

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Priority Rights to New  
Participant-Funded Transmission**

**Docket No. AD11-11-000**

**March 15, 2011 Technical Conference  
Comments of Kenneth Houston  
Director Transmission Services,  
PacifiCorp**

**Introduction**

Thank you for allowing me the opportunity to participate in today's technical conference to present PacifiCorp's views and experiences in attempting to "up-size" the Energy Gateway transmission expansion plan. I will also discuss the current regulatory uncertainty and other disincentives vertically integrated utilities face at the wholesale and retail level related to undertaking large transmission expansion projects.

**Energy Gateway**

In May 2007, PacifiCorp announced plans to build Energy Gateway. Energy Gateway consists of approximately 2,000 miles of new, primarily 500 kV, transmission lines extending from eastern Wyoming through Idaho into Oregon and from eastern Wyoming into southwest Utah. The project is necessary to meet network customers' long-term needs to serve load growth, to meet renewable energy requirements, and to support the development of diverse resource options needed under a variety of future regulatory and market scenarios, which may be driven by fuel price variability and potential renewable and low-carbon generation requirements. The first major segment of Energy Gateway—the Populus to Terminal line from Downey, Idaho, to the Salt Lake City area—was placed in service during November 2010. Construction is scheduled to

begin mid-2011 on the second major segment – Mona to Oquirrh – while outreach, siting, and permitting processes continue for the remaining segments.

PacifiCorp is required by the Commission to provide transmission service on an open, non-discriminatory basis and to “plan, construct, operate and maintain the system in accordance with good utility practice.” With over 16,000 miles of transmission lines ranging from 46 kV to 500 kV, PacifiCorp’s transmission system is one of the largest in the western U.S. To ensure its system is capable of providing reliable service for its 1.7 million retail and corresponding wholesale customers and to comply with its Open Access Transmission Tariff (“OATT”), PacifiCorp solicits each of its network customers annually for their 10-year load and resource forecasts and relies on this information to help determine project need, investment timing, and present and future network allocations of new capacity.

PacifiCorp’s Energy Gateway project will be constructed to serve network customer-projected load growth based upon load and resource forecasts and resulting network allocations. As such, the initial assessment of the project’s scale called for single 500-kV lines with an estimated 1,500 MW rating per segment. In 2007 when PacifiCorp posted the Energy Gateway project on its OASIS, it received a high level of interest in commercial point-to-point service; 39 point-to-point transmission service requests, resulting in 4,900 MW of requested capacity across the announced project. To satisfy these requests, PacifiCorp determined that it would need to “upscale” the project by using double circuit 500-kV line construction. PacifiCorp realized that if it followed the standard OATT “first-come, first-served” approach, it was unlikely the additional

capacity would be built as the first customer could not reasonably bear the costs for the entire upgrade.

In early 2008 PacifiCorp devised an alternative customer grouping queue process and potential pricing structures intended to satisfy the Commission's twin policy objectives of encouraging transmission investment and preventing undue discrimination. PacifiCorp was guided by a desire to meet customers' needs for more efficient and timely construction, while eliminating speculative transmission service requests and protecting the company against stranded investment risks. In the absence of favorable Commission precedent, however, PacifiCorp was severely challenged in designing a mutually acceptable pricing-capacity allocation structure that equitably balanced the risk burden borne by all parties. The Commission has yet to permit a departure from the *pro forma* tariff's prohibition against negotiated rates. Likewise, no policy guidance exists for establishing what rate, if any, a customer should pay at the end of an incrementally-priced contract.

After meeting with Commission staff, PacifiCorp presented its transmission customers a proposed non-conforming transmission service agreement featuring the following elements:

- Service was conditional upon completion of the line, PacifiCorp agreed to offer interim partial, redispatch and/or conditional firm service to the extent available and consistent with the OATT during any interim period until construction is fully completed.
- The amount of capacity granted was conditioned on the Western Electricity Coordinating Council ("WECC") agreeing with PacifiCorp's path rating. If the WECC path ratings were below expectations, contract capacity would be reduced *pro rata* to all customers taking service over the Energy Gateway path.
- Service was conditioned on the customer meeting enhanced credit requirements, which were: (a) for investment grade customers, a deposit for 90 days worth of

service at agreement signing; or (b) for non-investment grade customers with a guaranty from an investment grade entity both (1) a guaranty for one year worth of service and (2) a deposit for ninety days worth of service at agreement signing.

- Service under the terms and conditions of the transmission service agreements offered to customers was conditioned upon a sufficient number of customers executing agreements, determined at PacifiCorp's discretion based on its commercially reasonable needs. In the event that a sufficient number of customers did not execute transmission service agreements PacifiCorp would have sought out equity partners for remaining capacity. In the event that PacifiCorp was unable to engage equity partners for remaining capacity, PacifiCorp reserved the right to re-offer transmission service agreements with revised pricing and terms.
- The contract price would be adjusted-up or down- after the permitting process was complete and the engineer, procure, construct contract was awarded.
- PacifiCorp offered customers various contract term and rate options including a 20-year term transmission service agreement with an option to pay an upfront contribution in order to receive an embedded rate, a 20-year and a five-year incremental rate contract option or an option for shorter terms at incremental rates.

While one customer worked with PacifiCorp to negotiate certain terms of the contracts, none of the 39 requests resulting in signed agreements. After the initial wave of queue requests withdrew a second round was received, unfortunately with the same result. PacifiCorp has continued to investigate other alternatives that would allow the project to be "upsized"<sup>1</sup> including pursuit of potential equity partners in the project. Unfortunately, potential joint ownership partners have yet to step forward to sign definitive commercial agreements.

In summary, despite welcomed encouragement from Commission staff and PacifiCorp's efforts to design creative solutions, non-network customers were simply unwilling to commit such that Energy Gateway could be upsized. For this reason,

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<sup>1</sup> Legislative language developed by PacifiCorp and proposed as a part of the stimulus funding bill would have provided federal "back stop" funding for a 500 kV project that was upsized. Back stop funding would have applied for any capacity that was not fully subscribed at project completion. The proposed language was ultimately not included in the 2009 American Recovery and Reinvestment Act.

PacifiCorp's Energy Gateway project is currently designed and being constructed to serve projected network customer load growth.

### **Regulatory Uncertainty**

PacifiCorp is concerned by the escalating degree of regulatory uncertainty around the decision to undertake transmission expansion projects needed to serve network customer load requirements. As described above, consistent with the requirements of its OATT, PacifiCorp plans and builds its transmission system based on network customer 10-year load and resource forecasts and also sets aside or reserves network capacity based on this same data set. PacifiCorp's experience, however, is that the lengthy planning, permitting, and construction timeline required for significant transmission investments, as well as the typical useful life of these facilities, is well beyond the 10-year timeframe for load and resource forecasts. Using Energy Gateway as an example, it is now evident that major portions of the project will require four-five years for permitting alone. PacifiCorp desires clear Commission acknowledgement of this reality and policy guidance allowing jurisdictional public utilities the ability to plan and build the transmission system on a 20-year horizon, which would be more consistent with the time required for large scale transmission expansion projects.

In addition, although the OATT contemplates that public utilities may restrict "rollover rights" of transmission customers taking long-term service of at least five years in favor of forecasted network capacity needs, there is very little precedent demonstrating circumstances where this has been allowed. Indeed, most precedent on this issue supports denying a public utility's ability to restrict rollover. To be clear, PacifiCorp is concerned that unless and until there is clear guidance from the Commission in this area,

new transmission expansion projects undertaken for forecasted customer demand will continue to be impeded. PacifiCorp believes rollover rights should be limited when its available transmission capability studies show capacity is needed to meet future network customer requirements. PacifiCorp has concerns that once the Energy Gateway project is completed, capacity reserved for future load growth may be challenged, perhaps by the same customers who refused earlier commitments required for upsizing. PacifiCorp recommends that the Commission take the opportunity now to define with clarity the requirements necessary for project capacity to be set aside under priority access for future network load service needs.

Large transmission expansion projects also face similar regulatory uncertainty challenges at the state retail level. This is illustrated by PacifiCorp's recent experience with the Populus to Terminal project, the first of Energy Gateway's six main segments. The first segment was designed to meet PacifiCorp's current and forecasted customer energy needs now as well as to bolster system performance upon completion of future Energy Gateway segments. Just as it is not prudent to design such a project only to meet current needs, it is not practical to simultaneously construct and place into service 2,000 miles of new transmission facilities to avoid staged capacity ratings. Considering the lengthy planning, permitting, and construction timeline required for significant transmission investments, as well as the typical useful life of these facilities, it clearly would be imprudent to design such projects merely to meet "present needs" without consideration to meet forecasted growth in customer demand.

Despite these prudent planning measures, PacifiCorp may be required to defer a portion of this investment as a result of a regulatory order from one of its states.<sup>2</sup> The state commission ruled that recovery of a portion of the project's cost is to be deferred, noting that the project is not "presently 'used and useful' in its entirety" and that the line "was built to meet not only present needs but future needs."<sup>3</sup> PacifiCorp designed and built the Populus to Terminal project consistent with the requirements of its OATT and FERC precedent to serve both the current and forecasted needs of its customers, but nevertheless now has a portion of an investment subject to recovery if and when it is deemed used and useful at some future date. Such a regulatory treatment has a chilling effect on any decision to construct a transmission expansion project with surplus capacity for future network or wholesale customer needs. Absent a reversal of this order, the company faces significantly greater regulatory risk challenges from properly sizing projects to meet future customer needs and would need a solid contract commitment to pay upsizing costs for any wholesale customer request.

Accordingly, based on this recent precedent, unless state regulators specifically signal support for "upsizing" transmission projects due to the related benefits (such as maximized use of energy corridors, reduced environmental impacts, and improved economies of scale), PacifiCorp would not expect state regulatory approval for any portion of investments in transmission capacity beyond that needed solely for PacifiCorp's network customers. The Commission must recognize fully the added risk and regulatory disincentives some state regulators may create for public utilities where

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<sup>2</sup> PacifiCorp plans to seek reconsideration of this Order.

<sup>3</sup> Docket PAC-E-10-07 In the Matter of the Application of PacifiCorp DBA Rocky Mountain Power for Approval of Changes to its Electric Service Schedules (IPUC Order No. 32196, pg. 37). [http://www.puc.idaho.gov/internet/cases/elec/PAC/PACE1007/ordnotc/20110228FINAL\\_ORDER\\_NO\\_32196.PDF](http://www.puc.idaho.gov/internet/cases/elec/PAC/PACE1007/ordnotc/20110228FINAL_ORDER_NO_32196.PDF)

major transmission expansion investments are involved. Indeed, PacifiCorp's recent experience must be a consideration in future transmission expansion decisions. It is for these reasons that stronger assurances from the Commission are required to permit transmission providers the ability to restrict rollover rights for the purpose of serving future network load requirements.

### **Conclusion**

In summary, significant commercial risks exist for participant-funded lines. Anchor shipper concepts and other ideas can mitigate some of these risks; however, there appear to be no easy answers. Lengthy permitting and construction timelines create schedule uncertainties which when coupled with high project costs with variability risks make it difficult for queue customers to contractually commit to long-term transportation costs well in advance of firm commitments from customers to buy their product. Cost recovery uncertainty risks and the absence of a revenue stream during the construction period make it very difficult for a transmission provider to commit to upsize projects without customer commitments to pay their share of upgrade costs.

What can the Commission do to help?

Consider adopting the following policy recommendations. First, clarify and confirm a transmission provider's ability to assign priority access rights for future network load service obligations. Second, even though FERC is not the permitting agency, assistance to shorten and add certainty through the project permitting cycle would reduce the schedule risks transmission providers and customers face through the development and construction of a transmission expansion project. Finally, support

appropriate mechanisms for reducing cost recovery risk for all transmission expansion projects at both the federal and state levels.

Again, thank you for the opportunity to participate and provide PacifiCorp's perspective. I look forward to answering any questions you may have.