

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Southwestern Public Service Company

Docket Nos. ER06-71-000  
ER06-71-001

ORDER CONDITIONALLY ACCEPTING RATE SCHEDULE SUBJECT TO  
OUTCOME OF ANOTHER PROCEEDING

(Issued February 7, 2006)

1. On October 27, 2005, as amended on December 9, 2005, Xcel Energy Services, Inc. (Xcel), on behalf of Southwestern Public Service Company (Southwestern), filed revisions to Southwestern's Rate Schedule No. 118 (Rate Schedule) to reflect a partial assignment of the power sales provisions in that schedule from NewCorp Resources Electric Cooperative, Inc. (NewCorp) to Cap Rock Energy Corporation (Cap Rock).<sup>1</sup> In this order, the Commission conditionally accepts Southwestern's revised Rate Schedule, subject to modification to reflect the outcome of litigation in another proceeding, as discussed below.<sup>2</sup>

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<sup>1</sup> NewCorp will continue to be subject to the interconnection rights and obligations provisions in Rate Schedule No. 118.

<sup>2</sup> See *Golden Spread Electric Cooperative v. Southwestern Public Service Company*, 109 FERC ¶ 61,321 (2004) (Order on Complaint and Establishing Hearing and Settlement Judge Procedures); *Southwestern Public Service Company*, 109 FERC ¶ 61,373 (2004) (Order Accepting and Suspending Proposed Fuel Adjustment Clause Changes, Establishing Hearing and Settlement Judge Procedures and Consolidating Proceedings).

## **Background**

2. Cap Rock serves retail electric customers in Texas. Cap Rock purchases power from Southwestern to serve the full requirements loads of its western Texas customers located in its Stanton and Lone Wolf divisions, under the Rate Schedule at issue in this proceeding. The Stanton and Lone Wolf divisions are part of the Southwest Power Pool.<sup>3</sup>

3. NewCorp wheels the power purchased by Cap Rock from Southwestern through NewCorp's looped, 305-mile transmission system, which is interconnected with Southwestern's transmission grid, and delivers that power to Cap Rock at 16 substations owned by NewCorp.

4. Southwestern served NewCorp under Rate Schedule No. 118 until April 1, 2004, when, as part of a corporate restructuring, NewCorp assigned the wholesale service obligations under Rate Schedule No. 118 to Cap Rock. The Commission accepted the service agreement that memorialized the assignment of that service obligation from NewCorp to Cap Rock on October 20, 2003.<sup>4</sup>

5. Subsequently, Southwestern, NewCorp and Cap Rock discovered that the original assignment approved by the Commission in October 2003 gave the interconnection provisions to Cap Rock, which is not interconnected to Southwestern, and left no interconnection provisions applicable to NewCorp, which is interconnected with Southwestern. They agreed that Southwestern's Rate Schedule must be revised. They agreed that NewCorp would retain the interconnection rights and obligations under Rate Schedule No. 118, and that only the power sale provisions under the Rate Schedule would be assigned to Cap Rock.

6. In its October 27, 2005 filing, Xcel states that the revisions do not change Southwestern's rights or obligations nor do the revisions change any rate, term or condition of service. Instead, the revisions memorialize the new, agreed-upon division of rights and obligations between Cap Rock and NewCorp.

7. Subsequently, on December 9, 2005, Xcel filed an amended Rate Schedule. Xcel explains that the October 27, 2005 filing contained an outdated version of Exhibit B,

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<sup>3</sup> Cap Rock's smaller eastern Texas divisions, which are not interconnected with the Stanton and Lone Wolf divisions, are in the Electric Reliability Council of Texas (ERCOT).

<sup>4</sup> See *Southwestern Public Service Company*, Docket No. ER03-1321-000 (October 20, 2003)(unpublished letter order).

Attachment 1.<sup>5</sup> Xcel states that it revised that exhibit in a filing accepted by the Commission in Docket No. ER05-168-000, but the October 27, 2005 filing did not reflect those revisions.<sup>6</sup> Xcel, therefore, submitted an updated version of the revised Rate Schedule that reflects all the revisions, including the revisions previously accepted in Docket No. ER05-168-000, as well as the revisions filed in this docket on October 27, 2005.

### **Notice of Filing and Interventions**

8. Notice of Xcel's October 27, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 67,471 (2005), with interventions and protests due on or before November 17, 2005. Cap Rock and NewCorp jointly filed a timely motion to intervene.

9. Notice of Xcel's December 9, 2005 amendment was published in the *Federal Register*, 71 Fed. Reg. 1,421 (2006), with interventions and protests due on or before January 9, 2005. On January 9, 2005, Cap Rock and NewCorp filed another motion to intervene.

10. Cap Rock and NewCorp explain that the assignment of service obligations from NewCorp to Cap Rock was part of a restructuring undertaken to separate transmission service from wholesale power supply service. They state that NewCorp is converting its service to Cap Rock from wholesale requirements to transmission service under NewCorp's Open Access Transmission Tariff (OATT) which was memorialized in a new Network Integration Transmission Service Agreement between NewCorp and Cap Rock. They point out that the Commission accepted this change in service in the October 2003 letter order.

11. Cap Rock and NewCorp explain that the changes to the Rate Schedule at issue in this filing were requested by them to reflect the assignment of the power sale provisions in that Rate Schedule from NewCorp to Cap Rock. They state that the revised Rate Schedule in this filing clarifies the current power supply arrangement between Southwestern and Cap Rock and the rights and obligations of Southwestern and NewCorp related to their existing interconnection points. Cap Rock and NewCorp, therefore, concur with Xcel's request for Commission approval of Southwestern's revised Rate Schedule. However, they also raise concerns, which we describe and address below.

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<sup>5</sup> Exhibit B, Attachment 1, contains fuel adjustment clause (FAC) provisions.

<sup>6</sup> See *supra* note 1.

## **Discussion**

### **Procedural Matters**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), Cap Rock's and NewCorp's timely, unopposed motion to intervene serves to make them parties to this proceeding.

### **Commission Determination**

13. Subject to the findings discussed below, the Commission conditionally accepts the revised Rate Schedule, to be effective in part on April 1, 2004 and in part on January 1, 2005. In this regard, we note that Cap Rock and NewCorp specifically requested the revisions proposed in the revised Rate Schedule, and that they concur in Xcel's request for approval of the revised Rate Schedule.

14. Cap Rock points out that the revised Rate Schedule originally filed on October 27, 2005 in this proceeding contains the FAC provisions that were in effect through December 31, 2004, and that the revised Rate Schedule filed on December 9, 2005 contains the FAC provisions in effect beginning on January 1, 2005. Cap Rock notes that the justness and reasonableness of both FAC provisions were set for hearing and settlement judge proceedings in consolidated Docket Nos. EL05-19-002 and ER05-168-001.<sup>7</sup> Cap Rock states that, while the revised Rate Schedule in this proceeding should not affect the outcome of those other proceedings or any relief ordered in those proceedings, the Commission should make clear that its acceptance of the revised Rate Schedule in this proceeding is subject to any rulings in the other proceedings. The Commission agrees. The Commission, therefore, will conditionally accept Xcel's filing subject to the outcome of that separate proceeding.<sup>8</sup>

15. Cap Rock also points out that Xcel requested an April 1, 2004 effective date for the revisions to the Rate Schedule. Cap Rock and NewCorp support this effective date because it is the date that NewCorp assigned its power purchase obligations under the Rate Schedule to Cap Rock. According to Cap Rock, an April 1, 2004 effective date for the revised Rate Schedule would require that the FAC provisions in the October 27, 2005 filing be the effective FAC provisions for the April 1, 2004 through December 31, 2004 time period and the FAC provisions in the December 9, 2005 filing would be the effective FAC provisions commencing on January 1, 2005, subject to any refunds ordered

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<sup>7</sup> See *supra* note 1.

<sup>8</sup> *Id.*

in the other proceedings. Cap Rock requests the Commission to make this clear in accepting the revised Rate Schedule in this proceeding.

16. The Commission agrees. We clarify that the two different FAC provisions will apply for the two different time periods. The FAC provisions submitted on October 27, 2005 will apply for the time period from April 1, 2004, the date New Corp assigned its power purchase obligations under the Rate Schedule to Cap Rock, through December 31, 2004. The updated FAC provisions submitted on December 9, 2005 will apply prospectively from January 1, 2005. The Commission also recognizes that the FAC provisions accepted in this proceeding may be subject to further revisions upon conclusion of the hearing on those provisions in the other proceedings. In addition, the FAC provisions at issue here will be subject to any refunds that may be ordered in those proceedings. The Commission, therefore, directs Xcel to file a revised Rate Schedule, on Southwestern's behalf, within thirty days of the date of this order to reflect that different FAC provisions will apply for the two time periods. The Commission also directs Xcel to make a compliance filing revising Rate Schedule No. 118 in this proceeding to reflect any further changes to the FAC provisions within thirty days of the Commission's final order in the other proceedings.

17. Finally, Cap Rock notes that, while Exhibit C, Minimum Calendar Year Billing Demand for Cap Rock, in the revised Rate Schedule was revised to eliminate early termination penalty provisions, the heading for Exhibit C in the revised Rate Schedule still contains the words "and Early Termination Penalty." Cap Rock assumes that this is a drafting oversight, and that the heading for Exhibit C should be changed to remove the quoted phrase. The Commission agrees. We find that the phrase "and Early Termination Penalty," located in the heading of Exhibit C of the revised Rate Schedule, is a drafting oversight. Therefore, we direct Xcel to submit a compliance filing within thirty days of the date of issuance of this order to remove the phrase from Exhibit C of the revised Rate Schedule.

18. Xcel requests waiver of the Commission's 60-day prior notice requirement to allow the revised Rate Schedule, as amended, to become effective April 1, 2004, the date of NewCorp's partial assignment of its rights and obligations under the Rate Schedule to Cap Rock. The Commission finds good cause to grant Xcel's request for waiver of the Commission's 60-day prior notice requirement to permit April 1, 2004 and January 1, 2005 effective dates.<sup>9</sup>

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<sup>9</sup> See *Central Hudson Gas & Electric Corporation*, 60 FERC ¶ 61,106 at 61,337, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*)(Commission will waive prior notice requirement when filing has no rate impact or when the effective date has been

The Commission orders:

(A) Southwestern's revised Rate Schedule No. 118 is hereby conditionally accepted for filing, subject to the compliance filing ordered below and to the outcome of the consolidated proceeding in Docket Nos. EL05-19-002 and ER05-168-001, to be effective in part on April 1, 2004, and in part on January 1, 2005, as discussed in the body of this order.

(B) Xcel is hereby directed to make a compliance filing relating to the FAC provisions and the typographical error within thirty (30) days of the date of this order, as directed in the body of this order.

(C) Xcel is hereby directed to make a compliance filing revising Rate Schedule No. 118 in this proceeding to reflect any potential changes to the FAC provisions within thirty days of the Commission's final order in Docket Nos. ER05-168-000 and EL05-19-000, as directed in the body of this order.

(D) Xcel's request for waiver of the Commission's 60-day prior notice requirement is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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pre-approved by the Commission). As noted by Xcel, the revised Rate Schedule has no rate impact for the time period beginning April 1, 2004 and, therefore, the Commission will allow an April 1, 2004 effective date for the time period April 1, 2004 through December 31, 2004. *See* Xcel's transmittal letter at p. 1. And the Commission has already authorized a January 1, 2005 effective date for the revised FAC provisions and, therefore, a January 1, 2005 effective date will apply prospectively from January 1, 2005. *See Southwestern Public Service Company*, 109 FERC ¶ 61,373 (2004).