

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

PacifiCorp

Docket No. ER15-2591-000

**COMMENTS AND PROTEST OF THE WESTERN POWER TRADING FORUM
ON THE PACIFICORP §205(d) RATE FILING**

Pursuant to Rules 211, 212, and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”),¹ the Western Power Trading Forum (“WPTF”) submits these comments and protest in response to PacifiCorp’s proposed revisions to its Open Access Transmission Tariff (“OATT”).² The OATT revisions proposed by PacifiCorp (“PacifiCorp Tariff Filing”) are in response to the California Independent System Operator’s (“CAISO”) proposal to automatically recognize and account for capacity the EIM Entity Balancing Authority Area has available to maintain reliable operation (“CAISO Tariff Filing”).³

I. COMMUNICATIONS

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¹ 18 C.F.R. § 385.211, *et seq.* (2010).

² *PacifiCorp*, OATT Revised Section (EIM Available Balancing Capacity), Docket No. ER15-2591-000 (filed September 1, 2015) (“PacifiCorp Tariff Filing”).

³ *Cal. Indep. Sys. Operator Corp.*, Tariff Amendment in Compliance with July 20, 2015, Order, Docket Nos. ER15-861-000 & EL15-53-000 (filed August 19, 2015) (“CAISO Tariff Filing”).

II. BACKGROUND

On April 9, 2015, the Commission held a technical conference to investigate whether the existing EIM tariff provisions were just and reasonable as they relate to the price spikes experienced in the EIM (“Technical Conference”). On May 7, 2015, WPTF submitted comments in response to the Technical Conference and in response to CAISO’s proposal for the available capacity mechanism.⁴ In those comments WPTF provided background on the activity at the Commission related to the CAISO’s EIM waiver filings.⁵ On July 20, 2015, the Commission issued an Order directing the CAISO to submit detailed tariff language for implementing its available capacity proposal.⁶ The CAISO then filed proposed language in its CAISO Tariff Filing. Subsequent to that filing, PacifiCorp and NV Energy⁷, (collectively the “EIM Entities”) filed proposed modifications to their OATTs (together the “EIM Entity Tariff Filings”) to implement the CAISO’s available capacity proposal and more fully specify the resources that would be made available for this purpose.

WPTF filed comments and a protest to the CAISO’s Tariff Filing in which WPTF pointed out two key concerns.⁸ First, the CAISO Tariff Filing provides no demonstration that there are OATT provisions or other contractual relationships between the EIM Entities and resources that would make this capacity available to the EIM Entity. Second, WPTF expressed concern that the proposal to use the Default Energy Bid (“DEB”) for all resources, including

⁴ *Western Power Trading Forum*, Comments on Technical Conference and California Independent System Operator Corporation Proposal (dated May 7, 2015). (“WPTF’s May Comments”).

⁵ *Id.*, pp. 2 -3.

⁶ *Federal Energy Regulatory Commission*, Order on Compliance Filing, Docket No. ER15-861-002 (issued July 21, 2015).

⁷ *Nevada Power Company*, OATT Revisions Attachment P Schedule 9 and Definitions, Docket No. ER15-1196-004 (filed September 1, 2015) (“NV Energy Tariff Filing”).

⁸ *Western Power Trading Forum*, Comments and Protest to the California Independent System Operator Corporation Compliance Proposal, Docket Nos. ER15-861 and EL15-53, filed September 9, 2015 (WPTF’s CAISO Protest).

third-party resources which have not been demonstrated to have market power, may not properly compensate resources, thereby distorting market solutions. WPTF recommended that the Commission reject the CAISO's proposal or, in the alternative, approve the CAISO's available capacity proposal for a temporary period during which monthly reports on the use of this capacity would be required. The concerns expressed in WPTF's CAISO Protest are closely related to the concerns on the EIM Entity Tariff Filings, which are outlined below.

III. COMMENTS AND PROTEST.

Both the CAISO and the EIM Entities, in their respective filings, have endeavored to address the questions and concerns raised in WPTF's May Comments. The CAISO's Tariff Filing includes an extensive explanation of how the available capacity mechanism would operate and the EIM Entities' Tariff Filings have attempted to ensure that resources are not utilized as EIM Available Balancing Capacity unless there is an underlying contract that would enable such use. Nevertheless, the actual tariff language does not provide the necessary assurances that only capacity to which PacifiCorp has a right will be counted under this proposal. Nor does it assure third-party resources that they will be compensated based on pre-existing contractual arrangements they made with PacifiCorp.

WPTF continues to believe that the best solution to the concerns about counting, contracting, deploying, market clearing, and settlement of EIM Available Balancing Capacity is a preliminary market alignment for these services. A preliminary market alignment would be preferable to the approach proposed by the CAISO and the EIM Entities. However, some of WPTF's concerns could be relieved by directing modifications to the EIM Entities' Tariff Filings. For the reasons discussed below, the Commission should reject PacifiCorp's Tariff Filing until the proposal ensures the necessary market alignment or until modifications are made

to ensure that third-party resources are only counted when an appropriate contractual relationship exists and that those resources are compensated at their contractual price. If, nevertheless, the Commission approves PacifiCorp's Tariff Filing without modification, it should require reporting on the deployment and use of resources under the available capacity mechanism.

A. Resolving the available capacity proposal requires better alignment of the counting, contracting, deployments, market clearing, and settlement of the services

WPTF appreciates that the motive behind the available capacity mechanism is to adjust the EIM market design to avoid the waiver mechanisms to manage price spikes. However, doing so without properly aligning how the services are counted, contracted, deployed and paid will simply continue to distort and undermine the EIM. The proper way to resolve these deficiencies is to define the available capacity service that is being proposed and allow resource owners to offer to provide it at a price that is commensurate with the compensation that can be expected from the DEB-based EIM deployments. Instead, the EIM Entities' current language would count resources that have been obligated to provide other services under other pre-existing compensation regimes. From a practical perspective this is problematic to WPTF in two regards.

First, counting resources that are not being properly compensated distorts the market and the market solutions. Second, with respect to third party resources (e.g., resources not owned/operated by the EIM Entity) there is a specific concern that those parties will be harmed by being deployed under legacy OATT or contract provisions that did not contemplate being deployed under the EIM and compensated based on DEB-driven clearing prices.

To ensure these outcomes do not occur, the Commission must reject PacifiCorp's proposal or direct modifications to ensure that third-party resources are only counted when an appropriate contractual relationship exists and that those resources are compensated at their negotiated (or offered) price, rather than through DEB-driven clearing prices.

In the alternative, if the Commission feels compelled to approve the PacifiCorp's Tariff Filing without modification, WPTF urges the Commission to do so only for a temporary period during which PacifiCorp is required to report (1) all deployments of resources for the proposed available capacity deployments; (2) the OATT provisions or bilateral services under which the EIM Entity has the right to deploy such services; and (3) the impacts of the use of the DEBs on both that resources' settlement and the overall clearing price of the market. The Commission should require the parties (NV Energy, PacifiCorp and the CAISO) to file such reports monthly for the duration of this limited period to allow parties an opportunity to address the empirical results and assess the reasonableness and impacts of the approach.

B. PacifiCorp's OATT modifications do not ensure that PacifiCorp has a right to utilize the capacity counted as EIM Available Balancing Capacity

PacifiCorp has attempted to provide language that limits when resources would be counted and called upon by the EIM available capacity proposal outlined in the CAISO's Tariff Filing. The PacifiCorp cover letter has several references that appear to limit PacifiCorp's use of resources to those for which PacifiCorp has rights (either by ownership or through a contractual arrangement). For instance, PacifiCorp states that EIM Available Balancing Capacity will "be drawn from resources that the EIM Entity already has the authority to use for regulation or load following responsibilities needed to meet its obligations as a Balancing Authority."⁹ This is intended to help alleviate WPTF's concerns about which resources will be counted and the possibility that third-party resources could be counted in the absence of a pre-existing contractual right for PacifiCorp to use that resource.

⁹ PacifiCorp Tariff Filing, pg 6.

Nevertheless, although it may not be PacifiCorp's intent, the proposed definition of "Balancing Authority Area Resource"¹⁰ is too ambiguous to provide reasonable assurances that the appropriate resources and quantities are counted under the available capacity proposal. The ambiguous Balancing Authority Area definition would allow PacifiCorp to count any resource that is capable of providing regulation/load-following and has a contractual or OATT relationship with the utility as a Balancing Authority Area Resource.¹¹ PacifiCorp's proposed definition of Balancing Authority Area Resource does not specify that PacifiCorp must have a contractual relationship which allows the utility to use the resource for regulation or load following services. The definition certainly does not ensure PacifiCorp has a right to call upon the capacity. Instead, the language suggests that the mere existence of *any* contract (even an "energy-only" contract) provides PacifiCorp the right to count that resource as a Balancing Authority Area Resource which can be counted as EIM Available Balancing Capacity.

This concern is exacerbated by PacifiCorp's proposed definition of EIM Available Balancing Capacity.¹² That definition allows PacifiCorp to count *any* upward or downward capacity from a Balancing Authority Area Resource that was included in the PacifiCorp EIM Entity's Resource Plan. The definition does not limit PacifiCorp's ability to use capacity for which it has a right, but instead gives PacifiCorp the right to use *any* upward or downward capacity from a Balancing Authority Area Resource, even if the contract for capacity to meet reliability criteria was only for a subset of the resource's capacity.

¹⁰ Defined as: *A resource that is owned or voluntarily contracted for by PacifiCorp that can provide regulation and load following services to enable the PacifiCorp EIM Entity to meet reliability criteria.*

¹¹ In fact, the NVE EIM Entity filing indicates in its transmittal letter that it will not be calling upon capacity unless it has a pre-existing contractual right to call upon that capacity. (p. 7) However, the proposed OATT language is not specific enough to implement such a requirement.

¹² Defined as: *"Any upward or downward capacity from a Balancing Authority Area Resource that has not been bid into the EIM and is included in the PacifiCorp EIM Entity's Resource Plan."*

Given these two definitions, take, for example, a 500 MW resource that has a fixed 20 MW energy contract with PacifiCorp. If the resource *could* provide regulation or load following services it could be counted as a Balancing Authority Area Resource even if it had no contract or OATT service agreement to provide regulation or load following services, or even any agreement to provide energy services beyond the 20 MW of energy. Then the EIM Entity would be authorized to count *any* upward or downward capacity from the 500 MW resource under the proposed definition of EIM Available Balancing Capacity. These vague and overly broad definitions could clearly distort market results by including too much capacity in the bid stack to which the CAISO can look when the EIM encounters a power balance constraint.

The definitions of Balancing Authority Area Resource and EIM Available Balancing Capacity should be modified to remedy this issue. WPTF appreciates that in discussions prior to this filing PacifiCorp has indicated that it would consider modifications to its tariff filing to address these concerns. While WPTF and PacifiCorp were not able to discuss exact language that would address these issues, WPTF nevertheless appreciates PacifiCorp's willingness to consider solutions that may alleviate these concerns and looks forward to PacifiCorp's response to WPTF's proposed solution. WPTF recommends the following changes to the definitions, in order to address these concerns:

1.4B1 Balancing Authority Area Resource:

A resource ~~owned or voluntarily contracted for by PacifiCorp~~ that can provide regulation and load following services to enable the PacifiCorp EIM Entity to meet reliability criteria **which is either owned by PacifiCorp or which PacifiCorp has a contractual right to call upon the capacity to provide services to meet reliability criteria.**

1.11F1 EIM Available Balancing Capacity:

Any upward or downward **regulation or load following** capacity from a Balancing Authority Area Resource **that PacifiCorp has a right to, by virtue of ownership or a contractual arrangement, which** has not been bid into the EIM and is included in the PacifiCorp EIM Entity's Resource Plan.

C. The settlement proposed by PacifiCorp does not appropriately compensate third-party resources that may be dispatched

The CAISO's Tariff Filing states that use of the DEB for the available capacity mechanism is reasonable because the DEB is a "just and reasonable measure of resource's cost,"¹³ and that the Commission has already determined that the DEBs are a reasonable measure of a resources' marginal cost.¹⁴ WPTF's CAISO Protest already articulated why the use of DEBs as market bids for available capacity is not sufficiently justified.¹⁵ The use of DEBs may be appropriate for resources for which market power has been demonstrated. However, if DEBs are used as bids for third-party resources that have not been demonstrated to have market power, PacifiCorp's proposed settlement provisions could force a third-party resource to provide energy into the EIM and settle that energy at the DEB-based clearing prices of the EIM, rather than at the contractual rate that was established by the resource and PacifiCorp.

The CAISO Tariff Filing proposes to clear the market, not using bids the resources have submitted, but rather using DEB-based clearing prices. The PacifiCorp Tariff Filing would then settle resources (including third-party resources) dispatched under the proposal at the 5-minute or 15-minute Instructed Imbalanced Energy prices. Under this proposal, third party resources could be dispatched at a price less than their contract amount and would not have the ability to decline a dispatch instruction. This is not a just and reasonable proposal. As WPTF already articulated, allowing an EIM non-participating resource to transact at a price for services that the resource deems appropriate to account for its cost and risk would be a just and reasonable market solution. However, in the absence of that market structure, the Commission must ensure that resources that are used in the EIM by virtue of their contract are appropriately compensated. Simply put,

¹³ CAISO Tariff Filing, p. 19.

¹⁴ *Id.*

¹⁵ WPTF's CAISO Protest, p. 5-6.

the use of DEB-based clearing prices in the EIM should not undercut pre-existing contract prices.

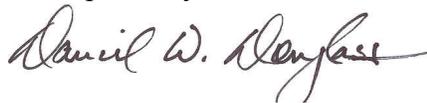
While WPTF recognizes that PacifiCorp does not currently use third-party resources to provide regulation and load following services and, thus, does not plan to count their capacity as EIM Available Balancing Capacity, it still seems reasonable for PacifiCorp's OATT to contain a provision that requires it to pay third-party resources for any difference between the contracted-for compensation and the CAISO's EIM energy payments. This would address concerns that may arise if, in the future, PacifiCorp were to use third-party resources under the available capacity proposal. WPTF recommends modifications to Schedule 9 to clarify that, should a pre-existing contractual right exist, the available capacity proposal does not give PacifiCorp the right to dispatch the resource at a settlement price less than the contract price. If this assurance is not provided, existing contract structures will be undermined and a dangerous precedent will be set which allows utilities to undercut their existing contractual relationships and force dispatch of a third-party resource at lower prices. The Commission should direct PacifiCorp to make modifications to its tariff to ensure, in the face of the CAISO's use of DEBs for EIM Available Balancing Capacity, that existing contractual arrangements are honored.

IV. CONCLUSION

WPTF appreciates the Commission's proactive steps to ensure that the EIM is a legitimate, well-functioning market. WPTF appreciates the CAISO's and EIM Entities' willingness to continue to work to define fully the proposed available capacity mechanism. However, in order for the available capacity mechanism to function properly, the correct resources must be counted and appropriately compensated. While WPTF recognizes that the EIM Entities often own the resources that would be used as EIM Available Balancing Capacity, and that those resources are subject to market power mitigation, that is not a valid reason to draft

tariff language that ignores impacts on third-party resources which may provide these services now or at some point in the future. WPTF appreciates that the EIM Entities have indicated a willingness to consider modifications to address, at least, WPTF's concern about which resources are counted under the available capacity proposal. WPTF urges the Commission to take actions on the contractual alignment and DEB/compensation issues detailed above.

Respectfully submitted,



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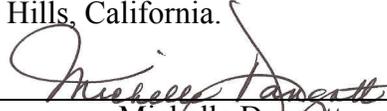
Attorney for the
WESTERN POWER TRADING FORUM

September 22, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the *Comments and Protest of The Western Power Trading Forum on the PacifiCorp §205(D) Rate Filing* on all parties of record in proceeding *ER15-2591-000* by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Executed on September 22, 2015, at Woodland Hills, California.



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