

131 FERC ¶ 61,182
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Empire District Electric Company

Docket No. ER10-877-000

ORDER ACCEPTING AND SUSPENDING
PROPOSED TARIFF REVISIONS AND
ESTABLISHING A HEARING

(Issued May 28, 2010)

1. On March 12, 2010, Empire District Electric Company (Empire) filed a proposed Full Requirements Electric Service Rate Schedule (Rate Schedule)¹ with a standard form of Electric Service Agreement (Agreement) to implement a cost-based full requirements wholesale electric service rate schedule and generation formula rate. In this order, the Commission conditionally accepts the Rate Schedule and Agreement for filing, suspends them for a nominal period to be effective June 1, 2010, subject to refund, and establishes a hearing, as discussed below.

Background

2. Empire is a public utility providing electric service to approximately 167,000 customers in southwest Missouri, southeast Kansas, northeast Oklahoma, and northwest Arkansas. Empire is also a transmission-owning member of the Southwest Power Pool, Inc. (SPP), with its transmission facilities, most of which operate at 69 kV and 161 kV, under the functional control of the SPP. All transmission service requests that would use Empire's transmission system are made through the SPP and Empire takes transmission service over its facilities under the SPP tariff.

3. Empire states that it currently provides bundled full requirements wholesale service within its balancing authority area to the cities of Monett, Mt. Vernon and Lockwood, Missouri and the city of Chetopa, Kansas under grandfathered agreements

¹ Empire designates the proposed Rate Schedule as “FERC Electric Rate Schedule, Original Volume No. 4.”

with stated rates under a cost-based wholesale power sale tariff (W-1 Tariff).² Empire also states that the term of service specified in each of the contracts has expired but Empire continues to provide service to these customers under their respective bundled service agreements. Empire notes that the Commission has found that Empire has market power for wholesale power sales in its home control area and, therefore, required Empire to offer long-term service at embedded cost rates.³ Empire states that upon Commission approval of the proposed Rate Schedule, Empire intends to file notices of cancellation of the existing W-1 Tariff. Empire states that at that time, if a customer has not made arrangements to meet its energy needs through service from a third party, the customer will have the option of taking service under the proposed Rate Schedule at a cost-based formula rate that complies with the Mitigation Order.

Empire's Filing

4. Empire states that the proposed Rate Schedule contains the generic provisions applicable to all wholesale customers taking service under the Rate Schedule, including the formula rate. The Agreement contains the customer-specific terms and conditions, as well as exhibits for customer specific information such as delivery points and good faith load forecasts, customer resources, and arrangements for transmission, ancillary and wholesale distribution service.

5. Under the proposed Rate Schedule, customers will have the option of selecting a term of ten years or longer, which Empire states reflects the planning horizon if its integrated resource plan. Empire states because it has transferred control of its transmission facilities to SPP, transmission, ancillary service and wholesale distribution charges will be assessed by SPP. Empire states that on-system wholesale customers taking service under the proposed Rate Schedule will be responsible for arranging and paying for all required transmission, ancillary service and wholesale distribution services and will be required to obtain Network Integrated Transmission Service from SPP under the SPP OATT. Empire states that the distribution charges will be collected under a "Schedule 10" arrangement, which will require SPP to file (on Empire's behalf) an application with the Commission to implement the Schedule 10 charges. Empire states that these customers will also have the option of designating Empire as their agent, to arrange day-to-day transmission scheduling on their behalf.

² The W-1 Tariff is designated as FERC Electric Tariff Second Revised Volume No. 1.

³ See Empire Filing at 2 (citing *Empire District Electric Co.*, 116 FERC ¶ 61,150 (2006), *reh'g denied*, 123 FERC ¶ 61,084 (2008) (Mitigation Order)).

6. Empire also states that it is proposing a cost-based lagging generation formula rate that it will use to calculate its embedded generation costs, including system average costs. Under the proposed Rate Schedule, wholesale customers will pay a monthly charge for the full requirements electric service, which may contain up to the following five types of charges: (1) a Customer Demand Charge to recover the costs associated with providing generation capacity; (2) a Customer Energy Charge to recover fuel costs, purchase energy costs, and other variable generation expenses; (3) charges Empire incurs to associated with arranging, transmission, ancillary services, and/or wholesale distribution services, (based on the SPP OATT); (4) charges to recover applicable taxes, fees, and assessments attributable to the full-requirements electric service that are not included in any of the other charges; and (5) charges to recover any fees, fines, penalties, or sanctions assessed against Empire, but attributable to a customer's failure to comply with the National Energy Reliability Corporation Standards. Under the proposed Rate Schedule, Empire will update the Customer Demand Charge and the customer net variable charge components of the Customer Energy Charge each June 1 using cost data from the prior calendar year and the generation formula rate template. Empire states that data will come from Empire's FERC Form No. 1 or will be otherwise derived in worksheets included in the generation formula rate template using Empire company records. Empire also states that each year it will post the recalculated Customer Demand Charge and the customer net variable charge components of the Customer Energy Charge no later than May 15. Customers will have an opportunity to review and challenge these calculations under the proposed Protocols (Attachment E) of the Rate Schedule.

7. Empire states that it based the proposed Rate Schedule and formula rate on a similar filing recently approved by the Commission for Westar Energy, Inc.⁴ with modifications including the following: no cap on Customer Demand Charge increases; customer-specific true-ups; blended depreciation rates; and an allocator for Administrative and General expenses that reflects state treatment. With regard to its proposal not to cap Customer Demand Charges, Empire states that because it uses an Allowance for Funds Used During Construction (AFUDC) methodology in its retail jurisdiction filings to integrate new generation units into its rate base, it is not requesting recovery of Construction Work in Progress. Empire explains that because it uses the AFUDC methodology, recovery of costs associated with major construction projects is delayed by several years. Accordingly, Empire states that it is not proposing any cap on the rate at which the Customer Demand Charge could increase from one year to the next because limiting the level of annual Customer Demand Charge increases would further delay recovery of the costs of new generation units.

⁴ Empire Filing at 1 (citing *Westar Energy Inc.*, 129 FERC ¶ 61,128 (2009) (*Westar*)).

8. Additionally, Empire states that is its proposing to true-up the Customer Demand Charge and the customer net variable components of the Customer Energy Charge individually for each customer to avoid significant customer cross-subsidies. Empire states that due to the disparity in size of each of Empire's four wholesale customers a combined true-up may have significant adverse affects on the smaller customers in the event that the largest customer experiences a significant increase or decrease in load or energy usage from one year to the next.

9. Noting that in addition to the Commission's wholesale rate jurisdiction, it is subject to the retail ratemaking jurisdiction of four states, Empire states that it is proposing to use blended depreciation rates reflecting a weighted average of plant in service in each of the jurisdictions in which it operates.⁵ Empire states that the generation formula rate template will update the jurisdictional split each year based on allocation methods applicable to each account and on actual plant balances in each jurisdiction.

10. Empire also proposes to allocate Administrative and General expenses, payroll taxes, and general plant expenses using an operation and maintenance expense allocator instead of a labor allocator. Empire explains that it does not use a labor allocator in retail rates and if it is required to use a labor allocator, as is typically used in Commission-jurisdictional rates, the mismatch between its retail and wholesale rates will result in trapped costs of approximately \$900,000. With regard to return on equity (ROE), Empire states that it determined a proposed 11.6 percent ROE based using the discounted cash flow methodology, including the Commission's screening method for determining the composition of the proxy group of comparable utilities, and considering Empire's specific risk factors to determine where the ROE should fall within the zone of reasonableness.

11. In support of its filing, Empire states that the Commission last approved an increase in the stated rates Empire charges customers under its full requirements wholesale service in its cost-based W-1 Tariff in 2003. Empire states that since that time, it has installed, and is in the process of installing, additional generation facilities to serve its load. According to Empire, under stated rates it would not be able timely to recover costs associated with its capital expansion program and would have to continuously file rate cases to recover its costs. Empire contends that the proposed generation formula rate is fair to both customers and Empire because Empire's generation revenue requirement will be updated each year so that it neither over-recovers, nor under-recovers its costs.

⁵ Empire has not provided a depreciation study to support the proposed depreciation rates as required by 18 C.F.R. Part 35.

12. Empire requests a June 1, 2010 effective date and requests waiver of any Commission regulations necessary including waiver of the requirement to submit full Period I and Period II data and the requirement in section 35.13(a)(2)(iv) for determining the amount of any rate increase.

Notice of Filing and Responsive Pleadings

13. Notice of Empire's filing was published in the *Federal Register*, 75 Fed Reg. 13,530 (2010), with interventions and protests due on or before April 2, 2010. None was filed.

Discussion

14. Upon review, we find that the proposed Rate Schedule and Agreement raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing ordered below. Among other things, Empire proposes an allocator for Administrative and General expenses other than the labor allocator typically used in Commission jurisdictional rates, proposes four sets of depreciation rates (i.e., one set for each state jurisdiction in which it operates) without any studies to support the depreciation rates or any testimony to support the blending of such depreciation rates, and does not adequately support the proposed return on equity of 11.6 percent. Our preliminary analysis indicates that Empire's proposed Rate Schedule and Agreement have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

15. In addition, we find that Empire has not fully complied with Order No. 614.⁶ Empire has filed a document listing the terms and conditions of its full requirements service and setting out its formula rate as a "rate schedule." The Commission finds that Empire should have designated that document as a tariff because Empire plans to allow customers seeking to obtain service under the terms and conditions of that document to execute a service agreement (using the form of service agreement).⁷ The proper designation for Empire's proposed Rate Schedule is as a tariff. Therefore, we direct Empire to submit a compliance filing within 30 days of the issuance of this order redesignating the proposed Rate Schedule its next available service tariff.⁸

⁶ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats & Regs. ¶ 31,096 (2000).

⁷ *See Westar*, 129 FERC ¶ 61,128 at P 15.

⁸ We also note that the tariff should be paginated with Original Sheet Numbers and have an effective date of June 1, 2010 on each sheet.

16. Accordingly, we will conditionally accept the proposed Rate Schedule and Agreement, suspend them for a nominal period to be effective on June 1, 2010, subject to refund, and set it for hearing.

17. We will grant Empire's requests for waivers consistent with our prior approval of formula rates.⁹ 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.¹⁰

The Commission orders:

(A) Empire's proposed Rate Schedule and Agreement are hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2010, subject to refund, subject to the outcome of hearing.

(B) Empire's request for waiver of the requirements of section 35.13 to provide full Period I and Period II data, and waiver of sections 35.13(a)(2)(iv) is hereby granted.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the 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 formula rate proposal as discussed in the body of this order.

(D) 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 this proceeding in a hearing room of the 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)

Kimberly D. Bose,

⁹ *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 94 (2007).

¹⁰ *Id.*

Secretary.