

150 FERC ¶ 61,084  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

PacifiCorp

Docket No. ER14-1578-005

ORDER REJECTING REQUEST FOR REHEARING

(Issued February 9, 2015)

1. On November 19, 2014, Deseret Generation and Transmission Co-operative, Inc. d/b/a Deseret Power (Deseret) filed a request for rehearing<sup>1</sup> of the Commission's October 20, 2014 order in this proceeding.<sup>2</sup> The October 20 Rehearing Order denied requests for rehearing and clarification regarding revisions to PacifiCorp's open access transmission tariff (OATT) to participate in the California Independent System Operator Corporation (CAISO) Energy Imbalance Market (EIM) and accepted in part, subject to a further compliance filing, and rejected in part PacifiCorp's EIM compliance filing. For the reasons discussed below, we reject Deseret's request for rehearing of the October 20 Rehearing Order.

**I. Background**

2. 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> Under the EIM, entities with balancing authority areas (BAA) outside of CAISO may voluntarily take part in the imbalance energy portion of the CAISO locational marginal price-based

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<sup>1</sup> Motion for Clarification or, in the Alternative, Request for Rehearing, of Deseret Generation & Transmission Co-operative, Inc. (Deseret Second Rehearing Request).

<sup>2</sup> *PacifiCorp*, 149 FERC ¶ 61,057 (2014) (October 20 Rehearing Order). The October 20 Rehearing Order denied requests for rehearing and clarification of *PacifiCorp*, 147 FERC ¶ 61,227 (2014) (June 19 Order).

<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).

real-time market alongside participants from within the CAISO BAA.<sup>4</sup> PacifiCorp's two BAAs—PacifiCorp East and PacifiCorp West—are the initial participants in the EIM.

3. 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, and revisions to Schedule 1 to allocate EIM-related administrative costs charged by CAISO to all PacifiCorp transmission customers. As relevant here, the June 19 Order accepted PacifiCorp's proposal 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, along with several other EIM-related administrative fees.<sup>5</sup> The Commission found that the administrative fee for this service, charged by CAISO to PacifiCorp, is properly considered as a scheduling, system control and dispatch service and therefore appropriately included in Schedule 1 of its OATT. 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>6</sup>

4. In addition, the June 19 Order 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 its proposal to require that generating resources internal to PacifiCorp's BAAs 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>7</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

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<sup>4</sup> *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,231 (CAISO EIM Order), *order on rehearing, clarification, and compliance*, 149 FERC ¶ 61,058 (2014) (conditionally accepting proposed tariff revisions to implement the EIM).

<sup>5</sup> June 19 Order, 147 FERC ¶ 61,227 at P 170.

<sup>6</sup> *Id.* P 173.

<sup>7</sup> *Id.* PP 113-115, 144-149.

also conflict with the proposal by CAISO to use reciprocal transmission rates for the EIM.<sup>8</sup>

5. Deseret filed a request for rehearing of the June 19 Order.<sup>9</sup> Among other arguments, Deseret expressed concern that, in light of the elimination of the transmission charge to export energy dispatched to the EIM, customers could be able to use the EIM without paying for their fair share of EIM costs.<sup>10</sup> Deseret asserted that elimination of this transmission charge also created the potential for free ridership in the EIM because administrative costs were passed through to PacifiCorp's transmission customers through Schedule 1, which currently includes a \$0.19/MWh EIM administrative fee, based on a minimum of five percent of the total gross absolute value of both supply and demand of all EIM participants.<sup>11</sup> Deseret illustrated this point by referring to Tri-State Generation and Transmission Cooperative, Inc.'s (Tri-State) contemporaneous request for rehearing, which proposed that a 500 MW wind farm participating in the EIM could reduce its firm point-to-point reservation to 1 MW in order to deliver the output to CAISO, and then dispatch the entire 500 MW without paying for transmission costs exceeding the 1 MW of reserved capacity.<sup>12</sup> Deseret thus argued that the Commission should reopen its assessment of the allocation of CAISO's administrative costs.<sup>13</sup>

6. The October 20 Rehearing Order denied the requests for rehearing and clarification, including Deseret's First Rehearing Request, and accepted PacifiCorp's EIM compliance filing in part, subject to a further compliance filing, and rejected the compliance filing in part. The Commission explained that 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, and further required that all EIM Participating

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<sup>8</sup> See CAISO EIM Order, 147 FERC ¶ 61,231 at PP 153-160.

<sup>9</sup> Request for Rehearing of Deseret Generation & Transmission Co-operative, Inc., Docket No. ER14-1578-002 (July 21, 2014) (Deseret First Rehearing Request).

<sup>10</sup> *Id.* at 8-9.

<sup>11</sup> *Id.* at 8. See June 19 Order, 147 FERC ¶ 61,227 at PP 164, 170-71; CAISO EIM Order, 146 FERC ¶ 61,231 at PP 184-90.

<sup>12</sup> Deseret First Rehearing Request at 8. Request for Rehearing of Tri-State Generation and Transmission Association, Inc., Docket No. ER14-1578-002 at 8 (July 21, 2014) (Tri-State Rehearing Request).

<sup>13</sup> Deseret First Rehearing Request at 9.

Resources in PacifiCorp's BAAs must be a PacifiCorp transmission customer.<sup>14</sup> In addition, the Commission noted that the October 20 Rehearing Order required PacifiCorp to 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.<sup>15</sup> The Commission therefore concluded transmission customers will not be able to participate in the EIM and avoid paying EIM administrative charges.

## **II. Request for Clarification or Rehearing**

7. In the Second Rehearing Request, Deseret asserts that the Commission's response to its First Rehearing Request in the October 20 Rehearing Order "creates substantial confusion as to how EIM administrative costs will be assessed" and thus requires clarification.<sup>16</sup> Deseret presents a two-step "test" based on the Commission's determination in the October 20 Rehearing Order. In "Step One," Deseret reverts to the hypothetical posed in the Tri-State Rehearing Request, and asserts that a transmission customer with a nominal 1 MW reservation could be dispatched in the EIM up to its full 500 MW capacity without being required to purchase an additional 499 MW of point-to-point transmission service.<sup>17</sup> In "Step Two," Deseret states that Schedule 11 unauthorized use charges are only imposed when a transmission customer's transmission use exceeds both its transmission reservation and the amount of its EIM resource directed dispatch. Deseret then queries whether the hypothetical customer in Step One has exceeded its EIM resources directed dispatch and would therefore be charged for unauthorized use under Schedule 11. If this is not the case, Deseret contends that the hypothetical resource is able to avoid paying for its equitable share of EIM administrative costs under Schedule 1.<sup>18</sup> Deseret asks the Commission to clarify which of the two outcomes is intended by the October 20 Rehearing Order.

8. If the Commission elects not to grant clarification, Deseret requests rehearing of the October 20 Rehearing Order as arbitrary, capricious and not the product of reasoned

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<sup>14</sup> October 20 Rehearing Order, 149 FERC ¶ 61,057 at P 83 (citing June 19 Order, 147 FERC ¶ 61,227 at P 149).

<sup>15</sup> *Id.* P 69.

<sup>16</sup> Deseret Second Rehearing Request at 3.

<sup>17</sup> *Id.* at 4.

<sup>18</sup> *Id.* at 4-5.

decision-making.<sup>19</sup> Deseret asserts that the Commission's reasoning in the October 20 Rehearing Order does not necessarily prevent free ridership, because a resource could avoid paying its proportionate share of administrative costs without actually exceeding its EIM resources directed dispatch and incurring Schedule 11 unauthorized use charges.<sup>20</sup> Deseret maintains that this outcome violates cost causation principles.

### III. Discussion

9. Although characterized as a request for clarification or, in the alternative, rehearing, we find Deseret's pleading is, in fact, a request for rehearing of an order denying rehearing, and therefore impermissible. Accordingly, we will reject Deseret's pleading.

10. The October 20 Rehearing Order explained the specific circumstances where Schedule 11 unauthorized use charges and their corresponding effect on EIM administrative costs would apply.<sup>21</sup> In simply reiterating Tri-State's hypothetical of a 500 MW resource with a 1 MW transmission reservation dispatching its full capacity into the EIM without having to purchase additional point-to-point transmission service,<sup>22</sup> Deseret is asking the Commission revisit an issue already addressed in the October 20 Rehearing Order.

11. Further, Deseret's argument that EIM participants will be able to avoid paying for EIM administrative costs by not reserving transmission service for EIM transactions was expressly rejected by the Commission in responding to Deseret in the October 20

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<sup>19</sup> *Id.* at 5-7.

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

<sup>21</sup> October 20 Rehearing Order, 149 FERC ¶ 61,057 at P 68 (requiring PacifiCorp to revise its OATT to clarify that it will assess Schedule 11 unauthorized use 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"); *id.* P 68 n.132 (clarifying the specific circumstances under which a transmission customer would be considered to have exceeded both its transmission reservation and the EIM resources directed dispatch); *id.* PP 69, 83 (stating that Schedule 1 scheduling, system control, and dispatch service charges would be imposed with respect to any such unauthorized transmission usage).

<sup>22</sup> Deseret Second Rehearing Request at 4.

Rehearing Order.<sup>23</sup> In the October 20 Rehearing Order, the Commission explained that: (1) the EIM will only dispatch resources that have existing transmission service reservations corresponding to their transaction prior to being dispatched; (2) EIM participants will be PacifiCorp transmission customers paying for transmission service; and (3) transmission customers will not be able to avoid paying EIM administrative charges because PacifiCorp is required to impose Schedule 11 unauthorized use charges on 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.<sup>24</sup> The Commission therefore was not persuaded by Deseret's concerns regarding free ridership, and Deseret simply reasserts those concerns here.

12. Rehearing of an order on rehearing lies only when the order on rehearing modifies the result reached in the original order in a manner that gives rise to a wholly new objection.<sup>25</sup> Litigation before the Commission cannot be allowed to drag on indefinitely,<sup>26</sup> so the Commission does not allow rehearing of an order denying rehearing.<sup>27</sup> As the Court of Appeals for the District of Columbia Circuit has stated, even "an improved rationale" would not justify a further request for rehearing.<sup>28</sup>

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<sup>23</sup> October 20 Rehearing Order, 149 FERC ¶ 61,057 at P 83. *See also* Deseret First Rehearing Request at 8-9.

<sup>24</sup> October 20 Rehearing Order, 149 FERC ¶ 61,057 at P 83.

<sup>25</sup> *See Southern Natural Gas Co. v. FERC*, 877 F.2d 1066, 1073 (D.C. Cir. 1999) (*Southern*).

<sup>26</sup> *Accord, e.g., Canadian Association of Petroleum Producers v. FERC*, 254 F.3d 289, 296 (D.C. Cir. 2001) (rejecting the notion of "infinite regress" that would "serve no useful end").

<sup>27</sup> *See, e.g., Market-Based Rates for Wholesale Sales of Electric Energy, Capacity, and Ancillary Services by Public Utilities*, 143 FERC ¶ 61,126, at PP 6-9 (2013); *Cargill Power Markets, LLC*, 114 FERC ¶ 61,093 (2006); *KeySpan-Ravenswood, LLC v. New York Independent System Operator, Inc.*, 112 FERC ¶ 61,153 (2005); *Southern Company Services, Inc.*, 111 FERC ¶ 61,329 (2005); *AES Warrior Run, Inc. v. Potomac Edison Company d/b/a Allegheny Power*, 106 FERC ¶ 61,181 (2004); *Southwestern Public Service Co.*, 65 FERC ¶ 61,088, at 61,533 (1993).

<sup>28</sup> *Southern*, 877 F.2d at 1073 (citing *Tennessee Gas Pipeline Co. v. FERC*, 871 F.2d 1099, 1109-10 (D.C. Cir. 1988)).

13. Here, the October 20 Rehearing Order affirmed the findings in the June 19 Order and denied rehearing of that order. Deseret's reiteration of arguments previously raised and rejected does not warrant revisiting them again.<sup>29</sup> In these circumstances, Deseret's request for rehearing of the October 20 Rehearing Order is impermissible.

14. Based upon the foregoing we reject Deseret's request for clarification, or in the alternative rehearing, of the October 20 Rehearing Order.

The Commission orders:

Deseret's request for clarification, or in the alternative rehearing, is hereby rejected, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>29</sup> See 18 C.F.R. § 385.713(c)(3) (2014); see also *Keyspan-Ravenswood LLC v. New York Indep. Sys. Operator Inc.*, 119 FERC ¶ 61,319, at n.12 (2007); *Trans Alaska Pipeline Sys.*, 67 FERC ¶ 61,175, at 61,531 (1994).