

142 FERC ¶ 61,172
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PacifiCorp v. Western Electricity Coordinating Council
and Los Angeles Department of Water and Power

Docket No. EL13-22-000

ORDER ON COMPLAINT

(Issued March 4, 2013)

1. On November 16, 2012, PacifiCorp filed a complaint, under Rule 206 of the Commission's Rules of Practice and Procedure¹ and sections 215(e)(3) and (e)(5) of the Federal Power Act (FPA),² against the Western Electricity Coordinating Council (WECC) (in its role as a Reliability Coordinator and Regional Entity) and the Los Angeles Department of Water and Power (LADWP), alleging that these entities are committing ongoing violations of mandatory Reliability Standards that have resulted in reductions of transfer capability on PacifiCorp's system. The complaint seeks an order directing compliance with the Reliability Standards and the issuance of penalties. In this order, as further discussed below, we dismiss the complaint, without prejudice, and refer this matter to the North American Electric Reliability Corporation (NERC) for non-public investigation and appropriate action, as necessary.

¹ 18 C.F.R. § 385.206 (2012).

² 16 U.S.C. §§ 824o(e)(3) and (e)(5) (2006). Section 215(e)(3) of the FPA provides that, "on its own motion or complaint, the Commission may order compliance with a reliability standard and may impose a penalty against a user or owner or operator of the bulk-power system"

I. Background

A. PacifiCorp's Complaint

2. PacifiCorp argues that Registered Entities must calculate System Operating Limits (SOL),³ Total Transfer Capability (TTC), and Available Transfer Capability (ATC) according to the Commission-approved mandatory Reliability Standards. According to PacifiCorp, mandatory Reliability Standards FAC-014-2 and MOD-029-1a set forth obligations regarding how transmission operators must establish SOLs and TTC values. PacifiCorp argues that, in the Western Interconnection, compliance with these Reliability Standards is tied to proper application of the WECC Procedures for Project Rating Review (Path Rating Process), which is a process for measuring and mitigating the interactions among various transmission lines. PacifiCorp further states that, at the end of the collaborative, multi-stage WECC Path Rating Process, a transmission line receives an Accepted Rating.⁴ PacifiCorp adds that the owner of the transmission line can then calculate SOLs, TTC, and ATC and operate the line in conformance with the Accepted Rating. PacifiCorp contends that other transmission owners should be able to rely on Accepted Ratings as they invest in the development of future, neighboring transmission lines.

3. PacifiCorp asserts that WECC has violated mandatory Reliability Standards by allowing LADWP to ignore the Accepted Ratings for PacifiCorp's and LADWP's lines as required by the WECC Path Rating Process. PacifiCorp argues that, to preserve system reliability, it had no choice but to accommodate LADWP's conduct by operating

³ NERC defines System Operating Limit or SOL as "[t]he value (such as MW, MVar, Amperes, Frequency or Volts) that satisfies the most limiting of the prescribed operating criteria for a specified system configuration to ensure operation within acceptable reliability criteria." See NERC Glossary of Terms Used in Reliability Standards at 19. According to NERC, SOLs are based upon certain operating criteria, including facility ratings, stability ratings and system voltage limits. *Id.*

⁴ Accepted Rating is defined as: "A project rating that has been reviewed and accepted by WECC members. This rating is granted by WECC at the conclusion of reviewed planning studies and will be the rating of the project when it is put in service, if it is built in accordance with Plan of Service specified in the Phase 2 Rating Report. This is a comprehensive rating including both the simultaneous and nonsimultaneous transfer capabilities." PacifiCorp Complaint, Exhibit 3, WECC Overview of Policies and Procedures for Regional Planning Project Review, Project Rating Review, and Progress Report (2010), at III-33.

portions of its system in a fashion that denies PacifiCorp the full benefits of its investment as recognized in the Accepted Rating.

4. According to PacifiCorp, LADWP utilized WECC's Path Rating Process in developing ratings for the Intermountain Power Project DC line (Intermountain line).⁵ According to PacifiCorp, in 2007, LADWP subsequently obtained approval for the project with an Accepted Rating based on a Plan of Service for its operation of the line (2007 Plan of Service). PacifiCorp claims that LADWP then began violating its Accepted Rating, and strayed from WECC's Path Rating Process, by importing more power to the Intermountain Power Project 345 kV bus than provided for in the 2007 Plan of Service without conducting a new operating study, contrary to WECC's Path Rating Process.

5. PacifiCorp alleges that these and other lapses in the way LADWP developed its SOLs for the relevant transmission lines violated Requirement 2 of Reliability Standard FAC-014-2, which requires transmission operators to "establish SOLs . . . that are consistent with its Reliability Coordinator's SOL Methodology."⁶ Further, according to PacifiCorp, since transmission operators must rely on SOLs in determining appropriate TTC values, the same infirmities also result in violations of Reliability Standard MOD-029-1a, which sets forth obligations on the calculation of TTC values.

6. PacifiCorp also argues that the WECC Reliability Coordinator violated Requirement 1 of Reliability Standard FAC-014-2 by failing to ensure that the SOL for the Intermountain line was established consistent with the its own SOL methodology, thus risking regional reliability.

7. PacifiCorp claims that the WECC Regional Entity has refused to address the reliability implications associated with the alleged Reliability Standards violations, despite repeated requests from PacifiCorp.

8. PacifiCorp asks the Commission for the following relief. First, it asks the Commission to direct LADWP to immediately conform its operation of the Intermountain line to an Accepted Rating and a SOL consistent with: (i) the 2007 Plan of

⁵ According to PacifiCorp, the Intermountain line "currently has a WECC-approved rating of 2400 MW northeast-to-southwest and a 1400 MW rating southwest-to-northeast." PacifiCorp Complaint at 11.

⁶ WECC Reliability Coordinator's SOL Methodology is a document that establishes the minimum methodology by which WECC entities will determine SOLs and Interconnection Reliability Operating Limits for the operations horizon.

Service; (ii) the SOL methodology of the WECC Reliability Coordinator; and (iii) applicable Reliability Standards, and to seek any changes to that SOL in a manner consistent with WECC's Path Rating Process and the related Reliability Standards.

9. Second, it asks the Commission to direct the WECC Reliability Coordinator to refrain from permitting SOLs in its Reliability Coordinator Area that are inconsistent with: (i) the 2007 Plan of Service; (ii) the Reliability Coordinator's SOL methodology; and (iii) applicable Reliability Standards.

10. Third, it asks the Commission to direct the WECC Regional Entity to ensure that WECC's Path Rating Process is enforced and applied consistent with: (i) the 2007 Plan of Service; (ii) the Reliability Coordinator's SOL methodology; and (iii) applicable Reliability Standards. Fourth, PacifiCorp asks that the Commission impose penalties on LADWP and WECC for their Reliability Standard violations to ensure future compliance.

11. PacifiCorp contends that the issues it raises in its complaint are distinct and separate from those pending before WECC regarding alleged procedural violations relating to PacifiCorp's Gateway South Project.⁷

II. Notice of Filing and Responsive Pleadings

12. Notice of PacifiCorp's complaint was published in the *Federal Register*, 77 Fed. Reg. 70,747 (2012) with interventions and protests due on or before December 6, 2012. On November 28, 2012, WECC filed a motion for an extension of time to December 17, 2012 by which to file its answer, which was granted on November 29, 2012.⁸ Timely motions to intervene were filed by the Cities of Anaheim, Pasadena and Riverside, California and by the Transmission Agency of Northern California. On December 17, 2012, WECC and LADWP separately filed responses to the complaint that contained both a motion to dismiss and an answer. On December 21, 2012, PacifiCorp requested an

⁷ PacifiCorp notes that, on July 29, 2011, LADWP initiated dispute resolution procedures under WECC's Bylaws alleging procedural violation of WECC's Path Rating Process relating to the Gateway South Project. According to PacifiCorp, "the issues in that proceeding involve the procedures followed in developing PacifiCorp's Gateway South Accepted Ratings, not the failures of LADWP and WECC to ensure compliance with the 2007 Plan of Service and interrelated Reliability Standards." PacifiCorp Complaint at 44.

⁸ *Notice of Extension of Time*, Docket No. EL13-22-000 (Nov. 29, 2012) (giving notice to all parties that the period for comments was extended to and including December 17, 2012).

extension of time to January 11, 2013 by which to file its answer to the motions to dismiss, which was granted on December 21, 2012.⁹ On January 11, 2013, PacifiCorp filed an answer to the WECC and LADWP motions to dismiss the complaint. On January 23, 2013, WECC filed a motion for leave to answer and an answer to PacifiCorp's answer. Likewise, on January 25, 2013, LADWP filed a motion for leave to answer and an answer to PacifiCorp's answer. On February 5, 2013, PacifiCorp filed a motion for leave to file an answer and an answer that addressed WECC's answer and LADWP's answer.

A. WECC's December 17, 2012 Answer and Motion to Dismiss

13. WECC argues that the Commission should dismiss PacifiCorp's complaint because it seeks to circumvent a long-standing practice by the Commission to allow NERC and the Regional Entities, such as WECC, to attempt to resolve disputes between utilities and allegations of violations of Reliability Standards before filing with the Commission. In addition, WECC argues that PacifiCorp is obligated to submit the issue of the complaint to WECC's Dispute Resolution Procedures prior to raising the issue with the Commission. WECC explains that, since the complaint primarily involves a dispute regarding transmission path ratings, it must be resolved according to WECC Bylaws, which mandate the use of WECC's Dispute Resolution Procedures.

14. WECC further asserts that the complaint fails to sufficiently allege any violations by WECC of Reliability Standards and, rather, at most suggests violations of WECC guidelines, policies and procedures that are outside of the Commission's jurisdiction. Therefore, WECC argues that the Commission should dismiss PacifiCorp's complaint. However, WECC states that, if the Commission declines to dismiss the complaint, then the Commission should allow WECC an opportunity to present additional evidence on the merits prior to issuing an order on the merits of the complaint.

B. LADWP's December 17, 2012 Answer and Motion to Dismiss

15. LADWP similarly argues that the WECC Regional Entity is the proper forum to address any reliability issues that result from LADWP's and PacifiCorp's operation of their respective transmission systems. LADWP asserts that the primary means set forth for enforcing Reliability Standards, in the first instance, is through NERC and Regional Entities such as WECC. LADWP argues that FPA section 215(e)(3) was not intended as the primary means to address specific, technical compliance with Reliability Standards and disputes between utilities on transmission path ratings. LADWP asserts that NERC and WECC have developed expertise on reliability and technical issues in the Western

⁹ *Notice of Extension of Time*, Docket No. EL13-22-000 (Dec. 21, 2012).

Interconnection, and that the Commission should consider the institutional advantages that NERC and WECC have in considering PacifiCorp's complaint.

16. LADWP further states that PacifiCorp is inappropriately and prematurely invoking FPA section 215(e)(3) as a way for the Commission to step into the middle of an ongoing dispute. LADWP states that, since issues underlying the present dispute remain pending before WECC, it is especially unwarranted for the Commission to intervene.

17. LADWP states that the WECC proceeding involves an ongoing dispute between PacifiCorp and LADWP over the potential for a simultaneous interaction that could occur between LADWP's and PacifiCorp's systems under particular operating conditions, a risk that must be mitigated to maintain reliable operations. LADWP states that this simultaneous interaction was identified during the WECC Path Rating Process that studied the regional impacts of significant expansions made by PacifiCorp as part of its Gateway South Project. LADWP further states that it has disputed aspects of the WECC process that established the new path ratings for these expanded facilities. This dispute is pending in an arbitration proceeding pursuant to WECC's Dispute Resolution Procedures. Therefore, LADWP states that the Commission should dismiss PacifiCorp's complaint and reject PacifiCorp's request for the Commission to exercise its discretionary authority to investigate PacifiCorp's allegations. Alternatively, LADWP argues that the Commission should deny PacifiCorp's requested relief, as PacifiCorp provided insufficient evidence of a Reliability Standard violation for the Commission to make a ruling on the pleading alone, without affording LADWP further opportunity for negotiation and the presentation of evidence.

C. PacifiCorp's January 11, 2013 Answer

18. PacifiCorp answers that the legal issue presented by its complaint is not whether the parties have acted consistently with the WECC Path Rating Process but, rather, whether they have violated the Reliability Standards that depend, in part, on the Path Rating Process. In PacifiCorp's view, that is the sole issue in the case.

19. PacifiCorp reiterates its argument that the Commission, and not WECC, should decide the parties' dispute and that the dispute is not suitable for WECC's Dispute Resolution Procedures.¹⁰ PacifiCorp argues that using WECC Dispute Resolution Procedures to address an alleged Reliability Standards violation would violate FPA section 215 and the NERC/WECC Delegation Agreement because the WECC dispute resolution process does not — and cannot — address issues related to compliance with mandatory Reliability Standards. In this regard, PacifiCorp points out that the WECC

¹⁰ PacifiCorp January 11, 2013 Answer at 2.

Bylaws prohibit the dispute resolution process from addressing compliance issues.¹¹ PacifiCorp adds that only the NERC Compliance Monitoring and Enforcement Program procedures can address compliance concerns. Moreover, PacifiCorp states that the WECC Regional Entity function, which is charged with enforcing Reliability Standards, does not oversee the dispute resolution process. Thus, PacifiCorp contends that the existing WECC dispute resolution process cannot consider or provide a remedy for the issues in this complaint.¹²

D. Additional Answers

20. WECC asserts that PacifiCorp has provided no authority for its proposition that an alleged violation of the Path Rating Process violates any Reliability Standard; therefore, the Commission should order that these issues be addressed through WECC's Dispute Resolution Procedures. WECC argues that its Path Rating Process is a voluntary collaborative multistage process. Therefore, WECC asserts that PacifiCorp's claims are more appropriately addressed through WECC's Dispute Resolutions Procedures since PacifiCorp's complaint involves an alleged violation of a voluntary process and not any Reliability Standards. In addition, WECC states that differing interpretations of the 2007 Plan of Service are properly made by an arbitrator, selected through the proper channels under WECC's Dispute Resolution Procedures.¹³

21. LADWP argues that PacifiCorp's complaint inappropriately requests the Commission to conclude, on the basis of the pleadings, that LADWP is in violation of Reliability Standards. LADWP states that the Commission's procedures for assessing a civil penalty in the first instance require the Commission to provide an opportunity for further hearing and presentation of additional evidence on the merits before it may assess

¹¹ PacifiCorp states that section 11 of the WECC Bylaws expressly forbids the WECC dispute resolution process from addressing Reliability Standards compliance issues, stating "[m]atters subject to the jurisdiction of the WECC Compliance Hearing Body are not subject to the procedures in Appendix C." PacifiCorp January 11, 2013 answer at 10 (citing Bylaws of the Western Electricity Coordinating Council, Exhibit B to the WECC Delegation Agreement).

¹² PacifiCorp January 11, 2013 Answer at 10.

¹³ WECC January 23, 2013 Reply at 7 (citing PacifiCorp Complaint, Exhibit 3, WECC Overview of Policies and Procedures for Regional Planning Project Review, Project Rating Review, and Progress Report (2010) as "stating that, concerning the protection of ratings, 'disputes shall be resolved through WECC Alternative dispute Resolution process or some other process mutually agreed to by the parties'").

civil penalties.¹⁴ Therefore, LADWP asserts that, according to the Commission's Policy Statement on the process of assessing civil penalties, the Commission must provide LADWP and WECC with an opportunity to request an administrative hearing with an Administrative Law Judge before the Commission may rule on the merits of PacifiCorp's complaint.¹⁵

22. PacifiCorp states that the Commission should not defer PacifiCorp's complaint to the pending WECC dispute resolution proceeding because PacifiCorp's complaint raises separate and distinct issues. PacifiCorp asserts that the WECC dispute resolution proceeding fails to address whether WECC and LADWP violated mandatory Reliability Standards.

23. PacifiCorp argues that limiting issues, such as those raised in its complaint, to WECC dispute resolution procedures would deny entities their statutory right to bring a complaint directly to the Commission under section 215(e)(3) of the FPA and prevent the Commission from being informed of alleged reliability violations. PacifiCorp emphasizes the importance of allowing entities to bring Reliability Standards compliance concerns directly to the Commission, especially when the Regional Entity has failed to respond to concerns of potential violations.¹⁶

III. Discussion

A. Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by WECC (on January 23, 2013), by LADWP (on January 25, 2013), and by PacifiCorp (on February 5, 2013) because they have provided information that assisted us in our decision-making process.

¹⁴ LADWP January 25, 2013 Answer at 22 & n.57 (citing *Process for Assessing Civil Penalties*, 117 FERC ¶ 61,317, at P 5 (2006)).

¹⁵ *Id.*

¹⁶ PacifiCorp February 5, 2013 Answer at 5.

B. Commission Determination

26. For the reasons discussed below, we dismiss the complaint without prejudice. Rather than make a determination on the pleadings, we refer this matter to NERC, as the Commission-certified Electric Reliability Organization, to investigate the alleged Reliability Standard violations set forth in PacifiCorp's complaint. NERC may, at its discretion, enlist in a joint investigation Northeast Power Coordinating Council, Inc (NPCC), the Compliance Enforcement Authority for WECC's activities as a registered entity.¹⁷

27. We conclude that the existing record in this docket is insufficient to allow us to reach a determination on the merits of PacifiCorp's allegations (i.e., whether LADWP or the WECC Reliability Coordinator violated certain Reliability Standards). For example, no party in this proceeding has provided a complete and detailed timeline of the events, including when the alleged Reliability Standards violations occurred. This information is needed to identify which versions of the applicable Reliability Standards were enforceable at the time the violations allegedly occurred, and over what period of time ongoing violations may have occurred.

28. Nor do the pleadings present sufficient evidence to allow the Commission to decide conflicting claims of fact. In particular, it is not possible to determine based on the current record whether LADWP properly followed the Reliability Coordinator methodology for developing SOLs, as required by mandatory Reliability Standards. Further pertinent issues that warrant investigation include:

- Whether LADWP established the SOL for the Intermountain line consistent with the then effective WECC Reliability Coordinator's methodology for establishing SOLs;
- Whether LADWP revised the SOL for the Intermountain line, and were any such revisions established in accordance with the WECC Reliability Coordinator's SOL methodology;

¹⁷ NPCC is a Regional Entity located in the U.S. Northeast and Canada. Pursuant to a Commission-approved agreement between NPCC and WECC, NPCC performs compliance and enforcement functions that pertain to WECC's registered reliability functions, e.g., as a Reliability Coordinator. The NPCC-WECC agreement authorizes NPCC to conduct a compliance investigation of WECC's functions as a registered entity, but does not authorize NPCC to investigate other registered entities within the WECC region such as LADWP. *See North American Electric Reliability Corp.*, Docket No. RR11-2-000 (Nov. 13, 2011) (delegated letter order).

- Whether LADWP calculated ATC or TTC values for the Intermountain line in a manner inconsistent with Reliability Standard MOD-029-1a; and
- Whether LADWP violated Reliability Standards FAC-014-2 or MOD-029-1a.¹⁸

29. Further, both WECC and LADWP argue that, if the Commission does not dismiss the complaint, they should be given an opportunity to provide additional on-the-record evidence before the Commission decides the merits of the complaint. Moreover, we will not refer this matter to the WECC Dispute Resolution Procedures. This option would be more appropriate if the sole issue was LADWP compliance with the WECC Path Rating Process and not, as framed by PacifiCorp, a dispute over whether LADWP and WECC as the Reliability Coordinator violated mandatory Reliability Standards. Since the complaint includes allegations against WECC as both Regional Entity and Reliability Coordinator, WECC is precluded from participating in an investigation.¹⁹

30. The Commission retains authority under section 215(e)(3) of the FPA and 18 C.F.R. § 39.7(f) to investigate alleged violations of Reliability Standards and order compliance and penalties. However, based on the individual circumstances presented in this complaint, we find that it would be appropriate for NERC to investigate the allegations presented in PacifiCorp's complaint against LADWP and WECC in the first instance and for NERC to take appropriate action in the event that it is determined that the Reliability Standards have been violated.²⁰ Given our determination that NERC

¹⁸ The Commission does not intend this to be an exclusive list and NERC may determine the proper scope of its investigation.

¹⁹ See *North American Electric Reliability Corp.*, Docket No. RR11-2-000, delegated letter order (November 15, 2011), in which the Commission approved NERC's agreement with WECC and NPCC giving NPCC responsibility for performing Regional Entity compliance monitoring and enforcement program functions with respect to those reliability functions for which WECC is the registered entity within the United States portion of the WECC region. Prior to this agreement, these enforcement functions were assigned to NERC.

²⁰ Cf. *Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, & Existing Transmission Commitments & Mandatory Reliability Standards for the Bulk-Power Sys.*, 134 FERC ¶ 61,118 (2011) (dismissing request for extension of time to comply with a reliability standard and directing the entity to address its compliance concerns to NERC, as "strik[ing] in this instance a reasonable balance

(continued...)

should investigate whether violations of the Reliability Standards have occurred or are occurring, we make no determinations as to the merits of PacifiCorp's complaint. We, therefore, will dismiss PacifiCorp's complaint, without prejudice.

31. We expect NERC to investigate the matter in a timely manner so that the issues PacifiCorp has raised can be resolved as soon as possible. To that end, NERC's provision of quarterly reports to the Commission on the status of the investigation until the investigation is completed will keep the Commission informed as to NERC's progress. If NERC determines that compliance/enforcement action is appropriate, a determination that violations occurred that result in the assessment of a penalty will be submitted to the Commission in the form of a Notice of Penalty pursuant to section 215(e) of the FPA. If NERC determines that a compliance/enforcement action is not appropriate, nothing in this order precludes PacifiCorp from renewing its complaint with the Commission, as necessary.

The Commission orders:

(A) As discussed in the body of this order, the Commission hereby refers this matter to NERC to conduct an investigation into the allegations presented by PacifiCorp in its complaint, with quarterly status reports to the Commission until the investigation is completed. NERC should take appropriate action(s) in the event that NERC and/or NPCC find that violations of the Reliability Standards have occurred or are occurring.

(B) PacifiCorp's complaint is hereby dismissed, without prejudice, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

between the roles of NERC and the Commission in the enforcement of mandatory Reliability Standards”).