

122 FERC ¶ 61,071  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Oklahoma Gas and Electric Company

Docket No. ER08-281-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING REVISED TARIFF  
SHEETS AND ESTABLISHING HEARING AND SETTLEMENT JUDGE  
PROCEDURES

(Issued January 31, 2008)

1. On November 30, 2007, Oklahoma Gas and Electric Company (OG&E) filed revised tariff sheets to (a) Attachment H and Attachment T to the Southwest Power Pool, Inc. (SPP) Open Access Transmission Tariff (OATT), and (b) Attachment H, Schedule 7 (Long and Short Term Firm Point-to-Point Transmission Service) and Schedule 8 (Non-Firm Point-to-Point Transmission Service) to OG&E's OATT. The revised tariff sheets would increase the electric transmission rates in OG&E's pricing zone and would convert those rates into formula rates, which would automatically adjust each year based on changes in OG&E's cost of providing service, without filings under section 205 of the Federal Power Act (FPA).<sup>1</sup> In this order, we conditionally accept the revised tariff sheets, suspend their effectiveness for five months, to be effective July 1, 2008, subject to refund, establish hearing and settlement judge procedures, and direct OG&E to make a compliance filing.

**I. Background**

2. On November 30, 2007, OG&E submitted tariff sheets that revise the rates for the OG&E pricing zone and for a limited number of grandfathered agreements (GFAs) under OG&E's OATT. The revised tariff sheets convert OG&E's existing transmission service rates, which are stated rates for network and point-to-point service customers based on OG&E's 1997 annual transmission revenue requirement (ATRR), to cost-of-service formula rates. The proposed formula rates produce an approximate rate increase of \$37.5 million resulting in an increase of OG&E's revenue requirement from \$65.1 million to

---

<sup>1</sup> 16 U.S.C. § 824d (2000 & Supp. V 2005).

\$102.6 million.<sup>2</sup> Specifically, OG&E proposes to implement a “formulaic template” that will use actual calendar year cost data, the majority of which will be drawn from the company’s FERC Form No. 1, and forecasted transmission plant balances to produce an ATRR for the governing rate year. OG&E states that the ATRR combined with the prior year’s zonal 12-CP load<sup>3</sup> will be used to calculate the rates in SPP.

3. OG&E’s proposal contains fixed values for the return on equity (ROE), depreciation rates and the cost of post-employment benefits other than pension (PBOPs). Additionally, OG&E’s proposal includes a true-up mechanism to ensure that deviations from actual costs during a rate period are accounted for, with interest, in the subsequent rate period. OG&E’s proposal also includes a process under which customers and other interested parties may obtain additional information regarding OG&E’s proposed rates for the upcoming rate year. In addition, OG&E states that its proposed rates appropriately incorporate and apply the SPP OATT definition of “transmission facilities.”

4. OG&E proposes a ROE formula component of 12.7 percent, which includes a base ROE of 12.2 percent and a 50 basis point adder as an incentive for OG&E’s participation in a regional transmission organization (RTO). OG&E does not propose to recover any additional incentives under section 219 of the FPA for ratemaking beyond the incentive for participation in the SPP RTO.

5. OG&E requests an effective date of February 1, 2008, and also requests that its proposed rates be accepted without an evidentiary hearing or with only a nominal suspension.<sup>4</sup> OG&E states that a nominal suspension period is appropriate with regard to its formula rate because the rate increase does not appear to be excessive and OG&E is not seeking additional rate incentives.

---

<sup>2</sup> OG&E states that approximately \$34.5 million will be borne by the OG&E load-serving entity as a transmission customer in the OG&E zone of SPP. This filing results in an increased revenue requirement of approximately \$3 million for non-OG&E transmission customers in the OG&E zone.

<sup>3</sup> OG&E’s 12-month CP load is the sum of the measurement of each of OG&E’s customers’ peak loads at the time of the monthly system peaks over a 12-month time frame.

<sup>4</sup> OG&E cites instances in which the Commission has accepted formula rates with a nominal suspension. *West Texas Co.*, 18 FERC ¶ 61,189 (1982), *Baltimore Gas & Electric Co.*, 115 FERC ¶ 61,066 (2006).

6. Additionally, OG&E requests waivers of certain Commission filing requirements,<sup>5</sup> stating that the testimony, supporting exhibits and its FERC Form No. 1 provide ample support for the proposed formula rate.

## **II. Notice and Responsive Pleadings**

7. Notice of OG&E's filing was published in the *Federal Register*, 72 Fed. Reg. 71,132 (2007), with protests and interventions due on or before December 21, 2007. Arkansas Electric Cooperative Corporation (AECC) and Golden Spread Electric Cooperative, Inc. (Golden Spread) filed motions to intervene and comments. Oklahoma Municipal Power Authority (OMPA) filed a motion to intervene, protest and request for hearing and five-month suspension. On December 28, 2007, Kansas City Power & Light (KCPL) filed a motion to intervene out of time. On January 11, 2008, OG&E filed an answer in response to OMPA's protest. On January 11, 2008, SPP filed a motion to intervene out of time. On January 30, 2008, American Electric Power Service Corporation (AEP) filed a motion to intervene out of time.

8. Although neither AECC nor Golden Spread take network integration transmission service in the OG&E zone, AECC and Golden Spread remain concerned about how the OG&E formula, in addition to other transmission formula rates proposed or adopted in the SPP footprint, affect SPP's ability to calculate and distribute zonal revenues.

9. OMPA raises a number of concerns along four main themes: (1) OG&E's ROE is unjust and unreasonable; (2) certain cost-of-service or rate design issues should be rejected or set for hearing; (3) the processes to review and challenge application of the formula are inadequate; and (4) the revised tariff sheets should be suspended for the maximum period and set for hearing.<sup>6</sup>

### **A. Return on Common Equity**

10. OMPA contends that OG&E's proposed base ROE of 12.2 percent is excessive and unjustified. OMPA asserts that its own Discounted Cash Flow (DCF) studies render an appropriate ROE between 9.25 percent and 9.65 percent. OMPA does not oppose the

---

<sup>5</sup> OG&E seeks waiver of the following sections of the Commission's regulations: section 35.13(d)(1)-(2), Period I-II data requirements for Statements AA through BM; section 35.13(d)(5), work papers related to Period I and II data; and section 35.13(h), cost of service statements.

<sup>6</sup> In addition, OMPA states that it had a relatively short time frame to review and identify deficiencies in the OG&E filing. OMPA points out that the Commission's notice of filing was not issued until December 7, 2007 and OMPA did not receive its service copy until December 10, 2007.

50 basis point ROE incentive for OG&E's membership in SPP. However, OMPA argues that OG&E fails to demonstrate that its ROE remains within the zone of reasonableness when the 50-basis-point adder is calculated on top of the base ROE of 12.2 percent.

11. OMPA also asserts that, in using a proxy group to establish an appropriate ROE for OG&E, OG&E has inappropriately included utilities outside of the SPP region.<sup>7</sup> OMPA argues that OG&E should have used a proxy group consisting of only transmission-owning members of SPP to perform a DCF analysis that produces less skewing and more reliable results.<sup>8</sup> If non-SPP transmission owners are included in the proxy group, OMPA asserts that both high-end and low-end estimates must be excluded from the proxy group. Finally, OMPA supports the use of the median ROE rather than the midpoint ROE in ascertaining the cost-based component of equity return.

12. OG&E responds to OMPA's objections, stating that the 12.2 percent base ROE, as well as the 12.7 percent ROE that reflects the addition of the 50 basis point adder for OG&E's participation in SPP, falls within the range of reasonableness produced by the Commission's DCF model. Additionally, OG&E asserts that OMPA's argument in favor of setting the base ROE at the median of the zone of reasonableness, rather than the midpoint, misapplies Commission precedent. OG&E states that if OMPA has a basis for its argument in favor of the median, the matter should be set for hearing and settlement procedures. OG&E also takes issue with OMPA's objection to the use of OG&E's actual capital structure in setting its formula rates. OG&E states that use of an entity's actual capital structure is consistent with Commission policy<sup>9</sup> and that it is particularly appropriate in setting formula rates because the formula will track changes in the actual capital structure and will provide for the utility to recover its actual costs.

13. With respect to the proxy group used to establish the ROE, OG&E states that it used a group of twenty-four transmission owners within SPP, the Midwest ISO, and PJM,

---

<sup>7</sup> OMPA cites the Commission's statement in *Commonwealth Edison Co.*, 119 FERC ¶ 61,238 at PP 77-79 (2007), that the proxy group should be limited to those companies with a direct link to the same RTO, absent a compelling showing in favor of including other companies. OMPA, December 21, 2007, Protest at 6.

<sup>8</sup> OMPA states that a group of five transmission-owning members of SPP would be sufficient to perform the DCF analysis. OMPA notes that the sixth transmission-owning member, Empire, has a high-end implied cost of equity at 40.7 percent. Therefore, OMPA states that Empire should be eliminated from the proxy group as an extreme outlier.

<sup>9</sup> OG&E, January 7, 2008, Answer at 18-19 (citing *ITC Holdings Corp.*, 121 FERC ¶ 61,229, at P 49 (2007), and *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 36 (2007)).

arguing that this approach is consistent with Commission precedent.<sup>10</sup> OG&E responds that the Commission has not established a bright line policy with respect to the composition of proxy groups as OMPA indicates; instead, according to OG&E, the Commission requires a fact-specific inquiry that reflects the particular characteristics of the relevant utility in determining the make-up of a proxy group.<sup>11</sup> Thus, OG&E urges the Commission to set the matter for hearing and settlement procedures.

### **B. Cost of Service and Rate Design**

14. OMPA asserts that: (1) OG&E has not provided the necessary material to permit the Commission and customers to evaluate whether the depreciation rates and PBOP expenses OG&E proposes are just and reasonable; (2) the formula rate should be corrected to remove all allocations of industry association dues from transmission-related costs; (3) the annual formula rate calculation should be adjusted based on a thirteen-month average rate base as opposed to the end-of-year rate base; (4) the accumulated amortization of intangible plant should be reflected in the formula rate determination; (5) OG&E should be required to demonstrate definitive plans for the use any land held for future use in the near term (within five years) if it is to qualify for inclusion in the rate base; (6) the apportionment factors for the weighted average state income tax rate total more than 100 percent and thus require clarification; and (7) a cap on the common equity ratio used in the formula transmission rates is necessary to maintain that the common equity ratio is within the zone of reasonableness and is not higher than 54.5 percent, the Value Line Projected 2010-12 common equity for OG&E's parent, OGE Energy Corp.

15. OMPA also states that: (1) because OG&E provides limited or no explanation or studies for the assignment of accumulated deferred income tax (ADIT) balances in Accounts 283 and 190 to various functional or allocation categories, the ADIT balances should not be allocated to the transmission function in their entirety; (2) OG&E does not provide an explanation as to why the values shown in the right-hand column of the table in Part I of the Transmission Network Load Worksheet (Worksheet B) are lower than the total monthly transmission peaks reported in OG&E's FERC Form No. 1 by a consistent 10 MW each month; (3) OG&E does not provide support for the network upgrade credit figures in Lines 69 and 119 of the rate formula; (4) OG&E should provide supporting documentation and explanation for all entries on Part I of Worksheet A, specifically as to how the reported values for "non-transmission revenue" were developed, and reconcile worksheet entries to amounts reported in OG&E's FERC Form No. 1, specifically in Account 456, for the applicable reporting year; and (5) OG&E provides no explanation

---

<sup>10</sup> *Id.* at 9-11 (citing *Bangor Hydro-Electric Co.*, 117 FERC ¶ 61,129, at P 3 (2006)).

<sup>11</sup> *Id.* at 8 (citing *So. Cal. Edison Co.*, 92 FERC ¶ 61,070, at 61,265 (2000); *Consumers Energy Co.*, 98 FERC ¶ 61,333, at 62,411-12 (2002)).

for the three-year average for allocating construction materials and supplies (M&S) and thus the Commission should reject the three-year average, and use the current-year ratio of transmission-related draws of M&S to total draw of M&S.

16. OMPA also contends that OG&E's formula rate improperly contains a temporal mismatch between load and projected cost that will enable OG&E systematically to over-recover costs. OMPA asserts that this over recovery will provide OG&E with an additional source of working capital above what it has already included as working capital in its rates. OMPA argues that the Commission should require OG&E to use projected load to mitigate the temporal mismatch (as proposed by American Electric Power in another rate case),<sup>12</sup> or alternatively, provide that the refunds in annual true-ups include interest at OG&E's overall cost of capital.

17. OMPA asserts that it is unclear whether OG&E intends for the instant filing to qualify as a request for determination by the Commission as to which of OG&E's facilities are "transmission facilities" consistent with Attachment AI of SPP's OATT.<sup>13</sup> OMPA states that OG&E fails to provide any evidence necessary for the Commission to make a determination of whether the OG&E facilities included in its transmission rate base satisfy the Attachment AI criteria. OMPA contends that OG&E must submit as part of its case-in-chief all studies and data supporting OG&E's proposed reclassifications in order to ensure that the rates to be charged are just and reasonable, and to support any possible conclusion that OG&E has complied with Attachment AI.

18. In responding to OMPA's objections to individual components of OG&E's rate formula, OG&E argues that to the extent its answer does not resolve OMPA's objections, they are most appropriately resolved during hearing and settlement procedures. OG&E argues that its use of year-end plant balances, which are then true-up to actual plant balances the following year, is appropriate for setting its formula rate. OG&E notes that the December 31 plant balance represents the midpoint of the rate year (which runs from July 1 to June 30), and that use of the midpoint is a reasonable mechanism for identifying a prior year's rate base that is neither disproportionately low or high. OG&E rejects OMPA's argument that this method "temporally mismatches" costs and loads, stating that because the load levels are the same for the projected rates and for the rates that reflect

---

<sup>12</sup> OMPA, December 21, 2007, Protest at 22 (citing American Electric Power Service Corp., June 22, 2007 Transmittal Letter, ER07-1069-000, at 4-5).

<sup>13</sup> Attachment AI requires all transmission owners to file request(s) with its appropriate regulatory authority for a determination as to which of its facilities are considered to be Transmission Facilities within three years of the acceptance of Attachment AI. *See Southwest Power Pool, Inc.*, 112 FERC ¶ 61,355 (2005) (accepting Attachment AI).

the true-up, there is no mismatch. OG&E also states that OMPA fails to support its argument in favor of requiring OG&E to calculate refunds made pursuant to the true-up at OG&E's overall cost of capital, as opposed to the Commission's prescribed rate.

19. Furthermore, OG&E states that its proposed depreciation rates are fully supported as they reflect depreciation expenses in OG&E's FERC Form No. 1 and are based on studies prepared in 2005 and updated in 2006. OG&E also asserts that its PBOP expenses are fully supported in the Notes to Financial Statements on page 123.21 of OG&E's 2006 FERC Form No. 1. OG&E next argues that its allocations of ADIT balances are appropriate to reflect the proper allocation of rate base to transmission. OG&E states that the apportionment factors for the weighted average state income tax rate are correct and that they exceed 100 percent due to differences in the way Arkansas and Oklahoma compute apportionment of sales. OG&E also notes that the load in the transmission rate divisor is not understated, stating that the 10 MW difference in monthly peaks represents a 10 MW point-to-point transaction under the SPP OATT exiting both the OG&E control area and SPP footprint.

20. OG&E argues that it has appropriately accounted for land held for future use in rate base, stating that a utility should acquire land rights when they may be obtained at a reasonable cost, which may be well before the land is actually used in connection with construction of facilities. OG&E also argues that it has allocated industry dues appropriately, stating that all customers benefit from OG&E's participation in industry associations. OG&E also provides support for the revenue credits in Worksheet A and its network upgrade credits to address OMPA's protest.

21. As to OMPA's objections relating to the use of a three-year average for allocating construction M&S and the manner in which OG&E accounts for accumulated amortization of intangible plant, OG&E states that it agrees with OMPA's comments and will revise its rate formula accordingly.

22. OG&E also responds to OMPA's argument that OG&E provided inadequate support to show compliance with Attachment AI of the SPP OATT, regarding classification of facilities as "transmission facilities." OG&E states that it used the criteria described in Attachment AI to determine which radial and normally open looped lines and which facilities within a substation qualify as "transmission facilities." OG&E also states that it used Attachment AI criteria to identify facilities that should be specifically excluded from the definition of transmission facilities. OG&E also argues that OMPA's suggestion that the seven-factor test should be applied to implement Attachment AI is not supported by the SPP OATT.

### **C. Review and Challenge Provisions**

23. OMPA states that OG&E's proposed customer-protection processes are inadequate and should be modified. OMPA asserts that although section I.3.(a) provides

for an “Annual Update,” OG&E does not commit to making any form of informational filing with the Commission. OMPA, therefore, argues that OG&E should be required to make annual informational filings of its updated rates.<sup>14</sup> Additionally, OMPA objects to time constraints on customers’ challenge rights, which OMPA argues limit customer opportunity to identify and challenge implementation of a new rate formula. OMPA argues that this concern applies equally to both formal and informal challenges because a customer’s formal challenges are limited to the same subject matter as those identified by that customer through the informal challenge. OMPA notes that the informal process that OG&E proposes is no substitute for adequate rights to enforce proper application of the formula. OMPA also requests that the implementation protocols include an option to remove a dispute from mandatory negotiations for decision by the Commission. OMPA states that discovery rights during the informal review period should be sufficiently broad so that discovery disputes can be resolved properly. Specifically, OMPA objects to OG&E’s proposal insofar as it allows OG&E to decide what information is relevant and therefore discoverable. OMPA asserts that OG&E does not specify how it will handle any agreed-upon corrections arising out of the informal review process. Lastly, OMPA asserts that OG&E must include language to specify how refunds will be made if OG&E files to end its formula rate.

24. OG&E states that its application includes procedural protocols that meet or exceed the requirements for proposed formula rates and that are based on provisions approved by the Commission in other formula rate cases.<sup>15</sup> OG&E asserts that requiring it to make an “informational filing” with the Commission each year amounts to a collateral attack on section 206 of the FPA.<sup>16</sup> OG&E explains that its Annual Update process will provide interested parties with an opportunity to challenge OG&E’s implementation of the formula through a section 206 filing with the Commission. OG&E further asserts that the requirements for formal and informal objections to its Annual Update provide sufficient process to resolve disputes among interested parties. OG&E also states that its protocols appropriately limit the subject of formal challenges to issues first raised in informal challenges so that the parties have a chance to resolve disputes informally first. OG&E argues that this process allows for annual rate certainty through the prompt resolution of disputes. Finally, OG&E objects to OMPA’s requests for additional discovery procedures, stating that such procedures are unnecessary and would impose unreasonable burdens on the parties and the Commission.

---

<sup>14</sup> See *Idaho Power Company*, 115 FERC ¶ 61,281, at P 29 (2006).

<sup>15</sup> OG&E, January 7, 2008, Answer at 34 (citing *Idaho Power Co.*, 120 FERC ¶ 61,144 (2007); *Baltimore Gas and Elec. Co.*, 115 FERC ¶ 61,066 (2006)).

<sup>16</sup> 16 U.S.C. § 824e (2000 & Supp. V 2005).

**D. Suspension and Hearing**

25. OMPA requests the proposed rates be suspended for the maximum five-month suspension period and set for hearing and settlement judge proceedings.

26. OG&E states that OMPA's protest does not provide an adequate basis for suspension of the proposed rates beyond a nominal period. OG&E further argues that equitable principles and a Commission policy favoring formula rates warrant a nominal suspension period.

**III. Discussion****A. Procedural Matters**

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214(d) (2007), the Commission will grant KCPL's, SPP's, and AEP's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

28. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept OG&E's answer because it has provided information that assisted us in our decision-making process.

**B. Acceptance and Suspension of OG&E's Proposal**

29. For the reasons discussed below, we will accept OG&E's proposal, subject to a compliance filing and five months' suspension, hearing, and settlement judge procedures, effective July 1, 2008, subject to refund.

30. OG&E's proposal raises 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 ordered below.

31. Our preliminary analysis indicates that OG&E's proposed revised tariff sheets have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), the Commission explained that, when our preliminary analysis indicates that proposed rates may be unjust and unreasonable and substantially excessive,

the Commission will generally impose a maximum suspension (i.e., five months).<sup>17</sup> Here the facts show that OG&E's rate increase results in an increase in OMPA's annual revenue requirement from approximately \$4 million to \$6.3 million. In the instant proceeding, our preliminary analysis<sup>18</sup> indicates that the proposed rates may be substantially excessive. Therefore, we will accept OG&E's filing subject to a compliance filing as discussed below, suspend it for five months to be effective on July 1, 2008, subject to refund, and set it for hearing and settlement judge procedures.

32. At the hearing, OG&E will be required to demonstrate the justness and reasonableness of its proposal. To the extent that OG&E wishes to rely on the Commission's treatment of other formula rate proposals, OG&E may cite that treatment as precedent.

33. While we are setting this matter for a trial-type evidential 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.<sup>19</sup> 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.<sup>20</sup> 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.

---

<sup>17</sup> *West Texas Utilities Co.*, 18 FERC ¶ 61,189, at 61,374-75 (the Commission will suspend a proposed rate for the maximum period, five months, if the proposed rate increase is found to be substantially excessive); *Tucson Elec. Co.*, 76 FERC ¶ 61,235, at 62,147 & nn.25-26 (1996).

<sup>18</sup> *So. Cal. Edison*, 114 FERC ¶ 61,099, at P 9-12 (2006) (noting that the Commission does not, as a general rule, open its preliminary analysis of rates to review).

<sup>19</sup> 18 C.F.R. § 385.603 (2007).

<sup>20</sup> 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](http://www.ferc.gov) - click on Office of Administrative Law Judges).

**C. Specific Findings**

34. We make specific findings on the following issues:

**1. Formula Specificity and Informational Filing**

35. We find that certain calculations proposed by OG&E in the formula rate lack specificity. For example, lines 61 and 94 of the rate formula template, which pertain to abandoned plant expenses, should be set to zero.<sup>21</sup> Additionally, the formula notes related to General Plant and Administrative and General Expenses provide too much discretion by allowing the use of allocators other than the wages-and-salary allocator.<sup>22</sup> The Commission's policy requires that all formula calculations be incorporated into rate schedules so that public utilities cannot unilaterally revise the calculations at their discretion.<sup>23</sup> In the instances noted above, OG&E has retained too much discretion in calculating its formula rates. Therefore, we direct OG&E to submit in a compliance filing a revised formula rate template that will incorporate all necessary details and calculations in the formula, as discussed in the body of this order. Additionally, we direct OG&E to include that formula rate template in both the SPP OATT and the OG&E OATT, such that all necessary information is expressly included in each tariff.

**2. Return on Common Equity**

36. We will grant up to a 50 basis points of incentive ROE for participation in SPP, consistent with section 219 of the FPA<sup>24</sup>—that the incentive applies to all utilities joining the transmission organization—and is intended to encourage OG&E's continued involvement with SPP.<sup>25</sup> Granting *up to* 50 basis points of incentive ROE does not imply

---

<sup>21</sup> Proposed Original Sheet Nos. 224D-224E.

<sup>22</sup> Proposed Original Sheet No. 224G, Letter J.

<sup>23</sup> *See Maine Yankee Atomic Power Company*, 42 FERC ¶ 61,307 at 61,923, *reh'g denied*, 43 FERC ¶ 61,453 (1988) (noting that formula calculations must be incorporated into rate schedules so that utilities cannot unilaterally revise them). *See also Midwest Independent Transmission System Operator, Inc.*, 101 FERC ¶ 61,221, at 61,967 (2002).

<sup>24</sup> 16 U.S.C. § 824s (2000 & Supp. V 2005).

<sup>25</sup> *See, e.g., San Diego Gas & Elec. Co.*, 118 FERC ¶ 61,073 at P 25-26, *American Elec. Power Service Corp.*, 120 FERC ¶ 61,205, at P 34 (2007).

that OG&E will ultimately receive that much.<sup>26</sup> Nor does granting up to 50 basis points of incentive ROE remove any issue pertaining to the ROE from consideration during the hearing and settlement procedures. Indeed, the hearing that is established herein should consider all other issues concerning OG&E's proposed ROE, including but not limited to the composition of the proxy group and OG&E's capital structure. The Commission's order is also subject to suspension and the zone of reasonableness returns determined at hearing.

### 3. Depreciation and PBOPs

37. With regard to OG&E's depreciation rates, it appears that due to an administrative oversight, the depreciation rates were inadvertently set to zero percent.<sup>27</sup> We note that utilities may make changes to depreciation rates only through a filing under section 205 of the FPA.<sup>28</sup> To change rates charged for power sales or transmission services (whether determined by stated rates or formula rates) to reflect a change in depreciation, a utility would first have to make a filing with the Commission pursuant to section 205 or 206, as appropriate, to that effect.<sup>29</sup>

38. Thus, we direct OG&E to include in its compliance filing a formula rate that reflects the actual depreciation rates for which OG&E is seeking approval.<sup>30</sup> We also set for hearing the PBOP level because OG&E does not support its proposed PBOP recovery.

---

<sup>26</sup> The amount of the 50 basis point incentive that OG&E could receive may be limited by the top of the zone of reasonableness that the Commission ultimately adopts in this proceeding after the hearing. Accordingly, we grant OG&E the full 50 basis point ROE incentive for participation in SPP so long as the additional 50 basis points do not result in a final ROE above the zone of reasonableness as determined in the hearing ordered below. *Id.* at P 25 & n.30.

<sup>27</sup> See Proposed Original Sheet No. 224AL, Worksheet M.

<sup>28</sup> 16 U.S.C. § 824d (2000 & Supp. V 2005).

<sup>29</sup> *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs., ¶ 31,104, at 31,695 & n.25 (2000). See also *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>30</sup> *Commonwealth Edison*, 119 FERC ¶ 61,238 at P 91, n.97.

#### 4. Tariff Sheet Designations and Other Issues

39. We note that OG&E proposes to implement a formula rate for new transmission service in the SPP OATT and for a limited number of GFAs under the OG&E OATT. However, we find that the materials included in the OG&E OATT make reference to the formula rate and implementation protocols in the SPP OATT, and do not address them specifically in the OG&E OATT.<sup>31</sup> Consistent with our regulations, we direct OG&E to include the OG&E formula rate and implementation protocols in the OG&E OATT in lieu of referencing the rate in the SPP OATT.

40. Lastly, it appears that OG&E includes two numbering typos in the implementation protocols that need to be corrected.<sup>32</sup>

#### 5. Waivers

41. We will grant OG&E's requests for waiver consistent with our prior approval of formula rates.<sup>33</sup> Nonetheless, to the extent that parties at the hearing procedures ordered below can show the relevance of additional information needed to evaluate this proposal, the presiding judge can provide for appropriate discovery of such information.<sup>34</sup>

#### The Commission orders:

(A) OG&E's proposed tariff sheet revisions are hereby accepted for filing and suspended for five months, to become effective on July 1, 2008, subject to refund, subject to the outcome of hearing and settlement judge procedures, and subject to the compliance filing ordered in Ordering Paragraph (B), as discussed in the body of this order.

(B) OG&E is hereby directed to file a compliance filing within thirty days of the date of this order to reflect the modifications discussed in the body of this order.

(C) 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

---

<sup>31</sup> 18 C.F.R. § 35.1 (2007) (requiring rate schedules to set forth all rates terms and conditions).

<sup>32</sup> The number 6 at the top of the Proposed Original Sheet No. 224AO should be deleted and 7 and 8 should be numbered as 6 and 7, and the number 2 at the top of Proposed Original Sheet No. 224AQ should be deleted and numbers 3, 4 and 5 should be renumbered as 2, 3 and 4.

<sup>33</sup> *Commonwealth Edison*, 119 FERC ¶ 61, 238 at P 94.

<sup>34</sup> *Id.*

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 OG&E's proposed tariff sheet revisions. However, the hearing will 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 (2007), 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.

(E) 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.

(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 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.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.