137 FERC ¶ 61,099
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Arizona Public Service Company Docket No. ER11-4437-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS,
SUBJECT TO COMPLIANCE FILING

(Issued November 1, 2011)

1. On September 2, 2011, Arizona Public Service Company (APS) submitted for filing pursuant to section 205 of the Federal Power Act (FPA),[1] revisions to its Large Generator Interconnection Procedures (LGIP). APS requests an effective date of November 1, 2011, for the proposed tariff revisions. For the reasons set forth below, we conditionally accept APS's proposed revisions to its LGIP, subject to a compliance filing within 30 days of the date of issuance of this order, effective November 1, 2011.

I. **Background**

2. APS, a wholly-owned subsidiary of Pinnacle West Capital Corporation, is a vertically integrated public utility incorporated in the State of Arizona. APS is engaged in the business of generating, transmitting, and distributing electricity in eleven of Arizona's fifteen counties. APS operates under a Commission-approved open access transmission tariff (OATT) and owns facilities used for the sale and transmission of electric energy in interstate commerce.[2]

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[1] 16 U.S.C. § 824d (2006).

[2] APS Transmittal Letter at 2.

3. In Order No. 2003,[3] the Commission issued standardized interconnection procedures and agreements for the interconnection of large generating facilities. The Commission's goal was to reduce undue discrimination and expedite the development of new generation while protecting reliability and ensuring that rates are just and reasonable. APS's LGIP was adopted to comply with the Commission's directives in Order No. 2003. Concerns about the effectiveness of queue management led the Commission to convene a technical conference on December 11, 2007. The Commission has found that "[s]urges in the volume of new generation development are taxing the current queue management approach in some regions"[4] and that "the unprecedented demand in some regions for new types of generation, principally renewable generation, places further stress on queue management because such generation technologies can, for example, be brought online more quickly than traditional generation."[5] APS states that it is located in a region facing these kinds of difficulties.

4. While the Commission has not required a particular solution, the Technical Conference Order suggested the following types of variations that, individually or in combination, could speed up queue processing while remaining faithful to the goals of Order No. 2003. These are: (1) increasing the requirements for obtaining and keeping a queue position, such as increasing deposit amounts; (2) eliminating the interconnection feasibility study as a separate step to reduce processing time without harming interconnection customers; and (3) instituting a first-ready, first-served approach, under which customers who demonstrate the greatest ability to move forward with project development are processed first.[6] The Commission also stated that we would consider methods of clustering other than the Order No. 2003 approach, which is based on a first-come, first-served paradigm as clusters are limited to requests filed within the same time frame.[7]

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[3] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008) (Order No. 2003).

[4] *Interconnection Queuing Practices*, 122 FERC ¶ 61,252, at P 3 (2008) (Technical Conference Order).

[5] *Id*.

[6] *Id*. P 15-18.

[7] *Id*. P 18.

5. APS states that WestConnect,[8] which is a voluntary membership association that engages in collaborative efforts to develop regional market enhancements, took note of the Commission's directions and established an LGIP work group in mid-2009 to address potential LGIP reforms. APS states that the work group meetings were open for participation by any stakeholder. APS further states that all participants were encouraged to comment on existing ideas, offer their own proposals or engage in any other manner they deem fit. According to APS, ultimately, all WestConnect members contributed to and support the proposed LGIP reforms discussed below.[9]

II. Notice and Responsive Pleadings

6. Notice of APS's filing was published in the Federal Register, 76 Fed. Reg. 56747 (2011), with protests and interventions due on or before September 23, 2011. No adverse comments were filed in the proceeding.

III. Applicant's Proposal

7. APS states that it proposes to modify its LGIP to manage interconnection requests more efficiently. Specifically, APS proposes to amend its LGIP by: (1) creating queue cluster windows; (2) replacing current deposit requirements with a single, two-level deposit; (3) making deposits increasingly non-refundable as the interconnection process proceeds; (4) permitting deposits in lieu of demonstrating site control; (5) setting the interest rate paid on deposits to match the rate APS actually earns; (6) eliminating the feasibility study; (7) streamlining the time and accuracy requirements of facility studies; and (8) creating a standardized Engineering and Procurement (E&P) Agreement. APS argues that its proposed amendments, as discussed below, are "consistent with or superior to" its existing LGIP.[10] Additionally, APS proposes a grandfathering mechanism for existing interconnection requests during the transition period.

A. Study Cluster Windows

1. Proposal

8. The tariff provision on clustering in APS's currently - effective LGIP requires that interconnection requests are received 180 days prior to APS's implementation of a study cluster window. APS proposes to instead establish a standard 6-month study cluster for system impact studies that would cluster all interconnection requests received during: (1)

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[8] APS is one of thirteen electric utility members providing transmission service in the Western Interconnection. APS Transmittal Letter at 3.

[9] APS Transmittal Letter at 6 -7.

[10] *See* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 825.

the second and third quarters of a given year; and (2) the fourth quarter of each year and the subsequent first quarter of the following calendar year. APS states that each 6-month period would be called a "Queue Cluster Window," and the studies for each window would initially commence on April 1 (for requests received during the fourth and first quarters) and October 1 (for the second and third quarters) of each year. APS states that the first Queue Cluster Window would commence upon the first date for a window study reached (April 1 or October 1) following Commission approval of its filing.

2. Discussion

9. The Commission has acknowledged that there may be approaches to prioritizing queue processing that provide protection against discrimination comparable to the first-come, first-served approach, but that are more efficient.[11] We accept APS's proposal to use a standard 6-month study cluster for system impact studies as consistent with or superior to the *pro forma* LGIP because it provides better coordination of interconnection studies and more certainty regarding milestones for interconnection customers. The Commission has already accepted similar clustering approaches in other cases,[12] and this change merely standardizes the timing for the clustering windows. We find that this standardization of the cluster timing will provide greater clarity to potential interconnection customers. In addition, we find APS's proposal acceptable because it protects interconnection customers against discrimination by studying multiple interconnection requests within each designated Queue Cluster Window.

B. Deposits

1. Proposal

10. APS states that, under its current LGIP, an initial deposit of $10,000 is an incentive for developers to secure a place in the queue for a project that may not be commercially viable and, while there are additional deposits at various stages of the process, this process creates administrative burdens and may permit interconnection customers to game the process by failing to make timely deposits. As a result, APS proposes to replace all current deposit requirements with a single, two-level initial deposit paid by the interconnection customer at the beginning of the interconnection process based on the size of the project. Specifically, APS proposes to require a deposit of $160,000 for large generator projects (generators larger than 20 MW) with an output

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[11] Technical Conference Order, 122 FERC ¶ 61,252 at P 18.

[12] *California Independent System Operator Corp.*, 124 FERC ¶ 61,292, at P 18-19, 33 (2008); *Public Service Co. of New Mexico*, 136 FERC ¶ 61,231, at P 75-76, 80, 82 (2011).

of up to 75 MWs and $250,000[13] for projects with an output greater than 75 MWs. APS also proposes to increase the deposit provision applicable to optional interconnection studies from $10,000 to $25,000 for the same reasons (i.e., to favor developers with secure projects over those seeking to tie up sites based on speculation).[14]

2. Discussion

11. In the Technical Conference Order, the Commission found that it may be appropriate to increase the requirements for getting and keeping a queue position.[15] The Commission recognized that it could be appropriate to increase the amount of the deposits required at the different stages of the process to more accurately reflect the cost of studies. The Commission stated that such a change would not only be consistent with traditional ratemaking principles, but would also increase the likelihood that only projects that are likely to be commercially viable (and hence willing to commit to the cost of such studies in advance) are in the queue.[16] Similar to those findings in the Technical Conference Order, we find APS's proposal to be consistent with or superior to the *pro forma* LGIP, because it will encourage interconnection requests that are commercially viable and permit these requests to be processed more expeditiously and without repeated re-study.[17] Furthermore, we find that the proposed deposit levels are not unduly discriminatory, because they are tied to generator size and reflect the actual costs interconnection customers typically incur during the interconnection process.

C. Refunds

1. Proposal

12. APS states that an interconnection customer currently pays only for actual costs incurred by a transmission provider to perform studies required in the interconnection process. APS asserts that this payment structure facilitates easy withdrawals from the queue. APS proposes to modify the deposit refunds as follows: (1) $25,000 of the initial deposit will be non-refundable if the interconnection customer withdraws after the start of work performed under the system impact study; (2) $50,000 will be deemed non-

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[13] According to APS, this amount exceeds the current total deposit requirements in the *pro forma* LGIP, but is less than the amount normally incurred by an interconnection customer in the existing interconnection process.

[14] APS Transmittal Letter at 9 – 10.

[15] *See* Technical Conference Order, 122 FERC ¶ 61,252 at P 16.

[16] *Id*.

[17] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 825.

refundable when the facilities study agreement is signed by the interconnection customer; (3) the non-refundable amount will be in addition to actual costs incurred by the transmission provider in earlier stages of the process; (4) the non-refundable amounts will not be cumulative; and (5) retained deposit funds will be applied to the cost of re-study work required by the withdrawal of the applicant's interconnection request and any deposit funds remaining after paying for the cost of re-study work will be returned to the withdrawing customer.[18] APS states that the intent of this proposal is to discourage "queue-sitting" and to encourage interconnection customers to only submit interconnection requests that will likely achieve interconnection.

2. Discussion

13. We find APS's proposal to modify its deposit refund obligation consistent with or superior to the *pro forma* LGIP because the procedure will encourage interconnection customers to assess the commercial viability of their interconnection requests. In addition, we note that APS's proposal is consistent with the Commission's traditional cost causation policy[19] as it obligates the withdrawing interconnection customers to assume responsibility for costs they cause others to incur as a result of re-study work that APS must perform. We also find APS's proposal acceptable based on its commitment to return any otherwise non-refundable amount that exceeds the cost of all re-study work.[20] For these reasons, we accept APS's proposal.

D. Site Control and Deposits in Lieu of Site Control

1. Proposal

14. APS asserts that many variables affect an interconnection customer's ability to obtain site control throughout APS's footprint, such as interconnection projects on land owned by Federal or State governments as well as on land owned by Sovereign Nations. APS states that each such variable imposes varying requirements for securing purchase options or leases that may cause implementation and timing hurdles, but these variables do not seriously risk site control in the long term. APS proposes to allow a deposit in lieu of site control that will involve the following changes:

(i) The deposit in lieu of site control will be $160,000 for large generator projects (generators larger than 20 MW) up to 75 MW or $250,000 for generator requests greater than 75 MW.

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[18] APS Transmittal Letter at 10 – 11.

[19] *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,114, at P 67 (2009), citing *ISO New England, Inc.*, 115 FERC ¶ 61,145, at P 13 (2006).

[20] APS Transmittal Letter at 10.

(ii) The deposit in lieu of site control will be partially non-refundable in the same manner as the initial deposit: (a) $25,000 at the start of the system impact study work; and (b) $50,000 when the interconnection customer signs the facilities study agreement.

(iii) APS will refund the deposit in lieu of site control when the interconnection customer demonstrates site control.

APS also proposes that interconnection customers will be able to submit deposits in lieu of site control commencing when the Commission accepts this proposal for filing.[21]

2. Discussion

15. We find APS's proposal to be consistent with or superior to the *pro forma* LGIP. To initiate an interconnection request under the currently effective LGIP, the interconnection customer is required to demonstrate site control or to post an additional deposit of $10,000. Under APS's proposed LGIP, the additional deposit would be applied toward any interconnection studies pursuant to the interconnection request. If the interconnection customer demonstrates site control within the specified cure period, the additional deposit will be refundable; otherwise, all deposits, additional and initial, become non-refundable.[22]

16. We find that APS's proposal here (similar to the deposits and refund obligations) will increase the likelihood that only projects that are likely to be commercially viable (and hence willing to commit to the cost of such studies in advance) will have a place in the queue. The deposits in lieu of site control are also tied to generator size and are non-refundable in the same manner as the initial deposit. Similarly to the initial deposit, we find that the proposed deposit levels are not unduly discriminatory, because they are tied to generator size and large projects typically cost more to interconnect than small projects and likely carry a greater risk.

E. Interest

1. Proposal

17. APS asserts that, in today's financial climate, the interest rate that transmission providers pay on deposits in accordance with section 35.19(a) of the Commission's

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[21] *Id.* at 11 – 12.

[22] Order No. 2003, Appendix C – Section 3.3.1 Initiating an Interconnection Request.

regulations often exceeds what transmission providers actually earn on deposits.[23] This being the case, APS proposes to use the actual interest rate it earns for purposes of its LGIP, instead of using 18 C.F.R. § 35.19(a)(2) to calculate interest. APS states that the revised interest rate methodologies will become operative on the effective date of the revised tariff following Commission approval of this proposal.[24]

2. **Discussion**

18. We will reject this proposal, because we find that the proposed revision is neither consistent with, nor superior to, the Commission's findings in Order No. 2003.[25] The Commission determined that the interest rate applicable to unpaid credits should be calculated based on an objective calculation and opted for a uniform interest rate to be applied across the board by transmission providers, rather than allowing varying interest rates for each transmission provider, based on an individual assessment of market conditions and costs.[26] Within 30 days from the issuance of this order, APS is directed to file a revised tariff that reinstates the interest rate in accordance with section 35.19(a) of the Commission's regulations.

F. **Elimination of Feasibility Study**

1. **Proposal**

19. APS proposes to eliminate the feasibility study. APS states that, under its proposed LGIP, interconnection customers may still hire a third-party to conduct a feasibility study at the interconnection customer's cost. APS argues that the overall experience of the WestConnect transmission providers is that many interconnection customers waive the feasibility study requirement, or use outside consultants to perform the study before making an interconnection request, thereby rendering moot the feasibility study process in the currently effective LGIP. APS further argues that, when transmission providers do perform a feasibility study, the results almost always subsequently change if, for example, a transmission provider considers a cluster of similar interconnection requests during the system impact study or an interconnection customer modifies its request or drops out of the queue.[27]

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[23] 18 C.F.R. § 35.19(a)(2) (2011).

[24] APS Transmittal Letter at 12.

[25] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 723.

[26] *Id.*

[27] APS Transmittal Letter at 12 – 13.

2. Discussion

20. We find APS's proposal to eliminate the feasibility study requirement to be consistent with or superior to the *pro forma* LGIP.[28] In the Technical Conference Order, the Commission recognized that elimination of the feasibility study as a separate step could reduce processing time without harming interconnection customers.[29] The Commission also noted that elimination of a separate feasibility study could streamline the study process and could reduce interconnection requests by screening out those customers who are not willing to pay the higher deposit required for a system impact study.[30]

G. Cost Option for Facilities Study

1. Proposal

21. APS's current LGIP allows an interconnection customer to obtain a facilities study cost estimate at a 20 percent level of accuracy within 90 days, or a 10 percent level of accuracy within 180 days. APS asserts that its current option to provide a higher level of accuracy for facilities studies does not result in a more accurate estimate, and only serves to delay the interconnection process. APS proposes to eliminate the option for differing levels of estimate accuracy, and, instead, to provide a cost estimate using best available information within 90 days, together with a commitment to use "best efforts" to provide the same level of accuracy that the transmission provider would use for its own construction estimates. APS states that it will begin offering a single cost estimate level for any cost estimates begun after the effective date of the revised tariff following Commission approval of this proposal.[31]

2. Discussion

22. The Commission finds APS's proposal to eliminate the option for differing levels of estimate accuracy to be consistent with or superior to the *pro forma* LGIP.[32] Section

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[28] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 825.

[29] Technical Conference Order, 122 FERC ¶ 61,252 at P 17. We also note that section 6.1 of the LGIP provides that "[i]f Interconnection Customer and Transmission Provider agree to forgo the Interconnection Feasibility Study, Transmission Provider will initiate an Interconnection System Impact Study under Section 7 of this LGIP and apply the $10,000 deposit towards the Interconnection System Impact Study."

[30] Technical Conference Order, 122 FERC ¶ 61,252 at P 17.

[31] APS Transmittal Letter at 13 -14.

[32] Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 825.

8.3, Interconnection Facilities Study Procedures, of the *pro forma* LGIP provides in pertinent part that,

> [t]he Transmission Provider shall use Reasonable Efforts to complete the study and issue a draft Interconnection Facilities Study report to the Interconnection Customer within the following number of days after receipt of an executed Interconnection Facilities Study Agreement: ninety (90) Calendar Days, with no more than a +/- 20 percent cost estimate contained in the report [or] one hundred eighty (180) Calendar Days, if the Interconnection Customer requests a +/- 10 percent cost estimate.

23. In other words, under the terms of the *pro forma* LGIP, if the interconnection customer desires an even more accurate estimate of costs (i.e., +/- 10 percent), APS honors this request, but is allowed an additional 90 calendar days (180 calendar days as opposed to 90), to complete and issue the study. According to APS, under its proposal it will use the best information available – the most recent costs for similar projects – to create a good faith estimate, and will no longer offer the option of preparing studies with alternate levels of accuracy. APS argues that the length of time between the estimate and construction is the most common source of inaccurate estimates and that, since the interconnection customer only pays the actual costs of constructing the facilities, the only impact caused by the so-called "more-accurate" estimate under the *pro forma* LGIP is an additional 90-day delay in the interconnection process. Given APS's statement that it uses the best information available to create a good faith estimate regardless of the level of accuracy sought by the interconnection customer and that there is no benefit related to the chosen level of accuracy, we find that its proposal to eliminate the differing levels of estimate accuracy can potentially expedite the time it takes for the transmission provider and the interconnection customer to process an interconnection request.

H. Grandfathering of Existing Interconnection Requests

1. Proposal

24. APS proposes to transfer some existing interconnection customers' requests into the queue cluster window. APS states that, in general, if it has initiated a feasibility study pursuant to an executed feasibility study agreement on the effective date of the tariff revisions, APS will conclude that study under the terms of that agreement. On the other hand, if an interconnection customer has executed an interconnection feasibility study agreement, but APS has not initiated the study as of the effective date of the LGIP tariff revisions, the interconnection customer will be placed into the initial Queue Cluster Window. APS states that it will develop business practices to establish the exact procedures for processing the Queue Cluster Window. APS further states that the new

study methods will commence upon the effective date of the revised tariff following Commission approval of this proposal.[33]

2. Discussion

25. We find that APS's proposal to grandfather existing interconnection requests for interconnection customers for whom a feasibility study has been initiated pursuant to an executed feasibility study agreement to be consistent with or superior to the *pro forma* LGIP. APS's proposal will allow these agreements to continue to be processed without further delays, thereby expediting the interconnection process. Furthermore, APS's proposal will allow those projects that are more advanced to move forward in an efficient and timely manner. We further find that it is acceptable to place in the initial Queue Cluster Window any interconnection customers with an executed feasibility study agreement, but for whom APS has not commenced the feasibility study as of the effective date of the revised tariff. For those interconnection customers whom a feasibility study has commenced, this proposal provides protection against discrimination by studying interconnection requests as they are made by Queue Cluster Window, and respects the first-come, first-served principle by according study rights to those customers whose interconnection requests are received within an individual cluster window, ahead of the requests received subsequently.

I. Engineering and Procurement Agreement

1. Proposal

26. APS states that it is proposing to include in its tariffs a blanket E&P Agreement for the benefit of APS and its interconnection customers to avoid the need for individual agreements to be drafted and filed with the Commission for approval. APS asserts that having an agreement in place under the tariff will allow APS and its interconnection customers to immediately begin acting under the blanket E&P Agreement upon its execution, rather than waiting 60 days for individual processing under Section 205 of the Federal Power Act. APS states that the *pro forma* E&P Agreement would be used upon the effective date of its revised tariff.[34]

2. Discussion

27. We reject APS's proposal to include a blanket E&P Agreement in its LGIP as inconsistent with the *pro forma* LGIP. Order No. 2003 addressed E&P Agreements, finding that parties could enter into E&P Agreement for long lead time items prior to

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[33] APS Transmittal Letter at 14.

[34] *Id*. at 14 -15.

entering into a LGIA.[35] However, Order No. 2003 did not establish a *pro forma* E&P Agreement. E&P Agreements are analogous to contribution in aid of construction agreements, which must be filed with the Commission prior to collecting money from the customer.[36] Therefore, within 30 days from issuance of this order, APS is directed to file a revised tariff that excludes its proposed standardized E&P Agreement.

The Commission orders:

(A) APS's tariff records filed in Docket No. ER11-4437-000 is hereby conditionally accepted, as discussed in the body of this order, to become effective November 1, 2011, as requested.

(B) APS is hereby directed to file a compliance filing, as discussed above, within 30 days of the date of issuance of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

[35] Order No. 2003, FERC Ststs. & Regs. ¶ 31,146 at P 226 – 228.

[36] *Western Massachusetts Electric Co.*, 61 FERC ¶ 61,182 at 61,664 (1992) and *American Electric Power Service Corp.*, 96 FERC ¶ 61,136 (2001).