

138 FERC ¶ 61,127  
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. ER12-647-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING  
TRANSMISSION SERVICE AGREEMENTS

(Issued February 17, 2012)

1. On December 21, 2011, PacifiCorp filed eight non-conforming transmission service agreements, which have been amended to reflect proposed revisions to its open access transmission tariff (OATT) in Docket Nos. ER11-3643-000 and ER11-3643-001 (2011 Transmission Rate Case).<sup>1</sup> As discussed below, the Commission conditionally accepts PacifiCorp's transmission service agreements, suspends them for a nominal period to become effective January 1, 2012, as requested, subject to refund and subject to the outcome of the 2011 Transmission Rate Case.

**I. Background**

2. On May 26, 2011, as amended on June 9, 2011, PacifiCorp submitted the 2011 Transmission Rate Case filing to the Commission. The 2011 Transmission Rate Case included proposed revisions to PacifiCorp's OATT to: (1) replace PacifiCorp's stated transmission rates with formula rates for network integration transmission service, point-to-point (PTP) transmission service and Schedule 1 (scheduling, system control, and dispatch service); (2) update ancillary service Schedules 2, 3, 5, and 6; (3) include a new Schedule 3A to provide for generation regulation and frequency response service; (4) update transmission real power loss factors under Schedule 10; and (5) make conforming changes to definitions and other sections of PacifiCorp's OATT.

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<sup>1</sup> As of the date of this order, the 2011 Transmission Rate Case is in settlement proceedings before the Commission. *PacifiCorp*, 136 FERC ¶ 61,092 (2011) (August 8 Order).

3. On August 8, 2011, the Commission accepted the 2011 Transmission Rate Case filing, suspended it for a five-month period to be effective December 25, 2011, subject to refund, and established hearing and settlement judge procedures.<sup>2</sup>

## II. PacifiCorp's Filing

4. In the instant case, PacifiCorp requests that the Commission accept for filing eight revised non-conforming transmission service agreements for PTP transmission service, of which five are executed and three are unexecuted (Agreements).<sup>3</sup> PacifiCorp explains that the revisions to the Agreements are intended to conform to the OATT revisions proposed in the 2011 Transmission Rate Case.<sup>4</sup>

5. PacifiCorp states that the revisions to the Agreements are the: (1) replacement of the start date for service; (2) inclusion of losses in a customer's reserved capacity; (3) specification of the delivery rate as set forth in Schedule 7; (4) changes to applicable ancillary services charges; (5) addition of a reference to Schedule 3A (generator regulation and frequency response service); and (6) addition of a reference to OATT section 15.7 and Schedule 10 regarding the assessment of real power losses.<sup>5</sup>

6. PacifiCorp states that the Commission's regulations require it to have on file full and complete rate schedules and non-rate terms and conditions for transmission service within thirty days of commencement of service.<sup>6</sup> Therefore, although the 2011 Transmission Rate Case has not concluded, PacifiCorp contends that the filing in this case is not premature. PacifiCorp notes that it has filed certain transmission service agreements with the Commission as non-conforming service agreements and that it files

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<sup>2</sup> *Id.* P 34.

<sup>3</sup> The five executed agreements are for long-term firm PTP service with Alpentel Energy Partners, LLC, Alpentel Energy, and Eugene Water and Electric Board, and two agreements for conditional long-term firm PTP service with CEP Funding, LLP. The three unexecuted agreements are for long-term firm PTP service with Bonneville Power Administration and two agreements for long-term firm PTP service with NextEra Energy Resources, LLC (NextEra). PacifiCorp Transmittal Letter at 1-2.

<sup>4</sup> *Id.* at 2 and 4.

<sup>5</sup> PacifiCorp Transmittal Letter at 4-5.

<sup>6</sup> *Id.* at 4, citing 18 C.F.R. § 35.1(a) (2011).

all revisions and updates to these non-conforming transmission service agreements with the Commission for acceptance within 30 days after service commences.<sup>7</sup>

7. PacifiCorp requests that the Commission accept the Agreements to be effective on January 1, 2012. PacifiCorp states that this request is consistent with the August 8 Order, which granted PacifiCorp's request that rates proposed in the 2011 Transmission Rate Case be made effective the first day of the month following the effective date established by the Commission.<sup>8</sup> Such effective date is January 1, 2012.

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

8. Notice of PacifiCorp's filing was published in the *Federal Register*, 76 Fed. Reg. 82,294 (2011), with protests or motions to intervene due on or before January 11, 2012. On January 11, 2012, NextEra filed a motion to intervene and protest. On January 23, 2012, PacifiCorp filed an answer.

#### **A. NextEra Protest**

9. NextEra states that it has an "inactive contractual arrangement" (SA 583) with PacifiCorp for transmission service that is contingent upon the completion of a 230 kV transmission line from Wallula to McNary (McNary Line).<sup>9</sup>

10. NextEra agrees with PacifiCorp that the filing in the instant case tracks the new rates and tariff changes accepted by the Commission in the August 8 Order.<sup>10</sup> However, NextEra argues that filing a revised SA 583 is premature because the agreement is subject to the negotiation and hearing procedures of the 2011 Transmission Rate Case.<sup>11</sup> In particular, NextEra objects to the January 1, 2012 proposed effective date for SA 583. NextEra argues that since the start date for the agreement is conditioned on the completion of the McNary Line, changing the start date from January 1, 2010, to January 1, 2012, is "meaningless and unnecessary."<sup>12</sup> Changing the start date of service, according to NextEra, raises the possibility that PacifiCorp intends to start billing under

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<sup>7</sup> PacifiCorp explains that it is filing the Agreements with the Commission because they contain provisions that do not conform to the *pro forma* OATT.

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

<sup>9</sup> NextEra Protest at 2-3.

<sup>10</sup> *Id.* at 5.

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

<sup>12</sup> *Id.* at 7.

SA 583 on January 1, 2012 even though the McNary Line has not yet been built. NextEra asserts that PacifiCorp has no right to bill or charge for services under SA 583 until construction of the McNary Line is complete.<sup>13</sup>

11. In addition, NextEra is concerned about the proposed increases in the billing determinants for PTP transmission service, for which PacifiCorp proposes to “gross up” the amount of reserved capacity to include losses.<sup>14</sup> NextEra acknowledges that the billing determinant calculation is properly at issue in and part of the 2011 Transmission Rate Case.

12. Finally, NextEra argues that PacifiCorp’s filing of the Agreements is premature “since all of the rates referenced in the revisions are subject to refund and the outcome of ongoing settlement procedures” in the 2011 Transmission Rate Case.<sup>15</sup> NextEra argues that section 35.1 of the Commission’s regulations does not require PacifiCorp to “impose unwanted amendments to existing non-conforming [transmission service agreements] that have already been filed with the Commission.”<sup>16</sup>

**B. PacifiCorp Answer**

13. PacifiCorp answers that it filed the Agreements with the Commission to reflect proposed revisions to its OATT, which were filed in the 2011 Transmission Rate Case.<sup>17</sup> PacifiCorp acknowledges that the proposed revisions are subject to refund and the outcome of the 2011 Transmission Rate Case. According to PacifiCorp, it revised and filed the Agreements for the general purpose of maintaining current non-conforming agreements on file with the Commission.<sup>18</sup>

14. PacifiCorp asserts that the start date for NextEra’s service under SA 583 remains the same—contingent upon the completion of the McNary Line—and PacifiCorp affirms that it will not bill NextEra for transmission services under SA 583 until the McNary Line is complete.<sup>19</sup> PacifiCorp notes that the change in the service start date to

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<sup>13</sup> *Id.* at 8-9.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 9-11.

<sup>16</sup> *Id.* at 11.

<sup>17</sup> PacifiCorp Answer at 2.

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

<sup>19</sup> *Id.* at 4-5.

January 1, 2012, is simply to match the date on which PacifiCorp would begin to charge transmission customers with “active service agreements in a manner consistent with the August 8 Order.”<sup>20</sup>

15. Finally, PacifiCorp states that its filing is not premature because all of the rates in the Agreements are subject to refund and the outcome of the ongoing settlement and other proceedings in the 2011 Transmission Rate Case. Specifically, PacifiCorp states that “[it] chose to undertake a significant effort to develop revised service agreements for its transmission customers that more accurately reflected the rates and charges that were contemplated as part of PacifiCorp’s transmission rate case, once [the Commission] accepted the OATT revisions in the August 8 Order.”<sup>21</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

16. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), NextEra’s timely, unopposed motion to intervene serves to make NextEra a party to this proceeding.

17. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011) prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PacifiCorp’s answer to NextEra’s protest because it has provided information that assisted us in our decision-making process.

##### **B. Commission Determination**

18. We find that PacifiCorp’s filing in this case is consistent with the 2011 Transmission Rate Case and supported by the Commission’s rules requiring the filing of full and complete rate schedules.<sup>22</sup> We note that both PacifiCorp and NextEra acknowledge that the Agreements are subject to the outcome of the hearing and settlement procedures in the 2011 Transmission Rate Case.<sup>23</sup>

19. PacifiCorp’s proposed change to the effective dates of the Agreements to January 1, 2012, is consistent with the 2011 Transmission Rate Case, which makes the

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<sup>20</sup> *Id.* at 4.

<sup>21</sup> *Id.* at 5.

<sup>22</sup> 18 C.F.R. § 35.1(a) (2011).

<sup>23</sup> PacifiCorp Transmittal Letter at 3 and 5; NextEra Protest at 9-11.

new transmission rates effective on the first day of the month following the effective date established by the Commission. We find that all other proposed changes to PacifiCorp's OATT are still subject to the outcome of the hearing and settlement procedures in the 2011 Transmission Rate Case. Therefore, we conditionally accept the Agreements, suspend them for a nominal period, to be effective January 1, 2012, subject to refund and subject to the outcome of the ongoing hearing and settlement procedures in the 2011 Transmission Rate Case.

20. We find that NextEra's concern about whether PacifiCorp intends to start billing NextEra for services on the yet to be built McNary Line is unwarranted given that PacifiCorp affirmed that it will not bill NextEra for transmission services under SA 583 until construction of the McNary Line is complete.

The Commission orders:

PacifiCorp's filing is hereby conditionally accepted for filing, suspended for a nominal period, to be effective January 1, 2012, as requested, subject to refund and subject to the OATT proceeding in Docket Nos. ER11-3643-000 and ER11-3643-001, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.