

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1438

In the Matter of

SWALLEY IRRIGATION DISTRICT

Complainant,

vs.

PACIFICORP, dba PACIFIC POWER

Respondent.

ORDER

DISPOSITION: SETTLEMENT AGREEMENT AND RELEASE ACCEPTED

**I. INTRODUCTION**

On August 21, 2009, Swalley Irrigation District (Swalley) filed a complaint requesting that the Public Utility Commission of Oregon (Commission) order PacifiCorp, dba Pacific Power (Pacific Power) to execute a power purchase agreement (PPA) containing avoided cost prices in effect prior to September 2009. After further briefing and negotiation between the parties, Swalley and Pacific Power ultimately resolved all issues in dispute. On October 21, 2009, the parties filed a Joint Submission of Settlement for Commission Approval. In this Order, we accept the parties' settlement agreement, but we reserve judgment on the reasonableness of the parties' PPA for ratemaking purposes.

**II. PROCEDURAL HISTORY**

Swalley filed a complaint with the Commission alleging that it had taken steps to establish a small power production facility, but that Pacific Power was refusing to execute a completed PPA unless the agreement included new, lower rates. Pacific Power then moved to extend the time to answer Swalley's complaint, to expedite determination of the applicability of OAR 860-029-0100, to dismiss the complaint, and to make the complaint more definite and certain. On August 31, 2009, an Administrative Law Judge (ALJ) conditionally granted Pacific Power's motion to extend time, and shortened the time for Swalley to reply to Pacific Power's

motion seeking expedited determination. The parties submitted further briefing and comments, and on September 8, 2009, the ALJ ruled that OAR 860-029-0100 did not apply, and denied Pacific Power's motions to dismiss and to make more definite and certain. On October 21, 2009, the parties filed a joint submission of settlement for Commission approval.

### III. DISCUSSION

#### A. Stipulation

##### *a. Parties' Positions*

The parties state that their joint Stipulation resolves all issues in this docket. Pacific Power has agreed to enter into a PPA with Swalley at the avoided cost rates in effect prior to the rates' revision on September 9, 2009. In exchange, Swalley has agreed to release its claims and agreed to a PPA milestone requiring Swalley to obtain a conduit project exemption from the Federal Energy Regulatory Commission (FERC) by February 28, 2010.

The parties state that their joint settlement addresses their concerns, serves the public interest, serves the interest of Pacific Power's customers, and establishes a reasonable resolution to a pending complaint proceeding. Upon Commission approval of their joint settlement, the parties state that they intend to execute a standard Oregon PPA containing the terms tendered by Swalley on July 21, 2009, and a one-page letter agreement establishing the new February 28, 2010 milestone.

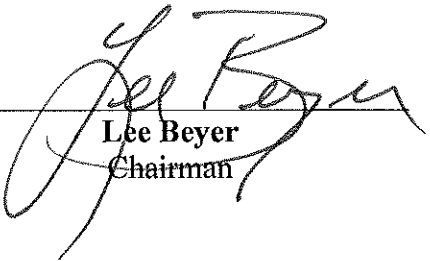
##### *b. Resolution*

The Commission encourages parties to a proceeding to voluntarily resolve issues in dispute. After our review, we find the parties' Settlement reasonable for purposes of resolving the complaint filed by Swalley, and accept it for those purposes. This decision, however, does not constitute a determination on the rate-making treatment of the PPA. We must make decisions that relate to rates only within rate cases. We reserve judgment on the prudence of the PPA for ratemaking purposes, and our acceptance of the Settlement does not exempt Pacific Power from its duty to show that recovery of costs is reasonable and in the public interest.

IV. ORDER

IT IS ORDERED THAT the Settlement Agreement and Release filed jointly by Swalley Irrigation District and Pacific Power is accepted.

Made, entered, and effective NOV 09 2009.

  
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**Lee Beyer**  
Chairman

  
\_\_\_\_\_  
**John Savage**  
Commissioner

  
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**Ray Baum**  
Commissioner



A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.