

137 FERC ¶ 61,106
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

The Empire District Electric Company

Docket Nos. ER10-877-000
ER10-1358-000
ER10-2099-000
ER10-2100-000
ER10-2101-000
ER10-2102-000
ER10-2103-000
ER10-2104-000
ER10-2105-000
ER10-2106-000
(consolidated)

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued November 3, 2011)

1. On May 24, 2011, The Empire District Electric Company (Empire) filed a Settlement Agreement and Offer of Settlement (Settlement) on behalf of itself, the Missouri Public Utility Alliance and the cities of Monett, Mt. Vernon and Lockwood, Missouri (collectively, “Cities”).¹ Along with the Settlement, Empire submitted a *pro forma* copy of Empire’s FERC Electric Tariff, Volume No. 4 (GFR Tariff), which includes a revised form of Full Requirements Electric Service Agreement for Municipalities, a revised generation formula rate template (GFR Template) and a revised Customer Demand Rate and Customer Net Variable Rate Protocols. Empire also submitted *pro forma* copies of revised Full Requirements Electric Service Agreements (requirements service agreements) and Wholesale Distribution Service Agreements (distribution service agreements) between Empire and each of the Cities.

¹ Empire and each of the Cities is a “Settling Party.”

I. The Settlement

2. According to the terms of the Settlement, all issues in the above-referenced consolidated dockets will be resolved upon Commission approval of the Settlement without material condition or modification. The Settlement also provides that after receiving a final order on the Settlement, Empire will extend the terms of the revised GFR Tariff, and as applicable, the terms of the requirements service agreements and distribution service agreements to the city of Chetopa, Kansas, a wholesale full requirements customer that did not intervene in any of the above-captioned proceedings. Article VI of the Settlement specifies that neither the Settlement nor any of its provisions shall become effective unless and until (1) the Commission shall have issued a Final Order approving all of the terms and provisions of the Settlement, including acceptance of the revised GFR Tariff, the requirements service agreements and the distribution service agreements, without modification or condition, unless all of the Settling Parties otherwise agree in writing to any modification or condition; and (2) the Commission in its order approving or accepting the Settlement has waived the requirement that Empire comply with any otherwise applicable regulations to the extent necessary only to effectuate all provisions of the Settlement, including any waivers of sections 35.13, 35.14, 35.18, 35.24 and 35.25 of the Commission's regulations.²

3. Paragraphs 8.1 and 8.2 of Article VIII of the Settlement set forth the rights of the Settling Parties to modify the GFR Tariff or the service agreements. Empire retains its rights under section 205 of the Federal Power Act (FPA)³ and the other Settling Parties retain their rights under section 206 of the FPA⁴ to file unilaterally with the Commission to modify, in whole or in part, the GFR Tariff, the requirements service agreements, and the distribution service agreements. Each Settling Party also retains its rights to oppose any filing made under FPA section 205 or 206 with respect to the GFR Tariff, the requirements service agreements, and the distribution service agreements. Article VIII, paragraph 8.3 provides that the standard of review the Commission shall apply when acting on proposed modifications to the Settlement proposed by a Settling Party, by a non-Settling Party, or by the Commission acting *sua sponte*, shall be the "just and reasonable" standard of review.

² 18 C.F.R. §§ 35.13, 35.14, 35.18, 35.24, 35.25 (2011).

³ 16 U.S.C. § 824d (2006).

⁴ 16 U.S.C. § 824e (2006).

II. Comments and Certification

4. On June 13, 2011, the Commission trial staff (Staff) submitted comments on the Settlement and on June 23, 2011, Empire filed a reply to Staff's comments. No other comments or reply comments were filed. On July 13, 2011, the Presiding Judge certified the Settlement to the Commission as uncontested.⁵

5. In its comments, Staff states that the Settlement represents a fair and reasonable resolution of the issues, recommends that the Presiding Judge certify it and that the Commission approve it, with certain depreciation accounting and reporting requirements. Specifically, Staff points out that under the Settlement, the Settling Parties have agreed to use composite depreciation rates shown in Worksheet M of the GFR Template, and that these rates will be reflected in Empire's FERC Form No. 1 Filing, beginning with the 2011 reporting year and going forward.⁶ Staff states that Empire agreed to apply these depreciation rates to 100 percent of its plant for FERC Form No. 1 reporting purposes and commits that it will not change the Commission-approved depreciation rates absent Commission approval of a filing under section 205 of the FPA making such change. In addition, Staff states that under the terms of the Settlement, the depreciation rates shown on Worksheet M will become Empire's Commission-approved depreciation rates but these depreciation rates may differ from the depreciation rates approved by Empire's four retail regulators in Arkansas, Kansas, Missouri, and Oklahoma. Staff also states that the Commission-approved wholesale depreciation rates and retail-approved depreciation rates may differ as of the effective date of any change in the Commission-approved depreciation rates or the effective date of any change in the depreciation rates approved by one or more of Empire's four state regulators.

6. Staff recommends that to ensure that the accounting data reported in Empire's FERC Form No. 1 for depreciation expense, depreciation reserves, and their related deferred income tax effects is developed on a Commission-approved basis, the Commission require Empire to report depreciation accounting data in its FERC Form No. 1 Filings. Staff recommends that Empire should report any difference between the amounts of depreciation expense that is computed using the Commission-approved depreciation rates and the rates approved by Empire's retail regulators in its FERC Form No. 1 as regulatory assets in Account 182.3, Other Regulatory Assets, or regulatory liabilities in Account 254, Other Regulatory Liabilities, with offsetting entries to Account 407.3, Regulatory Debits, or Account 407.4, Regulatory Credits, as appropriate.

⁵ *Empire District Elect. Co.*, 136 FERC ¶ 63,002 (2011) (Certification Order).

⁶ Settlement Agreement, Article II, paragraph 2.7.

7. Empire objects to Staff's accounting recommendations. Empire acknowledges that applying the Commission-approved weighted depreciation rates in Worksheet M to 100 percent of its production plant in its FERC Form No. 1 may result in a difference between Empire's FERC Form No. 1 and its financial statements because, for purposes of its financial statements, each year Empire will record the depreciation expense using the weighted average of the depreciation rates approved by all four of its state jurisdictions in addition to the Commission-approved weighted depreciation rates.

8. Empire believes that additional accounting and reporting requirements are unnecessary because Empire has already agreed to use the Commission-approved depreciation rates in Worksheet M in its FERC Form No. 1 Filing. If there is a change to any of the state or federal depreciation rates that are used to calculate the fixed weighted depreciation rates listed in Worksheet M, Empire states that it must make an FPA section 205 filing with the Commission to the extent it desires to reflect the change in the GFR Template and its FERC Form No. 1. Empire further states that this approach is consistent with Order No. 618,⁷ in which the Commission clarified that utilities are not required to file to obtain Commission approval before implementing changes to their methods of depreciation for accounting purposes, but must file with the Commission under section 205 or 206 of the FPA, as appropriate, to reflect changes in depreciation rates for ratemaking purposes. In order to reconcile its FERC Form No. 1 against its financial statements, Empire proposes to footnote in its FERC Form No. 1 any differences to the depreciation rates applied in its financial statements and its FERC Form No. 1 caused by changes to its state-approved depreciation rates or the weights used to average them.

9. In the Certification Order, the Presiding Judge finds minimal risk that Empire may be overcompensated for depreciation expense if the Commission does not adopt Staff's suggested reporting requirements. He also finds that the Settling Parties will have the opportunity to review this matter after observing the working dynamics of the formula in GFR Tariff. The Presiding Judge states that a Settling Party may submit a filing under section 205 or 206 of the FPA if it believes an adjustment to the formula is proper.⁸

III. Commission Determination

10. The Commission finds that the Settlement appears fair and reasonable and in the public interest and it is hereby approved as discussed below.

⁷ *Depreciation Accounting*, Order No. 618, FERC Stats. & Regs. ¶ 31,104 (2000) (Order No. 618).

⁸ See Certification Order, 136 FERC ¶ 63,002 at P 18.

11. Empire currently records on its books and records and reports in its FERC Form No. 1 depreciation expense and accumulated depreciation based on a blended or weighted average of the depreciation rates approved by all four of its state jurisdictions in addition to the Commission-approved rates. As a result, there is currently no difference between what Empire records for accounting purposes and what it reports to the Commission in its FERC Form No. 1. Empire and Staff are of the view that the implementation of Article II, paragraph 2.7 of the Settlement may lead to a difference between Empire's FERC Form No. 1 and its financial statements to the extent there are changes in any state-approved depreciation rates or the weights used to average them. Staff's approach for addressing this potential difference is for the Commission to require Empire to record any difference between the amounts of depreciation expense computed using the Commission-approved depreciation rates and rates approved by Empire's retail regulators as regulatory assets or liabilities, as appropriate. Empire proposes to footnote any such differences in its FERC Form No. 1 in order to be able to reconcile its FERC Form No. 1 against its financial statements.

12. It is not necessary to address the accounting for potential differences in depreciation rates approved by the Commission and retail regulators when at present it is not known whether differences exist. If a difference arises between the depreciation rates approved by the Commission and retail regulators, Empire may then seek further guidance if necessary to account for these differences in the FERC Form No. 1. Although Staff believes that there may be differences between the Commission's and retail regulators' depreciation rates, there is no guarantee that this will be the situation in the future. Moreover, notwithstanding Staff's comment on this issue, they did not oppose certification of the Settlement as uncontested.

13. Accordingly, the Commission finds that the Settlement is uncontested and resolves all of the issues between the Settling Parties in the above referenced dockets and the Commission also finds that good cause exists to grant the requested waivers. The Settlement is hereby approved, as it appears fair and reasonable and in the public interest as discussed above. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms and conditions under section 206 of the FPA.

14. Empire made its baseline electronic tariff filing pursuant to Order No. 714; however, it did not file its proposed tariff sheets in the eTariff format required by Order No. 714. Therefore, within 30 days of the date of this order, Empire is directed to make a compliance filing in eTariff format to reflect the Commission's action in this order.

15. This order terminates Docket Nos. ER10-877-000, ER10-1358-000, ER10-2099-000, ER10-2100-000, ER10-2101-000, ER10-2102-000, ER10-2103-000, ER10-2104-000, ER10-2105-000, and ER10-2106-000.

The Commission orders:

(A) The Settlement is hereby approved, as discussed in the body of this order.

(B) Empire is hereby directed to submit a compliance filing, within thirty days of the date of this order, with its proposed tariff sheets in eTariff format, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.