

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Nevada Power Company

Docket Nos. ER05-988-001  
EL06-84-000

ORDER GRANTING REHEARING,  
INSTITUTING SECTION 206 PROCEEDING, ESTABLISHING HEARING  
AND SETTLEMENT JUDGE PROCEDURES, AND REJECTING  
AMENDED TRANSMISSION SERVICE AGREEMENT AND AFFIDAVITS

(Issued July 28, 2006)

1. In this order, we will grant Nevada Power Company's (Nevada Power) request for rehearing of the Commission's order issued on July 18, 2005,<sup>1</sup> to provide it a forum in which to address its assertion that its projected native load needs justify a restriction on the rollover rights of its transmission customer, PacifiCorp, and institute a proceeding pursuant to section 206 of the Federal Power Act (FPA)<sup>2</sup> in Docket No. EL06-84-000, in order to provide Nevada Power that forum. Additionally, we will reject the amended transmission service agreement and affidavits that were filed by Nevada Power with its rehearing request.

**Background**

2. On May 19, 2005, Nevada Power filed an executed service agreement with PacifiCorp under Nevada Power's Open Access Transmission Tariff for 50 MW of long-term firm point-to-point transmission service for the period June 1, 2005 to June 1, 2006. In sections 5.0 and 6.0 of this service agreement, Nevada Power sought to restrict PacifiCorp's ability to rollover its transmission service beginning June 1, 2013, based on projected native load needs for the capacity.

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<sup>1</sup> See *Nevada Power Company*, 112 FERC ¶ 61,072 (2005) (July 2005 Order).

<sup>2</sup> 16 U.S.C. § 824(e) (2000).

3. In the July 2005 Order, the Commission found that the information filed by Nevada Power, consisting of a Loads and Resources Table taken from its 2003 Integrated Resource Plan filed with the Public Utilities Commission of Nevada (Nevada Commission), did not sufficiently support Nevada Power's conclusion that native load growth will constrain its transmission system such that it cannot provide transmission service to PacifiCorp beyond June 1, 2013.<sup>3</sup> The Commission also noted that, while the Nevada Commission had approved the load forecast in the Loads and Resources Table, the Nevada Commission denied Nevada Power's request to reserve import capacity for future native load growth.<sup>4</sup> Accordingly, the July 2005 Order conditionally accepted the proposed service agreement, as modified, to be effective June 1, 2005, and directed Nevada Power to make a compliance filing deleting sections 5.0 and 6.0 of the service agreement, which limit PacifiCorp's rollover rights.<sup>5</sup>

### **Rehearing Request**

4. On August 17, 2005, Nevada Power filed a request for rehearing of the July 2005 Order. Nevada Power attached to its request for rehearing: (1) an amended executed transmission service agreement limiting PacifiCorp's rollover rights beginning June 1, 2016 (instead of June 1, 2013, as in the original filing); (2) the Loads and Resources Table that it had submitted with its original filing which, it says, supports the limitation of PacifiCorp's rollover rights beginning June 1, 2016;<sup>6</sup> and (3) affidavits from a Commissioner and the General Counsel of the Nevada Commission.

5. Nevada Power asks the Commission to grant rehearing of the July 2005 Order and to accept the amended transmission service agreement limiting PacifiCorp's rollover rights beginning June 1, 2016.<sup>7</sup> It contends that the Loads and Resources Table provides a sufficient basis upon which PacifiCorp can reasonably ascertain the extent to which Nevada Power is limiting PacifiCorp's rollover rights.<sup>8</sup> According to Nevada Power, the Loads and Resources Table shows that the import capacity required by Nevada Power's

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<sup>3</sup> See July 2005 Order at P 9.

<sup>4</sup> *Id.*

<sup>5</sup> See *id.* at P 10. Nevada Power's compliance filing removing the rollover restrictions in sections 5.0 and 6.0 of the service agreement was accepted by delegated authority in a letter dated November 21, 2005.

<sup>6</sup> Request for Rehearing at 2, 4.

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.* at 2.

native load exceeds available total import capacity in 2016 by 104 MW.<sup>9</sup> Nevada Power states that the Loads and Resources Table reflects its Nevada Commission-approved resource plan as of August 2004.<sup>10</sup> Nevada Power argues that the restriction on PacifiCorp's rollover rights beginning June 1, 2016 is, therefore, consistent with Commission precedent.<sup>11</sup>

6. Finally, Nevada Power claims that the Commission misinterpreted the Nevada Commission's order concerning Nevada Power's reservation of import capacity for native load growth. Nevada Power claims that the Nevada Commission has not denied its request to reserve import capacity for future native load growth. According to Nevada Power, the Nevada Commission has not yet decided that issue. To support this position, Nevada Power submitted affidavits from a Commissioner and the General Counsel of the Nevada Commission with its rehearing request.<sup>12</sup>

## **Discussion**

### **Hearing and Settlement Judge Procedures**

7. Upon further consideration and as discussed below, we will grant rehearing to provide Nevada Power a forum in which to address its assertion that its native load growth restricts its ability to provide PacifiCorp rollover rights beyond June 1, 2013.<sup>13</sup> The issues to be addressed include whether Nevada Power can demonstrate that its native load growth will prevent it from providing rollover service to PacifiCorp over the specific transmission capacity (*i.e.*, contract path) used by PacifiCorp.

8. Because the Commission accepted Nevada Power's filing in the July 2005 Order without suspension or hearing, subject to the modification that the rollover restriction be removed, we will institute a section 206 proceeding in Docket No. EL06-84-000, with a refund effective date, to provide Nevada Power the forum discussed above. In addition, because this investigation will involve issues of material fact, we will set the matter for a trial-type evidentiary hearing.

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<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 8-12.

<sup>12</sup> *Id.* at 12-13.

<sup>13</sup> As discussed below, we reject Nevada Power's amended transmission service agreement filed with its rehearing request, indicating that the rollover restriction should not be effective until June 1, 2016, as opposed to June 1, 2013, as originally filed.

9. In cases where, as here, the Commission institutes a section 206 proceeding on its own motion, section 206(b), as amended by the Energy Policy Act of 2005,<sup>14</sup> requires that the Commission establish a refund effective date that is no earlier than the date of the publication by the Commission of notice of the initiation of the Commission's proceeding in the *Federal Register*, and no later than five months after the publication date. In order to give maximum protection to customers, and consistent with our precedent,<sup>15</sup> we will establish a refund effective date at the earliest date allowed. This date will be the date on which notice of the initiation of the proceeding in Docket No. EL06-84-000 is published in the *Federal Register*. In addition, section 206 requires that, if no final decision has been rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Given the nature and complexity of the matters to be resolved, we expect that, assuming the case does not settle, the presiding judge should be able to render a decision by April 30, 2007. If the presiding judge is able to render a decision by that date, and assuming the case does not settle, we estimate that we will be able to issue our decision within approximately four months of the filing of briefs on and opposing exceptions or by October 31, 2007.

10. While we are setting these matters for investigation and a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>16</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>17</sup> The settlement judge shall report to the Chief Judge and the Commission, within 30 days of the date of the appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with

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<sup>14</sup> Pub. L. No. 109-58, § 1285, 119 Stat. 594, 980-81 (2005).

<sup>15</sup> See, e.g., *Canal Electric Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

<sup>16</sup> 18 C.F.R. § 385.603 (2006).

<sup>17</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) – click on Office of Administrative Law Judges).

additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

### **Other Matters**

11. We will reject, as contrary to Commission precedent, Nevada Power's attempt to correct an alleged error and file an amended transmission service agreement as an attachment to its rehearing request.<sup>18</sup> This rejection is without prejudice to Nevada Power making a filing of the amended transmission service agreement pursuant to section 205 of the FPA.<sup>19</sup>

12. Further, we will reject, as contrary to Commission precedent, Nevada Power's attempt, on rehearing, to proffer new evidence in the form of affidavits from a Commissioner and the General Counsel of the Nevada Commission, in support of its assertion that the Commission erred in finding that the Nevada Commission denied Nevada Power's request to reserve import capacity for future native load growth.<sup>20</sup>

### **The Commission orders:**

(A) Nevada Power's rehearing request is hereby granted, as discussed in the body of this order.

(B) The amended transmission service agreement and affidavits submitted by Nevada Power with its rehearing request are hereby rejected, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL06-84-000, as discussed in the body of this order. However, the investigation and hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (D) and (E) below.

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<sup>18</sup> See, e.g., *PrairieLand Energy, Inc.*, 87 FERC ¶ 61,096, at 61,413 (1999) (citing *Northern States Power Company, et al.*, 54 FERC ¶ 61,242, at 61,711 (1991); *NuMaineCo Corporation*, 32 FERC ¶ 61,211, at 61,487 (1985)).

<sup>19</sup> Id.

<sup>20</sup> See, e.g., *Nevada Power Company*, 111 FERC ¶ 61,111, at P 10 (2005).

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the date of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) The Secretary shall promptly publish a notice of the Commission's initiation of the investigation under section 206 of the FPA in Docket No. EL06-84-000 in the *Federal Register*.

(H) The refund effective date in Docket No. EL06-84-000, established pursuant to section 206(b) of the FPA, will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (G) above.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.