144 FERC ¶ 61,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

United States Department of Energy - Western Area Power Administration (Pacific Northwest–Pacific Southwest Intertie Project)

Docket No. EF13-4-000

ORDER CONFIRMING AND APPROVING RATE SCHEDULES ON A FINAL BASIS

(Issued August 22, 2013)

1. On March 27, 2013, the Deputy Secretary of Energy (Deputy Secretary) filed a request for final confirmation and approval of Western Area Power Administration's (Western) Rate Schedules INT-FT5 and INT-NFT4 for the sale of firm and non-firm transmission service rates for the Pacific Northwest-Pacific Southwest Intertie Project (Intertie Project).[1] The Deputy Secretary placed the rates into effect on an interim basis effective May 1, 2013,[2] and requests final confirmation and approval of the rates for the period May 1, 2013, through April 30, 2018. In the order, we confirm and approve on a final basis Western's proposed rates.

I. Western's Filing

2. Western proposes to increase the annual revenues from $172,149,000 per year to $187,873,000 per year, reflecting, among other things, lower-than-projected sales of

[1] The Intertie Project was authorized by section 8 of the Pacific Northwest Power Marketing Act, Public Law 88-552, 16 U.S.C. § 837g (2006).

[2] Rate Order No. WAPA-157 was issued on March 27, 2013 under authority granted by Department of Energy Delegation Order No. 00-037.00 (Delegation Order), FERC Stats. & Regs. ¶ 9919 (2001).

transmission service, increased purchased power costs associated with purchases made for balancing authority area reliability purposes, and maturing debt ($28.4 million) associated with the original project.[3] Western argues that it must establish rates sufficient to recover annual operation and maintenance expenses, purchase power, transmission service and other costs, interest expense, and to repay investments. Western prepares a Power Repayment Study each fiscal year to determine if the existing rates will provide adequate revenues to repay all power system costs within the required time. Repayment criteria are based on existing law and applicable policies, including Department of Energy Order RA 6120.2, which outlines cost recovery criteria.[4] To meet these cost recovery criteria, Western states that its Power Repayment Study demonstrates that under the proposed rates sufficient revenues will now be available to meet its obligations.[5] Western states that its Power Repayment Study indicates that the existing transmission service rates yield insufficient revenue to satisfy the cost recovery criteria through the study period.

3. Western maintains that the proposed rates will provide sufficient revenue to pay all annual costs, including interest expense, and to repay the required investment within the allowable time periods.

II. <u>Notice of Filing and Responsive Pleadings</u>

4. Notice of the application was published in the *Federal Register*, 78 Fed. Reg. 25,434 (2013), with protests and motions to intervene due on or before May 6, 2013. Timely motions to intervene and protest were filed by Griffith Energy, LLC (Griffith Energy), and the Irrigation and Electrical Districts Association of Arizona (IEDA). On May 21, 2013, Western filed an answer to the protests. On June 5, 2013, IEDA filed an answer to Western's answer and protests.

5. In its protest Griffith Energy states that, faced with inaccurate projections of usage and the resulting proposed increase in the rates, Western should not be allowed to increase the rates but instead should be required to discuss the economics of the Intertie

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[3] Rate Order No. WAPA-157 at 11-12 (Mar. 27, 2013).

[4] Department of Energy, Order No. RA 6120.2.

[5] Rate Order No. WAPA-157 at 10-13.

with its customers, and perhaps restructure its debt.[6] Griffith further states that the failure by Western to do so means that Western cannot show that the rates are the lowest possible consistent with sound business principles. Finally, Griffith asserts that Western has not provided sufficient information to justify the recovery of costs associated with power purchases for the reliability needs of Western's Desert Southwest Regional Balancing Authority.[7]

6. In its protest, IEDA asserts that Rate Order No. WAPA-157 should be remanded to Western for further notice and opportunity to comment by its customers and for such modification to the filed rates as more adequate analysis produces.[8] IEDA states that it is not asking for the rates to be suspended at this time; rather, it would be appropriate for the Commission to order Western, should the Commission ultimately decide Western is over-collecting, to adjust the rates downward for the five year period involved in order to account for the over-collections that will have occurred by the time it has acted to correct that error.[9]

7. Both Griffith and IEDA request that the rates be remanded to Western for further notice and opportunity to comment.[10]

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2013)), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

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[6] Griffith Protest at 5-6.

[7] *Id.* at 7.

[8] *Id.* at 8-9.

[9] IEDA Protest at 8-9.

[10] Griffith Protest at 1, 6, 7; IEDA Protest at 9.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.213(a)(2) (2013) prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Western's and IEDA's answers, and will, therefore, reject them.

B. Standard of Review

10. The Department of Energy Organization Act grants the Secretary of Energy (Secretary) authority to confirm and approve Western's rates on an interim basis.[11] The Secretary, in turn, delegated the authority to confirm and approve Western's rates on a final basis to the Commission.[12] The Delegation Order establishes 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.[13]

11. The Commission is prohibited from reviewing policy judgments and interpretations of laws and regulations made by the power generating agencies.[14] 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 (e.g., Order No. RA 6120.2, which prescribes Western's financial reporting policies, procedures, and methodologies), or if they violate agreements between the Administrator and the applicable power generating agency.

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[11] 42 U.S.C. § 7152 (2006).

[12] Delegation Order § 3.

[13] *Id*.

[14] The power generating agencies include the Bureau of Reclamation, the Army Corps of Engineers, and the International Boundary and Water Commission. These agencies build and operate various projects. The Power Marketing Administrations market the output of the projects.

12. The Commission considers its role as that of an appellate body which reviews the record developed by the Administrator. The Commission thus may only approve or remand the rates submitted to it for final review.[15]

C. Commission Determination

13. The Commission has evaluated Western's filing for conformance to the 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 Power Repayment Study included in Western's filing, Western's rates should generate sufficient revenue to recoup the cost to transmit power, provide ancillary services, and 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 annual 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 Power Repayment Study was prepared in a manner consistent with Order No. RA 6120.2.

14. Although Griffith and IEDA have protested Western's filing, we are satisfied from our review that Western's rates are not arbitrary, capricious, or in violation of the law, and that they do not violate Department of Energy regulations or violate agreements between the Administrator and the applicable power generating agency.

15. Addressing Griffith's protest first, Western is required under statute and regulations to set rates that recover its costs. In addition, Western's filing explains that it now needs to recover power purchase costs associated with purchases made for balancing authority area reliability purposes, something it did not have to do earlier.[16] Finally,

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[15] *See, e.g., U.S. Department of Energy - Western Area Power Administration (Boulder Canyon Project)*, 61 FERC ¶ 61,229, at 61,844 (1992), *aff'd in relevant respects, Overton Power District No. 5 v. Watkins*, 829 F. Supp. 1523 (D. Nevada 1993), *vacated and remanded with directions to dismiss, Overton Power District No. 5 v. O'Leary*, 73 F.3d 253 (1996); *U.S. Department of Energy - Western Area Power Administration (Salt Lake City Area Integrated Projects)*, 59 FERC ¶ 61,058, at 61,240-41 & nn.17 & 20, *reh'g denied*, 60 FERC ¶ 61,002 (1992); *U.S. Secretary of Energy, Bonneville Power Administration*, 13 FERC ¶ 61,157, at 61,338 (1980).

[16] Rate Order No. WAPA-157 at 11.

Western has a maturing debt of $28.4 million that must be paid by 2020, which supports the increase in rates.[17] Accordingly, we deny Griffith's protest.

16. Next, IEDA essentially objects to Western's process and asks that Western be required to continue to discuss the rates with the Intertie customers and to adjust the rates in the future as necessary. The Commission does not have authority to require Western to undertake rate discussions, however, Western has agreed, in the underlying Rate Order, to do just that.[18] Again, we deny the protest.

17. In sum we are not persuaded to remand Rate Order No. WAPA-157, as requested by Griffith and IEDA.

The Commission orders:

Western's Rate Schedules INT-FT5 and INT-NFT4 are hereby confirmed and approved on a final basis for the period May 1, 2013 through April 30, 2018.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[17] *Id.* at 5.

[18] *Id.* at 13.