

136 FERC ¶ 61,108
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.

PacifiCorp
Nevada Power Company

Docket Nos. ER11-3816-000
ER11-3839-000

ORDER ON UNEXECUTED AMENDED TRANSMISSION FACILITIES
AGREEMENTS, ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued August 16, 2011)

1. PacifiCorp and Nevada Power Company d/b/a NV Energy (Nevada Power) have each filed similar unexecuted versions of a transmission facilities agreement that revises a 1987 facilities agreement between the parties. Both parties' unexecuted agreements include provisions for the installation of a second transformer at Nevada Power's Harry Allen substation. While the parties generally agree to the majority of the revisions in the unexecuted agreements, they have reached an impasse regarding the cost treatment of the second transformer. Specifically, the parties disagree over whether or not the installation of the second transformer at Nevada Power's Harry Allen substation constitutes a network upgrade to Nevada Power's transmission system or only promotes the reliability of the PacifiCorp system.

2. In this order, the Commission will accept Nevada Power's unexecuted agreement, suspend it for a nominal period, effective June 20, 2011, subject to refund, and set it for hearing and settlement judge procedures. The Commission will reject PacifiCorp's unexecuted agreement and dismiss Docket No. ER11-3816-000, without prejudice. PacifiCorp may make its arguments and take positions at the hearing and settlement proceedings ordered herein. PacifiCorp's motion to consolidate these proceedings is moot and will be rejected.

I. Background

3. PacifiCorp and Nevada Power's transmission systems are interconnected by a 345 kV transmission line (PacifiCorp/Nevada Power Line). PacifiCorp and Nevada Power constructed, own, and operate the PacifiCorp/Nevada Power Line pursuant to the terms and conditions of a transmission facilities agreement dated August 17, 1987 (1987 Transmission Facilities Agreement).

4. PacifiCorp delivers electricity to customers in southwest Utah from resources primarily located in central Utah. Load growth in southwest Utah has led to the potential for overloading the existing Nevada Power transformer capacity at the Harry Allen substation. To address this concern, PacifiCorp submitted a request to Nevada Power in 2008 to study the addition of a second 345/230 kV transformer at the Harry Allen substation. The study concluded that the addition of the second transformer addressed PacifiCorp's reliability needs. Following the completion of the study, PacifiCorp and Nevada Power began negotiating to provide for the installation, ownership, and operation of the second transformer.

5. Upon receipt of PacifiCorp's request, Nevada Power provided PacifiCorp with a term sheet (2008 Term Sheet) outlining the principles that would apply to PacifiCorp's request because the request fell outside of the provisions of Nevada Power's Open Access Transmission Tariff (OATT). Nevada Power explains that the 2008 Term Sheet contains the following provisions: (1) PacifiCorp will have rights to 100 percent of the capacity provided by the second transformer; provided, however, that Nevada Power will have the right to use the capacity on a non-firm basis at no charge, (2) PacifiCorp will be 100 percent responsible for all costs, including any applicable taxes, relating to the design, engineering, procurement, construction, and installation of the facilities, and (3) PacifiCorp will be 100 percent responsible for any costs of ongoing operations and maintenance and/or capital costs for the facilities.¹

6. In March 2010, PacifiCorp and Nevada Power entered into an engineering, procurement, and construction agreement in which the parties agreed to amend the 1987 Transmission Facilities Agreement, based on the principles outlined in the 2008 Term Sheet, to address installation of the second transformer. In June 2011, installation of the second transformer was completed.

¹ Nevada Power Filing, Exhibit 5.

II. Instant Filings

7. On June 17, 2011, in Docket No. ER11-3816-000, PacifiCorp filed an unexecuted Second Amended and Restated Transmission Facilities Agreement (Second Amended TFA) between Nevada Power and PacifiCorp. Subsequently, on June 20, 2011, in Docket No. ER11-3839-000, Nevada Power submitted for filing an unexecuted Amended and Restated Transmission Facilities Agreement (Amended TFA) between Nevada Power and PacifiCorp. Both agreements revise the 1987 Transmission Facilities Agreement to include provisions for the installation of the second transformer at the Harry Allen substation. While the parties generally agree with the majority of the revisions proposed in both agreements, the parties disagree about the cost treatment of the second transformer.

8. PacifiCorp requests waiver of the Commission's prior notice and filing requirements to permit an effective date of June 17, 2011 for the Second Amended TFA. In support of its request, PacifiCorp explains that the installation of the second transformer is imminent, and cost responsibility must be assigned as soon as possible.² Nevada Power requests waiver of the Commission's prior notice and filing requirements to permit an effective date of June 20, 2011 for the Amended TFA. In support of its request, Nevada Power explains that the installation of the second transformer provides PacifiCorp adequate rights to address its reliability needs.³

A. PacifiCorp Filing (Docket No. ER11-3816-000)

9. In its filing, PacifiCorp states that the installation of the second transformer addresses a reliability need that benefits both parties' systems, along with the entire Western Interconnection. Therefore, PacifiCorp contends that Nevada Power's customers should pay for the costs associated with the installation of the second transformer as a network upgrade to Nevada Power's transmission system, as such term is defined in Nevada Power's OATT. Accordingly, PacifiCorp proposes to include provisions in its Second Amended TFA to reflect that (1) Nevada Power will own, operate, and maintain the second transformer, (2) the second transformer is installed as a component of Nevada Power's transmission system, and (3) the second transformer is a network upgrade. In addition, PacifiCorp states that since it financed 100 percent of the installation, it is entitled to reimbursement of its costs via transmission credits or a cash payment.

² PacifiCorp Transmittal Letter at 22.

³ Nevada Power Transmittal Letter at 5.

B. Nevada Power Filing (Docket No. ER11-3839-000)

10. In its filing, Nevada Power states that the installation of the second transformer addresses PacifiCorp's reliability needs only. Nevada Power also states that the Amended TFA reflects the principles agreed to by the parties in the 2008 Term Sheet.⁴ Specifically, Nevada Power states that under the 2008 Term Sheet, the parties agreed to the principle that Nevada Power would undertake efforts to install a second transformer at the Harry Allen substation at PacifiCorp's expense, and in exchange, 100 percent of the capacity rights associated with the installation of the second transformer would be assigned to PacifiCorp.⁵ Accordingly, Nevada Power proposes to include provisions in section 10 of the Amended TFA that directly assign all of the capacity of the second transformer to PacifiCorp. Nevada Power also states that the Amended TFA meets the Commission's goals as set forth in Order No. 890.⁶ Nevada Power further states that the terms of the Amended TFA are just and reasonable because the installation benefits PacifiCorp's load in southwest Utah.

III. Notice of Filings and Responsive Pleadings

11. Notice of PacifiCorp's filing was published in the *Federal Register*, 76 Fed. Reg. 36,912 (2011), and notice of Nevada Power's filing was published in the *Federal Register*, 76 Fed. Reg. 37,803 (2011), with interventions, protests, and comments due on or before July 8, 2011, and July 11, 2011, respectively. On June 11, 2011, PacifiCorp filed a motion to intervene and protest in Docket No. ER11-3839-000. On June 28, 2011, PacifiCorp filed an expedited motion to consolidate dockets and establish a single comment period for the consolidated docket. On July 8, 2011, Nevada Power filed a motion to intervene and answer in support of PacifiCorp's expedited motion to consolidate dockets and establish a single comment period for the consolidated docket. The Public Utilities Commission of Nevada and Utah Associated Municipal Power System timely intervened in Docket No. ER11-3839-000. Utah Associated Municipal Power System timely intervened in Docket No. ER11-3816-000.

⁴ *Id.* at 3.

⁵ *Id.*

⁶ *Id.* at 4.

IV. PacifiCorp Protest

12. PacifiCorp contends that the second transformer is, by Commission precedent, a network upgrade. Specifically, PacifiCorp explains that in order to determine whether equipment is a network upgrade, the Commission has stated that “if there is any degree of integration with the network, the facilities are network facilities.”⁷ PacifiCorp adds that the Commission has previously found that a one-line terminal in a switchyard at the Harry Allen substation is a network facility, even though it is a modification of an existing Nevada Power switchyard.⁸

13. PacifiCorp denies that the second transformer is for the sole benefit of PacifiCorp.⁹ PacifiCorp contends that the second transformer allows Nevada Power to provide more reliable service to its customers and allows Nevada Power to post and sell increased capacity associated with the second transformer.¹⁰

V. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Analysis

15. PacifiCorp is a customer with respect to the facilities and services at issue in these proceedings, and therefore does not have the right to file its unexecuted agreement with the Commission under section 205 of the Federal Power Act.¹¹ Accordingly, we will reject its Second Amended TFA and dismiss Docket No. ER11-3816-000 without prejudice, as described in Paragraph 2, above.

⁷ PacifiCorp Filing at 12.

⁸ *Id.* (citing *Nevada Power Co.*, 100 FERC ¶ 61,077, at P 13, *order on reh’g*, 101 FERC ¶ 61,036 (2002)).

⁹ PacifiCorp Protest at 5.

¹⁰ *Id.* at 6.

¹¹ 16 U.S.C. § 824d (2006).

16. Nevada Power has requested waiver of the Commission's notice requirements to allow its proposed agreement to become effective June 20, 2011. In support, Nevada Power states that the waiver is appropriate because the installation of the second transformer will allow PacifiCorp to have capacity rights associated with installation of a second transformer at Nevada Power's Harry Allen substation so PacifiCorp can adequately address its reliability issues. We will grant waiver of the notice requirements for good cause shown effective June 20, 2011.

17. Nevada Power's unexecuted agreement raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedure ordered below.

18. Our preliminary analysis indicates that the proposed allocation of costs for the unexecuted facilities agreement has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Nevada Power's unexecuted facilities agreement, suspend it for a nominal period, effective June 20, 2011, subject to refund, and set it for hearing and settlement judge procedures.

19. The issue to be examined at hearing is the cost allocation associated with the second transformer, including all additional related issues.

20. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹² If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹³ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the appointment of the settlement judge,

¹² 18 C.F.R. § 385.603 (2011).

¹³ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Nevada Power's Amended TFA is hereby accepted for filing effective June 20, 2011, subject to refund, as discussed in the body of this order.

(B) PacifiCorp's Second Amended TFA is rejected and Docket No. ER11-3816-000 is hereby dismissed, without prejudice, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the issues raised in this proceeding, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five days of the date of this order.

(E) Within 30 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.