

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwestern Public Service Company

Docket No. ER05-168-000

Golden Spread Electric Cooperative, Inc.,
Lyntegar Electric Cooperative, Inc.,
Farmers' Electric Cooperative, Inc.,
Lea County Electric Cooperative, Inc.,
Central Valley Electric Cooperative, Inc., and
Roosevelt County Electric Cooperative, Inc.

Docket No. EL05-19-000

v.

Southwestern Public Service Company

ORDER ACCEPTING AND SUSPENDING
PROPOSED FUEL ADJUSTMENT CLAUSE CHANGES,
ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES, AND
CONSOLIDATING PROCEEDINGS

(Issued December 29, 2004)

1. In this order, the Commission accepts, suspends for a nominal period, to become effective January 1, 2005, subject to refund, and sets for hearing Southwestern Public Service Company's (SPS) proposed changes in the Fuel Cost Adjustment (FCA) clauses in various contracts with wholesale full requirements, partial requirements and interruptible customers. This order consolidates this proceeding with Docket No. EL05-19-000, in which hearing and settlement judge proceedings are underway. This order benefits customers by ensuring that rates for service under these contracts are just and reasonable, while encouraging the parties to resolve issues through direct settlement negotiations.

I. Background

2. On November 2, 2004, SPS filed proposed changes to the FCA clauses contained in various agreements with full requirements customers (Cap Rock Energy Corporation; Central Valley Electric Cooperative, Inc.; Farmers' Electric Cooperative, Inc.; Lea County Electric Cooperative, Inc.; Lyntegar Electric Cooperative, Inc.; and Roosevelt County Electric Cooperative, Inc.), a partial requirements customer (Golden Spread Electric Cooperative, Inc.), and an interruptible customer (Public Service Company of New Mexico). SPS requests an effective date of January 1, 2005.

3. SPS states that it is filing the revised FCA clauses to conform to the Commission's current fuel cost and purchased economic power adjustment clause regulations, 18 C.F.R. § 35.14 (2004), and to also account for expenses and revenues associated with SPS' participation in the Southwest Power Pool, Inc. (SPP) Open Access Transmission Tariff (OATT). Under the revised FCA clauses, SPS will collect the net difference between the amounts SPS pays to SPP for transmission losses and the amounts that SPP distributes to SPS to compensate it for supplying energy to cover transmission losses.

4. Separately, on November 2, 2004, in Docket No. EL05-19-000, a number of the cooperative customers¹ filed a complaint concerning SPS' rates for service under their contracts for full and partial requirements service. Among other things, they were concerned that SPS is recovering through its FCA clauses purchased power costs other than those that represent true economy purchases that substitute for SPS' own higher cost energy, in violation of the filed rate and the Commission's regulations. They were also concerned that some of the costs which are being collected through the FCA clauses may already be included in SPS' base rate. In response, the Commission set the complaint for hearing and settlement judge procedures.²

II. Notice of Filing and Responsive Pleadings

5. Notice of SPS' filing was published in the *Federal Register*, 69 Fed. Reg. 67,568 (2004), with interventions and protests due on or before November 23, 2004.

¹ Farmer's Electric Cooperative, Inc.; Lea County Electric Cooperative, Inc.; Central Valley Electric Cooperative, Inc.; Roosevelt County Electric Cooperative, Inc.; Golden Spread Electric Cooperative, Inc.; and Lyntegar Electric Cooperative, Inc. (collectively, Cooperatives).

² 109 FERC ¶ 61,321 (2004).

6. On November 23, 2004, Public Service Company of New Mexico (PNM) filed a motion to intervene and protest. PNM states that SPS has included costs, such as long term purchases, that are not supposed to be recovered through FCA clauses and should be further revised. They point out that there is no cost support to verify the effect of any of these proposed changes on either the FCA clause charges or the base demand charge. PNM is also concerned about the proposed inclusion of SPP transmission losses since there is no explanation in this filing as to whether and how this is appropriately addressed.

7. On November 23, 2004, Cooperatives filed a joint motion to intervene and protest, requesting that the proposal be rejected or, in the alternative, suspended for the maximum 5-month period and set for hearing. Cooperatives state that: (1) it is not clear whether the cost of purchases from qualifying facilities included in the proposed FCA clauses reflects purchases made on an economic basis and whether the fixed costs of such purchases are already included in base rates and should therefore not be recovered through the FCA clauses; (2) SPS has failed to explain why the "Market Value of Certain Energy Purchases" should be included in the FCA clauses; (3) SPS' proposed changes to the FCA clauses include various undefined or unexplained items; and (4) SPS has not provided justification for its proposal to include SPP transmission losses in the FCA clauses.

8. On December 2, 2004, Cap Rock Energy Corporation (Cap Rock) filed a motion to intervene out-of-time and protest. Cap Rock is concerned with: (1) the inclusion of qualifying facility purchases in the proposed FCA clauses; (2) inclusion of the "Market Value of Certain Energy Purchases," which is not clearly defined; (3) the appropriateness of inclusion of SPP transmission losses in the proposed FCA clauses; and (4) the lack of cost support for these proposed changes.

9. On December 8, 2004, SPS filed an answer to the protests, stating that its proposed FCA revisions are just and reasonable and should be accepted without a hearing. Specifically, SPS argues that the proposed changes are all appropriate. SPS also argues that its proposed FCA clauses conform to the Commission's regulations and that cost support is not required. SPS states that its proposed FCA clause revisions do not merit the statutory maximum five-month suspension and requests that they be accepted for filing and made effective as of January 1, 2005, without suspension. Finally, SPS requests that, if the Commission sets this matter for hearing, it hold the hearing in abeyance and provide for settlement judge procedures.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2004), given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay, we find good cause to grant Cap Rock's untimely motion to intervene.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept SPS' answer and will, therefore, reject it.

B. Commission Determination

12. SPS' proposed FCA clause revisions 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.

13. Our preliminary analysis indicates that the FCA clause revisions have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept them for filing, suspend them for a nominal period, to become effective January 1, 2005, subject to refund, and set them for hearing and settlement judge procedures, as ordered below.

14. We will also consolidate this proceeding with the ongoing proceeding in Docket No. EL05-19-000, in which cooperative customers have filed a complaint concerning SPS' base rate. Because the issues raised in the present proceeding and in Docket No. EL05-19-000 involve common issues of law and fact, we will consolidate the proceedings for purposes of hearing and decision (and also settlement).

The Commission orders:

(A) SPS' proposed FCA clause revisions are hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2005, subject to refund, as discussed in the body of this order.

(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 the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. ER05-168-000, concerning SPS' filing, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for the parties to resolve the issues through settlement judge procedures.

(C) Docket Nos. ER05-168-000 and EL05-19-000 are hereby consolidated for purposes of hearing and decision (and also settlement).

(D) The settlement judge or presiding judge, as appropriate, designated to sit in Docket No. EL05-19-000 shall determine the procedures best suited to accommodate consolidation of Docket No. ER05-168-000 with Docket No. EL05-19-000.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.