

137 FERC ¶ 61,247  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

PacifiCorp

Docket No. ER12-336-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATES AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 30, 2011)

1. On November 2, 2011, PacifiCorp filed with the Commission an unexecuted Amended and Restated Transmission Service and Operating Agreement (Unexecuted TSOA) with Utah Associated Municipal Power System (UAMPS). As discussed below, we will accept the filing, suspend it for a five-month period, to be effective June 2, 2012, subject to refund, and set all issues raised therein for hearing and settlement judge procedures.

**I. Background**

2. PacifiCorp states that the Original TSOA, which was executed by PacifiCorp and UAMPS in 1991, as amended in 1992 and 2001, provides for a form of network transmission service to UAMPS.<sup>1</sup> Since its inception, PacifiCorp claims that the Original TSOA's network transmission service was priced based upon the embedded cost of service of PacifiCorp's transmission system.<sup>2</sup> According to PacifiCorp, these rates, have not been changed since 1998 and were the result of a "black box" settlement.<sup>3</sup> PacifiCorp has recently filed a general rate case with the Commission, which, among other things, proposes to replace its stated network transmission service rates with formula rates,<sup>4</sup> because PacifiCorp contends that the stated rates are no longer sufficient

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<sup>1</sup> PacifiCorp Filing Letter at 1.

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.*

<sup>4</sup> *PacifiCorp*, 136 FERC ¶ 61,092 (2011).

to recover PacifiCorp's full costs in a timely or sufficient manner.<sup>5</sup> PacifiCorp adds that it has attempted to negotiate the revisions to the Original TSOA with UAMPS, but because these negotiations have been unsuccessful, PacifiCorp filed the Unexecuted TSOA with the Commission for approval under section 205 of the Federal Power Act (FPA).<sup>6</sup>

## II. PacifiCorp's Filing

3. PacifiCorp claims that the primary purpose of its filing is to modify the rates, along with the terms and conditions, of network transmission service provided to UAMPS by PacifiCorp under the Original TSOA to conform to the network transmission service provisions found under PacifiCorp's OATT, as it may be modified in PacifiCorp's current transmission rate case.<sup>7</sup>

4. PacifiCorp states that the rates in the Original TSOA no longer reflect PacifiCorp's cost of service to UAMPS.<sup>8</sup> Therefore, PacifiCorp has proposed revisions to incorporate the network service formula rate proposed in PacifiCorp's current rate case. The formula rate will apply to transmission services from all of UAMPS's resources except for Hunter II, which will retain the current pricing structure.<sup>9</sup>

5. Additional proposed revisions to the Original TSOA include: (1) coincident peak pricing model for load demand measurement; (2) addition of PacifiCorp's OATT list of ancillary services; (3) provision for UAMPS's mandatory purchase from PacifiCorp of scheduling, system control and dispatch, and reactive supply and voltage control services; and (4) provision for UAMPS's self-supply or third party purchase of regulation and frequency response, generator regulation and frequency response, energy imbalance and supplemental and spinning operating reserves. PacifiCorp also proposes to remove the emergency conditions section of the Original TSOA and other back-up services that UAMPS provides to PacifiCorp.<sup>10</sup> PacifiCorp also proposes to revise the Original TSOA

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<sup>5</sup> PacifiCorp acknowledges that in 2007, it entered into a settlement agreement in which it committed to file a general rate case for its transmission rates no later than June 1, 2011. PacifiCorp Filing Letter at 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 4.

to remove the provisions addressing transmission losses and instead incorporate the loss provisions contained in PacifiCorp's OATT.<sup>11</sup>

6. Additionally, PacifiCorp explains that the Original TSOA contains outdated scheduling provisions, which PacifiCorp proposes to revise to coincide with its business practices, the prevailing scheduling practices in the Western Electricity Coordinating Council, and PacifiCorp's OATT. The planning provisions of the Original TSOA are being revised to refer to PacifiCorp's OATT planning provisions. Similarly, system impact and feasibility studies will follow the provisions of PacifiCorp's OATT. Finally, PacifiCorp has incorporated certain definitions into the Unexecuted TSOA from its OATT.<sup>12</sup>

7. PacifiCorp argues that the Original TSOA authorizes it to file revisions unilaterally, except with regard to the Hunter II resource, which it does not propose.<sup>13</sup> PacifiCorp requests that the Unexecuted TSOA become effective as of January 2, 2012.

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

8. Notice of PacifiCorp's filing was published in the *Federal Register*, 76 Fed. Reg. 70,435 (2011), with interventions and protests due on or before November 23, 2011. UAMPS filed a timely motion to intervene and protest, which was amended by errata on December 2, 2011. On December 8, 2011, PacifiCorp filed a motion for leave to answer and answer. On December 9, 2011, Utah Municipal Power Agency filed a motion to intervene. On December 19, 2011, UAMPS filed a motion for leave to answer and answer.

### **IV. Discussion**

#### **A. Procedural Issues**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), UAMPS's timely, unopposed motion to intervene serves to make it 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 (2011), the Commission will grant Utah Municipal Power Agency's late-filed motion to intervene given its interest in the proceeding, the early state of the proceeding, and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R.

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.*

§ 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept PacifiCorp or UAMPS's answers with the exception noted below; and therefore, we will reject them.<sup>14</sup>

**B. UAMPS Protest**

10. UAMPS protests that PacifiCorp's filing "far exceeds" PacifiCorp's rights under the Original TSOA to file unilaterally to revise it, and that such revisions are not just and reasonable.<sup>15</sup> UAMPS argues that PacifiCorp is trying to deprive it of the bargain it struck with PacifiCorp 20 years ago and replace it with a network service agreement under PacifiCorp's OATT.<sup>16</sup> UAMPS contends that when the parties amended the Original TSOA in 2001, UAMPS negotiated the amendment "with the intent to protect itself from the sort of unilateral action PacifiCorp" has taken here.<sup>17</sup>

11. UAMPS contends that the Commission has dismissed filings of unexecuted agreements when agreements in place cover the same service, except in limited circumstances, none of which apply here.<sup>18</sup>

12. According to UAMPS, Utah law provides that contract provisions should be construed in *pari materia*.<sup>19</sup> While the Original TSOA appears to permit PacifiCorp to apply unilaterally to FERC to change certain provisions, allowing PacifiCorp unlimited ability to seek unilateral changes would eviscerate section 32.1 of the Original TSOA, which requires mutual consent to modifications not covered by the list of provisions set forth in the Original TSOA.<sup>20</sup> Specifically, UAMPS argues that the replacement of the Original TSOA by the Unexecuted TSOA requires mutual consent.<sup>21</sup>

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<sup>14</sup> In its December 19 Answer, UAMPS withdraws the portion of its protest regarding the unit charges in the ancillary services schedules. The Commission will accept such withdrawal.

<sup>15</sup> UAMPS Protest at 3.

<sup>16</sup> *Id.* at 5.

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

<sup>18</sup> *Id.* at 7 (citing *Green Mountain Power Corp.*, 60 FERC ¶ 61,158 (1992)).

<sup>19</sup> *Id.* at 10.

<sup>20</sup> *Id.* at 10-11.

<sup>21</sup> *Id.* at 11.

13. Moreover, UAMPS contends that the Original TSOA recites a number of specific circumstances and means by which its provisions may be changed that do not fall under the umbrella of section 27.<sup>22</sup> Given this, UAMPS argues that it makes no sense to construe the Original TSOA in a way to give PacifiCorp the unilateral right to replace the entire agreement.<sup>23</sup>

14. UAMPS argues that the Commission should reject the filing on the grounds that PacifiCorp has failed to make even a *prima facie* showing that its proposed changes to the Original TSOA are just and reasonable. UAMPS adds that PacifiCorp has the burden of proof to show that the Unexecuted TSOA is just and reasonable, and that its argument that the proposed changes would essentially implement the OATT does not satisfy this burden.<sup>24</sup>

15. With respect to PacifiCorp's cost support, UAMPS states that PacifiCorp's Statement BG/BH analysis is grossly deficient and provides another reason to reject PacifiCorp's filing. UAMPS contends that PacifiCorp has not provided any description of the sources of the data and the calculations used to determine its claimed present revenues (Statement BH) and changed revenues (Statement BG). UAMPS notes that the BG/BH analysis does not indicate what 12-month period is used in the BG/BH analysis. For this reason, UAMPS states that it can only assume that the coincident peak demands (CP) are for the year 2010. UAMPS claims it has been unable to duplicate these CP demand data with UAMPS's actual CP demand data for PacifiCorp's transmission system peaks for 2010.<sup>25</sup>

16. Given these flawed data, UAMPS contends that it is impossible to make an accurate assessment of the level of the proposed individual service schedule increases and the overall rate increase to UAMPS and to assess the level to which such proposed increases may be excessive for purposes of the *West Texas* test.<sup>26</sup>

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<sup>22</sup> For example, section 4.2 of the Original TSOA states that “[u]nless otherwise mutually agreed, UAMPS shall deliver losses to PacifiCorp at the Points of Receipt concurrently with the scheduled delivery of power and energy to be transmitted by PacifiCorp.” The Unexecuted TSOA simply strikes such provisions. *Id.* at 12-13.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 18.

<sup>25</sup> *Id.* at 22.

<sup>26</sup> *Id.* (citing *West Texas Utilities Co.*, 18 FERC ¶ 61,189, at 61,374-75 (1982) (*West Texas*)).

17. UAMPS adds that there are other flaws in PacifiCorp's proposed application of certain ancillary service charges to UAMPS including PacifiCorp's proposed Schedule 2 for the supply of reactive power to UAMPS's total coincident peak load. UAMPS states that PacifiCorp fails to account for reactive power produced from the Hunter II generation source that PacifiCorp and UAMPS jointly own, and this omission results in flawed calculations of the revenues from UAMPS for Schedule 2 service. UAMPS also claims that PacifiCorp proposes to apply both proposed Schedule 3 (Regulation and Frequency Response Service) and proposed Schedule 3A (Generation Regulation and Frequency Response Service) to UAMPS. UAMPS states that it is a network service customer and should be subject only to Schedule 3.<sup>27</sup>

### C. Commission Determinations

18. PacifiCorp's proposal raises issues that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Our preliminary analysis indicates that PacifiCorp's filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.<sup>28</sup> In *West Texas*,<sup>29</sup> the Commission explained that when our preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission will generally impose a five-month suspension. In the instant proceeding, we find that the proposed rates may be substantially excessive. Additionally, the hearing should consider the threshold issue of whether it is appropriate to replace provisions agreed to by the parties in the Original TSOA with PacifiCorp's OATT rates, terms and conditions of network transmission service. Therefore, we will accept PacifiCorp's proposed rates for filing, suspend them for five months, make them effective June 2, 2012, subject to refund, and set them for hearing and settlement judge procedures.

19. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603

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<sup>27</sup> *Id.* at 24.

<sup>28</sup> In *West Texas*, the Commission held that "rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable . . . ." *West Texas*, 18 FERC at 61,374.

<sup>29</sup> *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982) (*West Texas*).

of the Commission's Rules of Practice and Procedure.<sup>30</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>31</sup>

20. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) PacifiCorp's filing is hereby accepted for filing and suspended for five months, to be effective June 2, 2012, subject to refund and hearing, as discussed in the body of this order and the ordering paragraphs below.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed revisions. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) – (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five days of the date of this order.

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<sup>30</sup> 18 C.F.R. § 385.603 (2011).

<sup>31</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) – click on Office of Administrative Law Judges).

(D) Within 30 days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.