

UNITED STATES OF AMERICA 100 FERC ¶ 61,037
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Nevada Power Company

Docket Nos. ER02-1741-000
ER02-1742-000

ORDER ACCEPTING FOR FILING AND SUSPENDING FILING,
CONSOLIDATING
DOCKETS AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued July 5, 2002)

1. This order accepts for filing Nevada Power Company's (Nevada Power) Memoranda and Letters of Understanding relating to interconnection with five separate generators, suspends each for a nominal period, subject to refund, consolidates the filings and sets them for hearing. Our action should facilitate increased power supply and improved reliability because it ensures that the terms, conditions and charges for interconnection service are just and reasonable.

Background

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2. On May 6, 2002, Nevada Power filed executed Letters of Understanding (LOUs) with four generators: Reliant Energy Bighorn, LLC (Reliant), Las Vegas Cogeneration II LLC (L V Cogen), Duke Energy Moapa, LLC (Duke Moapa), and Mirant Las Vegas LLC (Mirant) (collectively, Generators). These LOUs set forth the preliminary cost estimates for the design, engineering, procurement and construction of Required Regional System Upgrades (RRSUs)¹ necessary to remedy any short-circuit or stability

¹RRSUs are network upgrades to third party transmission facilities. In this proceeding, studies have indicated that upgrades to four high voltage substations, three of which are jointly owned by a number of entities, are necessary. The study results are
(continued...)

problems on the transmission systems of other electric utilities when the specific generating projects are interconnected to Nevada Power's transmission grid. The four LOUs are similar to one another except for the specific estimated cost responsibility applicable to each generator for RRSU expenses associated with third party transmission facilities. Nevada Power requests that the LOUs be effective as of the execution date of each one.²

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3. Nevada Power has filed a Memorandum of Understanding (MOU) for each of the four generators noted above and an MOU for a fifth generator, Gen West, LLC (Gen West). These MOUs are similar to one another and generally provide the terms, conditions and payment obligations for these generators for RRSUs. Specifically, in accordance with NERC/WECC³ procedures, Nevada Power initiated procedures to perform a study to determine the reliability effect on neighboring transmission systems of generators' plans to interconnect new generation with Nevada Power's transmission grid. The studies determined that interconnection of these generating projects would necessitate upgrades to four high voltage substations on third party systems. The MOUs provide that interconnection will not take place until the RRSUs are installed.

4. Nevada Power requests that the MOUs be made effective as of the filing date, May 6, 2002.

Notice and Interventions

5. Notices of these filings were published in the Federal Register, 67 Fed. Reg. 35,539 (2001), with protests or interventions due on or before May 28, 2002. Timely motions to intervene and comments were filed in Docket No. ER02-1741-000 by GenWest and in Docket Nos. ER02-1741-000 and 1742-000 by LV Cogen. Duke Moapa and Reliant filed timely motions to intervene and protest in both dockets. Mirant filed a timely motion to intervene and protest in Docket No. ER02-1741-000 and a

¹(...continued)
attached to each of the MOUs in Attachments A - E.

²The effective dates for the LOUs are: April 8, 2002 for LV Cogen, May 1, 2002 for Duke, April 2, 2002 for Mirant and April 30, 2002 for Reliant.

³North American Electric Reliability Council/Western Energy Coordinating Council.

motion to intervene one day out-of-time and comments in Docket No. ER02-1742-000. On June 12, 2002, Nevada Power filed an answer to the Generators' protests.

Discussion

Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴ the timely unopposed motions to intervene of Duke Moapa, Mirant, LV Cogen, Gen West and Reliant make them parties to this proceeding. We will grant the late intervention of Mirant in Docket No. ER02-1742-000, given its interest in this proceeding, the early stage of the proceeding and the absence of any undue prejudice or delay.⁵ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 384.213(a)(2) (2001), generally prohibits answers to protests. We are not persuaded to allow Nevada Power's answer; accordingly, we will reject it.

Disputed Issues

7. The Generators have raised numerous issues regarding both the MOU and LOU provisions; some examples of their objections are discussed below. Under Section 12 of the MOU, Nevada Power will provide transmission credits, with interest, to the generators for the cost of RRSU allocated to Nevada Power based on its ownership share. Nevada Power, as the transmission provider, shall not provide any transmission credits to the generators for third party RRSUs and shall not be responsible for their acquisition. Duke Moapa requests that the Commission confirm that it is entitled to credits for these RRSUs and that Southern California Edison Company (So Cal Edison) and Los Angeles Department of Water and Power (LADWP) are required, as operating agents of two of the high voltage substations requiring upgrades, to provide definitive terms for transmission credits that are consistent with Commission policies. Duke Moapa argues that the fact that it has to pay for upgrades on a neighboring system should not prevent it from being reimbursed for the cost of those upgrades once they go into service. Mirant also argues for transmission credits for these RRSU and points out that the Generators may never take service over the third parties' transmission systems, which complicates the Generators' efforts to get transmission credits from those owners.

⁴18 C.F.R. § 385.214 (2001).

⁵See 18 C.F.R. § 385.214 (d)(1)(ii) (2001).

GenWest states that it reserves the right under the MOU to seek transmission credits from LADWP and SoCal Edison for network upgrades constructed on either of those parties' transmission systems for which GenWest is determined to be financially responsible.

8. While Reliant supports the allocation methodology for costs reflected in the LOUs and MOUs, it objects to the Attachment F "Trust Agreement" in the MOU, stating that the provision is insufficient to ensure that monies paid to Nevada Power for upgrades will be protected from disbursement for other purposes. Reliant suggests that the MOU should impose more specific conditions on Nevada Power's disbursement from the trust, additional protections requiring Generators to make payments into the trust for one month at a time, and a monthly accounting for money that has been spent.

9. Mirant argues that unlike the Facilities Studies in the pro forma Open Access Transmission Tariff, the MOU does not allow a prospective customer with a generation interconnection request to evaluate the costs of additional facilities before agreeing to take service and pay those costs. Mirant further objects that the MOU/LOU do not specify the estimated charges associated with the RRSU.

10. Mirant, LV Cogen II, Duke Moapa argue that MOU tax gross-up provisions are unreasonable. For example, Section 10 of the MOU requires a 34% tax gross-up at the outset from Duke Moapa, of which So Cal Edison⁶ would keep 20% until federal and state statutes of limitation have passed for the relevant refund audit years.

11. Duke Moapa and Mirant object to the inclusion in Attachments C and E to the MOU of an additional RRSU contribution for Generators that interconnect to the Centennial Project which these Generators argue should be included in Nevada's ratebase and recovered in Nevada Power's transmission rates.

Discussion

12. The Generators have raised various concerns with the proposed allocation of RRSU costs to and among them. These concerns raise factual questions that we cannot summarily decide based on the record before us. They are best addressed in the hearing and ADR/settlement judge procedures we order below.

⁶So Cal Edison is not a party to the MOU.

13. Our preliminary analysis indicates that the proposed MOU and LOU IIs have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept and suspend the MOU and LOUs for a nominal period, and set them for hearing. We find good cause to grant Nevada Power's request for waiver of the Commission's 60-day prior notice requirement to permit an effective date of May 6, 2002 for the MOUs and to make the LOUs effective as of the execution date of each agreement.⁷ Furthermore, we will consolidate Docket No. ER02-1741-000 with Docket No. ER02-1742-000 for purposes of hearing and decision.

14. In order to assist the parties in resolving this matter, we will hold the hearing in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁸ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in this proceeding; otherwise, the Chief Administrative Law Judge will select a judge for this purpose.⁹ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

15. Finally, we note that the Commission recently issued an Order Denying Rehearing in Nevada Power Company, Docket No. ER01-3149-000,¹⁰ in which the Commission found that Nevada Power, the immediate interconnecting utility, may not hold a generator that wishes to interconnect with Nevada Power hostage for system upgrades on other interconnected systems by requiring as a condition of interconnection that the generator accept responsibility for these upgrades. In accordance with that finding, the

⁷18 C.F.R. § 35.3 (2002). See Central Hudson Gas & Electric Corporation, et al., 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992).

⁸18 C.F.R. § 385.603 (2001).

⁹If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at 202-291-2500 within five days of the date of this order. The Commission's website contains a listing of the Commission's judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

¹⁰99 FERC ¶ 61,347, slip op. at 4 (2002).

Commission affirmed its removal of Section 3.6 from the Interconnection Agreement (IA) between Nevada Power and Mirant. The parties are free to address the impact of this finding in the ordered hearing. Further, the Commission notes that Nevada Power, LADWP and So Cal Edison have commitments in the Trust Agreement and the RRSU study, which recognize these parties' responsibilities toward construction of the RRSUs and we emphasize that these are commitments to which they must adhere. We encourage the parties to work together constructively to ensure that these interconnections are completed as rapidly as possible, while ensuring the reliability of the transmission system.

The Commission orders:

(A) Nevada Power's MOUs with the Generators are hereby accepted for filing and suspended for a nominal period, to become effective May 6, 2002, subject to refund.

(B) Nevada Power's LOUs with LV Cogen, Duke Moapa, Mirant and Reliant the are hereby accepted for filing and suspended for a nominal period, as revised consistent with this order, to become effective as of the execution date of each agreement.

(C) Nevada Power's request for waiver of the Commission's 60-day prior notice requirement is hereby granted.

(D) Docket No. ER02-1741-000 is hereby consolidated with Docket No. ER02-1742-000 as discussed in the body of this order.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed MOU and LOUs. As discussed in the body of this order, we will hold the hearing in abeyance to provide time for settlement judge procedures.

(F) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2001), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge.

(G) Within 60 days of the date of issuance of this order, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(H) If the settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding judge to be designated by the Chief Judge shall convene a conference in this proceeding to be held within approximately 15 days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.