

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

In re PacifiCorp

Docket No. IN07-5-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 18, 2007)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and PacifiCorp. This Order is in the public interest because it resolves certain self-reported violations by PacifiCorp of its Open Access Transmission Tariff (OATT),¹ with an agreed-upon payment of a \$10 million civil penalty, an independent review of PacifiCorp's business practices, and a compliance plan to assure compliance with PacifiCorp's OATT and the Commission's Standards of Conduct with respect to PacifiCorp's use of transmission service.

Background

2. PacifiCorp is a vertically-integrated public utility serving approximately 1.6 million retail electric customers in the Western Electricity Coordinating Council (WECC) area.² PacifiCorp owns or controls approximately 8,470 megawatts of primarily coal-fired, gas-fired and hydroelectric generating facilities, obtains between 20 and 25 percent of its annual energy requirements through short-term and long-term wholesale purchase arrangements with various WECC area counterparties, and sells wholesale power from its portfolio of owned and purchased resources under its Market-Based Rate

¹ PacifiCorp has had an OATT on file with the Commission since 1989. Its current OATT was filed in Docket No. ER04-431-000, effective April 26, 2004.

² PacifiCorp serves customers in two geographically separate control areas. PacifiCorp's eastern service territory comprises Salt Lake City, Utah, and adjoining areas in Utah, Wyoming, and Idaho. PacifiCorp's western service territory comprises parts of Portland, Oregon, and other areas in Oregon, Washington, and California. PacifiCorp's service territories are interconnected with control areas operated by the California ISO, Bonneville Power Administration, Puget Sound Energy, Portland General Electric, Public Service Co. of New Mexico, and numerous other major WECC-area utilities.

Authority.³ PacifiCorp owns 15,580 route miles of transmission lines and provides wholesale transmission service under its OATT.

3. PacifiCorp underwent a change in ownership in early 2006 following Commission approval of a merger with MidAmerican Energy Holdings Company (MidAmerican).⁴ On April 12, 2006, following an internal investigation prompted and led by PacifiCorp's new ownership, PacifiCorp self-reported various OATT and Standards of Conduct violations to Enforcement. Enforcement staff's investigation reviewed PacifiCorp actions over a several-year period, including a detailed review of available data from April 2003 to April 2006. PacifiCorp's cooperation with staff's investigation was exemplary.

Summary of Violations

4. Staff's investigation reviewed several aspects of PacifiCorp's operations under its OATT and the Commission's Standards of Conduct for transmission providers.

PacifiCorp's violations fall into the following categories:

- PacifiCorp's merchant function used network transmission (NT) instead of point-to-point transmission (PTP) to return power to the Bonneville Power Administration (BPA) under the companies' wholesale power exchange agreement, in violation of sections 28.1, 28.3, and 28.6 of PacifiCorp's OATT. NT is reserved to serve network load, not off-system customers.
- PacifiCorp's merchant function used NT instead of PTP to import power to facilitate off-system sales, in violation of section 28.6 of its OATT.
- PacifiCorp's merchant function used NT instead of PTP or secondary NT to bring power onto its system from resources not designated as network resources, in violation of sections 28.4 and 28.6 of its OATT. Secondary NT is provided on an as-available basis and subject to curtailment prior to NT.
- PacifiCorp's merchant function had exclusive access to certain points of receipt and points of delivery on transmission paths within its control area, in violation of sections 13.7(a) and 13.7(c) of its OATT.

³ *PacifiCorp*, 79 FERC ¶ 61,383 (1997). The Commission accepted PacifiCorp's last updated market power analysis on June 20, 2006. *PacifiCorp*, 115 FERC ¶ 61,349 (2006) (accepting PacifiCorp's market power analysis after an investigation in which it was determined that PacifiCorp did not have market power in its eastern service territory and Idaho control area).

⁴ *MidAmerican Energy Holdings Company, et al.*, 113 FERC ¶ 61,298 (2005).

- PacifiCorp's merchant function had access to certain non-public transmission information because certain merchant function employees were able to view PacifiCorp databases, such as historical third-party interchange data, in violation of the Commission's Standards of Conduct.
- PacifiCorp's merchant function and transmission function employees shared certain information about the accuracy of OASIS postings by telephone and email rather than through PacifiCorp's OASIS or website, in violation of the Commission's Standards of Conduct.
- PacifiCorp failed to administer designations of network resources through the OATT process, in violation of sections 29.2(vi) of its OATT.
- PacifiCorp's transmission function billed its merchant function for ancillary services and long-term firm PTP service based on annual budget estimates based on the prior year's usage, rather than actual metered usage as required by its OATT.

5. Enforcement staff determined that PacifiCorp's misuse of NT has been continuing since 1999, and that PacifiCorp engaged in more than two thousand separate occurrences of OATT violations. Of these, 329 occurred since August 8, 2005, representing 41,025 MWh in total transmission service. PacifiCorp derived relatively little financial benefit from its OATT violations, although PacifiCorp's practices provided its merchant function some benefits in the form of convenience and certainty. By using NT instead of PTP or secondary NT, for instance, PacifiCorp's merchant function avoided competing with unaffiliated transmission customers for PTP, forewent designating specific points of receipt and delivery for off-system sales, and prevented curtailments or denials of service by the transmission function.

6. PacifiCorp's improper use of NT resulted in its merchant function not making approximately \$86.5 million in PTP payments to PacifiCorp's transmission function. This underpayment is in the nature of an accounting transfer, since there is pass-through to ratepayers regardless whether the revenue is booked to the merchant function or the transmission function. PacifiCorp has stated that it has transferred the \$86.5 million to its transmission function.

7. PacifiCorp's practices also resulted in approximately \$884,082 in underpayments to certain wholesale customers. PacifiCorp distributed this amount to these customers in April 2006. In addition, PacifiCorp has identified \$672,465 in net profits associated with its merchant function's improper use of NT service. Since revenues from both merchant and transmission functions are factored into retail net power costs, this amount benefited PacifiCorp's retail ratepayers.

8. PacifiCorp self-reported these OATT and Standards of Conduct violations, and has stipulated to the actions that resulted in these violations under PacifiCorp's prior ownership. PacifiCorp's cooperation with staff's investigation has been exemplary, and PacifiCorp has proactively taken steps to remediate its past actions and to prevent future misuse of network service to facilitate off-system sales and Standards of Conduct violations.

Stipulation and Agreement

9. Enforcement and PacifiCorp have entered into the attached Agreement to resolve Enforcement's investigation of PacifiCorp's self-report. The Agreement requires PacifiCorp to pay a \$10 million civil penalty to the United States Treasury within ten days of this Order accepting and approving the Agreement, and to document the transfer of \$86.5 million from its merchant function to its transmission function.

10. PacifiCorp will choose, with Enforcement staff approval, an independent third party to review PacifiCorp's business practices for compliance with PacifiCorp's OATT and the Commission's Standards of Conduct for the year following the issuance of this Order. The third-party auditor shall submit a report contemporaneously directly to Enforcement staff and to PacifiCorp. If Enforcement staff so requests, PacifiCorp will contract for a second independent audit for the following year.

11. PacifiCorp will provide quarterly reports to Enforcement staff for one year which describe in detail the steps PacifiCorp has taken and will take to ensure compliance with its OATT and the Commission's Standards of Conduct.

Determination of the Appropriate Remedy

12. With respect to the amount of the civil penalty we approve here, we have considered that 329 of the identified violations occurred after August 8, 2005. The Commission may impose civil penalties of up to \$1 million per violation pursuant to section 316A of the Federal Power Act, as amended by the Energy Policy Act of 2005.⁵ In approving the Agreement and the \$10 million civil penalty, we considered the factors set forth in the Federal Power Act⁶ and our Policy Statement on Enforcement.⁷ We have

⁵ Section 1284(e) of the Energy Policy Act of 2005 amended section 316A(b) of the Federal Power Act (FPA), 16 U.S.C. § 825o-1(b), to grant the Commission authority to assess a civil penalty of not more than \$1,000,000 for each day that a violation of any provision of Part II of the FPA or any provision of any rule or order thereunder continues.

⁶ Section 316A(b) of the Federal Power Act, 16 U.S.C. § 825o-1(b).

⁷ Enforcement of Statutes, Orders, Rules, and Regulations, 113 FERC ¶ 61,068 (2006).

accorded great weight to the fact that, under its new ownership, PacifiCorp self reported these violations and cooperated in an exemplary manner with Enforcement staff. Absent its self-report and exemplary cooperation, the civil penalty sought would have been substantially higher. However, given the fact that the violations occurred over a substantial period of time and affected a large number of transactions, we find that the civil penalty agreed upon is appropriate.

13. We have also considered that, while there were a large number of affected transactions, the identifiable harm was relatively small, and that PacifiCorp has already paid \$884,082 in underpayments to affected wholesale customers. In light of all these circumstances, we conclude that the penalty specified in the Agreement provides a fair and equitable resolution of this matter and is in the public interest. We also conclude that the compliance program specified in the Agreement is in the public interest.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

In re PacifiCorp

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Docket No. IN07-5-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and PacifiCorp enter into this Stipulation and Consent Agreement (Agreement) to resolve all outstanding issues of fact and law arising from a non-public investigation pursuant to Part 1b of the Commission regulations, 18 C.F.R. Part 1b (2006), into certain self-reported violations of PacifiCorp's Open Access Transmission Tariff (OATT) and the Commission's Standards of Conduct for Public Utilities (Standards of Conduct), 18 C.F.R. Part 358 (2006). The Agreement resolves PacifiCorp's self-report of OATT and Standards of Conduct violations, and is the result of exemplary cooperation by PacifiCorp with Enforcement staff's investigation of the matters self-reported.

II. STIPULATION

Enforcement and PacifiCorp hereby stipulate and agree to the following:

A. Background

2. PacifiCorp is a vertically-integrated public utility serving approximately 1.6 million retail electric customers in the Western Electricity Coordinating Council (WECC) area. For its fiscal year ending March 31, 2006, PacifiCorp earned revenues of approximately \$2.81 billion from bundled retail electric sales and \$1.09 billion from sales of wholesale transmission, wholesale generation, and other sales. PacifiCorp underwent a change in ownership in early 2006 from Scottish Power PLC to MidAmerican Energy Holdings Company (MidAmerican) following Commission approval of the merger.¹

3. PacifiCorp owns or controls approximately 8,470 megawatts of primarily coal-fired, gas-fired, and hydroelectric generating facilities, obtains between 20 and 25 percent of its annual energy requirements through short-term and long-term wholesale

¹ *MidAmerican Energy Holdings Company, et al.*, 113 FERC ¶61,298 (2005).

purchase arrangements with various WECC area counterparties, and sells wholesale power from its portfolio of owned and purchased resources under its Market-Based Rate Authority, *PacifiCorp*, 79 FERC ¶ 61,383 (1997). PacifiCorp owns 15,580 route miles of transmission lines and provides wholesale transmission service under its OATT (Docket No. ER04-431-000, effective April 26, 2004).

4. Under section 28.6 of its OATT, PacifiCorp may “not use Network Integration Transmission Service for (i) sales of capacity and energy to non-designated loads, or (ii) the direct or indirect provision of transmission service by the Network Customer to third parties.” For sales to third parties utilizing the transmission provider’s transmission system, the network customer must use point-to-point transmission service.

5. In February 2006, PacifiCorp commenced an internal audit of PacifiCorp’s scheduling practices and other areas of potential noncompliance with Commission regulations. When MidAmerican subsequently assumed ownership of PacifiCorp, it immediately dispatched personnel to PacifiCorp and determined that PacifiCorp had engaged in potentially noncompliant practices involving its Network Transmission (NT) service.

6. On April 12, 2006, after completing its internal investigation, PacifiCorp self-reported various OATT and Standards of Conduct violations to Enforcement. At that time, PacifiCorp provided Enforcement staff a report entitled “Report on PacifiCorp’s Federal Energy Regulatory Commission Compliance Dated: April 10, 2006” (Report). The Report itemized the results of PacifiCorp’s internal investigation, and concluded that PacifiCorp violated its OATT and the Standards of Conduct while under Scottish Power ownership.

7. MidAmerican required PacifiCorp to alter its practices to conform to the requirements of its OATT and the Commission’s Standards of Conduct and determined that PacifiCorp’s actions deprived network customers of \$884,082 in payments they would have received if PacifiCorp had followed OATT requirements. PacifiCorp paid this amount to the affected network customers in April 2006. MidAmerican also required PacifiCorp to implement additional training and controls to improve the culture of compliance.

8. Enforcement opened a non-public investigation into the PacifiCorp’s self-report. PacifiCorp demonstrated exemplary cooperation with staff’s efforts to seek information regarding the self-reported violations, including in certain instances voluntarily waiving attorney-client privilege and providing staff with legal memoranda.

B. Improper Use of Network Transmission Service

9. PacifiCorp's merchant function improperly used NT. By doing so, PacifiCorp, which is required to treat itself as it would any other network customer, violated section 28.6 of its OATT, which states:

The Network Customer shall not use Network Integration Transmission Service for (i) sales of capacity and energy to non-designated loads, or (ii) direct or indirect provision of transmission service by the Network Customer to third parties. All Network Customers taking Network Integration Transmission Service shall use Point-to-Point Transmission Service under Part II of the Tariff for any Third-Party Sale which requires use of the Transmission Provider's Transmission System.

10. PacifiCorp's noncompliance in this area specifically involved: (1) using NT to return power to BPA; (2) using NT to import power to facilitate off-system sales; and (3) using NT to import power from resources not designated as network resources. PacifiCorp's practices provided its merchant function benefits in the form of convenience and certainty. PacifiCorp's merchant function at times avoided competing for transmission service with unaffiliated transmission customers, forewent designating specific points of receipt and delivery for off-system sales, and potentially avoided curtailments of service by the transmission function. This simplified PacifiCorp's transmission, generation, and power trading requirements to make off-system sales or return power to BPA, but other transmission system customers did not enjoy these same benefits.

(1) Using NT to Return Power to BPA

11. PacifiCorp has a grandfathered pre-Order No. 888 agreement with BPA wherein PacifiCorp may call upon power from BPA at various delivery points and subject to certain restrictions, and PacifiCorp must return a like amount of power to BPA at a later time or agree upon a cash-out price. These types of arrangements are common in the WECC and generally benefit the utilities involved by giving them more resource options for serving their load and allowing them to return the borrowed energy during low-load periods. During the relevant period, PacifiCorp's merchant function improperly scheduled its BPA return obligations using NT instead of point-to-point (PTP) service. Because return energy is not being used to serve the returning utility's load or another utility's load within the returning utility's control area, PacifiCorp should have used PTP service, and it was therefore contrary to sections 28.1 and 28.3 of PacifiCorp's OATT to use NT service for this purpose.

12. On November 17, 1999, PacifiCorp's outside counsel addressed and sent a memorandum to PacifiCorp senior management. In addition to describing five other

practices by PacifiCorp that likely violated PacifiCorp's OATT, the memorandum specifically advised that the use of network service to facilitate the return of power to BPA was improper. PacifiCorp senior management met in 1999 with its outside counsel and agreed to take corrective action. However, PacifiCorp failed to take corrective action with respect to the BPA return issue to bring itself in compliance with its OATT.

(2) *Using NT to Import Power to Facilitate Off-System Sales*

13. PacifiCorp utilized NT for some of its off-system purchases concurrent with off-system sales where the purchase price was higher than PacifiCorp's displaced resource incremental cost. Because these off-system purchases facilitated off-system sales, PacifiCorp is not allowed to schedule them using NT under OATT section 28.6. These transactions did not benefit PacifiCorp's wholesale merchant function or an unregulated affiliate because, under the terms of PacifiCorp's retail tariffs, any gains from off-system sales of power ultimately inure to the benefit of PacifiCorp's retail rate payers.

(3) *Using NT to Import Power from Non-Network Resources*

14. PacifiCorp utilized NT to import power from resources not designated as network resources. Under PacifiCorp's OATT, secondary NT should have been used under section 28.4 if network loads were being served or PTP should have been used under section 28.6 if off-system sales were being facilitated. Section 28.4 of PacifiCorp's OATT states: "The Network Customer may use the Transmission Provider's Transmission System to deliver energy to its Network Loads from resources that have not been designated as Network Resources. Such energy shall be transmitted, on an as-available basis, at no additional charge." Thus, secondary NT may not always be available or could be curtailed by firm PTP or other NT schedules when available transmission capacity is limited.

15. PacifiCorp avoided potential curtailments because the purchased energy was scheduled with a higher priority under NERC guidelines than it would have received had PacifiCorp used secondary NT or non-firm PTP. In addition, PacifiCorp used service that would have potentially been unavailable if PacifiCorp had requested service as required.

C. *Merchant Function Access to Points of Receipt and Delivery*

16. PacifiCorp's transmission function issued multiple assigned reference numbers (AREFs) to PacifiCorp's merchant function in association with single requests for PTP service. The multiple AREFs broke a single contract path into multiple segments for use by PacifiCorp's merchant function when scheduling transmission service.

PacifiCorp's transmission function did not provide multiple AREFs to unaffiliated customers.

17. Through the use of segmented PTP service, PacifiCorp had the flexibility to schedule firm service on each segment any amount of power up to the amount that should have been scheduled over the entire path. Under sections 13.7(a) and (c) of PacifiCorp's OATT, any change from the publicly-available points of receipt/points of delivery specified in PacifiCorp's merchant function long-term firm PTP agreement should have been requested as either a non-firm, as-available basis redirect or a firm redirect treated as a new transmission service request.

D. Merchant Function Access to Non-Public Transmission Information

18. The Standards of Conduct require that merchant function employees have access only to transmission function information that is available to all users of an OASIS or Internet website. Certain merchant function employees had the ability to view non-public transmission information in one of PacifiCorp's databases, such as historical third party interchange data. Also, a small number of these merchant function employees actually had "system administrator" access rights, allowing them to change other employees' access privileges to the transmission information database. Additionally, PacifiCorp had a practice of printing and storing certain non-public transmission information relating to historical third party interchange data. PacifiCorp reported that a printed copy of this historical data was provided to a marketing function employee. Availability of such access violates the Standards of Conduct, although there is no indication that the availability of such access was utilized by PacifiCorp merchant function employees or that PacifiCorp gained an unfair competitive advantage from it.

E. Off-OASIS Communications between Transmission and Merchant Function Employees

19. PacifiCorp's merchant function and transmission function employees engaged in several off-OASIS discussions via telephone and e-mail regarding the accuracy of OASIS postings. These communications were not shared with other transmission customers or posted on PacifiCorp's OASIS or Internet website.

20. PacifiCorp's information-sharing between its transmission and marketing functions resulted in PacifiCorp treating its marketing function differently than third-party customers by failing to post the same information on its OASIS. On April 5, 2006, PacifiCorp states that it posted the disclosed non-public transmission system information on its OASIS, and provided refresher training to relevant employees on communications prohibited by the Standards of Conduct.

F. Allowing the Merchant Function and Third Parties to Designate Network Resources Improperly

21. The designation of network resources by PacifiCorp and other NT customers was not always in compliance with the application procedures and requirements in its OATT; in some instances PacifiCorp did not submit its designations through the OATT process. PacifiCorp's failure to require a formal or complete application violated OATT section 29.2(vi). This section of PacifiCorp's OATT requires in each completed application for NT service six categories of technical specifications (such as VAR capability, operating restrictions, and approximate variable generating costs) for all current and ten-year projection network resources in writing.

G. Billing the Merchant Function Based on Estimates

22. PacifiCorp's transmission function billed the merchant function for ancillary services and long-term firm PTP based on an annual budget estimated from the merchant function's previous year's usage, not based on the merchant function's actual metered usage as required by PacifiCorp's OATT.

H. Quantification of Network Tariff Violations

23. At the direction of Enforcement staff, PacifiCorp performed analyses to determine the number of improper transactions that used network services and the amount of profit attributable to them. Based on PacifiCorp's analyses, staff determined that the misuse of network transmission service has been continuing since 1999, and PacifiCorp engaged in more than two thousand separate occurrences of OATT violations. Of these, 329 occurred since August 8, 2005, representing 41,025 MWh in total transmission service.

I. Action by PacifiCorp

24. After MidAmerican determined that PacifiCorp had been in violation of its OATT during the time PacifiCorp was owned by Scottish Power, it caused PacifiCorp to take immediate steps to remedy the causes of the violations, and promptly brought the violations to the Commission's attention. PacifiCorp provided Enforcement staff with a comprehensive Report on its activities and cooperated fully in staff's review of the matter, including in certain instances waiving attorney-client privilege and providing staff with key documents, including legal analysis. PacifiCorp also performed data analysis as requested by staff to determine the harm from its actions. The data analysis goes back to April 1, 2003, the length of time for which the necessary data was still available.

25. As a result of its internal investigation, the self-report, and the studies undertaken at staff's request, PacifiCorp has already taken certain actions. First,

PacifiCorp determined that it should have reflected \$86.5 million in revenues as attributable to its transmission function that had been attributed to its merchant function, and made this change on its books. This error did not affect ratepayers, however, as revenues from both the merchant and the transmission function are flowed through to ratepayers. Second, PacifiCorp voluntarily paid \$884,082 to certain network transmission customers, representing monies those customers would have received if PacifiCorp had used PTP service instead of NT service. Third, PacifiCorp estimated that it earned a net total of \$672,465 profit from off-system sales supported by purchases imported using NT service instead of PTP service. However, disgorgement of this amount is not necessary because all non-retail revenue received by PacifiCorp, including wholesale sales revenue, is a credit against PacifiCorp's retail revenue requirement. That is, revenue from wholesale sales benefits retail customers through a lower revenue requirement and, therefore, lower retail rates.

III. REMEDIES AND SANCTIONS

26. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation into the matters reported by PacifiCorp in its Report, Enforcement and PacifiCorp agree as follows:

27. PacifiCorp shall pay a civil penalty of \$10,000,000 (\$10 million) to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, and file proof of payment with the Commission within five days thereafter. The entire civil penalty shall be borne by PacifiCorp shareholders, and shall not be passed through, directly or indirectly, to any present or future customers or ratepayers.

28. PacifiCorp shall file proof, within five days after the Effective Date of this Agreement, that it transferred \$86.5 million in PTP revenues from PacifiCorp's merchant function to PacifiCorp's transmission function.

29. PacifiCorp shall make quarterly submissions to Enforcement staff for a period of one year, beginning ten days after the end of the calendar quarter in which the Effective Date of this Agreement falls. The submissions shall detail the steps PacifiCorp has taken or will take to remain compliant on a prospective basis with all elements of the PacifiCorp's OATT, Standards of Conduct, and OASIS requirements in general, as well as the specific areas of non-compliance identified in this Agreement. The submissions should also identify when PacifiCorp has completed each step.

30. PacifiCorp shall retain a third-party independent auditor, to be chosen by PacifiCorp with Enforcement approval, to conduct a comprehensive review of PacifiCorp's business practices for compliance with PacifiCorp's OATT and the Commission Standards of Conduct. Within ninety days after the first anniversary of the Effective Date of this Agreement, the third-party auditor shall submit its report

contemporaneously directly to Enforcement staff and PacifiCorp. At Enforcement staff's discretion, PacifiCorp will contract for a similar independent audit of the following year. That audit report, if required by Enforcement staff, will be submitted contemporaneously to Enforcement and PacifiCorp within ninety days of the second anniversary of the Effective Date.

IV. TERMS

31. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein as to PacifiCorp and any affiliated entity, its agents, officers, directors and employees, both past and present, and any successor in interest to PacifiCorp (collectively, PacifiCorp).

32. Commission approval of this Agreement without material modification shall release PacifiCorp and forever bar the Commission from bringing against PacifiCorp any and all administrative or civil claims arising out of, related to or connected with the conduct described in section B above.

33. Failure to make a timely civil penalty payment or to comply with the compliance program agreed to herein, or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act, 16 U.S.C. § 792 *et seq.*, and may subject PacifiCorp to additional action under the enforcement and penalty provisions of the FPA.

34. If PacifiCorp does not make the payments described herein at the times agreed by the parties, interest will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii) from the date that payment is due.

35. The signatories to the Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or PacifiCorp has been made to induce the signatories or any other party to enter into the Agreement.

36. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor PacifiCorp shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and PacifiCorp.

37. The Agreement binds PacifiCorp and its agents, successors and assigns.

38. In connection with the payment of the civil penalty provided for herein, PacifiCorp agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b), as amended. PacifiCorp waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

39. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

40. The undersigned representative of PacifiCorp affirms that he has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his knowledge, information and belief, and that he understands that the Agreement is entered into by Enforcement in express reliance on those representations.

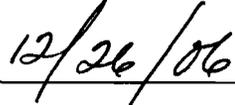
41. The Agreement may be signed in counterparts.

42. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:



Susan J. Court, Director
Office of Enforcement, Federal
Energy Regulatory Commission



Date

For PacifiCorp:



R. Patrick Reiten, President
Pacific Power



Date