

153 FERC ¶ 61,275
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tucson Electric Power Company

Docket No. ER15-124-003

ORDER DENYING REHEARING

(Issued December 4, 2015)

1. On May 1, 2015, the Commission issued an order that accepted three late-filed firm point-to-point transmission service agreements (TSAs) and one timely-filed firm point-to-point TSA between Tucson Electric Power Company (Tucson) and Salt River Project Agricultural Improvement and Power District (Salt River Project) together with certain notices of termination.¹ In this order, we deny Alterna Springerville LLC's and LDVF1 TEP LLC's (collectively, Alterna) request for rehearing of the May 1 Order.

I. Background

2. In March 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 a separate transaction between the parties (March 2010 TSA).² Tucson represented that the parties intended for the

¹ *Tucson Elec. Power Co.*, 151 FERC ¶ 61,088, at PP 22, 26 (2015) (May 1 Order).

² On November 12, 2014, Tucson filed an application under section 203 of the Federal Power Act, 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 (Transaction). On May 1, 2015, the Commission issued an order authorizing the Transaction. *Tucson Elec. Power Co.*, 151 FERC ¶ 61,089 (2015).

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).³ Tucson indicated that the TSAs reflected a transmission rate that is economically equivalent to the costs that Salt River Project would have incurred as an owner of transmission capacity on the Springerville-Coronado Line, i.e., had the Transaction been consummated. 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.

3. On October 17, 2014, as amended on November 21, 2014 and March 2, 2015, Tucson submitted the four TSAs. Tucson requested 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. Tucson simultaneously filed notices of termination for the three expired TSAs.

4. On November 7, 2014, Alterna filed a complaint, in Docket No. EL15-17-000, alleging that Tucson denied Alterna firm transmission service rights to Alterna's preferred delivery point at Palo Verde in favor of transmitting Tucson's own generation and generation owned by others (including Salt River Project). On February 19, 2015, the Commission denied Alterna's complaint on the basis that Alterna failed to show that Tucson was required to provide firm transmission service from Springerville Unit 1 to the point of interconnection of Tucson's transmission system at Palo Verde, as requested by Alterna.⁴ The Commission also found that Tucson did not violate its OATT by failing to set aside transfer capability for Alterna, and that Tucson had 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. Furthermore, in the Complaint Order, the Commission denied Alterna's request for the same discounted rates charged to Salt River Project because Alterna requested transmission service over a

³ Tucson noted 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 at 6.

⁴ *Alterna Springerville LLC v. Tucson Elec. Power Co.*, 150 FERC ¶ 61,094 (2015) (Complaint Order).

different path, to a different point of delivery, than Salt River Project. On March 23, 2015, Alterna filed a request for rehearing of the Complaint Order, which the Commission denied on October 30, 2015.⁵

5. In the May 1 Order, the Commission found that the proposed TSAs are just and reasonable, and accepted them for filing. However, the Commission denied Tucson's requested waiver of the Commission's prior notice requirement, and the March 2010 TSA, March 2013 TSA, and September 2013 TSA, and the notices of termination of those TSAs were accepted for filing, effective December 17, 2014. The September 2014 TSA was accepted for filing, effective September 17, 2014, as requested.⁶ The Commission noted that the additional transfer capability over the Springerville-Coronado Line and the transmission service provided to Salt River Project pursuant to the proposed TSAs were the direct result of Salt River Project's incremental investment in the Springerville-Coronado Line and its future acquisition of an ownership interest in the line. The Commission also found the situation unique, because the rates proposed in the TSAs were not based on the average system costs of Tucson's transmission system, but rather reflect the carrying and operation and maintenance costs that Salt River Project would incur as a partial owner of the Springerville-Coronado Line.⁷ Furthermore, the Commission explained that no other parties are entitled to the same discounted rates because no other party was similarly situated, i.e., no other party had the same point of delivery and point of receipt along the same path.⁸ The Commission also noted 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 a joint development plan between the parties.⁹ Moreover, the Commission observed that no party protested the proposed rates reflected in the TSAs. Accordingly, the Commission found that the rates under the TSAs appeared just and reasonable, and noted that they had not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

⁵ *Alterna Springerville LLC v. Tucson Elec. Power Co.*, 153 FERC ¶ 61,125 (2015).

⁶ May 1 Order, 151 FERC ¶ 61,088 at P 26.

⁷ *Id.* P 22.

⁸ *Id.* P 23 (citing Tucson OATT, Schedule 7, which only requires Tucson to offer the same discounted rate to customers on unconstrained transmission paths with the same point of delivery).

⁹ *Id.* (citing Tucson March 2, 2015 Filing, Attachment 1, section 4.4).

6. In addition, the Commission denied Alterna's request to suspend the TSAs for a maximum suspension period of five months and condition the acceptance of the TSAs on the outcome of the complaint proceeding in Docket No. EL15-17-000.¹⁰ Because the complaint had previously been denied in that proceeding, the Commission concluded that Alterna's request to condition the outcome of this proceeding on the complaint was moot.¹¹

II. Request for Rehearing

7. On June 1, 2015, Alterna filed a request for rehearing of the May 1 Order, arguing that the Commission erred in determining that Alterna's request to suspend the TSAs and defer action in this proceeding, pending the outcome of the complaint proceeding, was moot.¹² Alterna also claims that the May 1 Order is otherwise premature and unjustified because it relies upon erroneous findings in the Complaint Order that are pending rehearing.

8. Alterna further alleges that the Commission erred in finding that Tucson has not engaged in undue discrimination or preference in providing Salt River Project transmission service under the TSAs, when, according to Alterna, Tucson has denied transmission service to Alterna under a 1992 agreement between the two parties. Alterna contends that, in the May 1 Order, the Commission failed to independently analyze the facts, and, instead, relied on the Complaint Order as the sole basis for the conclusion that "Tucson has not engaged in undue discrimination or preference in providing transmission service to Salt River Project."¹³ Alterna states that the Commission's conclusion is legally erroneous because it relies on conclusions that are pending rehearing, and is factually erroneous because Alterna argues it is entitled to priority service on the Tucson transmission system that may be impacted by service Tucson provides to Salt River Project pursuant to the TSAs.

¹⁰ *Id.* P 24.

¹¹ *Id.* (citing Complaint Order, 150 FERC ¶ 61,094 at P 39).

¹² Alterna Rehearing Request at 6 (citing *Enron Power Mktg., Inc.*, 119 FERC ¶ 63,013, at P 147 (2007); *Honig v. Doe*, 484 U.S. 305, 317 (1988); *Weston*, 194 F.3d 145, 147-48 (D.C. Cir. 1999)).

¹³ *Id.* at 7 (citing May 1 Order, 151 FERC ¶ 61,088 at P 24).

9. Alterna asserts that the May 1 Order's finding that the transmission path utilized by Salt River Project has no impact on available transfer capability over the transmission path requested by Alterna ignores elementary principles of physics,¹⁴ and that the well-established principle of Kirchhoff's Law recognizes that energy will flow on the path of least resistance.¹⁵ Alterna states that the Springerville-Coronado Line is an alternating current line, and Salt River Project can flow power in either direction between Coronado and Springerville. Alterna claims that, when electricity is being transmitted from Coronado to Springerville, some of the electrons will spill onto other portions of the Tucson transmission system, which will, in turn, affect the amount of available transfer capability on other segments. According to Alterna, Tucson may calculate available transfer capability that includes Salt River Project's electrons and determine that available transfer capability is insufficient for Alterna's output, effectively granting Salt River Project priority over Alterna's pre-existing priority transmission rights.¹⁶

III. Commission Determination

10. We will deny Alterna's request for rehearing of the Commission's denial of Alterna's request to defer action in this proceeding pending the outcome of the complaint proceeding in Docket No. EL15-17-000. As noted above, on October 30, 2015, the Commission issued an order denying Alterna's request for rehearing of the Complaint Order.¹⁷

11. We also will deny Alterna's request for rehearing of the Commission's finding that Tucson did not engage in undue discrimination or preference in providing Salt River Project transmission service under the TSAs. We disagree with Alterna's assertion that the Commission failed to independently analyze the facts, and instead relied solely on the Complaint Order for the finding that Tucson did not engaged in undue discrimination or

¹⁴ *Id.* at 8 (citing May 1 Order, 151 FERC ¶ 61,088 at P 24).

¹⁵ *Id.* (citing *Pub. Serv. Co. of Ind., Inc.*, Opinion No. 349, 51 FERC ¶ 61,367, at n.54 (1990)).

¹⁶ *Id.* (citing North American Electric Reliability Corporation Reliability Standard MOD-001-1a and stating that "MOD-001-1a requires [available transfer capability] calculations to account for grandfathered rights. [Tucson] has not complied with this requirement in failing to carve out sufficient capacity to service [Alterna's] transmission rights under the [1992 agreement]").

¹⁷ *See Alterna Springerville LLC v. Tucson Elec. Power Co.*, 153 FERC ¶ 61,125.

preference in providing transmission service to Salt River Project.¹⁸ On the contrary, based on the record in this proceeding, the Commission found that the additional transfer capability over the Springerville-Coronado Line and the transmission service provided to Salt River Project pursuant to the TSAs was the direct result of Salt River Project's investment in transmission upgrades, and that, but for Salt River Project's investment in the facilities, there would be no additional capacity to provide the transmission service under the TSAs.¹⁹ In addition, based on the record, the Commission found that no other parties are similarly-situated to Salt River Project, i.e., no other parties have the same point of delivery and same point of receipt along the same transmission path, and, therefore, no other parties were entitled to the same discounted rate reflected in the TSAs (a rate that was not protested by any party).²⁰ Notably, Alterna has not demonstrated that it is similarly-situated to Salt River Project, nor does Alterna seek service over the same transmission path described in the TSAs.

12. Moreover, we find unpersuasive Alterna's arguments that the May 1 Order "ignores elementary principles of physics," because "energy will flow on the path of least resistance," and, therefore, "Salt River Project's electrons [may result in Tucson determining] that available transfer capability is insufficient for Alterna's output, effectively granting Salt River Project priority over Alterna's pre-existing priority transmission rights."²¹ Alterna's arguments ignore the process of determining available transfer capability under Tucson's OATT, where available transfer capability is calculated on each transmission segment separately.²² In fact, the transfer capability associated with these TSAs is deducted in the calculation of available transfer capability on the Springerville to Coronado line only, and has no impact on the available transfer capability on the segment from Springerville to Palo Verde, contrary to Alterna's assertion. Therefore, we reject Alterna's arguments on this point.

¹⁸ Alterna Rehearing Request at 7.

¹⁹ May 1 Order, 151 FERC ¶ 61,088 at P 22.

²⁰ *Id.* P 23.

²¹ Alterna Rehearing Request at 7-8.

²² *See* Tucson OATT, Attachment C.

The Commission orders:

Alterna's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.