

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Sierra Pacific Resources Operating Companies

Docket No. ER07-905-000

ORDER CONDITIONALLY ACCEPTING PROPOSED OPEN ACCESS
TRANSMISSION TARIFF REVISIONS

(Issued July 13, 2007)

1. On May 16, 2007, Nevada Power Company (Nevada Power) and Sierra Pacific Power Company (Sierra Pacific and, collectively, the Nevada Companies) submitted for filing proposed revisions to the Sierra Pacific Resources Operating Companies' Open Access Transmission Tariff (OATT).¹ The Nevada Companies propose to add, for a limited time, Capacity-Based Network Service (Capacity-Based NT) as an additional type of transmission service to their OATT. The Commission conditionally accepts the Nevada Companies' proposed tariff revisions, subject to certain conditions, described below, to be effective July 13, 2007, as requested.

I. Background

2. As proposed by the Nevada Companies, Capacity-Based NT would allow a network customer to reserve firm network service for the portion of its forecasted monthly load that exceeds designated network resources (including planning reserves) in circumstances where its designated network resources are insufficient to reliably serve its load. The Nevada Companies state that the service is necessary for them to implement their state-approved integrated resource plans, but would also benefit other similarly-situated network customers within their control areas.

3. The Nevada Companies explain that they rely heavily on power purchases to meet their load requirements pursuant to state-approved integrated resource plans. The Nevada

¹ Nevada Power and Sierra Pacific are affiliated but not interconnected utilities. Together they have a single OATT, which is administered by Sierra Pacific Resources Operating Companies.

Companies state that their current net-short position is the result of Nevada's experiment in and ultimate rejection of retail access, together with significant load growth. The Nevada Companies divested their generating resources pursuant to state legislation, and when that legislation was repealed the companies were financially unable to finance new generation or enter into new long-term power supply contracts, in part because of a disallowance of purchased power costs incurred during the Western energy crisis. Compounding the problem, the Nevada Companies have experienced load growth over the past several years well above the national average.

4. The Nevada Companies explain that they rely most heavily on shorter-term products to reflect their load profiles (short, steep summer demand spikes).² The Nevada Companies state that, while they issue requests for proposals (RFPs) regularly for this capacity and request that bidders specify the control area from which the power would originate, bidders offer in response seller's choice contracts that do not specify the source of generation. The Nevada Companies state that, in their experience, they do not believe it would be possible to procure sufficient power to meet their needs were they to require all sellers to identify the source of the power in RFP responses. The failure to specify the source control area, in turn, prohibits the Nevada Companies from designating these external purchases as network resources under the *pro forma* OATT, as clarified in Order No. 890.³

5. The Nevada Companies contend that Capacity-Based NT would enable them to reserve sufficient firm transmission capability to implement their state-approved integrated resource plans through a combination of resources – those eligible for designation as network resources and those short-term, seasonal purchases that are not. The Nevada Companies state that their proposal does not require any customer to switch to Capacity-Based NT nor does it restrict a traditional network integration transmission service customer from continuing to operate under the OATT and the terms of its existing network service arrangements. Additionally, the Nevada Companies state that this proposal expands service under the OATT by providing an optional service to those customers who may not be able to meet their load obligations under traditional network service. Finally, Capacity-Based NT will be available only during the months in which

² The Nevada Companies state that Nevada Power has a summer seasonal "open position" of approximately 1800 MW and that Sierra Pacific has a summer seasonal "open position" of approximately 325 MW. The Nevada Companies state that their integrated resource plans show the addition of resources sufficient to fill these deficits within one to seven years.

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007).

the customers' monthly peak network load forecast plus planning reserves is greater than the capacity of the customers' designated network resources. The Nevada Companies request Capacity-Based NT service to continue for five years.

II. Notice of Filings and Responsive Pleadings

6. Notice of the Nevada Companies' filing was published in the *Federal Register*, 72 Fed. Reg. 30,582 (2007) with protests and interventions due on or before June 11, 2007. The Electric Power Supply Association, Avista Energy, Inc., Coral Power, L.L.C., PacifiCorp, and the Office of the Attorney General for the State of Nevada, Bureau of Consumer Protection filed motions to intervene. The Public Utilities Commission of Nevada filed a notice of intervention and comments in support of the filing. The City of Needles, California, the Colorado River Commission of Nevada and the Southern Nevada Water Authority filed motions to intervene and comments in support of the filing. Plumas-Sierra Rural Electric Cooperative (Plumas-Sierra), Truckee Donner Public Utility District (Truckee), Reliant Energy, Inc. (Reliant), Utah Associated Municipal Power Systems (UAMPS) and the City of Fallon, Nevada (jointly, UAMPS/Fallon), Northwest and Intermountain Power Producers Coalition (NIPPC), and Barrick Goldstrike Mines Inc. and Barrick Turquoise Ridge Inc. (jointly, Barrick Mines) filed motions to intervene, adverse comments and protests to the filing. The Nevada Companies filed a response to motions to intervene, comments and protests on June 25, 2007. Plumas-Sierra filed a motion for leave to answer and answer on July 9, 2007. Reliant filed a motion for leave to answer and answer on July 10, 2007.

7. Plumas-Sierra states that it understands and is sympathetic to the difficult position in which the Nevada Companies, especially Nevada Power, find themselves. However, Plumas-Sierra states that the Nevada Companies' proposal seeks a fundamental change in the way network transmission is provided under the *pro forma* OATT. Plumas-Sierra contends that Capacity-Based NT will allow network customers who have not gone to the effort and expense of designating network resources to receive the service priority accorded to network customers, to the detriment of similarly-situated point-to-point transmission customers. Plumas-Sierra argues that there is therefore a chance that Capacity-Based NT will mean less point-to-point transmission capacity for customers such as Plumas-Sierra.

8. If the Commission were to allow the Nevada Companies to offer this service, Plumas-Sierra suggests that it should be carefully tailored and limited in time. Plumas-Sierra argues that Sierra Pacific's situation is not nearly as dire as that of Nevada Power. While the Commission may consider approving Capacity-Based NT in the Nevada Power zone for the requested five-year period, Plumas-Sierra suggests that the provision for Sierra Pacific should expire after 2008. Plumas-Sierra suggests that the Commission also require demonstrated progress towards ending the conditions that give rise to the need for Capacity-Based NT. Plumas-Sierra also suggests that transmission customers should

have the right to request the Commission to terminate Capacity-Based NT before it expires if the conditions necessitating the service have been addressed, or if it appears that the Nevada Companies are abusing the new service to the detriment of other transmission customers. Finally, Plumas-Sierra suggests that the Commission consider other ways of addressing the needs of transmission customers, such as the Nevada Companies' indication that they intend to add conditional firm service to the menu of services available under their OATT.

9. Truckee states concern that the Capacity-Based NT proposal will give the transmission provider (and other network customers) an unwarranted shortcut to reserve essential import capacity into a known load pocket based solely on load projections, avoiding the hurdles of arranging and committing to pay for network resources or even the more limited commitment of taking firm point-to-point service. Truckee claims that Capacity-Based NT would give the Nevada Companies an advantage in speed and flexibility over network customers such as Truckee who will continue to serve their needs through designated network resources. Truckee contends that it would be unfair to reward the very customers who have not observed the rigors of network resource designation by allowing them to essentially jump ahead of those who will have to abide by all of the network resource designation requirements before they can reserve scarce import capacity. Truckee therefore states that the Commission should, if it allows this service under the Nevada Companies' OATT, make clear that Capacity-Based NT is of lower priority than network service backed by designated network resources. That is, later-received requests for use of interface capacity to import an actual network resource should preempt use by a Capacity-Based NT customer that is premised only upon its Supplemental Resource Requirement, as described in the Nevada Companies' description of Capacity-Based NT.

10. NIPPC states that the Nevada Companies' proposal to reserve capacity without signed capacity contracts and to create a new service based on seasonal or spot purchases runs contrary to long-standing FERC policy.

11. Barrick Mines generally support the Nevada Companies' proposed Capacity-Based NT. However, Barrick Mines believe that there are several matters that should be considered to insure that the new tariff provisions are implemented in a fair and non-discriminatory manner. Barrick Mines contends that the provisions applicable to network customers to discourage over-forecasting and tying up available transmission capacity should apply equally to the network load of the Nevada Companies. Additionally, while Barrick Mines appreciate that existing Network Customers will have some grandfathered rights, Barrick Mines state that it is not clear if those rights can be exercised on a non-discriminatory basis using available transmission capacity at all interfaces rather than just one interface. Finally, Barrick Mines suggest that it would be better for the service to continue indefinitely rather than have an arbitrary termination date, unless a public

interest showing is made that it should be discontinued, because others may come to rely on the service and should not be left without workable options.

12. Reliant argues that the Nevada Companies' proposal would undermine, rather than promote, long-term contracts by permitting the Nevada Companies to reserve firm network service for short-term seasonal purchases. Reliant also states that the proposal may aid in discouraging generation development in the western market because area price caps may make spot market purchases more attractive than long-term investments in generating resources. Reliant also argues that the approval of the Nevada Companies' proposal could set a precedent for other proposed changes from features of the Order No. 890 *pro forma* OATT, resulting in the potential for a steady erosion of open access under the guise of state-mandated integrated resource plans. Finally, Reliant states that the Nevada Companies have not shown that their proposal is consistent with or superior to the *pro forma* OATT, and that reliance on an integrated resource plan and fear of increased costs is not sufficient justification for the kind of proposed departure from Order No. 890 proposed by the Nevada Companies. Reliant therefore asks the Commission to reject the proposal or, at a minimum, not permit the proposal to go into effect without assessment of its effect on competition and customers.

13. Although UAMPS/Fallon do not necessarily oppose the Nevada Companies' request, they urge the Commission to refrain from ruling on the proposal until the Commission clarifies on rehearing of Order No. 890 whether transmission providers must, even under the unique circumstances presented in the Western power markets, be required to confirm that designated network resources are backed by firm transmission arrangements between the resource and the transmission provider's system.

14. With respect to the specific features of the Capacity-Based NT proposal, UAMPS/Fallon state that the Nevada Companies have made no showing that the proposed service is necessary in Sierra Pacific's control area in the north. UAMPS/Fallon also state that the Commission should clarify that this proposal will not impact existing rights or adversely affect network customers who have and will continue to support transmission reservations with firm network resources. UAMPS/Fallon further state that the proposed "multiplier" in the charge for Capacity-Based NT should be eliminated or modified. Specifically, they argue that the Nevada Companies provide no cost-based justification for this aspect for the proposal. UAMPS/Fallon also argue that this aspect of the proposal is not comparable because the Nevada Companies are not subject to this multiplier. Finally, UAMPS/Fallon state that Nevada Companies' proposed treatment of planning reserves requires further scrutiny in that the definition and impact of planning reserves is unclear. As such, UAMPS/Fallon suggest that the Commission should set the Nevada Companies' filing for hearing in order to properly examine the rate impact of the proposed multiplier and the meaning and impact of the inclusion of planning reserves.

III. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Nevada Companies' response to motions to intervene, comments and protests (which is an answer) because it has provided information that assisted us in our decision-making process. For the same reason, we will also accept Plumas-Sierra and Reliant's answers.

B. Commission Determination

16. The Commission conditionally accepts the Nevada Companies' proposal to offer Capacity-Based NT subject to the conditions set forth below. We agree with the Nevada Companies that the particular circumstances surrounding the Nevada Companies' current operations have made it difficult for them to comply with our requirements for designating network resources, while providing transmission service at reasonable rates. The state's reversed position on retail access, the Western power crisis, the Nevada Companies' inability to timely obtain financing for needed generation and significant load growth have combined to cause the Nevada Companies to rely on large amounts of seasonal purchases from outside the state in order to meet the demand of their retail customers. These seasonal purchases, in turn, are not eligible for designation as network resources because the Nevada Companies are not being informed of the control area from which their suppliers source the contracts. Without a solution to this problem, the Nevada Companies' ability to serve their network load could be at risk, which would raise transmission reliability concerns.

17. We find that Capacity-Based NT, as proposed by the Nevada Companies, is a narrowly-tailored solution to the extreme and particular situation facing the Nevada Companies. We will therefore allow the Nevada Companies to offer Capacity-Based NT as an interim solution, but will limit the period for which the service will be offered to ensure that the exception from the network designation requirements of the *pro forma* OATT is no more than needed to address the extreme circumstances facing the Nevada Companies. Even as narrowly-tailored as the Nevada Companies have crafted it, Capacity-Based NT still has the potential to adversely affect the availability of point-to-point service that might otherwise have been available to the Nevada Companies' customers. We have considered the potentially adverse effects of the service, and the concerns raised by the intervenors, and concluded on balance that offering the service on a more limited basis is appropriate in light of the unusual circumstances affecting the

Nevada Companies' ability to acquire resources to serve their native load. The Commission therefore directs the Nevada Companies to make a compliance filing within 30 days of the date of this order, to establish the termination date for Capacity-Based NT as July 12, 2010.

18. We will not accept Truckee's request that later-received network service requests should preempt Capacity-Based NT reservations. We agree with the Nevada Companies that the purpose of Capacity-Based NT is to enable network customers that are "short" to reliably provide for their loads, and that allowing later-received NT requests to "bump" Capacity-Based NT reservations would undermine part of the features addressing the need for the service. With regard to the other concerns raised by Truckee, we note that Capacity-Based NT will be available to all eligible customers and, thus, Truckee itself will be able to take that service if it does not have sufficient designated network resources to meet its load. We make clear, however, that our acceptance of Capacity-Based NT will not alter the terms or priority of any pre-existing commitment that the Nevada Companies have with their network customers, including the allocation of interface capacity. We also remind the Nevada Companies of their continued obligation under the OATT to plan, maintain and upgrade their transmission system to reliably serve all long-term firm users of that system, including network and point-to-point customers.

19. We disagree with Barrick Mines that Capacity-Based NT should continue indefinitely. The Nevada Companies have proposed Capacity-Based NT as a short-term solution to a unique problem, and we have further limited the length of time for which the service may be offered to address our concerns regarding potential effects on other customers. The Nevada Companies have committed to work diligently to address the circumstances impairing their ability to rely on *pro forma* network service. We conclude that limiting the service to three years is necessary so that we may consider the progress made by the Nevada Companies should they propose to continue offering Capacity-Based NT after three years. We conclude that this limitation is sufficient to ensure that offering the service is just and reasonable and find that the additional conditions or requirements proposed by protesting parties are unnecessary. Should the Nevada Companies propose an extension beyond three years, they will have a heavy burden to demonstrate why the unique conditions leading us to allow Capacity-Based NT have not improved.

20. We decline UAMPS' invitation to wait until rehearing of Order No. 890 to approve or disapprove Capacity-Based NT. The Nevada Companies indicate that their need for approval of the service is imminent. With respect to the issues of the proposed rate multiplier and planning reserves for Capacity-Based NT, we agree that those issues have not been fully addressed in the record. We therefore direct the Nevada Companies to convene a technical conference, within thirty days of the date of this order, to work with interested parties to resolve those issues. We further direct the Nevada Companies to make a compliance filing within thirty days after the conclusion of the technical

conference incorporating any agreed-to modifications to the proposed tariff language that result from those discussions. Subject to submission of the compliance filings directed above, the Nevada Companies' proposed tariff revisions are accepted for filing and suspended for a nominal period, to become effective on July 13, 2007, subject to refund upon consideration of any modifications to the rate multiplier and planning reserve provisions resulting from the compliance procedures ordered above.

The Commission orders:

The Nevada Companies' proposed tariff revisions are hereby accepted for filing, and suspended for a nominal period, to become effective July 13, 2007, as requested, subject to refund and the submission of the compliance filings directed above.

By the Commission. Commissioner Wellinghoff not participating.

(S E A L)

Kimberly D. Bose,
Secretary.