

138 FERC ¶ 61,231
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Power Pool, Inc.

Docket No. ER12-959-000

ORDER ACCEPTING FORMULA RATE PROPOSAL AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued March 30, 2012)

1. On February 1, 2012, as supplemented February 2, 2012, Southwest Power Pool, Inc. (SPP) filed, on behalf of Tri-County Electric Cooperative, Inc. (Tri-County), revisions to SPP's Open Access Transmission Tariff (Tariff) to implement Tri-County's formula rate for transmission service. As discussed below, we accept the tariff revisions, to be effective April 1, 2012, as requested, and establish hearing and settlement judge procedures.

I. SPP's Filing

2. SPP explains that, as a Regional Transmission Organization, it administers its Tariff on a regional basis for transmission facilities located within its boundaries. Tri-County transferred control of its transmission facilities to SPP and became a transmission-owning member in the Southwestern Public Service Company (SPS) zone within SPP, effective August 10, 2010.¹ SPP adds that while each transmission owner is responsible for filing rate changes for its zone, SPP is responsible for filings necessary to incorporate such rate changes into the SPP Tariff.² In this filing, SPP states that the proposed Tariff revisions include a new addendum, which constitutes Tri-County's

¹ SPP Transmittal Letter at 1-3. Tri-County is a not-for-profit distribution cooperative with headquarters in Hooker, Oklahoma serving approximately 23,000 customers in Oklahoma, Kansas, Texas, Colorado, and New Mexico. *Id.* at 3.

² *Id.* at 2.

proposed formula rate.³ In addition, Tri-County sponsored testimony and exhibits to explain and identify the facilities it classifies as transmission facilities under the SPP Tariff.

3. SPP explains that the Tariff revisions are Tri-County's proposed formula rate and protocols in their entirety. The formula rate will be used to calculate the annual transmission revenue requirement and the resulting update to Attachment H for the Tri-County transmission facilities.⁴ SPP adds that it also submits revisions to Attachment T of the SPP Tariff to incorporate Tri-County's charges for point-to-point transmission service for the SPS pricing zone (SPP Zone 11).

II. Notice of Filing and Responsive Pleadings

4. Notice of SPP's filing was published in the *Federal Register*, 77 Fed. Reg. 6553 (2012), with interventions, protests, and comments due on or before February 22, 2012. Xcel Energy Services, Inc. (Xcel), New Mexico Cooperatives,⁵ Occidental Permian, Ltd. and Occidental Power Marketing, L.P. (Occidental), and Westar Energy, Inc. and Kansas Gas and Electric Company (together, Westar) filed timely motions to intervene and protest. On March 8, 2012, Tri-County filed a motion to intervene out of time and answer to the protests. On March 14, 2012, Occidental filed a motion to reject, or in the alternative, motion for leave to answer and answer. On March 16, 2012, New Mexico Cooperatives filed a motion for leave to answer and answer. On March 23, 2012, Xcel filed a motion to reject, or in the alternative, motion for leave to answer and answer.

5. Intervenors argue that Tri-County has not provided sufficient evidence that its facilities meet the requirements of "Transmission Facilities" as defined in Attachment AI of the SPP Tariff.⁶ Occidental argues that Attachment AI specifies which facilities constitute transmission facilities under SPP's Tariff⁷ and the Tri-County testimony and

³ *Id.* at 4.

⁴ *Id.* at 4.

⁵ The New Mexico Cooperatives consist of the following: Central Valley Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., and Roosevelt County Electric Cooperative, Inc.

⁶ *See, e.g.*, Westar Protest at 3, Occidental Protest at 3, Xcel Protest at 2.

⁷ Section II.1 of Attachment AI defines transmission facilities to include: "[a]ll existing non-radial power lines, substations, and associated facilities, operated at 60 kV or above, plus all radial lines and associated facilities operated at or above 60 kV that serve two or more eligible customers not Affiliates of each other."

exhibits do not demonstrate that that the facilities Tri-County proposes to include in its revenue requirements are transmission facilities.⁸ Also, intervenors assert that Tri-County failed to provide additional information, including a one-line diagram or map, that clearly indicate system configurations with radial and non-radial lines, substations and associated facilities, and their relation to the SPS electrical system. Thus, Occidental argues that the Commission needs more information before it can properly evaluate Tri-County's proposed revenue requirement formula rate.⁹

6. Additionally, Westar states that, under Attachment AI, certain facilities are excluded as transmission facilities: (1) generator step-up transformers and generator leads; (2) radial lines from a generating station to a single substation or switching station on transmission system; and (3) direct assignment facilities. Xcel and Westar claim that the proposal includes Tri-County facilities that are radial lines serving Tri-County load only and, therefore, they should not be included in the SPP Zone 11 rate.¹⁰ New Mexico Cooperatives claim that Tri-County's testimony does not apply the proper test in determining which facilities, if any, qualify as transmission facilities under the SPP Tariff.¹¹ While Tri-County states that certain transmission facilities were classified as transmission facilities at the time they were purchased from Xcel in 2006, Xcel argues that this does not resolve the issue because those facilities had not been classified under Attachment AI prior to the 2006 sale. Thus, Xcel asserts that Tri-County is still required to comply with the requirements of Attachment AI of the SPP Tariff for those facilities regardless of any prior classification.¹²

7. Xcel also contends that the proposed Tri-County formula rate and Attachment H and T tariff sheets for the SPS pricing zone are not just and reasonable, and are likely to produce excessive charges by Tri-County to both network and point-to-point transmission service customers in the SPS pricing zone, and point-to-point transmission service customers throughout the SPP region.¹³

⁸ Occidental Protest at 4.

⁹ *Id.* at 6.

¹⁰ Xcel Protest at 9; Westar Protest at 4.

¹¹ New Mexico Cooperatives Comments at 8-15.

¹² Xcel Protest at 13.

¹³ Xcel Protest at 3.

8. Intervenors argue that the formula rate template lacks transparency, documentation, and precision. Specifically, Xcel argues that because Tri-County is a non-jurisdictional utility, the Commission cannot be certain if Tri-County will record its costs in a manner contemplated by the Uniform System of Accounts. To mitigate this concern, Xcel suggests that the Commission direct Tri-County to incorporate the same procedures for its protocols that have been adopted by other non-jurisdictional participants with formula rates.¹⁴ Westar and KG&E argue that the proposed protocols are vague and do not provide an effective opportunity for review by affected customers or the ability to require corrections to the inputs and results if necessary.¹⁵ Occidental protests that the rate template and protocols are not sufficiently transparent and are not supported by the proper source documentation.¹⁶

9. To afford Tri-County the opportunity to modify its proposed revenue requirement to achieve just and reasonable rates, Westar, Xcel, and Occidental request that the Commission either reject the filing, issue a deficiency letter, or suspend the filing for the maximum five-month period and set it for hearing and settlement procedures.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁷ the timely 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 Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant Tri-County's motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

11. Rule 213(a) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority.¹⁸ We are not persuaded to accept Tri-County, Occidental, New Mexico Cooperatives, or Xcel's answers, and will, therefore, reject them.

¹⁴ Xcel Protest at 16-17.

¹⁵ Westar Protest at 5.

¹⁶ Occidental Protest at 6.

¹⁷ 18 C.F.R. § 385.214 (2011).

¹⁸ *Id.* § 385.213(a)(2).

B. Substantive Matters

1. Standard of Review

12. The Commission has addressed the standard of review to be applied to petitions involving non-jurisdictional entities in an opinion reviewing the transmission revenue requirement filed by the City of Vernon, California (Vernon).¹⁹ In Opinion No. 479, the Commission recognized that, as a municipally-owned utility, Vernon was not subject to its FPA section 205 jurisdiction. However, the Commission noted that because Vernon voluntarily submitted its transmission revenue requirement as a component of the California Independent System Operator's (CAISO) jurisdictional rate, Vernon's transmission revenue requirement is "subject to a full and complete section 205 review as part of our section 205 review of that jurisdictional rate."²⁰ The Commission explained that in *Pacific Gas & Elec. Co. v. FERC*, the U.S. Court of Appeals for the District of Columbia Circuit held that the Commission has statutory authority to review Vernon's transmission revenue requirement "to the extent necessary to ensure that the CAISO rates are just and reasonable."²¹ Subsequently, the court upheld the Commission's decision that subjecting the transmission revenue requirements of non-jurisdictional utilities (such as Vernon) to a full section 205 review is "the only way to ensure that CAISO's rate is just and reasonable."²²

13. Therefore, while Tri-County is not within the Commission's jurisdiction under FPA section 205, we find that, based on the court's rulings, it is appropriate to apply the just and reasonable standard of FPA section 205 to Tri-County's proposed rates. To determine the justness and reasonableness of such rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

2. Hearing and Settlement Judge Procedures

14. We find that the record before us does not provide enough information for us to determine the appropriate classification of the facilities that form the basis for the annual

¹⁹ See *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207, *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006).

²⁰ Opinion No. 479, 111 FERC ¶ 61,092 at P 44.

²¹ *Id.* at 43 (quoting *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

²² *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

revenue requirements proposed by Tri-County. In addition, Tri-County's proposed formula rate template and protocols raise issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement procedures ordered below.

15. Our preliminary analysis indicates that the proposed Tariff revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the proposed revisions for filing, to be effective April 1, 2012, and establish hearing and settlement judge procedures.

16. While we are setting this case for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute 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, 18 C.F.R. § 385.603 (2011). If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.²³ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the 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 commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) SPP's proposed Tariff revisions are hereby accepted for filing, to become effective April 1, 2012, as discussed in the body of this order and the ordering paragraphs below.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 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 1), a public hearing shall be held concerning this filing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

²³ The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen 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 days of the date of this order.

(D) Within thirty days 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 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) 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 days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a 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.