

151 FERC ¶ 61,088  
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.

Tucson Electric Power Company

Docket Nos. ER15-124-000  
ER15-124-001  
ER15-124-002

ORDER ACCEPTING LONG-TERM TRANSMISSION  
SERVICE AGREEMENTS AND NOTICES OF TERMINATION

(Issued May 1, 2015)

1. On October 17, 2014, as amended on November 21, 2014 and March 2, 2015,<sup>1</sup> Tucson Electric Power Company (Tucson) filed, pursuant to section 205 of the Federal Power Act (FPA)<sup>2</sup> and Part 35 of the Commission's regulations,<sup>3</sup> four long-term firm point-to-point transmission service agreements (TSAs) with Salt River Project Agricultural Improvement and Power District (Salt River Project). Tucson also filed notices of termination for three of the TSAs. In this order, we accept the TSAs and notices of termination for filing and deny Tucson's request for waiver of the Commission's 60-day prior notice requirement for certain of the TSAs, as discussed below.

**I. Background**

2. Tucson states that the Springerville Generating Station is a four-unit, coal-fired electric generating facility with a combined nameplate rating of 1,750 MW located in eastern Arizona.<sup>4</sup> Springerville Unit 3 is owned by Springerville Unit 3 Holding, LLC

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<sup>1</sup> On November 21, 2014, in Docket No. ER15-124-001, Tucson amended its filing to request a deferral of Commission action. On March 2, 2015, in Docket No. ER15-124-002, Tucson amended its filing to provide additional information.

<sup>2</sup> 16 U.S.C. § 824d (2012).

<sup>3</sup> 18 C.F.R. tt 35 (2014).

<sup>4</sup> Tucson October 17, 2014 Filing, Transmittal Letter at 3.

and leased to Tri-State Generation and Transmission Association, Inc. (Tri-State), which sells 100 MW of the output to Salt River Project pursuant to a long-term power purchase agreement. Springerville Unit 3 began commercial operation in July 2006. Springerville Unit 4 was constructed and is owned by Salt River Project and began commercial operation in December 2009. The nameplate capacity of Springerville Units 3 and 4, respectively, is 458 MW.

3. According to the application, during the development of Springerville Unit 4, there was no available transfer capability on the 345 kV Springerville-Coronado transmission line (Springerville-Coronado Line) to transmit Salt River Project's 100 MW from the Springerville Unit 3 generator and the output of the proposed Springerville Unit 4 generator. Tucson states that studies conducted by Tucson and Salt River Project determined that the capacity on the Springerville-Coronado Line could be increased by adding a second transformer at Coronado and making other upgrades at the Springerville and Coronado delivery points. In 2003, as part of a joint development plan,<sup>5</sup> Salt River Project agreed to fund and construct certain transmission equipment that would increase the capacity on the Springerville-Coronado Line and Tucson agreed to transfer to Salt River Project, after the equipment was installed, an undivided interest in the Springerville-Coronado Line in order for Salt River Project to transmit its 100 MW power purchase from Springerville Unit 3, and transmit the output of Springerville Unit 4.<sup>6</sup> However, Tucson states that negotiations to make needed changes to the Participation Agreement and to consummate the transfer of interest in the Springerville-Coronado Line were not completed by the time that Springerville Units 3 and 4 began commercial operation. Therefore, the parties entered into a number of transmission service

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<sup>5</sup> Tucson states that this commercial arrangement was memorialized in a series of agreements entered into between Tucson and Salt River Project on October 20, 2003. Tucson also describes several other agreements entered into between the parties that have not been filed with the Commission and are not filed in the instant proceeding, *e.g.*, Tucson states that it entered into a transmission service agreement in 2003 with Salt River Project for 100 MW of firm transmission service from Springerville to Coronado, under which it provided service from 2006 to 2013. Tucson March 2, 2015 Filing, Transmittal Letter at 4-5.

<sup>6</sup> Tucson October 17, 2014 Filing, Transmittal Letter at 3. Tucson states that the Springerville-Coronado Line is part of the San Juan-Springerville-Vail-Transmission System, a network of transmission facilities running from the San Juan Generating Station in northwestern New Mexico to the Vail Substation in southeastern Arizona. Tucson states that ownership and transmission rights are governed by the 1981 San Juan-Springerville-Vail Transmission System Participation Agreement between Tucson and Public Service Company of New Mexico (PNM) (Participation Agreement).

agreements whereby Tucson would provide Salt River Project with transmission service until such time as the transfer of ownership interest in the Springerville-Coronado Line to Salt River Project was consummated. The parties agreed that the rate for transmission service would be economically equivalent to the costs that Salt River Project would incur as a partial owner of the line.<sup>7</sup> Tucson states that, on March 9, 2010, Salt River Project completed installation and energized a new transformer and associated equipment at Coronado resulting in an increase in total transmission capacity on the Springerville-Coronado Line from 672 MW to 1,195 MW (an increase of 523 MW); however, the parties were not yet prepared to consummate the transfer of the ownership interest in the line and were still negotiating needed changes to the Participation Agreement.<sup>8</sup>

## **II. Proposed Transmission Service Agreements**

4. In the instant filing, Tucson submitted four transmission service agreements dating back to 2010 and simultaneously filed three notices of termination. On March 29, 2010, Tucson entered into a service agreement under its Open Access Transmission Tariff (OATT) to provide Salt River Project with 523 MW of firm, point-to-point transmission service from Springerville to Coronado, from March 10, 2010 until the earlier of March 10, 2011, or the date of the closing of the Transaction (March 2010 TSA). Tucson states that the March 2010 TSA reflects a transmission rate of \$11,715/month, which, according to Tucson, reflects a rate that is economically equivalent to the costs that Salt River Project would have incurred as an owner of 523 MW of transmission capacity on the Springerville-Coronado Line.<sup>9</sup> Tucson states that a dispute arose under the March 2010

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<sup>7</sup> Tucson March 2, 2015 Filing, Transmittal Letter at 4-5.

<sup>8</sup> *Id.* at 5-6. On October 30, 2014, Tucson proposed revisions to the Participation Agreement with PNM and Salt River Project to reflect the transfer of interests in the Springerville-Coronado Line. The revised Participation Agreement was accepted for filing. *See Tucson Elec. Power Co.*, Docket No. ER15-251-000 (Dec. 22, 2014) (delegated letter order). Additionally, on November 12, 2014, in Docket No. EC15-31-000, Tucson filed an application under section 203 of the FPA, 16 U.S.C. § 824b (2012), seeking authorization to: (1) sell a 57.44 percent undivided interest in the Springerville-Coronado Line to Salt River Project; and (2) acquire a 42.56 percent undivided interest in certain upgrades installed by Salt River Project on the Springerville-Coronado Line (the Transaction). The Commission is issuing concurrently with this order an order addressing the application in Docket No. EC15-31-000.

<sup>9</sup> Tucson October 17, 2014 Filing, Transmittal Letter at 5. Tucson states that the March 2010 TSA is reported in Tucson's most recent Electric Quarterly Report as Service Agreement No. 307.

TSA with regard to the settlement of losses, and that an offer of settlement submitted as part of this filing resolves that dispute.<sup>10</sup>

5. Tucson states that the parties intended for the Transaction to have been consummated prior to the expiration of the March 2010 TSA; however, it was not. Therefore, the parties entered into two new TSAs for 623 MW of bi-directional firm, point-to-point transmission service between Springerville and Coronado for the period of March 17, 2013 through the earlier of September 17, 2013, or the date of the closing of the Transaction (March 2013 TSA) and from September 17, 2013 through the earlier of September 17, 2014, or the date of the closing of the Transaction (September 2013 TSA).<sup>11</sup> Tucson states that the March 2013 TSA and September 2013 TSA reflect a transmission rate of \$19,012/month, which reflects a rate that is economically equivalent to the costs that Salt River Project would have incurred as an owner of 623 MW of transmission capacity on the Springerville-Coronado Line. On September 17, 2014, with the Transaction still not consummated, the parties entered into a new TSA for 623 MW for the period of September 17, 2014 until the earlier of September 17, 2015, or the date the Transaction is consummated (September 2014 TSA), at the same rate.

6. Tucson contends that, although the transmission rates under the TSAs are materially less than the transmission rate for firm point-to-point transmission service under its OATT, the rates are just and reasonable and do not provide Salt River Project any undue preference, and should be accepted for filing without condition, modification, or trial-type hearing.<sup>12</sup> Tucson contends that the rates do not provide Salt River Project any undue preference because they are specific to a very unique circumstance, specifically, the joint development plan whereby Salt River Project agreed to fund and

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<sup>10</sup> Tucson explains that, on October 24, 2013, Salt River Project agreed to pay \$1.2 million to settle the dispute and the parties agreed that losses under a new TSA would be settled based on actual meter data recording energy injection and energy delivery. Tucson requests that the Commission approve the offer of settlement without modification or condition because it is in the public interest, represents the results of negotiations between Tucson and Salt River Project, and fully resolves all outstanding issues between the parties regarding transmission service under the TSAs. *Id.* at 6-7.

<sup>11</sup> Tucson notes that the 100 MW increase was the result of combining 100 MW under an earlier transmission service agreement with the 523 MW under the March 2010 TSA into one TSA. Tucson March 2, 2015 Filing, Transmittal Letter at 6.

<sup>12</sup> Tucson notes that the rates for the service provided to Salt River Project would be approximately \$1.28 million per month under the March 2010 TSA and approximately \$1.53 million per month under the other TSAs, if full OATT rates were charged. Tucson October 17, 2014 Filing, Transmittal Letter at nn.13 & 14.

construct upgrades and Tucson agreed to provide Salt River Project such transmission service on terms “economically equivalent” to the costs that Salt River Project would incur as a partial owner of the line until an interest in the Springerville-Coronado Line is transferred to Salt River Project.<sup>13</sup> Tucson states that it is unaware of any other Tucson transmission customer that is similarly situated to Salt River Project in this instance.

7. Tucson explains that it discovered that the March 2010 TSA, the March 2013 TSA, and the September 2013 TSA were not properly filed with the Commission, and, in an effort to fully comply with the Commission’s regulations, it is filing the already expired TSAs and simultaneously filing notices of termination.<sup>14</sup> Tucson requests waiver of the Commission’s prior notice requirements to permit effective dates for the expired TSAs as of the dates that they expired by their own terms.<sup>15</sup> Tucson contends that the Commission’s acceptance of the TSAs 60 days after filing would be unworkable, as it might obligate Tucson to provide service under the expired TSAs for a period of time following the dates the agreements were replaced by mutual agreement of the parties.<sup>16</sup> Tucson also argues that, insofar as the rates charged to Salt River Project under the expired TSAs are well below Tucson’s cost-based OATT rates, any time value refunds would result in Tucson incurring a loss for this service provided.<sup>17</sup> Tucson requests waiver of the Commission’s prior notice requirements to permit an effective date of September 17, 2014 for the September 2014 TSA.

8. On January 15, 2015, Commission Staff requested additional information from Tucson to support its proposed TSAs.<sup>18</sup> Specifically, Tucson was required to further explain: the derivation of the rates under the TSAs, whether the discounted rates were

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<sup>13</sup> *Id.* at 8.

<sup>14</sup> *Id.* at 7. Tucson states that it has submitted copies of the expired TSAs as attachments to its filing while also creating a new tariff record under its OATT entitled “Cancelled Service Agreements,” which will reflect a list of the expired TSAs and their respective effective/termination dates.

<sup>15</sup> The requested effective dates are as follows: March 17, 2013 for the March 2010 TSA; September 17, 2013 for the March 2013 TSA; and September 14, 2014 for the September 2013 TSA.

<sup>16</sup> *Id.* at 9.

<sup>17</sup> *Id.*

<sup>18</sup> *Tucson Elec. Power Co.*, Docket Nos. ER15-124-000 and ER15-124-001, Deficiency Letter (Jan. 15, 2015).

posted on its Open Access Same-Time Information System (OASIS), whether the TSAs were processed pursuant to Tucson's OATT, and why the TSAs were not timely filed. On March 2, 2015, Tucson amended its filing to respond to the additional information requested.

9. In its response, Tucson explains that the TSAs were part of a larger commercial arrangement agreed to between Tucson and Salt River Project in 2003 related to the development of Springerville Units 3 and 4, and were "stopgap" measures designed to provide Salt River Project a means of transmitting its power from those generating units pending the sale by Tucson to Salt River Project of an interest in the Springerville-Coronado Line.<sup>19</sup> Tucson explains that the rates reflected in the TSAs consist of carrying costs and operation and maintenance (O&M) costs as agreed to by the parties. Specifically, Tucson states, the carrying charge reflects a 30-year amortization and an annual carrying cost rate of 10 percent on the book value of the portion of the Springerville-Coronado Line and associated equipment that would be transferred to Salt River Project upon consummation of the Transaction, and the O&M costs are based on Salt River Project's proportionate share of O&M expenses if it were an owner of the Springerville-Coronado Line using the agreed-upon percentage ownership ratios.<sup>20</sup>

10. Tucson explains that it did not post the transmission capacity or discounted rates reflected in the TSAs on its OASIS because the capacity used by Salt River Project was built and paid for by Salt River Project for its own use and the TSAs were merely stopgap measures pending consummation of the transfer of ownership in the Springerville-Coronado Line. Tucson states that, for purposes of discounted rates, no other entities were similarly situated to Salt River Project.<sup>21</sup> Tucson further states that Salt River Project's transmission service requests were processed pursuant to Tucson's OATT, including reflecting the transmission service requests on the OASIS.<sup>22</sup> Tucson asserts that the TSAs did not result in any transmission customer subsidizing the service to Salt River Project because Tucson has not sought recovery in its transmission rates of the costs of the new equipment paid for by Salt River Project.<sup>23</sup>

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<sup>19</sup> Tucson March 2, 2015 Filing, Transmittal Letter at 1.

<sup>20</sup> *Id.* at 7. The O&M cost responsibility ratios are set forth in Exhibit C of the revised Participation Agreement.

<sup>21</sup> *Id.* at 8-9.

<sup>22</sup> *Id.* at 9-11.

<sup>23</sup> *Id.* at 11-12.

11. With respect to untimely filing of the TSAs, Tucson explains that it initially viewed the TSAs as service agreements under the OATT at discounted rates consistent with Commission policy that could be reported in Electric Quarterly Reports, but later determined that some of the provisions in the TSAs could be considered non-conforming given the unique nature of the transactions related to the service.

### **III. Notices of Filings and Pleadings**

12. Notice of Tucson's October 17, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 63,617 (2014), with interventions and protests due on or before November 7, 2014. Alterna Springerville LLC and LDVF1 TEP LLC (jointly, Alterna) filed a timely motion to intervene and protest. On November 20, 2014, Tucson filed a request to defer statutory action and a motion for leave to answer and answer.<sup>24</sup> On November 20, 2014, Salt River Project filed a motion to intervene out of time and an answer.

13. Notice of Tucson's November 21, 2014 deferral of action filing was published in the *Federal Register*, 79 Fed. Reg. 71,413 (2014), with interventions and protests due on or before December 12, 2014. On December 12, 2014, Alterna filed an answer to Tucson's resubmitted request to defer statutory action.

14. Notice of Tucson's March 2, 2015 filing of supplemental information was published in the *Federal Register*, 80 Fed. Reg. 12,166 (2015), with interventions and protests due on or before March 23, 2015. None was filed.

### **IV. Protest and Answer**

#### **A. Protest**

15. Alterna argues that Tucson is proposing to provide transmission service pursuant to the TSAs that may adversely affect its ability to provide transmission service to Alterna. Specifically, Alterna states that the proposed transmission service to be provided by Tucson to Salt River Project may reduce the amount of available capacity on the San Juan-Springerville-Vail Transmission System that would otherwise be available for Tucson to transmit Alterna's ownership interest in Springerville Unit 1 to Palo Verde.

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<sup>24</sup> On November 21, 2014, Tucson resubmitted its request to defer statutory action through the eTariff system as an amendment to the October 17 filing.

16. Alterna asserts that under a 1992 agreement, it was granted rights to firm transmission service on Tucson's system to market its entitlement of the output of Springerville Unit 1 upon the expiration of a lease agreement on January 1, 2015.<sup>25</sup> Alterna asserts that Palo Verde is the only delivery point on Tucson's system that is commercially reasonable. Alterna argues that the 1992 agreement pre-dates the TSAs and the negotiations between Tucson and Salt River Project in 2003 relating to development of Springerville Unit 4, which ultimately resulted in establishment of the TSAs. Therefore, Alterna argues, the transmission commitment made by Tucson in 1992 takes precedence over the transmission service to be provided to Salt River Project.

17. Alterna states that the Commission should enforce its long-standing transmission policies by protecting Alterna's rights to transmission service. Therefore, Alterna requests that the Commission suspend the TSAs for the full five months under section 205 of the FPA and condition acceptance of the TSAs upon the outcome of the separately filed complaint.<sup>26</sup>

## **B. Answers**

18. Tucson argues that Alterna's request to suspend the effectiveness of the TSAs for five months is unjustified and should be denied without further proceedings. Tucson asserts that the argument raised by Alterna is collateral to its request for transmission service, which has been denied because there is currently no available transmission capability on the Springerville to Palo Verde path.<sup>27</sup> Tucson also contends that the purpose of a suspension period is to protect ratepayers from unjust, unreasonable, and/or unduly discriminatory rates, terms, or conditions, which Alterna does not allege. Instead, Tucson claims that a suspension would not benefit Alterna in any way and, in fact, would

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<sup>25</sup>Alterna Protest at 3. On November 7, 2014, in Docket No. EL15-17-000, Alterna filed a complaint with the Commission, pursuant to section 206 of the FPA, asserting that Tucson has denied firm transmission rights to which Alterna is entitled under the 1992 agreement, in favor of transmitting Tucson's own generation and generation owned by others. In an order issued on February 19, 2015, the Commission denied Alterna's complaint. *Alterna Springerville LLC, LDVF1 TEP LLC, Wilmington Trust Co., and William J. Wade v. Tucson Elec. Power Co.*, 150 FERC ¶ 61,094 (2015) (Complaint Order).

<sup>26</sup> Alterna Protest at 7.

<sup>27</sup> Tucson explains that the transmission rights awarded to Salt River Project over the line have no bearing on the calculation of available transmission capability between Springerville and Palo Verde.

harm the only ratepayer involved (i.e., Salt River Project). Finally, Tucson argues that the Commission has never suspended acceptance of a fully-executed agreement.

19. Salt River Project explains that the succession of TSAs with Tucson were entered into as interim, “stopgap” measures so that Salt River Project could serve its load using the Springerville-Coronado Line pending consummation of the Transaction, and that the TSAs are necessary for it to serve load in a reliable and cost-effective manner. Salt River Project asserts that, if the request to suspend the TSAs for five months is granted, Salt River Project would be without transmission service over the line, which would result in harm to its ratepayers.

## V. Discussion

### A. Procedural Matters

20. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,<sup>28</sup> the timely, unopposed motions to intervene serve to make Alterna and Salt River Project parties to this proceeding.<sup>29</sup>

21. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure<sup>30</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Tucson’s and Salt River Project’s answers because they have provided information that assisted us in our decision-making process.

### B. Commission Determination

#### 1. Transmission Service Agreements

22. We find that the proposed TSAs are just and reasonable, and accept them for filing, with effective dates as discussed below. We note that the additional transfer capability over the Springerville-Coronado Line and the transmission service provided to Salt River Project pursuant to the proposed TSAs are the direct result of Salt River Project’s incremental investment in transmission upgrades of the Springerville-Coronado Line related to its future acquisition of an ownership interest in the line. But for Salt River Project’s investments in the facilities, there would be no additional capacity to

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<sup>28</sup> 18 C.F.R. § 385.214 (2014).

<sup>29</sup> Because of Tucson’s March 2, 2015 amendment and the resulting new comment period, Salt River Project’s motion to intervene is no longer untimely.

<sup>30</sup> 18 C.F.R. § 385.213(a)(2) (2014).

provide the transmission service under the proposed TSAs. We find this to be a unique situation where the rates proposed in the TSAs are not based on the average system costs of Tucson's transmission system, but rather reflect the carrying and O&M costs that Salt River Project would incur as a partial owner of the Springerville-Coronado Line.<sup>31</sup> The Commission has approved non-conforming transmission service arrangements when it finds that they are just and reasonable and that unique factors necessitate the non-conforming provisions.<sup>32</sup>

23. The additional transfer capability that is the subject of the transmission service agreements was constructed and paid for by Salt River Project in order for Salt River Project to serve its load from Springerville Units 3 and 4 and, upon consummation of the Transaction, will be owned and operated by Salt River Project. Furthermore, considering that there are no other parties similarly situated with the same point of delivery and point of receipt along the same path, there are no other parties entitled to the same discounted rates.<sup>33</sup> We also note that this arrangement of "stopgap" TSAs with rates based on the costs that Salt River Project would incur as a partial owner of the Springerville-Coronado Line until the Transaction could be consummated was contemplated in the joint development plan between the parties.<sup>34</sup> Finally, we note that no party has protested the proposed rates reflected in the TSAs, and that Tucson and Salt River Project have settled a dispute with respect to losses under the TSAs on their own accord. Accordingly, we find that the rates under the March 2010 TSA, the March 2013 TSA, and the September 2013 TSA in this proceeding appear to be just and reasonable, and have not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

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<sup>31</sup> As Tucson points out, the costs of the new equipment paid for by Salt River Project are not included in Tucson's transmission rates.

<sup>32</sup> See, e.g., *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,018, at P 26 (2011), *pet. for review denied*, *NRG Power Mktg., LLC v. FERC*, 718 F.3d 947 (D.C. Cir. 2013) ("The Commission has approved non-conforming transmission service arrangements when it finds that they are just and reasonable, and that reliability concerns, novel legal issues, operational issues, or other unique factors necessitate the non-conforming provisions.").

<sup>33</sup> Schedule 7 of Tucson's OATT only requires Tucson to offer the same discounted rate to customers on unconstrained transmission paths with the same point of delivery.

<sup>34</sup> Tucson attaches as Attachment 1 to its March 2, 2015 Filing an Amended and Restated Joint Development Agreement dated October 2003. The stopgap TSAs at rates economically equivalent to the costs Salt River Project would incur as a partial owner of the Springerville-Coronado Line are contemplated in section 4.4 of the agreement.

Therefore, we will accept these three TSAs and the notices of cancellation for filing. We similarly find that the rates in the September 2014 TSA appear to be just and reasonable, and have not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful, and therefore we will accept the September 2014 TSA for filing.<sup>35</sup>

24. We deny Alterna's request for the Commission to suspend the TSAs for a maximum suspension period of five months and condition the acceptance of the TSAs on the outcome of a separately filed complaint. In the Complaint Order, the Commission denied Alterna's complaint, finding, among other things, that Tucson has not engaged in undue discrimination or preference in providing transmission service to Salt River Project because the transmission path utilized by Salt River Project has no impact on available transfer capability over the transmission path requested by Alterna.<sup>36</sup> Because the Commission has denied Alterna's complaint, Alterna's request to condition the outcome of this proceeding on the separately filed complaint is moot.<sup>37</sup>

## **2. Waiver of Notice and Time Value Refunds**

25. Tucson acknowledges that the non-conforming March 2010 TSA, March 2013 TSA, and September 2013 TSA, and associated notices of termination of those TSAs, were not filed with the Commission due to administrative oversight, and further acknowledges that the Commission generally denies waiver of its prior notice requirement and accepts late-filed agreements for filing 60 days after filing.<sup>38</sup> However, Tucson contends that the Commission's acceptance of the TSAs 60 days after filing would be unworkable as it might obligate Tucson to provide service under the expired

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<sup>35</sup> The versions of the September 2014 TSA filed in Docket Nos. ER15-124-001 and ER15-124-002 (although containing no revisions) supersede the previous versions, therefore the versions of the September 2014 TSA filed in Docket Nos. ER15-124-000 and ER15-124-001 are moot. In the future, Tucson should reference Associated Filing and Record Identifiers at the record level when amending a tariff record in a pending proceeding.

<sup>36</sup> Complaint Order, 150 FERC ¶ 61,094 at P 39.

<sup>37</sup> We note that Alterna's answer to Tucson's November 21, 2014 request to defer statutory action is also moot.

<sup>38</sup> Tucson October 17, 2014 Filing, Transmittal Letter at 8-9.

TSAs for a period of time following the dates the agreements were replaced by mutual agreement of the parties.<sup>39</sup>

26. The Commission's rules allow service agreements under tariffs to be filed up to 30 days after electric service has commenced.<sup>40</sup> A waiver of the Commission's prior notice requirement<sup>41</sup> is granted for untimely filings only upon a showing of extraordinary circumstances.<sup>42</sup> Tucson has not made such a showing. Although Tucson contends that good cause exists to grant the requested effective dates because the Commission's acceptance of the TSAs 60 days after filing would be unworkable as it might obligate Tucson to provide service under the expired TSAs for a period of time following the dates the agreements were replaced by mutual agreement of the parties, we disagree. Service under the March 2010 TSA, March 2013 TSA, and September 2013 TSA has already occurred. Therefore, denial of waiver of notice and acceptance of the TSAs and notices of termination with an effective date after a full 60-days notice will not cause Tucson to provide service under the expired TSAs. Accordingly, we will deny waiver of the Commission's prior notice requirement,<sup>43</sup> and the March 2010 TSA, March 2013

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<sup>39</sup> *Id.* at 9.

<sup>40</sup> 18 C.F.R. § 35.3(a)(2) (2014).

<sup>41</sup> 18 C.F.R. § 35.11 (2014).

<sup>42</sup> *See Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106 (1992), *reh'g denied*, 61 FERC ¶ 61,089 (1992). *See also Prior Notice and Filing Requirements Under Part II of the Federal Power Act (Prior Notice Order)*, 64 FERC ¶ 61,139, at 61,980, *clarified*, 65 FERC ¶ 61,081 (1993).

<sup>43</sup> We note that this is not the first instance in which Tucson has failed to file an agreement in a timely manner as required by section 205 of the FPA and section 35.1 of the Commission's regulations, 18 C.F.R. § 35.1 (2014). *See, e.g.*, Docket Nos. ER10-170-000, ER12-2603-000 and ER12-2605-000. It appears that Tucson also failed to file with the Commission certain other agreements described in its filings. We have referred this matter to the Commission's Office of Enforcement for further examination and inquiry as may be appropriate. Tucson is reminded that it must submit required filings on a timely basis or face possible sanctions by the Commission.

TSA, and September 2013 TSA, and notices of termination of those TSAs will be accepted for filing, effective December 17, 2014, after a full 60-days notice from the date of filing. The September 2014 TSA will be accepted for filing, effective September 17, 2014, as requested.<sup>44</sup>

27. Furthermore, it is the Commission's policy that, to the extent that Tucson collected any money under the expired TSAs prior to the effective date granted herein, Tucson must refund the time value of the monies collected, calculated pursuant to 18 C.F.R. § 35.19(a) (2014) of the Commission's regulations, for the entire period monies were collected without Commission authorization.<sup>45</sup> In other words, section 35.19a provides that interest shall be computed from the date of collection until the date refunds are made. This requirement applies to all agreements, regardless of whether the agreement terminated prior to being filed with the Commission.<sup>46</sup> However the Commission has limited its direction of time value refunds so as not to cause the utility to have provided the service at a loss.<sup>47</sup>

28. In this case, Tucson contends that, insofar as the transmission rates charged to Salt River Project under the expired TSAs are well below Tucson's cost-based rate for point-to-point transmission service and thus, any time value refunds would result in Tucson incurring a loss for providing this service.<sup>48</sup> Since the proposed transmission rates recover only carrying charges and O&M costs, we agree with Tucson's assertion that any time value refunds paid would result in Tucson operating at a loss. Accordingly, we find that no time value refunds are due.

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<sup>44</sup> Tucson requested a waiver of the notice requirements set forth in section 35.3 of the Commission's rules and regulations, 18 C.F.R. § 35.3 (2014), to allow the September 2014 TSA to become effective on September 17, 2014. Pursuant to section 35.3(a)(2) of the Commission's Regulations, 18 C.F.R. § 35.3(a)(2) (2014), waiver of notice is unnecessary because the September 2014 TSA is a service agreement under a tariff and the requested effective date is within 30 days of the commencement of service.

<sup>45</sup> *El Paso Elec. Co.*, 101 FERC ¶ 61,276 (2002), *reh'g denied*, 105 FERC ¶ 61,131 (2003).

<sup>46</sup> *See PacifiCorp*, 125 FERC ¶ 61,034, at P 24 (2008).

<sup>47</sup> *See Southern California Edison Co.*, 98 FERC ¶ 61,304 (2002); *Florida Power & Light Co.*, 98 FERC ¶ 61,276, *reh'g denied*, 99 FERC ¶ 61,320 (2002); *Carolina Power & Light Co.*, 87 FERC ¶ 61,083, at 61,357 (1999).

<sup>48</sup> Tucson October 17, 2014 Filing, Transmittal Letter at 9.

The Commission orders:

(A) Tucson's proposed March 2010 TSA, March 2013 TSA, and September 2013 TSA, and respective notices of cancellation of those TSAs are hereby accepted for filing, effective December 17, 2014, as discussed in the body of this order.

(B) Waiver of the Commission's 60-day prior notice requirement is hereby denied with respect to the requested effective dates for the March 2010 TSA, March 2013 TSA and September 2013 TSA, and respective notices of cancellation of those TSAs, as discussed in the body of this order.

(C) Tucson's proposed September 2014 TSA is hereby accepted for filing, effective September 17, 2014, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.