

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

APS Energy Services Company, Inc.

Docket Nos. ER06-1505-000  
ER99-4122-020

ORDER GRANTING REQUEST FOR WAIVERS  
OF CERTAIN FILING REQUIREMENTS

(Issued November 3, 2006)

1. On September 15, 2006, APS Energy Services Company, Inc. (APSES) filed a request for waiver of: (1) Parts 41, 101, and 141 of the Commission's regulations and (2) Subparts B and C of Part 35 of the Commission's regulations, with the exception of Sections 35.12(a), 35.13(b), 35.15 and 35.16. APSES states that because it makes only limited wholesale sales, none of which are at cost-based rates, the cost-of service information provided under Parts 41, 101, 141 and 35 is not relevant to the Commission's regulation of APSES. In this order, we grant the requested waivers, effective April 17, 2006.

**I. Background**

2. APSES is a subsidiary of Pinnacle West Capital Corporation (Pinnacle West) and owns subsidiaries that, in turn, own two small qualifying facilities and operate a third under a contract. APSES states that it is primarily engaged in retail marketing activities in California,<sup>1</sup> where it serves approximately 30 retail customers with an approximate load of 350 MW.

3. The Commission granted APSES authority to sell electric energy and capacity at market-based rates in an order dated October 13, 1999.<sup>2</sup> In that order, the Commission

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<sup>1</sup> APSES also services some retail customers located in the ERCOT region of Texas.

<sup>2</sup> *APS Energy Services Company, Inc.*, 89 FERC ¶ 61,024 (1999).

granted APSES a waiver of Parts 41, 101, and 141 of the Commission's regulations. The Commission also granted a waiver of Subparts B and C of Part 35, with the exceptions of Sections 35.12(a), 35.13(b), 35.15 and 35.16.

4. Because of the failure to comply with the Commission's requirements, the Commission subsequently rescinded those waivers in its April 17, 2006 Order,<sup>3</sup> as part of the revocation of the authority of Pinnacle West, Arizona Public Service Company (APS), Pinnacle West Energy Corporation, and APSES (collectively, the Pinnacle West Companies) to sell electric energy and capacity at market-based rates in the APS control area. The order stated that because "we revoke the Pinnacle West Companies' market-based rate authority in the APS control area, any waivers and authorizations previously granted in connection with that market-based rate authority are no longer applicable, effective as of the date of this order."<sup>4</sup>

5. In support of its request in the instant proceeding for waiver of Parts 41, 101, and 141 of the Commission's regulations and Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15 and 35.16, APSES states that it makes no cost-based wholesale sales of electric energy. Furthermore, APSES states that it makes market-based wholesale sales only as necessary to ensure that its retail load remains in balance, but otherwise does not engage in any wholesale marketing of electricity. APSES also states that it does not make any wholesale or retail sales of electricity inside the APS control area.

## **II. Notice of Filing**

6. Notice of APSES' filing was published in the *Federal Register*, 71 Fed. Reg. 56,517 (2006), with motions to intervene and protests due no later than October 6, 2006. None was filed.

## **III. Discussion**

7. The Commission has granted the waivers requested herein to entities that are not subject to cost-based rate regulation.<sup>5</sup> As noted above, APSES does not make cost-based wholesale sales. Further, APSES has no market-based rate authority in the APS control area, which is the mitigated control area that was the subject of the April 17, 2006 Order rescinding prior waivers. On this basis, we will grant the requested waivers for APSES

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<sup>3</sup> *Pinnacle West Capital Corporation*, 115 FERC ¶ 61,055 (2006).

<sup>4</sup> *Id.* at P 66.

<sup>5</sup> *PSEG Fossil LLC.*, 115 FERC ¶ 61,313 (2006) (Granting waiver of Parts 41, 101, 141, and most of Subparts B and C of Part 35 to generators and a marketer, that did not make cost-based sales).

consistent with the Commission's precedent granting these waivers to power marketers with market-based rates.

8. The Commission has, in limited circumstances and on a case-by-case basis, granted a public utility's request for waivers, including the Parts 41, 101, and 141 accounting and reporting requirements and the Part 35 cost-of-service filing requirements, although that public utility made power sales at cost-based rates.<sup>6</sup> In this circumstance, APSES is not selling at cost-based rates. Therefore, it is not necessary to impose the Commission's full accounting and financial reporting requirements or the full filing requirements of Subparts B and C of Part 35 of the Commission's regulations on APSES.

9. APSES' request for waiver of Part 41, Part 101, and Part 141 of the Commission's regulations concerning accounting and reporting requirements is granted. Notwithstanding the waiver of the accounting and reporting requirements granted here, APSES is expected to keep its accounting records in accordance with generally accepted accounting principles. APSES' request for waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for sections 35.12(a), 35.13(b), 35.15 and 35.16 is also granted.

10. The waivers granted herein are effective April 17, 2006, the date of the prior rescissions.

The Commission orders:

APSES' request for waiver is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>6</sup> *Nevada Sun-Peak Ltd. P'ship*, 86 FERC ¶ 61,243 (1999).