

145 FERC ¶ 61,086  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Arizona Public Service Company

Docket No. ER13-2300-000

ORDER ACCEPTING AND SUSPENDING PROPOSED REVISIONS TO  
TRANSMISSION SERVICE AGREEMENTS AND ESTABLISHING HEARING AND  
SETTLEMENT JUDGE PROCEDURES

(Issued October 31, 2013)

1. On August 30, 2013, Arizona Public Service Company (APS) filed, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> revisions to its Firm Transmission Service Agreement and Interruptible Transmission Service Agreement (collectively, Agreements) with Yuma Cogeneration Associates (Yuma).<sup>2</sup> In this order, we accept APS's proposed Agreements for filing, suspend them for a five-month period to become effective April 1, 2014, subject to refund, and establish hearing and settlement judge procedures.

**I. Instant Filing**

2. Currently, APS provides Yuma with 50.85 MW of firm transmission service from Yuma's generation facility to the 500 kV bus of the North Gila substation at a rate of \$1.52/kW per month. APS also currently provides Yuma with transmission at the same delivery points for amounts above the 50.85 MW of firm transmission on an interruptible basis. The current interruptible transmission rate reflects the same generally applicable transmission service rate as the firm transmission service; however, APS charges Yuma for the interruptible service at an hourly rate based on prescheduled energy, rather than on monthly reservations.

3. In the instant filing, APS proposes to revise the transmission rates it is charging Yuma under the Agreements to match its rate for point-to-point transmission service under its Open Access Transmission Tariff (OATT). APS alleges that it is not recovering its actual costs under the current rate structure because the rates under the Agreements

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> FERC Rate Schedule No. 198.

were developed in 1990 and 1994, respectively, and are too low. APS asserts that it is appropriate to update the rates under the Agreements to reflect the current OATT rate for point-to-point transmission service because the services provided under the Agreements are comparable to the transmission service that APS provides pursuant to its OATT.<sup>3</sup> APS estimates that, under its proposal, Yuma's annual charge for firm transmission service will increase from \$920,755.20 to \$1,779,922.78, and Yuma's annual charge for interruptible transmission service will increase from \$25,901.70 to \$50,136.33.<sup>4</sup>

4. APS asserts that the service it provides to Yuma under the Agreements is comparable to the long-term firm point-to-point transmission service and short-term non-firm point-to-point transmission service it provides pursuant to its OATT. APS asserts that both services contemplate the provision of transmission service over a set path between a stated receipt point and a stated delivery point. Further, APS states that, under the Agreements, it provides Yuma with priority service over the specified path, similar to the long-term firm point-to-point service it provides under its OATT. Thus, APS contends that it is appropriate to apply its OATT rate for the long-term firm and non-firm point-to-point service to the Agreements.

5. APS also proposes to charge Yuma for real power transmission losses incurred on its system, consistent with its Business Practice for Transmission Loss Payment for Point-to-Point Service. Pursuant to the APS OATT, APS states that it settles real power transmission losses using an hourly pricing proxy.<sup>5</sup> To calculate Yuma's real power losses, APS states that it will apply a 2.5 percent loss factor to Yuma's actual schedules. APS asserts that the new charge for losses will result in a total annual increase for Yuma of \$86,282.83.<sup>6</sup>

6. Finally, APS proposes to charge Yuma for additional ancillary service charges, including: (1) Scheduling, System Control and Dispatch Service; and (2) Reactive Supply and Voltage Control from Generation or Other Sources Service. APS asserts that

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<sup>3</sup> APS currently provides transmission service pursuant to its OATT, under which the transmission rate adjusts annually based on a Commission-approved formula. *See Arizona Public Service Co.*, 124 FERC ¶ 61,088 (2008).

<sup>4</sup> APS Filing at 4.

<sup>5</sup> *Id.* The hourly pricing proxy is calculated using the average published day ahead Dow Jones Electricity Price Index for Palo Verde, Four Corners, and Mead for on-peak and off-peak prices. APS applies the 2.5 percent loss factor to the actual schedules to calculate real power transmission losses. *Id.*

<sup>6</sup> Specifically, APS proposes to increase its annual rate for Firm Transmission Service losses by \$79,167.38, and increase its annual rate for Interruptible Transmission Service losses by \$7,115.45. Together, these losses total \$86,282.83.

these are standard services provided in connection with point-to-point transmission service and therefore appropriate for inclusion in this similar transmission service. APS states that the new rates for Ancillary Service charges will result in a total annual increase for Yuma of \$15,042.90.<sup>7</sup>

7. APS requests that the Commission accept the proposed revisions to its Agreements, effective November 1, 2013.

## **II. Notice, Interventions and Responsive Pleadings**

8. Notice of APS's filing was published in the *Federal Register*, 78 Fed. Reg. 55,256 (2013), with interventions and protests due on or before September 20, 2013. Yuma submitted a timely motion to intervene and protest. APS filed an answer to Yuma's protest on October 21, 2013.

9. Yuma argues that the OATT rate for long-term firm point-to-point transmission service that APS proposes to charge under the Agreements is not just and reasonable. Specifically, Yuma contends that the Agreements were specifically negotiated to provide for a limited and discrete service over a 15-mile segment that does not provide for the full transmission options available under APS's OATT. Yuma contends that a rate developed based on APS's total system costs is inappropriate and that APS has made no demonstration that the OATT rate is appropriate for these Agreements.

10. Yuma further attests that APS has not demonstrated why a 2.5 percent loss factor is appropriately applied to the Agreements. Yuma contends that APS has failed to provide line loss calculations for deliveries over a 15-mile segment of the 69 kV system, and contends that, based on industry standards, the delivery over this segment would typically have a loss factor no higher than 1 percent. Further, Yuma argues that, while APS seeks to assess reactive power charges, APS made no mention in its filing of the voltage support that Yuma's facility provides APS. Yuma explains that the voltage support its facility provides to APS's transmission system would likely have an offsetting positive effect on APS's cost structure.

11. Yuma requests that the Commission suspend APS's proposed rate increase and other changes for the maximum five-month period, set the matter for hearing, and hold the hearing in abeyance while the parties engage in settlement negotiations before an Administrative Law Judge.

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<sup>7</sup> Specifically, APS proposes to increase its annual rate for Firm Ancillary Services by \$14,644.80, and increase its annual rate for Interruptible Ancillary Services by \$398.10. Together, these increases total \$15,042.90.

### III. Discussion

#### A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules and Practice and Procedure,<sup>8</sup> the timely, unopposed motion of Yuma to intervene serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept APS's answer and will, therefore, reject it.

#### B. Substantive Matters

13. Our preliminary analysis indicates that APS's proposed revisions to the Agreements have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that APS's proposed revisions to the Agreements raise issues of material fact that cannot be resolved based on the record before us and that would more appropriately be addressed in the hearing and settlement judge procedures we order below.

14. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by the statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or unduly discriminatory, or that it may be inconsistent with other statutory standards.<sup>9</sup> It is our policy to suspend a requested rate increase for the maximum period in those cases where our preliminary analysis indicates that 10 percent or more of the requested increase appears to be excessive.<sup>10</sup> In *West Texas*,<sup>11</sup> we explained that where our preliminary review indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, we would generally impose a maximum suspension. Here, our preliminary analysis indicates that the proposed rates may yield substantially excessive revenues. APS has not provided evidence to support either its actual cost of providing the transmission service, its claim that it is losing money in providing the service, or its proposed 2.5 percent loss factor. Accordingly, we will accept the proposed Agreements for filing, suspend them for the maximum five-month period, to become effective on April 1, 2014, subject to refund, and set them for hearing and settlement judge procedures.

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<sup>8</sup> 18 C.F.R. § 385.214 (2013).

<sup>9</sup> See, e.g., *Boston Edison Co.*, 12 FERC ¶ 61,211 (1980).

<sup>10</sup> *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982) (*West Texas*).

<sup>11</sup> 18 FERC ¶ 61,189 (1982).

15. While we are setting these matters 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.<sup>12</sup> 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.<sup>13</sup>

16. The settlement judge shall report to the Chief Judge and the Commission, within thirty (30) days of the date of the appointment of the settlement judge, concerning 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 or provide for commencement of a hearing by assigning the case to a presiding judge, as appropriate.

The Commission orders:

(A) APS's proposed Agreements are hereby accepted for filing and suspended for five months, to become effective April 1, 2014, subject to refund, and subject to hearing and settlement judge procedures, 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 by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of APS's proposed rate increase under the Agreements. However, the hearing shall 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 (2013), 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 within five (5) days of the date of this order.

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<sup>12</sup> 18 C.F.R. § 385.603 (2013).

<sup>13</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(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 judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a 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.

( S E A L )

Kimberly D. Bose,  
Secretary.