

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

United States Department of Energy -  
Southwestern Power Administration  
(Integrated System)

Docket No. EF02-4011-000

ORDER CONFIRMING AND APPROVING RATE SCHEDULES  
ON A FINAL BASIS

(Issued October 22, 2003)

1. In this order, we confirm and approve Southwestern Power Administration's (Southwestern) power sales rates and transmission rates on a final basis.

**Background**

2. On September 20, 2002, the Secretary of Energy (Secretary) filed a request for final confirmation and approval of Southwestern's Rate Schedules P-02, NFTS-02, and EE-02, applicable to the sale of power and energy and for transmission services from Southwestern's Integrated System.<sup>1</sup> The Secretary placed the rates into effect on an interim basis effective October 1, 2002,<sup>2</sup> and requests final confirmation and approval of the rates for the period October 1, 2002 through September 30, 2006.<sup>3</sup>

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<sup>1</sup>The Integrated System consists of 22 multi-purpose hydroelectric projects whose power output is sold to preference customers in Arkansas, Kansas, Louisiana, Missouri, Oklahoma, and Texas. Rate Schedule P-02 is Wholesale Rates for Hydro Peaking Power. Rate Schedule NFTS-02 is Wholesale Rates for Non-Federal Transmission/Interconnection Facilities Service. Rate Schedule EE-02 is Wholesale Rates for Excess Energy.

<sup>2</sup>Rate Order No. SWPA-48, placing Rate Schedules P-02, NFTS-02, and EE-02 into effect on an interim basis, was issued on September 18, 2002.

<sup>3</sup>These rate schedules will supersede the present rate schedules, which were approved on a final basis in Docket No. EF98-4011-000, U.S. Department of Energy and Southwestern Power Administration – Integrated System, 83 FERC ¶ 62,083 (1996), for  
(continued)

3. Southwestern proposes to increase the revenues for the Integrated System from \$109.5 million to \$115.0 million primarily, to recover increased operation and maintenance expenditures and increased investment. In addition, Southwestern proposes to increase the Purchased Power Deferral Account by \$595,827 to recover certain purchased energy costs. Additionally, Southwestern proposes an adjustment of \$0.0011 per kWh for purchased power pursuant to the Administrator's Discretionary Purchased Power Adder Adjustment rate provision

### **Notice of Filing and Interventions**

4. Notice of the application was published in the Federal Register, 67 Fed. Reg. 61,859 (2002), with comments, protests, or motions to intervene due on or before October 21, 2002.

5. Southwestern Power Resources Association filed a timely motion to intervene, raising no substantive issues. Northeast Texas Electric Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc., (collectively, East Texas Cooperative) filed a timely joint motion to intervene and protest. East Texas Cooperative challenges Southwestern's adjustments to the following accounts upon which Rate Schedule P-02 is based: (1) personnel and large maintenance items in the Corps of Engineers Operations & Maintenance (O&M) expenses, (2) Southwestern's O&M expenses, (3) Investment Added projections, and (4) unfunded Civil Service Retirement System and Health and Life Insurance Benefits. East Texas Cooperative also argues that Southwestern is charging them a pancaked and discriminatory rate. Therefore, they request the Commission to remand Southwestern's Rate Schedule P-02.

6. Southwestern filed an answer to East Texas Cooperative's protest on December 5, 2002. East Texas Cooperative filed a motion to strike Southwestern's answer and an answer to Southwestern's answer on December 23, 2002.

### **Discussion**

#### **Procedural Matters**

7. Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene make the entities that filed

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the period January 1, 1998 through September 30, 2001. The Secretary extended these rates by a series of orders, the latest being rate schedules, P-98D and NFTS-98D, which were approved on July 31, 2001.

them parties to this proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Southwestern's and East Texas Cooperative's answers and will, therefore, reject them.

### **Standard of Review**

9. The Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (1977), grants the Secretary of Energy authority to approve Southwestern's rates on both an interim and final basis.<sup>4</sup> The Secretary of Energy, in turn, delegated the authority to confirm and approve Southwestern's rates on a final basis to the Commission.<sup>5</sup> The delegation establishes the standard for and scope of Commission review of Southwestern's rates. The scope of Commission review is limited to:

whether the rates are the lowest possible to customers consistent with sound business principles;

whether the revenue levels generated by the rates are sufficient to recover the costs of producing and transmitting the electric energy including the repayment, within the period of cost recovery permitted by law, of the capital investment allocated to power and costs assigned by Acts of Congress to power for repayment; and

the assumptions and projections used in developing the rate components that are subject to Commission review.<sup>6</sup>

10. The Commission is prohibited from reviewing policy judgments and interpretations of laws and regulations made by the power generating agencies.<sup>7</sup> The

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<sup>4</sup>42 U.S.C. § 7152 (2000).

<sup>5</sup>Department of Energy Delegation Order No. 00-037.00, Section 3.

<sup>6</sup>Id.

<sup>7</sup>The power generating agencies include the Bureau of Reclamation, the Army Corps of Engineers, and the International Boundary and Water Commission. These agencies build and operate various projects. The Power Marketing Administrations, such as Southwestern, market the output of the projects.

Commission may reject the rate determinations of Southwestern's Administrator only if it finds them to be arbitrary, capricious, or in violation of the law, if they violate Department of Energy regulations (e.g., DOE Order No. RA 6120.2, which prescribes Southwestern's financial reporting policies, procedures, and methodologies), or if they violate agreements between the Administrator and the applicable power generating agency. The Commission considers its role as that of an appellate body which reviews the record developed by the Administrator. In other words, the Commission does not develop a record on its own. Consequently, the Commission only affirms or remands the rates submitted to it for final review.<sup>8</sup>

11. In light of the limited scope of our review, the Commission will not remand Southwestern's Rate Order No. SWPA-48, as requested by East Texas Cooperative in this case. East Texas Cooperative is challenging Southwestern's decisions to increase or adjust certain accounts in the underlying P-02 Rates. Southwestern's decisions are not within our jurisdictional purview.

12. By statute,<sup>9</sup> Southwestern must repay the Federal investment from power revenues within a reasonable period of time, which as a general practice is 50 years. Our review of Southwestern's Power Repayment Study (PRS) indicates that the revenues to be collected under the proposed rates will be sufficient to recover Southwestern's costs of producing and transmitting the power and energy, including the recovery of the remaining Federal investment, with interest, over the remaining repayment period. Moreover, since the revenues generated by the proposed rates recover no more than Southwestern's annual costs and the remaining Federal investment, the rates are the lowest possible to customers. Our review also indicates that the PRS was prepared in a manner consistent with DOE Order No. RA 6120.2, which requires that Southwestern's system financial statements must be prepared in accordance with generally accepted accounting principles,

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<sup>8</sup>See, e.g., U.S. Department of Energy - Western Area Power Administration (Boulder Canyon Project), 61 FERC & 61,229 at 61,844 (1992), aff'd in relevant respects, Overton Power District No. 5, et al. v. Watkins, et al., 829 F. Supp. 1523 (D. Nevada 1993), vacated and remanded with directions to dismiss, Overton Power District No. 5, et al. v. O'Leary, et al., 73 F. 3d 253 (1996); U.S. Department of Energy - Western Area Power Administration (Salt Lake City Area Integrated Projects), 59 FERC & 61,058 at 61,240-41 & nn. 17, 20, reh'g denied, 60 FERC & 61,002 (1992); U.S. Department of Energy -- Bonneville Power Administration, 13 FERC & 61,157 at 61,338 (1980).

<sup>9</sup>Section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. ' 485h(c) (2000), and Section 5 of the Flood Control Act of 1944, 16 U.S.C. ' 825s (2000).

as appropriate, and that its PRS be prepared using sound forecasting techniques designed to approximate as closely as possible actual results.

13. Therefore, the proposed rates are confirmed and approved as requested.

The Commission orders:

The Commission confirms and approves on a final basis Southwestern's proposed Rate Schedules P-02, NFTS-02, and EE-02 for the period October 1, 2002 through September 30, 2006.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.