133 FERC ¶ 61,005
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 Co. and Sierra Pacific Power Co. Docket No. ER10-2107-000

ORDER CONDITIONALLY ACCEPTING PROPOSED RATE SCHEDULES AND DIRECTING A COMPLIANCE FILING

(Issued October 1, 2010)

1. On August 2, 2010, Nevada Power Company (Nevada Power) and Sierra Pacific Power Company (Sierra Pacific), both operating subsidiaries of NV Energy, Inc. and collectively referred herein as "NV Energy," submitted for filing an application for two Cost-Based Rate Schedules. In this order, we conditionally accept the Cost-Based Rate Schedules effective October 1, 2010, and direct NV Energy to make a compliance filing as discussed below.

NV Energy's Filing

2. NV Energy states that the Cost-Based Rate Schedules provide for voluntary, short-term wholesale sales of power and allow all parties to negotiate rates for transactions up to the ceiling rates set forth therein.[1] Specifically, the proposed Cost-Based Rate Schedules seek to establish for Nevada Power and Sierra Pacific an "up to" cost-based rate for short-term wholesale power sales that, according to NV Energy, is comparable in all material respects to other such tariffs and/or rate schedules that have been accepted by the Commission.[2] NV Energy asserts that the rate caps proposed under the Cost-Based Rate Schedules include demand charges calculated using two Commission established

[1] NV Energy Transmittal Letter at 3.

[2] *Id.*

methodologies: the *Unit Revenue Constraint Methodology*[3] and the *Units Most Likely to Participate Methodology*.[4]

3. NV Energy asserts that Nevada Power and Sierra Pacific do not have market-based rate authority for wholesale sales within their balancing authority areas, and that the Cost-Based Rate Schedules will allow them the opportunity to make short-term wholesale sales within their balancing authority under the Western Systems Power Pool (WSPP) Agreement, capped at a cost-based rate ceiling.[5] NV Energy also states that upon acceptance by the Commission, each of these stand-alone Cost-Based Rate Schedules will be submitted to WSPP, Inc., for ultimate inclusion within Schedule Q of the WSPP Agreement.[6]

4. In support of Nevada Power's and Sierra Pacific's demand charges, NV Energy states that it developed a fixed charge rate for each utilizing 2009 costs from their respective FERC Form No. 1s.[7] Under the *Unit Revenue Constraint* method, NV Energy explains that the demand component of the ceiling rates in each Cost-Based Rate

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[3] Under the unit revenue constraint methodology, rates may be based on: (1) the costs associated with a specific unit; (2) average system costs; or (3) the cost of the incremental unit on the system. However, whatever method is adopted, demand and energy charges must reflect the cost of the same generating resources, and the cost-based price may be based upon some or all of the costs of the last unit added to the system. *Illinois Power Co.*, 57 FERC ¶ 61,213 (1991).

[4] Under the units most likely to participate methodology, the production component of rates for sales where energy is priced on the basis of incremental cost should be analyzed based on the fixed costs of those generating units most likely to provide the service. *Indiana & Michigan Electric Co.*, 10 FERC ¶ 61,295, at 61,591 (1980).

[5] NV Energy Transmittal Letter at 3.

[6] Schedule Q allows for any Commission-approved company-specific rate schedules for mitigated WSPP members to be incorporated into the WSPP Agreement. The Commission accepted the addition of Schedule Q to the WSPP Agreement finding that it ensured just and reasonable rates for customers of mitigated members, while still enabling mitigated members to retain the efficiencies and convenience of the WSPP Agreement. (*Western Sys. Power Pool*, 126 FERC ¶ 61,193 (2009)).

[7] NV Energy Transmittal Letter at 4.

Schedule is based on the investment cost of a single owned generation resource.[8] According to NV Energy, the annual costs of those resources were then calculated using the fixed charge rate on installed costs. Under the *Units Most Likely to Participate* method, NV Energy states that the demand component of the ceiling rates in each Cost-Based Rate Schedule is based on the weighted cost of owned generation resources, including the fixed operation and maintenance expenses for each resource, that are deemed likely to participate in the sales transactions.[9] NV Energy asserts that it weighted the annual cost of each resource based on its available capacity compared to the total capacity. NV Energy then determined the annual costs (in $/kW) using the fixed charge rate on the investment costs.

<u>Notice of Filing and Responsive Pleadings</u>

5. Notice of the filing was published in the *Federal Register*, 75 Fed. Reg. 49,923 (2010), with interventions and comments due on or before August 23, 2010. A timely motion to intervene, raising no substantive issues, was filed by Bonneville Power Association. A timely motion to intervene and comments were filed by Truckee Donner Public Utility District (Truckee Donner). NV Energy filed an answer to Truckee Donner's comments.

<u>Procedural Matters</u>

6. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2010), the timely, unopposed motions to intervene serve to make those submitting them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NV Energy's answer because it has provided information that assisted us in our decision-making process.

<u>Truckee Donner's Comments</u>

7. Truckee Donner raises several issues with the NV Energy cost-based rate application. Truckee Donner states that the Cost-Based Rate Schedules do not match the

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[8] The generation resource selected for Sierra Pacific is the 261 MW Valmy unit, and the resource selected for Nevada Power is the 330 MW Reid Gardner unit.

[9] Nevada Power and Sierra Pacific state they determined these resources by performing the Commission's "stacking analysis" under which generating resources are stacked in ascending order based on fuel costs. *See infra*, n.23.

description provided in the transmittal letter in two respects. First, Truckee Donner contends that the transmittal letter notes that the Cost-Based Rate Schedules will only apply to short term sales (less than one year), but that the language in the rate schedule does not include such a limitation.[10] Second, Truckee Donner notes that the transmittal letter provides that demand caps are accompanied by an energy charge of "up to" 110 percent of [Nevada Power's and Sierra Pacific's] variable cost, but that the proposed rate schedule states that the energy charge will be "no less than" system incremental cost, plus up to 10 percent of system incremental cost.[11] Therefore, Truckee Donner requests the Commission to require NV Energy to: (1) include in the body of its rate schedule a statement that sales thereunder will be for a term of less that one year; and (2) require NV Energy to change the language of the rate schedules to limit the energy to 110 percent of incremental cost.[12]

8. Truckee Donner also notes that NV Energy proposes two separate rates in the proposed rate schedules, one using the *Unit Revenue Constraint* method and the other using the *Units Most Likely to Participate* method. Truckee Donner contends that the rate schedule does not articulate how the choice will be made between the two demand caps for any given transaction.[13] Therefore, Truckee Donner asks the Commission to require NV Energy to clarify the circumstances under which each rate will apply, and to justify the basis for their respective applications.[14]

9. Truckee Donner also notes that the formulation of System Incremental Cost does not appear to be as detailed as the Commission requires. Specifically, Truckee Donner argues that NV Energy has included a narrative description of the elements that may be included in System Incremental Costs, but does not include any formula.[15]

10. Finally, Truckee Donner argues that a note at the end of Section 2 of the proposed rate schedules is ambiguous in its description of the "floor" rate under the *Unit Revenue*

[10] Truckee Donner Comments at 3.

[11] *Id.* 4.

[12] *Id*. 4-5.

[13] *Id*. 5.

[14] *Id.*

[15] *Id*. 5, n.4.

Constraint method.[16] Truckee Donner states that, while it believes that the "floor" is intended to apply to the full demand and energy cost, it is concerned that the proposed language could also be read to apply the "floor" to the energy cost alone. Therefore, Truckee Donner asks the Commission to require NV Energy to revise its note so that the floor component is clearly applicable to the total demand and energy cost of the unit.[17]

NV Energy's Answer

11. NV Energy responds that the proposed language of the rate schedules is unambiguous. However, NV Energy states that it does not oppose modifying the rate sheets to provide expressly that no product sold shall be for a duration of one year or longer, and that it will remove the phrase "no less than" in Section (ii) of each rate schedule in order to address any confusing inference that may be drawn.[18]

12. NV Energy also responds to Truckee Donner's concerns regarding which of the proposed rate methodologies would be applied in each circumstance, stating that the choice from among different, lawful alternatives will depend on the circumstances faced by NV Energy and market conditions.[19] NV Energy contends that such flexibility is valuable both to NV Energy and to the efficiency of the markets for NV Energy, because each of the two proposed rate cap methodologies provides a different interrelationship between the level of demand and energy charges.[20] NV Energy also contends that this flexibility is supported by Commission precedent.[21] NV Energy notes that all sales under the Cost-Based Rate Schedules are voluntary, and that Commission precedent supports granting sellers flexibility from among different cost-based rate justification alternatives,

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[16] Under NV Energy's proposed Cost-Based Rate Schedules, Nevada Power and Sierra Pacific state under the *Unit Revenue Constraint* method, the "floor" is equal to 100 percent of System Incremental Cost.

[17] Truckee Donner Comments at 6.

[18] NV Energy Answer at 4.

[19] *Id.* 7.

[20] *Id*.

[21] *Id.* 5-6 (citing *Xcel Energy Services Inc.*, 130 FERC ¶ 61,041 (2010) (*Xcel Energy*); *Illinois Power Co.*, 57 FERC ¶ 61,213 (1991) (*Illinois Power*)).

so long as pricing consistency is maintained.[22] Thus, NV Energy concludes that there is no need to clarify when one methodology or the other will be used.

13. Lastly, NV Energy states the proposed rate schedules provide a detailed narrative description of System Incremental Costs consistent with the level of detail provided in dozens of cost-based rates on file with the Commission, and therefore the proposed rate schedules meet the Commission's requirements for specificity.[23]

Commission Determination

14. The Commission finds that the cost support provided by NV Energy is not consistent with the Commission's established practice. Specifically, with respect to the calculation of the demand charges under both the *Unit Revenue Constraint* and *Units Most Likely to Participate* methodologies, Nevada Power and Sierra Pacific developed their investment cost/kW by dividing the unit's total investment by the unit's **net capability**. However, under its established practice, the Commission determines a unit's investment cost/kW by dividing the unit's total investment cost by that unit's **nameplate capacity**.[24] We note that NV Energy has not justified or explained its proposed departure from established Commission practice. We also note Xcel Energy, on behalf of Public Service of Colorado, utilized nameplate capacity in the development of its rates, and that NV Energy stated in its Answer that it "carefully based its proposed rate schedules on the approach proposed by Xcel Energy and approved by the Commission this year."[25] As a result, the demand charges proposed in the Cost-Based Rate Schedules appear to be excessive. Accordingly, NV Energy's proposed rates under both methodologies must be revised to reflect the use of nameplate capacity. The Commission generally finds the Cost-Based Rate Schedules to be just and reasonable, and therefore accepts Nevada Power's and Sierra Pacific's proposed Cost-Based Rate Schedules subject to the conditions described above. NV Energy is therefore directed to submit in a compliance filing, within 30 days of the date of this order, revised Cost-Based Rate Schedules that are calculated using the Commission's established practice of using nameplate capacity to calculate a unit's investment cost/kW.

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[22] *Id*.

[23] NV Energy Answer at 2.

[24] *See* Stacking of Generating Units to Determine the Units Likely to Participate in Short Term Power Sales, *available at* http://www.ferc.gov/industries/electric/gen-info/mbr.asp (under "Quick Links," follow "Blank Stack Analysis" hyperlink).

[25] NV Energy Answer at 5, n.9.

15. The Commission finds that NV Energy's proposal to clarify its rate sheets (1) to respond to Truckee Donner's concerns regarding the duration of the products sold under the rate schedules and (2) to remove the phrase "no less than" in section (ii) of each rate schedule will provide further clarity to the Cost-Based Rate Schedules. Therefore, the Commission directs NV Energy to include these revisions, as proposed in its answer, in its compliance filing ordered herein.

16. Moreover, the Commission finds that, while both rate alternatives may be cost justified, NV Energy has not adequately explained the circumstances under which each rate alternative would be applied. The orders cited by NV Energy do not support NV Energy's contention that it should be granted sole discretion in deciding which rate methodology to apply to a given transaction. In *Illinois Power*, the Commission found that Illinois Power could choose to develop its rates using the costs of the most recent generating resource placed in service. The flexibility referred to in *Illinois Power* is the flexibility to choose one rate methodology from among various permissible methodologies for its rate schedule. NV Energy is proposing two rate methodologies for a single rate schedule. Under NV Energy's proposal it would have the flexibility to choose which rate methodology to apply to a given transaction. Thus, the flexibility referred to in *Illinois Power* is not the same as that proposed by NV Energy. Also, in *Xcel Energy*, the Commission did accept two rate methodologies in a single rate schedule, but it did not grant the seller flexibility to choose which to apply to a given transaction. Thus, the cases cited by NV Energy do not support its contention that it should be granted the discretion to choose which rate methodology to apply in a given transaction. Therefore, the Commission directs NV Energy to submit in the compliance filing directed herein, revised Cost-Based Rate Schedules that clarify the circumstances under which each rate alternative would be applied.[26]

17. NV Energy's narrative description of System Incremental Cost[27] provides sufficient detail to determine its costs. Therefore, the Commission will not require NV

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[26] As discussed above, NV Energy may not reserve to itself the discretion to choose which rate methodology applies in a given transaction. To the extent that NV Energy chooses to retain the option of two alternative rate methodologies in its rate schedules, NV Energy must in its compliance filing set forth in the rate schedules the specific circumstances under which each alternative would apply or clarify that the customer will have the flexibility to choose which alternative will apply for each transaction.

[27] Nevada Power and Sierra Pacific define System Incremental Cost as all reasonably forecasted costs of such power and/or energy and which otherwise would not

(continued…)

Energy to require a formula for System Incremental Cost. Also, NV Energy's description of the rate "floor" is consistent with other rate schedules currently on file with the Commission, we do not find it to be ambiguous, and thus no revision to its description is necessary.[28]

The Commission orders:

(A) Nevada Power's and Sierra Pacific's proposed Cost-Based Rate Schedules are conditionally accepted effective October 1, 2010.

(B) Nevada Power and Sierra Pacific are hereby directed to amend their Cost-Based Rate Schedules, as discussed in the body of this order, within 30 days of the date of issuance of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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have been incurred by them including, but not limited to, costs associated with fuel, labor, variable operation and maintenance, start-up, shut-down, fuel handling, taxes or other similar governmental impositions, regulatory commission charges, emission allowances and other environmental compliance costs. *See* Nevada Power Co., FERC Electric Tariff, Proposed Rate Schedule No. 114, Original Sheet No. 1, section 4; Sierra Pacific Power Co., FERC Electric Tariff, Rate Schedule 57, Original Sheet No. 1, section 4.

[28] *E.g.*, Public Service Co. of Colorado, FERC Electric Tariff, Original Vol. No. 2, First Revised Sheet No. 21, Note A. (providing that the total charges for power and energy shall not exceed the product of the requested demand multiplied by the maximum demand charge, plus the variable costs of the specified generator, and not withstanding the foregoing, a floor equal to 100 percent of Public Service's incremental cost).