

123 FERC ¶ 61,052  
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.

Sierra Pacific Resources Operating Companies

Docket No. OA07-34-000

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued April 17, 2008)

1. On July 13, 2007, pursuant to section 206 of the Federal Power Act (FPA),<sup>1</sup> Nevada Power Company (Nevada Power) and Sierra Pacific Power Company (Sierra) (collectively, the Nevada Companies)<sup>2</sup> submitted their compliance filing as required by Order No. 890.<sup>3</sup> In this order, we will accept the Nevada Companies' filing, subject to further modifications, as in compliance with Order No. 890, as discussed below.

**Background**

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. 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 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.

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<sup>1</sup> 16 U.S.C. § 824e (2000 & Supp. V 2005).

<sup>2</sup> Sierra Pacific Resources Operating Companies, the nominal petitioner in this filing, is the entity that administers the Nevada Companies' joint OATT.

<sup>3</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007).

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 (ISO) or regional transmission organizations (RTO), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit, within 120 days from publication of Order No. 890 in the *Federal Register* (i.e., July 13, 2007), section 206 compliance 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.<sup>4</sup>

### **Compliance Filing**

4. The Nevada Companies state that they are submitting the changes mandated in Order No. 890 without variation, or with only minor, non-substantive variations in areas such as formatting. Additionally, per Order No. 890, the Nevada Companies have added an Attachment L—Creditworthiness Procedures—(Creditworthiness Procedures) to meet the standards of Order No. 890.

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

5. Notice of the Nevada Companies' filing was published in the *Federal Register*, 72 Fed. Reg. 41,726 (2007), with interventions and protests due on or before August 3, 2007. A motion to intervene was filed by Plumas Sierra Rural Electric Cooperative and a motion to intervene and non-substantive comments were filed by Powerex Corporation (Powerex). Motions to intervene and protests were filed by Truckee Donner Public Utility District (Truckee Donner), Bonneville Power Administration (Bonneville), and the Colorado River Commission of Nevada (CRC). The Nevada Companies filed a motion for leave to answer and answer to the protests.

### **Discussion**

#### **Procedural Matters**

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the 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) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Nevada Companies' answer because it has provided information that assisted us in our decision-making process.

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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).

### **Nevada Companies' Filing**

7. We will accept the Nevada Companies' compliance filing, subject to modification, to be effective July 13, 2007. We also direct the Nevada Companies to file, within 30 days of the date of this order, a further compliance filing as discussed below.

#### **A. Attachment L - Creditworthiness**

8. In Order No. 890, the Commission required transmission providers to amend their OATTs to include a new attachment that sets forth the basic credit standards the transmission provider uses to grant or deny transmission service. This attachment must specify both the qualitative and quantitative criteria that the transmission provider uses to determine the level of secured and unsecured credit required. In addition, the Commission required transmission providers to address six specific elements regarding the transmission provider's credit requirements.<sup>5</sup>

9. In their filing, the Nevada Companies have included the creditworthiness procedures to meet the standards set forth in Order No. 890. The Nevada Companies state that the purpose of these procedures is to ensure that customers are able to meet their service-related financial obligations. Intervenors have raised the following concerns related to the creditworthiness procedures.

#### **1. Minimum Quantitative Standards for Governmental Customers**

10. Truckee Donner, Bonneville, and CRC protest the creditworthiness procedures, specifically those regarding the section entitled "Minimum Quantitative Standards for Governmental Customers," which states that federal and state governmental agencies' financial obligations must be backed by the full faith and credit of the federal or applicable state government. Truckee Donner, Bonneville, and CRC argue that the creditworthiness provision for governmental customers is too narrow and restrictive compared to the creditworthiness standards imposed on non-governmental entities. Bonneville, a federal power marketing administration, states that its payment obligations are not secured by the full faith and credit of the United States; rather, its credit obligations are met by the Bonneville Fund, which is a separate appropriation within the U.S. Treasury. Further, Bonneville attests that it has been a customer of the Nevada Companies for several decades, during which its creditworthiness has never been questioned. Therefore, Bonneville contends that the Nevada Companies' proposed disparate treatment of governmental customers is unjust and unreasonable and unduly preferential. Similarly, Truckee Donner states that it is a public utility district in the State of California, i.e., a government entity, yet its financial obligations are not secured by the full faith and credit of the State of California. Truckee Donner contends that if a

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<sup>5</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1656-61.

governmental customer can meet the minimum standards for non-governmental customers, it should be afforded unsecured credit on a similar basis. Finally, CRC states that under Colorado State law, it cannot legally obtain full backing by the Colorado State government for its credit obligations. CRC then states that it is important that the creditworthiness procedures recognize that not all governmental agencies can make a full faith and credit pledge, and, for those that cannot, other measures should be made available.

11. In their answer, the Nevada Companies respond to Bonneville, CRC, and Truckee Donner's argument that the creditworthiness procedures are too restrictive towards certain governmental entities by proposing to add the following language:

*A governmental entity whose obligations are not backed by the full faith and credit of the United States or a state must establish that it has the legal authority and the demonstrated ability to increase customer utility rates or other rates or to increase taxes.*

The Nevada Companies believe that this addition will alleviate protesters' concerns by broadening the scope of the standards for governmental agencies that cannot obtain full governmental backing.

12. Our review indicates that the Nevada Companies' proposed additional language in their answer satisfactorily addresses the intervenors concerns regarding the minimum quantitative standards for governmental customers. Accordingly, we direct the Nevada Companies to file, within thirty days of the date of this order, a revised tariff sheet reflecting the proposed language.

**2. Minimum Quantitative Standards for Non-Governmental Customers**

13. CRC protests other provisions of the creditworthiness procedures. Specifically, regarding the section entitled "Minimum Quantitative Standards for Non-Governmental Customers," CRC claims that newly-formed joint action agencies requesting transmission service on behalf of a group of customers under the Nevada Companies' OATT would presumably fail to satisfy the non-debt rated criteria, because they would have no audited financial data upon which to base their financial ratios. CRC contends that the creditworthiness procedures should recognize the financial standing of the individual member parties to meet tariff obligations, rather than the parent agency.

14. In response to CRC's protest discussed above, the Nevada Companies propose to add the following language (set forth below in italics):

Demonstration by Customer of its strong financial standing as a stand-alone entity *or, if applicable, the strong financial standing of its members to whom the Customer must have financial recourse.*

The Nevada Companies state that this proposed revision would allow a joint action agency that does not possess a strong, established financial standing to have its credit obligations evaluated based on the financial merit of each of its member parties.

15. Our review indicates that the Nevada Companies' proposed additional language in their answer satisfactorily addresses CRC's concern. Accordingly, we direct the Nevada Companies to file, within thirty days of the date of this order, a revised tariff sheet reflecting the proposed language.

### **3. Requirements for Unsecured Credit**

16. CRC also protests the creditworthiness procedures regarding "Requirements for Unsecured Credit." CRC states that some entities are not required to and do not prepare quarterly financial statements, and thus cannot satisfy this requirement. Thus, CRC claims that these provisions are overly rigid with respect to entities that may have other means of demonstrating creditworthiness.

17. In response to CRC's argument that not all entities provide quarterly financial statements, and thus cannot fulfill the requirements for unsecured credit, the Nevada Companies propose to amend this section as follows:

Two most recent audited year-end financial statements plus, *if available*, the most recent quarterly financial statements on a going-forward basis.

The Nevada Companies state that this amendment will broaden the provision to allow entities that do not prepare quarterly financial statements to meet the requirements for unsecured credit and receive transmission service.

18. Our review indicates that the Nevada Companies' proposed additional language in their answer satisfactorily addresses CRC's concern. Accordingly, we direct the Nevada Companies to file, within thirty days of the date of this order, a revised tariff sheet reflecting the proposed language.

### **4. Acceptable Collateral**

19. CRC protests the creditworthiness procedures section entitled "Acceptable Collateral." Specifically, CRC states that this section should indicate that the Nevada

Companies will accept a cash deposit as collateral, and that the provision should make clear that the cash deposit for at least “normal” transmission service (i.e., those services not requiring deposits or prepayment for construction of facilities) may be made to an escrow account held by a third party.<sup>6</sup> CRC contends that the Nevada Companies have entered into such escrow agreements in the past.

20. Truckee Donner also requests clarification to the “Acceptable Collateral” section of the creditworthiness procedures. Truckee Donner states that for those customers required to provide collateral, the satisfactory amount of collateral is unclear. Truckee Donner contends that for such situations, the maximum collateral should be no more than 30 or 60 days’ worth of expected transmission service charges.

21. Regarding CRC’s argument that the cash deposit form of acceptable collateral under some circumstances should be held in an escrow account and released only upon clear terms, and further that the Nevada Companies have entered into such agreements in the past, the Nevada Companies respond that CRC may be confusing the mechanism set forth in section 7.3 of the OATT regarding billing disputes with the acceptable forms of collateral set forth in the creditworthiness procedures. The Nevada Companies state that section 7.3 of the tariff permits a transmission customer to pay into “an independent escrow account the portion of the invoice in dispute” pending resolution of a billing dispute. In addition, and although the Nevada Companies have not proposed to include this mechanism in the creditworthiness procedures, the Nevada Companies state that they will consider implementing business practice language into the creditworthiness procedures regarding cash deposits collected as collateral for the construction of facilities to more clearly define the purpose for such cash deposits and the manner in which such deposits are treated and returned.

22. With respect to CRC’s concern about the holding location of cash deposits and prepayments, we find that the Nevada Companies stated that they would accept cash deposits as an acceptable form of collateral, but that CRC has not provided sufficient support for its argument concerning the establishment of a separate escrow account. Therefore, we reject CRC’s argument.<sup>7</sup> Regarding Truckee Donner’s concern that the satisfactory amount of collateral is unclear, we agree. The Nevada Companies state in their Attachment L that “The Transmission Provider will accept a Cash Deposit or prepayment amounts established by the applicable section of the Transmission Provider’s OATT.”<sup>8</sup> The Nevada Companies, however, do not provide citations to the relevant

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<sup>6</sup> See CRC Protest at 7.

<sup>7</sup> See *Entergy Services Inc.*, 104 FERC ¶ 61,329, at P 41 (2003).

<sup>8</sup> Sierra Pacific Resources Operating Companies, FERC Electric Tariff, Third Revised Vol. No. 1, Open Access Transmission Tariff, Original Sheet No. 257F.

OATT sections. We therefore direct the Nevada Companies to clarify, in a filing within 30 days of the date of this order, their Attachment L to reflect the necessary collateral amounts, or provide references to the applicable tariff sections where they can be found.

**B. Unreserved Use Penalties**

23. In Order No. 890, the Commission determined that transmission customers would be subject to unreserved use penalties in any circumstance in which the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its OATT.<sup>9</sup> The Commission also established a rebuttable presumption that unreserved use penalties no greater than twice the firm point-to-point rate for the penalty period are just and reasonable, provided that the penalty rates are consistent with certain principles articulated in Order No. 890.<sup>10</sup> Specifically, the Commission stated that: (1) the unreserved use penalties must be based on the period of unreserved use; (2) the unreserved use penalty for a single hour of unreserved use must be based on the rate for daily firm point-to-point transmission service; and (3) more than one assessment for a given duration (e.g., daily) results in an increase of the penalty period to the next longest duration (e.g., weekly). However, transmission providers proposing to charge an unreserved use penalty in excess of twice the relevant point-to-point rate were required to make a filing under section 205 of the FPA for Commission approval.<sup>11</sup>

24. We note that the Nevada Companies' proposed OATT contains an unreserved use penalty rate in section 13.7(c) that states

In the event that a Transmission Customer (including Third-Party Sales by the Transmission Provider) exceeds its firm reserved capacity at any Point of Receipt or Point of Delivery *or uses Transmission Service at a Point of Receipt or Point of Delivery that it has not reserved*, the rate for capacity in excess of the reservation shall be 150% of the applicable rate specified in Schedule 7 (emphasis added).

25. Similarly, we note that the Nevada Companies' OATT contains an unreserved use penalty rate in section 14.5 that states

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<sup>9</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 834, 848.

<sup>10</sup> *Id.* at P 846, 848.

<sup>11</sup> *Id.* at P 849.

In the event that a Transmission Customer (including Third-Party Sales by the Transmission Provider) exceeds its non-firm capacity reservation, the rate for capacity in excess of the reservation shall be 150% of the applicable rate specified in Schedule 8.

In addition to sections 13.7(c) and 14.5, Truckee Donner states that section 28.6 of the Nevada Companies' OATT states that the transmission provider "shall specify" penalties and charges applicable when a customer inappropriately uses network service to make third-party-sales. Truckee Donner contends that it has not been able to find any language within the Nevada Companies' OATT specifying such penalties and charges, and that those penalties should be spelled out in the tariff and should have been included in the compliance filing. Further, Truckee Donner states that the Nevada Companies should use the same 150 percent charge reflected in section 13.7(c) and section 14.5 applicable to unreserved use of point-to-point service.

26. The Commission finds that the Nevada Companies' unreserved use penalties, proposed or previously accepted, do not conform to the requirements of Order No. 890. We direct the Nevada Companies to modify their unreserved use penalty provisions to reflect the terms and conditions of Order No. 890. Specifically, the Nevada Companies' unreserved use penalties must indicate that (1) the unreserved use penalty for a single hour of unreserved use must be based on the rate for daily firm point-to-point transmission service and (2) more than one assessment for a given duration (e.g., daily) results in an increase of the penalty period to the next longest duration (e.g., weekly).<sup>12</sup>

27. Regarding Truckee Donner's concern, Order No. 890-A specified that

To the extent necessary, we clarify that all unreserved uses of the host transmission provider's system are to be considered uses of firm point-to-point transmission service, even if the customer is taking network service or non-firm point-to-point service for the reserved portion of its service.<sup>13</sup>

This should alleviate Truckee Donner's concerns that there are no appropriate charges specified in the Nevada Companies' OATT. All unreserved uses, including for network customers, will be considered firm point-to-point uses and thus fall under the penalty provisions set forth in the Nevada Companies' OATT section 13.7(c) delineating firm point-to-point service charges. Further, the Nevada Companies should provide in their

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<sup>12</sup> *Id.* at P 846.

<sup>13</sup> Order No. 890-A at P 454.

OATT section 14.5 that the applicable unreserved use penalty rate for non-firm point-to-point service will be based on their OATT Schedule 7, rather than as currently designated through their Schedule 8.<sup>14</sup>

28. Accordingly, we direct the Nevada Companies to file, within 30 days of the date of this order, revised tariff sheets reflecting the requirements for unreserved use penalties as set forth in Order No. 890, or to otherwise make a compliance filing that removes the unreserved use penalty language from their OATT.

### **C. Imbalance Energy Revenue Distributions**

29. In Order No. 890, the Commission determined that charges for both energy and generator imbalances would be based upon a tiered approach that reflects incremental costs. The Commission also required transmission providers to credit revenues in excess of incremental costs to all non-offending customers. As a result, the Commission directed transmission providers to develop, as part of their Order No. 890 compliance filings, a mechanism for crediting such revenues to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.<sup>15</sup>

30. Truckee Donner protests the Nevada Companies' omission of a distribution mechanism for operational penalty revenues. Truckee Donner contends that the Commission intended that transmission providers include such proposed mechanisms with the July 13 compliance filings, and since the Nevada Companies did not include a proposed mechanism for penalty revenue distribution with their compliance filing, the Nevada Companies should be required to modify their tariff to include such a provision.

31. This issue of the revenue crediting mechanism was raised in Docket No. OA07-2-000<sup>16</sup> and was addressed in a compliance order issued on March 3, 2008 in that proceeding.<sup>17</sup> Thus, there is no need to address the revenue crediting mechanism issue further here.

### **D. Attachment J – Procedures for Addressing Parallel Flows**

32. The *pro forma* OATT adopted in Order No. 890 includes a blank Attachment J entitled "Procedures for Addressing Parallel Flows" that is to be "filed by the

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<sup>14</sup> See *Puget Sound Energy, Inc.*, 121 FERC ¶ 61,230, at P 13 (2007).

<sup>15</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 663, 667, 727.

<sup>16</sup> *Sierra Pacific Resources Operating Companies*, 120 FERC ¶ 61,039 (2007).

<sup>17</sup> See *Sierra Pacific Resources Operating Companies*, 122 FERC ¶ 61,195 (2008).

Transmission Provider.” The Commission, in the North American Electric Reliability Corporation’s (NERC) Transmission Loading Relief (TLR) Order<sup>18</sup> amended the *pro forma* OATT to incorporate NERC’s TLR procedures. The Commission also required that every transmission-operating public utility adopting NERC’s TLR procedures file with the Commission a notice that its tariff shall be considered so modified to reflect the use of such procedures. That order addressed the NERC TLR procedures for public utilities in the Eastern Interconnection. Later, in Order No. 693, the Commission approved, as mandatory and enforceable, the IRO-006-3 Reliability Coordination—Transmission Loading Relief Reliability Standard, which includes the NERC TLR procedures and, by reference, the equivalent interconnection-wide congestion management methods used in the Western Electricity Coordinating Council (Western Systems Coordinating Council (WSCC) Unscheduled Flow Mitigation Plan) and Electric Reliability Council of Texas (ERCOT) section 7 of the ERCOT Protocols regions.<sup>19</sup> As a result, all transmission providers must complete Attachment J by incorporating the NERC TLR procedures, the WSCC Unscheduled Flow Mitigation Plan, or the ERCOT protocol and must provide a link to the applicable procedures.

33. The Nevada Companies have not filed any procedures in Attachment J. The Nevada Companies are directed to file, within 30 days of the date of this order, a further compliance filing with a completed Attachment J as follows

The North American Electric Reliability Corporation’s (“NERC”) Qualified Path Unscheduled Flow Relief for the Western Electricity Coordinating Council (WECC), Reliability Standard WECC-IRO-STD-006-0 filed by NERC in Docket No. RR07-11-000 on March 26, 2007, and approved by the Commission on June 8, 2007, and any amendments thereto, are hereby incorporated and made part of this Tariff. See [www.nerc.com](http://www.nerc.com) for the current version of the NERC’s Qualified Path Unscheduled Flow Relief Procedures for WECC.

#### **E. Rollover Rights Effective Date**

34. In Order No. 890, the Commission adopted a five-year minimum contract term in order for a customer to be eligible for a rollover right and adopted a one-year notice

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<sup>18</sup> *North American Electric Reliability Council*, 85 FERC ¶ 61,353, at 62,362 and Ordering Paragraph (B) (1998) (NERC Transmission Loading Relief Order).

<sup>19</sup> See *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg., 16,416 (April 4, 2007), FERC Stats. & Regs. ¶ 31,242 (2007), *order on reh’g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

period. The Commission determined that this rollover reform should be made effective at the time of acceptance by the Commission of a transmission provider's coordinated and regional planning process. The Commission explained that rollover reform and transmission planning are closely related, because transmission service eligible for a rollover right must be set aside for rollover customers and included in transmission planning.<sup>20</sup>

35. Truckee Donner supports the Nevada Companies' modifications to section 2.2. Truckee Donner states that while the Nevada Companies have adopted the *pro forma* language of section 2.2 revising the standards for rollover, they have departed somewhat and added language preserving the currently effective rollover standards until they are supplanted by the acceptance of the Nevada Companies' Attachment K. Truckee Donner states that it supports this minor deviation and urges the Commission to accept it.

36. The Nevada Companies have included the rollover reforms in section 2.2 of their revised tariff sheets, with a requested effective date of July 13, 2007. While the Nevada Companies have recently filed an Attachment K on December 7, 2008 in Docket No. OA08-38-000, setting forth their transmission planning process, it has not yet been accepted. This is contrary to Order No. 890's requirement that rollover reforms are not to become effective until after a transmission provider's Attachment K is accepted. Therefore, we direct the Nevada Companies to file, within 30 days of the date of this order, a revised tariff sheet that reflects the currently effective previous language of section 2.2. The Nevada Companies should re-file the rollover reform language established in Order No. 890 within 30 days after acceptance of their Attachment K, requesting an effective date commensurate with the date of that filing as of the date the Attachment K is accepted.

#### **F. Other Issues**

37. Truckee Donner objects to the date that the Nevada Companies selected to test whether Truckee Donner would be eligible for credits for customer-owned transmission facilities under section 30.9 of the Nevada Companies' OATT. Truckee Donner states that this section implements a new test for whether customer-owned transmission facilities would be eligible for such credits, and should apply only to transmission facilities added subsequent to the effective date of Order No. 890. According to Truckee Donner, the date of test implementation should be no later than May 14, 2007, and the Nevada Companies' selection of July 13, 2007 as the effective test date should be rejected.

38. We reject Truckee Donner's May 14, 2007 proposed effective date. While Order No. 890 established an effective date of sixty days after publication in the *Federal*

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<sup>20</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1231, 1265.

*Register*, the Commission extended all effective dates for Order No. 890 to July 13, 2007. Therefore, we will not deviate from the July 13, 2007 effective date for any portion of the OATT.<sup>21</sup>

The Commission orders:

(A) The Nevada Companies' compliance filing is conditionally accepted, effective July 13, 2007, subject to modification as discussed in the body of this order.

(B) The Nevada Companies are directed to file, within thirty days of the date of this order, a compliance filing as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>21</sup> See *Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).