

149 FERC ¶ 61,057  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

PacifiCorp

Docket Nos. ER14-1578-001  
ER14-1578-002

ORDER ON REHEARING, CLARIFICATION, AND COMPLIANCE

(Issued October 20, 2014)

1. On June 19, 2014, the Commission issued an order conditionally accepting in part, subject to modifications, and rejecting in part,<sup>1</sup> revisions submitted by PacifiCorp to its Open Access Transmission Tariff (OATT) to enable PacifiCorp's two balancing authority areas (BAA) to participate in the expanded Energy Imbalance Market (EIM) being developed by the California Independent System Operator Corporation (CAISO). In this order, we deny requests for rehearing and clarification of the June 19 Order. We also accept in part subject to a further compliance filing and reject in part the OATT revisions filed by PacifiCorp to comply with the June 19 Order, with the effective dates requested by PacifiCorp.

**I. Background**

2. PacifiCorp's two BAAs—PacifiCorp East and PacifiCorp West—are slated to be the first participants in CAISO's expanded real-time market for imbalance energy or EIM.<sup>2</sup> The EIM allows market participants in BAAs outside of CAISO the opportunity

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<sup>1</sup> *PacifiCorp*, 147 FERC ¶ 61,227 (2014) (June 19 Order).

<sup>2</sup> CAISO's proposed tariff revisions to implement the EIM were conditionally accepted in Docket No. ER14-1386-000 on June 19, 2014. *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,231 (2014) (CAISO EIM Order). An order on the compliance filing submitted by CAISO, which will address requests for rehearing and clarification

(continued...)

to take part in the imbalance energy portion of the locational marginal price (LMP)-based real-time market that CAISO currently operates within its own BAA. Thus, PacifiCorp's transmission customers will be able to elect whether to bid into the EIM or continue to serve their load as they do currently, either through self-supply of generation or bilateral energy purchases.

3. On March 25, 2014, PacifiCorp filed proposed OATT revisions to enable participation in the imbalance energy portion of CAISO's real-time market.<sup>3</sup> In the June 19 Order, the Commission conditionally accepted in part and rejected in part PacifiCorp's EIM OATT Filing, with various effective dates as requested by PacifiCorp. These OATT amendments included a new Attachment T, which sets forth the roles and responsibilities of customers and PacifiCorp under the EIM, revisions to Schedule 1 to allocate EIM-related administrative costs charged by CAISO to all PacifiCorp transmission customers, and revisions to Schedules 4 and 9, as modified, to reflect the use of LMP-based pricing for imbalance service under PacifiCorp's OATT for loads and non-EIM participants.

4. Specifically, the June 19 Order conditionally accepted a significant portion of PacifiCorp's EIM OATT Filing, including its plan to use LMPs resulting from the EIM to settle imbalances for transmission customers who continue to take service under Schedules 4 and 9 instead of participating in the EIM.<sup>4</sup> The order found the LMP-based imbalance pricing structure to be just and reasonable, as well as an accurate reflection of PacifiCorp's costs of providing imbalance service, but directed PacifiCorp to submit a compliance filing revising the real power loss calculation in Schedule 10 to financially settle losses consistent with the LMP structure. The June 19 Order also conditionally accepted PacifiCorp's proposal to facilitate EIM transfers between its two BAAs and CAISO via firm transmission rights voluntarily offered by transmission customers, but rejected PacifiCorp's proposal to include the requirements for scheduling and use of transmission rights in an unfiled business practice manual.<sup>5</sup> The June 19 Order found that the details of the voluntary transfer and any such future transactions affect the rates,

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filed by parties to that proceeding, is being issued concurrently in Docket Nos. ER14-1386-001 and ER14-1386-002.

<sup>3</sup> Filing for Revisions to the OATT to Implement the Energy Imbalance Market, Docket No. ER14-1578-000 (Mar. 25, 2014) (EIM OATT Filing).

<sup>4</sup> June 19 Order, 147 FERC ¶ 61,227 at PP 160-163.

<sup>5</sup> *Id.* PP 113-115.

terms, and conditions of Commission-jurisdictional service and must therefore be included in the OATT.

5. The June 19 Order also rejected PacifiCorp's proposal to require that generating resources that are internal to PacifiCorp's BAAs must secure transmission service from PacifiCorp, in excess of any transmission service that they already reserve as a PacifiCorp transmission customer, to participate in the EIM.<sup>6</sup> The Commission found that requiring PacifiCorp resources to purchase additional transmission service to participate in the EIM would result in a double-recovery of transmission costs, and would also conflict with the proposal by CAISO to use reciprocal transmission rates for the EIM.<sup>7</sup>

6. On July 21, 2014, Tri-State Generation and Transmission Association, Inc. (Tri-State)<sup>8</sup> and Deseret Generation & Transmission Co-Operative, Inc. (Deseret) each submitted in Docket No. ER14-1578-002 timely requests for rehearing of the June 19 Order. In addition, Powerex Corporation (Powerex) submitted a timely request for rehearing and clarification. The requests for rehearing and clarification raise general and procedural issues, and also address the holdings in the June 19 Order regarding: the use of voluntary transfers of firm transmission rights to facilitate EIM transfers, the use of reciprocal transmission charges with CAISO and EIM Entity BAAs, pricing for transmission service under the EIM, e-Tagging, the use of LMP-based pricing in OATT Schedules 4 and 9, EIM fees, collection of CAISO charges by PacifiCorp, and scheduling timelines.

7. On July 18, 2014, PacifiCorp submitted in Docket No. ER14-1578-001 revisions to its OATT intended to comply with the June 19 Order. The revisions reflect changes to the EIM provisions in Attachment T of its OATT, imbalance provisions in OATT Schedules 4 and 9, and real power loss provisions in Schedule 10 of its OATT, along with revised definitions and targeted revisions to other sections of its OATT.

8. Relevant portions of the June 19 Order, the requests for rehearing and clarification, and PacifiCorp's compliance filing are addressed by issue below.

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<sup>6</sup> *Id.* PP 144-149.

<sup>7</sup> *See* CAISO EIM Order, 147 FERC ¶ 61,231 at PP 153-160.

<sup>8</sup> Western Area Power Administration (Western) submitted comments supporting all aspects of Tri-State's request for rehearing.

## II. Discussion

### A. Procedural Matters

9. Notice of PacifiCorp's compliance filing was published in the *Federal Register*, 79 Fed. Reg. 43,463 (2014), with interventions and protests due on or before August 8, 2014. Powerex and Southern California Edison Company (SoCal Edison) submitted timely comments on the compliance filing. On August 15, 2014, PacifiCorp filed a motion for leave to answer and answer to Powerex's comments.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept PacifiCorp's answer because it has provided information that assisted us in our decision-making process.

### B. Substantive Matters

11. We deny the requests for rehearing and clarification, as discussed more fully below. We also accept the compliance filing in part subject to a further compliance filing, and reject the compliance filing in part, with the accepted provisions to become effective June 20, 2014, October 8, 2014, and the later of October 1, 2014 or the implementation date of the EIM, as applicable.

12. We next turn to discussion of the following issues raised on rehearing and/or with respect to PacifiCorp's compliance filing: (1) general and procedural issues; (2) the use of voluntary transfers of firm transmission rights to facilitate EIM transfers; (3) the use of reciprocal transmission charges with CAISO and EIM Entity BAAs; (4) pricing for transmission service under the EIM; (5) e-Tagging; (6) the use of LMP-based pricing in OATT Schedules 4 and 9; (7) EIM fees; (8) collection of CAISO charges by PacifiCorp; and (9) scheduling timelines.

#### 1. General and Procedural Issues

##### a. Benefits of the EIM

##### i. June 19 Order

13. In the June 19 Order, the Commission held that PacifiCorp had met its burden of proof to demonstrate that the proposed EIM OATT revisions were just and reasonable pursuant to section 205 of the Federal Power Act (FPA).<sup>9</sup> The Commission found that

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<sup>9</sup> 16 U.S.C. § 824d (2014); June 19 Order, 147 FERC ¶ 61,227 at P 80.

PacifiCorp's filing and the study prepared by Energy and Environmental Economics, Inc.<sup>10</sup> and adopted by PacifiCorp adequately demonstrated that the EIM will provide quantitative and qualitative benefits to PacifiCorp's customers, noting that these benefits can be expected to increase as expansion of the EIM brings incremental load and resource diversity into the market.<sup>11</sup>

**ii. Rehearing Requests**

14. In its request for rehearing, Deseret asserts that the Commission's finding that the EIM will provide qualitative and quantitative benefits to PacifiCorp's customers is unsupported, arbitrary, and capricious.<sup>12</sup> Deseret renews the contention from its initial comments that the EIM Benefits Study overstates the benefits to PacifiCorp transmission customers from the EIM, and alleges that the Commission failed to explain how PacifiCorp customers, and particularly customers in the PacifiCorp East BAA, will receive the claimed benefits.<sup>13</sup> Deseret provides a table from the EIM Benefits Study identifying high and low ranges for four types of benefits to PacifiCorp customers in 2017 (interregional dispatch, intraregional dispatch, flexibility reserves, and renewable curtailment). According to Deseret, the table demonstrates that customers in PacifiCorp East will see no appreciable benefits from the EIM.<sup>14</sup> In particular, Deseret notes that the table lists no monetary benefit for PacifiCorp East customers from renewable curtailment.<sup>15</sup> Deseret contends that these customers will likewise see no benefit from interregional dispatch or flexibility reserves, because these benefits are dependent on a BAA being able to receive power transfers or flexibility reserves and PacifiCorp is a "one-way street" (i.e., resources in PacifiCorp East can export power to PacifiCorp West or the CAISO BAA, but PacifiCorp West and CAISO cannot export power to PacifiCorp

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<sup>10</sup> See Energy and Environmental Economics, Inc., *PacifiCorp –ISO Energy Imbalance Market Benefits* (Mar. 13, 2013) (EIM Benefits Study), available on the CAISO website at <http://www.caiso.com/Documents/PacifiCorp-ISOEnergyImbalanceMarketBenefits.pdf>.

<sup>11</sup> June 19 Order, 147 FERC ¶ 61,227 at P 80.

<sup>12</sup> Deseret Rehearing Request at 2, 11-14 (citing *Ill. Comm. Comm'n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009)).

<sup>13</sup> *Id.* at 11.

<sup>14</sup> *Id.* at 12-14.

<sup>15</sup> *Id.* at 12.

East).<sup>16</sup> Lastly, since it sees no evidence that PacifiCorp was previously dispatching its own units in its BAA in an inefficient manner, Deseret contends that there is no reason to believe that intraregional dispatch will provide significant benefits to customers.<sup>17</sup>

15. Powerex raises a similar issue in its request for rehearing, arguing that EIM costs and charges will be paid by non-EIM customers, and that this “cross-subsidization” violates the Commission’s cost causation principles and undermines the potential efficiency benefits from the EIM.<sup>18</sup> Powerex states that this cross-subsidization is aggravated by the fact that PacifiCorp’s service territory spans six states, as ratepayers in one state might be required to pay the generation startup costs to cover the imbalance of a variable energy resource in another state.<sup>19</sup> The voluntary nature of the EIM does not, Powerex asserts, resolve its concerns, because price signals, long-term transmission rights, and efficient market outcomes will suffer negative impacts even if customers can opt out of EIM participation.<sup>20</sup>

### iii. Commission Determination

16. We deny requests for rehearing on this issue. To support its claim that the EIM will provide little if any benefit, Deseret focuses on one table of the EIM Benefits Study, which addresses the four principal benefits examined in the EIM Benefits Study, but not all possible benefits from the EIM.<sup>21</sup> Multiple commenters in this proceeding acknowledge potential benefits from the development of, and PacifiCorp’s participation in, an energy imbalance market in the West, including more efficient dispatch within the PacifiCorp BAAs and more efficient pricing on imbalance charges under OATT

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<sup>16</sup> *Id.* at 12, 13.

<sup>17</sup> *Id.* at 13.

<sup>18</sup> Powerex Rehearing and Clarification Request at 3-4.

<sup>19</sup> *Id.* at 4-5.

<sup>20</sup> *Id.* at 5-6.

<sup>21</sup> *See* EIM Benefits Study at 7 (“These [four] benefits are indicative, but not exhaustive. A recent report by staff to the Federal Energy Regulatory Commission identifies non-quantified reliability benefits that will also arise. These include enhanced situational awareness, security constrained [economic] dispatch, faster delivery of replacement generation after the end of contingency reserve sharing assistance, and enhanced integration of renewable resources.”).

Schedules 4 and 9, among other things. Thus, the Commission considered the totality of benefits in PacifiCorp's proposal—interregional and intraregional dispatch savings, reduction in flexible reserves, renewable energy curtailment, and reliability benefits due to increased situational awareness and responsiveness—and found that PacifiCorp's filing and the EIM Benefits Study adequately demonstrated that the EIM will provide both quantitative and qualitative benefits to PacifiCorp's customers.<sup>22</sup> Indeed, while Deseret opined that the EIM Benefits Study “likely overstates” the benefits to PacifiCorp transmission customers in its initial comments on PacifiCorp's EIM OATT Filing,<sup>23</sup> it also conceded that “on the whole, ...[the EIM] will likely produce net benefits” and expressed support for the implementation of a CAISO/PacifiCorp EIM.<sup>24</sup> Moreover, as noted in the June 19 Order, these benefits can be expected to increase as participation in the EIM increases geographically.<sup>25</sup> Additionally, to the extent that benefits to the PacifiCorp East BAA are currently limited by transmission constraints, these circumstances may change if transmission from CAISO to the PacifiCorp East BAA becomes available in the future. Accordingly, we continue to find that the record in this proceeding, including the EIM Benefits Study, adequately demonstrated quantitative and qualitative benefits sufficient to support the June 19 Order's finding.

**b. Hearing and Settlement Judge Procedures**

**i. June 19 Order**

17. In the June 19 Order, the Commission held that it was not necessary to set PacifiCorp's EIM OATT Filing for hearing, finding that the record in the proceeding was sufficient for the Commission to make determinations and direct compliance filings, where necessary, to modify the proposed OATT revisions.<sup>26</sup>

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<sup>22</sup> June 19 Order, 147 FERC ¶ 61,227 at PP 73-80.

<sup>23</sup> See Comments of Deseret Generation & Transmission Co-Operative, Inc., Docket No. ER14-1578-000 at 15-17 (April 25, 2014).

<sup>24</sup> See *id.* at 4, 14.

<sup>25</sup> June 19 Order, 147 FERC ¶ 61,227 at P 80. See also Public Utility Commissioners' EIM Working Group Comments, Docket No. ER14-1578-000 at 1 (April 23, 2014).

<sup>26</sup> June 19 Order, 147 FERC ¶ 61,227 at P 80.

**ii. Rehearing Request**

18. Tri-State asserts that the Commission should have found that issues of material fact exist regarding the justness and reasonableness of PacifiCorp's transmission rates and service under the EIM, and therefore, should have set the proceeding for hearing and settlement judge procedures.<sup>27</sup> Tri-State alleges that the Commission relied on erroneous assumptions in finding that EIM resources should not be required to pay for transmission service when operating in excess of their capacity reservations, and in dismissing as speculative Tri-State's concerns regarding EIM tagging and netting procedures.<sup>28</sup> Tri-State contends that, as a result, the Commission failed to address the perverse incentives created by giving EIM resources "free use" of the transmission system, and the *per se* discrimination resulting from PacifiCorp and CAISO's tagging practices.<sup>29</sup> Tri-State cites the informational report directed to be filed within one year of the implementation of the Western Electricity Coordination Council (WECC) Unscheduled Flow Mitigation Plan as evidence that the Commission could lack necessary facts to rule on the record. As a result, Tri-State argues, the Commission's acceptance of PacifiCorp's EIM OATT Filing and CAISO's EIM tariff filing in Docket No. ER14-1386-000 contradicts its policies and represents a lapse in its responsibilities under section 205 of the FPA.<sup>30</sup>

**iii. Commission Determination**

19. We reject Tri-State's request for rehearing on this issue. The decision as to whether to conduct an evidentiary hearing is within the Commission's discretion.<sup>31</sup>

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<sup>27</sup> Tri-State Rehearing Request at 6, 14-16 (citing 16 U.S.C. § 824d (2006); *Town of Norwood v. FERC*, 202 F.3d 392, 404 (D.C. Cir. 2000); *Vt. Dep't of Pub. Serv. v. FERC*, 817 F.2d 127, 140 (D.C. Cir. 1987); *Cajun Elec. Power Coop. v. FERC*, 28 F.3d 173, 177 (D.C. Cir. 1994); *Southern Cal. Edison Co., 40 FERC ¶ 61,106*, at 61,291 (1987) (citing *Citizens for Allegan County, Inc. v. FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1969))).

<sup>28</sup> *Id.* at 14-15.

<sup>29</sup> *Id.* at 15.

<sup>30</sup> *Id.* at 15-16.

<sup>31</sup> See *Minisink Residents for Environmental Preservation and Safety v. FERC*, 2014 WL 3973124, at \*13 (D.C. Cir. Aug. 15, 2014); *Blumenthal v. FERC*, 613 F.3d 1142, 1144 (D.C. Cir. 2010); *Woolen Mill Assocs. v. FERC*, 917 F.2d 589, 592 (D.C. Cir. 1990).

While the Commission has directed evidentiary hearings in cases involving disputed issues of material fact, the Commission “need not conduct such a hearing if the [disputed issues] may be adequately resolved on the written record.”<sup>32</sup> The Commission relied on substantial record evidence to reach its determination regarding EIM transmission service. Additionally, as stated in the June 19 Order, this informational report is for informational purposes only and is not intended to support the determinations in the June 19 Order retroactively.

## 2. Transfer of Transmission Rights to the EIM

### a. June 19 Order

20. In its EIM OATT Filing, PacifiCorp explained that it currently does not have any unsubscribed, available transmission capacity for EIM transfers between the PacifiCorp East and PacifiCorp West BAAs, or on the California-Oregon Intertie between PacifiCorp West and CAISO.<sup>33</sup> To facilitate these transfers, PacifiCorp proposed to utilize firm transmission rights offered by its marketing division and other transmission customers. The Commission accepted this proposal, subject to PacifiCorp making a compliance filing revising proposed section 5.2 of Attachment T to include the requirements for scheduling and using such transmission rights.<sup>34</sup> The Commission found, based on its preliminary analysis, that PacifiCorp’s proposal to make available transmission capacity that ordinarily would be used for bilateral transactions on a real-time basis appeared to be reasonable, and did not appear to constitute a sale, assignment, or transfer of transmission service requiring compliance with the reassignment provisions in section 23 of the *pro forma* OATT.<sup>35</sup> In particular, the Commission noted that PacifiCorp’s merchant function, PacifiCorp Energy, will not be relinquishing its transmission rights to another party, and will still be submitting the e-Tags in the prescheduling window indicating the amount of transmission rights that will be available in the EIM.

21. The Commission rejected, however, PacifiCorp’s proposal to include the basic terms of such transactions in an unfiled business practice manual, holding that such

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<sup>32</sup> *Cajun Elec. Power Coop., Inc. v. FERC*, 28 F.3d 173, 177 (D.C. Cir. 1994) (quoting *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993)).

<sup>33</sup> EIM OATT Filing at 39-40.

<sup>34</sup> June 19 Order, 147 FERC ¶ 61,227 at PP 113-115.

<sup>35</sup> *Id.* P 114.

specifications affect the rates, terms, and conditions of Commission-jurisdictional service.<sup>36</sup> The Commission therefore directed PacifiCorp to submit a compliance filing within 30 days of the June 19 Order setting forth specific procedures in its OATT to effectuate such voluntary transfers of transmission rights.

**b. Rehearing and Clarification Request**

22. Powerex supports the Commission's holding in the June 19 Order that the details of the voluntary transfers of transmission rights for use in the EIM affect the rates, terms, and conditions of Commission-jurisdictional service should be set forth in the OATT.<sup>37</sup> Powerex requests rehearing, however, of the Commission's conditional approval of PacifiCorp's proposed transmission donation arrangement, contending that the proposal sets aside transmission rights solely for EIM transfers, and that the Commission's approval of the proposal thus represents a departure from its open access policies and precedent.<sup>38</sup> Powerex asserts that the Commission erred in failing to respond to Powerex's request for details regarding the grandfathered agreements that may govern the transmission rights to be donated by PacifiCorp Energy.<sup>39</sup> According to Powerex, PacifiCorp's EIM OATT Filing did not provide sufficient information for the Commission to determine whether the particular transmission rights proposed to be made available by PacifiCorp Energy for EIM use are consistent with the underlying agreement and PacifiCorp's OATT. Furthermore, Powerex argues that the Commission exceeded its statutory authority and acted contrary to established precedent to the extent that it intended to exempt PacifiCorp from the requirements of section 205 of the FPA.<sup>40</sup>

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<sup>36</sup> *Id.* P 115.

<sup>37</sup> Powerex Rehearing and Clarification Request at 20-21.

<sup>38</sup> *Id.* at 17-19, 26-27 (citing *Grasslands Renewable Energy LLC*, 133 FERC ¶ 61,225, at PP 1, 20, 22 (2010); *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,273, at P 16 (2010); *Elec. Power Supply Ass'n*, 753 F.3d 216, 224-25 (D.C. Cir. 2014); *NorAm Gas Transmission Co. v. FERC*, 148 F.3d 2258, 1165 (D.C. Cir. 1998); *City of Anaheim v. FERC*, 558 F.3d 521, 522 (D.C. Cir. 2009); *Apache Corp. v. FERC*, 627 F.3d 1220, 1223 (D.C. Cir. 2010); *Westar Energy, Inc. v. FERC*, 473 F.3d 1239, 1241 (D.C. Cir. 2007)).

<sup>39</sup> *Id.* at 18.

<sup>40</sup> *Id.* at 19.

23. Additionally, Powerex seeks clarification that PacifiCorp Energy must take title to the energy associated with EIM energy transferred over transmission facilities reserved by PacifiCorp Energy.<sup>41</sup> Powerex argues that the Commission's preliminary finding that PacifiCorp's proposed transfer mechanism does not constitute a sale, assignment, or transfer is dependent on PacifiCorp's representations that PacifiCorp Energy will not be relinquishing the transmission rights it acquired from PacifiCorp to another party, and that PacifiCorp Energy will still submit the e-Tags by 75 minutes prior to the operating hour (T-75), indicating the amount of transmission rights that will be available in the EIM.<sup>42</sup> Absent clarification that PacifiCorp Energy will take title to the energy being delivered on its transmission reservation, however, Powerex contends that these representations do not adequately support the Commission's finding.<sup>43</sup> Powerex explains that, if an entity other than PacifiCorp Energy holds title to the energy associated with the EIM transfer, PacifiCorp Energy's transmission rights on the portion of the transmission reservation inside of CAISO's BAA must necessarily be sold, transferred, or reassigned, consistent with Commission precedent.<sup>44</sup> Powerex likens this scenario to PacifiCorp Energy providing transmission service for a third party, which it states is prohibited under Commission precedent.<sup>45</sup> Accordingly, Powerex requests clarification that a transmission customer wishing to provide transfer capacity for EIM transfers (a PacifiCorp Interchange Rights Holder) must take title to the energy associated with EIM dispatches transferred on those transmission segments on which it owns transmission rights. In the

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<sup>41</sup> *Id.* at 21-24, 27 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (Order No. 890), *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, at PP 168, 171 (2008) (Order No. 890-B), *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); *DC Energy, LLC v. PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,024, at P 24 (2013); *Utah Assoc. Mun. Power Sys. v. PacifiCorp*, 83 FERC ¶ 61,337, at 62,367 (1998), *order on reh'g and clarification*, 87 FERC ¶ 61,044 (1999); *Puget Sound Energy, Inc.*, 138 FERC ¶ 61,121, at P 14 (2012); *Southern Cal. Edison Co.*, 146 FERC ¶ 61,136, at P 24 (2014)).

<sup>42</sup> *Id.* at 21-22.

<sup>43</sup> *Id.* at 22.

<sup>44</sup> *Id.* at 22-23 (citing Order No. 890-B, 123 FERC ¶ 61,299 at PP 168, 171; *DC Energy, LLC v. PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,024, at P 24 (2013)).

<sup>45</sup> *Id.* at 23.

alternative, Powerex requests that the Commission clarify that the transmission rights must be sold, transferred, or reassigned pursuant to section 23 of PacifiCorp's OATT.<sup>46</sup>

**c. Compliance Filing**

24. In compliance with the June 19 Order, PacifiCorp proposes to revise section 5.2 of Attachment T of its OATT to specify that a PacifiCorp Interchange Rights Holder must submit an e-Tag in the T-75 prescheduling window including the unique Open Access Same-Time Information System (OASIS) identification reservation number(s) (Assignment Reference Number) associated with the transmission rights to be made available.<sup>47</sup> PacifiCorp states that it has also revised section 5.2 to require that the PacifiCorp Interchange Rights Holder include CAISO (as operator of the EIM) and all transmission providers and path operators associated with the Assignment Reference Number on the e-Tag, and to provide that the transfer of capacity to the EIM will be subject to the approval of the e-Tag by all entities required to provide e-Tag approval.<sup>48</sup>

25. PacifiCorp explains that the use of Assignment Reference Numbers ensures that a transmission customer can only use contractual rights associated with a specific agreement for service over a particular path, and cannot exceed the transmission capacity amount on the e-Tag. PacifiCorp notes that it has retained in section 5.2 the originally proposed language providing that the amount of transmission rights made available for EIM transfers shall never exceed the PacifiCorp Interchange Rights Holder's transmission rights.<sup>49</sup>

26. In its comments on the compliance filing, Powerex maintains that revised section 5.2 does not provide the requisite detail directed in the June 19 Order regarding the transfers, and requests that the Commission direct PacifiCorp to include additional information in its OATT.<sup>50</sup> Powerex asserts that timing was only one example of the material terms the Commission intended PacifiCorp to include in its OATT, and that PacifiCorp's revisions fail to cover other necessary details of these transfers, including

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<sup>46</sup> *Id.* at 23-24.

<sup>47</sup> Compliance Filing at 3. PacifiCorp notes that this proposal is consistent with the information provided in its May 12, 2014 answer in Docket No. ER14-1578-000.

<sup>48</sup> *Id.* at 4.

<sup>49</sup> *Id.* at 3-4.

<sup>50</sup> Powerex Comments at 3-10.

identifying which entity will hold title to the transmission rights used for, and energy associated with, the transfers.<sup>51</sup> Powerex contends that, because CAISO states in its compliance filing in Docket No. ER14-1386-001 that it will take title to energy associated with EIM transfers when the energy enters the CAISO-controlled grid or the transmission system of an EIM transmission service provider, whichever is first, it appears that CAISO will have title to the energy flowing over PacifiCorp's transmission system, including energy flowing on the firm transmission rights provided by PacifiCorp Interchange Rights Holders.<sup>52</sup> According to Powerex, additional revisions to PacifiCorp's OATT are necessary to ensure that CAISO's tariff and PacifiCorp's OATT are consistent.<sup>53</sup>

27. Powerex asserts that PacifiCorp's compliance filing also leaves unanswered additional questions regarding: (1) the specific procedures that will effectuate the use of PacifiCorp Interchange Rights Holders' transmission reservations by third parties for EIM transfers; (2) revisions to Attachment C of PacifiCorp's OATT to reflect the impact of EIM transactions on PacifiCorp's Available Transfer Capability calculations; (3) whether transmission capacity will be made available for use by other transmission customers to the extent it is not fully used for EIM transfers; (4) whether transmission rights made available for such transfers will be posted on OASIS; and (5) the inclusion of such donations in Electric Quarterly Reports.<sup>54</sup> Absent this information, Powerex asserts that PacifiCorp has failed to comply with the directive in the June 19 Order to include details sufficient to determine the effects of these transfers on Commission-jurisdictional transmission rights.<sup>55</sup>

28. In its answer, PacifiCorp asserts that its compliance filing satisfies the directives in the June 19 Order, and contends that Powerex's concerns go beyond the issues required to be addressed in the compliance filing.<sup>56</sup> In particular, PacifiCorp disagrees with Powerex that identifying the entity holding title to firm transmission rights made available for, and energy associated with, EIM transfers is necessary to comply with the

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<sup>51</sup> *Id.* at 5-6.

<sup>52</sup> *Id.* at 6-7.

<sup>53</sup> *Id.* at 7-8.

<sup>54</sup> *Id.* at 8-9.

<sup>55</sup> *Id.* at 10.

<sup>56</sup> PacifiCorp Answer at 4-5.

June 19 Order and prevent inconsistencies with CAISO's tariff.<sup>57</sup> PacifiCorp reasons that the focus of the June 19 Order—i.e., whether future transfers might involve third-party systems where the underlying ability to transfer the transmission rights may be unclear—is distinguishable from the information Powerex requests—i.e., details regarding a third-party's use of a PacifiCorp Interchange Rights Holder's transmission rights.<sup>58</sup> PacifiCorp maintains that its OATT has never addressed title to the energy transmitted over its system, and that title to energy is a separate issue of the allocation of commercial risk, not a crucial component of scheduling deliveries using transfer rights.<sup>59</sup> PacifiCorp characterizes Powerex's request for this information as a collateral attack on the June 19 Order, which, it asserts, did not direct PacifiCorp to modify the basic structure of its proposed mechanism for the transfer of PacifiCorp Interchange Rights Holder transmission rights.<sup>60</sup>

29. PacifiCorp asserts that the additional information requested in Powerex's comments likewise is not necessary, because Powerex improperly treats the PacifiCorp Interchange Rights Holder mechanism as if there were a formal assignment of transmission capacity, contrary to the June 19 Order's determination that PacifiCorp's proposal does not appear to be a sale, reassignment, or transfer of transmission service under its OATT.<sup>61</sup> First, PacifiCorp explains that, due to the nature of the EIM, no separate reservation of transmission capacity is required to effectuate the use of PacifiCorp Interchange Rights Holders' transmission reservations for EIM transfers.<sup>62</sup> Second, PacifiCorp asserts that no modification is necessary to the Available Transfer Capability provisions in Attachment C, because transmission rights will be decremented from Available Transfer Capability at the time that the e-Tags associated with those transmission rights are submitted, just as occurs today with respect to firm transmission rights.<sup>63</sup> Next, PacifiCorp contends that Powerex's concern regarding incomplete utilization of transmission made available for EIM transfers is both speculative and not

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<sup>57</sup> *Id.* at 5-6.

<sup>58</sup> *Id.* at 5-6.

<sup>59</sup> *Id.* at 5.

<sup>60</sup> *Id.* at 6.

<sup>61</sup> *Id.* at 7.

<sup>62</sup> *Id.* at 7-8.

<sup>63</sup> *Id.* at 8.

reasonably related to the June 19 Order's requirement that PacifiCorp include terms in its OATT for scheduling and using PacifiCorp Interchange Rights Holder transmission rights.<sup>64</sup> PacifiCorp states that under the EIM, just as under the current process, transmission rights that have been scheduled by a transmission customer cannot be re-sold.<sup>65</sup> PacifiCorp further clarifies that it does not propose that transmission capacity made available by a PacifiCorp Interchange Rights Holder will be posted on OASIS, because the transfer of such capacity is not an assignment and section 23.3 of its OATT thus does not apply. Lastly, PacifiCorp states that the donation of PacifiCorp Interchange Rights Holder transmission rights will not be reported in Electronic Quarterly Reports, because these transactions do not constitute resales of transmission capacity.

**d. Commission Determination**

30. We deny Powerex's request for rehearing. In accepting PacifiCorp's proposal, the Commission did not, as Powerex asserts, exempt PacifiCorp from the requirements of section 205 of the FPA. In fact, the Commission found in the June 19 Order that it was not sufficient for PacifiCorp to provide information explaining the mechanics of its proposal in its answer and a future business practice manual, and the Commission required these details to be included in the filed OATT.<sup>66</sup> However, the "grandfathered agreement or agreements" referred to by Powerex are not the source of the rights to be donated by PacifiCorp Energy, and thus are not pertinent to our assessment of PacifiCorp's interchange rights proposal.<sup>67</sup>

31. We also deny Powerex's request for clarification. As discussed below with respect to Powerex's comments on the compliance filing, information regarding title to transmission rights and energy associated with EIM transfers is not required. Powerex's

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<sup>64</sup> *Id.* at 8-9.

<sup>65</sup> *Id.* at 9.

<sup>66</sup> June 19 Order, 147 FERC ¶ 61,227 at P 115.

<sup>67</sup> See Motion for Leave to Answer and Answer of PacifiCorp, Docket No. ER14-1578-000 at 26 (May 12, 2014) (clarifying that "PacifiCorp Energy, as a PacifiCorp Interchange Rights Holder, intends to utilize existing firm transmission rights that have been sold to PacifiCorp Energy pursuant to *PacifiCorp's* OATT resulting from *PacifiCorp's* legacy ownership interests in the [California-Oregon Intertie] and does not intend to utilize firm transmission rights have been sold to PacifiCorp Energy by [Bonneville Power Administration] for EIM Transfers for initial EIM implementation") (emphasis in original).

request for clarification goes beyond the scope of the PacifiCorp Interchange Rights Holder proposal at issue in this proceeding.<sup>68</sup>

32. We find that PacifiCorp's proposed revisions to section 5.2 of Attachment T of its OATT comply with the directives in the June 19 Order. In particular, PacifiCorp has included the basic terms, including timing, for scheduling and using transmission rights held by a PacifiCorp Interchange Rights Holder. We find the proposed revisions to be just, reasonable, and not unduly discriminatory and therefore accept them for filing. Moreover, based on our review of the compliance filing, and consistent with our preliminary analysis in the June 19 Order, we confirm that the proposed use of transmission rights does not constitute a sale, assignment, or transfer of transmission service under section 23 of PacifiCorp's OATT. Under the proposed revisions to section 5.2, PacifiCorp Energy will still be submitting e-Tags in the prescheduling window (T-75) indicating the amount of transmission rights that will be available in the EIM, and will not relinquish transmission rights to another party.<sup>69</sup> We are also satisfied that section 5.2 ensures that such transfers will be supported by sufficient transmission rights.

33. Contrary to Powerex's assertions, we find the level of detail in revised section 5.2 to be both sufficient to meet the requirements of section 205 of the FPA and consistent with the detail provided elsewhere in PacifiCorp's OATT, and thus do not find it necessary for PacifiCorp to include additional detail at this time. The additional detail Powerex requests regarding title to the transmission rights and energy associated with EIM transfers is not necessary to determine that subsequent transfers will not be over third-party systems whereby the underlying ability to transfer the transmission rights may not be clear.

### **3. Transmission Usage Charge**

#### **a. June 19 Order**

34. The June 19 Order noted that PacifiCorp does not currently charge its transmission customers a separate transmission usage charge to import or export power across the

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<sup>68</sup> Powerex fails to draw a nexus to the precedent that they cite regarding holding title to the energy with PacifiCorp's proposal to use interchange rights that are voluntarily transferred, as one proceeding addressed the eligibility of off-system resources to be designated as a network resource and the other proceeding addressed the assessment of balancing operating reserve charges to an alleged physical transaction.

<sup>69</sup> See June 19 Order, 147 FERC ¶ 61,227 at P 114.

PacifiCorp/CAISO interface and was not proposing to do so in its EIM OATT Filing.<sup>70</sup> In addition, the June 19 Order stated that PacifiCorp supports CAISO's proposal that CAISO and PacifiCorp mutually waive transmission charges for transfers between their BAAs and that both parties commit to reevaluate their transmission proposals through their respective stakeholder processes after the first year of EIM operations. The June 19 Order determined that the arguments raised by commenters with respect to CAISO's waiver of the EIM transfer fee and any future stakeholder discussion are beyond the scope of PacifiCorp's EIM OATT Filing because PacifiCorp is not proposing any reciprocal tariff language effectuating a waiver of EIM transfer fees and the issue is more appropriately addressed in CAISO's EIM tariff filing.<sup>71</sup>

**b. Rehearing Request**

35. Powerex contends that the Commission erred as a threshold matter in determining that the issue of CAISO's waiver of its exit fee for EIM transactions was beyond the scope of PacifiCorp's EIM OATT Filing. According to Powerex, record evidence supports the conclusion that, notwithstanding PacifiCorp's lack of an "exit or entrance fee" comparable to those charged by CAISO, PacifiCorp's Attachment T will result in the unduly discriminatory waiver of transmission fees for a select set of transmission customers.<sup>72</sup>

**c. Commission Determination**

36. We deny Powerex's request for rehearing. While Powerex attempts to conflate PacifiCorp's proposed EIM transmission usage charge, which was rejected in the June 19 Order, with CAISO's waiver of its wheeling access charge for EIM transfers, the fact remains that CAISO's waiver of its wheeling access charge for EIM transfers was proposed in CAISO's EIM tariff filing and not PacifiCorp's EIM OATT Filing.<sup>73</sup> Numerous parties protested CAISO's waiver of its wheeling access charge, including Powerex, and the Commission addressed protesters' arguments in the CAISO EIM Order. Powerex's arguments that CAISO's waiver of its wheeling access fee renders Attachment T of PacifiCorp's OATT discriminatory reflect an inappropriate attempt to use this proceeding as a vehicle to challenge CAISO's EIM tariff filing. Moreover, we

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<sup>70</sup> *Id.* P 116.

<sup>71</sup> *Id.* P 124.

<sup>72</sup> Powerex Rehearing and Clarification Request at 7.

<sup>73</sup> *See* CAISO EIM Order, 147 FERC ¶ 61,231 at PP 125-160.

note that Powerex has raised its proposed remedy to apply an access charge to all exports in the EIM<sup>74</sup> in its request for rehearing of the CAISO EIM Order,<sup>75</sup> which is being addressed and issued concurrently in the CAISO EIM proceeding.<sup>76</sup> Accordingly, we reaffirm that Powerex's arguments concerning CAISO's waiver of its transmission access fee are beyond the scope of this proceeding.

#### **4. Use of Transmission Service for EIM Transactions**

##### **a. June 19 Order**

37. In its EIM OATT Filing, PacifiCorp proposed that network transmission customers may elect either to: (1) utilize their network service and continue to be billed for transmission based upon their monthly network load, plus any output of designated network resources participating in the EIM; or (2) use point-to-point transmission service under an umbrella service agreement for non-firm point-to-point transmission service and pay the hourly rate, on an after-the-fact basis, when dispatched.<sup>77</sup> In addition, PacifiCorp proposed that network customers using point-to-point transmission service to participate in the EIM be required to un-designate network resources to be bid into the EIM, but that network customers using network integration service to participate in the EIM need not un-designate their network resources (as a network resource would otherwise be required in order to make off-system sales).<sup>78</sup> PacifiCorp also proposed to charge both network and point-to-point transmission customers whose EIM dispatch operating point exceeded the transmission customer's reserved capacity, for any amount of the dispatch operating point in excess of the transmission customer's reserved capacity.<sup>79</sup> In the case of network customers, depending upon whether they were using network or non-firm point-to-point transmission service for EIM transactions, that difference would be added to either their

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<sup>74</sup> Protest of Powerex Corp., Docket No. ER14-1578-000 at 59 (April 25, 2014).

<sup>75</sup> See Powerex Corp. Request for Rehearing and Clarification, Docket No. ER14-1386-002 at 6-9 (July 21, 2014).

<sup>76</sup> See Paragraphs 45 through 47 of the Order on Rehearing, Clarification, and Compliance issued concurrently in Docket Nos. ER14-1386-001 and ER14-1386-002.

<sup>77</sup> EIM OATT Filing at 30-32.

<sup>78</sup> *Id.* at 31, 66.

<sup>79</sup> *Id.* at 34.

monthly network load or would be charged to them at the non-firm point-to-point transmission rate.

38. In the June 19 Order, the Commission rejected PacifiCorp's proposal to require EIM resources to pay for transmission service associated with EIM participation in addition to any transmission charges they incurred as a PacifiCorp transmission customer. The Commission directed PacifiCorp to submit a compliance filing to revise its OATT to eliminate the additional transmission charge for EIM transactions for participating resources.<sup>80</sup>

39. The Commission found that PacifiCorp's proposal to require EIM resources to purchase additional transmission service to participate in the EIM would result in double recovery of transmission costs.<sup>81</sup> By way of example, the Commission noted that an EIM resource located in PacifiCorp's BAA that is charged for non-firm point-to-point transmission service would include that transmission charge in its EIM offer price. If that resource were dispatched to serve load in PacifiCorp's BAA, the load would be charged for both network transmission service and for the transmission charge included in the EIM offer price. The Commission found that PacifiCorp's transmission formula rate would not return all of the non-firm transmission revenue to network customers due to the fact that firm point-to-point transmission customers would have to factor the non-firm point-to-point transmission rate in their bid. The Commission observed that if the firm point-to-point transmission customer stays within its transmission reservation, PacifiCorp would not collect any non-firm transmission revenues from that customer to credit against next year's revenue requirement, but the network load would end up paying that additional transmission charge nonetheless.<sup>82</sup>

40. The Commission also found that PacifiCorp's proposal to charge for transmission associated with EIM participation would conflict with CAISO's EIM reciprocal transmission rate proposal. Under CAISO's proposal, which the Commission accepted,<sup>83</sup> transmission charges will only be assessed in the BAA where the EIM energy sinks. Under PacifiCorp's proposal, the cost of transmission would be included in the energy bids of EIM resources in PacifiCorp's BAA as discussed above. If the resources in PacifiCorp's BAA were dispatched to serve load in CAISO, the PacifiCorp transmission

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<sup>80</sup> June 19 Order, 147 FERC ¶ 61,227 at P 144.

<sup>81</sup> *Id.* P 145.

<sup>82</sup> *Id.*

<sup>83</sup> *See* CAISO EIM Order, 147 FERC ¶ 61,231 at P 153.

charge included in the EIM energy bids would be paid by CAISO load. However, the reverse would not be true: a PacifiCorp load being served by a CAISO EIM resource would not be assessed a CAISO transmission charge. Therefore, the Commission found that the PacifiCorp proposal resulted in similarly situated EIM participants being treated in an unduly discriminatory manner because they were treated differently within the EIM footprint.<sup>84</sup>

41. Further, the Commission found PacifiCorp's proposal to be inconsistent with Commission policy regarding use of network service for off-system sales and to be unduly discriminatory because network customers choosing not to participate in the EIM would not be afforded the same ability to use network service for off-system sales.<sup>85</sup>

42. Moreover, the Commission stated that since the EIM will only dispatch resources that are already running (i.e., all EIM resources will have an existing transmission reservation corresponding to their transactions prior to being dispatched in the EIM), PacifiCorp should require that resources participating in the EIM in PacifiCorp's BAAs must be PacifiCorp transmission customers.<sup>86</sup>

43. The Commission also found that PacifiCorp did not provide a credible argument to justify charging participating resources for additional transmission related to EIM transactions. The EIM is an alternative means of providing and charging for services similar to Schedule 4 (Energy Imbalance Service) and Schedule 9 (Generator Imbalance Service) and under a traditional OATT structure, a customer would not pay additional transmission charges for imbalance energy and would only pay charges under Schedule 4 and Schedule 9.<sup>87</sup>

44. Finally, the Commission found that the eligibility requirements in section 3.1 of Attachment T were not clear with respect to firm point-to-point transmission usage.

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<sup>84</sup> June 19 Order, 147 FERC ¶ 61,227 at P 146.

<sup>85</sup> *Id.* P 147 (citing *Westar Energy, Inc.*, 142 FERC ¶ 61,066, at P 4 (2013) (approving stipulation and consent agreement resolving Westar Energy Inc.'s use of secondary network integration service for the purchase of energy to facilitate off-system sales); and section 28.6 of the Commission's *pro forma* OATT).

<sup>86</sup> *Id.* P 149.

<sup>87</sup> *Id.*

Therefore, the Commission directed PacifiCorp to add a provision stating that a resource may participate in the EIM using firm point-to-point transmission service.<sup>88</sup>

**b. Rehearing Requests**

45. Tri-State argues that the Commission erred in rejecting PacifiCorp's proposal to require that EIM resources in PacifiCorp's BAA pay for transmission service in excess of their capacity reservations.<sup>89</sup> Tri-State asserts that not requiring EIM resources to pay for transmission service when operating in excess of their capacity reservations will result in discriminatory cost-shifting to PacifiCorp's network customers and non-EIM point-to-point customers, displace non-EIM transmission service, provide an incentive to serve load using EIM transactions, and could distort price signals to build new transmission facilities.<sup>90</sup>

46. According to Tri-State, the June 19 Order would allow a 500 MW wind farm participating in the EIM with a 1 MW firm point-to-point capacity reservation to dispatch its entire 500 MW output to CAISO without paying any transmission costs above the 1 MW of reserved capacity.<sup>91</sup> Tri-State argues that permitting EIM resources to use PacifiCorp's transmission system at no cost will lead to distorted price signals for building new transmission facilities, the costs of which will fall disproportionately on PacifiCorp's load and non-EIM point-to-point customers.<sup>92</sup> Tri-State asserts that such cost-shifting violates the Commission's precedent and policy against discriminatory transmission charges and its precedent and policy regarding cost causation.<sup>93</sup>

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<sup>88</sup> *Id.* P 249.

<sup>89</sup> Tri-State Rehearing Request at 5. As noted earlier, Western filed comments in support of Tri-State's Rehearing Request.

<sup>90</sup> *Id.* at 6.

<sup>91</sup> *Id.* at 8.

<sup>92</sup> Powerex raises a similar argument in its Rehearing and Clarification Request at 8-9.

<sup>93</sup> Tri-State Rehearing Request at 8-9 (citing *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 476-477 (7th Cir. 2009) (citing *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 708 (D.C. Cir. 2000); *Pacific Gas & Elec. Co. v. FERC*, 373 F.3d 1315, 1320-21 (D.C. Cir. 2004)); *Inquiry Concerning the Commission's Pricing Policy for Transmission*

(continued...)

47. Tri-State notes that it understands the Commission's concern with respect to double recovery of transmission costs; however, Tri-State argues that the Commission's concern with double recovery is speculative and in many cases would not occur because resources in the EIM will be dispatched to serve loads other than PacifiCorp's.<sup>94</sup> Tri-State claims that the Commission more appropriately addressed the transmission free-rider problem in its orders approving the Southwest Power Pool, Inc. (SPP) tariff revisions to implement an energy imbalance market, where the Commission accepted SPP's proposal to require all market participants to pay for transmission charges associated with imbalance energy in excess of reserved point-to-point capacity.<sup>95</sup> Tri-State contends that SPP's proposal was necessary to prevent free-ridership of transmission service and that the Commission did not distinguish its finding in the SPP proceeding with its findings in the June 19 Order, nor did the Commission provide any evidence to support its shift in position.<sup>96</sup>

48. Finally, Tri-State argues that PacifiCorp's proposal to charge for transmission service for EIM transactions is not inconsistent with CAISO's reciprocity proposal because of the differences between CAISO and PacifiCorp transmission service. Tri-State asserts that CAISO does not provide point-to-point transmission service and all loads pay the costs of the transmission system through network integrated transmission service, whereas point-to-point transmission service represents 27 percent of the annual service on PacifiCorp's system.<sup>97</sup> Tri-State contends that PacifiCorp's proposal satisfied the principle underlying reciprocity by not assessing any additional transmission charge when an EIM customer operated within its capacity reservation, which was aimed at preventing a free-ridership problem that does not exist on the CAISO system.

49. Powerex claims that the Commission erred in ignoring record evidence that PacifiCorp's proposed amendments would result in discriminatory transmission rates.<sup>98</sup>

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*Services Provided by Public Utilities Under the Federal Power Act; Policy Statement*, FERC Stats. & Regs. ¶ 31,005 (1994); Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 838; *Waterbury Generation LLC*, 133 FERC ¶ 31,137, at P 4 (2010)).

<sup>94</sup> *Id.* at 7, 10.

<sup>95</sup> *Id.* at 9-10 (citing *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289, at PP 98-104 (2006); *Sw. Power Pool, Inc.*, 116 FERC ¶ 61,053, at P 17 (2006)).

<sup>96</sup> *Id.* at 10.

<sup>97</sup> *Id.* at 11.

<sup>98</sup> Powerex Rehearing and Clarification Request at 7-9, 24-25.

Specifically, Powerex contends that the Commission erred in addressing one issue associated with PacifiCorp's transmission proposal (double recovery of transmission costs) while ignoring a second issue (provision of free transmission service). Powerex argues that PacifiCorp's proposal would result in free transmission service for some EIM transactions, including: (1) EIM imports from CAISO to the PacifiCorp BAAs; (2) EIM wheel-throughs across PacifiCorp's transmission system; and (3) increase in non-network loads if partially offset by reductions in network load.<sup>99</sup>

50. Powerex argues that the Commission's directive to eliminate transmission charges for EIM transactions will create an incentive for generators to shift their transactions to the real-time EIM. According to Powerex, such incentives are contrary to the Commission's objective of reducing reliance on real-time markets.<sup>100</sup>

51. Powerex asserts that waiving transmission charges for EIM transactions will result in discriminatory rates for similarly situated PacifiCorp customers, contrary to the FPA and Commission precedent.<sup>101</sup> Furthermore, Powerex argues that the Commission erred in stating that under an OATT structure, customers do not pay additional transmission charges for imbalance energy.<sup>102</sup> Powerex claims that the Commission has consistently required generators taking imbalance service to have sufficient transmission for their injections onto the grid and loads taking imbalance service under the OATT to have sufficient transmission to withdraw energy from the grid.<sup>103</sup> Powerex contends that the Commission failed to provide sufficient support for its change in policy and that if the Commission's finding regarding transmission charges for EIM transactions is to be an exception from longstanding policy, the Commission should clarify this on rehearing.<sup>104</sup>

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<sup>99</sup> *Id.* at 8.

<sup>100</sup> *Id.* at 9 (citing *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,057, at PP 124-131 (2012), *reh'g denied*, 141 FERC ¶ 61,096 (2012); *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 10 (2006), *order on reh'g*, 119 FERC ¶ 61,076 (2007), *order on reh'g*, 120 FERC ¶ 61,271 (2007)).

<sup>101</sup> *Id.* at 10-11.

<sup>102</sup> *Id.* at 11, 25.

<sup>103</sup> *Id.* at 11-13.

<sup>104</sup> *Id.* at 13-14.

52. Deseret argues that the Commission's elimination of transmission charges for EIM transactions is arbitrary, capricious and not the product of reasoned decision-making because it harms transmission customers in the PacifiCorp BAAs and violates the Commission's cost causation principles.<sup>105</sup>

53. Deseret contends that because of the Commission's elimination of transmission charges for EIM transactions, PacifiCorp East transmission customers will bear the full per unit cost of EIM implementation for benefits that will accrue to CAISO load because PacifiCorp will not be able to collect any transmission revenues for the use of PacifiCorp's transmission system for EIM exports to CAISO.<sup>106</sup> Furthermore, Deseret argues that the notion that assessing a transmission charge for EIM transactions will manifest itself in the form of higher LMPs is misguided. Deseret argues that while network load could be double charged under certain circumstances, excess revenues for participating in the EIM would later be returned to all transmission customers (including those same network customers) as a revenue credit in PacifiCorp's formula transmission rate. In addition, Deseret asserts that any implicit payment for transmission service embedded in the LMPs occurs only to extent that the transmission customer's own resources are insufficient to meet its own load (a condition over which the customer has significant control).<sup>107</sup>

54. Deseret further argues that the Commission's concern that LMPs will increase due to the inclusion of transmission charges is only valid when the marginal resource(s) setting an LMP is faced with incremental transmission charges (i.e., marginal bids setting LMPs are from a designated network resource that is bid into the EIM during peak load conditions, or the portion of the capacity of a non-network resource which is primarily relying on EIM to justify its economic operation).<sup>108</sup>

55. Deseret also disagrees that PacifiCorp's transmission proposal would discriminate against network customers. Deseret notes that if a network customer chooses to participate in the EIM during peak load, it is using transmission capacity for which it has not paid a monthly charge; on the other hand, a point-to-point customer participating in the EIM may not pay an additional transmission charge if it stays within its original reservation. In either case, Deseret argues that the transmission customer would pay a

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<sup>105</sup> Deseret Rehearing Request at 2.

<sup>106</sup> *Id.* at 5.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 6.

monthly firm rate or an hourly, non-firm rate if it uses transmission capacity it has not otherwise paid for.<sup>109</sup>

56. Deseret argues that PacifiCorp East EIM participants are not similarly situated to CAISO EIM participants because PacifiCorp East currently only exports to other EIM BAAs, so PacifiCorp's transmission proposal does not violate CAISO's reciprocal EIM transmission proposal. Deseret states that if in the future PacifiCorp East begins receiving imports from other EIM BAAs, PacifiCorp's EIM transmission proposal could be revisited.<sup>110</sup>

57. Finally, Deseret argues that if the Commission upholds the elimination of the transmission charge for EIM exports from the PacifiCorp BAA, it must reassess the allocation of CAISO EIM administrative costs and whether a significant portion of EIM resources enjoy participation in the EIM without paying the costs associated with that participation because there is no vehicle for PacifiCorp to recoup those costs.<sup>111</sup>

**c. Compliance Filing**

58. In its compliance filing, PacifiCorp proposes to remove all language from its OATT "that expressly or indirectly concerns the assessment of transmission charges to PacifiCorp EIM Participating Resources for any EIM transactions."<sup>112</sup> Specifically, PacifiCorp proposes to: (1) eliminate language in proposed section 5.3 of Attachment T providing that charges related to EIM transmission are set forth in section 8.7 of Attachment T; and (2) replace proposed section 8.7 of Attachment T with the statement that there "shall be no incremental transmission charge assessed for transmission use related to the EIM."<sup>113</sup> In addition, PacifiCorp proposes to add language to section 3.1(2) of Attachment T to clarify that a resource may be associated with a service agreement for either firm point-to-point transmission service or non-firm point-to-point transmission service in order to be eligible to participate in the EIM.<sup>114</sup>

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<sup>109</sup> *Id.* at 6-7.

<sup>110</sup> *Id.* at 7.

<sup>111</sup> *Id.* at 8-9.

<sup>112</sup> Compliance Filing at 4.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 4-5.

59. PacifiCorp also submits a number of conforming revisions that were not specifically directed by the Commission, but it contends are needed to comply with the June 19 Order including: (1) revisions to sections 18.5 and 28.7 of its OATT to reinforce that a customer's election to use an umbrella service agreement for non-firm point-to-point transmission service or a network integration transmission service agreement is for purposes of eligibility to participate in the EIM (not for purposes of assessing any incremental transmission charges for EIM participation); (2) the addition of a new section 17.9 of PacifiCorp's OATT requiring the submission of a completed application for firm point-to-point transmission service in order to participate in the EIM consistent with Attachment T; (3) the elimination of the proposed language in section 34.2 (Determination of Network Customer's Monthly Network Load) because such language has been rendered unnecessary given the Commission's directive to eliminate transmission charges associated with EIM transactions; and (4) the elimination of language in sections 3.1, 3.3.1, and 3.3.5(5) of Attachment T concerning network customers' election to participate in the EIM using either a network integration transmission service agreement or an umbrella service agreement for non-firm point-to-point transmission service, including the billing impacts of such election, also rendered unnecessary due to the Commission's directive to eliminate transmission charges for EIM transactions.<sup>115</sup>

60. SoCal Edison argues that unauthorized use of transmission service charges under PacifiCorp OATT Schedule 11 should not apply to EIM transactions and therefore supports PacifiCorp's removal of proposed language in section 8.7 of Attachment T that would have made EIM transactions subject to Schedule 11.<sup>116</sup> SoCal Edison contends that unauthorized use charges should not apply to EIM transactions because transmission charges are not required for EIM participation, although it notes that the Commission did not address unauthorized use in the June 19 Order.<sup>117</sup> SoCal Edison asserts that applying unauthorized use of transmission service charges to EIM transactions would be inconsistent with CAISO's current practice not to charge generators for transmission.<sup>118</sup> SoCal Edison also argues that not applying unauthorized use of transmission service charges to EIM transactions would be consistent with the Commission's determination in the June 19 Order regarding Schedule 4 in that the impact of deviations will be explicitly included in CAISO's LMP and any excessive deviations would likely face low or

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<sup>115</sup> *Id.* at 5.

<sup>116</sup> SoCal Edison Comments at 3.

<sup>117</sup> *Id.* at 3.

<sup>118</sup> *Id.* at 4.

negative LMP settlements.<sup>119</sup> In addition, SoCal Edison argues that including unauthorized use of transmission service charges for EIM transactions would result in “similarly situated EIM participants being treated differently within the EIM footprint and therefore unduly discriminatory” because generators in the CAISO BAA are not subject to such charges.<sup>120</sup> Finally, SoCal Edison argues that if unauthorized use of transmission service charges is applied to EIM transactions, generators would include any expected charges in their energy bids, which could impact the LMP to the detriment of the efficiency and other benefits of the EIM.<sup>121</sup>

61. Powerex argues that PacifiCorp’s compliance filing creates ambiguity about the penalties PacifiCorp plans to charge for unreserved use of transmission (OATT Schedule 11) and that PacifiCorp’s compliance filing is inconsistent with the directive of the June 19 Order to reject any additional transmission charges associated with EIM transactions, because PacifiCorp’s OATT charges for any use of its transmission facilities in excess of a transmission customer’s transmission reservations.<sup>122</sup> Powerex contends that the Commission should require PacifiCorp to clarify the following in a further compliance filing: (1) whether PacifiCorp intends to charge penalties for transmission service used for EIM dispatches in excess of the transmission customer’s transmission reservations; (2) if not, whether PacifiCorp proposes to eliminate unreserved use charges for non-EIM dispatches over its system and how this would be consistent with Commission precedent and the *pro forma* OATT; and (3) if unreserved use penalties are only applicable to non-EIM uses of PacifiCorp’s system, how PacifiCorp will evaluate whether unreserved use has occurred when a transmission customer may simultaneously engage in EIM and non-EIM transactions.<sup>123</sup>

62. In response to comments, PacifiCorp states that it agrees with SoCal Edison and its understanding of the June 19 Order as reflected in PacifiCorp’s compliance filing.<sup>124</sup> PacifiCorp also notes that the Commission has recognized the commitment by CAISO and PacifiCorp to reassess EIM transmission charges based on EIM operational data after

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<sup>119</sup> *Id.*

<sup>120</sup> *Id.* (citing June 19 Order, 147 FERC ¶ 61,227 at P 146).

<sup>121</sup> *Id.* at 4-5 (citing June 19 Order, 147 FERC ¶ 61,227 at P 156).

<sup>122</sup> Powerex Comments at 11-12.

<sup>123</sup> *Id.* at 12.

<sup>124</sup> PacifiCorp Answer at 11.

one year of operation and that the upcoming stakeholder process can address the applicability of Schedule 11 to the EIM.<sup>125</sup>

**d. Commission Determination**

63. We deny the requests for rehearing on this issue. We are not persuaded that charging for EIM use of PacifiCorp transmission facilities would be consistent with CAISO's reciprocal transmission proposal and we remain concerned that charging for transmission on EIM transactions will lead to double charging of transmission costs, which Deseret concedes could occur. Similar to our finding in the CAISO EIM rehearing order issued concurrently with this order, there is no mechanism for EIM participants to selectively incorporate a transmission charge into their bids depending on where the transaction sinks.<sup>126</sup> EIM resources would include transmission charges in their bid prices, to account for the uncertainty of where the EIM transaction would be dispatched, which would distort the EIM from dispatching the most economically efficient generation into the market and lead to a double charge of transmission costs to customers in PacifiCorp's BAAs. We therefore find the removal of the transmission charge for EIM transactions to be consistent with cost causation principles.<sup>127</sup> Tri-State's concerns regarding the potential for this pricing mechanism to distort price signals for investment in new transmission facilities are speculative. However, we expect CAISO and PacifiCorp to consider and address any price signal issues that may arise when they undertake their planned reassessment of the EIM transmission pricing structure one year after implementation.

64. Contrary to Tri-State's arguments, the Commission did not deviate in the June 19 Order from its requirement in the orders on SPP's energy imbalance market that all market participants pay for transmission service in excess of their reserved point-to-point transmission service for imbalance energy. PacifiCorp's participation in CAISO's EIM is

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<sup>125</sup> *Id.*

<sup>126</sup> See Paragraph 45 of the Order on Rehearing, Clarification, and Compliance issued concurrently in Docket Nos. ER14-1386-001 and ER14-1386-002.

<sup>127</sup> See, e.g., *Black Oak Energy, LLC v. FERC*, 725 F.2d 230, 237 (2013) (explaining that the cost causation principle "requires that all approved rates reflect to some degree the costs actually caused by the customer who must pay them") (quoting *E. Ky. Power Coop., Inc. v. FERC*, 489 F.3d 1299, 1303 (D.C. Cir. 2007) (internal quotation marks omitted)); *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992) (same).

vastly different from SPP's formation of a real-time energy imbalance market. SPP proposed to create a real-time energy imbalance market where none previously existed, bringing together multiple BAAs that each had their own OATTs and would now take transmission service under a single OATT.<sup>128</sup> In contrast, PacifiCorp proposes to participate in CAISO's existing real-time energy imbalance market, using the rules and procedures of CAISO's tariff, which must be incorporated into PacifiCorp's OATT, while still providing transmission service for its transmission customers under the OATT. In CAISO's market, generating resources do not pay for transmission service to participate in the real-time energy market. In addition, CAISO proposed to eliminate the wheeling access charge for generating resources that are internal to CAISO that transfer imbalance energy across the California-Oregon Intertie to PacifiCorp's BAAs. Generating resources in CAISO's market are therefore not similarly situated to generating resources in SPP's then-proposed real-time imbalance market.

65. In order for comparable treatment to exist for resources in PacifiCorp's BAAs to those in CAISO's BAA, consistent with CAISO's proposal for reciprocal transmission service for EIM transfers across the California-Oregon Intertie and the concern that load would be double charged for transmission service, the June 19 Order correctly directed PacifiCorp to eliminate its proposed transmission charge for EIM transactions. Contrary to Deseret's assertions, we do not find that transmission constraints into PacifiCorp East render the elimination of this proposed transmission charge unduly discriminatory as PacifiCorp's existing OATT does not differentiate the type of transmission service provided to either PacifiCorp East or PacifiCorp West. PacifiCorp's OATT is universally applicable to both PacifiCorp BAAs and the elimination of the proposed transmission charge for EIM transactions must be viewed across the whole of PacifiCorp's BAAs and not individually. In addition, as previously noted, Deseret has conceded that the EIM will likely produce net benefits.<sup>129</sup> We note that CAISO and PacifiCorp are committed to reassessing the EIM's reciprocal transmission arrangement one year after implementation and if they file to eliminate reciprocal transmission service for the EIM or an alternative, the Commission will assess the overall transmission usage and charges at that time.

66. Having rejected rehearing of this directive in the June 19 Order, we accept in part and reject in part PacifiCorp's proposed OATT revisions to eliminate the additional transmission charge for EIM transactions for participating resources as discussed herein,

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<sup>128</sup> See *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289 (2006) (rejecting in part, conditionally accepting, and suspending SPP's proposal to implement a real-time energy imbalance market).

<sup>129</sup> See Comments of Deseret Generation & Transmission Co-Operative, Inc., Docket No. ER14-1578-000 at 4, 14 (April 25, 2014).

and direct PacifiCorp to submit a compliance filing within 30 days after the date of issuance of this order.

67. We find that PacifiCorp's proposed revisions to its OATT in the compliance filing to eliminate the additional transmission charge for EIM transactions for participating resources comply with our June 19 Order, with the exception of PacifiCorp's elimination of references to Schedule 11 (Unauthorized Use of Transmission Service) in section 8.7 of Attachment T. This revision was not addressed in the June 19 Order, as noted by SoCal Edison<sup>130</sup> and PacifiCorp,<sup>131</sup> and it goes beyond the intent of our finding in that order. To address the issue of unauthorized use of transmission service as it applies to EIM participation, we direct PacifiCorp to submit OATT revisions making Schedule 11 penalties applicable to any amount of transmission service used beyond both a transmission customer's reservation plus the amount of its EIM resource directed dispatch.

68. We share Powerex's concern that PacifiCorp's compliance filing creates an ambiguity on how Schedule 11 will work particularly if an EIM resource is dispatching itself beyond the instructions of CAISO. While we believe that Tri-State's example of a 500 MW wind farm dispatching itself above its 1 MW transmission reservation is unlikely, we are concerned that PacifiCorp's proposal to eliminate the applicability of Schedule 11 to any transmission use but transmission reservations could provide an incentive for a resource to not follow EIM dispatch instructions and run uninstructed to collect its nodal LMP. Accordingly, PacifiCorp must revise its OATT to make clear that it will assess Schedule 11 unauthorized use of transmission service penalty charges in the instances when a transmission customer's transmission use exceeds both its transmission reservation and the amount of its EIM resource directed dispatch.<sup>132</sup>

69. We also direct PacifiCorp to specify that any ancillary service charges that are applicable to Schedule 11 unauthorized use charges include PacifiCorp's Schedule 1 (Scheduling, System Control and Dispatch Service). In this manner, transmission

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<sup>130</sup> SoCal Edison Comments at 3.

<sup>131</sup> PacifiCorp Answer at 10.

<sup>132</sup> Assume, for example, that a transmission customer with a 100 MW transmission reservation and a 125 MW generating resource schedules 100 MW from that resource with PacifiCorp and submits a bid of 10 MW into the EIM from that resource to CAISO. If the resource is selected and dispatched by CAISO for 10 MW, but the resource actually produces 120 MW in total, that transmission customer should be charged for 10 MW of unauthorized transmission service use.

customers will not be able to lean on PacifiCorp's transmission system and the EIM by running uninstructed and avoid paying EIM fees.

**5. Unscheduled Flow Mitigation**

**a. June 19 Order**

70. In the June 19 Order, the Commission determined that PacifiCorp's proposal to use dynamic e-Tags with the same curtailment priority as the underlying transmission service reservations is consistent with the existing WECC Unscheduled Flow Mitigation Plan and will ensure that curtailments of EIM schedules over qualified paths are implemented based on transmission service priority.<sup>133</sup>

**b. Rehearing Request**

71. Tri-State requests rehearing of the Commission's acceptance of PacifiCorp's proposal only to tag inter-BAA transfers and not tag any intra-BAA transfers. Tri-State argues that this proposal will result in discriminatory curtailments under WECC's Unscheduled Flow Mitigation Plan. Tri-State also states that the proposal represents a departure from PacifiCorp's past practice of tagging intra-BAA transactions, because, prior to EIM, such transactions were bilateral transactions over its OASIS.<sup>134</sup> Tri-State asserts that its concerns are neither speculative nor outside the scope of this proceeding.<sup>135</sup>

72. Tri-State reiterates that under the Unscheduled Flow Mitigation Plan, only tagged transactions can be identified as contributing to loading of constrained paths and only tagged transactions are subject to curtailment.<sup>136</sup> Additionally, because only the net of inter-BAA transactions will be tagged, the full impact of all inter-BAA transactions on the loading of a constrained path will not be assessed for purposes of curtailment relief under the Unscheduled Flow Mitigation Plan.<sup>137</sup> Tri-State states that although the Commission addressed one form of discrimination by ensuring that Unscheduled Flow

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<sup>133</sup> June 19 Order, 147 FERC ¶ 61,227 at P 217.

<sup>134</sup> Tri-State Rehearing Request at 12.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 13.

<sup>137</sup> *Id.*

Mitigation Plan curtailments are implemented consistent with transmission priorities in the OATT, discrimination will still exist if the EIM participants can select which transactions to subject to curtailment and which will not be subject to curtailment simply through the tagging process under the EIM.<sup>138</sup>

73. In addition, Tri-State states that the curtailment of non-EIM transactions will impose substantial costs on entities engaging in non-EIM transactions since they may be required to replace their curtailed firm transactions by either procuring higher cost power from out-of-merit generation or schedule out-of-merit generating units to minimize the magnitude of the curtailed firm transactions.<sup>139</sup> Tri-State requests the Commission require PacifiCorp and CAISO to revise their proposed tariffs to provide that all EIM transactions will be tagged appropriately so that non-firm EIM transfers will be subject to curtailment and EIM participants will be appropriately charged their share of the costs for use of the PacifiCorp transmission system.<sup>140</sup>

**c. Commission Determination**

74. As the Commission stated in the June 19 Order and reaffirms here, Tri-State's concerns on this issue are beyond the scope of this proceeding; accordingly, we deny rehearing. The implementation of the EIM does not and should not change scheduling requirements as required by the North American Electric Reliability Corporation reliability standards. The EIM will provide an additional tool to manage transmission system congestion and relieve constraints before needing to implement transmission service curtailments.

**6. OATT Schedules 4 and 9**

**a. June 19 Order**

75. In the June 19 Order, the Commission accepted PacifiCorp's proposal to replace the use of the Hourly Pricing Proxy with the EIM LMPs for assessing charges or payments under Schedule 4 and Schedule 9.<sup>141</sup> The Commission also accepted PacifiCorp's proposal to remove the three-tiered penalties for imbalances, finding that the

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<sup>138</sup> *Id.* at 13 (citing *PacifiCorp*, 147 FERC ¶ 61,131, at PP 19-20 (2014)).

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 14.

<sup>141</sup> June 19 Order, 147 FERC ¶ 61,227 at P 160.

use of EIM LMPs provided adequate incentive to schedule energy accurately.<sup>142</sup> In addition, the Commission directed PacifiCorp to replace the use of the Hourly Pricing Proxy in OATT Schedule 10 with the EIM LMPs, as maintaining the Hourly Pricing Proxy in Schedule 10 would be inconsistent with PacifiCorp's use of the EIM LMPs in Schedule 4 and Schedule 9.<sup>143</sup>

**b. Rehearing Request**

76. Deseret states that it is not seeking rehearing of the Commission's decision to replace the legacy imbalance settlement mechanism (i.e., the Hourly Pricing Proxy); however, it notes that the Commission's finding that there is a relationship between PacifiCorp's actual cost and the EIM LMP is without record support.<sup>144</sup> According to Deseret, there is no reason or theory under which the Commission may state that the average nodal LMPs and resulting Load Aggregation Point price for the PacifiCorp East BAA will equal the sum of the actual incremental or actual all-in costs of the generating units supplying imbalance service.<sup>145</sup> Finally, Deseret notes that the LMP is only a way to price a product and that the LMP does not relate to the actual accounting costs incurred by generators, thus, the Commission's position that the Hourly Pricing Proxy based on the EIM LMPs will reflect the cost of generators actually providing imbalance energy has not been demonstrated and the Commission cannot state as a fact.<sup>146</sup>

**c. Compliance Filing**

77. In its compliance filing, PacifiCorp proposes to use the average hourly Load Aggregation Point price for the PacifiCorp East and PacifiCorp West BAAs in its Schedule 10.<sup>147</sup> PacifiCorp argues that because it operates its two BAAs as a single integrated system the Schedule 10 charges should be based on a single loss rate from the average of its two BAAs.

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<sup>142</sup> *Id.* P 161.

<sup>143</sup> *Id.* P 162

<sup>144</sup> Deseret Rehearing Request at 10.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at 10-11.

<sup>147</sup> Compliance Filing at 6.

78. PacifiCorp clarifies in its compliance filing that EIM Participating Resources will be settled directly under the CAISO EIM, and only non-participating resources will be subject to PacifiCorp's OATT Schedule 9.<sup>148</sup> PacifiCorp also proposes clarifying edits to the wording in Schedule 4 and Schedule 9 to clarify how charges and payments will be calculated for those entities subject to Schedule 4 and Schedule 9.<sup>149</sup>

**d. Commission Determination**

79. We deny rehearing on this issue. While Deseret argues that the EIM LMPs do not represent the actual cost for a given resource to provide imbalance energy, it does not dispute the fact that PacifiCorp will be charged at the EIM LMPs based on the CAISO EIM design. Therefore, while a given resource may or may not have costs equal to the EIM LMPs, PacifiCorp will need to pay for imbalance energy at the prices established by the EIM LMPs. It is these charges, assessed to PacifiCorp under the EIM, that support the Commission's statement in the June 19 Order that the EIM LMPs reflect the actual cost to PacifiCorp for providing imbalance energy.<sup>150</sup> Further, while PacifiCorp customers may be subject to increased costs as a result of congestion leading to higher EIM LMPs, this increased cost represents actual congestion and the actual increased costs associated with supplying imbalance energy to those customers.

80. Having rejected Deseret's rehearing arguments regarding the use of LMP-based pricing, we accept PacifiCorp's proposed revisions to OATT Schedule 10 and proposed clarifying revisions to Schedules 4 and 9. We find that PacifiCorp's proposal to use a single loss rate from the average of PacifiCorp's two BAAs in Schedule 10 complies with directives in the June 19 Order.

**7. EIM Fees in Schedule 1**

**a. June 19 Order**

81. In the EIM OATT Filing, PacifiCorp proposed to revise OATT Schedule 1 (Scheduling, System Control and Dispatch Service) in order to pass through the \$0.19/MWh administrative charge that CAISO would collect from PacifiCorp for its participation in the EIM as an EIM Entity, along with several other EIM-related

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<sup>148</sup> *Id.* at 7.

<sup>149</sup> *Id.* at 7-8.

<sup>150</sup> *See* June 19 Order, 147 FERC ¶ 61,227 at P 160.

administrative fees.<sup>151</sup> The June 19 Order accepted PacifiCorp's proposal, finding that the administrative fee for this service, charged by CAISO to PacifiCorp, is properly considered as a scheduling, system control and dispatch service and appropriately included in Schedule 1 of its OATT.<sup>152</sup> In addition, the June 19 Order directed PacifiCorp to identify and document each EIM-related charge in its annual transmission formula rate filing in which it proposes to collect EIM related start-up charges, to ensure that PacifiCorp is properly classifying start-up and capital costs to generation, transmission, common plant, etc., as appropriate.<sup>153</sup>

**b. Rehearing Request**

82. On rehearing, Deseret requests that if the Commission does not reinstate the transmission charge for EIM exports from PacifiCorp's BAAs, that the Commission should reopen its assessment of the allocation of CAISO's administrative costs.<sup>154</sup> Deseret is concerned that customers may use the EIM without paying for their fair share of EIM costs. In addition, while Powerex does not explicitly seek rehearing of the Commission's acceptance of PacifiCorp's Schedule 1 pass through of CAISO's EIM administrative charge, Powerex includes the charge in a table of charges that it contends the Commission erred in accepting.<sup>155</sup>

**c. Commission Determination**

83. We deny rehearing on this issue. We are not persuaded by Deseret's concern that EIM participants will be able to avoid paying for EIM administrative costs by not reserving transmission service for EIM transactions. The June 19 Order found that the EIM will only dispatch resources that are already running, meaning that all resources in the EIM will have an existing transmission service reservation corresponding to their transactions prior to being dispatched.<sup>156</sup> The June 19 Order further required that all EIM Participating Resources must be a PacifiCorp transmission customer. Thus, EIM

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<sup>151</sup> EIM OATT Filing at 44-46.

<sup>152</sup> June 19 Order, 147 FERC ¶ 61,227 at P 170.

<sup>153</sup> *Id.* P 173.

<sup>154</sup> Deseret Rehearing Request at 9.

<sup>155</sup> Powerex Rehearing and Clarification Request at 4.

<sup>156</sup> June 19 Order, 147 FERC ¶ 61,227 at P 149.

participants will be paying for transmission service. In addition, as discussed above, we are requiring that PacifiCorp impose Schedule 11 unauthorized use penalties on transmission customers that exceed their transmission reservation and EIM resource dispatch directions, including the imposition of Schedule 1 scheduling, system control and dispatch service charges on the unauthorized usage. Accordingly, transmission customers will not be able to participate in the EIM and avoid paying EIM administrative charges.

## **8. Collection of CAISO Charges by PacifiCorp**

### **a. June 19 Order**

84. The June 19 Order accepted PacifiCorp's proposal to allocate the following CAISO charges to PacifiCorp's transmission customers based upon measured demand: (1) flexible ramping constraint charges pursuant to proposed section 29.11(g) of CAISO's tariff; (2) real-time bid cost recovery charges pursuant to proposed section 29.11(f) of CAISO's tariff; (3) real-time congestion offset pursuant to proposed section 29.11(e)(2) of CAISO's tariff; and (4) real-time market neutrality and neutrality settlement charges pursuant to proposed sections 29.11(e)(3) and 29.11(e)(5) of CAISO's tariff, respectively (collectively, EIM Uplift Charges).<sup>157</sup> The June 19 Order found that the charges that CAISO will be assessing to PacifiCorp are an integral part of CAISO's security constrained economic dispatch and it is reasonable for PacifiCorp to allocate the aforementioned charges on the same basis as CAISO, i.e., Measured Demand.<sup>158</sup>

### **b. Rehearing Request**

85. Powerex argues that the Commission erred in accepting PacifiCorp's proposed allocation of EIM Uplift Charges. According to Powerex, the Commission's prior findings regarding CAISO's allocation of EIM costs using Measured Demand provide no support for PacifiCorp's proposed adoption of that allocation method.<sup>159</sup> Powerex contends that the Commission's acceptance of PacifiCorp's proposal to use Measured Demand to allocate EIM Uplift Charges is contrary to the weight of record evidence. In addition, Powerex argues that the Commission failed to respond to its arguments demonstrating the deficiencies in PacifiCorp's filing and that the Commission's failure to require PacifiCorp to support its cost allocation proposal with more than vague claims of

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<sup>157</sup> *Id.* P 174.

<sup>158</sup> *Id.* P 184.

<sup>159</sup> Powerex Rehearing and Clarification Request at 14.

reliability benefits is an arbitrary and capricious departure from Commission policy and precedent.<sup>160</sup>

**c. Commission Determination**

86. We deny Powerex's request for rehearing. Contrary to Powerex's assertion that the Commission failed to address its arguments, the June 19 Order considered Powerex's arguments and concluded that they were based upon faulty reasoning.<sup>161</sup> As explained in the June 19 Order, PacifiCorp's EIM OATT revisions are intended to work in parallel with CAISO's EIM tariff provisions. The EIM Uplift Charges were included in CAISO's EIM tariff filing and CAISO proposed to allocate the EIM Uplift Charges to PacifiCorp using Measured Demand. The June 19 Order found that the charges that CAISO will be assessing PacifiCorp are an integral part of CAISO's security constrained economic dispatch and it was reasonable for PacifiCorp to allocate the EIM Uplift Charges on the same basis as CAISO. Thus, we find that the Commission appropriately considered and addressed its concerns in the June 19 Order.

**9. Scheduling Timelines**

**a. June 19 Order**

87. The June 19 Order accepted PacifiCorp's proposal that its transmission customers must submit forecast data consistent with the timelines proposed by CAISO in order for CAISO to run its security constrained economic dispatch.<sup>162</sup> In addition, the June 19 Order found that neither Deseret nor BPA had demonstrated that maintaining the status quo for the submission of forecast data was a workable option in the EIM.

**b. Rehearing Request**

88. Deseret argues that the Commission misunderstood its concern with PacifiCorp's proposal.<sup>163</sup> Deseret contends that it does not object to the timing that transmission customers must submit forecast schedules to PacifiCorp. Rather, Deseret takes issue with how imbalances will be settled under Schedules 4 and 9. According to Deseret, PacifiCorp's proposal to settle load and generation imbalances based upon schedules

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<sup>160</sup> *Id.* at 16.

<sup>161</sup> June 19 Order, 147 FERC ¶ 61,227 at P 184.

<sup>162</sup> *Id.* P 191.

<sup>163</sup> Deseret Rehearing Request at 14.

submitted 55 minutes before the start of the hour (T-55) measured against metered quantities is punitive. Deseret notes that it will be able to modify dispatch schedules for its non-participating generation resources using both CAISO's and PacifiCorp's 15-minute scheduling timeline, which Deseret contends will result in actual metered generation being higher or lower than the generation schedule submitted at T-55 before the hour.<sup>164</sup> According to Deseret, intra-hour generation schedule changes will better match load changes thereby reducing the amount of energy imbalance service required by the transmission customer.

89. Deseret asserts that PacifiCorp's proposal will increase the risk of price point differentials for load serving entities in PacifiCorp's BAAs.<sup>165</sup> Deseret argues that if a customer adjusts generation in the fifteen minute scheduling timeline to match intra-hour load changes, the customer could be exposed to the difference between the price of the aggregate Load Aggregation Point for the entire BAA and the nodal price at the generator that adjusted its schedule. Alternatively, Deseret notes that the customer could elect to not adjust the generator schedule in the 15-minute scheduling timeline and settle its long or short generation position at the aggregate Load Aggregation Point price for the BAA, which could differ from its dispatch price. Deseret argues that the proper measure of imbalance energy should be based on the timelines between the 15-minute market and the five-minute EIM, and not the extended timeline required for hour-ahead schedules.<sup>166</sup>

**c. Commission Determination**

90. We deny Deseret's request for rehearing on this issue. The timeframe that PacifiCorp will use to measure imbalance energy is the exact same timeframe that CAISO will use to measure imbalances for non-participating load and resources and for which those imbalance charges are the responsibility of PacifiCorp as the EIM scheduling coordinator. Accordingly, it is reasonable that PacifiCorp would use the same measurement to pass through the allocated CAISO imbalance charges to its transmission customers that cause PacifiCorp to incur those charges.

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<sup>164</sup> *Id.* at 15.

<sup>165</sup> *Id.* at 15-16.

<sup>166</sup> *Id.* at 16.

## 10. Remaining Compliance Issues

### a. Compliance Filing

91. In the June 19 Order, the Commission rejected proposed section 10.3(3) of Attachment T, which gave PacifiCorp the authority unilaterally to suspend its participation in the EIM due to a market design flaw. PacifiCorp states that it has thus revised Attachment T to eliminate this provision.<sup>167</sup> The compliance filing also proposes various revisions PacifiCorp agreed to make in its May 12, 2014 answer in Docket No. ER14-1578-000, including: clarifying language in section 1 of Attachment T to reinforce the circumstances in which legacy transmission customers will be subject to Attachment T; changes concerning the under- and over-scheduling charges in sections 8.4.1 and 8.4.2 of Attachment T in response to intervenor comments; a clarifying revision regarding the notification requirement in section 9.2 of Attachment T; and modifications to the definitions of “Dispatch Operating Point,” “Measured Demand,” “Metered Demand,” and “Transmission Customer Base Schedule” to address commenter concerns.<sup>168</sup>

92. PacifiCorp represents that one of the revisions it offered to make—clarifying section 8.7.2.2 of Attachment T to make it clear that transmission rights acquired by a participating resource through a resale or assignment under section 23 of PacifiCorp’s OATT would be considered in an assessment of whether additional hourly non-firm transmission charges for EIM participation will apply—is now moot in light of the elimination of additional EIM transmission charges.<sup>169</sup> PacifiCorp notes that it has also made some non-substantive corrections in Attachment T that were not directed by the June 19 Order.<sup>170</sup>

93. Consistent with the June 19 Order, PacifiCorp commits to file any necessary additions to its OATT identified during the stakeholder review of the draft EIM business

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<sup>167</sup> Compliance Filing at 7.

<sup>168</sup> *Id.* at 7-10.

<sup>169</sup> *Id.* at 9.

<sup>170</sup> PacifiCorp identified typographical and ministerial corrections in Attachment T that it proposes to correct as follows: (1) section 7.3.2 (replace “Schedule Coordinator” with “Scheduling Coordinator”); (2) section 8.1 (make conforming changes consistent with amendments concerning schedule 9 described above); and (3) section 8.6 (capitalize “Liabilities” in heading). *Id.* at 11.

practice manual no later than 30 days after completion of this stakeholder process in September 2014.<sup>171</sup> PacifiCorp states that it also has complied with the directive in the June 19 Order to make current versions of all CAISO tariff provisions referenced in PacifiCorp's OATT (and notices of when CAISO proposes to amend any such provisions) available on its website.<sup>172</sup> PacifiCorp reports that these materials can be found in the EIM section of its OASIS website. Finally, PacifiCorp states that it will submit an informational supplement to its May 15, 2014 formula rate annual update filing in Docket No. ER11-3643-000 by July 31, 2014, consistent with the June 19 Order, and will include a separate attachment detailing information regarding EIM costs in each subsequent annual update filing.<sup>173</sup>

**b. Commission Determination**

94. Our review of these aspects of PacifiCorp's compliance filing, which are not contested, indicates that they are just and reasonable and not unduly discriminatory or preferential. Accordingly, we also accept these revisions for filing, with the effective dates requested by PacifiCorp. We agree that the revision to section 8.7.2.2 is no longer necessary, in light of the June 19 Order's directive to PacifiCorp to eliminate charges for EIM dispatches.

**11. Effective Dates and Requests for Waiver**

**a. Compliance Filing and September 16 Motion**

95. PacifiCorp requests that the revised OATT provisions that were directed in the June 19 Order become effective consistent with the effective dates requested by PacifiCorp in its initial EIM OATT Filing and granted by the Commission in that order.<sup>174</sup> Additionally, PacifiCorp requests waiver of the Commission's 60-day prior

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<sup>171</sup> *Id.* at 10.

<sup>172</sup> *Id.* at 10-11.

<sup>173</sup> *Id.* at 11. PacifiCorp submitted this supplement on July 23, 2014. *See* Supplement to Informational Filing of 2014 Transmission Formula Rate Annual Update for EIM Charges, Docket No. ER11-3643-000 (July 23, 2014).

<sup>174</sup> Compliance Filing at 11-12. PacifiCorp requested an effective date of June 20, 2014 with respect to certain of the proposed provisions, and requests waiver of the Commission's regulations to permit certain of the data submission requirements to go into effect just prior to the commencement of the EIM, on September 23, 2014, and the actual settlement provisions and other provisions concerning transmission service to

(continued...)

notice requirement, 18 C.F.R. § 35.11 (2014), to permit newly proposed section 17.9 of its OATT, which it states is necessary to comply with the Commission's directive to make clear that resources using firm point-to-point transmission service are eligible to participate in the EIM, to become effective as of June 20, 2014. PacifiCorp also requests waiver of any filing requirements in Part 35 of the Commission's regulations, to the extent not satisfied in its compliance filing here.<sup>175</sup>

96. On September 16, 2014, PacifiCorp filed, in Docket No. ER14-1578-000, a motion (September 16 Motion) to modify the effective date of certain EIM OATT provisions from September 23, 2014 to October 8, 2014. The September 16 Motion also requested a limited waiver of the requirements in the EIM OATT provisions that became effective on September 23, 2014, until the date of an order granting the motion. On October 2, 2014, the Commission issued an order accepting PacifiCorp's request to extend the effective date of certain EIM OATT revisions pending in this proceeding from September 23, 2014 to October 8, 2014, subject to the outcome of this proceeding. The Commission also granted temporary waiver of the EIM tariff provisions that became effective on September 23, 2014.<sup>176</sup>

**b. Commission Determination**

97. We find good cause to grant waiver of the Commission's 60-day prior notice requirement to permit revised section 17 of PacifiCorp's OATT to become effective as of June 20, 2014.<sup>177</sup> Consistent with the effective dates granted in the June 19 Order, we grant PacifiCorp's requested effective dates for the OATT revisions directed in the June 19 Order and submitted in the compliance filing, including the October 8, 2014 effective date requested in PacifiCorp's September 16 Motion.

The Commission orders:

(A) The requests for rehearing and clarification are hereby denied, as discussed in the body of this order.

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become effective as the EIM goes live, on the later of October 1, 2014 or the date of EIM implementation.

<sup>175</sup> *Id.* at 12.

<sup>176</sup> *PacifiCorp*, 149 FERC ¶ 61,006 (2014).

<sup>177</sup> 18 C.F.R. § 35.11 (2014). *See Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

(B) The compliance filing is hereby accepted in part, subject to a further compliance filing, and rejected in part, with the accepted provisions to be effective as of the dates requested, as discussed in the body of this order.

(C) PacifiCorp is hereby directed to submit a further compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

(D) PacifiCorp's request for waiver of the Commission's 60-day prior notice requirement, 18 C.F.R. § 35.11 (2014), is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.