

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UE 296

In the Matter of

PACIFICORP, dba PACIFIC POWER,

2016 Transition Adjustment Mechanism.

ORDER

DISPOSITION: STIPULATION ADOPTED

I. INTRODUCTION

On December 11, 2015, we issued Order No. 15-394 in this docket, establishing PacifiCorp, dba Pacific Power's 2016 transition adjustment mechanism (TAM). The TAM included a transition charge for PacifiCorp's long-term direct access program. The transition charge was the subject of an objection by Calpine Energy Solutions LLC, formerly known as Noble America Energy Solutions LLC (Calpine Solutions). Order No. 15-394 was appealed by Calpine Solutions and eventually remanded, with direction from the Oregon Court of Appeals to base our conclusions on the evidentiary record compiled within these proceedings. In this order, we consider and adopt the October 8, 2019 stipulation of the current parties to this docket resolving all issues associated with the remand. We explain the TAM decisions—specific to the direct access transition charge—issued in the intervening period between the issuance of Order No. 15-394 and the decision from the Court of Appeals, upon which we base this decision. In addition, we take official notice of specific evidence in support of our adoption of the stipulation.

II. BACKGROUND

A. Procedural History

Order No. 15-394 approved PacifiCorp's TAM, which set the 2016 "opt-out" or transition charge for participants in PacifiCorp's direct access program. This transition charge covers the difference between net power costs as listed in PacifiCorp's tariffs and the estimated market value of the electricity that is freed up when a customer chooses to purchase generation directly from a certified supplier. The calculation of the transition

charge for the 2016 TAM escalated at the rate of inflation for fixed generation costs in years six through ten, divided over the five-year set of charges.

Calpine Solutions filed a petition for review of Order No. 15-394 on February 5, 2016. During the multi-year appeal process, the Commission approved PacifiCorp's 2017 TAM, 2018 TAM, and the 2019 TAM in 2016, 2017, and 2018 respectively. Each of these adjustments included an updated transition charge for direct access customers, the specifics of which are discussed below.

On April 1, 2019, PacifiCorp filed its proposed 2020 TAM application (Docket No. UE 356), in which PacifiCorp proposed an updated calculation for the transition charge for its five-year direct access program. This proposal does not include a cost of inflation escalator and keeps the transition charge flat in nominal terms for years six through ten. On June 10, 2019, Calpine Solutions filed testimony supporting this treatment for the 2020 transition charge. On June 19, 2019, the Court of Appeals issued a decision on the appeal of Order No. 15-394, remanding the decision back to the Commission.

On September 23, 2019, parties—including Calpine Solutions—filed a full settlement of issues in Docket No. UE 356 (the 2020 TAM docket) including the transition charge for direct access customers.

B. Appeal of Order No. 15-394 and Remand

Order No. 15-394 approved a transition charge for 2016 direct access customers that included an inflation escalator for years six through ten. Calpine filed a petition for judicial review on February 5, 2016. In its appeal, Calpine Solutions argued that Order No. 15-394 contained implausible construction of applicable statutes, was not supported by substantial evidence or substantial reason, and improperly concluded that a prior order precluded consideration of Calpine Solution's arguments.

In the UE 296 proceedings which gave rise to Order No. 15-394, all parties—other than PacifiCorp—agreed that the five-year transition period opt-out charge would include delivery charges, generation fixed costs, and a transition adjustment. After five years, a direct access customer would only pay PacifiCorp for delivery service. PacifiCorp modified its proposed schedule to include an additional amount for years six through ten as a part of the five-year calculation. PacifiCorp proposed that for years six through ten, the fixed generation costs would escalate at the rate of inflation and then be reduced to a net present value (which took into account the value of freed up power). The inflation escalator charges were then divided up over the five-year payment period to create the

direct access fixed charge. This mechanism was approved as a part of PacifiCorp's 2016 TAM in Order No. 15-394.

In its review of our order, the Court of Appeals agreed with the Calpine Solutions statements that PacifiCorp's calculation was based on "illustrative examples" and not real data. The court noted Calpine Solutions assertions that PacifiCorp could adjust its system to match load loss within five years and "imposing ten years of alleged costs in a five-year period of recovery would present a negative value proposition for participants ***."¹ The court concluded that there was not substantial evidence in the 2016 TAM record to support the determination that the 2016 transition charge for PacifiCorp's five-year direct access program was reasonable. In support of this conclusion, the court observed that the only evidence for finding that the charge was reasonable was an assertion by a PacifiCorp witness who stated that using the rate of inflation was a "conservative assumption and conservative calculation."²

The court summed up its ruling by stating that "there is no evidence in the record from which a "reasonable person" could find that it is reasonable to assume" that fixed generation costs *** will escalate at the rate of inflation."³ The court reversed and remanded the decision to the Commission.

III. DISCUSSION

After the issuance of the Court of Appeals decision on June 19, 2019, PacifiCorp, Calpine Solutions, and Staff engaged in discussions regarding the evidentiary issues presented by the court. The stipulating parties (PacifiCorp, Staff and Calpine) concluded that they could resolve the issues on remand through an agreement and without additional litigation.

Accordingly, on October 8, 2019, the parties filed a stipulation and joint explanatory brief to resolve all issues on remand. Two other parties from original proceedings (CUB and AWEC) did not participate in the remand settlement discussions, but the stipulating parties note that these parties have no objection to the proposed stipulation.

In the proposed stipulation and joint explanatory brief, the parties sought to demonstrate the evolution of the transition charge over time, noting the calculation and other changes that occurred in the TAM proceedings between the 2016 TAM and the 2020 TAM

¹ *Calpine Energy Solutions LLC v. PUC*, 298 Or App 143, 150 (2019).

² *Id.* at 161 (2019).

³ *Id.* at 161 (2019).

dockets relevant to the transition charge. The 2017 TAM⁴ transition charge continued to include an inflation escalator for fixed generation costs in years six through ten, as was authorized in Order No. 15-394. In Order No. 16-182, which approved the 2017 TAM, we requested that PacifiCorp to provide an historical timeline of fixed generation costs as a part of its application for the subsequent 2018 TAM, broken down by its components as a check on the reasonableness of its forecasts.⁵

We issued Order No. 17-444 (authorizing the 2018 TAM) on November 1, 2017. Order No. 17-444 maintained in the transition charge calculation a rate of inflation escalator. PacifiCorp included the historic timeline exhibit as required. We noted that this exhibit displayed a historical time series from 2006 to 2015 of fixed generation costs by component, beginning with total rate base, then adding return on rate base, O&M, depreciation, amortization, and taxes from 2006 to 2015, and therefore provided greater clarity on PacifiCorp's generation and other costs included in the calculation of the transition charge.⁶

In order to clarify our intent for future transition charges, we directed PacifiCorp, in its next TAM filing, to demonstrate that the inflation adjustment represented a modest cost for years six through ten. Next we requested that the company exclude any new incremental generation in years six through ten of its forecast. Finally, we asked PacifiCorp to account for depreciation.⁷ We noted the expectation that the 2019 TAM would contain a transition charge for direct access customers somewhere between the 2018 approved TAM and Calpine Solutions' recommendation that the transition charge should decrease to account for depreciation and the exclusion of new investments to rate base for years six through ten.⁸

We approved Order No. 18-421 (authorizing the 2019 TAM) on October 26, 2018. The 2019 TAM calculation included a one-time non-precedential adjustment. The transition charge was calculated without applying an inflation escalation to fixed generation costs in years six through ten.⁹ According to the parties, this decreased the transition charge from the previous three calculated transition charges by a range of \$1.41/MWh to \$1.61/MWh.¹⁰

⁴ *In the Matter of PacifiCorp, dba Pacific Power, 2017 Transition Adjustment Mechanism*, Docket No. UE 307, Order 16-182 (Dec 20, 2016).

⁵ Joint Explanatory Brief at 2, citing Docket No. UE 307, Order No. 16-482 at 23 (Dec. 20, 2016).

⁶ *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).

⁷ *Id.*

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 (Oct 26, 2018).

¹⁰ *Id.* at 7.

Finally, in the 2020 TAM, PacifiCorp proposed to calculate the transition charge for its five-year direct access program using the same method agreed to by the parties in the 2019 TAM, holding the transition charge costs flat in nominal terms for years six through ten. PacifiCorp continued to recommend that this would be a non-precedential adjustment. After the Court of Appeals issued its decision, the parties further stipulated that PacifiCorp will not refer to this calculation as being “non-precedential” in the 2020 TAM. That language is reflected in the 2020 TAM stipulation.¹¹

In this docket, by presenting the evolution of the direct access transition charge from the 2016 TAM to the 2020 TAM, the Stipulating Parties argue that the transition charge calculation, as presented in UE 356 results in rates that are reasonable. In addition, the stipulating parties agree that the language change (removing the term “non-precedential”) is a necessary element of the proposed stipulation. Finally, the stipulating parties agree that this stipulation “fully resolves the Court of Appeals order remanding the case for further review by the Commission.”¹² The parties point to specific pieces of evidence that demonstrate the evolution of the transition charge and support the above reasonableness claims, as noted below.

A. Evidence

The joint explanatory brief listed and the proposed stipulation references a series of exhibits, associated with the TAM filings submitted in the various dockets subsequent to the issuance of Order No. 15-394 discussed above. The Stipulating Parties state that these exhibits serve to clarify and support the stipulation of the parties in this docket. The Stipulating Parties request that, in accordance with OAR 860-001-0460(1)(d), we take official notice in this docket of this testimony and exhibits in support of the stipulation, which are listed in the joint explanatory brief (and referenced in the stipulation) as follows:

- PacifiCorp’s Exhibit 110 in Docket No. UE 323, which displays a ten-year historical time series (2006-2015) of fixed generation costs broken down by components, and the associated testimony by PacifiCorp’s witness, Michael G. Wilding;¹³

¹¹ *In the Matter of PacifiCorp, dba Pacific Power, 2020 Transition Adjustment Mechanism*, Docket No. UE 356, Stipulation at 10 (Sep 23, 2019).

¹² Stipulation on Remand at 6 (Oct 8, 2019).

¹³ Docket No. UE 323, PAC/110, Wilding/1, PAC/100, Wilding/36-37, PAC/400, Wilding/56-59, PAC/800, Wilding/53-55.

- Calpine Solutions’ Exhibit 105 in Docket No. UE 323, which displays a ten-year historical time series (2006-2015) of fixed generation costs, including such costs less incremental investment, broken down by component, and the associated testimony by Calpine Solutions’ witness, Kevin C. Higgins;¹⁴
- PacifiCorp’s Exhibit 110 in Docket No. UE 339, which displays an eleven-year historical time series (2006-2016) of fixed generation costs, including such costs less certain incremental investments that PacifiCorp asserted were responsive to the Commission’s directive in Order No. 17-444, broken down by component, and the associated testimony by PacifiCorp’s witness, Mr. Wilding;¹⁵
- Staff’s Exhibit 102 in Docket No. UE 339, which displays a chart produced by PacifiCorp wherein PacifiCorp presented its Oregon-allocated fixed generation costs less certain incremental generation over a ten-year period (2007-2016);¹⁶
- Calpine Solutions’ Exhibit 106 in Docket No. UE 339, which displays an eleven-year historical time series (2006-2016) of fixed generation costs, including such costs less certain incremental investment that Calpine Solutions asserted were responsive to the Commission’s directive in Order No. 17-444, over assorted measurement periods and broken down by component, and the associated testimony by Calpine Solutions’ witness, Mr. Higgins.¹⁷
- PacifiCorp’s Exhibit 408 in Docket No. UE 356, displaying an eleven-year historical time series (2006-2016) of fixed generation costs, before and after removing incremental investment, broken down by component, and the associated testimony by PacifiCorp’s witness, Mr. Wilding.¹⁸

B. Official Notice

We take official notice of each of the items listed above. Parties may offer in evidence all or part of the record from another Commission proceeding.¹⁹ The Commission may take official notice of documents and records in the files of the Commission that have

¹⁴ Docket No. UE 323, Calpine Solutions/105, Higgins/2-3, Calpine Solutions/100, Higgins/30-36, Calpine Solutions/200, Higgins, 16-21.

¹⁵ Docket No. 339, PAC/110, Wilding/1, PAC/100, Wilding/47-54.

¹⁶ Docket No. 339, Staff/102, Gibbens/14.

¹⁷ Docket No. 339, Calpine Solutions/106, Higgins/1-20, Calpine Solutions/100, Higgins/20-32.

¹⁸ Docket No. UE 356, PAC/408, Wilding/1, PAC/100, Wilding/35-38, PAC/400, Wilding/65.

¹⁹ OAR 860-001-0490 states: “If a party offers in evidence all or part of the record from another Commission proceeding, then the party must provide a copy of the offered record to the ALJ and copies to other parties upon request.”

been made a part of the files in the regular course of performing the Commission's duties.²⁰ The items subject to the notice request are part of several dockets, submitted by various parties that became part of the record in the course of those dockets. We have reviewed the testimony and exhibits that the Stipulating Parties request we take official notice of, and find that this information supports the resolution proposed by the Stipulating Parties in this case. Our rules provide that we may take official notice of evidence in a Commission order.²¹

Substantial evidence in the record supports the stipulated method for calculating the transition charge for PacifiCorp's five year direct access program in the 2020 TAM, specifically the testimony and exhibits that are the subject of the request for official notice above. These documents support a range of calculations for the transition charge, including the compromise approach taken in the stipulation.

A party may object to the fact noticed within 15 days of the hearing during which notice was given, the ALJ ruling, or the Commission order. The objecting party may explain or rebut the noticed fact.²²

C. Commission Resolution

The Court of Appeals direction in this case is clear, that we must "prepare and enter findings of fact and conclusions of law upon the evidence received in the record."²³ Therefore, we look to the record in this case to support our decision. The parties have provided several pieces of evidence in an attempt to provide us with a sufficient record to support a decision to adopt the proposed stipulation in this case.

A review of the evidence proposed for official notice in this case allows us to follow the evolution of PacifiCorp's direct access transition charge presented by the parties. The evidence clarifies the differences in the various parties' positions over a series of TAM proceedings. The information provides specific cost information, some of which was requested by the Commission based on Calpine Solution's assertions, that assist in illustrating the appropriate components of the direct access transition charge, and the length of time for which those components should remain a part of the transition charge. Ultimately, this specific cost information requested by the Commission and submitted in various dockets provides evidentiary support and justifies the currently approved transition charge in PacifiCorp's TAM. Therefore, we adopt the stipulation because it is

²⁰ OAR 860-001-0460(1)(d).

²¹ OAR 860-001-0460(2).

²² OAR 860-001-0460(2).

²³ *Calpine*, 298 Or App 143, 163 (2019), citing ORS 756. 558(2)

supported by sufficient evidence in the record, appropriately resolves the issues in this case, and results in reasonable rates.

IV. CONCLUSION

The stipulation here and the foregoing evidence appropriately resolve the issue on remand regarding the sufficiency of the evidence supporting the calculation of PacifiCorp's direct access transition charge. The stipulation is a reasonable resolution of the disputed issues regarding the transition charge calculation, and the record contains sufficient evidence in support of the transition charge calculation methodology in the 2020 TAM, to which the parties have now agreed.

The stipulation is attached to this order as Appendix A and is adopted.

V. ORDER

IT IS ORDERED that:

1. Official notice will be taken of the documents and portions of testimony referenced in paragraph 15 of the stipulation and as listed above;
2. The stipulation filed by PacifiCorp, Calpine Solutions and Staff is adopted by this Commission to resolve all issues on remand from the Court of Appeals.

Made, entered, and effective Nov 25 2019.



Megan W. Decker
Chair



Stephen M. Bloom
Commissioner



Letha Tawney
Commissioner



A party may request rehearing or reconsideration of this order under 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 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

**BEFORE THE PUBLIC UTILITY COMMISSION
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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.

BACKGROUND

1
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: _____

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
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By: _____

Date: _____

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

By: *John Riemerschulte Jr. Sommer Mason*

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 _____