

128 FERC ¶ 61,233
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwestern Public Service Company

Docket No. ER08-749-003

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued September 10, 2009)

1. On April 23, 2009, Southwestern Public Service Company (SPS) filed a Settlement Agreement on behalf of itself, Cap Rock Energy Corporation (Cap Rock), Central Valley Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., and Roosevelt County Electric Cooperative, Inc., (collectively, New Mexico Cooperatives), Tri-County Electric Cooperative, Inc. (Tri-County), and West Texas Municipal Power Agency.¹ SPS states that this Settlement Agreement resolves all issues set for hearing in this case.²

2. On May 13, 2009, Golden Spread Electric Company (Golden Spread), which did not sign the Settlement Agreement, filed comments.³ Golden Spread states that it does

¹ Collectively, Cap Rock, the New Mexico Cooperatives, Tri-County, and West Texas Municipal Power Agency are SPS' full requirements customers (Full Requirements Customers).

² *Southwestern Public Service Co.*, 123 FERC ¶ 61,225 (2008) (May 30 Order). In the May 30 Order, the Commission made findings and conclusions as to the coincidental peak (CP) allocator, return on equity, the Job Creation Act of 2004, and meter charges, but set the remaining issues for hearing.

³ Golden Spread's rates were not directly at issue in this docket, but Golden Spread sought intervenor status to protect its interest with respect to determinations as to the appropriate allocation of demand-related costs that are to be applied to wholesale customers on the SPS system. In another proceeding, the Commission determined that SPS must design its rates on a 12-CP basis. *Golden Spread Electric Cooperative, Inc., et al. v. Southwestern Public Service Co.*, Opinion No. 501, 123 FERC ¶ 61,047, at P 74-78

(continued...)

not oppose the Settlement Agreement, based on the following conditions: (1) the Commission approve the Settlement Agreement on the basis that it is non-precedential and does not affect Golden Spread's rights with respect to its pending request for rehearing in this docket; and (2) the signatory parties clarify that no additional consideration was exchanged and no additional terms and conditions of settlement exist in resolution of this proceeding that are not disclosed in the Settlement Agreement. Golden Spread notes that, by its terms, the Settlement Agreement is non-precedential and does not affect its request for rehearing. However, Golden Spread questions the statement that the agreement is "not contingent on any other oral or written agreement among the Parties," and whether that statement indicates that there are other agreements among the Parties.

3. On May 13, 2009, Tri-County submitted comments in support of the settlement. Tri-County specifically notes SPS will continue to charge average fuel costs for its sales under the existing long-term market-based firm sales to El Paso Electric Company (El Paso) and for SPS' long-term cost-based interruptible power sales to Public Service Company of New Mexico. SPS has also agreed to pay Tri-County and the other Full Requirements Customers valuable monthly bill credits associated with revenues received by SPS in connection with these two agreements, as well as implement recalculated charges paid by the Full Requirements Customers under these contracts if the Commission directs SPS to impute incremental fuel costs to the sales under these contracts in an order on rehearing of Opinion No. 501. Finally, Tri-County states that it and SPS reserve their rights concerning the applicability of the order on rehearing of Opinion No. 501 to Tri-County under its contract with SPS, as well as SPS' requirement to impute incremental fuel costs to sales to El Paso and/or Public Service Company of New Mexico, so that Tri-County might receive the same treatment as the other Full Requirements Customers.

4. On May 13, 2009, Commission Trial Staff also filed comments supporting the Settlement Agreement.

5. On May 14, 2009, the Administrative Law Judge found that Golden Spread's request for a clarification, that no additional consideration was exchanged for the Settlement Agreement, constituted opposition to the settlement, and set the matter for oral argument on June 1, 2009.

(2008). Golden Spread is currently seeking rehearing of Opinion No. 501, and also has requested rehearing of the May 30 Order with respect to the issue of the appropriate demand allocation methodology. Both rehearing requests are pending.

6. On May 26, 2009, SPS and the Full Requirements Customers filed joint reply comments and an unopposed request for cancellation of oral argument. They attested that no additional consideration was exchanged and no additional terms and conditions of settlement exist in resolution of this proceeding that are not disclosed in the Settlement Agreement. They further stated that they shared the comments with Golden Spread, and that Golden Spread was satisfied with their representations and agrees that its condition had been met. Thus, SPS and the Full Requirements Customers requested that the oral argument be cancelled, and the Presiding Administrative Law Judge cancelled the oral argument by order issued May 27, 2009.

7. On June 2, 2009, the Presiding Judge certified the Settlement Agreement to the Commission as an uncontested settlement.

8. The Settlement Agreement resolves all issues set for hearing in the above-captioned proceeding, involving SPS' proposed changes in its rates and rate design for its wholesale full requirements customers. The Settlement Agreement is fair and reasonable and in the public interest and is hereby approved. The Commission's approval of this Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. Specifically, approval of this Settlement Agreement does not affect Golden Spread's rights with respect to its pending request for rehearing of the May 30 Order regarding the CP allocator.

9. Pursuant to Article II, Part C, Section 9 of the Settlement Agreement, the standard of review for modifications to the Settlement Agreement that are proposed by any party, and not agreed to in writing by all parties, shall be the "public interest" standard.⁴ The same section also provides that any change proposed by a non-party or the Commission, acting *sua sponte*, shall be the "most stringent standard permissible under applicable law."

10. Refunds and adjustments shall be made pursuant to the Settlement Agreement.

⁴ See *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956).

11. This order terminates Docket No. ER08-749-003.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.