

151 FERC ¶ 61,218
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 No. ER15-1524-000

ORDER ACCEPTING AND SUSPENDING TARIFF REVISIONS, AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued June 16, 2015)

1. On April 17, 2015, PacifiCorp filed a proposed amendment to Schedule 10 of its open access transmission tariff (tariff) to reflect an updated transmission system loss factor for real power losses on PacifiCorp's transmission system. PacifiCorp requests that amended Schedule 10 become effective June 1, 2015, to coincide with the effective date of its 2015 rate year. In this order, we accept PacifiCorp's amended Schedule 10, suspend it for five months and make it effective November 16, 2015, subject to refund, and establish hearing and settlement judge procedures.

I. Background

2. PacifiCorp proposed to replace its stated rates with formula rates for network integration transmission service, point-to-point transmission service, and certain ancillary services under its tariff on May 26, 2011, as amended on June 9, 2011. The Commission accepted PacifiCorp's proposal and set it for hearing and settlement judge procedures.¹ Subsequently, on May 23, 2013, the Commission approved a settlement agreement (Settlement) filed by PacifiCorp to resolve all issues in the proceeding involving its 2011 formula rate proposal.² The Settlement included an amended Schedule 10 that included an updated transmission system loss factor of 4.26 percent. Under section 3.6.9 of the

¹ *PacifiCorp*, 136 FERC ¶ 61,092, *reh'g denied*, 137 FERC ¶ 61,147 (2011).

² *PacifiCorp*, 143 FERC ¶ 61,162 (2013).

Settlement, PacifiCorp agreed to file an adjusted transmission system loss factor following the completion of every two segments of its Energy Gateway Project,³ beginning once the segments have been in operation for at least one full calendar year.⁴ The Settlement stipulates that the calculation for the transmission system loss factor must be consistent with the spreadsheet calculation identified in Appendix 16 to the Settlement (Loss Factor Calculation) and be based on PacifiCorp's most recent FERC Form No. 1 data for the prior calendar year.⁵ Furthermore, the Settlement includes a Loss Analysis Methodology in Appendix 17 to be used prospectively in calculating adjustments to PacifiCorp's transmission system loss factor.⁶

Schedule 10 – Transmission System Loss Factor

3. PacifiCorp states that it completed and placed in-service the Populus to Terminal segment of the Energy Gateway Project in November 2010, and subsequently placed in-service the Mona to Oquirrh segment of the Energy Gateway Project in May 2013, and that the Energy Gateway Project has been in commercial operation for over a full calendar year; therefore, PacifiCorp proposes to update its transmission system loss factor as contemplated by the Settlement. Specifically, PacifiCorp proposes to amend Schedule 10 of its tariff to reflect a transmission system loss factor of 4.45 percent, an increase from the current transmission system loss factor of 4.26 percent.

4. PacifiCorp states that it followed the transmission system Loss Factor Calculation and methodology found in Appendices 16 and 17 of the Settlement. PacifiCorp asserts that an increase in total energy losses, an increase in the proportion of transmission sales to ultimate customers in 2014 relative to an increase in distribution sales to ultimate

³ PacifiCorp states the Energy Gateway transmission expansion project is a multi-year, multi-billion dollar transmission expansion plan aimed at adding more than 2,000 MWs of new transmission across the West.

⁴ Transmittal at 2.

⁵ Section 3.6.9 also provides that, once triggered, PacifiCorp's update to its transmission system loss factor will be filed on or before April 1 following the full calendar year of commercial operation for the second of every two Energy Gateway Project segments (or substantially similar transmission segments or a combination thereof), with a request to the Commission that the updated transmission system loss factor be made effective June 1 of the calendar year in which the filing is made. Transmittal at 2.

⁶ Transmittal at 2.

customers, and an increase in off-system sales and purchases, all contributed to the proposed increase of its transmission system loss factor, given the relatively small increase in total system resources of 69 million MWh in 2010 to approximately 70 million MWh in 2014.⁷ PacifiCorp also explains that the calculations it used to derive the updated transmission system loss factor are demonstrated in the Loss Factor Calculation included in this filing, which is consistent with Appendix 16. PacifiCorp also states that, while it “made certain adjustments and assumptions to reflect its transmission system uses since execution of the Settlement, such adjustments and assumptions do not materially alter the methodology agreed upon by the settling parties.”⁸

5. In addition, PacifiCorp states that it calculated the estimated change in annual revenue as if the proposed transmission system loss factor of 4.45 percent had been in effect in 2014 instead of the current transmission system loss factor of 4.26 percent. According to PacifiCorp, the estimated impact on revenue for 2014 resulting from the update is an increase of approximately \$202,334 or around 0.06 percent of total annual revenue for the 12-month period ending December 31, 2014.⁹

6. PacifiCorp requests waiver of the Commission’s notice requirement, pursuant to 18 C.F.R. § 35.11, to permit an effective date for amended Schedule 10 of June 1, 2015. PacifiCorp argues that good cause exists to grant this waiver because the Settlement required the updated transmission system loss factor to be based on PacifiCorp’s 2014 FERC Form No. 1, which was filed the same date as this filing, and because the Settlement required a June 1 effective date. To the extent necessary, PacifiCorp also requests waiver of the full filing requirements of 18 C.F.R. § 35.13, arguing that good cause exists to grant waiver of the full range of information required by section 35.13.¹⁰

II. Notice of Filing and Responsive Pleadings

7. Notice of PacifiCorp’s filing was published in the *Federal Register*, 80 Fed. Reg. 22,732 (2015), with interventions and protests due on or before May 8, 2015. Bonneville Power Administration (Bonneville) filed a timely motion to intervene and comments. Deseret Generation & Transmission Cooperative, Inc. (Deseret) and Utah Associated Municipal Power Systems (Utah Municipal) filed timely motions to intervene

⁷ *Id.* at 3.

⁸ *Id.*

⁹ *Id.* at 5.

¹⁰ *Id.* at 6.

and protests. Powerex Corp. filed a timely motion to intervene. On May 22, 2015, PacifiCorp filed an answer to the comments and protests.

A. Comments and Protests

8. Protestors are generally concerned that PacifiCorp's revised methodology for calculating the transmission system loss factor is not in accordance with Appendices 16 and 17 of the Settlement, and they assert that there is not enough information provided by PacifiCorp to verify that the revisions to the transmission system loss factor methodology are consistent with the terms set forth in Appendix 17 of the Settlement.¹¹

9. Bonneville believes that at least one component of PacifiCorp's transmission system Loss Factor Calculation, the e-Tag query component may contain errors, and states that the information in PacifiCorp's filing is insufficient for Bonneville to determine whether the e-Tag queries have been properly designed and whether they comply with Appendix 17.¹² Deseret and Utah Municipal similarly contend that PacifiCorp should be required to provide its customers with more detail to validate the results of the expanded parameters used in the e-Tag query to generate the data inputs for the transmission system loss factor.¹³ Furthermore, Deseret and Utah Municipal contend that PacifiCorp's analysis of the rate impact of increasing its transmission system loss factor on its transmission customers is flawed and understates the rate impact on transmission customers.¹⁴ Using 2014 invoice data, Deseret estimates that the rate impact of the proposed change is close to \$2,000 to \$5,000 per month, with an annual estimated impacted of \$44,000 per year, depending on usage.¹⁵ Utah Municipal estimates that PacifiCorp's proposed higher transmission system loss factor will increase Utah Municipal's delivered cost of energy by approximately \$180,000 per year.¹⁶ Therefore, Deseret and Utah Municipal conclude that PacifiCorp's proposed tariff revisions result in

¹¹ Bonneville Comments at 7; Deseret Protest at 8; Utah Municipal Protest at 8.

¹² Bonneville Comments at 3.

¹³ See Bonneville Comments at 3-7; Deseret Protest at 5-8; Utah Municipal Protest at 7-8.

¹⁴ See Deseret Protest at 8-9; Utah Municipal Protest at 9.

¹⁵ Deseret Protest at 9.

¹⁶ Utah Municipal Protest at 9.

a rate increase of more than 10 percent, meet the threshold to be considered substantially excessive, and should be suspended for the full five-month period.¹⁷

B. PacifiCorp's Answer

10. PacifiCorp responds by arguing that, as filed, the update to its transmission system loss factor is fully consistent with and complete under the Settlement. According to PacifiCorp, the pleadings filed by Utah Municipal, Bonneville, and Deseret reflect a misunderstanding of the calculations underlying the updated transmission system loss factor and indicate that the additional clarifications provided in PacifiCorp's answer will be useful to clarify the record and eliminate the need for hearing and settlement judge procedures.¹⁸ PacifiCorp contends that the Commission should deny the requests for suspension and further investigation of PacifiCorp's update to its transmission system loss factor, arguing that, while protesters assert that the update will result in an excessive rate increase for transmission customers, protestors are really arguing that the update should be suspended and set for hearing so that they have additional time to verify that PacifiCorp accurately followed the criteria in Appendices 16 and 17 of the Settlement.

11. PacifiCorp also argues that the protestors do not raise issues of material fact to justify a hearing. According to PacifiCorp, the Settlement required PacifiCorp to use an e-Tag query rule similar to the rule set forth in Appendix 17, but PacifiCorp was not required to apply the exact same e-Tag query rule contained in Appendix 17. PacifiCorp also states that, to assuage the concerns of protestors, it is posting on its Open Access Same-Time Information System additional output data and analysis, as well as the results of its e-Tag queries.¹⁹ In addition, PacifiCorp asserts that protestors have not raised a disputed issue of material fact regarding the e-Tag queries, but rather they raise unsubstantiated suspicions. PacifiCorp contends that the fact that data regarding the allocation of losses to distribution customers was not included with its update to the transmission system loss factor does not mean that PacifiCorp failed to follow Appendices 16 and 17 of the Settlement.

¹⁷ Deseret Protest at 10-11; Utah Municipal Protest at 9 (citing *West Texas Utilities Co.*, 18 FERC ¶ 61,189, at 61,374 (1982)).

¹⁸ PacifiCorp Answer at 4.

¹⁹ *Id.* at 7.

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

13. 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 will accept PacifiCorp's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

Hearing and Settlement Judge Procedures

14. We find that PacifiCorp's proposed amendment to Schedule 10 raises material issues of fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

15. Our preliminary analysis indicates that PacifiCorp's proposed amendment to Schedule 10 has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. For instance, protesting parties have raised valid concerns regarding adjustments to the e-Tag queries PacifiCorp used in developing its Loss Factor Calculation and whether these adjustments are in keeping with the Settlement. These concerns are better addressed in a forum that allows for discovery. Therefore, we will accept PacifiCorp's amended Schedule 10 for filing, suspend it for five months, to become effective November 16, 2015, subject to refund and set it for hearing and settlement judge procedures.

16. In *West Texas Utilities Co.*,²⁰ the Commission explained that, when its preliminary examination indicates that proposed rates may be unjust and unreasonable and may be substantially excessive, as defined in *West Texas Utilities Co.*, it would generally impose a five-month suspension. In this proceeding, we find that PacifiCorp's proposed amendment to Schedule 10 may yield substantially excessive rates. Accordingly, we will suspend PacifiCorp's proposed amendment to Schedule 10 for five months and set PacifiCorp's proposed rates for hearing and settlement judge procedures, as ordered below.

²⁰ 18 FERC ¶ 61,189 (1982).

17. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²¹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.²² The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) PacifiCorp's proposed amendment to Schedule 10 of its Tariff is hereby accepted for filing and suspended for five months, to become effective November 16, 2015, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure, and the regulations under the Federal Power Act (18 C.F.R. Part I), a public hearing shall be held concerning PacifiCorp's tariff revisions. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), the Chief Administrative Law Judge is directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates

²¹ 18 C.F.R. § 385.603 (2014).

²² If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and with the Chief Judge on the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.