

140 FERC ¶ 61,095
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

El Paso Electric Company

Docket Nos. ER12-818-001
ER12-2079-000

ORDER ON INTERCONNECTION AGREEMENTS AND WAIVER REQUESTS

(Issued August 1, 2012)

1. In this order, we accept the proposed Interconnection Agreements filed by El Paso Electric Company (El Paso) governing the interconnection of two solar generating facilities owned by Arlington Valley Solar Energy II, LLC (AVSE) to the Hassayampa Switchyard (AVSE Interconnection Agreements), effective December 15, 2011, and May 24, 2012, respectively, and grant El Paso's request for waiver of the requirements of Order No. 2003,¹ as discussed below.

I. Background

2. On August 23, 1973, a group of public utilities and non-jurisdictional entities (collectively, Arizona Nuclear Power Plant (ANPP) Participants),² that jointly own the Palo Verde Nuclear Generating Facility,³ the Palo Verde Switchyard, and the

¹ See *Standardization of Generation Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *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).

² The jurisdictional ANPP Participants are Arizona Public Service Company (APS), El Paso, Public Service Company of New Mexico, and Southern California Edison Company. The non-jurisdictional ANPP Participants are the City of Los Angeles (by and through the Department of Water and Power) and Salt River Project Agricultural Improvement and Power District.

³ The Palo Verde Nuclear Generating Facility is located approximately 50 miles from Phoenix, Arizona, and is the largest nuclear generating facility in the United States.

Hassayampa Switchyard, executed the ANPP Participation Agreement. This agreement sought to facilitate the construction of the ANPP and govern ownership rights of the associated facilities. Since the ANPP became fully operational in 1988, the Palo Verde Switchyard at the Palo Verde Nuclear Generating Facility has become a market hub for sales of wholesale power in the southwest. The Hassayampa Switchyard is a satellite facility that serves as a common bus with the Palo Verde Switchyard.⁴

3. On August 31, 2001, after receiving numerous requests to interconnect approximately 5,000 MW of new generation, the ANPP Participants subject to the Commission's jurisdiction filed separate interconnection agreements with the Commission (2001 Hassayampa Interconnection Agreements). The 2001 Hassayampa Interconnection Agreements governed the interconnection of the new generating facilities to the common bus at the Palo Verde and Hassayampa Switchyards, and prescribed the accompanying rates, terms, and conditions for the maintenance and operation of the interconnection facilities. On October 22, 2001, the Commission accepted the 2001 Hassayampa Interconnection Agreements for filing.⁵

4. On July 24, 2003, the Commission issued Order No. 2003, which required public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to file revised open access transmission tariffs (OATT) containing standard generator interconnection procedures.⁶ The order became effective on January 20, 2004.⁷

5. Order No. 2003 also included a *pro forma* Large Generator Interconnection Agreement (LGIA) for public utilities to use when providing interconnection service for generating units with a capacity of more than 20 MW. The Commission specified that transmission providers would have to file an LGIA for any new interconnection request to their transmission system, but would not require retroactive changes to interconnection agreements filed with the Commission prior to the effective date of Order No. 2003.⁸

⁴ See *Arizona Public Serv. Co.*, 137 FERC ¶ 61,031, at P 2 (2011) (October 2011 Order). The Hassayampa Switchyard is located in APS's balancing authority area. *Mesquite Solar 1, LLC*, 138 FERC ¶ 61,074, at P 2 (2012).

⁵ *Arizona Public Serv. Co.*, Docket No. ER01-2994-000 (Oct. 22, 2001) (delegated letter order).

⁶ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 2.

⁷ *Id.* P 928.

⁸ *Id.* P 4.

6. On October 11, 2011, the Commission accepted revisions to APS's 2001 Hassayampa Interconnection Agreement with Mesquite Power, LLC (Mesquite Power) and granted APS's request for limited waiver of Order No. 2003 (2011 Hassayampa Interconnection Agreement).⁹ On April 12, 2012, the Commission accepted an identical Hassayampa Interconnection Agreement filed by El Paso.¹⁰

II. El Paso Filings and Request for Waiver

7. On January 17, 2012, in Docket No. ER12-818-000, El Paso filed the first AVSE Interconnection Agreement to interconnect a new 125 MW solar generating facility to the Hassayampa Switchyard.¹¹ El Paso states that it attempted to submit the instant filing on Friday, January 13, 2012 and requests an effective date of December 15, 2011.

8. El Paso explains that APS submitted the same AVSE Interconnection Agreement for filing with the Commission, in Docket No. ER12-653-000, which El Paso states contains additional information on the background and history of the ANPP Participants and their facilities.

9. El Paso requests waiver of Order No. 2003's requirement that transmission providers adopt and use the Commission's *pro forma* LGIA for all new interconnection requests for generators larger than 20 MW. El Paso explains that it entered the first AVSE Interconnection Agreement under the ANPP's interconnection procedures which, due to its combination of jurisdictional and non-jurisdictional owners and operation by a non-jurisdictional entity, are unique.¹² El Paso states that waiver of Order No. 2003's requirements is, thus, warranted based on the unique structure of the ANPP and the specific circumstances under which AVSE's interconnect request arises.

10. El Paso notes that the baseline tariff for its OATT only governs interconnection service that conforms to the Commission's *pro forma* Large and Small Generator Interconnection Procedures. Therefore, El Paso states that it has created a new baseline

⁹ Specifically, the revisions added Mesquite Solar 1, LLC (Mesquite Solar) to increase the capacity of Mesquite Power's interconnection by 700 MW, added a second 500 kV tie-line to connect the Mesquite Substation and Hassayampa Switchyard, and transferred certain ownership rights from Mesquite Power to Mesquite Solar. October 2011 Order, 137 FERC ¶ 61,031 at PP 12, 15.

¹⁰ *El Paso Electric Co.*, Docket No. ER11-1141-000 (April 12, 2012) (delegated letter order).

¹¹ On February 13, 2012, El Paso filed revisions to its original filing to remove a stray page located immediately after the interconnection agreement's title page.

¹² January 17, 2011 Filing, Transmittal Letter at 2.

tariff to separate its non-conforming, ANPP-related agreements from those under its OATT.

11. On June 21, 2012, in Docket No. ER12-2079-000, El Paso filed the second AVSE Interconnection Agreement for the second 125 MW solar generating facility,¹³ also requesting waiver of Order No. 2003. El Paso requests an effective date of May 24, 2012.

III. Notice of Filings

12. Notice of El Paso's amended filing in Docket No. ER12-818-001 was published in the *Federal Register*, 77 Fed. Reg. 10,738 (2012), with interventions, comments, and protests due on or before March 5, 2012. Notice of El Paso's filing in Docket No. ER12-2079-000 was published in the *Federal Register*, 77 Fed. Reg. 38,792 (2012), with interventions, comments, and protests due on or before July 12, 2012. No pleadings were filed in response to these filings.

13. On April 3, 2012, the Director, Division of Electric Power Regulation – West, issued a deficiency letter, in Docket No. ER12-818-001, directing El Paso to explain in detail why it was unable to comply with Order No. 2003 and to clarify how its request for waiver remained limited in scope, given that the Hassayampa Switchyard is part of a major market hub for sales of wholesale power in the southwest.¹⁴

14. On June 4, 2012, APS and El Paso filed a joint response. They contend that the ANPP Participants have developed an interconnection framework to ensure that new and existing customers that interconnect to the Palo Verde/Hassayampa common bus receive equitable treatment, consistent with the 2001 and 2011 Hassayampa Interconnection Agreements. APS and El Paso argue that this arrangement, which originally predated Order No. 2003, provides for interconnection customers to pay for all of the common bus facilities costs (both new and old) on a *pro rata* basis. APS and El Paso state that, under this framework, new interconnection customers do not pay for network upgrades or receive reimbursement through transmission credits. APS and El Paso state that the transmission providers also do not levy transmission charges for transmitting capacity through the common bus or roll the common bus facilities costs into their transmission rates. Further, according to APS and El Paso, the arrangement stipulates that the ANPP Participants will recalculate the *pro rata* cost share if the number of interconnection

¹³ On June 22, 2012, in Docket No. ER12-2092-000, APS filed the same interconnection agreement.

¹⁴ A substantively identical deficiency letter was issued regarding the substantively identical application of APS in Docket No. ER12-653-001.

customers at the Hassayampa Switchyard changes and that they will not seek different treatment for new interconnection customers.

15. APS and El Paso argue that revising the AVSE Interconnection Agreements may unravel how the Palo Verde/Hassayampa Switchyards function as a common bus as well as trigger extensive and potentially disruptive negotiations between the ANPP Participants and interconnection customers. Further, APS and El Paso argue that the ANPP Participants and interconnection customers have developed economic expectations based on the cost allocation framework contained in the Hassayampa Interconnection Agreements and expect new generators who interconnect to the Hassayampa Switchyard to be subject to the same requirements.

16. APS and El Paso also argue that their requests for waiver are limited in scope, despite the fact that the ANPP is a major energy hub, because they concern only the interconnections at the Hassayampa Switchyard. However, APS and El Paso argue that the importance of the Palo Verde/Hassayampa Switchyards is alone a sufficient reason to grant their requests for waiver; failing to do so may jeopardize the switchyards' role as a Western trading hub by creating uncertainty.

17. Notice of the El Paso's response to the Commission's deficiency letter was published in the *Federal Register*, 77 Fed. Reg. 34,945 (2012), with comments due on or before June 25, 2012.

18. In response to this notice, AVSE filed a motion to intervene and comments in support of APS and El Paso's filings. AVSE states that it has already sold the entire output of the solar project to San Diego Gas & Electric Company under a long-term power purchase agreement and will begin full commercial operations in December 2013. AVSE also points out that it closed on equity and debt financing for the project based on these arrangements in January 2012. AVSE argues that open, fair, and transparent access to the Hassayampa Switchyard is best achieved through Hassayampa-specific interconnection procedures that apply to all of the ANPP Participants. AVSE also contends that its investors value the certainty and stability associated with the AVSE Interconnection Agreements, particularly due to the significant financial resources they have already committed for construction activities required to implement the existing agreement. AVSE fears that entering into a new LGIA may have a detrimental effect on the project and its investors.

IV. Discussion

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motion to intervene serves to make AVSE a party to these proceedings.

20. The Commission historically has granted certain waiver requests involving an emergency situation or an unintentional error.¹⁵ Waiver, however, is not limited to those circumstances. For example, in several recent cases, the Commission has found good cause to grant waiver where the waiver is of limited scope, where there are no undesirable consequences, or where there are resultant benefits to customers.¹⁶ In the instant case, as discussed below, we find good cause to grant El Paso's request for waiver of Order No. 2003 and accept the AVSE Interconnection Agreements as proposed.

21. We find that El Paso's waiver request is limited in scope and arises out of its unique circumstances. The ANPP Participants, as a group of public utilities and non-jurisdictional entities, do not have a *pro forma* LGIA on file with the Commission; thus, we agree with El Paso that requests to interconnect to the Hassayampa Switchyard warrant interconnection procedures different than those that, under normal circumstances, we would expect El Paso to follow the *pro forma* LGIA in its OATT. Granting El Paso's request for limited waiver will allow for the construction of interconnection facilities needed to connect AVSE's new 125 MW solar generating facilities without interfering with the existing 2001 unique contractual arrangements that govern the ANPP Participants' ownership and operation of the Hassayampa Switchyard. Moreover, El Paso's waiver request is unopposed and we see no concerns of discrimination or basis to conclude that any undesirable consequences will arise from our grant of waiver in these proceedings. We also find that APS's request for limited waiver will benefit the ANPP Participants and interconnection customers because the agreement ensures equitable treatment. Thus, we will grant the requested waiver and will accept the AVSE Interconnection Agreements for filing, effective December 15, 2011, and May 24, 2012, respectively, as requested.

The Commission orders:

(A) The AVSE Interconnection Agreements are hereby accepted for filing, effective December 15, 2011, and May 24, 2012, respectively, as discussed in the body of this order.

¹⁵ See, e.g., *ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006) (granting limited and temporary change to tariff to correct an error); *Great Lakes Transmission LP.*, 102 FERC ¶ 61,331, at P 16 (2003) (granting emergency waiver involving *force majeure* event for good cause shown); *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330, at P 5 (2003) (granting waiver for good cause shown to address calculation in variance adjustment).

¹⁶ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,226 (2007); *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,031 (2008); *Cal. Indep. Sys. Operator Corp.*, 132 FERC P 61,132 (2010); *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,020 (2010).

(B) El Paso's request for waiver of the requirements of Order No. 2003 is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose
Secretary.