

120 FERC ¶ 61,166
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 17, 2007

In Reply Refer To:
PacifiCorp
Docket Nos. ER07-1049-000 and
ER07-1052-000
(not consolidated)

Troutman Sanders LLP
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Washington, DC 20004-2134

Attention: Amie V. Colby, Esquire
Attorney for PacifiCorp

Reference: Service Agreement Nos. 67 and 347

Dear Ms. Colby:

1. On June 19, 2007, you submitted for filing on behalf of PacifiCorp in Docket No. ER07-1049-000, a notice of termination of Service Agreement No. 67 dated August 1, 1997 for Network Integration Transmission Service to be effective June 19, 2007,¹ and a proposed Service Agreement No. 347 in Docket No. ER07-1052-000 to be effective June 19, 2007.² Waiver of the Commission's notice requirements pursuant to

¹ PacifiCorp's Service Agreement No. 67 also includes a separate agreement for Point-To-Point Transmission Service between PacifiCorp and Black Hills Corporation. PacifiCorp is not seeking to cancel that portion of Service Agreement No. 67 for Point-to-Point Transmission Service.

² On June 25, 2007, PacifiCorp submitted an errata to its June 19, 2007 filing in Docket No. ER07-1052-000. PacifiCorp stated it inadvertently omitted two explanatory tables to be attached to the end of Exhibits B and C.

section 35.11 of the Commission's regulations (18 C.F.R. § 35.11 (2007)) is granted,³ and the submittals are accepted for filing effective June 19, 2007, as requested.

2. In Docket No. ER07-1052-000, PacifiCorp proposes to replace the Network Integration Transmission Service Agreement between PacifiCorp and Black Hills Corporation in Service Agreement No. 67 (1997 NITSA) with a non-conforming Service Agreement No. 347.⁴ PacifiCorp states that Service Agreement No. 347, a Network Integration Transmission Service Agreement (Network Agreement) between PacifiCorp and Black Hills Power, Inc. (Black Hills), formerly known as Black Hills Corporation, deviates from the standard form of Network Agreement in its Open Access Transmission Tariff (OATT) with respect to: (1) the deletion of unnecessary resource details, (2) the parties' agreement that Black Hills will arrange for certain ancillary services to be provided by the electronic telemetering of its network load into an adjacent control area,⁵ and (3) other minor and non-substantive changes.

3. PacifiCorp states that it submitted the Network Agreement in unexecuted form due to an unresolved dispute concerning whether it needs to contain the list of multiple points of receipt that was contained in the 1997 NITSA and because it was waiting for additional information regarding the network designation amount of megawatts for the Wyodak Power Plant and the basis for those amounts. PacifiCorp states that it is no longer necessary to include multiple receipt points in the Network Agreement and that Black Hills has not identified any requirement to have such resources included in the

³ *Central Hudson Gas and Electric Company, et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992), and *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993) (*Waiver Orders*).

⁴ Original Service Agreement No. 347 under PacifiCorp's FERC Electric Tariff, Substitute Sixth Revised Volume No. 11.

⁵ With respect to the ancillary services, PacifiCorp states that it and Black Hills have agreed to incorporate language reflecting Black Hills' election to electronically telemeter its network load into the Western Area Colorado Missouri control area of the Western Area Power Administration. PacifiCorp states that this election effectively arranges for Black Hills to self-provide regulation and frequency response service, energy imbalance service, and real power losses associated with this service, and Black Hills may terminate the control area designation provisions and obligate PacifiCorp to provide the relevant ancillary services with advance notice to PacifiCorp of at least one year prior to termination.

Network Agreement. PacifiCorp avers that omitting the multiple generating units from the Network Agreement does not change Black Hill's transmission service since Black Hills has the same rights to the generating units under the 1997 Power Purchase Agreement (PPA), when it designated the PPA as a network resource. PacifiCorp also states that section 28.4 of its OATT gives Black Hills the right to use secondary service if it should need to serve its load from a resource other than the listed network resources. Moreover, PacifiCorp asserts that listing all points of receipt interferes with effective tariff administration and system planning and contradicts tariff requirements, could be misconstrued as multiple transmission rights from those varying points of receipt, and impede PacifiCorp's operational and load service responsibilities under the OATT.

4. Notice of this filing was issued on June 26, 2007, with comments, protests, or motions to intervene due on or before July 10, 2007. A timely motion to intervene and comments was filed by Black Hills. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, notices of intervention and timely unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they moved to intervene.⁶ On July 25, 2007, PacifiCorp filed an answer to Black Hills intervention and comments. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2007), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept PacifiCorp's answer; therefore, it is rejected.

5. In its comments, Black Hills states that prior to the December 31, 2006 expiration of the 1997 NITSA, it applied to PacifiCorp to renew its network integration transmission service arrangement with PacifiCorp pursuant to section 2.2 of PacifiCorp's OATT, but that PacifiCorp refused to identify in the Network Agreement the points of receipt at which Black Hills is entitled to receive power purchased from PacifiCorp. Black Hills argues that PacifiCorp's refusal to list the receipt points in the Network Agreement represents a break in the contractual structure that Black Hills and PacifiCorp adopted when they entered into various agreements in 1997.

6. Black Hills states that PacifiCorp's reasons for not identifying the points of receipt are unfounded because listing multiple points of receipt would not be construed as reserving multiple firm transmission rights and capacity from those resources. Black Hills states that it is neither party's intention, nor PacifiCorp's practice, to reserve capacity rights in excess of Black Hill's actual network service.

⁶ 18 C.F.R. § 385.214 (2007).

7. Black Hills disagrees with PacifiCorp's premise that it cannot effectively perform its operational and load service responsibilities under its tariff if it is required to identify the network resources. Black Hills states that it has verifiable rights to generating capacity under the PPA (which Black Hills refers to as the 1997 Power Sales Agreement) and that identifying the multiple receipt points in the Network Agreement would not obligate PacifiCorp to do anything differently than it has done in the past years under the PPA.

8. Black Hills states that PacifiCorp's refusal to list the multiple delivery points would constitute a violation of the rollover rights under section 2.2 of PacifiCorp's OATT. However, Black Hills notes that PacifiCorp has provided uninterrupted network service to Black Hills since the expiration of the 1997 NITSA on the same terms and conditions as the 1997 NITSA, and that PacifiCorp has given Black Hills assurances that omitting the list of points of delivery will not change Black Hills' transmission service. Black Hills states that it reserves its rights under section 206 of the Federal Power Act (FPA) to file a complaint if PacifiCorp fails to honor its agreement under the 1997 NITSA. Black Hills recommends that the Commission accept the Network Agreement on the condition that PacifiCorp add a provision to preserve Black Hills' contractual rights to service from PacifiCorp at the points of delivery identified in the 1997 NITSA. Black Hills states that ordering the text of section 8 of the 1997 NITSA to be added to the Network Agreement would satisfy Black Hills' request.

9. We accept the notice of termination of Service Agreement No. 67 for Network Integration Transmission Service in Docket No. ER07-1049-000, and Service Agreement No. 347 in Docket No. ER07-1052-000, effective as requested. Parties are not required to list all the details of a network service in their transmission service agreement. Rather, such details are correctly submitted with the designation of a resource.⁷ Therefore, we will not condition acceptance of the Network Agreement to include Black Hills' proposed provision.

10. The Commission finds that neither the 1997 NITSA nor section 2.2 of PacifiCorp's OATT provides for rollover rights as suggested by Black Hills, *i.e.*, Black Hills is not guaranteed access to that capacity under specific contractual terms. PacifiCorp has given Black Hills assurances that omitting the list of points of delivery will not change Black Hills's transmission service and that Black Hills has the same rights to the generating units under the PPA. In addition, PacifiCorp states that section 28.4 of its OATT gives Black Hills the right to use secondary service if it needs to serve

⁷ *Dayton Power and Light Company*, 93 FERC ¶ 61,331 at 62,128 (2000).

its load from a resource other than the listed network resources. Finally, the parties have agreed to the other deviations to the standard form of Network Agreement in PacifiCorp's OATT. Accordingly, the Commission accepts the PacifiCorp's unexecuted agreement effective June 19, 2007, as proposed.

By direction of the Commission.

Kimberly D. Bose,
Secretary.