

124 FERC ¶ 61,286
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 24, 2008

In Reply Refer To:
Powerex Corp.
Docket No. TX08-1-000

Powerex Corp.
Attention: Teresa Conway
1400 - 666 Burrard Street
Vancouver, British Columbia, Canada V6C 2X8

Dear Ms. Conway:

1. On May 30, 2008, Powerex Corp. (Powerex) filed an application under section 211 of the Federal Power Act (FPA), 16 U.S.C. §824j (2006), and section 5.2 of Nevada Power Company's (Nevada Power) Open Access Transmission Tariff (OATT), requesting that the Commission require Nevada Power to provide transmission service to Powerex.
2. Powerex states that the purpose of this section 211 application is to preserve the tax-exempt status of Nevada Power's local furnishing bonds.¹ In addition, Powerex states that Nevada Power is willing to provide the requested transmission service and that

¹ Sections 142(a)(8) and 142(f) of the Internal Revenue Code (IRS Code) of 1986 provide an exemption, for federal income tax purposes, for the interest on certain debt issued by a local government to provide financing for eligible facilities that are part of a 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)(2006). The Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 (1992), 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 services were provided pursuant to a Commission order issued under section 211 or section 213 of the FPA, 16 U.S.C. § 824l (2006), 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 facility which is allocable to the local furnishing of electric energy.

it waives its rights to a prior request for service under section 213(a) of the FPA and to the issuance of a proposed order under section 212(c).²

3. Notice of Powerex's filing was published in the *Federal Register*, 73 Fed. Reg. 32,702 (2008), with comments, protests and interventions due on or before June 30, 2008. No comments, protests or interventions were filed.

4. The Commission finds that Powerex has met the requirements of sections 211 and 212 of the FPA.³ Specifically, section 211 provides that the Commission may issue an order directing transmission service if the order meets the requirements of section 212 and would otherwise be in the public interest.⁴ We find that the public interest will be served by directing Nevada Power to provide the requested transmission service.⁵ The requirements of section 212 are satisfied because the requested transmission service will be provided under the rates, terms and conditions of Nevada Power's OATT.

5. Section 211 precludes a transmission order if ordering the requested transmission will unreasonably impair the continued reliability of the electric system,⁶ or if the transmitting utility is providing electric energy to the applicant pursuant to a contract or rate schedule for the sale of such energy which is on file with the Commission.⁷ Powerex states that ordering the requested transmission service will not unreasonably impair the continued reliability of the affected electric system. Powerex further states that Nevada Power was not already selling to Powerex the energy to be shipped under the requested transmission service.

² 16 U.S.C. § 824k (2006).

³ See generally *Nevada Power Co.*, 110 FERC ¶ 61,029, at PP 14-22 (2005) (discussing and applying the requirements).

⁴ 16 U.S.C. § 824j(a) (2006).

⁵ See generally *Florida Municipal Power Agency v. Florida Power & Light Co.*, 65 FERC ¶ 61,125, *reh'g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *order on reh'g*, 74 FERC ¶ 61,006 (1996), *order on reh'g*, 96 FERC ¶ 61,130 (2001) (determining that, as a general matter, the availability of transmission service serves the public interest by enhancing competition in power markets).

⁶ 16 U.S.C. § 824j(b) (2006).

⁷ 16 U.S.C. § 824(c) (2006); see also *Nevada Power Co.*, 110 FERC ¶ 61,029 at PP 11-13.

6. Accordingly, Nevada Power is hereby directed, pursuant to section 211 of the FPA, to provide transmission service, pursuant to Powerex's transmission service requests, under the applicable tariffs and rate schedules.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.