

146 FERC ¶ 61,006  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

January 8, 2014

In Reply Refer To:  
Public Service Company of Oklahoma  
Docket No. ER14-8-000  
Southwestern Electric Power Company  
Docket No. ER14-9-000

American Electric Power Service Corporation  
Attention: Amanda Riggs Conner  
801 Pennsylvania Ave., Ste. 320  
Washington, DC 20004

Dear Ms. Riggs Conner:

1. On October 1, 2013, American Electric Power Service Corporation (AEP) filed, in the above-referenced dockets, on behalf of Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO) (together, AEP West Operating Companies), amendments to the Restated and Amended Operating Agreement Among Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO), and AEP (Operating Agreement).<sup>1</sup>
2. The Operating Agreement provides a contractual basis for coordinating the planning, operation, and maintenance of the power supply resources of PSO and SWEPCO to achieve economies and efficiencies consistent with the provision of reliable electric service. Currently, the Operating Agreement calls for PSO and SWEPCO resources to be jointly dispatched and billed according to an “Internal Economy Energy Exchange” process set forth in Schedule E to the Operating Agreement. However, with the start of the Southwest Power Pool, Inc. (SPP) Integrated Marketplace, PSO and SWEPCO generating units will be committed and dispatched centrally by the SPP market dispatch.<sup>2</sup> As a result, Internal Economy Energy, which occurs as a result of the existing

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<sup>1</sup> The AEP West Operating Agreement submitted on behalf of PSO was filed in Docket No. ER14-8-000. A certificate of concurrence to the AEP West Operating Agreement submitted on behalf of SWEPCO was filed in Docket No. ER14-9-000.

<sup>2</sup> AEP Transmittal at 2.

two company dispatch, must be replaced by energy sale and purchase transactions between each of the AEP West Operating Companies and the SPP market. Therefore, to accommodate changes related to the start of the SPP Integrated Marketplace, as well as to eliminate duplicative and obsolete provisions and streamline the governance provisions, AEP proposes a number of changes throughout the Operating Agreement.<sup>3</sup>

3. AEP requests waiver of those provisions in section 35.13 of the Commission's regulations that would require it to submit cost-of-service and revenue data. AEP states that its filing qualifies for the abbreviated filing requirements under section 35.13(a)(2)(iii) of the Commission's regulations because the AEP West Operating Companies are not proposing a rate increase.

4. AEP requests that the revisions to the Operating Agreement take effect on March 1, 2014, or the date of the start of the SPP Integrated Marketplace. AEP also requests waiver of the Commission's notice requirements to permit the March 1, 2014 effective date, which is more than 120 days after the date of filing of the Operating Agreement.<sup>4</sup>

5. Notice of AEP's filing was published in the *Federal Register*, 78 Fed. Reg. 62,298 (2013), with interventions and protests due on or before October 22, 2013. None was filed.

6. Section 13.2 of the Operating Agreement states that:

It is the intent of the Parties that, to the maximum extent permitted by law, the provisions of this Agreement shall not be subject to change under Sections 205 and 206 of the Federal Power Act absent the written agreement of the Parties, and that the standard of review for changes unilaterally proposed by a Party, a non-Party, or the Commission, acting *sua sponte* or at the request of a non-Party, shall be the public interest standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish County, Washington*, 554 U.S. 527 (2008), and refined in *NRG Power Mktg. v. Maine Pub. Utils. Comm'n*, 130 S. Ct. 693, 700 (2010).

Because the Operating Agreement appears to invoke the *Mobile-Sierra* "public interest" presumption with respect to third parties and the Commission acting

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<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.* at 7.

*sua sponte*, we will analyze the applicability here of that more rigorous application of the just and reasonable standard.

7. The *Mobile-Sierra* “public interest” presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm’s length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm’s-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption. In *New England Power Generators Association v. FERC*,<sup>5</sup> however, the D.C. Circuit determined that the Commission is legally authorized to impose a more rigorous application of the statutory “just and reasonable” standard of review on future changes to agreements that fall within the second category described above.

8. The Operating Agreement, a Commission-approved agreement, provides a contractual basis for coordinating the planning, operation, and maintenance of the power supply resources of PSO and SWEPCO, and it was negotiated by AEPSC, PSO, and SWEPCO, who are affiliates. For this reason, the Operating Agreement does not provide the assurance of justness and reasonableness associated with arm’s-length negotiations. Consequently, the AEP West Operating Agreement does not embody “contract rates, terms, or conditions that *necessarily* qualify for a *Mobile-Sierra* presumption.”<sup>6</sup>

9. As we have stated recently, in the context of reviewing settlements that do not involve “contract rates,” the Commission has discretion as to whether to approve a request to impose on third parties the more rigorous application of the statutory “just and reasonable” standard of review that is often characterized as the *Mobile-Sierra* “public interest” standard of review.<sup>7</sup> The Commission also stated in these orders that it will not approve imposition of that more rigorous application of the statutory “just and

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<sup>5</sup> *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

<sup>6</sup> *Panhandle Eastern Pipe Line Co.*, 143 FERC ¶ 61,041, at P 84 (2013); *Entergy Arkansas, Inc.*, 143 FERC ¶ 61,299, at P 92 (2013).

<sup>7</sup> *See, e.g., MidAmerican Energy Co.*, 138 FERC ¶ 61,028, at P 7 (2012) (citing *Devon Power, LLC*, 134 FERC ¶ 61,208, *order on reh’g*, 137 FERC ¶ 61,073 (2011) (*Devon Power*), *aff’d*, *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364 (D.C. Cir. 2013); *Carolina Gas Transmission Corp.*, 136 FERC ¶ 61,014 (2011); *High Island Offshore Sys., LLC*, 135 FERC ¶ 61,105, at P 24 (2011)).

reasonable” standard of review on future changes to an agreement sought by third parties, absent compelling circumstances such as were found to exist in *Devon Power*. We find that the circumstances presented here do not satisfy that test. Thus, we find it unjust and unreasonable to impose the more rigorous application of the statutory “just and reasonable” standard of review in the instant proceeding with respect to future changes to the AEP West Operating Agreement sought by a third party or the Commission.

10. Therefore, we accept the Operating Agreement for filing, subject to AEP submitting a compliance filing, within 30 days of the date of this order to modify the provision in section 13.2 of the Operating Agreement that seeks to bind the Commission and third parties to the *Mobile-Sierra* “public interest” standard of review.

11. For good cause, we will grant AEP’s request for waiver of the detailed cost of service requirements of Part 35 of the Commission’s regulations.<sup>8</sup> Because AEP’s filing is limited to changes to enable the parties to participate in the SPP Integrated Marketplace and is not a rate increase, we will waive our requirements for detailed cost support.

12. We will also grant AEP’s request for waiver of the Commission’s notice requirement in section 35.3 of the Commission’s regulations to permit a March 1, 2014 effective date for the proposed tariff revisions.<sup>9</sup>

By direction of the Commission. Commissioner Norris is concurring with a separate statement attached.

Kimberly D. Bose,  
Secretary.

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<sup>8</sup> 18 C.F.R. § 35.13 (2013).

<sup>9</sup> *Id.* § 35.3.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Public Service Company of Oklahoma

Docket Nos. ER14-8-000

Southwestern Electric Power Company

ER14-9-000

(Issued January 8, 2014)

NORRIS, Commissioner, *concurring*:

I concur in the outcome of this order, which conditionally approves an amended operating agreement filed by American Electric Power Service Corporation (AEP) on behalf of Public Service Company of Oklahoma (PSO) and Southwestern Electric Power Company (SWEPCO). The Commission's approval is conditioned upon AEP submitting a revised agreement that modifies section 13.2 of the operating agreement to no longer bind third parties and the Commission acting *sua sponte* to the *Mobile-Sierra* public interest standard of review. I agree with the order that the operating agreement, which provides for coordinating the planning, operation, and maintenance of power supply resources between PSO and SWEPCO and was negotiated among affiliates is not the type of contract rate to which the public interest presumption would apply. However, while the D.C. Circuit has determined that the Commission may exercise discretion under the Federal Power Act to apply the public interest standard where the *Mobile-Sierra* presumption does not apply,<sup>1</sup> I continue to disagree, as a policy matter, that the Commission should exercise such discretion.<sup>2</sup>

I believe that the Commission can exercise its respect for rate certainty and stability, while protecting the rights of third parties and without sacrificing a future Commission's ability to review rates that may no longer be just and reasonable due to a change in circumstances. Therefore, I disagree with the analysis in this order of whether the Commission should permit the application of the public interest standard to future changes to the operating agreement.

For these reasons, I respectfully concur.

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John R. Norris, Commissioner

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<sup>1</sup> *New England Power Generators Ass'n, Inc. v. FERC*, No. 11-1422, at 10-12 (D.C. Cir. Feb. 15, 2013).

<sup>2</sup> *Devon Power LLC*, 134 FERC ¶ 61,208 (2011), *Norris, dissenting in part*.