

132 FERC ¶ 61,018
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

PacifiCorp

Docket No. ER10-1217-000

ORDER ACCEPTING JOINT OWNERSHIP AND
OPERATING AGREEMENT

(Issued July 9, 2010)

1. On May 10, 2010, PacifiCorp submitted for filing, under section 205 of the Federal Power Act (FPA),¹ a Joint Ownership and Operating Agreement (Agreement) with Idaho Power Company (Idaho Power) governing certain jointly owned transmission and interconnection facilities at PacifiCorp's new Populus Substation.² In this order, we accept the proposed Agreement to be effective July 10, 2010, as discussed below.

I. Background

2. PacifiCorp states that it is currently constructing the new 345 kV Populus Substation located near Downey, Idaho, which will provide additional transfer capability for PacifiCorp's customers and provide line terminal connections for additional 345 kV transmission lines located near the Populus Substation, including the Kinport-Bridger Line,³ the Borah-Bridger Line⁴ and the Borah-Ben Lomond Line.⁵ According to

¹ 16 U.S.C. § 824d (2006).

² On the same date, in Docket No. ER10-1220-000, Idaho Power submitted for filing a similar Joint Ownership and Operating Agreement with PacifiCorp governing certain jointly owned transmission and interconnection facilities at Idaho Power's Hemingway substation.

³ The Kinport-Bridger Line extends from Idaho Power's existing Kinport Substation near Pocatello, Idaho to the existing Bridger Substation near Rock Springs, Wyoming, which is jointly owned by PacifiCorp and Idaho Power.

⁴ The Borah-Bridger Line extends from Idaho Power's existing Borah Substation

(continued...)

PacifiCorp, construction of the Populus Substation is almost complete and the substation is expected to be energized in Fall 2010.

3. PacifiCorp states that Idaho Power has contractual rights to a portion of the transmission capacity on the Kinport-Bridger Line and Borah-Bridger Line, and that interconnecting PacifiCorp's transmission system at the Populus Substation with these lines will benefit both companies' customers. PacifiCorp asserts that, to that end, on May 3, 2010, PacifiCorp sold and transferred to Idaho Power an undivided ownership interest in certain facilities at the Populus Substation.⁶

4. On May 10, 2010, PacifiCorp filed the proposed Agreement, which governs the terms and conditions by which PacifiCorp and Idaho Power will complete the construction of certain transmission and interconnection facilities at the Populus Substation and interconnect those facilities with the Kinport-Bridger and Borah-Bridger Lines, as well as other nearby transmission lines. The Agreement also provides that PacifiCorp will operate and maintain the facilities for both parties, and that Idaho Power will compensate PacifiCorp for operation and maintenance costs through the payment of facilities charges.

5. PacifiCorp explains that there are two categories of facilities at the Populus Substation: (1) jointly owned facilities, which include facilities transferred to Idaho Power, and additional facilities being jointly developed by both parties, referred to as "Transmission Facilities;"⁷ and (2) facilities that will be owned solely by PacifiCorp, referred to as "Common Facilities."

near Idaho Falls, Idaho to the Bridger Substation.

⁵ The Borah-Ben Lomond Line extends from the Borah Substation to PacifiCorp's Ben Lomond substation near Ogden, Utah.

⁶ PacifiCorp explains that it and Idaho Power entered into a Joint Purchase and Sale Agreement dated April 30, 2010, under which PacifiCorp sold and transferred to Idaho Power an undivided ownership interest in certain facilities at the Populus Substation, and Idaho Power sold and transferred to PacifiCorp an undivided ownership interest in certain facilities at the Idaho Power's Hemingway Substation. PacifiCorp states that, as these facilities have not been energized yet, they are not subject to the Commission's jurisdiction at this time. PacifiCorp transmittal letter, n.8.

⁷ PacifiCorp states that it currently has a 79.2 percent undivided ownership interest in the Transmission Facilities while Idaho Power has a 20.8 percent undivided ownership interest in those facilities.

6. The Agreement provides that PacifiCorp will charge Idaho Power a Monthly Transmission Facilities Operations and Maintenance (O&M) Charge for the costs that PacifiCorp incurs in operating Idaho Power's ownership share of the Transmission Facilities. The charge is equal to the product of: (a) the installed cost of the Transmission Facilities when they initially enter service, (b) Idaho Power's undivided ownership interest in the Transmission Facilities, and (c) an O&M Expense Factor of 0.1845 percent per month. PacifiCorp will also charge Idaho Power a Monthly Common Facilities Charge for Idaho Power's ownership share of the costs that PacifiCorp incurs in owning and operating the Common Facilities. This charge is equal to the product of: (a) the installed cost of the Common Facilities when they initially enter service, (b) Idaho Power's undivided ownership interest in the Transmission Facilities, and (c) a Common Facility Factor of 1.0221 percent per month.

7. PacifiCorp includes cost support for the charges in Exhibit 2 of its filing, which shows that the charges are fixed charge rates based on PacifiCorp's 2008 FERC Form No. 1 data, consisting of components including O&M and administrative and general expenses, insurance and capital costs, and property taxes.

8. PacifiCorp requests waiver of notice to allow the Agreement to become effective on May 3, 2010. PacifiCorp claims that good cause exists for waiver of notice because the Agreement provides for the parties to develop the Transmission Facilities jointly, starting on May 3, 2010, and that the joint work on the substations needs to begin, without delay, to accommodate the timely interconnection of the transmission lines.

II. Notice of Filings and Pleadings

9. Notice of PacifiCorp's filing was published in the *Federal Register*,⁸ with interventions or protests due on or before June 1, 2010. Bonneville Power Administration (Bonneville) filed a timely motion to intervene and protest. On June 11, 2010, PacifiCorp filed an answer to Bonneville's protest. Also on June 11, 2010, Idaho Power filed a motion to intervene out of time and comments in support of PacifiCorp's answer.

10. Bonneville argues that the proposed Agreement is only a small part of a much larger transaction between PacifiCorp and Idaho Power involving the purchase and sale of significant portions of transmission lines and other facilities, including the Populus and Hemingway Substations. Bonneville contends that this larger transaction may have significant reliability and operational impacts on Bonneville's system and its customers.

⁸ 75 Fed. Reg. 28,599 (2010).

11. Bonneville states that PacifiCorp and Idaho Power have released a summary of a Memorandum of Understanding (MOU) that the companies entered into on March 5, 2010, which lists numerous transmission facilities that will be transferred and become jointly owned, including the Populus and Hemingway Substations.⁹ The MOU also lists a number of additional agreements that PacifiCorp and Idaho Power will enter into, including purchase and sale, interconnection, and joint development and construction agreements. Bonneville contends that the proposed Agreement is inextricably tied to the larger transaction and thus cannot be reviewed in isolation. For this reason, Bonneville argues that PacifiCorp should be required to provide the full MOU between PacifiCorp and Idaho Power and any other documents relevant to the transfer of ownership of transmission facilities between PacifiCorp and Idaho Power before the Commission rules on this filing.

12. Bonneville also argues that PacifiCorp may be required to make a filing under section 203 of the FPA for the larger transaction because PacifiCorp and Idaho Power are public utilities, and the value of the transaction likely exceeds \$10 million. Bonneville adds that Exhibit H of PacifiCorp's proposed Agreement states that the Populus Substation is scheduled to be energized on October 1, 2010, nullifying any argument that the substation is not jurisdictional, because it has not been energized. Bonneville contends that the Commission should delay ruling on this filing until PacifiCorp has provided full information on the larger PacifiCorp-Idaho Power transaction, including a filing under section 203 of the FPA. Alternatively, Bonneville asks that the Commission set the proposed Agreement in this docket for hearing to determine the full impacts of the overall transaction on neighboring transmission systems and transmission customers.

13. PacifiCorp responds that the only issue before the Commission in this docket is the justness and reasonableness of the terms, conditions and rates of the proposed Agreement, about which Bonneville has raised no issues. PacifiCorp contends that Bonneville's protest should be rejected, as it only concerns issues that are beyond the scope of this proceeding.

14. PacifiCorp explains that the non-binding MOU with Idaho Power is intended to facilitate agreement on the terms and conditions of certain transmission arrangements for the benefit of their native load customers and to satisfy the parties' capacity expansion obligations under their respective Open Access Transmission Tariffs. According to PacifiCorp, the parties' objective is to utilize the existing transmission system more

⁹ Bonneville includes a copy of the MOU summary in Exhibit B to its protest.

efficiently through the development of various projects and agreements.¹⁰ PacifiCorp states that the parties posted a detailed summary of the MOU on their OASIS websites on March 5, 2010, issued a joint press release further describing the MOU on March 31, 2010, and recently posted the entire MOU on their OASIS websites.¹¹ PacifiCorp states that, contrary to Bonneville's claims, the proposed Agreement is not "inextricably tied to the larger transaction," arguing that nothing in the non-binding MOU requires the parties to proceed with any of the other transactions contemplated in the MOU. PacifiCorp states that the proposed Agreement stands alone legally and operationally, and is intended to allow for the parties to plan and develop their intertwined transmission systems in the most efficient and cost-effective manner possible. PacifiCorp adds that the proposed Agreement reflects the parties' furtherance of the Commission's regional planning requirements in Order No. 890.¹²

15. With respect to the requirement to make a section 203 filing, PacifiCorp states that as the facilities transferred under the Joint Purchase and Sale Agreement were not energized when the transaction closed on May 3, 2010, they are not jurisdictional facilities and a section 203 filing is not required. PacifiCorp adds that if and when the parties reach further agreement on any of the transactions described in the MOU, the parties will make the appropriate filings with the Commission under section 205 and/or section 203, as necessary.

16. In its comments, Idaho Power states that it agrees with PacifiCorp that the proposed Agreement is a stand-alone transaction that is not dependent on any other transaction, and that the Commission should reject Bonneville's protest and accept the Agreement.

¹⁰ PacifiCorp Answer at 4.

¹¹ PacifiCorp states that it posted the MOU on its OASIS site on June 7, 2010 and that Idaho Power posted it on its OASIS site on June 4, 2010. PacifiCorp attaches the MOU in Exhibit 1 and the press release in Exhibit 2 of its answer.

¹² *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 (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).

III. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), Bonneville's timely, unopposed motion to intervene makes Bonneville a party to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2010), the Commission will grant Idaho Power's late-filed motion to intervene, given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2010), 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 has assisted us in our decision-making process.

B. Substantive Matters

19. We will accept the proposed Agreement. The issue before the Commission in this docket is the justness and reasonableness of the terms, conditions and rates contained in the proposed Agreement, which provide for the joint ownership and operation of various facilities at the Populus Substation. Based upon our review, the Commission finds that the terms, conditions and rates in the proposed Agreement are just and reasonable. Accordingly, we will accept the Agreement as proposed. We also reject, as beyond the scope of this proceeding, Bonneville's arguments regarding the relevance of other transactions that PacifiCorp and Idaho Power may enter into pursuant to the non-binding MOU between the parties. While Bonneville is free to raise concerns about reliability and operational impacts to its system and customers resulting from any future agreements filed by PacifiCorp and Idaho Power, it has not made any showing that the proposed Agreement before us has such impacts or is otherwise not just and reasonable.

20. We will also reject Bonneville's argument that PacifiCorp should make a filing, under section 203 of the FPA, regarding the May 3, 2010 transfer of facilities at the Populus Substation from PacifiCorp to Idaho Power. Exhibit H of the Agreement provides that the Populus facilities are expected to be energized on October 1, 2010. The transfer of ownership in transmission facilities not yet in service are not subject to the Commission's jurisdiction under section 203 of the FPA.¹³ Therefore, the facilities were not jurisdictional at the time of the transfer and the requirement for a section 203 filing requirement has not been triggered.

¹³ *Gamma Mariah, Inc.*, 44 FERC ¶ 61,442 (1988).

21. The Commission will deny PacifiCorp's request for waiver of notice and the effective date as inconsistent with Commission policy, which requires that agreements for the provision of new services must be filed prior to the commencement of service.¹⁴ Here, PacifiCorp submitted its filing for a new service on May 10, 2010, while requesting an effective date of May 3, 2010. Thus, the Commission will accept the Agreement for filing, but with an effective date of July 10, 2010, sixty days after filing. Consistent with the Commission's policy, for any monies collected before that effective date, PacifiCorp must refund the time value of the monies actually collected for the time period during which the rates were charged without Commission authorization,¹⁵ with the refunds limited so as not to cause PacifiCorp to suffer a loss.¹⁶ Accordingly, PacifiCorp must make time value refunds within 30 days of the date of this order and must file a refund report with the Commission within 30 days thereafter.

The Commission orders:

(A) PacifiCorp's proposed Agreement is hereby accepted for filing, effective July 10, 2010, as discussed in the body of this order.

(B) PacifiCorp is hereby directed to make time value refunds, if applicable, within 30 days of the date of this order and file a refund report with the Commission within 30 days thereafter, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴ *Central Hudson Gas & Electric Corporation, et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992), and *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993).

¹⁵ *El Paso Electric Company*, 101 FERC ¶ 61,276 (2002), *reh'g denied*, 105 FERC ¶ 61,131 (2003).

¹⁶ *See Southern California Edison Co.*, 98 FERC ¶ 61,304 (2002); *see also Florida Power & Light Co.*, 98 FERC ¶ 61,276, *reh'g denied*, 99 FERC ¶ 61,320 (2002).