

125 FERC ¶ 61,264
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Arizona Public Service Company

Docket No. ER09-217-000

ORDER ACCEPTING NON-CONFORMING SERVICE AGREEMENT

(Issued December 5, 2008)

1. In this order, the Commission accepts a non-conforming retail network transmission service agreement submitted by Arizona Public Service Company (APS) between itself and its affiliate APS Marketing and Trading (APS M&T).

APS' Filing

2. On October 31, 2008, APS filed a non-conforming retail network transmission service agreement under its OATT.¹ APS proposes to supersede an existing conforming retail network transmission service agreement between itself and APS M&T, in order to allow APS M&T to designate as a network resource, preference power resources made available to APS M&T's customer, the city of Yuma, Arizona.²

3. APS explains that under the Western Area Power Administration's (Western) legal requirements for preference power, only the recipient of the preference power allocation, in this case the city of Yuma, may take title to the power. Because APS M&T would not be able to have title to the power, it cannot fulfill the requirements under APS's OATT for designating the preference power as a network resource.

¹ Retail network transmission service is provided by APS under Part IV of its OATT.

² The preference power has been allotted to the city of Yuma from Western's Parker-Davis hydropower resource.

4. APS proposes to add the following language to the network transmission service agreement:

13. Notwithstanding sections 37.2 and 38.2 of the Tariff, Transmission Customer may designate as a Network Resource, under this service agreement, allocations of preference power made available to an entity whose load is included in the Network Load served under this service agreement without taking title to such power. Preference power designated pursuant to this section 12 is limited to small allocations of power (less than 5 MW).

5. As a result of the proposal, the revised retail network transmission service agreement will contain a provision that waives application of sections 37.2 and 38.2 of its Order No. 890³ compliant OATT for small preference power resources, allocated to a portion of APS M&T's network load.⁴

6. APS states that the instant non-conforming service agreement is superior to the *pro forma* tariff because the existing *pro forma* tariff is not suitable for meeting the needs of the city of Yuma. APS explains that the city of Yuma is not an eligible customer under the APS OATT because it is not the electric service provider to the load within the city.⁵ As a result, the use of point-to-point transmission service to take delivery of the preference power is not an option for the city of Yuma. APS states that the city of Yuma would have to create a municipal utility in order to become eligible for transmission service under the APS OATT. In any event, APS contends that the cost of point-to-point transmission service would erase the benefit of the preference cost savings to the city of

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007); *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008).

⁴ Sections 37.2 and 38.2 of APS' OATT reference sections 29.2 and 30.2 of its OATT, respectively. Both sections 29.2 and 30.2 require, among other things, an attestation by the network transmission customer that it owns, has purchased, or has committed to purchase the generation that will be designated as a network resource.

⁵ APS is currently the retail transmission service provider for all retail, commercial and industrial load in the city of Yuma.

Yuma. APS also notes that APS M&T will have hourly scheduling control of the preference power in order to respond to redispatch requests from APS.⁶

7. APS requests that the Commission accept the non-conforming retail network transmission service agreement effective January 1, 2009.

Notice of Filing and Procedural Matters

8. Notice of APS's filing was published in the *Federal Register*, 73 Fed. Reg. 67,495 (2008), with interventions and protests due on or before November 21, 2008. Timely motions to intervene and comments in support of the filing were submitted by Western and the city of Yuma.

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁷ the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

Discussion

10. The Commission accepts APS' non-conforming retail network transmission service agreement with APS M&T. APS has identified a complication faced by the city of Yuma, which is ineligible to obtain wholesale service from APS, and has narrowly defined a remedy through a non-conforming retail network transmission service agreement with APS M&T to accommodate the preference power requirements of Western for delivery to the city of Yuma.

11. The Commission finds that the city of Yuma's status as ineligible to obtain wholesale transmission service on its own behalf distinguishes it from wholesale transmission customers who have greater transmission service options under the OATT. The Commission agrees that it would be unreasonable to require the city of Yuma to develop a municipal authority solely for the purpose of receiving its one megawatt of preference power from Western. Under APS's instant proposal, the city of Yuma is able to obtain delivery of the preference power in a manner that is consistent with its operations and Western's legal obligations of title. As a result, the terms and conditions of the proposed agreement are consistent with or superior to the requirements of the *pro forma* OATT.

⁶ APS notes that the Commission raised the concern regarding the inability to respond to redispatch calls in proposed generic OATT modifications to accommodate the preference power issues described in the instant filing. *See, Arizona Public Service Company*, 124 FERC ¶ 61,314, at P 6 (2008).

⁷ 18 C.F.R. § 385.214 (2008).

The Commission orders:

APS' proposed non-conforming retail network transmission service agreement is accepted, effective on January 1, 2009 as requested, as discussed above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.