

ISSUED: January 22, 2010

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1355

In the Matter of the

PUBLIC UTILITY COMMISSION OF  
OREGON

Investigation into Forecasting Forced Outage  
Rates for Electric Generating Units.

RULING

**DISPOSITION: FURTHER TESTIMONY AND HEARINGS AUTHORIZED;  
ESTABLISHMENT OF PROCEDURES**

**I. INTRODUCTION**

On October 6, 2009, I provided notice to the parties of the Commission's intention to adopt the Stipulations settling all of the issues in the case relative to Portland General Electric Company (PGE) and Idaho Power Company (Idaho Power), subject to certain specific modifications, and to modify and insert additional language into the Partial Stipulation relative to PacifiCorp, dba Pacific Power (PacifiCorp), settling certain open issues. The modifications in that Notice set forth the language to establish the methodology for addressing extraordinary forced outages in the calculation of forced outage rates (FORs) for coal fired generating facilities and for the regulatory treatment of outages caused by utility management's imprudence.

On October 19, 2009, PGE, Idaho Power, and PacifiCorp each filed responses indicating that the stipulations were integrated documents and that the Commission's proposed changes had amounted to a rejection of the stipulations, giving them the right, pursuant to OAR 860-014-0085(6), to void their respective stipulation agreements. Although PacifiCorp, Idaho Power, and PGE asked the Commission to accept their stipulations as filed, they each indicated that they were exercising that right and seeking additional proceedings.

In Commission Order No. 09-479, entered December 7, 2009, the Commission sought to clarify some of its earlier comments, request further comment from the parties, and establish procedures for the conduct of the remainder of the case. A prehearing conference was held on January 7, 2010, at which the companies indicated their desire to offer additional testimony to address the Commission's proposed modifications to their respective stipulations and to have the option to offer testimony on other issues included in the stipulations that had now been rejected. The parties had only limited success in their efforts to agree on the parameters

and methods for the introduction of additional testimony regarding the impact and scope of the changes or additions to the stipulations proposed by the Commission in Order No. 09-479.

On January 8, 2010, PacifiCorp submitted "clarifying questions on Order No. 09-479 and the October 7, 2009 Notice." PacifiCorp asks for (1) the status of its Partial Stipulation; (2) an acknowledgement of the filing of reply and supplemental testimony (noted below; see fn. 1); (3) information regarding the timing of future Commission rulings; (4) a statement as to whether limitation of additional testimony and cross-examination to the proposed collar mechanism and imprudence satisfies the "new issues of fact" standard; (5) a statement as to whether the submission of previous testimony diminishes their right to submit evidence on the Commission proposals in response to the Commission's variant of the proposals in ICNU's reply testimony; (6) a statement on how the Commission will provide the parties with direction on limitation of testimony; and (7) a statement as to whether the Commission will entertain a stipulated alternative to its proposed collar mechanism and treatment of imprudent outages.

On January 19, 2010, the Industrial Customers of Northwest Utilities (ICNU) and the Citizens' Utility Board of Oregon (CUB) filed a joint response to PacifiCorp, asserting the parties had numerous opportunities to set forth all necessary evidence, there were no new facts, and the record was fully developed and ready for a Commission decision and that PacifiCorp was essentially trying to reargue the case.

## II. DISCUSSION AND RULING

Order No. 09-479 at p. 4, fn. 2, stated that pre-filed direct testimony of the parties and certain data responses had already been admitted into the record by Ruling of September 28, 2009.<sup>1</sup> The Commission further stated with respect to the Coal and Imprudence Issues:

Parties will only be allowed to offer additional testimony if they can establish that there are new issues of fact that their witnesses have not previously been able to address.

Regardless of whether additional testimony may be allowed, all parties will be allowed to file opening and reply briefs with respect to those issues and, in addition, may make further argument based upon the existing record with respect to other aspects and issues of the case if they so choose." (Order at 4.)

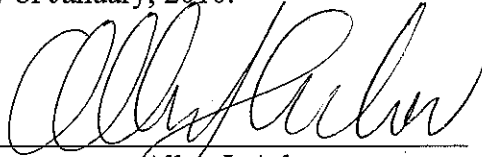
Upon further review of all of the circumstances related to the Commission's Order and the companies' responses, I have concluded that in keeping with the Commission's intention, the parties may file motions seeking the right to file additional testimony (but not the testimony itself) with respect to new issues of fact arising subsequent to the submission of reply and supplemental testimony. Such motions shall be filed no later than January 29, 2010. In order to ensure that all such testimony satisfies this requirement, before the testimony itself is

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<sup>1</sup> Order No. 09-479 at 4. In fact, all proffered testimony, including any reply and supplemental testimony was received into and made part of the record by the Ruling of September 28, 2009.

submitted, the motion shall set forth with particularity the new facts alleged which the testimony will purport to prove. Oppositions to motions shall be filed no later than February 5, 2010. Based upon the Ruling disposing of the motions, a conference will be held to establish a schedule for the remainder of the proceeding, including dates for submission of testimony in accordance with the Ruling.

Dated at Salem, Oregon, this 22nd day of January, 2010.



Allan J. Arlow  
Administrative Law Judge

UM 1355 Ruling authorizing further testimony and hearings 1-22-10