

123 FERC ¶ 61,054
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Golden Spread Electric Cooperative, Inc.
Lyntegar Electric Cooperative, Inc.
Farmers' Electric Cooperative, Inc.
Lea County Electric Cooperative, Inc.
Central Valley Electric Cooperative, Inc.
Roosevelt County Electric Cooperative, Inc.

Docket Nos. EL05-19-003

v.

Southwestern Public Service Company

Southwestern Public Service Company

ER05-168-002
(consolidated)

Southwestern Public Service Company

ER06-274-008

ORDER APPROVING UNCONTESTED PARTIAL SETTLEMENT
SUBJECT TO MODIFICATION

(Issued April 21, 2008)

1. On December 3, 2007, Southwestern Public Service Company (SPS), submitted revised sheets to its Open Access Transmission Tariff (tariff) in a joint Offer of Settlement and Settlement Agreement (Settlement Agreement), between itself, Golden Spread Electric Cooperative and Lyntegar Electric Cooperative, Inc. (collectively Golden Spread), and Occidental Permian Ltd. and Occidental Power Marketing L.P. (collectively Occidental), resolving among themselves all but one of the issues in the above-captioned dockets. The dockets listed above represent two separate proceedings that are not consolidated: (1) the Complaint Proceeding in Docket Nos. EL05-19 and ER05-168

(consolidated),¹ and (2) the Rate Proceeding in Docket No. ER06-274.² The Settlement Agreement does not resolve, in either the Complaint Proceeding or the Rate Proceeding, the issue of the appropriate demand cost allocator for use on the SPS system.³ In addition, because the Settlement Agreement is only between SPS, Golden Spread, and Occidental, the Settlement Agreement does not resolve the Complaint Proceeding as to all parties.⁴

2. On December 20, 2007, Commission Trial Staff submitted comments in support of the Settlement Agreement. Trial Staff suggests that the Commission make one minor change to the Settlement Agreement. Specifically, Trial Staff recommends that SPS be required, in the same time frame that it provides the Annual Update to its formula rate customers, to make an informational filing with the Commission providing the agency with the same information. On January 18, 2008, the Settlement Judge certified the

¹ Docket No. EL05-19-000 is a complaint proceeding filed by parties under section 206 of the Federal Power Act 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 Commission consolidated 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. Contemporaneously with this order, the Commission issued an order on the merits of the Initial Decision resolving all issues in the Complaint Proceeding. *See Golden Spread Electric Cooperative, Inc.*, 123 FERC ¶ 61,047 (2008) (Opinion No. 501 and Order on Initial Decision).

² SPS filed the Rate Proceeding on December 1, 2006. Subsequently, SPS settled with all of the parties involved in the Rate Proceeding, except Golden Spread and Occidental, and the Commission approved that settlement on September 20, 2007. *See Southwestern Public Service Co.*, 120 FERC ¶ 61,243 (2007).

³ The issue of the appropriate demand cost allocator for use on the SPS system is currently being litigated in the Rate Proceeding. In the Complaint Proceeding, the Commission addressed the demand cost allocator issue in the Opinion and Order on Initial Decision.

⁴ Farmers' Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., Central Valley Electric Cooperative, Inc., Roosevelt County Electric Cooperative, Inc., though listed in the caption above, are not parties to this Settlement Agreement.

Settlement Agreement to the Commission as uncontested.⁵ On January 7, 2008, SPS filed an answer wherein it agreed to make the informational filing recommended by Trial Staff.

3. The Commission finds that the Settlement Agreement is fair, reasonable, and in the public interest, with the minor change suggested by Trial Staff above. However, the Commission notes that the revised tariff sheets filed in the Settlement Agreement are not in compliance with Order No. 614.⁶ We direct SPS to file revised tariff sheets with the correct designations in a compliance filing within 30 days of the date this order issues. Accordingly, the Settlement Agreement is hereby approved, as modified. The Commission's approval of this Settlement Agreement does not constitute approval of or precedent regarding, any principle or issue in this proceeding.

4. According to the Settlement Agreement, the standard of review for any future changes to this settlement by the parties shall be the just and reasonable standard.⁷ The Commission retains the right to investigate the rates, terms, and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act, 16 U.S.C. § 824e (2000).

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵ *Southwestern Public Service Co.*, 122 FERC ¶ 63,003 (2008). The Commission notes that though Public Service Company of New Mexico does not oppose the Settlement, PNM did file comments on the Settlement describing its impact on other matters. The Commission finds that PNM's comments are not relevant to the Commission's consideration of the Settlement.

⁶ *Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,096 (2000).

⁷ See Article II.G.6 of the Settlement Agreement.