

156 FERC ¶ 61,006
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. ER16-1342-000

ORDER ACCEPTING NOTICE OF CANCELLATION OF RATE SCHEDULE AND
REJECTING PROPOSED RATEMAKING AND ACCOUNTING TREATMENT

(Issued July 1, 2016)

1. On April 1, 2016, pursuant to section 205 of the Federal Power Act (FPA)¹ and section 35.15 of the Commission's regulations,² Arizona Public Service Company (APS) filed a notice of cancellation of Rate Schedule 38, a transmission service agreement (Agreement) under which APS provides dedicated transmission service to Southern California Edison Company (SoCal Edison) over the Four Corners-Eldorado Line. APS and SoCal Edison entered into the Agreement on July 20, 1966,³ and APS states that the Agreement expires on its own terms on July 6, 2016.⁴ In its filing, APS requests that the Commission permit it to: (1) pay SoCal Edison a \$12,688,457 negotiated reimbursement pursuant to section 25.4 of the Agreement, which APS asserts represents the difference between its net investment in the Four Corners-Eldorado Line and the line's "beneficial use" to APS once the Agreement terminates; (2) record the \$12,688,457 reimbursement payment as a regulatory asset and begin recovering it in APS's next Open Access Transmission Tariff (OATT) formula rate filing; and (3) make related accounting entries on its books.

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.15 (2015).

³ APS filed the Agreement with the Federal Power Commission on June 30, 1967, and the Commission accepted the filing on September 29, 1967.

⁴ APS Filing at 1-3.

2. In this order, we accept APS's notice of cancellation, effective July 6, 2016, as requested. In addition, we find that APS has failed to support the \$12,688,457 reimbursement payment to SoCal Edison. Accordingly, we reject APS's proposal to record this amount as a regulatory asset, recover it in APS's OATT formula rates and make related accounting entries on its books. Finally, we refer to the Commission's Office of Enforcement certain issues related to the Agreement's termination.

I. Background and Instant Filing

3. Pursuant to the Agreement, APS agreed to construct, own, operate, and maintain a 1,550 MW, 500 kV transmission line from the Four Corners Power Plant to the Arizona-Nevada border (Four Corners-Eldorado Line) for SoCal Edison to transmit its portion of the Four Corners Power Plant output to California.⁵ In exchange for SoCal Edison's exclusive use of the Four Corners-Eldorado Line, SoCal Edison agreed to pay APS monthly transmission charges based on the sum of APS's investment in the line.⁶ The monthly transmission charges under the Agreement flow from a formula rate that includes a fixed 3.25 percent depreciation rate designed to recover APS's original investment over the term of the Agreement, based on straight-line, remaining life depreciation.

4. On May 2, 2013, APS filed a notice of cancellation of the Agreement and a request for authorization to defer as a regulatory asset a negotiated \$40 million early termination payment from APS to SoCal Edison.⁷ On September 13, 2013, the Commission accepted the notice of cancellation, but rejected APS's proposal to recover the \$40 million termination payment to SoCal Edison in its wholesale rates.⁸ The Commission found that APS had failed to: (1) justify including the termination payment in its wholesale rates; (2) substantiate the purported benefits to customers; or (3) support a termination payment greater than the depreciated original cost of the line.

⁵ The Agreement refers to the Four Corners-Eldorado Line as the "Arizona Transmission System." *See id.*, Ex.1, section 5.3.

⁶ *Id.* at 4-5.

⁷ In its May 2, 2013 filing, APS requested that the Agreement terminate on either: (1) the date on which SoCal Edison sells and transfers its interests in Units 4 and 5 at the Four Corners Four Corners Power Plant to APS; or (2) July 6, 2016. *See* APS May 2, 2013 Filing, Docket No. ER13-1402-000 (filed May 2, 2013).

⁸ *Ariz. Pub. Serv. Co.*, 144 FERC ¶ 61,200, at PP 14-16 (2013), *reh'g denied*, 147 FERC ¶ 61,017 (2014).

5. On December 30, 2013, SoCal Edison filed an Assignment Agreement and a Resale Tariff with APS as an alternative means to consummate the \$40 million payment that APS had originally proposed. On February 27, 2014, the Commission rejected SoCal Edison's filing, finding that the proposed Assignment Agreement constituted a modification of the grandfathered Agreement, which would require the related transmission service to be provided pursuant to APS's OATT.⁹

6. APS and SoCal Edison subsequently notified the Commission of their decision not to terminate the Agreement and requested that the Commission modify the effective date of the Agreement's cancellation to reflect the date on which the Agreement terminates pursuant to its own terms.¹⁰ In the instant filing, APS represents that the Agreement will expire on July 6, 2016.

A. Notice of Cancellation

7. APS asserts that its filing complies with section 35.15(a) of the Commission's regulations, which requires APS to submit its notice of cancellation at least 60 days, but no more than 120 days, before the Agreement's termination date. APS states that its filing likewise complies with the Commission's directive that APS file the notice of cancellation under section 205 of the FPA when the Agreement terminates by its own terms.¹¹ Accordingly, APS requests that the Commission accept the notice of cancellation, effective July 6, 2016, the date that the Agreement expires on its own terms.

B. APS's Calculation of the Reimbursement Payment Under Section 25.4 of the Agreement

8. APS represents that the Four Corners-Eldorado Line has a remaining useful life that substantially exceeds the term of the Agreement. APS explains that the cost-based rate set forth in the Agreement was designed to recover all of APS's costs associated with the Four Corners-Eldorado Line over the term of the Agreement because APS had no independent need; rather, APS built the system solely to facilitate SoCal Edison's

⁹ *So. Cal. Edison Co.*, 146 FERC ¶ 61,136, at PP 24-26 (2014), *reh'g denied*, 148 FERC ¶ 61,120 (2014).

¹⁰ The Commission notified APS that it must submit a notice of cancellation pursuant to section 205 of the FPA when the Agreement terminates on its own terms. *Ariz. Pub. Serv. Co.*, Docket No. ER13-1402-003 (Jan. 3, 2014) (delegated letter order) (APS Delegated Letter Order).

¹¹ *Id.*

transmission of its portion of the output from Four Corners to its load in California. APS states that it and SoCal Edison recognized that the formulaic cost-based rate could, in certain circumstances, over- or under-recover certain cost components.¹² Accordingly, the Agreement contains a reimbursement provision that states, at section 25.4:

Upon the expiration of the term of this agreement . . . , if the investment in the [Four Corners-Eldorado Line] has not been fully amortized and/or depreciated, the parties agree to negotiate equitable terms under which [APS] or [SoCal Edison] shall be reimbursed, by the other, consideration being given to the Net Investment, removal costs and salvage value, and, under the circumstances then prevailing, the beneficial use to [APS] of the [Four Corners-Eldorado Line].¹³

9. APS states that the Four Corners-Eldorado Line has not been fully amortized or depreciated and, therefore, the parties have negotiated a reimbursement payment. Specifically, APS states that, with SoCal Edison, it has calculated a \$12,688,457 reimbursement payment by subtracting the line's remaining beneficial use (\$43,337,647) from the sum of APS's net investment (\$30,649,190), salvage value (\$0), and removal costs (\$0), and that the resulting negative amount reflects a payment from APS to SoCal Edison.¹⁴

10. APS states that it calculated the \$30,649,190 net investment component of the reimbursement provision by subtracting the accumulated depreciation balance for the facilities from the total original cost of the facilities as reflected on SoCal Edison's monthly billing statements, pursuant to section 9.1.1.1 of the Agreement.¹⁵

11. For the salvage and removal components of the reimbursement provision, APS states that section 25.4 of the Agreement contemplates that APS would remove the Four Corners-Eldorado Line from service when the Agreement expires, and that the

¹² APS Filing at 4.

¹³ *Id.* at Ex. 1, section 25.4.

¹⁴ *Id.* at 5.

¹⁵ APS states that net investment is a contractually defined term: “[n]et investment in the [Four Corners-Eldorado Line] as of any given time shall be deemed to be the total amount of its investment calculated . . . as of that time, less the straight line depreciation . . . and amortization . . . accumulated to that time.” *Id.* at Ex. 1, section 9.1.1.1.

parties would develop salvage and removal values at that time. However, APS states that it now plans to operate the line to serve its native load and offer transmission service to third-party customers over an extended service life that substantially exceeds the Agreement's term. As a result, APS states that it will not remove or salvage the line for the foreseeable future. Moreover, APS explains that it has already charged or credited SoCal Edison for removal costs or salvage value over the term of the Agreement and that these values are reflected in its calculation of net investment. For these reasons, APS states that it has agreed with SoCal Edison to assume all remaining removal costs and retain any salvage value when it ultimately removes the Four Corners-Eldorado Line from service. Accordingly, APS states that the salvage and removal costs under section 25.4 of the Agreement are \$0.¹⁶

12. Regarding the "beneficial use" component of the reimbursement provision, APS states that it and its customers will receive the benefit of using these facilities over the remainder of their useful life. APS further states that it expects to use a portion of the capacity to serve native load customers and that there is a significant queue of transmission service requests pending, indicating that the facilities will continue to be used and useful over the remaining life. APS also notes that revenue credits from third-party transmission service it will offer once the Agreement expires will benefit its retail customers. To calculate the value of this "beneficial use," APS states that SoCal Edison and APS agreed to re-compute the depreciation charged to SoCal Edison over the life of the Agreement,¹⁷ using APS's Commission-approved transmission depreciation rate, from the Agreement's inception through the Four Corners-Eldorado Line's extended service life that APS now foresees. According to APS, this calculation results in \$43,337,647 of remaining "beneficial use" to APS.¹⁸

13. Finally, to calculate the reimbursement payment, APS netted the \$30,649,190 net investment (that APS contends SoCal Edison owes APS) against the \$43,337,647 in beneficial use (that APS contends it owes SoCal Edison), and that, as a result, APS states that it owes SoCal Edison a reimbursement payment of \$12,688,457. According to APS, this calculation reflects the amount by which APS overcharged SoCal Edison for depreciation expense over the Agreement's life, given the estimated remaining life of the facilities after the Agreement expires. Further, APS requests that the Commission defer

¹⁶ APS Filing at 5-6.

¹⁷ APS states that the Agreement's term is 50 years. *Id.* at 4.

¹⁸ *Id.* at 6.

to the parties' calculation of the reimbursement payment under section 25.4 of the Agreement.¹⁹

C. Request for Approval of Proposed Regulatory Asset and Related Accounting Treatment

14. APS seeks Commission authorization to record the \$12,688,457 reimbursement payment to SoCal Edison as regulatory asset and recover it in its OATT formula rates. APS states that, in order to begin recovering the \$12,688,457 reimbursement payment in its OATT formula rates this year, it must include the payment in its next OATT formula rate filing, which it must make by May 15, 2016. In addition, APS asks that the Commission approve the following related accounting entries: (1) a \$12,688,457 debit to Account 454, Rent from Electric Property; and (2) a corresponding credit to Account 242, Miscellaneous Current and Accrued Liabilities.²⁰

II. Notice and Responsive Pleadings

15. Notice of APS's filing was published in the *Federal Register*, 81 Fed. Reg. 21,858 (2016), with protests and interventions due on or before April 11, 2016.²¹ Avangrid Renewables, LLC (Avangrid) and the Navajo Tribal Utility Authority (NTUA)²² filed timely motions to intervene. The City of Los Angeles Department of Water & Power (LADWP) filed an untimely motion to intervene. SoCal Edison and M-S-R Public Power Agency (M-S-R) filed timely motions to intervene and comments. On May 4, 2016,

¹⁹ *Id.* at 5-6.

²⁰ *Id.* at 7-8.

²¹ *Id.* at 8.

²² NTUA is a public utility and an enterprise of the Navajo Nation that provides for the operation, maintenance, and expansion of electric, communications, natural gas, water, wastewater, and generation (primarily solar) services for the Navajo people. NTUA also takes transmission service from APS. NTUA Comments at 1.

NTUA filed a motion for leave to file late comments, under Rule 214 (d) of the Commission's regulations,²³ on behalf of itself and the Navajo Nation.²⁴

16. On May 9, 2016, APS filed an answer to NTUA's comments. On May 10, 2016, Pattern Energy Group LP (Pattern Energy), on behalf of its subsidiaries, Broadview Energy JN, LLC, Broadview Energy KW, LLC, and Grady Wind Energy Center, LLC, filed a late motion to intervene and an answer to NTUA's comments. Also on May 10, 2016, Avangrid filed a motion for leave to answer and an answer to NTUA's comments.

17. M-S-R states that SoCal Edison should credit its transmission customers with any revenue SoCal Edison receives from APS when the Agreement terminates, and notes that SoCal Edison has previously agreed to do so.²⁵ Accordingly, M-S-R submits that the Commission should condition its acceptance of the cancellation on SoCal Edison's commitment to pass on any payment it receives from APS, pursuant to section 25.4 of the Agreement, to its transmission customers through its formula rate by crediting Account 565 (Transmission of Electricity by Others) in SoCal Edison's FERC Form 1, and in Account 565 (Transmission for Four Corners) in SoCal Edison's filed formula rate.²⁶

18. SoCal Edison states that it supports APS's request for rate recovery and will flow the amount to its transmission ratepayers through its formula rate.²⁷

A. **NTUA's Comments**

19. NTUA contends that the Commission should grant the Navajo Nation all of SoCal Edison's capacity on the Four Corners-Eldorado Line, once the Agreement expires, so that the Navajo Nation may serve both its native load and California loads with renewable energy and natural gas generation projects that it is developing on Navajo land. NTUA maintains that, but for the rights-of-way and leasehold interests that the

²³ 18 C.F.R. § 385.214 (2015).

²⁴ The Navajo Nation is a Native American territory that covers more than 27,000 square miles in Arizona, New Mexico, and Utah. NTUA Comments at P 7. The Navajo Nation did not file a motion to intervene.

²⁵ M-S-R Intervention and Comments at P 10.

²⁶ *Id.* P 12.

²⁷ SoCal Edison Intervention and Comments at 2.

Navajo Nation granted APS to build the Four Corners Power Plant within the Navajo Nation and transmit SoCal Edison's output across the Navajo Nation to California, there would be no Four Corners Power Plant and no Four Corners-Eldorado Line.

20. Further, NTUA states that, in 2013, while APS and SoCal Edison pursued the early termination of the Agreement, APS presented to the Navajo Nation Council, President's Office, and NTUA the option to have all of the transmission rights associated with the Four Corners-Eldorado Line assigned to the Navajo Nation through NTUA when the Agreement expires. NTUA contends that it accepted the offer with the Navajo Nation and entered into a confidentiality agreement to develop an agreement; however, NTUA states that APS subsequently and unilaterally informed the Navajo Nation that it was no longer interested in completing such an agreement.²⁸

21. In addition, NTUA states that the closure of Four Corners Units 1, 2, and 3 has economically devastated the Navajo Nation by inflicting an estimated \$86.8 million in lost taxes, fees, royalties, and jobs for 660 Navajo workers.²⁹ As a result, NTUA contends that the Commission should compensate the Navajo Nation for these losses by allowing it to assume SoCal Edison's transmission rights across the Navajo Nation, at fair compensation to APS, until APS's right-of-way expires in 2024.³⁰

22. Specifically, NTUA proposes two options: (1) the Navajo Nation will take the transmission rights on the Four Corners-Eldorado Line and appropriately compensate APS for the full value of those rights; or (2) APS will receive the transmission rights and grant the Navajo Nation full usage of those rights, without the need for the Navajo Nation to complete a transmission service request for the full value of those rights. NTUA concludes that these options, which would leave APS and SoCal Edison whole while also helping the Navajo Nation mitigate its economic losses, are in the public interest. Finally, if the Commission denies its requested relief, NTUA requests that the Commission institute a hearing or settlement procedures to resolve all issues of material fact.³¹

²⁸ NTAU Comments at PP 11, 18, 21.

²⁹ *Id.* P 12.

³⁰ *Id.* PP 21-22 and n.20.

³¹ *Id.* PP 22, 26, 28.

B. Answers to NTUA's Comments**1. APS's Answer**

23. APS argues that NTUA's comments are misplaced and irrelevant to the instant proceeding, which involves only the cancellation of the Agreement and the ratemaking and accounting treatment for the payment that APS proposes to make pursuant to section 25.4 of the Agreement. APS argues that the Commission should deny NTUA's requested relief in its entirety, on the grounds that it conflicts with the FPA, Order No. 888,³² and the terms and conditions of APS's OATT.³³

24. Specifically, APS claims that it has received 40 completed transmission service requests for capacity formerly dedicated to SoCal Edison under the Agreement, and that NTUA has not submitted any transmission service requests for this capacity. In addition, APS states that it fully compensated the Navajo Nation for APS's use of the land underlying the Four Corners-Eldorado Line as part of the Right-of-Way Agreement between APS and the Navajo Nation.³⁴ Further, APS states that it is unaware of any condition or requirement of the Right-of-Way Agreement that would require the Four Corners-Eldorado Line to be used only to transmit power generated within the Navajo Nation. Moreover, APS contends that the relief NTUA requests would confer an undue preference and advantage on NTUA, and subject the entities already in APS's transmission queue to undue prejudice and disadvantage. Finally, APS argues that NTUA has made no evidentiary showing that would justify abrogating the seven transmission service agreements that APS has already executed with third parties, in which APS has already made available 900 MW transmission capacity on the Four Corners-Eldorado Line.³⁵

³² *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, *clarified*, 76 FERC ¶ 61,009 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (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 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

³³ APS Answer at 1-2.

³⁴ *Id.* at Ex. A.

³⁵ *Id.* at 5-7.

2. Avangrid's Answer

25. Avangrid argues that the Commission should reject NTUA's arguments as beyond the scope of the proceeding because NTUA does not object to APS's filing of the notice of termination. Further, Avangrid contends that NTUA's request for the capacity rights over the Four Corners-Eldorado Line is inconsistent with the open access framework that Order Nos. 888 and 890 established.³⁶ Avangrid states that it submitted transmission service requests for capacity on the line over five years ago, and that NTUA is only now stepping forward for the first time, requesting capacity over the line without complying with the terms and conditions of APS's OATT. Avangrid contends that any grant of transmission rights would undermine the orderly process for requesting transmission service established in Order No. 888. Avangrid argues that NTUA's unilateral expectations provide no basis for granting priority access to transmission outside of the OATT framework.³⁷

3. Pattern Energy's Motion to Intervene and Answer

26. Pattern Energy states that it takes no position on the notice of cancellation's rates, terms, and conditions.³⁸ However, Pattern Energy states that it has a direct and substantial interest in the outcome of the proceeding because its subsidiaries hold confirmed "first-in-time" priority access across the Four Corners-Eldorado Line, which they properly reserved under APS's OATT and memorialized in transmission service agreements with APS.³⁹ Pattern Energy urges the Commission to deny the relief that NTUA requests because it would confer preferential access to the Four Corners-Eldorado Line and deprive Pattern Energy's subsidiaries of their reasonable economic expectations and contractual rights. Finally, Pattern Energy argues that NTUA's requested relief is outside of the scope of the proceeding because it is a request for equitable relief based on

³⁶ Avangrid Answer at 6 (citing Order No. 888, *supra* note 32; *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

³⁷ *Id.* at 5-9.

³⁸ Pattern Energy Answer at 1, 8.

³⁹ *Id.* at 3 and n.8. *See also* *Ariz. Pub. Serv. Co.*, Docket No. ER15-192-002 (Jan. 14, 2016) (delegated letter order).

non-jurisdictional contracts that are neither before the Commission nor at issue in the proceeding.⁴⁰

III. Discussion

A. Procedural Matters

27. 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.

28. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the Commission will grant LADWP and Pattern Energy's late-filed motions to intervene, given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

29. 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 unless otherwise ordered by the decisional authority.⁴¹ We will accept APS's, Avangrid's, and Pattern Energy's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Notice of Cancellation

30. We will accept APS's timely notice of cancellation, in accordance with section 35.15 of our regulations, and will cancel the Agreement (i.e., Rate Schedule 38), effective July 6, 2016. Section 35.15 of the Commission's regulations provides that when a rate schedule, tariff, or service agreement or part thereof required to be on file with the Commission is proposed to be cancelled or terminated by its own terms and no new rate schedule, tariff, or service agreement or part thereof is to be filed in its place, a filing must be made to cancel such rate schedule, tariff, or service agreement or part thereof at

⁴⁰ Pattern Energy Answer at 3, 5-6, 10-12.

⁴¹ We note that NTUA captioned its protest as "comments." Regardless of how styled, it is in fact a protest, and we will treat it as one. *See, e.g., J. William Foley, Inc. v. United Illuminating Co.*, 142 FERC ¶ 61,125, at n.23 (2013) (citing *Stowers Oil & Gas Co., et al.; Northern Natural Gas Co., Div. of Internorth, Inc.*, 27 FERC ¶ 61,001, at 61,002 n.3 (1984) ("Nor does the style in which a petitioner frames a document necessarily dictate how the Commission must treat it.")). We will likewise treat the answers to NTUA as answers to a protest.

least 60 days but not more than 120 days prior to the date such cancellation or termination is proposed to take effect. APS has filed to terminate its currently effective Rate Schedule 38 consistent with section 35.15 of the regulations, and no party to this proceeding has contested the cancellation of the Rate Schedule. Thus, we will accept the notice of cancellation effective, as requested, July 6, 2016.

31. APS acknowledges in the instant filing that, on December 22, 2015, it entered into a subsequent “Agreement Concerning Expiration of Edison-Arizona Transmission Agreement” (Expiration Agreement). According to APS, the Expiration Agreement provides “(i) that the [Agreement] will expire according to its terms on July 6, 2016 and (ii) for the process for settling the obligations of the parties upon such expiration pursuant to [s]ection 25.4 of the [Agreement].”⁴²

2. Other Matters

32. APS has not filed the Expiration Agreement with the Commission. Consistent with FPA Section 205(c)⁴³ and the Commission’s *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*,⁴⁴ we find that the Expiration Agreement affects

⁴² APS Filing, Ex. 2 at 1.

⁴³ 16 U.S.C. § 824d (c) (2012). Section 205(c) of the FPA⁴³ states that:

... every public utility shall file with the Commission ... schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

⁴⁴ 64 FERC ¶ 61,139, *order on reh’g and clarification*, 65 FERC ¶ 61,081 (1993). In *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, the Commission set forth a two-part test for deciding whether an agreement is subject to the Commission’s jurisdiction under section 205 of the FPA. First, is the service at issue tied to wholesale sales or to transmission in interstate commerce or does it in any manner affect or relate to jurisdictional rates or service? Second, does a public utility provide the service? If the answer to both questions is yes, then the agreement is jurisdictional. *See Entergy Mississippi, Inc.*, 117 FERC ¶ 61,200, at PP 24-27 (2006) (*Entergy Mississippi*) (finding agreement jurisdictional under the two-part test); *cf. LG&E Energy Marketing, Inc.*, 123 FERC ¶ 61,147, at 9-10 (2008) (*LG&E*) (finding agreement not jurisdictional under the two-part test).

or relates to rates, terms, or conditions for transmission service over which the Commission has jurisdiction. Specifically, the Expiration Agreement revises the earlier Agreement by setting a new termination date. APS should have filed the Expiration Agreement with the Commission under section 205(c) of the FPA. Accordingly, APS must file the Expiration Agreement with the Commission under section 205(c) of the FPA within 30 days of the date of this order. Further, we will refer this matter to the Commission's Office of Enforcement for further examination and inquiry as may be appropriate. This is not the first instance in which APS has failed to file in a timely manner an agreement required by section 205 of the FPA and section 35.1 of the Commission's regulations, 18 C.F.R. § 35.1 (2015).⁴⁵ APS is reminded that it must submit required filings on a timely basis or face possible sanctions by the Commission.

3. Calculation of Payment by APS to SoCal Edison Under Section 25.4 of the Agreement

33. As noted above, section 25.4 of the Agreement states that, if the line is not fully amortized or depreciated when the Agreement expires, the parties may negotiate terms upon which to reimburse each other, in the event that the line is not fully depreciated with consideration given to the net investment, removal costs, salvage value, and "beneficial use." Further, because APS commits to bear all of the costs associated with the Four Corners-Eldorado Line's future salvage and removal, it reflects them as \$0 in the reimbursement calculation. Accordingly, APS's ratemaking proposal and payment turn on the net investment and "beneficial use" components of the reimbursement provision. We address each in turn.

a. APS's Net Investment Calculation

34. APS calculates the \$30,649,190 net investment by subtracting the accumulated depreciation balance for the facilities from the total original cost of the facilities, as reflected on SoCal Edison's monthly billing statements, pursuant to section 25.4 of the

⁴⁵ See, e.g., Docket Nos. ER14-1876-000, ER15-1386-000, and ER13-976-000. In addition, we note that APS's statements in the instant filing appear to be internally inconsistent and to conflict with statements in its filing in Docket No. ER13-1402-003 regarding the Agreement's termination date. APS's December 2013 Filing recognizes that Section 26 of the Agreement ties the termination date to the date that the Four Corners Power Plant site lease expires. APS has indicated that the Expiration Agreement terminates the Agreement as of July 6, 2016. According to APS's May 9 Answer to NTUA, APS extended the Four Corners lease to July 6, 2041 making July 6, 2041 the date that the Agreement expires by its own terms. Therefore, the potential conflicts with regard to these statements are also included in the referral.

Agreement. APS states that the billing worksheets attached to its filing show that APS has fully depreciated and recovered the initial cost of constructing the Four Corners-Eldorado Line over its service life and that the remaining \$30,649,190 in undepreciated investment represents the net book value of APS's capital additions after the line entered service.⁴⁶ We will accept, for purposes of the reimbursement calculation, APS's statement that its net investment in the Four Corners-Eldorado Line is \$30,649,190.⁴⁷

b. APS's "Beneficial Use" Calculation

35. APS calculates \$43,337,647 of "beneficial use" pursuant to section 25.4 of the Agreement. At the outset, we note that the Agreement does not define "beneficial use," and that it is not a term that the Commission employs in ratemaking or accounting. Accordingly, we analyze APS's "beneficial use" calculation within the context of section 25.4 and the cost-based formula rate in which it arises (i.e., a rate that APS designed to recover its original cost and all other costs of providing dedicated service to SoCal Edison over what APS represents to be the Four Corners-Eldorado Line's 50-year service life and the Agreement's 50-year term).

36. In addition, we note that, while section 25.4 of the Agreement as accepted by the Commission provides for the parties to negotiate a "beneficial use" value, the Commission's acceptance of section 25.4 does not bind the Commission to adopt whatever value the parties might negotiate in the future. Indeed, "beneficial use" is not a line item in the cost-based formula rate that the Agreement specifies in section 9, Billing and Payment for Transmission Service.⁴⁸ Rather, it is a component of the *rate-change* mechanism—i.e., Net Investment minus Removal Costs, minus Salvage Value, minus "Beneficial Use"—to which the parties "agreed to agree" as the final payment under the Agreement. As a rate change under section 205 of the FPA, APS's "beneficial use" calculation requires cost support and Commission review. However, APS did not file this rate change pursuant to section 35.13 of the Commission's regulations,⁴⁹ and

⁴⁶ APS Filing, at Ex. 2 at 5-6.

⁴⁷ We emphasize that this is not a merits determination, as the Commission has not audited APS's books or billing records.

⁴⁸ *Id.* Ex. 1 at section 9. Section 9 permits APS to bill SoCal Edison for APS's Investment Costs (return, depreciation and an amortization expense allowance), Changes in Plant Investment, Income Taxes, Property Taxes, Operation and Maintenance Expense, and Administrative and General Expense.

⁴⁹ 18 C.F.R. § 35.13 (2015).

provided no cost support for its calculation of the “beneficial use” component of its proposed reimbursement payment.

37. As discussed above, APS calculates “beneficial use” by re-computing its monthly depreciation charges to SoCal Edison, using “[Commission]-approved transmission depreciation rates,”⁵⁰ from the Agreement’s inception through the Four Corners-Eldorado Line’s extended service life—a period of time that APS’s filing does not specify. In other words, based on the unspecified extended service life, APS now seeks, for purposes of the “beneficial use” calculation, to revise retroactively the estimates and assumptions used to develop its depreciation rates, and effectively substitute new depreciation rates for those on file with the Commission since 1967.⁵¹

38. This is improper. First, we cannot approve a “beneficial use” calculation that rests on a service life estimate that APS has neither provided nor supported here. More importantly, under the Commission’s straight-line, remaining life depreciation method, utilities may implement changes in estimated service life *prospectively only*, over the remaining life of the assets.⁵² For this reason, the Commission cannot go back and, under the guise of a “beneficial use” calculation, effectively restate the depreciation rate and order a reimbursement payment that amounts to a refund for the difference between the

⁵⁰ APS Filing at 5.

⁵¹ *Id.* at 1.

⁵² *Carnegie Natural Gas Co.*, 60 FERC ¶ 61,166, at 61,606 and n.24 (1992) (depreciation charges rest on studies, practices, and information available at the time they were recorded; changes in depreciation estimates resulting from new information, subsequent developments, better insight, or improved judgement should be accounted for in the period of change and future periods, not through retroactive restatement of prior period depreciation amounts) (citing Accounting Principles Board Opinion No. 20, *Financial Accounting Standards Board Original Pronouncements* (1991)). *See also Va. Electr. and Power Co.*, 11 FERC ¶ 63,028 (1980), *aff’d*, Opinion No. 118, 15 FERC ¶ 61,052, at 61,107 (1981) (providing for prospective recovery of a depreciation deficiency); *Fla. Power Corp.*, 134 FERC ¶ 61,145, at PP 19-20 (denying a request to give back a depreciation reserve surplus); *Fla. Power Corp.*, 136 FERC ¶ 61,033, *reh’g denied*, 137 FERC ¶ 61,150 (2011) (denying request to adjust Account 108 for depreciation surplus).

depreciation that APS collected under the Agreement and what it would have collected had it originally set the Four Corners-Eldorado Line's service life longer.⁵³

39. Further, contrary to APS's assertions, the \$43,337,647 "beneficial use" calculation does not reflect "the under-recovery of various cost components" associated with providing dedicated service to SoCal Edison over the Agreement's term.⁵⁴ Indeed, with the exception of APS's depreciation and amortization expenses, which are the only fixed components of the Agreement's cost-based formula rate, APS automatically flows through and recovers all other expenses on an actual basis. As a result, "beneficial use" does not reflect an under-recovery of any expense, and APS has alleged none. Instead, it reflects the \$30,649,190 net book value of APS's investment in the Four Corners-Eldorado Line, *plus* a \$12,688,457 non-cost-based premium that APS seeks to assign to its future OATT customers, in the final year of its cost-based rate Agreement with SoCal Edison. We find no basis to alter the Agreement's central tenet—its cost-based formula rate—in this way at this late date.

40. Our determination here is analogous to our longstanding precedent on acquisition adjustments, which holds that, "when a facility is acquired by one regulated entity from another, [only] the seller's depreciated original cost is included in the cost-of-service

⁵³ We note that APS likewise failed to specify in its filing what depreciation rates it is referring to when it states that it developed the OATT customers' remaining "beneficial use" of the line by "recalculating the appropriate depreciation to have been charged to [SoCal Edison's] use *using APS's FERC-approved transmission depreciation rates*" (emphasis added). Whether APS is referring to the 3.25 percent depreciation rate in the Agreement, or the 2.0 percent OATT depreciation rate accepted in a September 26, 2011 delegated letter order, applying either rate to a past period, for purposes of calculating the "beneficial use" and resulting reimbursement payment, creates an impermissible retroactive adjustment. *See Ariz. Pub. Serv. Co.*, Docket No. ER12-190-000, (Sept. 26, 2011) (delegated letter order).

⁵⁴ While APS's filing represents that the "the cost-based rate set forth in the [Agreement] was designed to recover all of APS's costs associated with the line over the 50-year term of the [Agreement]," the Agreement itself does not contain a 50-year term. APS Filing at 4. We recognize, however, that the billing worksheets attached to APS's filing show that APS has fully depreciated and recovered in rates the initial cost of constructing the Four Corners-Eldorado Line over its service life, and that the remaining \$30,649,190 in undepreciated investment represents the net book value of APS's capital additions after the line entered service. *Id.*, Ex. 2 at 5-6.

computations, even though the price paid by the purchaser may exceed that amount.”⁵⁵ This policy, which dates back to the Federal Power Commission, was designed to prevent regulated entities from selling facilities at artificially inflated prices in order to increase rates.⁵⁶ Accordingly, the Commission disallows premiums above net book value, absent a demonstration of specific, tangible, non-speculative, quantifiable benefits in monetary terms, for which the utility bears a heavy burden of proof.⁵⁷ For similar reasons here, we find, as well, that the “beneficial use” component of APS’s reimbursement provision should likewise reflect net book value, and thus should appropriately reflect the Four Corners-Eldorado Line’s \$30,649,190 net book value without the \$12,688,457 premium. When netted against the \$30,649,190 net investment component of the reimbursement provision, the resulting payment from APS to SoCal Edison is \$0.00.

c. APS’s Regulatory Asset Proposal

41. As noted, APS proposes to create a regulatory asset for the \$12,688,457 difference between its actual \$30,649,190 net book value and its estimated \$43,337,647 “beneficial use,” whose ratemaking treatment we reject in this order. While our disallowance of the reimbursement payment moots APS’s request that it be permitted to record \$12,688,457 as a regulatory asset, we also find that APS supplied no support for classifying the \$12,688,457 difference as a regulatory asset.

⁵⁵ *Mo. Pub. Serv. Comm’n v. FERC*, 783 F.3d 310, 313 (D.C. Cir. 2015) (*Mo. Pub. Serv. Comm’n II*) (citing *Rio Grande Pipeline Co.*, 178 F.3d 533, 536 (D.C. Cir. 1999), *N. Natural Gas Co.*, 35 FERC ¶ 61,114, at 61,236 (1986)).

⁵⁶ *Mo. Pub. Serv. Comm’n II*, 783 F.3d at 313 (citing *United Gas Pipe Line Co.*, 25 FPC 26, at 64 (1961)); *Arkla Energy Res.*, 61 FERC ¶ 61,004, at 61,038 (1992) (*Arkla*), *reh’g denied*, 68 FERC ¶ 61,331 (1994); *Mont. Power Co. v. FERC*, 599 F.2d 295, 300 (9th Cir. 1979).

⁵⁷ *Mo. Pub. Serv. Comm’n v. FERC*, 601 F.3d 581, 586 (D.C. Cir. 2010) (*remanding Mo. Interstate Gas Co.*, 119 FERC ¶ 61,074 (2007)), *initial decision on remand*, *Mo. Interstate Gas Co.*, 137 FERC ¶ 63,014 (2011), *opinion on remand*, *Mo. Interstate Gas Co.*, Opinion No. 525, 142 FERC ¶ 61,195, *reh’g denied*, Opinion No. 525-A, 144 FERC ¶ 61,220 (2013), *aff’d*, *Mo. Pub. Serv. Comm’n II*, 783 F.3d 310 (2015); *Kan. Pipeline Co.*, 81 FERC ¶ 61,005, at 61,018 (1997); *Longhorn Partners Pipeline*, 73 FERC ¶ 61,355 (1995); *Arkla*, 61 FERC ¶ 61,004, at 61,038 (1992), *reh’g denied*, 68 FERC ¶ 61,331 (1994).

42. The Uniform System of Accounts defines regulatory assets as arising:

[f]rom specific . . . expenses . . . or losses that would have been included in net income determination in one period under the general requirements of the Uniform System of Accounts but for it being probable that such items will be included in different period(s) for purposes of developing rates the utility is authorized to charge for its utility service.⁵⁸

43. APS has offered no reason, no less demonstrated, why the \$12,688,457 is an “expense” or “loss” from a prior accounting period that would have been included in the determination of net income, but for it being probable that the costs would be recoverable in future rates.

44. Given our rejection of APS’s proposed \$43,337,647 “beneficial use” computation and APS’s failure to offer any support for its regulatory asset proposal, we find no legal or technical basis to approve APS’s requested \$12,688,457 regulatory asset, and we will likewise reject it.

4. APS’s Accounting Proposal

45. Given our rejections of APS’s \$12,688,457 reimbursement payment and regulatory asset proposals, its proposal to make related accounting entries on its books is moot.

5. Scope of the Proceeding

46. We find that the issues raised by NTUA regarding the future allocation of transmission capacity on the Four Corners-Eldorado Line upon termination of the Agreement are beyond the scope of this proceeding.

The Commission orders:

(A) APS’s notice of cancellation is hereby accepted for filing, effective July 6, 2016, as discussed in the body of this order.

(B) APS’s request to recover the reimbursement payment in its annual transmission formula rates is hereby rejected, as discussed in the body of this order.

⁵⁸ See Uniform System of Accounts, 18 C.F.R. pt. 101, Definition 31A (“Regulatory Asset”) (2015).

(C) APS's requests to record a \$12,688,457 regulatory asset and make related accounting entries on its books are hereby rejected, as discussed in the body of this order.

(D) Within 30 days of the date of this order, APS shall file with the Commission, pursuant to section 205(c) of the FPA, the December 22, 2015 Expiration Agreement, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.