

144 FERC ¶ 61,076
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Arizona Public Service Company

Docket No. ER13-1612-000

ORDER ACCEPTING AND SUSPENDING PROPOSED REVISIONS TO
TRANSMISSION SERVICE AGREEMENT AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued July 31, 2013)

1. On May 31, 2013, Arizona Public Service Company (APS) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ revisions to its Reciprocal Transmission Service Agreement (Agreement) with PacifiCorp.² In this order, we accept the proposed revisions to the Agreement for filing, suspend them for a five-month period to become effective on January 1, 2014, subject to refund, and establish hearing and settlement judge procedures.

I. Instant Filing

2. Currently, APS provides PacifiCorp with 30 megawatts of transmission service from Cholla to Four Corners at a rate of \$1.52/kW per month. In this filing, APS proposes to revise the transmission rate under the Agreement to reflect its Open Access Transmission Tariff (OATT) rate for long-term firm point-to-point transmission service. APS purports that it is not recovering its actual costs under the current rate structure because the rate under the Agreement was developed in 1989. APS asserts that it is appropriate to update the rate under the Agreement to reflect a more current OATT rate for long-term point-to-point transmission service because the two services are

¹ 16 U.S.C. § 824d (2006).

² FERC Rate Schedule No. 183.

comparable.³ APS states that its proposal will ensure that it adequately recover its actual costs of providing PacifiCorp service under the Agreement. APS estimates PacifiCorp's charges will increase from \$547,200 to \$1,057,788.80 as a result of the proposed rate increase.⁴

3. APS asserts that the service it provides under the Agreement is comparable to the long-term firm point-to-point transmission service it provides pursuant to its OATT because both services contemplate the provision of transmission service over a set path between a stated receipt point and a stated delivery point. Further, APS states that, under the Agreement, it provides PacifiCorp with priority service over the specified path, similar to the long-term firm point-to-point service it provides under its OATT. Thus, APS contends that it is appropriate to apply its OATT rate for the long-term firm point-to-point service to the Agreement.

4. APS also proposes to charge PacifiCorp for real power transmission losses incurred on its system, consistent with its Business Practice for Transmission Loss Payment for Point-to-Point Service. To calculate PacifiCorp's real power losses, APS states that it will apply a 2.5 percent loss factor to PacifiCorp's actual schedules. APS estimates the rate impact for PacifiCorp's losses will be \$191,990. APS asserts that the new charge for losses combined with the proposed rate increase will result in a total annual increase for PacifiCorp of \$702,588.80.⁵

II. Notice, Interventions and Responsive Pleadings

5. Notice of APS's May 31 filing was published in the *Federal Register*, 78 Fed. Reg. 34,658 (2013), with interventions and protests due on or before June 21, 2013.

6. On July 17, 2013, PacifiCorp filed an out-of-time motion to intervene and, on July 19, 2013, filed an out-of-time protest. PacifiCorp argues that the OATT rate for long-term firm point-to-point transmission service that APS proposes to charge under the Agreement is not just and reasonable because the two transmission services are not comparable. Specifically, PacifiCorp argues that the transmission service APS provides under the Agreement is of a lower quality than the long-term firm point-to-point service APS provides under its OATT and that the resulting proposed rate is, therefore, too high.⁶

³ APS currently provides transmission service pursuant to its OATT, under which the transmission rate adjusts annually based on a Commission-approved formula. *See Arizona Public Service Co.*, 124 FERC ¶ 61,088 (2008).

⁴ APS Filing at 3.

⁵ *Id.*

⁶ PacifiCorp Protest at 3-4.

7. PacifiCorp explains that the transmission service it receives pursuant to the Agreement is inferior because, unlike other customers that take long-term firm point-to-point service under APS's OATT, it is unable to either reassign or redirect its service. PacifiCorp states that reassignment and redirect rights add value to the long-term firm point-to-point service APS provides under its OATT that the transmission service it receives under the Agreement lacks. Therefore, PacifiCorp argues that it is improper to revise the Agreement to reflect the OATT rate for long-term firm point-to-point transmission service because the two services are materially different.

8. PacifiCorp requests that the Commission suspend APS's proposed rate increase and other changes for the maximum five-month period, set the matter for hearing, and hold the hearing in abeyance while the parties engage in settlement negotiations before a Commission Administrative Law Judge.

9. On July 25, 2013, APS filed an answer to PacifiCorp's out-of-time protest.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant PacifiCorp's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept APS's answer and will, therefore, reject it.

B. Substantive Matters

12. We find that APS's proposed revisions to the Agreement raise issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Our preliminary analysis indicates that APS's proposed revisions to the Agreement have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

13. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by the statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or unduly discriminatory, or that it may be inconsistent with other statutory standards.⁷ It is our policy to suspend a requested rate increase for the maximum period in those cases

⁷ See, e.g., *Boston Edison Co.*, 12 FERC ¶ 61,211 (1980).

where our preliminary analysis indicates that ten percent or more of the requested increase appears to be excessive.⁸ We recognize, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.⁹ Here, our preliminary analysis indicates that the proposed rates may yield substantially excessive revenues, particularly in light of the indication that APS's proposal may amount to a more than 100 percent increase in the amount that it charges PacifiCorp. Accordingly, we will accept the proposed revisions to the Agreement, suspend them for the maximum five-month period, to become effective on January 1, 2014, subject to refund, and set them for hearing and settlement judge procedures.

14. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁰ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹¹

15. The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) APS's proposed revisions to the Agreement are hereby accepted for filing and suspended for the maximum five-month period, to become effective January 1, 2014, subject to refund, and subject to hearing and settlement judge procedures, as discussed in the body of this order.

⁸ *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982).

⁹ *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980).

¹⁰ 18 C.F.R. § 385.603 (2012).

¹¹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of DEF's cost factor update for interchange service. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.