

146 FERC ¶ 61,064
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Arizona Public Service Company

Docket No. ER14-540-000

ORDER ACCEPTING AGREEMENT FOR ENERGY EXCHANGE

(Issued February 3, 2014)

1. In this order, we accept for filing an agreement for firming service and energy exchange (Agreement) between Arizona Public Service Company (APS) and the City of Azusa, California (Azusa). We find that the proposed energy exchange transaction (Transaction) is a simultaneous exchange transaction that requires Commission authorization. Based on the specific information provided by APS, we find that the proposed Transaction does not raise the types of open access transmission concerns that were described in *Puget Sound Energy, Inc.*¹ and thus we authorize the proposed Transaction and accept the proposed Agreement.

I. Background

2. APS is a vertically-integrated public utility that makes both wholesale and retail power sales and that participates in wholesale markets throughout the western interconnection. The Commission has granted APS authority to make wholesale power sales at market-based rates in all areas and all times except in the Phoenix Valley Load Pocket during the months of June, July, and August.² APS operates its wholesale transmission service and recovers associated transmission costs through a formula rate under its Open Access Transmission Tariff (OATT).

¹ *Puget Sound Energy, Inc.*, 138 FERC ¶ 61,121, at P 14 (2012) (*Puget Sound Energy*).

² *Pinnacle West Capital Corp.*, 122 FERC ¶ 61,035, at P 2 (2008).

3. Azusa is a municipal electric utility that is not subject to the jurisdiction of the Commission under sections 205 and 206 of the Federal Power Act.³ Azusa has a grandfathered, long-term power purchase agreement for unit contingent power from San Juan Unit 3 in New Mexico with Southern California Public Power Authority (SCPPA). In turn, SCPPA has grandfathered transmission rights on Tucson Electric Power Company's (Tucson Electric) transmission system.⁴ The power purchase agreement allows Azusa to use SCPPA's transmission rights with Tucson Electric and accept delivery of unit contingent power at San Juan 345 kV, Westwing 500 kV, Palo Verde 500 kV, or Four Corners 345 kV delivery points.

4. APS states that it previously provided energy firming and exchange service to Azusa under a long-term power sale contract that expired on December 31, 2012. However, APS states that it was able to continue providing energy firming and exchange service to Azusa under a Commission-approved service agreement⁵ that terminated on its own terms on December 31, 2013 (Expired Agreement).⁶

II. Instant Filing

5. On December 6, 2013, APS filed the proposed Agreement, which it explains will continue (with similar terms) the service provided under the Expired Agreement. Although APS notes that the proposed Agreement specifies a term from January 1, 2014 to December 31, 2014, APS requests the Commission to approve the proposed Agreement with an effective date of February 5, 2014.⁷

³ 16 U.S.C. §§ 824d and 824e (2012).

⁴ APS states that, although the Azusa power purchase agreement is still effective, there is no effective jurisdictional rate schedule that sets forth the terms of that agreement.

⁵ *Arizona Public Service Co.*, Docket No. ER13-251-000 (Dec. 19, 2012) (delegated letter order).

⁶ APS filed a notice of cancellation for the service agreement in Docket No. ER14-539-000, which was accepted via a delegated letter order. *Arizona Public Service Co.*, Docket No. ER14-539-000 (Jan. 10, 2014) (delegated letter order).

⁷ APS explains that extended negotiations resulted in APS filing the proposed Agreement beyond the required 60-day prior notice and filing requirements for a simultaneous exchange. Accordingly, while the proposed Agreement specifies a term extending from January 1, 2014 through December 31, 2014, it also provides that the

(continued...)

6. The proposed Agreement allows APS to take delivery of up to 29 MW of Azusa's unit-contingent power at San Juan 345 kV, Westwing 500 kV, Palo Verde 500 kV or Four Corners 345 kV in exchange for a like amount of firm power to Azusa at Palo Verde 500 kV.⁸ APS explains that it typically sources the delivery to Azusa from its own generation resources at Palo Verde 500 kV, but in some instances may purchase firm power to provide for delivery. APS states that the proposed Agreement provides that Azusa will notify APS of the specific monthly exchange amount, not to exceed 29 MW, five days before the start of the each month. Further, APS states that Azusa will pay for replacement cost of energy, in the event San Juan Unit 3 is de-rated or offline, and a service charge of \$1.90/MWh during the third quarter and \$1.75/MWh during the remainder of the year.

7. APS explains that any time it elects to receive power at a delivery point other than Palo Verde 500 kV, the proposed Agreement could meet the Commission's criteria for consideration as a simultaneous exchange. However, APS asserts that the Commission's concerns relating to simultaneous exchanges are mitigated by the relevant factual circumstances.⁹ APS states that the Commission's concern that APS may be effectively offering transmission service to Azusa does not apply to the proposed transaction because Azusa already has rights to receive delivery at the point that APS delivers to Azusa. APS explains that it delivers power to Azusa at Palo Verde 500 kV but that Azusa can already receive delivery at Palo Verde 500 kV under the terms of its power purchase agreement with SCPPA using Tucson Electric's transmission system. APS also states that it has the option under the terms of the proposed Agreement to elect to receive the unit-contingent energy product at Palo Verde and preclude the proposed Agreement from the definition

effective date will not be determined until Commission approval has been received. Therefore, APS requests that the Commission approve the proposed Agreement with an effective date of February 5, 2014.

⁸ According to the proposed Agreement, APS may select the point at which it will receive the energy from among the aforementioned points of receipt.

⁹ APS states that in *Puget Sound Energy*, the Commission ordered that all marketing entities seek prior approval of simultaneous exchanges within or at the border of a transmission affiliate's system to address the Commission's concern that an entity affiliated with the transmission provider could effectively circumvent the Commission's regulations for open access transmission service by coordinating an exchange that would allow the transmission provider to collect its full cost of service for transmission facilities while also increasing revenues to the affiliated merchant function. APS Transmittal Letter at 1-2.

of a simultaneous exchange. APS states that this further shows that the proposed Agreement primarily serves to firm Azusa's power schedule and not offer transmission service or circumvent the use of transmission service.

8. Moreover, APS adds that any concern that APS may be circumventing transmission service and collecting its cost of service rates for transmission and additional revenues for the simultaneous exchange also does not apply to the circumstances of the proposed Agreement because, absent the proposed Agreement, Azusa would not use APS transmission to deliver to Palo Verde 500 kV. APS states that, instead, Azusa's energy is scheduled using Tucson Electric's transmission system pursuant to the grandfathered arrangement between Tucson Electric and SCPPA identified above. Thus, APS argues that, because Tucson Electric's transmission system is used for all delivery points (including Palo Verde 500 kV), this shows that APS is not circumventing its own transmission. Finally, APS adds that competitive alternatives exist between the points within or on the border of APS's transmission system.

III. Notice of Filing

9. Notice of APS's filing was published in the *Federal Register*, 74 Fed. Reg. 76,141 (2013), with interventions and protests due on or before December 27, 2013. None was filed.

IV. Discussion

10. The Commission finds APS's proposed Agreement to be just and reasonable and not unduly discriminatory. We will therefore accept the proposed Agreement. In doing so, the Commission finds that the proposed Transaction is a simultaneous exchange transaction as defined by *Puget Sound Energy*, and is the type of simultaneous exchange transaction that requires prior Commission authorization. Based on the specific information provided by APS, the Commission finds that the proposed Transaction does not raise the types of open access transmission service concerns that were described in *Puget Sound Energy*.

11. In *Puget Sound Energy*, the Commission defined a simultaneous exchange transaction as follows:

Simultaneous exchanges occur when a pair of simultaneously arranged (i.e., part of the same negotiations) wholesale power transactions between the sale counterparties in which party A sells an electricity product to party B at one location and party B sells a similar electricity product to party A at a different location have an overlapping delivery period. The

simultaneous exchange is the overlapping portion (both in volume and delivery period) of these wholesale power transactions.^[10]

In *Puget Sound Energy*, the Commission also identified information that applicants seeking approval of simultaneous exchange transactions should provide to support their applications.¹¹

12. APS has provided sufficient information regarding the proposed Transaction to allow the Commission to fully evaluate the proposed Transaction. Under the proposed Transaction, APS will take delivery of up to 29 MW of Azusa's unit-contingent power at San Juan 345 kV, Westwing 500 kV, Palo Verde 500 kV or Four Corners 345 kV in exchange for a like amount of firm power to Azusa at Palo Verde 500 kV. Any time APS elects to receive power at a delivery point other than Palo Verde 500 kV, power sales occur at different locations during overlapping delivery periods. Based on these facts as represented by APS, the Commission finds that, if APS elects to receive power at a delivery point other than Palo Verde 500 kV, APS's proposed Transaction involves a simultaneously arranged power sale transaction between the same counterparties that falls within the definition of a simultaneous exchange transaction. However, based on the facts as represented by APS, the Commission finds that the proposed Transaction does not raise open access transmission service concerns nor does it appear to involve the implicit provision of transmission service on APS's transmission system. In particular, Azusa already has rights to receive delivery from APS using Tucson Electric's transmission rights under the terms of Azusa's grandfathered arrangement between Tucson Electric and SCPPA explained above. Thus, because Tucson Electric's transmission rights are used for all delivery points, we find that APS would not be circumventing its own transmission under the proposed Transaction.

13. Accordingly, we find APS's proposed Transaction to be just and reasonable and not unduly discriminatory. Therefore, we will accept the proposed Agreement for filing, effective February 5, 2014, as requested.

¹⁰ *Puget Sound Energy*, 138 FERC ¶ 61,121 at P 12.

¹¹ *Puget Sound Energy*, 138 FERC ¶ 61,121 at P 19.

The Commission orders:

APS's proposed Agreement is hereby accepted for filing, effective February 5, 2014, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.