

121 FERC ¶ 61,247
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 Nos. OA07-19-001
OA07-43-000
OA07-43-001

ORDER ON COMPLIANCE FILING

(Issued December 7, 2007)

1. On July 13, 2007, as amended on July 18, 2007, pursuant to section 206 of the Federal Power Act (FPA), Arizona Public Service Company (APS) submitted a compliance filing as required by Order No. 890¹ and in compliance with a prior Commission order in Docket No. OA07-19-000.² In this order, we accept APS' compliance filing and require a further compliance filing, as discussed below.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have not been approved as independent system operators (ISO) or regional transmission organizations (RTO), and whose transmission facilities are not under the control of an ISO or RTO, were directed

¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007) (Order No. 890).

² *Arizona Public Service Co.*, 120 FERC ¶ 61,038 (2007) (July 13, 2007 Order).

to submit, within 120 days from publication of Order No. 890 in the *Federal Register* (*i.e.*, July 13, 2007), section 206 compliance filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed in Order No. 890.³

4. The Commission recognized, however, that some of these non-ISO/RTO transmission providers may have provisions in their existing OATTs that the Commission previously deemed to be consistent with or superior to the terms and conditions of the Order No. 888⁴ *pro forma* OATT, but which *pro forma* terms and conditions were modified by Order No. 890. The Commission provided an opportunity for such transmission providers to submit an FPA section 205 filing seeking determination that a previously-approved variation from the Order No. 888 *pro forma* OATT substantively affected by the reforms adopted in Order No. 890 continues to be consistent with or superior to the revised *pro forma* OATT. The Commission directed applicants to make those filings within 30 days from publication of Order No. 890 in the *Federal Register*, (*i.e.*, April 16, 2007), and to request that the proposed tariff provisions be made effective as of the date of the transmission provider's FPA section 206 compliance filing, described above, except for imbalance-related provisions, which may become effective on the first day of the billing cycle following that date. The Commission also requested that applicants state that the Commission has 90 days following the date of submission to act under section 205.⁵

5. In addition, after submission of their FPA section 206 compliance filings, non-ISO/RTO transmission providers may submit FPA section 205 filings proposing rates for

³ The original 60-day compliance deadline provided for in Order No. 890 was extended by the Commission in a subsequent order. *See Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).

⁴ *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, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *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).

⁵ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 138-139.

the services provided for in their tariffs, as well as non-rate terms and conditions that differ from those set forth in Order No. 890 if those provisions are “consistent with or superior to” the *pro forma* OATT.⁶

6. In Order No. 890, the Commission also required transmission providers to file redesigned transmission charges that reflect the Capacity Benefit Margin (CBM)⁷ set-aside to ensure that customers not benefiting from the CBM set-aside (*i.e.*, point-to-point customers) do not pay for CBM. We directed transmission providers to submit redesigned transmission charges through a limited issue FPA section 205 rate filing within 120 days after the publication of the Final Rule in the *Federal Register*.⁸

II. APS’ Filings

7. In its July 13, 2007 filing in Docket No. OA07-43-000, APS states that it has revised its OATT to reflect the changes required by Order No. 890. In addition, APS states that: (1) it has not filed an Attachment J; (2) it proposes to adopt the *pro forma* provision for generator imbalances; (3) it has posted a business practice that explains its revenue crediting mechanism for imbalances; (4) it has included in its OATT a description of how it will process a request to cluster studies and has detailed transmission customers’ obligations when they have joined a cluster; (5) it has revised its retail network integration transmission service provisions to parallel the revisions to the network integration transmission service provisions in the OATT; and (6) it has provided a statement noting that it does not have or use a CBM set-aside in its control area.

8. In its July 18, 2007 filing, APS states that it was submitting revised tariff sheets as an errata to its July 13, 2007 filing, and in compliance with a Commission order in Docket No. OA07-19-000. APS explains that on July 13, 2007, the same day that it submitted its section 206 compliance filing in Docket No. OA07-43-000, the Commission issued an order on an FPA section 205 filing APS submitted on April 16, 2007. In that filing, APS had sought a determination that previously-approved variations from the Order No. 888 *pro forma* OATT substantively affected by the reforms adopted in Order No. 890 continued to be consistent with or superior to the revised *pro forma* OATT. In its April 16, 2007 filing, APS had proposed to add a new Schedule 10 to its

⁶ *Id.* at P 135.

⁷ CBM is the amount of total transfer capability preserved by the transmission provider for load-serving entities, whose loads are located on the transmission provider’s system, to enable access by the load-serving entities to generation from interconnected systems to meet generation reliability requirements, or such definition as contained in Commission-approved reliability standards.

⁸ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

OATT to incorporate use of the Dow Jones index as a pricing proxy in the generator imbalance schedule adopted in Order No. 890. The Commission rejected APS' proposed generator imbalance schedule, without prejudice to refiling in accordance with the schedule set forth in Order No. 890.⁹ According to APS, the July 13, 2007 Order was issued too late to be incorporated into APS' section 206 filing. APS states that, as directed by the July 13, 2007 Order, it has resubmitted Schedule 10 to conform to Order No. 890. In addition, APS has resubmitted an updated Table of Contents to correct errors in some of the page references. APS requests a July 13, 2007 effective date for the tariff sheets submitted in both filings.

III. Notices of Filing and Responsive Pleadings

9. Notices of APS' filings were published in the *Federal Register*, 72 Fed. Reg. 41,727 and 72 Fed. Reg. 41,729 (2007), with interventions and protests due on or before August 3, 2007 and August 8, 2007, respectively. On August 2, 2007, the Navajo Tribal Utility Authority filed a timely motion to intervene in Docket No. OA07-43-000. On August 3, 2007, Powerex Corp. (Powerex) filed a timely motion to intervene and comments in Docket Nos. OA07-43-000, OA07-43-001 and OA07-19-001. On August 20, 2007, Powerex filed supplemental comments in Docket Nos. ER07-1171-000 and OA07-43-000.

10. In its comments, Powerex asserts that because of the short time it had to review all of the tariffs under which it is a customer, it has been unable to complete its review of APS' filing and that it reserves its right to file additional comments. Powerex's supplemental comments, although captioned to include Docket Nos. ER07-1171-000 and OA07-43-000, did not address APS' filing in Docket No. OA07-43-000.

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

12. For the reasons stated below, we will accept APS' compliance filing, and require a further compliance filing.

⁹ See July 13, 2007 Order at P 10.

1. Attachment J

13. APS states that Order No. 890 appears to add Attachment J to add Transmission Loading Relief Procedures (TLR) to the *pro forma* OATT. It also states that this requirement seems to stem from an order in which the Commission directed transmission-operating public utilities in the Eastern Interconnection to adopt North American Electric Reliability Corporation's (NERC) Version 0 TLR procedures.¹⁰ According to APS, these procedures are not applicable to APS and Order No. 890 does not discuss any new requirement for utilities in the Western Interconnection to adopt these procedures. As a result, APS has not included Attachment J, or any language from the *pro forma* OATT referencing Attachment J.

14. The Commission finds that APS has misunderstood the requirements related to Attachment J under Order No. 890. The *pro forma* OATT adopted in Order No. 890 includes a blank Attachment J entitled "Procedures for Addressing Parallel Flows" that is to be "filed by the Transmission Provider." The Commission, in the NERC Transmission Loading Relief Order¹¹ amended the *pro forma* OATT to incorporate NERC's TLR procedures. The Commission also required that every transmission-operating public utility adopting NERC's TLR procedures file with the Commission a notice that its tariff shall be considered so modified to reflect the use of such procedures. That order addressed the NERC TLR procedures for public utilities in the Eastern Interconnection. Later, in Order No. 693, the Commission approved, as mandatory and enforceable, the IRO-006-3 Reliability Coordination --Transmission Loading Relief Reliability Standard, which includes the NERC TLR procedures and, by reference, the equivalent interconnection-wide congestion management methods used in the Western Electricity Coordinating Council (Western Systems Coordinating Council Unscheduled Flow Mitigation Plan) and Electric Reliability Council of Texas (ERCOT) (section 7 of the ERCOT Protocols) regions.¹² As a result, all transmission providers must complete Attachment J by incorporating either the NERC TLR procedures, WSCC Unscheduled Flow Mitigation Plan, or ERCOT protocol and must provide a link to the applicable procedures.

¹⁰ APS July 13, 2007 Filing at 3 (*citing to North American Electric Reliability Council*, 113 FERC ¶ 61,013 (2005)).

¹¹ *North American Electric Reliability Council*, 85 FERC ¶ 61,353, at 62,362 and Ordering Paragraph (B) (1998) (NERC Transmission Loading Relief Order).

¹² *See Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 Fed. Reg., 16,416 (April 4, 2007), FERC Statutes and Regulations ¶ 31,242, at 31,561-62 (2007), *order on reh'g* Order No. 693-A, 120 FERC ¶ 61,053 (2007).

15. APS has not filed any procedures in Attachment J and is therefore directed to file, within 30 days of the date of this order, a further compliance filing with a completed Attachment J. In that compliance filing, APS must also re-insert the references to Attachment J into its OATT.

2. Generator Imbalance Service and Pricing

16. In its July 13, 2007 filing, APS states that, when it made its April 16, 2007 filing in Docket No. OA07-19-000, it requested Commission acceptance of previously-approved variations from the Order No. 888 *pro forma* OATT that permit APS to price Energy Imbalance Service based on an average of certain published index prices. Additionally, APS states that in its April 16, 2007 filing, it submitted a new Schedule 10 for Generator Imbalance Service that would adopt the same pricing mechanism as that used by APS to price Energy Imbalance Service (i.e, index prices). In its July 18, 2007 filing, in compliance with the Commission's July 13, 2007 Order, APS revised Schedule 10 to adopt the use of its incremental cost for pricing Generator Imbalance Service, as provided under the Order No. 890 *pro forma* OATT.

17. The Commission finds that APS' revised Schedule 10 complies with the Commission's July 13, 2007 Order. However, it is not necessary to accept APS' revised Schedule 10 because in a concurrent order in Docket Nos. ER07-1171-000, ER07-1171-001 and ER07-1171-002, we accept APS' proposal to adopt index pricing for generator imbalances that supersede APS' tariff sheets in this proceeding.

3. Imbalance Revenue Crediting Mechanism

18. APS states that, because it proposes to use the Dow Jones index as a proxy for system incremental cost for generator and energy imbalance charges, it proposes to credit to non-offending customers imbalance revenues that are above the index in order to comply with Order No. 890. APS states that it will distribute imbalance revenues on an annual basis and that it will determine a weighted average distribution factor for each customer based on the amount of transmission service that customer takes over the course of the year. APS also states that it has posted a business practice explaining how it will distribute these revenues and that distributions will be based upon FERC Form No. 1 data. In addition, APS states that an offending customer paying an imbalance penalty will not receive a distribution from the penalty amounts it pays.

19. We find that APS has not fully supported its proposed distribution methodology. APS' description of its distribution methodology would appear to define a non-offending customer as a customer who has not been charged any imbalance penalty in any hour for an entire year. Such a definition of a non-offending customer is unduly restrictive, unjust and unreasonable. Incurring an imbalance penalty for one single hour in the entire year should not make a customer ineligible for a share of penalty revenues for the entire year.

Accordingly, we direct APS to file, within 30 days of the date of issuance of this order, a revised mechanism for the distribution of penalty revenues that defines non-offending customers on an hourly basis.¹³

4. Clustering

20. APS states that Order No. 890 encourages transmission providers to conduct transmission studies in a cluster when reasonable and requires transmission providers to include language in their compliance filings describing how they will process a request to cluster studies and how they will structure transmission customers' obligations under a cluster. APS states that it has included language in Attachment D (Methodology for Completing a System Impact Study) in response to these directives.

21. APS proposed the following language in response to the clustering requirement:

While APS is not required to study transmission requests in a cluster, APS may consider a customer's request to cluster transmission service request studies where APS can reasonably accommodate the request. If clustered, the study costs will be shared equally among the customers in the cluster.

22. The Commission finds APS' clustering language to be deficient. In Order No. 890, the Commission did not generally require transmission providers to study transmission requests in a cluster, although the Commission did encourage transmission providers to cluster studies when it is reasonable to do so. The Commission also explicitly required transmission providers to consider clustering studies if the customers involved request a cluster and the transmission provider can reasonably accommodate the request. As a result, the Commission directed transmission providers to include tariff language in their Order No. 890 compliance filings that describes how the transmission provider will process a request to cluster studies and how it will structure transmission customers' obligations when they have joined a cluster.¹⁴ APS' proposed language does not describe how it will process a request to cluster studies. In addition, beyond stating that study costs will be shared equally among customers in a cluster, APS does not describe how it will further structure customer obligations under a cluster. Accordingly, we direct APS to file, within 30 days of issuance of this order, a further compliance filing that describes how it will process a request to cluster request studies and how it will structure transmission customers' obligations when they have joined a cluster.

¹³ As discussed above, we are concurrently issuing an order accepting APS' proposal to adopt index pricing for generator imbalances; therefore, we do not take issue with APS' use of the index in the calculation of the revenues to be distributed.

¹⁴ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370-71.

5. Revised Retail Network Transmission Service Provisions

23. APS states that it has revised Part IV of its OATT (Retail Network Integration Transmission Service) to reflect changes the Commission required in Part III of the OATT (Network Integration Transmission Service). APS states that Part IV of its OATT incorporates the terms and conditions associated with Retail Network Integration Transmission Service in order to accommodate retail choice in Arizona. APS explains that the terms of Part IV are substantially the same as those in Part III (Network Integration Transmission Service) of APS' OATT, which parallels Part III of the Commission's *pro forma* OATT. Thus, according to APS, changes to the network service provisions of the APS OATT require making changes to both Part III and Part IV of its OATT.

24. We find that because revisions to Network Integration Transmission Service were mandated under Order No. 890 and because APS' Retail Network Integration Transmission Service is based on its Network Integration Transmission Service, we will accept APS' proposal as in compliance with Order No. 890.

6. Capacity Benefit Margin

25. In Order No. 890 the Commission required transmission providers to file redesigned transmission charges that reflect the CBM set-aside to ensure that customers not benefiting from the CBM set-aside (*i.e.*, point-to-point customers) do not pay for CBM. In its response to that compliance requirement, APS states that it does not have or use a CBM set-aside in its control area at this time and, thus, no changes are needed to its rate design. Because APS does not reserve CBM for native load or any other customer no changes are needed to its rate design. We conclude that APS' statement in its filing with regard to CBM complies with Order No. 890 and, accordingly, we will accept it.¹⁵

7. Rollover Rights Effective Date

26. In Order No. 890, the Commission adopted a five-year minimum contract term in order for a customer to be eligible for a rollover right and adopted a one-year notice period. The Commission determined that this rollover reform should be made effective at the time of acceptance by the Commission of a transmission provider's coordinated and regional planning process. The Commission explained that rollover reform and

¹⁵ We note that to the extent APS uses CBM in the future or provides a CBM set-aside at the request of a customer, it must revise its transmission charges consistent with the requirements of Order No. 890. *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

transmission planning are closely related, because transmission service eligible for a rollover right must be set aside for rollover customers and included in transmission planning.¹⁶

27. APS has included the rollover reforms in section 2.2 of its revised tariff sheets, with a requested effective date of July 13, 2007. However, APS has not yet filed an Attachment K, setting forth its transmission planning process.¹⁷ This is contrary to Order No. 890's requirement that rollover reforms are not to become effective until after a transmission provider's Attachment K is accepted. Therefore, we direct APS to file, within 30 days of the date of this order, a revised tariff sheet that reflects the previous language of section 2.2. APS should re-file the rollover reform language established in Order No. 890 within 30 days after acceptance of its Attachment K, requesting an effective date as of the date the Attachment K is accepted.

8. Creditworthiness

28. In Order No. 890, the Commission required transmission providers to amend their OATTs to include a new attachment that sets forth the basic credit standards the transmission provider uses to grant or deny transmission service. This attachment must specify both the qualitative and quantitative criteria that the transmission provider uses to determine the level of secured and unsecured credit required. In addition, the Commission required transmission providers to address six specific elements regarding the transmission provider's credit requirements.¹⁸

29. We find that APS' creditworthiness provisions require further refinement and more detail, and thus, we will require APS to revise its creditworthiness provisions. APS has not provided a detailed description of the process it will use to determine a customer's creditworthiness in its "qualitative and quantitative scoring model" when credit rating agency reports are not available for that particular customer. Accordingly, we direct APS to file revised creditworthiness provisions refining its creditworthiness provision as discussed above, within 30 days of the date of issuance of this order.

¹⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1231, 1265.

¹⁷ Attachment K is to be submitted to the Commission by December 7, 2007. *See Order Extending Compliance Action Date and Establishing Technical Conferences*, 120 FERC ¶ 61,103 (2007).

¹⁸ *Id.* at P 1656-61.

9. Unreserved Use Penalties

30. In Order No. 890, the Commission determined that transmission customers would be subject to unreserved use penalties in any circumstance where the transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its OATT.¹⁹ The Commission also established a rebuttable presumption that unreserved use penalties no greater than twice the firm point-to-point rate for the penalty period were just and reasonable, provided that the penalty rates were consistent with certain principles articulated in Order No. 890.²⁰ Specifically, the Commission stated that (1) the unreserved use penalties must be based on the period of unreserved use; (2) the unreserved use penalty for a single hour of unreserved use is to be based on the rate for daily firm point-to-point transmission service; and (3) more than one assessment for a given duration (e.g., daily) results in an increase of the penalty period to the next longest duration (e.g., weekly). However, transmission providers proposing to charge an unreserved use penalty in excess of twice the relevant point-to-point rate were required to make a filing under section 205 of the FPA for Commission approval.²¹

31. We note that APS' OATT contains an unreserved use penalty rate in Schedule 7, which provides as follows:

APS will assess a charge for unauthorized use of transmission service at a rate equal to two (2) times the maximum allowable rate for the service at issue. The charge will be applied to use in excess of the reservation amount (the overrun), which shall be the difference between the maximum integrated hourly amount of transmission service actually used by the customer less the amount of transmission service the customer has reserved for such hour. The transmission customer will incur the charge for maximum hourly overrun during the calendar month, or for the period of transmission service if such service is for a term of less than one month.

32. The Commission finds that APS' proposed unreserved use penalties do not conform to the requirements of Order No. 890. We direct APS to modify its unreserved use penalty language to reflect the terms and conditions delineated in Order No. 890. Specifically, APS' unreserved use penalty provision must indicate that (1) unreserved use penalties must be based on the period of unreserved use; (2) the unreserved use penalty

¹⁹ *Id.* at P 834, 848.

²⁰ *Id.* at P 846, 848.

²¹ *Id.* at P 849.

for a single hour of unreserved use is to be based on the rate for daily firm point-to-point transmission service; and (3) more than one assessment for a given duration (e.g., daily) results in an increase of the penalty period to the next longest duration (e.g., weekly). Accordingly, we direct APS to file, within 30 days of the date of issuance of this order, revised tariff sheets reflecting the requirements for unreserved use penalties as set forth in Order No. 890, or to otherwise make a compliance filing that removes the unreserved use penalty language from its OATT.

10. Simultaneous Submission Window

33. In Order No. 890, the Commission decided to retain its first-come, first-served policy regarding transmission service requests. However, the Commission required those transmission providers who set a “no earlier than” time limit for transmission service requests to treat all such requests received within a specified period of time, or window, as having been received simultaneously. Although the Commission left it to the transmission providers to propose the amount of time the window would be open, the Commission stated that the window should be open for at least five minutes unless the transmission provider presents a compelling rationale for a shorter window. The Commission also required each transmission provider that is required to, or decides to, deem all requests submitted within a specified period as having been submitted simultaneously to propose a method for allocating transmission capacity if sufficient capacity is not available to meet all requests submitted within that time period.²²

34. APS has not addressed whether or not it has adopted the use of a simultaneous submission window. If APS has adopted the use of a “no earlier than” time limit for the submission of transmission service requests, we direct APS to file, within 30 days of the date of this order, a further compliance filing either (1) indicating that it is currently in compliance with the use of a simultaneous submission window as required in Order No. 890 referencing the Commission order where such variation from the *pro forma* OATT was accepted by the Commission, or (2) proposing a tariff provision to comply with the remaining compliance requirements of Order No. 890 for adoption of a simultaneous submission window.²³

35. Accordingly, we will accept APS’ compliance filing, as modified, to be effective July 13, 2007. We also direct APS to file, within 30 days of the date of this order, a further compliance filing as required above.

²² Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1418-22.

²³ *Id.*

The Commission orders:

(A) APS' compliance filing is hereby accepted, effective July 13, 2007, as discussed in the body of this order.

(B) APS is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.