

152 FERC ¶ 61,137
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

American Electric Power Service Corporation

Docket No. ER07-1069-000

ORDER ON FORMAL CHALLENGES AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued August 19, 2015)

1. On May 23, 2013, as revised on July 15, 2013 and December 23, 2013, American Electric Power Service Corporation (AEP) filed an annual informational filing on behalf of its subsidiaries Southwestern Electric Power Company (SWEPCO) and Public Service Company of Oklahoma (PSO), detailing the calculation of the 2013 charges under the AEP transmission formula rate (2013 Annual Update) in the Southwest Power Pool, Inc. (SPP) open access transmission tariff (Tariff).¹ On January 22, 2014, Ms. Martha Peine filed a formal challenge (2013 Formal Challenge) to AEP's 2013 Annual Update. On May 23, 2014, as revised on December 8, 2014, AEP filed its annual informational filing detailing the calculation of the 2014 charges under the AEP transmission formula rate (2014 Annual Update). On January 5, 2015, Martha Peine filed a formal challenge (2014 Formal Challenge) to AEP's 2014 Annual Update. As discussed below, we set the 2013 Formal Challenge and the 2014 Formal Challenge (together, Formal Challenges) for hearing and settlement judge procedures.

I. Background

2. On June 22, 2007, AEP submitted for approval under section 205 of the Federal Power Act (FPA)² revised tariff sheets (2007 Application) on behalf of two of its operating companies: SWEPCO and PSO. The Commission accepted for filing the

¹ Southwest Power Pool, Inc., Open Access Transmission Tariff, Attachment H, Add. 4 Part 1, 0.0.0, II.1(c).

² 16 U.S.C. § 824d (2000).

formula rate and formula rate protocols proposed in the 2007 Application, subject to refund, effective February 1, 2008 and established hearing and settlement procedures.³ The parties subsequently reached an agreement on the issues, which the settlement judge certified to the Commission as an uncontested settlement.⁴ The Commission approved the settlement, finding it fair and reasonable and in the public interest.⁵

A. The Formula Rate

3. The revised tariff sheets, as proposed, increased electric transmission rates in AEP's zone in the electricity market that is overseen by SPP and converted the rates for SWEPCO and PSO from stated rates to a formula rate that automatically adjusts each year based on changes to AEP's costs of providing service, without contemporaneous requests for approval under FPA section 205. SWEPCO and PSO's charges are calculated based on each subsidiary's cost pursuant to the same formula rate.

B. Formula Rate Protocols

4. AEP's 2007 Application also included Formula Rate Implementation Protocols (Protocols) that provided a process under which customers and other interested parties are afforded an opportunity to informally review and challenge AEP's application of the formula rate (i.e., AEP's calculations in its annual updates)⁶ before they proceed to file a formal challenge to AEP's annual update with the Commission.⁷

5. Specifically, as relevant here, the Protocols provide that the formula rate is recalculated each year to become effective for service on and after July 1 of each year through June 30 of the subsequent year.⁸ The Protocols further provide that AEP shall prepare the annual update on or before May 25 of each calendar year and the annual update is subject to review.⁹ Interested parties have 135 days after the annual update is

³ *American Electric Power Service Corp.*, 120 FERC ¶ 61,205 (2007).

⁴ *American Electric Power Service Corp.*, 126 FERC ¶ 63,009 (2009).

⁵ *American Electric Power Service Corp.*, 127 FERC ¶ 61,292 (2009).

⁶ AEP 2007 Application, Ex. AEP 101 at 7-10.

⁷ SPP Tariff, Attachment H, Addendum 4, part 1, section III.2.

⁸ Southwest Power Pool, Inc., Open Access Transmission Tariff, Attachment H, Add. 4 Part 1, 0.0.0, I.2.

⁹ *Id.*, at I.3 and II.1.

posted to serve reasonable information requests on AEP for information and workpapers supporting the annual update. AEP has 15 days to make a good faith effort to respond to the information requests. To the extent that AEP and any interested party are unable to resolve disputes related to information requests, AEP or any interested party may petition the Commission to appoint an Administrative Law Judge as a discovery master. The discovery master has the power to issue binding orders to resolve discovery disputes and compel the production of discovery.

II. Discussion

A. Filings and Responsive Pleadings

6. On May 23, 2013, as revised on July 15, 2013, AEP filed on behalf of SWEPSCO and PSO, an annual informational filing detailing the calculations to its transmission formula rate to reflect 2013 charges. Martha Peine submitted a petition with the Commission requesting that an Administrative Law Judge be appointed as a discovery master, as set forth in AEP's Protocols in the SPP Tariff.¹⁰ Martha Peine's petition was granted by the Commission in a notice dated October 31, 2013. On November 1, 2013, AEP filed a response to the petition for a discovery master. On December 23, 2013, AEP filed a second revised informational filing. On January 22, 2014, Martha Peine filed the 2013 Formal Challenge to AEP's 2013 Annual Update. On February 21, 2014, AEP filed a response to Martha Peine's 2013 Formal Challenge.

7. On May 23, 2014, as revised on December 8, 2014, AEP filed the 2014 Annual Update reflecting 2014 charges. On January 5, 2015, Martha Peine filed the 2014 Formal Challenge to AEP's 2014 Annual Update. On February 4, 2015, AEP filed a response to Martha Peine's 2014 Formal Challenge.

8. Martha Peine alleges in the 2013 Formal Challenge and the 2014 Formal Challenge that AEP failed to properly apply its formula rate and the procedures in the Protocols. Specifically, she contends the following issues are improperly reflected in the transmission formula rate as shown in the 2013 Annual Update and 2014 Annual Update: (1) charitable contributions; (2) general advertising expenses; (3) economic development expenses benefiting communities outside of the SPP region; (4) lobbying expenses; and (5) state rate case expenditures for generation and distribution affiliates. Martha Peine requests that Commission: (1) direct AEP to provide documentation supporting its responses to discovery; (2) set the Formal Challenges for an evidentiary hearing in order to fully develop the record with testimony; and (3) order refunds with interest. Additionally, in the 2014 Formal Challenge, Martha Peine requests that the Commission:

¹⁰ Southwest Power Pool, Inc., Open Access Transmission Tariff, Attachment H, Add. 4 Part 1, 0.0.0, II.1(c).

(1) determine that the cost of all labor, legal fees and expenses related to examination of amounts challenged (where that challenge is ultimately found to be valid) is the sole responsibility of AEP shareholders rather than ratepayers; and (2) impose any and all fines, penalties and reprimands available under the Commission's authority.

9. AEP responds that it provided detailed documentation during the discovery process and that it already more than reasonably accommodated Martha Peine's discovery requests as required under the Protocols and that there is no need for it to provide Martha Peine with additional information. AEP states that the Formal Challenge displays a lack of understanding of how the formula rate works and the claims amount to an impermissible attack on the formula rate itself. AEP states that the Commission should deny the request for a full evidentiary hearing.

B. Commission Finding

10. We find that the Formal Challenges raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the trial-type, evidentiary hearing and settlement judge procedures ordered below. Therefore, we set the issues raised in the Formal Challenges for hearing and settlement judge procedures.

11. While we are setting this matter 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.¹¹ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.¹² The settlement judge shall report to the Chief Judge and the Commission within 30 days of 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 the commencement of a hearing by assigning the case to a presiding judge.

¹¹ 18 C.F.R. § 385.603 (2015).

¹² If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at (202) 502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 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 AEP's 2013 and 2014 Annual Updates. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed below.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge 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.

(C) Within thirty (30) days of the date 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.

(D) 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 Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Such 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. Commissioner Honorable is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.