

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

PacifiCorp

Docket No. TX04-4-000

FINAL ORDER DIRECTING TRANSMISSION SERVICE

(Issued April 18, 2005)

1. In this order, we grant PacifiCorp's request pursuant to section 211 of the Federal Power Act (FPA),<sup>1</sup> as amended by the Energy Policy Act of 1992 (EPAAct),<sup>2</sup> for an order directing transmission service from Nevada Power Company (Nevada Power). This order benefits customers because it allows for transmission service without jeopardizing a utility's tax status.

**Background**

2. On February 19, 2004, PacifiCorp requested that Nevada Power provide 50 MW of Long Term Firm Point to Point transmission service from Mead 230 kV to the Nevada-Utah Border of the Harry Allen-Red Butte 345 kV line for the period June 1, 2005 to June 1, 2006, under Nevada Power's Open Access Transmission Tariff (OATT). In response, Nevada Power advised PacifiCorp that Nevada Power needs a Commission order requiring it to provide the requested transmission service under section 211 of the

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<sup>1</sup>16 U.S.C. §§ 824j (2000).

<sup>2</sup>Pub. L. No. 102-486, 106 Stat. 2776 (1992).

FPA, in order to preserve its local furnishing bonds' tax-exempt status.<sup>3</sup> On May 28, 2004, PacifiCorp filed an application under section 211 of the FPA and section 5.2 of Nevada Power's OATT<sup>4</sup> requesting that the Commission require Nevada Power to provide this transmission service. PacifiCorp revised its filing on March 1, 2005.<sup>5</sup>

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<sup>3</sup> 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 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(f)(1). EPA 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 service 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.

<sup>4</sup> 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 10 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 (1997), *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). This provision is contained in section 5 of Nevada Power's OATT.

<sup>5</sup> PacifiCorp initially submitted three requests for transmission service to Nevada Power. However, it subsequently withdrew two of the requests and, in its amended filing, only seeks this service.

PacifiCorp states that the purpose of its section 211 application is to prevent any loss of tax-exempt status on the part of Nevada Power.

3. Notice of PacifiCorp's original filing was published in the Federal Register, 69 Fed. Reg. 34,345 (2004), with comments, protests, and interventions due on or before June 18, 2004. On June 14, 2004, Nevada Power filed an answer and waiver of rights to a request for service under section 213(a) of the FPA and to the issuance of a proposed order under section 212(c) of the FPA.

4. Notice of PacifiCorp's amended filing was published in the *Federal Register*, 70 Fed. Reg. 11,965 (2005), with comments, protests, and interventions due on or before March 14, 2005. None was filed.

## **Discussion**

### **A. Local Furnishing Bonds and Waiver of Certain Procedural Rights Under Sections 211 and 212 of the FPA**

5. As discussed above, Nevada Power supports PacifiCorp's application for an order under section 211 directing Nevada Power to provide transmission services to PacifiCorp. Further, Nevada Power waives its right to a prior request for service under section 213(a) and an evidentiary hearing under section 211(a) and the issuance of a proposed order under section 212(c). The Commission stated in Order No. 888-A that "upon receipt of the transmission provider's waiver of its rights to a request for service under section 213(a) and to the issuance of a proposed order under section 212(c), [the Commission] shall issue an order under section 211."<sup>6</sup> Accordingly, as discussed further below, the Commission will grant PacifiCorp's request and will issue an order under section 211 of the FPA directing Nevada Power to provide the requested transmission service to PacifiCorp. As Nevada Power has waived its rights to a proposed order under section 212(c), this order is a final order, effective upon the date of issuance.

### **B. Requirements of Sections 211 and 212**

6. As discussed below, we find that PacifiCorp's application meets the requirements set forth in sections 211 and 212 of the FPA.

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<sup>6</sup> Order No. 888-A at 30,296.

### **1. Jurisdiction**

7. 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. PacifiCorp is an electric utility. As a result, we find that PacifiCorp is eligible to request an order directing Nevada Power to provide transmission services. Moreover, we find that PacifiCorp is an "electric utility" under section 3(22) of the FPA.<sup>7</sup>

### **2. Good Faith Request**

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

### **3. Public Interest**

9. 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 and would otherwise be in the public interest. In *Florida Municipal Power Agency v. Florida Power & Light Company*,<sup>8</sup> 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.

10. The same principles apply here. Accordingly, we find that the public interest will be served by directing Nevada Power to provide PacifiCorp with the requested transmission service.

### **4. Reliability**

11. Section 211(b) precludes a transmission order that would unreasonably impair the continued reliability of affected electric systems. We find that ordering the requested

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<sup>7</sup> 16 U.S.C. § 796(22) (2000).

<sup>8</sup> 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).

transmission service will not unreasonably impair the continued reliability of affected electric systems.

### **5. Effect on Contracts or Rate Schedules**

12. Section 211(c)(2) provides that no order may be issued under section 211(a) 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. It appears that no such energy is currently provided by Nevada Power to PacifiCorp. Accordingly, we find that section 211(c)(2) of the FPA does not preclude an order for transmission service in this case.

### **6. Rates**

13. Section 212(a) 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 the recovery of such costs from the applicant for such order and not from a transmitting utility's existing wholesale, retail, and transmission customers. The order requested here would not shift costs to other customers because 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).

#### **The Commission orders:**

(A) Nevada Power is hereby directed, pursuant to section 211 of the FPA, to provide transmission services to PacifiCorp under the applicable tariffs and rate schedules, as discussed in the body of this order.

(B) This order is a final order, effective upon the date of issuance.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.