

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PacifiCorp

Docket Nos. ER17-219-000
ER17-219-002
EL17-27-000
(Consolidated)

CERTIFICATION OF UNCONTESTED SETTLEMENT TO THE COMMISSION

(Issued March 5, 2018)

TO THE COMMISSION:

1. Pursuant to 18 C.F.R. § 385.602(g)(1), I hereby certify for the Commission's consideration as an uncontested offer of settlement the following documents:
 - a. The Settlement Agreement, filed on January 31, 2018 by PacifiCorp;¹
 - b. The Explanatory Statement, attached to the Settlement Agreement; and
 - c. Comments of Commission Trial Staff (Staff) in Support of Settlement Agreement, filed on February 20, 2018.
2. The Settlement Agreement resolves all issues disputed in these proceedings and is not opposed by any proceeding participant. The Settlement Agreement presents no genuine issues of material fact and is fair and reasonable and in the public interest.
3. The Settlement Agreement was filed with revised tariff sheets for PacifiCorp Schedules 3, 3A, 5, and 6. It establishes two separate effective date intervals, as detailed in Sections II.17 and II.18 of this Certification, and requires no refunds. The standard of review for modifications is discussed in Section II.31 of this Certification.

¹ The Settlement Agreement, filed in eTariff, was assigned Docket No. ER17-219-002.

I. Case Summary

4. On October 28, 2016, PacifiCorp filed revisions to its Open Access Transmission Tariff (OATT) in Docket No. ER17-219-000.² The filing proposed to update stated rates for ancillary service Schedules 3 (Regulation and Frequency Response Service), 3A (Generator Regulation and Frequency Response Service), 5 (Operating Reserve – Spinning Reserve Service), and 6 (Operating Reserve – Supplemental Reserve Service), and make clarifying revisions to Schedule 11 (Unauthorized Use of Transmission Service). The proposed revisions provided for differentiated rates to reflect cost variability associated with variable energy resources (VERs), non-variable energy sources (Non-VERs), and load.

5. On February 2, 2017, the Commission issued an order accepting and suspending PacifiCorp's proposed rates, initiated a Federal Power Act (FPA) section 206 proceeding, and established hearing and settlement judge procedures.³ Specifically, the February 2 Order accepted and suspended the revisions to Schedules 3 and 3A for five months, effective July 13, 2017, subject to refund. It accepted the revisions to Schedules 5 and 6, effective February 13, 2017, subject to refund, and instituted the corresponding section 206 investigation in Docket No. EL17-27-000. Lastly, the February 2 Order accepted the proposed revisions to Schedule 11 outright and directed PacifiCorp to make a compliance filing correcting the rates in Schedules 3, 3A, 5, and 6 within 30 days.

6. On February 7, 2017, the Chief Administrative Law Judge issued an order appointing the undersigned as settlement judge. Settlement conferences were convened on February 23, 2017, April 27, 2017, June 15, 2017, October 31, 2017, and December 7, 2017. During the December 7, 2017 settlement conference, the participants reached a broad agreement in principle that would fully resolve all issues contested in these proceedings. PacifiCorp filed the Settlement Agreement certified herein on January 31, 2018.

² The following entities intervened in the proceedings: Utah Associated Municipal Power Systems (UAMPS), Deseret Generation & Transmission Co-operative, Inc. (Deseret), Utah Municipal Power Agency (UMPA), Bonneville Power Administration (BPA), Avangrid Renewables, LLC (Avangrid), NextEra Energy Resources, LLC (NextEra), American Wind Energy Association, Renewable Northwest, EDP Renewables North America LLC, Public Power Council, Western Area Power Administration, and Powerex Corporation.

³ *PacifiCorp*, 158 FERC ¶ 61,121 (2017) (February 2 Order).

II. Terms of the Settlement Agreement

7. Article 1 identifies the parties⁴ to the Settlement Agreement and confirms that it will be filed with the Commission.

8. Article 2 provides the proceedings' background and procedural history.

9. Article 3 outlines the framework for self-supply of ancillary services. Section 3.1 requires PacifiCorp to update its OATT ancillary services Rate Schedules 5 and 6 to set requirements for self-supply and third-party supply by customers of contingency reserves under Schedules 5 and 6. Attachment 1 to the Settlement Agreement contains these requirements. Section 3.1 also establishes the new self-supply criteria's transition timeline, which is initiated by the Settlement Agreement's effective date.

10. Section 3.2 provides a contingency in the event the Commission requires self-supply language to be included in a business practice rather than the OATT. In that case, the Settlement Agreement establishes a "Moratorium Period"—through June 30, 2020—during which all self-supply provisions included in a business practice will not be subject to change by any Settling Party unless agreed upon by all.

11. Section 3.3 concerns changes to business practices (as contemplated by Section 3.2) and the creation of conflicting business practices from the expiration of the Moratorium Period through December 31, 2025. It requires PacifiCorp to notify and confer with the Combined Customers⁵ in good faith regarding any such change. Section 3.3 provides that if no agreement is reached within 60 days, the Combined Customers may file a complaint under FPA section 206 in which PacifiCorp will carry the burden of proving its changes are just and reasonable.

12. Section 3.4 references sample calculations for self-supply and contingency supply included as Attachment 2 to the Settlement Agreement. It explains how the new calculation supersedes calculations in pre-Settlement Agreement business practices, illustrates the process for appending calculation details and other technical elements to a business practice, and details the revision process based on changes in NERC Standard BAL-002-WECC-2.

⁴ The Settlement Agreement defines the "Settling Parties" as PacifiCorp, UAMPS, Deseret, UMPA, BPA, Avangrid, and NextEra.

⁵ The Settlement Agreement defines the "Combined Customers" to be the Settling Parties excluding PacifiCorp.

13. Section 3.5 provides that charges for Schedules 5 and 6 will not apply to the extent customers meet self-supply requirements or acquire third-party supply of the required reserves under Schedules 5 and 6.

14. Section 3.6 states that the Combined Customers will not self-supply ancillary services for Rate Schedules 3 and 3A during the Moratorium Period and will be charged for those services in accordance with Settlement Agreement Sections 4 and 7.

15. Section 3.7 outlines the process by which the Settling Parties will collaborate to create a framework for self-supply of Schedules 3 and 3A and to update the self-supply provisions for Schedules 5 and 6 (including PacifiCorp's ability to automate e-Tag adjustments) during the Moratorium Period. Section 3.7 obligates PacifiCorp to implement the agreed-upon framework via an FPA section 205 filing. It also reserves the Combined Customers' right to bring an FPA section 206 action challenging the OATT to the extent it does not enable customers to self-supply under Schedules 3 and 3A, and propose provisions to that end. In that scenario, PacifiCorp may advocate for alternative procedures, but may not contest the Combined Customers' right to self-supply or right to file a complaint.

16. Section 3.8 provides that the Settlement Agreement does not restrict the Combined Customers' right to challenge PacifiCorp's Schedule 3, 3A, 5, and 6 rates under FPA section 206 after the Moratorium Period expires.

17. Article 4 sets forth the Ancillary Service Rates for Schedules 3, 3A, 5, and 6 on a black box basis. The rates are divided into two separate effective periods to accommodate the Tax Relief and Jobs Act of 2017: (1) the effective date (as set by the February 2 Order) to December 31, 2017; and (2) January 1, 2018 onward.

18. Section 4.1 sets the rates for Schedules 3 and 3A Load, VERs, and Non-VERs applied to the Transmission Customer Schedule 3/3A obligation as follows:

	Settling Parties Agreed Rates effective from July 13, 2017 through December 31, 2017	Settling Parties Agreed Rates effective beginning January 1, 2018
Schedule 3 (Load rate)	2.25 \$/kW-year	2.124 \$/kW-year
Schedules 3 and 3A (Non-VER generation rate)	1.90 \$/kW-year	1.794 \$/kW-year-
Schedules 3 and 3A (VER generation rate for uncommitted scheduling)	6.984 \$/kW-year	6.593 \$/kW-year

	Settling Parties Agreed Rates effective from July 13, 2017 through December 31, 2017	Settling Parties Agreed Rates effective beginning January 1, 2018
Schedules 3 and 3A (VER generation rate for 60-minute committed scheduling, subject to qualification as set forth below)	5.965 \$/kW-year	5.631 \$/kW-year

19. Section 4.2 establishes the rates for Schedules 5 and 6 as follows:

	Settling Parties Agreed Rates effective from February 13, 2017 through December 31, 2017	Settling Parties Agreed Rates effective beginning January 1, 2018
Schedule 5 (Spinning Reserves)	0.16 \$/MWh	0.151 \$/MWh
Schedule 6 (Supplemental Reserves)	0.16 \$/MWh	0.151 \$/MWh

20. To qualify for the Schedule 3 and 3A VER generation rates for 60-minute committed scheduling for a month, during every hour of that month (except as specified here), a VER customer must utilize and submit into BSAP by 57 minutes prior to the operating hour (T-57), consistent with PacifiCorp’s EIM Business Practice, hour-ahead base schedules consistent with PacifiCorp’s VER forecast vendor’s forecast available as of no more than 72 minutes prior to the operating hour (T-72) without modification or manual override of the hour-ahead forecast, fifteen- minute schedule, and five-minute schedule. In any calendar month for up to two operating hour intervals, a VER customer may utilize and submit into BSAP by T-57, hour-ahead schedules consistent with PacifiCorp’s VER forecast vendor’s forecast available as of up to 90 minutes prior to the operating hour (T-90), without modification or manual override of the hour-ahead forecast, fifteen-minute schedule, and five-minute schedule, and still be eligible for this rate. Use and submission into BSAP of hour-ahead schedules older than PacifiCorp’s

VER forecast vendor's forecast at T-90 in any hour during a calendar month will make a VER customer ineligible for this rate in that month.

21. Article 5 contemplates modifications to Schedule 3, 3A, 5, and 6 rates in the event of further changes to the federal corporate income tax rate. In such a case, PacifiCorp must make a single-issue FPA section 205 filing to update the rate within six months of the corporate income tax change. This filing will be exempt from the Moratorium Period and the Combined Customers are barred from challenging this filing beyond enforcing PacifiCorp's compliance with the Settlement Agreement. Article 5 will terminate on the earlier of: (1) December 31, 2025; or (2) the effective date of a PacifiCorp filing to update its Schedule 3, 3A, 5, and 6 rates.

22. Article 6 details the Moratorium Period on changes to ancillary service rates, terms, and conditions. Section 6.1 states that the Schedule 3, 3A, 5, and 6 black box rates and any provisions included in or removed from a business practice will remain in force and will not be modified by any Settling Party during the Moratorium Period, except as provided elsewhere in the Settlement Agreement. PacifiCorp will not propose any new or separate ancillary service schedule charge or other rate, term, or condition of service for Schedules 3, 3A, 5, or 6 during the Moratorium Period.

23. Section 6.2 allows PacifiCorp to make an FPA section 205 filing updating the Regulation Reserve Study and ancillary service rates for Schedules 3, 3A, 5, or 6 after the Moratorium Period, with an effective date no earlier than July 1, 2020. The Combined Customers may intervene, protest, and participate fully in any proceeding arising from PacifiCorp's filing or any other proceeding regarding PacifiCorp's ancillary services rates for Schedules 3, 3A, 5, and 6.

24. Section 6.3 provides that PacifiCorp will coordinate in good faith with stakeholders to agree upon the methodology and applicable regulation and operating reserves data to be used in the future update of the Schedules 3 and 3A ancillary services rates. Section 6.3 contains a list specific issues for PacifiCorp and the stakeholders to consider.

25. Section 6.4 requires PacifiCorp to conform its FPA section 205 filing to each of the issues listed in Section 6.3 upon which consensus is reached.

26. Section 6.5 states that the restriction on the Combined Customers' rights to self-supply ancillary services for Rate Schedules 3 and 3A included in Section 3.6 will expire at the end of the Moratorium Period.

27. Article 7 details the Settlement Agreement's applicability to specific legacy agreements. Section 7.1, Section 7.2, and Section 7.3 concern legacy agreements

between PacifiCorp and UMPA, Deseret, and UAMPS, respectively. Each section identifies the billing determinants to be used during the Moratorium Period for the load-based charges outlined in Schedule 3/3A service under the individual legacy agreements. These sections also provide that generation-based charges will not apply to the legacy agreements during the Moratorium Period.

28. Article 8 establishes the Settlement Agreement's effective date. Section 8.1 states that the Settlement Agreement will become binding upon the Settling Parties when the Commission issues a final order approving the Settlement Agreement without modification or condition.

29. Section 8.2 requires any Settling Party with a request for rehearing in these proceedings to withdraw their request within 30 days of the Settlement Agreement effective date.

30. Section 8.3 provides that if the Commission approves the Settlement Agreement with conditions or material modifications, a Settling Party may provide written notice to all other Settling Parties within 10 business days that it finds such conditions or modifications unacceptable. At that time, the Settlement Agreement becomes ineffective unless the Settling Parties agree in writing within an additional 15 business days that certain conditions or modifications consistent with those proposed by the Commission are acceptable to all Settling Parties.

31. Article 9 states that PacifiCorp will file an unopposed motion for interim rate relief and expedited action concurrently with the Settlement Agreement.⁶

32. Article 10 provides that the standard of review for modification to the Settlement Agreement, whether proposed by a party to the proceedings, a party with standing under FPA section 206, or the Commission acting *sua sponte*, will be the "most strict standard set forth" in *United Gas Pipeline Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 348 (1956); *Fed. Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cty., Wash.*, 554 U.S. 527 (2008); or *NRG Power Marketing, LLC v. Maine Pub. Util. Comm'n*, 558 U.S. 165 (2010).

⁶ PacifiCorp filed the motion discussed in Article 9 on January 31, 2018 in Docket No. ER17-217-003. On February 8, 2018, the Chief Administrative Law Judge issued an order granting the motion.

33. Article 11 contains provisions common to settlements filed before the Commission.

III. Comments on the Settlement Agreement

34. On February 20, 2018, Staff submitted its Comments in Support of Settlement Agreement. Staff supports the Settlement Agreement because it resolves all issues set for hearing in the February 2 Order fairly and reasonably, and implements significantly reduced rates for the rate schedules at issue.⁷ Staff praises the Settlement Agreement's framework for facilitating collaboration between PacifiCorp and its customers on self-supply issues outside the context of the current proceedings.⁸

35. Staff lastly comments on the Settlement Agreement and the Explanatory Statement's seemingly contradictory standards of review for modifications sought by third parties or the Commission acting *sua sponte*. Whereas Section 10.1 of the Settlement Agreement imposes the "most strict standard" set forth in the cited cases for *all* modifications, the Explanatory Statement's answer to Question D holds that the applicable standard to modifications proposed by third parties or the Commission acting *sua sponte* "shall be the ordinary just and reasonable standard of review, not the public interest standard of review."⁹

36. Staff believes these apparent differences can be reconciled:

While parties to an agreement are free to impose a stricter standard among themselves, the "most strict standard" language, as well as phrases of similar import, is ambiguous and could lead to disputes should a Party in the future propose an amendment that is contested by another. The Commission has noted the uncertainty in the context of similar language directed at third parties and the Commission, and has concluded that, when reviewing rates of general applicability, the just and reasonable standard would apply.¹⁰

⁷ Staff February 20, 2018 Comments at 11-12.

⁸ *Id.* at 12.

⁹ Explanatory Statement at 13.

¹⁰ Staff February 20, 2018 Comments at 14 (citing *Illinois Power Marketing Co. et*

37. Staff argues: “*Illinois Power Marketing* demonstrates that, in the context of rates of general applicability, the Commission is inclined to interpret the ‘most stringent standard permissible’ as applied to non-parties or the Commission acting *sua sponte* as referring to the ordinary just and reasonable standard of review.”¹¹ Staff contends that this principle applies in the current proceedings such that, notwithstanding the Settlement Agreement’s ambiguity, the applicable standard to modifications proposed by third parties and the Commission would be the just and reasonable standard.¹²

IV. Discussion

38. I recommend approval by the Commission. The Settlement Agreement is fair, reasonable, and in the public interest.

39. In accordance with the requirements of the Amended Notice to the Public on Information to be Provided with Settlement Agreements and Guidance on the Role of Settlement Judges,¹³ the following questions and answers are provided below:

Does the settlement affect other pending cases?

40. The Settlement Agreement affects no other pending cases.

Does the settlement raise issues of first impression?

41. The Settlement Agreement raises no issues of first impression.

Does the settlement depart from Commission precedent?

42. The Settlement Agreement does not depart from Commission precedent.

al., 155 FERC ¶ 61,172, at P 5 (2016)).

¹¹ Staff February 20, 2018 Comments at 14.

¹² *Id.* at 14-15.

¹³ Chief Administrative Law Judge’s December 15, 2016 Notice to the Public: Amended Notice to the Public on Information to be Provided with Settlement Agreements and Guidance on the Role of Settlement Judges.

Does the settlement seek to impose a standard of review other than the ordinary just and reasonable standard with respect to any changes to the settlement that might be sought by either a third party or the Commission acting *sua sponte*?

43. The Settlement Agreement seeks the “most strict standard” for *all* modifications, including those sought by third parties or the Commission acting *sua sponte*. The Explanatory Statement states that “the standard of review for any changes proposed by a non-party or the Commission acting *sua sponte* shall be the ordinary just and reasonable standard of review, not the public interest standard of review.”¹⁴ The undersigned believes the apparent contradiction can be reconciled in the manner suggested by Staff, such that the just and reasonable standard of review would apply to any such modifications.

V. Certification

44. I find and conclude that the Settlement Agreement does not present any genuine issue of material fact and appears to be fair and reasonable and in the public interest. Upon acceptance of the Settlement Agreement by the Commission, these proceedings should be terminated.



Steven A. Glazer
Settlement Judge

¹⁴ Explanatory Statement at 13.