

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

NewCorp Resources Electric Cooperative, Inc.                      Docket Nos. ER04-1149-000 and  
ER04-1149-001

ORDER ACCEPTING NETWORK INTEGRATION TRANSMISSION SERVICE  
AGREEMENT AND NETWORK OPERATING AGREEMENT AND DENYING  
WAIVER OF PRIOR NOTICE REQUIREMENT

(Issued October 29, 2004)

1. In this order the Commission accepts NewCorp Resources Electric Cooperative, Inc.'s (NewCorp) Network Integration Transmission Service Agreement (NITSA) and Network Operating Agreement (NOA) with Cap Rock Energy Corporation (Cap Rock). However, the Commission denies NewCorp's request for waiver of the Commission's sixty-day prior notice requirement and requires time value refunds. This order benefits customers because it ensures that terms and conditions of transmission service are just and reasonable.

**Background**

2. On August 25, 2004, as amended on August 31, 2004, NewCorp submitted for filing the NITSA and NOA with Cap Rock, requesting a waiver of the sixty-day prior notice requirement to allow an effective date of April 1, 2004. NewCorp explains that the Commission previously accepted, in Docket No. ER03-1116-000, two service agreements under NewCorp's full requirements electric service tariff, including a Service Termination Agreement and a Master Operation, Maintenance Administrative Services Agreement.<sup>1</sup> NewCorp states that in that proceeding it was terminating wholesale, full-requirements service to its sole customer, Cap Rock, so that it could initiate transmission-only service to Cap Rock under NewCorp's open access transmission tariff (OATT). It further explains that it made a further compliance filing to provide the effective date of April 1, 2004, for the termination of full requirements service and initiation of service under NewCorp's OATT. NewCorp states that it did not previously file the NITSA and

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<sup>1</sup> *NewCorp Resources Electric Cooperative, Inc.*, Docket No. ER03-1116-000 (Aug. 29, 2003) (unpublished letter order); Docket No. ER03-1116-001 *et al.* (Oct. 13, 2004) (unpublished letter order).

NOA that were put into effect as of April 1, 2004, because, in its opinion, both the NITSA and the NOA conform to the *pro forma* NITSA and NOA that are part of its OATT and, pursuant to section 35.1 of the Commission's regulations,<sup>2</sup> did not have to be filed with the Commission. However, NewCorp states that it has now elected to file the NITSA and NOA because other parties, or the Commission, may not agree that the agreements conform to the *pro forma* NITSA and NOA in its OATT.

### **Notice and Responsive Pleadings**

3. Notice of this filing was published in the *Federal Register*, 69 Fed. Reg. 55,424 (2004), with comments, protests, or interventions due on or before September 21, 2004. Pioneer Natural Resources USA, Inc. (Pioneer) submitted a timely motion to intervene and protest in Docket No. ER04-1149-000.<sup>3</sup> Pioneer, which is a retail electric customer of Cap Rock, states that it will be affected by various provisions of the NITSA and NOA. Pioneer explains that NewCorp is an affiliate of Cap Rock and that NewCorp transmits power for Cap Rock to Cap Rock's retail customers. Pioneer further explains that Cap Rock passes the entirety of NewCorp's transmission charges through to Cap Rock's retail customers. Pioneer adds that its interests are not represented by any other party to this proceeding.

4. Pioneer raises questions with respect to a number of provisions of the NITSA and NOA, but essentially only requests that it be allowed to "participate in the Commission's review of NewCorp's filing to protect Pioneer's interests in this and other provisions of the agreement that affect Pioneer."

5. Pioneer specifically protests NewCorp's request for waiver of the Commission's sixty-day prior notice requirement. It argues that waiver would be harmful to the public interest, is without merit, and should be rejected. Pioneer also argues that because Cap Rock and NewCorp are essentially the same entity, the fact that they agreed to the waiver is not significant. It concludes that even if the NITSA and NOA are in every respect beneficial to affected parties and the public, the affected parties and the public should receive paper notice if this proceeding affects their interests.

6. On September 29, 2004, NewCorp filed an answer in opposition to Pioneer's motion to intervene. NewCorp asserts that it opposes the intervention because "Pioneer is likely to raise issues that properly are not within the scope of this proceeding."<sup>4</sup> NewCorp further asserts that "[b]ecause the present proceeding does not propose new or

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<sup>2</sup> 18 C.F.R. § 35.1(g) (2004).

<sup>3</sup> Pioneer also submitted a motion to intervene and protest in Docket No. ER04-1149-001 that incorporates by reference its protest in Docket No. ER04-1149-000.

<sup>4</sup> NewCorp Answer at 2-3.

changed rates, but instead merely implements previously filed and accepted rates, there are no issues in this case that will affect rates paid by Cap Rock to NewCorp. Pioneer has an available remedy to contest rates, and should not be allowed to drag rate related issues into this case.”<sup>5</sup> It concludes that Pioneer’s participation in this proceeding would not be constructive.

## **Discussion**

### **Procedural Matters**

7. Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(c) (2004), states that the Commission must expressly grant a motion to intervene that was opposed by another party. Despite NewCorp’s opposition, we will grant Pioneer’s timely motion to intervene. Pioneer is a customer of Cap Rock and thus has an interest which may be directly affected by the outcome of this proceeding.<sup>6</sup> NewCorp’s arguments that Pioneer may raise issues, including retail rate issues, that are beyond the scope of this proceeding are irrelevant to a determination of whether Pioneer should be admitted as a party to this proceeding. Moreover, we disagree with NewCorp’s assertion that Pioneer is not affected because there are no rate effects associated with its filing. NewCorp is submitting the NITSA and NOA with Cap Rock that, for the first time, provide the rates, terms and conditions under which Cap Rock will receive network transmission service from NewCorp. Thus, we conclude that Pioneer has an interest which may be directly affected by the outcome of this proceeding.

### **NITSA and NOA**

8. Our review indicates that the non-conforming NITSA and NOA appear to be just and reasonable, and have not been shown to be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful.<sup>7</sup> Accordingly, we will accept the NITSA and NOA for filing, without suspension or hearing, to be effective October 25, 2004, as discussed further below.

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<sup>5</sup> *Id.* at 3.

<sup>6</sup> See 18 C.F.R. § 385.214(2)(ii) (2004).

<sup>7</sup> See *Wolverine Power Supply Cooperative, Inc.*, 81 FERC ¶ 61,369 at 62,755 (1997) (discussing affiliate transactions between cooperatives and their member -owners; here, such a transaction does not present concerns regarding affiliate abuse since any profits earned by NewCorp will flow through to Cap Rock).

### **Waiver of Prior Notice Request**

9. NewCorp requests waiver of the Commission's sixty-day prior notice requirement. It first argues that it acted in good faith in not filing the agreements because it concluded that they were conforming agreements that need not be filed with the Commission. NewCorp further argues that notice to the public was previously provided in advance of the initiation of service under the NITSA and NOA by the filing of its Service Termination Agreement in Docket No. ER03-1116-000, which terminated Cap Rock's prior bundled power purchase arrangement in advance of Cap Rock taking unbundled transmission service under the NITSA and NOA. NewCorp also argues that if waiver is denied there will be disruption and administrative inconvenience to NewCorp because NewCorp and Cap Rock would have to return to full requirements service for the period from April 1, 2004, to whatever effective date is allowed, and would have to recalculate rates for that period. NewCorp further states that both NewCorp and Cap Rock have agreed in writing to the effective date of April 1, 2004, and that no other customers are affected by the acceptance of the early effective date.

10. We will deny NewCorp's request for waiver of the Commission's 60-day prior notice requirement. NewCorp's justifications for failing to file the NITSA and NOA do not constitute extraordinary circumstances that would justify waiver and a retroactive effective date. If there was any question as to whether the agreements were non-conforming or not, NewCorp should have sought clarification from the Commission. Moreover, just because NewCorp previously terminated its bundled arrangement with Cap Rock and indicated that it would be providing unbundled transmission service to Cap Rock is not notice to the public as to the specific rates, terms, and conditions that it has now filed with the Commission and are the subject of this proceeding. Finally, denial of waiver does not mean that NewCorp and Cap Rock have to return to full requirements service for the period April 1, 2004 to whatever effective date is allowed. As discussed below, the Commission's remedy is to require the refund of the time value of the revenues collected. No service change or rate recalculation is required. While we are denying NewCorp's request for waiver, we will permit an effective date of October 25, 2004, which is after 60 days' notice from when NewCorp first submitted the network agreements at issue.

11. Under the Commission's time value remedy, for a cost-based rate, in cases where service commences before filing, and where waiver of the prior notice requirement is denied, the utility must refund the time value of revenues collected<sup>8</sup> for the time period the rate was collected without Commission authorization to the date that the utility

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<sup>8</sup> 18 C.F.R. § 35.19a (2004).

ultimately issues refunds.<sup>9</sup> Additionally, we will limit the application of the time value of remedy formula to an amount that permits a public utility to recover its variable costs. Such information, when pertinent, must be submitted with a utility's refund report.

12. Accordingly, we will order NewCorp to refund to Cap Rock, within 30 days of the date of this order, the time value of revenues collected for service occurring during the time period from April 1, 2004 to the date NewCorp makes the refunds. Further, we will order NewCorp to file a refund report with the Commission within 30 days thereafter.

The Commission orders:

(A) NewCorp's NITSA and NOA are hereby accepted for filing, to be effective October 25, 2004, as discussed in the body of this order.

(B) NewCorp's request for waiver of the Commission's prior notice requirement is hereby denied, as discussed in the body of this order.

(C) NewCorp is hereby directed to make time value refunds within 30 days of the date of this order and to file a refund report with the Commission within 30 days thereafter.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

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<sup>9</sup> *Carolina Power & Light Co.*, 84 FERC ¶ 61,103 at 61,522 (1998), *order on reh'g*, 87 FERC ¶ 61,083 at 61,356 (1999).