

147 FERC ¶ 61,137
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Sierra Pacific Power Company
Nevada Power Company

Docket Nos. ER10-2474-005
ER10-2475-005
ER10-2474-007
ER10-2475-007

ORDER ACCEPTING NOTICE OF CHANGE IN STATUS
AND TARIFF AMENDMENTS

(Issued May 20, 2014)

1. In this order, the Commission accepts a notice of change in status filed by Nevada Power Company d/b/a NV Energy (Nevada Power) and Sierra Pacific Power Company d/b/a NV Energy (Sierra Pacific, and collectively, Applicants)¹ reporting the acquisition of interest in a generation facility, Unit No. 4 of the Reid Gardner Station (Unit No. 4), and the prospective commencement of operation of a transmission facility, the One Nevada Transmission Line (ON Line). Additionally, as discussed below, the Commission recognizes the consolidation of the Sierra Pacific and Nevada Power balancing authority areas as combined into the Nevada Power (NEVP) balancing authority area. The Commission also designates the new relevant geographic region for

¹ See *NV Energy, Inc.*, 145 FERC ¶ 61,170 (2013) (authorizing the internal corporate reorganization under which Sierra Pacific will merge into Nevada Power and Nevada Power will be the surviving corporation). On April 14, 2014, Applicants notified the Commission that they filed a motion with the Public Utilities Commission of Nevada on March 14, 2014 to withdraw its request for approval of the reorganization pending before the Nevada Commission. See Applicants Informational Filing, Docket No. EC13-113-000 (April 14, 2014) (representing that, if the Public Utilities Commission of Nevada grants their request, the withdrawal will permit the Applicants to submit a new filing for approval of the internal corporate reorganization in the fourth quarter of 2014). For purposes of this order, we will refer to Sierra Pacific and Nevada Power as separate entities.

the consolidated NEVP balancing authority area as the Northwest region. Lastly, the Commission also accepts Applicants' proposed revisions to their market-based rate tariffs to reflect the consolidated NEVP balancing authority area and the requirements of Order No. 784,² effective February 3, 2014, as requested.

I. Background

2. On November 4, 2013, Applicants submitted a notice of change in status (November 4 Filing) stating that Nevada Power acquired from the California Department of Water Resources a 67.8 percent ownership interest in the 257 megawatt (MW) Unit No. 4 located in Nevada.³ Additionally, Applicants prospectively notified the Commission that the north-to-south, 570-mile, 500 kV, ON Line located in Nevada would be energized on January 1, 2014. Applicants state that the ON Line will provide the first direct interconnection of the Applicants' balancing authority areas as the new, single NEVP balancing authority area. The Applicants represent that the ON Line will enable the Applicants to jointly dispatch their generation to serve retail customers and will more efficiently facilitate compliance with Nevada's renewable energy portfolio standards. Further, Applicants state that they will continue to provide only cost-based power sales to eligible customers within the NEVP balancing authority area. Applicants represent that the acquisition of Unit No. 4 and the energization of the ON Line do not change the Commission's previous grant of market-based rate authority, excluding the Sierra Pacific and Nevada Power balancing authority areas.

3. Applicants represent that they are public utilities that own approximately 6,700 MW of generating capacity in the NEVP balancing authority area, and purchase approximately 2,700 MW of additional generating capacity. Applicants state they are

² *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, Order No. 784, FERC Stats. & Regs. ¶ 31,349 (2013), *order on clarification*, Order No. 784-A, 146 FERC ¶ 61,114 (2014). We note that Applicants are not being granted authority to make third-party sales of operating reserves to a public utility that is purchasing ancillary services to satisfy its own open access transmission tariff requirements (OATT) to offer ancillary services to its own customers. If Applicants seek such authority, they must make the required showing and receive Commission authorization prior to making such sales. *See id.* PP 200-202.

³ The acquisition was authorized by the Commission in *Nev. Power Co.*, 145 FERC ¶ 61,022 (2013) and consummated on October 22, 2013.

both wholly owned subsidiaries of NV Energy, Inc. (NV Energy).⁴ Applicants state that the Commission granted them the authority to sell electric energy, capacity, and ancillary services at market-based rates excluding market-based sales to customers located within the Nevada Power and Sierra Pacific balancing authority areas.⁵ Applicants represent that they offer retail and wholesale transmission service throughout Nevada. Applicants also state that Nevada Power's service territory in southern Nevada includes the cities of Las Vegas, North Las Vegas and Henderson and that Sierra Pacific's service territory in western, central and northeastern Nevada, includes the cities of Reno, Sparks, Carson City, and Elko. Applicants state that they provide service on their respective transmission facilities pursuant to the terms of their Commission-approved OATT.⁶ Applicants further note that the Commission has conditionally accepted, in part, a revised OATT to reflect a single-system transmission service rate following the in-service date of the ON Line.⁷

4. On March 4, 2014, Applicants notified the Commission that on February 3, 2014, the North American Electric Reliability Corporation (NERC) notified Applicants that NERC approved the consolidation of the Nevada Power and Sierra Pacific balancing authority areas and confirmed Nevada Power's ability to continue to perform the balancing authority function for the NEVP balancing authority area.⁸

5. In addition, Applicants proposed revisions to their market-based rate tariffs, pursuant to section 205 of the FPA,⁹ to reflect the consolidation of the Applicants'

⁴ See *Silver Merger Sub, Inc.*, 145 FERC ¶ 61,261 (2013) (authorizing the merger of Silver Merger Sub, Inc. with and into NV Energy, resulting in NV Energy becoming a wholly owned subsidiary of MidAmerican Energy Holdings Company (MidAmerican)).

⁵ November 4, 2013 Filing at 3-4 (November 4 Filing) (citing *Sierra Pac. Power Co.*, 95 FERC ¶ 61,193, *reh'g dismissed*, 96 FERC ¶ 61,050 (2001)).

⁶ *Id.* at 9 (citing *NV Energy, Inc.*, Docket No. ER10-3151-000 (Oct. 27, 2010) (delegated letter order)).

⁷ *Id.* at 9-10 (citing *NV Energy, Inc.* 144 FERC ¶ 61,105, at P 65 (2013)).

⁸ March 4, 2014 Filing at 1 (March 4 Filing).

⁹ 16 U.S.C. § 824d (2012).

balancing authority areas into NEVP and to include provisions in compliance with Order No. 784.¹⁰

II. Notice of Filings

6. Notices of Applicants' filings were published in the *Federal Register*,¹¹ with interventions and comments due on or before March 25, 2014. None was filed.

III. Discussion

A. Balancing Authority Area

7. In Order No. 697, the Commission recognizes that a balancing authority area is a collection of generation, transmission, and loads within the metered boundaries of a balancing authority, and the balancing authority maintains load/resource balance within this area.¹² A balancing authority area is physically defined with metered boundaries. Every generator, transmission facility, and end-use customer must be in a balancing authority area.¹³ With regard to traditional markets, the default relevant geographic market is the balancing authority area where the seller is physically located and the markets directly interconnected to the seller's balancing authority area (first-tier balancing authority area markets).¹⁴

¹⁰ March 4 Filing at 1. See Order No. 784, FERC Stats. & Regs. ¶ 31,349 at PP 200-202.

¹¹ 78 Fed. Reg. 68,431 (2013); 79 Fed. Reg. 14,243 (2014).

¹² *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 251, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012) (citing "Glossary of Terms Used in Reliability Standards," at <http://www.ferc.gov/industries/electric/indus-act/reliability/standards.asp>).

¹³ *Id.*

¹⁴ *Id.* P 232.

8. The responsibilities of a balancing authority include the following: (1) match, at all times, the power output of the generators within the balancing authority area and capacity and energy purchased from or sold to entities outside the balancing authority area, with the load within the balancing authority area in compliance with the Reliability Standards; (2) maintain scheduled interchange and control the impact of interchange ramping rates with other balancing authority areas, in compliance with Reliability Standards; (3) have available sufficient generating capacity, and Demand Side Management to maintain Contingency Reserves in compliance with Reliability Standards; and (4) have available sufficient generating capacity, Demand Side Management, and frequency response to maintain Regulating Reserves and Operating Reserves in compliance with Reliability Standards.¹⁵ Applicants represent that Nevada Power will perform the balancing authority function in the consolidated NEVP balancing authority area.

9. Based on Applicants' representations that Nevada Power will be performing the balancing authority functions and that NERC approved the consolidation of the Nevada Power and Sierra Pacific balancing authority areas, the Commission will recognize NEVP as a consolidated balancing authority area.

10. In Order No. 697, the Commission adopted a regional review of updated market power analyses and divided the country into six regions, the Northeast, Southeast, Central, Southwest Power Pool, Southwest, and Northwest regions, in which sellers would be located.¹⁶ Previously, the Sierra Pacific and Nevada Power balancing authority areas were located in the Northwest and Southwest regions, respectively.

11. In light of NERC's approval of the Sierra Pacific and Nevada Power balancing authority areas' consolidation, as well as the location of Applicants' and their affiliates' generation and transmission assets in the Northwest region subsequent to the MidAmerican merger,¹⁷ the Commission designates the relevant region for the NEVP balancing authority area as the Northwest region.

12. The Commission directs Applicants to submit a compliance filing, within 30 days from the date of this order, revising the limitations and exemptions section of their market-based rate tariffs to include a citation to this order and to reflect that Applicants'

¹⁵ *Id.* P 251 (citing Approved Reliability Standards, at <http://www.ferc.gov/industries/electric/indus-act/reliability/standards.asp>).

¹⁶ *Id.* at app. D.

¹⁷ *See supra* note 4.

market-based rate authorization excludes market-based sales to customers located within the NEVP balancing authority area.

B. Market-Based Rate Authorization

13. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.¹⁸

1. Horizontal Market Power

14. The Commission has adopted two indicative screens for assessing horizontal market power: the pivotal supplier screen and the wholesale market share screen.¹⁹ The Commission has stated that passage of both screens establishes a rebuttable presumption that the applicant does not possess horizontal market power, while failure of either screen creates a rebuttable presumption that the applicant has horizontal market power.²⁰

15. Applicants have prepared the pivotal supplier and wholesale market share screens for the California Independent System Operator (CAISO) market, Los Angeles Department of Water and Power (LADWP), PacifiCorp-East, Bonneville Power Administration, Idaho Power Company (Idaho Power), and Western Area Power Administration – Lower Colorado balancing authority areas (WALC) balancing authority areas, which are all first-tier to NEVP.²¹ The pivotal supplier and wholesale market share screens for those areas were prepared consistent with the requirements of Order No. 697 when the Commission-accepted Simultaneous Transmission Import Limit (SIL) study results are taken into consideration for the CAISO market and the LADWP and Idaho Power balancing authority areas.²²

¹⁸ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 62, 399, 408, 440.

¹⁹ *Id.* P 62.

²⁰ *Id.* PP 33, 62-63.

²¹ Applicants explain that because they are not authorized to make market-based rate sales in the NEVP balancing authority area, and are not seeking market-based rate authority in the NEVP balancing authority area, they are not relying on market power screens for that area, which they state they have included for informational purposes.

²² *See Pub. Serv. Co. of N.M.*, 146 FERC ¶ 61,126, at P 2 & app. A (2014); *see also Puget Sound Energy, Inc.*, 147 FERC ¶ 61,021, at P 2 & app. A (2014) (collectively,

(continued...)

16. Applicants demonstrate that they pass both the pivotal supplier and the wholesale market share screens for the Bonneville Power Administration, PacifiCorp-East, and WALC balancing authority areas.²³ Further, Applicants demonstrate that they pass both the pivotal supplier and wholesale market share screens in the CAISO market and in the LADWP and Idaho Power balancing authority areas when the Commission-accepted SIL values for those areas are applied. Accordingly, we find that Applicants' submittals satisfy the Commission's requirements for market-based rate authority, regarding horizontal market power, excluding the NEVP balancing authority area.

2. Vertical Market Power

17. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved OATT on file or that the seller has received waiver of the OATT requirement before granting a seller market-based rate authorization.²⁴

18. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²⁵ The Commission requires a seller to provide a description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).²⁶ The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.²⁷ The Commission adopted a

SIL Study Orders). In the SIL Study Orders, the Commission stated that it will use these SIL values when examining updated market power analyses for the Southwest and Northwest regions, respectively.

²³ At the time of Applicants' filing, MidAmerican and PacifiCorp were not yet affiliates of Applicants, and thus were not treated as such in our analysis. *See supra* note 4; *see also* PacifiCorp, Notification of Change in Status of MidAmerican MBR Sellers, Docket No. ER10-3246-003 (filed Jan. 2, 2014).

²⁴ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

²⁵ *Id.* P 440.

²⁶ Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers, but will allow intervenors to demonstrate otherwise.²⁸

19. Applicants represent that they own and operate various transmission facilities in Nevada and California, including the ON Line facility. Applicants state that service is provided over these transmission facilities pursuant to their Commission-approved OATT.²⁹

20. Regarding other barriers to entry, Applicants represent that the acquisition of the Unit 4 capacity and consolidation of the balancing authority areas following the energization of the ON Line will not involve any changes to the Applicants' ownership or control of intrastate natural gas transportation, intrastate natural gas storage or distribution facilities; sites for generation capacity development; and sources of physical coal supplies and ownership of or control over who may access transportation of coal supplies such as barges and rail cars that would allow them to erect barriers to entry. Applicants represent that Sierra Pacific's ownership and operation of local natural gas distribution facilities and propane facilities that are used to serve retail customers in its franchised service area do not raise any market entry concerns.³⁰ Applicants represent that they do not own or control either interstate or intrastate natural gas pipelines or storage facilities. Applicants represent that they do not own or control physical coal supply sources or have control over who may access transportation of coal supplies. Applicants also represent that they have long-term contracts for coal supply, but that they do not create a barrier to entry. Finally, consistent with Order No. 697, Applicants affirmatively state that they have not and will not erect barriers to entry into the relevant market.³¹

²⁸ *Id.* P 446.

²⁹ *See supra* note 6. Applicants further note that the Commission has conditionally accepted, in part, a revised OATT to reflect a single system transmission service rate following the in-service date of the ON Line, which occurred on January 1, 2014. November 4 Filing at 10 (citing *NV Energy, Inc.*, 144 FERC ¶ 61,105, at P 65 (2013)); March 4 Filing at 2.

³⁰ November 4 Filing at 10.

³¹ We interpret this statement to apply to Applicants and their affiliates, and our authorizations herein are predicated on Applicants complying with this commitment. *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

21. Based on Applicants' representations, we find that Applicants satisfy the Commission's requirements for market-based authorization regarding vertical market power.

22. Based on Applicants' satisfaction of the Commission's requirements for market-based authorization regarding horizontal and vertical market power, we will accept Applicants' notice of change in status.

C. Reporting Requirements

23. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rate authorization must electronically file an Electric Quarterly Report (EQR) with the Commission containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter.³² Public utilities must file EQRs no later than 30 days after the end of the reporting quarter.³³

³² *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit EQRs to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

³³ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2013). Failure to file an EQR (without an appropriate request for extension), or failure to report an agreement in an EQR, may result in forfeiture of market-based rate authority requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

24. Applicants must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.³⁴

25. In Order No. 697, the Commission created two categories of sellers.³⁵ Category 1 sellers are not required to file regularly scheduled updated market power analyses. Category 1 sellers are wholesale power marketers and wholesale power producers that own or control 500 MW or less of generation in aggregate per region; that do not own, operate, or control transmission facilities other than limited equipment necessary to connect individual generation facilities to the transmission grid (or have been granted waiver of the requirements of Order No. 888); that are not affiliated with anyone that owns, operates, or controls transmission facilities in the same region as the seller's generation assets; that are not affiliated with a franchised public utility in the same region as the seller's generation assets; and that do not raise other vertical market power issues.³⁶ Sellers that do not fall into Category 1 are designated as Category 2 sellers and are required to file updated market power analyses.³⁷

26. Applicants must file updated market power analyses for any region in which it is designated as a Category 2 seller in compliance with the regional reporting schedule adopted in Order No. 697.³⁸ The Commission also reserves the right to require an updated market power analysis at any time for any region.³⁹

³⁴ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2013).

³⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 848.

³⁶ 18 C.F.R. § 35.36(a) (2013).

³⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 850.

³⁸ *Id.* P 882.

³⁹ *Id.* P 853.

The Commission orders:

(A) Applicants' notice of change in status is hereby accepted for filing, as discussed in the body of this order.

(B) Applicants' market-based rate tariff revisions are hereby accepted for filing, effective February 3, 2014, as discussed in the body of this order.

(C) Applicants are hereby directed to submit a compliance filing, within 30 days from the date of this order, revising the limitations and exemptions section of their market-based rate tariffs and to reflect that Applicants' market-based rate authorization excludes market-based rate sales to customers located within the NEVP balancing authority area, as discussed in the body of this order.

(D) The relevant region for the NEVP balancing authority area is hereby designated as the Northwest region, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.