

146 FERC ¶ 61,230
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 Electric Power Company

Docket Nos. ER14-1183-000
ER14-1184-000
ER14-1185-000
ER14-1186-000
ER14-1187-000
ER14-1248-000
ER14-1249-000
ER14-1250-000
ER14-1307-000
ER14-1402-000
(consolidated)

ORDER ACCEPTING FOR FILING, SUSPENDING, AND SETTING FOR HEARING
PROPOSED REVISED POWER SUPPLY AGREEMENTS, CONSOLIDATING
PROCEEDINGS AND ESTABLISHING SETTLEMENT JUDGE PROCEDURES

(Issued March 28, 2014)

1. Southwestern Electric Power Company (SWEPCO) filed, pursuant to Federal Power Act (FPA) section 205,¹ 10 unexecuted revised power supply agreements (PSAs) with various customers (PSA Customers)² in order to include provisions to support implementation of the Southwest Power Pool, Inc. (SPP) Integrated Marketplace. In this order, we accept the proposed PSAs for filing and suspend them for a nominal period, to become effective March 1, 2014, as requested, subject to refund, and establish hearing and settlement judge procedures. Additionally, we consolidate these proceedings for purposes of hearing and settlement judge procedures.

¹ 16 U.S.C. § 824d (2012).

² The PSA Customers are: Tex-La Electric Cooperative of Texas, Inc. (TEX-LA); East Texas Electric Cooperative (East Texas Co-op); Northeast Texas Electric Cooperative (Northeast Texas Co-op); Hope Water and Light Commission (Hope); City of Bentonville, Arkansas (Bentonville); City of Prescott, Arkansas (Prescott); City of Minden, Louisiana (Minden); and Rayburn Country Electric Cooperative, Inc. (Rayburn).

I. Filings

2. SWEPCO states that it provides capacity and energy to meet the PSA Customers' partial electric requirements and entered into various PSAs, which have been accepted by the Commission. SWEPCO explains that the rates for the capacity and energy provided under the PSAs are calculated in accordance with the Commission-approved rate formulas included in the relevant exhibits to the PSAs. SWEPCO explains that these formulas are designed generally to track the costs booked to SWEPCO's FERC Form 1.

3. In its filings, SWEPCO explains that, as a result of SPP Integrated Marketplace implementation, the PSAs must be updated to address, among other things, the new market construct. For example, SWEPCO proposes revisions stating that the customer is obligated to assign Auction Revenue Rights (ARRs) and Transmission Congestion Rights (TCRs) to SWEPCO. SWEPCO submitted the revised PSAs on an unexecuted basis. SWEPCO requests that the Commission accept the PSAs for filing and permit them to become effective on March 1, 2014, to coincide with the implementation of the SPP Integrated Marketplace.

II. Notices of Filings and Responsive Pleadings

4. Notice of SWEPCO's filing in Docket No. ER14-1183-000 (TEX-LA PSA) was published in the *Federal Register*, 79 Fed. Reg. 6892 (2014), with interventions and protests due on or before February 19, 2014.

5. Notice of SWEPCO's filing in Docket No. ER14-1184-000 (East Texas Co-op PSA) was published in the *Federal Register*, 79 Fed. Reg. 6892 (2014), with interventions and protests due on or before February 19, 2014.

6. Notice of SWEPCO's filing in Docket No. ER14-1185-000 (Northeast Texas Co-op PSA) was published in the *Federal Register*, 79 Fed. Reg. 6892 (2014), with interventions and protests due on or before February 19, 2014.

7. Notice of SWEPCO's filing in Docket No. ER14-1186-000 (TEX-LA Electric Reliability Council of Texas, Inc. PSA) was published in the *Federal Register*, 79 Fed. Reg. 6892 (2014), with interventions and protests due on or before February 19, 2014.

8. Notice of SWEPCO's filing in Docket No. ER14-1187-000 (East Texas Co-op and Northeast Texas Co-op PSA) was published in the *Federal Register*, 79 Fed. Reg. 6892 (2014), with interventions and protests due on or before February 19, 2014.

9. Notice of SWEPCO's filing in Docket No. ER14-1248-000 (Hope PSA) was published in the *Federal Register*, 79 Fed. Reg. 8183 (2014), with interventions and protests due on or before February 24, 2014.

10. Notice of SWEPCO's filing in Docket No. ER14-1249-000 (Bentonville PSA) was published in the *Federal Register*, 79 Fed. Reg. 8183 (2014), with interventions and protests due on or before February 24, 2014.
11. Notice of SWEPCO's filing in Docket No. ER14-1250-000 (Prescott PSA) was published in the *Federal Register*, 79 Fed. Reg. 8183 (2014), with interventions and protests due on or before February 24, 2014.
12. Notice of SWEPCO's filing in Docket No. ER14-1307-000 (Minden PSA) was published in the *Federal Register*, 79 Fed. Reg. 9734 (2014), with interventions and protests due on or before March 4, 2014.
13. Notice of SWEPCO's filing in Docket No. ER14-1402-000 (Rayburn PSA) was published in the *Federal Register*, 79 Fed. Reg. 14,026 (2014), with interventions and protests due on or before March 24, 2014.
14. TEX-LA filed timely motions to intervene and comments in support in Docket Nos. ER14-1183-000 and ER14-1186-000.
15. East Texas Co-op filed a timely motion to intervene and comments in support in Docket No. ER14-1184-000. Northeast Texas Co-op filed a timely motion to intervene and comments in support in Docket No. ER14-1185-000. East Texas Co-op and Northeast Texas Co-op filed a timely motion to intervene and comments in support collectively in Docket No. ER14-1187-000.
16. Hope, Bentonville, and Prescott each filed, in Docket Nos. ER14-1248-000, ER14-1249-000, and ER14-1250-000, motions to intervene, protests, and motions to consolidate Docket Nos. ER14-1248-000, ER14-1249-000, ER14-1250-000, and ER14-1307-000.
17. Minden filed, in Docket No. ER14-1307-000, a motion to intervene and motion to consolidate Docket Nos. ER14-1248-000, ER14-1249-000, ER14-1250-000, and ER14-1307-000.
18. Hope, Bentonville, and Prescott note that the proposed revisions to their respective PSAs require them to assign their ARRs and TCRs to SWEPCO. However, they argue that the revised PSAs improperly omit language regarding protection for the PSA Customers from congestion costs resulting from the assignment.³ Thus, Hope, Bentonville, and Prescott assert that protective language should be included in the PSAs indicating that SWEPCO will use "reasonable best efforts" in managing ARRs and TCRs on behalf of the PSA Customers to mitigate congestion costs for the PSA Customers.⁴

³ Hope Comments at 4; Bentonville Comments at 4; Prescott Comments at 4.

⁴ Hope Comments at 4; Bentonville Comments at 4; Prescott Comments at 4.

19. Hope, Bentonville, Prescott, and Minden request that the Commission consolidate Docket Nos. ER14-1248-000, ER14-1249-000, ER14-1250-000, and ER14-1307 to promote administrative efficiency and to conserve resources of the parties and the Commission.

III. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules and 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 the proceeding.

B. Hearing and Settlement Judge Procedures

21. Our preliminary analysis indicates that the proposed PSAs have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

22. SWEPCO's filings 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. For instance, certain of the PSAs provide only limited information regarding the proposal for how SPP Integrated Marketplace Settlement Charges will be reflected in the FERC accounts and the PSA rates, while other PSAs provide no information regarding how the SPP Integrated Marketplace Settlement Charges will be reflected in the FERC accounts and the PSA rates.⁵ As a result, we cannot determine whether the accounting included in the PSAs is consistent with the Commission's Uniform System of Accounts.⁶

23. Accordingly, we will accept the proposed PSAs for filing, suspend them for a nominal period, to become effective on March 1, 2014, as requested, subject to refund, and set them for hearing and settlement judge procedures. In addition, in light of the common issues of law and fact presented in the dockets, including, but not limited to, the proposed accounting for SPP Integrated Marketplace Settlement Charges and the rights and obligations of the parties regarding ARRs and TCRs, we will consolidate the instant filings for purposes of settlement, hearing, and decision.

⁵ Information regarding details of the SPP Integrated Marketplace Settlement Charges can be found in the following PSAs: (1) TEX-LA PSA, Appendix 2 of Exhibit G; (2) East Texas Co-op PSA, Appendix 2 of Exhibit G; (3) East Texas Co-op and Northeast Texas Co-op PSA, Appendix 2 of Exhibit I; (4) Bentonville PSA, Appendix 2 of Exhibit C; (5) Minden PSA, Appendix 2 of Exhibit D; and (6) Rayburn PSA, Appendix 2 of Exhibit D.

⁶ 18 C.F.R. pt. 101 (2013).

24. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before 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.⁷ 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.⁸

25. The settlement judge shall report to the Chief Judge and the Commission, within 30 days of the date of the appointment of the settlement judge, concerning 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 or provide for commencement of a hearing by assigning the case to a presiding judge, as appropriate.

The Commission orders:

(A) The proposed PSAs are hereby accepted for filing and suspended for a nominal period, to become effective March 1, 2014, as requested, subject to refund, and subject to hearing and settlement judge procedures, as discussed in the body of this order.

(B) The above-captioned dockets are hereby consolidated for the purpose settlement, hearing, and decision, as discussed in the body of this order.

(C) 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 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of SWEPCO's proposed rates, terms and conditions under the PSAs. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) 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

⁷ 18 C.F.R. § 385.603 (2013).

⁸ 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 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>).

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.

(E) 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.

(F) 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.