

152 FERC ¶ 61,126  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
Tony Clark, and Colette D. Honorable.

Southwestern Public Service Company

Docket No. ER14-192-001

ORDER DENYING REHEARING

(Issued August 14, 2015)

1. In this order, we deny a request for rehearing by Golden Spread Electric Cooperative, Inc. (Golden Spread) of the Commission's order issued December 27, 2013<sup>1</sup> accepting revisions filed by Xcel Energy Services, Inc., on behalf of its utility operating affiliate Southwestern Public Service Company (Southwestern), to the cost-based formula rate template for the partial requirements power service that Southwestern provides to Golden Spread.

**I. Background**

2. Southwestern provides partial requirements production service to Golden Spread pursuant to a Replacement Power Supply Agreement (Replacement Agreement), which incorporates a cost-based formula rate template. 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 to reflect the actual rates from the prior calendar year.

3. On October 28, 2013, Southwestern submitted proposed revisions to the currently-effective cost-based formula rate template in the Replacement Agreement (October 28 Filing). Southwestern stated that it discussed the proposed changes with Golden Spread

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<sup>1</sup> *Southwestern Pub. Serv. Co.*, 145 FERC ¶ 61,281 (2013) (December 27 Order).

prior to filing, and that Golden Spread had not raised any concerns regarding the proposed revisions.<sup>2</sup> Specifically, Southwestern proposed to:

- (i) Eliminate line items and workpapers previously used to calculate and include revenue credits and adjustments associated with the now-deactivated Wholesale Interruptible Load Management Program;
- (ii) Cease crediting retail interruptible program revenues to wholesale customers (and removing the associated load from the system demand used to derive the formula demand rate charge), and instead allocate system average costs to these retail interruptible programs;
- (iii) Remove incremental capacity sales from the system demand used to calculate the Southwestern system average embedded firm demand rate in the template, and instead credit wholesale customers' bills for their proportional share of non-fuel margins realized on such incremental capacity sales, because the pricing of the incremental capacity sales does not reflect average system prices;
- (iv) Allow for adjustments to the 500 series of production expense accounts (derived from Southwestern's FERC Form No. 1 and used to calculate production rates) to ensure that the template accurately reflects production costs at the Total Company level for allocation, excluding, e.g., the effects of retail regulatory deferrals, and provides customers with specific information as to where Total Company Expenses are shown; and
- (v) Permit, on a prospective basis, adjustments to the volumes reflected in the Estimated Rates used in the annual update to reflect changes such as customer departures or abnormal weather.<sup>3</sup>

4. Golden Spread protested Southwestern's filing, asserting that, although it had no objection to the template revisions proposed in the October 28 Filing, the Commission could not find that Southwestern's proposed template would produce charges that are just and reasonable unless three additional revisions were made.<sup>4</sup> First, Golden Spread

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<sup>2</sup> October 28 Filing at 6.

<sup>3</sup> *Id.* at 3-5.

<sup>4</sup> Golden Spread Protest at 1.

argued that Southwestern must incorporate a three coincident peak (CP) demand allocator instead of the 12 CP demand allocator in Southwestern's filing, as directed by the Commission in an August 15, 2013 order on the Initial Decision in Docket No. ER06-274-007.<sup>5</sup> Second, Golden Spread requested that the Commission direct Southwestern to reduce its return on common equity (ROE) from 10.25 percent to 9.15 percent, consistent with arguments presented by Golden Spread in two complaints pending before the Commission.<sup>6</sup> Finally, Golden Spread stated 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.<sup>7</sup>

5. In an answer filed December 3, 2013 (Southwestern Answer), Southwestern argued that Golden Spread's objections were beyond the narrow scope of the discrete changes proposed in the October 28 Filing.<sup>8</sup> With respect to the substance of Golden Spread's claims, Southwestern asserted that asking the Commission to make a determination regarding the ROE used in the formula rate would inappropriately prejudice the outcome of the pending complaint proceedings.<sup>9</sup> In addition, Southwestern pointed out that the state utility commissions had not adopted the depreciation rates resulting from the retail study on which Golden Spread relied.<sup>10</sup> Finally, Southwestern stated that the matter of its demand allocation methodology "continues to be litigated" on rehearing in Docket No. ER06-274-017 and thus "is not final before the Commission."<sup>11</sup>

6. Golden Spread responded on December 11, 2013 (Golden Spread Answer), maintaining that the Commission does not generally allow utilities to propose changes to

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<sup>5</sup> *Id.* at 6-7 (citing *Southwestern Pub. Serv. Co.*, 144 FERC ¶ 61,133, at PP 52-53 (2013)).

<sup>6</sup> *Id.* at 8-10. Golden Spread refers to the complaints in Docket Nos. EL12-59-000 and EL13-78-000.

<sup>7</sup> *Id.* at 10-12.

<sup>8</sup> Southwestern Answer at 2-6.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> *Id.* at 7-9.

<sup>11</sup> *Id.* at 9.

formula rates without opening up the entire rate for review, and again asserting that the Commission must review Southwestern's formula rate as a whole.<sup>12</sup>

7. In the December 27 Order, the Commission accepted Southwestern's October 28 Filing to be effective January 1, 2013, as requested. The Commission found that Southwestern's proposed revisions to its cost-based formula rate template were just and reasonable and served to make the template more accurate and thereby reduce the necessity to true up over- or undercharges in the annual update.<sup>13</sup> The Commission denied Golden Spread's protest as beyond the scope of the proceeding, holding that the components of the formula rate with which Golden Spread expressed concern were not integral to the narrow and discrete changes proposed in the October 28 Filing.<sup>14</sup>

## II. Request for Rehearing

8. On January 27, 2014, Golden Spread filed a request for rehearing. Golden Spread contends that the Commission has enabled Southwestern to avoid scrutiny of elements of its formula rate that cannot be deemed just and reasonable—namely, the demand allocation methodology, ROE, and depreciation rates—by “cherry-picking” a narrow set of proposed amendments.<sup>15</sup> Golden Spread asserts that, in concluding that these issues were beyond the scope of the proceeding, the Commission departed from longstanding precedent establishing the Commission's obligation to review the entire formula rate, as a whole, any time a change to one of its components is filed.<sup>16</sup> Golden Spread maintains that the Commission must ensure the reasonableness of the total rate, taking into account the interaction among various elements of the rate, and will allow “piecemeal” changes to

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<sup>12</sup> Golden Spread Answer at 6-7.

<sup>13</sup> December 27 Order, 145 FERC ¶ 61,281 at P 17.

<sup>14</sup> *Id.* P 18 (citing *Boston Edison Co.*, 65 FERC ¶ 61,311, at 62,425-62,426 (1993), *reh'g denied*, 66 FERC ¶ 61,337 (1994) (*Boston Edison*)).

<sup>15</sup> Golden Spread Rehearing Request at 3-4.

<sup>16</sup> *Id.* at 4-5 (citing *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,552 (1994) (*Ocean State Power II*); and *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 767, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

rates only in certain circumstances “not applicable here.”<sup>17</sup> In fact, according to Golden Spread, even in the case cited in the December 27 Order to find that Golden Spread’s concerns were not integral to the proposed revisions, the Commission did not look solely to the revised portion of the rates in rendering its judgment.<sup>18</sup> Golden Spread asserts that Southwestern must bear the burden of demonstrating that the rate resulting from the application of its formula is just and reasonable.<sup>19</sup>

9. Golden Spread states that the Commission has failed to provide a reasoned explanation for its departure from precedent, and asserts that the December 27 Order is therefore arbitrary and capricious.<sup>20</sup> Golden Spread cautions that the December 27 Order “sets a dangerous precedent” by allowing utilities to submit limited modifications to rates that may be unjust and unreasonable under section 205 of the Federal Power Act (FPA)<sup>21</sup> and thereby shifting the burden of making that showing to customers under section 206 of the FPA.<sup>22</sup>

### **III. Commission Determination**

10. We deny Golden Spread’s request for rehearing. We affirm that the only issues before the Commission in the December 27 Order were the changes to Southwestern’s formula rate template proposed in the October 28 Filing pursuant to section 205 of the FPA.

11. In the October 28 Filing, Southwestern sought neither a rate increase nor a sweeping change in rate design. Rather, Southwestern proposed limited and discrete updates and refinements to remove outdated line items and workpapers, change the method of reflecting retail interruptible load and incremental capacity sales in the allocation methodology, provide adjustments to production operation and maintenance account balances to remove the effects of retail ratemaking decisions, and include better estimates of volumes used to calculate Estimated Rates. Indeed, Golden Spread

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<sup>17</sup> *Id.* at 5 (citing *Batavia v. FERC*, 672 F.2d 64, 77 (D.C. Cir. 1982) (*Batavia*)).

<sup>18</sup> *Id.* at 5-6 (citing *Boston Edison*, 65 FERC ¶ 61,311 at 62,425).

<sup>19</sup> *Id.* (citing *Virginia Elec. & Power Co.*, 123 FERC ¶ 61,098, at P 47 (2008)).

<sup>20</sup> *Id.* at 6.

<sup>21</sup> 16 U.S.C. § 824d (2012).

<sup>22</sup> Golden Spread Rehearing Request at 6-7 (citing 16 U.S.C. § 824e (2012)).

expressly did not object to these changes.<sup>23</sup> Southwestern represented that each of these updates to the template has either no effect, or only a minimal effect, on rates.<sup>24</sup> Tellingly, Golden Spread did not and does not allege that the unchanged CP demand allocation methodology, ROE, and depreciation rates are somehow integral to the proposed tweaks to the template in a way that causes the proposed changes to be unjust and unreasonable, and we find that they are not.

12. Golden Spread's reliance on *Batavia* and related precedent is misplaced. *Batavia* involved a challenge to an order in which the Commission declined to reject or suspend a currently-effective fuel adjustment clause pursuant to FPA section 205 authority, based on the logic that the challenged clause had already been approved by the Commission in a previous proceeding, and instead instituted an FPA section 206 proceeding to investigate its justness and reasonableness. The United States Court of Appeals for the District of Columbia Circuit found that, while simply filing for higher rates does not automatically tax a company with the burden of proof with respect to unchanged portions of the rate, the Commission has the authority to review the revised rate "completely to ensure that its parts—old and new—operate in tandem to ensure a 'just and reasonable' result."<sup>25</sup> The court therefore concluded that the Commission had the authority under FPA section 205 to suspend the preexisting fuel adjustment clause and require refunds *if*

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<sup>23</sup> Golden Spread Protest at 1, 4. Southwestern filed substantively the same revisions with respect to six full requirements customers—Central Valley Electric Cooperative, Inc., Farmers' Electric Cooperative of New Mexico, Inc., Lea County Electric Cooperative, Inc., Roosevelt Electric Cooperative, Inc., Sharyland Utilities, L.P., and West Texas Municipal Power Agency—in Docket Nos. ER14-186-000 through ER14-191-000. These customers likewise raised no concerns with the revisions, which were accepted via delegated letter orders in those dockets.

<sup>24</sup> Southwestern Answer at 5.

<sup>25</sup> *Batavia*, 672 F.2d 64 at 75-77. See also *Laclede Gas Co. v. FERC*, 670 F.2d 38, 42 (5th Cir. 1982) (*Laclede*) (finding that, by filing for a rate increase under section 4 of the Natural Gas Act (NGA), the pipeline opened to scrutiny under that section all practices that were "an integral part of the manner in which rates are charged"). Cases under the NGA and FPA typically are read *in pari material*, that is, in the same way when they involve similar provisions. See, e.g., *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, 353 (1956), and *Arkansas-Louisiana Gas Co. v. Hall*, 453 U.S. 571, 578 n.7 (1981).

the interaction between the existing clause and newly-proposed revisions would result in the clause being unjust or unreasonable.<sup>26</sup>

13. The Commission and courts have subsequently narrowed and clarified this holding to explain that *Batavia* is relevant only where a changed rate interacts with an existing rate in a way that will *create* an unjust or unreasonable result.<sup>27</sup> In other words, an unchanged component of a rate is subject to reevaluation in connection with a proposed rate increase only “if the unchanged component is integral to the justness and reasonableness of the proposed increase.”<sup>28</sup> By contrast, Golden Spread argues only that the changes in the October 28 Filing were “incomplete.”<sup>29</sup> Its claim that the demand allocation methodology, ROE, and depreciation rates are unjust and unreasonable has no bearing on the narrow revisions submitted in the October 28 Filing.<sup>30</sup> In fact, Golden

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<sup>26</sup> *Batavia*, 672 F.2d 64 at 76-77.

<sup>27</sup> *East Tennessee Natural Gas Co. v. FERC*, 863 F.2d 932, 942-44 (D.C. Cir. 1988) (“An interaction between proposed changes and existing rates does not open the door to any and all retroactive rate changes in existing rates. Only where the interaction will *create* results that are unjust or unreasonable under *existing* Commission policy as it applies to the pipeline at the time it files its proposed rate changes does the pipeline forego that reliance interest and invite retroactive changes to existing rates.”) (emphasis in original); *New York Indep. Sys. Operator, Inc.*, 119 FERC ¶ 61,130, at P 17, *reh’g denied*, 121 FERC ¶ 61,039, at PP 12-18 (2007), *aff’d sub nom. TC Ravenswood, LLC v. FERC*, No. 07-127, slip. op. at 2-3 (D.C. Cir. 2009).

<sup>28</sup> *Entergy Servs., Inc.*, 143 FERC ¶ 61,120, at P 51 (2013) (determining that the utility had the burden under section 205 of the FPA of proving the justness and reasonableness of the continued use of labor ratios for allocating Account No. 924, Property Insurance, because these ratios were an integral part of its proposal to change the allocators for all administrative and general accounts (including Account No. 924) to use a labor ratio including affiliate labor).

<sup>29</sup> Golden Spread Protest at 1.

<sup>30</sup> Golden Spread’s reliance on *Ocean State Power II* is misplaced because that case is inapposite. In that case, the filing party sought to amend its ROE methodology in an annual informational filing rather than through an FPA section 205 filing to change the formula. *Ocean State Power II*, 69 FERC ¶ 61,146 at 61,543, 61,552. In denying this request, the Commission did not address the question of whether, or the extent to which, a change to the ROE methodology would necessitate reexamining any other unchanged components of the rate.

Spread's arguments clearly demonstrate its belief that these elements of the formula rate are unjust and unreasonable regardless of the revisions actually filed in this proceeding, as evidenced, for example, by the fact that its arguments to reduce the ROE are currently pending before the Commission in two complaint proceedings. Accordingly, there is nothing in the interaction between these rate components that creates an unjust and unreasonable result, and Golden Spread has provided no basis for the Commission to include these unchanged rate components in its review under section 205 of the FPA.

14. Moreover, contrary to Golden Spread's assertions, Southwestern does not have the burden under section 205 of the FPA of proving the justness and reasonableness of unchanged components of the formula rate. In *ANR Pipeline Co. v. FERC*, the United States Court of Appeals for the District of Columbia Circuit held that *Batavia* and *Laclede* only address the Commission's authority to order refunds, and that, even where these cases apply, the Commission would still have the burden of proof under section 206 of the FPA to require the utility to change any part of its rates that the utility did not propose to change.<sup>31</sup> The Commission has clarified that, while "the applicant bears the burden of proof under FPA section 205 or NGA section 4 with respect to unchanged components of the utility's cost of service that are an integral part of its proposed overall rate increase," in cases involving changes in "rate methodology features such as the allocation of costs among customers or the design of the utility rates, the Commission must proceed under FPA section 206 or NGA section 5."<sup>32</sup> The changes proposed in the October 28 Filing fall into the latter category. Accordingly, Golden Spread is mistaken in asserting that Southwestern, in light of the October 28 Filing, has the burden of demonstrating the justness and reasonableness of unchanged components of its formula rate under section 205 of the FPA.

15. Accordingly, the Commission will affirm its finding in the December 27 Order that the issues raised in Golden Spread's protest are beyond the scope of this proceeding.

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<sup>31</sup> *ANR Pipeline Co.*, 771 F.2d 507, 514 (D.C. Cir. 1985) (holding that "when the Commission imposes a change not proposed by the natural gas company—including an *alteration in an unchanged part of a proposed higher rate*—it must first find that the existing provision is unjust or unreasonable) (emphasis in original).

<sup>32</sup> *New Dominion Energy Coop.*, 122 FERC ¶ 61,174, at P 66 (2008) (finding that the Commission must proceed under FPA section 206 with respect to challenges to unchanged rate components in connection with filed changes to the applicants' reactive power rate design, even if those changes might incidentally increase overall rates).

The Commission orders:

Golden Spread's request for rehearing of the December 27 Order is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.