148 FERC ¶ 61,051
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

El Paso Electric Company | Docket No. ER14-1388-001

ORDER ACCEPTING IN PART, AND REJECTING
IN PART, TARIFF REVISIONS

(Issued July 21, 2014)

1. In this order, we accept El Paso Electric Company's (El Paso) proposed revisions to its Open Access Transmission Tariff (Tariff) to price imbalances using the Intercontinental Exchange Palo Verde Index prices, and reject El Paso's proposal to revise the distribution of imbalance penalty revenues assessed under its Tariff.

I. Background

2. On February 28, 2014, as amended on May 22, 2014, pursuant to section 205 of the Federal Power Act,[1] El Paso filed the proposed revisions. El Paso requests an effective date of May 1, 2014. El Paso states that, currently, Schedule 4 (Energy Imbalance Service) and Schedule 9 (Generator Imbalance Service) of its Tariff adopt the *pro forma* Tariff methodology for calculating the incremental and decremental costs to be used when establishing the charges for the provision of energy or generator imbalance service. El Paso states that, under this methodology, the incremental and decremental costs are calculated using El Paso's actual average hourly cost of the last 10 MW dispatched for any purpose.[2] El Paso now proposes to calculate incremental and decremental costs under Schedules 4 and 9 using the Intercontinental Exchange Palo Verde Index on-peak and off-peak prices. El Paso states that these proposed revisions are consistent with or superior to the Commission's *pro forma* Tariff methodology because using a rate published by a reputable third party provider, rather than El Paso's variable costs, will provide El Paso's transmission customers with transparent, easily verifiable pricing.[3]

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[1] 16 U.S.C. § 824d (2012).

[2] El Paso February 28, 2014 Transmittal at 2.

[3] *Id*.

3. El Paso also proposes to revise the distribution of imbalance penalty revenues assessed under Schedules 4 and 9. Specifically, El Paso proposes to revise section 7.4.1 (Imbalance Penalties) to state that, "[w]hen Imbalance Penalties are limited to a specific transmission path on the system, they will be distributed to all non-offending Transmission Customers on the same path." El Paso asserts that this change is consistent with or superior to the *pro forma* Tariff because it allocates revenues from imbalance penalties directly to non-offending transmission customers who deliver to the same point as the offending customer, and who were, El Paso argues, the customers most exposed to potential impacts from the offending customer's behavior. El Paso asserts that its proposal is akin to the Commission's long-standing ratemaking principle that a direct assignment of costs is superior to a general allocation of costs in situations where costs can be directly identified and assigned.[4]

4. On April 22, 2014, Commission staff issued a deficiency letter requesting that El Paso provide additional support for its proposed tariff revisions. On May 22, 2014, El Paso submitted its response.

II. Notice and Responsive Pleadings

5. Notice of El Paso's February 28, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 13,291 (2014), with interventions and protests due on or before March 21, 2014. None was filed. Notice of El Paso's May 22, 2014 response to the deficiency letter was published in the *Federal Register*, 79 Fed. Reg. 31,933 (2014), with interventions and protests due on or before June 12, 2014. None was filed.

III. Discussion

A. Use of Palo Verde Index

6. El Paso explains that it proposes to use index prices for the Palo Verde hub to price imbalance charges instead of index prices for other hubs in the Southwest, such as Four Corners and Mead, because it has no generation at Mead and because Palo Verde is over 200 miles closer to its service territory than Mead.[5] El Paso also states that it has 633 MW of generation assets at Palo Verde compared to only 108 MW at Four Corners, and that its participation in the Four Corners project expires in 2016.[6]

7. We find that El Paso has provided adequate support for its proposal to use Palo Verde index prices to price imbalance charges. We also note that the use of index prices

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[4] *Id*. at 3.

[5] El Paso May 22, 2014 Response at 1.

[6] *Id*. at 1-2.

to price imbalance charges has been accepted for a number of other utilities in the West.[7] Accordingly, we will accept El Paso's revised Schedule 4 (Energy Imbalance Service) and Schedule 9 (Generator Imbalance Service) for filing, effective May 1, 2014, as requested.

B. Crediting of Imbalance Penalty Revenues

8. We will reject El Paso's proposal to revise the distribution of imbalance penalty revenues. We find that El Paso's proposal has not been shown to be consistent with or superior to the *pro forma* imbalance penalty refund provisions adopted in Order No. 890,[8] and is inconsistent with our precedent requiring that penalty revenues be credited to all non-offending customers.[9] Moreover, El Paso's proposal fails to recognize that the penalty portion of the imbalance charge adopted in Order No. 890 was not intended to be a cost recovery mechanism. Rather, the Commission intended that the penalty revenues would be refunded to all non-offending customers so as to minimize any incentive that transmission providers might have to profit from penalty revenues as opposed to seeking other methods of encouraging accurate scheduling.[10]

9. El Paso states that metering data at the point of delivery gives El Paso the ability to identify an imbalance as being associated with the customer's scheduled transmission path.[11] Further, El Paso explains that:

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[7] *See, e.g., Puget Sound Energy, Inc.*, Docket No. ER13-2380-000 (Nov. 7, 2013) (delegated letter order); *Portland General Electric Company*, Docket No. ER13-2377-000 (Oct. 29, 2013) (delegated letter order); *PacifiCorp,* Docket No. ER13-2231-000 (Oct. 11, 2013) (delegated letter order).

[8] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 727, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 331 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

[9] *See, e.g.,* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 727; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 331; *Florida Power & Light Co.*, 122 FERC ¶ 61,079 (2008); *Avista Corp*., 122 FERC ¶ 61,204 (2008); *Entergy Services, Inc*., 109 FERC ¶ 61,095 (2004).

[10] *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 727; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 332.

[11] El Paso May 22, 2014 Response at 2.

> in distributing imbalance penalty revenues to non-offending customers on the same path, [El Paso] would include all non-offending customers *on any path* that is delivering to the same point as the offending customer. In implementing the distribution this way, all customers potentially affected by an imbalance (including those that might share the same delivery point, but do not share an identical complete path from receipt point to delivery point) would fall within the group of non-offending customers on the same path eligible for the distribution.[[12]]

10. However, it is not clear which customers El Paso intends to receive the refunds, non-offending customers on the same path or all non-offending customers who share the same delivery point. Assuming that El Paso is targeting all non-offending customers delivering to the same point of delivery (rather than customers on the same path), El Paso has not demonstrated that such customers face additional risk of curtailment as a result of imbalances. Assuming *arguendo* that there were some additional risk to *some* non-offending customers, for a variety of technical reasons (including how similar a non-offending customer's path is to the offending customer's path, or where the regulating resource managing the imbalance is located), there may not be a strong relationship between which customers deliver to the same point of delivery as the offending customer and which customers are negatively affected by an imbalance. Thus, we conclude that El Paso has not sufficiently demonstrated that its proposal accurately targets the harmed group of customers.

11. Furthermore, we note that El Paso appears to be arguing that it should be refunding a recovered *cost* (rather than a *penalty*) to those entities that incurred that cost.[13] Yet El Paso is proposing to do so by allocating some of the existing *penalty* portion of the imbalance charge to allegedly harmed non-offending customers. To the extent a party can demonstrate such a cost, and demonstrate that it can identify the parties that bear that cost, it is conceivable that such a party could justify recovering that additional cost as part of a new cost-based component of an imbalance charge, and refunding that portion of the charge to the appropriate customers. However, as discussed above, El Paso has not done that here.

12. Accordingly, we will reject El Paso's proposed revision to section 7.4.1 (Imbalance Penalties).

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[12] *Id*. (emphasis in original).

[13] *See Niagara Mohawk Power Corp.*, 86 FERC ¶ 61,009, at 61,028 (1999) (making the distinction between the cost-based portion and the penalty portion of an imbalance charge).

The Commission orders:

(A) El Paso's proposed revisions to Schedule 4 (Energy Imbalance Service) and Schedule 9 (Generator Imbalance Service) of its Tariff are hereby accepted for filing, effective May 1, 2014.

(B) El Paso's proposed revision to section 7.4.1 (Imbalance Penalties) of its Tariff is hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.