

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

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

Southwest Power Pool, Inc.

Docket No. ER15-1775-001

ORDER DENYING CLARIFICATION AND REHEARING

(Issued December 4, 2015)

1. In this order, the Commission denies a request by Basin Electric Power Cooperative (Basin Electric) for clarification and/or rehearing of the Commission's order in this proceeding issued on August 21, 2015,¹ wherein the Commission conditionally accepted Southwest Power Pool, Inc.'s (SPP) proposed revisions to its Open Access Transmission Tariff (Tariff) to add a formula rate template and implementation protocols and to accommodate the recovery of an annual transmission revenue requirement for Basin Electric.

I. Background

2. On May 22, 2015, SPP submitted proposed Tariff revisions on behalf of Basin Electric, which included a 50 basis point adder to Basin Electric's base return on equity (ROE) for its participation in SPP, a Commission-approved regional transmission organization (RTO). The Commission conditionally granted this request.² The Commission's approval of this incentive was conditioned on Basin Electric's continuing membership in SPP.³

¹ *Sw. Power Pool, Inc.*, 152 FERC ¶ 61,144 (2015) (August 21 Order).

² *Id.* P 29.

³ *Id.*

3. In its proposal, Basin Electric requested a base ROE of 10.37 percent, with a 50 basis point RTO participation adder, for a total ROE of 10.87 percent.⁴ Basin Electric asserted that, because there is no dominant transmission owner in SPP's Upper Missouri Zone, it used the average of the ROEs on file for the existing SPP transmission owners (excluding ROEs of independent transmission companies) to arrive at a just and reasonable ROE.

4. One of the protestors of SPP's filing was the Missouri Public Service Commission (Missouri Commission), which raised concerns about Basin Electric's method for determining its ROE. Missouri Commission contended that developing the base ROE using the average of the ROEs on file for the existing SPP transmission owners may not lead to an ROE within the range of reasonableness. It pointed out that SPP's filing did not include an analysis of what the current range of reasonableness is for SPP transmission owners, and that the use of this average would allow Basin Electric to rely on outdated information that does not reflect current capital market conditions or the results of the application of the Commission's currently approved discounted cash flow methodology. Missouri Commission argued that the Commission should reject SPP's proposed Tariff revisions, suspend them for the maximum five month statutory period, set the ROE for a full evidentiary hearing, and direct the parties to engage in settlement negotiations.⁵

5. SPP's filing was also protested by the Kansas Corporation Commission (Kansas Commission), which argued that Commission precedent requires that an ROE for a non-jurisdictional utility be justified either by a discounted cash flow analysis or by the use of an established and reasonable margin above the cost of its debt.⁶ In response to these arguments, Basin Electric answered that its methodology ensures that the proposed ROE falls within the range of reasonable returns approved by the Commission.⁷

6. After evaluating these arguments, the Commission issued its August 21 Order, wherein it conditionally accepted, suspended, and set for hearing the proposed formula rate template and implementation protocols, including the proposed ROE. In addition,

⁴ *Id.* at P 6 and n.9.

⁵ Missouri Commission Protest at 4-5.

⁶ Kansas Commission Protest at n.3 (citing *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092 at PP 96, 101-103, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297).

⁷ Basin Electric Answer at 7-10.

the Commission granted the requested 50 basis point adder, subject to the adder being applied to a base ROE that has been shown to be just and reasonable based on an updated discounted cash flow analysis, and subject to the resulting ROE being within the zone of reasonableness determined by that updated discounted cash flow analysis.

7. On September 21, 2015, Basin Electric filed a request for clarification of the August 21 Order, alternatively seeking rehearing if such clarification is denied. On October 6, 2015, Kansas Commission filed an answer opposing Basin Electric's request.

II. Discussion

A. Procedural Matters

8. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2015), prohibits an answer to a request for rehearing. We, therefore, reject the Kansas Commission's answer.

B. Substantive Matters

9. In its request for clarification, Basin Electric reiterates its argument that the Commission has held that a non-jurisdictional entity is not required to use any particular method or model to determine its base ROE. Basin Electric further argues that the ROE included in its filing was developed using a methodology that conforms to the Commission's prior guidance. Basin Electric requests that the Commission clarify that it did not intend to require Basin Electric to prepare a discounted cash flow analysis to support its ROE.⁸

10. In the event that the Commission does not grant its request for clarification, Basin Electric seeks rehearing of the Commission's finding requiring that Basin Electric perform an updated discounted cash flow analysis. In this regard, Basin Electric reiterates that it is not a "public utility" subject to the Commission's jurisdiction under sections 205 and 206 of the Federal Power Act (FPA).⁹ Basin Electric contends the Commission has not required non-jurisdictional transmission owners to justify their base ROE using a discounted cash flow analysis and argues that the Commission should not stray from this precedent. Basin Electric further argues that this precedent is well-founded because a discounted cash flow analysis is not appropriate for non-jurisdictional utilities and contends that such analysis is not possible for Basin Electric. Thus,

⁸ Basin Electric Rehearing Request at 2-4.

⁹ 18 U.S.C. §§ 824d and 824e (2012).

Basin Electric argues that the Commission erred by requiring it to establish an ROE based on an updated discounted cash flow analysis.¹⁰

C. Commission Determination

11. We deny Basin Electric's request for clarification and/or rehearing. We are not persuaded by Basin Electric's arguments to deviate from our precedent requiring the use of the discounted cash flow methodology to determine a just and reasonable ROE. Thus, we continue to condition our approval of Basin Electric's RTO participation adder on it being applied to a base ROE that has been shown to be just and reasonable based on an updated discounted cash flow analysis,¹¹ and subject to the resulting ROE being within the zone of reasonableness determined by that updated discounted cash flow analysis,¹² as may be determined in the hearing and settlement procedures established in this proceeding. Further, as we stated in the August 21 Order, our approval of this incentive is conditioned on Basin Electric's continuing membership in SPP.¹³

¹⁰ Basin Electric Rehearing Request at 4-8.

¹¹ While the Commission prefers a discounted cash flow analysis to support an ROE, it may be appropriate to consider alternative approaches if a utility can demonstrate that a discounted cash flow analysis is simply not possible. *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006). For example, some public power entities do not have bond ratings or even enter the market for debt, which might make it difficult to perform a discounted cash flow analysis. *See Sw. Power Pool, Inc.*, 152 FERC ¶ 61,248, at P 32 (2015); *Sw. Power Pool, Inc.*, 152 FERC ¶ 61,249, at P 32 (2015); *Sw. Power Pool, Inc.*, 152 FERC ¶ 61,251, at P 31 (2015).

¹² *Martha Coakley, Mass. Attorney General*, Opinion No. 531, 147 FERC ¶ 61,234, (2014) ("In considering these other methodologies, we do not depart from our use of the DCF methodology; rather, we use the record evidence to inform the just and reasonable placement of the ROE within the zone of reasonableness established in the record by the DCF methodology."), *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014), *order on reh'g*, Opinion No. 531-B, 150 FERC ¶ 61,165 (2015).

¹³ August 21 Order, 152 FERC ¶ 61,144, at P 29 (2015).

The Commission orders:

Basin Electric's request for clarification and/or rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.