

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Wayne-White Counties Electric Cooperative

Docket No. ER04-564-000

ORDER ACCEPTING AND SUSPENDING POWER SALES AGREEMENT AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued April 15, 2004)

1. Wayne-White Counties Electric Cooperative (Wayne-White) is a party to a wholesale power sales agreement with the City of Fairfield, Illinois (Fairfield), which it proposes to modify. Wayne-White proposes a 21 percent increase in the rates it charges Fairfield and an amendment to allow the demand charges to be billed based on the peak one-hour demand during the billing month. This order accepts the filing, suspends the proposed rate increase for a nominal period, permits the proposed rate increase to go into effect on April 18, 2004, subject to refund, and sets the proposed rate increase for hearing and settlement judge procedures.
2. This action benefits customers because it provides an opportunity for the parties to develop a more complete factual record upon which the Commission may evaluate the justness and reasonableness of the proposed rate increase.

Background

3. Wayne-White's Rate Schedule No. 2 with Fairfield includes a demand charge based on Fairfield's hourly demand during the peak hour of the prior year that established Wayne-White's annual demand obligation under its contract with Soyland Power Cooperative (Soyland), Wayne-White's former wholesale power supplier. After Wayne-White changed power suppliers in 2000, this billing determinant did not exist for January 2001 and thereafter. Wayne-White and Fairfield agreed that, beginning in January 2001, Fairfield's demand charges would be billed based on Fairfield's peak one-hour demand during the billing month, which results in a rate reduction. Wayne-White requests acceptance of this amendment to Rate Schedule No. 2 effective January 1, 2001.
4. Wayne-White presently purchases power from Constellation Power Source, Inc. (Constellation) at a graduated rate increasing each of the six years of the contract (beginning in 2000, with a "substantial bump" in 2003). Wayne-White has not increased

Fairfield's rates to reflect the change. Because Wayne-White is losing money on power sales to Fairfield, Wayne-White has given notice of its intent to terminate the contract one year early (December 31, 2004) in accordance with the terms of the contract. Wayne-White states it has also attempted to negotiate a rate increase with Fairfield but with no success. In the meantime, Wayne-White has proposed to increase its rates to Fairfield.

Notice, Comments and Protests

5. Notice of Wayne-White's filing was published in the Federal Register, 69 Fed. Reg. 9609 (2004), with protests and interventions due on or before March 9, 2004. Fairfield filed a timely motion to intervene and protest. On March 25, 2004, Wayne-White filed a motion for leave to answer and an answer. On March 30, 2004, Fairfield filed a motion to reject Wayne-White's answer.

Discussion

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motion to intervene serves to make Fairfield a party to this proceeding. Rule 213 (a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits the filing of an answer to a protest unless permitted by the decisional authority. Accordingly, Wayne-White's answer is rejected and Fairfield's motion to reject is moot.

Proposed Changes

7. Wayne-White is proposing a rate increase of approximately \$657,000, an increase of 21 percent over present rates. This would include the direct cost of purchased power from Constellation, which includes charges of \$10.31/KW-month for capacity and \$21.94/MWH for energy; a share of the cost of Wayne-White's buyout from Soyland which averages \$42,400/month; a facilities charge of \$150/month which Fairfield already pays; and an unbundled transmission rate using a load-ratio-share approach that would equate to approximately \$14,250/month on average. Wayne-White does not propose to include any allocated administrative and overhead costs, debt costs, or a return on equity in its charges to Fairfield; thus, the proposed rate is estimated to only produce revenues of approximately \$3.7 million for 2004, as compared to its cost-of-service of approximately \$4.2 million.

8. Wayne-White states that a unilateral rate change is permitted under its contract with Fairfield and requests an effective date of January 1, 2004.

9. In addition, as noted above, Wayne-White proposes to revise the billing of demand charges, effective January 1, 2001.

Protest

10. In its protest, Fairfield urges the Commission to reject Wayne-White's filing. Fairfield also asks the Commission to deny Wayne-White's request to put its proposed rate increase into effect retroactively. If Wayne-White's request is accepted, Fairfield requests the Commission to suspend the rate increase for five months and allow the rates to go into effect subject to refund, hearing and investigation. Fairfield takes no position on Wayne-White's proposal to amend, retroactive to January 1, 2001, the demand charge billing determinants because this change equates to a rate reduction for Fairfield.

11. Fairfield protests that Wayne-White should not be excused from providing full cost support for its rate increase. Fairfield points out that there is no support for Wayne-White's claimed \$4.2 million fully-allocated cost of service. Fairfield further states that there are no production-related charges to allocate to Fairfield which Wayne-White alleges are not being included when determining its proposed rate increase. Fairfield also claims that administrative and overhead charges and the continuing facilities charge are likely to be recovered through Wayne-White's newly-proposed transmission charge. According to Fairfield, Wayne-White failed to support either its losses or its assessing Fairfield any of the Soyland buy-out costs. Further, Fairfield asserts that Wayne-White has not justified its purchase power costs or claimed loss factor.

12. Fairfield also argues that there is no requirement to unbundle the transmission rate as the agreement was entered into before July 1996 and the governing assumption is that the rates under the terms of the agreement compensate Wayne-White for all related transmission services. Fairfield further asserts that Wayne-White is retroactively charging Fairfield increased rates, which should be permitted only on a prospective basis.

Commission Response

13. We find that the intervenor has raised issues of material fact concerning Wayne-White's proposed rate increase that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below.

14. Our preliminary analysis of Wayne-White's proposed rate increase indicates that it has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept Wayne-White's rate increase for filing, suspend it, make it effective subject to refund, and set it for hearing.

15. In West Texas Utilities Company,¹ we explained that when our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not

¹18 FERC ¶61,189 at 61,374 (1982).

be substantially excessive, as defined in West Texas, we would generally impose a short suspension. Here, our examination indicates that the proposed rates may not yield substantially excessive revenues. Accordingly, the Commission will accept the proposed rates for filing, suspend them for a nominal period, to become effective on April 18, 2004, subject to refund, and set them for hearing, as ordered below.²

16. Although we are setting this proceeding for a trial-type evidentiary hearing, we are hopeful that Wayne-White and Fairfield can negotiate a mutually-acceptable agreement that will resolve the matters at issue. Accordingly, to aid the parties in their efforts at settlement, we will hold the evidentiary hearing in abeyance and provide for a settlement judge to assist in arriving at a settlement.³ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding. Otherwise, the Chief Judge will select a settlement judge.⁴

17. Finally, we will accept Wayne-White's amendment to its Rate Schedule No. 2 to allow Fairfield's demand charges to be billed based on Fairfield's peak one-hour demand during the billing month, which has the effect of reducing the rates to Fairfield and which is unopposed, as proposed, effective January 1, 2001.⁵

The Commission orders:

(A) Wayne-White's amendment to its Rate Schedule No. 2 to establish Fairfield's demand charges based on Fairfield's peak one-hour demand during the billing month is hereby accepted for filing, effective January 1, 2001.

² Wayne-White requests a waiver of the requirement for 60-days' prior notice of proposed increased rates, to permit a January 1, 2004 effective date. No reasons were stated in the application to support the request for waiver. Consistent with Central Hudson Gas & Electric Corp., 60 FERC ¶ 61,106 at 61,339, order on reh'g, 61 FERC ¶ 61,089 (1992), we find that Wayne-White has not demonstrated good cause to justify waiver of the 60-day prior notice requirement for the proposed rate increase.

³ 18 C.F.R. § 385.603 (2003).

⁴ 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 days of this order. FERC's website contains a listing of Commission Judges and a summary of their background and experience. (www.ferc.gov click on Office of Administrative Law Judges)

⁵ Central Hudson Gas & Electric Corp., 60 FERC ¶ 61,106 at 61,339, order on reh'g, 61 FERC ¶ 61,089 (1992).

(B) Wayne-White's proposed rate increase is hereby accepted for filing and suspended for a nominal period, to become effective April 18, 2004, subject to refund.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed rate increase. As discussed in the body of the order, we will hold the hearing in abeyance to give the parties time to attempt to settle, as discussed below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within 15 days of the date of this order. To the extent consistent with this order, the designated settlement judge shall have all power and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(E) Within 45 days of the date of this order, 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 may 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.

(F) If settlement discussions fail, a presiding administrative law judge, to be selected by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within approximately fifteen (15) days of the date of the presiding judge's selection, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Such 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)

Magalie R. Salas,
Secretary.