

120 FERC ¶ 61,231
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PacifiCorp Docket No. ER07-882-001

Pacific Gas and Electric Company Docket No. ER07-967-001

PacifiCorp Docket No. EL07-84-0001

ORDER ON REQUESTS FOR CLARIFICATION AND DENYING REQUEST FOR
REHEARING

(Issued September 11, 2007)

1. This order addresses motions for clarification and rehearing filed in response to the Commission's July 30, 2007 order¹ on proposed changes to several agreements that govern the Pacific Intertie.² Parties have requested that the Commission clarify what issues can be raised in the paper hearing established in the July 30 Order. This order clarifies that issue for the parties and denies a request for rehearing.

I. Background

2. The July 30 Order addressed the termination of a 40-year capacity lease agreement (Capacity Agreement) as well as terminations and amendments to related agreements. Among other things, the July 30 Order established a paper hearing on operational, maintenance, and planning issues related to the proposed Owners Coordinated Operation Agreements (Coordinated Operation Agreement) and directed briefs and/or evidence to be filed within 45 days of the date of the order. The July 30 Order also established a section 206 proceeding to examine PacifiCorp's system-wide rates.

3. On August 29, 2007, the California Public Utilities Commission (CPUC), Southern California Edison Company (SoCal Edison), San Diego Gas and Electric

¹ *PacifiCorp, Pacific Gas and Electric Co., Southern California Edison Co.*, 120 FERC ¶ 61,113 (2007) (July 30 Order).

² The Pacific Intertie, as referred to herein, consists of the California-Oregon Intertie (COI) and a 500-kV direct current line (DC Line).

Company (SDG&E), and Pacific Gas and Electric Company (PG&E) (collectively, the California Parties) filed a request for clarification or, in the alternative, rehearing of the July 30 Order. The California Parties request that the Commission clarify that the July 30 Order was not meant to resolve the rate pancake issue and that this issue remains open for briefing and Commission consideration in the paper hearing and section 206 proceeding. However, if the Commission did affirmatively find that there is no rate pancake associated with the termination of the Capacity Agreement in the July 30 Order, then the California Parties request rehearing of this issue. The California Parties request that the Commission reconsider the July 30 Order and find that the termination of the Capacity Agreement and use of PacifiCorp's open access transmission tariff (OATT) rate in its place could result in an unjust and unreasonable rate pancake, and therefore, parties may raise such issues in the subsequent proceedings.

4. On August 29, 2007, PacifiCorp also filed a motion for clarification requesting that the Commission clarify that the paper hearing relates solely to the appropriate terms for the coordinated operation, maintenance, and planning of the California-Oregon Intertie (COI) under a restated Coordinated Operation Agreement.

5. The Coordinated Operation Agreement provides for coordinated planning and operation of the COI facilities, including coordinated efforts to maintain and enhance transfer capability. The Coordinated Operation Agreement also allocates the transfer capability of the COI among the parties and determines each party's share of curtailments. The Coordinated Operation Agreement requires operation of the COI by a single operator, currently the CAISO under the California-Oregon Intertie Path Operating Agreement (Path Operating Agreement).

6. On September 4, 2007, the Transmission Agency of Northern California (TANC) filed an answer to PacifiCorp's motion for clarification. TANC contends that PacifiCorp's reading of the July 30 Order is too narrow and argues that the Commission intended to recognize that the Coordinated Operation Agreement imposes requirements that, in turn, produced related agreements that are integral to the performance of the Coordinated Operation Agreement. For example, TANC explains, the Coordinated Operation Agreement provides for the selection of a path operator for the COI and the negotiation and implementation of a COI Path Operator Agreement. Further, TANC states, the Coordinated Operation Agreement also provides that each signatory must have an agreement with its control area operator, which requires the control area operator to operate COI facilities in conformance with the Coordinated Operation Agreement.

7. On September 5, 2007, the California Parties filed an answer opposing PacifiCorp's motion for clarification. The California Parties argue that it is not possible to determine what constitutes just and reasonable Coordinated Operation Agreement provisions in the absence of record evidence regarding their impacts on reliable operations of the COI and their interaction with other operational agreements or tariffs.

II. Discussion

8. In the July 30 Order, the Commission stated:

Our preliminary analysis of PG&E's proposed amendments to the Coordinated Operation Agreement indicates that the amendments have not been shown to be just and reasonable and might be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. In particular, PG&E and PacifiCorp disagree on the appropriate practice for allocating curtailments to be included in the Coordinated Operation Agreement. In addition, it is not clear whether all appropriate parties have been included as parties to the Coordinated Operation Agreement. We will therefore...initiate paper hearing procedures on both it [the amended Coordinated Operation Agreement filed by PG&E] and the Coordinated Operation Agreement that has been proposed by PacifiCorp in its answer. The differences between these proposed Coordinated Operation Agreements do not appear to be numerous or extensive and focus, in particular, on the allocation of curtailments. However, all of the disputed issues on coordinated operation, maintenance, and planning related to a Coordinated Operation Agreement are to be briefed with evidence in the paper hearing.³

9. We hereby clarify that the paper hearing is not limited to the appropriate terms of a Coordinated Operation Agreement, and that the Commission intended for the parties to provide briefs only on operational, maintenance, and planning issues related directly to a Coordinated Operation Agreement, as that is the issue before us. While parties have raised that there may be additional agreements, such as a Path Operator Agreement and agreements with control area operators, which will also need to be in place to effectively operate the COI, such agreements are not before the Commission and thus are outside the scope of the paper hearing. To the extent additional agreements, such as those raised by TANC, are pertinent to the operation, maintenance, and planning of the COI and cannot be agreed-upon by the parties to such agreements, those agreements should be brought before the Commission, on their own merits, as they have not been presented in the instant proceedings.⁴

³ July 30 Order at P 35 (footnote omitted).

⁴ Pursuant to section 39.6 of the Commission's reliability regulations, if a user, owner, or operator of the facilities of a Transmission Organization determines that a reliability standard may conflict with a function rule, order, tariff, rate schedule, or an agreement accepted, approved, or ordered by the Commission with respect to such Transmission Organization, the user, owner, or operator shall expeditiously notify the Commission, the Electric Reliability Organization and the relevant Regional Entity of the possible conflict.

10. Further, as stated in the July 30 Order, it is not clear to us that termination of the Capacity Agreement will introduce any new pancaked rate. It appears that the issue raised by protestors is really about the magnitude of the rate rather than how the charge is levied.⁵ Nonetheless, we did not rule on that issue. Accordingly, we hereby clarify that the issue of rate pancaking, while not one to be addressed in the paper hearing, may be considered as part of the section 206 proceeding, which is the forum for raising rate issues related to PacifiCorp's system-wide rates. As the California Parties recognize,⁶ the pancake issue is inextricably intertwined with our review in the section 206 proceeding of whether PacifiCorp's rates are just and reasonable, and that is the appropriate proceeding to raise this rate issue. As discussed above, the paper hearing is reserved for operation, maintenance, and planning issues directly related to a Coordinated Operation Agreement. Because we have clarified that the California Parties' concerns about PacifiCorp's system-wide rates, including the rate pancaking issues, may be raised in the section 206 proceedings, the California Parties' alternative request for rehearing is moot and hereby denied. However, we note that all issues are open for discussion to the extent the parties are discussing settlement.

11. The Commission orders:

(A) Clarification with regard to issues to be included in the paper hearing is granted, as discussed herein.

(B) The California Parties' alternative request for rehearing is hereby denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.

⁵ *Id.* at P 24.

⁶ California Parties' August 29, 2007 Request for Clarification, or in the Alternative, Request for a Rehearing at 6.