

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

PacifiCorp

Docket No. ER07-882-000

**INTERVENTION AND COMMENTS
OF THE WYOMING OFFICE OF CONSUMER ADVOCATE**

INTRODUCTION

Pursuant to Rule 214(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”), 18 C.F.R. § 385.214(a)(2) (2007), the Wyoming Office of Consumer Advocate (hereinafter the OCA) hereby gives notice of intervention in the above-captioned proceeding. The OCA is charged with representing the interests of Wyoming citizens and all classes of utility customers in matters involving public utilities. Pursuant to W.S. § 37-2-401 and 402 the OCA has the power to act as a party in any proceeding before the Wyoming Public Service Commission, appeal decisions issued by the Wyoming Public Service Commission to the District Court, and seek permission to appear amicus curiae in any court proceeding in order to accomplish the purposes specified in the statute.

Termination of the lease agreement described herein may have a material and continuing impact on the retail rates paid by Rocky Mountain Power’s Wyoming customers. As such the OCA has a legitimate interest in the findings made by the Commission in this proceeding that cannot be adequately represented by any other party.

COMMUNICATIONS

Please address all notices, questions, and correspondence regarding this filing to:

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COMMENTS IN SUPPORT OF TERMINATION WITHOUT DELAY

On May 10, 2007, PacifiCorp filed with the Commission a notice of termination with respect to the Agreement for Use of Transmission Capacity Among Pacific Power & Light Company, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company designated at PacifiCorp rate schedule FERC No. 86 (the “1967 Capacity Agreement”). The 1967 Capacity Agreement provides for Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (the “California Companies”) to have full right to use the 47 miles PacifiCorp-owned 500 kV transmission line between Malin substation in southern Oregon and Indian Spring in northern California (the “Malin-to-Indian Spring Line”).

The Malin-to-Indian Spring Line is part of the California-Oregon Intertie (the “COI”), a set of three parallel 500-kV transmission lines that link the Pacific Northwest to California. The aggregate north-to-south capacity rating of the COI is 4,800 MW, and its south-to-north capacity is rated at 3,675 MW.

Under the 1967 Capacity Agreement, the California Companies have had access to the full capacity of the Malin-to-Indian Spring Line (with rated north-to-south capacity of 1,600 MW and south-to-north capacity of 1,225 MW) in exchange for a level, 40-year fixed payment of \$475,000 per year. These terms were appropriate at the time the parties entered into the agreement, decades before the Commission’s implementation of open access transmission policy. The capacity should be offered under PacifiCorp’s Commission-filed Open Access Transmission Tariff on a non-discriminatory basis to all eligible customers, and be subject to the system-wide average rates applicable to transmission service anywhere on the PacifiCorp transmission system.

The Malin to Indian Spring Line has historically been included in the rate base of the Company and responsibility for recovery of the costs associated with the line have been assigned to PacifiCorp's rate payers as a system asset. The \$475,000 annual fixed payment is credited against the retail revenue requirement in general rate case proceedings; however this fixed payment is below market, may not recover all of the capital carrying, operations and maintenance costs of the line and thereby results in a subsidization of the users of the line by PacifiCorp's retail ratepayers. Approximately 15% of the cost of PacifiCorp's system resources are allocated to Wyoming retail ratepayers under the currently approved system allocation methodology.

PacifiCorp has entered into contracts of a similar nature in the past whereby it has leased a substantial portion of the capacity of certain transmission facilities to third parties on a long term fixed price basis. The usual practice of the Wyoming Public Service Commission in general rate case proceedings, upon the recommendation of interested parties, has been to impute the equivalent amount of market revenue associated with these contracts as an offset to the retail revenue requirement in order to hold Wyoming retail customers harmless from the Company's decision to enter into below market contracts on a long term basis. Treatment of the Malin-Indian Spring Line, absent termination of the 1967 Capacity Agreement, merits similar treatment.

While parties in California may have strong incentives to delay termination of the 1967 Capacity Agreement and extend the benefits they have received beyond the negotiated 40-year term, the Commission must not allow this to happen. There is no reason why the necessary terms and arrangements related to interconnection, operational coordination, and commercial implementation cannot be in place before July 31, 2007, which is the termination date specified

in the 1967 Capacity Agreement. The termination date is widely known by the parties to all the agreements. Any required alternative arrangements should be in place in advance of this date.

Any action by the Commission allowing the term of the 1967 Capacity Agreement to be extended beyond its July 31, 2007 termination date could, in effect, confer preferential service terms on California parties – terms that are not available to other PacifiCorp transmission customers. Other customers that wish to use capacity on PacifiCorp's system are required to pay PacifiCorp's system-wide average rate, and this is consistent with Commission policy on integration of transmission facilities and their costs. *See, e.g., South Carolina Elec. & Gas Co.*, 118 FERC ¶ 61,185 (2007).

Some parties may attempt to argue that it would be unjust and unreasonable for the highly beneficial arrangements they currently enjoy under the 1967 Capacity Agreement to be discontinued. The Commission has already held, and been affirmed by the Court of Appeals for the D.C. Circuit in holding, that a party's inability to obtain service on the particularly favorable terms it seeks is not equivalent to denial of service on just and reasonable terms. *See Pacific Gas and Electric Co.*, 109 FERC ¶61,255 (2004), *reh'g denied Pacific Gas and Electric Co.*, 111 FERC ¶61,175 (2005), *appeal denied sub nom. Sacramento Mun. Util. Dist. v. FERC*, 474 F3d 797 (D.C. Cir. 2007). PacifiCorp has no obligation to acquiesce to other parties' preferences that it manage its system for their unique benefit. On the contrary, PacifiCorp has an obligation to offer capacity on its transmission facilities to all eligible customers on a nondiscriminatory basis, and to operate its transmission system for the benefit of *all* of its customers.

In fact, extending the 1967 Capacity Agreement beyond the date that it will terminate by its own terms is contrary to the open access rules and market reforms that the Commission has undertaken over the last decade. Transparent and open access to the transmission system by all

potential users of the system at market based rates has been a bulwark of the Commission's efforts in this area. Requiring the 1967 Capacity Agreement to remain in place beyond July 31, 2007 will hinder rather than advance the Commission's goal of open and transparent access to the western interconnected transmission system. Further, extension of the 1967 Capacity Agreement would deprive Wyoming ratepayers of the benefits associated with the operation of an efficient and transparent market for transmission services.

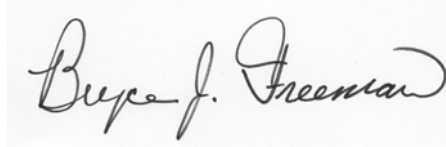
The capacity that has been available to customers on the Malin-to-Indian Spring Line for the past 40 years will not be withdrawn from the market when the 1967 Capacity Agreement expires. It will continue to be offered under PacifiCorp's Open Access Transmission Tariff in accordance with Commission policy. PacifiCorp has indicated its willingness to participate in operational coordination agreements and to accept the California ISO's request to leave the Malin-to-Indian Spring Line within the boundaries of the California ISO's balancing authority area. Thus, from the standpoint of reliability and operations, nothing will change with the termination of the 1967 Capacity Agreement.

The proper scope of a proceeding concerning termination of a transmission agreement with a negotiated termination date is whether the party filing for termination has complied with the Commission's regulations in 18 C.F.R. § 35.15. *See, e.g., Xcel Energy Services, Inc.*, 115 FERC ¶ 61,256 (2006) at P 11. PacifiCorp has done so.

CONCLUSION

The Wyoming Office of Consumer Advocate respectfully urges the Commission to accept PacifiCorp's notice of termination of the 1967 Capacity Agreement and allow termination to take effect, in accordance with the agreement, on July 31, 2007.

Submitted this 30th day of May, 2007.

A handwritten signature in black ink that reads "Bryce J. Freeman". The signature is written in a cursive style with a large initial 'B' and 'F'.

Freeman, Administrator Bryce J.