

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Nevada Power Company

Docket No. TX04-2-001

ORDER GRANTING IN PART AND DENYING IN PART
REHEARING AND FINAL ORDER DIRECTING
TRANSMISSION SERVICE

(Issued January 21, 2005)

1. On September 3, 2004, Nevada Power Company (Nevada Power) requested rehearing of the Commission's order issued in this proceeding on August 4, 2004,¹ that denied a request to direct transmission services pursuant to sections 211 and 212 of the Federal Power Act (FPA).² In this order, we grant Nevada Power's request for rehearing as to the named transmission customers provided in Attachment A to its initial application (Attachment A), effective 10 days after the date of issuance of this order. However, we deny rehearing to the extent of not ordering transmission service as to future, unknown customers.

Background

2. On April 12, 2004, Nevada Power, Pinnacle West Capital Corporation (Pinnacle West), and the City of Needles, California (Needles) (collectively, Applicants) filed an application requesting that the Commission "require Nevada Power to provide transmission service" under section 211 of the FPA.³ They also requested an "order that Nevada Power was obligated under section 211 to provide transmission service under all

¹ *Nevada Power Company*, 108 FERC ¶ 61,137 (2004) (August 4 Order).

² 16 U.S.C. § 824j and 824k (2000).

³ Application at 1.

previously-filed [transmission service agreements or interconnection agreements].”⁴ Finally, Nevada Power requested “that the Commission issue an order under section 211 obligating Nevada Power to provide transmission to all customers who in the future request short-term transmission service.”⁵

3. The Applicants stated that the application was filed in order to preserve tax-exempt status of “local furnishing” debt issued under the Internal Revenue Code (IRS Code) to finance certain Nevada Power facilities.⁶ Applicants further stated that section 142(f)(2)(A) of the IRS Code would preserve the tax-exempt status of interest on Nevada Power’s local furnishing bonds if the requested transmission service were provided pursuant to a Commission order issued under section 211 of the FPA (and the portion of the cost of the facilities used to provide 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).⁷

4. The August 4 Order denied the application on several grounds. First, the Commission stated that section 211 only permits the issuance of an order upon application by the requested recipient of the transmission service.⁸ The Applicants had submitted the request to provide transmission service on behalf of 95 transmission customers with previously-filed transmission service agreements. However, only two of the transmission customers, Pinnacle West and Needles, had filed to request transmission service. Therefore, the Commission determined that it could not order transmission service under section 211 to the other entities listed in Attachment A to the application who were not themselves applicants.

⁴ *Id.* at 4.

⁵ *Id.* at 5.

⁶ 26 U.S.C. §§ 103, 142(a)(8), 142(f) (2000). “Local furnishing” of electric energy is defined as furnishing “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). Local furnishing debt is further discussed in the Commission’s August 4 Order, 108 FERC ¶ 61,137 at P 3-4.

⁷ 26 U.S.C. § 142(f) (2000).

⁸ August 4 Order at P 13.

5. The Commission also noted that section 211(c)(2) provides that the Commission may not order transmission service if such order would require the transmitting utility to transmit an amount of electric energy required to be provided to such applicant pursuant to a rate schedule on file during such period. The Commission determined that this provision prohibited it from ordering Nevada Power to provide transmission services to the customers listed in Attachment A, as Nevada Power is currently providing transmission service to them pursuant to rate schedules on file with the Commission.⁹

6. Finally, the Commission rejected the Applicants' request that the Commission issue an order under section 211 obligating Nevada Power to provide transmission to all customers who in the future request short-term transmission service because under such request, there is no actual applicant. The Commission reserved judgment on whether an applicant could justify and be granted a section 211 order requiring all short-term transmission services it may need from Nevada Power in the future, *i.e.*, a blanket order valid as to that applicant.¹⁰

7. Nevada Power requests rehearing of the August 4 Order, arguing that nothing in section 211 prohibits a transmission owner from making a filing on behalf of its transmission customers and that section 211(c) does not prohibit the issuance of an order when only transmission service is already being provided. Nevada Power also reiterates that a blanket section 211 order would allow it to process short-term requests quickly and efficiently.

Discussion

Request for Rehearing

8. While Nevada Power admits that section 211 of the FPA speaks in terms of providing service to an applicant, it argues that nothing in section 211 prohibits a transmission owner from making a filing on behalf of a proposed transmission customer. It also contends that the Commission has not been so strict in other contexts, citing *Commonwealth Edison Company*,¹¹ where the Commission approved a purchaser's filing on behalf of three generation owners, even though section 205(c) of the FPA¹² requires

⁹ *Id.* at P 11.

¹⁰ *Id.* at P 14.

¹¹ 95 FERC ¶ 61,325 (2001).

¹² 16 U.S.C. § 825d(c) (2000).

rate filings to be made by the public utility providing the service. Nevada Power also asserts that the Commission has allowed pipeline owners to file applications on behalf of producers in the context of similar language of section 7 of the Natural Gas Act (NGA).¹³ Nevada Power requests that the Commission grant rehearing and hold that Nevada Power is permitted to make a filing on behalf of its customers, both with respect to current customers and for the blanket request for future short-term customers.

9. Upon reflection, we will grant rehearing in part on this issue, and permit a utility to make an application for transmission service on behalf of specific customers. There is nothing in the plain language or legislative history of section 211 that prohibits a customer from designating an agent, including the transmitting utility from whom it seeks transmission service, to apply on its behalf.

10. However, we will deny rehearing of Nevada Power's request for a blanket order under section 211 for future, unknown applicants. Although we will permit Nevada Power to make a filing on behalf of known applicants, *i.e.*, those listed in Attachment A to its application, there still must be an actual, known applicant. In *Suffolk County Electrical Agency*,¹⁴ the Commission decided it was unable to issue an order pursuant to section 211 because Suffolk had not identified any specific plans to purchase the power for which it sought the section 211 transmission order. The Commission explained that, for example, it could not evaluate whether an order would satisfy the requirement of section 211(b) that the order not "unreasonably impair the continued reliability of electric systems affected by the order" absent a specific request.¹⁵

11. Nevada Power also argues that, contrary to the August 4 Order, section 211(c) does not prohibit the issuance of an order when transmission service only is already being provided. It states that Congress' intention in enacting section 211 was to avoid requiring a transmitting utility to transmit power for a customer with an existing obligation to purchase power from that utility and that section 211(c) does not prohibit the issuance of

¹³ 15 U.S.C. § 717f (2000). *See, e.g. Transwestern Pipeline Co.*, 60 FERC ¶ 61,139 (1992); *ONEOK, Inc.*, 55 FERC ¶ 61,453 (1991).

¹⁴ Opinion No. 467, 106 FERC ¶ 61,157 (2004), *reh'g denied*, Opinion No. 467-A, 108 FERC ¶ 61,173 (2004).

¹⁵ Opinion No. 467 at P 1 n.4. We continue to reserve judgment on whether an applicant could justify and be granted a section 211 order requiring all short-term transmission services it may need from Nevada Power in the future, *i.e.*, a blanket order valid as to that applicant.

an order when *transmission* service, as opposed to the *sale of energy*, is already being provided. Nevada Power states that it does not know whether the Commission erroneously believed that Nevada Power was selling energy to its customers or whether the Commission intended to hold that it cannot grant a section 211 request if the transmission provider already is providing transmission service to a customer. Nevada Power now states that it is not currently selling energy to any of the transmission providers identified in Attachment A.

12. Section 211(c)(2) states that:

No order may be issued under subsection (a) or (b) which requires the transmitting utility subject to the order to transmit, during any period, an amount of electric energy which replaces any amount of electric energy –

(A) required to be provided to such applicant pursuant to a contract during such period, or

(B) currently provided to the applicant by the utility subject to the order pursuant to a rate schedule on file during such period with the Commission....¹⁶

13. We will also grant rehearing on this issue. Under section 211(c)(2)(B), the Commission may not issue an order directing transmission service if the transmitting utility is providing electric energy pursuant to a rate schedule for the sale of such energy which is on file with the Commission. Although the transmission customers listed in Attachment A are having electric energy transmitted by Nevada Power pursuant to a rate schedule on file with the Commission, Nevada Power has now clarified that *it* is not selling that energy to these customers but rather is merely providing them with transmission service. In *Kiowa Power Partners, LLC*, the Commission stated that section 211(c)(2) did not preclude an order for transmission service because Kiowa did not purchase electric energy from either of the transmission providers from which it was requesting transmission service.¹⁷ Therefore, as Nevada Power has clarified that it is not actually providing electric energy under any of the rate schedules included in Attachment A, the Commission may order transmission service under section 211 as to these customers.

¹⁶ 16 U.S.C. § 824j(b) (2000).

¹⁷ 99 FERC ¶ 61,251 at P 41 (2002).

Requirements of Sections 211 and 212

14. As discussed below, we find that Nevada Power's application, as to the known customers in Attachment A, meets the requirements set forth in sections 211 and 212 of the FPA.

1. Jurisdiction

15. 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. The companies listed in Attachment A are eligible to request an order requiring Nevada Power to provide them transmission services and, as discussed above, Nevada Power is authorized to request an order on their behalf.

2. Good Faith Request

16. Because Nevada Power has waived its rights under sections 211 and 213¹⁸ to a request for service and is willing to provide the transmission service requested by Nevada Power, compliance with this requirement is not necessary here.

3. Public Interest

17. 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*,¹⁹ 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.

18. The same principles apply here. Accordingly, we find that the public interest will be served by directing Nevada Power to provide the requested transmission service to the entities listed in Attachment A.

¹⁸ 16 U.S.C. § 8241 (2000).

¹⁹ 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).

4. Reliability

19. Section 211(b) precludes a transmission order that would unreasonably impair the continued reliability of affected electric systems. We find that ordering the requested transmission service will not unreasonably impair the continued reliability of affected electric systems.

5. Effect on Contracts or Rate Schedules

20. 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. For reasons stated above, we find that section 211(c)(2) of the FPA does not preclude an order for transmission service in this case.

6. Rates

21. 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 Open Access Transmission Tariff. We find that this satisfies the requirements of section 212(a).

7. Applicability

22. An order under section 211 cannot be made effective prior to the date of a final order. *See City of College Station, Texas*, 76 FERC ¶ 61,138 at 61,743 (1996), *final order*, 86 FERC ¶ 61,165 at 61,583 (1999). Therefore, we grant Nevada Power's request for rehearing as to the named transmission customers provided in Attachment A to its initial application (Attachment A), effective 10 days after the date of issuance of this order.

The Commission orders:

(A) Nevada Power's request for rehearing is hereby granted in part, and Nevada Power is hereby directed, pursuant to section 211 of the FPA, to provide transmission service to those known customers listed in Attachment A to its application.

(B) Nevada Power's request for rehearing is hereby denied as to the request to direct it to provide transmission service to all customers who may in the future request short-term transmission service.

(C) This order is a final order, effective ten (10) days after the date of issuance of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.