

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

PacifiCorp

Docket Nos. ER05-505-000

**MOTION TO INTERVENE AND PROTEST
OF SEMPRA ENERGY SOLUTIONS**

I. INTRODUCTION

In accordance with Rules 211, 212 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.212 and 385.214, Sempra Energy Solutions ("SES") hereby moves to intervene in the above-captioned proceeding. SES further protests the filing by PacifiCorp of a Network Integration Transmission Service Agreement (the "TSA") between PacifiCorp and SES, and PacifiCorp's request for an order of the Commission declaring that the transmission loss factors applicable to the TSA are those in PacifiCorp's retail tariffs, rather than those in PacifiCorp's Open Access Transmission Tariff ("OATT") on file with this Commission.

II. NATURE OF INTEREST

Sempra Energy Solutions, a wholly owned subsidiary of Sempra Energy, provides an integrated mix of energy-related products and services designed to meet the growing needs of commercial and industrial customers throughout the United States. SES is a registered and active alternative Electric Service Supplier ("ESS") in Oregon, and the first (thus far, the only) alternative supplier to serve retail customers in the PacifiCorp service territory. The TSA at issue, which was submitted to the Commission by PacifiCorp is between PacifiCorp and SES, and thus SES is directly impacted by the outcome of this proceeding. The rate PacifiCorp is attempting to impose on SES is contrary to the filed rates in its OATT and would deny SES and its retail customers the benefit of their bargain with respect to the transmission loss factor that

will be applied to energy supplies scheduled by SES for delivery to the customers. Therefore, SES has a direct and significant interest in the outcome of this proceeding that cannot be adequately represented by any other party, and it is in the public interest to allow SES to intervene.

III. PERSONS FOR SERVICE

All correspondence, communications, pleadings and other documents related to this proceeding should be addressed to:

Theodore E. Roberts, Attorney
Sempra Energy
101 Ash Street, HQ 13D
San Diego, CA 92101-3017
Telephone: (619) 699-5111
Fax: (619) 699-5027
E-mail: troberts@sempra.com

and

Greg Bass
Director, Retail Commodity Operations
Sempra Energy Solutions
101 Ash Street, HQ 09
San Diego, CA 92101-3017
Telephone: (619) 696-3177
Fax: (619) 696-3104
E-mail: gbass@semprasolutions.com

SES requests that both of the individuals identified above be placed on the Commission's official service list in this proceeding.

IV. PROTEST

The relief sought by PacifiCorp is contrary to a plain reading of the tariffs at issue, and will have the effect of choking off the first blooms of direct access in its service territory. As structured by PacifiCorp and approved by the Oregon Public Utilities Commission ("OPUC"),

Oregon customers taking service from an ESS are to look to the Direct Access rate schedules of PacifiCorp, Schedules 728, 730 and 748, which PacifiCorp attached to its filing. These schedules clearly indicate that:

Consumers taking service under this schedule must also take service under the Company's FERC Open Access Transmission Tariff (OATT) or be served by an ESS or Scheduling ESS.

Schedule 9 of the OATT, which PacifiCorp also attached to its filing, indicates that a loss adjustment of 8.04% will apply to "*Use of a combination of the Transmission System and the Distribution System,*" with Transmission System defined in the OATT as 46 kV or greater and the Distribution System at a voltage 34.5 kV *or less* (emphasis added). In any reasonable reading, 34.5 kV or less encompasses secondary delivery. This plain reading of the tariff is consistent with what PacifiCorp has represented to SES, the Commission, the OPUC and other market participants repeatedly in planning for direct access. Now, after customers have signed up for ESS service and contracts are in place, PacifiCorp is attempting to bootstrap an additional 5.5% of losses onto the filed and effective OATT loss rate by pointing to the 13.68% loss adjustment factor for secondary delivery in its Standard Offer and Emergency Service retail service schedules for nonresidential customers. These two rate schedules do not apply to retail customers who elect to receive service from an ESS; they apply to customers who fail to contract for electricity from an ESS, but have opted out of PacifiCorp's bundled service. Rate Schedules 728, 730 and 748 are the rates applicable to ESS retail customers, and these Schedules refer to the OATT for the terms of transmission service.

The interpretation that 8.04% is the intended loss adjustment is further borne out by representations made by PacifiCorp during implementation meetings on direct access in its territory. Attachment 1 to this Intervention and Protest is a copy of a handout distributed by

PacifiCorp to members of the Commission staff, the staff of the OPUC and market participants who attended an October 2003 workshop at which PacifiCorp made a presentation on how direct access customers would be billed for service. On the third page (entitled "Transmission & Ancillary Service Charges for Cost-of-Service & Direct Access Customers"), PacifiCorp shows OATT Sch. 9 Losses of \$3.20 on a total energy price of \$39.75, for a loss factor of 8.04%. Significantly, the description accompanying this example states that:

For illustrative purposes, the following table compares the difference in charges faced by an industrial customer *taking secondary voltage service*, with a 1 MW load.... (emphasis added).

This example is no fluke. Representatives of SES held a number of telephone conversations with representatives of PacifiCorp's transmission department on the issue of transmission losses and loss adjustments, and were repeatedly told that the 8.04% OATT loss adjustment was the appropriate one to use. It was only on the eve of signing the TSA (in late December for service commencing on January 1, 2005) that PacifiCorp first substituted a 13.68% loss adjustment for the 8.04% loss adjustment in the OATT. By this time, SES had already signed contracts with customers who opted out of bundled service, and did so in reliance on the plain language of Schedules 728, 730 and 748, Schedule 9 of the OATT, presentations before the Commission and the OPUC, and the repeated assurances from PacifiCorp in phone conversations that the applicable transmission loss adjustment was 8.04%. SES's customers will suffer significant financial harm if a 13.68% factor is imposed now after the fact, and direct access will be dealt a harsh blow. It is simply unjust and unfair to impose a higher loss adjustment on customers than the one referenced in the applicable tariffs.

Schedule 9 of the OATT indicates that the rates therein became effective on April 26, 2004, and tariff sheet number 265 was issued on July 23, 2004. Those rates thus post-date

PacifiCorp's 1991 transmission losses study by some thirteen years. Direct Access has been a customer option in Oregon for the past two years. PacifiCorp should have been aware that customers would eventually exercise their direct access option when it (1) filed rate schedules stating that direct access customers would receive transmission service under the OATT, and (2) subsequently filed an OATT with a 8.04% loss adjustment, while the loss adjustment for secondary delivery was 13.68%. Instead of correcting any potential oversight by filing under Section 205 of the Federal Power Act to revise its OATT, PacifiCorp has opted to ask the Commission to impose on direct access customers a rate *other than* the rate that is on file and effective. There is no justification for doing so, and the Commission should reject the request.

The Commission should not allow PacifiCorp to engage in arbitrary, ad hoc rate changes, especially at a point where direct access is beginning to take hold in PacifiCorp's service territory and the increase in charges will have the effect of eliminating the savings that were bargained for in good faith reliance on the 8.04% loss factor. Further, nowhere in its filing did PacifiCorp make reference to the fact that, in its pending rate case before the OPUC (docket number UE-170), it seeks to reduce its loss adjustment for secondary delivery from 13.68% to 9.95%. Even if one were to accept *arguendo* that the 13.68% number was correct (a proposition which SES firmly rejects), there is no justifiable reason why PacifiCorp should not seek to have the updated loss adjustment apply rather than a percentage based on an outdated study upon which even PacifiCorp appears to no longer rely.

IV. CONCLUSION

After months and months of repeatedly invoking the OATT loss adjustments, and after filing direct access tariffs that specifically reference the OATT as the tariff vehicle for power delivery, PacifiCorp suddenly wants to increase the loss factor applicable to ESS customers from

8.04% to 13.68%, an increase of nearly 60%. Such an increase will have the effect of depriving direct access customers who have already signed contracts in good faith based on the language of the applicable Schedules of the benefit of their bargain. PacifiCorp seeks to have this Commission impose upon SES and its customers a rate *other than* the tariff rate. Under the circumstances, the appropriate action for PacifiCorp would be to file to change its tariff, but it has chosen not to do so. Any alleged conflict between the tariffs is the fault of PacifiCorp, and PacifiCorp, not direct access customers, should bear the consequences, if any, of that conflict. Under no circumstances should a 13.68% loss factor be imposed on direct access customers after the fact, particularly when PacifiCorp itself has already filed to reduce the factor in its other retail tariffs to 9.95%. If the Commission grants PacifiCorp the relief it requested, direct access customers will be forced to pay unjust and unreasonable rates for transmission losses while customers under Rate Schedule 220 and 230 would pay more favorable, discriminatory rates once the OPUC approves them.

Wherefore, the Commission should reject PacifiCorp's request to impose a 13.68% loss factor on SES and its direct access customers, and direct PacifiCorp to apply the 8.04% loss factor that is in its OATT.

Respectfully Submitted,



Theodore E. Roberts

Attorney for Sempra Energy Solutions
101 Ash Street, HQ 13D
San Diego, CA 92101
Tel: (619) 699-5111
Fax: (619) 699-5027
E-mail: troberts@sempra.com

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ATTACHMENT 1

PacifiCorp OPUC/FERC Presentation - October 3, 2003

PacifiCorp's upcoming FERC OATT Filing

- A proposed revision of the Energy Imbalance calculations to remove the incremental pricing component from the pricing calculations. At present, energy imbalances payments are based upon either the system incremental cost or the hourly pricing proxy. In the future, payments will be based upon only the hourly pricing proxy.
- In addition, we will be replacing Dow Jones pricing data with data acquired from Powerdex. At present, the hourly pricing proxy is based upon the Dow Jones HLH and LLH prices. In the future, it will be based upon hourly prices received from Powerdex.
- Revision of Attachment M to clarify that any Retail Customer qualified to participate in Oregon Direct Access may contract with the Transmission Business Unit of PacifiCorp as a Transmission Customer. Retail End-Users can also still use an ESS or Scheduling ESS as a designated agent in contracting for transmission service.

Review of FERC Docket ER 02-653-000

- OAR 860-038-0590(3)(a) is the administrative rule in Oregon that addresses Transmission and Distribution Access. This rule requires that "Any transmission or distribution capacity to which as electric company has entitlements, by ownership or by contract, for purpose of serving its Oregon load shall be made available to an electric company and ESSs that are serving such load on at least a pro rata basis."
- The Oregon Commission addressed and approved PacifiCorp's plan for complying with this rule in UE 116, Order No. 01-846. In summary, this plan contemplated that, for purposes of determining available transmission capacity, PacifiCorp proposed to assign a pro rata share of each transmission path used in each eligible service to each load. If contracts restricted the use of PacifiCorp's rights by an ESS, PacifiCorp agreed to acquire additional or replacement service and socialize the cost of such purchases as a direct access implementation cost.
- OAR 860-038-0590(4) required PacifiCorp to make a filing with FERC if necessary to implement its provisions. To clarify its approach to compliance with OAR 860-038-0590(3)(a), PacifiCorp filed revisions to Section 2.1 of its OATT as a part of PacifiCorp's December 31, 2001 filing to revise its OATT.

- In an order issued on February 28, 2002, FERC rejected PacifiCorp's revisions to Section 2.1 because PacifiCorp had not demonstrated by a detailed study that the allocation of transmission capacity to native load customers going to direct access was necessary to implement direct access and would be done on a non-discriminatory basis. 98 FERC ¶61, 224
- PacifiCorp petitioned for rehearing, clarifying that its revisions to section 2.1 were designed to comply with retail access policy as set by the Oregon Commission. On this basis, PacifiCorp argued that a detailed study justifying the need for and methodology of the proposed change should not be required.
- In an order issued on June 3, 2002, FERC rejected PacifiCorp's request for rehearing on this issue. While FERC indicated it did not object to the concept of allowing existing native load transmission capacity to follow the retail load as it is released to retail choice, it was not comfortable with the generality and open-ended nature of PacifiCorp's proposal. 99 FERC ¶ 61,259.
- On July 1, 2002, PacifiCorp made a compliance filing that removed its proposed revisions to section 2.1 of its OATT. On July 23, 2003, ICNU filed a protest to the Company's filing, raising a broad range of concerns about implementing direct access in Oregon. PacifiCorp answered this protest by arguing both that ICNU's issues were improperly raised in response to PacifiCorp's compliance filing and that ICNU's issues were being addressed in Oregon rulemaking AR 441. FERC has not responded to these filings.
- PacifiCorp and the other parties have addressed PacifiCorp's approach to OAR 860-038-0590(3)(a) in a number of subsequent workshops and meetings. As a result of these discussions, the following points were clarified: (1) PacifiCorp has developed a spreadsheet on which it relies to follow its approach to the pro rata rule; (2) the spreadsheet is simply a means of determining whether a Network Service Agreement can be offered to a retail end user or an ESS without a system impact study to determine if the system can accommodate the service; (3) customers and ESSs do not need to deliver power to the points reserved for them under this approach and are free to apply for service to any point under the OATT; and (4) because the pro rata rule is really a screen to help PacifiCorp determine whether or not a system impact study is required, PacifiCorp can follow this approach without additional OATT changes.
- In summary, as the parties in Oregon have further studied the "pro rata" issue raised in PacifiCorp's filing in ER 02-653-000, it has subsided as an area of concern and other issues not implicated directly by that filing have moved to the forefront, including imbalance energy charges, whether a retail customer could be a transmission customer under PacifiCorp's OATT, not just an ESS, and the manner in which transmission charges impact Oregon's transition charge calculation.

Transmission & Ancillary Service Charges for Cost-of-Service Customers & Direct Access Customers

For illustrative purposes, the following table compares the difference in charges faced by an industrial customer taking secondary voltage service, with a 1 MW load and a 70% load factor for on-peak usage. Imbalance charges are not included in this example.

PacifiCorp			
Cost of Service Customer		Direct Access Customer	
<u>Energy</u>		<u>Energy</u>	
Energy Charge OPUC Sch. 48	\$31.05	Assumed Energy Price @ MidC	\$39.75
Transition Adjustment	0	Transition Adjustment	-11.00
Total Energy Charge	\$31.05		\$28.75
<u>Transmission & Ancillary Services</u>		<u>Transmission & Ancillary Services</u>	
OPUC Sch. 48	\$3.49	OATT Attch. M Transmission	\$2.53
		OATT Sch. 3 Ancillary Services	\$0.16
		OATT Sch.9 Losses	<u>\$3.20</u>
Total Sch 48 Trans. & Ancill. Charges	\$3.49	Total OATT Charges	\$5.89
BPA Wheel to PacifiCorp		BPA Wheel to PacifiCorp	\$2.98
BPA Losses		BPA Losses	<u>\$0.76</u>
Total BPA Charges	0	Total BPA Charges	\$3.74
TOTAL COS CUSTOMER CHARGE	\$34.54	TOTAL DA CUSTOMER CHARGE	\$38.38

Energy, distribution and system usage charges other than those listed below are the same for PGE customers under direct access (Sch. 483), cost of service (Sch. 83) or PGE market rates (Sch. 583). For illustrative purposes, the following table compares the difference in monthly transmission & ancillary service charges faced by an industrial customer taking either primary or secondary voltage service, with a 1 MW load and a 70% load factor for on-peak usage. Imbalance charges, per OATT Sch. 4-R are not included in this example. Energy, distribution and system usage charges other than those listed below are the same for PGE customers under direct access (Sch. 483), cost of service (Sch. 83) or PGE market rates (Sch. 583).

PGE			
Cost of Service Customer		Direct Access Customer	
<u>Transmission & Ancillary Services</u>		<u>Transmission & Ancillary Services</u>	
		OATT Sch. 1 Scheduling	\$12.49
		OATT Sch. 2 Ancillary Service	\$38.40
		OATT Sch.3 Regulation	\$87.04
		OATT Sch. 4 Imbalance	
		OATT Schs. 5 & 6 Spinning & Reserves**	
		OATT Sch. 7 Transmission	<u>\$523.00</u>
		Total OATT Charges	\$660.93
OPUC Sch. 83	\$780.00	OPUC Sch 583 Ancillary Service	<u>\$280.00</u>
TOTAL TRANSMISSION & ANCILLARY SERVICE	\$780.00	TOTAL TRANSMISSION & ANCILLARY SERVICE	\$940.93

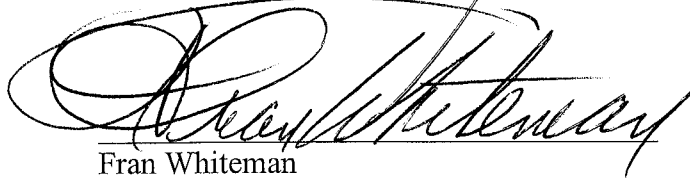
* Per MidC Daily Non Firm

** In ESS Energy Price

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing **MOTION TO INTERVENE AND PROTEST OF SEMPRA ENERGY SOLUTIONS** upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at San Diego, California this 18th day of February 2005.



Fran Whiteman

Submission Contents

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