

133 FERC ¶ 61,166
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Nevada Power Company, Sierra Pacific Power
Company, and Great Basin Transmission, LLC

Docket Nos. ER10-3317-000

Sierra Pacific Power Company

ER10-3332-000

ORDER ACCEPTING TRANSMISSION USE AND CAPACITY EXCHANGE
AGREEMENT

(Issued November 19, 2010)

1. On September 30, 2010, Nevada Power Company (Nevada Power), Sierra Pacific Power Company (Sierra Pacific),¹ (together the NVE Parties) and Great Basin Transmission, LLC (Great Basin, and together with the NVE Parties, the Parties) filed, pursuant to section 205(c) of the Federal Power Act (FPA)² and Part 35 of the Commission's regulations,³ a Transmission Use and Capacity Exchange Agreement (TUA).⁴ The TUA sets forth, among other things, the Parties' respective rights regarding ownership and capacity entitlements for a proposed 570-mile, 500 kV alternating current transmission line that will run from southern Idaho to southern Nevada (Transmission Line). As discussed below, we accept the TUA and the TUA Concurrence.

¹ Nevada Power and Sierra Pacific are both doing business as NV Energy, Inc. (NV Energy).

² 16 U.S.C. § 824d(c) (2006).

³ 18 C.F.R. Part 35 (2010).

⁴ On October 1, 2010, Sierra Pacific submitted a certificate of concurrence with Nevada Power's TUA (TUA Concurrence). *See* Sierra Pacific's October 1, 2010 Filing of Concurrence in Docket No. ER10-3332-000.

I. Background

2. NV Energy is an investor-owned public utility holding company that owns Nevada Power and Sierra Pacific. NV Energy has a service area of approximately 54,500 square miles and provides electricity to approximately 1.2 million electric customers in Nevada and parts of California through its wholly-owned subsidiaries, Nevada Power and Sierra Pacific.⁵
3. Nevada Power is an electric utility that serves approximately 827,000 residential, commercial and industrial customers over 4,500 square miles in southern Nevada. Nevada Power serves various wholesale customers pursuant to agreements on file with the Commission or in accordance with Nevada Power's market-based rate authority.⁶
4. Sierra Pacific is an electric utility that serves approximately 366,000 retail electric customers over 50,000 square miles in western, central, and northeastern Nevada, and northeastern California. Sierra Pacific also serves approximately 151,000 retail gas customers in Reno and Sparks, Nevada. Sierra Pacific operates the transmission system in northern Nevada, and is authorized to engage in market-based sales of energy outside of its balancing authority area.⁷
5. Great Basin is an indirect affiliate of LS Power Development, LLC.⁸ Great Basin is a special purpose company formed to develop, finance and construct certain portions of, and jointly own the Transmission Line.
6. In December 2009, the NVE Parties and Great Basin executed a Memorandum of Understanding (MOU) and term sheet setting forth general principles for the

⁵ Currently Nevada Power and Sierra Pacific have no direct transmission ties, do not exchange power, and operate as separate balancing authority areas. *See* September 30, 2010 Transmittal Letter in Docket No. ER10-3317-000 at 7 (Transmittal Letter).

⁶ *Id.* at 6.

⁷ *Id.* at 7.

⁸ Through affiliates and subsidiaries, LS Power develops, owns and operates independent power projects and transmission lines in the United States. LS Power has one independent power project in the region of the proposed project. Las Vegas Power Company, LC, an exempt wholesale generator, owns and operates a 540 MW natural gas-fired generating facility (the Apex Project) in Clark County, Nevada, which is interconnected to Nevada Power. Transmission for the Apex Project is provided under two, 20-year transmission service agreements under the NV Energy Tariff. *Id.* at 8.

development of a joint transmission project.⁹ After signing the MOU, the parties entered into commercial negotiations that culminated in the TUA. The joint transmission project is being developed in two phases consisting of three segments. In Phase 1, Great Basin in coordination with the NVE Parties will construct a 235-mile, 600 MW capacity, 500 kV, transmission line that will run from a proposed Robinson Station Summit Substation near Ely, Nevada to the Nevada Power's Harry Allen Substation near Las Vegas, Nevada (ON Line). ON Line is expected to enter service by the end of 2012 and will be the first direct interconnection between the Nevada Power and Sierra Pacific transmission systems. The Parties state that ON Line will provide Nevada Power with access to lower-cost renewable energy resources in northern Nevada to serve load centers such as Las Vegas. According to the Parties, ON Line will also enable the NVE Parties to dispatch their generation resources jointly to serve retail customers in northern and southern Nevada more efficiently, and further enable the NVE Parties to satisfy Nevada's Renewable Portfolio Standards.

7. In Phase 2, Great Basin is considering constructing and owning the Southwestern Intertie Project North (SWIP-N), a 275 mile 500 kV transmission line that would run from Idaho Power Company's Midpoint Substation to the Robinson Summit Substation. SWIP-N would interconnect with the NVE Parties' transmission systems (via ON Line) and the Idaho Power Company transmission system. In addition, Great Basin is also considering constructing and owning the Southern Nevada Intertie Project (SNIP), a 60-mile transmission line that would run from Nevada Power's existing Harry Allen Substation to the Eldorado Substation south of Las Vegas (together the SWIP-N and the SNIP are collectively referred to as the Great Basin Segments). SNIP would interconnect with the NVE Parties' transmission system and the California Independent System Operator's balancing authority area at the Eldorado Substation. When SWIP-N and SNIP commence service, the capacity of the Transmission Line (including ON Line, SNIP, and SWIP-N) is expected to increase from ON Line's capacity of 600 MW to approximately 2,000 MW. The Transmission Line will provide renewable generation projects in northern Nevada, Idaho, and beyond, additional means of access to the southern Nevada market, and upon completion of the Great Basin Segments, additional access to western markets, as well as providing the southern Nevada market with increased access to existing and new renewable generation resources within Nevada. The Great Basin Segments are expected to enter service by as early as 2013.¹⁰

8. On July 30, 2010, the Public Utilities Commission of Nevada (Nevada Commission) conditionally accepted the NVE Parties' request to construct ON Line

⁹ *Id.* at 2.

¹⁰ *Id.* at 9.

through a joint project with Great Basin.¹¹ On August 27, 2010 and September 9, 2010, respectively, the NVE Parties' filed the executed TUA and an explanatory filing regarding the terms of the executed TUA with the Nevada Commission. On October 14, 2010, the Nevada Commission granted final approval of the NVE Parties' proposal to proceed to construct ON Line.¹²

9. On November 5, 2010, the Commission accepted for filing by separate unpublished letter orders in Docket Nos. ER11-14-000¹³ and ER11-17-000,¹⁴ respectively: (1) an executed Transmission Interconnection Agreement between Sierra Power, Nevada Power and Great Basin that governs the interconnection of ON Line with Sierra Pacific's existing Falcon to Gonder 345 kV transmission line; and (2) an executed Transmission Interconnection Agreement between Nevada Power, Sierra Power, and Great Basin that governs the interconnection of ON Line with Nevada Power's existing Harry Allen Substation.

10. In the instant filing, the Parties request that the Commission accept the TUA and grant the other specific relief requested therein on an expedited basis, no later than November 19, 2010.¹⁵ The Parties explain that they seek to close on an initial transaction under the TUA by the end of 2010, which will require the Parties to coordinate with multiple entities, including the Nevada Commission and the Department of Energy (DOE). The Parties also state that the transactions contemplated under the TUA are dependent on DOE funding, which is a time-sensitive process that is dependent on favorable and timely Commission action. The Parties assert that securing approval as soon as possible will permit construction of the project to move forward immediately, which will create new job opportunities for the local work force.¹⁶

¹¹ *Id.* at 3 (referencing Order, Application of Nevada Power for approval of Triennial Integrated Resource Plan, Docket No. 10-02009 ¶ 416 (July 30, 2010)).

¹² Nevada Commission's October 15, 2010 Notice of Intervention in Docket No. ER10-3317-000 at 3.

¹³ *See* November 5, 2010 Letter Order in Docket No. ER11-14-000.

¹⁴ *See* November 5, 2010 Letter Order in Docket No. ER11-17-000.

¹⁵ Transmittal Letter at 2 and 27.

¹⁶ *Id.* at 27.

II. The TUA

11. The TUA sets forth the terms and conditions for the two phases of developing, constructing, operating, and owning the Transmission Line. The Parties state that the project carefully balances the capacity rights and cost responsibilities of the parties based on their respective anticipated investment in the two phases of the project. The Parties provide that currently Great Basin owns and is responsible for the development and construction of ON Line. Prior to the acquisition closing date, anticipated by year-end, Great Basin expects to transfer all of its ownership interest and assign its corresponding rights under the TUA to an affiliated assignee. On the acquisition closing date, Great Basin or its affiliated assignee will sell to the NVE Parties a 25 percent undivided interest in ON Line, whereupon, Nevada Power will have primary responsibility for completing construction¹⁷ and for the day-to-day management and operation of ON Line. After the acquisition closing date, the Parties note that Great Basin, Sierra Pacific, and Nevada Power will own ON Line as tenants-in-common.¹⁸

12. During Phase 1, i.e. after the acquisition closing date and prior to the commercial operation of either Great Basin Segment, the Parties represent that the NVE Parties will have rights to 100 percent of the ON Line capacity, which they will offer pursuant to the rates, terms, and conditions set forth in NV Energy's Open Access Transmission Tariff.¹⁹ In addition, the NVE Parties will operate and control ON Line, subject to the oversight of a Management Committee that will consist of one Great Basin representative and one representative from the NVE Parties. Specifically, the Management Committee has general oversight over the development, construction, ownership and management of ON Line. The duties of the Management Committee, for example, include approving a capital repair budget, but not the annual operating plan submitted to the Management Committee by the NVE Parties.²⁰

¹⁷ This includes primary responsibility for the overall management of all aspects of ON Line, the administration of the ON Line agreements, and all activities taken in connection with the development, construction, testing and start-up of ON Line prior to the commencement of operation. *See* TUA § 4.01.

¹⁸ Following the acquisition closing date, Great Basin will own 75 percent of ON Line, Sierra Pacific will own 1.25 percent of ON Line and Nevada Power will own 23.75 percent of ON Line. Transmittal Letter at 14 (citing TUA § 3.01).

¹⁹ The Parties state that both Nevada Power and Sierra Pacific provide open access transmission service under the NV Energy Operating Companies FERC Electric Tariff, Third Revised Volume No. 1 (NV Energy Tariff). *Id.* at 4 n.13.

²⁰ *See* TUA § 7.01.

13. The Parties state that Great Basin will receive, in exchange for its capacity rights, monthly payments from the NVE Parties during Phase 1. The Parties assert that the monthly payments are akin to lease payments because they are based on the construction and development costs incurred by Great Basin for ON Line. In addition, the NVE Parties will have the right to purchase all (but not less than all) of Great Basin's ON Line ownership interest, under certain circumstances, on the 15th, 30th, and 41st anniversaries of ON Line's commercial operation date. On the 41st anniversary, the NVE Parties will have the option to renew their capacity entitlements. The Parties explain that on the 41st anniversary if the NVE Parties do not exercise either option, their ON Line capacity rights will be reduced, and they will no longer be entitled to capacity over the Great Basin Segments.²¹

14. The Parties state that Great Basin will own 100 percent of the Great Basin Segments and that Great Basin will be solely responsible for the development and construction of those segments, as well as any costs and liabilities associated with their development. As part of Great Basin's development and construction of SNIP, under the TUA, Nevada Power grants Great Basin the option (SNIP Option) to acquire rights to certain Centennial Phase 3 facilities,²² described in the SNIP License and Sale Agreement, in exchange for the Option Exercise Payment. Specifically, the Parties explain that Great Basin will have the option (but not the obligation) to hang a portion of its wires required for the construction of the SNIP on Nevada Power's existing towers constructed as part of its Centennial Phase 3 project.²³ The TUA states that in exercising such rights, Great Basin shall not interfere with the operation of any of Nevada Power's facilities (except as may be agreed to by Nevada Power in writing in connection with the

²¹ Transmittal Letter at 14 (citing TUA § 3.02(e) and 3.09(a)).

²² See TUA § 6.05. The Centennial Phase 3 facilities are the transmission facilities owned by Nevada Power as part of its 500 kV transmission line extending from the Harry Allen Substation to the Mead Substation, located near Boulder City, Nevada. See SNIP License and Sale Agreement at § 1.01.

²³ Transmittal Letter at 17. Under section 2.01 of the SNIP License and Sale Agreement, Nevada Power grants to Great Basin an exclusive license to: (i) permit, install, construct, maintain, use and remove improvements in the open circuit position; and (ii) permit, maintain, use and remove transferred assets for the term of the agreement and to the extent of Nevada Power's right to grant such license. Under section 2.02 of the agreement, Nevada Power will also assign, transfer, convey, and deliver all of its right, title, and interest in assets under Schedule 1 of the agreement. These assets include 13 tubular steel, 500 kV dead-end poles and roughly 3 miles of 3-triple bundled wires. See SNIP License and Sale Agreement Schedule 1.

construction of the SNIP).²⁴ The TUA additionally states that all material aspects of elements to be constructed on Nevada Power facilities or in its right-of-way shall be subject to Nevada Power's prior review and written approval, not to be unreasonably withheld, conditioned, or delayed.²⁵ Finally, the TUA stipulates the conditions under which the SNIP Option shall expire and shall no longer be exercisable.²⁶

15. Upon commencement of Phase 2,²⁷ the NVE Parties and Great Basin will be allocated specified shares of transmission capacity that will vary depending on which Great Basin Segment first achieves commercial operation. The Parties explain that the allocation of capacity entitlements between the NVE Parties and Great Basin will be based on each party's relative contribution to the anticipated investment in the total costs of the Transmission Line. Specifically, the TUA provides that if SWIP-N is the first segment to achieve commercial operation, the NVE Parties' capacity entitlement shall be 45.2 percent of the combined capacity on SWIP-N and ON Line.²⁸ If SNIP achieves commercial operation before SWIP-N, the NVE Parties' capacity entitlement will be 70.4 percent of the combined capacity of SNIP and ON Line.²⁹ Once both Great Basin Segments are operational, the capacity of the Transmission Line is expected to exceed 2,000 MW and the NVE Parties and Great Basin will have capacity entitlements to 38 percent and 62 percent, respectively, of the Transmission Line.³⁰

16. The Parties explain that during Phase 2, the NVE Parties will retain operational control of the Transmission Line, and will continue to provide transmission service for their respective share of the capacity rights over the Transmission Line pursuant to the

²⁴ See TUA § 6.05(a)(ii)(A).

²⁵ See *id.* § 6.05(a)(ii)(B).

²⁶ See *id.* § 6.05.

²⁷ The Parties state that Phase 2 commences upon commercial operation of either of the Great Basin Segments. Transmittal Letter at 15.

²⁸ See TUA § 3.02(b)(i).

²⁹ See *id.* § 302(b)(ii).

³⁰ The NVE Parties will have the right to all capacity above 2,000 MW and up to 2,080 MW on the Transmission Line and Great Basin will have the right to all capacity above 2,080 MW and up to 2,100 MW. If the capacity of the line exceeds 2,100 MW, the NVE Parties will have the right to 38 percent of the capacity above 2,100 MW and Great Basin will be entitled to all capacity other than the capacity to which the NVE Parties are entitled. See *id.* at § 3.02(c)(i)-(iv).

NV Energy Tariff. The Parties assert that after Great Basin has filed for, and been granted, authority to sell transmission capacity at either cost-based, or negotiated, rates and the Commission has accepted its open access transmission tariff (OATT), Great Basin will offer its share of Transmission Line capacity pursuant to the terms of its Commission-approved OATT. The Parties state that Great Basin is not seeking authorization with respect to selling transmission capacity related to Phase 2 at this time.³¹

17. The Parties point out that the TUA apportions transmission losses between the ON Line portion of the Transmission Line and the Great Basin Segments. Specifically, the Parties explain that the TUA requires that transmission losses be allocated first to the NVE Parties' ON Line capacity entitlement, as if the NVE Parties had proceeded on a stand-alone basis to construct ON Line and the Great Basin Segments had not been built (i.e., the line load will be at 600 MW). These losses shall be borne solely by the NVE Parties. The Parties provide that all subsequent or additional transmission losses associated with the remaining capacity over ON Line and each of the Great Basin Segments will be allocated pro rata to the parties based on their usage.³²

18. The Parties request that the Commission accept the TUA under section 205 of the FPA.³³ Specifically, the Parties explain that the TUA is a contract that affects or relates to jurisdictional rates and services provided by a public utility, and that the TUA governs the joint ownership of ON Line and the exchange of capacity rights associated with the Transmission Line.

19. In addition, the TUA "requires the Parties to seek a determination from the Commission that the Parties will not be required to re-file the attached SNIP License [and Sale] Agreement [...] in order for Great Basin to exercise the SNIP Option provided under the TUA."³⁴ The Parties assert that because the TUA "includes the payment terms for the exercise of Great Basin's option, the Parties do not believe that the SNIP License [and Sale] Agreement is a jurisdictional service agreement that would be required to be filed with the Commission for review and acceptance upon execution."³⁵ The Parties

³¹ Transmittal Letter at 4.

³² *Id.* at 16.

³³ *Id.* at 18.

³⁴ *Id.* at 17.

³⁵ *Id.* at 18. A form SNIP License and Sale Agreement was filed. The TUA states that Great Basin and Nevada Power shall execute the SNIP License and Sale Agreement substantially in the attached form. *See* TUA § 6.05(b)(iv)(1).

further explain that the SNIP License and Sale Agreement simply provides the mechanism to effectuate the SNIP Option contained in section 6.05 of the TUA.

20. Great Basin requests that the Commission confirm that it will not “become a ‘public utility’ by virtue of entering into the TUA and the first set of transactions entered into thereunder.”³⁶ Great Basin further requests that “the Commission confirm that the [a]ffiliated [a]ssignee shall retain the same status as Great Basin to the extent the [a]ffiliated [a]ssignee is not otherwise a public utility.”³⁷ To the extent the Commission deems Great Basin and/or its affiliated assignee to be a “public utility” during Phase 1, Great Basin requests waiver for itself and its affiliated assignee of the Commission’s requirements to: (1) have an OATT on file; (2) establish an Open Access Same-Time Information System; (3) comply with the Standards of Conduct; and (4) adhere to certain Commission accounting, filing, and record-keeping requirements under Parts 35 and 141 of the Commission’s regulations.

21. The Parties assert that during Phase 1,³⁸ Great Basin is not a “public utility” under section 201 of the FPA, as it does not own, operate, or control Commission-jurisdictional facilities, nor does it provide jurisdictional services or engage in jurisdictional transactions.³⁹ The Parties state that during Phase 1, Great Basin will not operate ON Line or have any control or input over the commercial decision-making of the NVE Parties or the capacity sold or transmission service provided on ON Line. Moreover, during Phase 1, the Parties provide that Great Basin will not “be engaged, in any way, in the sale or transmission of electric energy,”⁴⁰ as the NVE Parties will: (1) exercise sole operational control over day-to-day management and all operating activities of ON Line;⁴¹ and (2) bear sole responsibility for all ON Line operating costs. Finally, the Parties state that “Great Basin’s limited oversight through the Management Committee does not give it any authority to exercise operational control during Phase 1, nor would it give Great Basin any authority to control, or even influence, in any way the

³⁶ Transmittal Letter at 2.

³⁷ *Id.* at 21 n.77.

³⁸ The Parties anticipate that Great Basin will become a public utility after the commencement of Phase 2, at which time the Parties represent that Great Basin will make all necessary section 205 filings. *Id.* at 22-23.

³⁹ *Id.* at 21.

⁴⁰ *Id.* at 22.

⁴¹ *Id.* This includes all matters related to metering, scheduling, compliance with reliability standards, outages, maintenance, and delivery and accounting of energy.

NVE Parties' performance of transmission functions such as decisions to grant or deny transmission service requests."⁴²

22. The Parties state that Great Basin may apply for Commission authorization to sell Phase 2 Transmission Line capacity at negotiated rates. Therefore, Great Basin requests "that the Commission confirm that the TUA and the transactions contemplated thereunder will not create an affiliate relationship, as the existence of such a relationship would endanger Great Basin's eligibility for negotiated rate authority."⁴³ The Parties assert that Great Basin and the NVE Parties do not satisfy the Commission's definition of "affiliate,"⁴⁴ as "there is no entity that exercises control over Great Basin and the NVE Parties or that owns or controls, directly or indirectly, more than 10 percent of the voting securities of Great Basin and the NVE Parties, or of their respective parent entities."⁴⁵

23. The Parties explain that Great Basin is not, and will not become, affiliated with the NVE Parties.⁴⁶ Specifically, the Parties assert that while the NVE Parties will operate the Transmission Line, it will be Great Basin, rather than the NVE Parties, that will provide transmission service under its OATT for its Phase 2 capacity. Moreover, the Parties state that although the Transmission Line will be located in the NVE Parties' service territories, Great Basin is a new entrant to the Nevada region transmission market, and has no affiliates with transmission assets located therein. Finally, the Parties point out that "the only entity that may charge negotiated rates will be Great Basin (for the future Phase 2 capacity), which . . . is not an affiliate of any transmission provider with which Great Basin's merchant project will interconnect, and Great Basin will bear the full financial risk for its investment in the Transmission Line."⁴⁷

24. The Parties assert that the TUA will enhance competition between Great Basin and the NVE Parties, and that there is no means by which Great Basin could receive any financial benefit based on the conduct of the NVE Parties, or vice versa.⁴⁸ In addition,

⁴² *Id.*

⁴³ *Id.* at 23.

⁴⁴ *Id.* (citing 18 C.F.R. § 35.36(a)(9) (2010)).

⁴⁵ *Id.*

⁴⁶ *Id.* at 24.

⁴⁷ *Id.*

⁴⁸ *Id.*

the Parties contend that competition between Great Basin and the NVE Parties will serve to discipline rates under Great Basin's OATT for Phase 2 capacity, as the NVE Parties provide transmission service at cost-based rates, and, under the NV Energy Tariff, they are obligated to expand their system to accommodate new transmission service requests.

III. Notice, Intervention, and Responsive Pleadings

25. Notice of the filing was published in the *Federal Register*, 75 Fed. Reg. 62,521 (2010), with comments and protests due on or before October 15, 2010. A motion to intervene was filed by the Nevada Bureau of Consumer Protection. A Notice of Intervention was filed by the Nevada Commission that urged the Commission to accept the TUA. The Nevada Commission specifically noted that the Parties joint proposal to construct ON Line will assist the NVE Parties in meeting Nevada's Renewable Portfolio Standard requirements, encourage renewable energy development and help deliver reliable and reasonably priced electricity to Nevada consumers.

26. Notice of the TUA Concurrence was published in the *Federal Register*, 75 Fed. Reg. 63,458 (2010), with comments and protests due on or before October 22, 2010. No motions or notices to intervene, comments, or protests were filed.

IV. Discussion

A. Procedural Matters

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notice of intervention and timely, unopposed motion to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

28. Based upon the facts presented, and in light of the Parties' commitment to make all necessary future Commission filings, we find, as described below, that the TUA and the TUA Concurrence are just and reasonable and accept them for filing, effective November 19, 2010, as requested. We find that the TUA sets forth an innovative proposal for the joint ownership and exchange of capacity rights associated with ON Line. The TUA is the product of a unique collaboration between the Parties that was negotiated at arm's length and divides the Parties' capacity rights and cost responsibilities based on each party's anticipated investment in the two phases of the Transmission Line. We find that this proposal provides several potential benefits to the region that are available only as a result of this joint development. First, during Phase 1, ON Line will enable a more efficient joint dispatch of the Nevada Power and Sierra Pacific transmission systems and load diversity. Second, Phase 2 will preserve the Phase 1 benefits and provide the additional benefit of adding significant transmission capacity to the region that will allow greater access to renewable resources.

29. Specifically, ON Line will establish the first direct transmission interconnection between Nevada Power's and Sierra Pacific's transmission systems and will:

(1) facilitate costs savings as the result of joint dispatch of generation resources by combining two separate balancing authority areas;⁴⁹ (2) increase operational and reliability benefits by pairing conventional generating resources to support renewable resources;⁵⁰ (3) provide renewable generation projects in northern and eastern Nevada, and Idaho a means to access load located in southern Nevada;⁵¹ and (4) help the Parties satisfy Nevada's Renewable Portfolio Standards.⁵² Upon completion of Phase 2, the Transmission Line will allow renewable generation projects increased access to western markets and will increase operating efficiencies and reliability for Nevada Power and Sierra Pacific.

30. Under the TUA, the NVE Parties will purchase a 25 percent ownership share of ON Line and during Phase 1, in exchange for a monthly lease payment, will be entitled to Great Basin's capacity rights associated with its 75 percent ownership share of ON Line.⁵³ The monthly lease payment is a formula that includes cost components designed to recover Great Basin's capitalized and upfront costs,⁵⁴ on-going expenses, capital repair costs, and operating costs on a levelized basis. The TUA further provides the NVE Parties with the right to purchase Great Basin's 75 percent ON Line ownership interest on the 15th, 30th, and 41st anniversaries of ON Line's commencement of service. We find that the cost formula and components are designed to recover Great Basin's costs for development and construction of ON Line and, therefore, appear just and reasonable.

31. We also find that the treatment of transmission line losses under the TUA holds the NVE Parties' ON Line wholesale and retail customers harmless with respect to the

⁴⁹ Nevada Power and Sierra Pacific anticipate future filings with the Commission to consolidate the balancing authority areas. *Id.* at 9.

⁵⁰ *Id.*

⁵¹ *Id.* at 10.

⁵² *Id.* at 4.

⁵³ In Phase 2, the NVE Parties' capacity rights will change depending on which Great Basin Segment reaches completion first. The capacity rights will be reallocated again when both Great Basin Segments are complete. *See supra* P 15.

⁵⁴ A capital recovery factor will be applied to those capitalized costs and up-front costs funded by Great Basin. *See* TUA § 3.06 and Schedule 2.

joint development of the project. Under the proposal, transmission line losses for 600 MW of transmission service will be calculated first on ON Line as if the NVE Parties proceeded to construct ON Line on a stand-alone basis. For those taking service over the Great Basin Segments, transmission customers will be allocated a pro rata share of the higher transmission loss factor attributable to the increased capacity of those segments.⁵⁵ The Parties represent that the transmission loss allocation was specifically designed to protect the NVE Parties' customers from the effects of jointly developing the project and that without this transmission allocation, the Parties suggest that the NVE Parties might not jointly develop the Transmission Line and instead only develop the ON Line segment. Given that the joint development proposal results in significantly greater benefits and that joint development is only possible if the Parties losses are allocated as agreed to by the Parties, we find that this proposed allocation of transmission losses is just and reasonable.

32. We agree that the form of SNIP License and Sale Agreement is not an agreement for jurisdictional service under section 205 of the FPA, but rather an option that Great Basin may elect to exercise in order to acquire rights to certain Nevada Power Centennial Phase 3 facilities. So long as the SNIP License and Sale Agreement does not materially change from the attached form,⁵⁶ we find that the parties are not obligated to re-file it under section 205 of the FPA if Great Basin exercises the SNIP Option under section 6.05 of the TUA. To the extent that the SNIP License and Sale Agreement effectuates a transfer of jurisdictional assets under section 203 of the FPA, we find that Nevada Power must obtain Commission authorization for the assets being transferred.

33. We find that based on the facts and circumstances presented here, neither Great Basin nor its affiliated assignee should be treated as a public utility through the end of Phase 1 by virtue of entering into the TUA and undertaking the activities contemplated by that agreement. Section 201(e) of the FPA defines a "public utility" as "any person who owns or operates facilities subject to the jurisdiction of the Commission. . . ."⁵⁷ Once energized, ON Line will constitute an electric transmission facility that is subject to Commission jurisdiction. Great Basin or its affiliated assignee will hold title to its portion of ON Line, and to that extent it would own a facility that is subject to the jurisdiction of the Commission. However, in a limited number of circumstances, the Commission has found ownership simply to be incidental to some other activity and

⁵⁵ See Transmittal Letter at 16 n.59.

⁵⁶ Section 6.05 of the TUA provides that "Great Basin and [Nevada Power] shall execute the SNIP License and Sale Agreement substantially in the form attached hereto. . . ."

⁵⁷ 16 U.S.C. § 824e.

concluded that finding the technical owner to be a public utility would raise form over substance and restrict the availability of services needed by operating companies that perform the traditional functions of a public utility.⁵⁸

34. The applicable precedent in which the Commission has found ownership to be incidental largely concerns the ownership of jurisdictional facilities by a lessor in a leveraged lease arrangement. Such cases typically involve an owner trustee who, acting on behalf of owner participant investors, acquires an interest in jurisdictional facilities which it then leases to another entity (the lessee) that will assume operational control over the facilities and use them to engage in jurisdictional transactions. The Commission has ruled that a leveraged lease is “essentially a financing device,”⁵⁹ and that the participation of an owner trustee or an owner participant in such an arrangement does not make it a public utility despite its ownership interest in facilities that are subject to Commission jurisdiction. The Commission has concluded that this result will apply where a party with an ownership interest will not operate or control the operation of the jurisdictional facilities, is not otherwise engaged in the business of selling or producing electric power, and has a principal business activity other than that of a public utility.⁶⁰ In reaching this conclusion, the Commission has found that it would be inconsistent with the FPA to label the financial participants in such transactions as public utilities, and subject them to the Commission’s jurisdiction, where these participants hold only equitable or legal title to the facilities, and are removed from the operation of the facilities and the sale or transmission of electric energy.⁶¹

35. In this case, Great Basin will function as a project developer and construction contractor that will sell to the NVE Parties a 25 percent ownership interest in ON Line, retain the remaining 75 percent ownership interest, and exchange in a manner similar to a lease the capacity rights associated with this interest to the NVE Parties in return for monthly payments. Great Basin will also transfer operational control over ON Line to the NVE Parties, and the Parties represent that Great Basin will not be in a position to influence the NVE Parties’ performance of transmission functions such as decisions to grant or deny transmission service requests. Great Basin also will not otherwise be

⁵⁸ See *Pacific Power & Light Co.*, 3 FERC ¶ 61,119 (1978).

⁵⁹ *Id.* at 61,337. See also *Baltimore Refuse Energy Systems Co.*, 40 FERC ¶ 61,366 (1987); *El Paso Electric Co.*, 36 FERC ¶ 61,055 (1986); *Montana Power Co.*, 35 FERC ¶ 61,084 (1985); *Public Service Company of New Mexico*, 33 FERC ¶ 61,325 (1985); *Portland General Electric Co.*, 33 FERC ¶ 61,459 (1985).

⁶⁰ *Pacific Power & Light Co.*, 3 FERC at 61,337-338.

⁶¹ *Id.* at 61,337.

engaged in the sale or transmission of electric energy during Phase 1. Based on the facts and circumstances as presented in the application, we find that Great Basin's function during Phase 1 is a combined one of project developer and investor, and that its ownership interest in ON Line is incidental to that function. Thus, consistent with the Commission's precedent, we find that, given the facts and circumstances presented, Great Basin is not a public utility and that it and its affiliated assignee will not become a public utility by virtue of entering into the TUA and engaging in the transactions contemplated for Phase 1. However, to promote transparency we require Great Basin to make an informational filing that states the identity of any affiliated assignee within 30 days from the date the identity of any affiliated assignee becomes available.⁶² In addition, we will require Great Basin and/or its affiliated assignee to make a filing to notify the Commission of any material change in facts within 30 days of any such change in facts.⁶³ Based upon these findings, we need not address the Parties' requests for waiver.

36. We also find that, based upon the facts presented, the transactions contemplated in the TUA do not create an affiliate relationship between Great Basin and the NVE Parties. The Parties state that there is no entity that exercises control over Great Basin and the NVE Parties or that owns or controls, directly or indirectly, more than 10 percent of the voting securities of Great Basin and the NVE Parties, or of their respective parent entities. They also state that Great Basin is not, and will not become, affiliated with the NVE Parties. They explain that there is no means by which Great Basin could receive any financial benefit based on the conduct of the NVE Parties, or vice versa. Finally, the Parties assert that Great Basin has no affiliates with transmission assets in the Nevada region. Based upon these facts, we find that the transactions contemplated under the TUA will not create an affiliate relationship between Great Basin and the NVE Parties. We will require the Parties to make a filing to notify the Commission of any material change in facts with respect to this matter within 30 days of any such change in facts.

37. Finally, we note that the Parties have committed to submit any new rates, or changes to existing rates for jurisdictional service through subsequent section 205 filings.⁶⁴ To the extent that the transactions contemplated under the TUA trigger

⁶² The Commission does not intend to issue public notices, accept comments, or issue orders on such informational filings.

⁶³ If the facts change so that Great Basin or its affiliated assignee operates ON Line in order to make sales of electric energy at wholesale or to engage in transmission of electric energy in interstate commerce, Great Basin or its affiliated assignee will become a public utility and will be required to make filings under section 205 of the FPA. *See, e.g., Unicom Investments, Inc.*, 91 FERC ¶ 61,109, at 61,387, n.9 (2000).

⁶⁴ *See e.g.* Transmittal Letter at 9 n.27, 13 n.41, 14, n.48, 15, 17, 18, 19, 20, 23.

jurisdictional events, the Parties must follow through with their commitment and make all necessary filings with the Commission.⁶⁵

The Commission orders:

(A) The TUA is hereby accepted, effective November 19, 2010, as discussed in the body of this order.

(B) The TUA Concurrence is hereby accepted, effective November 19, 2010, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶⁵ This is not limited to filings required by section 205 of the FPA.