

134 FERC ¶ 61,099
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

PacifiCorp

Docket Nos. ER10-745-002
ER10-745-003

ORDER DENYING REHEARING AND ACCEPTING COMPLIANCE FILING

(Issued February 11, 2011)

1. This order denies a request for rehearing by CEP Funding, LLC and Columbia Energy Partners, LLC (together, CEP Parties) of the Commission's April 16, 2010 order that conditionally accepted PacifiCorp's revised Attachment C (Methodology to Assess Available Transfer Capability).¹ This order also accepts PacifiCorp's compliance filing in this proceeding, effective April 13, 2010.

I. Background

2. On September 11, 2007, PacifiCorp submitted Attachment C to its Open Access Transmission Tariff (OATT) pursuant to Order No. 890.² On March 25, 2008, PacifiCorp's Attachment C was accepted subject to PacifiCorp submitting a further compliance filing. Specifically, the Commission gave PacifiCorp two options regarding transmission reserve margin. The Commission stated that PacifiCorp must provide

¹ *PacifiCorp*, 131 FERC ¶ 61,043 (2010) (April 16 Order).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009). Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability in each transmission provider's Attachment C.

either: (1) a detailed explanation of its transmission reserve margin calculation methodology and a clear explanation of the conditions under which PacifiCorp uses transmission reserve margin or (2) if PacifiCorp did not intend to use transmission reserve margin, to clearly state so in its OATT.³ On April 24, 2008, PacifiCorp submitted its compliance filing, which stated, among other things, that PacifiCorp did not use transmission reserve margin, (i.e., transmission reserve margin was set to zero). On October 28, 2008, PacifiCorp's revised Attachment C was accepted for filing effective September 11, 2007.⁴

3. On February 12, 2010, as amended on February 17, 2010, PacifiCorp filed pursuant to section 205 of the Federal Power Act (FPA) a proposed tariff revision to its Attachment C to remove the sentence reflecting that transmission reserve margin methodology was set to zero. PacifiCorp stated that the statement was inadvertently included in PacifiCorp's Attachment C and did not correspond to PacifiCorp's actual practice of calculating transmission reserve margin.⁵ On April 16, 2010, the Commission ruled on this filing and found that the sentence should be removed because it inaccurately reflects how PacifiCorp calculates transmission reserve margin on its transmission system. Specifically, the Commission stated:

It would be confusing to customers for the Commission to require PacifiCorp to maintain language in its OATT that does not reflect its actual practice. In Order No. 890, the Commission recognized that “[available transfer capability] calculations have a direct and tangible effect on the granting of open access transmission service,” and thus, “a detailed statement of the methodology and its components that define how the transmission provider determines [available transfer capability] belongs in the transmission provider’s OATT.”⁶

³ *PacifiCorp*, Docket No. OA07-114-000 (Mar. 25, 2008) (unpublished letter order) (March 25 Letter Order).

⁴ *PacifiCorp*, Docket No. OA07-114-000 (Oct. 28, 2008) (unpublished letter order).

⁵ PacifiCorp proposed to remove the following sentence from its Attachment C: “[f]or purposes of calculating [available transfer capability], [transmission reserve margin] for the aforementioned characteristics is set to zero because those characteristics are included in the determination of the posted path [total transfer capability] limit.” See *PacifiCorp*, 131 FERC ¶ 61,043, at P 7 (2010).

⁶ *Id.* P 20 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 328).

However, the Commission stated that by removing the sentence, PacifiCorp's Attachment C no longer met the Order No. 890 requirements for transmission reserve margin because more definitive language was needed to clarify its methodology. Accordingly, the Commission accepted the tariff revision on the condition that PacifiCorp provide a definitive explanation of its calculation methodology for transfer reserve margin.⁷ On May 14, 2010, CEP Parties filed a request for rehearing of the Commission's April 16 Order, and on May 17, 2010, PacifiCorp made its compliance filing.

II. Request for Rehearing

A. CEP Parties' Request for Rehearing

4. In their request for rehearing, CEP Parties contend that the Commission erred by accepting the proposed OATT change, subject to clarification, because PacifiCorp failed to meet its burden of proof under section 205 of the FPA.⁸ In addition, the CEP Parties also argue that the Commission erred because the record does not contain substantial evidence to support a change from the existing just and reasonable tariff.⁹ Finally, CEP Parties contend that the April 16 Order is arbitrary and capricious as it is not based upon substantial evidence and does not address significant and substantive arguments and evidence proffered by CEP Parties in their protest to the proposed tariff change.¹⁰

B. Determination

5. The Commission denies CEP Parties' request for rehearing. In its February 12, 2010 filing, PacifiCorp proposed to revise Attachment C of its OATT to remove a sentence that PacifiCorp stated had been inadvertently included in its Attachment C and that did not correspond to PacifiCorp's actual practice of calculating transmission reserve margin. Upon review of PacifiCorp's filing, the Commission found that the sentence should be removed because it was an inaccurate statement of how PacifiCorp calculates transmission reserve margin. However, we also required PacifiCorp to make additional revisions to its Attachment C because the removal of the sentence would make PacifiCorp's Attachment C no longer comply with the requirements of Order No. 890. In reaching its determination, the Commission reviewed PacifiCorp's proposal and found that the proposed revisions to Attachment C were consistent with the requirements of Order No. 890 and also just and reasonable.

⁷ *Id.* P 24.

⁸ 16 U.S.C. § 824(d) (2006).

⁹ CEP Parties' Request for Rehearing at 5.

¹⁰ *Id.*

Accordingly, PacifiCorp met its section 205 burden and the Commission properly accepted PacifiCorp's proposed revisions in accordance with section 205.

6. We also disagree with CEP Parties' statement that "the record does not contain substantial evidence to support a change from the existing just and reasonable tariff."¹¹ In its February 12, 2010 filing, PacifiCorp explained that it does set aside transmission reserve margin for some of its lines, that the sentence in question was included inadvertently in its Attachment C, and that its actual practice did not match the language of its Attachment C.¹² This information is sufficient for the Commission to conclude, as it did in the April 16 Order, that it would be confusing to customers for the Commission to require PacifiCorp to maintain language in its OATT that does not reflect its actual practice. Maintaining such an inaccurate statement would be unjust and unreasonable. Accordingly, we find PacifiCorp's proposal to remove the inadvertent language reasonable because it enables PacifiCorp to have a transmission reserve margin methodology that is in compliance with Order No. 890, is just and reasonable, and is needed in order to have consistency between its tariff and practice.

7. Finally, we disagree with CEP Parties' assertion that the April 16 Order is arbitrary and capricious because the Commission did not address the arguments and evidence CEP Parties proffered in their protest. The Commission considered the arguments CEP Parties made in its protest. For example, as noted in the April 16 Order, CEP Parties argued that PacifiCorp had not demonstrated that the proposed tariff change is just and reasonable and that PacifiCorp did not offer any technical or policy basis for its change.¹³ CEP Parties also contended that the only basis PacifiCorp presented in support of its revision was that the OATT is inconsistent with PacifiCorp's actual practice.¹⁴ CEP Parties also argued that in light of the language in PacifiCorp's Attachment C explaining total transfer capability limits in the Western Interconnection, a transmission reserve margin in an amount other than zero would double count the transmission reserve margin criteria in the calculation of transmission reserve margin and total transfer capability.¹⁵

8. In reaching our determination to accept PacifiCorp's tariff revisions, subject to a further compliance filing, we weighed not only PacifiCorp's application but also the

¹¹ CEP Parties Request for Rehearing at 2.

¹² PacifiCorp February 12, 2010 Filing at 2.

¹³ See April 16 Order, 131 FERC ¶ 61,043 at P 12.

¹⁴ *Id.*

¹⁵ See *id.* P 13.

arguments CEP Parties made in their protest. As to CEP Parties' argument that PacifiCorp offered no technical or policy reason for its proposed change, we find such reasons to be unnecessary because the tariff was inconsistent with PacifiCorp's actual practice. In the April 16 Order the Commission noted that "[available transfer capability] calculations have a direct and tangible effect on the granting of open access transmission service," and thus, "a detailed statement of the methodology and its components that define how the transmission provider determines [available transfer capability] belongs in the transmission provider's OATT."¹⁶ We concluded that it is only appropriate for PacifiCorp's OATT to reflect the available transfer capability methodology PacifiCorp actually uses.¹⁷ We also considered CEP Parties' concerns regarding double counting in requiring PacifiCorp to provide an affirmative statement indicating that its transmission reserve margin calculation methodology does not account for reliability components used to establish total transmission capability.¹⁸ Therefore, the Commission's decision to accept PacifiCorp's proposed transmission reserve margin revisions, subject to a compliance filing, is not arbitrary and capricious. CEP Parties' request for rehearing is denied.

III. Compliance Filing

A. Notice and Responsive Pleadings

9. Notice of PacifiCorp's compliance filing was published in the *Federal Register*, 29 Fed. Reg. 29,529 (2010), with interventions or comments due on or before June 7, 2010. CEP filed a timely motion to intervene and protest. PacifiCorp filed an answer to CEP Parties' protest.

B. Discussion

1. Procedural Matters

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PacifiCorp's answer because it has provided information that assisted us in our decision-making process.

2. Substantive Matters

¹⁶ See *id.* at 20 (citing Order 890, FERC Stats. & Regs. ¶ 31,241 at *pro forma* OATT, Att. C).

¹⁷ April 16, 2010 Order, 131 FERC ¶ 61,043 at P 20.

¹⁸ See *id.* at 24.

a. CEP Parties' Protest

11. CEP Parties protest PacifiCorp's compliance filing, stating that it does not comply with the Commission's directives in the April 16 Order and that it is inconsistent with PacifiCorp's earlier OATT filings. Specifically, CEP Parties contend that PacifiCorp simply "followed the Commission's literal words and merely listed which of the WECC criteria it will actually use."¹⁹ CEP Parties further argue that PacifiCorp did not explain how it satisfied the Commission's compliance requirements and that PacifiCorp merely "cherry-picked" two of the six WECC criteria for calculating transmission reserve margin and added two definitions describing simultaneous limitations. CEP Parties also contend that PacifiCorp fails to explain why it deleted language describing the power flow studies used in transmission reserve margin assessments. CEP Parties contend that this deletion suggests that PacifiCorp is proposing to move away from calculating transmission reserve margin in accordance with WECC principles, while at the same time appearing to use the same power studies database.²⁰ CEP Parties also argue that it cannot determine from PacifiCorp's filing whether PacifiCorp will use loop flow/parallel path or a nomogram relationship with another path for its transmission reserve margin calculation methodology.

b. Answer

12. PacifiCorp states that it fully complied with the Commission's directives in the April 16 Order. In response to CEP Parties' claim that PacifiCorp failed to comply with the Commission's directives by selecting only two of the WECC criteria, PacifiCorp states that it was not required to select more than two criteria by the Commission.²¹ In response to CEP Parties' contention that the WECC methodology already accounts for reliability margin, PacifiCorp states that such a contention is in conflict with WECC provisions which state that transmission reserve margin may be utilized to account for reliability components or may be set to zero.²²

13. PacifiCorp also contends that CEP Parties' arguments based on its expert witness' affidavit are beyond the scope of the issue presented in the compliance filing and should therefore be rejected.²³

¹⁹ See CEP Parties' Protest at 7.

²⁰ *Id.* 7 (citing Proposed First Revised Tariff Sheet No. 318G).

²¹ PacifiCorp Answer at 4.

²² PacifiCorp Answer at 4-5.

²³ *Id.*

3. Determination

14. The Commission accepts PacifiCorp's compliance filing. In the April 16 Order the Commission accepted PacifiCorp's proposed tariff revision subject to PacifiCorp providing an explanation of its calculation methodology for transmission reserve margin and ensuring that its calculation of transmission reserve margin does not account for reliability components already accounted for in establishing total transmission capability.

15. As directed by the Commission in the April 16 Order, PacifiCorp clarified its transmission reserve margin calculation methodology and stated that the calculation does not account for reliability components already accounted for in establishing total transmission capability (i.e., it does not double count). Specifically, PacifiCorp states that it utilizes the WECC criteria of allowances for unscheduled loop flow and simultaneous limitations associated with operation under a nomogram to derive transmission reserve margin.²⁴ PacifiCorp also clarifies which databases are used in transmission reserve margin assessments and the conditions under which transmission reserve margin is used.²⁵

16. In addition, PacifiCorp included a statement that PacifiCorp's calculation of Total Transfer Capability does not account for these two reliability components and definitions of "Non-Simultaneous Transfer Capability" and "Simultaneous Transfer Capability."²⁶

17. CEP Parties contend that PacifiCorp has "cherry picked" WECC criteria to use in its calculation instead of using all of the listed WECC criteria. The Commission reiterates that transmission providers are not required to use transmission reserve margin; furthermore, the Commission does not require them to use a particular methodology, the Commission only requires them to explain its definition, methodology, databases, and the conditions under which the transmission provider uses transmission reserve margin.²⁷ Therefore, PacifiCorp is not required to use all of the WECC criteria as CEP Parties contend PacifiCorp should use.

18. Instead, the Commission requires from a transmission provider that use transmission reserve margin to explain in its Attachment C: (1) its definition of transmission reserve margin; (2) its transmission reserve margin calculation methodology (e.g., its assumption on load forecast errors, forecast errors in system topology or

²⁴ See Compliance Filing at 2.

²⁵ See *Id.*, Ex. B at 4.

²⁶ *Id.*

²⁷ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at *pro forma* OATT, Att. C

distribution factors and loop flow sources) for both the operating and planning horizons; (3) the databases used in its transmission reserve margin assessments; and (4) the conditions under which it uses transmission reserve margin.²⁸ PacifiCorp has provided this information in its tariff with the instant compliance filing.

19. The only issue in a compliance filing is whether the company has complied with the directives of the Commission's prior order.²⁹ As stated above, PacifiCorp has provided an explanation of its calculation methodology for transmission reserve margin and has stated that it does not account for reliability components already accounted for in establishing total transmission capability, as required in the April 16 Order. In addition, as directed, PacifiCorp noted which of the WECC criteria it uses in its transmission reserve margin calculation. Accordingly, PacifiCorp's revisions are accepted, effective April 13, 2010.

The Commission orders:

(A) CEP Parties' request for rehearing is hereby denied.

(B) PacifiCorp's revised tariff sheets are hereby accepted, effective April 13, 2010.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁸ See March 25 Letter Order at P 12 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at *pro forma* OATT, Att. C).

²⁹ *Xcel Energy Servs.*, 117 FERC ¶ 61,180, at P 37 (2006).