

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

PacifiCorp
Docket No. ER05-429-000
March 1, 2005

PacifiCorp
700 N.E. Multnomah, Suite 550
Portland, Oregon 97232

Attention: Jack E. Stamper
Regulatory Manager Transmission Services

Reference: Revised Transmission Agreement

Dear Mr. Stamper:

On January 7, 2005, PacifiCorp submitted for filing an amendment to its 1976 transmission agreement (Agreement) with Tri-State Generation and Transmission Association, Inc. (Tri-State), providing for PacifiCorp to construct, and for Tri-State to pay for, an additional point of delivery and associated equipment. PacifiCorp requests waiver of notice to allow the amendment to become effective December 10, 2004, stating that service over the new facilities has not yet commenced.

Although the amendment is being filed as a revision to the existing Agreement between PacifiCorp and Tri-State, it essentially constitutes a contribution-in-aid of construction (CIAC) for a new facility. Commission policy requires that CIAC agreements be filed before up-front payments are made by the customer, even if payments are received before the facilities in question are energized.¹ The transmittal letter and the amendment state that Tri-State made a payment to PacifiCorp in the amount of \$246,800 for the estimated costs of construction, prior to the execution date of the amendment (December 10, 2004). PacifiCorp has identified no extraordinary circumstances that would justify waiving the prior notice requirement to permit PacifiCorp to collect payments prior to filing.² Therefore, waiver of notice is not granted, and the amendment is accepted effective March 9, 2005, sixty days after filing, as conditioned below. Accordingly, consistent with *El Paso Electric Company*, 101 FERC

¹ See *American Electric Power Service Corporation*, 96 FERC ¶ 61,136 (2001).

² *Central Hudson Gas & Electric Corporation, et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

¶ 61,276 (2002), *reh'g denied*, 105 FERC ¶ 61,131 (2003), PacifiCorp must refund the time value of the revenues actually collected for the time period the rate was charged without Commission authorization. Accordingly, PacifiCorp is directed to make refunds within 30 days of the date of this order and to file a refund report with the Commission within 30 days thereafter.³

The revised Agreement does not comply with the requirements of Order No. 614. Specifically, the revised Agreement contains old, outdated language that has been superceded by various amendments over time. For example, the original agreement (designated as Sheet Nos. 96-109) contains several articles and sections that were amended by later supplements. The Commission has found that superceded language must be removed and only relevant, effective language be included in a single, comprehensible rate schedule.⁴ Acceptance is therefore conditioned upon PacifiCorp filing a complete and up-to-date Agreement with all superceded language removed. PacifiCorp may make this compliance filing together with the refund report ordered above, within 60 days of the date of this letter order.

This filing was noticed on January 14, 2005, with comments, protests, or motions to intervene due on or before January 28, 2005. No protests or comments were filed. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

This acceptance for filing shall not be construed as constituting approval of the referenced filing or of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service provided for in the filed documents; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or any which may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against PacifiCorp.

³ Consistent with *Southern California Edison Company*, 98 FERC ¶ 61,304 (2002), the time value refunds will be limited to ensure that PacifiCorp will not be constructing the facilities at a loss. If PacifiCorp determines that any portion of the ordered refunds will result in PacifiCorp constructing the facilities at a loss, PacifiCorp must make such a showing in its compliance filing refund report.

⁴ See *Boston Edison Company*, 98 FERC ¶ 61,292 (2002).

This action is taken pursuant to authority delegated to the Director, Division of Tariffs and Market Development - West, under 18 C.F.R. § 375.307. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Sincerely,

Jamie Simler, Director
Division of Tariffs and Market
Development – West

cc: All Parties