

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PacifiCorp

)

**Docket Nos. ER11-3643-000
ER11-3643-001**

**INITIAL COMMENTS OF THE COMMISSION TRIAL STAFF
IN SUPPORT OF SETTLEMENT AGREEMENT**

**To: Hon. John P. Dring
Settlement Judge**

Pursuant to Rule 602(f) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 C.F.R. § 385.602(f) (2012), the Commission Trial Staff (Staff) submits its initial comments in support of the Settlement Agreement (Settlement) filed on February 22, 2013, by PacifiCorp, Bonneville Power Administration, Deseret Generation & Transmission Co-operative, Inc., Utah Associated Municipal Power Systems, and Utah Municipal Power Agency.¹ The Settlement resolves all issues set for hearing in this proceeding.

¹ PacifiCorp represents that the following Parties do not oppose the Settlement: NextEra Energy Resources, LLC, Western Area Power Administration, Utah Division of Public Utilities, Idaho Power Company, Pacific Gas and Electric Company, Tri-State Generation and Transmission Association, Inc., Industrial Customers of Northwest Utilities, Modesto Irrigation District, Cities of Santa Clara, California and Redding, California, M-S-R Public Power Agency, Utah Industrial Energy Consumers, Iberdrola Renewables, Inc., Powerex Corp, Los Angeles Department of Water and Power, Transmission Agency of Northern California and Puget Sound Energy, Inc. PacifiCorp and each intervenor are each referred to as a "Party" and collectively referred to as the "Parties" in the Settlement.

For the reasons discussed below, Staff supports the Settlement and believes that the Settlement represents a reasonable resolution of the issues in this proceeding, and recommends that the Settlement Judge certify it and the Commission accept it.

I. BACKGROUND

On May 26, 2011, PacifiCorp filed revisions to its Open Access Transmission Tariff (OATT) under section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2006), to replace its stated rates with formula rates for its Network Integration Transmission Service (NITS), Point-To-Point (PTP) Transmission Service, and Ancillary Service Schedule 1 (Scheduling, System Control and Dispatch Service). PacifiCorp also proposed to revise its stated rates for Ancillary Services Schedules 2, 3, 5, and 6; include a new Schedule 3A to provide for Generation Regulation and Frequency Response Service; revise its transmission real power loss factors under Schedule 10; and modify certain definitions in Section 1 of its OATT.

The Commission accepted the filing and suspended the proposed tariff sheets subject to refund, and established hearing and settlement judge procedures. *PacifiCorp*, 136 FERC ¶ 61,092 (2011) (Hearing Order), *reh'g denied* 137 FERC ¶ 61,147 (2011).

On August 15, 2011, the Chief Administrative Law Judge (Chief Judge) appointed Administrative Law Judge John P. Dring as settlement judge in this proceeding. The Parties and the Staff engaged in numerous technical conferences and settlement discussions under the auspices of Judge Dring, and reached an agreement resulting in the instant Settlement. Contemporaneous with the Settlement, PacifiCorp filed an “Unopposed

Motion for Interim Rate Relief and Request for Expedited Action” seeking authorization to place Settlement Agreement rates in effect on an interim basis, with staggered dates as outlined in its motion, effective March 1, 2013. On February 28, 2013, the Chief Judge granted PacifiCorp’s Motion.

II. DESCRIPTION OF THE SETTLEMENT

The key substantive provisions of the Settlement are summarized below.

The Settlement specifies that the revised Formula Rate template (Formula) as well as the revised Formula Rate Implementation (Protocols) are incorporated into the Settlement, and the Settlement Rates will be incorporated into PacifiCorp’s OATT upon the Commission’s acceptance of the Settlement. The Settlement explains the various Appendices in detail, and reflects that the modified tariff sheets will supersede the current version of those tariff sheets, effective December 25, 2011.

Under the Settlement, a stated base Return on Equity (ROE) of 9.8 percent will be used and a stated incentive ROE adder of 50 basis points (Incentive ROE) will be applied for the portions of PacifiCorp’s Energy Gateway Project approved for an Incentive ROE. The Incentive ROE will be applied in this proceeding only, without prejudice to any proposed change in the base ROE or the Incentive ROE after expiration of the moratorium as explained in Section 3.2. The Settlement will not limit PacifiCorp from filing for up to the full 200 basis point adder for the Energy Gateway Project after the moratorium expires, nor will it prevent any person from intervening and protesting, and seeking to reduce or eliminate the incentive rates for the Energy Gateway Project in any

such filing after expiration of the moratorium. The Settlement states that the ROE, any incentives for PacifiCorp's Energy Gateway Project, and the rates, terms, and conditions in Schedules 2, 5, and 6 (collectively, the "Moratorium Provisions") will not be subject to change prior to June 1, 2015. It emphasizes that the moratorium applies to any proposed change or addition to or deduction from any Moratorium Provisions. Also, single issue rate filings that affect or relate to the Formula Rate are not permissible, except for a lead-lag study and updated depreciation and amortization rates. Furthermore, any future filing proposing a change to any Moratorium Provisions related to the Formula Rate after the moratorium expires will constitute a comprehensive re-opener of the Formula rate.

The Settlement provides that the Annual Transmission Revenue Requirement (ATRR) used to determine NITS and PTP Service charges will be calculated annually and will be effective as of December 25, 2011.

The Settlement's Section 3.4 and its sub-sections contain numerous provisions addressing the Formula. In this respect, the Settlement provides that the calculation of the ATRR and specified charges under the Formula will be updated annually in accordance with the Protocols, with the initial calculation to be effective as of December 25, 2011. The Settlement addresses the treatment of PacifiCorp's annual projection of ATRR and charges under the Formula Rate for the next Rate Year and the calculation of the true-up to actual ATRR (True-Up). PacifiCorp will use end-of-year inputs for the preceding calendar year for the Projection, except for plant additions, load, and unfunded

reserves described in the Settlement. Under the Settlement, PacifiCorp will use a 13-month average of its actual capital structure, subject to a 53 percent equity cap.

The Settlement establishes the treatment for the listed Formula inputs and addresses the treatment of specific inputs. It reflects that the revisions to the Protocols will be effective as of December 25, 2011.

Section 3.6 of the Settlement contains provisions concerning specific Ancillary Service Schedules to PacifiCorp's OATT and provides that the formula rate for Scheduling, System Control and Dispatch Service will be the same as the currently-effective version of Schedule 1 of PacifiCorp's OATT, effective December 25, 2011. The Settlement also provides that the charge for Reactive Supply and Voltage control from Generation or Other Sources Service (Reactive Service) will be \$0.55/kW-year as reflected in the changes to PacifiCorp's OATT.

The Settlement addresses a mechanism by which credits not to exceed a transmission customer's maximum monthly Reactive Service obligation will be provided to individual transmission customers who have demonstrated that they own and operate qualifying generators that will meet PacifiCorp's minimum eligibility criteria to serve such customer's load and supply Reactive Service.

The Parties have agreed to a charge of \$2.90/kW-year for Regulation and Frequency Response Service under Schedule 3 and \$2.90/kW-year for Generator Regulation and Frequency Response Service under Schedule 3A, effective as of December 25, 2011, as reflected in the Settlement. The Settlement obligates PacifiCorp

to file proposed adjusted Schedule 3 and 3A rates with the Commission with a proposed effective date of June 1, 2013 and prohibits Parties from challenging the use of a 9.8 percent ROE in comments or protests.

The Settlement specifies the charges on an hourly basis for Operating Reserve – Spinning Reserve Service under Schedule 5, and the charges for Operating Reserve – Supplemental Reserve Service under Schedule 6. Appendices 13 and 14 to the Settlement provide supporting documentation for the Schedule 5 and 6 rate calculation and an explanation of the Schedule 5 and 6 charge calculations, respectively. Moreover, the changes under Schedule 7 (Long-term Firm and Short-term Firm PTP Service) and Schedule 8 (Non-firm PTP Service) of PacifiCorp's OATT, respectively, will be calculated annually, effective as of December 25, 2011.

With regard to revised Schedule 10 and Real Power Losses, the Settlement reflects that language currently in PacifiCorp's OATT describing system input gross up for losses will be set forth in the affected Ancillary Service Schedules rather than PacifiCorp's Section 1.45 OATT. The Parties have also agreed to a mechanism by which PacifiCorp will file an adjusted Transmission System factor for Real Power Losses under Schedule 10, consistent with a losses calculation methodology, following completion of every two Energy Gateway Project segments which have been placed into commercial operation for at least one full calendar year.

The Settlement contains provisions describing the standard of review to be applied to the Moratorium Provisions. It provides that if the Commission considers changes to

the ROE or any of the Moratorium Provisions pursuant to a filing by a Party, and the proposed changes would take effect before June 1, 2015, the standard of review for such proposed changes will be subject to the public interest application of the just and reasonable standard set forth in the *Mobile-Sierra* line of cases.² The ordinary just and reasonable standard of review, as clarified in *Morgan Stanley*, will apply to future changes to the Moratorium Provisions sought by the Commission acting *sua sponte* or at the request of a non-Party to this proceeding. Changes that would take effect on or after June 1, 2015, or any changes to other provisions of the Settlement, will be subject to the ordinary just and reasonable standard of review.

The Settlement reflects the Parties' agreement regarding depreciation and amortization rates, effective December 25, 2011 and effective June 1, 2012, respectively. For all subsequent annual updates to the Formula, PacifiCorp will make a single issue filing pursuant to section 205 of the FPA to update depreciation rates if and when one or more of PacifiCorp's retail jurisdictions change(s) the corresponding rates, using the methodology set forth in Attachment 8 to the Formula.

² *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish County, Washington*, 554 U.S. 527, 128 S. Ct. 2733 (2008) (*Morgan Stanley*) and refined in *NRG Power Mktg. v. Maine Pub. Utils. Comm'n*, 558 U.S.165, 130 S. Ct. 693, 700 (2010).

The Parties have agreed that PacifiCorp will make a compliance filing within 30 days of the Commission's acceptance of the Settlement via eTariff to incorporate certain revisions.

The Settlement addresses interim rates and provides that contemporaneous with the Settlement, PacifiCorp will file an expedited motion for leave to charge rates on an interim basis for certain schedules with respective effective dates. It provides alternative effective dates for certain rate Schedules in the event the motion for interim rates is not approved before March 1, 2013.

The Settlement specifies that any refunds required pursuant to the Settlement or by Commission order will be calculated from January 1, 2012. It provides the precise manner in which refunds will be calculated under various rate Schedules for the applicable periods. It avers that the refund associated with rates produced by the Formula Rate will be performed concurrent with and pursuant to the True-Up process described in the Protocols. Moreover, in the event that the Formula included in Attachment H-1 to PacifiCorp's OATT requires a modification or adjustment to accommodate a future FERC Order No. 1000 compliance filing, PacifiCorp will make an appropriate filing to reflect the necessary revisions without changing any Moratorium Provisions before the moratorium period expires.

The remaining provisions of the Settlement are ministerial and general in nature.

III. DISCUSSION

Staff believes that the Settlement provides a fair and reasonable resolution of numerous and complex issues that serves the public interest, is uncontested by the Parties as set forth in footnote 1, and resolves all issues set for hearing and settlement judge procedures in Docket Nos. ER11-3643-000 and ER11-3643-001. The Settlement reflects significant compromise among the Parties to obtain closure to a lengthy settlement process. As discussed in the Explanatory Statement, the uncontested Settlement (i) does not raise any policy implications; (ii) does not affect other pending cases; (iii) has no issues of first impression; and (iv) is subject to the public interest application of the *Mobile-Sierra* just and reasonable standard of review for modifications of the Settlement prior to June 1, 2015 proposed by a Party.

After this moratorium, the Parties may seek to change the formula rate subject to the just and reasonable standard. The ordinary just and reasonable standard of review (rather than the public interest standard) applies to changes initiated by the Commission acting *sua sponte* or at the request of a non-Party to this proceeding. Finally, acceptance of the settlement would save the time and expense associated with litigation.

IV. CONCLUSION

For the reasons discussed above, Trial Staff supports the certification of the

Settlement by the settlement judge and acceptance of the Settlement by the Commission.

Respectfully submitted,

Renee Terry
Anja M. Clark
Commission Trial Staff Counsel

Washington D.C.
March 14, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day served by email a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Washington, DC this 14th day of March, 2013.

/s/ Renee Terry

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