

102 FERC ¶ 61,231
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Arizona Public Service Company

Docket No. ER03-347-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING PROPOSED
REVISIONS TO RATE SCHEDULE AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued February 27, 2003)

1. In this order, the Commission conditionally accepts and suspends Arizona Public Service Company's (APS) revised rate schedule sheets with PacifiCorp, to be effective March 1, 2003, subject to refund. In addition, we will establish hearing procedures, but hold the hearing in abeyance pending settlement judge procedures. This order benefits customers because it ensures that APS's power sales to PacifiCorp will be at reasonable and not unduly discriminatory rates.

The Instant Filing

2. On December 30, 2002, APS filed a request for to change the rates to its Long-Term Power Transactions Agreement (Agreement), FERC Electric Rate Schedule No. 182, between itself and PacifiCorp. APS is required to file for regulatory approval to increase: (1) the O&M charges, (2) the Supplemental Coal Energy (SCE) percentage adder, if it is in excess of 20 percent, and (3) the Other Supplemental Energy (OSE) percentage adder, if it is in excess of 15 percent.¹ APS states that the filing was made to increase the percentage adders allowed in the Agreement. APS proposes revisions to the O&M charges and to increase the SCE percentage adder. APS proposes no change in the level of the OSE percentage adder. APS requests an effective date of March 1, 2003.

¹See PacifiCorp Electric Operations and Arizona Public Service Company, 54 FERC ¶ 61,296 (1991).

Notice of Filing and Responsive Pleading

3. Notice of APS's filing was published in the Federal Register, 68 Fed. Reg. 1058 (2003), with interventions and protests due on or before January 21, 2003. On January 29, 2003, the Commission extended the comment period date until February 10, 2003. PacifiCorp filed a timely motion to intervene and comments in this proceeding.

4. PacifiCorp states that, in Docket No. ER91-26-000,² the Commission had found the energy rates proposed in the Agreement reasonable subject to certain limitations:

For SCE: the Commission determined "Arizona's revisions to the SCE percentage adder in 2001 (i.e., an increase to 25 percent), and 2006 (i.e., an increase to 30 percent) will constitute a change in rate which requires timely filing pursuant to Part 35 of the Commission's regulations, together with cost support."

For OSE: "The Commission cannot conclude that any adder above 15 percent would be reasonable over the duration of this contract. Accordingly, we shall require that any increase in the percentage adder to track the rate of inflation will require a timely filing under Part 35, together with cost data demonstrating that the revised adder generates a reasonable contribution to the fixed costs of the facilities used to provide the service."

5. PacifiCorp claims that this rate filing is APS's attempt to provide the cost support requested by the Commission, in order to justify and support the increase in the SCE percentage adder (to 25 percent). PacifiCorp claims that the percentage increases for SCE and OSE may generate an excessive contribution to the fixed costs of the facilities used to provide the service. PacifiCorp adds that, by letter dated September 6, 2002 (September 6 letter), it received a \$2.5 million refund from APS. The September 6 letter stated that the refund stemmed from a review of the billings for the SCE and the OSE. However, according to PacifiCorp, there was no accompanying calculations for the refund. PacifiCorp maintains that, although the original billings were in compliance with the contract, they did not reflect the limitations included in the Commission order in Docket No. ER91-26-000.³ PacifiCorp explains that the refund of \$2.5 million by APS to PacifiCorp last year underscores the need for a careful and thorough review of the Agreement and its pricing mechanisms.

²See supra note 1.

³See supra note 1.

Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), PacifiCorp's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Suspension and Hearing

7. In its March 19, 1991 order in Docket No. ER91-26-000, the Commission found the energy rates proposed in the Agreement reasonable but made them subject to certain limitations.⁴ The Commission reasoned that the percentage adders were meant to: (1) compensate for difficulties in quantifying costs; and (2) provide a margin of error in the seller's estimate of incremental fuel costs. Since the proposed rates included no demand or reservation charges, the Commission determined the monies generated by the percentage adders greater than 10 percent were a contribution to fixed costs. The Commission sought to ensure that the monies above 10 percent, however, would not produce more than a 100 percent contribution to fixed costs. Further, the Commission determined that APS's revisions to the SCE percentage adder in 2001 (i.e., an increase to 25 percent), and 2006 (i.e., an increase to 30 percent) would constitute a change in rates which would require a timely filing, including cost support. Likewise, the Commission determined that any increase in the percentage adders to track the rate of inflation would require a timely filing, including cost support. PacifiCorp appears to be concerned that the proposed revised rates may not be cost justified.

8. We find that the proposed rate increase has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, the Commission conditionally accepts the proposed revised rate schedules, as modified as discussed below, suspends them for a nominal period to be effective March 1, 2003, subject to refund, and sets them for trial-type evidentiary hearing. However, in order to allow the parties an opportunity to resolve this matter amicably without an evidentiary hearing, we will hold the hearing in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁵ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in this proceeding; otherwise, the Chief

⁴See supra note 1.

⁵18 C.F.R § 385.603 (2002).

Administrative Law Judge will select a judge for this purpose.⁶ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of the evidentiary hearing by assigning the case to a presiding judge.

C. Percentage Adders

9. The Agreement requires that APS file for changes in the GNP Price Deflator used to calculate the proposed revised rates.⁷ APS states that since it has never requested an increase in the GNP Price Deflator, it is justified in calculating the GNP Price Deflator of twenty-five percent for the years 1991 through 2001. However, according to the Agreement (Appendix E, Sections 1.1 and 1.20), the O&M expenses :

"...shall be adjusted in accordance with the percentage change in the GNP Price Deflator over the immediate preceding twelve month period."

Based upon the methodology for calculating the GNP Price Deflator, as described in the Agreement, the GNP Price Deflator proposed by APS in this proceeding is incorrect. The Agreement (in Appendix E, Sections 1.1 and 1.20) specifically states that the GNP Price Deflator is to be calculated over the immediate preceding twelve month period. APS had the opportunity to file with the Commission to adjust the GNP Price Deflator for the past ten years prior to this filing, but chose not to do so. Therefore, it is too late in the day for APS to do so now.

10. With regard to other issues concerning the reasonableness of the SCE and OSE adders, they may be addressed in the evidentiary hearing ordered above.

⁶ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of the Commission's judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

⁷ The Commission previously stated that although it has permitted public utilities to adopt automatic adjustment clauses that track actual company-specific costs, it is inappropriate to allow automatic adjustments that track national indices like the GNP price deflator, because these indices cannot be relied upon to reflect the utilities' own costs. See supra note 1.

D. Other Matters

11. APS states that it included in its filing a re-conformed copy of the Agreement consistent with the Commission's Order No. 614.⁸ However, all of the rate schedule sheets in the re-conformed copy, including any unchanged sheets, show an effective date of March 1, 2003, the proposed effective date of the proposed rates in this proceeding. APS is directed to file a re-conformed copy of the Agreement to show the original effective date for any unchanged sheets and a March 1, 2003 effective date only for the revised sheets.

The Commission orders:

(A) The Commission hereby conditionally accepts the revised rate schedule sheets, subject to refund, and suspends them for a nominal period to become effective March 1, 2003, subject to refund, as discussed in the body of this order.

(B) APS is directed to file a corrected re-conformed Agreement within 15 days of the date of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed rate increase. As discussed in the body of this order, we will hold the hearing in abeyance to provide time for settlement judge procedures.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2001), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge.

(E) Within 60 days of the date of this order, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions.

⁸ Designation of Electric Rate Schedule Sheets, Order No. 614, III FERC Stats. & Regs., Regs. Preambles ¶ 31,096 (2000).

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Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(F) If the settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding judge to be designated by the Chief Judge shall convene a conference in this proceeding to be held within approximately 15 days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.