

133 FERC ¶ 61,243
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Golden Spread Electric Cooperative, Inc.
Lyntegar Electric Cooperative, Inc.
Farmers' Electric Cooperative, Inc. Docket Nos. EL05-19-014
Lea County Electric Cooperative, Inc.
Central Valley Electric Cooperative, Inc.
Roosevelt County Electric Cooperative, Inc.

v.

Southwestern Public Service Company

Southwestern Public Service Company ER05-168-013
(consolidated)

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued December 20, 2010)

1. On July 7, 2010, Southwestern Public Service Company (SPS) submitted an Offer of Settlement and Settlement Agreement (Settlement), among itself, Cap Rock Energy Corporation (Cap Rock), and Occidental Permian Ltd. and Occidental Power Marketing L.P. (collectively Occidental).¹ The Settlement resolves all issues in the above-captioned consolidated dockets among the Joint Settling Parties.²

¹ SPS, Cap Rock, and Occidental are hereinafter referred to as the Joint Settling Parties. SPS and Cap Rock are hereinafter referred to as the Settling Parties.

² Docket No. EL05-19-000 is a complaint proceeding filed by parties under section 206 of the Federal Power Act (FPA) against SPS alleging historical and continuing violation of various provisions of SPS's fuel cost adjustment clause (FCAC). Docket No. ER05-168-000 is a proceeding wherein SPS filed to revise its FCAC. The
(continued...)

2. The Settling Parties ask the Commission to accept the blank formula rate template included in the Settlement as the “rate” for service to Cap Rock upon the effectiveness of the Settlement. The Settling Parties state that the Commission previously has accepted SPS’s use of formula rates for partial requirements service to Golden Spread Electric Cooperative, Inc. (Golden Spread),³ for interruptible service to Public Service Company of New Mexico (PNM),⁴ and for full requirements service to West Texas Municipal Power Authority⁵ and to the New Mexico Cooperatives.⁶ The Settling Parties explain that the formula rate template included in the SPS-Cap Rock power supply agreement (PSA) tracks exactly the full requirements formula rate templates for the New Mexico Cooperatives with four exceptions that the Settling Parties describe in Appendix A of their filing. In addition, the Settling Parties assert that the SPS-Cap Rock PSA includes detailed formula rate Implementation Procedures identical in all substantive provisions to those recently accepted for the New Mexico Cooperatives. Moreover, the Settling Parties state that no changes have been made to the Wholesale Fuel Cost and Economic Purchased Power Adjustment Clause and associated Fuel Protocols accepted by the Commission in the fall of 2009 as part of the SPS-Cap Rock PSA in connection with the settlement of SPS’s 2008 rate case in Docket No. ER08-749-000.⁷

Commission consolidated Docket nos. EL05-19-000 and ER05-168-000 and set them for hearing and settlement judge procedures. The parties participated in a hearing in February and March 2006, and the judge issued an Initial Decision on May 24, 2006. On April 21, 2008, the Commission issued an Opinion and Order on the Initial Decision. *Golden Spread Elec. Coop., Inc., et al. v. Southwestern Pub. Serv. Co.*, Opinion No. 501, 123 FERC ¶ 61,047 (2008) (Opinion No. 501). Requests for rehearing of Opinion No. 501 are pending before the Commission.

³ *Golden Spread Elec. Coop., Inc. v. Southwestern Pub. Serv. Co.*, 123 FERC ¶ 61,054 (2008).

⁴ *Southwestern Pub. Serv. Co.*, Docket No. ER10-260-000 (Jan. 5, 2010) (unpublished letter order).

⁵ *Southwestern Pub. Serv. Co.*, Docket No. ER10-515-000 (Feb. 18, 2010) (unpublished letter order).

⁶ *Southwestern Pub. Serv. Co.*, 131 FERC ¶ 61,260 (2010). The New Mexico Cooperatives are Central Valley Electric Cooperative, Inc.; Farmers’ Electric Cooperative of New Mexico, Inc.; Lea County Electric Cooperative, Inc.; and Roosevelt County Electric Cooperative, Inc.

⁷ *Southwestern Pub. Serv. Co.*, 128 FERC ¶ 61,233 (2009).

3. The Settling Parties include a populated formula template showing the full requirements production, energy and base fuel estimated rates that were derived under the template for the formula rate year between July 1, 2010 and June 30, 2011. The Settling Parties also indicate that the Settlement is conditioned upon the closing of a proposed transaction (Transaction) that involves the acquisition of Cap Rock by Sharyland Utilities, L.P. (Sharyland). The Settling Parties explain that the above-described rates will be applicable to service to Cap Rock the first day of the month following the month in which Sharyland closes the Transaction, and will be subject to true-up at the time of the 2011 Annual Update. The Settling Parties state that SPS will advise the Commission when Sharyland has closed the Transaction (expected July 2010), thereby establishing an August 1, 2010, effective date for the formula rate and the associated Implementation Procedures.

4. The Settling Parties state that upon the Commission's acceptance of the Settlement and the closing of the Transaction, the Settlement will become effective and will finally and completely resolve all outstanding issues in the above-captioned dockets as among the Joint Settling Parties. The Settling Parties indicate that the Settlement does not resolve the consolidated dockets for certain other parties that still have requests for rehearing of Opinion No. 501 pending.

5. The Joint Settling Parties request expedited consideration of the Settlement. The Joint Settling Parties assert that expedited consideration would resolve uncertainty between SPS and Cap Rock introduced by these consolidated dockets and it would facilitate the agreed-upon conversion of Cap Rock to formula rates.

6. On July 27, 2010, PNM submitted initial comments on the Settlement. On August 6, 2010, SPS submitted reply comments.

7. In its initial comments, PNM takes no position with respect to the Settlement. PNM states that the Settlement pertains only to the Joint Settling Parties, and it does not resolve the above-captioned proceedings for other parties, such as PNM, that have requested rehearing of Opinion No. 501 pending before the Commission.⁸ PNM asserts that these requests have been pending for more than two years, during which time SPS has requested periodic delays of Commission action in order to negotiate separate settlements with individual participants in this proceeding. PNM states that all parties besides PNM have settled with SPS, and although SPS and PNM have engaged in periodic settlement discussions, the prospect of a settlement remains remote. PNM therefore submits that there is no longer a basis for delay and urges the Commission to act on outstanding requests for rehearing of Opinion No. 501.

⁸ PNM thereafter sets forth the issues it raised in its request for rehearing of Opinion No. 501.

8. In its reply comments, SPS notes that because PNM took no position with respect to the Settlement, it is unopposed. SPS therefore asks the Commission to act promptly to accept the Settlement without condition or modification. SPS states that it does not object to PNM's request for the Commission to act on pending requests for rehearing.⁹

9. The settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of this Settlement Agreement does not constitute approval of or precedent regarding, any principle or issue in this proceeding.

10. Article II.G.4 of the Settlement states that SPS may propose changes to the rates and, where specified, to the associated terms and conditions and said changes, if permitted under the Settlement, shall be subject to the just and reasonable standard under section 205 of the Federal Power Act (FPA). Similarly, any changes that Cap Rock may propose to the rates and, where specified, to the associated terms and conditions submitted herewith must conform to the provisions of the Settlement. If otherwise permitted under the Settlement, any such proposed changes are subject to the just and reasonable standard under section 206 of the FPA. In addition, Article II.G.4 states that absent the agreement of the Joint Settling Parties to a proposed change to the Settlement, the standard of review for any changes to the Settlement proposed by a party shall be the "public interest" standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Fed. Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Article II.G.4 further states that the standard of review for any changes proposed by a non-party or the Commission acting *sua sponte* shall be the most stringent standard permissible under applicable law.

11. As a condition of this acceptance, SPS is required to make a compliance filing in eTariff format to ensure that any applicable electronic tariff provisions reflect the Commission action in this order.

By the Commission.

Kimberly D. Bose,
Secretary.

⁹ SPS thereafter sets forth additional issues that it raised in requests for rehearing of Opinion No. 501 that were not set forth by PNM.