

134 FERC ¶ 61,042
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 20, 2011

In Reply Refer To:
PacifiCorp
Docket Nos. ER11-2170-000
ER09-408-002
ER09-408-003

PacifiCorp
825 NE Multnomah
Suite 1800
Portland, OR 97232

Attention: Mary M. Wiencke, Esq.

Dear Ms. Wiencke:

1. On November 23, 2010, in Docket No. ER11-2170-000, you submitted on behalf of PacifiCorp, a non-conforming service agreement for conditional long-term firm point-to-point transmission service between PacifiCorp and CEP Funding, LLC (CEP) to be designated as Service Agreement FERC No. 622 (Service Agreement) under PacifiCorp's open access transmission tariff (OATT). In addition, you submitted a Notice of Cancellation for twelve unexecuted agreements for long-term conditional firm point-to-point transmission service with CEP (Original Agreements),¹ which the Commission accepted, subject to compliance filing in Docket No. ER09-408-000.² We accept the proposed Service Agreement to be effective November 22, 2010, and accept the Notice of Cancellation effective upon the date of this order, as requested. Additionally, we dismiss as moot CEP's January 4, 2010 request for rehearing of the December 2009 Order and PacifiCorp's January 4, 2010 compliance filing, as discussed below.³

¹ PacifiCorp designated the Original Agreements as Service Agreement Nos. 516 through 527 under PacifiCorp's Open Access Transmission Tariff (OATT), Seventh Revised Volume No. 11.

² *PacifiCorp*, 129 FERC ¶ 61,200 (2009) (December 2009 Order).

³ The request for rehearing and compliance filings were filed in Docket Nos. ER09-408-002 and ER09-408-003, respectively.

2. The initial proceeding commenced on December 12, 2008 when PacifiCorp filed the unexecuted Original Agreements in Docket No. ER09-408-000.⁴ In the December 2009 Order, the Commission accepted the Original Agreements for filing subject to PacifiCorp submitting a compliance filing clarifying how its transmission reserve margin is derived under Attachment C (Methodology to Assess Available Transfer Capability) of its OATT. The Commission also suggested that, if useful, the parties may contact the Commission's Dispute Resolution Service to aid or assist in any further negotiations.⁵

3. PacifiCorp submitted the compliance filing on January 4, 2010 and CEP filed a request for rehearing and clarification of the December 2009 Order.

4. In its November 23, 2010 filing, PacifiCorp explains that, under the Service Agreement CEP will be provided conditional firm service, based on curtailable hours, for the summer and winter seasons, respectively, with varying service commencement dates for the incremental service blocks identified in Attachment 1 of the Service Agreement. Specifically, the amount of capacity available under the Service Agreement includes: (i) 187 MW in the summer period, beginning June 1, 2011; and (ii) 113 MW in the winter period, beginning November 1, 2013.⁶ The Service Agreement stipulates the point of receipt as CEP's proposed wind farm interconnected near the Burns Reactor Station (represented by M500 on PacifiCorp's OASIS). The point of delivery is the BPAT.PACW scheduling point on PacifiCorp's OASIS.⁷

5. Section 5.0 of the Service Agreement's Specifications for Conditional Long-Term Firm Point-to-Point Transmission Service (Specifications for Service) provides that the existing transmission path requested by CEP is fully subscribed by firm rights holders from November to May. Accordingly, the curtailable hours defined in Attachment 1 represent the total number of hours that PacifiCorp may curtail CEP's scheduled MW from November to May each year. According to PacifiCorp, during these months, it will make a determination regarding whether CEP's schedule needs to be curtailed during the pre-schedule period, when existing firm rights holders submit pre-schedules committing use of their existing firm reservations. PacifiCorp explains that if it determines that the pre-schedules from the existing customers holding firm rights will fully subscribe the requested path, CEP's schedule will be curtailed in the pre-schedule horizon. Section 5.0 further provides that PacifiCorp will reassess the curtailable hours on a biennial basis

⁴ The December 2009 Order provides details on the early procedural history.

⁵ December 2009 Order, 129 FERC ¶ 61,200 at P 45.

⁶ *See* Service Agreement, Attachment 1.

⁷ *See id.* sections 3.0 and 4.0, respectively.

from the date of service commencement.⁸ The Service Agreement provides that the applicable transmission charge will be the rate for conditional firm service set forth in PacifiCorp's OATT.

6. Section 5.1 of the Specifications of Service provides CEP with a one-time future right, but not an obligation, to elect to convert the curtailable hours conditional firm service into conditional firm service based on system conditions with Summer Lake as the contractual point of delivery.⁹ According to PacifiCorp, such election may be made by CEP provided that: (i) Bonneville Power Administration (BPA) establishes Summer Lake as a valid scheduling point and seamless interface with full interchange between the BPA and PacifiCorp transmission systems; (ii) CEP provides written notice received by PacifiCorp at least 90 days in advance of the calendar month in which conversion to system conditions conditional firm service is to commence; and (iii) CEP's capacity option will be up to 187 MW year-round. Such election expires 90 days after BPA establishes Summer Lake as a valid scheduling point and seamless interface.

7. Section 5.1 also provides that PacifiCorp considers CEP's election right to be a pending request for conditional firm service to Summer Lake. As PacifiCorp explains, this means that PacifiCorp will not grant any capacity on Summer Lake to any other existing or future transmission customers until such time as CEP's election right expires.¹⁰ Once CEP makes the election, PacifiCorp will file a revised service agreement with the Commission reflecting the system conditions stipulated under section 5.1 of the Service Agreement.

8. In addition, in section II.C of the November 23, 2010 transmittal letter, PacifiCorp states that within 30 days of Commission acceptance and approval of the Service Agreement, CEP, pursuant to the terms of the PacifiCorp OATT, may make a

⁸ *See id.* Specifications for Service, section 5.0.

⁹ Section 15.4(c) of the *pro forma* OATT provides that if the Transmission Provider determines that it cannot provide firm point-to-point transmission service because of insufficient capability on its transmission system, the Transmission Provider will offer firm service with the condition that the Transmission Provider may curtail the service prior to the curtailment of other firm transmission service for a specified number of hours per year, or during specified system condition(s), identified in the service agreement. Section 5.1 of the proposed Service Agreement offers CEP an option to convert from conditional firm service with an identified number of curtailable hours per year to conditional firm service which will be curtailed if certain identified system conditions (which are stipulated in the Service Agreement) exist on the transmission system.

¹⁰ *See id.* section 5.1.

supplemental service request for an additional 113 MW with a point of delivery at Summer Lake. PacifiCorp states that under this supplemental service request, PacifiCorp will: (i) provide CEP with a new service agreement with Summer Lake as the point of delivery for system conditions conditional firm service, as defined in the Service Agreement; and (ii) transfer CEP's existing deposits for the original transmission service requests so that CEP's supplemental request would not require any additional deposit.¹¹ PacifiCorp states that it will not grant any capacity to Summer Lake to any other existing or future transmission customers, until such time as this 30-day period expires.¹² PacifiCorp also states that CEP recognizes that service to Summer Lake cannot be utilized until BPA establishes Summer Lake as a valid scheduling point and interface with full interchange between the transmission systems of BPA and PacifiCorp. PacifiCorp notes that on November 9, 2010, it sent a letter to CEP confirming agreement with these additional terms, subject to the Commission's acceptance of the instant filing.¹³

9. PacifiCorp states that the Service Agreement is the result of an extensive series of discussions and negotiations among PacifiCorp, CEP, and BPA. The Commission's Dispute Resolution Service Staff also assisted the parties in reaching this agreement. PacifiCorp also asserts that the Service Agreement replaces and supersedes the Original Agreements accepted for filing in the December 2009 Order. PacifiCorp requests that the Commission accept the proffered Service Agreement for filing and explicitly approve the terms of agreement between the parties expressed in the November 23, 2010 transmittal letter, particularly section II.C, and accompanying documentation contained in its filing. PacifiCorp states that the foregoing serves as a settlement of all issues in Docket No. ER09-408 in their entirety.

10. PacifiCorp requests an effective date of November 22, 2010 for the Service Agreement, stating that the Commission's regulations permit the filing of service agreements within 30 days after service commences.¹⁴

11. Regarding its Notice of Cancellation, PacifiCorp requests waiver of the Commission's filing requirements to permit the cancellation of the Original Agreements effective on the date the Commission accepts the Service Agreement and renders the approvals requested in the November 23, 2010 filing as settlement of all issues in Docket

¹¹ *See* PacifiCorp Transmittal at 6.

¹² *Id.*

¹³ *See id.* PacifiCorp included the November 9, 2010 letter in its November 23, 2010 filing as Enclosure 3.

¹⁴ *Id.* at 7 (citing 18 C.F.R § 35.3(a)(2)) (2010).

No. ER09-408. PacifiCorp argues that the Commission may provide that a notice of cancellation shall be effective prior to the date the filing would otherwise become effective under the Commission's regulations, for good cause shown.¹⁵ PacifiCorp also states that CEP has provided its consent for the cancellation of the Original Agreements, contingent upon the Commission's acceptance of the Service Agreement and the requested approvals as a settlement of all issues in this proceeding. PacifiCorp also states that PacifiCorp and CEP have agreed that, upon the Commission's acceptance of the Service Agreement and all requested approvals the Original Agreements will be cancelled with no charges imposed upon CEP.

12. Notice of PacifiCorp's January 4, 2010 filing in Docket No. ER09-408-003 was published in the *Federal Register*, 75 Fed. Reg. 2533 (2010) with interventions or protests due on or before January 25, 2010. On January 21, 2010, CEP filed a protest and on February 12, 2010, PacifiCorp filed an answer to CEP's protest. CEP also filed an answer to PacifiCorp's answer and a motion to lodge the Commission's April 16, 2010 Order in Docket No. ER10-745-000.¹⁶ PacifiCorp filed an answer to the motion to lodge and supplemental protest and CEP filed an answer to PacifiCorp's answer.

13. Notice of PacifiCorp's November 23, 2010 filing in Docket No. ER11-2170-000 was published in the *Federal Register*, 75 Fed. Reg. 74,707 (2010) with interventions or protests due on or before December 14, 2010. CEP filed a timely motion to intervene stating that PacifiCorp's filing represents a resolution of issues raised in Docket No. ER09-408 and, if approved in its entirety by the Commission, will resolve all issues in that long standing docket.

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules

¹⁵ *Id.* at 8 (citing 18 C.F.R. § 35.15(a)).

¹⁶ *PacifiCorp*, 131 FERC ¶ 61,043 (2010) (April 2010 Order). In the course of addressing the December 2009 Order, PacifiCorp recognized that it needed to revise a portion of Attachment C to its OATT addressing transmission reserve margin. PacifiCorp filed an amendment to its Attachment C on February 12, 2010, in Docket No. ER10-745-000. On April 16, 2010, the Commission accepted PacifiCorp's amendment, subject to a compliance filing. PacifiCorp submitted its compliance filing on May 17, 2010 and CEP protested the compliance filing and filed a request for rehearing of the April 2010 Order. The Commission will address PacifiCorp's compliance filing and CEP's protest and request for rehearing in Docket No. ER10-745-000 in a separate order to be issued at a later date.

of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest and to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept CEP's or PacifiCorp's answers and will, therefore, reject them. Furthermore, because we are accepting the Service Agreement, as discussed below, we find PacifiCorp's January 4, 2010 compliance filing and the associated pleadings to be moot.

15. We find the non-conforming Service Agreement to be just and reasonable. The uncontested Service Agreement enables PacifiCorp to accommodate CEP's request for transmission service in light of the operational realities of the transmission path at issue. Under the Service Agreement, CEP will receive up to 187 MW of conditional firm service available from June through October (summer period) in incremental amounts, and five-year terms beginning June 1, 2011. Additionally, the Service Agreement provides for conditional firm service from November through May (winter period) in incremental amounts beginning in November 1, 2013. The winter period reflects a specified number of curtailable hours. PacifiCorp and CEP have agreed to additional commitments as part of their negotiation whereby CEP may request an additional 113 MW within 30 days, as detailed in the transmittal letter (section II.C) and Enclosure 3 of the November 23 filing. Furthermore, as PacifiCorp explains the Service Agreement is the result of significant effort by PacifiCorp, CEP, BPA, and the Commission's Dispute Resolution Service to reach a mutually agreeable solution to the issues in the ER09-408-000 proceeding and to provide CEP with the transmission service it needs. The Commission's acceptance will result in termination of all of the issues in Docket No. ER09-408-000. We will require PacifiCorp to file a revised service agreement, if CEP opts to convert to an alternative conditional firm service as stipulated under section 5.1 of the Service Agreement. We also expect PacifiCorp to follow through on those commitments agreed to and stipulated in its transmittal letter regarding CEP's future request for transmission service. Accordingly, we accept the Service Agreement for filing, effective November 22, 2010, as requested and grant waiver of the notice requirement, for good cause shown.¹⁷

¹⁷ *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

16. In addition, we accept the Notice of Cancellation to be effective on the date of issuance of this order. The requested cancellation is uncontested and the customer does not seek an extension.¹⁸ We also find the request for rehearing, compliance filing, and motion to lodge filed in Docket No. ER09-408-000 to be moot in light of our acceptance of the November 23 filing and acceptance of the Notice of Cancellation.

By direction of the Commission

Kimberly D. Bose,
Secretary.

¹⁸ *Id.*