

141 FERC ¶ 61,112
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Los Angeles Department of Water and Power

v.

Docket No. EL12-87-000

PacifiCorp

ORDER ON COMPLAINT

(Issued November 9, 2012)

1. On July 23, 2012, pursuant to section 206 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's Rules of Practice and Procedure,² the Los Angeles Department of Water and Power (LADWP) filed a complaint with the Commission against PacifiCorp (Complaint). In the Complaint, LADWP alleges that PacifiCorp improperly billed LADWP for unreserved use penalties during summer 2011 and asks the Commission to issue an order directing PacifiCorp to cease attempting to collect such penalties, including interest, from LADWP. For the reasons set forth below, we will grant the relief requested in the Complaint.

I. Background

2. LADWP identifies itself as a proprietary department of the City of Los Angeles, California, that provides water and power to that city. LADWP adds that it is a vertically-integrated utility that owns generation, transmission, and distribution facilities.³

¹ 16 U.S.C. § 824e (2006).

² 18 C.F.R. § 385.206 (2012).

³ LADWP Complaint at 4-5.

3. LADWP is the operating agent for the Intermountain Power Project Direct Current Line (IPP DC Line), a +/- 500 kV DC bi-pole system that runs from the Intermountain station in central Utah to the Adelanto station in Southern California.⁴ LADWP states that it also operates two 50-mile 345 kV lines between the IPP station and the Mona station (the IPP Mona Lines), which are located in northern Utah, and that LADWP transfers electric energy over the IPP Mona Lines to the IPP DC Line to serve load in LADWP's service territory in Los Angeles County, California.⁵ LADWP notes that the IPP DC Line is connected to PacifiCorp's transmission system through the IPP Mona Lines.

4. According to PacifiCorp, pursuant to LADWP's Western Electricity Coordinating Council (WECC)-authorized 2007 Plan of Service, LADWP received a 2400 MW rating for the IPP DC Line based on system conditions that simulated a net generation import limitation of 227 MW at the Intermountain bus and certain upgrades to the IPP DC Line, including an update to the generation tripping scheme.⁶

5. The potential for interaction between the IPP DC Line and PacifiCorp's upgrades and new transmission lines across part of PacifiCorp's transmission network, known as the "Energy Gateway Project," is at the center of the parties' dispute in this case. LADWP states that as part of the southern segment of the Energy Gateway Project, PacifiCorp is upgrading and constructing three transmission lines in southern Utah: the

⁴ *Id.* at 5. PacifiCorp notes that this line is also referred to as Path 27. PacifiCorp August 13, 2012 Answer at 8.

⁵ LADWP Complaint at 5.

⁶ PacifiCorp August 13, 2012 Answer at 8-9. PacifiCorp states that the approval rating requires and is subject to an armed Remedial Action Scheme, which, among other things, operates to trip 400 MW of southwest Utah wind generation connected to the Intermountain station bus and that the Remedial Action Scheme is intended to prevent the mono-pole or bi-pole outage of the IPP DC Line from overloading other transmission paths. The IPP DC Path Rating Study specifies that "the rating study results only apply for a 400 MW resource connected radial to the Intermountain bus that is incorporated into the required remedial action scheme. This 2400 MW rating is not applicable when other resources are utilized." *Id.* at 14-16 (quoting IPP DC Path Rating Study, Appendix F at 4-5).

TOT 2B1 path,⁷ the TOT 2B2 path,⁸ and the TOT 2C path.⁹ According to LADWP, these three line upgrades are referred to as the “Gateway South Project.”¹⁰

6. According to LADWP, PacifiCorp submitted the Gateway South Project to the WECC project rating procedures and WECC convened a project review group to assess the impacts of the Gateway South Project on the regional transmission network and to establish line ratings for these and other transmission paths. LADWP states that, through the WECC line rating process, the WECC project review group identified the potential for “simultaneous interaction” between the IPP DC Line and the Gateway South Project line after the planned upgrades go into service. Specifically, LADWP states that “[i]f (1) a contingency occurs on the IPP DC Line or the IPP Mona Lines and (2) such contingency results in an outage, and (3) LADWP net imports are not immediately curtailed, then power flow on the IPP Mona Lines may impact the Gateway South Project.” Specifically, for certain heavily-loaded paths of the Gateway South Project, a line or system operating limit may be exceeded. LADWP further states that:

[t]he simultaneous interaction has the potential to occur during a single (N-1) or double (N-2) contingency event on the IPP DC Line or IPP Mona Lines, and typically during the summer operating season, when the Gateway South Project lines are heavily loaded and LADWP imports large amounts of energy to serve load on its system (up to 600 MW).¹¹

⁷ The TOT 2B1 path is a 345 kV line running from PacifiCorp’s Pinto substation in southeastern Utah to Arizona Public Service Company’s Four Corners substation in northwest New Mexico. The planned upgrade would increase the rating of the path from its existing rating of 530 MW north to south, and 500 MW south to north to a bidirectional rating of 600 MW. LADWP Complaint at 5.

⁸ The TOT 2B2 path is a 230 kV line running from PacifiCorp’s Sigurd substation in central Utah to Western Area Power Administration’s Glen Canyon 230 kV substation in northern Arizona. *Id.* at 6.

⁹ The TOT 2C path is a 345 kV line running from PacifiCorp’s Red Butte substation in southwestern Utah to NV Energy’s Harry Allen substation located near the Las Vegas Valley of southern Nevada. The planned upgrade would increase the rating of the TOT 2C transmission path from its existing bidirectional limit of 300 MW to 400 MW in 2011 and 600 MW in 2014 north-to-south and 580 MW south-to-north. *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 6-7.

7. LADWP notes that, although LADWP objected to certain elements of the June 7, 2011 proposed path rating report, WECC granted PacifiCorp final path rating for the Gateway South Project on June 21, 2011.¹² LADWP notes that on July 29, 2011, it invoked WECC's dispute resolution procedures to address LADWP's complaint of irregularities in the WECC project review group process pursuant to which PacifiCorp was granted a final path rating for the Gateway South Project.¹³

8. LADWP notes that, around the same time that PacifiCorp was granted a final path rating for the Gateway South Project, the WECC Operating Transfer Capability Policy Committee (OTCPC) was establishing seasonal system operating limits, which the OTCPC does each operating season. LADWP states that, on May 6, 2011, the OTCPC established interim system operating limits for paths including the IPP DC Line and the Gateway South Project for the summer 2011 operating season (Interim Limits). LADWP states that the OTCPC approved imports of 600 MW from the Mona Lines into the IPP DC Line for the summer 2011 operating season.¹⁴ PacifiCorp contends that the OTCPC granted LADWP imports of remote wind generation greater than the 227 MW of such generation previously allowed for under the 2007 Plan of Service.¹⁵ LADWP states that the OTCPC-established interim limits for TOT 2B1 and TOT 2C, of 575 MW and 354 MW respectively, that is, 25 MW and 46 MW less than PacifiCorp's final path ratings for those paths.¹⁶

9. According to LADWP, on June 13, 2011, after the OTCPC issued the Interim Limits, PacifiCorp sent LADWP a letter demanding payment for mitigation measures that PacifiCorp would need to undertake if LADWP operated in accordance with the Interim Limits. LADWP states that in the letter, PacifiCorp acknowledged the establishment of a 600 MW import into the IPP DC Line, but stated that PacifiCorp "strongly disagree[d]" with the rating because it would require PacifiCorp to limit power flows on the Gateway South Project.¹⁷ LADWP states that PacifiCorp's letter demanded that:

¹² *Id.* at 7.

¹³ *Id.* at 8.

¹⁴ *Id.* at 7 (citing Richard Ferreira, May 6, 2011 Letter to WECC Board of Directors, Rocky Mountain Sub-region, LADWP Complaint, Att. 1, n.2 (indicating that IPP DC imports are limited to 600 MW)).

¹⁵ PacifiCorp August 13, 2012 Answer at 21.

¹⁶ LADWP Complaint at 7-8.

¹⁷ *Id.* at 8.

LADWP (1) purchase appropriate firm capacity pursuant to the existing umbrella agreements in place between LADWP and PacifiCorp for the balance of the 2011 summer season, (2) confirm its intention to operate the system consistent with the 2007 formally WECC-approved [IPP DC Line] rating, including a maximum import limit of 227 MW, or (3) be subject to unreserved use charges.¹⁸

10. Accordingly, PacifiCorp billed LADWP for 25 MW and 46 MW of unreserved use on TOT 2B1 and TOT 2C, respectively, in amounts that correspond with the difference between PacifiCorp's summer 2011 Interim Limits and PacifiCorp's final path rating with maximum path transfer capability ratings for TOT 2B1 and TOT 2C.¹⁹ Thus, the total bill for the unreserved use penalty that PacifiCorp assessed LADWP is approximately \$ 3.8 million, including interest, during summer 2011. LADWP and PacifiCorp state that they were able to resolve their dispute over path flows in 2012, and, on a going-forward basis, agreed to a nomogram to govern the interaction of these paths.

II. Complaint and Responsive Pleadings

A. LADWP Complaint

11. LADWP argues that PacifiCorp's Open Access Transmission Tariff (Tariff) does not permit PacifiCorp to assess unreserved use penalties on neighboring transmission operators to compensate PacifiCorp for power flow limitations it must make on its system to comply with WECC-approved system operating limits.²⁰ LADWP asserts that since PacifiCorp is not authorized under its Tariff to bill LADWP unreserved use penalties to compensate for limitations on the use of PacifiCorp's transmission facilities, PacifiCorp is violating section 205 of the FPA²¹ and its filed rate with the Commission.²² As a result, LADWP requests that the Commission prohibit PacifiCorp from attempting to collect the unreserved use penalties at issue.

¹⁸ *Id.* (quoting K. Houston, June 13, 2011 Letter to A. Benyamin, Complaint, Att. 2).

¹⁹ LADWP Complaint at 9.

²⁰ *Id.* at 2.

²¹ 16 U.S.C. § 824d (2006).

²² LADWP Complaint at 17.

12. LADWP states that the three prerequisites for PacifiCorp to assess an unreserved use penalty under PacifiCorp's Tariff are: (1) the party subject to the penalty is a transmission customer; (2) the party is using transmission service; and (3) a transmission provider that has an unreserved use penalty in its Tariff.²³ However, LADWP argues that the prerequisites are not met in this case. First, LADWP states that it is not a transmission customer of PacifiCorp, because it has not executed a transmission service agreement or submitted a written request for point-to-point or network integration transmission service.²⁴ Second, LADWP asserts that it does not receive "transmission service" from PacifiCorp when "PacifiCorp limits power flows over its transmission lines in compliance with system operating limits established by WECC."²⁵ LADWP does not dispute that PacifiCorp's Tariff contains a penalty for unreserved use, but states that such penalty has been misapplied in this instance.

13. In addition, LADWP argues that the policies underlying the unreserved use penalty do not support allowing PacifiCorp to charge LADWP with unreserved use penalties to compensate PacifiCorp for limiting power flows over its transmission lines in order to comply with WECC-approved operating limits.²⁶ LADWP states that the purpose of the penalty is to create the appropriate incentive for customers to reserve the correct amount of transmission service to prevent potential reliability problems, and argues that LADWP does not reserve transmission service on the paths at issue in this case.²⁷ LADWP further claims that its actions did not threaten system reliability, and that it operated in accordance with WECC-approved system operating limits at all times material to its Complaint.²⁸

²³ *Id.* at 12; PacifiCorp August 13, 2012 Answer at 9-11.

²⁴ LADWP Complaint at 14.

²⁵ *Id.* at 15-16.

²⁶ *Id.* at 19.

²⁷ *Id.* at 19-20 (citing *Preventing Undue Discrimination and Preference in Transmission Serv.*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 447 (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, *order on clarification*, Order No. 890-D, 128 FERC ¶ 61,126 (2009); *Waterbury Generation LLC*, 133 FERC ¶ 31,137, at P 4 (2010)).

²⁸ LADWP Complaint at 20.

14. Finally, LADWP asserts that PacifiCorp is attempting to collect penalties from LADWP based on disputed WECC-approved Interim Limits. LADWP states that the authority for addressing any reliability issues that may result from simultaneous interactions of LADWP and PacifiCorp's systems resides with WECC, the regional organization responsible for evaluating the effects of new transmission infrastructure and adopting operating limits to ensure compliance with federal reliability standards.²⁹ LADWP states that PacifiCorp's attempt to transform its dispute with LADWP presently before WECC into "transmission services," abuses the intent and purpose of the unreserved use penalty provision in the Tariff.

B. PacifiCorp August 13, 2012 Answer to the Complaint

15. In its August 13, 2012 Answer, PacifiCorp disagrees that LADWP is not a transmission customer of PacifiCorp and is not using PacifiCorp transmission services. PacifiCorp asserts that LADWP is a longstanding transmission customer³⁰ and that LADWP took actions that forced PacifiCorp to set aside firm point-to-point service on PacifiCorp's transmission system in order to accommodate LADWP's unauthorized and unreserved use.³¹ PacifiCorp states that "LADWP's [C]omplaint is premised on the belief that because it is not causing power to flow over PacifiCorp's transmission system, LADWP is not 'using' transmission service."³²

16. PacifiCorp alleges that, instead of following the appropriate WECC rating process, LADWP sought and received the Interim Limits, which allowed LADWP to import additional remote generation greater than the 2007 Plan of Service amount. PacifiCorp states that the OTCPC granted the Interim Limits in April 2011 but failed to follow, and in fact was inconsistent with, the procedures for changes to the rating contained in the WECC rating process.³³ Therefore, PacifiCorp asserts that LADWP should have continued to follow the 2007 Plan of Service and that its failure to do so significantly altered the interaction between the TOT 2 paths and the IPP DC path. PacifiCorp states

²⁹ *Id.* at 20-21.

³⁰ PacifiCorp August 13, 2012 Answer at 1. PacifiCorp attaches currently-effective umbrella transmission service agreements between the parties to its August 13, 2012 Answer that it states have been in place since 1999.

³¹ *Id.* at 1-2.

³² *Id.* at 11.

³³ *Id.*

that if LADWP had operated pursuant to the 2007 Plan of Service, then the two systems would not have experienced a negative interaction.

17. PacifiCorp states that the study forming the basis for the 2007 Plan of Service specified that if LADWP intended to import more than the 227 MW studied in the Intermountain station bus study, additional analysis was necessary.³⁴ PacifiCorp asserts that the Interim Limits were approved “without following the procedures for changes to ratings contained in the WECC Rating Process,” including the submission of necessary technical studies.³⁵

18. As noted above, PacifiCorp states that the 2007 Plan of Service that resulted in the WECC-approved 2400 MW path rating was based on specific operational limitations. PacifiCorp further states that the 2007 Plan of Service was based on net imports up to 227 MW at the Intermountain bus and the requirement that the planned 400 MW of Milford wind generation resources in southwest Utah directly connected with the Intermountain bus as well as the 1900 MW Intermountain Power Plant would be subject to interruption via a Remedial Action Scheme. PacifiCorp states that the Remedial Action Scheme, as evaluated in the IPP DC Line rating study, was a contingency arming scheme designed to trip the Intermountain Power Plant and Milford wind resources in the event of a bi-pole outage on the IPP DC Line.³⁶

19. PacifiCorp alleges that the ability of LADWP to trip the planned 400 MW Milford wind resources was a key factor in the 2007 Plan of Service because, in the event of a bi-pole outage on IPP DC Line, LADWP’s electricity would immediately flow onto PacifiCorp’s TOT 2B1 and TOT 2B2, and TOT 2C lines, jeopardizing their reliability.³⁷ In contrast, PacifiCorp states, a pledge to trip remote, unidentified facilities would not ensure system reliability because resources located remote from the Intermountain station are less effective at providing relief than those located at the Intermountain station. Therefore, PacifiCorp alleges, if LADWP intended to import generation from remote

³⁴ *Id.* at 15. PacifiCorp further states that “it was expected that the 1900 MW from the Intermountain Power Plant, plus the 400 from Milford, plus up to approximately 227 MW of electricity from other generating sources could be imported using the 2400 MW of transmission capacity on [the IPP DC Line].” *Id.*

³⁵ *Id.* at 21. While PacifiCorp asked the OTCPC to reconsider the Interim Limits, PacifiCorp did not appeal those determinations because, it maintains, that approach was not a realistic option given the imminence of the summer operating season.

³⁶ *Id.* at 15-16.

³⁷ *Id.* at 16.

locations, it would need to update its 2007 Plan of Service so that simultaneous interactions between IPP DC Line and PacifiCorp's paths could be properly studied.³⁸

20. PacifiCorp states that the Milford resource ultimately connected in 2009 produced only 306 MW instead of the planned 400 MW, causing LADWP to concentrate its efforts to import additional wind generation from remote locations. PacifiCorp states that this put LADWP's WECC-approved rating at risk "due to its failure to complete its own plan of service"³⁹ PacifiCorp states that LADWP was required to notify the WECC Planning Coordination Committee, WECC Technical Studies Subcommittee, and WECC project review group for the IPP DC Line upgrade that Milford would not produce 400 MW and that LADWP consequently planned to significantly increase its wind imports from remote locations. In addition, PacifiCorp states that LADWP was obligated to consult with the project review group to determine if the IPP DC Line's final path rating should change.⁴⁰

21. PacifiCorp claims that LADWP intentionally operated outside of its WECC-authorized 2007 Plan of Service by importing more generation than had been studied while not simultaneously maintaining its ability to trip enough local generation following the loss of the IPP DC Line, causing an unauthorized interaction between the two systems' paths and forcing PacifiCorp to reduce its available transfer capability (ATC). PacifiCorp claims, "[w]ith the OTCPC's imprimatur, LADWP must compensate PacifiCorp for its unreserved use of PacifiCorp's transmission paths."⁴¹ PacifiCorp further states that the Interim Limits granted by the OTCPC could not and did not decide whether LADWP has the right to use capacity allocated to PacifiCorp under the WECC ratings process.⁴²

22. PacifiCorp claims that "LADWP's actions and their effect on ATC on PacifiCorp's TOT 2 paths demonstrate that LADWP is taking firm point-to-point service, even if LADWP is not causing power to flow over PacifiCorp's paths, because LADWP

³⁸ *Id.* at 17. PacifiCorp quotes the following language from the IPP DC path rating study: "If there is any desire by any party to import wind or any generation remote from Intermountain via [the IPP DC Line], additional operating studies would need to be performed to ensure the remedial scheme is appropriate."

³⁹ *Id.* at 19 (quoting WECC Rating Process at III-58).

⁴⁰ PacifiCorp August 13, 2012 Answer at 19.

⁴¹ *Id.* at 23.

⁴² *Id.*

is reducing otherwise available ATC on those paths.”⁴³ PacifiCorp states that LADWP’s unreserved use has preempted other uses of the TOT 2 paths and that LADWP has received the “super-priority” status of any reserved transmission use. PacifiCorp further states that in order to protect system reliability, PacifiCorp must reserve the capacity for LADWP, but because LADWP did not seek such service through PacifiCorp’s Tariff, it effectively cannot be curtailed. PacifiCorp contends that in order to operate in a secure state and prevent significant facility overloads on major WECC paths or potential reliability standards violations, PacifiCorp must effectively “reserve” ATC over certain of its paths for LADWP’s use.

23. PacifiCorp also alleges that LADWP’s operation outside the 2007 Plan of Service negatively affects system reliability. PacifiCorp asserts that when modeling system conditions to determine ATC, all transmission elements must be modeled at 100 percent of their continuous ratings.⁴⁴ First, PacifiCorp argues that LADWP could not have modeled PacifiCorp’s TOT 2B and TOT 2C paths at their continuous ratings because this would have demonstrated a negative interaction threatening reliability following a bi-pole outage of the IPP DC Line in violation of reliability standard MOD-029-1a, requirement R2.1.2, which requires that the power flow model used to calculate ATC cannot result in transient, dynamic, or voltage instability or operation above emergency ratings.⁴⁵ Second, PacifiCorp asserts that LADWP failed to follow MOD-029-1a, R2.5, which requires transmission operators to identify circumstances in which their paths’ total transmission capacity could have an adverse impact on the total transmission capacity of an existing path by modeling their proposed total transmission capacity against the flow of such other path.⁴⁶ Finally, PacifiCorp argues that LADWP failed to follow reliability standards governing transmission operations and forced PacifiCorp to curtail its transactions below the WECC-approved ratings to account for LADWP’s effective reservation. PacifiCorp states that LADWP failed to honor TOP-008-1, Requirement R2, which obligates transmission operators to operate their systems so as to not create operating limit violations on another transmission provider’s system. PacifiCorp argues that LADWP ignored these reliability concerns and forced PacifiCorp to ensure reliability by reducing its ATC.⁴⁷

⁴³ *Id.* at 24.

⁴⁴ *Id.* at 28 (stating that this requirement includes neighboring systems, per MOD-029-1a, Requirement R1.1.1.2).

⁴⁵ *Id.*

⁴⁶ *Id.* at 29.

⁴⁷ *Id.* at 29-30.

24. PacifiCorp states that LADWP's behavior is not causing a loop flow on PacifiCorp's path and therefore is not subject to the Commission's loop flow policy. PacifiCorp asserts that its reduction in ATC is not an inadvertent result of interconnected utility operations but rather a deliberate action by LADWP to operate outside its WECC-approved 2007 Plan of Service. PacifiCorp argues that unlike loop flows, LADWP's deliberate actions do not result in unauthorized flows but instead create an unauthorized and uncompensated reduction in ATC on PacifiCorp's paths.

25. Finally, PacifiCorp concludes that unreserved use penalties are appropriate in this case and further that the three purposes of unreserved use, namely, to: (1) make PacifiCorp whole for LADWP's use of PacifiCorp's transmission system;⁴⁸ (2) protect system reliability;⁴⁹ and (3) aid orderly allocation of transmission capacity by encouraging LADWP to properly reserve the transmission service that it uses⁵⁰ are served by the application of the penalties in this case.

C. LADWP August 27, 2012 Answer

26. LADWP asserts that in PacifiCorp's August 13 Answer, PacifiCorp admits that it levied unreserved use penalties on LADWP because PacifiCorp disagrees with the Interim Limits established by WECC.⁵¹ LADWP argues that PacifiCorp concedes that the Interim Limits required PacifiCorp to reduce its ATC and that PacifiCorp's dispute with LADWP is really a challenge to the final path rating established by WECC. LADWP states that the dispute over the Interim Limits, as well as the related dispute involving WECC's issuance of a final path rating for PacifiCorp's Gateway South Project, concern the relationship between LADWP and PacifiCorp as neighboring transmission operators and that WECC is the appropriate forum for resolving these disagreements. LADWP notes that these disputes are currently subject to WECC's alternative dispute resolution procedures.⁵²

⁴⁸ *Id.* at 3-4, 25 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 863).

⁴⁹ PacifiCorp August 13, 2012 Answer at 25 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 838).

⁵⁰ PacifiCorp August 13, 2012 Answer at 4, 25 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 838).

⁵¹ LADWP August 27, 2012 Answer at 3.

⁵² *Id.* at 2, 4.

27. LADWP argues that the cases in which the Commission has allowed the application of the unreserved use penalty all involve the actual flow of energy over the transmission provider's system.⁵³ In addition, the Commission has declined to allow the assessment of unreserved use penalties that involved actual use of transmission services in excess of a reservation when such uses were required to comply with Independent System Operator dispatch signals.⁵⁴

28. LADWP also asserts that the Commission's policy that finds that "the customer using unreserved use service shall be deemed to have executed a service agreement to govern that service" does not apply to LADWP because the Commission clarified that such agreement is only deemed to exist when a customer is actually receiving transmission services.⁵⁵ LADWP argues that since it did not cause energy to flow over PacifiCorp's transmission system, it did not receive transmission services.

29. LADWP claims that the Interim Limits were mandatory and that PacifiCorp failed to appeal those operating limits through WECC's appeal process.⁵⁶ LADWP argues that PacifiCorp's August 13 Answer focuses on whether WECC appropriately established the Interim Limits and that this issue is currently before WECC. In addition, LADWP states that PacifiCorp's answer reflects PacifiCorp's belief that, although the Interim Limits were mandatory, it was entitled to disregard them. LADWP states that PacifiCorp cites no authority for the proposition that it may unilaterally determine the invalidity of, then disregard, a binding operating limit that has been adopted by a reliability coordinator.⁵⁷

⁵³ *Id.* at 6-7 (citing *Granite Reliable Power, LLC*, 137 FERC ¶ 61,187 (2011); *PacifiCorp*, 136 FERC ¶ 61,117 (2011); *S. Co. Servs., Inc.*, 129 FERC ¶ 61,254 (2009)).

⁵⁴ LADWP August 27, 2012 Answer at 6-7 (citing *Waterbury Generation LLC*, 133 FERC ¶ 61,137, at P 15 (2010); *Pittsfield Generation Co., L.P.*, 127 FERC ¶ 61,035, at P 10 (2009)).

⁵⁵ LADWP August 27, 2012 Answer at 7 (citing *S. Co. Servs. Inc.*, 123 FERC ¶ 61,030, at P 15 (2008); *Midwest Indep. Transmission Sys. Op., Inc.*, 123 FERC ¶ 61,154, at P 35 (2008); *Entergy Servs., Inc.*, 124 FERC ¶ 61,148 (2008) (all three cases indicating that a customer taking network service or non-firm point-to-point service could be deemed to have executed an agreement for firm point-to-point service)).

⁵⁶ LADWP August 27, 2012 Answer at 9.

⁵⁷ *Id.* at 10.

30. LADWP asserts that it is not a “longstanding customer” of PacifiCorp’s that has continuously taken non-firm point-to-point transmission service from PacifiCorp. LADWP acknowledges that it has two transmission service agreements with PacifiCorp, executed in 1999, but that LADWP is aware of only four isolated instances in which it received transmission services under these agreements and all of those were related to re-routing energy over PacifiCorp’s transmission system and were for non-firm service.⁵⁸ LADWP states that it did not take service from PacifiCorp at all during the summer 2011 operating season, which is the only period that LADWP was billed for unreserved use penalties by PacifiCorp.

31. Finally, LADWP states that it operated in accordance with WECC-approved system operating limits at all times germane to the issues in its Complaint. LADWP states that levying unreserved use penalties against a neighboring transmission operator acting within the WECC-established operating limits does not advance the Commission’s policy that unreserved use penalties create the appropriate incentive for customers to reserve the correct amount of transmission service and avoid potential reliability problems.⁵⁹

D. PacifiCorp’s September 11, 2012 Answer

32. In its September 11, 2012 Answer to LADWP’s Answer, PacifiCorp argues that its Tariff and not reliability standards govern unreserved use charges, and that in the event of a conflict between a reliability standard and a tariff, the tariff governs until the Commission rules otherwise.⁶⁰ Therefore, PacifiCorp states that LADWP’s obligation to pay unreserved use penalty charges as a result of its operation outside its 2007 Plan of Service is determined by PacifiCorp’s Tariff. PacifiCorp states that LADWP is not entitled to free transmission service on PacifiCorp’s system simply because of purported interim operating limits.⁶¹

33. PacifiCorp states that the Interim Limits established by the OTCPC were not governed by the reliability standards approved by the Commission as mandatory and enforceable. According to PacifiCorp, the Interim Limits are not binding on the parties and are actually invalid under the reliability standards because the limits were developed

⁵⁸ *Id.* at 11.

⁵⁹ *Id.* at 14.

⁶⁰ PacifiCorp September 11, 2012 Answer at 3 (citing 16 U. S. C. § 824o(d)(6) (2006); 18 C.F.R. § 39.6 (2012)).

⁶¹ PacifiCorp September 11, 2012 Answer at 2-3.

without regard to the WECC Reliability Coordinator's standard operating limit methodology.⁶² Instead, PacifiCorp states that the Interim Limits were developed by the now-defunct OTCPC, which exercised neither the WECC Regional Entity's authority nor the WECC Reliability Coordinator's authority.⁶³ PacifiCorp states that the OTCPC simply noted the LADWP and PacifiCorp contrasting claims and then arbitrarily granted LADWP the limit it requested.⁶⁴ Therefore, PacifiCorp argues that the Interim Limits fail as a defense to LADWP's unreserved use of PacifiCorp's system because the Interim Limits were non-binding and did not need to be considered in establishing ATC. Consequently, PacifiCorp argues that LADWP compromised reliability of parts of the regional transmission system by operating outside of the 2007 Plan of Service, compelling PacifiCorp to set aside transmission service on its system to preserve reliability and comply with mandatory reliability standards.⁶⁵ PacifiCorp states that charges for firm point-to-point service are not assessed based on power that flows but based on the reservation itself that must always be available to the customer regardless of whether the customer chooses to use it.⁶⁶ PacifiCorp responds that it was forced to reserved firm point-to-point service on the TOT path for LADWP's use. Only by setting aside this capacity could PacifiCorp ensure than a bi-pole outage of the IPP DC Line would not result in multiple facility overloads. In reserving this capacity, PacifiCorp states that it provided a FERC-jurisdictional service to LADWP; thus PacifiCorp should be compensated according to the rates in its Tariff.⁶⁷

34. PacifiCorp states that the WECC dispute resolution process is not designed to address issues related to compliance with mandatory reliability standards. PacifiCorp argues that only the North American Electric Reliability Corporation (NERC) Compliance Monitoring and Enforcement Program procedures are designed to address

⁶² *Id.* at 4-5.

⁶³ *Id.* at 5.

⁶⁴ *Id.* at 5-6.

⁶⁵ *Id.* at 7-8.

⁶⁶ *Id.* at 9.

⁶⁷ *Id.* at 8-9.

compliance concerns.⁶⁸ Therefore, PacifiCorp asserts that these issues are not squarely within WECC's jurisdiction as alleged by LADWP.

III. Notice of Filing and Responsive Pleadings

35. Notice of the Complaint was published in the *Federal Register*, 77 Fed. Reg. 44,609 (2012), with interventions and protests due on or before August 13, 2012. On August 7, 2012, Powerex Corp. filed a motion to intervene. On August 13, 2012, PacifiCorp filed an answer to the Complaint. On August 27, 2012, LADWP filed a motion for leave to answer, and an answer, to PacifiCorp's answer. On September 11, 2012, PacifiCorp filed a second answer to the Complaint.

IV. Discussion

A. Procedural Matters

36. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

37. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

B. Commission Determination

38. As discussed further below, the Commission will grant the relief requested in the Complaint and direct PacifiCorp to cease attempting to collect unreserved use penalties from LADWP for summer 2011.

39. In Order No. 890, the Commission noted that "[u]nreserved use penalties are intended, in part, to give transmission customers an incentive to reserve and pay for the appropriate level of transmission service so that transmission service is allocated in an orderly fashion."⁶⁹ Additionally, in Order No. 890-A, the Commission noted that "all unreserved uses have the potential to impair reliability and disrupt the allocation of

⁶⁸ PacifiCorp September 11, 2012 Answer at 10 (citing NERC Rules of Procedure, Appendix 4C, § 1). PacifiCorp states that the Commission retains independent authority to enforce compliance with reliability standards. 18 C.F.R. § 39.7(f) (2012).

⁶⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 838.

transmission rights, and therefore, all should be subject to a penalty.”⁷⁰ The Commission further found that unreserved use penalties “will help discourage disorderly use of transmission service.”⁷¹

40. We find that LADWP’s actions during the summer of 2011 do not constitute an unreserved use of transmission service over PacifiCorp’s transmission system. Rather, we find that, during the period in question, the parties were following the Interim Limits established by WECC, which required PacifiCorp to reduce its available transmission capacity on TOT 2B1 and TOT 2C by 25 MW and 46 MW, respectively. PacifiCorp has misinterpreted section 11 of its Tariff in billing LADWP a penalty charge of up to 200 percent of the applicable firm point-to-point rate. The unreserved use penalty, as set forth in PacifiCorp’s Tariff, does not permit the assignment of unreserved use penalties to compensate PacifiCorp for limiting power flows over its transmission lines in order to comply with WECC-approved operating limits.

41. PacifiCorp acknowledges that it had prior knowledge of the Interim Limits for LADWP over the IPP DC Line and for PacifiCorp over the Gateway South Project for the summer 2011 operating season. Therefore, we find that LADWP’s action did not have the potential to impair reliability or disrupt the allocation of transmission rights, nor did it result in disorderly use of PacifiCorp’s transmission system, as PacifiCorp alleges.

42. Because we find that LADWP’s actions did not constitute an unreserved use of transmission over PacifiCorp’s transmission system, we do not address whether LADWP is a transmission customer of PacifiCorp. In addition, we find that allegations regarding LADWP’s compliance with mandatory reliability standards and the validity of the WECC rating processes are beyond the scope of this proceeding.⁷²

43. For the reasons discussed herein, we will grant the relief requested by LADWP in its Complaint and direct PacifiCorp to cease attempts to collect unreserved use penalties from LADWP for summer 2011.

The Commission orders:

(A) The relief requested in LADWP’s Complaint is hereby granted, as discussed in the body of this order.

⁷⁰ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 462.

⁷¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 835.

⁷² As discussed above, there appears to be an ongoing alternative dispute resolution process at WECC regarding the validity of the WECC rating processes.

(B) PacifiCorp is hereby directed to cease attempts to collect unreserved use penalties from LADWP for summer 2011, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.