

145 FERC ¶ 61,080
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

NV Energy, Inc.

Docket Nos. ER13-1605-002
ER13-1607-001

ORDER ON REHEARING

(Issued October 29, 2013)

1. On September 4, 2013, NV Energy, Inc., on behalf of its public utility subsidiaries Nevada Power Company (Nevada Power) and Sierra Pacific Power Company (Sierra Pacific) (collectively, NV Energy) filed a request for rehearing of an order issued in this proceeding on August 5, 2013.¹ That same day, Las Vegas Power Company, LLC (Las Vegas Power) also filed a request for rehearing of the August 5 Order. In the August 5 Order, the Commission accepted in part, subject to acceptance of NV Energy's internal reorganization in Docket No. EC13-113-000, rejected in part, and accepted and suspended in part proposed revisions to transmission and ancillary service rates and non-rate terms and conditions in NV Energy's Open Access Transmission Tariff (OATT). In this order, we grant the request for rehearing filed by NV Energy and deny the request for rehearing filed by Las Vegas Power.

I. Background

2. The One Nevada Transmission Line Project (ON Line), currently projected to go into service on January 1, 2014, is an approximately 235-mile, 500 kV transmission line between Sierra Pacific's Robinson Summit Substation and Nevada Power's Harry Allen Substation. Nevada Power and Sierra Pacific are both operating utility subsidiaries of NV Energy, but are not currently interconnected.² The ON Line will be the first line

¹ *NV Energy, Inc.*, 144 FERC ¶ 61,105 (2013) (August 5 Order).

² *See Sierra Pacific Power Co.*, 87 FERC ¶ 61,077, at 61,337 (1999) (1999 Merger Order) (approving merger, and noting that single-system rates were not appropriate at that time because Nevada Power and Sierra Pacific were not interconnected).

directly interconnecting the transmission systems operated by Nevada Power and Sierra Pacific. Currently, Nevada Power and Sierra Pacific provide transmission service under a single OATT, which contains separate zonal transmission service rates for the Nevada Power zone and the Sierra Pacific zone.

3. On May 31, 2013, NV Energy filed in Docket No. ER13-1605-000 revisions to the rates contained in the NV Energy OATT to replace the current zonal rate structure with a single-system transmission rate structure (Single-System Rates) over the integrated NV Energy transmission system. That same day, NV Energy also made a filing in Docket No. ER13-1607-000 with revisions to certain non-rate terms and conditions contained in the NV Energy OATT to reflect the consolidation of the Sierra Pacific and Nevada Power transmission systems. Also on May 31, 2013, NV Energy filed an application in Docket No. EC13-113-000 (Merger Application) for an internal reorganization, under which Sierra Pacific would merge into Nevada Power.

4. In order to ensure a seamless transition from the zonal rate structure to the Single-System Rate structure, NV Energy requested that the Commission accept the revised NV Energy OATT to become effective on the later of January 1, 2014 or the ON Line in-service date, either by accepting its filings with 60-days' prior notice and a five-month suspension, or with greater than 120-days' notice and a nominal suspension.

5. In the August 5 Order, the Commission consolidated the proceedings in Docket Nos. ER13-1605-000 and ER13-1607-000.³ Based on its preliminary analysis, the Commission found that NV Energy's proposed rates and non-rate terms and conditions had not been shown to be just and reasonable, and set the revised NV Energy OATT—aside from certain items addressed summarily⁴—for hearing and settlement judge procedures.⁵ The Commission also found good cause to grant NV Energy's request for waiver of the 120-day prior notice requirement, and suspended the revised NV Energy

³ August 5 Order, 144 FERC ¶ 61,105 at P 62.

⁴ The Commission: (1) summarily rejected NV Energy's proposed Attachment K and proposal to change section 19.1 of the OATT to treat any request to study conditional firm or planning redispatch options received after the system impact study agreement is executed as a new transmission service request; (2) summarily accepted revisions to sections 13.8, 14.6 and the large generator interconnection agreement to comply with Order Nos. 764 and 764-A; and (3) directed NV Energy to submit a compliance filing supplying missing information for Attachment H. *Id.* PP 67-71.

⁵ *Id.* P 63.

OATT for a nominal period to become effective on the later of January 1, 2014 or the in-service date of the ON Line, subject to refund.⁶

II. NV Energy's Request for Rehearing

A. Issue

6. NV Energy requests rehearing of the statement in the August 5 Order that acceptance, in part, of the Single-System Rates is “subject to acceptance of NV Energy’s internal reorganization in Docket No. EC13-113-000.”⁷ NV Energy asserts that the August 5 Order did not articulate a rationale for this holding and that, in fact, there is no evidence in the record that would support linking the two proceedings.⁸ NV Energy argues that the commercial operation of the ON Line—not acceptance of the Merger Application—should be the benchmark for implementation of the Single-System Rates, because activation of the ON Line will make available the single-system transmission service to be recovered under the Single-System Rates.⁹ NV Energy is concerned that implementation of the Single-System Rates could be delayed if the internal reorganization has not been accepted at the time that the ON Line is ready to enter commercial operation.¹⁰ NV Energy adds that, should the Commission issue an order accepting the Merger Application prior to the effective date for the Single-System Rates, it would not object to the Commission dismissing its request for rehearing as moot.¹¹

B. Commission Determination

7. The Commission will grant NV Energy’s request for rehearing. The Commission agrees with NV Energy that, even if the Merger Application has not been accepted at the time that the ON Line commences service, the Single-System Rates should be allowed to go into effect, subject to refund, to properly charge for, and recover the costs of, service over the integrated transmission system. Order No. 888 generally requires holding company public utility members to file single-system rates to ensure that customers

⁶ *Id.* PP 64-65.

⁷ *Id.* PP 1, 65, and ordering para. (C).

⁸ NV Energy Rehearing Request at 3-4.

⁹ *Id.* at 4.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 6.

across the holding company system pay the same price for service.¹² The Commission permitted zonal rates in the 1999 Merger Order based, in part, on the fact that Nevada Power and Sierra Pacific's systems were not yet interconnected.¹³ Accordingly, the consummation of the internal reorganization is not a necessary condition for acceptance of the Single-System Rates.

III. Las Vegas Power's Request for Rehearing

A. Issue

8. Las Vegas Power requests rehearing of the Commission's decision to suspend the Single-System Rates for a nominal period, instead of the maximum five-month suspension, and to allow such rates to become effective on the later of January 1, 2014, or the in-service date of the ON Line. Las Vegas Power argues that the August 5 Order violates the Commission's obligation under the Administrative Procedure Act¹⁴ to engage in reasoned decisionmaking because the Commission failed to address protestors' arguments that the "rate increases proposed by NV Energy were unsupported, contrary to Commission precedent, and otherwise unjust and unreasonable,"¹⁵ and therefore should be subject to the maximum five-month suspension.¹⁶ Las Vegas Power further asserts

¹² See *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, FERC Stats. & Regs. ¶ 31,036, at 31,728-29 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *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) (requiring holding company public utility members to file single system-wide tariffs "permitting transmission service across the entire holding company system at a single price"); *New England Power Co.*, 88 FERC ¶ 61,292, at 61,890 (1999) ("The Commission generally requires that affiliated systems adopt a single system rate reflecting the combined costs of the affiliated system."); *Pennsylvania – New Jersey – Maryland Interconnect*, 81 FERC ¶ 61,257, at 62,249 (1997) (directing three operating companies who proposed "three different rates based on the costs of the three operating companies" to instead submit a single-system rate, consistent with Order No. 888).

¹³ 1999 Merger Order, 87 FERC at 61,337.

¹⁴ 5 U.S.C. §§ 551-706 (2006).

¹⁵ Las Vegas Power Rehearing Request at 6.

¹⁶ *Id.* at 5-8.

that the August 5 Order erred in abandoning the Commission's established policy under *West Texas Utilities Co.*¹⁷ that proposed rates should be suspended for the full five-month period, beginning on the proposed effective date, where preliminary analysis indicates that more than 10 percent of the proposed rate increase is excessive.¹⁸ According to Las Vegas Power, the Commission failed to identify any harsh and inequitable results meriting departure from the maximum suspension policy in *West Texas*.¹⁹

B. Commission Determination

9. The Commission will deny Las Vegas Power's request for rehearing. The Commission has broad discretion to determine the length of the suspension period.²⁰ While the determination of suspension periods must in some way be related to the Commission's "interim or ultimate inquiries,"²¹ suspension decisions are made early in the proceeding, based on preliminary information, and must necessarily reflect "a rough first cut review."²² In any event, the Commission properly exercised its discretion in this case, because a nominal suspension, in conjunction with waiver of the 120-day advance notice filing requirement, will permit the Single-System Rates to become effective at the time that the ON Line goes into service, and therefore will prevent NV Energy from charging its existing zonal rates for single-system service. We find that to do otherwise here would produce an inequitable result. To the extent that the Single-System Rates are determined to be excessive, customers are protected by the refund effective date.

¹⁷ 18 FERC ¶ 61,189, at 61,375 (1982) (*West Texas*).

¹⁸ Las Vegas Power Rehearing Request at 8-11.

¹⁹ *Id.* at 9.

²⁰ *See, e.g., Southern Co. Servs., Inc.*, 99 FERC ¶ 61,204, at PP 3, 21 (2002) (explaining that the Commission "has considerable discretion in determining the length of the suspension period, based upon its evaluation of the circumstances of a particular case," and "generally will not reconsider its decision regarding the length of the suspension period"); *Equitrans, L.P.*, 111 FERC ¶ 61,112, at P 23 (2005); *Cent. Hudson Gas & Elec. Corp.*, 90 FERC ¶ 61,042, at 61,196 (2000).

²¹ *Exxon Pipeline Co. v. FERC*, 725 F.2d 1467, 1473 (D.C. Cir. 1984). *See also, Northeast Energy Assocs. v. FERC*, 158 F.3d 150, 154 (D.C. Cir. 1998).

²² *Southern California Edison Co.*, 20 FERC ¶ 61,129, at 61,285 (1982). *Accord, e.g., Appalachian Power Co.*, 59 FERC ¶ 61,313, at 62,158 (1992); *Midwest Indep. Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,174, at P 146 (2010).

The Commission orders:

(A) The request for rehearing filed by NV Energy is hereby granted, as discussed in the body of this order.

(B) The request for rehearing filed by Las Vegas Power is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.