

149 FERC ¶ 61,267
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Utah Associated Municipal Power Systems v.
PacifiCorp

Docket No. EL14-101-000

ORDER APPROVING SETTLEMENT AND
DISMISSING COMPLAINT

(Issued December 22, 2014)

1. On September 12, 2014, pursuant to sections 206 and 306 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's Rules of Practice and Procedure,² Utah Associated Municipal Power Systems (Utah Associated) filed a complaint (Complaint) against PacifiCorp. The Complaint concerns the treatment of post-retirement benefits other than pensions (PBOP) expenses in PacifiCorp's transmission formula rate (formula rate). On October 16, 2014, PacifiCorp, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure,³ filed an unexecuted Offer of Settlement (Settlement) along with its answer to the Complaint. In this order, we approve the Settlement and dismiss the Complaint.

I. Background

2. Utah Associated states that it is an interlocal association, joint action agency, and political subdivision of the State of Utah that provides power pooling, scheduling and other electric services to its members, which consist of 45 municipal and other public power systems in eight western states. Utah Associated states that it and its members are transmission-dependent utilities that rely on the transmission systems of others to access their resources and serve their loads.⁴ Utah Associated explains that 35 of its members,

¹ 16 U.S.C. §§ 824e and 825e (2012).

² 18 C.F.R. § 385.206 (2014).

³ 18 C.F.R. § 385.602.

⁴ Complaint at 3.

with an aggregate peak transmission load of almost 800 MW, are located in the PacifiCorp East balancing authority area. Utah Associated also explains that, excluding its member-owned distributed generation, it owns approximately 300 MW of generation that is directly or indirectly connected with the PacifiCorp East balancing authority area. Utah Associated states that through it, these loads and resources receive a form of network transmission service from PacifiCorp under a pre-Order No. 888⁵ contract, the Transmission Service and Operating Agreement, which incorporates PacifiCorp's transmission rates and charges under PacifiCorp's Open Access Transmission Tariff (Tariff), including PacifiCorp's formula rate.⁶

3. Utah Associated states that PacifiCorp is a vertically-integrated public utility that is primarily engaged in the business of providing retail electric service to over 1.7 million customers in Utah, Oregon, Wyoming, Washington, Idaho, and California. According to Utah Associated, PacifiCorp provides electric transmission service pursuant to its Commission-approved Tariff over an integrated transmission system that spans two balancing authority areas: PacifiCorp East and PacifiCorp West. Utah Associated states that the charges for the transmission service provided by PacifiCorp are calculated pursuant to PacifiCorp's formula rate. The transmission rate under the formula rate is updated for the next rate year, and trued up for the previous calendar year, effective June 1 each year. However, Utah Associated states that the PBOP component of PacifiCorp's formula rate is fixed and is not updated or trued up in the annual rate calculation.⁷

4. On May 26, 2011, pursuant to section 205 of the FPA,⁸ PacifiCorp filed to revise its formula rate and protocols under which the rates for network and point-to-point transmission service under its Tariff and the Transmission Service and Operating Agreement will be set and re-computed annually. Utah Associated states that the issues

⁵ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁶ Complaint at 4.

⁷ *Id.* at 2-3.

⁸ 16 U.S.C. § 824d.

pertaining to PacifiCorp's proposed revisions to its formula rate and protocols, including the amount of annual PBOP expense that will be included in PacifiCorp's formula rate, were ultimately resolved in a settlement agreement approved by the Commission in May 2013.⁹

II. Notice and Responsive Pleadings

5. Notice of Utah Associated's Complaint was published in the *Federal Register*, 79 Fed. Reg. 57,547 (2014), with interventions and protests due on or before October 2, 2014. On September 30, 2014, PacifiCorp filed a motion for extension of time to respond to the Complaint.¹⁰ On October 2, 2014, the Commission granted the extension of time to respond to the Complaint to and including October 16, 2014.

6. Deseret Generation & Transmission Cooperative, Inc. (Deseret) filed a motion to intervene, answer in response to the motion for extension of time, and comments in support of the Complaint. Timely motions to intervene were filed by: Bonneville Power Administration; NextEra Energy Resources, LLC; Utah Division of Public Utilities; and Utah Municipal Power Agency.

7. On October 16, 2014, PacifiCorp filed, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, the unexecuted Settlement to resolve all issues in the Complaint with its answer to the Complaint. Utah Associated and Deseret each filed comments in support of the Settlement. PacifiCorp filed reply comments.

III. Complaint

8. Utah Associated alleges that although PacifiCorp's actual PBOP expense in 2011 was \$15,417,672, its PBOP expense declined dramatically in 2012 to \$112,598, a 99.3 percent decrease from the fixed amount of \$15,236,246 included in the formula rate calculation.¹¹ Utah Associated argues that PacifiCorp's answers to questions at the annual customer meeting held in July 2013 and to information requests concerning PacifiCorp's 2013 annual update disclosed that the significant reduction in PBOP expense incurred in 2012 was expected to continue into the future due to changes that

⁹ *PacifiCorp*, 143 FERC ¶ 61,162 (2013) (May 2013 Settlement).

¹⁰ In its motion, PacifiCorp requested that the Commission shorten the period for answers to its motion to two days. On October 1, 2014, the Commission granted PacifiCorp's request to shorten the period to answer its motion to 12:00 p.m. on October 2, 2014.

¹¹ Complaint at 6 (citing Daniel Affidavit ¶ 4).

PacifiCorp made to its PBOP plan. Utah Associated asserts that, as a result of health care reform legislation, PacifiCorp made several changes to its post-age 65 retiree medical coverage that served to reduce the overall PBOP expenses to PacifiCorp.¹² Subsequently, Utah Associated states that it submitted an informal challenge under PacifiCorp's formula rate protocols to the continued use of the inflated PBOP amount of \$15,236,246 in PacifiCorp's 2013 annual update, but that PacifiCorp rejected Utah Associated's informal challenge on the basis that the PBOP expense in the formula rate could not be changed absent a filing at the Commission. According to Utah Associated, PacifiCorp declined to make such a filing because it did not want to open its entire formula rate up to possible challenge and litigation by intervenors.¹³

9. Furthermore, Utah Associated states that PacifiCorp's response to Utah Associated's request with respect to the 2014 annual update also shows projected negative PBOP expenses (i.e., credits) through 2019.¹⁴ Utah Associated asserts that based on the information provided by PacifiCorp itself, there has been a material change in PacifiCorp's PBOP plan such that PacifiCorp's actual PBOP expenses are now, and will continue to be, significantly lower than the fixed PBOP expense in PacifiCorp's formula rate. According to Utah Associated, it appears that going forward there will not actually be a PBOP expense at all, but a PBOP credit. Utah Associated concludes that the formula rate as currently constituted is unjust and unreasonable because it leads to an excessive revenue requirement, and therefore violates both the FPA and Commission policy.¹⁵

10. Utah Associated requests that the Commission require that the fixed expense for PBOP in PacifiCorp's formula rate be modified to more accurately reflect PacifiCorp's actual cost of service. Utah Associated argues that this could be accomplished by revising the fixed PBOP amount in the formula rate to reflect the credit that PacifiCorp projects. Alternatively, Utah Associated argues that the Commission could waive its general policy requiring fixed PBOP amounts in formula rates, and require PacifiCorp to include its actual accrued PBOP expense (or credit) in the annual update to its formula rate going forward.¹⁶ Utah Associated requests that the Commission grant PacifiCorp a waiver of the Commission's PBOP policy, and require PacifiCorp to include its actual

¹² *Id.* at Ex. No. UAMPS-1 at 5.

¹³ *Id.* at 6.

¹⁴ *Id.* at 7 (citing Ex. No. UAMPS-8).

¹⁵ *Id.* at 9.

¹⁶ *Id.*

PBOP expense or credit in developing the annual update to its formula rate. According to Utah Associated, this would permit more accurate tracking of PacifiCorp's actual annual cost of service and avoid exposing either PacifiCorp or its customers to over- or under-recovery of PacifiCorp's actual PBOP expense, and relieve PacifiCorp or its customers of the burden of periodic filings to adjust a fixed PBOP expense in the formula rate that no longer reflects current circumstances. In this regard, Utah Associated argues that the Commission has permitted the use of actual PBOP accruals in its formula rates before, and should do so here.¹⁷

IV. Comments to Complaint, Answer to Complaint and Proposed Settlement, and Comments on Proposed Settlement

11. In its comments, Deseret states that, like Utah Associated, it is a transmission service customer of PacifiCorp, and owns substantial transmission facilities and generating resources within the PacifiCorp East balancing authority area. Deseret argues that the facts presented by Utah Associated demonstrate that PacifiCorp's transmission formula rate is unjust and unreasonable. Deseret fully supports Utah Associated's request for relief.¹⁸

12. In its answer, PacifiCorp responds that its current formula rate includes a fixed, authorized amount for PBOP expense that was included after careful analysis and active negotiation among the parties to the May 2013 Settlement, including Utah Associated, and approved by the Commission. PacifiCorp argues that, in applying its PBOP expense adjustment to rates, its actions have been entirely consistent with its Commission-approved formula rate, and Utah Associated does not allege that PacifiCorp has used incorrect inputs or otherwise misapplied its formula rate,¹⁹ and has not presented any evidence that the formula rate as a whole is unjust and unreasonable.

13. Furthermore, PacifiCorp argues that the impact of a fixed PBOPs expense input on its transmission rates is limited.²⁰ PacifiCorp states that it does not have the ability under

¹⁷ *Id.* (citing *Maine Yankee Atomic Power Co.*, 66 FERC ¶ 61,375, *order granting clarification*, 68 FERC ¶ 61,190 (1994)).

¹⁸ Deseret Comments at 1, 4.

¹⁹ Answer at 8-9.

²⁰ In this regard, PacifiCorp states that it is not actually recovering an amount of PBOPs expense equivalent to the fixed amount of \$15,236,246 in its formula rate, and that only a small percentage of authorized, fixed PBOPs expense is included as a component in the calculation of PacifiCorp's transmission charges. *Id.* at 9.

the terms of the approved May 2013 Settlement to propose changes to the PBOP component of its formula rate through an FPA section 205, “single issue” filing, without reopening the entire settlement.²¹ Nonetheless, PacifiCorp acknowledges the issue raised in Utah Associated’s Complaint and therefore proposes a Settlement for the resolution of this proceeding. According to PacifiCorp, resolution of this proceeding through the Settlement would avoid the substantial time and expense of additional settlement or hearing procedures.²²

14. The Settlement provides the entirety of relief requested by Utah Associated, and provides for recovery of PacifiCorp’s actual PBOP total expense amount (or inclusion of PacifiCorp’s actual PBOP credit) through the annual update process for PacifiCorp’s formula rate commencing in the 2015 rate year.²³ The Settlement also revises the statement in footnote H of Attachment H-1 that “PBOP expense is fixed until changed as the result of a filing at FERC,” to expressly provide that “PacifiCorp will include actual PBOP expense until changed as the result of a filing at FERC. PacifiCorp will include in the Annual Update Informational Filing its annual actuarial valuation report to support its actual PBOP expense.”²⁴ PacifiCorp states that no other substantive changes to its formula rate concerning the treatment of PBOP expense are necessary to effectuate the proposal in the Settlement and resolve this proceeding.

15. Article 4.1 of the Settlement governs the standard of review and provides that the standard of review for any change to the Settlement proposed by a settling party shall be the “public interest” standard of review. Further, the standard of review for any changes sought by a non-party, or the Commission acting *sua sponte*, shall be the ordinary just and reasonable standard of review.

16. Utah Associated supports PacifiCorp’s Settlement, and requests that the Commission accept the Settlement. Utah Associated states that the modifications to the formula rate proposed by PacifiCorp will remedy over-recovery of PacifiCorp’s actual PBOP expense and will result in recovery (or crediting) of PacifiCorp’s actual jurisdictional expense (or credit) through the formula rate. Deseret also supports the Settlement, stating that it will permit more accurate tracking of PacifiCorp’s actual cost of service, avoid future complaints, and provide an enhanced level of transparency to ensure that formula rates remain just and reasonable. PacifiCorp filed reply comments

²¹ *Id.* at 3.

²² *Id.* at 12.

²³ Settlement at Articles 1.3, 3.2, 3.3.

²⁴ *Id.* at Exhibit A.

requesting that the Commission accept the Settlement by January 15, 2015, to allow it sufficient time in advance of its May 15, 2015 annual update to provide all parties with sufficient regulatory certainty as to the mechanism PacifiCorp will employ to apply its actual PBOP expense to its formula rate and projected transmission charges for the 2015 rate year.

V. Discussion

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

18. The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. Consistent with the Commission's approval of the Settlement, the Commission dismisses the Complaint.

19. The Settlement was not filed in eTariff format as required by Order No. 714.²⁵ Therefore, PacifiCorp is directed to make a compliance filing within 30 days in eTariff format to reflect the Commission's action in this order, and to incorporate into the formula rate template in its tariff the approved tariff revisions from the Settlement attachments.²⁶

20. PacifiCorp is also directed to file an executed version of the Settlement with the Commission within 30 days of the date of this order.

The Commission orders:

(A) The Settlement is hereby approved, as discussed in the body of this order.

(B) PacifiCorp is hereby directed to make a compliance filing within 30 days in eTariff format to reflect the Commission's action in this order, and to incorporate into the formula rate template in its tariff the approved tariff revisions from the Settlement attachments, as discussed in the body of this order.

²⁵ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

²⁶ The filing submitted in eTariff should use the following coding: Type of Filing Code – 80.

(C) PacifiCorp is hereby directed to file an executed version of the Settlement with the Commission within 30 days of the date of this order, as discussed in the body of this order.

(D) Utah Associated's Complaint is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.