

145 FERC ¶ 61,189
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Old Dominion Electric Cooperative

Docket No. ER13-2483-000

ORDER ACCEPTING AND SUSPENDING COST-OF-SERVICE RATE SCHEDULE
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 2, 2013)

1. On September 30, 2013, Old Dominion Electric Cooperative (ODEC) submitted, pursuant to section 205 of the Federal Power Act,¹ a superseding cost-of-service rate schedule² which amends ODEC's existing cost-of-service rate schedule for all requirements service provided to its eleven distribution members.³ As discussed below, we accept the proposed rate schedule revisions for filing, suspend them for a nominal period to become effective January 1, 2014, subject to refund, and establish hearing and settlement judge procedures.

I. Background

2. Old Dominion Electric Cooperative (ODEC) is a public utility that operates as a not-for-profit electric generation and transmission cooperative, providing generation, transmission, ancillary and other related services to eleven member electric distribution cooperatives serving retail customers in Virginia, Delaware, and Maryland. ODEC is

¹ 16 U.S.C. § 824e (2012).

² Old Dominion Electric Cooperative, Old Dominion Electric Cooperative Tariff Database, [Volume No. 1, Rate Formula, 1.0.0](#).

³ ODEC's member distribution cooperatives are A&N Electric Cooperative, BARC Electric Cooperative, Choptank Electric Cooperative, Community Electric Cooperative, Delaware Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative. ODEC Transmittal Letter at 1.

owned entirely by the eleven member distribution cooperatives, which are the primary purchasers of the power it sells. The member distribution cooperatives purchase their power requirements from ODEC under full requirements wholesale power contracts (WPCs). The WPCs between ODEC and each of its member distribution cooperatives have been on file with the Commission since 1992.⁴

3. ODEC became subject to FERC jurisdiction in 1992 and has since recovered revenues from its member distribution cooperatives based on a formula rate as opposed to a fixed, stated rate.⁵ ODEC explains that as a not-for-profit generation and transmission electric cooperative, ODEC's formula rates do not include capital structure components or a return on common equity. Unlike investor-owned utilities, cooperatives develop rates that instead include a margin requirement that is expressed as a percentage of all interest paid on debt service within a given test year. This margin is a component of, and collected through, ODEC's formula rate and is necessary to enhance the security of a cooperative's bondholders and respond to the requirements for credit ratings. All billing from ODEC to its member distribution cooperatives is reflected in the formula rate as purchased power and classified as either demand-related or energy-related expenses.⁶

4. ODEC states that the WPCs require that at least every three years, ODEC's Board of Directors (Board)⁷ review the formula rate to determine whether it reflects and recovers all costs and expenses and whether it represents the best way to allocate those costs and expenses. If the Board determines that the formula rate no longer reflects and recovers all costs or does not allocate those expenses appropriately, the Board adopts a new formula to reflect appropriately all costs and expenses. Consistent with the WPCs requirement that the formula rate be reviewed at least triennially, ODEC's Board recently

⁴ The current Second Amended and Restated Wholesale Power Contracts between ODEC and each of its member distribution cooperatives were most recently accepted by delegated letter order November 4, 2008. *See Old Dominion Electric Cooperative*, Docket No. ER08-1498-000 (November 4, 2008) (delegated letter order).

⁵ ODEC's formula rate is on file with the Commission and was most recently amended in a filing accepted by delegated letter order issued December 29, 2010. *See Old Dominion Electric Cooperative*, 133 FERC ¶ 61,261 (2010).

⁶ Transmittal Letter at 4-6.

⁷ ODEC is governed by its Board of Directors, which includes two representatives from each of the ODEC member distribution cooperatives and one representative from TEC Trading, Inc., which is a taxable corporation owned by the member distribution cooperatives. Transmittal Letter at 2.

completed a comprehensive review of the formula rate and adopted changes in the rate design as well as updates to the rate schedule that are proposed in this filing.⁸

II. Filing

5. ODEC's proposed rate schedule contains a revised formula rate to supersede the currently-effective formula rate.⁹ ODEC states that many of the core aspects of its existing cost-of-service rate schedule will remain the same under the proposed schedule. ODEC states that with respect to the individual rate components, both the current and the proposed formula rate design allocate demand and energy costs to ODEC's member distribution cooperatives based upon their usage. ODEC states that the proposed formula rate will allocate demand costs to ODEC's member distribution cooperatives in a manner that more closely reflects how PJM allocates demand costs to ODEC, and will provide energy rates that more accurately reflect market conditions and ODEC's costs.¹⁰ In addition, ODEC states that it has revised the timing of the demand and energy rate adjustments to typically take effect January 1, which is the beginning of ODEC's budget year.¹¹

III. Notice and Responsive Pleadings

6. Notice of ODEC's filing was published in the *Federal Register*, 78 Fed. Reg. 61,996 (2013), with interventions and protests due on or before October 21, 2013. A timely-filed motion to intervene was filed by Office of the Attorney General of Virginia, Division of Consumer Counsel (Virginia Consumer Counsel). Bear Island Paper WB LLC (Bear Island)¹² filed a timely motion to intervene, protest, and request for hearing. On November 14, 2013, ODEC filed a Motion for Leave to Answer and Answer to Bear Island's pleading. On November 8, 2013, Bear Island filed a Motion for Leave to Answer and Answer to ODEC's November 14, 2013 answer. On November 22, 2013,

⁸ Transmittal Letter at 3.

⁹ Transmittal Letter at 4.

¹⁰ *Id.*

¹¹ *Id.*

¹² Bear Island is a retail industrial customer of Rappahannock Electric Cooperative and receives a monthly bill from Rappahannock that flows-through, without mark up or change, what Rappahannock pays to ODEC. Protest at 2. Prior to its emergence from bankruptcy proceedings, Bear Island was known as Bear Island Paper Company, L.P. (November 15, 2013 Errata to November 8, 2013 Bear Island Motion for Leave to Answer and Answer to ODEC's answer).

ODEC filed a Motion for Leave to Answer and Answer to Bear Island's November 8, 2013 Answer. On November 25, 2013, Bear Island filed a Motion for Leave to Answer and Answer to ODEC's November 22, 2013 Answer.

7. Virginia Consumer Counsel states that ODEC maintains that the overall revenues to be collected under the superseding rate schedule are the same as ODEC would have collected under its existing rate schedule. Virginia Consumer Counsel points out that, nonetheless, the proposed superseding rate schedule will restructure cost allocation among ODEC's member distribution cooperatives.¹³

8. In its protest, Bear Island asserts that its interests in demand-side management and cost-of-service rates will not be protected under ODEC's proposed rate schedule.¹⁴ Bear Island explains that it has invested considerable capital and labor costs in optimizing its demand management activities.¹⁵ Bear Island contends that ODEC's proposed formula rate would thwart its investment in equipment that enables it to participate in such programs and provide disincentive for its demand response activities at the same level and manner.¹⁶

9. Bear Island maintains that ODEC's filing should be deemed deficient and refiled because the proposed rate design would increase its rates, asserting that ODEC improperly filed the proposed rate schedule as a "rate schedule change other than a rate increase."¹⁷ Bear Island further contends that the proposed rate changes are: (i) inconsistent with the Commission's directive in Opinion No. 499 that ODEC allocate its demand costs in the same manner as PJM;¹⁸ (ii) contrary to cost causation and proper price signals; and (iii) discriminatory and unduly prejudicial in deciding which costs to socialize and which to assign to particular delivery points or customers.¹⁹ Finally,

¹³ Virginia Consumer Counsel Motion to Intervene at 2-3, citing Attachment D of ODEC's filing. Attachment D shows the application of the current and proposed formula rates to ODEC's 2012 actuals, including a comparison of the resulting revenues that would be collected from each member distribution cooperative under each scenario.

¹⁴ Protest at 7.

¹⁵ *Id.* at 8 (citing *Old Dominion Electric Cooperative*, Opinion No. 499, 122 FERC ¶ 61,174 (2008) (Opinion No. 499)).

¹⁶ *Id.* at 11.

¹⁷ *Id.* at 13 (citing 18 CFR subsection 35.13 (2013)).

¹⁸ Protest at 20 (citing Opinion No. 499, 122 FERC ¶ 61,174 at P 46).

¹⁹ Protest at 21 - 39.

Bear Island maintains that ODEC may have violated its current formula rate in certain areas and is therefore seeking discovery, an audit by FERC, and directives by FERC that ODEC cease and cure such violations by issuing credits to its customers for those violations.²⁰

10. Bear Island requests that the Commission issue a deficiency notice or, alternatively, suspend ODEC's filing for the maximum period and set for hearing.²¹ Noting that the Commission's settlement procedures have been successful in number of cases involving Bear Island, Bear Island requests that the Commission set this matter for settlement judge procedures before evidentiary hearings commence.²²

IV. Discussion

A. Procedural Matters

11. 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.

12. 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 a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept ODEC's and Bear Island's answers and will, therefore, reject them.

B. Determination

13. ODEC's proposed tariff revisions raise 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 we order below.

14. Our preliminary analysis indicates that ODEC's proposed rate schedule revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we accept the proposed rate schedule revisions for filing, suspend them for a nominal period to become effective January 1, 2014, subject to refund, and establish hearing and settlement judge procedures.

²⁰ *Id.* at 40 - 49.

²¹ *Id.* at 49.

²² *Id.* at 53.

15. In *West Texas Utilities Co.*,²³ the Commission explained that when its preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission will generally impose a five-month suspension. In the instant proceeding, our preliminary analysis indicates that the rates may not be substantially excessive, as defined in *West Texas*, and therefore, as stated above, we accept the proposed rate schedule revisions for filing, suspend them for a nominal period, to be effective January 1, 2014, subject to refund, and set them for hearing and settlement judge procedures.

16. While we are setting ODEC's proposed rate schedule revisions for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before the 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.²⁴ 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.²⁵

17. The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date 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) ODEC's proposed rate schedule revisions are hereby accepted for filing, and suspended for a nominal period, to become effective January 1, 2014, subject to refund, as discussed in the body of this order.

(B) 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 FPA, particularly sections 205 and

²³ 18 FERC ¶ 61,189 (1982) (*West Texas*).

²⁴ 18. C.F.R. § 385.603 (2013).

²⁵ 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 (5) days of the date of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

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 ODEC's proposed rate schedule revisions. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C), (D), and (E) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), 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 within five (5) days of the date of this order.

(D) 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.

(E) 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 Commission, 888 First Street, NE, Washington, DC 20426. Such a 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.,
Deputy Secretary.