

121 FERC ¶ 61,160
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.

Sierra Pacific Power Company and Nevada Power
Company

Docket Nos. ER07-1371-000
EL08-6-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATES, INSTITUTING
SECTION 206 PROCEEDING, ESTABLISHING REFUND EFFECTIVE DATE,
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued November 13, 2007)

1. In this order, we accept for filing Sierra Pacific Power Company's (Sierra) and Nevada Power Company's (Nevada) (collectively, the SPR Operating Companies) proposed transmission service rates for SPR Operating Companies' Zone A and suspend them for five months to become effective April 15, 2008, subject to refund. We accept the proposed change to the Schedule 1 - Scheduling System Control and Dispatch Service (Schedule 1) rate and suspend it for one day to become effective November 16, 2007, subject to refund. We also institute a section 206 proceeding and establish a refund effective date. Finally, we establish hearing and settlement judge procedures.

The Filing

2. On September 14, 2007, SPR Operating Companies filed to revise the Zone A transmission rates for point-to-point service and network service under SPR Operating Companies' open access transmission tariff (OATT). Specifically, the rate for network and point-to-point service increases from \$2.88/kW/month to \$2.97/kW/month. SPR Operating Companies also filed to increase the rates under Schedule 1 of the OATT from \$158.81/MW/month to \$246.27/MW/month. According to SPR Operating Companies, the increase in transmission rates reflects the costs of the construction of new transmission facilities, as well as increases in capital expenditures and transmission operation and maintenance expenses. SPR Operating Companies also seek a return on common equity of 11.5 percent for use in computing the cost of transmission service. These proposed changes will result in an increase in point-to-point and network rates of 3.1 percent.

3. SPR Operating Companies state that the increased rates are being filed in compliance with the settlement in Docket No. ER05-14-000, which obligated them to file cost justification for either the existing Zone A base rates or new rates by September 15, 2007.¹

4. SPR Operating Companies initially requested that the proposed rates be made effective November 15, 2007, without further investigation or hearing. However, SPR Operating Companies, in its October 22 Answer, requests that the Commission suspend the effectiveness of the Zone A rates for a nominal period and allow them to go into effect subject to refund. In its October 22 Answer, the SPR Operating Companies also request the initiation of settlement proceedings before a settlement judge.

Notice of Filing and Responsive Pleadings

5. Notice of SPR Operating Companies' filing was issued on September 20, 2007, with interventions, protests and comments due on or before October 5, 2007. Timely motions to intervene raising no substantive comments were filed by the California Electricity Oversight Board, and Plumas Sierra Rural Electric Cooperative. Timely motions to intervene and protest were filed by the City of Fallon, Nevada and Truckee Donner Public Utility District (collectively, protesters). A motion to intervene out-of-time was filed by Barrick Goldstrike Mines Inc. and Barrick Turquoise Ridge Inc., as manager of Turquoise Ridge Joint Venture (jointly referred to as the Barrick Mines). On October 22, 2007, SPR Operating Companies filed an answer addressing the cost-of-service issues raised in the protests. SPR Operating Companies requests that the Commission order a nominal suspension of the proposed rates and initiate settlement proceedings (October 22 Answer). On November 6, 2007, protesters filed an answer to SPR Operating Companies' October 22 Answer.

Discussion

Procedural Matters

6. 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.

7. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2007), the Commission will grant Barrick Mines' motion to

¹ The Commission approved the settlement on May 6, 2006. See *Sierra Pacific Resources Operating Companies*, 111 FERC ¶ 61,173 (2005).

intervene out-of-time given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

8. 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 decisional authority. We will accept SPR Operating Companies' and protesters' answers because they have provided information that assisted us in our decision-making process.

Analysis

Rate Design

9. Protesters argue that SPR Operating Companies have not shown that the use of the stated rate methodology is just and reasonable, absent periodic updating of the billing determinants. Protesters argue that SPR Operating Companies' stated rate methodology should be rejected, or at least modified to require that the proposed stated rate be recalculated periodically in accordance with current billing determinants. Protesters contend that the stated rate methodology will deny existing network customers the benefit of increased load growth and use of the system. Furthermore, the protesters assert that this rate structure will result in over-recovery of costs by SPR Operating Companies because as load on or use of its transmission system grows, SPR Operating Companies will be able to recover its entire revenue requirement from only a portion of its actual load and would be able to retain the revenues received from additional load and customers.

10. The protesters assert that SPR Operating Companies' rate filing was the result of a stipulated settlement in Docket No. ER05-14-000, which was entered into on the condition that it would not set precedent for any determination regarding the transmission rates of Sierra.² Therefore, the protesters argue that SPR Operating Companies cannot cite the settlement as support for its proposal in the instant docket.

Commission Determination

11. Consistent with its previous rulings, the Commission will accept SPR Operating Companies' stated rate methodology for Zone A. As previously noted, in *Alliance Companies*, we found that a stated rate for network transmission service is just and

² See *Sierra Pacific Resources Operating Companies*, 110 FERC ¶ 61,126 (2005).

reasonable as it provides greater rate certainty to suppliers and customers.³ However, as discussed below, we will set for hearing and settlement judge procedures the appropriate level of the stated rate, as well as whether any further modifications are required to the proposed rate design, as argued by protestors.

12. Consistent with its previous rulings,⁴ the Commission will also deny the protestors' request that SPR Operating Companies be directed to modify its proposal to require that the applicable rate be periodically recalculated in accordance with current billing determinants.

Proposed Transmission Rate Increase

13. Protesters argue that SPR Operating Companies' existing Zone A transmission rates are overstated. Protesters also contend that SPR Operating Companies' proposal to increase its Zone A transmission rates is not adequately justified.

14. Protesters also contend that there are errors and questionable assumptions found in SPR Operating Companies' cost-of-service study including: (1) the proposed return on equity is excessive; (2) the Period II transmission system load is understated; (3) certain transmission revenue credits for Period II are understated; (4) the cash working capital requirement is overstated; (5) the prepayments component of rate base is overstated; (6) the allocations of other prepayments to transmission are questionable; and (7) the general and intangible plant functionalization and allocation requires scrutiny.

Commission Determination

15. For the reasons discussed below, we will accept SPR Operating Companies' proposed transmission rate increase and suspend it for a full five months, to become effective April 15, 2008, subject to refund, and set the matter for hearing and settlement judge procedures. However, as discussed below, we are accepting SPR Operating Companies' stated rate methodology for Zone A, without requiring periodic updating of the billing determinants, and thus those issues will not be addressed in the hearing procedures ordered below.

³ See *Alliance Companies, et al.*, 94 FERC ¶ 61,070 (2001), *order on reh'g*, 95 FERC ¶ 61,182 (2001) (*Alliance Companies*). See also *PJM Interconnection, L.L.C., et al.*, 108 FERC ¶ 61,318 (2004) (*PJM*); *Southwest Power Pool*, 96 FERC ¶ 61,034 (2001).

⁴ See *Sierra Pacific Operating Companies*, 109 FERC ¶ 61,245 at P 10 (2004).

Suspension

16. Our preliminary analysis indicates that SPR Operating Companies' proposed transmission rates 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 Company*,⁵ the Commission explained that when its preliminary examination indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission would generally impose a five-month suspension. In the instant proceeding, we find that the proposed rates may be substantially excessive. Therefore, we will suspend SPR Operating Companies' proposed rate increase for the maximum five month period.

17. Additionally, should it be determined that SPR Operating Companies' present transmission rates are unjust and unreasonable, and that lower rates would be just and reasonable, the Commission would need to institute an investigation of the SPR Operating Companies' present transmission rates pursuant to section 206 of the FPA. Accordingly, the Commission will institute a proceeding in Docket No. EL08-6-000, and it will establish a refund effective date. When the Commission institutes a section 206 proceeding on its own motion, section 206(b) of the FPA, as recently amended by section 1285 of the Energy Policy Act of 2005,⁶ requires the Commission to establish a refund effective date that is no earlier than publication of the notice of its initiation of the investigation, but no later than five months after that date. The Commission will establish a refund effective date in this proceeding to be the date of publication of the notice of the initiation of the investigation in the *Federal Register*.

18. Section 206(b) also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reason why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such a decision. To implement that requirement, we will direct the presiding judge to provide a report to the Commission no later than 15 days in advance of the refund effective date in the event the presiding judge has not, by that date: (1) certified to the Commission a settlement which, if accepted, would dispose of the proceeding; or (2) issued an initial decision. The judge's report, if required, shall advise the Commission of the status of the investigation and provide an estimate of the expected date of certification or a settlement or issuance of an initial decision.

⁵ 18 FERC ¶ 61,374-75 (1982) (*West Texas*).

⁶ Energy Policy Act of 2005, Pub.L. No. 109-58, § 1285, 119 Stat. 594, 580-81.

Proposed Schedule 1 Rate Increase

19. SPR Operating Companies have filed to increase the Schedule 1 rate from \$158.81/MW/month to \$246.27/MW/month. The protesters have not specifically taken issue with this proposed rate.

Commission Determination

20. Our review indicates that SPR Operating Companies' proposed Schedule 1 rate has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful.

Suspension

21. As defined in *West Texas*, the Commission would generally impose a five-month suspension. The Commission recognizes, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances exist here. Accordingly, the Commission will exercise its discretion to suspend the proposed Schedule 1 rate for a one day period and permit the rate to become effective November 16, 2007, subject to refund, and the outcome of the hearing and settlement judge procedures established in this order.

Consolidation

22. Because Docket No. ER07-1371-000 and Docket No. EL08-6-000 raise common issues of law and fact, we will consolidate them for purposes of hearing and decision.

Hearing and Settlement Judge Procedures

23. SPR Operating Companies' filing raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed through the hearing and settlement judge procedures.

24. Accordingly, among the issues to be examined at hearing are: (1) the proposed return on equity; (2) the transmission system load; (3) transmission revenue credits; (4) cash working capital requirements; (5) the prepayments component of rate base; (6) allocations of other prepayments to transmission; and (7) general and intangible plant functionalization and allocation.

25. While we are setting these matters for a trial-type evidentiary 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 Commission's Rules of Practice and Procedure.⁷ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁸ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the 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 commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) SPR Operating Companies' proposed tariff sheets reflecting the increased transmission rates are hereby accepted for filing and suspended for five months, to become effective April 15, 2008, subject to refund, as discussed in the body of this order.

(B) SPR Operating Companies' proposed tariff sheet reflecting the increased Schedule 1 rate is hereby accepted for filing and suspended for one day to become effective November 16, 2007, subject to refund.

(C) 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 by the Federal Power Act, particularly section 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 issues raised in Docket No. ER07-1371-000, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in paragraphs (E) and (F) below.

⁷ 18 C.F.R. § 385.603 (2007).

⁸ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

(D) 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 by the Federal Power Act, particularly section 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 in Docket No. EL08-6-000 concerning the justness and reasonableness of SPR Operating Companies' rates, as discussed in the body of this order.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding 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 in writing or by telephone within five (5) days of the date of this order.

(F) Within thirty (30) days 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 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.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 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.

(H) Docket Nos. ER07-1371-000 and EL08-6-000 are hereby consolidated for the purposes of hearing and decision.

(I) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of section 206 proceedings in Docket No. EL08-6-000.

(J) The refund effective date established pursuant to section 206(b) of the Federal Power Act will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (I) above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.