

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

POWEREX CORP.) Docket No. TX09-____-000

APPLICATION FOR AN ORDER DIRECTING
THE PROVISION OF TRANSMISSION SERVICE

Pursuant to Section 211 of the Federal Power Act ("FPA") and Section 5.2 of Nevada Power Company's ("Nevada Power") Open Access Transmission Tariff ("OATT"), Powerex Corp. ("Powerex") hereby applies for an order from the Federal Energy Regulatory Commission ("Commission") requiring Nevada Power to provide transmission service. Powerex requests Commission action on this application no later than March 1, 2009 in light of the April 1, 2009 service commencement date.

Powerex is authorized to state that Nevada Power does not object to providing the requested transmission service, but that a Commission order is necessary to preserve Nevada Power's local furnishing bonds. Nevada Power has informed Powerex that it will waive its rights to a request for service under Section 213(a) of the FPA and to the issuance of a proposed order under Section 212(c) of the FPA.

I. DETAILS OF REQUESTED SERVICE

On August 11, 2008, Powerex submitted the following request for transmission service:

Transmission Provider:	Nevada Power
Transmission Customer:	Powerex
Request Date:	August 11, 2008
Transmission Service Type:	Long Term Firm Point-to-Point

Point of Receipt:	REDB (Red Butte)
Point of Delivery:	MEAD230 (Mead)
Path Name:	W/NEVP/PACE-WALC/REDB-MEAD230/
Capacity Requested:	100 MW
Start and Stop Date:	Full Period, Sliding from April 01, 2009 until April 01, 2010
Term:	One Year
OASIS Reference:	72418106

II. BACKGROUND

A. Local Furnishing Bonds

Sections 142(a)(8) and 142(f) of the Internal Revenue Code of 1986 (the "Code") provide an exemption, for federal income tax purposes, for the interest on certain debt issued by local governmental units to provide financing for eligible transmission, distribution, or generation facilities that are part of a system for the "local furnishing" of electric energy. The Code and Treasury Regulations have generally defined "local furnishing" to mean providing service to the general public in an area not exceeding two contiguous counties, or one city and a contiguous county ("two-county area"). In general, the IRS takes the position that the "local furnishing" exemption does not apply to electric properties that are part of a system any component of which is (a) built sooner, larger or of a different design than reasonably was expected to be needed to provide service to retail customers within that two-county area, or (b) not held on a priority basis to provide service to retail customers in the permitted two-county area. The utility owning or operating a "local furnishing" system is generally referred to as a "local furnishing utility."

The Energy Policy Act of 1992 (P.L. 102-486) amended Sections 211 and 213 of the FPA to broaden significantly the power of the Commission to order electric utilities to transmit power upon the request of others, including neighboring utilities and independent power producers. Recognizing that such orders otherwise could adversely affect the qualification of interest on certain debt for the "local furnishing" exemption, Section 1919(a) of the Energy Policy Act of 1992 amended Section 142(f) of the Code to provide that the transmitting utility's "local furnishing" status could be preserved if (a) electricity is transmitting through the utility's system "pursuant to an order of the Commission under Section 211 or 213 of the FPA, and (b) the portion of the cost of the facility that is "financed with tax-exempt bonds is not greater than the portion of the cost of the facility which is allocable to the local furnishing of electric energy (determined without regard to this paragraph)." Thus, Section 142(f)(2), as amended, provides a limited "safe harbor" for transmission service performed pursuant to Section 211, so long as the portion of the cost of any facility financed with tax-exempt bonds is not greater than the cost allocable to the local furnishing of electric energy.

B. Section 5 of the OATT

In Order Nos. 888, *et seq.*, the Commission adopted *pro forma* tariff provisions specifically intended to avoid, or minimize, the loss of tax-exempt status for local furnishing debt due to open access transmission service.¹ Specifically, Section 5 of the

¹ *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), 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 sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002). The revised *pro forma* tariff adopted in Order No. 890, as modified in Order No. 890-A, did not revise Section 5 of the Commission's *pro forma* tariff.

pro forma tariff provides that a local furnishing utility that receives a transmission request that would jeopardize the tax-exempt status of bonds used to finance its facilities must so advise the requesting party; if that party tenders a Section 211 application for such service, the local furnishing utility must waive its rights to oppose the application (as well as the right to a proposed order), and, upon issuance of the Commission's order, must provide the service. This provision has been adopted in Section 5.2 of Nevada Power's OATT.

III. THE REQUESTED ORDER IS NEEDED TO PRESERVE NEVADA POWER'S LOCAL FURNISHING BONDS

On August 11, 2008, Powerex submitted a request for 100 MW of Yearly Firm Point-to-Point Transmission, Full Period, Sliding from April 01, 2009 until April 01, 2010, assignment reference number – 72418106. Point of Receipt of REDB (Red Butte) and a Point of Delivery of MEAD230 (Mead).

In response to this transmission service request, Nevada Power informed Powerex that it needs the Commission to order that Nevada Power is obligated under Section 211 of the FPA to provide the requested transmission service in order to preserve Nevada Power's local furnishing bonds. Powerex therefore requests that the Commission issue an order requiring Nevada Power to provide the requested transmission service to Powerex under Section 211 of the FPA. As noted above, Powerex is authorized to state that Nevada Power does not oppose this request. As required by Section 5.2 of its OATT, Nevada Power has informed Powerex that it will

waive its rights to a request for service under Section 213(a) of the FPA and to the issuance of a proposed order under Section 212(c) of the FPA.²

IV. THIS APPLICATION MEETS THE REQUIREMENTS OF FPA SECTIONS 211 AND 212

As discussed below, this application meets the requirements set forth in Sections 211 and 212 of the FPA.³

A. Jurisdiction

Under Section 211(a) of the FPA, any electric utility, federal power marketing agency, or any other person generating electric energy for sale for resale may apply to the Commission for an order requiring a transmitting utility to provide transmission services to the Powerex. Powerex is eligible to request an order requiring Nevada Power to provide it with transmission services.

B. Good Faith Request

Because Nevada Power has waived its rights under Sections 211 and 213⁴ to a request for service and is willing to provide the transmission service requested by Powerex, compliance with this requirement is not necessary here.

² Powerex notes that Nevada Power has reserved all of its rights under the OATT with respect to how Powerex's request is processed, to require Powerex's compliance with the OATT, and if necessary, to condition its obligation to provide service on the construction of any necessary facilities.

³ See *generally Nevada Power Co.*, 110 FERC ¶ 61,029 at PP 14-22 (2005) (discussing and applying these requirements).

⁴ 16 U.S.C. § 824/ (2000).

C. Public Interest

Section 211(a) of the FPA provides that the Commission may issue an order directing transmission service if the order meets the requirements of Section 212 and would otherwise be in the public interest. In *Florida Municipal Power Agency v. Florida Power & Light Co.*,⁵ the Commission determined that, as a general matter, the availability of transmission service enhances competition in power markets by increasing power supply options of buyers and sales options of sellers, and that this should result in lower costs to consumers. The same principles apply here. Accordingly, the public interest will be served by directing Nevada Power to provide the requested transmission service to Powerex.

D. Reliability

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

E. Effect on Contracts or Rate Schedules

Section 211(c)(2) provides that no order may be issued under Section 211(a) that requires the transmitting utility subject to the order to transmit, during any period, an amount of electric energy that replaces any amount of electric energy that is required to be provided to Powerex pursuant to a contract during such period or that the utility subject to the order currently provides to the Powerex pursuant to a rate schedule on file with the Commission. Nevada Power is not selling to Powerex the energy that is to

⁵ 65 FERC ¶ 61,125, *reh'g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *order on reh'g*, 74 FERC ¶ 61,006 (1996), *order on reh'g*, 96 FERC ¶ 61,130 (2001).

be shipped under the transmission service agreement, and therefore Section 211(c)(2) of the FPA does not preclude an order for transmission service in this case.⁶

F. Rates

Section 212(a) requires that the transmitting utility subject to an order under Section 211 provide wholesale transmission services at rates, charges, terms and conditions which permit the recovery of such utility of all the costs incurred in connection with the transmission services and necessary associated services. Section 212(a) further provides, to the extent practicable, for the recovery of such costs from the Powerex for such order and not from a transmitting utility's existing wholesale, retail, and transmission customers. The order requested here would not shift costs to other customers because transmission service will be provided under the rate, terms, and conditions of Nevada Power's OATT. This satisfies the requirements of Section 212(a).

G. Applicability

An order under Section 211 cannot be made effective prior to the date of a final order.⁷ Therefore, the Commission may grant Powerex's request in this Application effective 10 days after the date of issuance of its Order in this proceeding granting this Application.

V. COMMISSION ACTION BY MARCH 1, 2009 REQUESTED

Powerex requests that the Commission act on this application no later than March 1, 2009 to allow Powerex to make the necessary arrangements in order for service to commence on April 1, 2009. Powerex notes that no parties intervened in opposition to Powerex's prior application for an Order directing Nevada Power to

⁶ See *Nevada Power Co.*, 110 FERC ¶ 61,029 at PP 11-13 (2005).

⁷ See *City of College Station, Texas*, 76 FERC ¶ 61,138 at 61,743 (1996), *final order*, 86 FERC ¶ 61,165 at 61,583 (1999).

provide transmission service pursuant to FPA Section 211 in Docket No. TX08-1-000, which was granted by the Commission on September 24, 2008,⁸ and Powerex does not expect opposition to the instant application. Accordingly, Powerex requests that the Commission issue an Order by March 1, 2009 directing Nevada Power, pursuant to section 211 of the FPA, to provide transmission service, pursuant to Powerex's transmission service request, under the applicable tariffs and rate schedules.

V. CONCLUSION

For the foregoing reasons, Powerex respectfully requests the Commission to order Nevada Power under Section 211 of the FPA to provide the requested transmission. Powerex also requests that the Commission issue such Order no later than March 1, 2009.

Respectfully submitted,

/s/ Teresa Conway

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**On Behalf of
POWEREX CORP.**

November 5, 2008

DC/246504.1

⁸ *Powerex Corp.*, 124 FERC ¶ 61,286 (2008).

ATTACHMENT A

(Form of Notice)

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Powerex Corp.

Docket No. TX09-__-000

NOTICE OF APPLICATION FOR TRANSMISSION SERVICES

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Take notice that on November 5, 2008, Powerex Corp. filed an application for an order directing the provision of transmission service from Nevada Power Company, pursuant to section 211 of the Federal Power Act and section 5.2 of Nevada Power Company's Open Access Transmission Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 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 notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.


This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on _____, 2008.


Kimberly D. Bose,
Secretary.

AFFIDAVIT OF SERVICE

Pursuant to 18 C.F.R. § 36.1(b)(2), I, being duly sworn, depose and say that the entities identified below were provided with notice that Powerex Corp. ("Powerex"), 1400 - 666 Burrard Street, Vancouver, British Columbia, Canada, V6C 2X8, this day filed with the Federal Energy Regulatory Commission ("Commission") the foregoing Application requesting that the Commission order Nevada Power Company ("Nevada Power") to provide transmission services pursuant to Section 211 of the Federal Power Act to Powerex. This order is requested to preserve the tax-exempt status of Nevada Power's local furnishing bonds. This notice has been served pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure.


Teresa Conway

SUBSCRIBED AND SWORN before me, a notary public in the Province of British Columbia, this 5th day of November, 2008.


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My Commission Does Not Expire

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