

154 FERC ¶ 61,129  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

February 24, 2016

In Reply Refer To:  
Nevada Power Company  
Docket Nos. ER13-1860-000  
ER13-1860-001

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Attn: Joseph C. Hall, Esq.

Dear Mr. Cooper and Mr. Hall:

1. On October 1, 2015, you filed, in the above-referenced proceedings, a Settlement between Nevada Power Company d/b/a NV Energy (Nevada Power) and Cargill Power Markets, LLC (Cargill) (collectively, Settling Parties). As discussed below, the Settlement appears to be fair and reasonable and in the public interest, and is hereby approved.
2. The Settlement provides the terms and conditions under which Cargill will receive transmission service from Nevada Power, comprised of four separate Transmission Service Agreements (TSAs) totaling 225 MW of capacity, with each TSA possessing different points of receipt (POR) and points of delivery (POD).
3. On October 21, 2015, Commission Trial Staff filed comments in support of the Settlement. On October 30, 2015, Cargill submitted reply comments in support of the Settlement. Cargill also requested that the Commission provide guidance concerning the proper implementation of Article 3, in which Cargill and Nevada Power agree that the transmission service underlying the instant proceeding will be redirected on a long-term

firm basis from Cargill's original POR and POD to new PORs and PODs pursuant to the NV Energy Open Access Transmission Tariff (OATT). Cargill states that the clarification it seeks will be used to evaluate NV Energy's processing of its transmission queue when implementing the terms and conditions of the Settlement. Both Cargill's original service and its redirected service require available transfer capability (ATC) of the ON Line Project. Cargill further states that the revised PORs and PODs for Cargill's transmission service were implemented pursuant to the NV Energy OATT and that Section 22.2 of the NV Energy OATT governs the scope of a Long-Term Firm Point-to-Point transmission service customer's ability to redirect its transmission service to new PORs and PODs.

4. Cargill seeks guidance from the Commission on two questions related to the implementation of Article 3. First, Cargill seeks Commission guidance that capacity associated with Cargill's original requested transmission service—particularly as it requires the ON Line Project's transmission capacity—cannot be released until Cargill's redirected transmission service is accepted and confirmed on the NV Energy OASIS. Second, Cargill requests that the Commission clarify that, in a circumstance where both Cargill's original transmission service and redirected transmission service require the same capacity of the ON Line Project, confirmation of the redirected service results in such capacity of the ON Line Project being used to provide Cargill's redirected transmission service. Cargill comments that Commission guidance will assist the Settling Parties in evaluating the implementation of the Settlement because Cargill was initially informed there was insufficient capacity to grant Cargill's original 300 MW of requested transmission service. Cargill states that NV Energy has now granted transmission service to a subsequently queued customer whose transmission requests require capacity that Cargill had been informed was unavailable.

5. On November 4, 2015, Nevada Power submitted a response to Cargill's comments. Nevada Power responds that the Settlement provides Cargill with essentially an option to take up to 225 MW of transmission capacity in up to four TSAs, as explained in Articles 3.3 through 3.6 of the Settlement. Nevada Power states that the Settlement does not commit Cargill but provides it with the ability to take service under any, all or none of the TSAs at its discretion, after the Commission's approval of the Settlement. Nevada Power claims that Cargill interjects issues outside of the Settlement that do not need to be addressed as part of the approval of the Settlement.

6. On November 16, 2015, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.<sup>1</sup> On December 7, 2015, Cargill filed a request for expedited review and supplemental comments reiterating its request for guidance.

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<sup>1</sup> *Nevada Power Co.*, 153 FERC ¶ 63,014 (2015).

In response, on December 14, 2015, Nevada Power reiterated that Cargill's request for guidance is irrelevant to the Commission's approval of the Settlement.

7. We note that Cargill has filed comments in support of the Settlement but also seeks guidance regarding the implementation of Article 3 of the Settlement. Because Cargill's request for guidance relates to the implementation of the Settlement rather than the terms of the Settlement itself, which is the matter before us here, we find that Cargill's request for guidance regarding Article 3 is beyond the scope of the Settlement and does not prevent us from treating the Settlement as uncontested.

8. On January 28, 2016, Cargill requested that the Commission require that the Settlement be revised to reflect a new start date and stop date for the first five-year 50 MW increment of transmission service to be taken under the Settlement that was scheduled to commence on January 1, 2016. Cargill requests that this 50 MW of service begin on the second full month after an order approving the settlement and stop five years after the start date in order to maintain the reservation's eligibility for rollover rights.

9. On February 5, 2016, Nevada Power responded that, under the circumstances, it would be reasonable for the Commission's approval of the Settlement to acknowledge a delayed start date of the 50 MW TSA.<sup>2</sup> However, Nevada Power claims that Cargill's request that the start date commence two months after the Commission's approval is contrary to section 3.3 of the Settlement. Nevada Power requests that the Commission approve the Settlement by February 25, 2016 to provide Cargill with the agreed-upon, two business days to execute the Settlement. Nevada Power asks the Commission to recognize that the term of the 50 MW TSA may reflect a start date of March 1, 2016 and a stop date of March 1, 2021, consistent with the Settlement.

10. We expect the contracting parties to express clearly their intentions and not require the Commission to read into their agreements what is not spelled out there.<sup>3</sup> Here, the Settlement expressly provides for a January 1, 2016 start date, but both Settling Parties agree that it would be reasonable to delay the start of the Settlement from January 1, 2016 to a later date. However, the Settling Parties do not agree to the two month delay proposed by Cargill. Instead, Nevada Power supports a March 1, 2016 effective date. We find that, as compared to the January 1, 2016 effective date spelled out in the Settlement, the delayed March 1, 2016 effective date proposed by Nevada Power would benefit Cargill. Accordingly, we find that, if the Settling Parties do not want to be bound

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<sup>2</sup> Nevada Power February 5, 2016 Response at 2 (citing *Public Serv. Co. of New Mexico*, 147 FERC ¶ 61,184 (2014)).

<sup>3</sup> *Florida Power & Light Co.*, 67 FERC ¶ 61,141, at 61,396, n.11 (1994).

by the January 1, 2016 start date, then a March 1, 2016 effective date is a reasonable alternative to the January 1, 2016 effective date.

11. Pursuant to section 3.12 of the Settlement,

[t]he standard of review for any proposed changes sought by any Settling Party to the terms of this Settlement shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and *Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527 (2008), and the standard of review for any changes proposed by a non-party or the Commission acting sua sponte shall be the ordinary just and reasonable standard of review, not the public interest standard of review, see *Devon Power LLC*, 134 FERC ¶ 61,208, at P 10 (2011).

12. The Settlement resolves all issues in dispute in these proceedings. The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission’s approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

13. This letter terminates Docket Nos. ER13-1860-000 and ER13-1860-001.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.