

155 FERC ¶ 61,093
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

April 22, 2016

In Reply Refer To:
Nevada Power Company
Sierra Pacific Power Company
PacifiCorp
Docket Nos. ER16-604-000
ER16-605-000
ER16-606-000
ER10-3246-005

Troutman Sanders LLP
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Washington, D.C. 20004

Attention: Christopher R. Jones

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166

Attention: Jeffrey M. Jakubiak

Dear Mr. Jones and Mr. Jakubiak:

1. On December 21, 2015, Nevada Power Company and Sierra Pacific Power Company (collectively NV Energy), and PacifiCorp (together with NV Energy, Berkshire EIM Sellers) filed revised market-based rate tariffs in compliance with the Commission's order accepting in part, subject to condition, the Berkshire EIM Sellers' revised market-based rate tariffs to reflect NV Energy's joining of the Energy Imbalance Market (EIM) administered by the California Independent System Operator Corporation (CAISO).¹ The Berkshire EIM Sellers request that the Commission accept their tariffs effective December 1, 2015.

¹ *Nevada Power Company*, 153 FERC ¶ 61,206 (2015) (EIM MBR Order).

2. PacifiCorp previously filed a notice of change in status on July 27, 2015, in response to the Commission's June 19, 2014 order,² and to notify the Commission that on November 1, 2014, it began participating in the EIM administered by CAISO.³
3. Notice of the Berkshire EIM Sellers' December 21, 2015 filings was published in the *Federal Register*,⁴ with interventions and protests due on or before January 11, 2016. Timely motions to intervene were filed in all three dockets by Modesto Irrigation District, the Cities of Santa Clara, California and Redding, California, Western Power Trading Forum, and Los Angeles Department of Water & Power.
4. Notice of PacifiCorp's July 27, 2015 filing was published in the *Federal Register*,⁵ with interventions and protests due on or before August 17, 2015. Timely motions to intervene were filed by NV Energy, Transmission Agency of Northern California, Modesto Irrigation District, and the Cities of Santa Clara, California and Redding California.
5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R § 385.214 (2015), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to those proceedings.

² See *PacifiCorp*, 147 FERC ¶ 61,227, at P 206 (2014) (conditionally accepting, in part, subject to further modifications, and rejecting, in part, PacifiCorp's proposed Open Access Transmission Tariff revisions related to PacifiCorp joining the EIM and directing PacifiCorp to make a market-based rate change of status filing with a market power study within nine months of the launch of the EIM so that the Commission can assess whether PacifiCorp has market power in the EIM).

³ The change in status contained a market power analysis of the previously existing EIM geographic footprint, consisting of the CAISO market, and the PacifiCorp-West, and PacifiCorp-East balancing authority areas (3-BAA EIM footprint). However, on the same day it submitted the change in status filing, PacifiCorp, along with NV Energy, submitted a market power analysis of the expanded geographic footprint, which also included the NV Energy balancing authority area (4-BAA EIM footprint). The Commission addressed the market power analysis of the 4-BAA EIM footprint in the EIM MBR order.

⁴ 80 Fed. Reg. 81,309 (2015).

⁵ 80 Fed. Reg. 45,971 (2015).

6. In the EIM MBR Order, as a condition of approving the Berkshire EIM Sellers' participation in the EIM at market-based rates, the Commission required the Berkshire EIM Sellers to submit compliance filings to propose revised language for their market-based rate tariffs to reflect that their EIM bids will be limited at all times to the Default Energy Bid calculated in accordance with the Variable Cost or Negotiated Rate Options provided in the CAISO tariff.⁶ Further, the Commission ordered the Berkshire EIM Sellers to remove, as unnecessary, language regarding affiliate sales from their tariffs.⁷

7. In addition to the changes described above, each of the Berkshire EIM Sellers include the following language in its revised market-based rate tariff: “[i]n the event that data on the CAISO calculation of the Default Energy Bid is not available in a timely manner to the Seller for the applicable period, the Default Energy Bid for the same period from the preceding day shall govern for purposes of this provision.” The Berkshire EIM Sellers explain that they are unable to foreclose the possibility of a system failure of either CAISO or their systems, causing delay in publishing and/or receiving the Default Energy Bid calculation, and therefore need an objective data point to use in their bids in those situations without fear of a tariff violation.

8. The Commission accepts the market-based rate tariffs, subject to condition, as discussed below.⁸ In the event that any of the Berkshire EIM Sellers need to use the preceding day's Default Energy Bids to participate in the EIM, that Berkshire EIM Seller must make a posting on its respective Open Access Same-Time Information System (OASIS) website.⁹ This is necessary to maintain transparency. Further, the Commission directs the Berkshire EIM Sellers to submit a compliance filing within 30 days from issuance of this order proposing revised language for their market-based rate tariffs that reflects this condition.

⁶ EIM MBR Order, 153 FERC ¶ 61,206 at P 56.

⁷ *Id.* P 62.

⁸ The Commission can revise a proposal filed under section 205 of the FPA as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

⁹ This OASIS posting may be a simple acknowledgment that it had to use the previous day's Default Energy Bid.

9. Finally, the Commission finds that PacifiCorp's July 27, 2015 change in status filing concerning the 3-BAA EIM footprint has been overtaken by events through the expansion of the EIM and PacifiCorp's subsequent market-based rate tariff filings. Accordingly, the Commission rejects the filing as moot, and terminates Docket No. ER10-3246-005.

By direction of the Commission.

Kimberly D. Bose,
Secretary.