

135 FERC ¶ 61,117
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 No. ER11-3841-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued August 19, 2011)

1. On June 21, 2011, PacifiCorp submitted for filing under section 205 of the Federal Power Act¹ revisions to its Open Access Transmission Tariff (OATT).² The proposed revisions would amend Schedule 9 and Schedule 11 of the OATT to impose generator imbalance charges on a generator interconnection customer responsible for a generator imbalance, as well as an unauthorized use penalty charge for transmission service related to the same transaction. The Commission accepts PacifiCorp's revised tariff sheets, as discussed below.

I. Background

2. PacifiCorp currently provides generator imbalance service to its transmission customers when transmission service is used to deliver energy from a generator located within its balancing authority, and there is a difference between the output of the generator and a delivery schedule from that generator. Schedule 9 of the PacifiCorp OATT defines the charges for this service, based on the deviation from the transmission customer's delivery schedule; i.e., the greater the deviation, the greater the charge.

3. Under PacifiCorp's current Schedule 11, transmission customers that use transmission service that has not been reserved or is in excess of the reserved capacity are subject to unreserved use penalty charges. These penalty charges include: (i) 200 percent of the applicable firm or non-firm point-to-point transmission service charges; and (ii) ancillary service charges for the period of unreserved use.

¹ 16 U.S.C. § 824d (2006).

² PacifiCorp OATT, Vol. No. 11.

II. PacifiCorp's Filing

4. In its filing, PacifiCorp proposes to amend its OATT to allow it to impose generator imbalance service charges under Schedule 9 of its OATT and a charge for unauthorized use of transmission service on generator interconnection customers under Schedule 11 of its OATT, in cases where the generator interconnection customer is the party responsible for the imbalance or unauthorized use. PacifiCorp states that in each instance, these charges will be imposed on either a transmission customer or generator interconnection customer, and not both for the same imbalance or unauthorized use.

5. PacifiCorp states that under its current OATT provisions, only transmission service customers are subject to these charges because PacifiCorp lacks a sufficient contractual basis for imposing such charges on generation interconnection customers.³ PacifiCorp states that by including these provisions in its OATT, it will create a contractual nexus between it and the generation interconnection customer because several provisions in the *pro forma* Large Generator Interconnection Agreement (LGIA) and Small Generator Interconnection Agreement (SGIA) incorporate the OATT by reference.⁴ In addition, PacifiCorp states that the Commission has previously approved various non-conforming OATT mechanisms for transmission providers to assess a generator imbalance service charge on interconnection customers responsible for a generator imbalance.⁵

6. PacifiCorp states that if a generator's output differs from its scheduled delivery amount, it must resolve such imbalance with the transmission customer. However, in certain circumstances, PacifiCorp believes it is more appropriate to charge or credit the generator interconnection customer rather than the transmission customer under Schedule 9. Thus, in recognition of the fact that generator interconnection customers and transmission service customers are sometimes distinct and separate entities, PacifiCorp contends that these revisions to Schedule 9 of its OATT are necessary to impose imbalance service charges on the entity responsible for the imbalance.

7. PacifiCorp states that the revisions to Schedule 11 of its OATT are necessary in order to impose unauthorized use penalty charges on generator interconnection customers responsible for over-deliveries of generation. PacifiCorp contends that this mechanism is

³ PacifiCorp Filing at 2.

⁴ *Id.* at 2 (referring to LGIA Article 1 and SGIA Glossary of Terms, which define "Tariff" as the tariff through which open access transmission service and interconnection service are offered).

⁵ *See id.* at n. 6.

appropriate because it will minimize surplus generation and therefore allow PacifiCorp to more reliably operate its transmission system.⁶

8. According to PacifiCorp, the Commission has previously stated that it may be appropriate to assess charges for a generator imbalance as well as an unreserved use in certain circumstances.⁷ It further argues that the Commission has specifically found that a transmission customer may be subject to both generation imbalance charges and unauthorized use charges for placing excess energy onto the transmission system.⁸ PacifiCorp believes it is reasonable to impose unauthorized use penalties on generator interconnection customers in the same way as it imposes these penalties on transmission customers.⁹

9. Lastly, PacifiCorp states that the proposed revisions follow the Commission's directives in Order No. 890 by promoting accurate scheduling practices and by fully informing customers about the charges for which they will be responsible.¹⁰

III. Notice of Filing and Responsive Pleadings

10. Notice of PacifiCorp's filing was published in the *Federal Register*, 76 Fed. Reg. 37,802 (2011), with interventions and protests due on or before July 19, 2011. Avista Corporation, Utah Municipal Power Agency, M-S-R Public Power Agency, and Iberdrola Renewables, Inc. file motions to intervene. The American Wind Energy Association (AWEA) filed a motion to intervene and protest. PacifiCorp filed an answer.

IV. AWEA's Protest

11. AWEA contends that the proposed tariff revisions give PacifiCorp too much latitude in assigning imbalance and improper use costs to generators. Such broad

⁶ *Id.* at 4.

⁷ *Id.* at 3 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 449 (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)).

⁸ *Id.* (citing *PPM Energy v. PacifiCorp*, 120 FERC ¶ 61,140, at P 30-31 (2007)).

⁹ *Id.* at 4.

¹⁰ *Id.* at 3 (citing *Arizona Pub. Serv. Co.*, 121 FERC ¶ 61,246, at P 62 (2007) (*APS*)).

latitude, AWEA argues, creates unnecessary uncertainty and creates the risk that these charges will be arbitrarily assigned or double collected.¹¹

12. Additionally, AWEA believes PacifiCorp has failed to adequately define the specific circumstances in which it could charge interconnection customers under schedules 9 and 11 of its OATT, creating the potential for undue discrimination. AWEA states that this ambiguity runs counter to the Commission's directive in Order No. 890 that a transmission service provider should fully inform its customers "about the charges for which they will be responsible if they experience imbalances."¹² AWEA believes that the issues raised by PacifiCorp are best resolved on a case-by-case analysis, most likely utilizing a non-conforming LGIA.

13. Lastly, AWEA argues that PacifiCorp failed to take into account the Commission's conclusion in Order No. 890 that variable energy resources are exempt from third tier imbalance charges and requests the Commission to require PacifiCorp to amend its filing to recognize such exemption.¹³

V. PacifiCorp's Answer

14. In response to AWEA's contention that the tariff will provide PacifiCorp with too much discretion regarding which entities are responsible for imbalance charges, PacifiCorp reiterates that it will apply the tariff revisions in a uniform and non-discriminatory manner, and will only charge an interconnection customer for imbalance charges if the following conditions are satisfied:

- 1) PacifiCorp identifies a generator imbalance ("a difference occurs between the output of a generator located in [PacifiCorp's control area] and a delivery schedule from that generator . . . over a single hour.");
- 2) the interconnection customer (*i.e.*, the signatory to a FERC-jurisdictional interconnection agreement) with ownership and/or operational responsibility (or "control") over the output of the generation facility and the transmission customer(s) are separate and distinct entities; and

¹¹ AWEA Protest at 1-2.

¹² *Id.* at 2 (citing *APS*, 121 FERC ¶ 61,246 at P 62).

¹³ *Id.* at 3.

- 3) there is no agreement (or series of agreements) that provides the transmission customer(s) with contractual rights to service covering the full output of the interconnection customer's generation facility.¹⁴

15. PacifiCorp also answers AWEA's contention that these proposed tariff revisions will only address a very narrow problem. PacifiCorp describes three instances in which these charges would apply and argues that AWEA provides no substantive basis for its belief that this problem is limited in scope.¹⁵

16. PacifiCorp argues in its answer that a case-by-case approach is not a workable solution to the stated problem. PacifiCorp reiterates that it needs a contractual nexus in order to impose imbalance and unauthorized use penalty charges on interconnection customers. PacifiCorp argues that it is more efficient to make this contractual nexus through its OATT, rather than renegotiating current LGIAs and SGIAs to incorporate new generator imbalance or unauthorized use provisions.

17. Additionally, PacifiCorp argues that it does exempt variable energy sources from third-tier energy imbalance charges, contrary to AWEA's protest. PacifiCorp states that its proposed revisions expressly make interconnection customers "subject to charges for Generator Imbalance Service ... *in accordance with Schedule 9.*"¹⁶ PacifiCorp argues that it intends to impose any charges on interconnection customers within the scope of its currently-effective Schedule 9, including the exemption for variable energy sources.

18. Lastly, PacifiCorp reiterates its contention that its filing is consistent with limited Commission precedent¹⁷ and with Order No. 890. PacifiCorp believes that with the tariff language, the explanation provided in its answer, and its commitment to post a business practice further setting forth its uniform approach for implementing Schedules 9 and 11, it has adequately supported its proposal.¹⁸

¹⁴ *Id.* at 2-3.

¹⁵ *Id.* at 3-4.

¹⁶ *Id.* at 6 (citing PacifiCorp Filing at 5) (emphasis in original).

¹⁷ *Id.* at 7-8 (citing *APS*, 121 FERC ¶ 61,246).

¹⁸ *Id.* at 8.

VI. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits answers 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.

B. Commission Determination

20. The Commission finds that the tariff revisions allowing PacifiCorp to impose charges on generator interconnection customers pursuant to OATT Schedules 9 and 11 are just and reasonable. The revisions will make clear when PacifiCorp will impose these charges on generators, whether they ultimately take transmission service or not, and fully inform the entities of the charges for which they will be responsible, as directed by Order No. 890 and Commission precedent.¹⁹

21. As we similarly concluded in *APS*, the Commission finds that PacifiCorp has proposed imbalance charge provisions which provide appropriate incentives to keep schedules accurate without being excessive.²⁰ Furthermore, PacifiCorp has made it clear that it will impose these OATT Schedule 9 imbalance charges on a non-discriminatory basis and with sufficient transparency to prevent collection of imbalance charges from both the transmission customer and the generation interconnection customer. PacifiCorp addressed AWEA's concern regarding the exemption from third-tier imbalance charges for variable energy resources by explaining that Schedule 9 of its currently effective OATT provides for such an exemption, and that these tariff revisions do not affect that exemption.²¹ Lastly, these proposed revisions will provide incentives to keep schedules accurate, increasing the efficiency and reliability of PacifiCorp's transmission system.

22. AWEA fails to provide any evidence to support its contention that PacifiCorp will use these revisions to charge imbalance and unauthorized use charges in an arbitrary or discriminatory manner. Even so, PacifiCorp clarified in its answer that the conditions under which a generation interconnection customer is charged pursuant to Schedule 9

¹⁹ See *APS*, 121 FERC ¶ 61,246 at P 62.

²⁰ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 72.

²¹ PacifiCorp Answer at 6-7.

and 11 are already specified in its tariff.²² The Commission concludes that this clarification adequately addresses AWEA's concerns regarding arbitrary or discriminatory treatment under Schedule 9.

23. The Commission finds just and reasonable PacifiCorp's proposal to subject generator interconnection customers to the unauthorized use penalty charges of Schedule 11 of PacifiCorp's OATT. For the same reasons discussed above, we find it appropriate to assign Schedule 11 unauthorized use penalty charges to generation interconnection customers who place excess amounts of generation on PacifiCorp's system. Furthermore, the unauthorized use penalty charges will, similar to Schedule 9 imbalance charges, support system reliability and provide an incentive for customers to reserve and pay for the appropriate level of service.

The Commission orders:

PacifiCorp's proposed tariff revisions are hereby accepted effective August 21, 2011, as discussed above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²² *Id.* at 2.