

160 FERC ¶ 61,131
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

Portland General Electric Company

Docket Nos. ER10-2249-007
ER17-1693-000

ORDER ON MARKET POWER ANALYSIS, NOTICE OF CHANGE IN STATUS,
AND MARKET-BASED RATE TARIFF CHANGES

(Issued September 28, 2017)

1. On June 16, 2017, Portland General Electric Company (Portland) filed a notice of change in status, with an accompanying market power analysis, in Docket No. ER10-2249-007, and requested authorization to transact at market-based rates in the Energy Imbalance Market (EIM) administered by California Independent System Operator Corporation (CAISO). Separately, on May 26, 2017, Portland filed proposed revisions to its market-based rate tariff to reflect its participation in the EIM in Docket No. ER17-1693-000. On July 25, 2017, pursuant to the authority delegated by the Commission's February 3, 2017 Order Delegating Further Authority to Staff in Absence of Quorum,¹ the proposed tariff revisions were accepted for filing, suspended for a nominal period, to become effective July 26, 2017, as requested, subject to further refund and further Commission order.² In this further order, we accept Portland's market-based rate tariff filing, effective July 26, 2017. We also accept Portland's change in status filing and authorize Portland to transact at market-based rates in the EIM.

I. Background

A. Portland and the EIM

2. Portland is a regulated, vertically integrated electric utility located in the Western Electricity Coordinating Council and has an Open Access Transmission Tariff on file

¹ *Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135 (2017).

² *Portland General Electric Co.*, 160 FERC ¶ 62,074 (2017) (delegated letter order).

with the Commission.³ Portland is using a subset of its resources, totaling approximately 3,000 MW, to participate in the EIM. Portland states that it is authorized by the Commission to sell energy and capacity at market-based rates in all U.S. markets except for the Portland balancing authority area.⁴

3. The EIM enables entities with balancing authority areas outside of CAISO to take part in the real-time economic energy dispatch portion of the CAISO locational marginal price (LMP)-based electricity market alongside participants from within the CAISO market.⁵ Portland states that it anticipates commencing financially binding EIM operations on October 1, 2017. At that time, in addition to the Portland balancing authority area, the EIM footprint will include the CAISO market, as well as the Arizona Public Service Company, Puget Sound Energy, Inc. (Puget), PacifiCorp-East, PacifiCorp-West (PACW), and NV Energy balancing authority areas (7-BAA footprint).

4. Portland states that it expects that EIM transfers will occur directly between the PACW and Portland balancing authority areas and between the Portland balancing authority area and CAISO using transmission on either Bonneville Power Administration's or Portland's systems, in addition to Portland's rights on the California-Oregon Intertie.

B. Portland's Filings

5. In its June 16, 2017 change in status filing, Portland submits a market power analysis that examines Portland's participation in the 7-BAA footprint utilizing the Commission's two indicative horizontal market screens (the pivotal supplier screen and the wholesale market share screen), as modified to reflect the particular circumstances of the EIM.

6. Portland submits the pivotal supplier and wholesale market share screens for the 7-BAA footprint, which include sensitivity studies using varying de-rating methodologies for hydroelectric and wind units. Portland indicates that it made three adjustments to the standard indicative screen format to fit the characteristics of the EIM. Specifically, Portland: (1) accounted for the existence of participating and non-participating

³ *Puget Sound Energy, Inc.*, Docket No. ER12-409-000 (Jan. 6, 2012) (delegated letter order).

⁴ June 16, 2017 Filing at 3 (citing *Portland Gen. Elec. Co.*, Docket No. ER10-2249-006, *et al.* (Dec. 1, 2016) (delegated letter order)).

⁵ *Cal. Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,231, *order on reh'g, clarification and compliance*, 149 FERC ¶ 61,058 (2014).

resources; (2) adjusted the load metric used to determine the amount of generation committed to serve an entity's customers' demand to reflect base schedule amounts, rather than actual load; and (3) calculated expected demand for imbalance energy during the time of the system peak instead of the proxy for wholesale load used in the pivotal supplier screen.⁶ Portland also submits an alternative, "merit order," set of wholesale market share screen analyses that accounts for the economics of generating facilities where the lowest cost resources are assumed to be used to serve base schedules. Portland represents that it passes both the pivotal supplier screen and the market share screen in all sensitivity analyses for the 7-BAA footprint.

7. Portland also states that it will lack vertical market power in the EIM because Portland's transmission facilities are subject to the terms and conditions of a Commission-approved Open Access Transmission Tariff. Further, Portland states that it does not have the ability to erect other barriers to entry by competing suppliers.

8. Portland provides an analysis purporting to demonstrate that the Portland balancing authority area will not be a submarket of the 7-BAA footprint because sufficient firm, unconstrained transmission will be available to ensure a competitive supply of imported generation to meet the demand for imbalance energy in the Portland balancing authority area. In its analysis, Portland uses a December 2014 to November 2015 study period to estimate the demand for imbalance energy in the Portland balancing authority area by comparing actual load data for the Portland balancing authority area to the forecast of its hourly load.⁷ Portland states that inbound EIM transfers will take place on (1) the PACW to Portland path, on which Portland's merchant holds 276 MW of firm transmission rights, 200 MW of which it has committed for EIM transfers,⁸ and (2) the CAISO to Portland path, on which Portland holds several long-term firm transmission

⁶ These adjustments are consistent with the adjustments made by Puget in its notice of change in status filing.

⁷ Specifically, Portland aggregated 1-minute load data on the actual load in the Portland balancing authority area to calculate 15-minute actual load values. The hour-ahead load forecast was evenly spread to each of the 15-minute periods in the subsequent hour. For each 15-minute interval, the calculated 15-minute actual load value was compared to the 15-minute forecast to estimate demand for imbalance energy.

⁸ Portland's merchant function's remaining 76 MW, as well as any additional Available Transfer Capability, will be made available for EIM transfers.

rights.⁹ Portland argues that based on the results of its analysis, the demand for imbalance energy in the Portland balancing authority area will, in most hours, be significantly less than Portland's 200 MW firm transmission dedicated to inbound EIM transactions.

9. Specifically, Portland finds that the mean absolute value of imbalance demand in the Portland balancing authority area in the study period was 45 MW and estimates that demand would be between -117 and 117 MW in 95 percent of all 15-minute intervals. Further, Portland estimates that EIM demand would be expected to exceed 200 MW in either direction in only 0.077 percent of all periods and would be expected to exceed 200 MW into the Portland BAA in only 0.039 percent of periods.¹⁰ Portland adds that an analysis of the congestion history of both the PACW to Portland and CAISO to Portland paths during the study period showed zero instances of congestion.

10. Additionally, Portland argues that, while it does not expect frequently binding constraints, the application of Commission-approved market monitoring and mitigation measures to constrained internal paths and interties between the seven balancing authority areas in the EIM will ensure that Portland and other sellers cannot exercise market power in the event a binding constraint arises that is deemed to be non-competitive. Portland further notes that CAISO's mitigation measures have recently been enhanced to include mitigation at 5-minute intervals as well as 15-minute intervals.

11. Portland's proposed market-based rate tariff revisions, filed May 26, 2017, include a new section 6.2 stating that Portland may make sales into the EIM at market-based rates "for all periods in which such authority is granted by the Commission." The new proposed tariff section also states that if at any point Portland does not have market-based rate authority in the EIM, "any EIM bids by [Portland] shall not exceed the Default Energy Bid calculated in accordance with the Variable Cost or Negotiated Rate Options provided in the CAISO tariff."

II. Notice of Filings and Responsive Pleadings

12. Notice of Portland's May 26, 2017 filing (Docket No. ER17-1693-000) was published in the *Federal Register*, 82 Fed. Reg. 25,789 (2017), and notice of Portland's June 16, 2017 filing (Docket No. ER10-2249-007) was published in the *Federal Register*, 82 Fed. Reg. 28,651 (2017), with interventions and protests due on or before June 16, 2017 and July 10, 2017, respectively. Timely motions to intervene were filed in both

⁹ EIM transfers ranging from 85 to 627 MW can occur on the CAISO to Portland path when Portland's merchant function contributes its firm rights of 627 MW on that path.

¹⁰ June 16, 2017 Filing, Attach. B at 32.

dockets jointly by the Cities of Santa Clara, California and Redding, California and the M-S-R Public Power Agency. The Modesto Irrigation District filed a timely motion to intervene in Docket No. ER17-1693-000. Puget filed a motion to intervene out of time in Docket No. ER10-2249-007 on July 11, 2017. No protests or comments were filed.

III. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2017), the Commission will grant Puget's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Substantive Matters

14. We accept Portland's notice of change in status filing and authorize Portland to transact in the EIM at market-based rates. Based on its representations, we find that Portland has demonstrated that the Portland balancing authority area will not be a submarket of the EIM and that Portland passes both the pivotal supplier and wholesale market share screens in the 7-BAA footprint, thereby establishing a rebuttable presumption that it lacks horizontal market power in the EIM. We also find that Portland lacks vertical market power in the 7-BAA footprint.

15. The Commission has stated that EIM participants must take into account whether the existence of frequently-binding transmission constraints create a separate relevant geographic submarket that should be studied.¹¹ The Commission provided further clarification that "a potential EIM participant is permitted to demonstrate that there are no frequently binding transmission constraints that would limit imports into its home balancing authority area (or the balancing authority area where its generation is located) such that the home balancing authority area should not be deemed to be an EIM submarket itself, or to be within an EIM submarket."¹² The Commission further stated

¹¹ *Nevada Power Company*, 151 FERC ¶ 61,131, at P 201 and n.384 (2015) (*Nevada Power*).

¹² *Arizona Public Service Co.*, 156 FERC ¶ 61,148, at P 28 (2016).

that “[h]aving made such a demonstration, there would be no need for a seller to submit a separate market power analysis for its home balancing authority area.”¹³

16. Consistent with this guidance, Portland provides an analysis to demonstrate that (1) the 200 MW of firm transmission on the path from PACW to the Portland balancing authority area, which Portland’s merchant function committed to EIM transfers, experienced no instances of transmission congestion (firm or non-firm) during the study period; and (2) the demand for imbalance energy in the Portland balancing authority area is likely to average 45.10 MW and fall within a range of plus or minus 117 MW during 95 percent of all 15 minute intervals. Portland states that these demonstrations indicate that sufficient firm, unconstrained transmission will be available to ensure a competitive supply of imported generation to meet the demand for imbalance energy in the Portland balancing authority area.

17. We have reviewed this analysis and agree with Portland’s conclusion that the Portland balancing authority area should not be deemed a submarket within the EIM footprint requiring a separate market power analysis. The 200 MW of firm transmission committed to EIM transfers on the PACW to Portland path, as well as additional transmission on both the PACW to Portland and CAISO to Portland paths, will allow sufficient competing imbalance energy to enter the Portland balancing authority area. In addition, Portland’s analysis shows that there were no instances of transmission congestion on the PACW to Portland or CAISO to Portland transmission paths during the December 2014 to November 2015 study year and we were able to verify that no curtailment messages existed during the study period on these paths. Given this analysis, we conclude that no submarket needs to be studied at this time.¹⁴

18. However, we remind Portland that it should submit a change in status filing if there is a decrease in the amount of firm transmission capacity committed to EIM transfers between PACW and Portland.¹⁵

19. As far as the horizontal market power screens, Portland prepared the pivotal supplier and wholesale market share screens for the 7-BAA footprint, consistent with the

¹³ *Id.*

¹⁴ *See, e.g., PPL Corp.*, 149 FERC ¶ 61,260, at PP 102-103 (2014) (finding that binding constraints in 2.2 percent of all study hours during an 18-month study period was insufficient evidence to support the existence of a submarket).

¹⁵ *Puget Sound Energy, Inc.*, 156 FERC ¶ 61,242, at P 22 (2016) (*Puget*).

requirements of Order No. 697,¹⁶ with adjustments consistent with past Commission guidance on the EIM.¹⁷ We have reviewed those screens and find that Portland passes the pivotal supplier and wholesale market share screens in the 7-BAA footprint, with market shares ranging from 1.1 to 1.5 percent.¹⁸ Therefore, Portland's submarket analyses and indicative screen results for the 7-BAA EIM create a rebuttable presumption that Portland does not have market power in the EIM.¹⁹

20. For the reasons stated above, we find that Portland lacks horizontal market power in the EIM. We also find, based on Portland's representations, that it lacks vertical market power in the EIM. Accordingly, we accept Portland's market-based rate tariff and find that Portland's participation in the EIM will not alter the facts the Commission relied upon in granting Portland market-based rate authority. We therefore accept this notice of change in status and authorize Portland to transact in the EIM at market-based rates and accept its corresponding changes to its market-based rate tariff.

The Commission orders:

(A) Portland's notice of change in status is hereby accepted for filing, as discussed in the body of this order.

¹⁶ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 231- 232, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 567 U.S. 934 (2012).

¹⁷ *See, e.g., Puget*, 156 FERC ¶ 61,242 at P 8; *Nevada Power*, 151 FERC ¶ 61,131 at P 201.

¹⁸ These percentages are from Portland's base case, 5-year average hydro/wind production screen. However, we took all of Portland's sensitivity analyses into account. Portland's peak market share across these analyses is 1.5 percent.

¹⁹ Portland also cites to improved CAISO monitoring and mitigation. We note that some of the Commission's concerns with CAISO's marketing and mitigation remain. *See, e.g., Nevada Power Company*, 153 FERC ¶ 61,206, at P 49 (2015), *order on reh'g* 155 FERC ¶ 61,186, at PP 12-15 (2016) (noting that because the EIM was developed and approved as a voluntary market, a market participant could engage in physical withholding, which would not be addressed through CAISO's mitigation).

(B) Portland's market-based rate tariff is hereby accepted for filing, as discussed in the body of this order.

(C) Portland is hereby authorized to transact in the EIM at market-based rates, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.