

Rocky Mountain Power
Docket No. 10-035-124
Witness: Dean S. Brockbank

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF UTAH

ROCKY MOUNTAIN POWER

Direct Testimony of Dean S. Brockbank

Klamath

January 2011

1 **Q. Please state your name, business address and present position with**
2 **PacifiCorp dba Rocky Mountain Power (the “Company”).**

3 A. My name is Dean S. Brockbank. My business address is 1407 West North
4 Temple, Salt Lake City, Utah 84116. My present position is Vice President and
5 General Counsel of PacifiCorp Energy.

6 **Qualifications**

7 **Q. Briefly describe your educational background and business experience.**

8 A. I have a Bachelor of Science degree in Accounting from Brigham Young
9 University and hold a law degree from George Mason University. I have been
10 employed by PacifiCorp for over seven years and support the commercial and
11 trading, generation and mining departments as General Counsel. Prior to joining
12 PacifiCorp I worked for Duke Energy Corporation as Assistant General Counsel.

13 **Purpose and Overview of Testimony**

14 **Q. What is the purpose of your testimony?**

15 A. My testimony explains the process involved in pursuing a new federal operating
16 license for hydroelectric projects in general and the specific process that has been
17 followed for relicensing the Klamath Hydroelectric Project (“Project”) and
18 settlement of issues related to the relicensing proceeding. My testimony explains
19 how the expenses and costs for relicensing and settlement for the Project are
20 prudent expenditures that have been incurred in the best interest of PacifiCorp’s
21 customers. The relicensing and settlement process costs for the Project for which
22 the company is seeking recovery in this case amount to \$73.69 million on an
23 unallocated total system basis.

24 **Q. Please summarize your testimony.**

25 A. PacifiCorp's hydro generation facilities comprise an important component of its
26 overall power supply portfolio. The Project has provided reliable, low-cost power
27 since it was constructed. Owners of non-federal hydropower projects are required
28 under the Federal Power Act to apply for new operating licenses from Federal
29 Energy Regulatory Commission ("FERC"). Relicensing is a complex and often
30 contentious regulatory process that takes many years to complete. The process
31 requires consulting with multiple federal, state, tribal, environmental and
32 community stakeholders; conducting and analyzing the results of numerous
33 environmental studies; presenting and documenting the results of studies and
34 consultation in license applications and other required documentation; and
35 triggers the need to comply with other federal laws such as the federal Clean
36 Water Act and Endangered Species Act. In order to operate hydro facilities and
37 to preserve their unique benefits, licensees must seek new licenses and essentially
38 "prove," through the relicensing process, that continuing to operate the project is
39 still in the public interest. The Company pursued relicensing of the Project given
40 the historic benefits provided to PacifiCorp's customers and the belief that the
41 Project could be relicensed and operated economically in conformance with
42 environmental requirements.

43 The relicensing process resulted in an outcome in which the Company
44 determined that settlement of the relicensing proceeding through the Klamath
45 Hydroelectric Settlement Agreement ("KHSa") was in customers' best interests.
46 Throughout the relicensing and settlement process, PacifiCorp has sought to

47 protect the interests of its customers by controlling costs, reducing uncertainty and
48 risk, avoiding expensive litigation, and accurately assessing the impact of
49 proposed regulatory mandates on the Project.

50 The outcome of PacifiCorp's relicensing and settlement process for the
51 Klamath Hydroelectric Project will ensure that customers in all its states continue
52 to benefit from the facilities prior to potential removal in 2020 in a manner that is
53 cost effective and mitigates risks to customers. For example, the KHSA allows the
54 Company to continue to operate the project as it has historically over the next 10
55 years. Under relicensing scenarios, generation from the project would be
56 decreased in the near term, which would increase net power costs for all
57 customers. In addition, the Company's relicensing and settlement efforts have
58 achieved an outcome through the KHSA that protects customers from costs and
59 risks related to continued relicensing of the Project as well as potential facilities
60 removal. These are substantial benefits that have been realized through the
61 expenditures the Company has incurred to pursue and obtain settlement of the
62 relicensing process.

63 **Q. Does your testimony address the reasonableness of the Company's decision**
64 **to execute the KHSA?**

65 A. Yes. My testimony in this proceeding initially focuses on the prudence of the
66 costs incurred by the Company in pursuit of a new license for the Project and the
67 costs incurred by the Company to reach settlement with stakeholders. I also
68 provide an overview of the KHSA and describe the substantial benefits related to
69 entering the KHSA as compared to continuing the relicensing process.

70 **Q. Please describe how you have organized your testimony.**

71 A. First, I briefly describe the Project and the benefits customers have derived and
72 will continue to derive from the operation of the Project. Second, I provide an
73 overview of the process to obtain a new operating license. Third, I describe the
74 relicensing and settlement process undertaken to date to resolve the expiration of
75 the Project license. Fourth, I explain the relicensing and settlement costs for
76 which PacifiCorp seeks recovery in this case. Finally, I provide an overview of
77 the KHSA and describe why the company's decision to execute the KHSA is in
78 the best interest of the Company's customers.

79 **Overview of the Project**

80 **Q. Please describe the Project.**

81 A. The Project is a 169 megawatt hydroelectric facility on the Klamath River in
82 southern Oregon and northern California. It consists of eight developments
83 including seven powerhouses, five main stem dams on the Klamath River (Iron
84 Gate, Copco No. 1, Copco No. 2, J.C. Boyle, and Keno), as well as two small
85 diversion dams on Spring Creek and Fall Creek, tributaries to the Klamath River.
86 The Project as currently licensed includes the East Side and West Side generating
87 facilities, which use water diverted by the Link River Dam, a facility owned by
88 the Bureau of Reclamation that regulates the elevation and releases of water from
89 Upper Klamath Lake and which is not included in the Project. The Project also
90 includes Keno Dam, which has no hydroelectric generation facilities, but which
91 serves to regulate water levels in Keno Reservoir as required by the Project
92 license. The Company operates all eight developments under one FERC license

93 (FERC Project No. 2082). The Project is partially located on federal lands
94 administered by the Bureau of Land Management and the Bureau of Reclamation.
95 The first hydroelectric development, Fall Creek, was completed in 1903 and Iron
96 Gate, the last hydroelectric development, was completed in 1962. Keno Dam was
97 completed in 1968. A map of the Project is provided as Exhibit RMP___(DSB-1).

98 **Q. Generally, what benefits does the Project provide PacifiCorp and its**
99 **customers?**

100 A. Since its completion, the Project has provided reliable, low-cost power. As
101 currently operated in compliance with the limitations of the existing license, the
102 Project is a source of energy, capacity, and reserves. Unlike most other sources of
103 generation, hydro projects also provide an additional environmental benefit
104 because they are emissions-free. In addition, the generating units of the Project
105 located in California qualify as renewable energy resources for the California
106 Renewable Portfolio Standard.

107 **Overview of Federal Relicensing**

108 **Q. Please provide an overview of the federal relicensing process.**

109 A. Under the Federal Power Act (“FPA”), FERC has the exclusive authority to
110 license nonfederal hydropower projects on navigable waterways. Original
111 licenses are issued for a term of 50 years, after which a licensee may seek
112 relicensing. FERC issues subsequent licenses for a term of not less than 30 years
113 or more than 50 years with FERC deciding the length of the license. FERC
114 regulations require that a licensee file a Notice of Intent to apply for a new license
115 five and a half years prior to license expiration. On average, licensing takes eight

116 to 10 years, and some applications have taken as long as 30 years. During the
117 relicensing process, FERC typically allows projects to continue operating on
118 annual license extensions under the same terms and conditions once the old
119 license has expired. Such is the case with the Project at this time, as the original
120 project license expired in 2006. The licensing process requires FERC to consider
121 the economic, engineering, environmental, and socioeconomic aspects of the
122 project. In issuing licenses, FERC must give "equal consideration" to
123 environmental values and adequately protect and mitigate the effects of the
124 Project based on environmental and other concerns. In doing so, FERC attaches
125 conditions to the license.

126 **Q. What roles do state and federal resource agencies play in the process?**

127 A. State and federal fish and wildlife agencies review applications and submit
128 comments to FERC regarding the impact the Project may have on the
129 environment. Based on those impacts, state and federal agencies recommend
130 conditions to FERC to place on the license to mitigate the potential impacts. The
131 FPA gives certain federal agencies authority to require FERC to include the
132 agency's conditions on the license. For example, the Secretaries of Commerce
133 and the Interior have the authority to require applicants to install fishways
134 (ladders and screens) at projects, and to require applicants to reduce variability of
135 in-stream flows.

136 **Q. What options does an applicant have if the mandatory conditions make the**
137 **project uneconomic?**

138 A. The applicant has limited options. The applicant may accept the uneconomic
139 license, decommission and remove the facility, or pursue litigation and challenge
140 the mandatory conditions. The applicant has the option of selling the facility as
141 well. Because of the potential risks of removal of facilities and the uncertainty of
142 litigation, those options are seldom favored. Consequently, applicants often try to
143 manage uncertainty by settling issues among the various stakeholders before
144 licensing is completed or by negotiating acceptable decommissioning and
145 removal outcomes.

146 **Q. Other than the FPA, what other laws must FERC take into consideration**
147 **when granting licenses?**

148 A. Because licensing is a “federal action,” FERC must evaluate the application under
149 a host of federal laws: the Clean Water Act (“CWA”), the Coastal Zone
150 Management Act, the National Environmental Policy Act (“NEPA”), the
151 Endangered Species Act (“ESA”), the Fish and Wildlife Coordination Act, and
152 the National Historic Preservation Act, among others. These laws add significant
153 time and expense to the application process.

154 The Company has sought CWA Section 401 certifications for the Project
155 from both Oregon and California. In addition, ESA considerations are present at
156 the Project due to the presence of threatened coho salmon in the Klamath River
157 below Iron Gate dam, and endangered Lost River and shortnose suckers that

158 predominantly reside in Upper Klamath Lake and its tributaries but utilize habitat
159 within the Project boundary.

160 **Q. Does FERC offer more than one relicensing process?**

161 A. Yes. At the time the license application for the Project was developed and filed –
162 the final license application was submitted to FERC in February 2004 – applicants
163 could use either traditional or alternative licensing processes. During the process
164 of developing the license application for the Project, FERC developed an
165 additional licensing process called an integrated licensing process, which became
166 the default process for relicensing in 2005. Applicants may also enter into a
167 negotiated settlement at any time. The Company initiated licensing under the
168 traditional approach for the Project, and has pursued settlement to resolve the
169 issues related to the Project relicensing.

170 **Q. Please provide a more detailed description of the traditional FERC**
171 **relicensing process.**

172 A. The traditional process involves three stages of consultation. In the first stage, the
173 applicant distributes an Initial Consultation document, which explains the project
174 and its operation and environmental setting to federal and state agencies, tribes,
175 non-governmental organizations (“NGOs”), community interest groups and other
176 stakeholders. Following the consultation document, the stakeholders meet and
177 visit the site. Thirty days after the meeting, comments and additional study
178 recommendations are due to the applicant. Stage one ends when a set of resource-
179 by-resource study plans and stakeholder consultation documentation have been
180 completed and provided to FERC.

181 **Q. What takes place in the second stage of consultation?**

182 A. In the second stage, the applicant conducts the proposed studies and prepares a
183 draft license application, which it distributes to FERC and to interested agencies,
184 tribes and stakeholders for review and comment. At this stage, agencies routinely
185 request additional studies, which can be costly and time-consuming. The
186 applicant may refer such requests to FERC for dispute resolution and FERC may
187 request additional information. The applicant must provide FERC with a written
188 summary of how the Company resolved any disagreements with agencies and
189 others. The second stage ends when FERC accepts a final application for filing.

190 **Q. Please describe the third stage.**

191 A. In the third stage, FERC solicits initial comments and preliminary terms and
192 conditions from resource agencies, tribes, and stakeholders, and gives notice that
193 the project is ready for environmental analysis under NEPA. FERC may require
194 additional information from the applicant to address those comments. FERC next
195 initiates its detailed environmental and engineering review and solicits final
196 comments, recommendations, terms and conditions, and mandatory prescriptions.
197 From all of this information, FERC prepares an Environmental Assessment or
198 Environmental Impact Statement taking into account comments, responses and
199 conditions. Ultimately, FERC issues a license order describing both how the
200 project will be operated during the next license term, and what environmental and
201 other enhancement obligations the licensee must fulfill. Those obligations
202 include the mandatory terms and conditions provided by the Secretaries of
203 Commerce, Agriculture and Interior. In addition, if relevant, FERC appends any

204 conditions associated with CWA Section 401 water quality certifications that have
205 been issued by state agencies.

206 **Q. Please describe the relicensing process to date for the Project.**

207 A. PacifiCorp filed a Notice of Intent to relicense and issued its First Stage
208 Consultation Document on December 15, 2000. In an attempt to arrive at
209 consensus-based approaches to the licensing process with the various stakeholders
210 involved, PacifiCorp pursued a “traditional-plus” licensing approach in which the
211 traditional process was followed with a concerted effort to solicit stakeholder
212 input and agreement on study plans before they were submitted to FERC for
213 review. This “traditional-plus” approach resulted in a significant number of
214 stakeholder meetings to review proposed study plans, gather input, and attempt to
215 achieve consensus. The Company took this collaborative approach to relicensing
216 intending to complete the process more rapidly with agreement among the
217 stakeholders in order to avoid a prolonged and expensive relicensing proceeding,
218 which is common for hydroelectric relicensing.

219 **Q. Please explain stakeholder participation in the relicensing process for the**
220 **Project.**

221 A. Public meetings for the relicensing process began in January 2001 and continued
222 through 2002 and 2003. The final license application was submitted to FERC in
223 February 2004. FERC issued its first scoping document for the environmental
224 review process in April 2004 and scoping was completed in May 2005. FERC
225 issued notice that the project was ready for environmental analysis on December

226 28, 2005. The original FERC license expired February 28, 2006, and annual
227 licenses have been issued by FERC since that time.

228 Federal agencies – the National Marine Fisheries Service, U.S. Fish and
229 Wildlife Service, Bureau of Reclamation, and Bureau of Land Management –
230 issued draft terms and conditions for a new license in March 2006. The draft
231 terms called for full volitional fish passage at all Project developments as well as
232 other license conditions to benefit environmental resources that would reduce
233 power generation and increase the costs of a new license. That same month, the
234 Company submitted applications to California and Oregon for CWA Section 401
235 water quality certifications of the Project. As a result of the Energy Policy Act of
236 2005, the Company had the opportunity to challenge the underlying facts behind
237 the draft agency terms and conditions and propose alternative licensing
238 conditions. The Company filed alternative license conditions with FERC that the
239 Company believed provided similar environmental benefits as the draft agency
240 terms and conditions but at less cost and loss in power production from the
241 Project. The Company’s filing also challenged material facts relied upon by the
242 agencies. A trial-type hearing was conducted on these issues of material fact
243 underlying the agency terms and conditions in August 2006 and a decision was
244 issued by an administrative law judge in September 2006. Also in September
245 2006, FERC issued a draft Environmental Impact Statement for Hydropower
246 License.

247 Incorporating the findings of the trial-type hearing, the agencies issued
248 modified terms and conditions for a new license in January 2007. FERC then

249 initiated ESA consultation for a new license in March 2007 and the National
250 Marine Fisheries Service and U.S. Fish and Wildlife Service issued final
251 biological opinions in December 2007. To initiate analysis of the project under
252 the California Environmental Quality Act pursuant to obtaining CWA Section 401
253 certification, the Company signed a memorandum of understanding with the
254 California State Water Resources Control Board in September 2007. FERC
255 completed its environmental analysis of the project and released its final
256 Environmental Impact Statement for Hydropower License in November 2007.

257 **Q. Please describe the relicensing process after the Company filed its**
258 **applications for CWA Section 401 certification of the Project.**

259 A. Since filing its applications in March 2006 for CWA Section 401 certification
260 with California and Oregon, PacifiCorp has been implementing water quality
261 studies and monitoring in order to improve water quality conditions in the Project
262 reservoirs and in the Klamath River downstream of Project facilities. The result
263 of these study and planning efforts will help the states of California and Oregon
264 assess whether the Project can meet applicable water quality standards. In June
265 2009, the California North Coast Regional Water Quality Control Board issued a
266 draft total maximum daily load (“TMDL”) report for the Klamath River and in
267 February 2010, the Oregon Department of Environmental Quality released its
268 draft TMDL for the Klamath River in Oregon. The TMDLs prescribe nutrient,
269 temperature, and dissolved oxygen requirements in the river that must be attained
270 by Project facilities. PacifiCorp has been actively involved in reviewing the

271 TMDLs since they will ultimately inform the conditions that may be imposed on
272 the Project through the CWA Section 401 certification processes.

273 **Q. Please describe how settlement is used in FERC relicensing process.**

274 A. Due to the complex nature of relicensing proceedings and the many issues and
275 stakeholders involved in the process, many relicensing proceedings are resolved
276 by settlement. As mentioned before, a settlement between the parties to a
277 relicensing proceeding can be entered at any time while the relicensing process is
278 ongoing. Settlements are encouraged by FERC and recent changes to the
279 relicensing process alternatives have been made to encourage applicants and
280 stakeholders to reach consensus on the issues related to project relicensing so the
281 parties can reach settlement. Indeed, PacifiCorp has pursued settlement for the
282 majority of its recently completed hydro relicensing proceedings including the
283 North Umpqua, Bear River, and Lewis River projects. In addition, settlements
284 have been entered among PacifiCorp, agencies and stakeholders to decommission
285 the Condit, American Fork, and Powerdale hydro projects after those projects
286 began the traditional FERC relicensing process.

287 **Q. Please describe the settlement process to date for the Project.**

288 A. For the Project, PacifiCorp initiated settlement discussions in October 2004 with
289 stakeholders following submittal of the license application. The first mediated
290 settlement meeting was conducted in January 2005. Settlement meetings
291 proceeded through 2005 and mid-2006 when the settlement group turned its
292 attention to resolving basin-wide issues among the stakeholders. This group of
293 stakeholders, after months of negotiations, released the draft Klamath Basin

294 Restoration Agreement (“KBRA”) in January 2008. Because the provisions
295 surrounding these broader issues were beyond the scope of the relicensing
296 proceedings, PacifiCorp did not participate in these negotiations. The KBRA is
297 intended to resolve issues of water allocation in the Klamath Basin and provide
298 for habitat restoration and called for removal of PacifiCorp’s main stem
299 hydroelectric dams. Following release of the KBRA, active settlement
300 negotiations were resumed among PacifiCorp, the federal government, and the
301 states of California and Oregon.

302 Other key stakeholders joined the settlement negotiations, resulting in an
303 Agreement in Principle (“AIP”), which was released on November 13, 2008. The
304 AIP laid out a framework for resolution of the issues related to relicensing of the
305 Project including the potential decommissioning and removal of PacifiCorp’s four
306 main stem dams on the Klamath River – J.C. Boyle, Copco No. 1, Copco No. 2,
307 and Iron Gate. As a result of discussions with the National Marine Fisheries
308 Service and the U.S. Fish and Wildlife Service, PacifiCorp also developed an
309 Interim Conservation Plan to provide benefits to ESA-listed aquatic species
310 during the period of interim operations prior to potential dam removal or the re-
311 establishment of fish passage through the Project pursuant to project relicensing.

312 Following the release of the AIP, PacifiCorp pursued further negotiations
313 with the parties to the AIP – the federal government, California and Oregon – as
314 well as an expanded group of stakeholders, agencies, and other interested parties
315 to complete a final settlement agreement for the Project. On February 18, 2010,
316 the KHSA was executed by over 30 parties, including PacifiCorp, the Secretary of

317 the Interior, governors from the states of Oregon and California, Native American
318 Tribes, and parties representing counties, irrigation districts, fishermen,
319 environmentalists and other organizations. I have provided a detailed chronology
320 of key points in the Klamath relicensing and settlement process as Exhibit
321 RMP___(DSB-2).

322 **Q. Is PacifiCorp a signatory to the KBRA?**

323 A. No. PacifiCorp is a party to the KHSA but not the KBRA. The two agreements,
324 however, are linked.

325 **Q. Absent the settlement under the KHSA, what steps remain to be completed
326 in the relicensing process?**

327 A. In order for FERC to issue a new Project license, CWA Section 401 water quality
328 certification must first be completed by the states of California and Oregon. The
329 conditions of the CWA Section 401 certification would then be incorporated into
330 the new FERC license for the Project. PacifiCorp has CWA Section 401 water
331 quality certification applications pending in both states. However, pursuant to the
332 KHSA, CWA Section 401 certification of the Project will be held in abeyance
333 while the Secretary of the Interior makes a determination as to whether the four
334 main stem Klamath River dams owned by PacifiCorp should be decommissioned
335 and removed or relicensed.

336 **Costs and Benefits of Relicensing**

337 **Q. Please describe how pursuing relicensing and settlement has provided**
338 **customer benefits.**

339 A. PacifiCorp has pursued relicensing to preserve economic benefits to its customers
340 from the Project. Had the Company not elected to pursue relicensing of the
341 Project, it would have been required to submit an application to FERC for
342 surrender of the Project license and decommissioning/removal of the facilities.
343 Doing so would have exposed PacifiCorp's customers to the uncertainties related
344 to potential decommissioning and removal of the facilities, while necessitating
345 that PacifiCorp's customers pay for the immediate replacement of the energy
346 provided by the Project. Throughout the relicensing and settlement process,
347 PacifiCorp has taken the position that decommissioning and removal of the
348 Project without sufficient protections against the associated costs, risks and
349 liability is not in the best interests of the Company or its customers. To that end,
350 it has pursued settlement in a manner that will provide those protections. In
351 addition, the relicensing and settlement process has provided benefits by allowing
352 customers to continue to benefit from the Project during the period between the
353 expiration of the Project license in March 2006 and continuing until the potential
354 removal of the facilities.

355 **Q. How much has the Company incurred in the licensing and settlement**
356 **processes?**

357 A. Through June 30, 2010, the Project had accumulated \$71.12 million on a system-
358 wide basis in relicensing and settlement process costs. A detailed cost breakdown

359 for the Project is provided as Confidential Exhibit RMP____(DSB-3). The project
360 is currently forecast to be completed at a total cost of approximately \$74 million
361 on a system-wide basis.

362 **Q. Do the relicensing and settlement costs include costs to implement the**
363 **KHSA?**

364 A. No. The relicensing and settlement costs only include costs related to pursuing
365 the traditional relicensing process and the costs necessary to pursue settlement of
366 the Project relicensing. Costs related to implementing the KHSA will be
367 recovered as they are incurred prior to potential removal of the facilities through
368 normal operations and maintenance costs and, where applicable, specific capital
369 projects related to KHSA implementation.

370 **Q. What are the major cost categories for the process costs?**

371 A. For costs through 2009, approximately 52 percent of the costs (\$35 million)
372 derive from outside expert consulting and legal services. These services included
373 the development of the information necessary to prepare the first stage
374 consultation document and the costs to consult with stakeholders and prepare
375 detailed study plans for the various resource areas investigated as part of the
376 relicensing process. These services included the execution of the vast array of
377 technical studies required and the costs to prepare the license application.
378 Examples of the studies and data collected include:

- 379 • Complete aerial photography and mapping of the Project,
- 380 • Bathymetric and sediment studies of Project reservoirs,
- 381 • Environmental resource investigations,

- 382 • Wildlife and vegetation surveys,
- 383 • Geomorphology studies,
- 384 • Biological and engineering studies of various fish passage
- 385 alternatives, fisheries modeling and habitat assessment,
- 386 • Studies of potential Project operational enhancements,
- 387 • Historic and cultural resources investigations,
- 388 • Socioeconomic studies,
- 389 • Recreation surveys and planning,
- 390 • Extensive water quality monitoring, and development of a Project
- 391 water quality model and associated water quality modeling studies,
- 392 • Development of cost estimates for potential protection, mitigation,
- 393 and enhancement (“PM&E”) measures likely to be required in a
- 394 new license.

395 These costs also included license application preparation, CWA Section 401
396 applications costs and related studies, ESA consultation and documentation costs,
397 legal review and legal costs associated with the Company’s challenge to agency
398 terms and conditions, responses to comments in relation to the license application
399 and required analysis of the Project pursuant to the California Environmental
400 Quality Act. Finally, this included costs associated with the settlement process,
401 facilitator and mediator services, communications and other services.

402 The amount of information necessary to be developed for the preparation
403 and support of hydroelectric license applications is rather astounding. The Project
404 license application and associated study documentation and filings produced by

405 the Company require in excess of 8 feet of shelf space. This is similar to the shelf
406 space devoted to the Company's license application for the recently relicensed
407 North Umpqua project.

408 Materials, labor and associated expenses accounted for approximately \$11
409 million – or approximately 16 percent of total costs. These costs included labor
410 and associated costs for the Company's project management, technical leads,
411 environmental scientists, and administrative staff. The remaining costs are related
412 to property taxes paid against accrued relicensing costs, and Allowance for Funds
413 Used During Construction ("AFUDC"). Costs included in this rate case
414 Application related to the Project are included in the testimony and exhibits of
415 Mr. Brian S. Dickman.

416 **Q. What controls did the Company put in place to insure that the expenditures**
417 **made in the relicensing process were required, necessary, and prudent?**

418 A. First, the Company appoints a Project Manager for each relicensing project. The
419 Project Manager works with Hydro Resources and PacifiCorp Energy
420 management to coordinate all efforts related to the process and project cost
421 management. The Company also assembles a project team, which is comprised of
422 technical leads who are subject matter experts in the various relicensing areas.
423 Examples of technical leads include: fishery and wildlife biologists, cultural and
424 recreation specialists, engineering, etc. The team develops a relicensing strategy
425 to address likely required studies and potential PM&E measures. The technical
426 leads assist the Project Manager is overseeing work tasks within their area of
427 expertise. Consultants have been generally selected through a formal bidding

428 process unless specific expertise was needed, in conformance with general
429 PacifiCorp procurement policy.

430 Finally, due to the fluid and multi-disciplinary nature of the FERC
431 relicensing process, which requires significant legal support, the Office of General
432 Counsel reviews the relicensing project and works with the Project Manager and
433 outside counsel to assure that legal services in support of the relicensing effort are
434 necessary, prudent, and procured in conformance with Company policies that are
435 intended to control costs.

436 **Q. Please explain how outside services costs have been managed?**

437 A. First, an overall budget was established for the project spanning the time through
438 expected license issuance. Each year, as part of the annual budgeting and
439 approval process, the portion of the Project budget to be expended in the
440 upcoming year is thoroughly reviewed and approved by management.
441 Throughout the year, a monthly break down of all Project expenditures is
442 provided to department management and to the Project Manager. This process
443 provides an opportunity to look at Project costs on an overall basis and make
444 adjustments as may be necessary to stay within the overall Project budget if
445 possible. The process also provides an opportunity to review all expended costs
446 on a monthly basis to ensure they are proper and represent prudent expenditures
447 to accomplish the relicensing and settlement objectives.

448 **Q. Has the complexity of the Project impacted the overall level of process costs?**

449 A. Yes. As detailed earlier in my testimony, the relicensing process is time-
450 consuming, complex and requires the expenditure of significant staff labor,

451 outside technical support, and legal services to prepare an application and defend
452 that application through the regulatory process. The Project has been the most
453 complex and contentious relicensing proceeding the Company has undertaken for
454 its many hydroelectric projects. Even so, the Project relicensing costs compare
455 favorably with another recent relicensing effort by the Company on the North
456 Umpqua River. At the conclusion of that relicensing process in 2005, the total
457 cost was approximately \$55.1 million. In that case, the relicensing and settlement
458 process spanned 10 years, from 1991 to 2001. The settlement parties were fewer
459 in number and included: U.S. Forest Service, National Marine Fisheries Service,
460 U.S. Fish and Wildlife Service, Bureau of Land Management, Oregon Department
461 of Environmental Quality, Oregon Department of Fish and Wildlife, and Oregon
462 Water Resources Department.

463 **KHSA Details**

464 **Q. Please provide a more detailed description of the KHSA.**

465 A. The KHSA provides for the transfer of the Project to a dam removal entity
466 (“DRE”) no earlier than 2020. The KHSA calls for the Secretary of the Interior to
467 conduct further studies and environmental review and to issue a determination by
468 March 2012 as to whether dam removal should proceed. Prior to the Secretary’s
469 determination, key milestones called for in the KHSA must occur, including the
470 passage of federal legislation to enact key provisions of the KHSA and to provide
471 protection for the Company and its customers from liabilities related to dam
472 removal. Prior to transfer of the Project facilities to the DRE, PacifiCorp will
473 continue to operate the facilities and its customers will continue to benefit from

474 the low-cost power produced by the facilities. Prior to dam removal, the KHSA
475 requires the Company to implement a number of interim measures to benefit
476 environmental resources in the Klamath Basin.

477 **Q. Please provide an overview of PacifiCorp's approach to the negotiations that**
478 **led to the execution of the KHSA.**

479 A. Relicensing the project has been a complex and challenging process that is
480 interwoven into longstanding and contentious issues in the Klamath Basin.
481 Throughout these negotiations, the federal government and the states of Oregon
482 and California have expressed a strong policy preference that PacifiCorp's dams
483 on the Klamath River be removed. In response, PacifiCorp outlined four core
484 principles that guided its negotiation strategy related to a path that could lead to
485 dam removal:

- 486 1. Protect utility customers from uncertain costs of dam removal;
- 487 2. Transfer dams to a third party for removal;
- 488 3. Protect utility customers from liabilities of dam removal; and
- 489 4. Ensure that utility customers continue to benefit from the low-cost power
490 of the dams until the dams are removed

491 **Q. Does the KHSA deliver the Company's four core principles?**

492 A. Yes. The terms of the KHSA deliver each of these elements for the benefit of
493 PacifiCorp's customers. As such, the KHSA provides a more certain and less
494 risky path forward for customers.

495 **Q. How does the KHSA protect customers from uncertain costs of dam**
496 **removal?**

497 A. The KHSA contains a \$200 million cap on the customer contribution to the costs
498 of dam removal.

499 **Q. Were there any other key considerations for PacifiCorp as it negotiated the**
500 **terms of the KHSA?**

501 A. Yes. PacifiCorp negotiated the terms of the KHSA in a manner that resulted in a
502 fair and balanced outcome to customers and other stakeholders. Under
503 relicensing, the status quo for the Project just isn't an option. As such, the costs
504 to customers under the KHSA were compared against a baseline relicensing
505 scenario throughout the negotiations. This analysis ensured that customers would
506 be expected to be no worse off under the KHSA as compared to a conservative
507 estimate of relicensing costs. This analysis, combined with the significant risk-
508 reducing elements of the KHSA, ensures that the KHSA is in the public interest.

509 **Q. Please describe PacifiCorp's general approach to the economic analysis**
510 **supporting its decision to enter into the KHSA.**

511 A. Prior to entering the KHSA, PacifiCorp compared the cost to customers of the
512 KHSA with the costs to customers under a conservative relicensing scenario. The
513 costs to customers of relicensing are highly uncertain. As such, the Company
514 developed a relicensing case against which the economics of the KHSA were
515 compared. The relicensing case relies heavily on the costs and data developed as
516 part of the FERC Final Environmental Impact Statement ("FEIS").

517 **Q. How was the analysis structured?**

518 A. The analysis evaluated the Present Value Revenue Requirement ("PVRR") of the
519 stream of costs under the KHSA and compared it against the PVRR of the stream
520 of costs under the relicensing scenario. The analysis covered a 44-year period
521 beginning in 2010 – this equates to a 40-year license beginning in 2013.

522 **Q. What did the analysis assume with respect to the costs of replacement**
523 **power?**

524 A. In both scenarios, the Company assumed that lost generation would be replaced
525 with renewable, non-carbon emitting resources. This was accomplished through
526 the use of a forward price curve that contained a “carbon adder” as a reasonable
527 proxy for the cost of renewable replacement power. I would note that there is also
528 lost generation under the baseline relicensing scenario due to operating
529 restrictions that were included in the FERC FEIS.

530 **Q. How did the Company use the analysis to inform its negotiation strategy?**

531 A. As mentioned above, the Company was willing to agree to a set of financial
532 commitments under the KHSA that did not exceed the cost estimates in the
533 relicensing scenario. However, it was also important to the durability of the
534 KHSA that the other settlement parties viewed the overall result as fair and
535 balanced. If the PVRR of the KHSA was significantly below the baseline
536 relicensing case, this durability would have been threatened.

537 **Q. Does the KHSA result in a fair and balanced outcome to PacifiCorp’s**
538 **customers?**

539 A. Yes. Based on the results of this conservative analysis, the KHSA results in a
540 PVRR that is below the cost of relicensing. This is shown in a summary of the
541 Company’s economic analysis included in Confidential Exhibit RMP___(DSB-4).
542 The PVRR calculations are addressed in the testimony of Mr. Steven R.
543 McDougal. More importantly, customers are protected from the risks and
544 liabilities that exist absent an agreement among the parties. These risks include:

545 (1) potentially higher costs under final terms and conditions for relicensing; (2)
546 difficulties in securing state and federal approvals for relicensing; (3) continued
547 litigation related to endangered species act requirements and water quality issues;
548 and (4) early shut-down and removal of the project. In the end, the terms of the
549 KHSA allow the Company to respond to the policy preferences of the federal
550 government favoring removal of the Project, while protecting all of PacifiCorp's
551 customers for the long term with respect to economic impact and risks.

552 **Q. Have any credit rating entities commented on the benefits of the KHSA?**

553 A. Yes. In an October 7, 2010, credit report for PacifiCorp, Standard & Poor's cited
554 the KHSA as a "Major Rating Factor" providing strength to PacifiCorp's credit
555 rating. The Standard & Poor's assessment stated that "A settlement reached in
556 February 2010 regarding the contentious Klamath hydro relicensing case has the
557 potential to adequately address the company's financial exposure if the project is
558 decommissioned, which will not occur before 2020."

559 **Q. What does this rating agency comment mean with respect to customer
560 benefits?**

561 A. This means that PacifiCorp's execution of the KHSA pursuant to the relicensing
562 and settlement process has favorably impacted customers already by
563 strengthening PacifiCorp's credit rating, which ultimately translates to a lower
564 cost of debt, which reduces PacifiCorp's costs and keeps customer rates down.

565 **Q. Does this complete your direct testimony?**

566 A. Yes.