

Klamath River Facilities Removal Act of 2010

SECTION 1. SHORT TITLE.

This Act may be referred to as the ‘Klamath River Facilities Removal Act of 2010.’

SECTION 2. DEFINITIONS

- (a) The term ‘Commission’ or ‘FERC’ means the Federal Energy Regulatory Commission.
- (b) The term ‘Definite Plan’ means a plan prepared by the Secretary of the Interior or its designee that contains a timetable for the decommissioning and removal of the Facilities; including, but not limited to: the plans for removal and disposal of sediment, debris, and other materials; a plan to avoid downstream impacts from facility removal; a plan for compliance with all applicable environmental laws; a detailed explanation of the estimated costs of decommissioning and removal; and a complete plan for engineering, decommissioning, and Facilities removal.
- (c) The term ‘Facilities’ or ‘Facility’ means the following specific hydropower facilities within the jurisdictional boundary of FERC project number 2082: Iron Gate dam, Copco 1 dam, Copco 2 dam, and J.C. Boyle dam and appurtenant works presently licensed to PacifiCorp.
- (d) The term ‘Facilities removal’ means physical removal of all or part of each of the Facilities to achieve at a minimum a free-flowing condition and volitional fish passage, site remediation and restoration, measures to avoid or minimize adverse downstream impacts, and all associated permitting for such actions, as described in the Definite Plan.
- (e) The term ‘Nominal Dollars’ means dollars that are not adjusted for inflation at the time they are collected.
- (f) The term ‘PacifiCorp’ or ‘Owner’ means PacifiCorp, an Oregon corporation, the owner of the Project.
- (g) The term ‘Project’ means the Klamath Hydroelectric Project as licensed by FERC under Project Number 2082.
- (h) The term ‘Secretary’ means the Secretary of the Interior.
- (i) The term ‘States’ means the State of Oregon and the State of California.

SECTION 3. ACQUISITION OF FACILITIES

- (a) The Department of the Interior is hereby authorized to take over the Klamath Hydroelectric Project as provided in Section 14 of the Federal Power Act, 16 U.S.C. § 807, and in accordance with this Klamath River Facilities Removal Act of 2010. Within thirty days of this Act, FERC shall notify PacifiCorp, the Project licensee, in writing of the United States' intent to take over the Project and acquire the Facilities pursuant to this Act. PacifiCorp must present any claim to compensation to FERC within six months of this Act and in accordance with Section 14 of the Federal Power Act.
- (b) Effective sixty days after submission to Congress of the report referred to in section 3(d), the Secretary shall acquire the Facilities and all rights of the Owner therein pursuant to the authority of this Act.
- (c) Notwithstanding any provision of federal, state, or common law, in consideration for transfer of ownership of the Facilities, PacifiCorp shall not, after the transfer of ownership and control of the Facilities to the United States, be liable for any harm to persons, property, or the environment, or damages arising from, or relating to, Facility operation or removal including but not limited to any damage caused by the release of any material, substance, or hazardous substance. Notwithstanding Section 10(c) of the Federal Power Act, this protection from liability preempts the laws of any State to the extent such laws are inconsistent with this Act, except that this Act shall not be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law. This liability protection shall become operative as it relates to any particular Facility only upon transfer of title to that Facility from PacifiCorp to the United States.
- (d) Prior to acquisition of any Facility, the Secretary shall prepare a Definite Plan for Facilities removal and shall submit such Definite Plan on or before January 31, 2012, to the Appropriations Committees of the United States Senate and the United States House of Representatives, as well as to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the United States House of Representatives.
- (e) In preparing the Definite Plan, the Secretary shall consult with appropriate State and local officials, affected Indian tribes, the Commission, the Environmental Protection Agency, and the Secretary of Commerce. In addition, the Secretary shall afford an opportunity for public comment on the Definite Plan prior to its submission to Congress.
- (f) Effective sixty days following submission of the Definite Plan to Congress as provided in Section 3(d), but no later than one hundred twenty days following such submission, PacifiCorp shall convey to the United States, through the Secretary, title to the Facilities, including all property and all other rights to the Project and interests therein. Upon such conveyance of the Facilities by

PacifiCorp to the United States, and without further action by the United States, title shall transfer and vest in the United States, PacifiCorp shall be released from any further liability arising from its ownership and/or operation of the Facilities, as provided in Section 3(c), and the acquisition from PacifiCorp shall be deemed to be completed.

SECTION 4. IMPLEMENTATION OF FACILITIES REMOVAL

- (a) Effective sixty days after submission of the Definite Plan and following the conveyance described in Section 3(f), the Secretary is authorized and directed to take such actions as are necessary to implement the decommissioning and removal of the Facilities as set forth in the Definite Plan.
- (b) Notwithstanding any provision of federal law, the Secretary, or its designee, shall commence Facilities removal as set forth in the Definite Plan by July 1, 2013 and shall complete Facilities removal, including necessary site remediation and restoration, no later than June 30, 2015.
- (c) Facilities removal shall not be subject to FERC jurisdiction or require FERC approval. Facilities removal shall comply with all applicable federal environmental laws to the fullest extent possible; provided that such compliance shall not delay the commencement and/or completion dates set forth in Section 4(b).

SECTION 5. FACILITIES REMOVAL COSTS

Consistent with the Facility Removal Agreement, the costs of Facilities Removal will be provided as follows:

- (a) Two hundred million in Nominal Dollars will be provided by PacifiCorp customers in the states of California and Oregon (Customer Contribution). This Customer Contribution will come from a surcharge to be set by the California Public Utilities Commission and the Public Utility Commission of Oregon.
- (b) Two hundred fifty million in Nominal Dollars will be provided through a general obligation bond passed by voters of the State of California.
- (c) The contributions described in Sections 5(a) and (b) shall be placed for deposit in an interest bearing account, in which the Secretary or its designees shall be authorized to withdraw funds necessary to cover the costs of Facilities removal.
- (d) In the absence of a Facility Removal Agreement, or in the event that the contributions described in Sections 5(a) or (b) have not been approved by the date of the Secretary's report in Section 3(d), or in the event that the Secretary determines the contributions will be insufficient to cover the complete costs of

Facilities removal, the Secretary shall recommend in the Definite Plan a federal contribution, if any, necessary to implement and complete Facilities removal.

- (e) If the Secretary determines that a federal contribution is necessary to accomplish or complete Facilities removal, it is the intent of Congress that such federal contribution be reimbursed to the United States Treasury through any additional customer surcharges that may be directed by the California Public Utilities Commission or the Public Utility Commission of Oregon.

SECTION 6. PROJECT OPERATION

- (a) Notwithstanding any other provision of law, neither the Commission nor any other agency of the Federal Government shall have the authority or jurisdiction to issue a permanent license or similar order with respect to the Project prior to conveyance as provided in Section 3(f), except that the Commission shall have jurisdiction under the Federal Power Act and is hereby authorized and directed to issue or maintain in effect annual licenses or authorizations for the Project, authorizing continued operation of the Project, subject to any interim conditions deemed necessary for the adequate protection of fish, wildlife, water quality, or other aquatic resources, until the date the Secretary has acquired title to the Facilities. The Commission's authority to issue subsequent annual licenses to the Project shall terminate on December 31, 2012.
- (b) Upon conveyance of the Facilities to the United States, the Secretary shall maintain the Facilities in a safe condition for the period prior to their removal.

SECTION 7. SAVINGS

- (a) Nothing in this Act shall abridge or modify existing rights to Klamath River water.
- (b) Nothing in this Act shall affect or modify any rights of any Indian Tribe secured by Treaty, Executive Order, or other law of the United States.

SECTION 8. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to carry out the purposes of this Act.