

125 FERC ¶ 61,265
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Arizona Public Service Company

Docket Nos. ER08-1460-000
ER08-1460-001

ORDER REJECTING AMENDMENT TO SERVICE AGREEMENT

(Issued December 5, 2008)

1. In this order, the Commission rejects an amendment to an existing network transmission service agreement submitted by Arizona Public Service Company (APS). APS proposes to amend an existing network transmission service agreement in order to implement certain non-conforming provisions that allow the customer, under its open access transmission tariff (OATT) agreement, to designate, as a network resource, power to which the customer does not have title.

APS' Filings

2. On August 28, 2008, in Docket No. ER08-1460-000, APS filed an amendment to an existing service agreement under its OATT (Original Filing). APS proposed to amend the existing conforming network transmission service agreement between itself and APS Marketing and Trading (APS M&T) to allow APS M&T to designate as a network resource, preference power resources made available to its customer, the city of Williams. APS M&T would not have title to the power or ownership control over the resource.

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

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

13. Notwithstanding sections 29.2.8 and 30.2 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 13 is limited to small allocations of power (less than 5 MW).

5. The proposed revised service agreement contains a provision that waives application of sections 29.2.8 and 30.2 of APS' Order No. 890-compliant OATT for small preference power resources, allocated to a portion of APS M&T's network load.

6. APS requested that the Commission accept the non-conforming service agreement effective September 21, 2008, in order that delivery of the preference power may commence on October 1, 2008.

7. In a supplemental filing, APS states that it is not practical for the city of Williams to take point-to-point transmission service to deliver the one MW of preference power because the city of Williams is served at four discrete delivery points at distribution voltages. APS states that a direct assignment study would be necessary to determine the charges applicable to the transmission of one MW. APS also contends that the city of Williams would be required to pay twice for preference power delivery if it used point-to-point transmission service; one charge for the specific point-to-point reservation, and again for the same one MW because transmission service is included in the calculation of the bill for network transmission service. APS states that "this increased transmission charge of approximately \$20,000 would offset some of the savings that the preference power allocation is intended to provide."¹

8. APS acknowledges the possibility of an agency agreement in which city of Williams would take transmission service directly from APS, and contract with APS M&T to provide other services for which city of Williams would be responsible as a network customer. APS contends that this is not a reasonable alternative because city of Williams "has no desire to become the primary transmission customer."² APS states that the costs of implementing and administering such an arrangement would either detract from or eliminate the savings of the preference power allocation from Western.³

¹ APS' October 24, 2008 Filing at 5. APS states that the benefit to the city of Williams of the non-conforming service agreement that APS proposes is \$175,000 in annual energy charges. *Id.* at 7. APS states that secondary network service is not adequate for transmitting the one MW of preference power because it is not as firm as primary network transmission service. *Id.* at 5-6.

² *Id.* at 6.

³ *Id.*

Notice of Filing and Responsive Pleadings

9. Notice of the Original Filing was published in the *Federal Register*, 73 Fed. Reg. 52,346 (2008), with interventions and protests due on or before September 18, 2008. None was filed.
10. Notice of the Supplemental Filing was published in the *Federal Register*, 73 Fed. Reg. 65,843(2008), with interventions and protests due on or before November 17, 2008.
11. The Western Area Power Administration (Western) timely filed comments and the city of Williams filed a timely motion to intervene and comments in the Supplemental Filing, Docket No. ER08-1460-001.
12. Western states that it supports APS and APS M&T's efforts to provide transmission service to Williams in the most cost-effective manner. Western states that if the Commission does not approve the non-conforming service agreement, it asks the Commission to provide guidance on how the city of Williams's allocation may be transmitted under APS' tariff in a cost-effective manner.⁴
13. City of Williams states that it is a municipality and wholesale customer of APS that does not take transmission service under the APS OATT.⁵ Rather, city of Williams has a contract with APS M&T under which it receives transmission service. Because of its status as a municipality, city of Williams states that Western awarded it one MW of preference power.⁶ City of Williams also states that delivery of such one MW of preference power would save it \$175,000 per year.
14. City of Williams states that under the existing APS OATT and its agreement with APS, it has no reasonable and economical means of receiving the one MW of preference power.⁷ If it uses secondary network service, such service would be non-firm and therefore interruptible. Renegotiating the agreement would require significant costs amounting to a financial hardship.⁸

⁴ Western, November 14, 2008 Comments at 3.

⁵ City of Williams, November 17, 2008 Motion and Comments at 2.

⁶ *Id.* at 2.

⁷ *Id.* at 3.

⁸ *Id.*

Discussion

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

16. The Commission rejects APS's non-conforming service agreement with APS M&T. In Order No. 890,¹⁰ the Commission affirmed the long-standing requirement that a resource must be owned, purchased, or leased by the network customer in order to qualify for designation as a network resource.¹¹ Among other things, this ensures that the network customer is able to fulfill its obligation to redispatch its network resources as requested by the transmission provider.¹²

17. APS has not demonstrated that the proposed non-conforming amendment to its service agreement with APS M&T is consistent with or superior to the *pro forma* OATT. The city of Williams is able to take transmission service from APS to deliver its allocation of preference power from Western. The reasons APS advances in the supplemental filing for not doing so amount to economic hardship arguments. While the Commission recognizes the cost elements involved, both APS and city of Williams admit that alternative, OATT-compliant alternatives, will merely reduce the city of Williams' annual savings of \$175,000 per year by an estimated \$20,000. The arrangement with Western would therefore still provide the city of Williams with about \$155,000 in annual savings. Since this is a situation where there are OATT-compliant alternatives available and the cost of compliance not only appears minimal but still provides overall savings to the customer we conclude that there is no basis for finding the proposal consistent with or superior to the *pro forma* OATT. Accordingly, under such circumstances, the Commission will require conformance with the OATT's requirements for designations of preference power as a network resource.

⁹ 18 C.F.R. § 385.214 (2008).

¹⁰ *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).

¹¹ *See id.* P 1523, *pro forma* OATT, section 30.1.

¹² *Pro forma* OATT, section 30.5.

The Commission orders:

APS's proposed revision to the network transmission service agreement with APS M&T is rejected.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.