

169 FERC ¶ 61,110
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

November 21, 2019

In Reply Refer To:
Southwest Power Pool, Inc.
Docket No. ER19-1910-000

Southwest Power Pool, Inc.
201 Worthen Drive
Little Rock, AR 72223

Attention: Luke B. Hill, Esq.

OGE Energy Corp.
321 N. Harvey
Oklahoma City, OK 73102

Attention: John D. Rhea, Esq.

Jones Day
51 Louisiana Avenue, NW
Washington, DC 20001

Attention: Kenneth B. Driver, Esq.

Dear Messrs. Hill, Rhea and Driver:

1. On May 21, 2019, Southwest Power Pool, Inc. (SPP), on behalf of Oklahoma Gas & Electric Company (OG&E), filed an Uncontested Stipulation and Agreement of Settlement (Settlement) with the Commission in this proceeding. The Settlement resolves all issues set for hearing regarding Oklahoma Municipal Power Authority's (OMPA) complaint alleging that OG&E's 10.6 percent base return on equity (ROE) is excessive, and that its treatment of excess Accumulated Deferred Income Taxes (ADIT) does not fully reflect the effects of the Tax Cuts and Jobs Act of 2017¹ (TCJA) on

¹ Pub. L. No. 115-97, 131 Stat. 2054 (2017).

OG&E's annual transmission revenue requirement. The Settling Parties include OG&E and OMPA.

2. On June 7, 2019, the Commission's Trial Staff filed comments that do not oppose certification of the Settlement or its acceptance by the Commission. On June 24, 2019, the Settlement Judge certified the Settlement to the Commission as uncontested.²

3. Article 4 of the Settlement reduces the base ROE in OG&E's transmission formula rates from 10.6 percent to 10.0 percent.

4. Article 3 of the Settlement addresses the treatment of excess ADIT resulting from the TCJA. Article 7 of the Settlement provides that if the Commission issues a final rule in Docket No. RM19-5-000 or any other final rule or policy statement addressing TCJA-related excess ADIT balances that requires OG&E to return the total excess ADIT on a basis that differs from the Settlement, then the final rule or policy statement will control and the return of the total excess ADIT will be adjusted to conform with the final rule or policy statement.

5. Article 12 of the Settlement establishes the following standard of review:

12.1 The standard of review for any change to this Settlement Agreement proposed by a Settling Party shall be the "public interest" application of the just and reasonable standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified in *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington*, 554 U.S. 527 (2008) and *NRG Power Marketing v. Maine Public Utilities Commission*, 558 U.S. 165 (2010).

12.2 Once this Settlement Agreement has become effective pursuant to the provisions of Article 8, the standard of review for any change to this Settlement Agreement sought by the Commission acting *sua sponte* or at the request of a non-Settling Party or a non-party to the proceeding shall be the just and reasonable standard of review (rather than the "public interest" standard), as clarified in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County, Washington*, 554 U.S. 527 (2008).

² *Sw. Power Pool, Inc.*, 167 FERC ¶ 63,048 (2019).

6. The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.
7. SPP is directed to make a compliance filing with revised tariff records in eTariff format,³ within 45 days of this order, to reflect the Commission's action in this order.
8. This letter order terminates Docket Nos. ER19-1910-000 and EL18-58-000.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

³ See *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008).