

153 FERC ¶ 61,213
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Western Area Power Administration

Docket No. EF15-8-000

ORDER CONFIRMING AND APPROVING RATE SCHEDULES
ON A FINAL BASIS

(Issued November 19, 2015)

1. In this order, we confirm and approve on a final basis Western Area Power Administration's (Western) transmission and ancillary service rate schedules.¹

I. Background

2. On July 23, 2015, the Deputy Secretary of the United States Department of Energy (Deputy Secretary) filed a request for final confirmation and approval of the proposed formula transmission and ancillary service rate schedules for Western's Pick-Sloan Missouri Basin Program--Eastern Division (Pick-Sloan--ED).² In Rate Order No. WAPA-170, the Deputy Secretary confirmed and approved the rate schedules on an interim basis, placing the rates into effect on or after October 1, 2015, upon transfer of

¹ The particular rate schedules for which Western seeks confirmation and approval are as follows: WUAGP-ATRR for Annual Transmission Revenue Requirement for Transmission Service, WAUGP-AS1 for Scheduling, System Control, and Dispatch Service, WAUWAS3 for Regulation and Frequency Response Service, WAUW-AS4 for Energy Imbalance Service, WAUW-AS5 for Operating Reserve-Spinning Reserve Service, WAUW-AS6 for Operating Reserve-Supplemental Reserve Service, and WAUW-AS7 for Generator Imbalance Service.

² Pick-Sloan Missouri Basin Program consists of eight power plants located on the Missouri River and its tributaries in the states of Montana, North Dakota, and South Dakota, as well as transmission lines, substations, communication equipment, and facilities related to operation and maintenance.

functional control of eligible Western-Upper Great Plains (Western-UGP) facilities to Southwest Power Pool, Inc. (SPP). The Deputy Secretary requests that this Commission give final confirmation and approval of the rates for the period October 1, 2015 through September 30, 2020.³

3. In addition, Western submitted a request for waiver of the Commission's requirements set forth in 18 C.F.R. §§ 300.11, 300.12(b) and 300.12(c) to file Statements A through F, a Power Repayment Study (PRS) and a Cost of Service Study, respectively. Western states that, because the rates addressed in Rate Order No. WAPA-170 are formula rates for transmission and ancillary services, they are not generated through a PRS, and therefore Statements A-F and the PRS do not have a direct relationship to these rates. Furthermore, because they are formula rates, the requirement to provide a Cost of Service Study does not apply.

4. According to the application, Western-UGP has signed a Membership Agreement with SPP and will place certain transmission facilities into SPP's Integrated Marketplace.⁴ Historically, the Western-UGP transmission facilities in the Pick-Sloan--ED have been integrated with transmission facilities of Basin Electric Power Cooperative (Basin Electric) and Heartland Consumers Power District (Heartland) to provide transmission services over the Integrated System (IS). The IS includes approximately 9,848 miles of transmission lines, with transmission and ancillary services provided

³ The proposed rate schedules WAUGP-ATRR, WAUGP-AS1, WAUW-AS3, WAUW-AS4, WAUW-AS5, WAUW-AS6, and WAUW-AS7 supersede the present rate schedules, which were approved on a final basis in *U.S. Dept. of Energy--Western Area Power Admin. (Pick-Sloan Missouri Basin Program--Eastern Division)*, 132 FERC ¶ 61,257 (2010). These rates were extended through December 31, 2016 under Rate Order No. WAPA-168.

⁴ As part of this transition, the Commission recently accepted two filings made by SPP. In Docket No. ER15-2347-000, the Commission accepted and suspended, and established hearing and settlement judge procedures concerning SPP's filing to revise its Open Access Transmission Tariff (OATT) to incorporate an agreement governing tariff administration and other duties SPP will perform on behalf of Western-UGP for its facilities in the Western Interconnection that will transfer to the functional control of SPP on October 1, 2015. *Southwest Power Pool, Inc.*, 152 FERC ¶ 61,255 (September 30, 2015). In Docket No. ER15-2354-000, the Commission conditionally accepted and suspended, and made effective subject to refund and the outcome of the instant proceeding, a filing by SPP to revise its OATT to add an Annual Transmission Revenue Requirement (ATRR) for Western-UGP and implement a formula rate template and implementation protocols for transmission service using the facilities of Western-UGP. *Southwest Power Pool, Inc.*, 152 FERC ¶ 61,257 (2015).

under Western's OATT, and Western-UGP serving as OATT administrator. The IS includes transmission facilities located in both the Eastern and Western Interconnections separated by the Miles City direct current (DC) tie and the Fort Peck Power Plant substation. Western-UGP also has operated two Balancing Authority Areas within the IS: Western Area Power Administration, Upper Great Plains West Balancing Authority Area (WAUW) and Western Area Power Administration, Upper Great Plains East Balancing Authority Area (WAUE), that were also separated by the Miles City DC tie and the Fort Peck Power Plant substation. Western-UGP's historical rate schedules for the IS consisted of separate rates for firm and non-firm transmission service and ancillary services rates for the transmission facilities in the Pick-Sloan--ED.

5. On November 1, 2013, Western published in the *Federal Register* a Notice of Recommendation to Pursue Regional Transmission Organization Membership.⁵ Subsequently, Western-UGP signed the Membership Agreement with SPP. Upon final Commission approval of membership within SPP, Western-UGP would transfer functional control of all eligible Western-UGP Pick-Sloan--ED facilities in the Eastern and Western Interconnections, which include nearly 100 substations and 7,800 miles of transmission lines, to SPP. Subsequently, Pick-Sloan--ED transmission and ancillary services would no longer be available on the IS under Western's OATT, but instead will be available from SPP under SPP's OATT.

6. In the instant filing, Western explains that it has transferred functional control of eligible Western-UGP transmission facilities located in the Upper Missouri Zone (UMZ) into SPP. Western explains further that it will merge its WAUE in the Eastern Interconnection into SPP's Balancing Authority Area and place its transmission system located in the Eastern Interconnection into SPP's Integrated Marketplace. Western-UGP will retain operation of its WAUW in the Western Interconnection as the Balancing Authority, and will not place its transmission facilities located in the Western Interconnection into SPP's Integrated Marketplace. Even though SPP's Integrated Marketplace will not extend into the Western Interconnection, Western-UGP's eligible transmission facilities in the Western Interconnection will be included under SPP's OATT to allow SPP to provide transmission service over all of Western-UGP's eligible transmission facilities under the UMZ rate regardless of whether they are located in the Eastern or Western Interconnection. The UMZ is a single SPP rate zone that includes Western-UGP's transmission facilities located in the Eastern and Western Interconnections. Therefore, a single formula rate schedule, WAUGP-ATRR, will calculate the ATRR for all of Western-UGP's eligible transmission facilities that are transferred to the functional control of SPP and used by SPP to calculate charges for

⁵ 78 Fed. Reg. 65,641 (2013).

transmission service under the SPP OATT. Western-UGP will utilize a formula template to calculate its ATRR.

7. Western-UGP has also developed formula rate schedule WAUGP-AS1 for Scheduling, System Control, and Dispatch Service (SSCD), which will include Western-UGP's costs associated with providing this service in the UMZ, and formula rate schedules to calculate charges for ancillary services associated with its WAUW. According to Western, these ancillary services formula rate schedules are necessary because the Western-UGP transmission facilities in its WAUW are not included within SPP's Integrated Marketplace, and SPP's standard market-based ancillary services will not be available. Therefore, when SPP provides transmission service in the WAUW, the associated ancillary services will need to be provided by Western-UGP as the Balancing Authority. These ancillary service formula rate schedules include WAUW-AS3 for Regulation and Frequency Response Service, WAUW-AS4 for Energy Imbalance Service, WAUW-AS5 for Operating Reserve-Spinning Reserve Service, WAUW-AS6 for Operating Reserve-Supplemental Reserve Service, and WAUW-AS7 for Generator Imbalance Service.

8. The proposed formula rates for use under SPP's OATT include Transmission and Ancillary Service Rates as described in Rate Schedules WAUGP-ATRR, WAUGP-AS1, WAUW-AS3, WAUW-AS4, WAUW-AS5, WAUW-AS6, and WAUW-AS7. These rates will be submitted to SPP as the Transmission Provider in order for SPP to bill SPP transmission customers for transmission and ancillary services that SPP provides over Western-UGP's transmission facilities under the SPP OATT. The costs under the formulas in these rate schedules will be recalculated annually and those utilizing estimates for the upcoming year to calculate revenue requirements will be true-up to actual costs in a subsequent year. The ATRR includes operation and maintenance expenses, administrative and general expenses, interest expenses, and depreciation expenses, and are offset by appropriate estimated revenue credits. Annual audited financial data will be used to true-up the cost estimates and credit estimates with the actual expenses and credits. When calculating these true-up rates, Western-UGP will true-up the estimates it used in the calculation of its calendar year 2013, 2014, and 2015 IS rate charges that were in place prior to joining SPP. This IS true-up will only include Western-UGP's portion of the IS revenue requirement, and these formula rates for use under the SPP OATT will only include Western-UGP's IS true-up, if applicable. The IS true-up, if any, associated with the other IS owners' (Heartland and Basin) portion of the IS revenue requirement is outside the scope of this rate process, and would be addressed by the other IS owners.

9. According to Western, it prepared Transmission and Ancillary Services rate studies to ensure that the formula rates are based on the cost of service of the Western-UGP eligible transmission facilities that will be transferred to the functional control of

SPP and the associated operation of the WAUW. These studies included all applicable expenses and associated offsetting revenues.

10. Western maintains that the proposed rates will provide sufficient revenue to pay all annual costs, including interest expenses, and repay required investments within the allowable periods.

II. Notice, Interventions, and Comments

11. Notice of the filing was published in the *Federal Register*,⁶ with interventions and protests due on or before August 24, 2015.

12. Heartland, East River Electric Power Cooperative, Inc., and Xcel Energy Services Inc., on behalf of its utility operating company affiliates Southwestern Public Service Company, Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, filed timely motions to intervene.

13. NorthWestern Corporation (NorthWestern) and Missouri River Energy Services (Missouri River) each filed timely motions to intervene and comments. Western filed an answer to the comments.

14. In NorthWestern's comments, which were filed in Docket No. ER15-2354-000 as well as the instant docket, NorthWestern states that it supports Western-UGP's efforts to join SPP effective October 1, 2015. NorthWestern states it incorporates by reference a motion NorthWestern filed in Docket No. ER15-2347-000. NorthWestern states that in that motion it raised the issue of whether it is appropriate to apply the UMZ rate, which includes charges based on the costs of transmission facilities in the Eastern Interconnection, for transmission service on facilities in the Western Interconnection. NorthWestern states the issue can and should be addressed in Docket No. ER15-2347-000, but that NorthWestern is raising the issue here in case the Commission determines it is appropriately addressed here.⁷

15. In Missouri River's comments, Missouri River argues that Western "fails to include key data, information, and explanations" that it claims are necessary for the Commission to evaluate Western's rates. Missouri River's non-exhaustive list of information Western should supply includes an explanation of Western's inclusion in its

⁶ 80 Fed. Reg. 45,971 (Aug. 8, 2015).

⁷ In Docket No. ER15-2347-000, the Commission has since responded to NorthWestern's concerns. See *Southwest Power Pool, Inc.*, 152 FERC ¶ 61,255, at PP 35-37 (September 30, 2015).

ATRR of costs for certain facilities within the Nebraska Public Power District (NPPD) Balancing Authority Area and Missouri River requests that Western explain why the costs for these facilities are not assigned to the NPPD rate zone. Missouri River also requests either confirmation that Western will take SPP network integration transmission service for the loads connected to certain radial facilities or confirmation that another party will register with SPP as the entity responsible for the UMZ-connected load and pay the UMZ rate, and, if not, then provide an explanation.

16. In Western's answer, Western responds to the comments filed by NorthWestern and Missouri River. In response to NorthWestern, Western argues that the issue of the inclusion of costs of Eastern Interconnection facilities in the UMZ rate and the application of that rate to transmission customers in the Western Interconnection was previously discussed in the proceedings on Western-UGP joining SPP (Docket Nos. ER14-2850 and ER14-2851) and in Western's Public Process for Rate Order No. WAPA-170, yet NorthWestern did not raise its concerns in those proceedings. Western explains that providing transmission service across the entire Western-UGP footprint (i.e., the Eastern and Western Interconnection facilities) under a one-rate construct (the UMZ rate) is consistent with the Commission's goal of having a utility provide transmission service under a single tariff.

17. In response to Missouri River, Western argues that SPP pricing zones are not defined by historical Balancing Authority Area boundaries. Western argues that the integrated and contiguous nature of the Federal facilities resulted in Western-UGP's decision to retain those facilities in the same pricing zone (the UMZ) as other IS facilities. Western contends that shifting the facilities listed by Missouri River to a different pricing zone would result in a cost shift to the NPPD pricing zone. Furthermore, Western argues that it properly included facilities within its formula rate. With respect to Western's intentions as to SPP transmission service, Western states its understanding of that service and to the extent new interpretations or clarifications of the SPP OATT result from those dockets, Western commits to adjust its rates by considering the clarifications in other dockets as appropriate.

III. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Western's answer because it has provided information that assisted us in our decision-making process.

20. A party has an obligation to clearly articulate, explain and justify the basis for its requested action.⁸ Incorporation by reference of arguments from prior pleadings or in other proceedings is not sufficient. For example, in the context of rehearing requests, the Commission has rejected attempts to incorporate by reference arguments from a prior pleading in another proceeding, as such incorporation fails to inform the Commission both which arguments from the referenced pleading are relevant and how they are relevant.⁹ Such reasoning is equally applicable here to NorthWestern's attempts to incorporate by reference.

B. Standard of Review

21. The Secretary of Energy has delegated the authority to confirm and approve Western's rates on a final basis to the Commission.¹⁰ 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.¹¹

⁸ See 18 C.F.R. § 385.203(a)(7) (2015).

⁹ See *ExxonMobil Chem. Co. v. Entergy Servs., Inc.*, 112 FERC ¶ 61,255, at P 10 (2005); see also *City of Santa Clara, Calif. v. Enron Power Mktg., Inc.*, 112 FERC ¶ 61,280, at P 8 n.4 (2005).

¹⁰ Delegation Order No. 00-037.00A, § 3 (Delegation Order).

¹¹ *Id.*

22. The Commission is prohibited from reviewing policy judgments and interpretations of laws and regulations made by the power generating agencies.¹² The 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 Department of Energy regulations (e.g., Department of Energy Order No. RA 6120.2, which prescribes financial reporting policies, procedures, and methodologies), or if they violate agreements between Western's Administrator and the applicable power generating agency.

23. 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.¹³

C. Commission Determination

24. By statute,¹⁴ Western must repay the Federal investment within a reasonable period of time, which, as a general practice, is 50 years. Our review of Western's submittal indicates that the revenues to be collected under the rates should be sufficient to recover Western's costs, including the recovery of the remaining Federal investment, with interest, over the remaining repayment period. Moreover, since the revenues generated by the rates recover no more than Western's annual costs and the remaining Federal investment, the rates are the lowest possible to customers. Our review also indicates that the submittal was prepared in a manner consistent with Department of Energy Order No. RA 6120.2, which requires that Western's financial statements must be

¹² 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 Federal Power Marketing Administrations, such as Western, market the output of the projects.

¹³ See, e.g., *U.S. Dept. of Energy--Western Area Power Admin. (Boulder Canyon Project)*, 61 FERC ¶ 61,229, at 61,844 (1992), *aff'd in relevant respects sub nom. Overton Power District No. 5 v. Watkins*, 829 F. Supp. 1523 (D. Nevada 1993), *vacated and remanded with directions to dismiss sub nom. Overton Power District No. 5 v. O'Leary*, 73 F. 3d 253 (9th Cir. 1996); *U.S. Dept. of Energy--Western Area Power Admin. (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).

¹⁴ 16 U.S.C. § 825s (2012).

prepared in accordance with generally accepted accounting principles, as appropriate, and that its repayment analyses be prepared using sound forecasting techniques designed to approximate as closely as possible actual results.

25. Because Western's proposed rates are consistent with the standards by which they must be judged, i.e., the standards provided in the Delegation Order, they merit final confirmation and approval. Therefore, the proposed rates are confirmed and approved as requested. Western's request for waiver of the Commission's requirements to file Statements A through F, a PRS and a Cost of Service Study is also granted. The Commission finds that Western has shown good cause for granting waiver in that Western filed formula rates which reflect the costs of providing service.

26. Because the Commission's role is to act as an appellate body which reviews the record, the Commission does not develop a record on its own. Thus, Missouri River's claim that, essentially, the Commission should develop a more detailed record on the assignment of the cost of certain facilities located in the NPPD Balancing Authority Area is misplaced. In addition, concerns about whether certain facilities should be included in the UMZ are beyond the scope of this proceeding. In any event, Missouri River never argues that, or why, such costs are indeed mis-assigned, but rather merely assumes – without explanation or justification – that they are. Similarly, while Missouri River requests that Western confirm that it will take particular SPP transmission service for certain loads, it does not claim that Western has acted inappropriately or explain how or why Western may have acted inappropriately. We likewise find this request to be beyond the scope of this proceeding. Moreover, Western has provided its current understanding of SPP's OATT and has committed to reflect subsequent interpretations or clarifications in its future rate filings or cost true-ups, as necessary.

The Commission orders:

The Commission hereby confirms and approves on a final basis Western's proposed Rate Schedules WAUGP-ATTR, WAUGP-AS1, WAUW-AS3, WAUW-AS4, WAUW-AS5, WAUW-AS6, and WAUW-AS7, for the period October 1, 2015 through September 30, 2020.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.