

151 FERC ¶ 61,261
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. ER14-1578-003
ER14-1578-004

ORDER ACCEPTING COMPLIANCE FILINGS

(Issued June 26, 2015)

1. On November 5, 2014, PacifiCorp submitted a compliance filing (November 5 Compliance Filing) to amend Attachment T of its Open Access Transmission Tariff (OATT) to address the charge for unauthorized use of transmission service under OATT Schedule 11 (Unauthorized Use of Transmission Service) as directed in the Commission's October 20, 2014 order in this proceeding (October 20 Order).¹ On November 10, 2014, PacifiCorp submitted an additional compliance filing (November 10 Compliance Filing) (collectively, Compliance Filings) to establish November 1, 2014 as the actual effective date for certain provisions of its OATT implemented to facilitate PacifiCorp's participation in the Energy Imbalance Market (EIM) administered by the California Independent System Operator Corporation (CAISO).² In this order, we accept PacifiCorp's Compliance Filings, effective November 1, 2014, as requested.

¹ *PacifiCorp*, 149 FERC ¶ 61,057 (2014). The October 20 Order accepted in part, subject to a further compliance filing, and rejected in part a previous compliance filing that PacifiCorp submitted pursuant to the Commission's June 19, 2014 order in this proceeding, which conditionally accepted in part and rejected in part proposed revisions to PacifiCorp's OATT. *PacifiCorp*, 147 FERC ¶ 61,227 (2014) (June 19 Order). The October 20 Order also denied requests for rehearing and clarification of the June 19 Order.

² *See PacifiCorp*, 149 FERC ¶ 61,006 (2014) (October 2 Order) (Commission letter order directing PacifiCorp to submit a compliance filing with revised tariff sheets identifying the actual effective date of the provisions for which PacifiCorp requested an effective date of the later of October 1, 2014 or the implementation of the EIM).

I. Background

2. On March 25, 2014, PacifiCorp filed proposed OATT revisions to enable its two balancing authority areas (BAAs) to participate in the expanded EIM being developed by CAISO. Under the EIM, entities with BAAs outside of CAISO may voluntarily take part in the imbalance energy portion of the CAISO locational marginal price-based real-time market alongside participants from within the CAISO BAA.³ 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, subject to further modifications, and rejected in part PacifiCorp's proposed OATT revisions, which included a new Attachment T, setting forth the roles and responsibilities of customers and PacifiCorp under the EIM. The June 19 Order granted PacifiCorp's request for a phased-in approach for various sections of its Attachment T, including PacifiCorp's request that provisions related to the actual implementation of the EIM become effective on September 23, 2014, and that provisions related to the settlement of charges associated with the EIM and additional aspects related to implementation of the EIM become effective on the later of October 1, 2014, or the date on which CAISO and PacifiCorp mutually agree to commence the EIM.⁴ As relevant here, 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.⁵ 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.⁶

4. On July 18, 2014, PacifiCorp submitted tariff revisions in Docket No. ER14-1578-001 to comply with the June 19 Order (July 18 Compliance Filing). In the July 18 Compliance Filing, PacifiCorp proposed to remove all language from its OATT that expressly or indirectly concerned the assessment of transmission charges to PacifiCorp EIM participating resources for any EIM transactions.

³ *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,231 (2014), *order on rehearing, clarification, and compliance*, 149 FERC ¶ 61,058 (2014) (conditionally accepting proposed tariff revisions to implement the EIM).

⁴ June 19 Order, 147 FERC ¶ 61,227 at P 71.

⁵ *Id.* P 130.

⁶ *Id.* P 144.

5. Subsequently, on September 16, 2014, PacifiCorp filed a motion (September 16 Motion) to modify the effective dates of the EIM OATT provisions, including the provisions accepted in the June 19 Order and the provisions then pending in the July 18 Compliance Filing.⁷ Specifically, PacifiCorp requested that the Commission extend the effective date of these provisions from September 23, 2014 to October 8, 2014, in light of CAISO's and PacifiCorp's mutual decision to implement the EIM in planned stages with full operation of the EIM anticipated on November 1, 2014.

6. In the October 2 Order, the Commission granted PacifiCorp's request to extend the effective date of the relevant provisions from September 23, 2014 to October 8, 2014, subject to the outcome of the then-pending proceeding regarding PacifiCorp's July 18 Compliance Filing in Docket No. ER14-1578-001. The October 2 Order also granted a limited waiver of the provisions to the extent they already took effect for a short period prior to issuance of the October 2 Order.⁸ The Commission directed PacifiCorp to submit a compliance filing with revised tariff sheets, identifying the actual effective date of the provisions for which PacifiCorp requested an effective date of either the later of October 1, or the implementation of the EIM, within 10 days after full activation of the EIM.⁹

7. In the October 20 Order, the Commission, in relevant part to this order, accepted in part and rejected in part the July 18 Compliance Filing.¹⁰ Specifically, the October 20 Order found that PacifiCorp's elimination of references to Schedule 11 (Unauthorized Use of Transmission Service) in section 8.7 of Attachment T exceeded the Commission's directive in the June 19 Order, and therefore rejected that portion of PacifiCorp's proposed revisions.¹¹ The Commission found that PacifiCorp's proposal created an

⁷ The September 16 Motion was also filed in Docket No. ER14-2544-000, as PacifiCorp had previously filed additional proposed revisions to Attachment T in that docket for which it requested an effective date of September 23, 2014. *See PacifiCorp*, 148 FERC ¶ 61,240, at PP 34-36 (2014) (accepting, subject to a further compliance filing, proposed amendments to OATT Attachment T regarding the sub-allocation of operating reserve obligation charges and payments from CAISO, as market operator of the EIM, and submission of forecast data by non-participating resources that are also variable energy resources).

⁸ October 2 Order, 149 FERC ¶ 61,006 at P 7.

⁹ *Id.* P 8.

¹⁰ On February 9, 2015, the Commission issued an order rejecting a request for rehearing of the October 20 Order. *PacifiCorp*, 150 FERC ¶ 61,084 (2015).

¹¹ October 20 Order, 149 FERC ¶ 61,057 at P 67.

ambiguity on how Schedule 11 would work, particularly if an EIM resource was dispatching itself beyond the instructions of CAISO.¹² Thus, the October 20 Order directed 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.¹³

8. Finally, the Commission directed PacifiCorp to specify that any ancillary service charges applicable to Schedule 11 unauthorized use charges will include PacifiCorp's Schedule 1 (Scheduling, System Control and Dispatch Service) to ensure that transmission customers will not be able to lean on PacifiCorp's transmission system and the EIM by running uninstructed and avoid paying EIM fees.¹⁴

9. PacifiCorp commenced financially binding participation in the EIM on November 1, 2014, following a one-month period of parallel operation, during which CAISO ran a real-time representation of the EIM in a parallel but non-binding production environment.

II. Compliance Filings

A. November 5 Compliance Filing

10. To comply with the October 20 Order, PacifiCorp proposes to amend section 8.7 of Attachment T of its OATT to provide that the unauthorized transmission use charges in Schedule 11 of its OATT will apply to any amount of actual metered generation in an operating hour that exceeds the sum of both: (1) the greatest positive dispatch operating point or manual dispatch the participating resource received during the operating hour, and (2) the transmission customer's reserved capacity.¹⁵ PacifiCorp notes that this language differs slightly from the language originally proposed by PacifiCorp on this issue in its initial filing of EIM OATT revisions, but asserts that the proposed language reflects stakeholder input and more accurately reflects the conditions under which an unauthorized use of the transmission system should be assessed unauthorized transmission use penalties under the EIM.¹⁶ PacifiCorp contends that by employing the

¹² *Id.* P 68.

¹³ *Id.* P 67.

¹⁴ *Id.* P 69.

¹⁵ November 5 Compliance Filing at 3.

¹⁶ *Id.* at 4.

greatest positive dispatch operating point or manual dispatch of the resource, as opposed to using an average of these points, PacifiCorp is effectively providing a “tolerance band” that will provide transmission customers with a reasonable margin for generator output error. PacifiCorp states that it considered applying an explicit tolerance band percentage to actual metered generation compared to reserved capacity plus dispatch operating point or manual dispatch amounts. However, PacifiCorp states that it determined not to do so to ensure consistency between transmission customers with resources participating in the EIM and transmission customers with non-participating resources, which are not subject to a tolerance band for Schedule 11 charges with respect to their reserved capacity under PacifiCorp’s OATT.¹⁷

11. PacifiCorp asserts that, consistent with the Commission’s directives in the October 20 Order, it has also specified in section 8.7 of OATT Attachment T that any ancillary service charges that are applicable to Schedule 11 charges will apply and will include Schedule 1 of PacifiCorp’s OATT.¹⁸ PacifiCorp asserts that this language comports with the manner in which it currently calculates charges applicable to Schedule 11 with regard to unauthorized use of transmission service.

12. PacifiCorp requests an effective date of November 1, 2014 for these revisions.¹⁹

B. November 10 Compliance Filing

13. To comply with the October 2 Order, the November 10 Compliance Filing revises the tariff sheets for which PacifiCorp previously requested an effective date of either the later of October 1, 2014, or the implementation of the EIM, to reflect the actual November 1, 2014 effective date for these provisions.²⁰ In addition, PacifiCorp proposes to revise section 1 of Attachment T of its OATT to reflect both the extension of the September 23, 2014 effective date for certain provisions to October 8, 2014, and to reflect November 1, 2014 as the date of full EIM market operations.²¹

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 5.

²⁰ November 10 Compliance Filing at 4-5.

²¹ *Id.* at 4.

III. Notice of Filings and Responsive Pleadings

A. November 5 Compliance Filing

14. Notice of PacifiCorp's November 5 Compliance Filing was published in the *Federal Register*, 79 Fed. Reg. 68,229 (2014), with interventions and protests due on or before November 26, 2014. Timely comments were filed by Western Power Trading Forum (WPTF) and Powerex Corporation (Powerex). PacifiCorp filed an answer to the comments on December 10, 2014.

15. WPTF supports PacifiCorp's proposed language in the November 5 Compliance Filing implementing the Commission's directive to apply Schedule 11 charges to resources participating in the EIM.²² In particular, WPTF asserts that PacifiCorp's proposal to assess Schedule 11 penalties based on the greatest positive dispatch instruction during the hour is appropriate because the operational nature of generators may prevent them from precisely meeting five-minute dispatch instructions.²³ According to WPTF, PacifiCorp's proposed language for applying Schedule 11 penalties to participating resources will help ensure that generators acting in good faith to comply with EIM dispatch instructions will not be subject to Schedule 11 penalties, while also ensuring comparable treatment between EIM participating and non-participating resources.²⁴

16. However, WPTF seeks clarification regarding the application of the Schedule 11 charges to EIM participating resources that sell to PacifiCorp, or third parties, at the generator bus. Specifically, WPTF seeks clarification that in situations where a generator is not being dispatched by the EIM but is selling generation in the bilateral market at the generator bus (and using the purchaser's transmission rights to transmit that power) the generator will not be charged for unauthorized use under Schedule 11. WPTF contends that under these circumstances the generator would have neither transmission rights nor EIM dispatch instructions for purposes of calculating Schedule 11 penalties, and therefore should not be subject to Schedule 11 penalties as long as the generation output is covered by another transmission customer's transmission reservation.²⁵

²² WPTF Comments at 3-4.

²³ *Id.* at 3.

²⁴ *Id.* at 3-4.

²⁵ *Id.* at 4.

17. Powerex asserts that PacifiCorp's proposal to base the assessment of Schedule 11 charges upon the greatest dispatch operating point or manual dispatch received within an hour is inconsistent with the Commission's directives in the October 20 Rehearing Order.²⁶ According to Powerex, the Commission's directive in the October 20 Rehearing Order was intended to ensure that generators comply with EIM dispatch instructions by applying Schedule 11 charges any time that a generator's output exceeds the sum of its transmission reservation and the EIM dispatch instruction received in a particular interval.²⁷ By contrast, Powerex asserts that PacifiCorp's proposal would permit resources to persistently exceed EIM dispatch instructions and their own transmission reservations without triggering the application of Schedule 11 charges as long as their output in a given interval does not exceed the sum of their transmission reservation and the highest dispatch instruction received in *any interval* during that operating hour. Using the example presented by the Commission in the October 20 Order,²⁸ Powerex argues that a transmission customer that schedules 100 MW from its resource and submits a 10 MW bid into the EIM (and is then selected and dispatched by CAISO through the EIM for 10 MW only for one dispatch interval) could produce 110 MW in every single dispatch interval throughout the operating hour—effectively ignoring CAISO's dispatch and producing the additional 10 MW as uninstructed energy—without triggering the application of Schedule 11 charges.²⁹

18. Powerex argues that PacifiCorp has not justified its alleged departure from the directive in the October 20 Order.³⁰ Powerex contends that compliance filings must be limited to the specific directives in the relevant Commission order, and that the Commission did not authorize PacifiCorp to include a margin of error in applying Schedule 11 charges.³¹ Powerex further asserts that the Commission has repeatedly declined requests to limit the application of unreserved use charges based upon claims

²⁶ Powerex Comments at 3.

²⁷ *Id.* at 4.

²⁸ October 20 Order, 149 FERC ¶ 61,057 at P 68 n.132.

²⁹ Powerex Comments at 5.

³⁰ *Id.* at 5-6.

³¹ *Id.* (citing *Pac. Gas & Elec. Co.*, 109 FERC ¶ 61,336, at P 5 (2004)).

regarding the variability of generation.³² Powerex requests that the Commission reject the November 5 Compliance Filing and direct PacifiCorp to revise section 8.7 of Attachment T so that a transmission customer will be subject to Schedule 11 charges for any five-minute interval in which the actual metered output of its resource exceeds the sum of its transmission reservation and the dispatch operating point or manual dispatch received by the resource in that particular interval.³³

19. PacifiCorp clarifies in its answer, per WPTF's request, that including EIM transactions in its assessment of unauthorized use charges will not alter the manner in which it otherwise applies Schedule 11 of its OATT.³⁴ In particular, PacifiCorp clarifies that it will continue to compile all reservations sourced from the generator when calculating unreserved use, and that a generator will not be subject to Schedule 11 charges if its generation output is covered by one or more transmission customer reservations.³⁵

20. In response to Powerex, PacifiCorp maintains that its proposal in the November 5 Compliance Filing complies with the Commission's directive in the October 20 Order to develop a proposal applying Schedule 11 penalties to transmission service that exceeds both a transmission customer's reserved capacity and an amount attributable to EIM-directed dispatch of a resource.³⁶ PacifiCorp contends that its inclusion of a margin for generator output error is reasonable.³⁷ Because Schedule 11 charges are currently assessed based on hourly increments due to the hourly nature of transmission

³² *Id.* at 6-7 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 448 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009); *Granite Reliable Power, LLC*, 137 FERC ¶ 61,187 (2011) (*Granite Reliable Power*)).

³³ *Id.* at 7.

³⁴ PacifiCorp Answer at 4-5.

³⁵ *Id.* at 5.

³⁶ *Id.* at 5-8.

³⁷ *Id.* at 6-7.

reservations, PacifiCorp argues that Powerex's request to assess these charges based on each five-minute interval is overly and unnecessarily precise.³⁸

21. PacifiCorp asserts that the precedent cited by Powerex to claim that the Commission has rejected proposals limiting the application of unreserved use charges based on variability of generation is inapposite, as the Commission indicated in the June 19 Order that resources in PacifiCorp's BAAs participating in the EIM should be treated similarly to participating resources in CAISO's BAA to the extent feasible.³⁹ PacifiCorp states that generators within CAISO's BAA are not exposed to any unreserved use charges, and contends that its proposal appropriately recognizes the Commission's concerns that resources not have incentives to produce beyond their committed use and EIM dispatch, while also not imposing unduly restrictive charges that may discourage participation in the EIM.⁴⁰

B. November 10 Compliance Filing

22. Notice of PacifiCorp's November 10 Compliance Filing was published in the *Federal Register*, 79 Fed. Reg. 68,675 (2014), with interventions and protests due on or before December 1, 2014. None were filed.

IV. Discussion

A. Procedural Matters

23. 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 in Docket No. ER14-1578-003 because it has provided information that assisted us in our decision-making process.

B. Commission Determination

24. We accept the Compliance Filings, effective November 1, 2014, as requested, because they comply with the relevant directives in the October 2 Order and the October 20 Order.

³⁸ *Id.* at 7.

³⁹ *Id.* (citing June 19 Order, 147 FERC ¶ 61,227 at P 146).

⁴⁰ *Id.*

25. We reject Powerex's arguments that the November 5 Filing exceeds the directives in the October 20 Order. In the October 20 Order, the Commission required that PacifiCorp apply Schedule 11 penalties to any amount of transmission service used beyond both a transmission customer's reservation plus the amount of its EIM resource directed dispatch; PacifiCorp's November 5 Compliance Filing satisfactorily accomplishes that directive.⁴¹ Powerex's request to assess the Schedule 11 penalty measured against every five-minute dispatch interval seeks to introduce a level of specificity that extends the plain meaning of the directive and the Commission's intent.

26. We are not persuaded by Powerex's contention that the proposed language in section 8.7 of Attachment T will permit a customer to run uninstructed without penalty. Powerex builds upon the example set forth in footnote 132 of the October 20 Order to support this contention,⁴² arguing that a customer could receive a dispatch instruction for 10 MW in the first interval of the operating hour and no subsequent dispatch instructions for the remainder of the hour yet continue to produce 10 MW for the remainder of the operating hour, thereby collecting uninstructed energy payments without penalty.⁴³ We are not persuaded by Powerex's argument.

27. Returning to the example from the October 20 Order, consider a transmission customer that has a 100 MW transmission reservation and a 125 MW generating resource. Absent an EIM dispatch instruction, if the transmission customer were to generate 1 MW over its 100 MW reservation for any part of the hour, that customer would be assessed a penalty charge under Schedule 11 of PacifiCorp's OATT for the 1 MW that exceeded the reservation amount. Consistent with the October 20 Order, if that customer were to receive an EIM dispatch instruction of 10 MW in one interval and generates that 10 MW and an *additional* 10 MW beyond the dispatch instruction in that same interval, the customer would be assessed a Schedule 11 unauthorized use charge under revised section 8.7 of Attachment T for the 10 MW that exceeds the dispatch instruction. Measuring the dispatch deviation against the greatest dispatch instruction received for the hour appropriately applies Schedule 11 to the EIM context by treating EIM dispatch instructions like a transmission reservation, which is an hourly product.

⁴¹ See October 20 Rehearing Order, 149 FERC ¶ 61,057 at PP 67-68.

⁴² *Id.* P 68 n.132 (“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.”).

⁴³ Powerex Comments at 5.

Thus, PacifiCorp's proposal is both consistent with the October 20 Order and Schedule 11 of its OATT.

28. By contrast, Powerex's proposal to assess Schedule 11 penalties against any positive deviation for each dispatch interval would require a significant change to Schedule 11, with potentially punitive consequences. Under Powerex's proposal, each dispatch interval would essentially be treated as a five-minute transmission reservation, which may not be technically feasible for some generators to comply with on a five-minute basis. For instance, assume that a generator receives an EIM dispatch signal to generate 20 MW in the first interval of the operating hour and timely produces 20 MW. In the next dispatch interval, the same generator is instructed to produce only 10 MW but is unable to reduce its output by a full 10 MW in five minutes due to the operational nature of that resource and its inherent imprecision and therefore produces 11 MW. This generator would be assessed a Schedule 11 penalty under Powerex's proposal despite its good faith efforts to comply with the dispatch instruction. If that same generator was dispatched up and down through the operating hour, it could be penalized multiple times over the hour.⁴⁴ This result could have a chilling effect on participation in the EIM and was not intended by the Commission's directive in the October 20 Order.

29. We also disagree with Powerex's characterization of PacifiCorp's proposal as a limitation on unreserved penalty charges. The examples Powerex cites of the Commission rejecting requests to exempt intermittent resources from the application of unreserved use charges are inapposite. PacifiCorp's proposal does not exempt any transmission customer from Schedule 11 charges; it simply sets the transmission reservation quantity to the greatest dispatch point for that hour when measuring the actual use of the transmission system by that customer. The Commission has long recognized the variability of generation output over the course of an hour and has implemented deviation bands in Schedule 9 of the Commission's *pro forma* OATT to account for the fact that generation output can vary over the course of an hour.⁴⁵ PacifiCorp's proposal appropriately ensures that resources "are able to reserve sufficient transmission capacity to deliver their full output in the event it is produced,"⁴⁶ which in this instance is the greatest positive dispatch point in the operating hour.

⁴⁴ Powerex's proposal also is contrary to the application of Schedule 11, which in the instance of an unreserved transmission use that occurs for less than an hour, the penalty is applied one-time to the greatest deviation over the reserved capacity and not to each instance in the hour that the customer exceeds its transmission reservation.

⁴⁵ Order No. 890, FERC Stats. and Regs. ¶ 31,241 at P 667.

⁴⁶ *Granite Reliable Power*, 137 FERC ¶ 61,187 at P 14.

30. Finally, we note that PacifiCorp clarifies in its answer, per WPTF's request, that including EIM transactions in its assessment of unauthorized use charges will not alter the manner in which it otherwise applies Schedule 11 of its OATT. We find PacifiCorp's explanation to be sufficient and will not direct PacifiCorp to submit an additional compliance filing on that issue.

The Commission orders:

PacifiCorp's Compliance Filings are hereby accepted, effective November 1, 2014, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.