

120 FERC ¶ 61,205
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

American Electric Power Service Corporation

Docket No. ER07-1069-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING
REVISED TARIFF SHEETS AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued August 31, 2007)

1. On June 22, 2007, American Electric Power Service Corporation submitted for approval under section 205 of the Federal Power Act (FPA)¹ revised tariff sheets on behalf of two of its operating companies: Southwestern Electric Power Company and Public Service Company of Oklahoma (collectively, AEP). The revised tariff sheets would increase electric transmission rates in AEP's zone in the electricity market that is overseen by Southwest Power Pool, Inc. (SPP) and would convert those rates into formula rates that would be automatically adjusted each year based on changes to AEP's costs of providing service, without contemporaneous requests for approval under section 205. In this order, we conditionally accept the revised tariff sheets for filing, suspend their effectiveness for five months, to be effective February 1, 2008, establish hearing and settlement judge procedures, and direct AEP to make a compliance filing.

I. Background

2. On June 22, 2007, AEP submitted for approval "pro forma" tariff sheets that would revise the rates for the AEP pricing zone under SPP's Open Access Transmission Tariff (OATT).² The revised tariff sheets would convert AEP's existing transmission service rate, which is based on 1996 cost data, to a cost-of-service formula rate. AEP proposes to recalculate the formula rate in May of each year for service from July 1 of the same year to June 30 of the following year. The inputs to the formula rate would be historical data from the previous year's FERC Form No. 1 as well as data from AEP's

¹ 16 U.S.C. § 824d (2000).

² AEP uses the term "pro forma" to indicate that, if the tariff sheets are accepted, the actual revised tariff sheets will be issued by SPP. AEP states that SPP will also file annual updates to the tariff sheets to reflect application of AEP's formula rates. We will refer to the "pro forma" tariff sheets as revised tariff sheets.

accounting ledgers and new transmission plant additions that have gone into service or are expected to go into service in the current calendar year. AEP proposed an ROE formula component of 11.9 percent which includes a base ROE of 11.4 percent and a 50 basis point adder as an incentive for AEP's participation in SPP.

3. AEP does not propose, at this time, incentive rate treatment except for the adder for its participation in SPP discussed above. However, in order to allow AEP to reflect certain incentive rate treatments that it may seek and the Commission may authorize in the future, AEP's proposed formula rate includes placeholders for the following incentive rate treatments: recovery of 100 percent Construction Work In Progress (CWIP), recovery of ROE incentives, and recovery of unamortized pre-commercial costs in the event of Commission approval of abandonment costs. Additionally, the proposal includes a cap of \$0.05 per kW per month on the annual rate impact of increases in Post-employment Benefits Other than Pensions (PBOPs).³

4. To avoid any over- or under-recovery that might result from the use of estimated data, AEP's proposal includes a true-up provision that provides for AEP either to charge or refund over 12 months, with interest, the difference between the estimated transmission revenue requirement and the actual revenue requirement. AEP's proposal also includes a process under which customers and other interested parties would be afforded the opportunity to review and challenge AEP's application of the formula rate (*i.e.*, AEP's calculations in its annual updates) before they could file a complaint with the Commission.⁴ However, AEP notes that this process would not apply to complaints about the formula rate itself.

5. AEP also proposes modifications as to how SPP, on AEP's behalf, would charge transmission customers for taking service over AEP's facilities. For Network Integration Transmission Service (network service), AEP proposes to collect one-twelfth of its annual revenue requirement from network customers based on their load ratio shares.⁵ For Point-to-Point Transmission Service (PTP service), AEP proposes to eliminate a transmission service discount that ensures a transmission customer, taking service over more than one AEP zone (*i.e.*, East Zone, West Zone-SPP or West Zone-ERCOT), will not be charged more than the rate for either the East or West Zone. AEP asserts that the

³ In support of this provision, AEP cites *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007) (*Duquesne*).

⁴ Ex. AEP 101 at 7-10.

⁵ The existing rate design in the SPP OATT for AEP's network service rates applies a stated rate to network load which results in revenue collection that varies with changes in network load.

discount, which was implemented in the AEP OATT, is now obsolete since the AEP Operating Companies have transferred control of their facilities to regional transmission organizations (RTOs).⁶

6. AEP's proposal results in a rate increase of approximately \$51.3 million (57.8 percent) if the costs of expected transmission upgrades are included and a rate increase of approximately \$40.6 million (45.81 percent) if the costs of expected transmission upgrades are excluded. AEP explains that it is proposing formula rates because AEP has made and expects to make further significant annual additions to its transmission plant for an extended period of time. AEP contends that its transmission formula rate is similar to the transmission formula rates that have been accepted by the Commission for other transmission owners in RTOs. Further, AEP notes that the Commission has encouraged transmission owners, particularly in SPP, to file formula rates.⁷

7. Additionally, AEP filed revised tariff pages to modify Schedule 1, Scheduling, System Control and Dispatch Service (scheduling service) of SPP's OATT.⁸ Under the existing Schedule 1 of SPP's OATT, SPP charges transmission customers stated rates for scheduling service that reflect the rates charged to SPP by the control area operators. AEP does not propose to change SPP's rates to transmission customers but, instead, proposes to incorporate into the SPP OATT a formula rate to calculate its charges to SPP for scheduling service.⁹ AEP notes that AEP's existing charges to SPP for scheduling service are contained in AEP's OATT.

⁶ AEP also changes the reference of "American Electric Power – West" zone to "Zone 1" to recognize that the rates for the zone now reflect the rates of other transmission owners in the zone besides AEP.

⁷ AEP's June 22, 2007 Filing at 1 & n.1. AEP cites *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057 at P 386, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007); *Allegheny Power System Operating Cos.*, 106 FERC ¶ 61,003 at P 32 (2004); *Southwest Power Pool, Inc.*, 111 FERC ¶ 61,118 at P 32 (2005).

⁸ AEP is not proposing to change the rates for any other transmission ancillary service in the SPP OATT.

⁹ AEP also proposes certain administrative changes in the revised tariff pages. For example, AEP proposes to eliminate the reference in Attachment H of the SPP OATT to the AEP Texas North transmission facilities because those facilities were transferred to SWEPCO in February 2007.

8. AEP requests an effective date of September 1, 2007 and that its proposed rates be accepted for filing without an evidentiary hearing or with only a nominal suspension.¹⁰ AEP further requests that, if the Commission establishes a hearing, the Commission specify the issues set for hearing and not permit parties to litigate formula rate provisions that the Commission has approved for other transmission owners.

9. AEP also requests waivers of some Commission filing requirements, including: waivers of the full Period I-II data requirements; waiver of attestation concerning Period II submissions required by section 35.13(c)(6); and waiver of the requirement in section 35.13(a)(2)(iv) to determine if and the extent to which a proposed change constitutes a rate increase based on Period I-II data. AEP states that the abbreviated statements, testimony and its FERC Form No. 1 provide ample support for the proposed formula rate.

II. Notice and Responsive Pleadings

10. Notice of AEP's filing was published in the *Federal Register* with protests or interventions due on or before July 13, 2007.¹¹ Empire District Electric Company, Oklahoma Gas and Electric Company, Midwest Energy, Inc., Kansas City Power and Light Company and SPP filed timely motions to intervene. City Utilities of Springfield, Missouri (City Utilities), Xcel Energy Services, Inc. (on behalf of its subsidiary Southwestern Public Service Company) (Xcel), Sunflower Electric Power Corporation (Sunflower) and City of Coffeyville, Kansas (Coffeyville) filed untimely motions to intervene. Timely motions to intervene and protests were filed by: East Texas Electric Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative, Inc. (collectively East Texas Cooperatives); Oklahoma Municipal Power Authority (OMPA); and Arkansas Electric Cooperative Corporation (AECC) and Golden Spread Electric Cooperative, Inc. (Golden Spread). East Texas Cooperatives, OMPA, AECC and Golden Spread are herein referred to collectively as Protesting Parties. On July 30, 2007, AEP filed an answer to the protests. On August 14, 2007, OMPA, AECC and Golden Spread filed an answer to AEP's answer. Also on August 14, 2007, East Texas Cooperatives filed a motion to reject AEP's answer and, in the alternative, an answer to AEP's answer.

11. The Protesting Parties raise various issues along four main themes that: (1) the processes to review and challenge the application of the formula are inadequate;

¹⁰ AEP cites instances in which the Commission has accepted formula rates with a nominal suspension, citing *Idaho Power Co.*, 115 FERC ¶ 61,281, at P 30 (2006); *Duquesne*, 118 FERC ¶ 61,087 at P 69; and *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219 (2007).

¹¹ 72 Fed. Reg. 36,444 (2007).

(2) AEP's requested ROE is unjust and unreasonable; (3) certain cost-of-service and rate design issues should be rejected or set for hearing; and (4) the revised tariff sheets should be suspended for the maximum period and set for hearing.

A. Review and Challenge Provisions

12. Protesting Parties assert that AEP's protocols for revising and challenging application of the formula rate are insufficient to ensure that AEP's rates are fair, are overly restrictive on customers, lack clarity and therefore could be "gamed" by AEP, and are otherwise unreasonable. Protesting Parties ask the Commission (1) to require AEP to file its annual rate updates (*i.e.*, the annual adjustments that AEP makes to its transmission rates by operation of the proposed formula) with the Commission under section 205 of the FPA; (2) to modify provisions that limit customers' access to information and ability to challenge rate changes, (3) to ensure sufficient discovery rights during the informal review period, and (4) to require AEP to specify when agreed-upon corrections to the formula rate calculations would be made.

13. In response, AEP asserts that the annual updates should not be subject to review under section 205. According to AEP, the formula rate is the filed rate; thus, the annual update is not a rate change under section 205. AEP also argues that Protesting Parties' suggestions would undermine the Commission's policy of encouraging utilities to adopt formula rates. AEP proposes to have SPP post the annual updates on SPP's website and to provide widespread notice of the posting (including to customers, state commissions and the Commission). AEP states that it does object to including the posted information with its notice to the Commission, strictly as an informational filing.¹² AEP also states that it will disclose any changes in its accounting policies, practices or procedures that would affect the formula or calculations thereunder, and that any formula calculations that are based on its books and records would be consistent with the Commission's accounting policies and procedures.¹³

14. Finally, AEP asserts that it has proposed a more extensive and customer-friendly review process than what the Commission has approved in some other cases. For example, AEP's annual update would become final after eight months while the review and challenge timelines for certain companies is only about six and one-half months. AEP states that its proposed review process is designed to afford a comprehensive opportunity for review and resolution of issues before the start of the next annual update so that issues in one annual update are resolved prior to the next annual update.

¹² AEP states that its proposal to post the information on the website of a RTO makes this case different from the informational filing requirement in *Idaho Power*, 115 FERC ¶ 61,281 at P 29.

¹³ AEP's answer at 6-7 citing Formula Rate Implementation Protocols at I.3.c and I.4.a.

According to AEP, customers would have two chances to review and request information (*i.e.*, when the costs are reflected in rates and, again, when the rates are trued-up to actual costs in the next annual update).

B. Return on Common Equity

15. Protesting Parties assert that AEP's proposed base ROE of 11.4 percent is excessive in light of the actual risks that AEP faces in providing transmission service. They also assert that, in using a proxy group to establish an appropriate ROE for AEP, AEP has inappropriately included utilities outside of the SPP region. Finally, they assert that AEP must exclude both the high-end and low-end estimates from its proxy group and use the median ROE within the zone of reasonableness. Protesting Parties also contest AEP's request for a 50 basis point adder for RTO participation on the grounds that such an incentive is unnecessary; AEP is under an obligation to participate in an RTO.

16. AEP responds that objections to its proposed ROE would result in relitigation of well-settled Commission policy, are based on incorrect facts concerning risk to AEP, would prevent AEP from compensating investors, and would thwart the legislative goal of encouraging investment in transmission infrastructure.

17. Specifically with respect to the proxy group, AEP states that it used a proxy group of twenty-four transmission owners in SPP, the region that is overseen by Midwest Independent Transmission System Operator, Inc. (Midwest ISO), and the region that is overseen by PJM Interconnection, LLC (PJM). AEP states that this approach is consistent with Commission precedent and the Commission's on-going effort to eliminate seams and push towards a "virtual single market."¹⁴ AEP asserts that such a large proxy group avoids problems that the Commission has found with small proxy groups.¹⁵ AEP also asserts that its large proxy group recognizes that transmission owners throughout the country compete for investment funds from the same pool of potential capital. Finally, AEP states that elimination of use of high and low estimates and use of a median ROE would contradict Commission policy.¹⁶

¹⁴ See AEP's answer at 11, 15, 17 (citing *Bangor Hydro Electric Co.*, 117 FERC ¶ 61,129 at P 23 (2006); *Consumers Energy Co.*, Opinion No. 456, 98 FERC ¶ 61,333, at 62,412 (2002); *Midwest Independent Transmission System Operator, Inc.*, 100 FERC ¶ 61,292 at P 5 (2002).

¹⁵ AEP's cites *Williston Basin Interstate Pipeline Co.*, 104 FERC ¶ 61,036 at P 35, 38 (2003).

¹⁶ AEP answer at 22-23.

C. Cost of Service and Rate Design

18. Protesting Parties assert that: (1) AEP's proposed depreciation rates have not been approved by the Commission; (2) the proposed implementations of associated business development expenses and allocation of property taxes are improper; (3) AEP's formula rates fail to remove the cost of directly assigned facilities from AEP's revenue requirement; (4) AEP's proposed inclusion of generator interconnection costs in the formula rate should be set for hearing; (5) AEP has overstated rate base, for example by understating accumulated deferred income taxes (ADIT); (6) classification of transmission and distribution facilities should be determined in this proceeding; and (7) AEP's formula rate calculation should be based on a thirteen-month average rate base as opposed to the year-end balance.

19. Protesting Parties also identify allegedly irregular or improper applications in the proposed formula, such as (1) proposed PBOPs, (2) proposed 1/8 method of Cash Working Capital recovery, (3) proposed wage and salary allocation, (4) proposed common electric plant allocation, (5) exclusion of Account 219, (6) inclusion of Account 216.1, and (7) inclusion of overly-broad placeholders for other costs.

20. AEP responds: (1) that its proposed depreciation rates have been approved by the Commission because they are derived from depreciation expenses reported in the FERC Form No. 1 and have been approved by state regulatory commissions; (2) that its inclusion and allocation of associated business development expenses, industry association, and property taxes dues are proper; (3) that the proposed formula does not include direct assignment facilities; (4) with respect to generation interconnection, that the amount on Worksheet B, line 1 of the formula titled "Funds from IPP Customers" relates only to funds received from generators related to network upgrades; (5) that the proposed allocation of ADIT includes one incorrect amount (which AEP must correct in its compliance filing) but is otherwise valid; (6) that classification of AEP's transmission and distribution facilities will be determined when AEP seeks a related determination under SPP's OATT in September 2008; (7) that use of a thirteen-month rate base would undermine AEP's goal of having rates that reflect current investment; (8) that the formula rate reflects established practice concerning the treatment of prepaid pension costs;¹⁷ and (9) that its placeholders for other adjustments to rate base provide needed flexibility and transparency in the formula rate.¹⁸

¹⁷ AEP cites Commission Accounting and Reporting Guidance to Recognize the Funded Status of Defined Benefit Post Retirement Plans, Docket No. A107-1-000 (March 29, 2007).

¹⁸ AEP included common plant, as a placeholder, in case it acquires a utility with common plant in the future.

D. Hearing and Waivers

21. Protesting Parties assert that AEP's proposal raises issues of material fact that warrant an evidentiary hearing, that AEP has not demonstrated a sufficient basis for excluding components of its proposed formula rate from consideration at hearing, and that limiting the scope of the hearing as proposed by AEP would inappropriately shift the burden of proof to customers. Protesting Parties also seek a five-month suspension of AEP's proposal in light of the substantial rate increase that would result.¹⁹ Finally, Protesting Parties oppose AEP's request for waivers of the Commission's regulations concerning the filing of Period I and II data, attestation of Period II data, and data on whether the proposed change is a rate increase. Protesting Parties suggest that waiver would be especially inappropriate here in light of the magnitude of the proposed rate increase and the significant time since AEP last submitted cost support.²⁰

22. AEP responds that a hearing is not required to address many of the cost-of-service and rate design issues raised by the Protesting Parties and that none of the issues raised would justify rejection of the proposed formula rate. AEP notes that the size of the rate increase does not matter in determining the length of a suspension; rather, it is the amount of the rate increase that is excessive. AEP argues that the Commission may take highly judgmental factors, such as ROE, into consideration when determining the suspension period. AEP argues that no party has shown that AEP's proposal is substantially excessive. However, if the Commission determines a suspension period is necessary, AEP argues for a nominal suspension so that it is not deprived of the opportunity to recover just and reasonable rates for the five month period.

III. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will also grant the late interventions of City Utilities, Xcel, Sunflower, and Coffeyville given the early stage of this proceeding, their interests in this proceeding, and the absence of any undue prejudice or delay.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the

¹⁹ They cite *Duke Power Co.*, 74 FERC ¶ 61,050, at 61,113 (1996).

²⁰ They cite *Commonwealth Edison Co.*, 119 FERC ¶ 61,238 at P 93 (2007) and *Trans-Allegheny*, 119 FERC ¶ 61,219 at P 57.

decisional authority. We will accept AEP's answer because it has provided information that assisted us in our decision-making process. We will deny the answers to AEP's answer. Protesting Parties will have future opportunities to be heard.

B. Acceptance and Suspension of AEP's Proposal

25. For the reasons discussed below, we will accept AEP's proposed formula rate and 50 basis point adder for RTO participation, subject to a compliance filing and five months' suspension, hearing, and settlement judge procedures, effective February 1, 2008, subject to refund.

26. AEP's proposed formula rate raises 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.

27. Our preliminary analysis indicates that AEP's proposed revised tariff sheets have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), the Commission explained that, when our preliminary analysis indicates that proposed rates may be unjust and unreasonable and substantially excessive, the Commission will generally impose a maximum suspension (*i.e.*, five months).²¹ In the instant proceeding, our preliminary analysis indicates that the proposed rates may be substantially excessive. Therefore, we will accept AEP's filing subject to a compliance filing as discussed below, suspend it for five months to be effective on February 1, 2008, subject to refund, and set it for hearing and settlement judge procedures.

28. At the hearing, AEP will be required to demonstrate the justness and reasonableness of its proposal. Except to the extent that an issue is resolved below, we will not limit the scope of the hearing as requested by AEP to avoid shifting the burden of proof to customers. To the extent that AEP wishes to rely on the Commission's treatment of other formula rates, AEP may cite that treatment as precedent.

29. While we are setting this matter for a trial-type evidential hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the

²¹ 18 FERC ¶ 61,189 at 61,374-75 (the Commission will suspend a proposed rate for the maximum period, five months, if the proposed rate increase is found to be substantially excessive); *Tucson Elec. Co.*, 76 FERC ¶ 61,235 at 62,147 & nn.25-26 (1996).

Commission's Rules of Practice and Procedure.²² If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.²³ The settlement judge shall report to the Chief Judge and the Commission within 30 days of appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

C. Specific Findings

30. We make specific findings on the following issues:

1. Formula Specificity and Informational Filing

31. We have concerns about the specificity of the calculations in the proposed formula rate. For example: (1) many of the components of the formula refer to worksheets without including the calculations from those worksheets;²⁴ (2) certain administrative and general expenses have no stated allocator in the formula;²⁵ and (3) the formula's notes related to General Plant and Administrative and General expenses refer to documentation that is not provided.²⁶

32. The Commission's policy requires that all formula calculations be incorporated into rate schedules so that public utilities cannot unilaterally revise the calculations at their discretion.²⁷ Thus, AEP is required to submit, in the compliance filing ordered

²² 18 C.F.R. § 385.603 (2007).

²³ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission'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).

²⁴ See, e.g., proposed Original Sheet No. 161D.14.

²⁵ See, e.g., proposed Original Sheet No. 161D.6, lines 81-84.

²⁶ Proposed Original Sheet No. 161D.8, Letter K.

²⁷ *Maine Yankee Atomic Power Co.*, 42 FERC ¶ 61,307, *reh'g denied* 43 FERC ¶ 61,453 (1988). See also, *Midwest Independent Transmission System Operator, Inc.*, 101 FERC ¶ 61,221 (2002).

herein, a revised formula rate template that will be part of the SPP OATT and that will incorporate all necessary details and calculations, including but not limited to all supporting worksheets.

33. As noted above, formula rates must be transparent and references in the formula rate template to publicly available information, such as the FERC Form No. 1, for input data facilitate transparency. AEP's current formula rate template utilizes data as formula inputs that are from non-public sources (*e.g.*, AEP's accounting ledgers). We will include in the hearing the issue of whether AEP's formula rate, as revised in the compliance filing, is transparent enough to operate without an informational filing.

2. Return on Common Equity

34. We will grant up to 50 basis points of incentive ROE for participation in SPP, subject to suspension and the zone of reasonable returns determined at hearing.²⁸ The Commission's decision to grant AEP an incentive ROE for participation in SPP is consistent with the stated purpose of section 219 of the FPA²⁹ – that the incentive applies to all utilities joining the transmission organization – and is intended to encourage AEP's continued involvement with SPP.³⁰ The hearing that is established herein should consider all other issues concerning AEP's proposed ROE, including but not limited to the composition of the proxy group and AEP's capital structure.³¹

3. Other Incentives and Placeholders

35. AEP proposed, as part of its formula rate, placeholders for the recovery of future incentives when those incentives are authorized by the Commission. The placeholders apply to incentives such as recovery of 100 percent CWIP, project-specific ROE

²⁸ *See, e.g., San Diego Gas & Elec. Co.*, 118 FERC ¶ 61,073, at P 25-26 (2007) (*SDG&E*).

²⁹ Pub. L. No. 109-58, § 1241, 119 Stat. 594, 961, *to be codified at* 16 U.S.C. § 824s.

³⁰ *See SDG&E*, 118 FERC ¶ 61,073 at P 26 (finding that there are considerable benefits associated with a utility's membership in a transmission organization).

³¹ At present, there is no value in the formula template for AEP's ROE. In its compliance filing, AEP must incorporate a stated value for the ROE into the formula template as part of the formula rate. *See New England Power Co.*, 31 FERC ¶ 61,378; *Southwestern Elec. Power Co.*, 31 FERC ¶ 61,389 (1985).

incentives, and recovery of unamortized pre-commercial costs when abandonment costs are granted.³² The formula template is blank (*i.e.*, has no values) with respect to these placeholders.

36. We direct AEP, in its formula template, to maintain a value of zero in all incentive placeholders. When AEP applies for authorization to recover incentives, AEP can also apply under section 205 to replace the zero values in the placeholders with the approved amounts.³³ We also direct the parties at the hearing to ensure that the formula components, including the placeholders for future incentives, will work as intended and will calculate the incentives correctly when authorized for specific projects. For example, the formula should be able to track incentives for individual projects, since all projects might not be approved for incentives or for the same incentives.³⁴

37. Specifically with respect to CWIP that might be approved by the Commission (whether 50 percent CWIP under Order No. 298 or 100 percent incentive CWIP under Order No. 679), AEP will need to demonstrate in the relevant, future filing that it meets applicable requirements.³⁵

4. Depreciation

38. AEP asserts that it is unnecessary to set its proposed depreciation rates for hearing because those rates are derived from the depreciation rates in AEP's FERC Form No. 1. AEP's response seems to indicate that its depreciation rates may automatically adjust as long as the depreciation rates are found in the FERC Form No. 1. To the contrary, we permit changes to depreciation rates only through a filing under section 205:

To change prices charged for power sales or transmission services (whether determined by stated rates or formula rates) to reflect a change in

³² It remains unclear from AEP's proposal where pre-commercial costs would be recovered (if the project is not abandoned). *See Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, at P 50 (2007).

³³ In permitting the placeholders for future incentives, we are not prejudging the outcome of future requests by AEP for authorization for such incentives.

³⁴ *San Diego Gas & Elec.*, 118 FERC ¶ 61,073 at P 23.

³⁵ *Construction Work In Progress for Public Utilities; Inclusion of Costs in Rate Base*, Order No. 298, 48 Fed. Reg. 24,323, FERC Stats. & Regs. ¶ 30,455 at 30,534, *order on reh'g*, Order No. 298-A, 48 Fed. Reg. 46,012, FERC Stats. & Regs. ¶ 30,500, *order on reh'g*, Order No. 298-B, 48 Fed. Reg. 55,281, FERC Stats. & Regs. ¶ 30,524 (1983).

depreciation, a utility would first have to make a filing with [the Commission] pursuant to sections 205 or 206, . . . as appropriate, to that effect.[³⁶]

Thus, we will require AEP to state in the formula rate the Commission-approved depreciation rates and require AEP to make a section 205 filing to change them.³⁷ To the extent that AEP reports in its FERC Form No. 1 depreciation rates that have changed from what was used in AEP's last transmission rate case, then the depreciation rates are reasonably included in the hearing.

5. PBOPs

39. AEP proposes, in section I.5 of the formula rate template, protocols to allow recovery of PBOP costs which do not exceed a rate impact equivalent to \$0.05/kW per month in the projected annual transmission revenue requirement (as compared with the immediately prior annual update) without a section 205 or 206 rate change filing.³⁸ We reject this provision of AEP's proposal as inconsistent with the Commission's policy on PBOPs.³⁹ PBOP accounts are typically amounts that are amortized over a set period of time,⁴⁰ much like decommissioning expenses. A modification in the amortization without Commission scrutiny can result in over-recovery or intergenerational inequities. AEP is directed to submit revised tariff sheets reflecting this revision as part of the compliance filing to be made within 30 days of the date of this order.

6. Waivers

40. We deny AEP's request for waiver of filing an attestation as required in 18 C.F.R. § 35.13(d)(6). AEP has provided no justification for the requested waiver. We will

³⁶ *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs. ¶ 31,104, at 31,695 & n.25 (2000). *See also* Order No. 679, *supra*.

³⁷ *Commonwealth Edison*, 119 FERC ¶ 61,238 at P 91, n.97.

³⁸ *See Statement of Financial Accounting Standards No. 106*, Employers' Accounting for Postretirement Benefits Other Than Pensions.

³⁹ *See Maine Yankee Atomic Power Co.*, 66 FERC ¶ 61,375, *order on clarification*, 68 FERC ¶ 61,190 (1994); *Post-Employment Benefits Other than Pensions, Statement of Policy*, 61 FERC ¶ 61,330 (1992), *order on reh'g*, 65 FERC ¶ 61,035 (1993).

⁴⁰ In accordance with *Statement of Financial Accounting Standards No. 106*.

require AEP to provide this attestation as part of its compliance filing to be made within 30 days of the date of this order, along with corrected tariff sheets reflecting the Commission's policy on PBOPs.

41. However, we will grant the remaining waivers consistent with our prior approval of formula rates.⁴¹ Nonetheless, to the extent that parties at the hearing ordered below can show the relevance of additional information needed to evaluate this proposal, the presiding judge can provide for appropriate discovery of such information.⁴²

The Commission orders:

(A) AEP's proposed tariff sheet revisions are hereby accepted for filing and suspended for five months, to become effective on February 1, 2008, subject to refund, subject to the outcome of hearing and settlement judge procedures, and subject to the compliance filing ordered in Ordering Paragraph (B), as discussed in the body of this order.

(B) AEP is hereby directed to file a compliance filing within 30 days to reflect the modifications that are ordered herein, as discussed in the body of this order.

(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 AEP's proposed tariff sheet revisions. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2007), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the date of the appointment of the settlement judge, 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 shall provide

⁴¹ *Commonwealth Edison*, 119 FERC ¶ 61,238 at P 94.

⁴² *Id.*

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 judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., 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)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.