

153 FERC ¶ 61,157  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Arizona Public Service Company

Docket No. ER15-192-001

ORDER ON TRANSMISSION SERVICE AGREEMENTS

(Issued November 9, 2015)

1. On October 24, 2014, Arizona Public Service Company (APS) filed two unexecuted transmission service agreements (Service Agreements) with National Renewable Solutions, LLC (NRS) under APS's Open Access Transmission Tariff (OATT) pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and Part 35 of the Commission's regulations.<sup>2</sup> In this order, we accept this filing subject to condition, to be effective as of the date of this order, as requested, as discussed below.

**I. Background**

2. On July 20, 1966, APS and Southern California Edison Company (SoCal Edison) entered into an agreement (APS-SoCal Edison Agreement) that provided for APS to build, own, operate, and maintain a 500 kV transmission line extending from the Four Corners Power Plant to the Arizona-Nevada border (Four Corners-Eldorado Line). Under the APS-SoCal Edison Agreement, APS agreed to lease all of the line's transmission capacity to SoCal Edison to transmit power from SoCal Edison's ownership share of the Four Corners Power Plant to California. SoCal Edison's transmission system is under the operational control of the California Independent System Operator Corporation (CAISO), including SoCal Edison's leased transmission capacity on the Four Corners-Eldorado Line. Thus, the interface between the APS and CAISO balancing authority areas is currently located at the Four Corners 500 kV bus at the Four Corners Power Plant.

---

<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. Part 35 (2015).

3. The Four Corners Power Plant is a coal-fired generating facility located in Fruitland, New Mexico, and is jointly owned by APS and five other utilities. In 2013, SoCal Edison sold its ownership interests in the Four Corners Power Plant and associated transmission interconnection facilities to APS.<sup>3</sup> As a result of the sale, SoCal Edison no longer needs the capacity on the Four Corners-Eldorado Line to transmit power to CAISO. Consequently, APS and SoCal Edison each filed separate proposals with the Commission to terminate the APS-SoCal Edison Agreement, which would have resulted in the transfer of SoCal Edison's transmission capacity on the Four Corners-Eldorado Line to APS. The Commission approved APS's proposal to cancel the APS-SoCal Edison Agreement, but rejected separate proposals filed by APS<sup>4</sup> and SoCal Edison addressing the terms for the sale of the leased capacity on the Four Corners-Eldorado Line from SoCal Edison to APS.<sup>5</sup>

4. On December 13, 2010, APS posted a statement on its Open Access Same-Time Information System (OASIS) indicating that additional transmission capacity may become available following the termination of the APS-SoCal Edison Agreement. Subsequently, on January 25, 2011, NRS submitted three transmission service requests<sup>6</sup> for a total of 600 MW of long-term firm point-to-point transmission service from the point of receipt of the Four Corners 345 kV bus to the point of delivery of Moenkopi substation.<sup>7</sup> On March 7, 2011, Iberdrola Renewables, LLC (Iberdrola) submitted a

---

<sup>3</sup> *Ariz. Pub. Serv. Co.*, 141 FERC ¶ 61,154 (2012) (granting authorization for APS to acquire SoCal Edison's ownership interests in certain generation facilities and associated transmission interconnection facilities and rights at the Four Corners Power Plant as consistent with the public interest).

<sup>4</sup> *Ariz. Pub. Serv. Co.*, 144 FERC ¶ 61,200, at PP 13-14 (2013) (accepting APS's filing of a notice of cancellation for the APS-SoCal Edison Agreement, but rejecting without prejudice APS's proposal to recover a \$40 million termination payment to SoCal Edison in its wholesale transmission rates as unsupported).

<sup>5</sup> *S. Cal. Edison Co.*, 146 FERC ¶ 61,136, at PP 24-26 (2014) (rejecting an Assignment Agreement and Resale Tariff proposed by SoCal Edison as inconsistent with SoCal Edison's OATT and Commission policy).

<sup>6</sup> TGP Flying Cloud Holdings, LLC, which NRS subsequently purchased, originally submitted the three transmission service requests. For the purposes of this order, NRS will be used to refer to both entities. *See* APS October 24, 2014 Filing at 2.

<sup>7</sup> NRS November 14, 2014 Protest at 8-9; NRS March 25 Answer at 7-8.

transmission service request for 300 MW of long-term firm point-to-point transmission service from the point of receipt of the Four Corners 345 kV bus to the point of delivery of “NEWPOINT.”<sup>8</sup> The next day, on March 8, 2011, APS revised the point of delivery listed in NRS’s January 25, 2011 transmission service requests to “NEWPOINT,”<sup>9</sup> adding in the OASIS status field that it changed the point of delivery to indicate the Moenkopi substation via the current CAISO path.<sup>10</sup>

## **II. Instant Filing**

### **A. October 24 Filing**

5. On October 24, 2014, APS filed two unexecuted service agreements: (1) Service Agreement No. 338, for 225 MW of firm point-to-point transmission service from the Four Corners 345 kV bus to the Four Corners 500 kV bus (the current APS-CAISO interface) for a term of 30 years, beginning December 1, 2015; and (2) Service Agreement No. 339, for 375 MW of firm point-to-point transmission service at the same points of receipt and delivery for a term of 30 years, beginning January 1, 2017. APS explains that, on July 14, 2014, it began processing its queue for service to the current APS-CAISO interface and further states that NRS is the first customer in its transmission queue.<sup>11</sup>

6. APS states that NRS’s January 25, 2011 transmission service requests originally reflected a point of delivery of Moenkopi. APS asserts that it cannot accommodate this delivery point because it currently has no transmission capacity rights beyond the Four Corners 500 kV bus. APS contends that NRS has requested a “sliding point of delivery” so that if the APS-CAISO interface moves from the current interface at the Four Corners 500 kV bus—presumably to a new point at the opposite end of the Four Corners-Eldorado Line called Willow Beach—NRS be allowed to move the points of delivery reflected in its January 25, 2011 transmission service requests to this new

---

<sup>8</sup> Iberdrola March 10 Amended Protest at 3-4.

<sup>9</sup> “NEWPOINT” is a term APS’s transmission customers can use as a receipt or delivery point when requesting transmission service over an unposted transmission path on OASIS. APS September 14 Supplement, Attachment B, APS Informational Guidelines for New Point Requests.

<sup>10</sup> NRS November 14, 2014 Protest at 9; NRS March 25 Answer at 9.

<sup>11</sup> APS October 24, 2014 Filing at 2.

point without reentering APS's transmission queue process.<sup>12</sup> APS asserts that NRS's request is inconsistent with section 22.2 of APS's OATT, which states that "any request by a transmission customer to modify receipt and delivery points on a firm basis shall be treated as a new request for service."<sup>13</sup> Therefore, APS explains that it cannot accommodate NRS's request without Commission approval. Thus, APS requests that the Commission accept the two unexecuted Service Agreements with an effective date that coincides with the date of the Commission order accepting the Service Agreements.<sup>14</sup>

**B. September 14 Supplement**

7. On September 14, 2015, APS filed additional information related to the status of the Four Corners-Eldorado Line (September 14 Supplement). APS explains that negotiations between the parties regarding SoCal Edison's transfer of capacity rights on the Four Corners-Eldorado Line to APS continue; however, according to APS, no agreement has been finalized.<sup>15</sup> APS also states that, following its acquisition of SoCal Edison's capacity rights on the Four Corners-Eldorado Line, it expects to have 1,293 MW of available transmission capability between Four Corners and Moenkopi, and 1,555 MW between Moenkopi and Willow Beach.<sup>16</sup> APS explains that transmission customers can currently access CAISO markets by either taking service from the Four Corners 345 kV bus to the Four Corners 500 kV bus from one of the owners of the Four Corners 345/500 kV transformers, or by interconnecting directly at the Four Corners 500 kV bus. APS states that if the SoCal Edison's leased transmission capacity rights are transferred to APS, its transmission customers will access CAISO by requesting transmission service from the Four Corners 500 kV bus to Willow Beach.<sup>17</sup>

---

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* (citing APS FERC Electric Tariff, Volume No. 2, Part II, Section 22, Changes in Service Specifications).

<sup>14</sup> On December 23, 2014, APS submitted a request for deferral of its October 24, 2014 Filing and an informal settlement conference with NRS and Iberdrola. On April 23, 2015, the settlement judge terminated the informal settlement procedures and returned the case to the Commission for further action.

<sup>15</sup> APS September 14 Supplement at 2.

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

<sup>17</sup> *Id.* at 4.

8. APS explains that its New Path OASIS Instructions include instructions for transmission customers to request capacity over an unposted path, including the use of the term “NEWPOINT” as a means for customers to request a point of delivery on an unposted path.<sup>18</sup> APS argues that the use of its New Path OASIS Instructions is neither mandatory nor the only method by which potential transmission customers can request service over an unposted path.<sup>19</sup> Finally, APS states that there are 39 pending transmission service requests in its queue for service from the Four Corners 345 kV bus to the Four Corners 500 kV bus, several of which designate “Moenkopi” or “Eldorado” as the requested point of delivery in either the written application or OASIS request.<sup>20</sup>

### **III. Notice of Filings and Responsive Pleadings**

9. Notice of APS’s October 24, 2014 Filing was published in the *Federal Register*, 79 Fed. Reg. 65,388 (2014), with interventions and protests due on or before November 14, 2014. Timely motions to intervene and protests were filed by NRS and Iberdrola.

10. On December 23, 2014, APS filed a Notice of Request for Deferral. Notice of APS’s December 23 Request for Deferral was published in the *Federal Register*, 79 Fed. Reg. 78,846 (2014), with interventions and protests due on or before January 13, 2015. None was filed.

11. On January 15, 2015, APS filed a Motion to Hold the Proceeding in Abeyance. Notice of APS’s January 15 Motion was published in the *Federal Register*, 80 Fed. Reg. 3,230 (2015), with interventions and protests due on or before February 5, 2015. None was filed.

12. On March 10, 2015, Iberdrola submitted an amended protest. On March 25, 2015, APS and NRS filed answers to Iberdrola’s protest. On April 8, 2015, Iberdrola filed a reply to APS’s and NRS’s answers. On April 23, 2015, NRS filed an answer to

---

<sup>18</sup> *Id.*, Attachment B, APS Informational Guidelines for New Point Requests.

<sup>19</sup> APS states that the term “NEWPOINT” has been used nine times to request a delivery point on a new or unposted transmission paths on its OASIS (eight of which were on the same day and by the same entity), and all such requests were either withdrawn, refused, or deemed invalid. *Id.* at 5.

<sup>20</sup> *Id.* at 6.

Iberdrola's reply. On May 1, 2015, Iberdrola filed a response to NRS's answer. On May 14, 2014, NRS filed a reply to Iberdrola's response.

13. On August 14, 2015, Commission staff issued a letter requesting additional information from APS to support its October 24, 2014 Filing.<sup>21</sup> APS filed the September 14 Supplement in response to that request. Notice of APS's September 14 Supplement was published in the *Federal Register*, 80 Fed. Reg. 56,974 (2015), with interventions and protests due on or before October 5, 2015. Pattern Energy Group LP (Pattern) filed a timely motion to intervene. On September 14, 2015, NRS and Pattern jointly filed a Request for Expedited Action by the Commission on the Service Agreements. On October 5, 2015, NRS and Pattern filed joint comments, and Iberdrola filed comments. On October 9, 2015, Iberdrola filed an answer to NRS's and Pattern's joint comments.

**A. Point of Delivery**

**1. NRS Position**

14. NRS requests that the Commission revise the two unexecuted Service Agreements to preserve its queue priority for service over the Four Corners-Eldorado Line via a right to redirect its transmission service to the appropriate APS-CAISO interface in the event that APS's and SoCal Edison's planned transfer of capacity rights goes through.<sup>22</sup> NRS argues that it should not be deprived of its first-in-time priority for capacity on the Four Corners-Eldorado Line for delivery to the APS-CAISO interface because of APS's and SoCal Edison's failure to terminate the APS-SoCal Edison Agreement in a manner acceptable to the Commission. NRS explains that, if SoCal Edison transfers its capacity rights to APS and APS gains control of the Four Corners-Eldorado Line capacity, the APS-CAISO interface will change to Willow Beach at the Arizona-Nevada border. NRS argues that this change could strand NRS's power at the Four Corners 500 kV bus, the current APS-CAISO interface, and undermine the value of the transmission service it originally requested from APS over four years ago. Thus, NRS requests that it be allowed to redirect its transmission service to the new APS-CAISO interface without

---

<sup>21</sup> *Ariz. Pub. Serv. Co.*, Docket No. ER15-192-000 (Aug. 14, 2015) (deficiency letter).

<sup>22</sup> NRS contends that it is in various stages of project finance discussions with several financial institutions and is also engaged in power purchase agreement discussions with entities located in CAISO. NRS November 14, 2014 Protest at 5-6.

reentering APS's transmission queue.<sup>23</sup> By allowing NRS to redirect its transmission service to the new APS-CAISO interface, NRS contends that the Commission would put NRS in the same commercial position that it was in when it submitted its January 25, 2011 transmission service requests and hold NRS harmless for the uncertainty surrounding SoCal Edison's transfer of capacity rights to APS.<sup>24</sup> Furthermore, NRS argues that its requested relief is just and reasonable because it can be applied to any customer in APS's transmission queue for service to the APS-CAISO interface.<sup>25</sup>

15. NRS notes that no party has protested its requested relief and that APS has expressly stated that it does not oppose the requested relief subject to Commission approval.<sup>26</sup> NRS also argues that the Commission would not need to make a determination regarding section 22.2 of APS's OATT because NRS has not requested any modification to its transmission service request and it is APS who has changed its requested point of delivery. NRS adds that its requested relief is consistent with Commission precedent, as the Commission has previously found that transmission providers should administer newly acquired, previously leased transmission capacity in a manner that preserves existing priority rights for transmission service.<sup>27</sup> However, in the alternative, NRS requests waiver of sections 13.2(i)<sup>28</sup> and 22.2<sup>29</sup> of APS's OATT to allow NRS to redirect its transmission service to Willow Beach upon the transfer of SoCal Edison's capacity rights on the Four Corners-Eldorado Line to APS while allowing

---

<sup>23</sup> *Id.* at 3, 12-13.

<sup>24</sup> *Id.* at 3, 14.

<sup>25</sup> *Id.* at 14-15.

<sup>26</sup> NRS and Pattern Comments at 6-7 (citing APS September 14 Supplement at 1 n.1).

<sup>27</sup> *Id.* at 8-9 (citing *Pub. Serv. Co. of N.M.*, 142 FERC ¶ 61,030 (2013)).

<sup>28</sup> NRS November 14, 2014 Protest at 15 (citing APS OATT, section 13.2(i) ("Long-Term Firm Point-To-Point Transmission Service shall be available on a first-come, first-served basis, i.e., in the chronological sequence in which each Transmission Customer has requested service.")).

<sup>29</sup> *Id.* (citing APS OATT, section 22.2 ("Any request by a Transmission Customer to modify Receipt and Delivery Points on a firm basis shall be treated as a new request for service in accordance with Section 17 hereof.")).

NRS to maintain the queue priority it established on January 25, 2011, stating that its request for waiver is consistent with Commission precedent.<sup>30</sup>

## 2. Iberdrola Position

16. Iberdrola argues that APS should provide the service requested by NRS and other transmission customers in the queue by providing these customers with the option to change their delivery point in the event that the planned capacity rights transfer goes through.<sup>31</sup> Iberdrola contends that APS has unilaterally turned its APS-CAISO interface queue into a “transformer only” queue by providing customers with no certainty of retaining the APS-CAISO interface as their point of delivery in the event APS and SoCal Edison eventually complete the capacity rights transfer, leaving customers with a choice of either signing up for potentially useless service or abandoning their queue position.<sup>32</sup> Iberdrola adds that the Commission has previously allowed a transmission customer to change its point of delivery following the establishment of a new delivery point on the transmission provider’s system.<sup>33</sup>

17. Iberdrola argues that section 22.2 of APS’s OATT should not bar this type of resolution because it is APS, whose negotiations with SoCal Edison may result in termination of the APS-SoCal Edison Agreement, who would be modifying the delivery point requested by the transmission customers in the APS-CAISO interface queue.<sup>34</sup> Iberdrola notes that there appears to be no dispute that granting the request of NRS, Iberdrola, and other parties for a delivery point corresponding with the APS-CAISO interface represents a just and reasonable response to the continued uncertainty surrounding the control of capacity of the Four Corners-Eldorado Line, and that it should be approved by the Commission.<sup>35</sup> Alternatively, Iberdrola requests that, if the

---

<sup>30</sup> *Id.* at 15-16.

<sup>31</sup> Iberdrola states that, based on the information APS posted on its OASIS, Iberdrola has spent material funds in the development of a renewable energy project for delivery into the CAISO market. Iberdrola November 14, 2014 Protest at 2, 7-8.

<sup>32</sup> *Id.* at 9.

<sup>33</sup> *Id.* at 8-9 (citing *PacifiCorp*, 134 FERC ¶ 61,042 (2011)).

<sup>34</sup> *Id.* at 10.

<sup>35</sup> Iberdrola October 9 Answer at 2.

Commission determines that APS's OATT does not permit this resolution, the Commission grant any waivers necessary to effectuate an equitable result.<sup>36</sup>

**B. Queue Priority**

**1. Iberdrola Position**

18. Iberdrola requests that the Commission reject the proposed Service Agreements, arguing that Iberdrola was the first customer to properly submit a request to the APS-CAISO interface in conformance with APS's OATT and business practices.<sup>37</sup> Iberdrola argues that, because the delivery point listed in NRS's January 25, 2011 transmission service requests was changed on March 8, 2011, APS should have treated NRS's transmission service requests as new requests for service with a queue position as of that date, behind Iberdrola's March 7, 2011 transmission service request. Iberdrola adds that APS's failure to treat NRS's change in delivery point as new requests for service for the purpose of determining queue priority violates both APS's OATT and the Commission's first-in-time principles.<sup>38</sup>

19. Iberdrola contends that the New Path OASIS Instructions mandate that a customer seeking to be placed in a queue to reserve capacity for an unposted path must submit a transmission service request listing "NEWPOINT" as the point of delivery or point of receipt.<sup>39</sup> Iberdrola states that the purpose of the New Path OASIS Instructions is to allow a customer seeking delivery over an unposted path to be placed in a queue to reserve in a manner that is open and equitable to all customers. Iberdrola asserts that,

---

<sup>36</sup> Iberdrola November 14, 2014 Protest at 11.

<sup>37</sup> Iberdrola explains that, prior to March 3, 2015, it believed that the relative positions of its request and those of NRS were irrelevant due to a pending commercial arrangement between the parties. Iberdrola also states that it previously believed that the 1,000 MW of transfer capability APS posted on its OASIS would accommodate the combined requests of NRS and Iberdrola (i.e., 900 MW); however, Iberdrola later learned that APS's share of the transmission path is limited to 630 MW. Iberdrola March 10 Amended Protest at 2 n.5.

<sup>38</sup> *Id.* at 4-5 (citing *TGP Granada, LLC v. Pub Serv. Co. of N.M.*, 140 FERC ¶ 61,005, at P 32 (2012)).

<sup>39</sup> *Id.* at 3-4 & n.12; *see also* Iberdrola March 10 Amended Protest, Attachment A, New Path OASIS Instructions.

without the New Path OASIS Instructions, the administration of transmission service requests on APS's OASIS would lack a clear and uniform process for forming and processing queues for unposted paths, resulting in confusion and ambiguity, and creating opportunities for undue discrimination.<sup>40</sup> Iberdrola contends that APS's and NRS's attempts to portray APS's New Path OASIS Instructions as optional ignore Commission precedent establishing that both transmission providers and transmission customers are required to comply with applicable business practices in order to provide transmission customers with certainty and minimize opportunities for undue discrimination.<sup>41</sup>

20. For these reasons, Iberdrola argues that it was the first customer to submit a valid transmission service request for service to "NEWPOINT" and is first in APS's transmission queue for service to the APS-CAISO interface.<sup>42</sup> Iberdrola argues that the Commission should reject the two unexecuted Service Agreements and find that Iberdrola is first in APS's transmission queue for service to the APS-CAISO interface. In addition, Iberdrola argues that the Commission should reject NRS's request for a waiver of APS's New Path OASIS Instructions, claiming that granting NRS's waiver request would harm a third party by preventing Iberdrola from obtaining the transmission capacity necessary to reach the CAISO market.<sup>43</sup>

## 2. NRS and APS Position

21. NRS and APS assert that the Commission should deny Iberdrola's claim that APS should have rejected NRS's January 25, 2011 transmission service requests for failing to request a point of delivery of "NEWPOINT." NRS and APS argue that APS's New Path OASIS Instructions are not mandatory and serve to identify a standard term (i.e., "NEWPOINT") as a temporary placeholder during the interim period between when a transmission service request for a new or unposted path is submitted and when the transmission provider establishes and registers the final transmission path.<sup>44</sup> NRS asserts that its written application, submitted pursuant to section 17.1 of APS's OATT,

---

<sup>40</sup> Iberdrola March 10 Amended Protest at 6; Iberdrola April 8 Reply at 7-8.

<sup>41</sup> Iberdrola October 9 Answer at 3-4.

<sup>42</sup> Iberdrola March 10 Amended Protest at 5; Iberdrola April 8 Reply at 4.

<sup>43</sup> Iberdrola April 8 Reply at 10-11.

<sup>44</sup> NRS March 25 Answer at 10-11; NRS April 23 Answer at 5-6; APS March 25 Answer at 5.

specifically identifies the requested delivery point as the APS-CAISO interface at the Arizona-Nevada border.<sup>45</sup> Thus, NRS and APS contend that any failure on NRS's part to use "NEWPOINT" as its requested delivery point was ministerial, in good faith, and ultimately harmless, adding that there has been no improper conduct or lack of transparency in this case.<sup>46</sup>

22. Moreover, even if APS's New Path OASIS Instructions were mandatory, NRS and APS argue that the Commission has previously found that, in the event of a conflict between a business practice standard and a tariff, the tariff controls.<sup>47</sup> NRS and APS also assert that the Commission has previously held that an OATT's first-in-time principles govern when queue priority is challenged on the basis of a possible failure to comply with a transmission-related business practice but where there is no improper conduct and the queue was processed transparently.<sup>48</sup> Finally, NRS and APS add that Iberdrola has not shown that it failed to understand the scope of NRS's January 25, 2011 transmission service requests or that its business expectations were based on misleading information, as Iberdrola has had access to the information on APS's OASIS for more than four years.<sup>49</sup>

---

<sup>45</sup> NRS adds that, while it did not submit its written application on OASIS, section 17.1 of APS's OATT requires transmission customers to submit a written application and, thus, NRS's communications with APS were not improper. NRS March 25 Answer at 4, 11; NRS April 23 Answer at 5-6.

<sup>46</sup> NRS March 25 Answer at 10, 14; NRS May 14 Reply at 4; APS March 25 Answer at 2, 5.

<sup>47</sup> NRS March 25 Answer at 12 (citing *Open Access Same Time Information System and Standards of Conduct*, 90 FERC ¶ 61,202, at P 130 (2000) ("[W]e clarify that, in the event of a conflict between [a business practice] and the *pro forma* tariff, the *pro forma* tariff controls.") (as codified in 18 C.F.R. Part 37)); APS March 25 Answer at 7.

<sup>48</sup> NRS March 25 Answer (citing *Powerex Corp.*, 138 FERC ¶ 61,188 (2012), *reh'g denied*, 139 FERC ¶ 61,226, at P 16 (2012) (finding that first-in-time principles govern in a dispute concerning queue priority based on a potential failure to comply with business practices if there is no misconduct and the queue was processed transparently)); APS March 25 Answer at 8.

<sup>49</sup> NRS states that, beginning in January 2014, it participated in a series of negotiations with Iberdrola for Iberdrola to purchase 300 MW of the transmission

(continued ...)

23. NRS also requests that the Commission reject Iberdrola's argument that APS's March 8, 2011 revision to its January 25, 2011 transmission service requests constitutes a new service request and, therefore, has a queue position behind Iberdrola's March 7, 2011 transmission service requests. NRS explains that the term "NEWPOINT" is a temporary placeholder for use until the transmission provider establishes the actual delivery point. Thus, NRS contends that APS's revision served to clarify the delivery point in OASIS and did not change its requested delivery point.<sup>50</sup> However, in the event that the Commission determines that NRS should have listed "NEWPOINT" as its point of delivery in its January 25, 2011 transmission service requests, NRS requests waiver of APS's OASIS instructions so that APS may process NRS's transmission service requests according to first-in-time principles.<sup>51</sup> For these reasons, NRS and APS argue that the Commission should reject Iberdrola's arguments and find that NRS's January 25, 2011 transmission service requests are first in APS's transmission queue for service to the APS-CAISO interface.<sup>52</sup>

### **C. Motion for Expedited Action and Joint Comments**

24. NRS and Pattern explain that NRS has expanded its wind generation projects to include an additional 200 MW for a total of 497 MW, all intended for sale into CAISO. NRS and Pattern add that Pattern has acquired NRS's generation facilities and that Pattern has entered into a power purchase agreement for 297 MW with a California utility. In addition, NRS and Pattern expect Pattern to execute another power purchase agreement with a California utility for the remaining 200 MW and, therefore, are relying on the transmission service underlying the Service Agreements to fulfill these contractual obligations.<sup>53</sup> NRS and Pattern also state that they plan to close on the necessary

---

capacity NRS would receive from APS. Thus, NRS claims that Iberdrola was aware that NRS held the first position in APS's transmission queue. NRS April 23 Answer at 7. *See also* APS March 25 Answer at 6.

<sup>50</sup> NRS March 25 Answer at 14 n.34.

<sup>51</sup> *Id.* at 15-16 (citing *EDF Renewables N. Am. LLC*, 149 FERC ¶ 61,069, at PP 12-13 (2014); *Aragonne Wind, LLC*, 145 FERC ¶ 61,106, at PP 18-21 (2013)); NRS April 23 Answer at 8.

<sup>52</sup> NRS March 25 Answer at 8; NRS April 23 Answer at 2, 8; APS March 25 Answer at 10; APS March 25 Answer at 3-4.

<sup>53</sup> NRS and Pattern September 14 Motion at 2.

financing arrangements in mid-November 2015 and that NRS's project must enter commercial operation before 2017 to qualify for federal production tax credits. Thus, NRS and Pattern request that the Commission issue an order on the proposed Service Agreements by November 10, 2015, consistent with the relief previously requested by NRS in this docket.<sup>54</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

##### **B. Substantive Matters**

27. We accept this filing subject to condition, as discussed further below.<sup>55</sup>

##### **1. Point of Delivery**

28. As proposed, APS's two unexecuted Service Agreements with NRS for long-term firm point-to-point transmission service reflect a point of receipt of the Four Corners 345 kV bus and a point of delivery of the Four Corners 500 kV bus. We find that, at the time NRS submitted its January 25, 2011 transmission service requests, the future location of the APS-CAISO interface was uncertain; however, NRS, and the other APS transmission customers in APS's transmission queue, unambiguously intended to request transmission service from APS to the APS-CAISO interface, wherever it may be. Here, APS, in deciding to process its transmission queue for the APS-CAISO interface prior to the transfer of capacity rights from SoCal Edison to APS, has tendered the two

---

<sup>54</sup> *Id.* at 2-3; NRS and Pattern Comments at 7.

<sup>55</sup> The Commission can revise a proposal filed under section 205 of the FPA as long as the filing utility accepts the change. *See City of Winnfield, La. v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). A utility is free to indicate that it is unwilling to accede to the Commission's conditions in this order by withdrawing its filing.

unexecuted Service Agreements to NRS reflecting a delivery point only to the Four Corners 500 kV bus. We find that the Service Agreements, as proposed, are inconsistent with NRS's transmission service requests, which requested a point of delivery of the APS-CAISO interface. Such a result would impose on NRS, and the other transmission customers who requested to transmit their power to CAISO, unnecessary business risk given the uncertainty regarding whether those customers can obtain transmission service to CAISO from the Four Corners 500 kV bus in the event that the APS-CAISO interface changes to a different location on APS's system.

29. Instead, we find that, given the specific facts presented in this case, it is appropriate to allow NRS to retain its requested delivery point, which is the APS-CAISO interface, in the event that this interface changes. This finding is not inconsistent with section 22.2 of APS's OATT because it is APS, the transmission provider, that is changing the transmission customer's point of delivery, not the transmission customer. Section 22.2 of APS's OATT states that "any request by a transmission customer to modify receipt and delivery points on a firm basis shall be treated as a new request for service;" however, in this case, it is not NRS who is changing its requested point of delivery, but rather APS. It is APS's unilateral business decision to obtain SoCal Edison's capacity rights on the Four Corners-Eldorado Line, and this decision should not adversely affect the APS transmission customers that submitted good faith transmission service requests, which reflect their intent to transmit power to CAISO.

30. Notably, this is not a situation where the transmission customer is requesting a change to its previously requested delivery point so that it can pursue a different business opportunity. In fact, APS asserts that there are 39 transmission service requests, including NRS's, in the transmission queue that represent requests for service between the Four Corners 345kV bus and Willow Beach, the expected APS-CAISO interface. Of these, APS states that 15 transmission service requests originally requested service to the Moenkopi substation, eight requested service to the Eldorado substation, and the rest specified "NEWPOINT" as the point of delivery.<sup>56</sup> Clearly, there was significant confusion among all of APS's transmission customers concerning where the new APS-CAISO interface would be located and how to properly reflect that location as their requested delivery point into CAISO. Thus, based on these facts, we find that there was no ambiguity as to where NRS requested to deliver its power, and that the Service Agreements as filed do not properly reflect the transmission service requested.

31. For these reasons, we accept the two unexecuted Service Agreements between APS and NRS, subject to condition, and direct APS to submit a compliance filing within

---

<sup>56</sup> APS September 14 Supplement at 6.

30 days of the date of this order to revise the point of delivery listed in both Service Agreements to indicate delivery to the APS-CAISO interface, or such scheduling point(s) that will be used to specify that interface wherever it is on the Four Corners-Eldorado Line. We note that the APS-CAISO interface is currently located at the Four Corners 500 kV bus; however, should this interface change as a result of SoCal Edison's planned transfer of capacity rights to APS, the point of delivery under the respective Service Agreements should appropriately be deemed the new scheduling point at the APS-CAISO interface.

32. Similarly, we also direct APS to provide this flexibility to its other transmission customers, including Iberdrola, with transmission service requests pending in its transmission queue for service to the APS-CAISO interface. We find that extending this flexibility to all of APS's transmission customers who have requested service to the APS-CAISO interface will ensure that these customers are served on a first-come, first-served basis, consistent with both APS's OATT and longstanding Commission policy.

## **2. Queue Priority**

33. We reject Iberdrola's argument that APS's March 8, 2011 revision to the delivery point listed in NRS's January 25, 2011 transmission service requests for transmission service to the APS-CAISO interface constitutes a new transmission service request under section 22.2 of APS's OATT, which would have resulted in a new queue position for NRS's transmission service requests as of that date. Therefore, we conclude that NRS is first in APS's transmission queue for service to the APS-CAISO interface.

34. We also agree with APS that its transmission customers are not required to designate their point of delivery as "NEWPOINT" when requesting service to an unposted or new transmission path. Instead, APS's OASIS instructions identify the term "NEWPOINT" as one possible method for transmission customers to reflect that their requested service is for capacity over a new or unposted transmission path. Further, we agree with APS that its New Path OASIS Instructions are not mandatory and do not constitute a formal APS business practice or OATT provision, which is evidenced by the fact that 23 of the 39 transmission service requests pending in APS's transmission queue for service to the APS-CAISO interface did not reflect "NEWPOINT" as their requested point of delivery.<sup>57</sup> Therefore, we conclude that NRS made no error in designating its point of delivery as the Moenkopi substation in its January 25, 2011 transmission service requests, and APS correctly accepted these transmission service requests into its transmission queue.

---

<sup>57</sup> *Id.*

35. Moreover, it was clear that NRS sought transmission service to the APS-CAISO interface, which was expected to change following NRS's January 25, 2011 submission of the transmission service requests at issue.<sup>58</sup> NRS clarified its intent by identifying its requested delivery point as "the Arizona-Nevada border . . . to the extent the Moenkopi substation is no longer the [CAISO] interface," which APS further clarified by updating the status field of NRS's transmission service requests in OASIS to identify the CAISO path.<sup>59</sup> This information was available to APS's transmission customers, including Iberdrola, for more than four years prior to APS's initial filing of the unexecuted Service Agreements, and Iberdrola has not chosen to challenge this matter until now. Thus, we reject Iberdrola's assertion that it is first in the queue for service to the APS-CAISO interface because nothing in the record reflects any misunderstanding regarding NRS's request for service to the APS-CAISO interface.

36. We also reject Iberdrola's argument that APS's March 8, 2011 revision of the point of delivery reflected in NRS's January 25, 2011 transmission service requests constitutes a new request for service under section 22.2 of APS's OATT and a new queue position as of that date. For the same reasons discussed above, we note that it was the transmission provider, APS, not the transmission customer, who revised the delivery point in an attempt to clarify it. Thus, we find that APS correctly accepted NRS's January 25, 2011 transmission service requests as first in the queue for service to the APS-CAISO interface over the Four Corners-Eldorado Line.

The Commission orders:

(A) APS's proposed Service Agreements are hereby accepted subject to condition, effective as of the date of this order, as discussed in the body of this order.

---

<sup>58</sup> Notably, NRS's January 25, 2011 transmission service request did not request service to the Four Corners 500 kV bus, the current APS-CAISO interface, because NRS sought a different transmission service, one that would deliver its power to CAISO at the new interface, which was thought to be located at the Arizona-Nevada border.

<sup>59</sup> NRS March 25 Answer at 7-9.

(B) APS is hereby directed to submit a compliance filing to modify the Service Agreements within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.