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NV Energy, Inc., Sierra Pacific Power Company, Nevada Power Company

Docket No. EC13-113-000

FEDERAL ENERGY REGULATORY COMMISSION - COMMISSION

145 F.E.R.C. P61,170; 2013 FERC LEXIS 2027

November 26, 2013

ACTION:

[**1] ORDER AUTHORIZING INTERNAL CORPORATE REORGANIZATION

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

OPINION:

[*62,030]

1. On May 31, 2013, NV Energy, Inc. (NV Energy); Sierra Pacific Power Company (Sierra Pacific); and Nevada Power Company (Nevada Power) (collectively, Applicants) filed an application n1 under 203(a)(1)(B) of the Federal Power Act (FPA) n2 requesting authorization for an internal corporate reorganization under which Sierra Pacific will merge into Nevada Power (Proposed Transaction). The Commission has reviewed the Proposed Transaction under the Commission's Merger Policy Statement. n3 As discussed below, we will authorize the Proposed Merger as consistent with the public interest.

n1 Application for Approval of Internal Corporate Reorganization under Section 203 of the Federal Power Act (Application).

n2 16 U.S.C. § 824b (2012).

n3 *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. P 31,044 (1996), reconsideration denied, *Order No. 592-A*, 79 FERC P 61,321 (1997) (*Merger Policy Statement*). See also *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. P 31,253 (2007) (*Supplemental Policy Statement*). See also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. P 31,111 (2000), *order on reh'g*, *Order No. 642-A*, 94 FERC P 61,289 (2001). See also *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. P 31,200 (2005), *order on reh'g*, *Order No. 669-A*, FERC Stats. & Regs. P 31,214, *order on reh'g*, *Order No. 669-B*, FERC Stats. & Regs. P 31,225 (2006).

[**2]

I. Background

A. Description of the Parties

2. Applicants state that Sierra Pacific is a vertically integrated public utility that generates, transmits and distributes electric energy throughout northern Nevada. Sierra Pacific operates a transmission system in northern Nevada and owns and operates approximately 1,500 megawatts (MW) of generation. Sierra Pacific provides transmission service pursuant to an open access transmission tariff (OATT) and provides wholesale power services to various customers within its service territory. Sierra Pacific also operates as a local distribution company and provides natural gas service to customers in Reno and Sparks, Nevada.

3. Applicants state that Nevada Power is a vertically integrated public utility that generates, transmits and distributes electric energy in Las Vegas and surrounding areas in southern Nevada. Nevada Power operates a transmission system in southern Nevada and owns and operates approximately 4,537 MW of generation. Nevada Power provides transmission service pursuant to an OATT and provides wholesale power services to various customers within its service territory.

4. Both Sierra Pacific [**3] and Nevada Power are owned by NV Energy, a public utility holding company. Sierra Pacific and Nevada Power do business as NV Energy in Nevada.

B. Description of the Proposed Transaction

5. Applicants state that the Proposed Transaction is an internal corporate reorganization. Pursuant to the Plan of Merger and Merger Agreement (Merger Agreement), Nevada Power, as the surviving corporation, will assume all debts, liabilities, FERC-jurisdictional contracts, and assets of Sierra Pacific. n4

n4 Application at 10. Applicants state that Nevada Power, the surviving company, will amend its articles of incorporation to change its name to NV Energy Operating Company.

6. Applicants state that, since the 1999 merger that resulted in the affiliation of Sierra Pacific and Nevada Power, n5 the two companies have had no direct interconnection between their regulated service territories, and have operated as two separate balancing authority areas (BAAs). n6 Applicants further state that, in January 2006, Applicants [**4] announced a plan that proposed to interconnect the Nevada Power and Sierra Pacific systems through the construction and operation of the One Nevada Transmission Line, known as "ON Line." n7 Applicants elected to pursue the ON Line as a joint development project with Great Basin Transmission, LLC (Great Basin), with which Applicants have executed a Transmission Use and Capacity Exchange Agreement (TUA) approved by the Commission. n8 Under the terms of the TUA, the ON Line portion of the project (referred to as "Phase 1") is a 235-mile, 500 kilovolt transmission line from northern Nevada at the Robinson Summit [*62,031] Substation, south to Nevada Power's Harry Allen substation. Phase 1 will be jointly owned by Applicants, which collectively own a 25 percent ownership interest, and Great Basin, which owns a 75 percent ownership interest. n9 The TUA also provides for the development of separate northern and southern extensions of the ON Line (referred to as "Phase 2") at Great Basin's option. Applicants state that, following completion of Phase 1, Applicants will have the right to 100 percent of the ON Line capacity, including that associated with Great Basin's ownership share, until the Phase [**5] 2 facilities are built. n10

n5 *Sierra Pac. Power Co. and Nevada Power Co.*, 87 FERC P 61,077 (1999), *reh'g denied*, 88 FERC P 61,058 (1999) (1999 Merger Order).

n6 Application at 4.

n7 *Id.* at 5, n.1.

n8 *Id.* at 6 (citing *Nevada Power Co.*, 133 FERC P 61,166 (2010)).

n9 *Id.* at 6.

al for the Proposed Transaction does not preempt any state proceedings and that the timing of our determination does not have any impact on state jurisdiction.

n78 Merger Policy Statement, FERC Stats. & Regs. P 31,044 at 30,124.

n79 *Id.* at 30,125.

4. Cross-subsidization

a. Applicants' Analysis

61. Applicants [**47] state that the Proposed Transaction does not create any new marketing affiliates with non-captive customers, transfer utility assets to or from such marketing affiliates, or require Sierra Pacific or Nevada Power to issue debt on behalf of or encumber utility assets on behalf of such marketing affiliates. Applicants state that upon consummation of the Proposed Transaction, all debt of Sierra Pacific will be assumed by Nevada Power and consolidated into Nevada Power debt. n80

n80 Application at 20.

62. Applicants note that except for the transfer of debt as described above, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future: (1) any transfers of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuances of securities by a traditional public utility associate company that has captive customers [**48] or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional facilities, for the benefit of an associate company; or (4) any new affiliate contracts between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review under *sections 205 and 206* of the FPA. n81

n81 *Id.* at 20-21, Exhibit M.

b. Commission Determination

63. Based on the representations as presented in the Application, we find that the Proposed Transaction will not result in an inappropriate cross-subsidization or the pledge or encumbrance of utility assets for the benefit [**49] of an associate company.

5. Accounting Issues

64. As noted above, Applicants commit for a period of five years to hold transmission and wholesale customers harmless from transaction-related costs, which we have interpreted to include all merger-related costs, including costs related to consummating the proposed transaction and merger costs incurred to integrate and achieve synergies. Although Applicants have not explained the nature, amount, or accounting for the merger-related costs subject to its hold harmless commitment, the Commission has previously stated that costs incurred to consummate a merger transaction are non-operating in nature and must be recorded in Account 426.5, Other Deductions. n82 Additionally, the Commission has stated that integration costs and other operational costs incurred to achieve merger synergies costs are generally considered to be operating in nature and may be recorded in an operating expense account or capitalized in an asset ac-

count, as appropriate. n83 Nevertheless, Applicants' accounting for all merger-related costs does not permit recovery through Applicants' wholesale power or transmission rates during the hold-harmless period [**50] without first making a section 205 filing and receiving authorization from the Commission, consistent with the hold harmless requirements discussed above. Applicants must implement appropriate internal controls and procedures to ensure the proper identification, accounting, and rate treatment for all merger-related costs incurred prior to and subsequent to the merger.

n82 These costs may include, but are not limited to, internal and external third party costs for legal, consulting, and professional services incurred to consummate the merger. *See, e.g., Exelon Corp., 138 FERC P 61,167, at P 133 (2012).*

n83 *See, e.g., Exelon Corp., 138 FERC P 61,167 at P 133 and Bangor Hydro Electric Company and Maine Public Service Company, 144 FERC P 61,030, at P 33 (2013).*

65. In Attachment A to the Application, Applicants provided *pro forma* accounting entries to record the transfer of electric and gas plant assets, other assets and liabilities, and capital stock [**51] at their book value from Sierra to Nevada Power, which resulted from the merger. However, Applicants did not use Account 102, Electric Plant Purchased and Sold, to record the transfer of the plant assets, as required by Electric Plant Instruction (EPI) No. 5, Electric Plant Purchased or Sold. n84

n84 *18 C.F.R. Pt. 101 (2013).*

66. Account 102 is used as an interim control account to record all aspects of a transaction involving the acquisition or transfer of operating units or systems. The use of this account is an important accounting control that helps ensure that acquisitions and transfers of operating units or systems are properly accounted for, whether or not the entities involved in the transaction are members of the same corporate family. Therefore, we will require Applicants to record the transfer of the plant assets through Account 102, consistent with the instructions of EPI No. 5 of the Commission's Uniform System of Accounts. Applicants [*62,040] shall submit their proposed final accounting for the merger [**52] within six months after the merger is consummated. The accounting submission shall provide all merger-related accounting entries made to the books and records of Applicants, including merger consummation and integration costs, along with appropriate narrative explanations describing the basis for the entries.

6. Additional Issues

67. Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. n85 To the extent that the foregoing authorization results in a change in status, Applicants are advised that they must comply with the requirements of Order No. 652. In addition, Applicants shall make any appropriate filings under *section 205* of the FPA to implement the Proposed Transaction.

n85 *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. P 31,175, order on reh'g, 111 FERC P 61,413 (2005). See 18 C.F.R. § 35.42 (2013).*

[**53]

68. Information and/or systems connected to the bulk power system involved in this Proposed Transaction may be subject to reliability and cyber security standards approved by the Commission pursuant to *FPA section 215*. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information databases, and operating systems. If affiliates, personnel or investors are not authorized for access to such

