

152 FERC ¶ 61,029
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Nevada Power Company

Docket No. ER15-1727-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued July 14, 2015)

1. On May 15, 2015, Nevada Power Company (Nevada Power) filed proposed revisions to Schedule 7 (Long-Term Firm and Short-Term Firm Point-To-Point Transmission Service) of its Open Access Transmission Tariff (OATT) to provide a method for the distribution of any unreserved use penalty revenues collected from customers. In this order, we conditionally accept Nevada Power's proposed OATT revisions effective July 14, 2015, as requested, subject to Nevada Power making a compliance filing.

I. Background

2. In Order No. 890-A,¹ the Commission clarified the process for distributing operational penalties.² The Commission explained that, if a transmission provider elects to impose unreserved use penalties, it must submit to the Commission a tariff filing under section 205 of the Federal Power Act (FPA)³ stating the applicable unreserved use penalty rate. Also, each transmission provider must submit a one-time compliance filing under section 206 of the FPA⁴ stating the transmission provider's methodology for

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007) (Order No. 890), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on reh'g*, Order No. 890-D, 145 FERC ¶ 61,261 (2013).

² Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 472.

³ 16 U.S.C. § 824d (2012).

⁴ 16 U.S.C. § 824e (2012).

distributing revenues from unreserved use penalties. This one-time compliance filing can be submitted at any time prior to the first distribution of operational penalties.

3. Nevada Power, pursuant to section 206 of the FPA, is proposing a methodology for distribution of unreserved use penalty revenues. Nevada Power states that its currently-effective OATT includes an unreserved use penalty rate, but does not include provisions for distributing the revenues collected from unreserved use penalties. Therefore, Nevada Power proposes to revise Schedule 7 to allocate unreserved use penalty revenues on a monthly basis among Qualified Transmission Customers⁵ in proportion to their respective Qualified Transmission Loads⁶ for such hours in which unreserved use penalties are assessed. Nevada Power explains that unreserved use penalty revenue refers to amounts collected for unreserved use above the base firm point-to-point transmission service charge for the transmission service provided.⁷

4. Nevada Power asserts that the Commission should accept this proposal because it is modeled on its existing Schedule 4 provisions for the distribution of energy imbalance penalty revenues, and because the distribution methodology is similar to others on file with the Commission.⁸

II. Notice and Responsive Pleadings

5. Notice of the Nevada Power's filing was published in the *Federal Register*, 80 Fed. Reg. 29,319 (2015), with interventions and protests due on or before June 5, 2015. Powerex filed a motion to intervene and comments. On June 22, 2015, Nevada

⁵ As originally filed, Qualified Transmission Customer was defined as each of the following types of customers who did not incur unreserved use penalties for the hours in question: (1) long-term firm point-to-point transmission service customers; (2) network customers; or (3) transmission providers on behalf of their native load customers.

⁶ As originally filed, Qualified Transmission Load was defined as the following with respect to each Qualified Transmission Customer: (1) for each long-term firm point-to-point transmission service customer, its reserved capacity applicable to such period; (2) for each network customer, its load for such period; or (3) for the transmission provider on behalf of its native load customers, the load in such period.

⁷ Nevada Power May 15 Filing at 3-4.

⁸ *Id.* at 4 (citing *Florida Power & Light Co.*, 127 FERC ¶ 61,115 (2009) and *Big Rivers Electric Corp.*, 128 FERC ¶ 61,264 (2009)).

Power filed a motion for leave to answer and an answer. On June 23, 2015, Powerex filed comments in support of Nevada Power's answer.

6. In its comments, Powerex requests that the Commission direct NV Energy to revise its proposed definitions of Qualified Transmission Customer and Qualified Transmission Load to better accord with Commission policy and precedent. Powerex asserts that, in Order No. 890, the Commission endorsed the use of clear and consistent unreserved use penalty provisions, but noted that transmission providers would also be required "to develop a mechanism for crediting such revenues to *all* non-offending transmission customers...."⁹ Powerex further notes that the Commission has expressly reaffirmed this requirement in *Puget Sound Energy, Inc.* stating that, "[i]n reaching that determination, we specifically rejected a proposal to exclude short-term firm and non-firm transmission customers from receiving unreserved use penalty revenues."¹⁰ Because Nevada Power does not propose to include *all* non-offending customers, including short-term firm and non-firm point-to-point transmission customers, Powerex believes that the Commission should order NV Energy to modify its proposal to comply with Commission policy.¹¹

7. In its answer, Nevada Power represents that it has reached an agreement with Powerex regarding the proposed OATT language. Nevada Power offers to adjust the proposed changes to Schedule 7 of its OATT to include all non-offending transmission customers, so that it now applies to: (1) all firm and non-firm point-to-point transmission service customers, (2) network customers, and (3) the transmission provider on behalf of its native load customers.¹²

8. Nevada Power states that, because of the irregular nature of non-firm transmission usage, making this change might lead to an administratively burdensome dispersal mechanism. Therefore, in order to efficiently address the potential administrative burden of distributing these amounts to non-firm customers, Nevada Power will allocate penalty revenues, plus interest, to non-offending customers on a monthly, instead of hourly basis. Additionally, the allocation will not be triggered until the accumulated unreserved use

⁹ Powerex June 5 Comments at 6 (quoting Order No. 890 at P 727 (emphasis added)).

¹⁰ *Id.* at 6-7 (quoting *Puget Sound Energy, Inc.*, 121 FERC ¶ 61,230 at P 19 (2007)).

¹¹ *Id.* at 7-8.

¹² Nevada Power Answer at 2.

penalty revenue reaches \$100,000. However, Nevada Power states that, if no distribution has been made by the end of each calendar year, a distribution will be made on or before April 1st of the following calendar year.¹³

9. In its supporting comments, Powerex states that it has worked with Nevada Power to resolve the issues raised in its initial comments and that Powerex supports the tariff revisions included in Nevada Power's answer.¹⁴

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), Powerex's timely, unopposed motion to intervene serves to make it a party to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept Nevada Power's answer and Powerex's supporting comments because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

12. We find that Nevada Power's revised proposal is reasonable and in compliance with Order No. 890. Nevada Power proposes revisions to Schedule 7 of its OATT in order to distribute all unreserved use penalty revenues that it collects to all non-offending transmission customers, as required by Order No. 890.¹⁵ In Order No. 890-A, the Commission clarified that it may be administratively difficult for some transmission providers to distribute small amounts of operational penalty revenues. The Commission therefore stated that transmission providers may propose a reasonable minimum threshold

¹³ *Id.* at 3 (citing *Florida Power & Light Co.*, 127 FERC ¶ 61,115, at P 19 (2009) (approving a monthly settlement mechanism); *Entergy Servs., Inc.*, 124 FERC ¶ 61,148, at P 42 (2008) (*Entergy*) which approved a \$100,000 threshold).

¹⁴ Powerex June 23 Comments at 2.

¹⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 859.

to trigger a distribution.¹⁶ We find that Nevada Power's \$100,000 threshold for distributing unreserved use penalty revenues is reasonable.¹⁷

13. Nevada Power states that it will make a compliance filing to create an updated tariff record with the revised Schedule 7 proposed in its answer.¹⁸ Therefore, we will direct Nevada Power to submit a compliance filing with a revised Schedule 7 within 15 days of the date of this order.

The Commission orders:

(A) Nevada Power's revisions to Schedule 7 of its OATT are hereby conditionally accepted, effective July 14, 2015, as discussed in the body of this order.

(B) Nevada Power is hereby directed to make a compliance filing within 15 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁶ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 475.

¹⁷ See, e.g., *Carolina Power and Light Co.*, 103 FERC ¶ 61,209, at P 35 (2003); *Entergy*, 124 FERC ¶ 61,148 at P 42.

¹⁸ The revised Schedule 7 included in Nevada Power's answer contains a typographical error. Specifically, section 7(8)(a) states "under this Section 7(8) fur such month" and should state "under this Section 7(8) for such month." We expect this error to be corrected in the compliance filing.