

147 FERC 61,017  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Arizona Public Service Company

Docket No. ER13-1402-002

ORDER ON REHEARING

(Issued April 7, 2014)

1. In this order, we deny Southern California Edison Company's (SoCal Edison) request for rehearing of the Commission's September 13, 2013 order accepting Arizona Public Service Company's (APS) notice of cancellation of a Transmission Service Agreement and rejecting APS's associated request for rate recovery.<sup>1</sup> Additionally, we provide clarification of our finding in the September 13 Order.

**I. Background**

2. APS and SoCal Edison entered into a Transmission Service Agreement on July 20, 1966, under which APS constructed, owned and operated a 500 kV transmission line from the Four Corners Power Plant to the Arizona-Nevada border (Arizona Transmission System). Additionally, under the agreement, SoCal Edison pays APS monthly cost-based transmission service charges in exchange for rights to all of the transmission capacity on the Arizona Transmission System. In 2010, SoCal Edison agreed to sell 100 percent of its ownership interests in the Four Corners Power Plant to APS. On November 8, 2010, APS and SoCal Edison agreed to terminate the Transmission Service Agreement. The parties mutually agreed that APS would pay SoCal Edison a one-time contract termination payment of \$40 million for the transmission capacity on the transmission line.<sup>2</sup>

---

<sup>1</sup> *Arizona Public Service Co.*, 144 FERC ¶ 61,200 (2013) (September 13 Order).

<sup>2</sup> *Id.* PP 2-3.

3. On May 2, 2013, as amended on June 21, 2013, APS filed, pursuant to section 205 of the Federal Power Act,<sup>3</sup> a notice of cancellation of the Transmission Service Agreement. APS also requested Commission authorization to defer and amortize over 10 years the proposed \$40 million payment from APS to SoCal Edison. Alternatively, APS requested authorization to treat the proposed \$40 million as an immediate miscellaneous transmission expense and flow it through its formula rate. In support of its filing, APS stated that paragraph 25.3 of the Transmission Service Agreement governed the procedures for termination, providing that:

In the event of termination by [SoCal Edison] pursuant to paragraph 25.2, [SoCal Edison] shall pay [APS] on or as of the date of termination a lump sum equal to (a) the Net Investment of the Arizona Transmission System as of the effective date of termination plus estimated removal costs and minus the estimated salvage value of the facilities removed (with adjustments to actual removal costs and salvage value after removal has been completed); and (b) the Termination Charges, if any, as defined in paragraph 24.8. [SoCal Edison] shall be given credit, under the circumstances then prevailing, for any beneficial use to [APS] of the Arizona Transmission System which [APS] may retain.

4. In the September 13 Order, the Commission accepted APS's notice of cancellation, and rejected APS's associated request for rate recovery, finding that APS did not adequately support its proposal to recover the \$40 million termination payment in its jurisdictional, cost-based transmission rates. With respect to paragraph 25.3, the Commission rejected APS's contention that the termination procedures of the agreement authorized recovery of the proposed \$40 million termination payment to SoCal Edison, noting that, "paragraph 25.3, by its express terms, lays out the lump sum termination payment that *SoCal Edison shall pay APS*; it does not prescribe an equalization of benefits and provides no justification for a termination payment that *APS shall pay SoCal Edison*."<sup>4</sup> The Commission further found that paragraph 25.3 did not permit SoCal Edison to "receive payment for terminating the Transmission Service Agreement," noting that "credit against costs is not a payment *above* costs, especially when this interpretation would conflict with the plain language of '[SoCal Edison] shall pay [APS].'"<sup>5</sup>

---

<sup>3</sup> 16 U.S.C. § 824d (2012).

<sup>4</sup> September 13 Order, 144 FERC ¶ 61,200 at P 20 (emphasis in original).

<sup>5</sup> *Id.* (emphasis in original).

5. Following the issuance of the September 13 Order, on December 18, 2013, APS submitted a filing requesting that the Commission revise the effective date of the cancellation of the Transmission Service Agreement with SoCal Edison from the date on which SoCal Edison transferred its ownership interests in the Four Corners Power Plant to APS to the date on which the Transmission Service Agreement terminates by its own terms. On January 3, 2014, the Commission accepted APS's revised effective date of the cancellation of the agreement, and required APS to file a notice of cancellation under section 205 with the Commission when the agreement terminates by its own terms.<sup>6</sup>

6. On October 15, 2013, SoCal Edison filed a timely motion for clarification or, in the alternative, request for rehearing of the September 13 Order. SoCal Edison asks the Commission to clarify that its interpretation of paragraph 25.3 of the Transmission Service Agreement as it appears in the September 13 Order only applies to the specific case in which the ruling was made (i.e., the proceeding in Docket No. ER13-1402) and that no party is estopped from or otherwise prejudiced in a future section 205 filing from arguing that APS could be required to make a payment to SoCal Edison pursuant to paragraph 25.3 of the Transmission Service Agreement.

7. Alternatively, SoCal Edison seeks rehearing, arguing that the Commission erred in ruling that paragraph 25.3 of the Transmission Service Agreement does not require APS to make a termination payment to SoCal Edison even where the credit that SoCal Edison is entitled to under the provision exceeds the costs for which SoCal Edison is otherwise responsible under the provision.

8. SoCal Edison argues that the Commission failed to give the parties' intention precedence in its interpretation of paragraph 25.3. SoCal Edison asserts that paragraph 19 of the Transmission Service Agreement specifies that the terms of the contract are to be interpreted in accordance with Arizona law, which dictates that a contract is to be interpreted to give effect to the intention of the parties.<sup>7</sup> SoCal Edison asserts that the parties' intention is that the credit to SoCal Edison under paragraph 25.3 can exceed the amount otherwise owed by SoCal Edison to APS under the provision, resulting in a net payment obligation by APS to SoCal Edison. SoCal Edison argues that, in the September 13 Order, the Commission advances a contrary interpretation of the intent of the contracting parties and that this interpretation violates the operative principles of contract interpretation in Arizona.

---

<sup>6</sup> *Arizona Public Service Co.*, Letter Order, Docket No. ER13-1402-003 (Jan. 3, 2014).

<sup>7</sup> SoCal Edison Request for Clarification or Rehearing at 5.

9. Further, SoCal Edison claims that the parties' interpretation is supported by the language of paragraph 25.4, which provides that, upon the date of expiration of the term of the Transmission Service Agreement, "[APS] or [SoCal Edison] shall be reimbursed, by the other, consideration being given to the Net Investment, removal costs and salvage value, and under the circumstances then prevailing, the beneficial use to APS of the Arizona Transmission System."<sup>8</sup> SoCal Edison explains that these factors, and therefore the math underlying the payment calculation, are the same as in paragraph 25.3. SoCal Edison contends that, while the parties' interpretation was intended to harmonize the language of the adjoining paragraphs, the Commission's interpretation assigns opposite meanings to the same operative language.

10. SoCal Edison also argues that the Commission failed to consider extrinsic evidence in its interpretation of paragraph 25.3. SoCal Edison asserts that, in interpreting the contract under Arizona law, the Commission must consider extrinsic evidence if the contract language is ambiguous or is reasonably susceptible to the interpretation advanced by the proponent of the evidence.<sup>9</sup> SoCal Edison contends that both circumstances are present in this situation. First, SoCal Edison asserts that the contract language is ambiguous because it addresses credits that SoCal Edison is entitled to under the agreement, while also referring to payments by SoCal Edison to APS, but not payments made by APS to SoCal Edison. Second, SoCal Edison argues that paragraph 25.3 of the agreement explicitly provides that SoCal Edison is entitled to a monetary credit for the remaining beneficial use retained by APS, and that there is no language in the agreement capping the entitlements at the amounts otherwise owed by SoCal Edison to APS. Therefore, SoCal Edison argues that the agreement is reasonably susceptible to the interpretation that SoCal Edison is entitled to compensation for the full value of the credit, even if the credit exceeds the amounts otherwise owed by SoCal Edison to APS.

11. In light of these alleged errors, SoCal Edison argues that the Commission should revise its September 13 Order to eliminate any suggestion that APS could not be required to make a termination payment to SoCal Edison pursuant to paragraph 25.3 of the Transmission Service Agreement.

## **II. Discussion**

12. We will deny SoCal Edison's request for rehearing. SoCal Edison misinterprets the September 13 Order, where we focused exclusively on APS's obligations under the Transmission Service Agreement and did not address or interpret SoCal Edison's contractual rights under the Transmission Service Agreement. Rather, the Commission

---

<sup>8</sup> *Id.* at 8.

<sup>9</sup> *Id.* at 10-11.

reviewed the agreement to determine if it supported APS's assertion that paragraph 25.3 of the Transmission Service Agreement authorizes APS's recovery of the proposed \$40 million termination payment to SoCal Edison in its jurisdictional wholesale rates. The Commission's review found that, contrary to APS's claim, the agreement made no provision for a payment by APS to SoCal Edison and that paragraph 25.3 of the Transmission Service Agreement, by its explicit language, did not authorize recovery by APS in its jurisdictional rates of a \$40 million termination payment by APS to SoCal Edison. We grant clarification to the extent that we clarify that, in the September 13 Order, the Commission only addressed the direct language of the Transmission Service Agreement as it applied to APS and did not address or interpret SoCal Edison's contractual rights thereunder.

The Commission orders:

SoCal Edison's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.