

145 FERC ¶ 61,239  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

Cargill Power Markets, LLC

v.

Docket No. EL13-42-001

NV Energy, Inc.

ORDER ON REQUEST FOR REHEARING OR ALTERNATIVE REQUEST FOR  
CLARIFICATION

(Issued December 19, 2013)

1. On June 17, 2013, Cargill Power Markets, LLC (Cargill) requested rehearing, or in the alternative, clarification of the Commission's May 17, 2013 Order<sup>1</sup> that granted, in part, a petition for declaratory order filed by Sierra Pacific Power Company (Sierra Pacific) and Nevada Power Company (Nevada Power) in Docket No. EL13-14-000 and denied a complaint filed by Cargill against NV Energy, Inc. (NV Energy) in the above-captioned docket.<sup>2</sup> In this order, we deny rehearing but grant, in part, clarification of the Commission's holdings in the May 17 Order regarding NV Energy's designation of network resources for its to-be-combined system.

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<sup>1</sup> *Sierra Pacific Power Co.*, 143 FERC ¶ 61,144 (2013) (May 17 Order).

<sup>2</sup> No party sought rehearing of the Commission's holdings in the May 17 Order regarding the petition for declaratory order. Accordingly, the Commission will address those holdings only to the extent they are necessary to respond to arguments raised on rehearing.

## I. Background

### A. Cargill Complaint

2. Cargill's Complaint primarily concerned transmission studies performed by NV Energy regarding three 100 MW requests for long-term firm point-to-point transmission service that, if granted, would require north-to-south capacity on the One Nevada Transmission Line Project (ON Line).<sup>3</sup> Cargill challenged NV Energy's purported designation of Sierra Pacific and Nevada Power's then-existing network resources for NV Energy's to-be-combined system,<sup>4</sup> arguing that the resources were not properly designated because: (1) there was no open access transmission tariff (OATT) in effect governing the potential, combined system; (2) the designations were improperly conditioned upon the potential merger of the Sierra Pacific and Nevada Power balancing authority areas (BAA); and (3) the ultimate firm deliverability of the resources will depend on, among other things, the outcome of the Commission and Nevada Public Utilities Commission (Nevada Commission) proceedings on the consolidation of the Sierra Pacific and Nevada Power systems. Cargill also argued that NV Energy had failed to demonstrate its right to native load priority over the combined system, and that NV Energy improperly proposed to make Cargill's service conditional on (1) whether Phase 2 of the ON Line is developed, and (2) the successful merger of Sierra Pacific and Nevada Power, including Commission approval of a single OATT for the combined system. Finally, Cargill requested that the Commission require NV Energy to provide it with information necessary to evaluate assumptions underlying NV Energy's transmission studies.<sup>5</sup>

### B. The May 17 Order

3. The Commission denied Cargill's Complaint. With respect to Cargill's argument that NV Energy's purported network resource designations in the Torrey Letter are not valid because NV Energy did not have an OATT governing transmission service over the

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<sup>3</sup> The ON Line is a 235-mile, 500 kilovolt transmission line that will provide the first direct interconnection between the Sierra Pacific and Nevada Power transmission systems. As explained in the May 17 Order, the ON Line is Phase 1 of a larger joint transmission project that is being developed in two phases consisting of three segments. If completed, the larger transmission project would be a 570-mile, 500 kV transmission line that runs from southern Idaho to southern Nevada. *Id.* P 7 n.9.

<sup>4</sup> NV Energy claimed that it designated these network resources through a January 25, 2011 letter from Sheryl Torrey of NV Energy's merchant function to Mario Villar of NV Energy's transmission function (Torrey Letter).

<sup>5</sup> *Id.* PP 70-82.

ON Line in January 2011, the Commission found Cargill's argument moot in light of the Commission's conclusion that NV Energy's existing OATT governed the transmission service requests submitted by Cargill and other parties.<sup>6</sup>

4. In addition, the Commission affirmed that the network resources identified in the Torrey Letter were eligible to be designated as network resources. The Commission emphasized that whether a designating entity controls, directly or indirectly, the designated resource is the critical consideration to determine the resource's eligibility, and the Commission noted that Cargill provided no evidence that NV Energy lacked control of the network resources that it designated. The Commission also held that adopting Cargill's position would make it effectively impossible for merging utilities to exercise their right to invoke native load priority until after the merger was complete, because *all* designated network resources for the merging utilities' combined system would be conditioned upon completion of the merger, and therefore ineligible to be designated as network resources.<sup>7</sup>

5. The Commission rejected Cargill's argument that NV Energy failed to demonstrate that it designated its network resources prior to Cargill submitting its transmission service requests. The Commission found that NV Energy's merchant function, acting on behalf of native load, timely designated its network resources for the combined system through the Torrey Letter on January 25, 2011. Although NV Energy's transmission function failed to post those resources to Sierra Pacific and Nevada Power's respective OASIS sites until September 1, 2011, i.e., after Cargill submitted certain of its transmission service requests, the Commission found that NV Energy's network resources have a priority date of January 25, 2011.<sup>8</sup>

6. With respect to NV Energy's native load priority claim, the Commission affirmed that Order No. 888 allows transmission providers to reserve, through the native load priority, sufficient transmission capacity to reliably serve their native loads. The Commission found that NV Energy was claiming native load priority to serve the needs of its *existing* native load, rather than to serve future anticipated load growth. Though the Commission found that NV Energy should timely have advised transmission customers that NV Energy did not believe that its then-existing OATT governed their transmission service requests, the Commission explained that, regardless of whether NV Energy provided proper notice of its position, NV Energy should not have used its interim procedures in lieu of its existing OATT procedures, and affirmed that, prospectively, NV

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<sup>6</sup> *Id.* P 109.

<sup>7</sup> *Id.* P 110.

<sup>8</sup> *Id.* P 111.

Energy will be required to process Cargill and other customers' transmission service requests pursuant to the procedures in the NV Energy OATT.<sup>9</sup>

7. The Commission stopped short of finding that NV Energy had established a right to the full capacity of the ON Line. Instead, the Commission reserved that question for future proceedings on the individual transmission service agreements executed by Cargill and other customers.<sup>10</sup>

8. With respect to Cargill's assertions that NV Energy improperly refused to provide Cargill with information necessary to evaluate the transmission studies performed by NV Energy, the Commission noted that its regulations require that NV Energy provide customers with the data necessary to fully analyze NV Energy's claimed native load priority. The Commission affirmed its expectation that NV Energy would provide transmission customers with the information they need to fully evaluate NV Energy's transmission studies.<sup>11</sup> Finally, the Commission held that, should the ON Line be put into service prior to consummation of the proposed 2013 merger (provided that it is ultimately approved), NV Energy must make the ON Line capacity available to third parties pursuant to its OATT.<sup>12</sup>

## II. Discussion

### A. Designation of Network Resources

#### 1. Request for Rehearing or, in the Alternative, Clarification

9. Cargill seeks rehearing of the Commission's determination in the May 17 Order that NV Energy's control of the generation resources in question was sufficient for them to be designated as network resources for the combined NV Energy system. Cargill claims the Commission's conclusion is inconsistent with the *pro forma* OATT and Commission precedent regarding network resource designation, which excludes from eligibility resources that cannot be called upon to meet a network customer's network load on a non-interruptible basis, except for purposes of fulfilling obligations under a reserve sharing program. Cargill states that the Commission has explained that "the time

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<sup>9</sup> *Id.* PP 112-114.

<sup>10</sup> *Id.* P 115. NV Energy subsequently filed unexecuted transmission service agreements with ORNI 47, LLC (Ormat) and Cargill in Docket Nos. ER13-1724-000 and ER13-1860-000, respectively. We address those filings in a concurrently-issued order.

<sup>11</sup> *Id.* P 116.

<sup>12</sup> *Id.* P 117.

of designation is when the transmission provider determines that power from a network resource is deliverable to associated network load,” and that while NV Energy might control the resources at issue, there must be a meaningful determination that the resource is deliverable to load for it to qualify as a network resource.<sup>13</sup> However, according to Cargill, that determination cannot be made until it is known what resources will be used to serve NV Energy’s combined system, and those resources are not known because neither the Commission nor the Nevada Commission have yet evaluated NV Energy’s proposed merger of its two utility operating companies, including determining the mitigation measures that each agency might impose on NV Energy that will impact the resources’ deliverability. Thus, according to Cargill, it is not clear whether the resources identified in the Torrey Letter actually qualify as network resources.<sup>14</sup>

10. Cargill also challenges the Commission’s conclusion that Cargill’s position on network resource designation for merging entities would make it effectively impossible for those companies to invoke native load priority until after a merger is completed, because all designated network resources would be conditioned on a merger.<sup>15</sup> Cargill claims that the Commission is overlooking the difference between the regulatory approvals necessary to implement a merger and the actual consummation of the merger. Under Cargill’s position, a transmission provider would identify generation resources to serve its own loads with its transmission function, receive third-party transmission service requests, and hold both its own generation resources and third-party transmission service requests until the necessary regulatory approvals have been granted for the merger. Upon receiving those approvals, the transmission provider would then designate network resources for the combined system and perform necessary studies with full knowledge of any necessary mitigation measures before determining whether a transmission customer would be required to fund network upgrades. Cargill explains that the priority date for the network resources used to serve a combined system would be the date when the transmission provider designated the resources once it obtained appropriate regulatory approvals, and these resources would have a higher priority than third-party transmission service requests.<sup>16</sup>

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<sup>13</sup> Cargill Rehearing Request at 8 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 51, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

<sup>14</sup> *Id.* at 7-8.

<sup>15</sup> May 17 Order, 143 FERC ¶ 61,144 at P 110.

<sup>16</sup> Cargill Rehearing Request at 8-9.

11. As applied to this case, Cargill states that the ON Line could have been considered as part of the Nevada Power or Sierra Pacific BAA, and Cargill and other customers' transmission service requests could have been held in either the Nevada Power or Sierra Pacific transmission queues. Following Commission approval of the merger and an OATT for the combined system, NV Energy could then designate network resources for the combined system and study the transmission service requests using accurate information regarding the amount of capacity actually available on the ON Line.<sup>17</sup>

12. However, according to Cargill, a transmission provider should not be permitted to assume a priority right over a transmission facility and force transmission upgrade costs on third parties when it is not clear what transmission capacity will actually be needed to serve the combined system and/or what generation resources will in fact be deliverable to the combined system. Cargill asserts that such a policy could lead to unfair results for a transmission customer who funds upgrades that ultimately prove unnecessary because of mitigation measures placed on a merging utility, and particularly where transmission providers do not operate in organized markets and may merge with larger holding company systems with substantial generation and transmission assets. Accordingly, Cargill states that the Commission should find that NV Energy's purported designation of network resources in the Torrey Letter's attachments was not sufficient to designate those resources for a combined NV Energy system and reserve capacity over the ON Line.<sup>18</sup>

13. In the alternative, Cargill requests that the Commission clarify that (1) the May 17 Order's conclusion applies only to the generation resources specifically identified in the Torrey Letter, to the extent that NV Energy has, in fact, established the requisite control required by sections 29 and 30 of the NV Energy OATT; (2) the Torrey Letter establishes priority rights only for the generation resources attached thereto, and therefore that any generation resources that are not included in the Torrey Letter but were posted on OASIS on September 1, 2011 (or any other date) are not properly designated for the combined NV Energy system; and (3) that generation resources NV Energy may designate in the future do not have priority over Cargill's transmission service requests.<sup>19</sup>

## 2. Commission Determination

14. We deny Cargill's request for rehearing and affirm our findings in the May 17 Order, as further clarified below.

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<sup>17</sup> *Id.* at 9-10.

<sup>18</sup> *Id.* at 10.

<sup>19</sup> *Id.* at 11.

15. We disagree with Cargill that the May 17 Order improperly permits NV Energy to assume that the network resources it designated for its to-be-combined system will be deliverable, prior to complete regulatory approval of the consolidation.<sup>20</sup> While conditions might be imposed upon the consolidation of the Sierra Pacific and Nevada Power systems that could impact whether individual resources will be used to serve NV Energy's to-be-combined system, we affirm our finding that, under the facts of this case, it was reasonable for NV Energy to perform transmission studies using the assumption that those resources would, in fact, serve the to-be-combined system. NV Energy has an obligation to serve its native load, to do so through the designation of network resources intended to serve that load, and to perform transmission studies for transmission service requests. Prohibiting NV Energy from assuming the deliverability of its network resources would not enable NV Energy to plan to meet these obligations prior to Commission and Nevada Commission approval of its consolidation.

16. Similarly, we conclude that it would be unreasonable, as Cargill argues, for NV Energy to effectively assume that its network resources will not be deliverable for the to-be-combined system until such time as both the Commission and Nevada Commission rule on the proposed system consolidation, and to defer doing *any* transmission studies until the agencies rule on the consolidation filings. While that delay might not be an obstacle to Cargill's request for transmission service, which it seeks to commence on January 1, 2016 (i.e., roughly two years after NV Energy's proposed consolidation), it would be an obstacle for customers that seek to initiate service concurrent with, or soon after, the consolidation takes effect, particularly if the studies indicate that system upgrades must be constructed for the service to commence.<sup>21</sup> While transmission customers do face some risk that transmission studies performed prior to a merger could underestimate the amount of capacity available if an agency, for example, requires divestment of a previously-designated network resource or transmission capacity be made available to third parties, on balance we find that allowing for that risk is more reasonable than an outright prohibition on the performance of transmission studies prior to regulatory approval of a merger, as would occur under Cargill's position. For the same reason we also disagree that a transmission provider should not be permitted to assume a priority right over a transmission facility prior to final confirmation, following the necessary regulatory approval of the consolidation, of what transmission capacity will

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<sup>20</sup> We note that the Commission approved the consolidation on November 27, 2013. *NV Energy, Inc.*, 145 FERC ¶ 61,170 (2013).

<sup>21</sup> For example, Ormat, which also filed a request for service over the to-be-combined system, requested that its service commence in December 2013. Prohibiting NV Energy from studying Ormat's request until the Commission and Nevada Commission rule on the consolidation application would only further delay Ormat's ability to begin taking service while NV Energy performs the requisite studies.

actually be needed to serve the combined system and/or what generation resources will, in fact, be deliverable to the combined system.

17. However, we grant Cargill's request for clarification in part and deny it in part. First, we grant Cargill's request that the Commission clarify that the May 17 Order's conclusion that the resources in the Torrey Letter were properly designated as network resources applies only to the generation resources specifically identified in the Torrey Letter, to the extent that NV Energy has, in fact, established the requisite control required by sections 29 and 30 of the NV Energy OATT. Subject to our discussion above, in which we affirm that NV Energy may properly assume the designation of these resources for its to-be-combined system prior to Commission and Nevada Commission approval of the system consolidation, we clarify that the Commission's intent was to confirm that the resources identified in the Torrey Letter are *eligible* to be designated as network resources, provided that they otherwise satisfy the requirements of sections 29 and 30 of the NV Energy OATT. We note that NV Energy represented to the Commission that its merchant function included the information required under those OATT sections when it filed the Torrey Letter with NV Energy's transmission function, and Cargill provided no evidence to contradict this assertion; instead, Cargill simply asserted that these resources were categorically ineligible to be designated based on the facts presented to the Commission.<sup>22</sup> However, our holding does not preclude Cargill, should it have evidence calling NV Energy's representation into question with respect to one or more of these resources, from challenging NV Energy's designations in another proceeding.

18. With respect to Cargill's second clarification request – that generation resources excluded from the Torrey Letter but were posted on OASIS on September 1, 2011 (or any other date) are not properly designated for the combined NV Energy system – we agree with Cargill that the Torrey Letter did not designate any network resources other than those specifically listed in the included attachments. Therefore, if NV Energy posted additional network resources for its to-be-combined system in the September 1, 2011 posting beyond those designated in the Torrey Letter, NV Energy may not rely on the Torrey Letter to support their designation. However, we deny Cargill's request that we hold any additional network resources in the September 1, 2011 posting or thereafter are not properly designated for the to-be-combined NV Energy system; whether those resources are properly designated turns on whether NV Energy's merchant function submitted a timely request to designate those resources and included the information required under sections 29 and 30 of the NV Energy OATT, and we will not prejudge that question at this time.

19. Finally, we deny Cargill's request that we hold that all generation resources NV Energy may designate in the future do not have priority over Cargill's transmission service requests at issue in this proceeding. Queue priority for future designated network

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<sup>22</sup> May 17 Order, 143 FERC ¶ 61,144 at PP 78, 98.

resources will be determined pursuant to the NV Energy OATT, and we will not categorically prejudge those priority determinations at this time.

## **B. Customer Access to Study Information**

### **1. Request for Clarification**

20. Cargill requests that the Commission clarify that NV Energy is obligated to provide Cargill with all information necessary to fully evaluate NV Energy's treatment of Cargill's transmission service requests. Cargill asserts that NV Energy refused to provide the relevant electronic files used to evaluate Cargill's transmission service requests, and that NV Energy continues to refuse to provide the data to Cargill. Cargill also asserts that, notwithstanding Cargill's willingness to enter into a non-disclosure agreement, NV Energy has refused to provide Cargill with the attachments to the Torrey Letter that NV Energy claims establish NV Energy's control over the resources identified therein. Cargill requests that the Commission clarify that NV Energy, in order to properly respond to the Commission's directive that NV Energy provide Cargill with the information needed to fully evaluate NV Energy's native load priority claim, must provide Cargill (1) all files in the electronic format in which they were created and used by NV Energy when evaluating Cargill's transmission service requests, regardless of whether or not such files identify a transmission limitation, and (2) the documents included as attachments to the Torrey Letter that NV Energy claims establish NV Energy's control over the generation resources identified in those attachments.<sup>23</sup>

### **2. Commission Determination**

21. We deny Cargill's requested clarification, in light of our holding in Docket No. ER13-1860-000 to set the Cargill transmission service agreement for settlement and hearing procedures. We find that issues of access to relevant information, including confidential or otherwise privileged information, regarding NV Energy's studies and underlying assumptions are appropriately resolved by the administrative law judge overseeing the hearing. However, we reiterate our holding in the May 17 Order that NV Energy has an obligation to provide to customers the information necessary to evaluate NV Energy's native load priority claims and studies performed to evaluate customers' transmission service requests.<sup>24</sup>

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<sup>23</sup> Cargill Rehearing Request at 12-14.

<sup>24</sup> May 17 Order, 143 FERC ¶ 61,144 at P 116.

The Commission orders:

(A) Cargill's rehearing request is hereby denied, as discussed in the body of this order.

(B) Cargill's request for clarification is hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.