

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Sulphur Springs Valley Electric
Cooperative, Inc.

Docket No. ER04-753-000

ORDER DENYING REQUEST FOR DISCLAIMER OF
JURISDICTION AND ACCEPTING AGREEMENTS

(Issued June 21, 2004)

1. On April 22, 2004, Sulphur Springs Valley Electric Cooperative, Inc. (SSVEC) submitted two agreements under which it provides transmission service for others at no charge, requesting that the Commission disclaim jurisdiction or, in the alternative, accept the agreements effective April 22, 2004, the date SSVEC retired its Rural Utilities Service (RUS) debt. This order denies the request for disclaimer of jurisdiction and accepts the agreements for filing, effective as of the date SSVEC retired its RUS debt. This order benefits customers because it requires agreements for jurisdictional services to be filed with the Commission.

Background

2. SSVEC states that it planned to pay off its RUS debt on April 22, 2004, making it subject to Commission jurisdiction. SSVEC is a small distribution cooperative located within the control area of Arizona Public Service Company (APS) and Southwest Transmission Cooperative, Inc., and is a member of Arizona Electric Power Cooperative, Inc. (AEPCo), from which it receives all of its power needs. SSVEC's system is comprised of 298 miles of transmission lines and 3,597 miles of distribution lines, and is primarily used to provide service to its retail loads over a 6,500 square mile area in southeastern Arizona. SSVEC makes no sales for resale.

3. SSVEC has identified two agreements under which it provides transmission service for others: (1) the McNeal Backup Agreement dated December 31, 1985, under which SSVEC provides stand-by backup service in the event one of the other two parties to the agreement has an outage on one of its transmission lines; and (2) the Graham County Agreement dated February 14, 1977, under which SSVEC allows Graham County the continued use of a 17 mile section of 69 kV transmission line that Graham

County Electric Cooperative, Inc. transferred to SSVEC in 1977. SSVEC states that the two agreements contain no charges and that accordingly it receives no revenues for the transmission services it provides.

4. SSVEC states that it is submitting the two agreements under section 205 to avoid any adverse consequences associated with failure to file, but believes that its jurisdictional status is unclear given the fact that it provides the services under the two agreements at no specified charges. SSVEC argues that the economic regulation scheme under the Federal Power Act should not apply because there are no economics to regulate, and there is no need for the Commission to make a determination as to the justness and reasonableness of a non-existent charge. SSVEC asserts that it is within the Commission's statutory discretion to determine whether regulation is required at all. It states that in the Prior Notice Order,¹ the Commission explained that "when the burdens of regulation yield a gain of trivial or no value," then "there is likely a basis for an implication of de minimis authority to provide exemption."² SSVEC argues that because it has chosen to forego seeking compensation for the services at issue the Commission should disclaim jurisdiction over its two agreements. SSVEC further argues that Commission regulation would be harmful to SSVEC, as it would incur regulatory costs such as the Commission's annual charges assessment methodology, while collecting no revenues for the services it provides. SSVEC requests that the Commission disclaim jurisdiction or, in the alternative, accept the agreements effective April 22, 2004, the date SSVEC planned to retire its RUS debt.³

Notice of Filing

5. Notice of the filing was published in the Federal Register, 69 Fed. Reg. 25,381 (2004), with interventions and protests due on or before May 13, 2004. On May 13, 2004, Graham County filed a motion to intervene and comments in support of SSVEC's request for disclaimer of jurisdiction. Graham County argues that no useful purpose would be served by the Commission's exertion of jurisdiction as Sulfur Springs charges no rates and the agreements present mutual, cooperative arrangements in the interests of efficiency and reliability. Graham County contends that Commission jurisdiction would impose regulatory costs on SSVEC which could be passed on to Graham County.

¹ Prior Notice and Filing Requirements under Part II of the Federal Power Act, 64 FERC ¶ 61,139, order on reh'g, 65 FERC ¶ 61,081 (1993).

² Id. at 61,996.

³ SSVEC states that in the event the Commission denies its request for disclaimer of jurisdiction, it will file for requests for waivers of various requirements, including Order Nos. 646, 888, 889, 2001, 2003 and 2004 (Filing Letter at p. 9, n.11).

Discussion

Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴ Graham County's timely, unopposed motion to intervene serves to make it a party to this proceeding.

Commission Decision

7. We find that the two agreements are for jurisdictional services under section 205 of the FPA.⁵ The fact that there are no specified charges or revenues associated with the services under the two agreements does not change SSVEC's obligation as a public utility to file with the Commission the agreements at issue here.⁶ The Commission has previously explained, in denying a request to disclaim jurisdiction, that the fact that a utility may receive little, if any, money from a sale or that a contract involves de minimis transactions is not determinative of whether the Commission can waive its jurisdiction.⁷ The Commission further explained, specifically with reference to the Prior Notice Order, that it may consider granting de minimis exemptions in individual circumstances only if Commission regulation will engender "a gain of trivial or no value."⁸ The Commission also noted that the courts have specifically held that the Commission must exercise regulation in cases in which the benefits to the public from Commission regulation

⁴ 18 C.F.R. § 385.214 (2003).

⁵ 16 U.S.C. § 824d (2000).

⁶ See section 205(c) of the FPA. Moreover, as to SSVEC's argument that Commission regulation would be harmful to it because it would have to pay annual charges to the Commission even though it collected no revenues for the services at issue, the Commission has previously explained that "[t]he annual charge is based on the volume of jurisdictional transactions and is, therefore, proportionate to [the company's] jurisdictional business." Graham County Electric Cooperative, 84 FERC ¶ 61,244 at 62,237 (1998). The Commission further explained, however, that a public utility seeking waiver of the annual charge must include evidence that it does not have the money to pay the charges or that, if paid, it would be placed in financial distress or emergency. Id. SSVEC is free to make such a waiver request in a future filing with the Commission.

⁷ See Northern Indiana Public Service Co., 66 FERC ¶ 61,213 at 61,488 (1994).

⁸ See id.

outweigh the costs.⁹ In this regard, we emphasize that our concern goes well beyond the rates a public utility charges. It extends to non-rate terms and conditions, as well as to matters of undue discrimination or preference.¹⁰ SSVEC has failed to demonstrate how Commission regulation of its agreements will bring “trivial or no value” to the public interest. Accordingly, we will deny SSVEC’s request for disclaimer of jurisdiction, but will accept the two agreements for filing, as designated, effective April 22, 2004, the date that SSVEC retired its RUS debt.

The Commission orders:

(A) SSVEC’s request that the Commission disclaim jurisdiction over the agreements is hereby denied.

(B) The agreements are hereby accepted for filing, as designated, effective April 22, 2004.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁹ See id.

¹⁰ See section 205(b) of the FPA.