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October 8, 2019

VIA ELECTRONIC FILING

PUC Filing Center
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-1088

**Re: UE 296– In the Matter PACIFICORP, dba PACIFIC POWER, 2016 Transition
Adjustment Mechanism**

Attention Filing Center:

Attached for filing in the above-captioned docket is an electronic copy of the Stipulation on Remand signed by Calpine Energy Solutions, PacifiCorp, and Staff of the Public Utility Commission of Oregon (Stipulating Parties). This filing is being made concurrently with the Joint Explanatory Brief in support of the Stipulation.

Please contact this office with any questions.

Very truly yours,



Katherine McDowell

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 296

In the Matter of
PACIFICORP, d/b/a PACIFIC POWER,
2016 Transition Adjustment Mechanism

STIPULATION ON REMAND

INTRODUCTION

1
2 1. This Stipulation on Remand is entered into for the purpose of fully resolving the
3 issues addressed in the decision of the Court of Appeals of the State of Oregon in case no.
4 A161359, issued on June 19, 2019, reversing and remanding Public Utility Commission of
5 Oregon (Commission) Order No. 15-394 in Docket No. UE 296. The Commission issued this
6 order in the 2016 Transition Adjustment Mechanism (TAM) for PacifiCorp, dba Pacific
7 Power (PacifiCorp). The TAM is PacifiCorp's annual filing to update its net power costs in
8 rates and to set transition adjustments for direct access customers.

9 2. The parties to this Stipulation on Remand are PacifiCorp, Calpine Energy
10 Solutions, LLC (Calpine Solutions), and Staff of the Public Utility Commission of Oregon
11 (Staff) (collectively, the Stipulating Parties). The parties in Court of Appeals Case No.
12 A161359 are PacifiCorp, Calpine Solutions, and the Commission; the parties in Docket No.
13 UE 296 are PacifiCorp, Calpine Solutions' predecessor Noble Americas Energy Solutions
14 LLC (Noble Solutions), Staff, the Oregon Citizens' Utility Board (CUB), and the Industrial
15 Customers of Northwest Utilities (ICNU), now the Alliance of Western Energy Consumers
16 (AWEC). The parties to Docket No. UE 296 that are not parties to this Stipulation on
17 Remand, CUB and AWEC, have communicated to the Stipulating Parties that they do not
18 object to the Commission's approval of this Stipulation on Remand.

1 **BACKGROUND**

2 3. On December 11, 2015, the Commission entered Order No. 15-394 in this
3 docket, approving the 2016 opt-out charge for PacifiCorp’s five-year direct access program,
4 set forth in Schedule 200, which included escalation at the rate of inflation for fixed generation
5 costs in years six through ten of the program.¹

6 4. On February 5, 2016, Noble Solutions, the predecessor of Calpine Solutions,
7 appealed Order No. 15-394 to the Court of Appeals.

8 5. On December 20, 2016, the Commission entered Order No. 16-482 in Docket
9 No. UE 307 for the 2017 TAM, approving the 2017 opt-out charge in PacifiCorp’s five-year
10 direct access program. This order re-affirmed the inclusion of an inflation escalator for fixed
11 generation costs in years six through ten of the program.² The Commission also directed
12 PacifiCorp to provide a historical time series of fixed generation costs, broken down by
13 components, in the 2018 TAM.³

14 6. On March 16, 2017, the parties to Court of Appeals Case No. A161359 argued
15 the case before the Court of Appeals.

16 7. On November 1, 2017, the Commission entered Order No. 17-444 in Docket No.
17 UE 323 for the 2018 TAM, approving the 2018 opt-out charge in PacifiCorp’s five-year direct
18 access program. This order continued the inclusion of an inflation escalator for fixed
19 generation costs in years six through ten.⁴ The record before the Commission included, inter
20 alia: (1) PacifiCorp’s Exhibit 110, displaying a ten-year historical time series (2006-2015) of

¹ *In the Matter of PacifiCorp, dba Pacific Power, 2016 Transition Adjustment Mechanism*, Docket No. UE 296, Order No. 15-394, at 12 (Dec. 11, 2015).

² *In the Matter of PacifiCorp, dba Pacific Power, 2017 Transition Adjustment Mechanism*, Docket No. UE 307, Order No. 16-482, at 23 (Dec. 20, 2016).

³ *Id.*

⁴ *In the Matter of PacifiCorp, dba Pacific Power, 2018 Transition Adjustment Mechanism*, Docket No. UE 323, Order No. 17-444, at 20 (Nov. 1, 2017).

1 fixed generation costs broken down by components, and the associated testimony by
2 PacifiCorp's witness, Michael G. Wilding;⁵ and (2) Calpine Solutions' Exhibit 105,
3 displaying a ten-year historical time series (2006-2015) of fixed generation costs, including
4 such costs less incremental investment, broken down by component, and the associated
5 testimony by Calpine Solutions' witness, Kevin C. Higgins.⁶ The Commission also directed
6 PacifiCorp for the next TAM proceeding to demonstrate that its opt-out charge: (a) uses a
7 modest inflation adjustor to forecast costs for years six through ten; (b) does not include
8 incremental generation in years six through ten; and (c) accounts for depreciation.⁷ The
9 Commission indicated an expectation that the next opt-out charge would be somewhere
10 between PacifiCorp's 2018 opt-out charge and the alternative charge requested by Calpine
11 Solutions.⁸

12 8. On October 26, 2018, the Commission entered Order No. 18-421 in Docket No.
13 UE 339 for the 2019 TAM, approving a partial stipulation addressing PacifiCorp's 2019 opt-
14 out charge for its five-year direct access program.⁹ Specifically, the parties stipulated to a
15 one-time, non-precedential adjustment, in which the opt-out charge in the 2019 TAM was
16 calculated without applying inflation to fixed generation costs in years six through ten, instead
17 holding those costs flat in nominal terms.¹⁰ This had the effect of decreasing the opt-out
18 charge relative to the calculation using the method approved for rates offered in the previous
19 three election windows under Order No. 15-394, Order No. 16-482, and Order No. 17-444,

⁵ Docket No. UE 323, PAC/110, Wilding/1, PAC/100, Wilding/36-37, PAC/400, Wilding/56-59, PAC/800, Wilding/53-55.

⁶ Docket No. UE 323, Calpine Solutions/105, Higgins/2-3, Calpine Solutions/100, Higgins/30-36, Calpine Solutions/200, Higgins, 16-21.

⁷ Order No. 17-444 at 21.

⁸ *Id.*

⁹ *In the Matter of PacifiCorp, dba Pacific Power, 2019 Transition Adjustment Mechanism*, Docket No. UE 339, Order No. 18-421, at 7, 8 (Oct. 26, 2018).

¹⁰ *Id.* at 8.

1 by approximately \$1.41/MWh to \$1.61/MWh, depending on rate schedule.¹¹ The record
2 before the Commission in Docket No. UE 339 included, inter alia: (1) PacifiCorp's Exhibit
3 110, displaying an eleven-year historical time series (2006-2016) of fixed generation costs,
4 including such costs less certain incremental investments that PacifiCorp asserted were
5 responsive to the Commission's directive in Order No. 17-444, broken down by component,
6 and the associated testimony by PacifiCorp's witness, Mr. Wilding;¹² (2) Staff's Exhibit 102,
7 displaying a chart produced by PacifiCorp wherein PacifiCorp displayed its Oregon-allocated
8 fixed generation costs less certain incremental generation over a ten-year period (2007-
9 2016);¹³ and (3) Calpine Solutions' Exhibit 106, displaying an eleven-year historical time
10 series (2006-2016) of fixed generation costs including such costs less certain incremental
11 investment that Calpine Solutions asserted were responsive to the Commission's directive in
12 Order No. 17-444, over assorted measurement periods and broken down by component, and
13 the associated testimony by Calpine Solutions' witness, Mr. Higgins.¹⁴

14 9. On April 1, 2019, PacifiCorp made its initial filing in the 2020 TAM, Docket
15 No. UE 356, in which PacifiCorp proposed to calculate the opt-out charge for its five-year
16 direct access program using the same method agreed to by the parties in the 2019 TAM, *i.e.*,
17 holding Schedule 200 flat in nominal terms for years six through ten.¹⁵ As in the 2019 TAM,
18 PacifiCorp proposed this as a non-precedential adjustment for the 2020 TAM only, in the
19 interest of minimizing contested issues.¹⁶ On June 10, 2019, Calpine Solutions filed
20 testimony supporting this treatment for the 2020 opt-out charge to eliminate a potentially

¹¹ *Id.* at 19.

¹² Docket No. UE 339, PAC/110, Wilding/1, PAC/100, Wilding/47-54.

¹³ Docket No. UE 339, Staff/102, Gibbens/14.

¹⁴ Docket No. UE 339, Calpine Solutions/106, Higgins/1-20, Calpine Solutions/100, Higgins/20-32.

¹⁵ *In the Matter of PacifiCorp, dba Pacific Power, 2020 Transition Adjustment Mechanism*, Docket No. UE 356, PAC/100, Wilding/37-38.

¹⁶ *Id.*

1 contentious issue.¹⁷ The parties have reached a full settlement of all issues in Docket No. UE
2 356, including the consumer opt-out charge for direct access customers, in the 2020 TAM
3 Stipulation filed on September 23, 2019.¹⁸ Accordingly, the Administrative Law Judge has
4 granted a motion to suspend the procedural schedule in that docket.¹⁹ The record before the
5 Commission in the 2020 TAM includes, inter alia, PacifiCorp's Exhibit 408, displaying an
6 eleven-year historical time series (2006-2016) of fixed generation costs, before and after
7 removing incremental investment, broken down by component, and the associated testimony
8 by PacifiCorp's witness, Mr. Wilding.²⁰

9 10. On June 19, 2019, the Court of Appeals issued its decision in Noble Solutions'
10 appeal from Order No. 15-394 in this docket.²¹ The Court concluded there was not substantial
11 evidence in the 2016 TAM record to support the Commission's determination that the 2016
12 opt-out charge in PacifiCorp's five-year direct access program was reasonable.²² Specifically,
13 the Court found there was insufficient evidence in the record that fixed generation costs would
14 still increase at the rate of inflation in years six through ten after accounting for the removal
15 of incremental generation.²³ Therefore, the Court reversed and remanded to the
16 Commission.²⁴

17 11. After the Court of Appeals issued its remand order, PacifiCorp, Calpine
18 Solutions, and Staff engaged in discussions regarding the scope and issues on remand. Based

¹⁷ Docket No. UE 356, Calpine Solutions/100, Townsend/8-9.

¹⁸ Docket No. UE 356, Stipulation at ¶ 23 (Sep. 23, 2019).

¹⁹ Docket No. UE 356, ALJ Ruling: Motion Granted, Procedure Schedule Suspended (Aug. 1, 2019).

²⁰ Docket No. UE 356, PAC/408, Wilding/1, PAC/100, Wilding/35-38, PAC/400, Wilding/65.

²¹ *Calpine Energy Solutions LLC v. Public Util. Comm'n of Ore.*, 298 Or App 143, 445 P3d 308 (2019).

²² *Id.* at 145, 160-161.

²³ *Id.* at 161.

²⁴ *Id.* at 163.

1 on these discussions, the Stipulating Parties concluded that they could resolve the issues on
2 remand through this Stipulation on Remand without additional litigation.

3 **AGREEMENT**

4 12. The Stipulating Parties agree that PacifiCorp will calculate the 2020 opt-out
5 charge for PacifiCorp's five-year direct access program in the 2020 TAM in Docket No. UE
6 356 by holding fixed generation costs flat in nominal terms in years six through ten, without
7 an inflation escalator. This is the calculation currently reflected in PacifiCorp's testimony in
8 the 2020 TAM, and it matches the stipulated approach in the 2019 TAM.

9 13. The Stipulating Parties further agree that PacifiCorp will not refer to this
10 calculation as being "non-precedential" in the 2020 TAM. PacifiCorp has changed the
11 description of the 2020 opt-out charge calculation to remove the term "non-precedential" in
12 the stipulation filed in the 2020 TAM.

13 14. The Stipulating Parties agree that the opt-out charge calculation under this
14 Stipulation on Remand results in rates that are reasonable.

15 15. The Stipulating Parties agree that the Commission should take official notice of
16 all testimony and exhibits cited in footnotes 5-6, 12-14, and 20 in this Stipulation on Remand.
17 The Stipulating Parties further agree that this Stipulation on Remand fully resolves the Court
18 of Appeals order remanding the case for further review by the Commission.

19 16. This Stipulation on Remand will be offered into the record of this proceeding as
20 evidence pursuant to OAR 860-001-0350(7). The Stipulating Parties agree to support this
21 Stipulation on Remand throughout this proceeding and any appeal, provide witnesses to
22 sponsor this Stipulation on Remand at any hearing before the Commission, and recommend
23 that the Commission issue an order adopting the settlements contained herein. The Stipulating
24 Parties also agree to cooperate in drafting and submitting a brief in support of the Stipulation
25 on Remand in accordance with OAR 860-001-0350(7).

1 17. If this Stipulation on Remand is challenged, the Stipulating Parties agree that
2 they will continue to support the Commission's adoption of the terms of this Stipulation on
3 Remand. The Stipulating Parties agree to cooperate in cross-examination and put on such a
4 case as they deem appropriate to respond fully to the issues presented, which may include
5 raising issues that are incorporated in the settlements embodied in this Stipulation on Remand.

6 18. The Stipulating Parties have negotiated this Stipulation on Remand as an
7 integrated document. If the Commission rejects all or any material part of this Stipulation on
8 Remand or adds any material condition to any final order that is not consistent with this
9 Stipulation on Remand, each Stipulating Party reserves its right, pursuant to OAR 860-001-
10 0350(9), to present evidence and argument on the record in support of the Stipulation on
11 Remand or to withdraw from the Stipulation on Remand. To withdraw from the Stipulation
12 on Remand, a Stipulating Party must provide written notice to the Commission and other
13 Stipulating Parties within five days of service of the final order rejecting, modifying, or
14 conditioning this Stipulation on Remand. Stipulating Parties shall be entitled to seek
15 rehearing or reconsideration pursuant to OAR 860-001-0720 in any manner that is consistent
16 with the agreement embodied in this Stipulation on Remand.

17 19. By entering into this Stipulation on Remand, no Stipulating Party shall be
18 deemed to have approved, admitted, or consented to the facts, principles, methods, or theories
19 employed by any other Stipulating Party in arriving at the terms of this Stipulation on
20 Remand, other than those specifically identified in the body of this Stipulation on Remand.
21 No Stipulating Party shall be deemed to have agreed that any provision of this Stipulation on
22 Remand is appropriate for resolving issues in any other proceeding, except as specifically
23 identified in this Stipulation on Remand.

24 20. The Stipulating Parties agree that this Stipulation on Remand represents a
25 compromise in the positions of the Stipulating Parties. Without the written consent of all of
26 the Stipulating Parties, evidence of conduct or statements, including but not limited to term

1 sheets or other documents created solely for use in settlement conferences in this docket, are
2 confidential and not admissible in the instant or any subsequent proceeding, unless
3 independently discoverable or offered for other purposes allowed under ORS 40.190.

4 21. This Stipulation on Remand is not enforceable by any Stipulating Party unless
5 and until adopted by the Commission in a final order. Each signatory to this Stipulation on
6 Remand acknowledges that they are signing this Stipulation on Remand in good faith and that
7 they intend to abide by the terms of this Stipulation on Remand unless and until the Stipulation
8 on Remand is rejected or adopted only in part by the Commission. The Stipulating Parties
9 agree that the Commission has exclusive jurisdiction to enforce or modify the Stipulation on
10 Remand.

11 22. This Stipulation on Remand may be executed in counterparts and each signed
12 counterpart shall constitute an original document.

13 23. This Stipulation on Remand is entered into by each Stipulating Party on the date
14 entered below such Stipulating Party's signature.

PACIFICORP

By:  _____

Date: 10/7/19 _____

**STAFF OF THE PUBLIC UTILITY
COMMISSION OF OREGON**

By: _____

Date: _____

**CALPINE ENERGY SOLUTIONS,
LLC**

By: _____

Date: _____

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PACIFICORP

By: _____

Date: _____

**STAFF OF THE PUBLIC UTILITY
COMMISSION OF OREGON**

By: John Riemenschneider Jr. Samuel Moran

Date: 10/8/19

**CALPINE ENERGY SOLUTIONS,
LLC**

By: _____

Date: _____

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PACIFICORP

**STAFF OF THE PUBLIC UTILITY
COMMISSION OF OREGON**

By: _____

By: _____

Date: _____

Date: _____

**CALPINE ENERGY SOLUTIONS,
LLC**

By:  _____

Date: 10/4/19 _____