

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. OA07-2-000

ORDER CONDITIONALLY ACCEPTING PROPOSED VARIATIONS FROM THE  
PRO FORMA OPEN ACCESS TRANSMISSION TARIFF

(Issued July 13, 2007)

1. On April 14, 2007, Nevada Power Company (Nevada Power) and Sierra Pacific Power Company (Sierra) (collectively, the Nevada Companies)<sup>1</sup> submitted the Nevada Companies' FPA section 205 compliance filing pursuant to Order No. 890.<sup>2</sup> Specifically, the Nevada Companies filed to retain certain provisions of their Open Access Transmission Tariff (OATT) that vary from the non-rate terms and conditions of the *pro forma* OATT as modified in Order No. 890. As discussed below, the Commission conditionally accepts the Nevada Companies' proposed variations from the *pro forma* OATT to become effective July 13, 2007, as requested.

**I. Background**

2. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis.<sup>3</sup> Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems, and

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<sup>1</sup> Sierra Pacific Resource Operating Companies is the entity that administers the Nevada Companies' joint OATT.

<sup>2</sup> *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).

<sup>3</sup> *See id.* at P 26-61.

standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have not been approved as independent system operators (ISOs) or regional transmission organizations (RTOs), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit FPA section 206 filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890, within 120 days from publication of Order No. 890 in the Federal Register, *i.e.*, July 13, 2007.<sup>4</sup>

4. The Commission recognized, however, that some of these non-ISO/RTO transmission providers may have provisions in their existing OATTs that the Commission previously deemed to be consistent with or superior to the terms and conditions of the Order No. 888<sup>5</sup> *pro forma* OATT, but which *pro forma* terms and conditions were modified by Order No. 890. The Commission provided an opportunity for such transmission providers to submit an FPA section 205 filing seeking determination that a previously-approved variation from the Order No. 888 *pro forma* OATT substantively affected by the reforms adopted in Order No. 890 continues to be consistent with or superior to the revised *pro forma* OATT. The Commission directed applicants to make those filings within 30 days from publication of Order No. 890 in the Federal Register, *i.e.*, April 16, 2007, and to request that the proposed tariff provisions be made effective as of the date of the transmission provider's FPA section 206 compliance filing, described above, except for imbalance-related provisions, which may become effective on the first day of the billing cycle following that date. The Commission also requested that applicants state that the Commission has 90 days following the date of submission to act under section 205.

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<sup>4</sup> The original 60-day compliance deadline provided for in Order No. 890 was extended by the Commission in a subsequent order. *See Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).

<sup>5</sup> Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub. nom. *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. *New York v. FERC*, 535 U.S. 1 (2002).

## II. Nevada Companies' Filing

5. The Nevada Companies' state that their current filing is made in response to the first set of compliance filings described above. Specifically, the Nevada Companies submit: (1) Schedule 4 – Energy Imbalance Service and (2) Schedule 9 – Generation Imbalance Service. The Nevada Companies state that Order No. 890 allows transmission providers to resubmit previously approved variations of the *pro forma* OATT, subject to a demonstration that such variations continue to be consistent with or superior to the revised *pro forma* OATT.

6. The Nevada Companies explain that Schedules 4 and 9 were the outcome of extensive settlement negotiations between the Nevada Companies, intervenors and Commission staff in Docket No. ER03-37-000.<sup>6</sup> The Nevada Companies state that these previously-accepted variations from the *pro forma* OATT represent the resolution of various issues regarding energy imbalance and generator imbalance service by the Nevada Companies and their transmission customers. The Nevada Companies contend that these schedules have been in place for over four years and incorporate many but not all of the features adopted by the Commission in Order No. 890 as well as additional features favorable to transmission customers. For purposes of the required tiered imbalance provisions, the Nevada Companies Schedules 4 and 9 contain an alternative market proxy pricing feature for the calculation of incremental and decremental costs. The market price proxy contained in the Nevada Companies' schedules is zone specific. The Sierra Pacific zone is based on the Dow Jones Mid-Columbia Daily Firm Index report, on-peak and off-peak, plus a basis difference equal to the point-to-point transmission rates for PacifiCorp and the Bonneville Power Administration under their respective OATTs. The Nevada Power zone is based on the on-peak and off-peak Mead/Marketplace Index prices shaped by the Palo Verde hourly index report.

7. The Nevada Companies also state that they have made changes to Schedules 4 and 9 of the *pro forma* OATT in order to conform to new language requirements under Order No. 890. Specifically, language permitting the use of non-generating resources to provide imbalance service, and preventing double billing for the same imbalance has been added to Schedules 4 and 9, and language providing exceptions for intermittent resources from charges associated with the highest deviation band has been added to Schedule 9. The Nevada Companies acknowledge that the Commission found in Order No. 890 that transmission providers should offer a consistent crediting mechanism that credits all non-offending transmission customers with the revenues received through imbalance penalties or charges above the transmission providers' incremental costs. The Nevada Companies, however, state that their schedules do not contain this feature and do not believe that their schedules should be found unacceptable based on the absence of this

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<sup>6</sup> An uncontested settlement was accepted by the Commission on July 1, 2003.

mechanism. The Nevada Companies again contend that the provisions of the schedules are the product of extensive negotiation and contain many features that are worth preserving even in the absence of this revenue crediting requirement. The Nevada Companies therefore state that their OATT Schedules 4 and 9 should be collectively considered as consistent with or superior to the *pro forma* schedules adopted by the Commission in Order No. 890.

### **III. Notice of Filing and Responsive Pleadings**

8. Notice of the Nevada Companies' filing was published in the *Federal Register*, 72 Fed. Reg. 20,524 (2007), with comments, protests or interventions due on or before May 7, 2007. Motions to intervene and comments were filed by Truckee Donner Public Utility District (Truckee) and Powerex Corporation (Powerex). Truckee supports the filing and requests that the Commission permit the Nevada Companies to continue to use the agreed-upon imbalance provisions as modified in the filing.

9. Powerex contends that the Nevada Companies included modifications to their OATT that go beyond seeking to preserve previous Commission-approved variations from the Order No. 888 *pro forma* OATT that would otherwise be affected by the Order No. 890 *pro forma* OATT reforms. Specifically, Powerex states that the Nevada Companies indicate that they do not plan to develop a mechanism for crediting revenues received by imbalance penalties or charges that are in excess of incremental cost, and that this additional deviation from the Order No. 890 *pro forma* OATT is to be filed after the section 206 compliance filings that are to be submitted by July 13, 2007. Powerex therefore concludes that this additional modification has been prematurely filed and requests that the Commission defer acting on the variations until such timely filings have been made. Additionally, Powerex asks the Commission to direct the Nevada Companies to refile their Order No. 890 compliance changes and deviations from the Order No. 890 *pro forma* OATT at that time.

### **IV. Discussion**

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. The Commission conditionally accepts the previously-approved variations identified by the Nevada Companies in Schedule 4 and Schedule 9 of their OATT, except as provided below. With the exception of the lack of a mechanism for distributing revenues from imbalance charges, we find that these variations remain consistent with the requirements of the *pro forma* OATT as modified by Order No. 890. Additionally, we interpret the added language made to both schedules in order to conform to the reforms adopted in Order No. 890 regarding non-generation resources and double billing,

and to Schedule 9 to provide for exceptions required for intermittent resources, to be made in compliance with Order No. 890. We have considered those proposed changes here for administrative convenience and found them to be reasonable.<sup>7</sup>

12. With respect to the mechanism for distributing penalty revenues above incremental cost, we reject the Nevada Companies' proposal not to distribute revenues from imbalance charges to non-offending customers. In Order No. 890, the Commission determined that imbalance revenues must be distributed to all non-offending customers, including affiliated transmission customers, and the transmission provider on behalf of its own customers.<sup>8</sup> The Commission explained that such distribution "recognizes that transmission providers bear the responsibility to correct imbalances and often use their own facilities to do so."<sup>9</sup> Under the Nevada Companies' proposal, all imbalance revenues would continue to be retained by the Nevada Companies. The Nevada Companies have failed to show that this would be consistent with or superior to the requirements of the *pro forma* OATT, as reformed in Order No. 890. The Nevada Companies are directed to develop and file a mechanism for crediting imbalance revenues to all non-offending customers and the Nevada Companies on behalf of their own customers in accordance with the requirements of Order No. 890, as ordered below.

13. As discussed above, we find that the proposed revisions are consistent with the Commission's *pro forma* OATT, except for the lack of a mechanism to distribute imbalance charge revenues to non-offending customers. Accordingly, we will conditionally accept the Nevada Companies' proposed amendments for filing to become effective July 13, 2007, subject to the Nevada Companies making a compliance filing within 30 days of the date of this order proposing a revenue distribution mechanism as discussed above.

14. The Commission has considered only those previously-approved variations from the *pro forma* OATT that the Nevada Companies contend in their transmittal letter are consistent with or superior to the reforms adopted in Order No. 890. Acceptance of these proposed variations to the *pro forma* OATT tariff sheets does not relieve the Nevada Companies of the obligation to make a section 206 compliance filing for requirements of

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<sup>7</sup> The Commission directed transmission providers that are not located within the footprint of an ISO or RTO to conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890, on or before July 13, 2007.

<sup>8</sup> See Order No. 890 at P 727.

<sup>9</sup> Id.

Order No. 890 not addressed in the instant filing as required by Order No. 890 on or before July 13, 2007.

The Commission orders:

(A) The Nevada Companies' proposed amendments to its OATT are hereby conditionally accepted for filing to become effective July 13, 2007, as discussed in the body of this order.

(B) The Nevada Companies are hereby directed to file a mechanism to distribute revenues to non-offending customers, as discussed above, within 30 days of the date of this order.

By the Commission. Commissioner Wellinghoff not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.