151 FERC ¶ 61,070
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Arizona Public Service Company | Docket No. ER15-920-000

ORDER ACCEPTING AGREEMENT FOR ENERGY EXCHANGE

(Issued April 24, 2015)

1. In this order, we accept for filing an agreement for firming service and energy exchange (Agreement) between Arizona Public Service Company (APS) and the City of Azusa, California (Azusa), effective April 1, 2015, as requested.

I. <u>Background</u>

2. APS is a vertically-integrated public utility that makes both wholesale and retail power sales and that participates in wholesale markets throughout the western interconnection. The Commission accepted for filing APS's market-based power sales tariff in an order issued in 1997.[1] With certain geographic restrictions, APS is authorized to make sales of power and energy at market-based rates.[2] APS provides open access transmission service and recovers associated transmission costs through a formula rate

[1] *Arizona Public Service Co.*, 79 FERC ¶ 61,022 (1997).

[2] *See Pinnacle West Capital Corp*., 115 FERC ¶ 61,055, at P 5 (2006); *Pinnacle West Capital Corp.*, 122 FERC ¶ 61,035, at P 2 (2008); *Arizona Public Service Co.*, 149 FERC ¶ 61,013 (2014) (Show Cause Order) (where the Commission instituted a proceeding under section 206 of the Federal Power Act, 16 U.S.C. § 824e (2012) (FPA), to determine whether market-based rate authority for APS in the APS balancing authority area and the Phoenix Valley Load Pocket is just and reasonable). On December 2, 2014, in response to the Show Cause Order, APS indicates that it would no longer make sales at market-based rates in the APS balancing authority area or in the Phoenix Valley Load Pocket outside of the APS balancing authority area.

under its Open Access Transmission Tariff. Azusa is a municipal electric utility that is not a public utility for purposes of sections 205[3] and 206 of the FPA.

3. APS states that Azusa has a grandfathered, long-term power purchase agreement with Southern California Public Power Authority (SCPPA) for unit contingent power from the San Juan Unit 3 generator in New Mexico, and in turn, SCPPA has grandfathered transmission rights on Tucson Electric Power Company's (Tucson) transmission system for delivery of this power.[4] APS states that the power purchase agreement allows Azusa to use SCPPA's transmission rights with Tucson for delivery of the unit contingent power at the San Juan 345 kV, Westwing 500 kV, Palo Verde 500 kV, or Four Corners 345 kV delivery points.

4. APS states that it previously provided energy firming and exchange service to Azusa under a Commission-approved service agreement[5] that terminated by its own terms on December 31, 2014 (Expired Agreement).[6]

II. Instant Filing

5. On January 29, 2015, as supplemented on March 13, 2015, APS filed the proposed Agreement.[7] APS explains that the agreement will continue (with similar terms) the

[3] 16 U.S.C. § 824d (2012).

[4] APS Transmittal Letter at 2-3. APS also states that, although the Azusa power purchase agreement is still in effect, there is currently no rate schedule on file with the Commission that sets forth the terms of that agreement since SCPPA is not subject to wholesale regulation under the FPA.

[5] *See Arizona Public Service Co.*, 146 FERC ¶ 61,064 (2014).

[6] The Commission accepted a notice of cancellation effective December 31, 2014. *Arizona Public Service Co.*, Docket No. ER15-273-000 (Dec. 22, 2014) (delegated letter order).

[7] The proposed Agreement is designated as Service Agreement No. 340 under APS's FERC Electric Tariff, Volume No. 3, Market-Based Rate Tariff.

service provided under the Expired Agreement. APS requests that the Commission accept the proposed Agreement for filing, effective April 1, 2015.[8]

6. The proposed Agreement allows APS to take delivery of up to 29 MW of Azusa's unit-contingent power at San Juan 345 kV, Westwing 500 kV, Palo Verde 500 kV, or Four Corners 345 kV delivery points in exchange for Azusa taking delivery of a like amount of power from APS at Palo Verde 500 kV.[9] APS states that under the proposed Agreement it will only make sales to the Palo Verde 500 kV delivery point, located in the Salt River Project balancing authority area, where APS retains market-based rate authority.[10] APS explains that it typically sources the delivery to Azusa from its own generation resources at Palo Verde 500 kV, but in some instances may purchase firm power to provide for delivery.[11] Under the proposed Agreement, Azusa will notify APS of the specific monthly exchange amount, not to exceed 29 MW, no later than five business days before the start of each month. The proposed Agreement also provides for Azusa to pay a service fee of $2.25/MWh for the third quarter of the year and $1.90/MWh for the first, second and fourth quarters of the year. APS states that the purpose of the service fee is to compensate APS for providing the firming energy service to Azusa.

7. In the event that San Juan Unit 3 is de-rated or offline, Azusa will reimburse APS for replacement energy in the third quarter of the year "at the [Intercontinental Exchange] ICE Day-Ahead Power Price Report for Palo Verde Hub (ICEI@PV) plus $1.05/MWh, for the for the respective On/Off-Peak Index for the delivery day…".[12] In the event the ICE Index for Palo Verde is no longer published and made available, the proposed Agreement states that the Parties will utilize a mutually agreed upon substitute index.

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[8] While the proposed Agreement specifies a term from February 1, 2015 through December 31, 2015, it also states that the proposed Agreement will not become effective until APS receives Commission approval. Accordingly, APS requests an effective date of April 1, 2015, after a full 60-day notice period.

[9] According to the proposed Agreement, APS may select the point at which it will receive the energy from among the aforementioned points of receipt.

[10] APS Supplemental Filing at 1 and n.2 (citing Show Cause Order, 149 FERC ¶ 61,013 (accepting APS's updated market analysis for the Salt River Project balancing authority area)).

[11] APS Transmittal Letter at 3.

[12] This adder is $0.85/MWh in the first, second and fourth quarters of the year.

8. APS explains that, any time APS elects to receive power at a delivery point other than Palo Verde 500 kV, the proposed Agreement could meet the Commission's criteria for consideration as a simultaneous exchange as described in *Puget Sound Energy, Inc.*[13] However, APS asserts that the Commission's concerns relating to simultaneous exchanges are mitigated by the relevant factual circumstances. Specifically, APS contends that the Commission's concern that APS may be effectively offering transmission service to Azusa does not apply to the proposed transaction because Azusa has existing rights for delivery at the point that APS delivers to Azusa.[14] APS explains that it delivers power to Azusa at Palo Verde 500 kV, but that Azusa can receive delivery at Palo Verde 500 kV under the terms of its power purchase agreement with SCPPA using Tucson's transmission system.[15] APS also states that under the proposed Agreement APS may elect to receive the unit-contingent energy product at Palo Verde 500 kV and preclude the proposed Agreement from the definition of a simultaneous exchange. APS contends that this demonstrates that the proposed Agreement primarily serves to firm Azusa's power schedule and not to offer transmission service or circumvent the use of transmission service.[16]

9. Moreover, APS adds that any concern of the Commission that APS may be circumventing transmission service and collecting cost-of-service rates for transmission and additional revenues for the simultaneous exchange does not apply to transactions under the proposed Agreement because, absent the proposed Agreement, Azusa would not use APS transmission to deliver to Palo Verde 500 kV.[17] APS states that, instead, Azusa's energy would be scheduled using Tucson's transmission system pursuant to the grandfathered arrangement between Tucson and SCPPA referenced above. Thus, APS argues that, because Tucson's transmission system may be used for all delivery points (including Palo Verde 500 kV), APS is not circumventing its own transmission service.

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[13] 138 FERC ¶ 61,121 (2012) (*Puget Sound*). APS asserts that, if APS elects delivery at Palo Verde 500 kV, both parties would be providing energy at the same location, which would not be considered a simultaneous exchange under the Commission's definition. *See* APS Transmittal Letter at 3, n.12.

[14] APS Transmittal Letter at 3-4.

[15] *Id*. at 4.

[16] *Id*.

[17] *Id*.

Finally, APS states that other competitive alternatives exist for delivery within or on the border of APS's transmission system.[18]

III. Notice of Filing

10. Notice of APS's filing was published in the *Federal Register*, 80 Fed. Reg. 7442 (2015), with interventions and protests due on or before February 19, 2015. None was filed. Notice of APS's supplemental filing was published in the *Federal Register*, 80 Fed. Reg. 14,998 (2015), with interventions and protests due on or before March 23, 2015. None was filed.

IV. Discussion

11. We find that the transaction contemplated under the proposed Agreement is a simultaneous exchange transaction as defined by *Puget Sound*, and is the type of simultaneous exchange transaction that requires prior Commission authorization. Based on the information provided by APS, we find that the proposed Agreement does not raise the types of open access transmission service concerns expressed by the Commission in *Puget Sound*.

12. In *Puget Sound*, the Commission described simultaneous exchanges as transactions that involve overlapping delivery periods stating:

> Simultaneous exchanges occur when a pair of simultaneously arranged (i.e., part of the same negotiations) wholesale power transactions between the same counterparties in which party A sells an electricity product to party B at one location and party B sells a similar electricity product to party A at a different location have an overlapping delivery period. The simultaneous exchange is the overlapping portion (both in volume and delivery period) of these wholesale power transactions.[19]

The Commission expressed concern that the marketing function of a transmission provider could utilize the complexity of simultaneous exchanges to effectively circumvent the Commission's regulations for open access transmission service by coordinating a simultaneous exchange that would allow the transmission provider to

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[18] *Id.*

[19] *Puget Sound*, 138 FERC ¶ 61,121 at P 12.

continue to recover its full cost-of-service through its transmission rates while also increasing revenues to the merchant affiliate.[20] As a result of these concerns, the Commission stated that simultaneous exchange transactions involving the use of the transmission provider's system by its merchant affiliate must be filed with the Commission and evaluated on a case-by-case basis prior to engaging in such transactions.[21] The Commission also identified information that applicants seeking approval of simultaneous exchange transactions should provide to support their applications.[22]

13. We find that APS has provided sufficient information regarding its proposed Agreement to allow the Commission to fully evaluate the arrangement. Under the proposed Agreement, APS will purchase up to 29 MW of Azusa's unit-contingent power for delivery at San Juan 345 kV, Westwing 500 kV, Palo Verde 500 kV or Four Corners 345 kV in exchange for a like amount of firm power for delivery to Azusa at Palo Verde 500 kV. Any time APS elects to receive power at a delivery point other than Palo Verde 500 kV, power sales occur between the same counterparties at different locations during overlapping delivery periods. Based on these facts as represented by APS, we find that, if APS elects to receive power at a delivery point other than Palo Verde 500 kV, such transaction involves a simultaneously arranged power sale transaction between the same counterparties that falls within the definition of a simultaneous exchange transaction. However, based on the facts as represented by APS, we find that the proposed Agreement neither raises open access transmission service concerns nor appears to involve the implicit provision of transmission service on APS's transmission system because Azusa has rights for delivery power from APS using Tucson transmission under the terms of a separate agreement between Tucson and SCPPA, as explained above. Thus, because Tucson transmission is used for all delivery points (including Palo Verde 500 kV), we find that APS would not be circumventing its own transmission under the proposed Agreement.

14. Accordingly, we find the transactions contemplated under APS's proposed Agreement to be just and reasonable and not unduly discriminatory. Therefore, we will accept the proposed Agreement for filing, effective April 1, 2015, as requested.[23]

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[20] *Id.* P 14.

[21] *Id*.

[22] *Id.* P 19.

[23] To the extent that the index used to price replacement energy is changed, APS must revise the Agreement in a section 205 filing to reflect the specific index.

The Commission orders:

APS's proposed Agreement is hereby accepted for filing, effective April 1, 2015, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.