

151 FERC ¶ 61,170
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PacifiCorp

Docket Nos. ER15-741-000
ER15-741-001

ORDER ACCEPTING PROPOSED NETWORK OPERATING AGREEMENT
AMENDMENT

(Issued May 21, 2015)

1. In this order, we accept PacifiCorp's proposed amendment to the Network Operating Agreement (Network Operating Agreement) between PacifiCorp and its merchant function, PacifiCorp Energy, to be effective February 22, 2015, as requested.

I. Background

2. On December 24, 2014, PacifiCorp filed the proposed amendment to the Network Operating Agreement pursuant to section 205 of the Federal Power Act (FPA).¹ PacifiCorp states that there is a potential conflict between the Commission's policies regarding the designation of network resources and the obligations imposed by the Public Utility Regulatory Policies Act (PURPA)² regarding qualifying facility (QF) power.³ PacifiCorp notes that the Commission's precedent in *Madison Gas & Electric Company v. Wisconsin Power & Light Company*⁴ does not appear to allow a transmission provider to grant new designated network resource requests unless there is sufficient available transfer capability (ATC) to meet that request.⁵ In *Madison*, the Commission also noted

¹ 16 U.S.C. § 824d (2012).

² 16 U.S.C. § 824a-3 (2012).

³ PacifiCorp December 24 Filing at 5.

⁴ *Madison Gas & Elec. Co v. Wisc. Power & Light Co.*, 80 FERC ¶ 61,331 (1997) (*Madison*).

⁵ PacifiCorp December 24 Filing at 4 (citing *Madison*, 80 FERC at 62,103-04).

that a resource could be designated as a substitute “as-available” resource with priority above all non-firm transmission if there is no ATC.⁶

3. PacifiCorp further explains that PURPA requires a utility to purchase, and make firm transmission arrangements for, a QF’s power, and to keep customers indifferent to such QF purchases.⁷ PacifiCorp states that PacifiCorp Energy has historically made these firm transmission arrangements by designating QF power purchase agreements as network resources. PacifiCorp asserts that, when the transmission system is constrained, and constraints cannot be relieved by using planning redispatch, it is required to construct network upgrades to accommodate firm transmission service requests.

4. PacifiCorp states that this appears to put it in the position of having to construct network upgrades that are not justified by economic or reliability reasons.⁸ Specifically, PacifiCorp explains that, because PURPA requires a utility to purchase QF power and make firm transmission arrangements to deliver it even if the QF has chosen to site in a constrained area, but Commission precedent does not allow the designation of a new network resource until sufficient ATC is available, a utility is in the position of having to construct network upgrades to accommodate the PURPA-required QF firm transmission service, even if the utility would not have otherwise constructed those upgrades for economic or reliability reasons.

5. PacifiCorp argues that building these upgrades that are solely to accommodate QFs, and not otherwise cost-justified or necessary for load service or reliability, could run contrary to the Commission’s long-term planning policies and to the mandate that customers should be kept indifferent to QF purchases (i.e. they pay no more than the avoided cost).⁹

II. PacifiCorp Filing

6. PacifiCorp asserts that the proposed amendment to the Network Operating Agreement is designed to address this conflict. The proposed amendment would allow PacifiCorp to grant additional designated network resource applications on behalf of PacifiCorp Energy in order to enable firm delivery from QFs even if there is no ATC, provided that PacifiCorp Energy agrees to operate its portfolio of designated network

⁶ *Madison*, 80 FERC at 62,103-04.

⁷ PacifiCorp December 24 Filing at 4.

⁸ *Id.* at 5.

⁹ *Id.* at 6.

resources in the affected area within system reliability limits and curtail QF power last, even if that is out of economic merit order.¹⁰ PacifiCorp's proposed amendment would allow the designation of network resources in two circumstances: (1) as an interim measure while previously-identified network upgrades are being constructed; and (2) as a longer-term measure where no upgrades will be constructed for purposes of accommodating the QF request(s). PacifiCorp states that the proposed amendment provisions have been developed within the construct of the existing Open Access Transmission Tariff (OATT) planning redispatch option.¹¹

7. PacifiCorp believes that it is appropriate to characterize the proposed operational practice as a form of planning redispatch.¹² PacifiCorp states that the practice under its proposed amendment is distinguished from current OATT processes because, while traditional planning redispatch contemplates delivering designated resources in a different manner, the proposed Network Operating Agreement amendment involves a network customer (in this case, PacifiCorp Energy) agreeing to operate its network resources within certain limits because there is insufficient capacity to accommodate all of the designated network resources without limitation.¹³ PacifiCorp argues that this amendment will allow it to accommodate QF requests in constrained areas without building uneconomic upgrades.¹⁴

8. PacifiCorp asserts that other network customers will remain protected under the proposed protocol because it will only address PacifiCorp Energy's network service. PacifiCorp maintains that the proposal will not affect any other network customer's network allocation, and that all network loads will continue to be served on a firm basis. PacifiCorp states that only PacifiCorp Energy's designated network resources will be subject to the proposed operating protocol, unless another network customer requests similar treatment.¹⁵

9. PacifiCorp states that the proposed Network Operating Agreement amendment includes provisions that: (1) address certain considerations that can be taken into account

¹⁰ *Id.* at 1.

¹¹ *Id.* at 6.

¹² *Id.* at 8.

¹³ *Id.*

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 8.

for the prioritizing of non-QF designated network resources; and (2) clarify that the Network Operating Agreement planning redispatch procedures will apply during normal operating conditions, not system emergency conditions. PacifiCorp states that, with regard to the first, the proposed Network Operating Agreement amendment notes that PacifiCorp Energy can take additional contractual obligations into account in prioritizing the planning redispatch of its non-PURPA designated network resources. PacifiCorp states that, with regard to the second, the proposed Network Operating Agreement amendment makes it clear that the new planning redispatch procedures are different than the Reliability Redispatch Procedures discussed in Section 8.2 of the Network Operating Agreement, or the system emergency operations discussed in section 307 of the Commission's PURPA regulations.¹⁶

III. Notice of Filing and Responsive Pleadings

10. Notice of PacifiCorp's December 24, 2014 filing was published in the *Federal Register*, 80 Fed. Reg. 217 (2015), with interventions and protests due on or before January 14, 2015. None was filed.

11. On February 20, 2015, the Commission staff issued a letter notifying PacifiCorp that its filing was deficient. On March 23, 2015, PacifiCorp submitted a filing in response to the February 20, 2015 deficiency letter. Notice of PacifiCorp's March 23, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 16,669 (2015), with interventions and protests due on or before April 13, 2015. Utah Associated Municipal Power Systems (UAMPS) filed a timely motion to intervene and protest. On April 28, 2015, PacifiCorp filed a motion for leave to answer and answer to the UAMPS protest.

A. Deficiency Letter and Response

12. The deficiency letter asked four questions. First, PacifiCorp was asked to identify the transmission paths on which PacifiCorp Energy's schedules will not exceed the transmission limits prescribed by PacifiCorp and how the limits would be prescribed. In response, PacifiCorp states that its amendment is not limited to a particular line or area of PacifiCorp's system; rather, the amended Network Operating Agreement would apply in any area of PacifiCorp's system where QFs have caused or contributed to transmission constraints that limit PacifiCorp's ability to fully accommodate designated network resource requests. PacifiCorp explains that transmission limits would be prescribed in accordance with PacifiCorp's OATT Attachment C, which sets forth PacifiCorp's ATC methodology.¹⁷

¹⁶ *Id.* at 8-9.

¹⁷ PacifiCorp March 23 Filing at 3.

13. Second, PacifiCorp was asked to provide the amount of must-take QF power that PacifiCorp is currently contractually obligated to deliver, the amount of pending QF interconnection requests, and the transmission paths associated with this generation. In response, PacifiCorp identified the amount of QF generation in each state. With regard to specific transmission path information, PacifiCorp states that the amendment proposal is not limited to a particular line or area of PacifiCorp's system, but notes that in Utah there is a current need to implement the amendment because there has been an influx of QF requests and there is limited ATC.¹⁸

14. Third, PacifiCorp was asked to explain its statement that only PacifiCorp Energy would be subject to the proposed operating protocol, unless another network customer requests similar treatment, and asked how honoring such other customer requests would comply with the Commission's regulations. In response, PacifiCorp states that offering this treatment to other network customers is consistent with the Commission's open access policies. PacifiCorp explains that, if another customer requested a similar amendment to its network operating agreement, PacifiCorp would file a request for approval of the amendment pursuant to section 205 of the FPA, just as it has done with the proposed amendment in this case.¹⁹

15. Fourth, PacifiCorp was asked to clarify the long term solution to the constraints that PacifiCorp believes the proposed amendment addresses. In response, PacifiCorp states that it does not envision its proposal as an interim measure. PacifiCorp asserts that the first option of the proposed Network Operating Agreement amendment is an interim measure to be used until upgrades that have already been identified are constructed, but that the second option is intended to have an indefinite timeline. PacifiCorp explains that, in either case, requests for designation of network resources could be granted immediately, despite the fact that network upgrades have not yet been completed or identified pursuant to the OATT.²⁰

B. Protest

16. UAMPS states that it is an interlocal association and a political subdivision of the State of Utah that provides power pooling, scheduling, resource management, and other electric services to its members, consisting of 44 municipal and other public power systems in eight western states.²¹ UAMPS explains that it is a PacifiCorp transmission

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 5.

²⁰ *Id.* at 6.

²¹ UAMPS Protest at 2.

customer. UAMPS argues that PacifiCorp's proposed amendment to the Network Operating Agreement should be rejected, or at the least suspended and set for hearing.²²

17. UAMPS argues that, if any other network customer can request a similar amendment to its network operating agreement, then the amendment should be proposed in PacifiCorp's generally applicable OATT.²³ UAMPS asserts that neither Order No. 888²⁴ nor PacifiCorp's OATT appears to qualify PacifiCorp's obligation to construct additional capacity when a request for network service requires such construction (and redispatch cannot create sufficient ATC to accommodate the request) on PacifiCorp's unilateral determination that the additions are cost-justified.²⁵

18. UAMPS questions PacifiCorp's assertion that the proposed amendment will not impair transmission service for existing customers. UAMPS notes that, under the amendment, PacifiCorp Energy must curtail other resources if necessary to accommodate its PURPA deliveries without violating system reliability limits. UAMPS asserts that this will alter the amount of generation input on the transmission system for multiple generators, which will alter flows on the system and potentially create new constraints and affect other customers' transmission service use in real time operations.²⁶

19. UAMPS argues that PacifiCorp has not committed to make any adjustments to its planning models in light of the proposed amendment, which makes it possible that a new designated network resource could be denied while a PacifiCorp QF designated network

²² *Id.* at 11.

²³ *Id.* at 3.

²⁴ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

²⁵ UAMPS Protest at 4.

²⁶ *Id.* at 4-5.

resource would be granted. UAMPS asserts that this could have a chilling effect on the addition of new designated network resources in the PacifiCorp footprint.²⁷

20. UAMPS also contends that the proposed amendment should not be accepted without more complete cost justification. UAMPS states that there is no data in PacifiCorp's filing comparing the potential costs of PacifiCorp's proposed redispatch practice under the amendment to the costs of construction of additional facilities to accommodate the desires of PacifiCorp's merchant function.²⁸

C. PacifiCorp Answer

21. PacifiCorp argues that the proposed customer-specific Network Operating Agreement is the appropriate place for the proposed language, not the generally applicable OATT. PacifiCorp asserts that PacifiCorp Energy is the only customer whose PURPA mandatory purchase obligation is likely to trigger the need for unnecessary upgrades and notes that, if UAMPS or any other network customer believes it has particular operational needs that would justify a similar redispatch protocol, PacifiCorp would welcome a discussion regarding incorporating a similar amendment to that customer's network operating agreement.²⁹

22. PacifiCorp asserts that economic considerations are one of the primary factors to be considered in transmission planning.³⁰ PacifiCorp argues that UAMPS does not understand the circumstances under which PacifiCorp will not construct a network upgrade under the proposed amendment. PacifiCorp states that it is not upon PacifiCorp's unilateral determination that an upgrade is or is not cost justified; rather, it is when a QF chooses to site its project in a constrained area and the transmission studies performed in accordance with the OATT process demonstrate that there is insufficient ATC to accommodate the request.³¹

23. In response to UAMPS' concerns that PacifiCorp's curtailment practices pursuant to the proposed amendment could affect other customers' transmission service, PacifiCorp asserts that the proposal will not affect any other network customer's network

²⁷ *Id.* at 5-6.

²⁸ *Id.* at 7.

²⁹ PacifiCorp Answer at 3-4.

³⁰ *Id.* at 4-5.

³¹ *Id.* at 6.

allocation, all network loads will continue to be served on a firm basis, and the physical transmission entitlements of other transmission customers will be preserved.³²

24. PacifiCorp states that it did not provide a comparison of the costs of PacifiCorp's proposed redispatch to the costs of construction of additional facilities because no such comparison can be made with certainty at this time. PacifiCorp explains that it does not know exactly whether, when, and where the Network Operating Agreement amendment protocol will be used, as that depends almost exclusively on where QFs choose to site their projects, whether those projects remain viable and eventually come online, and whether allowing the QF power to flow in a particular constrained area will indeed require other resources to be backed down. With regard to the potential cost of construction of network upgrades, PacifiCorp contends that this amount also necessarily depends on the same QF-driven factors and the specific additional facilities necessary to accommodate those QF requests.³³

IV. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motion to intervene serves to make UAMPS a party to this proceeding.

26. Rule 213(a)(2) of the Commission's Rule 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 will accept PacifiCorp's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

27. We will accept PacifiCorp's proposed amendment to the Network Operating Agreement, to be effective February 22, 2015, as requested. We find that PacifiCorp's proposed amendment is consistent with PURPA. As PacifiCorp acknowledges, Commission precedent requires electric utilities, such as PacifiCorp, to deliver a QF's power on a firm basis and prohibits the curtailment of QF resources except under two very narrow circumstances: (1) system emergencies; and (2) extreme light loading

³² *Id.* at 8-9.

³³ *Id.* at 11-12.

conditions.³⁴ PacifiCorp's proposed amendment complies with these requirements because it would obligate PacifiCorp Energy to curtail the schedules of non-QFs before the schedules of any QFs during normal operating conditions.³⁵

28. PacifiCorp's proposed amendment would, at the same time, also allow its customers to avoid paying for network upgrades when the network upgrades are not justified by economic or reliability needs. In addition, PacifiCorp appropriately proposes to limit the impact of the additional designation of network resources on the generation of other network customers by requiring PacifiCorp Energy to operate its portfolio of designated network resources within its network rights and within transmission system limits.³⁶ Moreover, PacifiCorp represents that the proposed amendment does not affect the transmission capacity reserved for any other existing PacifiCorp transmission customer or any other network customer's network allocation, and that all network loads will continue to be served on a firm basis.³⁷ While the proposed amendment departs from the *Madison* precedent that new designated network resource requests cannot be granted unless there is sufficient ATC, we believe that this departure is justified under the specific circumstances here, given PacifiCorp's commitments that the proposed amendment will not affect the transmission service received by other customers and PacifiCorp Energy's obligation to operate its entire portfolio of designated network resources within its existing network rights.

29. We are not persuaded by UAMPS' arguments that the proposed amendment to the Network Operating Agreement should be rejected or set for trial-type, evidentiary hearing. PacifiCorp Energy commits to operating its network resources within its existing transmission rights. Therefore, the additional designation of network resources

³⁴ See PacifiCorp Answer at 7-8 (citing *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215, at P 38 (2013) ("The Commission has specifically held that...the purchasing utility cannot curtail the QF's energy as if the QF were taking non-firm transmission service on the purchasing utility's system"); 18 C.F.R. § 292.307(b) ("During any system emergency, an electric utility may discontinue: (1) Purchases from a qualifying facility if such purchases would contribute to such emergency"); 18 C.F.R. § 292.304(f); *Entergy Servs., Inc.*, 137 FERC ¶ 61,199, at P 55 (2011) ("In Order No. 69, which implemented section [292.]304(f), the Commission stated that that section was intended to deal with a certain condition which can occur during light loading periods...Section [292.]304(f)...applies only to such low loading scenarios"))).

³⁵ See PacifiCorp December 24 Filing at 9; PacifiCorp Answer at 7-8.

³⁶ See PacifiCorp December 24 Filing at 6.

³⁷ *Id.* at 2, 8.

pursuant to the proposed amendment should not impact ATC or impair the transmission rights of other customers. To the extent generation will be curtailed to accommodate these additional network resources, it will be the generation of PacifiCorp Energy, not the generation of any third party, that will be curtailed. We also disagree with UAMPS that the proposed amendment must be included in PacifiCorp's OATT. PacifiCorp has made it clear that any network customer requesting similar terms would be accommodated through an amendment to its network operating agreement. Finally, we disagree with UAMPS that PacifiCorp's proposal must be supported with a more complete cost justification. Any showing in this regard would be hypothetical, speculative, and not necessary to show that this proposal is just and reasonable.

The Commission orders:

PacifiCorp's proposed Network Operating Agreement amendment is hereby accepted, effective February 22, 2015, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.