

141 FERC ¶ 61,267
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Nevada Power Company	Docket Nos.	ER13-255-000 EL13-28-000 (Consolidated)
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ORDER ACCEPTING AND SUSPENDING PROPOSED RATES, ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES, AND INSTITUTING A
SECTION 206 PROCEEDING

(Issued December 31, 2012)

1. In this order, we accept for filing Nevada Power Company’s (Nevada Power) proposed Zone B transmission service rates and ancillary service rates in Schedules 2, 3, 5, 6, 7, 8, 11 and Attachment H to the NV Energy, Inc. Operating Companies’ Open Access Transmission Tariff (NV Energy OATT or OATT) and suspend them for five months to become effective June 1, 2013, subject to refund. We also accept Nevada Power’s proposed changes to Schedules 1 and 10 to become effective January 1, 2013, subject to refund. Additionally, because Nevada Power is proposing a rate decrease for Schedule 1 and Schedule 10, and a further decrease may be warranted, we will institute an investigation pursuant to section 206 of the Federal Power Act (FPA)¹ in Docket No. EL13-28-000 to determine whether Nevada Power’s proposed rate decreases are just and reasonable. Finally, we establish hearing and settlement judge procedures. We consolidate the instant proceedings for purposes of hearing and settlement procedures.

I. Background

2. Nevada Power is a public utility that serves retail and wholesale customers in Southern Nevada and is subject to regulation by the Commission and the Public Utilities Commission of Nevada (Nevada Commission). Nevada Power is wholly owned by NV Energy, Inc., a public utility holding company, which also wholly owns Sierra Pacific Power Company (Sierra Pacific), a public utility that serves retail and wholesale customers in Northern Nevada. In 2008, both Nevada Power and Sierra Pacific began doing business as NV Energy. Nevada Power currently provides transmission service

¹ 16 U.S.C. § 824e (2006).

under the NV Energy OATT, which contains separate rates for the Nevada Power zone (Zone B). The instant filing revises rates for Zone B only.

II. Instant Filing

3. On October 31, 2012, Nevada Power filed to revise the Zone B transmission rates for network and point-to-point service under the OATT.² The proposed revisions include an increase in the rate for network and point-to-point service from \$1.40/kW/month to \$2.51/kW/month. Nevada Power also filed rate revisions to several ancillary services.³ Specifically, Nevada Power proposes to decrease the scheduling and dispatch rate under Schedule 1 from \$111.90/MW/month to \$70.92/MW/month. Additionally, Nevada Power proposes to increase the rates under Schedules 2, 3, 5, 6, and 11. Nevada Power proposes to increase its rate for reactive power, Schedule 2, from \$158/MW/month to \$506.48/MW/month. Nevada Power's proposed rates for Schedules 3, 5, and 11 increase from \$6,445.08/MW/month to \$7,760/MW/month. Nevada Power's proposed charges for supplemental reserves in Schedule 6 increase from \$3,039/MW/month to \$8,060/MW/month. Nevada Power also proposes to update its Schedule 10 loss factor consistent with the transmission loss analysis it performed in June of 2012, resulting in a reduction in the loss factor from 1.32 percent to 1.26 percent.

4. Nevada Power requests that the proposed rates be made effective January 1, 2013, without suspension.

5. Nevada Power states that it is filing this increase in rates to ensure that it recovers its capital investment in its transmission system and continues that investment to maintain system reliability.⁴ In addition, Nevada Power states that it also seeks to continue to recover the costs of operating its transmission system and earn a reasonable return on its investment.

² Nevada Power's filing updates the OATT rates for firm point-to-point transmission service (Schedule 7); non-firm point-to-point transmission service (Schedule 8); and annual transmission revenue requirement for network integration transmission service (Attachment H).

³ Nevada Power's filing updates the following OATT rates: scheduling system control and dispatch service (Schedule 1); reactive supply and voltage control from generation sources service (Schedule 2); regulation and frequency response service (Schedule 3); operating reserve-spinning reserve service (Schedule 5); operating reserve-supplemental reserve service (Schedule 6); loss compensation service (Schedule 10); and regulation and frequency response service for generators selling outside of control area (Schedule 11).

⁴ Nevada Power Transmittal Letter at 1.

6. Nevada Power notes that it last filed to update its transmission rates in 2003 and, before that, had not revised its transmission rates since 1999.⁵ According to Nevada Power, the proposed changes for network integration transmission service and point-to-point rates are justified because it has made significant changes to its transmission system to improve reliability, relieve constraints, provide for increased service needs, and as a result of governmental mandates and changing regulatory requirements. Nevada Power asserts that the addition of new transmission plant as well as upgrades to existing facilities as a result of these factors has caused an increase in net plant from \$823.7 million in the 2003 filing to \$1.2 billion in the instant filing.

7. Nevada Power also maintains that operating costs have increased since 2003, due to increased depreciation expense associated with the new plant additions as well as a change in the manner in which Nevada Power will recover certain costs under Schedule 1.⁶ Nevada Power proposes to recover all general plant and administrative and general (A&G) expenses through its network and point-to-point rates rather than allocate some of these costs to its Schedule 1 charge. Nevada Power explains that this change results in a higher point-to-point and network rate and a lower Schedule 1 rate. According to Nevada Power, other contributing factors in the operating expense increase include Western Electricity Coordinating Council dues, increased corporate A&G expense allocated to the transmission business line, and expenses related to joint projects with other utilities.

8. In addition, Nevada Power states that its load has decreased since the 2003 filing, causing a decrease in billing determinants.⁷

9. Nevada Power states that it last filed to update its ancillary services rates in 2002.⁸ According to Nevada Power, the increase in the proposed rates for Schedule 2 reflects the fact that it has added generating capacity capable of providing reactive support. In addition, Nevada Power states that Las Vegas Power Company, LLC (Las Vegas Power), a merchant generator in Nevada Power's service territory, recently filed a reactive power rate schedule for its Apex Plant and the costs associated with Nevada Power's payment for reactive power from the Apex Plant will be recovered under Schedule 2.

10. Nevada Power states that the increases in Schedules 3, 5, 6, and 11 are due to the addition, since the 2003 filing, of additional generation capable of providing regulation and frequency response to its system, increasing the Schedule 3 and Schedule 11 revenue

⁵ *Id.* at 5.

⁶ *Id.* at 6.

⁷ *Id.*

⁸ *Id.* at 5.

requirements, as well as those for spinning reserves in Schedule 5.⁹ Finally, Nevada Power states that it has also added generation capable of providing supplemental reserves, increasing the Schedule 6 revenue requirement.

III. Notice of Filing and Responsive Pleadings

11. Notice of Nevada Power's October 30, 2012 filing was published in the *Federal Register*, 77 Fed. Reg. 37,356 (2012), with interventions and protests due on or before November 21, 2012. The Nevada Commission filed a notice of intervention. The Office of the Attorney General for the State of Nevada Bureau of Consumer Protection, Valley Electric Association, Inc., and Colorado River Commission filed motions to intervene. Ormat Nevada, Inc. (Ormat)¹⁰ filed a motion to intervene with comments. Southern Nevada Water Authority (SNWA)¹¹ and Las Vegas Power filed motions to intervene and protests. On December 6, 2012, Nevada Power filed an answer to the protests and comments.

12. Ormat, SNWA, and Las Vegas Power all argue that the proposed rates are excessive and unsupported. Ormat notes that, apart from Nevada Power's scheduling (Schedule 1) and losses compensation (Schedule 10) rates, all of Nevada Power's proposed rates are substantial increases and for most of the services, nearly triple the rates over the existing rates.¹² Las Vegas Power asserts that Nevada Power is proposing, without support, substantial rate increases of approximately 20 percent (Schedules 3, 5, and 11), 79 percent (Schedules 7 and 8, point-to-point transmission service and Attachment H network transmission service), 165 percent (Schedule 6), and 220 percent (Schedule 2) for its transmission and ancillary services.¹³ According to Las Vegas Power, this equates to an annual rate increase of \$8.4 million for Las Vegas Power alone, which is an 83 percent annual rate increase for transmission and ancillary services.¹⁴ SNWA asserts that in the aggregate, SNWA and its member agencies face nearly a \$2.7

⁹ *Id.* at 7.

¹⁰ Ormat is a vertically-integrated company primarily engaged in the geothermal and recovered energy power business. Through its subsidiaries, Ormat is the developer of existing and proposed generation projects within Nevada.

¹¹ SNWA is primarily a municipal water authority but owns generating facilities interconnected to the Nevada Power transmission system.

¹² Ormat Intervention at 4.

¹³ Las Vegas Power Protest at 4-5.

¹⁴ *Id.* at 1.

million rate increase as a result of this filing and a significant portion of that increase is substantially excessive.¹⁵

13. In its answer, Nevada Power states that its rate filing was adequately supported.¹⁶ Nevada Power maintains that Las Vegas Power, in particular, exaggerates deficiencies in hopes of creating the appearance of significant omissions.¹⁷ Furthermore, Nevada Power argues that the intervenors have failed to establish that a five-month suspension period is warranted.

14. SNWA and Las Vegas Power are concerned that Nevada Power's proposal to switch to a 12 coincident peak demand allocation is entirely unsupported in the rate filing and is inconsistent with Commission precedent.¹⁸ Las Vegas Power notes that this is not the first time that Nevada Power has sought to change the allocator to use a 12 coincident peak in its allocation and failed to provide support for its proposed allocation. Las Vegas Power maintains that, in order to support the use of a 12 coincident peak demand allocation, Nevada Power must show a change in circumstances and that the proposed allocation otherwise satisfies the Commission's test, and this it cannot do.

15. In its answer, Nevada Power argues that neither Las Vegas Power nor SNWA have established that Nevada Power should deviate from the Commission's 12 coincident peak approach.¹⁹ Nevada Power argues that neither party demonstrated that a 4 coincident peak approach would be the proper alternative.

16. SNWA and Las Vegas Power maintain that Nevada Power's determination of its rate of return (ROR) and return on equity (ROE) is unsupported.²⁰ According to SNWA, Nevada Power's proposed ROE of 11.04 percent is grossly excessive, the analysis supporting this rate is flawed, it does not represent well-established Commission precedent, and it is contrary to the operating realities of this utility. In addition, SNWA states that the requested ROE also greatly exceeds Nevada Power's allowed ROE granted by the Nevada Commission over the last decade, a decade wherein Nevada Power has experienced significant improvement in its financial condition, improved debt rankings, higher gross margins, and other indications of prosperity. In addition, Las Vegas Power

¹⁵ SNWA Protest at 20.

¹⁶ Nevada Power Answer at 3.

¹⁷ *Id.*

¹⁸ SNWA Protest at 4-10; Las Vegas Power Protest at 18-21.

¹⁹ Nevada Power Answer at 11.

²⁰ SNWA Protest at 11-16; Las Vegas Power Protest at 21-26.

maintains that Nevada Power's determination of its ROR and ROE varies significantly from recent Commission precedent as to methodology, ignores relevant information for both Nevada Power and NV Energy, is based fully on an inadequate proxy group analysis, and includes an equity risk premium that is speculative and potentially inappropriate.

17. In its answer, Nevada Power asserts that objections to the proxy group that formed the basis of the Discounted Cash Flow analysis and the ROE are unfounded.²¹ Nevada Power claims that it used an acceptable measure of central tendency and properly aligned its ROE with its risk.

18. SNWA also maintains that Nevada Power's proposed capital structure and embedded debt costs are excessive and contradict Nevada Power's own documents.²² SNWA believes that Nevada Power has overstated the percentage of equity in the Period II proposed capital structure and cost of long-term debt in its filing to support higher rates.

19. In its answer, Nevada Power asserts that it bases its transmission rates on its actual Period II capital structure.²³ Nevada Power claims that its recent retail rate case does not support the notion that its capital structure is very different than what was filed in that case.

20. SNWA and Las Vegas Power also maintain that other aspects of Nevada Power's cost of service should be investigated.²⁴ SNWA argues that Nevada Power should be required to provide additional detail about its cost of service and thereafter demonstrate that its treatment of certain items is both appropriate and consistent with Commission precedent. Las Vegas Power argues that Nevada Power failed to provide the necessary support for its Schedule 2 rates and otherwise has not correctly calculated the rates; Statement BB for Period I and Period II raise questions as to the accuracy of load estimates; the revenue credit calculation in the Period II Statement AU lacks credibility and is unsupported; the filing raises but does not answer questions with respect to system upgrades, omits unfunded reserves from rate base, has improperly included certain A&G expenses, should exclude certain facilities from the transmission revenue requirement; Nevada Power needs to account for all transmission-related revenue credits and production-related revenue credits; to the extent that Nevada Power has switched to the

²¹ Nevada Power Answer at 6.

²² SNWA Protest at 16-18.

²³ Nevada Power Answer at 19.

²⁴ SNWA Protest at 18; Las Vegas Power Protest at 26, 33, 36, 38-42.

use of a levelized gross plant fixed charge rate for Schedules 2, 3, 5, 6, and 11, the switch violates Commission precedent; and Nevada Power's depreciation is flawed.

21. In its answer, Nevada Power claims that its load forecast is accurate, its revenue credits are credible and well-supported, its Schedule 2 rates are adequately supported and are just and reasonable, it properly employed a levelized gross plant methodology for ancillary services, and its ancillary service rates are supported by proper depreciation values.²⁵

IV. Discussion

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Nevada Power's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

24. Nevada Power's proposed rates raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

25. Our preliminary analysis indicates that Nevada Power's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In *West Texas Utilities Co.*,²⁶ the Commission explained that when our preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission will generally impose a five-month suspension. In the instant proceeding we find that the proposed rates, with the exception of Schedule 1 and Schedule 10, may be substantially excessive. Therefore, we will accept Nevada Power's proposed Zone B transmission service rates and ancillary service rates in Schedules 2, 3, 5, 6, 7, 8, 11 and Attachment H to the OATT for filing, suspend them for five months, to become effective June 1, 2013, subject to refund, and set them for hearing and settlement judge procedures.

²⁵ Nevada Power Answer at 14-19.

²⁶ *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982) (*West Texas*).

26. In addition, while Nevada Power is proposing a rate decrease in two rate schedules (Schedules 1 and 10), our review indicates that a further decrease may be warranted. Therefore, we will accept the proposed Schedule 1 and Schedule 10 rates for filing, to become effective January 1, 2013, but we will also institute a section 206 investigation in Docket No. EL13-28-000 with respect to the justness and reasonableness of Nevada Power's proposed rate decreases.

27. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA, as amended by section 1285 of the Energy Policy Act of 2005,²⁷ requires that the Commission establish a refund effective date that is no earlier than publication of the notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months after the publication date. Consistent with our general policy of providing maximum protection to customers,²⁸ we will establish the refund effective date at the earliest date possible, i.e., the date the initiation of the investigation in Docket No. ER13-28-000 is published in the *Federal Register*.

28. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within 12 months of the commencement of hearing procedures, or, if the case were to go to hearing immediately, by December 31, 2013. Thus, we estimate that, if the case were to go to hearing immediately, we would be able to issue our decision within approximately nine months of the filing of briefs on and opposing exceptions, or by November 30, 2014.

29. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²⁹ If the parties desire, they may,

²⁷ Energy Policy Act of 2005, Pub. L. No. 109-58, § 1285, 119 Stat. 594, 980-981 (2005).

²⁸ See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

²⁹ 18 C.F.R. § 385.603 (2012).

by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.³⁰

30. The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

31. In light of the common issues of law and fact presented in Docket Nos. ER13-255-000 and EL13-28-000, we will consolidate the two proceedings for purposes of settlement, hearing and decision.

The Commission orders:

(A) Nevada Power's proposed transmission service rates and ancillary service rates in Schedules 2, 3, 5, 6, 7, 8, 11 and Attachment H to the OATT are hereby accepted for filing and suspended for five months, to become effective June 1, 2013, subject to refund, as discussed in the body of this order.

(B) Nevada Power's proposed scheduling and dispatch rate and loss compensation rate in Schedules 1 and 10 are hereby accepted for filing to become effective January 1, 2013, as requested, subject to refund, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of Nevada Power's proposed rates. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this

³⁰ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) Docket Nos. ER13-255-000 and EL13-28-000 are hereby consolidated for the purposes of settlement, hearing and decision.

(H) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of a section 206 proceeding in Docket No. EL13-28-000.

(I) The refund effective date established pursuant to section 206(b) of the Federal Power Act will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (H) above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.