

156 FERC ¶ 62,099

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Nevada Power Company

Docket No. EC16-109-000

ORDER AUTHORIZING THE ACQUISITION OF EXISTING GENERATION  
FACILITIES

(Issued August 4, 2016)

On April 27, 2016 Nevada Power Company (Nevada Power or Applicant) filed an application pursuant to section 203(a)(1)(B) of the Federal Power Act (FPA)<sup>1</sup> to acquire a 25 percent ownership interest in the Silverhawk Generating Facility from the Southern Nevada Water Authority (SWNA) (Proposed Transaction). The facilities involved with the Proposed Transaction include an existing generation facility.

Applicant states that Nevada Power is a wholly owned subsidiary of NV Energy, Inc., (NV Energy) which, in turn, is a wholly owned subsidiary of Berkshire Hathaway Energy Company (BHE). BHE is a subsidiary of Berkshire Hathaway Inc. NV Energy owns two public utility subsidiaries, Sierra Pacific Power Company (Sierra Pacific) and Nevada Power.

Applicant explains that both Nevada Power and Sierra Pacific are vertically integrated public utilities offering retail and wholesale transmission service in Nevada. Nevada Power operates the balancing authority area in Nevada (NV Energy balancing authority area). Nevada Power's service territory includes the cities of Las Vegas, Henderson, and North Las Vegas in southern Nevada, while Sierra Pacific's service territory includes the cities of Reno, Sparks, Carson City, and Elko in northern Nevada. Applicant states that Nevada Power and Sierra Pacific make wholesale sales under agreements on file with the Commission, or under terms of its market-based rate authority (outside of the NV Energy balancing authority area). Additionally, Applicant states that Nevada Power owns and operates approximately 2,000 miles of high voltage transmission lines and Sierra Pacific owns and operates approximately 2,150 miles of transmission high voltage transmission lines, and that Nevada Power provides open access transmission service under the terms of the Nevada Power Company and Sierra Pacific Open Access Transmission Tariff (OATT). Applicant notes that Nevada Power and Sierra Pacific jointly dispatch their generating resources under the terms of a Joint Dispatch Agreement.

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<sup>1</sup> 16 U.S.C. § 824 (2012).

Applicant represents that SWNA is a wholesale water supplier that delivers water through seven municipal member agencies. SWNA is not a public utility as defined under section 201 of the FPA. Applicant states that SWNA is a wholesale Network Integration Transmission Services customer and a point-to-point customer of Nevada Power.

Applicant notes that Nevada Power currently owns 75 percent of the Silverhawk Facility and, through contractual arrangements with SWNA, controls 100 percent of the Silverhawk Facility's output. Under the Purchase and Sale Agreement Nevada Power will acquire SNWA's 25 percent interest in the Silverhawk Facility, a 520 MW natural gas-fired generating facility located near Apex, Nevada interconnected to the Nevada Power transmission system, along with the associated interconnection facilities, transmission contracts and other assets, properties, rights and interests, and books and records associated with the Silverhawk Facility. Applicant states that, following the closing of the Proposed Transaction, Nevada Power will own and continue to control 100 percent of the output from the Silverhawk Facility.

Applicant states that the Proposed Transaction does not affect horizontal competition. Applicant explains that there is no effect on competition because Nevada Power is acquiring generating capacity that it already controls and therefore there is no impact on market concentration in the NV Energy balancing authority area.

Applicant states that the Proposed Transaction presents no vertical market power concerns. Applicant states that the parties to the Proposed Transaction do not provide any inputs to electricity products in the same geographic market or the extent of the business transfers in the same geographic market is *de minimis*. In addition, Applicant states that the Proposed Transaction is focused on the Silverhawk Facility and its associated interconnection facilities, and does not include any other transmission assets or other inputs to electricity generation. Applicant notes that Nevada Power operates its transmission system pursuant to an open access transmission tariff on file with the Commission.

Applicant states that the Proposed Transaction will have no adverse effect on rates. Applicant explains that Nevada Power has no wholesale requirements customers and thus none of its customers will be affected by the Proposed Transaction. Applicant states that Nevada Power maintains a cost-based and coordination tariff that will not change as a result of the Proposed Transaction. Additionally, Applicant states that the Proposed Transaction will have no adverse impact on the rates, terms, or conditions of jurisdictional transmission services, as neither the NV Energy Open Access Transmission Tariff nor any other Nevada Power transmission service agreement is affected by the Proposed Transaction.

Applicant states that the Proposed Transaction will not adversely affect regulation at either the federal or state level. Applicant notes that Nevada Power will remain subject to the Commission's jurisdiction under the FPA and, continue to be subject to the regulation by the Public Utilities Commission of Nevada.

Applicant verifies that, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company; specifically that the Proposed Transaction will not result in: (a) 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; (b) new issuances of securities by traditional public utility associate companies that has captive customers or that own or provide transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (c) new pledges or encumbrances of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (d) new affiliate contracts between 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 service agreements subject to review under sections 205 and 206 of the FPA.<sup>2</sup>

The original filing was noticed on April 28, 2016. Comments, protests or interventions were due on or before May 18, 2016. Southern Nevada Water Authority filed a motion to intervene. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214).

Information and/or systems connected to the bulk system involved in these transactions may be subject to reliability and cybersecurity 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 database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, North America Electric Reliability Corporation or the relevant regional

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<sup>2</sup> See Applicant's Exh. M.

entity may audit compliance with reliability and cybersecurity standards.

When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired absent access to the parent company's books and records. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the Proposed Transaction is based on such examination ability.

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.<sup>3</sup> To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of Order No. 652.

Nevada Power provides proposed accounting entries for the Proposed Transaction at Attachment 2 to the application. Nevada Power's proposed accounting entries clear the respective purchase of the twenty five percent remaining ownership share through Account 102, Electric Plant Purchased or Sold. Nevada Power's proposed accounting entries record the original cost in Account 101, Electric Plant in Service, and related accumulated depreciation of the acquired assets in Account 108, Accumulated Provision for Depreciation of Electric Utility Plant, on its books. Additionally, Nevada Power's proposed accounting entries collectively record an acquisition adjustment in Account 114, Electric Plant Acquisition Adjustments, for the amount paid in excess of the depreciated original cost of the assets purchased. Nevada Power's proposed accounting entries amortize the acquisition adjustment to Account 406, Amortization of Electric Plant Acquisition Adjustments, over the remaining life of the asset purchased. Nevada Power states that it is proposing to amortize the acquisition adjustment to Account 406 because it assumes that the Public Utilities Commission of Nevada (PUCN) will approve acquisition cost recovery. Nevada Power further states that any amount not allowed for recovery by the PUCN will be recorded to Account 425, Miscellaneous Amortization.

Nevada Power's proposed accounting for the acquired asset is found to be in compliance with Electric Plant Instruction No. 5, Electric Plant Purchased or Sold, and

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<sup>3</sup> *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

the instructions for Account 102.<sup>4</sup>

After consideration, it is concluded that the Proposed Transaction is consistent with the public interest and is authorized, subject to the following conditions:

- (1) The Proposed Transaction is authorized upon the terms and conditions and for the purposes set forth in the application;
- (2) Applicant must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances;
- (3) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission;
- (4) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;
- (5) If the Proposed Transaction results in changes in the status or upstream ownership of Applicant's affiliated qualifying facilities, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2015) shall be made;
- (6) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;
- (7) Applicant shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction;
- (8) Applicant shall notify the Commission within 10 days of the date that the Proposed Transaction has been consummated; and
- (9) Nevada Power shall account for the Proposed Transaction in accordance with Electric Plant Instruction No. 5 and Account 102 of the Uniform System of Accounts. Nevada Power shall submit their final accounting entries within six months of the date that the transaction is consummated,

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<sup>4</sup> 18 C.F.R. pt, 101 (2015).

and the accounting submissions shall provide all the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307 (2015). This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2015).

Steve P. Rodgers, Director  
Division of Electric Power  
Regulation - West

Document Content(s)

EC16-109-000.DOC.....1-6