

112 FERC ¶ 61,072
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Nevada Power Company

Docket No. ER05-988-000

ORDER CONDITIONALLY ACCEPTING TRANSMISSION SERVICE
AGREEMENT AS MODIFIED

(Issued July 18, 2005)

1. On May 19, 2005, Nevada Power Company (Nevada Power) filed an executed Service Agreement for Long-Term Firm Point-to-Point Transmission Service (Service Agreement)¹ with PacifiCorp under Nevada Power's Open Access Transmission Tariff (OATT). In this order, we conditionally accept the Service Agreement, as modified below, to become effective June 1, 2005, and direct Nevada Power to make a compliance filing deleting section 5.0 and section 6.0, which limit PacifiCorp's rollover rights.

Background

2. On February 19, 2004, PacifiCorp requested that Nevada Power provide 50 MW of long-term firm point-to-point transmission service from the Mead 230 kV substation to a point on the Harry Allen-Red Butte 345 kV line at the Nevada-Utah border, for the period June 1, 2005 to June 1, 2006, under Nevada's OATT. In response, Nevada Power advised PacifiCorp that Nevada Power needs a Commission order requiring it to provide the requested transmission service under section 211 of the Federal Power Act (FPA),² in order to preserve its local furnishing bonds' tax-exempt status.³ On May 28, 2004,

¹ Sierra Pacific Operating Companies' FERC Electric Tariff, Third Revised Volume No. 1, Open Access Transmission Tariff, Service Agreement No. 05-00399.

² 16 U.S.C § 824j (2000).

³ Sections 142(a)(8) and 142(f) of the Internal Revenue Code of 1986 (IRS Code) provide an exemption, for federal income tax purposes, for the interest on certain debt issued by local governments to provide financing for eligible facilities that are part of a
(continued...)

PacifiCorp filed an application under section 211 of the FPA and Nevada Power's OATT requesting that the Commission require Nevada to provide this transmission service.⁴ On April 18, 2005, the Commission issued an order directing Nevada to provide the requested transmission service to PacifiCorp.⁵

3. Nevada Power and PacifiCorp executed the Service Agreement on May 11, 2005. Nevada Power submitted the Service Agreement to the Commission on May 19, 2005. Nevada Power states that the Service Agreement deviates in material respects from the

system for the "local furnishing" of electric energy. "Local furnishing" of electric energy is defined as furnishing service "solely within the area consisting of (A) a city and 1 contiguous county, or (B) 2 contiguous counties." 26 U.S.C. § 142(f)(1) (2000). The Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 (1992) (EPAct), amended section 142(f)(2)(A) of the IRS Code to preserve the tax-exempt status of interest on local furnishing bonds if other transmission service were provided pursuant to a Commission order issued under sections 211 or 213 of the FPA and the portion of the cost of the facilities used to provide the directed transmission service that is financed with tax-exempt bonds is not greater than the portion of the cost of the facilities which is allocable to the local furnishing of electric energy. *See PacifiCorp*, 111 FERC ¶ 61,070 at P 2 n.3 (2005) (*PacifiCorp*).

⁴ *See id.* at P 2 & n.4. In Order Nos. 888 and 888-A, the Commission recognized that open access transmission service might jeopardize the tax-exempt status of local furnishing bonds. Accordingly, the Commission required any public utility subject to Order No. 888 that had financed transmission facilities with local furnishing bonds to include in its tariff a provision that it will not contest the issuance of an order under section 211 of the FPA requiring the provision of such service and that it will, within 10 days of receiving a written request by an applicant, file with the Commission a written waiver of its rights to a request for service from the applicant under section 213(a) of the FPA and to the issuance of a proposed order under section 212(c). *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, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 at 31,762-63 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (March 4, 1997), FERC Stats. & Regs. ¶ 31,048 at 30,296-98 (1997), *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).

⁵ *See PacifiCorp*, 111 FERC ¶ 61,070 at P 1.

applicable form of service agreement contained in its OATT since it contains a rollover restriction.

4. Proposed section 5.0 of the Service Agreement states that “[t]he Transmission Customer has the ability to rollover the transmission service associated with this agreement pursuant to section 2.2 of the Tariff until June 1, 2013. The Transmission Customer has not requested and has agreed not to request rollover after June 1, 2013.” Proposed section 6.0 has provisions stating that the transmission customer is aware that rollover rights are contingent upon a System Impact Study and execution of a Facilities Study Agreement. Those requirements are based upon the Loads and Resources Table (Table), approved by the Public Utilities Commission of Nevada (PUCN), attached to the Service Agreement, demonstrating that transmission reserved by the transmission provider for native load growth will be required to serve native load after June 1, 2013. Proposed section 6.0 also states that the transmission customer has requested the transmission provider not to complete any Facilities Studies and associated requirements or approvals pertaining to rolling over the service after June 1, 2013. Proposed section 6.0 further provides that the transmission customer agrees that rollover rights under the Service Agreement are restricted after June 1, 2013.

5. Nevada Power argues that, in Order No. 888, the Commission concluded that public utilities may reserve existing transmission capacity needed for native load growth and transmission load growth reasonably forecasted within the utility’s current planning horizon. Nevada Power states that, in *Nevada Power Company*, 97 FERC ¶ 61,324 at 62,493 n.17 (2001), the Commission instructed Nevada Power as follows:

“We note that in the October 25 Amendment, Nevada Power has provided its most recent Resource Plan, as required pursuant to Nevada State law and accepted by the Nevada PUC. The Resource Plan includes projections of Nevada Power’s need for additional transmission capacity in the future to serve native load. If Nevada Power wishes to submit service agreements that limit rollover rights based upon these specific projections, then we will consider such a proposal at the time of the filing of such service agreements.”

Nevada Power argues that it has attempted to follow these instructions, in the instant filing, by submitting a Loads and Resources Table (Table) reflecting the load forecast approved by the PUCN as an attachment to the Service Agreement. Nevada Power states that the Table reflects reasonably forecasted native load growth and native loads’ corresponding transmission capacity requirements.

6. Nevada Power requests waiver of the Commission’s prior notice requirement to permit the Service Agreement to become effective June 1, 2005.

Notice of Filing

7. Notice of Nevada Power's filing was published in the *Federal Register*, 70 Fed. Reg. 30,940 (2005), with interventions and protests due on or before June 9, 2005. No motions to intervene or protests were filed.

Discussion

8. The Commission has consistently stated that a transmission provider can deny the customer the ability to roll over its long-term firm point-to-point transmission service agreement only if the transmission provider includes in the original service agreement a specific limitation based on reasonably forecasted native load needs for the transmission capacity provided under the contract at the end of the contract term.⁶ The Commission has further stated that a transmission provider may limit the terms under which a new transmission customer may roll over a new long-term firm point-to-point transmission service agreement if the transmission provider has a pre-existing contract obligation that commences in the future.⁷ For example, if the transmission provider knows at the time of the execution of the original service agreement that available transfer capability to serve the customer will only be available for a particular period of time, after which it is already committed to another transmission customer under a previously-confirmed transmission request (i.e., an agreement under which service would commence at sometime in the future), the transmission provider can reflect those obligations in the long-term firm point-to-point transmission service agreement and thereby limit the prospective transmission customer's rollover rights.⁸

9. In order to make this demonstration, a transmission provider must identify the pre-existing contracts that commence in the future or show that native load growth projections are sufficiently supported in the record at the time of the original transmission service agreement.⁹ The Service Agreement submitted by Nevada Power includes

⁶ *Nevada Power Company*, 97 FERC ¶ 61,324 at 63,493 (2001) (*NevadaPower*); *Public Service Company of New Mexico v. Arizona Public Service Company*, 99 FERC ¶ 61,162 at 61,667 (2002); *Constellation Power Source, Inc. v. American Electric Power Corporation and Southwest Power Pool, Inc.*, 100 FERC ¶ 61,157 at P 34 (2004).

⁷ *Southern Company Services, Inc.*, 108 FERC ¶ 61,093 at P 10-11 (2004) (*Southern*).

⁸ *Id.* at P 10.

⁹ *Nevada Power*, 97 FERC at 63,493; *American Electric Power Service Corporation*, 101 FERC ¶ 61,384 at P 14 (2002).

provisions in proposed sections 5.0 and 6.0 that limit the rights of the transmission customer, PacifiCorp, to continue to receive long-term firm point-to-point transmission service after June 1, 2013. As in the cases cited above, the information filed in this proceeding does not sufficiently support Nevada Power's conclusion that native load growth or pre-existing contract obligations that commence sometime in the future will constrain Nevada Power's transmission system such that it cannot provide transmission service to PacifiCorp beyond June 1, 2013. Nevada Power has included the Table in its filing as an attachment to the Service Agreement in an effort to demonstrate the need to reserve its import capacity for native load growth. Nevada Power states that the Table was taken from Nevada Power's 2003 Integrated Resource Plan filed with the PUCN in its Docket No. 04-8022,¹⁰ and reflects the load forecast approved by the PUCN. Although the Table indicates that the required import capacity to serve native load beyond 2013 exceeds the import capacity reserved for native load, Nevada Power has not provided any support to justify the reported values for required import capacity. Indeed, other than the values reflected in the Table, the Commission cannot find any data that would support the conclusion that Nevada Power cannot provide rollover rights to PacifiCorp after June 1, 2013, due to native load growth, that will require PacifiCorp's transmission capacity. The Commission also notes that, even though the PUCN approved the load forecast in the Table, the PUCN denied Nevada Power's request to reserve import capacity for future native load growth.¹¹ Therefore, we will reject Nevada Power's restriction of PacifiCorp's rollover rights proposed in sections 5.0 and 6.0.

10. Accordingly, we will conditionally accept the proposed Service Agreement, as modified, to be effective June 1, 2005, as requested.¹² We further direct Nevada Power to make a compliance filing removing sections 5.0 and 6.0 of the Service Agreement within 30 days of the date of this order.

The Commission orders:

(A) Nevada Power's Service Agreement, as modified, is hereby conditionally accepted for filing, effective June 1, 2005, as discussed in the body of this order.

¹⁰ *Application of Nevada Power for Approval of the Third Amendment to the Supply-Side Action Plan of its 2003 Electric Resource Plan*, PUCN Docket No. 04-8022 (December 28, 2004).

¹¹ *Id.* at P 85.

¹² As Nevada Power filed the Service Agreement within 30 days of the proposed effective date, and indeed before the proposed effective date, we will grant waiver of the prior notice requirement. *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984, *clarified*, 65 FERC ¶ 61,081 (1993).

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(B) Nevada Power is hereby directed to submit a compliance filing, as discussed in the body of this order, within 30 days from the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.