

121 FERC ¶ 61,278
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

PacifiCorp	Docket Nos. ER07-882-000, EL07-84-000, ER07-1392-000, ER08-143-000
Pacific Gas and Electric Company	Docket Nos. ER07-967-000, ER08-255-000, ER07-1213-000
California Independent System Operator Corporation	Docket No. ER07-1373-000

ORDER APPROVING UNCONTESTED
SETTLEMENT AGREEMENT

(Issued December 20, 2007)

1. On November 21, 2007, the parties to these proceedings filed an uncontested Offer of Settlement (Settlement) in accordance with Rule 602¹ that would resolve all outstanding issues. The term of the Settlement is January 1, 2008 to December 31, 2017. The Settlement is fair, reasonable, and in the public interest as it provides a complete resolution of all the issues between the parties in the above-captioned dockets. Specifically, the Settlement provides for the shared usage, coordinated operation, maintenance and planning of the California-Oregon Intertie (COI). In conjunction with the Settlement, Pacific Gas and Electric Company (PG&E), in Docket No. ER08-255-000, seeks authorization to collect the cost of new lease payments, as established in the Settlement, from its transmission customers. We approve the uncontested Offer of Settlement effective January 1, 2008, as proposed. Additionally, we will accept and suspend, to be effective March 1, 2008, PG&E's proposed tariff sheets as discussed herein.

¹ 18 C.F.R. § 385.602 (2007) (Rule 602).

I. Background

2. The COI extends from near the California-Oregon border to central California. The COI is formed by three, 500-kV alternating current (AC) transmission lines. Two were built in 1967 and are referred to as the Pacific AC Intertie. The third was built in 1993 and is referred to as the California-Oregon Transmission Project (COTP). The COI is operated by the California Independent System Operator Corporation (CAISO) and is used in conjunction with intertie facilities in Oregon and Washington to transfer electricity between the Pacific Northwest and central California.²

3. A 47-mile segment of the easternmost of the two Pacific AC Intertie lines, hereafter referred to as the PACI-2, is owned by PacifiCorp (PacifiCorp Segment). The PacifiCorp Segment is located at the northern end of PACI-2, between the Malin substation in southern Oregon and a point in northern California known as Indian Spring. PG&E owns the southern 47 miles of PACI-2 from Indian Spring to the Round Mountain substation.³ Since the PacifiCorp Segment was built in 1967, PacifiCorp has leased the full capacity of the PacifiCorp Segment to PG&E, Southern California Edison Company (SoCal Edison) and San Diego Gas & Electric Company (SDG&E) (together, the California Companies) for a fixed annual payment of \$475,000. The relevant agreement – the Use of Transmission Capacity Agreement (Capacity Agreement) – provided for a term of 40 years expiring on July 31, 2007.

4. In the 1990s, when the COTP was added to form the COI, the active interest holders in the COI – the California Companies, Western Area Power Administration (Western), and the Transmission Agency of Northern California (TANC) on behalf of the COTP Participants – executed an agreement to determine responsibilities and rights over the combined system. The agreement, referred to here as the Coordinated Operation Agreement, provides for the three lines that form the COI to operate as a single system. The agreement also calls for the parties to execute a detailed operating agreement (Path Operating Agreement). Finally, the Coordinated Operation Agreement assigns one third of the COI's capacity to each of the three lines that form the COI, such that each are deemed to have 1600 MW of the COI's 4800 MW of north-to-south transfer capability. In 1998, the California Companies turned over operational control and tariff administration of the PacifiCorp Segment to the CAISO.

² See *Cal. Energy Comm'n v. Bonneville Power Admin.*, 902 F.2d 1298, 1302 (9th Cir. 1990); *Pacific Gas and Elec. Co. v. FERC*, 746 F.2d 1383, 1384 n.1 (9th Cir. 1984).

³ There is no operational demarcation at Indian Spring; ownership of the continuous line simply changes hands between PacifiCorp and PG&E at that point.

A. Initial Proposals

5. On May 10, 2007, in Docket No. ER07-882-000, PacifiCorp proposed to terminate the Capacity Agreement and offer service under its OATT. PacifiCorp proposed that the CAISO continue to physically operate the PacifiCorp Segment as part of the COI. On May 30, 2007, in Docket No. ER07-967-000, PG&E proposed various revisions to the Coordinated Operation Agreement. Parties raised concerns regarding reliable operation and the cost of transmission service over the COI.

6. On June 30, 2007, the Commission accepted and suspended PacifiCorp's proposed termination of the Capacity Agreement and PG&E's proposed revisions to the Coordinated Operation Agreement, effective December 31, 2007, subject to the outcome of a paper hearing on certain of the issues raised by the parties.⁴ The Commission also established, under section 206 of the Federal Power Act,⁵ an investigation of the system-wide rate in PacifiCorp's OATT.⁶ The investigation was to be held in abeyance pending any approval of termination of the Capacity Agreement.

B. Additional Proposals

7. While the paper hearing was underway, parties filed three additional proposals related to this proceeding, based on the assumption that the Commission would approve termination of the Capacity Agreement effective December 31, 2007. Specifically, on September 14, 2007, in Docket No. ER07-1373-000, the CAISO submitted a proposed, unexecuted operating agreement between the CAISO and PacifiCorp under which PacifiCorp would be allowed to schedule use of the PacifiCorp Segment but would be required to coordinate those schedules with the CAISO. On September 21, 2007, in Docket No. ER07-1392-000, PacifiCorp submitted seven executed service agreements for firm, point-to-point transmission service with Powerex Corp. (Powerex) and PPM Energy, Inc. (PPM Energy) under its OATT for service over the PacifiCorp Segment. Finally, on November 1, 2007, in Docket No. ER08-143-000, PacifiCorp submitted its own competing version of an operating agreement between PacifiCorp and the CAISO.

8. The additional proposals were contested on various issues, including whether PacifiCorp schedules over the PacifiCorp Segment should be subject to CAISO congestion charges and the CAISO's scheduling deadlines, and what services PacifiCorp may provide over the PacifiCorp Segment.

⁴ See *PacifiCorp*, 120 FERC ¶ 61,113, at P 20-25, 35, *clarified*, 120 FERC ¶ 61,231, at P 9 (2007).

⁵ 16 U.S.C. § 824e (2000).

⁶ The investigation of PacifiCorp's rates was assigned Docket No. EL07-84-000.

II. Offer of Settlement

9. On November 21, 2007, PacifiCorp submitted in accordance with Rule 602, on behalf of itself, PG&E, the CAISO, TANC, Sacramento Municipal Utility District (SMUD), Powerex and PPM Energy, a proposed Settlement intended to resolve all of the outstanding issues in these proceedings, including all issues set for paper hearing, as well as termination of the section 206 proceeding in Docket No. EL07-84-000. Initial and reply comments were due on November 29, 2007 and December 3, 2007, respectively. Including the parties to the Settlement, the Settlement is supported by or unopposed by the following parties: the Commission's Trial Staff, the California Department of Water Resources, the California Public Utilities Commission, the California Electricity Oversight Board, SoCal Edison, SDG&E, Utah Municipal Power Agency, Bonneville Power Administration and Western. On December 4, 2007, the Settlement was certified as uncontested by the Settlement Judge.⁷

10. The Settlement allows for the existing Capacity Agreement to terminate effective December 31, 2007, and provides for the parties to enter into various agreements and arrangements, as discussed below. In addition, this Settlement includes a section 205 rate filing by PG&E in order to recover costs related to the Settlement, as discussed below. The Settlement provides that Commission approval of the Settlement will moot the need for any Commission order on the paper hearing established in Docket Nos. ER07-882-000 and ER07-967-000 discussed above, and will make Commission action unnecessary in the additional proposals filed in Docket Nos. ER07-1373-000, ER07-1392-000 and ER08-143-000, also discussed above. In addition, the Settlement provides that upon approval of the Settlement, the Commission's investigation of PacifiCorp's transmission rates established in Docket No. EL07-84-000 shall be terminated. The Settlement also provides for PacifiCorp to file a general rate case for its system-wide transmission rates no later than June 1, 2011. The parties request waiver of the Commission's notice requirements to allow the Settlement to become effective on January 1, 2008, and for specific agreements to become effective on later dates, as discussed below.

A. Transmission Exchange Agreement

11. Under the Transmission Exchange Agreement, PacifiCorp and PG&E would each own one half of the capacity that is assigned to PACI-2, resulting in each owning 800 MW of north-to-south transfer capability and 612.5 MW of south-to-north transfer capability along the entire PACI-2. The capacity that PacifiCorp would own is referred to as the PacifiCorp Share. The Transmission Exchange Agreement would have a term of 20 years, beginning January 1, 2008. Provisions include: (1) curtailments on PACI-2 will be allocated pro rata between PacifiCorp and PG&E capacity; (2) service under PacifiCorp's OATT will be exempt from CAISO congestion and transmission access

⁷ *PacifiCorp*, 121 FERC ¶ 63,016 (2007).

charges for service on the PACI-2; and (3) PacifiCorp will upgrade its series capacitors at the Malin substation, with any resulting increase in capacity being divided equally between PacifiCorp and PG&E. In 2008, PacifiCorp and PG&E will undertake good faith negotiations aimed at reaching a permanent ownership arrangement.

B. Lease Agreement

12. Under the Lease Agreement, PacifiCorp will lease to PG&E initially all of the PacifiCorp Share. The Lease Agreement would have a term of 10 years, beginning January 1, 2008. For the first four years (beginning January 1, 2008 and ending December 31, 2011), PG&E would lease the full PacifiCorp share, 800 MW of north-to-south transfer capability and 612.5 MW of south-to-north transfer capability, for \$20 million per year. Afterwards, the amount of capacity and the annual amount would decline over the remaining term of the Lease Agreement, with any capacity not leased offered by PacifiCorp under its OATT. After December 31, 2017, none of the PacifiCorp Share would be leased, and PacifiCorp will offer all its capacity under its OATT.

C. Operating Agreement

13. PacifiCorp and the CAISO will execute an operating agreement (Operating Agreement) that will require PacifiCorp to coordinate the schedules over the PacifiCorp Share offered under PacifiCorp's OATT with the CAISO. The Operating Agreement will become effective on January 1, 2012, when PG&E will no longer lease the full amount of the PacifiCorp Share. Use of the PacifiCorp Share under PacifiCorp's OATT will not be subject to CAISO transmission access charges or congestion charges.

D. Transmission Service Agreements

14. The transmission service agreements between PacifiCorp and Powerex and between PacifiCorp and PPM Energy, originally filed in Docket No. ER07-1392-000, would become effective on January 1, 2012, when PG&E would no longer lease all of the PacifiCorp Share.

E. COI Coordination Agreements

15. When PacifiCorp commences service over the PacifiCorp Share under PacifiCorp's OATT on January 1, 2012, PacifiCorp will be added to the Coordinated Operation Agreement and the Path Operating Agreement. Current curtailment allocation and voting interest structure on the COI, as provided for in the Coordinated Operation Agreement and Path Operator Agreement, will remain in effect until both agreements are amended to, *inter alia*, include PacifiCorp as a party. The Settlement states that these amended agreements must be negotiated, approved by the Commission, and made effective no later than January 1, 2012.

F. Docket No. ER08-255-000

16. The Settlement provides for PG&E to recover its costs under the Lease Agreement from PG&E's transmission service customers. To effectuate this, PG&E filed revised sheets to its Transmission Owner (TO) Tariff to recover the lease payments from its transmission customers in Docket No. ER08-255-000. PG&E requests that the revised TO Tariff sheets, in Appendix 6 of the Settlement, become effective March 1, 2008.⁸

17. Notice of PG&E's filing in Docket No. ER08-255-000 was published in the *Federal Register* with interventions and protests due on or before December 7, 2007.⁹ The following entities filed timely motions to intervene raising no issues: TANC, Modesto Irrigation District, and the City of Santa Clara, California, the City of Redding, California and the M-S-R Public Power Agency. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed notices and motions to intervene serve to make these entities parties to Docket No. ER08-255-000. The California Electricity Oversight Board (CEOB) filed a motion to intervene out-of-time. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214(d) (2007), the Commission will grant CEOB's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

III. Discussion

18. On December 4, 2007, the Settlement Judge to these proceedings certified the uncontested Settlement, stating that it resolves all of the issues raised in these proceedings, and that it is fair and in the public interest.¹⁰ We find that the uncontested Settlement is fair, reasonable, and in the public interest, and the Settlement is hereby approved in all respects.¹¹ As a result of the Settlement, the owners of the COI facilities will continue to operate the COI in an integrated and reliable fashion.¹² Also, as a result

⁸ PG&E proposes to collect \$23.3 million (fourteen months equivalent) in year one, effective March 1, 2008 to compensate for the timing difference between the effectiveness of the proposed Settlement and the effectiveness of PG&E's Transmission Owner rate filing in Docket No. ER07-1213-000.

⁹ 72 Fed. Reg. 67,930 (2007).

¹⁰ 18 C.F.R. § 385.602(g)(1) (2007).

¹¹ 18 C.F.R. § 385.602(g)(3) (2007).

¹² The Settlement does not exempt any of the parties from meeting the requirements of Commission approved Electric Reliability Organization and Regional Entity Reliability Standards.

of the Settlement, PacifiCorp's usage of its portion of the PACI-2 for service under its OATT will be phased-in over the next 10 years. The Settlement also resolves the parties' concerns about the cost of transmission service over the COI. In addition, the Settlement provides PacifiCorp with a date certain for obtaining transmission capacity on PACI-2 and allows PG&E and the CAISO to avoid an immediate reduction in transmission capacity available to them and to have a transition period for appropriate adjustment.

19. The parties request that the Commission waive the 60-day notice requirement, 18 C.F.R. 35.3(a) (2007), and make the Operating Agreement and Transmission Service Agreements effective on January 1, 2012. We find good cause exists to grant the parties' request.¹³

20. The Settlement provides that the standard of review for any modifications to this Settlement with less-than-unanimous consent of the Parties, or *sua sponte* by the Commission, is the *Mobile-Sierra* public interest standard,¹⁴ except as specifically provided in sections 5.2, 5.3, and 5.4 of the Settlement. In addition, the standard of review for modifying the rates for CAISO charges referenced in section 4.4 of the Settlement, either at the request of a party or *sua sponte* by the Commission, will be the just and reasonable standard of review. Commission approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

21. Additionally, in Docket No. ER08-255-000, PG&E proposes to collect the Settlement cost, which is the PacifiCorp Lease Agreement payment of \$20 million annually, from its customers. We are approving such costs as part of the Settlement. PG&E proposes to allocate the PacifiCorp Intertie Lease Revenue Requirement amount between the revenue requirements for Existing High Voltage and New High Voltage Facilities in the same manner as PG&E's TO-10 High Voltage Revenue Requirement (*see* Docket No. ER07-1213-000). In this regard, we note that the allocation of PG&E's revenue requirement is still at issue in that proceeding. Because issues related to the final allocation of PG&E's revenue requirement are unresolved, we accept and suspend to be

¹³ *See Central Hudson Gas and Electric Co.*, 60 FERC ¶ 61,106 at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,983-84 (1993), *clarified*, 65 FERC ¶ 61,081 (1993).

¹⁴ As a general matter, parties may bind the Commission to a public interest standard of review. *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1st Cir. 1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound. *Maine Public Utilities Comm'n v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006). In this case, we find that the public interest standard should apply, except as specifically provided in sections 5.2, 5.3, 5.4, and 4.4 of the Settlement.

effective as of March 1, 2008, PG&E's proposed rate allocation subject to the outcome of Docket No. ER07-1213-000.

The Commission orders:

- (A) The Settlement is approved effective January 1, 2008.
- (B) The agreements included in the Settlement are accepted, as designated, effective as proposed.
- (C) Termination of the Capacity Agreement is accepted, effective December 31, 2007.
- (D) This order terminates Docket Nos. ER07-882-000, ER07-967-000, ER07-1373-000, ER07-1392-000, and ER08-143-000.
- (E) This order also terminates the Commission's investigation of PacifiCorp's rates established in Docket No. EL07-84-000.
- (F) PG&E's proposed TO Tariff sheets filed in Docket No. ER08-255-000 are hereby accepted and suspended, subject to refund, effective March 1, 2008, subject to a final cost allocation being determined in Docket No. ER07-1213-000, as discussed herein.

By the Commission. Commissioners Kelly and Wellinghoff dissenting in part
with separate statements attached.

(S E A L)

Kimberly D. Bose,
Secretary.

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Issued December 20, 2007

KELLY, Commissioner, *dissenting in part*:

The parties to this settlement agreement request that the *Mobile-Sierra* “public interest” standard of review apply to any future changes to most provisions of this settlement that may be proposed by a party, a non-party or the Commission acting *sua sponte*. As I have explained in *Transcontinental Gas Pipe Line Corporation*,¹ I do not believe the Commission should approve a “public interest” standard of review provision, to the extent future changes are sought by a non-party or the Commission acting *sua sponte*, without an affirmative showing by the parties and a reasoned analysis by the Commission as to the appropriateness of such a provision.

Accordingly, I dissent in part from this order.

Suedeen G. Kelly

¹ 117 FERC ¶ 61,232 (2006).

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(Issued December 20, 2007)

WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case have asked the Commission to apply the “public interest” standard of review when it considers future changes to the instant settlement that may be sought by any of the parties, a non-party, or the Commission acting *sua sponte*, except as specifically provided for in certain sections of the settlement.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,¹ I believe that it is inappropriate for the Commission to grant the parties’ request and agree to apply the “public interest” standard to future changes to the settlement sought by a non-party or the Commission acting *sua sponte*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,² I disagree with the Commission’s characterization in this order of case law on the applicability of the “public interest” standard.

For these reasons, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ 117 FERC ¶ 61,055 (2006).

² 117 FERC ¶ 61,149 (2006).