

126 FERC ¶ 61,077
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Powerex Corp.

Docket No. TX09-1-000

FINAL ORDER DIRECTING
THE PROVISION OF TRANSMISSION SERVICE

(Issued January 29, 2009)

1. In this order, we grant the request of Powerex Corp. (Powerex) for an order directing Nevada Power Company (Nevada Power) to provide transmission service pursuant to section 211 of the Federal Power Act (FPA)¹ commencing on April 1, 2009.

Background

2. On August 11, 2008, Powerex submitted a request for transmission service to Nevada Power.² Nevada Power did not object to providing the requested transmission service, however, Nevada Power informed Powerex that it needs a Commission order directing Nevada Power to provide the requested transmission service pursuant to section 211 of the FPA in order to prevent the loss of tax-exempt status on its local furnishing bonds.³

¹ 16 U.S.C. § 824j (2006).

² Powerex November 5, 2008 Application at 1-2.

³ Sections 142(a)(8) and 142(f) of the Internal Revenue Code (IRS Code) of 1986 provide an exemption, for federal income tax purposes, for the interest on certain debt issued by a local government to provide financing for eligible facilities that are part of a system for the “local furnishing” of electric energy. “Local furnishing” of electric energy is defined as furnishing service “solely within the area consisting of (A) a city and 1 contiguous county, or (B) 2 contiguous counties.” 26 U.S.C. §§ 142(a)(8), 142(f)(1) (2006). The Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 (1992),

(continued...)

3. On November 5, 2008, Powerex filed the instant application. Powerex requests that the Commission require Nevada Power, pursuant to section 211 of the FPA, to provide the requested transmission service under the terms of section 5.2 of Nevada Power's Open Access Transmission Tariff (OATT).⁴ Powerex states that Nevada Power is willing to provide the requested transmission service and that it waives its rights to a prior request for service under section 213(a) of the FPA⁵ and to the issuance of a proposed order under section 212(c) of the FPA.⁶

amended section 142(f)(2)(A) of the IRS Code to preserve the tax-exempt status of interest on local furnishing bonds if other transmission services were provided pursuant to a Commission order issued under section 211 or section 213 of the FPA and the portion of the cost of the facilities used to provide the directed transmission service that is financed with tax-exempt bonds is not greater than the portion of the cost of the facility which is allocable to the local furnishing of electric energy.

⁴ In Order Nos. 888 and 888-A, the Commission recognized that open access transmission service might jeopardize the tax-exempt status of local furnishing bonds. Accordingly, the Commission required any public utility subject to Order No. 888 that had financed transmission facilities with local furnishing bonds to include in its tariff a provision that it will not contest the issuance of an order under section 211 of the FPA requiring the provision of such service and will, within ten days of receiving a written request by an applicant, file with the Commission a written waiver of its rights to a request for service from the applicant under section 213(a) of the FPA and to the issuance of a proposed order under section 212(c). *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 (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) (Order No. 888). This provision has been adopted in section 5.2 of Nevada Power's OATT. The revised *pro forma* tariff adopted in Order No. 890, as modified in Order Nos. 890-A and 890-B, did not revise section 5 of the Commission's *pro forma* tariff. *Preventing Undue Discrimination and Preference in Transmission Services*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification*, 123 FERC ¶ 61,299 (2008).

⁵ 16 U.S.C. § 824l (2006).

⁶ 16 U.S.C. § 824k (2006).

4. Notice of Powerex's filing was published in the *Federal Register*, 73 Fed. Reg. 67,865 (2008), with motions to intervene and protests due on or before December 5, 2008. None were filed.

Discussion

5. As discussed below, we find that Powerex has satisfied the requirements of sections 211 and 212 of the FPA.⁷

Jurisdiction

6. Under section 211(a) of the FPA, any electric utility, federal power marketing agency, or any other person generating electric energy for sale for resale may apply to the Commission for an order requiring a transmitting utility to provide transmission services to the applicant. As Powerex is an electric utility,⁸ it is eligible to request an order requiring Nevada Power to provide it with transmission services.

Good Faith Request

7. Because Nevada Power has waived its rights under sections 211 and 213 of the FPA to a request for service, and is willing to provide the transmission service requested by Powerex, compliance with this requirement is not necessary here.

Public Interest

8. Section 211(a) of the FPA provides that the Commission may issue an order directing transmission service if the order meets the requirements of section 212 of the FPA and would otherwise be in the public interest. In *Florida Municipal Power Agency v. Florida Power & Light Company*,⁹ the Commission determined that, as a general matter, the availability of transmission service enhances competition in power markets by increasing power supply options of buyers and sales options of sellers, and that this should result in lower costs to consumers. The same principles apply here. Accordingly,

⁷ See generally *Nevada Power Co.*, 110 FERC ¶ 61,029, at P 14-22 (2005) (discussing and applying the requirements).

⁸ See *Powerex Corp.*, 125 FERC ¶ 61,179, at P 5 (2008) ("Powerex is authorized by the Commission to make wholesale energy, capacity, and ancillary service sales in the United States").

⁹ 65 FERC ¶ 61,125, *reh'g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *order on reh'g*, 74 FERC ¶ 61,006 (1996), *order on reh'g*, 96 FERC ¶ 61,130 (2001).

we find that the public interest will be served by directing Nevada Power to provide the requested transmission service to Powerex.

Reliability

9. Section 211(b) of the FPA precludes a transmission order that would unreasonably impair the continued reliability of the affected electric systems. We find that ordering the requested transmission service will not unreasonably impair the continued reliability of the affected electric systems.

Effect on Contracts or Rate Schedules

10. Section 211(c)(2) of the FPA provides that no order may be issued under section 211 that requires the transmitting utility subject to the order to transmit, during any period, an amount of electric energy that replaces any amount of electric energy that is required to be provided to the applicant pursuant to a contract during such period or that the utility subject to the order currently provides to the applicant pursuant to a rate schedule on file with the Commission. Powerex states that Nevada Power is not currently selling to Powerex the energy that is to be shipped under the transmission service agreements. Therefore, section 211(c)(2) does not preclude an order for transmission service in this case.

Rates

11. Section 212(a) of the FPA requires that the transmitting utility subject to an order under section 211 provide wholesale transmission services at rates, charges, terms and conditions which permit the recovery by such utility of all the costs incurred in connection with the transmission services and necessary associated services. Section 212(a) further provides, to the extent practicable, for recovery of such costs from the applicant for such order and not from transmitting utility's existing wholesale, retail, and transmission customers. Powerex states that the order requested here would not shift costs to other customers because the transmission service will be provided under the rates, terms, and conditions of Nevada Power's OATT. We find that this satisfies the requirements of section 212(a).

Applicability

12. An order under section 211 of the FPA cannot be made effective prior to the date of a final Commission order.¹⁰ As Nevada Power has waived its rights to a Proposed Order, this order is a Final Order. Therefore, we will grant Powerex's request to direct

¹⁰ See *Nevada Power Co.*, 110 FERC ¶ 61,029, at P 11-13 (2005).

Nevada Power to provide the requested transmission service, commencing on April 1, 2009.

The Commission orders:

(A) Powerex's request for an order directing transmission service is hereby granted.

(B) Nevada Power is hereby directed, pursuant to section 211 of the FPA, to provide the requested transmission service to Powerex.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.