

September 9, 2008

Via Electronic Filing

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

**Re: Condit Hydroelectric Project, FERC Project 2342-011  
Six-Month Update**

Dear Secretary Bose:

This document provides the Federal Energy Regulatory Commission (“the Commission”) a six-month status report describing PacifiCorp’s and the settlement parties’ progress with respect to the implementation of the Condit Settlement Agreement. This letter provides an update on activities from March 1, 2008, through August 31, 2008.

**Washington State Department of Ecology**

State Environmental Impact Statement / 401 Water Quality Certificate

PacifiCorp has conducted additional sediment sampling at Northwestern Lake at the request of the Regional Sediment Evaluation Team (RSET) consisting of the U.S. Army Corps of Engineers (Corps), the Washington Department of Ecology (Ecology), the Environmental Protection Agency (EPA), NOAA Fisheries, and the U.S. Fish and Wildlife Service. The sediment sampling and analysis results and the supplemental evaluation of mercury in sediments report were provided to the RSET on March 29, 2007 and December 10, 2007, respectively.

In response to ongoing consultation with the RSET, PacifiCorp was directed to conduct additional sediment testing in the lower White Salmon River and Columbia River. Testing is completed and a final report is expected mid-September 2008.

Given this additional sampling, PacifiCorp withdrew its May 14, 2007 request to Ecology for water quality certification and reapplied for such certification in May 2008. A copy of PacifiCorp’s withdrawal and reapplication letter was filed with the Commission on July 8, 2008.

On March 23, 2007, Ecology finalized its Supplemental Environmental Impact Analysis (SEIS) issued pursuant to the State of Washington’s State Environmental Policy Act (SEPA). In light of the mercury evaluation required by RSET, and as part of its ongoing effort to review and certify the decommissioning proposal under Section 401 of the Clean Water Act, Ecology has contracted with URS Corporation to prepare a revised or second draft SEIS. The final revised or second SEIS is expected by December 31, 2008.

## **U.S. Army Corps of Engineers**

### 404 Dredge and Fill Permit/Section 10 Permit for In-Water Work

PacifiCorp has applied to the United States Army Corps of Engineers (Corps) for a permit under Section 404 of the Clean Water Act authorizing dredge and fill associated with the decommissioning proposal and for a permit under Section 10 of the River and Harbors Act authorizing in-water work associated with dam removal. The Corps is awaiting completion of PacifiCorp's additional sediment sampling (see above), as well as Ecology's SEPA and 401 processes before issuing the 404 Permit and the Section 10 Permit.

## **United States Fish and Wildlife Service / NOAA Fisheries**

### Biological Opinions

Letters to NOAA Fisheries and the U.S. Fish and Wildlife Service were sent on August 8, 2008, and August 13, 2008 respectively. These letters requested concurrence from the services on clarifications concerning the scope and content of the Biological Opinions (BiOp) (NOAA BiOp 2006; USFWS BiOp 2005). Additionally the letters requested that confirmation of concurrence be given in a letter to FERC and PacifiCorp. To date, concurrence is pending.

The White Salmon River Technical Working Group consisting of representatives from the U.S. Fish and Wildlife Service, NOAA Fisheries, the Yakama Nation, the Washington Department of Fish and Wildlife, the U.S. Geological Service, American Rivers and PacifiCorp completed development of a pilot fish salvage plan. Per the plan, researchers will collect adult Fall Chinook Salmon returning to the White Salmon River in September and October of 2008, and transport them upstream of Condit Dam. The main purpose is to evaluate collection methods, and then select the most appropriate and effective means of collecting fish for future use just prior to dam removal.

## **Federal Power Act Preemption/County Permitting**

On June 15, 2007, PacifiCorp sent applications to Klickitat and Skamania Counties for a number of local permits (including a Substantial Development Permit, a Conditional Use Permit, and a Floodplain Development Permit). PacifiCorp understands from the Commission's May 18, 2006 declaratory order that the Federal Power Act preempts state and local regulation of the proposal to decommission the Condit Hydroelectric Project. The declaratory order also clarified that the Commission may include state and local requirements as terms of the Commission's surrender order if the Commission concludes that such state and local requirements do not conflict with the other terms of the Commission's order. PacifiCorp applied for county permits not because such permits are required but rather as a method of determining what, if any, local requirements the Counties would like to see imposed by the Commission as part of its surrender order.

On September 28, 2007, the Klickitat County Planning Department sent a letter requesting a reimbursement agreement to facilitate evaluation and processing of PacifiCorp's permit application. PacifiCorp requested an estimate of the scope and cost of Klickitat County's evaluation efforts to review the permit application in a letter dated

November 27, 2007. PacifiCorp received no response to this request and so sent Klickitat County another letter on June 26, 2008 reiterating its request for an estimate of the scope and cost of county review. In response, counsel for Klickitat and Skamania Counties sent PacifiCorp a letter in which the counties disputed PacifiCorp's characterization of the Commission's May 2006 declaratory order and asserted that PacifiCorp has acted in bad faith in maintaining that the Federal Power Act preempts state and local regulation of the decommissioning of Condit Dam. By letter dated August 15, 2008, PacifiCorp responded by denying the Counties' assertions of bad faith and by stating that, notwithstanding the apparent disagreement between PacifiCorp and the counties regarding the preemptive impact of the Federal Power Act, the company desires to work collaboratively with the counties to determine what, if any, requirements the counties would like to see imposed by the Commission as part of its surrender order regarding the decommissioning of the Condit project. To that end, PacifiCorp requested a meeting with Klickitat County. PacifiCorp remains willing to negotiate a reimbursement agreement to defray county costs associated with county review.

On August 27, 2008, Klickitat County requested a meeting with PacifiCorp to discuss issues related to the decommissioning. PacifiCorp will meet with the county on September 19, 2008.

### **Decommissioning**

#### Owner's Engineer

In July and August 2008, PacifiCorp received from its engineering contractor a set of 60 percent draft decommissioning plans for review. The drafts further update the planning, engineering, monitoring, design, and construction methods for the proposed decommissioning of the Condit project.

#### City of White Salmon Water Supply Line

PacifiCorp sent a proposed term sheet for relocation of the city's water supply line to Mike Wellman, City of White Salmon. Subsequent meetings and discussion followed to discuss this project.

#### Mt. Adams Orchard Water Supply

PacifiCorp has begun discussions with Mt. Adams Orchard regarding relocation of their agricultural water intake currently located on the shore of Northwestern Lake.

### **Project Schedule**

On May 30, 2008, PacifiCorp notified the Commission that all necessary permits that would allow for removal to commence by October 2008 had not been received. PacifiCorp is hopeful that it can obtain final permits and a Commission Surrender Order in time to allow dam removal to commence in October 2009. Given delay in permit issuance, parties to the settlement agreement have discussed whether a modification to the settlement agreement is needed. Discussions with interested parties at several meetings have led to the tentative conclusion that no modification of the settlement agreement is necessary at this time. Parties are working to memorialize this conclusion.

As part of these discussions, the participating settlement parties noted that PacifiCorp will require some reasonable period of time after all permits become final and all appeals, if any, have run their course, within which to complete the necessary procurement, contracting, and mobilization of a demolition contractor before PacifiCorp can begin decommissioning. PacifiCorp currently estimates nine months is needed for such activities after final permits are received.

**Parties to the Settlement Agreement**

PacifiCorp conducted quarterly meetings with the parties to the settlement agreement, on April 16, 2008, and July 16, 2008. The next meeting is scheduled for October 15, 2008.

Please call me at (503)-813-6657 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Olson", with a long horizontal flourish extending to the left.

Todd Olson, Program Manager  
Hydro Resources  
PacifiCorp Energy

CC: FERC Service List  
FERC Portland Regional Office, Attn: Patrick Regan

**CERTIFICATE OF SERVICE**

I hereby certify that on September 9<sup>th</sup>, I served true copies of the foregoing PacifiCorp's Letter to Secretary Bose regarding the six month update for the Condit Hydroelectric Project on FERC Docket No. 2342 by first-class mail or electronic mail to each person designated on the FERC website service list as of today's date in this proceeding.

Dated this 9<sup>th</sup> day of September, 2008 at Portland, Oregon.



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