audit the Recipient's compliance with this non-disclosure agreement.
13. The Recipient is required to promptly report all unauthorized disclosures of CEII to the Commission.
14. Violation of this non-disclosure agreement may result in criminal or civil sanctions against the Recipient.

Initials: _____
Date: _____

15. I hereby certify my understanding that access to CEII is provided to me pursuant to the terms and restrictions of the above provisions, that I have been given a copy of and have read the provisions, and that I agree to be bound by them. I understand that the contents of the CEII, any notes or other memoranda, or any other form of information that copies or discloses CEII shall not be disclosed to anyone other than another person who has been granted access to these same materials by the Commission. I acknowledge that a violation of this agreement may result in criminal or civil sanctions, including the suspension of my ability to appear before the Commission pursuant to 18 C.F.R. §.385.2102.

By: _____

Signature

Print Name: _____

Title: _____

Representing: _____

Date: _____

Exhibit C

§ 385.2201

18 CFR Ch. I (4-1-03 Edition)

the Commission which was under the official responsibility of such person, as defined in 18 U.S.C. 202, while in the service of the Commission.

(c) Nothing in paragraphs (a) and (b) of this section prevents a former member, officer, expert, administrative law judge, attorney, accountant, engineer, or other employee of the Commission with outstanding scientific or technological qualifications from practicing before or acting as an attorney or representative in connection with a particular matter in a scientific or technological field if the Chairman of the Commission makes a certification in writing, published in the FEDERAL REGISTER, that the national interest would be served by such action or representation.

Subpart V—Off-the-Record Communications; Separation of Functions

§ 385.2201 Rules governing off-the-record communications (Rule 2201).

(a) *Purpose and scope.* This section governs off-the-record communications with the Commission in a manner that permits fully informed decision making by the Commission while ensuring the integrity and fairness of the Commission's decisional process. This rule will apply to all contested on-the-record proceedings, except that the Commission may, by rule or order, modify any provision of this subpart, as it applies to all or part of a proceeding, to the extent permitted by law.

(b) *General rule prohibiting off-the-record communications.* Except as permitted in paragraph (c) of this section, in any contested on-the-record proceeding, no person outside the Commission shall make or knowingly cause to be made to any decisional employee, and no decisional employee shall make or knowingly cause to be made to any person outside the Commission, any off-the-record communication.

(c) *Definitions.* For purposes of this section: (1) *Contested on-the-record proceeding* means (i) Except as provided in paragraph (c)(1)(ii), any proceeding before the Commission to which there is a right to intervene and in which an intervenor disputes any material issue,

any proceeding initiated pursuant to rule 206 by the filing of a complaint with the Commission, or any proceeding initiated by the Commission on its own motion or in response to a filing.

(ii) The term does not include notice-and-comment rulemakings under 5 U.S.C. 553, investigations under part 1b of this chapter, proceedings not having a party or parties, or any proceeding in which no party disputes any material issue.

(2) *Contractor* means a direct Commission contractor and its subcontractors, or a third-party contractor and its subcontractors, working subject to Commission supervision and control.

(3) *Decisional employee* means a Commissioner or member of his or her personal staff, an administrative law judge, or any other employee of the Commission, or contractor, who is or may reasonably be expected to be involved in the decisional process of a proceeding, but does not include an employee designated as part of the Commission's trial staff in a proceeding, a settlement judge appointed under Rule 603, a neutral (other than an arbitrator) under Rule 604 in an alternative dispute resolution proceeding, or an employee designated as being non-decisional in a proceeding.

(4) *Off-the-record communication* means any communication relevant to the merits of a contested on-the-record proceeding that, if written, is not filed with the Secretary and not served on the parties to the proceeding in accordance with Rule 2010, or if oral, is made without reasonable prior notice to the parties to the proceeding and without the opportunity for such parties to be present when the communication is made.

(5) *Relevant to the merits* means capable of affecting the outcome of a proceeding, or of influencing a decision, or providing an opportunity to influence a decision, on any issue in the proceeding, but does not include:

(1) Procedural inquiries, such as a request for information relating solely to the status of a proceeding, unless the inquiry states or implies a preference for a particular party or position, or is

otherwise intended, directly or indirectly, to address the merits or influence the outcome of a proceeding;

(i) A general background or broad policy discussion involving an industry or a substantial segment of an industry, where the discussion occurs outside the context of any particular proceeding involving a party or parties and does not address the specific merits of the proceeding; or,

(iii) Communications relating to compliance matters not the subject of an ongoing proceeding.

(d) *Applicability of prohibitions.* (1) The prohibitions in paragraph (b) of this section apply to:

(i) Proceedings initiated by the Commission from the time an order initiating the proceeding is issued;

(ii) Proceedings returned to the Commission on judicial remand from the date the court issues its mandate;

(iii) Complaints initiated pursuant to rule 206 from the date of the filing of the complaint with the Commission, or from the date the Commission initiates an investigation (other than an investigation under part 1b of this chapter) on its own motion; and

(iv) All other proceedings from the time of the filing of an intervention disputing any material issue that is the subject of a proceeding.

(2) The prohibitions remain in force until:

(i) A final Commission decision or other final order disposing of the merits of the proceeding is issued; or, when applicable, after the time for seeking rehearing of a final Commission decision, or other final order disposing of the merits, expires;

(ii) The Commission otherwise terminates the proceeding; or

(iii) The proceeding is no longer contested.

(e) *Exempt off-the-record communications.* (1) Except as provided by paragraph (e)(2), the general prohibitions in paragraph (b) of this section do not apply to:

(i) An off-the-record communication permitted by law and authorized by the Commission;

(ii) An off-the-record communication related to any emergency concerning a facility regulated by the Commission or a facility that provides Commission-

regulated services, involving injury or threat of injury to persons, property, or the environment, subject to disclosure under paragraph (g) of this section;

(iii) An off-the-record communication provided for in a written agreement among all parties to a proceeding that has been approved by the Commission;

(iv) An off-the-record written communication from a non-party elected official, subject to disclosure under paragraph (g) of this section;

(v) An off-the-record communication to or from a Federal, state, local or Tribal agency that is not a party in the Commission proceeding, subject to disclosure under paragraph (g) of this section, if the communication involves:

(A) an oral or written response to a request for information made by the Commission or Commission staff; or

(B) a matter before the Commission in which a Federal, state, local, or Tribal agency has regulatory responsibilities, including authority to impose or recommend conditions in connection with a Commission license, certificate, or exemption;

(vi) An off-the-record communication, subject to disclosure under paragraph (g) of this section, that relates to:

(A) The preparation of an environmental impact statement if communications occur prior to the issuance of the final environmental impact statement; or

(B) The preparation of an environmental assessment where the Commission has determined to solicit public comment on the environmental assessment, if such communications occur prior to the issuance of the final environmental document.

(vii) An off-the-record communication involving individual landowners who are not parties to the proceeding and whose property would be used or abuts property that would be used by the project that is the subject of the proceeding, subject to disclosure under paragraph (g) of this section.

(viii) An off-the-record communication from any person related to any national security-related issue concerning a facility regulated by the

Commission or a facility that provides Commission-regulated services.

(2) Except as may be provided by Commission order in a proceeding to which this subpart applies, the exceptions listed under paragraph (e)(1) will not apply to any off-the-record communications made to or by a presiding officer in any proceeding set for hearing under subpart E of this part.

(f) *Treatment of prohibited off-the-record communications.* (1) *Commission consideration.* Prohibited off-the-record communications will not be considered part of the record for decision in the applicable Commission proceeding, except to the extent that the Commission by order determines otherwise.

(2) *Disclosure requirement.* Any decisional employee who makes or receives a prohibited off-the-record communication will promptly submit to the Secretary that communication, if written, or a summary of the substance of that communication, if oral. The Secretary will place the communication or the summary in the public file associated with, but not part of, the decisional record of the proceeding.

(3) *Responses to prohibited off-the-record communications.* Any party may file a response to a prohibited off-the-record communication placed in the public file under paragraph (f)(2) of this section. A party may also file a written request to have the prohibited off-the-record communication and the response included in the decisional record of the proceeding. The communication and the response will be made a part of the decisional record if the request is granted by the Commission.

(4) *Service of prohibited off-the-record communications.* The Secretary will instruct any person making a prohibited written off-the-record communication to serve the document, pursuant to Rule 2010, on all parties listed on the Commission's official service list for the applicable proceeding.

(g) *Disclosure of exempt off-the-record communications.* (1) Any document, or a summary of the substance of any oral communication, obtained through an exempt off-the-record communication under paragraphs (e)(1)(i), (iv), (v), (vi) or (vii) of this section, promptly will be submitted to the Secretary and placed in the decisional record of the relevant

Commission proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under paragraph (e)(1)(v) of this section.

(2) Any person may respond to an exempted off-the-record communication.

(3) Any document, or a summary of the substance of any oral communications, obtained through an exempt off-the-record communication under paragraphs (e)(1)(viii) of this section, will be submitted promptly to the Secretary and placed in a non-public decisional file of the relevant Commission proceeding and made available to parties to the proceeding, subject to their signing a non-disclosure agreement. Responses will also be placed in the non-public decisional file and held confidential. If the Commission determines that the communication does not contain sensitive national security-related information, it will be placed in the decisional file.

(h) *Public notice requirement of prohibited and exempt off-the-record communications.* (1) The Secretary will, not less than every 14 days, issue a public notice listing any prohibited off-the-record communications or summaries of the communication received by his or her office. For each prohibited off-the-record communication the Secretary places in the non-decisional public file under paragraph (f)(1) of this section, the notice will identify the maker of the off-the-record communication, the date the off-the-record communication was received, and the docket number to which it relates.

(2) The Secretary will not less than every 14 days, issue a public notice listing any exempt off-the-record communications or summaries of the communication received by the Secretary for inclusion in the decisional record and required to be disclosed under paragraph (g)(1) of this section.

(3) The public notice required under this paragraph (h) will be posted in accordance with § 388.106 of this chapter, as well as published in the FEDERAL REGISTER, and disseminated through any other means as the Commission deems appropriate.

(i) *Sanctions.* (1) If a party or its agent or representative knowingly

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makes or causes to be made a prohibited off-the-record communication, the Commission may require the party, agent, or representative to show cause why the party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the prohibited off-the-record communication.

(2) If a person knowingly makes or causes to be made a prohibited off-the-record communication, the Commission may disqualify and deny the person, temporarily or permanently, the privilege of practicing or appearing before it, in accordance with Rule 2102 (Suspension).

(3) Commission employees who are found to have knowingly violated this rule may be subject to the disciplinary actions prescribed by the agency's administrative directives.

(j) *Section not exclusive.* (1) The Commission may, by rule or order, modify any provision of this section as it applies to all or part of a proceeding, to the extent permitted by law.

(2) The provisions of this section are not intended to limit the authority of a decisional employee to decline to engage in permitted off-the-record communications, or where not required by any law, statute or regulation, to make a public disclosure of any exempted off-the-record communication.

[Order 607-A, 65 FR 71254, Nov. 30, 2000, as amended by Order 623, 66 FR 67482, Dec. 31, 2001]

§ 385.2202 Separation of functions (Rule 2202).

In any proceeding in which a Commission adjudication is made after hearing, no officer, employee, or agent assigned to work upon the investigation or trial of the proceeding or to assist in the trial thereof, in that or any factually related proceeding, shall participate or advise as to the findings, conclusion or decision, except as a witness or counsel in public proceedings.

PART 388—INFORMATION AND REQUESTS

Sec.

388.101 Scope.

388.102 Notice of proceedings.

388.103 Notice and publication of decisions, rules, statements of policy, organization and operations.

388.104 Informal advice from Commission staff.

388.105 Procedures for press, television, radio, and photographic coverage.

388.106 Requests for Commission records available in the Public Reference Room.

388.107 Commission records exempt from public disclosure.

388.108 Requests for Commission records not available through the Public Reference Room (FOIA requests).

388.109 Fees for record requests.

388.110 Procedure for appeal of denial of requests for Commission records not publicly available or not available through the Public Reference Room, denial of requests for fee waiver or reduction, and denial of requests for expedited processing.

388.111 Procedures in event of subpoena.

388.112 Requests for privileged treatment of documents submitted to the Commission.

388.113 Accessing critical energy infrastructure information.

AUTHORITY: 5 U.S.C. 301-305, 551, 552 (as amended), 553-557; 42 U.S.C. 7101-7352.

SOURCE: Order 488, 53 FR 1473, Jan. 20, 1988, unless otherwise noted.

§ 388.101 Scope.

This part prescribes the rules governing public notice of proceedings, publication of decisions, requests for informal advice from Commission staff, procedures for press, television, radio and photographic coverage, requests for Commission records, requests for confidential treatment of documents submitted to the Commission, procedures for responding to subpoenas seeking documents or testimony from Commission employees or former employees, fees for various requests for documents, and requests for reduction or waiver of these fees.

§ 388.102 Notice of proceedings.

(a) Public sessions of the Commission for taking evidence or hearing argument; public conferences and hearings before a presiding officer; and public conferences or hearings in substantive rulemaking proceedings, will not be held except upon notice.

(b) Notice of applications, complaints, and petitions, is governed by Rule 2009 (notice) in part 385 of this

CERTIFICATE OF SERVICE

I hereby certify that, on this 28th day of August 2018, I have served the public filing of Klamath River Renewal Corporation's Letter dated August 28, 2018 to FERC regarding Independent Board of Consultants Procedures ("BOC") under Project Nos. P-14803-000 and P-2082-062, via email containing a link thereto, or via U.S.P.S. if no email address was available, upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Ivy Carr

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