

148 FERC ¶ 61,193
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Western Area Power Administration

Docket No. EF14-4-000

ORDER CONFIRMING AND APPROVING RATE SCHEDULES
ON A FINAL BASIS

(Issued September 18, 2014)

1. On February 27, 2014, the Deputy Secretary of Energy (Deputy Secretary) filed a request for final confirmation and approval of an extension of the Western Area Power Administration's (Western) Rate Schedules PD-F7, PD-FT7, PD-FCT7, and PD-NFT7¹ for the sale of firm electric and transmission service for the Parker-Davis Project (Parker-Davis).² The Deputy Secretary placed the rates into effect on an interim basis effective October 1, 2013,³ and requests final confirmation and approval of the rates for the period October 1, 2013, through September 30, 2018. In this order, we confirm and approve on a final basis Western's proposed rates.

I. Western's Filing

2. Western states there are no changes to the existing formula rates as they will continue to provide sufficient revenue to recover all appropriate costs, including interest expense, and to repay investment within the allowable period.

¹ The Parker-Davis rate schedules were previously approved on a final basis on February 27, 2009, in *United States Department of Energy - Western Area Power Administration*, 126 FERC ¶ 62,157 (2009).

² Parker-Davis consists of two multipurpose projects whose power output is sold to preference customers in California, Arizona, and Nevada.

³ Rate Order No. WAPA-162 was issued on September 16, 2013, under authority granted by Department of Energy Delegation Order No. 00-037.00, FERC Stats. & Regs. ¶ 9919 (2001) (Delegation Order).

II. Notice of Filing and Responsive Pleadings

3. Notice of the application was published in the *Federal Register*, 79 Fed. Reg. 15,587 (2014), with protests and interventions due on or before March 31, 2014. A timely motion to intervene and protest was filed by Mohave Electric Cooperative (Mohave Electric) and a motion to intervene and comments was filed by the Southwest Transmission Dependent Utility Group (Southwest Utility). Additionally, a timely motion to intervene was filed by Arizona Electric Power Cooperative. On April 14, 2014, Western filed an answer to the protest.

4. In its protest Mohave Electric states that the charges proposed by Western, in fact, represent an increase of approximately 18 percent over two years. Mohave Electric also asserts that it has recently discovered that customers have lost their longstanding ability to cancel their contracts due to such an increase.⁴ Mohave Electric maintains that the proposed increase is due to Western's use of estimated projections of certain costs to be recovered through the formula rates, rather than the use of actual historical data.⁵ Mohave asserts that this increase renders the current Mohave Electric 15 MW Parker-Davis Western transmission contract no longer affordable, used or useful to Mohave Electric, and it sought to cancel the contract under a general power contract provision (GPCP) that would permit a customer to cancel a contract upon occurrence of a rate change.⁶ Mohave Electric asserts it gave timely notice of cancellation of its contract under the GPCP. Mohave Electric complains that Western denied it its right to cancel its contract, informing Mohave Electric that, because the 18 percent increase resulted from a change in inputs to the formula rate, rather than to a change in the formula rate itself, the contract provision allowing a cancellation upon a change in rates does not apply.⁷ Given Western's use of estimated projections of costs, and Mohave Electric's loss of the right to cancel the 15 MW Parker-Davis Western transmission contract, Mohave Electric asserts customers have lost the ability to negotiate effectively with Western concerning contract cost oversight and formula driven de facto rate increases, and have a lessened ability to serve their members in a cost-effective manner.

5. In its comments, Southwest Utility states it has previously supported, and continues to support, Western's formula rate approach.⁸ Southwest Utility advises the

⁴ Mohave Electric at 3.

⁵ *Id.* at 2-3.

⁶ *Id.* at 3.

⁷ *Id.* at 4.

⁸ Southwest Utility at 3-4.

Commission, however, that certain issues have been raised recently with regard to use of the formulae without further formal process for 5 years, given the volatility of costs, regulatory requirements and changes in the industry. Southwest Utility notes that, at its next meeting, Western has indicated it will discuss with its customers certain rate design alternatives that could ameliorate future rate increases,⁹ which, in turn, is contemplated to result in a further filing with the Commission for approval of modified formula rates, which would occur before the current 5 year period concludes.¹⁰ In the meantime, Southwest Utility urges the Commission to preserve the status quo by approving Western's filing.

6. In its answer to Mohave Electric's protest, Western states its rate schedules were established in compliance with Department of Energy (DOE) Order RA 6120.2 on Power Marketing Administration Financial Reporting, and that DOE Order RA 6120.2 allows estimated costs to be included in Western's formula rates, including estimates of replacement costs.¹¹ Western also notes that, under its rate-setting process, the public is notified of Western's proposed action and it provided the opportunity to comment on that proposed action.¹² Western asserts it notified the public of the proposed extension of the existing rate methodology and formula rates, held an informal public meeting, and provided a thirty-day consultation and comment period.¹³ However, Mohave Electric did not inform Western of any concerns during that public process.¹⁴ Finally, Western notes that, under its tariff, a contractor has a right to terminate service upon the adjustment of a rate resulting in an increase in the charges, but this right does not exist if the rates change when, as is the case here, Western updates charges under an existing formula rate.¹⁵

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ Western Answer at 3.

¹² *Id.* at 4.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 5 (citing *Western Area Power Administration*, 112 FERC ¶ 61,044, at P 14 (2005) (stating termination rights only apply where Western proposes a new or revised formula or other new rate, and not where Western is merely updating the charge pursuant to the current formula rate)).

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed 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) (2014) prohibits an answer to a protest unless otherwise ordered by the decisional authority. In this case, the Commission finds good cause to permit Western's answer in this proceeding because it provides information that has assisted the Commission in its deliberations.

B. Standard of Review

9. The DOE Organization Act grants the Secretary of Energy (Secretary) authority to confirm and approve Western's rates on an interim basis.¹⁶ The Secretary, in turn, delegated the authority to confirm and approve Western's rates on a final basis to the Commission.¹⁷ The Delegation Order establishes the standard and scope for Commission review of Western's rates. The scope of Commission review is limited to: (1) whether the rates are the lowest possible to customers consistent with sound business principles; (2) 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 (3) the assumptions and projections used in developing the rate components that are subject to Commission review.¹⁸

10. The Commission is prohibited from reviewing policy judgments and interpretations of laws and regulations made by the power generating agencies.¹⁹ The

¹⁶ 42 U.S.C. § 7152 (2012).

¹⁷ Delegation Order § 3.

¹⁸ *Id.*

¹⁹ 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 market the output of the projects.

Commission may reject the rate determinations of Western's Administrator only if it finds them to be arbitrary, capricious, or in violation of the law, if they violate DOE regulations (e.g., DOE Order RA 6120.2, which prescribes Western's financial reporting policies, procedures, and methodologies), or if they violate agreements between the Administrator and the applicable power generating agency.

11. The Commission considers its role as that of an appellate body that reviews the record developed by the Administrator. The Commission thus may only affirm or remand the rates submitted to it for final review.²⁰

C. Commission Determination

12. The Commission has evaluated Western's filing for conformance to the applicable standards, and finds that it is consistent with those standards. As demonstrated in the previously approved Power Repayment Study, Western's rates should generate sufficient revenue to pay all annual costs, including interest expense, and to repay investment within the cost recovery period. Additionally, since the revenues generated by the proposed rates should recover no more than Western's annual costs and the remaining federal investment, the proposed rates are the lowest possible to customers, consistent with sound business principles. The prior review also found that the Power Repayment Study was prepared using sound forecasting techniques designed to approximate actual results, and that the Power Repayment Study was prepared in a manner consistent with DOE Order No. RA 6120.2.²¹

13. Although Mohave Electric has protested Western's filing, we are satisfied from our review that Western's rates are not arbitrary, capricious, or in violation of the law, and that they do not violate DOE regulations or violate agreements between the Administrator and the applicable power generating agency. Western is required under statute and regulations to set rates that recover its costs. In addition, Western's filing explains that the formula rates are the same as previously approved, and that they will continue to provide sufficient revenue to recover all appropriate costs, including interest

²⁰ 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 v. Watkins*, 829 F. Supp. 1523 (D. Nevada 1993), *vacated and remanded with directions to dismiss*, *Overton Power District No. 5 v. O'Leary*, 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).

²¹ *U.S. Department of Energy - Western Area Power Administration*, 126 FERC ¶ 62,157, at 64,431 (2009).

expense, and to repay investment within the allowed period. Western filed formula rates with the Commission, and the formulae are the rates that the Commission approved: the inputs to the formula rates are a separate matter, and Mohave Electric has provided us no basis to find the rates arbitrary, capricious or in violation of the law, DOE regulations, or agreements between the Administrator and the applicable power generating agency.²² Western's use of estimates rather than historical actual costs as inputs is, in fact, authorized by and consistent with DOE Order RA 6120.2.²³

14. Also, as we understand from Southwest Utility's comments, Western intends to discuss with its customers rate design alternatives that could ameliorate future rate increases. Finally, because the Commission considers its role as that of an appellate body, which may only affirm or remand the rates submitted to it for final review, we find that, since the formula rates have previously been approved, and the formula rates have not been changed, we have no reason to remand the rates submitted.

15. Accordingly, we deny Mohave Electric's protest.

The Commission orders:

Western's Rate Schedules are hereby confirmed and approved on a final basis for the period October 1, 2013 through September 30, 2018.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²² Regarding Mojave's assertion that Western denied it the opportunity to terminate the agreement, the Commission finds that, as Western correctly notes, it is changes to the formulae, rather than changes to the inputs, that permit termination of the parties' agreements. *See supra* note 15.

²³ DOE Order RA 6120.2 at § 10.