

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

United States Department of Energy-
Western Area Power Administration
(Boulder Canyon Project)

Docket No. EF05-5091-000

ORDER CONFIRMING AND APPROVING RATE SCHEDULE
ON A FINAL BASIS

(Issued June 22, 2006)

1. On August 12, 2005, the Deputy Secretary of Energy (Deputy Secretary) filed a request for final confirmation and approval of Western Area Power Administration's (Western) Rate Schedule BCP-F7, for electric service from the Boulder Canyon Project (BCP), effective October 1, 2005 through September 30, 2010; the Deputy Secretary placed the rates into effect on an interim basis effective October 1, 2005. In this order, the Commission confirms and approves Western's Rate Schedule BCP-F7 on a final basis effective October 1, 2005 through September 30, 2010.

Western's Filing

2. Western explains that the power repayment study (PRS) for the BCP indicates that the existing base charge and rates are in excess of the amount needed to satisfy the cost-recovery criteria through the study period. Western further explains that, annual expenses are increasing from FY 2005 to FY 2006, but that there will be a decrease in the proposed electric service base charge and rates as a result of \$3.4 million in post-September 11, 2001 security costs being collected in FY 2005, but declared nonreimbursable by Congress.¹

¹ Until Congress instructs otherwise.

3. Western explains that, under existing Rate Schedule BCP-F6, the base charge is \$57,654,683, the energy rate is 7.41 mills per kilowatt-hour (mills/kWh), and the capacity rate is \$1.39 per kilowatt-month (kWmonth). It points out that the composite rate is 14.82 mills/kWh. Under proposed Rate Schedule BCP-F7, the base charge will be \$57,465,018, with an energy rate of 7.03 mills/kWh, and a capacity rate of \$1.37 per kWmonth. The composite rate will be 14.05 mills/kWh, which represents a decrease of approximately 5 percent when compared with the existing composite rate.

Notice of Filing and Responsive Pleadings

4. Notice of Western's filing was published in the *Federal Register*, 70 Fed. Reg. 49275 (2005), with motions to intervene and protests due on or before September 6, 2005. Timely motions to intervene and protests were filed by Colorado River Commission of Nevada (CRC), Irrigation & Electrical Districts Association of Arizona (IEDA) and Arizona Power Authority (Authority). On September 21, 2005, Western filed an answer to the protests.

Discussion

A. Procedural Matters

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedures,² the Commission does not usually permit answers to protests. However, the Commission finds good cause to permit Western's answer in this proceeding because it provides information that assists the Commission's deliberations.

B. Standard of Review

6. The Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (1977), grants the Secretary of Energy (Secretary) authority to approve Western's rates on both an interim and final basis.³ The Secretary, in turn, delegated the authority to confirm and approve Western's rates on a final basis to the Commission.⁴ The Delegation establishes

² 18 C.F.R. § 385.213(a)(2) (2005).

³ 42 U.S.C. § 7152 (2000).

⁴ Department of Energy Delegation Order No. 00-037, 1 FERC Stats. & Regs. ¶ 9,919 (2001).

the standard and scope for Commission review of Western's rates. The scope of Commission review is limited to (1) whether the rates are the lowest possible to customers consistent with sound business principles; (2) whether the revenue levels generated by the rates are sufficient to recover the costs of producing and transmitting the electric energy including the repayment, within the period of cost recovery permitted by law, of the capital investment allocated to power and costs assigned by Acts of Congress to power for repayment; and (3) the assumptions and projections used in developing the rate components that are subject to Commission review.

7. The Commission is prohibited from reviewing policy judgments and interpretations of laws and regulations made by the power generating agencies.⁵ The Commission may reject the rate determinations of Western's Administrator only if it finds them to be arbitrary, capricious, or in violation of the law, if they violate Department of Energy regulations (such as Order No. RA 6120.2, which sets forth financial reporting policies, procedures and methodologies), or if they violate agreements between Western's Administrator and the applicable power generating agency.

8. The Commission considers its role as that of an appellate body which reviews the record developed by the Administrator. The Commission only affirms or remands the rates submitted to it for review.⁶

C. Protests

9. The gravamen of the protests filed by the Authority, CRC, and IEDA is that under the terms of the Omnibus Appropriations Act, post-September 11, 2001 security costs for FY 2005 are non-reimbursable until Congress instructs otherwise. Consequently, they object to the inclusion of \$3.4 million in security costs for FY 2006. In response, Western acknowledges that the Omnibus Appropriations Act conference report may conclude that post-September 11, 2001 security costs are non-reimbursable, but Western also points out that Congress instructed Reclamation to submit a report no later than May 1, 2005, specifying planned reimbursable and non-reimbursable security costs by

⁵ The power generating agencies include the Bureau of Reclamation (Reclamation), the Army Corps of Engineers and the International Boundary and Water Commission. These agencies build and operate various projects. The Power Marketing Administrations, such as Western, market the output of the projects.

⁶ See, e.g., *United States Department of Energy-Western Power Administration (Salt Lake City Area Integrated Projects)*, 59 FERC ¶ 61,058 at 61,240-41, *reh'g denied*, 60 FERC ¶ 61,002 (1992).

project and region. Western states that, in the report Reclamation submitted, security costs were characterized as operation and maintenance costs subject to reimbursement, and while not reimbursable in FY 2005, should be included in Reclamation's costs for FY 2006. Western argues that, with the submission of the report, it now has the authority to collect the security costs in question. Western contends that doing so reflects a policy judgment based upon an interpretation of applicable law.

10. In the circumstances of this case, we agree with Western and reject the protestors' arguments. We find that, in light of the submission of the required report distinguishing between reimbursable and non-reimbursable security costs and the determination that the costs at issue here are reimbursable security costs, these costs may be reflected in Western's rates. These decisions reflect policy judgments and interpretations of law that are beyond the scope of Commission review, and must be accorded deference.

12. The Commission has evaluated Western's filing for conformance to applicable standards, and finds that it is consistent with those standards. The Commission's review of Western's submittal indicates that, as demonstrated in the PRS included in Western's filing, Western's rates will generate sufficient revenue to recoup the cost of producing and transmitting power, and providing ancillary services, and to repay the remaining Federal investment, with interest, in a timely manner. Additionally, since the revenues generated by the proposed rates should recover no more than Western's costs and the remaining Federal investment, the proposed rates are the lowest possible to customers, consistent with sound business principles. The Commission's review also indicates that the assumptions and projections used were reasonable and that the PRS was prepared in a manner consistent with Order No. RA 6120.2.

The Commission orders:

Western's Rate Schedule BCP-F7 is hereby confirmed and approved on a final basis for the period October 1, 2005 through September 30, 2010.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.