

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

)	
Duke Energy North America, LLC and)	
Duke Energy Trading and Marketing, L.L.C.)	
)	
Complainants,)	Docket No. EL04-____-000
)	
v.)	
)	
Nevada Power Company)	
)	
Respondent.)	
)	

**COMPLAINT AND REQUEST FOR FAST TRACK PROCESSING OF
DUKE ENERGY NORTH AMERICA, LLC AND
DUKE ENERGY TRADING AND MARKETING, L.L.C.**

Pursuant to Section 206 of the Federal Power Act ("FPA"),¹ and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"),² Duke Energy North America, LLC ("DENA") and Duke Energy Trading and Marketing, L.L.C. ("DETM") respectfully submit this Complaint requesting that the Commission expeditiously direct Nevada Power Company ("NPC") to abide by Section 17.7 ("Existing Section 17.7") of the Sierra Pacific Resources Operating Companies' FERC Electric Tariff, First Revised Volume No. 1 ("NPC OATT")³ and grant DETM's timely filed notice of extension of commencement of

¹ 16 U.S.C. § 824e.

² 18 C.F.R. § 385.206 (2003).

³ NPC is one of the Sierra Pacific Resources operating companies and, therefore, provides open access transmission service under the Sierra Pacific Resources OATT. For purposes of this Complaint, DENA and DETM use the term "Existing Section 17.7" (footnote continued on next page)

transmission service under Service Agreement No. 97 (the "DETM TSA") of the NPC OATT.⁴

Pursuant to Existing Section 17.7 of NPC's OATT, DETM timely provided notice of a one year extension of the original service commencement date (*i.e.*, July 31, 2003) ("Year One") as specified in the DETM TSA. To date, NPC has refused to honor DETM's notice, having returned DETM's payment equal to one month's transmission service reservation fee as provided for under Existing Section 17.7.

Since July 31, 2003, NPC has required DETM to place one month's service charge in escrow each month during the pendency of the dispute. Until November 10, 2003, DETM was required to pay \$726,000 into escrow each month. Starting November 10, 2003, the monthly amount that DETM is required to pay into escrow each month increased to \$1.17 million a month as a result of the Commission's order in Docket No. ER03-1328-000 making NPC's proposed transmission rate increase effective as of November 10, 2003, subject to refund and to the outcome of a hearing.⁵ To date, therefore, DETM has paid over \$5.11 million into escrow, and is now required to post an additional \$1.17 million every month until this dispute is resolved.

DENA and DETM are filing this Complaint at this time because they have been unable to resolve the dispute with NPC by informal means or through Commission

to refer to the version of Section 17.7 in the NPC OATT in effect until March 21, 2004, which such version mirrors Section 17.7 of the Commission's *pro forma* tariff. On March 21, 2004, as discussed in more detail below, NPC's proposed changes to Existing Section 17.7 become effective, subject to refund and the outcome of settlement judge procedures. *See Supplemental Order Accepting and Suspending Tariff Filing*, 105 FERC ¶ 61,070 (2003) ("October 17 Order").

⁴ The TSA is attached, hereto, as Attachment A.

⁵ *See Order Accepting and Suspending Tariff Sheets, Subject to Refund, and Establishing Hearing Procedures*, 105 FERC ¶ 61,178 (2003).

settlement processes established by the Commission in Docket Nos. EL03-209-000, EL03-213-000, and ER03-1236-000.⁶ DENA and DETM are currently parties in these three proceedings, which relate to NPC's rejection of a number of extension notices tendered under Existing Section 17.7 of NPC's OATT as well as NPC's proposed changes to Existing Section 17.7.

The first proceeding was initiated by Pinnacle West Energy Corporation ("Pinnacle West") on July 10, 2003 in Docket No. EL03-209-000 when Pinnacle West filed a complaint with the Commission pursuant to Section 206 of the FPA requesting that the Commission direct NPC to abide by Existing Section 17.7 of the NPC OATT and grant Pinnacle West a one year extension for the commencement of service under Pinnacle West's transmission service agreement with NPC for Pinnacle West's payment of one month's transmission reservation fee. On July 18, 2003, a similar complaint was filed by Southern Nevada Water Authority ("SNWA") in Docket No. EL03-213-000 concerning NPC's rejection of SNWA's notice of a one year extension of its transmission service agreement with NPC for SNWA's payment of one month's transmission reservation fee. DETM and DENA intervened and filed comments in support of Pinnacle West's and SNWA's complaints in both dockets. The Pinnacle West and SNWA complaints placed before the Commission disputes virtually identical to the one that DETM currently has with NPC's unlawful rejection of DETM's notice to extend the service commencement date of the DETM TSA under Existing Section 17.7 of the NPC OATT.

⁶ See *Order Establishing Settlement Procedures*, 105 FERC ¶ 61,053 (2003) ("October 8 Order").

The third proceeding was initiated on August 21, 2003 by NPC. On that date, NPC made a filing with the Commission in Docket No. ER03-1236-000 proposing to revise Existing Section 17.7 of the NPC OATT to modify the fee payable by a transmission customer deferring transmission service where new facilities or upgrades are required to provide such service. In the filing, NPC expressly acknowledged that the purpose of the filing was to legitimize, through a Section 205 filing, NPC's refusal to apply Existing Section 17.7 of its existing OATT to extension notices that were tendered by customers, including DETM, before July 31, 2003 under TSAs that include no case-specific provisions that would modify or invalidate Existing Section 17.7. In addition, in stark contrast to NPC's actual rejection of DETM's extension notice, NPC also noted in the filing that its position was not to deny extensions but rather to grant them as long as NPC is permitted to assess an extension fee other than the one month fee provided for in Existing Section 17.7. DETM and DENA intervened and filed a protest in this proceeding as well.

On October 8, 2003, the Commission issued an order in each of the three proceedings described above establishing settlement judge procedures.⁷ After numerous meetings over the course of the last four months conducted under the purview of settlement judge procedures, DENA, DETM, and NPC have been unable to resolve their dispute. Pinnacle West and SNWA have, however, each reached settlement with NPC on their respective disputes. On December 19, 2003, NPC filed with Judge Massey, the presiding settlement judge, an Offer of Settlement memorializing the settlement reached among Pinnacle West, SNWA, and NPC. On

⁷ October 8 Order, at P 36.

January 12, 2004, Judge Massey certified the Offer of Settlement to the Commission. If approved by the Commission, the Offer of Settlement will result in the withdrawal of the complaints that Pinnacle West and SNWA filed in Docket Nos. EL03-209-000 and EL03-213-000. Under the circumstances, therefore, DENA and DETM have no option other than to file a formal Complaint at this time in order to ensure a Commission forum for resolution of their dispute with NPC.

DENA and DETM also request expedited consideration of this Complaint. As noted above, DETM has already paid over \$5.11 million dollars into escrow and is obligated to continue to pay into escrow \$1.17 million each month until resolution of this dispute. These dollars reflect the full cost of transmission service which DETM is not using because DETM has invoked its right to extend commencement of service.

Expedited action is also necessary to restore contractual and financial certainty to the DETM TSA transaction. On October 17, 2003, the Commission denied NPC's request for waiver of notice with respect to the proposed change to Existing Section 17.7 filed in Docket No. ER03-1236-000 so as to permit a retroactive effective date of May 1, 2003 and suspended the effectiveness of the proposed change five months from sixty days after NPC's submission of filing, *i.e.*, until March 21, 2004.⁸ The March 21, 2004 effective date is fast approaching, and the dispute over the applicability of Existing Section 17.7 as compared to the applicability of NPC's proposed changes to Existing Section 17.7 to DETM's Year One extension notice as well as any additional extension notices, and the corresponding fee(s) applicable to such extension notices, will not be resolved until the Commission rules on the instant Complaint or, in the event the

⁸ October 17 Order, at P 7.

Commission rules unfavorably on the instant Complaint, the Section 205 proceeding. Accordingly, until the Commission acts, DETM will be unable to ascertain the cost of its Year One notice extension and any additional extensions in the commencement of service and may also be compelled to provide additional extension notices, along with corresponding one-month fees, prior to March 21, 2004 (the effective date of the amendment to Section 17.7) in an attempt to lessen the potential financial impact to DETM. While DETM is entitled to refunds for amounts paid under Existing Section 17.7, at present DETM is forced to pay \$1.17 million a month into escrow until this Complaint is resolved and to consider making decisions regarding time periods beyond Year One without knowledge or understanding of the potential financial consequences. This severely impacts DETM's ability to make sound economic decisions about whether and when to exercise its rights under the NPC OATT to provide notice of further extensions.⁹ DETM and DENA therefore ask the Commission for expedited action, and more specifically, for a ruling on the instant Complaint by March 18, 2004, so as to enable DETM to make rational and sound economic decisions with respect to extension of its TSA with full knowledge and understanding of its ability to extend its TSA and the financial impacts associated therewith. Otherwise, DETM may have no other choice but to make economic decisions with respect to extension of its TSA prior to March 21, 2004 in an effort to mitigate the overall potential financial impact of NPC's proposed amendment to Section 17.7.

⁹ DETM is currently evaluating whether to provide NPC with notices of extension for years beyond the Year One notice. In particular, if NPC's proposed changes to Existing Section 17.7 are deemed inapplicable to DETM's TSA, DETM in all likelihood would defer giving notice of further extensions at this time, and would evaluate its options on a year-by-year basis. If, however, the Amended Section 17.7 is deemed to apply to the DETM TSA, or if no decision is reached before March 18, 2004, then DETM expects to provide notice of additional extension(s) of service.

Given NPC's inappropriate denial of DETM's timely extension request, as explained in more detail below, DENA and DETM respectfully request that the Commission direct NPC to abide by Existing Section 17.7 of its OATT. In particular, NPC should be directed to recognize and accept DETM's right to utilize Existing Section 17.7 of NPC's OATT for the Year One extension, subject to DETM's payment of a one month reservation fee based on the transmission rate in effect at the time of the Year One extension and the other terms and conditions of Existing Section 17.7. The Commission should also direct NPC to recognize that DETM has to the right to use Existing Section 17.7 to extend the initial service commencement date for an additional four years through the payment of additional amounts equal to one month's reservation fee for each year of extension. The Commission should make clear that any revised extension terms adopted in Docket No. ER03-1236-000 will be applied to new TSAs and are not applicable to any of the optional five year extensions to which DETM is entitled under the DETM TSA.

I. COMMUNICATIONS

DENA and DETM respectfully request that all pleadings, correspondence and other communications concerning this docket be directed to the following persons, and their names and addresses be placed on the official service list for this docket:

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II. DESCRIPTION OF PARTIES

A. DENA and DETM

DENA is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at 5400 Westheimer Court, Houston, Texas 77056. DENA is currently developing an electric generating facility to be owned and operated by Duke Energy Moapa, LLC, a wholly-owned subsidiary of DENA, and interconnected with NPC's transmission system. DETM is a Delaware limited liability company having its principal place of business at 5400 Westheimer Court, Houston, Texas 77056, and is a long-term firm transmission customer under NPC's OATT.

B. Nevada Power Company

NPC is a public utility, as defined in the FPA, organized under the laws of the State of Nevada. NPC is a wholly-owned subsidiary of Sierra Pacific Resources, Inc., an electric utility holding company registered under PUHCA. NPC merged with Sierra Pacific Resources in 1999, thereby becoming affiliated with Sierra Pacific Resources and its existing public utility affiliate, Sierra Pacific Power Company. NPC provides retail generation and distribution services to customers in southern Nevada, wholesale generation services to customers in Nevada and elsewhere, and transmission service over its transmission system located in southern Nevada.

III. BACKGROUND

A. Service Agreement No. 97

On August 1, 2001, NPC submitted for filing with the Commission in Docket No. ER01-2759-000 Service Agreement No. 97 obligating NPC to provide DETM with 600 MW of firm point-to-point transmission service for a five-year term commencing on

July 31, 2003.¹⁰ NPC submitted the DETM TSA and transmission service agreements with other identified entities planning to take transmission service.¹¹ NPC notified DETM and the Other Centennial Customers that it was planning to construct a transmission expansion project, referred to as the Centennial Project,¹² that would be used, *inter alia*, to provide service under the TSAs as well as allow for NPC to accommodate native load growth. NPC did not propose an incremental rate for service to DETM and the Other Centennial Customers. Rather, NPC elected to price the transmission service at NPC's embedded transmission service rate.

DENA and DETM filed a protest to the DETM TSA, and the Other Centennial Customers filed protests to their transmission service agreements, raising concerns about restrictions that NPC proposed to impose on DETM's and the Other Centennial Customers' rights to roll over service under Section 2.2 of the NPC OATT. The Commission granted the protests and prohibited NPC from restricting rollover rights in the affected TSAs. The Commission also set for hearing issues surrounding security requirements, and the parties reached settlement on those matters.¹³

¹⁰ See *Nevada Power Co.*, Docket No. ER01-2759-000, "Notice of Filing" (issued Aug. 7, 2001).

¹¹ NPC also entered into transmission service agreements with Calpine Corporation ("Calpine"), Mirant Americas Development, Inc. ("Mirant"), Pinnacle West Energy Corporation ("Pinnacle West"), and Reliant Energy Services, Inc. ("Reliant") (collectively, the "Other Centennial Customers"). The Other Centennial Customers' transmission service agreements were filed in Docket Nos. ER01-2758-000, ER01-2757-000, ER01-2754-000, and ER01-2755-000, respectively.

¹² The Centennial Project consists of a number of 500, 230 and 138 kV transmission projects, and it is a key component of Governor Guinn's 2001 Nevada Energy Protection Plan. The Centennial projects will ultimately provide 3000 MW of new transmission capacity. See NPC's Integrated Resource Plan 2003, submitted to the Public Utilities Commission of Nevada ("PUCN") on July 1, 2003, Volume VI, at 37-38.

¹³ *Nevada Power Co., et al.*, 97 FERC ¶ 61,324 (2001); *order approving settlement, Nevada Power Co., et al.*, 99 FERC ¶ 61,301 (2002).

B. DETM's Notice To Exercise Its Rights Under Existing Section 17.7 Of NPC's OATT

In January 16, 2003, DETM alerted a NPC representative that DETM intended to provide a notice of extension of the commencement of transmission service for Year One. On June 10, 2003, DETM sent a letter to NPC invoking its rights under Existing Section 17.7 of NPC's OATT¹⁴ to extend the commencement date for the transmission service under the DETM TSA by one year, until July 31, 2004.¹⁵ Consistent with the requirements of Existing Section 17.7 of NPC's OATT, DETM enclosed with the Extension Notice a check for \$726,000, equal to one month's charge for the firm transmission service under the TSA calculated at the transmission rate in effect at the time the Extension Notice was made.¹⁶

On June 27, 2003, NPC provided a written response to the Extension Notice.¹⁷ In its response, NPC denied DETM's invocation of Existing Section 17.7 of NPC's OATT to extend the service commencement date. NPC's response states, in part, that:

¹⁴ As noted earlier, Existing Section 17.7 of NPC's OATT tracks Section 17.7 of the *pro forma* OATT adopted by the Commission in Order No. 888. *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, 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, Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd*, 535 U.S. 1 (2002). Specifically, Section 17.7 allows any long-term firm transmission customer to defer commencement of service under its TSA for up to five years, by paying, for each annual extension, a non-refundable fee equal to one month's charges under the TSA.

¹⁵ See Letter from Beck B. Mayberry, Senior Director, Power Origination, Duke Energy Trading and Marketing, L.L.C., to Carolyn J. Cowan, Executive Director, Transmission Policy and Operations, NPC Company (June 10, 2003) (the "Extension Notice"). The Extension Notice is attached hereto as Attachment B.

¹⁶ A copy of the check is attached to the Extension Notice. See Attachment B.

¹⁷ See Letter from Carolyn J. Cowan, Executive Director, Transmission Policy and Operations, NPC Company, to Beck B. Mayberry, Senior Director, Power Origination, (footnote continued on next page)

Section 17 of the OATT addresses transmission service requests which can be fulfilled using existing capacity. Where, as here, the Transmission Provider determines that a System Impact Study is necessary to accommodate a request for service under Section 17, the provisions of Section 19 then govern the service request. If Network Upgrades are required for the requested service, no extension of commencement of service can be permitted because the Transmission Customer is responsible for the costs of the upgrades and any extension would eliminate that responsibility during the period of extension.¹⁸

The Rejection Letter also sets forth NPC's intention to start charging DETM for service under the DETM TSA, on a monthly basis, commencing on July 31, 2003.¹⁹ Importantly, the Rejection Letter failed to provide any valid justification for NPC's assertion that the Section 17 provisions of its OATT no longer apply when a transmission provider is required to undertake a system impact study in order to evaluate a transmission service request or construct new facilities in order to satisfy a transmission service request.

C. Settlement Discussions with NPC

As set forth above, in July 2003, Pinnacle West and SNWA filed separate complaints regarding their TSAs with NPC raising disputes virtually identical to DETM's dispute with NPC regarding NPC's improper denial of extension requests under Existing Section 17.7. Subsequently, in August, 2003, NPC filed its proposed OATT amendment under Section 205. DENA and DETM intervened in each of these proceedings. On October 8, 2003, the Commission directed the appointment of a settlement judge to assist the parties in these proceedings to arrive at a settlement. Over

Duke Energy Trading and Marketing, L.L.C. (June 27, 2003) (the "Rejection Letter"). The Rejection Letter is attached hereto as Attachment C.

¹⁸ Rejection Letter at 1.

¹⁹ Rejection Letter at 2.

the last four months, representatives of DENA and DETM attended a number of settlement conferences at FERC and also participated in numerous informal conferences with NPC in an attempt to resolve the issues raised in this Complaint as well as issues related to additional extensions of the DETM TSA service commencement date.²⁰ However, after several months of negotiations and settlement discussions pursuant to the October 14 Order, DENA and DETM were unable to reach agreement with NPC.

Notably, on December 19, 2003, NPC filed an Offer of Settlement among NPC, Pinnacle West, and SNWA in Docket Nos. EL03-209-000 and EL03-213-000. On January 12, 2004, Judge Massey certified the Offer of Settlement to the Commission. If approved by the Commission, the Offer of Settlement will result in the withdrawal of the complaints that Pinnacle West and SNWA filed in Docket Nos. EL03-209-000 and EL03-213-000. In that event, DENA and DETM will no longer have a Commission forum to resolve its dispute with NPC. Therefore, DENA and DETM have no other option but to file this formal Complaint, requesting fast track processing, so that DETM will not be further harmed by NPC's refusal to follow Existing Section 17.7 of its OATT and can gain certainty about the cost of extensions under the TSA.

IV. COMPLAINT

NPC's denial of DETM's notice to extend commencement of service under its TSA is contrary to the express terms of NPC's OATT and Commission precedent. NPC's reliance on opportunities provided in Order No. 888-A for transmission

²⁰ See *Order of Chief Judge Designating Settlement Judge and Establishing Settlement Conference*, Docket Nos. EL03-209-000, EL03-213-000 and ER03-1236-000 (October 14, 2003) ("October 14 Order"). See *Report to the Commission and Chief Judge*, Docket No. ER03-1236-000 (January 26, 2004) ("January 26 Report") (requesting the settlement period be extended an additional thirty days from its present expiration date of February 5, 2004).

providers to propose different terms for extension of service when facilities were constructed to provide the service is misplaced because NPC failed to propose restrictions on DETM's Existing Section 17.7 OATT rights when NPC proffered DETM a proposed service agreement for its transaction. NPC also failed to propose and have the Commission accept any modifications to DETM's Existing Section 17.7 rights prior to DETM's June 10, 2003 notice of extension. While NPC subsequently proposed modifications to Section 17.7 of its OATT in August 2003 ("Proposed Section 17.7"), those modifications provide no basis to restrict DETM's Existing Section 17.7 rights because DETM had no notice that NPC intended to restrict a fundamental term of the DETM TSA before DETM committed to take service under the agreement. Moreover, because the Commission denied waiver of notice and suspended the Section 205 NPC OATT amendment for five months, to become effective March 21, 2004, subject to refund, NPC has no basis to argue that the NPC OATT amendment is applicable to DETM's June 10, 2003 extension notice or any other extension notice submitted prior to March 21, 2004.

A. NPC's Administration Of Existing Section 17.7 Of Its OATT Directly Contravenes Order No. 888-A

Existing Section 17.7 of NPC's OATT mirrors the same section of the Commission's *pro forma* OATT. In particular, Existing Section 17.7 of NPC's OATT provides as follows:

The Transmission Customer can obtain up to five (5) one year extensions for the commencement of service. The Transmission Customer may postpone service by paying a non-refundable annual reservation fee equal to one month's charge for Firm Transmission Service for each year or fraction thereof. If during any extension for the commencement of service an Eligible Customer submits a Completed Application for Firm Transmission Service, and such request can be satisfied only by releasing all or part of the Transmission Customer's Reserved Capacity, the original

Reserved Capacity will be released unless the following condition is satisfied. Within thirty (30) days, the original Transmission Customer agrees to pay the Firm Point-to-Point transmission rate for its Reserved Capacity concurrent with the new Service Commencement Date. In the event the Transmission Customer elects to release the Reserved Capacity, the reservation fees or portions thereof previously paid will be forfeited.²¹

This provision allows a transmission customer to pay a one month transmission reservation charge to extend the commencement date of a transmission service agreement for one year. The customer may exercise its right under Existing Section 17.7 to cover periods totaling five years.

NPC denied DETM's notice of extension, claiming that, when a transmission provider performs a system impact study under Section 19 of the OATT, Existing Section 17.7 is inapplicable and the OATT does not provide for any extensions in the commencement of transmission service. However, there is no such limitation in NPC's OATT, *i.e.*, there is nothing in the NPC OATT that restricts Existing Section 17.7 to only those customers for whom no studies are performed under Section 19. Indeed, were such a restriction to exist, it would invalidate Existing Section 17.7 rights for virtually all long-term requests which are almost always subject to study. Given that Existing Section 17.7 applies only to long-term requests and that most long-term requests are subjected to a study process, NPC's interpretation of its OATT would effectively nullify the extension option altogether.

Furthermore, NPC implies that if the system impact study determines that new facilities are necessary to provide transmission service, then DETM and other transmission customers are not entitled to rely on Existing Section 17.7 to give notice of an extension in commencement. However, NPC fails to acknowledge that there is

²¹ Existing NPC OATT at § 17.7.

nothing in the NPC OATT that limits the applicability of Existing Section 17.7 to only those customers for whom no costs for new transmission facilities are required under Section 19. NPC's interpretation that Existing Section 17.7 no longer applies where costs are likely to be incurred for new transmission facilities cannot be correct. Under NPC's reading of its OATT, DETM could only invoke Existing Section 17.7 if no system impact study was required and no costs for transmission facilities were necessary. As such, NPC's reading of its OATT would limit the applicability of Existing Section 17.7 to long-term transmission reservations to such a degree that the section would be useless.

Because NPC's OATT unambiguously grants DETM the right to provide notice of an extension of the DETM TSA upon payment of an amount equal to one month's reservation charge, and because NPC's arguments to the contrary are without foundation, the Commission should grant DENA and DETM's complaint and rule that NPC violated its OATT in denying DETM's June 10, 2003 notice of extension.

B. NPC's Administration Of Existing Section 17.7 Is Not Supported By Commission Precedent

NPC's assertion that Existing Section 17.7 is invalidated when a transmission provider determines that it will perform a system impact study under Section 19 to evaluate a transmission request or when new transmission facilities are required under Section 19 is not only at odds with the plain language of its OATT, it is also not supported by Commission precedent and must be rejected. For instance, in *American Electric Power Service Corp.*²² the Commission confirmed that Section 17.7 is available in circumstances involving new construction.²³ In this case, Consumers Energy Company

²² 97 FERC ¶ 61,207 (2001) ("*AEP*").

²³ *Id.* at 61,905.

("Consumers") requested transmission service from American Electric Power Service Corporation ("AEP"). In response, AEP conducted a system impact study and identified necessary expansion to satisfy Consumers and other customers transmission needs.²⁴ Thereafter, Consumers requested that AEP grant a one year extension for service to commence if AEP's necessary expansions were not complete in time for the peak summer season.²⁵ In response, AEP and the Commission agreed that if AEP could not timely provide Consumers requested transmission service, Sections 17.7 (providing extensions for commencement of service) and 19.7 (providing for partial interim service) of its OATT would be available to Consumers.²⁶

In addition, in *PacifiCorp*, the Commission rejected a specific proposal to amend Section 17.7 to deny the extension option when new facilities are involved.²⁷ The Commission explained that PacifiCorp had not demonstrated that the proposed modification to Section 17.7 was consistent with or superior to the *pro forma* tariff as required under Order No. 888.²⁸ The Commission's ruling in *PacifiCorp* confirms that, contrary to NPC's bald assertion, the *pro forma* OATT (and therefore the NPC OATT with Existing Section 17.7) does not restrict a customer's right to provide notice of extensions for the commencement of service.²⁹

Accordingly, consistent with the Commission's established precedent, the Commission should grant DENA and DETM's complaint and rule that NPC violated its

²⁴ *Id.* at 61,901.

²⁵ *Id.* at 61,905.

²⁶ *Id.*

²⁷ 98 FERC ¶ 61,224, *order on reh'g*, 99 FERC ¶ 61,259 (2002).

²⁸ *PacifiCorp* at 61,885.

²⁹ *Id.*

OATT by denying DETM's June 10, 2003 notice of extension of commencement of service.

C. NPC's Reliance On Language In Order No. 888-A Is Also Misplaced

NPC has argued, in responding to the Pinnacle West and SNWA complaints in Docket Nos. EL03-209-000 and EL03-213-000 as well as in Docket No. ER03-1236-000, that the following language in Order No. 888-A authorizes NPC to establish different terms and conditions for extensions of transmission service that require construction of new facilities:

Several utilities ask the Commission to clarify that, if transmission facilities have been constructed to accommodate a request for transmission service, delays by the customer in commencing service should be prohibited or the customer should pay the full carrying charges on the facilities during the period of delay (less any revenues received). . .

Because different factual circumstances may exist that may lead to alternative solutions to the problem, we will not adopt a generic resolution. Rather, the Commission believes it appropriate to allow each utility to propose solutions in subsequent section 205 filings with the Commission.³⁰

First, it should be recognized that, when DETM tendered a timely notice of extension of commencement of service for its TSA, NPC did not respond with a proposal to abide by the notice under modified terms and conditions. NPC simply denied the notice of extension outright. Only after Pinnacle West and SNWA filed complaints alleging similar improper denials of service did NPC propose to the Commission that Order No. 888-A included language that provided certain opportunities to propose for Commission approval different terms for extensions of TSAs which require construction of facilities. At no time prior to that — neither when it

³⁰ Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,322 (1997).

tendered the TSAs to DETM and Other Centennial Customers, nor when it was alerted by DETM that DETM would be invoking its extension rights, nor when it denied DETM's, Pinnacle West's and SNWA's invocation of their extension rights — did NPC propose for Commission approval modified terms and conditions for extension. Rather, in 2001, NPC provided to DETM and Other Centennial Customers TSAs without any restrictions on extension rights³¹ and, in 2003, when extensions were submitted in accordance with those unrestricted TSAs, NPC denied the extension requests outright. Accordingly, while the language in Order No. 888-A may provide a transmission provider with certain opportunities to present a timely proposal for modified extension terms for Commission approval, NPC did not do so here. Therefore, to the extent that NPC may claim that Order No. 888-A permits its denial of DETM's Year One extension request or permits NPC to charge a fee higher than the one month fee provided for in Existing Section 17.7, such a claim would be misplaced insofar as NPC did not seek prior Commission approval of *any* restrictions on DETM's extension rights under the NPC OATT, either when granting DETM's request for transmission service or any time before denying DETM's notice of extension. Given the fact that NPC never requested or received Commission approval to constrain or modify DETM's extension rights when it submitted DETM's TSA for filing, and DETM submitted a timely extension of its TSA on June 10, 2003 pursuant to Existing Section 17.7, Order No. 888-A provides NPC with no authority to deny any notice of extension submitted by DETM with respect to its TSA or to otherwise modify the one month fee provided for in Existing Section 17.7.

³¹ As noted *infra*, NPC did include in the DETM TSA certain other proposed transaction-specific restrictions on DETM's rights under the NPC OATT.

Accordingly, the Commission should rule that NPC violated its OATT in denying DETM's June 10, 2003 notice of extension.

D. NPC's Section 205 OATT Amendment Should Not Be Applied to DETM's TSA

NPC's Section 205 OATT amendment provides no basis for NPC to depart from the requirements of its currently-effective OATT and the unqualified TSAs that customers relied upon when they confirmed their transmission reservations. NPC has previously demonstrated its understanding, for example, of the need to make a timely Section 205 filing proposing modifications in a transmission service agreement when granting service if NPC seeks to depart from specific terms of the *pro forma* OATT on a case-by-case basis in order to allow the customer the opportunity to dispute NPC's application of the OATT to specific transactions, including any proposals for case-specific departures in service terms. In DETM's case, for instance, upon granting DETM service in 2001, NPC filed a TSA with the Commission that proposed customer-specific departures from the terms of the *pro forma* OATT for Commission approval.³² DETM was thus provided the opportunity to exercise its rights to protest those proposed departures with which it took issue, which DETM successfully did.³³

Thus, there is no conflict between the Order No. 888-A requirement for case-by-case resolution and the Order No. 888-A requirement for a timely Section 205 filing to

³² In 2001, NPC incorporated language in DETM's TSA making DETM's reservation "contingent upon the successful completion of the [Mead] transformer installation." It also included *proposed* limitations on DETM's rollover rights which, as noted *supra*, DETM successfully contested. A copy of DETM's TSA is shown on Attachment A.

³³ DETM exercised its right to have its TSA submitted to the Commission (in Docket No. ER01-2759-000) on an unexecuted basis. DETM opposed certain terms of the TSA filed by NPC, and, in particular, was successful in challenging NPC's proposal to impose restrictions on DETM's rights to roll over service under Section 2.2 of the NPC OATT.

propose such case-by-case resolution. NPC had the opportunity to propose case-specific extension terms that depart from Existing Section 17.7 in the TSAs it tendered to its customers for execution in 2001. And, under the Commission's procedures, if the customers had disagreed with that case-specific proposal, they could have exercised their rights to request the TSAs to be filed on an unexecuted basis so that the Commission could render a final ruling on the terms of service before the customer made its decision to undertake the transaction.

The ability to extend service on an annual basis by surrendering a one month reservation fee is a fundamental element of any long-term transmission service and it goes to the heart of the service requested by DETM. As is the case with proposed restrictions on rollover rights, it was incumbent upon NPC to inform DETM of any proposed restrictions on the nature of the service offered, including extension rights, before DETM committed to the requested transmission service. NPC failed to propose case-specific modifications before DETM committed to this particular transaction, and should not now be permitted to restrict retroactively a unique and essential provision of the service DETM requested. While NPC is free to propose changes to transmission service rates and other terms and conditions of the DETM TSA, NPC was obligated to identify in advance any proposed restriction on such an intrinsic element of the service itself. Indeed, NPC, as the transmission provider, is the only party with the authority and, in fact, the ability to understand and know about the new transmission facilities to be built in order to provide transmission service, including the scope of the facilities to build, their cost and method of recovery, the timing of their construction and any contingencies, and the financial impact to NPC of construction and possible delay. It is through the system impact study process provided for under the OATT that the

transmission provider makes these types of determinations, as did NPC here, with any restrictions on the terms of transmission service to be offered. In providing for Existing Section 17.7 in its OATT, part of the NPC's responsibility is to evaluate the impact of a transmission customer exercising these rights in the event that transmission customer decides to take the transmission service offered. Therefore, as the transmission provider, NPC's unique ability to obtain and evaluate such information carries with it the responsibility to put DETM on notice prior to DETM's acceptance of transmission service that NPC is reserving its right to modify the extension rights set forth in the DETM TSA. As noted earlier, however, NPC did not do so.

No matter what format NPC uses to implement the option provided under Order No. 888-A in the future (generic OATT modification as NPC proposed in Docket No. ER03-1236-000, or case-by-case TSA modification as NPC proposed when it attempted to restrict DETM's rollover rights in Docket No. ER01 2759-000), this is a key procedural flaw. DETM should have been put on notice by NPC that NPC intended to modify the fundamental terms and conditions of transmission service before DETM executed or agreed to the TSA. Without such advance notification, it was reasonable for DETM to assume, as part of its evaluation of whether to take the transmission service, that the terms of Existing Section 17.7 applied to its transmission service under its TSA and that, if necessary at a later date, DETM could exercise its rights under Existing Section 17.7 to extend the commencement of service at a pre-defined and known cost.³⁴ Because DETM was not informed of limitations or additional charges that would be imposed when it

³⁴ Thus, while DETM was on notice that the actual fee could change to limit charges on the basic transmission service rate, DETM was not on notice that extensions would be restricted or would not be available by payment of a fee based on one-twelfth (1/12) of the annual transmission service rate.

exercised its rights under the TSA, however, DETM could not evaluate the economic consequences of the transaction and could not make an informed decision as to whether to confirm the reservation or not. If DETM had been apprised of potential limitations on its deferral rights or the potential for additional costs for exercising its OATT rights, DETM's evaluation of the transmission service may have been very different. It is possible, for example, that DETM may have decided to not confirm the reservation. Alternatively, DETM might have modified its request for service to mitigate these limits and costs (*e.g.*, DETM might have negotiated additional service provisions to mitigate these consequences, might have requested a shorter or longer term or a different initial commencement date, or might have exercised its right to require NPC to file the service agreement on an unexecuted basis to obtain Commission review and revision on a timely basis).

The Commission should confirm that NPC's belated attempt to change its OATT terms of Existing Section 17.7 retroactively, after DETM confirmed the service and after the service agreement was executed, is unjust and unreasonable and, therefore, DETM is permitted to provide notice of extensions of service for up to five annual periods by providing a timely notice and paying an amount equal to one month's transmission charge. Although DETM has provided notice of extension for Year One, DETM has made clear to NPC that it is not seeking to shorten the total contract term of five years but simply to extend the commencement date of service.

E. The Effective Date Established for NPC's Section 205 Amendment Clearly Limits The Applicability Of That Amendment To DETM's TSA

Even if the Commission concludes that NPC's Proposed Section 17.7 applies to extension notices made under the NPC OATT, NPC's Proposed Section 17.7 should not be applied to DETM's Year One notice of extension or to any other extension notice

provided prior to March 21, 2004. The inapplicability of NPC's Proposed Section 17.7 to DETM's Year One notice of an extension and to any other extension notice provided prior to March 21, 2004 is clear given the Commissions' denial of NPC's request for waiver of notice to permit its Section 205 OATT amendment to become effective retroactively on May 1, 2003.³⁵ The Commission ruled that NPC had not demonstrated good cause for waiver of the requirement under Section 205 of the FPA and that NPC provide sixty days notice of tariff changes. The Commission further imposed a five month suspension, making the OATT amendment effective, subject to refund, on March 21, 2004.³⁶ As such, the Section 205 proposal simply was not in effect on June 10, 2003, the date DETM requested the Year One extension, and does not take effect until March 21, 2004.³⁷ NPC has no choice but to grant DETM the Year One extension (and any additional extension notices provided prior to the March 21, 2004 effective date) under the terms of its Existing Section 17.7 OATT.

³⁵ *Nevada Power Co.*, 105 FERC ¶ 61,070, at P 3 (2003).

³⁶ *Id.* at P 7.

³⁷ In Docket No. ER02-1236-000, NPC had requested that, if the Commission denied waiver of notice to permit a May 1, 2003 effective date, the Commission allow NPC to apply the proposed amendment to the extension requests that it had denied and "which are still pending." Transmittal Letter at 10. However, as DETM noted in its protest in to the Section 205 amendment, DETM's extension notice is "pending" only because NPC violated its existing OATT terms when it denied DETM's timely request. DETM also noted that NPC's actions in response to the extension notice had created continuing uncertainty and forced DETM to forego the opportunity to schedule against its reservation, to redirect its reservation, or to reassign its reservation for periods prior to the Commission's rulings. Accordingly, retroactive application of the OATT provisions to DETM's TSA would cause irreparable harm. DETM also noted that delays in clarifying the applicability of the Section 205 amendment to the June 10, 2003 extension notice would delay DETM's ability to mitigate its costs by utilizing its transmission reservation. In denying waiver of notice and suspending the OATT amendment for five months, the Commission did not grant NPC's request to circumvent the notice requirement by treating DETM's June 10, 2003 extension notice as pending.

V. REQUEST FOR SUMMARY DISPOSITION

The relief requested herein can be provided solely on the basis of this Complaint and the Attachments hereto. An evidentiary hearing is not necessary in this case because there are no issues of disputed fact before the Commission. The issue at hand is simply a question of the proper interpretation of Existing Section 17.7 of NPC's OATT as it applies to this particular DETM TSA. Furthermore, the institution of settlement proceedings to address the instant dispute is unlikely to be fruitful, as NPC and DENA and DETM have already attempted conscientiously, but failed to resolve the issue presented herein through Commission-administered settlement discussions. Accordingly, DENA and DETM request that the Commission grant this Complaint summarily.

VI. RULE 206 REQUIREMENTS

A. Requirement for Fast Track Processing

Fast track processing by the Commission is necessary to timely resolve the issue raised in this Complaint. First, DENA and DETM request that the Commission utilize its fast track procedures to reduce the financial burden and unreasonable uncertainty created by the requirement to pay \$1.17 million per month into escrow, for each month that NPC refuses to permit DETM to extend the commencement of transmission service under Existing Section 17.7 of NPC's OATT. Second, given that the effective date for the tariff amendment filed under Section 205 is March 21, 2004, a Commission ruling by March 18, 2004 is required in order to allow DETM the ability to evaluate the cost of additional extensions; otherwise, DETM may have no other choice but to make decisions with respect to extension of its TSA prior to March 21, 2004 in an effort to mitigate the overall potential financial impact. While DETM is entitled to refunds for amounts paid under Existing Section 17.7, at present, DETM is forced to consider

making decisions regarding time periods beyond Year One without knowledge of the related risks and costs. Therefore, fast track processing of this Complaint under Section 206 of the Commission's regulations is necessary to prevent DETM from incurring wholly unwarranted transmission reservation fees and to provide certainty as DETM considers its business alternatives with respect to the TSA.

B. Resolution of this Complaint in Other Commission Proceedings

In accordance with 18 C.F.R. § 385.206(b)(6), DENA and DETM are unaware of any proceeding before the Commission or in any other forum that might resolve the issue presented herein. DENA and DETM have conscientiously attempted to resolve this dispute in the forums that were available as a result of the Pinnacle West and SNWA complaint proceedings. However, as described above, those proceedings will settle without addressing DETM's TSA if the Commission approves the recently-filed Offer of Settlement.

C. Use of Alternative Dispute Resolution

DENA and DETM have attempted to resolve this dispute on an informal basis, and through formal Commission settlement judge procedures, with NPC. Considering that a clear OATT interpretation issue is involved, and that DENA and DETM and NPC have differing interpretations of the OATT, further use of informal discussions or settlement proceedings is unlikely to result in any change in the parties' current positions. Therefore, given the parties' unsuccessful settlement efforts over the last four months, the use of such avenues would not be productive in resolving the instant dispute.

VII. RELIEF REQUESTED

DENA and DETM respectfully request that the Commission direct NPC to abide by Existing Section 17.7 of its OATT. In particular, NPC should be directed to recognize

and accept DETM's right to utilize Existing Section 17.7 of NPC's OATT for the Year One extension, subject to DETM's payment of a one month reservation fee and the other terms and conditions of Existing Section 17.7. The Commission also should direct NPC to recognize that DETM has the right to use Existing Section 17.7 to extend the initial service commencement date for an additional four years through the payment of additional one month reservation fees. The Commission also should clarify that NPC's proposed Section 17.7 applies only to future transmission services that DETM may request from NPC and does not impact the DETM TSA at issue in this Complaint.

VIII. CONCLUSION

For the reasons set forth herein, DENA and DETM respectfully request that the Commission grant this Complaint and order the relief requested herein.

Respectfully submitted,

February 3, 2004

/s/ Maria Farinella (e-filed)

Larry F. Eisenstat

Michael J. Rustum

Maria Farinella

Dickstein Shapiro Morin & Oshinsky LLP

2101 L Street, NW

Washington, DC 20037-1526

Telephone: (202) 785-9700

**Counsel to Duke Energy North America, LLC
and Duke Energy Trading and Marketing,
L.L.C.**

ATTACHMENT A

Service Agreement No. 97

**SIERRA PACIFIC RESOURCES OPERATING
COMPANIES, FERC ELECTRIC TARIFF,
FIRST REVISED VOLUME NO. 1**

SERVICE AGREEMENT NO. 97

Effective: July 1, 2001
Filed to comply with order of the Federal Energy Regulatory Commission,
Docket Nos. ER01-2754-000 et al., issued June 12, 2002,
99 FERC ¶ 61,301 (2002)

Sierra Pacific Resources Operating Companies
FERC Electric Tariff
First Revised Volume No. 1
Open Access Transmission Tariff

Service Agreement No. 97

Page 1 of 5

**Service Agreement For Long-Term
Firm Point-To-Point Transmission Service**

- 1.0 This Service Agreement, dated as of 7-3-02, is entered into, by and between Sierra Pacific Power Company and/or Nevada Power Company as appropriate ("Transmission Provider"), and Duke Energy Trading and Marketing, (Duke) ("Transmission Customer").
- 2.0 The Transmission Customer has been determined by the Transmission Provider to have a Completed Application for Firm Point-To-Point Transmission Service under the Tariff.
- 3.0 The Transmission Customer has provided to the Transmission Provider an Application deposit in accordance with the provisions of Section 17.3 of the Tariff.
- 4.0 Service under this agreement shall commence on the later of (1) the requested service commencement date, or (2) the date on which construction of any Direct Assignment Facilities and/or Network Upgrades are completed, or (3) such other date as it is permitted to become effective by the Commission. Service under this agreement shall terminate on the actual termination date or such date as mutually agreed upon by the parties.
- 5.0 The Transmission Customer's renewal rights under this agreement shall be as specified in Section 2.2 of the Transmission Provider's Tariff as it may be amended from time to time in accordance with FERC policy. In addition, in order to assist the Transmission Provider in planning its system appropriately, the Transmission Customer will communicate with the Transmission Provider on a nonbinding basis regarding its assessment of whether it will renew this agreement as follows:
 - 5.1 In the event the Transmission Customer signs a power sales contract that: (1) utilizes the transmission capacity provided for under this agreement, and (2) extends beyond this agreement's initial term, the Transmission Customer shall so notify the Transmission Provider (without identifying the parties to the power sales contract) and shall provide the Transmission Provider with the Transmission Customer's assessment of the likely impact of such contract on its intent to renew this agreement.

5.2 The Transmission Customer will on an annual basis, starting five years prior to the end of the initial term of this agreement, provide the Transmission Provider with a nonbinding statement of its current assessment of whether it will renew this agreement. The Transmission Customer will, on Transmission Provider's request, answer any reasonable questions the Transmission Provider has about such assessment; provided that the Transmission Customer shall not be obligated to provide any confidential market data to the Transmission Provider.

5.3 The Transmission Provider's transmission personnel shall treat as confidential and proprietary all information provided by Transmission Customer under this Section 5.0, and shall comply with FERC's affiliate regulations and other applicable provisions of Order No. 889, or any successor requirements, in its treatment of such information; provided that this Section 5.3 shall not prevent the Transmission Provider from providing information to FERC, the PUCN or any other agency of competent jurisdiction in accordance with applicable requirements of such agency or from compliance with any valid court order requiring the production of such information. The Transmission Provider shall give the Transmission Customer notice of any such agency request or court order so that the Transmission Customer may take any action deemed necessary by the Transmission Customer to protect the confidentiality of the requested information.

6.0 The Transmission Provider agrees to provide and the Transmission Customer agrees to take and pay for Firm Point-To-Point Transmission Service in accordance with the provisions of Part II of the Tariff and this Service Agreement.

7.0 Any notice or request made to or by either Party regarding this Service Agreement shall be made to the representative of the other Party as indicated below.

Sierra Pacific Resources Operating Companies
FERC Electric Tariff
First Revised Volume No. 1
Open Access Transmission Tariff

Service Agreement No. 97

Specifications For Long-Term Firm Point-To-Point
Transmission Service

1.0 Term of Transaction: 5 Year(s)

Start Date: 07-31-03

Termination Date: 07-30-08

2.0 Description of capacity and energy to be transmitted by Transmission Provider including the electric Control Area in which the transaction originates.

600 MW from Harry Allen 500 kV Substation in Nevada Power Company's Control Area to Mead 230 kV Substation.

3.0	Point of Receipt	Delivering Party
	Harry Allen 500 kV Substation	Duke Energy Trading and Marketing

4.0	Point of Delivery	Receiving Party
	Mead 230 kV Substation	Duke Energy Trading and Marketing

Nevada Power will propose the addition of a Mead 500/230 kV transformer such that this contract path would allow for deliveries to Mead 230 kV. Nevada Power will work with the appropriate third party utilities to accomplish the interconnection. Any firm service that is offered by Nevada Power to Mead 230 kV using this contract path is contingent upon the successful completion of the transformer installation.

5.0 Maximum amount of capacity and energy to be transmitted (Reserved Capacity): 600 MW

6.0 Designation of party(ies) subject to reciprocal service obligation: None

7.0 Name(s) of any Intervening Systems providing transmission service: None

Sierra Pacific Resources Operating Companies
FERC Electric Tariff
First Revised Volume No. 1
Open Access Transmission Tariff

Service Agreement No. 97

Page 5 of 5

- 8.0 Service under this Agreement may be subject to some combination of the charges detailed below. (The appropriate charges for individual transactions will be determined in accordance with the terms and conditions of the Tariff.)
- 8.1 Transmission Charge: \$1.21/kW-mo.
- 8.2 System Impact and/or Facilities Study Charge(s):
Pending finalization, \$30,000 deposit in place. Duke will be responsible for the final actual costs.
- 8.3 Direct Assignment Facilities Charge: None under this TSA.
However, Direct Assignment Facilities will be required to provide the associated interconnection and are defined in the Interconnection & Operation Agreement.
- 8.4 Ancillary Services Charges: As negotiated in the future or as defined in Interconnection and Operation Agreement.
- 8.5. Power Factor Requirements: As defined in Interconnection and Operation Agreement.

ATTACHMENT B



June 10, 2003

Carolyn J. Cowan
Executive Director, Transmission
Nevada Power Company
6226 W. Sahara Avenue
Las Vegas, Nevada 89146

Re: Notification of Extension of Commencement of Service Under Transmission Service Agreement for Long-Term Firm Point-To-Point Transmission Service between Duke Energy Trading and Marketing, L.L.C. and Nevada Power Company, Dated July 3, 2002

Dear Ms. Cowan:

Duke Energy Trading and Marketing, L.L.C. ("DETM") and Nevada Power Company ("NPC") are parties to a Transmission Service Agreement for Long-Term Firm Point-To-Point Transmission Service, dated July 3, 2002 (the "TSA"), designated as Service Agreement No. 97 under the Sierra Pacific Resources Operating Companies Open Access Transmission Tariff ("OATT") and accepted for filing by the Federal Energy Regulatory Commission ("FERC") in Docket No. BR01-2759 on September 23, 2002. The TSA implements the settlement reached between NPC and DETM and approved by the FERC in *Nevada Power Co.*, 99 FERC ¶ 61,301 (2002), and provides for 600 MW of firm point-to-point transmission service commencing July 31, 2003 and continuing for a five-year term.

Under the TSA, NPC has agreed to provide, and DETM has agreed to take and pay for, firm point-to-point transmission service in accordance with the provisions of Part II of the OATT. Under Part II of the OATT, a transmission customer can obtain up to five one-year extensions for the commencement of service if the customer pays a non-refundable annual reservation fee equal to one month's charge for firm transmission service for each year or fraction thereof. See OATT, Section 17.7. This is to notify you that, in accordance with Part II of the OATT, DETM is exercising its rights under Section 17.7 to extend the commencement of service under the TSA for one year, i.e., to July 31, 2004. Enclosed herewith is a check payable to NPC for \$726,000.00 ($\$1.21/\text{KW-mo} \times 1000\text{KW}/\text{MW} \times 600\text{MW} = \$726,000/\text{mo}$), which is the amount of the non-refundable annual reservation fee in this case. Accordingly, it is our understanding that service under the TSA will now commence on July 31, 2004. We also understand that if, during the one-year extension, an eligible customer under the OATT submits a completed application for firm transmission service and such request can only be satisfied by releasing all or part of the 600 MW we have reserved under the TSA, NPC will release the 600 MW of reserved capacity in the event that we do not agree, within 30 days, to pay the firm point-to-point transmission rate for the 600 MW of reserved capacity concurrent with the new service commencement date.

Thank you for your cooperation in this matter. If you have any questions or require additional information, please do not hesitate to contact me at 801-531-4416.

Sincerely,

Beck B. Mayberry
Sr. Director, Power Origination
Duke Energy Trading and Marketing, L.L.C.

A Duke Energy and Mobil Company
4 Triad Center, Suite 1000
Salt Lake City, UT 84180
(801) 531-4400 Fax: (801) 531-5470

THE FACE OF THIS DOCUMENT CONTAINS MICRO PRINTING



Duke Energy Trading & Mktg LLC
5400 Weathermar Court
Houston, TX 77056

JP Morgan Chase
Syracuse, NY

0001003120

P.O. BOX 1642
Houston, Texas 77251-1642

50-937213

*****726,000.00

Date 06/11/2003 Pay Amount \$

Pay *Seven hundred twenty six thousand and 00/100 Dollars*

To The Order of Nevada Power Company
P.O. Box 230
LAS VEGAS, NV 89151-0230

David L. Hansen

AUTHORIZED SIGNATURE

⑆0001003120⑆ ⑆021309379⑆ ⑆01854896⑆

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ATTACHMENT C

Cynthia Cowden, P.E.
Executive Director, Transmission Policy & Operations



6226 West Sahara Avenue • PO Box 230 • Las Vegas, NV 89151 • 702/367-5670

June 27, 2003

Mr. Beck B. Mayberry
 Senior Director, Power Origination
 Duke Energy Trading and Marketing, L.L.C.
 4 Triad Center, Suite 1000
 Salt Lake City, Utah 84180

Manager, New Business Development
 Duke Energy Trading and Marketing
 4 Triad Center, Suite 1000
 Salt Lake City, Utah 84180

RE: Service Agreement No. 97
Request for Extension of Service

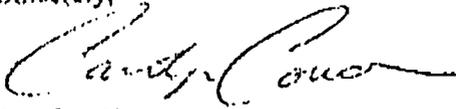
Gentlemen,

Enclosed herewith you will find the check presented by Duke Energy Trading and Marketing, L.L.C. ("Duke") for \$726,000, which accompanied your June 10, 2003 request for an extension of the commencement of service under Service Agreement No. 97 ("TSA"). You have cited Section 17.7 of the Sierra Pacific Resources Operating Companies Open Access Transmission Tariff ("OATT") as the basis for seeking such an extension. However, Section 17 of the OATT addresses transmission service requests which can be fulfilled using existing capacity. Where, as here, the Transmission Provider determines that a System Impact Study is necessary to accommodate a request for service under Section 17, the provisions of Section 19 then govern the service request. If Network Upgrades are required for the requested service, no extension of commencement of service can be permitted because the Transmission Customer is responsible for the costs of the upgrades and any extension would eliminate that responsibility during the period of the extension.

Section 4.0 of the TSA provides that "[s]ervice under this agreement shall commence on the later of (1) the requested service commencement date, or (2) the date on which construction of any Direct Assignment Facilities and/or Network Upgrades are completed..." As you know, Nevada Power has completed construction of the facilities required by the Duke Moapa plant. The requested service commencement date is July 31, 2003. Therefore, Nevada Power will present monthly invoices to Duke for service commencing on such date, and continuing through July 30, 2008, unless Duke chooses to extend the term in accordance with the TSA. In the event Duke fails to pay any invoice within the time provided under the OATT, Nevada Power will promptly notice Duke and initiate the cure period provided thereunder. Interest on delinquent amounts shall accrue in accordance with the methodology described in 18 CFR §

35.19a(a)(2)(iii). If required, Nevada Power will look to Duke's affiliate, Duke Capital Corporation, for satisfaction of past due payment obligations under the TSA.
I can be reached at (702) 367-5670 to discuss any of the foregoing.

Sincerely,



Carolyn Cowan
Executive Director
Transmission Policy and Operations
Nevada Power Company



Duke Energy Trading & Mktg LLC
5400 Westheimer Court
Houston, TX 77056

JP Morgan Chase
Syracuse, NY

0001003120

P.O. BOX 1642
Houston, Texas 77251-1642

50-937213

*****726,000.00

Pay Amount \$

Date 06/11/2003

Seven hundred twenty six thousand and 00/100 Dollars

Pay

To The Order of
Nevada Power Company
P.O. Box 230
LAS VEGAS, NV 89151-0230

David L. Hense
AUTHORIZED SIGNATURE

⑆0001003120⑆ ⑆021309379⑆ ⑆61854898⑆

THE FACE OF THIS DOCUMENT REMAINS MICRO PROOFING

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW WHEN CHECKING ENDORSEMENT

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Complaint via e-mail, fax, and by first class United States mail, postage prepaid, upon the corporate officials for Nevada Power Company as listed on the Commission's Web site.

Dated at Washington, DC this 3rd day of February, 2004.

/s/ Danielle K. Schonback (e-filed)
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, NW
Washington, DC 20037-1526

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Duke Energy North America, LLC and)	
Duke Energy Trading and Marketing, L.L.C.)	
)	
Complainants,)	Docket No. EL04-_____ -000
)	
v.)	
)	
Nevada Power Company)	
)	
Respondent.)	

NOTICE OF FILING

(Issued _____, 2004)

Take notice that on February 3, 2004, Duke Energy North America, LLC (“DENA”) and Duke Energy Trading and Marketing, L.L.C. (“DETM”) (collectively, “Duke Energy”) tendered for filing with the Federal Energy Regulatory Commission (“Commission”), a Complaint Requesting Fast Track Processing against Nevada Power Company (“NPC”) pursuant to Section 206 of the Federal Power Act, 16 U.S.C. § 824e, and Rule 206 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. 385.206.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission’s web site at <http://www.ferc.gov>, using the “eLibrary” link. Protests and interventions may be filed electronically via the Internet in lieu of paper, see 18 C.F.R. § 385.2001(a)(1)(iii) and the instructions on the Commission’s web site under the “e-Filing” link. The Commission strongly encourages electronic filings.

Comment Date: _____

Magalie R. Salas
Secretary

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