

145 FERC ¶ 61,281
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwestern Public Service Company

Docket No. ER14-192-000

ORDER ACCEPTING PROPOSED TARIFF REVISIONS

(Issued December 27, 2013)

1. On October 28, 2013, Xcel Energy Services, Inc., on behalf of its utility operating affiliate Southwestern Public Service Company (Southwestern), filed proposed revisions to the cost-based formula rate template (October 28 Filing) for the partial requirements power service that Southwestern provides to Golden Spread Electric Cooperative, Inc. (Golden Spread). As discussed below, we accept the proposed revisions for filing to become effective January 1, 2013, as requested.

I. Background

2. Southwestern is a vertically-integrated electric utility that provides generation, transmission, and distribution services in the Texas Panhandle and Eastern New Mexico. Southwestern is a transmission-owning member of the Southwest Power Pool, Inc. (SPP) and provides transmission services over its transmission facilities under the SPP Open Access Transmission Tariff. Golden Spread is a non-profit electric generation and transmission cooperative that supplies wholesale electric power and energy to its sixteen member cooperatives.

3. Southwestern provides partial requirements production service to Golden Spread, pursuant to a Replacement Power Supply Agreement (Replacement Agreement).¹ Golden Spread was converted from a cost-based stated rate to a cost-based formula rate as the result of a settlement agreement resolving Southwestern's disputed rate proceeding in Docket No. ER06-274-000, *et al.*, as well as certain issues regarding its fuel cost adjustment clause in the complaint and rate proceedings in consolidated Docket Nos. EL05-19-000, *et al.* and ER05-168-000, *et al.* (Settlement).² The Settlement

¹ October 28 Filing at 2.

² In the October 28 Filing, Southwestern proposes to amend only the cost-based formula rate template, and not any other terms established by the Settlement.

established the currently-effective, cost-based rate template for Golden Spread, and included related implementation procedures.³ Under the implementation procedures, Southwestern updates the formula rate on an annual basis, using the estimated rates (Estimated Rates) for the upcoming year (beginning July 1 of each calendar year), and a true-up of the Estimated Rates from the prior calendar year.⁴ Southwestern explains that it has—from time to time, and most recently in July 2013—modified the current template, with Golden Spread’s agreement, to reflect changed circumstances.⁵

II. Southwestern’s Filing

4. In the October 28 Filing, Southwestern proposes to make five substantive changes to the currently-effective, cost-based formula rate template for Golden Spread.⁶ First, Southwestern plans to eliminate revenue credits and adjustments associated with the Wholesale Interruptible Load Management Program.⁷ Southwestern explains that this program is no longer active, as the termination date agreed upon with the applicable customers has passed and that the only customer still eligible to participate is not currently participating. Second, Southwestern proposes to stop crediting retail interruptible program revenues to wholesale customers (and remove the associated load from the system demand used to derive the formula demand rate charge), and instead to allocate system average costs to these retail interruptible programs.⁸ Third, Southwestern proposes to revise the way that incremental capacity sales are treated in the template. Specifically, it proposes to remove incremental capacity sales (which do not reflect average system prices) from the system demand used to calculate its average embedded firm demand rate.⁹ Southwestern also states that it will credit wholesale customers’ bills for their proportional share of non-fuel margins realized on such incremental capacity sales. Fourth, Southwestern wishes to revise the template to allow for adjustments to the 500 series of production expense accounts (derived from Southwestern’s FERC Form

³ October 28 Filing at 1-2.

⁴ *Id.* at 2.

⁵ *Id.* See *Southwestern Pub. Serv. Co.*, Docket No. ER13-1455-000 (July 2, 2013) (unpublished letter order accepting revision to cost-based formula rate template).

⁶ Southwestern also proposes ministerial changes to the Table of Contents to reflect these proposed revisions.

⁷ See October 28 Filing at 3.

⁸ *Id.* at 3-4.

⁹ *Id.* at 4.

No. 1, and used to calculate production rates) to ensure that the template accurately reflects Total Company costs for allocation and provides customers with specific information as to where Total Company Expenses are shown.¹⁰ Finally, Southwestern proposes, on a prospective basis, to permit adjustments to the volumes reflected in the Estimated Rates used in the annual update to reflect changes such as customer departures or abnormal weather.¹¹ Southwestern asserts that these adjustments will minimize surcharges or refunds resulting from the annual true-up by ensuring that the Estimated Rates are as accurate as possible.

5. Southwestern reports that it discussed the proposed changes with, and provided a copy of the draft revisions to, Golden Spread prior to filing, and that Golden Spread “raised no express concerns” regarding the proposed revisions.¹²

6. Southwestern requests an effective date of January 1, 2013, to permit the use of the revised template in its 2014 annual update, which includes the true-up of its 2013 Estimated Rates.¹³

III. Notice and Responsive Pleadings

7. Notice of Southwestern’s filing was published in the *Federal Register*, 78 Fed. Reg. 67,353 (2013), with interventions and protests due on or before November 18, 2013. On November 18, 2013, Golden Spread submitted a timely motion to intervene and protest. Tri-County Electric Cooperative, Inc. (Tri-County) filed an untimely motion to intervene on November 25, 2013.

8. On December 3, 2013, Southwestern filed a motion for leave to answer and answer to Golden Spread’s protest. On December 11, 2013, Golden Spread filed a motion for leave to answer and answer to Southwestern’s answer (December 11 Answer).

9. Golden Spread states that, while it has no objection to Southwestern’s proposed revisions to the template as set forth in its filing, the changes are incomplete because, in reviewing proposed changes to the formula rate, the Commission is obligated to review the rate in its entirety.¹⁴ According to Golden Spread, the Commission cannot deem that Southwestern’s proposed template will produce charges that are just and reasonable

¹⁰ *Id.* at 4-5.

¹¹ *Id.* at 5.

¹² *Id.* at 6.

¹³ *Id.* at 6-7.

¹⁴ Golden Spread Protest at 1.

unless three additional revisions are made. First, Golden Spread argues that Southwestern must incorporate a 3 coincident peak (CP) demand allocator instead of the 12 CP allocator in Southwestern's filing, as directed by the Commission in its August 15, 2013 order on the Initial Decision in Docket No. ER06-274-007.¹⁵ Golden Spread asserts that Southwestern's failure to update the demand allocator to 3 CP is inconsistent with Table 5 - Schedule A-3 PR, which actually contains a footnote stating that "the demand allocation methodology is subject to the litigated outcome in Docket No. ER06-274-003."¹⁶

10. In addition, Golden Spread requests that the Commission direct Southwestern to reduce its return on common equity (ROE) from 10.25 percent to 9.15 percent, reflecting the updated median of an appropriate proxy group under current market conditions.¹⁷ Golden Spread notes that its objections regarding Southwestern's ROE are currently pending before the Commission in complaints pursuant to section 206 of the Federal Power Act (FPA), filed on April 20, 2012 and July 19, 2013 in Docket Nos. EL12-59-000 and EL13-78-000, respectively.¹⁸

11. Finally, Golden Spread contends that Southwestern must revise its most recent Commission depreciation rates to reflect a new depreciation study filed by the company in one of its retail jurisdictions.¹⁹ Golden Spread asserts that the Commission's production depreciation expense currently used in the Replacement Agreement formula rate template will be overstated if the production depreciation rates are not conformed to reflect the results of the new study.²⁰

12. In its answer, Southwestern argues that Golden Spread's objections lie beyond the narrow scope of the changes proposed in the October 28 Filing, and asks the Commission to reject Golden Spread's protest as not properly before the Commission in this proceeding.²¹ Moreover, according to Southwestern, Golden Spread has represented that

¹⁵ *Id.* at 6-7 (citing *Southwestern Pub. Serv. Co.*, 144 FERC ¶ 61,133, at PP 52-53 (2013) (Order on Initial Decision)).

¹⁶ *Id.* at 7.

¹⁷ *Id.* at 8-10.

¹⁸ *Id.* at 8-9.

¹⁹ *Id.* at 10-12.

²⁰ *Id.* at 11.

²¹ Southwestern December 3 Answer at 2-6.

it does not object to the changes proposed in the October 28 Filing and therefore, as the proponent of revisions to unchanged components of the existing rate template, should bear the burden under section 206 of the FPA of showing that these existing components are unjust and unreasonable.²²

13. Southwestern also addresses the substance of Golden Spread's claims. First, Southwestern asserts that asking the Commission to make a determination regarding the ROE used in the formula rate would inappropriately prejudice the outcome of the pending proceedings in Docket Nos. EL12-59-000 and EL13-78-000.²³ In addition, Southwestern points out that the depreciation rates resulting from the retail study on which Golden Spread relies have not been adopted by Southwestern's state utility commissions.²⁴ Finally, Southwestern reasons that, although the Order on Initial Decision in Docket No. ER06-274-007 found that Southwestern should use a 3 CP demand allocation methodology, the matter "continues to be litigated" on rehearing and thus "is not final before the Commission."²⁵

14. In its December 11 Answer, Golden Spread maintains that, except in narrow circumstances that do not apply to this proceeding, the Commission does not allow changes to formula rates in the context of a set of proposed changes without opening up the entire rate for review.²⁶ Golden Spread asserts that this is particularly true in light of the evidence it has presented supporting a reduced ROE and new depreciation rates, and the superseding Commission order directing the use of a 3 CP demand allocator.²⁷

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the unopposed, timely motion to intervene serves to make Golden Spread a party to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will

²² *Id.* at 3-4.

²³ *Id.* at 7.

²⁴ *Id.* at 7-9.

²⁵ *Id.* at 9.

²⁶ Golden Spread December 11 Answer at 6-7.

²⁷ *Id.* at 7.

grant Tri-County's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

16. 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 unless otherwise ordered by the decisional authority. We will accept the answers filed by Southwestern and Golden Spread because they have provided information that assisted us in our decision-making process.

B. Commission Determination

17. Based upon a review of the filing, we find that Southwestern's proposed revisions to its cost-based formula rate template are just and reasonable, and will accept them, effective January 1, 2013, as requested. We find merit in Southwestern's efforts to make its rate template more accurate and reduce the amount of over- or undercharges to be trued up in the annual update. We also note that Golden Spread states that it does not object to these proposed revisions.²⁸

18. We find that the issues raised in Golden Spread's protest are beyond the scope of this proceeding. Southwestern has proposed narrow and discrete changes to the rate template, and Golden Spread's concerns regarding the ROE, demand allocator, and depreciation rates are not integral to these changes.²⁹ Accordingly, Golden Spread's concerns are not properly before the Commission in this FPA section 205 proceeding.

The Commission orders:

Southwestern's proposed revisions to its cost-based formula rate are hereby accepted for filing, effective January 1, 2013, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁸ Golden Spread Protest at 1.

²⁹ See *Boston Edison Co.*, 65 FERC ¶ 61,311, at 62,425-62,426 (1993), *reh'g denied*, 66 FERC ¶ 61,337 (1994).