

137 FERC ¶ 61,080
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Arizona Public Service Company

Docket No. ER11-4352-001

ORDER ACCEPTING AND SUSPENDING NON-CONFORMING LARGE
GENERATOR INTERCONNECTION AGREEMENT, SUBJECT TO REFUND, AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued October 21, 2011)

1. On August 22, 2011, as amended on August 23, 2011, Arizona Public Service Company (APS) submitted a non-conforming Large Generator Interconnection Agreement (LGIA) to interconnect a 100.8 MW wind-powered generating facility owned by Perrin Ranch Wind, LLC (Perrin Ranch) to the jointly owned Moenkopi to Yavapai 500 kV transmission line. In this order, the Commission accepts APS's proposed non-conforming LGIA, suspends it for a nominal period to become effective October 21, 2011, as requested, subject to refund and, as discussed below, establishes hearing and settlement judge procedures.

I. Background

2. On March 22, 2010, Perrin Ranch submitted a request with APS for an interconnection to a 500 kV jointly owned transmission line extending from Moenkopi to Yavapai – a segment of the Navajo Project.¹ The Navajo Project is operated pursuant to the Navajo Project Southern Transmission System Operating Agreement (Navajo Project Agreement) among the Participants. The Moenkopi to Yavapai portion of the Navajo Project is owned by four of the six Participants in the following percentages: APS owns

¹ The co-owners of the Navajo Project are APS; Tucson Electric Power Company (Tucson); the United States of America, acting through the Secretary of the Interior, Bureau of Reclamation (Bureau of Reclamation); the Department of Water and Power of the City of Los Angeles; Nevada Power Company (Nevada Power), and the Salt River Project Agricultural Improvement and Power District (Salt River) (jointly, Participants).

24.7 percent, Tucson owns 13.3 percent, Salt River owns 38.3 percent, and the Bureau of Reclamation owns 23.7 percent (collectively, Joint Owners). APS is the operating agent for the Moenkopi to Yavapai portion of the line.

3. While the Participants and Perrin Ranch were able to reach an agreement over most of the provisions in the LGIA, APS states that the parties were unable to reach a consensus on issues regarding the appropriate scope and treatment of network upgrades versus interconnection facilities.² Subsequently, on August 19, 2011, Perrin Ranch made a written request to APS that APS file an unexecuted LGIA with the Commission. On August 22, 2011, as amended on August 23, 2011, APS filed a non-conforming LGIA with the Commission. Even though only four of the six Participants are joint-owners of the portion of the Navajo Project that involves Perrin Ranch's interconnection request, the proposed LGIA was drafted to be an agreement among Perrin Ranch and all six of the Participants. In light of the remaining disagreements among the parties, the proposed LGIA has not been executed by any of the parties.

II. APS's Filing

4. APS contends that the non-conforming provisions of the LGIA are operationally necessary and consistent with or superior to its existing *pro forma* LGIA.³ According to APS, virtually all of the non-conforming provisions are intended to reflect the fact that the Navajo Project is a joint participant system and to ensure that the responsibilities, obligations and benefits are clearly and appropriately attributed to each of the relevant Participants. Specifically, APS proposes to, among other things: (1) replace "Standard Large Generator Interconnection Agreement" with "Agreement"; (2) add definitions to ensure that all necessary terms are defined; (3) remove the options for adopting a time-frame for engineering, procurement, and construction activities because the parties have already agreed to these time-frames; (4) specify that the interconnection customer's interconnection facilities must operate its facilities in accordance with applicable and reasonable guidelines and procedures; (5) specify that, if the interconnection customer plans to undertake a modification, it must provide the operating agent relevant information to evaluate the potential impact of the modification; (6) state that the operating agent will retain ultimate authority to approve or deny a non-emergency conditional removal from service to perform maintenance, testing, or to install or replace equipment; (7) modify the provision regarding third-party users to specify that the interconnecting customer will be entitled to compensation for capital expenses incurred in connection with the transmission system interconnection facilities, as such, capital

² APS August 22, 2011 Filing, Transmittal Letter at 16.

³ *Id.* at 3.

expenses are shown on the records of the interconnection customer and approved by the Participants; (8) provide for a one-time payment of a “Common Facilities Use Fee” to ensure that the Participants are compensated for the interconnection customer’s use of common facilities; and (9) add language specifying that the costs and expenses of operation, maintenance, capital improvements, insurance, and taxes will be calculated by the operating agent.

5. In addition, APS states that the Commission’s *pro forma* LGIA provides interconnection customers the option of choosing either energy resource or network resource interconnection service. APS proposes to delete these provisions and specify instead that the operating agent, APS, will provide “interconnection service” on behalf of the project at the point of interconnection. APS states that this change is appropriate because both energy and network resource interconnection service “contemplate an interconnection with a transmission provider that owns the entirety of the relevant transmission system.”⁴

6. APS proposes to add section 2.7 to the LGIA, which states that, “[n]otwithstanding any other provision in Article 2, [the LGIA] will become effective and binding as to the United States only upon execution of [the LGIA] by all parties including the United States.” APS contends that this provision is necessary to make clear the conditions that must be satisfied in order for the LGIA to become binding upon the United States. Furthermore, the proposed LGIA revises section 11.3 to state that network upgrades and distribution upgrades will be at “the sole expense of the interconnection customer.” In addition, the LGIA adds language to section 11.4.1 stating that the costs of network upgrades will be repaid by any one or more of the Joint Owners required to make repayments “under Applicable Laws and Regulations.” Section 11.4.1 further states that the repayment will be based on the Joint Owners’ ownership percentage and that “the United States and Salt River Project are not required to make such repayments.”

⁴ *Id.* at 6. Appendix A of the LGIA states that the Interconnection Customer Interconnection Facilities include a new substation which will contain one 138kV/500kV step-up transformer. In addition, Appendix A explains that the Perrin Ranch Project will interconnect to the Moenkopi to Yavapai 500kV transmission line via the Transmission System Interconnection Facilities (i.e., the Cedar Mountain switchyard). Appendix C of the LGIA designates the point of interconnection at the point where the Cedar Mountain switchyard connects to the Moenkopi to Yavapai transmission line – effectively designating the switchyard as “interconnection facilities.” The ten deviations described above (in P 4-5) were not challenged by Perrin Ranch and the four deviations discussed below (in P 6-7) were protested by Perrin Ranch.

7. Finally, Appendix A of the proposed LGIA explains that primary communication to provide reliable integration of the generating facility to the communications network will be provided by a new microwave tower. Appendix A also explains that the second permanent communication path (which will take years to build) will be a fiber optic line between the Cedar Mountain switchyard and the Yavapai substation, and will cost \$6.3 million, about a third of the cost of the interconnection facilities.

III. Notice of Filing and Responsive Pleadings

8. Notice of APS's August 22, 2011 Filing was published in the *Federal Register*, 76 Fed. Reg. 53,897 (2011), with interventions and comments due on or before September 12, 2011. Notice of APS's August 23, 2011 Filing was published in the *Federal Register*, 76 Fed. Reg. 54,459 (2011), with interventions and comments due on or before September 13, 2011. Timely motions to intervene and protest were filed by Perrin Ranch, and comments were filed by Tucson, Salt River, and Nevada Power. In addition, on September 27, 2011, Tucson filed an answer to Perrin Ranch's protest and, on October 7, 2011, Perrin Ranch filed an answer to Tucson's answer and Salt River's comments.

9. Perrin Ranch objects to four of APS's proposed deviations to the *pro forma* LGIA. Specifically, Perrin Ranch argues that the LGIA failed to: (1) justify or support the proposed deviations to the Commission's longstanding cost allocation policies; (2) justify or support the proposed deviations to section 11.4.1 (governing repayments); (3) justify or support the proposed addition of a new section 2.7, which provides that the LGIA will only be binding as to the United States upon execution by all parties including the United States; and (4) demonstrate the justness and reasonableness of the \$6.3 million fiber optic communication path or adequate consideration of lower cost, microwave-based alternatives. These objections are discussed below.

10. Perrin Ranch requests that the Commission require APS to revise its proposed LGIA to match an earlier version of the LGIA that APS sent to Perrin Ranch on August 5, 2011 (August 5 LGIA). Perrin Ranch states that APS described the August 5 LGIA as the final draft to be filed with the Commission, but APS withdrew it due to objections from two Navajo Project internal committees.⁵ Perrin Ranch also states that it intends to achieve commercial operation of its project by December 31, 2011 because it is pursuing American Recovery and Reinvestment Act grants.

⁵ Perrin Ranch notes that the revised LGIA submitted herein reflect significant changes from the August 5 LGIA. Perrin Ranch Protest at 5-6.

11. Perrin Ranch contends that the Commission's policies on the allocation of generator interconnection are clear and well-settled. Perrin Ranch states that the generator can be required to pay upfront the costs of the interconnection facilities and network upgrades necessary to safely and reliably interconnect the generator that would not have been incurred "but for" the generator's request to interconnect.⁶ Furthermore, Perrin Ranch states that the costs of the interconnection facilities can be directly assigned to the generator, but the costs of the network upgrades must be repaid to the generator either through direct repayments or transmission credits.⁷ In addition, Perrin Ranch contends that network upgrades are defined as all facilities located "at or beyond" the point of interconnection with the transmission system – i.e., the "at or beyond" test.⁸ The "point of interconnection" is the point where the generator facility connects to the transmission system.⁹ According to Perrin Ranch, the Cedar Mountain switchyard should be classified as a network upgrade.

12. Perrin Ranch argues that APS's August 5 LGIA fully complied with these well-settled cost allocation policies. Perrin Ranch argues, however, that the unexecuted LGIA submitted by APS in the instant filing altered these provisions and now deviates from the Commission's longstanding policies. First, Perrin Ranch argues that: (1) the point of interconnection has been redrawn and changed to two different points on two lines that come out of the Cedar Mountain switchyard; (2) the facilities that were classified as network upgrades in the August 5 LGIA– i.e., the costs of the Cedar Mountain switchyard, modifications to the 500 kV transmission line, and the fiber optic communication path – were reclassified as interconnection facilities, thus resulting in the

⁶ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 694 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at P 579-590 (Order No. 2003-A), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

⁷ Perrin Ranch Protest at 9 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 694; *Nevada Power Co.*, 111 FERC ¶ 61,161, at P 12, *reh'g denied*, 113 FERC ¶ 61,007 (2005)).

⁸ *Id.* (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 65; *see, e.g., Florida Power Corp.*, 121 FERC ¶ 61,027, at P 15 (2007); *South Carolina Electric & Gas Co.*, 118 FERC ¶ 61,185, at P 20 (2007); *Nevada Power Co.*, 111 FERC ¶ 61,161 at P 13).

⁹ *Id.*

elimination of all network upgrades in the unexecuted LGIA; and (3) section 11.3 of the *pro forma* LGIA was altered to state that the costs of network upgrades are at the “sole expense” of the generator.¹⁰ Perrin Ranch argues that APS’s filing made no attempt to explain these deviations and that these deviations should be rejected.

13. Salt River and Tucson argue that, under the Commission’s “at or beyond test,” the new switchyard is located on the generator’s side of the point of interconnection and is therefore an interconnection facility. Salt River also argues that the new switchyard is not geographically or functionally integrated with the bulk electric system or the Navajo Project, and that it is used solely by the Perrin Ranch Project. In addition, Salt River and Tucson argue that the switchyard does not create additional capacity or transmission service that the Joint Owners may use or sell to Perrin Ranch Project or a third party, and thus there is no benefit to the Joint Owners’ customers from the new interconnection facilities. Perrin Ranch agrees that the “at or beyond” test is the appropriate standard for determining whether the facilities should be classified as network upgrades and argues that, under this standard, the facilities qualify as a network upgrade.¹¹

14. In its answer, Tucson argues that Commission precedent makes it clear that the switchyard at issue is an interconnection facility. Tucson states that, in *Pacific Gas and Electric Co.*,¹² the Commission found that it was appropriate to directly assign the cost of two 230 kV circuit breakers to the interconnection customer because they were not at or beyond the point of interconnection. Also, Tucson asserts that, in *Progress Energy Carolinas, Inc.*,¹³ the Commission reviewed one-line diagrams and determined that the facilities were located behind the interconnection point.

¹⁰ *Id.* at 10.

¹¹ *Id.* at 2-6.

¹² Tucson Answer at 5 (citing *Pacific Gas and Electric Co.*, 106 FERC ¶ 61,240 (2004)).

¹³ *Id.* (citing *Progress Energy Carolinas, Inc.*, 105 FERC ¶ 61,231 (2003)).

15. Moreover, Salt River contends that the *Mansfield* framework¹⁴ – although not directly on point – demonstrates that the switchyard is an interconnection facility. First, Salt River contends that the switchyard is radial. Second, Salt River contends that power flows in only one direction. Third, Salt River contends that the Participants are not able to serve new load to themselves or any third-parties as a result of the switchyard. Fourth, Salt River contends that the switchyard does not provide new capability or improve reliability, and the switchyard is isolated from all other components of the transmission grid. Finally, Salt River contends that an outage at the new switchyard would curtail transmission service on the Moenkopi-Yavapai line, and that the switchyard is not integrated beyond the extent it connects the Moenkopi-Yavapai line.¹⁵

16. Furthermore, Salt River argues that ratepayers are protected from adverse rate implications associated with Perrin Ranch’s interconnection. Specifically, Salt River cites Order No. 2003 which states, “we first affirm that an important objective of our interconnection pricing policy continues to be the protection of existing Transmission Customers, including the Transmission Provider’s native load, from adverse rate implications associated with Interconnection Facilities and Network Upgrades required to interconnect a new Generating Facility.” Salt River states that “the shared goals of open access for transmission and interconnection customers can be achieved without overreach and unintended consequences of orderly investments in new transmission facilities that can and do truly contribute to reliability and increased transmission capacity,” which Salt River argues is not the case here.

17. Nevada Power states that Perrin Ranch seeks interconnection in a component of the Navajo Project in which Nevada Power does not have an ownership interest. However, Nevada Power requests that the Commission accept the LGIA as filed and argues that the LGIA strikes a proper balance between taking the rights and obligations of

¹⁴ *Mansfield Municipal Electric Dept. v. New England Power Co.*, 97 FERC ¶ 61,134 (2001) (*Mansfield*). Under the *Mansfield* framework, transmission facilities are considered to be integrated, thereby justifying rolled-in pricing, unless all five of the following factors are satisfied: (1) the facilities are radial, not looped; (2) energy flows in just one direction over the facilities at issue; (3) the applicant is able to serve only its own customers over these facilities; (4) the radial configuration prevents the applicant from providing support and added reliability to the other looped lines; and (5) an outage on any one of these facilities would not affect the power flows on the remainder of the system. Thus, a negative showing on even one of the factors is sufficient to demonstrate some degree of integration. *Mansfield*, 97 FERC ¶ 61,134 at 61,613-14.

¹⁵ Salt River Protest at 8.

the Participants under the Navajo Project Agreement and providing Perrin Ranch the ability to interconnect to a jointly owned transmission system.

18. Next, Perrin Ranch argues that the Commission should reject the proposed deviations from *pro forma* LGIA sections 11.3 and 11.4.1. Perrin Ranch argues that the sole justification for these deviations is the assertion by APS that the Commission has limited jurisdiction over the United States and Salt River and, as such, these entities are not required to repay amounts advanced as network upgrades. Perrin Ranch argues that this issue could be addressed in the LGIA simply by adding the phrase “Subject to Applicable Laws and Regulations, ...” at the beginning of section 11.4.1, arguing that this would preserve the issue and allow it to be resolved at a later date, consistent with Commission rules and precedent. Perrin Ranch objects to locking in repayment rules without any showing that non-jurisdictional entities treat their own upgrades comparably.¹⁶

19. Perrin Ranch also argues that the proposed new section 2.7 should be rejected because it is unsupported and conflicts with section 2.1 of the LGIA. Section 2.1 states that the LGIA will become effective upon execution by the Parties “or if filed unexecuted, upon the date specified by [the Commission].” Perrin Ranch argues that the Commission’s common practice is to allow unexecuted LGIAs to be filed and to become effective upon the effective date specified by the Commission. Perrin contends that, in light of the Commission’s exclusive jurisdiction to regulate the terms and conditions of interconnection service, unexecuted LGIAs that are accepted by the Commission can become binding and effective on the parties, even though they are not executed.

20. Moreover, Perrin Ranch argues that APS has not shown that the \$6.3 million fiber optic communication path is just and reasonable, especially in light of potentially less expensive alternatives. Perrin Ranch further argues that APS has stated that its standards require microwave-based or fiber optic-based communication paths or any combination thereof. Thus, Perrin Ranch contends that an approach using dual microwave-based paths would be feasible for Perrin Ranch’s interconnection and would be far less expensive than the fiber optic. Perrin Ranch argues that this issue can be resolved by revising Appendix B of the LGIA to add a milestone that will provide the parties additional time to explore less expensive and reasonable alternatives to the fiber optic communication path, and still allow the parties to proceed with the timely construction of

¹⁶ Perrin Ranch Answer at 6.

the permanent second communication path in time to meet the December 31, 2014 deadline for completion of that path.¹⁷

21. Tucson argues that the fiber optic communication path is necessary in order to minimize the negative impacts to the Navajo Project's reliability.

IV. Discussion

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motion to intervene serves to make the entities that filed them parties to this proceeding.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011) prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Tucson's and Perrin Ranch's answers because they have provided information that assisted us in our decision-making process.

B. Commission Determination

24. Our preliminary analysis indicates that the proposed non-conforming LGIA has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the proposed non-conforming LGIA, suspend it for a nominal period to become effective October 21, 2011, as requested, subject to refund, and set the contested terms and conditions of the proposed LGIA for hearing and settlement judge proceedings. The contested provisions include, for example, issues related to the classification of facilities, cost allocation, repayment rules and communication path proposal.

25. While we are setting for hearing and settlement judge procedures the contested provisions of the non-conforming LGIA, we are not setting for hearing and settlement

¹⁷ Perrin Ranch proposes to add a milestone that states:

Interconnection Customer will determine and demonstrate, to APS' reasonable satisfaction, an alternative and less expensive, permanent communication solution by December 31, 2012 or APS will proceed with the previously identified fiber optic solution.

Perrin Ranch Protest at 15.

judge procedures the uncontested provisions. In *Midwest ISO*,¹⁸ the Commission stated that a transmission provider seeking deviations from [its] *pro forma* interconnection agreement “bears a burden higher than the consistent with or superior to standard . . . [and] must explain what makes the interconnection unique and what operational concerns or other reasons necessitate the change.”¹⁹ We find that unique and operational issues exist with this interconnection that necessitates the proposed uncontested deviations from the *pro forma* LGIA in order to interconnect Perrin Ranch’s facilities to the jointly owned Moenkopi/Yavapai 500 kV transmission line. As APS explains, these uncontested provisions are necessary to reflect that Navajo Project is a joint participant system and to ensure that the responsibilities, obligations and benefits are clearly and appropriately attributed to each of the relevant Participants.

26. While we are setting the contested provisions of the LGIA for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission’s Rules of Practice and Procedure.²⁰ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.²¹ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

¹⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,252, at P 10-11 (2006) (*Midwest ISO*).

¹⁹ *Id.* P 11.

²⁰ 18 C.F.R. § 385.603 (2011).

²¹ If the parties decide to request a specific judge, they may make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission’s website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

The Commission orders:

(A) APS's proposed LGIA is hereby accepted for filing and suspended for a nominal period to become effective October 21, 2011, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the contested provisions of the LGIA. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and

to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.