

151 FERC ¶ 61,191
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. ER15-710-002

ORDER ACCEPTING AND SUSPENDING NETWORK INTEGRATION
TRANSMISSION SERVICE AGREEMENT AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued June 1, 2015)

1. On December 23, 2014, Arizona Public Service Company (APS) filed an unexecuted Network Integration Transmission Service Agreement (NITSA) with the Electrical District No. 3 of Pinal County, Arizona (ED3), under APS's Open Access Transmission Tariff (OATT) pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations.² In this order, we accept the proposed NITSA for filing, to be effective January 1, 2015, as requested, subject to a nominal suspension and refund. We also set the issue of transmission credits that ED3 may be eligible for under section 30.9 of APS's OATT for its investments in facilities used by APS to provide network service for hearing and settlement judge procedures.

I. Background

2. ED3 is a political subdivision of the State of Arizona and provides retail electric service within Pinal County, Arizona. To serve its load, ED3 purchases federal hydropower entitlements and other electric resources for delivery over three separate transmission paths: (1) a 230 kV path from the Western Area Power Administration's (Western) Test Track Substation through ED3's ownership-like rights in APS's Santa Rosa Substation to an ED3-owned transformer (Western Path #1); (2) a 69 kV path

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.13 (2014).

directly from Western's Test Track Substation to ED3's Maricopa Substation (Western Path #2); and (3) a direct interconnection between an APS-owned transformer and ED3's Maricopa Substation (APS Path).³ ED3's transmission system includes a transformer at APS's Santa Rosa Substation and certain ownership-like rights in the associated facilities, upgrades at Western's Test Track Substation, and a 156 MW interest in the Southeast Valley transmission project, discussed in further detail below.⁴

3. APS provided network integration transmission service to its affiliate, APS Merchant and Trading (APS M&T), pursuant to APS Service Agreement No. 216, under which APS listed ED3 as a network load.⁵ On February 26, 2008, ED3 and APS M&T entered into a five-year transaction confirmation (2008 Transaction Confirmation), under which APS M&T provided network service to ED3 beginning on March 1, 2008, which the parties later extended through December 31, 2014.⁶

4. On October 24, 2013, in anticipation of the 2008 Transaction Confirmation's expiration date, ED3 submitted a request to APS for network integration transmission service "materially identical to that currently received by ED3 under [the 2008] Transaction Confirmation."⁷ In the October 2013 Request, ED3 stated that, based on its previous arrangements with APS M&T, it intended to exercise its right under section 2.2 of APS's OATT to roll over the network integration transmission service it received from APS M&T. On December 4, 2014, following a year of negotiations with APS concerning the October 2013 Request, ED3 resubmitted its request for network integration transmission service and a notice to exercise rollover rights.⁸ In the December 2014 Application, ED3 requested that APS file an unexecuted network

³ ED3 January 13, 2015 Protest (ED3 January 13 Protest), Delaney Declaration at P 17.

⁴ *Id.* at 9.

⁵ On March 30, 2007, the Commission accepted Service Agreement No. 216 in a delegated letter order issued in Docket No. ER07-470-000.

⁶ ED3 January 13 Protest, Delaney Declaration, Exhibit D, APS-ED3 2008 Transaction Confirmation.

⁷ APS December 23, 2014 Filing (APS December 23 Filing), Attachment A, ED3 October 24, 2013 Transmission Service Application (October 2013 Request).

⁸ *Id.*, Attachment B, ED3 December 4, 2014 Transmission Service Application (December 2014 Application).

integration transmission service agreement with the Commission to begin on January 1, 2015, to avoid any disruption in transmission service.

II. Instant Filings

5. APS filed a proposed unexecuted *pro forma* NITSA with ED3 for network integration transmission service over a 10-year period commencing January 1, 2015. APS states that it has been unable to reach an agreement with ED3 concerning the amount of ED3's load to designate as network load under the NITSA. According to APS, ED3 claims it should be allowed to designate only one-third of its load as APS network load and exclude the two-thirds of its load served by Western (over Western Path #1 and Western #2) under the NITSA.⁹ APS asserts that ED3's request to designate less than its full load as network load is impermissible under section 1.30 of its OATT, which states that a network customer "may not designate only part of the load at a discrete point of delivery,"¹⁰ and violates well-established Commission precedent.¹¹ APS also claims that, to the extent that ED3 was previously billed for less than its full load

⁹ APS states that ED3 requests to designate only part of its discrete load (i.e., the one-third of ED3's load that is served by APS's transmission system) as network load under the proposed NITSA. In contrast, APS argues that ED3 should be required to designate its full load (i.e., the one-third of ED3's load that is served by APS's transmission system and the two-thirds of ED3's load that is served by Western) under the proposed NITSA. *Id.* at 3.

¹⁰ Section 1.30 of APS's OATT states that the "Network Customer's Network Load shall include all load served by the output of any Network Resources designated by the Network Customer. A Network Customer may elect to designate less than its total load as Network Load but may not designate only part of the load at a discrete Point of Delivery." *Id.* at 3, n.8.

¹¹ *Id.* at 3 (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,036 at 31,736 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,048 at 30,258-61 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 726 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002); *Idaho Power Co.*, 106 FERC ¶ 61,329 (2004) (*Idaho Power*); *Ameren Serv. Co. v. Prairieland Energy, Inc.*, 131 FERC ¶ 61,125 (2010) (*Ameren Services*)).

under Service Agreement No. 216, such billing was incorrect and APS will correct the billing error in a separate filing.¹²

6. On February 18, 2015, Commission staff requested that APS provide additional information to further support the proposed NITSA. This information included, but was not limited to, explaining how ED3 would designate or otherwise pay for less than its entire load, given that ED3's full load is reflected in the October 2013 Request and proposed NITSA; how the "billing error" under Service Agreement No. 216 with APS M&T occurred; the circumstances under which ED3 would qualify for transmission credits under section 30.9 of APS's OATT; and how APS planned to evaluate ED3's eligibility for these transmission credits. In addition, Commission staff requested that APS provide additional details concerning the metered interconnections of APS's network resources and ED3's points of delivery.

7. In response, APS explains that providing ED3 with network service while discounting ED3's discrete load by amounts equal to deliveries from Western to ED3 via either ED3's rights in APS's Santa Rosa Substation (Western Path #1) or ED3's Maricopa Substation (Western Path #2) would violate APS's OATT and Commission precedent.¹³ APS asserts that this arrangement would also allow ED3 to avoid its load ratio share cost responsibility for network service by increasing transmission service over Western's transmission system during APS's monthly peaks. Moreover, APS contends that the Commission has previously found that behind-the-meter generation, which APS states is akin to Western's deliveries to ED3, is subject to the transmission provider's network integration transmission service charges.¹⁴ Alternatively, APS asserts that, if ED3 chooses to designate less than its full load as network load, ED3 must instead purchase point-to-point transmission service to serve its load.

8. APS contends that ED3 was incorrectly billed by APS M&T for network service under Service Agreement No. 216 as a result of an administrative error. This billing error resulted in APS's other network load customers subsidizing ED3's load ratio share. APS states that it will provide credits to those transmission customers who overpaid as a result of the incorrectly billed load ratio share as a part of APS's annual update to its

¹² *Id.* at 3-4.

¹³ APS March 20 Filing at 2.

¹⁴ *Id.* at 3.

transmission formula rate and true-up process. APS adds that no other customers were subject to a similar billing error.¹⁵

9. In addition, APS states that ED3's ownership-like rights in the Santa Rosa Substation and related facilities are used by APS to provide transmission service to ED3 and other transmission customers and, therefore, are eligible for transmission credits under section 30.9 of its OATT, as they are integrated with the APS transmission system. Thus, APS proposes to treat the \$731,768 payment ED3 made in connection with the Santa Rosa Substation and associated facilities as a payment for network upgrades and credit ED3 in this amount, as discussed further below.¹⁶

10. Finally, APS provided additional information regarding the network service it provides ED3 and how ED3's delivery paths are metered. For example, APS explains that, in the event of a reduction in ED3's energy deliveries from Western, APS increases its deliveries to ED3 to offset any reductions and that ED3 does not incur additional transmission charges for these deliveries because ED3's load is located within APS's balancing authority area. Alternatively, APS states that, if APS reduces its deliveries to ED3, Western is unable to increase its deliveries to ED3 because it does not respond to dynamic signals associated with ED3's load and, instead, only delivers prescribed amounts to ED3.¹⁷ In addition, APS asserts that it does not meter Western's deliveries to ED3 over Western Path #1 or Western Path #2. APS does, however, meter its interchange with Western's balancing authority area, although APS contends that this meter data is not sufficiently granular to identify deliveries for a specific customer or path.¹⁸ APS also submitted a one-line diagram showing the points of interconnection described in Exhibit 1 of the NITSA, including an illustration of the boundaries of its balancing authority area and updated meter locations.¹⁹

III. Notice and Responsive Pleadings

11. Notice of APS's December 23 filing was published in the *Federal Register*, 80 Fed. Reg. 214 (2014), with interventions and protests due on or before January 13,

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 4-5.

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 5-6.

¹⁹ APS April 2 Filing, Exhibit A.

2015. A timely motion to intervene and protest was filed by ED3. On January 28, 2015, APS filed an answer to ED3's January 13 Protest. On February 13, 2015, ED3 filed an answer to APS's January 28 Answer.

12. Notice of APS's March 20 Filing was published in the *Federal Register*, 80 Fed. Reg. 15,999 (2015), with interventions and protests due on or before April 10, 2015. The Commission subsequently granted a motion to extend the comment period to April 17, 2015.

13. Notice of APS's April 2 Filing was published in the *Federal Register*, 80 Fed. Reg. 19,078 (2015), with interventions and protests due on or before April 23, 2015. On April 17, 2015, ED3 filed a supplemental protest and comments on APS's March 20 Filing and April 2 Filing. On April 30, 2015, APS filed an answer to ED3's April 17 Protest.

A. ED3 Protests and Answer

14. ED3 asserts that APS's refusal to allow ED3 to designate less than its entire load as network load under the NITSA is discriminatory and anticompetitive because APS provided this service to its affiliate, APS M&T, for over six years under Service Agreement No. 216. Specifically, ED3 explains that section 4 of its 2008 Transaction Confirmation with APS M&T states that ED3's purchases "delivered by a third party supplier or ED3 directly to the [Test Track Substation] over a third party's transmission system, without use of the APS transmission system, will not be included in the OATT pass-through transmission charge."²⁰ Thus, ED3 disputes APS's claims that the partial requirements sale was a billing error and asserts that the partial requirements sale was, instead, purposeful and a facet of ED3's ownership-like rights in APS's Santa Rosa Substation. ED3 also counters APS's claim that ED3 was the sole beneficiary of the billing error, noting that APS M&T benefited from the 2008 Transaction Confirmation because it was able to make a power sale with substantial margins built into it.²¹ Therefore, ED3 argues that APS provided preferential treatment to its affiliate by allowing APS M&T to deviate from "the strict requirements of the Commission's definition of 'network load'" to facilitate a partial requirements power sale to ED3 and that APS's refusal to provide materially identical service to ED3 is unduly discriminatory.²²

²⁰ ED3 January 13 Protest at 10.

²¹ ED3 February 13 Answer at 6.

²² ED3 January 13 Protest at 12.

15. ED3 also claims that the proposed NITSA, which designates ED3's entire load as network load, is contractually barred by the Santa Rosa Interconnection Agreement between APS and ED3.²³ ED3 states that, prior to entering into the Santa Rosa Interconnection Agreement, it paid APS \$3.6 million for the engineering, procurement, and construction of a 230/69 kV—167 MVA transformer and associated bus and interconnection work, in addition to a separate payment of \$731,768 for a *pro rata* share of the Santa Rosa Substation common facilities. ED3 explains that, subsequently, on May 23, 2008, it entered into the Santa Rosa Interconnection Agreement with APS, which it claims was intended to eliminate any requirement for additional payments to APS to transfer energy across the Santa Rosa Substation to ED3's Maricopa Substation. ED3 argues that it made these investments based on the understanding that these investments would provide benefits after the December 31, 2014 expiration of its partial requirements purchase from APS M&T.²⁴

16. Moreover, ED3 contends that section 5.3 of the Santa Rosa Interconnection Agreement requires APS and ED3 to negotiate in good faith any amendments necessary to maintain the parties' relative economic balance "in the event of a material change in circumstances or regulation that adversely affects the realization of mutual economic benefits provided under the agreement."²⁵ ED3 argues that this provision serves to preclude APS from imposing additional transmission charges on ED3 for power imported over ED3's facilities and ownership-like rights at the Santa Rosa Substation, absent a change in circumstances or regulatory treatment resulting in additional costs to APS. Thus, ED3 argues that APS's proposal to impose network charges based on its full load is unjust and unreasonable because the proposed NITSA significantly degrades the parties' economic balance by charging ED3 for deliveries to the Santa Rosa Substation.

17. Finally, ED3 argues that, if the Commission accepts the proposed NITSA despite these deficiencies in APS's filing, the Commission should direct APS to provide revenue credits for the network resources ED3 owns in an amount large enough to maintain the relative economic balance of the Santa Rosa Interconnection Agreement. ED3 claims that APS's proposal to provide transmission credits for its \$731,768 investment in the Santa Rosa Substation ignores the \$3.6 million transformer it owns at the Santa Rosa Substation and its investment of approximately \$14 million to purchase a 156 MW participation interest in the Southeast Valley transmission project.²⁶ ED3 asserts that, if

²³ *Id.*, Delaney Testimony, Exhibit E, Santa Rosa Interconnection Agreement.

²⁴ ED3 February 13 Answer at 7.

²⁵ ED3 January 13 Protest, Delaney Testimony at P 14-15.

²⁶ ED3 April 20 Protest at 7.

the Commission were to accept the NITSA, APS would use both of these facilities to provide network service to ED3's load. ED3 also argues that these facilities are "subject to a presumption of integration" under the Commission's open access rule.²⁷ Therefore, ED3 contends that both of these investments should be eligible for compensation under section 30.9 of APS's OATT.

18. For these reasons, ED3 argues that the proposed NITSA is unjust, unreasonable, unduly discriminatory, and anti-competitive and requests that the Commission reject or summarily modify the NITSA and direct APS to provide ED3 with the same network transmission service that APS previously provided to APS M&T, or, in the alternative, set the NITSA for a full evidentiary hearing. ED3 also states that, as part of its December 2014 Application, it submitted a good faith request pursuant to section 211 of the FPA for network service that would omit from its load ratio share the portion of its load that does not require use of APS's transmission system (i.e., Western Path #1 and Western Path #2), consistent with the service APS provided to APS M&T under Service Agreement No. 216.²⁸ ED3 explains that its request is based on the Commission's guidance indicating that, "if a customer seeks a customized transmission service not offered in an OATT, that customer may, barring successful negotiation for such service, file a section 211 application."²⁹

B. APS Response

19. APS argues that ED3 has failed to support its request for a network integration transmission service that deviates significantly from APS's OATT and Commission precedent. APS contends that ED3's December 2014 Application does not seek a

²⁷ ED3 January 13 Protest at 17 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 350 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,239, at PP 60-67 (2008)).

²⁸ On May 6, 2015, ED3 filed an application under sections 211 and 212 of the FPA (16 U.S.C. §§ 824j, 824k (2012)) and Part 36 of the Commission's regulations (18 C.F.R. Part 36 (2014)) requesting a Commission order directing APS to provide transmission service in a manner equivalent to the transmission service that APS provided to APS M&T between the period of March 1, 2008, and September 19, 2014, in Docket No. TX15-1-000. The Commission will address ED3's section 211 application in a separate order.

²⁹ ED3 January 13 Protest at 4 (citing *Duke Pwr. Co.*, 81 FERC ¶ 61,010, at 61,047 & n.6 (1997) (*Duke Power*)).

“unique transmission service” permissible under section 211 of the FPA; instead, APS claims that ED3 seeks to obtain network service under APS’s OATT without paying the full charges applicable to such service. APS asserts that the Commission has consistently rejected attempts to obtain the precise type of service that ED3 seeks on the grounds that it is impermissible under the *pro forma* OATT. For example, APS explains that, in *FMPA*, the Commission determined that splitting a load at a point of delivery, such that only part of the load is served with network integration transmission service, is impermissible.³⁰ APS asserts the Commission upheld its restrictions on designating network load in Order No. 888-A, where the Commission stated that “splitting a discrete load is antithetical to the concept of network service” because “a load at a discrete point of delivery cannot be partially integrated—it is either fully integrated or not integrated.”³¹ In addition, APS states that the Commission found that a split system (with only part of the load designated) creates the potential for a customer to evade some or all of its load ratio share cost responsibility for network services by using behind-the-meter generation during monthly peaks to reduce its load ratio share below its actual, typical monthly peak usage, resulting in a rate that is subsidized by other network customers. APS adds that the Commission has continued to consistently apply this policy in several orders³² since its Order No. 888 findings were upheld on appeal by the D.C. Circuit Court of Appeals in *Transmission Access Policy Study Group v. FERC*.³³ Therefore, APS argues that longstanding Commission precedent prohibits ED3’s request to designate less than its full load as network load and that ED3’s attempt to modify its rates for network service is impermissible.

³⁰ APS January 28 Answer at 6 (citing *Florida Municipal Power Agency v. Florida Power & Light Co.*, 65 FERC ¶ 61,125 (*FMPA*), *reh'g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *clarified*, 74 FERC ¶ 61,006 (1996), *reh'g denied*, 96 FERC ¶ 61,130 (2001), *aff'd*, *Florida Municipal Power Agency v. FERC*, 315 F.3d 362 (D.C. Cir. 2003), *cert. denied*, 540 U.S. 946 (2003); *see also Florida Power & Light Co.*, 105 FERC ¶ 61,287 (2003), *order on reh'g*, 106 FERC ¶ 61,204 (2003), *remanded*, *Florida Municipal Power Agency v. FERC*, 411 F.3d 287 (D.C. Cir. 2005), *order on remand*, 113 FERC ¶ 61,290 (2005), *order on reh'g*, 116 FERC ¶ 61,012 (2006)).

³¹ APS January 28 Answer at 6-7 (citing Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,259).

³² *Id.* at 7 (citing *Idaho Power*, 106 FERC ¶ 61,329; *Ameren Services*, 131 FERC ¶ 61,125).

³³ *Id.* (citing 225 F.3d 667, 736 (D.C. Cir. 2000)).

20. APS also asserts that ED3's reliance on Service Agreement No. 216 is misplaced because the amount charged to APS M&T for ED3's network service was the result of a billing error. APS explains that this billing error resulted in other network customers being billed for load ratio shares that were larger they should have been by an amount proportional to that by which ED3's load ratio share was understated. APS states that, to correct this error, it will provide credits to the impacted transmission customers in the amount of their incorrectly billed load ratio share.³⁴

21. APS similarly challenges ED3's reliance on the Santa Rosa Interconnection Agreement, which APS contends is irrelevant to ED3's request for network service because it ignores the fundamental distinction between the network integration transmission service ED3 has requested and interconnection service. APS also argues that the Santa Rosa Interconnection Agreement does not contemplate network service and only addresses ED3's use of certain common bus facilities. APS states that it does not disagree that ED3 retains certain ownership-like rights in the Santa Rosa Substation; however, APS asserts that ED3's ownership-like rights have no bearing on the network service provided or the pricing of network service, except that ED3 may qualify for transmission credits under section 30.9 of APS's OATT.³⁵ Thus, APS reiterates its argument that ED3 cannot take network service over the APS system and deduct deliveries from Western or other third parties from its designated network load.

22. With respect to ED3's eligibility for transmission credits, APS proposes to credit ED3 for the \$731,768 payment that ED3 made to APS in 2008 for a *pro rata* share of the Santa Rosa Substation common facilities as a network upgrade payment, in addition to any additional plant costs or operating and maintenance costs paid by ED3.³⁶ APS disputes ED3's claim that it is eligible for additional transmission credits associated with its other investments in the Santa Rosa Substation and Southeast Valley transmission project. Concerning ED3's transformer at the Santa Rosa Substation, APS argues that the Commission has previously found that "delivery point facilities interconnecting a customer's system to the jurisdictional transmission provider's system not to be integrated facilities eligible for credits under section 30.9."³⁷ In addition, APS asserts that it does not have the right to use the facilities located at the Southeast Valley

³⁴ *Id.* at 11.

³⁵ *Id.* at 13.

³⁶ APS March 20 Filing at 4-5.

³⁷ APS January 28 Answer at 17 (citing *Northern States Power Co.*, 87 FERC ¶ 61,121 (1999)).

transmission project to provide transmission service and, therefore, that ED3 is not eligible for transmission credits for its investment in these facilities.

IV. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), ED3's timely, unopposed motion to intervene serves to make it a party to this proceeding.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to an answer or protest unless otherwise ordered by the decisional authority. We accept the answers filed by APS and ED3 because they provided information that assisted us in our decision-making process.

B. Commission Determination

25. As discussed below, we will accept and suspend the NITSA for a nominal period, effective January 1, 2015, as requested, subject to refund. In addition, we find that the amount of transmission credits that ED3 is entitled to under section 30.9 of APS's OATT raises issues of material fact and, therefore, we will set this discrete issue for hearing and settlement judge procedures.

26. We find that ED3's request to designate less than its entire load as network load violates both APS's OATT and longstanding Commission policy, which require network customers to designate their entire load as network load to receive network service.³⁸ For example, in Order No. 888-A, the Commission stated that it "will allow a network customer to exclude the *entirety* of a discrete load from network load, but not just a portion of the load served by behind-the-meter generation."³⁹ In addition, the

³⁸ Part III of APS's OATT defines network integration transmission service as a transmission service that "allows the Transmission Customer to integrate, economically dispatch, and regulate its current and planned Network Resources to serve its Network Load in a manner comparable to that in which APS utilizes its Transmission System to serve its Native Load Customers." APS OATT, Part III, Preamble, Network Integration Transmission Service.

³⁹ Order No. 888-A, FERC Stats & Regs. ¶ 31,048 at 30,262; *see also* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1619.

Commission stated that “a customer may not choose to have part of a discrete load served under network integration service at one or more delivery points and at the same time have the remaining portion of the same load served under point-to-point transmission service at other delivery points.”⁴⁰ The Commission has since issued several orders upholding its policy of prohibiting network customers from designating only a portion of a discrete load as network load, which is what ED3 seeks to do here.⁴¹ Therefore, we find that APS’s proposal to designate ED3’s entire load as network load under the NITSA is just and reasonable and consistent with Commission precedent.

27. In addition, we disagree with ED3 that the proposed NITSA is unduly discriminatory and anticompetitive based on APS’s provision of network service to APS M&T under Service Agreement No. 216. APS states that this service resulted from a billing error and that APS will credit its transmission customers that were overbilled by an amount proportionate to the amount that ED3 underpaid. Furthermore, the Santa Rosa Interconnection Agreement is subject to APS’s OATT, which clearly prohibits network customers from designating less than their full load as network load. Thus, we find that neither Service Agreement No. 216 or the Santa Rosa Interconnection Agreement have bearing on the proposed NITSA, which, as discussed above, we find to be just and reasonable as filed.

28. However, we find merit in ED3’s claim that it is entitled to transmission credits under section 30.9 of APS’s OATT for certain transmission investments in or adjacent to APS’s transmission system, in addition to the \$731,768 investment ED3 made in the Santa Rosa Substation that APS proposes to credit back to ED3.⁴² Specifically, ED3 claims that its additional investments (i.e., the \$3.6 million transformer that it owns at the APS Santa Rosa Substation and its \$14 million 156 MW participation interest in the Southeast Valley transmission project) also qualify for transmission credits. Commission precedent dictates that “credits related to customer-owned facilities are more appropriately addressed on a case-by-case basis, where individual claims for credits may be evaluated against a specific set of facts.”⁴³ The Commission has since clarified this precedent, stating that “integration will be presumed for customer-owned facilities that, if

⁴⁰ Order No. 888-A, FERC Stats & Regs. ¶ 31,048 at 30,260-61.

⁴¹ See *FMPA*, 65 FERC ¶ 61,125; *Idaho Power*, 106 FERC ¶ 61,329; *Ameren Services*, 131 FERC ¶ 61,125; *Consumers Energy Co.*, 86 FERC ¶ 63,004, at 65,032 (1999), *aff’d*, Opinion No. 456, 98 FERC ¶ 61,333 (2002).

⁴² APS March 20 Filing at 4-5.

⁴³ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,742-43.

owned by the transmission provider, would be eligible for inclusion in the transmission provider's annual transmission revenue requirement;" otherwise, "to satisfy the integration standard, the customer must show that its new facility is integrated with the transmission provider's system, provides additional benefits to the transmission grid in terms of capability and reliability, and can be relied on by the transmission provider for the coordinated operation of the grid."⁴⁴ Neither party has presented sufficient, objective information for us to determine the appropriate amount of transmission credits in this proceeding. Therefore, we find that the amount of transmission credits that ED3 is entitled to under section 30.9 of APS's OATT raises issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

29. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute 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.⁴⁵ 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.⁴⁶ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of 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.

The Commission orders:

(A) The NITSA is hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2015, as requested, subject to refund, as discussed in the body of this order.

⁴⁴ Order No. 890-B, FERC Stats. & Regs. ¶ 61,299 at P 47.

⁴⁵ 18 C.F.R. § 385.603 (2014).

⁴⁶ 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>).

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the 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 issue of transmission credits that ED3 may be eligible for under section 30.9 of APS's OATT for its investment in facilities used by APS to provide network service. 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 (2014), 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.

(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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.