144 FERC ¶ 61,134
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwestern Public Service Company Docket No. ER08-749-002

ORDER DISMISSING REQUEST FOR REHEARING

(Issued August 15, 2013)

1. On June 30, 2008, Golden Spread Electric Cooperative, Inc., (Golden Spread) sought rehearing of the Commission's May 30, 2008 order in the above-captioned proceeding.[1] As discussed below, we dismiss Golden Spread's request for rehearing.

I. Background

2. On March 31, 2008, Southwestern Public Service Company (SPS) submitted for filing, pursuant to section 205 of the Federal Power Act (FPA),[2] changes to its rates and rate design for service to SPS's wholesale full requirements customers.[3] The most significant rate design change proposed by SPS was a modified demand cost allocation.[4] SPS requested an effective date of June 1, 2008.[5]

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[1] *Southwestern Pub. Serv. Co.*, 123 FERC ¶ 61,225 (2008) (May 30 Order).

[2] 16 U.S.C. § 824d (2006).

[3] The following customers are affected by the proposed rate changes: Cap Rock Energy Corporation (Cap Rock); Central Valley Electric Cooperative, Inc. (Central Valley); Farmers' Electric Cooperative, Inc. (Farmers); Lea County Electric Cooperative, Inc. (Lea County); Roosevelt County Electric Cooperative, Inc. (Roosevelt County), Tri-County Electric Cooperative, Inc. (Tri-County); and the West Texas Municipal Power Agency (WTMPA) (collectively, Full Requirements Customers).

[4] Demand cost allocation, or demand allocation, refers to the method of apportioning fixed capacity costs among customer classes. The Commission typically uses a coincident peak (CP) method to allocate demand costs, through which demand costs are allocated based on the customer class's load at the time of (or coincident with)
(continued…)

3. SPS's proposed changes in its rates and rate design would result in a rate increase of $17.9 million per year to cover the increased costs of full requirements service to the seven cost-based Full Requirements Customers.[6] SPS initially proposed rates using a 3 CP demand cost allocation methodology and noted that the question of which demand allocator to use in its rates was already pending before the Commission in Docket Nos. EL05-19-000 (Opinion No. 501 proceeding) and Docket No. ER06-274-000.[7] While SPS filed its rates using a 3 CP allocator in order to recover all of its costs for service to the Full Requirements Customers, SPS stated that it would switch to a 12 CP demand allocator if the Commission found it just and reasonable.

4. SPS also stated that since its last rate case, it had invested, and anticipated additional investment, of more than $70 million to modify existing generation units, primarily to meet environmental and pollution control requirements, replace aging and outmoded plant components, and cover additional operating and maintenance costs. In addition, beginning June 1, 2008, SPS explained that it planned to purchase needed capacity from Lea Power Partners LLC (Lea Power), a non-affiliated third-party supplier, in order to meet increased energy demand on the SPS system.

5. Protests were filed by several parties raising various rate issues. Importantly, the New Mexico Cooperatives[8] filed a motion for partial summary disposition on the issue of

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the system peak load. The coincident peak may be based, for example, on a single peak month (1 CP), the average of three peak months (3 CP), or the average of peaks in 12 months (12 CP). Typically, a company that has a relatively flat load profile throughout the year would choose to allocate demand costs on a 12 CP basis, which assumes that a utility's load is relatively constant throughout all 12 months of the year. A summer (or winter) peaking company would choose to allocate demand costs more typically on a 3 CP basis, which assumes the load profile peaks during three peak usage months.

[5] SPS Mar. 31, 2008 Transmittal at 6.

[6] According to SPS, the effect of the proposed changes includes rate increases in the range of 2.91 percent for Tri-County to 7.08 percent for Farmers.

[7] *See generally Golden Spread Electric Cooperative, Inc. v. Southwestern Pub. Serv. Co.*, 115 FERC ¶ 63,043, at PP 23-24 (2006), *rev'd in part*, Opinion No. 501, 123 FERC ¶ 61,047 at 61,249 (2008), *rev'd in part*, Opinion No. 501-A, 144 FERC ¶ 61,132 (2013); *Southwestern Pub. Serv. Co.*, 124 FERC ¶ 63,015 (2008), *rev'd*, 144 FERC ¶ 61,133 (2013).

[8] The New Mexico Cooperatives consist of the following four Full Requirements Customers: Central Valley, Farmers, Lea County, and Roosevelt County.

the appropriate demand cost allocation for SPS. The New Mexico Cooperatives argued that the Commission determined, in Opinion No. 501, that SPS's rates should reflect a 12 CP demand cost allocation methodology.[9] Moreover, the New Mexico Cooperatives performed an analysis, which they stated was similar to that performed by the Commission in Opinion No. 501, demonstrating that a 12 CP demand cost allocation was appropriate for the rates in this proceeding. The New Mexico Cooperatives contended that there was no issue of material fact that would prevent the Commission from granting its requested summary disposition.

6. Subsequently, Golden Spread, which is not a Full Requirements Customer, filed an answer to the New Mexico Cooperative's motion for summary disposition. Golden Spread contested the use of a 12 CP demand cost allocation for the Full Requirements Customers' rates and argued that summary disposition was inappropriate because: (i) material issues of fact existed on the demand allocation issue; and (ii) multiple rehearing requests, including Golden Spread's, were pending in the Opinion No. 501 proceeding on which the New Mexico Cooperatives' motion relied.

7. In the May 30 Order, the Commission granted summary disposition on the demand allocation issue, finding a 12 CP demand cost allocator just and reasonable for the rates assessed to the Full Requirements Customers.[10] The Commission explained that, on April 21, 2008, the Commission determined in Opinion No. 501 that a 12 CP demand cost allocator appropriately reflected SPS's system conditions.[11] The Commission also rejected Golden Spread's argument that Opinion No. 501 could not

[9] Opinion No. 501, 123 FERC ¶ 61,047, at PP 74-78 (2008), *rev'd in part*, Opinion No. 501-A, 144 FERC ¶ 61,132 (2013).

[10] *Southwestern Pub. Serv. Co.*, 123 FERC ¶ 61,225 (2008) (May 30 Order). While the Commission summarily ruled on the demand cost allocator issue, the Commission accepted the proposed rates, suspended them for a nominal period, subject to refund, and set them for hearing and settlement judge procedures. On April 23, 2009, SPS and the Full Requirements Customers reached a settlement agreement (2009 Settlement Agreement) that settled all issues set for hearing in this proceeding. Golden Spread did not contest the 2009 Settlement Agreement; rather, Golden Spread filed comments stating that the Commission should approve the 2009 Settlement Agreement only on the basis that it is non-precedential and does not affect Golden Spread's rights with respect to its pending rehearing request in this proceeding. The Commission approved the uncontested 2009 Settlement Agreement on September 10, 2009. *Southwestern Pub. Serv. Co.*, 128 FERC ¶ 61,233 (2009).

[11] Opinion No. 501, 123 FERC ¶ 61,047 at PP 74-78.

serve as valid precedent while rehearing requests are pending.[12] The Commission explained that its grant of summary disposition based on the findings in Opinion No. 501 was without prejudice to the pending requests for rehearing in that proceeding.

8. Referring to SPS's answer, the Commission also noted that SPS does not oppose the use of a 12 CP demand cost allocation for the Full Requirements Customers if its rates are not suspended for more than a nominal period.[13] The Commission's examination indicated that the proposed rates would not yield substantially excessive revenues and, therefore, the Commission subjected the proposed rates to a nominal suspension. The Commission also accepted SPS's use of a 12 CP demand cost allocator in this proceeding and directed SPS to file revised rates using that methodology.[14]

II. Golden Spread Request for Rehearing

9. On rehearing, Golden Spread argues that the Commission's determination in the May 30 Order that the 12 CP demand cost allocation is just and reasonable for the SPS system is not supported by the record in this case. According to Golden Spread, the Commission did not conduct a case-by-case analysis consistent with Commission precedent, and the Commission made no factual finding with respect to the SPS system based on the record in this proceeding. Golden Spread states that the Commission instead relied upon its findings in Opinion No. 501, without making a connection between the facts in the record for this case and the determination in Opinion No. 501 that a 12 CP demand cost allocation is appropriate.[15] Golden Spread contends that the

[12] May 30 Order, 123 FERC ¶ 61,225 at P 13 (citing 18 C.F.R. § 385.713(e) (2007); *Midwest Hydraulics, Inc.*, 120 FERC ¶ 61,247, at P 8 (2007) (*Midwest Hydraulics*)).

[13] May 30 Order, 123 FERC ¶ 61,225 at P 13; *see also* SPS May 7, 2008 Answer at 2-5. SPS also explicitly assumed the risk that the Commission could grant rehearing of Opinion No. 501 and find that SPS should continue to use a 3 CP demand cost allocator. SPS May 7, 2008 Answer at 4.

[14] The compliance filing was submitted on June 20, 2008 and was accepted under delegated letter authority. *Southwestern Pub. Serv. Co.*, Docket No. ER08-749-001 (Oct. 29, 2008) (delegated letter order).

[15] Golden Spread June 30, 2008 Request for Rehearing at 6 (citing *Illinois Power Co.*, 59 FPC 2245 (1977) *reh'g denied*, 1 FERC ¶ 61,174 (1977) (*Illinois Power*)). Golden Spread states that, in *Illinois Power*, the Commission rejected a motion for summary disposition based on a recently issued opinion because different facts in the two cases could result in different outcomes.

record in Opinion No. 501 does not reflect the current system conditions, and that Golden Spread should have been given the opportunity to present evidence of the differences in SPS's operating conditions.

10. Golden Spread also contends that its answer explained why the New Mexico Cooperatives failed to meet their burden of proof for summary disposition, but that the Commission rejected Golden Spread's arguments without explanation. Golden Spread states that the Commission's regulations allow summary disposition only if there is no genuine issue of fact material to the decision of a proceeding, but that there were such factual issues in this case. Golden Spread also argues that reliance upon Opinion No. 501 to grant summary disposition was inappropriate because of errors in Opinion No. 501 that, when corrected on rehearing, would result in a 3 CP demand cost allocation.[16]

11. Finally, Golden Spread contends that, to support the summary disposition, the Commission cited inapposite precedent – *Midwest Hydraulics*[17] – relating to whether a stay of an order pending rehearing is appropriate. Golden Spread agrees that, under *Midwest Hydraulics*, a request for rehearing does not operate as a stay of the order subject to rehearing. However, Golden Spread explains that *Midwest Hydraulics* is irrelevant in this instance because Golden Spread was not requesting a stay of the Opinion No. 501 proceedings. Golden Spread reiterates that the Commission should not grant summary disposition based upon a Commission order subject to further consideration.[18]

III. <u>Commission Determination</u>

12. Because the Commission is granting Golden Spread's requested relief in an order being issued concurrently with this order, we find that we need not address Golden Spread's rehearing request in this docket. As Golden Spread explained in its Motion to Intervene in this proceeding, Golden Spread's rates are not at issue in this rate case;[19]

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[16] For example, Golden Spread states that Opinion No. 501 was inconsistent with SPS-specific precedent in Opinion Nos. 162 and 337, and the determination in Opinion No. 501 failed to reflect the exclusion of opportunity sales that are revenue credited.

[17] 120 FERC ¶ 61,247 (2007).

[18] Golden Spread June, 30, 2008 Request for Rehearing at 11 (citing *Maine Yankee Atomic Power Co.*, 42 FERC ¶ 61,307, at 61,922 (1988)).

[19] The rates at issue in this proceeding apply only to SPS's Full Requirements Customers. Golden Spread is not a Full Requirements Customer; therefore, its rates are not at issue in this proceeding.

nonetheless, Golden Spread intervened in order to protect its interest in SPS's "company wide cost allocation principles."[20] In Opinion No. 501-A, issued concurrently with this order, the Commission finds, consistent with Golden Spread's argument, that a 3 CP demand cost allocation methodology is appropriate for the SPS system. Accordingly, we will dismiss Golden Spread's rehearing request in this proceeding.

The Commission orders:

Golden Spread's request for rehearing is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[20] Golden Spread Apr. 21, 2008 Motion to Intervene at 4.