

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Sierra Pacific Power Company

Docket Nos. ER01-1527-004
ER01-1527-005
ER01-1527-006

Nevada Power Company

ER01-1529-004
ER01-1529-005
ER01-1529-006

ORDER CONDITIONALLY ACCEPTING
UPDATED MARKET POWER ANALYSIS

(Issued May 26, 2005)

1. In this order, the Commission conditionally accepts an updated market power analysis filed on October 28, 2004, as amended on November 12, 2004 and March 3, 2005, by Sierra Pacific Power Company (Sierra Pacific) and Nevada Power Company (Nevada Power) (collectively, Sierra Companies).¹ As discussed below, we conclude that, subject to the Commission's acceptance of the compliance filing directed herein, the Sierra Companies satisfy the Commission's standards for market-based rate authority. In addition, in this order, the Commission accepts the Sierra Companies' tariff sheets that include the market behavior rules, as required by the Commission in its Market Behavior

¹ The Sierra Companies should have filed their updated market power analysis by May 11, 2004, which is three years from the date the Commission granted them authority to sell electric energy and capacity at market-based rates outside of their control areas. The Sierra Companies did not file that analysis until October 28, 2004. The Sierra Companies' next updated market power analysis is due within three years of the date of this order and we expect that filing to be made in a timely fashion.

Rules Order.² This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. The Sierra Companies' next updated market power analysis is due three years from the date of this order.

Background

2. On October 28, 2004, the Sierra Companies filed an updated market power analysis pursuant to the Commission's order granting them authority to sell electric energy and capacity at market-based rates outside of the Sierra Pacific and Nevada Power control areas (October 28 Filing).³ In addition, the Sierra Companies filed revised tariff sheets that include the market behavior rules required by the Commission's Market Behavior Rules Order.

3. The October 28 Filing addresses the two market power screens that the Commission recently adopted for its generation market power analysis.⁴ The Sierra Companies state that they pass the pivotal supplier and wholesale market share screens for their first-tier markets,⁵ which are outside of their respective control areas,⁶ even

² *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g*, 107 FERC ¶ 61,175 (2004) (Market Behavior Rules Order).

³ *Sierra Pacific Power Company and Nevada Power Company*, 95 FERC ¶ 61,193, *order dismissing reh'g*, 96 FERC ¶ 61,050 (2001) (*Sierra Pacific*). In *Sierra Pacific*, the Commission accepted the Sierra Companies' market-based rates, subject to a condition prohibiting sales to or purchases from their generation market-power affiliate, Sierra Pacific Energy Corporation (SPEC). The Sierra Companies' filing to comply with that order was accepted in *Sierra Pacific Power Company and Nevada Power Company*, Docket Nos. ER01-1527-001, ER01-1527-002, ER01-1529-001, and ER01-1529-002, Unpublished Letter Order (August 10, 2001).

⁴ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

⁵ The Sierra Companies' first-tier markets include: Bonneville Power Administration (BPA), the California Independent System Operator Corporation (CAISO), Idaho Power Corporation (Idaho Power), Pacificorp East (PACE), WAPA-Lower Colorado (WALC), and the Los Angeles Department of Water and Power (LADWP). The Sierra Companies explain that the Arizona Public Service (APS) control area is also examined because Nevada Power owns an interest in the Navajo facility, which is located in the APS control area. With respect to the CAISO market, the

(continued)

when using conservative assumptions. In addition, the Sierra Companies provided updated information on the other three parts of the Commission's four-part analysis. The Sierra Companies state that they continue to be unable to exercise transmission market power, erect barriers to entry, or engage in affiliate abuse or reciprocal dealing.

4. In their November 12, 2004 filing, the Sierra Companies provide detailed workpapers regarding their simultaneous import limits (SIL) studies (including load flow base case data, programs, and related documents supporting the SIL data for the Nevada Power control area⁷) and additional information regarding the other three parts of the Commission's market-based rate analysis (November 12 Filing). In their March 3, 2005 filing, the Sierra Companies provide spreadsheets containing information on short-term transmission reservation requests for the four seasonal peak days during the period from the summer of 2003 to the spring of 2004 (March 3 Filing).

5. The Sierra Companies state that they are both vertically-integrated electric utilities that serve load at retail and wholesale in Northern, Western and Southern Nevada. They state that there are no direct transmission links between Sierra Pacific and Nevada Power and the companies operate independently as two separate control areas. The Sierra Companies are directly interconnected to the control areas of BPA, the CAISO, Idaho Power, PACE, WALC and LADWP.

6. Sierra Pacific owns about 1,060 MW of generating facilities within its control area and procures about 340-440 MW of long-term purchases.⁸ Furthermore, Sierra Pacific owns 21 diesel generators with a total capacity of 45 MW, located in both Nevada and Northern California. Nevada Power currently owns a total of 3,751 MW, including 1,964 MW of its generating resources and 1,787 MW of long-term purchased power with various suppliers. The Sierra Companies explain that 476 MW of Nevada Power's generation is located outside their control area, namely 221 MW of the Mohave

indicative screens for the CAISO's SP15 and NP15/ZP26 zones were also performed. October 28 Filing at 4 n.5.

⁶ The Sierra Companies state that their market-based rate authority excludes sales to customers located within the Sierra Pacific and Nevada Power control areas.

⁷ The Sierra Companies note that, in most cases, there are no publicly available SIL studies for their first-tier interconnected markets and that, as discussed in their October 28 Filing, conservative assumptions were used in developing a proxy for the SIL data where there were no available studies for first-tier control area markets. November 12 Filing at 2.

⁸ October 28 Filing, Attachment A at 4.

generating facility in the CAISO and an interest in the Navajo facility (255 MW), which is located in the Arizona Public Service control area.

Notice of Filing and Responsive Pleadings

7. Notice of the October 28 Filing was published in the *Federal Register*, 69 Fed. Reg. 65,167 (2004), with interventions or protests due on or before November 18, 2004. On November 18, 2004, Calpine Corporation (Calpine) filed a motion to intervene and limited comments. On November 26, 2004, the Sierra Companies filed an answer to Calpine's motion to intervene.

8. Notice of the November 12 Filing was published in the *Federal Register*, 69 Fed. Reg. 71,028 (2004), with interventions or protests due on or before December 3, 2004. None was filed.

9. Notice of the March 3 Filing was published in the *Federal Register*, 70 Fed. Reg. 22,023 (2005), with interventions or protests due on or before May 2, 2005. None was filed.

10. In its motion to intervene, Calpine argues that the Sierra Companies' submission is deficient because it provides only a superficial, cursory analysis of the transmission, barriers to entry and affiliate abuse parts of the market-based rate analysis and thus does not demonstrate that the Sierra Companies lack market power in those areas. In their answer, the Sierra Companies state that they have adequately addressed these parts of the market-based rate analysis.

Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motion to intervene of Calpine serves to make it a party to this proceeding.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Sierra Companies' answer because it has provided information that assisted us in our decision-making process.

Discussion

Market-Based Rate Authorization

13. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and

transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.⁹

14. As discussed below, the Commission concludes that, subject to the Commission's acceptance of the compliance filing directed herein, the Sierra Companies satisfy the Commission's standards for market-based rate authority.

Generation Market Power

15. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. The Sierra Companies state that both Sierra Pacific and Nevada Power each satisfy the pivotal supplier and the wholesale market screens for all of their first-tier markets, even when using conservative assumptions. They state that, because they seek continued market-based rate authorization only for sales outside of their own control areas, the relevant control areas for the market power screens are the control areas with which the Sierra Companies are directly interconnected or in which they own or control generation. The Sierra Companies explain that they performed the indicative screens for their nine first-tier control areas¹⁰ and, using conservative assumptions; Sierra Pacific and Nevada Power state that they pass both the pivotal supplier and wholesale market share screens in those nine first-tier control areas.

16. The Commission has previously stated that uncommitted capacity is determined by adding the total nameplate capacity of generation owned or controlled through contract and firm purchases, less operating reserves, native load commitments and long-term firm non-requirement sales.¹¹ Further, applicants are required to prepare the screens as designed.¹² In conducting their pivotal supplier and wholesale market share screens, the Sierra Companies prepared two sets of indicative screens. One set employs nameplate capacity of the Sierra Companies' generation holdings, but uses the maximum

⁹ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155 at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281 at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 at 62,062-63 (1994).

¹⁰ See *supra* note 5.

¹¹ April 14 Order, 107 FERC ¶ 61,018 at P 95.

¹² *Id.* at P 118.

net dependable capacity (MNDC) for all rival suppliers.¹³ The second set uses MNDC for all generation capacity. The Sierra Companies state that the use of MNDC instead of nameplate capacity is a more appropriate measure of thermal generator size and that in almost every case, MNDC is slightly lower than the nameplate rating, but in some cases higher.¹⁴ They assert that these scenarios comply with the Commission's directives because they overstate the Sierra Companies' generating capacity relative to all other suppliers and, therefore, the Sierra Companies' uncommitted capacity and market share.

17. Sierra Companies use of seasonal capacity for competitors would be considered a conservative assumption in instances where the seasonal capacity is less than nameplate capacity. However, Sierra Companies indicate that in some instances seasonal capacity is greater than nameplate capacity for its competitors. Accordingly, consistent with our precedent, the Commission directs the Sierra Companies to revise their submittal using nameplate capacity for all generating capacity used in calculation of the screens for each of the markets examined (i.e., including the Sierra Companies and competing suppliers' capacity), and submit the relevant work papers and documentation within 30 days of the date of this order.¹⁵ In this regard, Sierra Companies may use *fully supported* simplifying assumptions (i.e., use of seasonal capacity for competitors where the seasonal capacity is less than the nameplate capacity).

Transmission Market Power

18. When a transmission-owning public utility seeks market-based rate authority, the Commission has required the public utility to have an open access transmission tariff (OATT) on file before granting such authorization. The Sierra Companies state that they have an OATT on file with the Commission.¹⁶ In addition, the Sierra Companies state that they do not have significant control over any transmission facilities outside of their control area, that is, the areas in which the Sierra Companies are authorized to make market-based rate sales. Further, they assert that their transmission system "does not

¹³ The Sierra Companies state that they obtained generating capacity data for rival suppliers from the Energy Information Administration's Form 860, North American Electric Reliability Council's Electric Supply and Demand Database, Henwood Database (for units after the year 2000), other public sources, and Sierra Pacific, with respect to its own generating plants.

¹⁴ October 28 Filing, Attachment A at 7.

¹⁵ See *Westar Energy, Inc.*, 110 FERC ¶ 61,316 at P 20 (2005); *Tampa Electric Co.*, 110 FERC ¶ 61,206 at P 30 (2005).

¹⁶ *Sierra Pacific Power Company*, 87 FERC ¶ 61,077, *reh'g denied*, 88 FERC ¶ 61,058 (1999).

provide much of a through path, especially at times of high internal demand.”¹⁷ Calpine claims that the Sierra Companies have not demonstrated that they lack transmission market power. However, Calpine has not submitted any evidence to support its argument in this regard. Thus, the Commission finds that the Sierra Companies satisfy the Commission’s transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

19. The Sierra Companies state that they do not have the ability to erect barriers to entry. They indicate that they do not own sufficient numbers of generation sites to impose other generation barriers within or outside of their retail service areas. The Sierra Companies note that there is a high level of new plant construction activity in Arizona, New Mexico, California and surrounding areas, and that Sierra Pacific and Nevada Power are not current participants in any of the construction development activity. The Sierra Companies state that Sierra Pacific provides state-regulated retail natural gas service in Northern Nevada, and the Sierra Companies own an interest in the Tuscarora natural gas pipeline. The Sierra Companies state that their affiliated natural gas pipeline is operated under the Commission’s open access rules for gas pipelines and routinely supplies gas to rival gas facilities. We note that, in *Enron Power Marketing, Inc.*, 65 FERC ¶ 61,305 (1993), the Commission determined that a power marketer may be affiliated with an interstate natural gas pipeline because, under the Commission’s requirements, such pipelines must offer open access services on a non-discriminatory basis. Also, in *Vantus Energy Corporation*, 73 FERC ¶ 61,099 (1995), the Commission further explained that affiliation with an interstate natural gas pipeline does not raise market power concerns because the pipeline is subject to the Commission’s natural gas pipeline open access requirements. However, should the Sierra Companies or any of their affiliates deny, delay or require unreasonable terms, conditions or rates for natural gas service to a potential electric competitor in bulk power markets, that electric competitor may file a complaint with the Commission that could result in the suspension of the Sierra Companies’ authority to sell power at market-based rates.¹⁸

20. In addition, Calpine generally states that the Sierra Companies have not demonstrated that they do not have the ability to erect barriers to entry. However, Calpine has not submitted any evidence to support its argument in this regard. Thus,

¹⁷ See October 28 Filing, Attachment A at 30.

¹⁸ See, e.g., *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 at 61,148 (1993) (regarding affiliated intrastate natural gas pipelines and affiliates with gas storage facilities).

based on the Sierra Companies' representations, the Commission is satisfied that the Sierra Companies cannot erect barriers to entry.

Affiliate Abuse

21. The Sierra Companies state that there are no problematic relationships between Sierra Pacific and Nevada Power and other affiliates that would raise any concern regarding affiliate abuse. The Sierra Companies explain that Nevada Power is exclusively an electric utility and has no significant Sierra Pacific affiliates in its service area. In addition, as noted above, Sierra Pacific's affiliated gas pipeline is operated under the Commission's open access rules for gas pipelines and routinely supplies gas to rival gas facilities. They also state that they have discontinued the operations of their power marketing subsidiary and terminated its market rate authority.¹⁹ Furthermore, we note that Sierra Pacific's and Nevada Power's market-based rate tariffs contain a prohibition on transactions with each other and any other affiliate with a franchised service area. Calpine claims that the Sierra Companies have not demonstrated that they lack market power in the area of affiliate dealing. However, Calpine has not submitted any evidence to support its argument in this regard. Thus, based on the Sierra Companies representations, the Commission finds that the Sierra Companies satisfy the Commission's concerns with regard to affiliate abuse.

22. In the Market Behavior Rules Order, the Commission directed market-based rate sellers to include as an amendment to their market-based rate tariff the market behavior rules at such time as they seek continued authorization to sell at market-based rates. In their October 28 Filing, the Sierra Companies submitted revised tariff sheets to amend their tariffs to include the market behavior rules set forth in Appendix A to the Market Behavior Rules Order. The Commission accepts the revised tariff sheets for filing.²⁰

Reporting Requirements

23. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or

¹⁹ See *supra* note 3; October 28 Filing at 5.

²⁰ Sierra Pacific Power Company, FERC Electric Tariff, Original Volume No. 7, Original Sheet Nos. 3 and 4; Nevada Power Company, FERC Electric Tariff, Original Volume No. 11, Original Sheet Nos. 3 and 4.

greater) market-based power sales during the most recent calendar quarter.²¹ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.²²

24. The Sierra Companies must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.²³ Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, the Sierra Companies directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the following provision:

[Insert market-based rate seller name] must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

²¹ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

²² The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

²³ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175 (2005).

25. The Sierra Companies are directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) The Sierra Companies' updated market power analysis is hereby conditionally accepted for filing, subject to Commission acceptance of the compliance filing directed in Ordering Paragraph (D), as discussed in the body of this order.

(B) The Sierra Companies' next updated market power analysis is due within three years of the date of this order as discussed in the body of this order.

(C) The Sierra Companies are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to include the change in status reporting requirement adopted in Order No. 652.

(D) The Sierra Companies are directed, within 30 days of the date of issuance of this order, to revise their generation market power analysis, as discussed in the body of this order.

(E) The Sierra Companies' revised tariff sheets incorporating the market behavior rules are hereby accepted for filing, effective December 17, 2003.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.