

January 10, 2020

Via Electronic Filing

Kimberly D. Bose, Secretary
Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: FERC Project No. 2337-079

Dear Ms. Bose and Mr. Davis:

The purpose of this letter is to advise the Federal Energy Regulatory Commission (“Commission”) of recent developments related to PacifiCorp’s pending request for rehearing in the above-captioned docket. Specifically, on December 31, 2019, PacifiCorp and the Oregon Department of Environmental Quality (“Oregon DEQ”) entered into a settlement agreement resolving PacifiCorp’s state-level challenge to the water quality certification for the Prospect No. 3 Hydroelectric Project (“Project”).

Under the settlement agreement, Oregon DEQ has agreed to issue a revised water quality certification for the Project by February 7, 2020. The revised certification will eliminate existing conditions 4(i) and 4(j), and revise certification condition 4(e). The Commission incorporated these conditions into the new license because they were mandatory conditions of the certification originally adopted by Oregon DEQ.¹ As part of the settlement agreement, PacifiCorp has agreed to fund or implement several off-site fish passage and screening improvements at third-party facilities. Although these off-site improvements will be required by the settlement agreement, they will not be included in the revised certification, they are not proposed as license requirements, and they will be one-time obligations with no ongoing maintenance or other obligations.

Oregon DEQ has issued a public notice seeking comment on the proposed revisions to the water quality certification conditions and all comments are due by February 4, 2020. A copy of the draft revised certification and of Oregon DEQ’s analysis of the revised

¹ See *PacifiCorp*, 168 FERC ¶ 62,175 at para. 51 and 54 (Sep. 27, 2019).

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certification is available at: <https://www.oregon.gov/deq/wq/wqpermits/Pages/Section-401-Hydropower.aspx>.

Within 7 days of Oregon DEQ's issuance of a revised water quality certification that is consistent with the settlement agreement, PacifiCorp will file the revised certification with the Commission and request that the Commission modify the new Project license to conform to the revised certification conditions (including the removal of certification conditions 4(i) and 4(j), the revision of condition 4(e), and the revision of any license provisions that implement these deleted or modified conditions).

PacifiCorp is advising the Commission of these developments so that the Commission can make an informed decision about how to proceed with PacifiCorp's pending request for rehearing. PacifiCorp respectfully suggests that the Commission either: (i) continue to consider the request for rehearing and take no action on the request before the revised water quality certification is issued and filed with the Commission; or (ii) grant the pending request for rehearing and modify Ordering Paragraph (D) to reserve the authority to modify the license to reflect the revised water quality certification conditions expected by February 7, 2020.

If you have any questions, please do not hesitate to contact me at (503) 295-3085.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jeffrey S. Lovinger", is written over a horizontal line.

Jeffrey S. Lovinger
Attorney for PacifiCorp

cc: John Sample, PacifiCorp Assistant General Counsel
Todd Olson, PacifiCorp Director of Compliance