

141 FERC ¶ 61,156
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

In re PacifiCorp

Docket No. IN13-2-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued November 28, 2012)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and PacifiCorp. This Order is in the public interest because it resolves Enforcement's non-public investigation, under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2012), of conduct by PacifiCorp Transmission Services (PTS) and PacifiCorp's marketing function, Commercial and Trading (C&T), that potentially violated PacifiCorp's open access transmission tariff (OATT) and Part 37 of the Commission's regulations. PacifiCorp has agreed to pay a civil penalty of \$265,000, implement remedial measures, and consent to compliance monitoring.

I. Background

2. PacifiCorp is a wholly-owned subsidiary of MidAmerican Energy Holdings Company. PacifiCorp owns and operates 78 generating plants across the West that have a net capacity of approximately 10,483 megawatts. PacifiCorp has 62,000 miles of distribution line and approximately 15,900 miles of transmission line.

3. PTS is responsible for all of PacifiCorp's transmission services. PTS operates a transmission system located in the Western Interconnection. PTS' transmission practices are governed by its Commission-approved OATT. Pursuant to its OATT and applicable Commission regulations, PTS operates an Open Access Same-Time Information System (OASIS). OASIS is designed to ensure that all potential customers have access to the same information about the system.

4. C&T is PacifiCorp's marketing function, with responsibility for wholesale load service to all of PacifiCorp's retail service territories. In performing its functions, C&T is a transmission customer of the transmission system operated by PTS. Under the terms of the OATT and Commission regulation, all of PTS's customers, including C&T, are required to request transmission service in writing, and through the OASIS.

5. To obtain a transmission reservation on PacifiCorp's transmission system, the potential customer must reserve the capacity through PTS' OASIS. The OASIS system generates an OASIS reservation number known as an assignment reservation number or "AREF." The customer includes the AREF in its e-Tag, which it then submits to the WECC Western Interchange Tool (a/k/a WIT) for validation and approval. If approved, the valid e-Tag is forwarded to each relevant balancing authority, which in turn applies its own criteria to approve or reject the e-Tag, and thus the transmission reservation request. As the transmission operator, PTS reviews and accepts or rejects e-Tags submitted for transmission across PacifiCorp's balancing areas.

6. Each e-Tag identifies the various transmission paths (a/k/a "legs") that will constitute the transaction. Each leg of the e-Tag representing physical transmission must include an AREF. Legs representing non-physical aspects of the transaction may include other designations in lieu of AREFs, such as the "No OASIS Required" (NOR) designation.

II. Investigation

7. Following a call to the Enforcement Hotline, Enforcement opened a non-public, preliminary investigation to examine the e-Tagging practices of PTS during the period July 2, 2009 through February 11, 2011. In particular, staff examined whether the NOR designation was properly applied in requests for transmission on PacifiCorp's system.

8. During the period under examination, staff found that PTS' customers, including C&T, submitted e-Tags containing more than 78,000 NOR designations. Under the system PTS had in place at the time, it was possible for a customer to obtain physical transmission by using the NOR designation in lieu of an AREF. PTS did not have in place an effective mechanism either for rejecting such improper e-Tags, or for identifying and penalizing the unreserved use of its transmission system resulting from the acceptance of e-Tags containing such improper designations.

9. The Commission's regulations, 18 C.F.R. § 37.6(e)(1) (2012), require that all requests for transmission and ancillary services offered under an OATT "must be made on the OASIS and posted prior to the Transmission provider responding to the request." Similarly, sections 17.1 and 18.1 of PacifiCorp's OATT require that all point-to-point transmission reservations made by transmission customers, both firm and non-firm, must be made in writing via the OASIS. Staff concludes, on the basis of its investigation, that these requirements were violated on 22 occasions in which PTS' customers submitted, and PTS accepted, e-Tags containing NOR designations in lieu of AREF's obtained via OASIS for physical transmission across PacifiCorp's transmission system. C&T submitted 6 of these e-Tags. NOR use in e-Tags must be monitored to ensure that NORs are not being used in place of AREFs for transaction legs involving physical

transmission. Unmonitored acceptance of e-Tags containing NOR designations can lead to unauthorized access to or unreserved use of physical transmission, or to improper curtailments.

10. In addition, staff concluded, on the basis of its investigation, that PTS violated Schedule 11 of PacifiCorp's OATT by failing to timely identify and penalize the unreserved use of PacifiCorp's transmission associated with the 22 improperly submitted NOR designations.

III. Stipulation and Consent Agreement

11. Enforcement staff and PacifiCorp resolved Enforcement's investigation by means of the attached Agreement.

12. PacifiCorp stipulates to the facts. PacifiCorp admits that its transmission customers submitted improper transmission reservations, that it could have implemented a mechanism to timely review certain e-Tag reservations, and that it failed to assess customers operational penalties under Schedule 11 for unauthorized use of the transmission system.

13. PacifiCorp neither admits nor denies violations of the Commission's regulations, 18 C.F.R. § 37.6(e)(1) (2012), or of Sections 17.1 and 18.1 of its tariff, but agrees to pay a civil penalty of \$265,000. PacifiCorp also agrees to make semi-annual compliance reports to Enforcement for one year, with an additional second year at Enforcement's discretion.

IV. Determination of the Appropriate Sanctions and Remedies

14. In determining the appropriate remedy for PacifiCorp, Enforcement considered the factors described in the Revised Policy Statement on Enforcement.¹ PacifiCorp cooperated fully with the investigation, and implemented remedial measures that staff concludes will mitigate or prevent the occurrence of similar violations in the future.

15. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned, is consistent with the Revised Policy Statement on Penalty Guidelines,² and is in the public interest, as it reflects the nature and seriousness of PacifiCorp's conduct.

¹ 123 FERC ¶ 61,156 (2008).

² *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

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The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

United States of America
Federal Energy Regulatory Commission

PacifiCorp) Docket No. IN13-2-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. Staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and PacifiCorp enter into this Stipulation and Consent Agreement (Agreement) to resolve a non-public investigation conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. part 1b (2012). The investigation, arising from a Hotline call, examined possible violations of PacifiCorp's open access transmission tariff (OATT) and of Part 37 of the Commission's regulations through the actions of PacifiCorp's transmission function, PacifiCorp Transmission Services (PTS), and PacifiCorp's marketing function, Commercial and Trading (C&T). Specifically, Enforcement staff examined PTS' acceptance of e-Tags without a proper transmission reservation or associated transmission assignment reference number (AREF), including from PTS' marketing function, C&T.

II. STIPULATED FACTS

Enforcement and PacifiCorp hereby stipulate to the following:

2. PacifiCorp is a wholly-owned subsidiary of MidAmerican Energy Holdings Company. PacifiCorp owns and operates 78 generating plants across the West that have a net capacity of approximately 10,483 megawatts. PacifiCorp has 62,000 miles of distribution line and approximately 15,900 miles of transmission line.

3. PTS is responsible for all of PacifiCorp's transmission services. PTS operates a transmission system located in the Western Interconnection. PTS' transmission practices are governed by its Commission-approved OATT. Pursuant to its OATT and applicable Commission regulations, PTS operates an Open Access Same-Time Information System (OASIS). OASIS is designed to ensure that all potential customers have access to the same information about the system.

4. C&T is PacifiCorp's marketing function, with responsibility for wholesale load service to all of PacifiCorp's retail service territories. In performing its functions, C&T is a transmission customer of the transmission system operated by PTS. Under the terms of the OATT and Commission regulation, all of PTS's customers, including C&T, are required to request transmission service in writing, and through the OASIS.

5. To obtain a transmission reservation on PacifiCorp's transmission system, the potential customer must reserve the capacity through PTS's OASIS. The OASIS system generates an OASIS reservation number known as an assignment reservation number or "AREF." The customer then includes the AREF in its e-Tag, which it then submits to the WECC Western Interchange Tool (a/k/a WIT) for validation and approval. If approved, the valid e-Tag is forwarded to each relevant balancing authority, which in turn applies its own criteria to approve or reject the e-Tag, and thus the transmission reservation request. As the transmission operator, PTS reviews and accepts or rejects e-Tags submitted for transmission across PacifiCorp's balancing areas.

6. Each e-Tag identifies the various transmission paths (a/k/a "legs") that will constitute the transaction. Each leg of the e-Tag representing physical transmission must include an AREF. Legs representing non-physical aspects of the transaction may include other designations in lieu of AREFs, such as the "No OASIS Required" (NOR) designation.

7. During the period July 1, 2009 through February 11, 2011, PTS accepted from affiliated and unaffiliated customers e-Tags containing over 78,000 NOR designations. Most of these were submitted by PacifiCorp's marketing function, C&T.

8. PTS did not have a mechanism in place to timely review these more than 78,000 e-Tags containing NOR-designated line segments. Since the system default was to accept line segments containing NOR designations and since manual review was difficult, e-Tags containing NOR designations were accepted and processed despite the fact that PTS had no way of knowing whether the designations were appropriate. PacifiCorp was aware of the problem as early as late 2008, but did not implement effective review measures until 2011.

9. An examination of the e-Tag line segments containing NOR designations revealed that a small percentage represented transaction legs involving physical transmission and which therefore should have included an AREF number rather than an NOR designation. C&T, which is PacifiCorp's largest transmission customer, submitted more of these NOR designations than any other single entity.

10. Most of the instances in which PTS accepted an NOR designation accompanying a physical transmission leg of a transaction during the July 2, 2009 through February 11, 2011 period involved customers who had validly obtained an AREF number for that leg of the transaction and simply failed to enter it properly into the e-Tag.

11. In the remaining 22 instances in which PTS accepted an NOR designation in lieu of an AREF number for a transaction leg representing physical transmission, the customer did not obtain a valid AREF number through OASIS. C&T was responsible for 6 of these instances.

III. VIOLATIONS

12. NOR use in e-Tags must be monitored to ensure that NORs are not being used in place of AREFs for transaction legs involving physical transmission. Unmonitored acceptance of e-Tags containing NOR designations can lead to unauthorized access to or unreserved use of physical transmission, or to improper curtailments.

13. The Commission's regulations, 18 C.F.R. § 37.6(e)(1) (2012), require that all requests for transmission and ancillary services offered under an OATT "must be made on the OASIS and posted prior to the Transmission provider responding to the request." With respect to the 22 physical transmission legs for which PTS provided transmission access to customers who had not purchased it, Enforcement finds that PTS violated this regulation by accepting requests for transmission service that had not been made through, or posted on, OASIS.

14. Sections 17.1 and 18.1 of PacifiCorp's OATT require that all point-to-point transmission reservations made by transmission customers, both firm and non-firm, must be made in writing via the OASIS. Enforcement finds that PTS's transmission customers, including C&T, failed, on 22 occasions to make transmission reservations via the OASIS, instead using the NOR designation in lieu of an OASIS-generated AREF number. Enforcement further finds that PTS did not appropriately monitor acceptance of e-Tags containing NOR designations on 22 occasions by accepting requests by transmission customers, including C&T, for transmission service that had not been made through, or posted on, OASIS.

15. Schedule 11 of PacifiCorp's OATT requires PTS to charge customers and apply operational penalties for unauthorized, i.e., unreserved use of its transmission system. By accepting the e-Tags containing these 22 physical transmission legs for which no reservation was made by transmission customers via OASIS, PTS provided, and its customers obtained, unauthorized access to PacifiCorp's transmission system (also known as unreserved use). Enforcement

finds that PTS violated Schedule 11 of the OATT by failing to timely identify and penalize these instances of unreserved use on its transmission system.

IV. REMEDIES AND SANCTIONS

16. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, PacifiCorp accepts the facts as stipulated above and admits that its transmission customers submitted improper transmission reservations, that it could have implemented a mechanism to timely review certain e-tag reservations, and that it failed to assess customers operational penalties under Schedule 11 for unauthorized use of the transmission system. PacifiCorp neither admits nor denies that its conduct violated § 37.6 of the Commission's regulations, or Sections 17.1 or 18.1 of PacifiCorp's OATT. In resolution hereof, PacifiCorp agrees to undertake the following obligations:

A. Civil Penalty

17. PacifiCorp shall pay a civil penalty in the amount of \$265,000, payable to the United States Treasury, within ten (10) days of the Commission's issuance of an order approving this Agreement without modification or condition.

B. Mitigation Measures

18. PacifiCorp has implemented certain remedial measures that staff finds mitigate or prevent the occurrence of similar violations in the future. These include updating and revising relevant Business Practices, including an update as recently as May 2012. PacifiCorp has also imposed and collected unreserved use charges as required pursuant to Schedule 11 of the OATT. Also significant, it has implemented certain measures designed to ensure that access to transmission cannot be obtained except by properly obtaining an AREF via OASIS, such as replacement of NOR designations with a limited set of numerical scheduling identifiers (a/k/a "Series 200"); revision of its reserve sharing e-Tag templates; improved training for customers and employees; revised OASIS validation processes; and conversion of OASIS to a new platform provided by Open Access Technology International (OATI).

C. Compliance Reports

19. PacifiCorp shall make semi-annual reports to Enforcement for one (1) year following the Effective Date of this Agreement. The first semi-annual report shall be submitted no later than ten (10) days after the end of the second calendar quarter after the quarter in which the Effective Date of this Agreement falls. The second report shall be submitted six months thereafter. In its reports, PacifiCorp

shall identify and describe (i) any OATT violations detected by PacifiCorp and the actions taken to address such violations; (ii) any operational penalties assessed under Schedule 11 of the OATT; (iii) any material changes to PacifiCorp's policies or business practices concerning practices similar to those at issue in this proceeding; (iv) any training for employees or customers relating to OASIS or e-Tagging practices; and (v) the status of the conversion of OASIS to the OATI platform. Each report shall include an affidavit executed by an officer of PacifiCorp that the compliance report is true, complete, and accurate.

20. Upon request by Enforcement, PacifiCorp shall provide additional documentation supporting its reports. After receipt of the second semi-annual report, Enforcement may, at its sole discretion, require PacifiCorp to submit semi-annual reports for one (1) additional year.

D. Relationship to Other Proceedings

21. This Agreement shall have no effect on, nor be deemed an admission regarding, any issue pending before the Commission in any other proceeding, whether initiated under FPA section 205 or 206, with respect to the same or similar matters.

V. TERMS OF CONSENT AGREEMENT

22. The Effective Date of this Agreement shall be the date on which the Commission issues an order approving this Agreement without modification or condition.

23. Unless the Commission issues an order approving the Agreement in its entirety and without material modification or condition, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor PacifiCorp shall be bound by any provision or term of the Agreement, unless otherwise agreed in writing by Enforcement and PacifiCorp.

24. The Agreement binds PacifiCorp and its agents, successors and assigns. The Agreement does not create or impose any additional or independent obligations on PacifiCorp, or any affiliated entity, its agents, officers, directors or employees, other than the obligations identified in Section IV of this Agreement.

25. In connection with the payment of the civil penalty provided for herein, PacifiCorp agrees that the Commission's order approving the Agreement without modification or condition shall be a final order assessing a civil penalty under the Federal Power Act, 16 U.S.C. § 792, *et seq.*, as amended. PacifiCorp further waives rehearing of any Commission order approving the Agreement without

material modification or condition, and judicial review by any court of any Commission order approving the Agreement without material modification or condition.

26. Commission approval of this Agreement without material modification or condition shall release PacifiCorp and forever bar the Commission from holding PacifiCorp, its affiliates, agents, officers, directors and employees, both past and present, liable for any and all civil and administrative claims arising out of, related to, or connected with the conduct addressed in this Agreement and occurring on or before the Agreement Effective Date. In further consideration for this release, PacifiCorp represents that it is not aware of any material facts concerning the events that were not disclosed to Enforcement during the investigation and which might reasonably be considered to constitute further violations of Part 37 of the Commission's regulations or any section of the OATT.

27. Failure to make a timely payment or to comply with any other provision of this Agreement shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act and may subject PacifiCorp to additional action under the enforcement and penalty provisions of the Federal Power Act.

28. If PacifiCorp does not make the payment above at or before the time agreed by the parties, interest on the portion payable to the United States Treasury will begin to accrue and be payable to the United States Treasury, pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii), from the date that payment is due.

29. The signatories to the Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or PacifiCorp has been made to induce the signatories or any other party to enter into the Agreement.

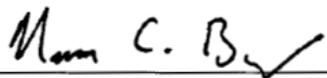
30. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

31. The undersigned representative of PacifiCorp affirms that he or she read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

32. The Agreement may be signed in counterparts, and each counterpart so

executed shall be deemed to be an original.

Agreed to and accepted:



Norman C. Bay
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: 11.9.12



R. Patrick Reiten
Chief Executive Officer and President, Pacific Power

Date: 11/5/12

Document Content(s)

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