

123 FERC ¶ 61,086  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

PacifiCorp

Docket Nos. OA07-54-001  
ER07-1291-002

ORDER ON COMPLIANCE FILING

(Issued April 28, 2008)

1. On December 28, 2007, PacifiCorp submitted revised tariff sheets to comply with the Commission's November 30, 2007 order<sup>1</sup> in the above referenced dockets. In this order, we accept in part and reject in part PacifiCorp's proposed tariff revisions, as discussed below, and order a further compliance filing.

**I. Background**

2. In Order No. 890, the Commission reformed the *pro forma* open access transmission tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis.<sup>2</sup> The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890.<sup>3</sup>

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<sup>1</sup> *PacifiCorp*, 121 FERC ¶ 61,223 (2007) (November 30, 2007 Order).

<sup>2</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

<sup>3</sup> For a more detailed explanation of the Order No. 890 compliance deadlines see *PacifiCorp*, 121 FERC ¶ 61,223 at P 2-5.

3. On July 13, 2007, pursuant to section 206 of the Federal Power Act (FPA),<sup>4</sup> PacifiCorp submitted a compliance filing in Docket No. OA07-54-000 as required by Order No. 890. Additionally on August 17, 2007, in Docket No. ER07-1291-000, as amended on October 1, 2007, pursuant to section 205 of the FPA,<sup>5</sup> PacifiCorp submitted proposed revisions to its OATT deviating from the *pro forma* OATT as modified in Order No. 890 as well as certain proposed provisions that it had failed to include in its July 13, 2007 compliance filing.

4. In the November 30, 2007 Order, the Commission found that several of PacifiCorp's proposed tariff revisions filed in Docket No. OA07-54-000 did not comply with the requirements of Order No. 890. Specifically, the Commission directed PacifiCorp to submit a compliance filing to include Attachment J (Procedures for Addressing Parallel Flows), which PacifiCorp had not included in its compliance filing, and to revise its proposed provisions addressing creditworthiness, simultaneous submission windows, and rollover rights. In addition, the Commission found that, for the period from July 13, 2007 through October 1, 2007, PacifiCorp's OATT contained unreserved use penalties that were not in compliance with Order No. 890 and were unjust and unreasonable. Accordingly, we directed PacifiCorp to make refunds with interest calculated pursuant to section 35.19a of the Commission's regulations<sup>6</sup> to any customers on which it had assessed unreserved use penalties between July 13, 2007 and October 1, 2007.<sup>7</sup>

5. Additionally, the November 30, 2007 Order addressed PacifiCorp's FPA section 205 filing in Docket Nos. ER07-1291-000 and ER07-1291-001. The Commission found that PacifiCorp's proposed tariff provisions addressing the distribution of imbalance penalty revenues and clustering did not comply with the requirements of Order No. 890. The Commission also found that PacifiCorp had not shown that its proposed intentional imbalance penalties were consistent with or superior to the Order No. 890 *pro forma*

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<sup>4</sup> 16 U.S.C. § 824e (2000 & Supp. V 2005).

<sup>5</sup> 16 U.S.C. § 824d (2000).

<sup>6</sup> 18 C.F.R. § 35.19a (2007).

<sup>7</sup> We note that on January 4, 2008, PacifiCorp submitted a refund report to comply with this directive. The refund report was accepted for filing on January 30, 2008. *See PacifiCorp*, Docket Nos. ER07-1291-003 and OA07-54-002 (Jan. 30, 2008) (unpublished letter order).

OATT. PacifiCorp was directed to make a further compliance filing within 30 days of the date of the November 30, 2007 Order to comply with the requirements of Order No. 890.

## **II. PacifiCorp's Compliance Filing**

6. PacifiCorp states that its December 28, 2007 filing includes revised tariff sheets and a revised business practice to comply with the Commission's directives in Docket Nos. OA07-54-001 and ER07-1291-002 pursuant to the November 30, 2007 Order. PacifiCorp requests an effective date of July 13, 2007 for its revised tariff sheets, except for Schedules 4 (Energy Imbalance Service) and 9 (Generator Imbalance Service), for which PacifiCorp requests an October 2, 2007 effective date. The specifics of PacifiCorp's filing are discussed separately below for Docket Nos. OA07-54-001 and ER07-1291-002.

## **III. Notice of Filing and Responsive Pleadings**

7. Notice of PacifiCorp's filing was published in the *Federal Register*, 73 Fed. Reg. 2472 (2008), with interventions and protests due on or before January 18, 2008. Powerex Corp. (Powerex) filed a timely motion to intervene and comments.<sup>8</sup>

## **IV. Discussion**

### **A. Procedural Matters**

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

### **B. Substantive Matters**

#### **1. Docket No. OA07-54-001**

9. As a preliminary matter, we note that PacifiCorp's December 28, 2007 filing includes a new Attachment J which PacifiCorp had not included in its July 13, 2007 compliance filing. In addition, PacifiCorp has revised the effective date of its proposed

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<sup>8</sup> In its comments, Powerex opposes certain of PacifiCorp's OATT revisions and suggests that the Commission direct PacifiCorp to modify certain provisions. Accordingly, we will treat Powerex's comments as a protest.

rollover rights provision in section 2.2, as directed in the November 30, 2007 Order.<sup>9</sup> Accordingly, we accept PacifiCorp's revised Attachment J and section 2.2 as in compliance with Order No. 890.

**a. Simultaneous Submission Window**

**i. PacifiCorp's Filing**

10. In the November 30, 2007 Order, we found that PacifiCorp's OATT includes "no earlier than" time limits for transmission requests but PacifiCorp had failed to define how it will treat all such requests received within a specified period of time, how long the window will be left open and how it will allocate transmission capacity if sufficient capacity is not available to meet all requests submitted within that time period. We directed PacifiCorp to make a further compliance filing that clearly indicates that PacifiCorp has satisfied the remaining compliance requirements of Order No. 890 for adoption of a simultaneous submission window.<sup>10</sup>

11. PacifiCorp states that in its July 13, 2007 filing, it had proposed a "no earlier than" time limit for transmission service requests under sections 17.8 (Expedited Treatment for Requests for and Reservation of Short-Term Firm Point-To-Point Transmission Service) and 18.3 (Reservation of Non-Firm Point-To-Point Transmission Service) of its OATT. According to PacifiCorp, pursuant to the November 30, 2007 Order, it is required to include additional detail with regard to its proposal for a simultaneous submission window for transmission service requests. PacifiCorp states that it has revised sections 13.2 and 14.2 of its OATT<sup>11</sup> to provide the required additional detail. PacifiCorp's revised section 13.2, provides as follows:

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<sup>9</sup> In the November 30, 2007 Order, we found that PacifiCorp included the rollover reforms in section 2.2 of its revised tariff sheets, with a requested effective date of July 13, 2007. However, under Order No. 890, rollover reforms are not to become effective until after a transmission provider's Attachment K (Transmission Planning Process) is accepted. At that time, PacifiCorp had not yet filed an Attachment K. Accordingly, we direct PacifiCorp to file a revised tariff sheet that reflects the previous language of section 2.2.

<sup>10</sup> *PacifiCorp*, 121 FERC ¶ 61,223 at P 23.

<sup>11</sup> Both of these sections are entitled "Reservation Priority." Section 13.2 applies to firm point-to-point transmission service and section 14.2 applies to non-firm point-to-point transmission service.

For any requests for Firm Point-to-Point Transmission Service for which this Tariff establishes an earliest time such requests are permitted to be submitted, any requests for such service submitted within a five (5) minute window following such earliest time shall be deemed to have been submitted simultaneously during such window. If sufficient transmission capacity is not available to meet all such requests submitted within any such five (5) minute window, the otherwise applicable priorities shall apply to allocation of transmission capacity to such requests; provided that, if the otherwise applicable priorities would be to allocate transmission capacity to transmission requests on a first-come, first-served basis (i.e., in the chronological sequence in which each Transmission Customer has requested service), transmission capacity shall instead be allocated to such transmission requests in equal amounts to each such request but not in excess of the requested amount of any request.<sup>12</sup>

**ii. Protest**

12. Powerex argues that PacifiCorp's proposal to allocate transmission capacity equally when insufficient transmission capacity is available to meet all simultaneous requests disproportionately impairs transmission access to higher volume customers. Powerex states that the results of PacifiCorp's proposed method is arbitrary, discriminatory and unduly preferential and is therefore inconsistent with the Commission's mandate for open access transmission service. Powerex requests that PacifiCorp be required to implement a *pro rata* or other nondiscriminatory allocation method, or demonstrate how its use of an equal allocation method is consistent with or superior to *pro rata* allocation and is not discriminatory or unduly preferential.

13. In addition, Powerex notes that under section 14.2 of PacifiCorp's OATT PacifiCorp proposed to apply its simultaneous submission window procedure to non-firm point-to-point transmission requests. Powerex states that in Order 890-A, the Commission clarified that it did not intend for the "no earlier than" time in the section of the *pro forma* OATT that applies to non-firm point-to-point service to trigger a mandatory requirement to establish a submittal window for non-firm point-to-point transmission service requests.<sup>13</sup> Powerex states that Order No. 890-A was issued on December 28, 2007, which is the same day that PacifiCorp submitted its filing in the

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<sup>12</sup> Section 14.2 has similar language.

<sup>13</sup> Powerex Protest at 4 (citing Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 802 n.303).

instant proceeding. Powerex concludes that the Commission should permit PacifiCorp to modify its tariff if PacifiCorp decides that it does not want to apply the simultaneous window provision to non-firm point-to-point transmission service.

**iii. Commission Determination**

14. In Order No. 890, the Commission decided to retain its first-come, first-served policy regarding transmission service requests. However, the Commission required those transmission providers who set a “no earlier than” time limit for transmission service requests to treat all such requests received within a specified period of time, or window, as having been received simultaneously. Although the Commission left it to transmission providers to propose the amount of time the window would be open, the Commission stated that the window should be open for at least five minutes unless the transmission provider presents a compelling rationale for a shorter window. The Commission also required each transmission provider that is required to, or decides to, deem all requests submitted within a specified period as having been submitted simultaneously to propose a method for allocating transmission capacity if sufficient capacity is not available to meet all requests submitted within that time period.<sup>14</sup> Further, we stated that transmission providers will have discretion to determine which transmission services will be subject to a submittal window policy.<sup>15</sup>

15. We disagree with Powerex that PacifiCorp’s proposal to allocate capacity equally among requests submitted in the simultaneous window is arbitrary, or is discriminatory as applied to higher volume customers. In Order No. 890, the Commission declined to prescribe an allocation methodology, stating that the transmission provider is in the best position to determine an allocation that is appropriate to its system.<sup>16</sup> We find that PacifiCorp’s proposal to allocate capacity equally among the requests is consistent with Order No. 890. Accordingly, we reject Powerex’s request that PacifiCorp be required to implement a pro rata method of allocating among simultaneous requests when insufficient transmission capacity is available.

16. With regard to whether transmission providers are required to establish simultaneous submission windows for non-firm point-to-point service, in Order No. 890 we stated that transmission providers will have discretion to determine which

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<sup>14</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1418-22.

<sup>15</sup> *Id.* P 1418.

<sup>16</sup> *Id.* P 1422.

transmission services will be subject to a submittal window policy.<sup>17</sup> On the other hand, as Powerex notes, in Order No. 890-A the Commission clarified that the requirement to establish a submittal window applies to those transmission providers that have adopted a “no earlier than” time for the submission of firm point-to-point or network service. We stated that the *pro forma* OATT contains a “no earlier than” time that applies to requests for non-firm point-to-point service, which we did not intend to trigger the requirement to establish a submittal window.<sup>18</sup> Therefore, the Commission gave transmission providers discretion to determine what transmission services would be subject to a submittal window policy; however, and it was not the Commission’s intent to mandate that transmission providers establish simultaneous submission windows for requests for non-firm point-to-point service requests.

17. Accordingly, we find that PacifiCorp’s proposal to apply a simultaneous submission provision to requests for non-firm point-to-point service to be consistent with Order No. 890. If PacifiCorp chooses to remove its simultaneous submission window provision applicable to non-firm point-to-point service requests from its tariff, it may do so consistent with Order No. 890. Therefore, for the reasons stated above we accept PacifiCorp’s proposed revisions to section 13.2 and 14.2 as in compliance with Order No. 890.

**b. Creditworthiness (Attachment L)**

**i. PacifiCorp’s Filing**

18. In the November 30, 2007 Order, the Commission found that: (1) PacifiCorp had not provided a creditworthiness criterion that recognizes a governmental agency’s ability to raise rates to cover outstanding obligations; (2) although PacifiCorp proposes to accept cash deposits as a form of collateral, it has not specified that the cash deposits will be placed in an interest-bearing escrow account; and (3) PacifiCorp failed to provide a sufficient description of how the amount of credit security to be posted by transmission customers will be calculated and the quantitative criteria that will be used to determine the amount of additional security to be posted by transmission customers.<sup>19</sup> We directed PacifiCorp to file a further compliance filing to address these issues.

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<sup>17</sup> *Id.* P 1418.

<sup>18</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 802 n.303.

<sup>19</sup> *PacifiCorp*, 121 FERC ¶ 61,223 at P 18-20.

19. PacifiCorp states that it has revised its Attachment L to incorporate the requirements of the November 30, 2007 Order. PacifiCorp has amended sections 1(c) and 1(d) of its Attachment L, which apply to federal and state governmental agencies, respectively, to add “has the ability to raise rates to cover outstanding obligations” as a creditworthiness criterion. With regard to cash deposits, PacifiCorp proposes the following addition to section 2 of its Attachment L (List of Acceptable Forms of Collateral/Security) to comply with the November 30, 2007 Order:

Transmission Provider shall accrue interest on cash deposits held as security at Transmission Provider's average short-term investment rate. In the event that Transmission Provider's senior secured debt ratings fall below BBB-, as indicated by S&P, and below Baa3, as indicated by Moody's, cash deposits would be placed in an escrow account and invested in that financial institution's U.S. Treasury obligation fund.

All costs associated with meeting the security requirements, including any costs of obtaining and posting security, are the responsibility of the Transmission Customer.

20. To address how the amount of credit security to be posted by transmission customers will be calculated, PacifiCorp added the following to section 3 of its Attachment L (Security Requirements).

If security is required, the Transmission Customer must:

- a) Provide and maintain in effect during the term of the Transmission Service Agreement, security in a form identified in section 2 in an amount equal to four (4) times the estimated total service charge for one month of service; or
- b) Prepay for Transmission Service, as outlined below in this Subsection:
  1. For service of one (1) month or less, the Transmission Customer shall pay the total charge for Transmission Service by the later of five (5) business days prior to the commencement of Transmission Service or at the time Transmission Service is requested to Transmission Provider;
  2. For service of greater than one (1) month the Transmission Customer shall provide cash prepayment for each month's service not less than five (5) business days prior to the beginning of the month.

If a Transmission Customer, pursuant to Subsection (b) of this section, fails to provide prepayment five (5) business days prior to the commencement of Transmission Service or five (5) business days prior to the beginning of the month, as may be applicable depending on the term of service, Transmission Provider shall require that the Transmission Customer provide additional security in a form identified in section 2 up to an amount equal to four (4) times its estimated, average monthly service charge.

21. Further, PacifiCorp has revised section 7 of its Attachment L (Procedures to Post Additional Credit Security) to describe the quantitative criteria that it will use to determine the amount of additional security. The proposed section 7 provides as follows (in redline/strikeout):

If the Transmission Provider requires the Transmission Customer to post new or additional credit security, the Transmission Customer must either:

- b)a) for new transmission service, post credit security prior to the start of transmission service in an amount ~~determined by the Transmission Provider~~ specified in section 3; or
- b) for existing transmission service, post credit security in an amount ~~determined by the Transmission Provider~~ specified in section 3 within five (5) business days of receipt of a written notification from Transmission Provider of a change in the creditworthiness of Transmission Customer or Transmission Customer's guarantor.

## ii. Commission Determination

22. We find that, as directed in the November 30, 2007 Order, PacifiCorp has added language recognizing a governmental entity's ability to raise rates to cover outstanding obligations as an additional creditworthiness criterion. In addition, we will accept PacifiCorp's proposed revision to section 2. Under revised section 2, PacifiCorp will accrue interest on cash deposits held as security at its average short-term investment rate and, in the event that PacifiCorp's senior secured debt ratings fall below identified levels, cash deposits will be placed in an escrow account and invested in that financial institution's U.S. Treasury obligation fund. We find that this adequately addresses how PacifiCorp will handle cash received as collateral. Further, we find that in section 3 of Attachment L PacifiCorp has provided sufficient detail about how the amount of credit security to be posted by transmission customers will be calculated (i.e., four times the estimated total service charge for one month of service or a prepayment based on the applicable length of the service requested) and sufficient detail in section 7 regarding the

quantitative criteria (i.e., as specified in section 3) that will be used to determine the amount of any additional security it will require. Accordingly, we accept PacifiCorp's revised Attachment L as in compliance with Order No. 890.

**2. Docket No. ER07-1291-002**

**a. Imbalance Energy Revenue Distribution**

**i. PacifiCorp's Filing**

23. In the November 30, 2007 Order, the Commission found that PacifiCorp had failed to support its proposed intentional imbalance penalties. We directed PacifiCorp to remove the intentional imbalance penalty provisions from Schedules 4 (Energy Imbalance Service) and 9 (Generator Imbalance Service) of its OATT.<sup>20</sup> The Commission also found PacifiCorp's definition of non-offending customers eligible to receive imbalance penalty revenues, as defined in its business practice, to be unduly restrictive.<sup>21</sup> We directed PacifiCorp to file a revised mechanism for the distribution of penalty revenues that defines non-offending customers on an hourly basis.

24. To comply with the Commission's directives, PacifiCorp removed the language regarding intentional imbalance penalties from Schedules 4 and 9 of its OATT. In addition, it submitted a revised business practice that describes customers eligible to receive imbalance penalty revenues. Specifically, an eligible customer is defined as a customer (1) that has a valid transmission service agreement under PacifiCorp's OATT, (2) that receives imbalance service from PacifiCorp as defined under Schedules 4 and 9 of its OATT, and (3) whose schedules have deviated from the first imbalance deviation band no more than the greater of (a) two percent of the customer's total hours of schedule in any month or (b) eight hours of schedule in any month. PacifiCorp states that this revised mechanism expands the number of customers that will be eligible for imbalance revenue distribution.

**ii. Commission Determination**

25. In Order No. 890, the Commission determined that charges for both energy and generator imbalances would be based upon a tiered approach that reflects incremental costs. The Commission also required transmission providers to credit revenues in excess of incremental costs to all non-offending customers. As a result, the Commission

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<sup>20</sup> *Id* P 56.

<sup>21</sup> *Id.* P 45.

directed transmission providers to develop, as part of their Order No. 890 compliance filings, a mechanism for crediting such revenues to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.<sup>22</sup>

26. The Commission finds that, as directed in the November 30, 2007 Order, PacifiCorp has removed the intentional imbalance penalty provisions from Schedules 4 (Energy Imbalance Service) and 9 (Generator Imbalance Service) of its OATT. However, with regard to its mechanism for the distribution of penalty revenues, we find PacifiCorp has not complied with the November 30, 2007 Order and that PacifiCorp's proposed mechanism is still inconsistent with Order No. 890.

27. In the November 30, 2007 Order, the Commission directed PacifiCorp to revise its mechanism to define non-offending customers on an hourly basis—i.e., penalty revenue collected during a given hour, should be distributed to customers who were not subject to an imbalance penalty for that hour.<sup>23</sup> Further, in Order No. 890-A, the Commission clarified that the transmission provider should distribute the penalty revenue received in a given hour to those non-offending customers in that hour.<sup>24</sup> PacifiCorp's proposed mechanism restricts customers eligible to receive imbalance penalties to those whose schedules have deviated from the first imbalance deviation band no more than the greater of two percent of the customer's total hours of schedule in any month or eight hours of schedule in any month. PacifiCorp has failed to create a mechanism to distribute imbalance penalty revenues from a given hour to customers to whom the penalty did not apply in that hour. Therefore, we reject PacifiCorp's definition of an eligible customer and we direct PacifiCorp to file, within 30 days of the date of issuance of this order, a further compliance filing with a revised mechanism for the distribution of penalty revenues to distribute the penalty revenue received in a given hour to those non-offending customers in that hour.

The Commission orders:

(A) PacifiCorp's compliance filing in Docket No. OA07-54-001 is hereby accepted effective July 13, 2007, as discussed in the body of this order.

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<sup>22</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663, 667, 727.

<sup>23</sup> *PacifiCorp*, 121 FERC ¶ 61,223 at P 45.

<sup>24</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 333.

(B) PacifiCorp's compliance filing in Docket No. ER07-1291-002 is hereby accepted with certain tariff sheets effective on July 13, 2007 and October 2, 2007, subject to PacifiCorp submitting a further compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.