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123 FERC ¶ 61,225
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Southwestern Public Service Company Docket No. ER08-749-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING RATES AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued May 30, 2008)

1. On March 31, 2008, Southwestern Public Service Company (SPS) filed, pursuant to section 205 of the Federal Power Act (FPA),[1] changes in its rates and rate design for service to its wholesale full requirements customers.[2] SPS requests an effective date of June 1, 2008. In this order, we conditionally accept the proposed rates for filing and suspend their effectiveness for a nominal period, to be effective June 1, 2008, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. SPS proposes changes in its rates and rate design that would result in a rate increase of $17.9 million per year for seven cost-based full requirements customers to cover increased costs for full requirements service.[3] Specifically, since its last rate case, SPS has invested and anticipates additional investment amounts of more than $70 million to modify existing generation units, primarily to meet environmental and pollution

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[1] 16 U.S.C. § 824d (2000 & Supp. V 2005).

[2] 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).

[3] According to SPS, the effect of the proposed changes includes rate increases for Cap Rock (6.76 percent); Central Valley (6.09 percent); Farmers (7.08 percent); Lea County (6.12 percent); Roosevelt County (7.31 percent); Tri-County (2.91 percent); and WTMPA (3.44 percent).

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control requirements, replace aging and outmoded plant components, and cover additional operating and maintenance costs. In addition, beginning June 1, 2008, SPS will 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.[4]

II. Notice of Filing and Responsive Pleadings

3. Notice of SPS's filing was published in the *Federal Register*, 73 Fed. Reg. 19,210 (2008), with protests and interventions due on or before April 21, 2008. On April 18, 2008, Cap Rock filed a motion to intervene. On April 21, 2008, Farmers, Lea County, Central Valley, and Roosevelt County (collectively, New Mexico Cooperatives) filed a motion to intervene and motion to reject filing, or, in the alternative, protest and request for maximum suspension of rates and the implementation of evidentiary hearing proceedings. WTMPA also filed a motion to intervene and protest. Golden Spread Electric Cooperative, Inc. (Golden Spread Cooperative), Occidental Permian Ltd. (Occidental) and Tri-County filed motions to intervene. On May 1, 2008 and May 6, 2008, New Mexico Cooperatives filed a supplement to their previous motion to reject and protest. On May 7, 2008, SPS filed an answer in response to the motion for rejection, motions for summary disposition, and protests. On May 9, 2008, New Mexico Cooperatives filed an answer to SPS's answer. On May 14, 2008, SPS filed an answer to New Mexico Cooperatives' May 9 answer. On May 16, 2008, Golden Spread Cooperative filed an answer to New Mexico Cooperatives' May 1, 2008 supplement to their motion to reject and protest.

III. Discussion

A. Procedural Matters

4. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

5. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

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[4] According to SPS's testimony, the Lea Power generator will convert fuel into electricity at a lower and more efficient heat rate and will benefit customers by lowering SPS's system fuel costs once the plant begins generating energy. SPS states that another advantage of the Lea Power generator will be reduced water consumption and the combined-cycle will allow SPS to more easily integrate wind onto its system.

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B. Substantive Matters

6. We find that SPS's proposed rates have not been shown to be just and reasonable. Therefore, we will accept SPS's proposed rate schedule for filing, suspend it for a nominal period, make it effective June 1, 2008, subject to refund, and set issues raised by the filing for hearing and settlement judge procedures, as explained further below.

1. Coincidental Peak Demand Allocator

a. SPS's Proposal

7. SPS proposes rates using a 3 Coincidental Peak (CP) demand allocator. SPS states that the revenue requirement for the Full Requirements Customers is $2.6 million higher with a 3 CP allocator than it would be using a 12 CP allocator. SPS also acknowledges that at the time of its filing, the Commission was considering the proper demand allocation methodology for SPS in other proceedings: (1) the Commission's action on the Initial Decision in Docket No. EL05-19-000, in which the presiding administrative law judge found that a 3 CP demand allocator continued to be appropriate;[5] and (2) a hearing addressing this same issue in Docket No. ER06-274 (2006 Rate Case) scheduled to commence July 29, 2008.[6] These circumstances create a dilemma for SPS in developing its cost of service analysis for this filing. SPS maintains, as it has in those pending proceedings, that a 12 CP allocator is the appropriate demand allocator for its system. If the Commission were to rule otherwise, however, SPS would risk not recovering its full costs from the Full Requirements Customers. If the Commission ultimately holds that a 12 CP allocator is the appropriate allocator for the SPS system, SPS commits to reflect such a result in this docket, and the parties can discuss in the course of this proceeding the most efficient means to implement such a result.

b. Protests

8. New Mexico Cooperatives and WTMPA protest SPS's use of a 3 CP demand allocator, arguing that the use of a 12 CP allocator is appropriate. New Mexico

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[5] *See Golden Spread Electric Cooperative, Inc.*, 115 FERC ¶ 63,043, at P 22-24 (2006) (*Golden Spread* initial decision). The Commission ultimately reversed the initial decision and approved a 12 CP allocator for SPS. *See Golden Spread Electric Cooperative, Inc.*, Opinion No. 501, 123 FERC ¶ 61,047, at P 74-78 (2008) (Opinion No. 501), *reh'g pending*.

[6] *Southwestern Public Service Company*, 114 FERC ¶ 61,091 (2006). The demand allocation issue was not resolved by the partial settlement of the 2006 Rate Case. *Southwestern Public Service Co.*, 123 FERC ¶ 61,054 (2008) (2006 Rate Case settlement).

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Cooperatives state that usage of the 3 CP allocator overstates rates by $2.6 million (or 17 percent), which they claim is unjust and unreasonable. WTMPA states that in the complaint proceeding resolved by Opinion No. 501, SPS demonstrated that a 12 CP allocator is just and reasonable for its full requirements service given the load patterns on the SPS system. New Mexico Cooperatives and WTMPA both support summary disposition of this issue.

c. Answer

9. In its answer, SPS agrees to a 12 CP demand allocator in this proceeding if the Commission does not suspend the filing for more than a nominal period.[7] With receipt of a nominal suspension, SPS agrees to make a compliance filing reflecting the use of a 12 CP demand allocator, and SPS will assume the risk that the Commission may grant rehearing of Opinion No. 501 and find that SPS should continue to use a 3 CP allocator.

d. Golden Spread Cooperative's Answer

10. Golden Spread Cooperative states that it did not initially file a protest to SPS's 3 CP allocator proposal because Golden Spread Cooperative agreed with that proposal. Not until SPS revised its proposal to include a 12 CP allocator did Golden Spread Cooperative protest. It notes that its rates are not directly at issue in this docket, but it is interested in the outcome of the allocator as applicable to rehearing of Opinion No. 501. Golden Spread Cooperative further argues that the record in this case does not support a decision that a 12 CP allocator is appropriate here and that Opinion No. 501 was flawed in arriving at the decision that a 12 CP allocator was appropriate in that docket. Moreover, Golden Spread Cooperative contends that Opinion No. 501 is not a binding decision because rehearing is pending in that case.

e. New Mexico Cooperatives' Answer

11. New Mexico Cooperatives assert that Golden Spread Cooperative's filing should be struck to the extent it seeks to raise an issue of material fact regarding the appropriate demand cost allocator because it does not have rates at issue in this case and it delayed protesting the issue, even though SPS suggested in its initial application that the use of a 12 CP allocator was appropriate.

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[7] SPS's 12-month CP load is the sum of the measurement of each of SPS's customers' peak loads at the time of the monthly system peaks over a 12-month time frame.

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f. Commission Determination

12. We accept SPS's use of a 12 CP demand allocator for its proposed rates in this proceeding, and this allocator will be incorporated in the rates that go into effect on June 1, 2008. In its filing, SPS proposes rates using a 3 CP demand allocation methodology and notes that, at the time of filing, the question of which allocator to use in its rates was pending before the Commission. Out of caution, SPS filed its rates using a 3 CP allocator in order to recover all of its costs for services to its Full Requirements Customers. However, SPS did note that it would switch to a 12 CP allocator if the Commission found it just and reasonable.

13. In addition, we find the use of a 12 CP demand allocator just and reasonable for SPS's system. Specifically, on April 21, 2008, the Commission concluded that the use of a 12 CP demand allocator more appropriately reflected SPS's system conditions.[8] In its answer, SPS states that it does not oppose the use of a 12 CP allocator if its rates are not suspended for more than a nominal period. As discussed below, our examination indicates that the proposed rates may not yield substantially excessive revenues and we subject them to a nominal suspension. Accordingly, we accept SPS's proposal to use a 12 CP allocator in this proceeding and direct SPS to file revised rates using a 12 CP demand allocator in a compliance filing within thirty days of the date of this order.

2. Return on Common Equity

a. SPS's Proposal

14. SPS proposes a return on common equity (ROE) of 12.2 percent. SPS states that it derived its ROE using a one-step Discounted Cash Flow (DCF) methodology and also developed ROE benchmarks using forward-looking applications of the Capital Asset Pricing Model (CAPM) and expected earnings approaches. In establishing its ROE, SPS

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[8] Opinion No. 501 at P 74-78. We reject Golden Spread Cooperative's argument that Opinion No. 501 is not valid precedent while rehearing is pending. *See* 18 C.F.R. § 385.713(e) (2007); *Midwest Hydraulics, Inc.*, 120 FERC ¶ 61,247 at P 8 (2007) ("The Federal Power Act expressly provides that the filing of a request for rehearing or a petition for judicial review does not operate as a stay of the order of which rehearing or judicial review is sought. Although a request for rehearing may make an order non-final and thus subject to potential revocation or modification, the request does not stay the effectiveness or enforceability of the order's provisions.") (citations omitted). Further, our disposition of this issue here based on our findings in Opinion No. 501 is without prejudice to pending requests for rehearing of Opinion No. 501 concerning the demand allocation issue.

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developed a specific proxy group of twenty-one utilities of similar corporate credit ratings, risk, and growth.

b. Protests

15. WTMPA and New Mexico Cooperatives contend that SPS's proposed ROE of 12.2 percent is excessive by 200 basis points. They state that SPS employs a flawed DCF methodology, faulty CAPM, and an expected earnings methodology that deviates from Commission precedent. WTMPA's own DCF studies yield an ROE between 7.5 percent and 11.8 percent, with a median of 9.8 percent. New Mexico Cooperatives assert that the ROE should not exceed nine to ten percent and that limiting SPS's ROE to this range would reduce SPS's requested rate increase by 13.9 percent, for a revenue reduction of $2,071,000. Moreover, New Mexico Cooperatives note that the Commission found the just and reasonable ROE for SPS to be 9.33 percent.[9] WTMPA also supports the use of the median ROE rather than the midpoint ROE to determine the cost-based component of equity return. WTMPA and New Mexico Cooperatives contend that all matters concerning the ROE should be set for hearing.

16. WTMPA and New Mexico Cooperatives assert that SPS specifically erred in composing its proxy group to establish an appropriate ROE. First, they contend that utilities outside of the regions of the Southwest Power Pool, Inc. (SPP), PJM Interconnection, LLC (PJM), and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) should not be included; therefore the Hawaiian Electric Company, Inc. and Exelon Corp. should not be included in the proxy group. Second, New Mexico Cooperatives assert that utilities with comparable credit ratings for unsecured debt should be considered, and that companies from the proxy group with a credit rating two steps below that of SPS (i.e., First Energy Corp. and Great Plains Energy, Inc.) should not be included. Furthermore, WTMPA states that SPS did not treat outlying values in the proxy group consistently. For instance, SPS included Constellation Energy Group, Inc.'s (Constellation) high-end implied cost of equity of 19.2 percent but excluded its low-end value of 13.1 percent. WTMPA and New Mexico Cooperatives support excluding both values for Constellation. WTMPA and New Mexico Cooperatives note that the Commission recently affirmed a proxy group for SPS in Opinion No. 501 consisting of Allete Inc., OGE Energy Corp., Progress Energy Inc. and Wisconsin Energy Corporation.[10]

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[9] Opinion No. 501 at P 62.

[10] *Id.* (affirming presiding judge's findings regarding proxy group in *Golden Spread* initial decision, 115 FERC ¶ 63,043, at P 97, 104-105).

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c. Answer

17. SPS disagrees with assertions that the proxy group should be established by locality, arguing that the purpose of the proxy group is to determine what level of ROE investors demand from utilities displaying similar business and financial risks. Furthermore, SPS contends that New Mexico Cooperatives' support for the Opinion No. 501 proxy group, which includes utilities from Florida to Wisconsin, is inconsistent with their claim that a proxy group must be limited to the region in which SPS is located. SPS also argues that the use of the median value, done for the first time in Opinion No. 501 and *Virginia Electric and Power Company*, has not been explained and is arbitrary.[11] Lastly, with receipt of a nominal suspension, SPS states that it will make a compliance filing reflecting a return on equity of no more than 10.25 percent, subject to refund. Such compliance rates would remain subject to refund, including the return on equity component.

d. New Mexico Cooperatives' Answer

18. New Mexico Cooperatives argue that the revised 10.25 percent ROE is still excessive. They note that the DCF analysis provided in their protest supports a 9.8 percent ROE.

e. Commission Determination

19. We accept SPS's proposal of an ROE of no higher than 10.25 percent, and this ROE will be incorporated in the rates to go into effect on June 1, 2008, subject to refund and subject to the outcome of hearing and settlement judge procedures as discussed in the body of this order. However, issues of material fact still remain concerning the appropriate return on equity for SPS and, therefore, whether the level of the revised 10.25 percent ROE is excessive shall remain an issue to be discussed during the hearing and settlement judge procedures. Furthermore, the hearing that is established herein should consider all other issues concerning SPS's proposed ROE, including but not limited to the composition of the proxy group. Therefore, we direct SPS to file its rates using a 10.25 percent ROE in a compliance filing within thirty days of the date of this order.

3. Job Creation Act of 2004

20. SPS reflected the Job Creation Act of 2004 in its cost of service. WTMPA and New Mexico Cooperatives contend that SPS incorrectly reflects the impact of the 2004 Job Creation Tax Act on the revenue requirements of the full requirements customers as an increase in income tax expense of $179,833, rather than a reduction. In its answer,

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[11] *Virginia Electric and Power Company*, 123 FERC ¶ 61,098, at P 66 (2008).

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SPS states that it will correct the error with respect to the tax deduction associated with the Jobs Creation Act of 2004. Therefore, we direct SPS to file its rates correcting this error in a compliance filing within thirty days of the date of this order.

4. Meter Charges

a. SPS's Proposal

21. SPS proposes to remove the meter costs from the customer charge for each of the Full Requirements Customers. SPS states that it owns the meters at each interconnection point with the Full Requirements Customers. The meters will track the usage of these customers and provide billing for transmission and production services. In its last production rate case, SPS stated that, if the transmission rate applicable to these customers were changed to include metering costs, SPS would propose to reduce the customer charge so long as the metering costs were reflected in the transmission rate. SPS filed a transmission rate case in which it proposed to move the meter costs to the transmission service rates.[12] SPS states that the meter costs will be directly assigned to each Full Requirements Customer in that proceeding and that meter costs will be excluded from the production rate in this proceeding.

b. Protests

22. New Mexico Cooperatives assert that the treatment of meter charge costs must be coordinated between this proceeding and SPS's transmission rate case, otherwise SPS will double recover its meter costs during the period between the effective dates of the rates established in the transmission rate case, in which it moves its meter costs from production charges to transmission charges, and the proposed rates in this docket, in which it removes its meter costs from its production customer charge. Thus, New Mexico Cooperatives state that rates will be unjust and unreasonable if the overall meter charge amount established in the transmission rate case does not match the amount removed from the rate base in this proceeding. Furthermore, WTMPA states that SPS has not justified increasing the customer charge to $548 per meter and further, has not explained why the customer charge for Full Requirements Customers has not declined.

c. Answer

23. SPS asserts that all metering costs and all retail-related customer costs have been excluded from the expenses claimed. SPS contends that it has provided ample support for such costs.

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[12] *Xcel Energy Services, Inc.*, 122 FERC ¶ 61, 098 (2008).

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d. Commission Determination

24. We will accept SPS's proposed meter costs in this proceeding subject to the outcome of its transmission formula rate proceeding in Docket No. ER08-313-000. SPS states that it has removed the delivery point meter costs from the production rate and directly assigned those costs to the transmission rate. We agree with New Mexico Cooperatives that the treatment of meter charge costs should be coordinated between both proceedings to avoid any double recovery of meter costs and to ensure that the meter costs excluded from this proceeding equal the meter costs added to the transmission rate in Docket No. ER08-313-000.

5. Additional Cost of Service and Rate Design Issues

25. In addition to the issues raised above, WTMPA and New Mexico Cooperatives raised the following issues to be addressed at hearing, along with other issues that may arise at a later time.

a. Fuel Cost Adjustment Clause and Fuel Protocols

26. SPS proposes to raise its base cost of fuel in its fuel cost adjustment clause from $0.03443 per kilowatt-hour (KWh) to $0.03991 per KWh in keeping with a recent Commission decision[13] and submits Fuel Protocols that explain how purchased power expenses are recovered through the Fuel Cost Adjustment Clause.

27. New Mexico Cooperatives protest that SPS did not sufficiently explain the proposed revision to the Fuel Cost Adjustment Clause or the assumed $3 million in savings in fuel costs associated with the purchased power from the Lea Power facility, and therefore request that these issues be set for hearing. Regarding the Lea Power facility, New Mexico Cooperatives further argue that SPS cannot yet quantify the impact of the facility on costs or ratemaking and note that SPS has moved to remove related costs from its pending New Mexico Commission rate case. New Mexico Cooperatives also contend that the proposed Fuel Cost Adjustment Clause includes a credit for an unspecified "share" of margin from sales SPS makes to the SPP Energy Imbalance Services Market (EIS Market) and is unclear whether "share" means that 100 percent of such margins will be allocated to various customer classes, or if SPS will retain a portion of the margins on its EIS Market transactions. New Mexico Cooperatives further protest SPS's Fuel Protocol provision, which was copied from a settlement that SPS entered into with a specific party, asserting that the provision is not necessarily just and reasonable for all parties.

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[13] *See* Opinion No. 501 at P 36-49.

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28. SPS answers that the fuel savings from the purchase of the Lea Power plant will result from the lower heat rate due to greater efficiencies at the new plant that will displace energy currently being produced by older, less efficient plants. Moreover, SPS acknowledges that there are questions as to the correct accounting treatment for the Lea Power facility but still claims that the Lea Power facility lease payments need to be collected from customers. In addition, SPS clarifies that the Fuel Cost Adjustment Clause provides for the pass through of 100 percent of the margins associated with transactions into the SPP EIS Market and states that, regarding the Fuel Protocols, its explanation is sufficient and does not require additional testimony. SPS also states its changes to the Fuel Cost Adjustment Clause are not substantive and have no impact on the Full Requirements Customers.

b. Data Regarding Intangible Plant Additions

29. WTMPA and New Mexico Cooperatives contest SPS's projected plant additions and state that it is unclear as to whether significant portions of the projected intangible plant additions should be allocated to transmission, rather than power production.[14]

30. In its answer, SPS states that all software investment in Account No. 303 (Miscellaneous Intangible Plant) is allocated using the labor allocator. SPS states that a significant portion of such software is for general system use and is appropriately allocated to all functions. As to the remaining software, SPS states that it does not record such investment in specific production, transmission, distribution or general plant accounts. Therefore, SPS states that it is possible that some portion of the software used primarily for transmission is reflected in this production filing but, at the same time, the filing excludes some portion of any software used primarily to exclusively for production such as the Energy Supply Document Management System or the Energy Supply Maximo System.

c. Allocation of Costs to Interruptible Customers

31. SPS proposes to include interruptible loads in the demand allocation, contending that this ensures that interruptible loads pay their fair share of costs on the SPS system. SPS also states that it reflects payments in the allocated revenue requirements of the full requirements customers under its Wholesale Interruptible Load Management Program.

32. WTMA and New Mexico Cooperatives express concern regarding SPS's proposal to eliminate the credit for service provided to interruptible loads and instead include the

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[14] New Mexico Cooperatives also question whether the costs of Project No. 10810006, relating to SPP Market Phase 2, and Project No. 10810599, Utility Innovations 2007, including plug-in hybrid vehicles and smart distribution assets, are properly included in wholesale power rates.

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interruptible loads in the allocation process, denying the customers all of the margins earned by use of the assets they pay.

33. SPS answers that the Commission has recognized two alternative methods to allocate cost of service to interruptible customers: the allocation of costs to interruptible load, as SPS proposes, or revenue crediting, as supported by protestors. SPS contends that New Mexico Cooperatives attempted to quantify the revenue credit but have not considered whether they are better or worse off under the allocation method proposed by SPS.

d. Pension expense

34. WTMPA and New Mexico Cooperatives take issue with SPS's addition to rate base for the negative pension expense booked prior to the test year. SPS states that it has reflected the income earned by the external fund as a reduction to Account No. 926 and thereby as a reduction to cost of service.[15]

e. Corporate overhead costs

35. WTMPA and New Mexico Cooperatives take issue with the fact that SPS should demonstrate that is has removed Xcel Energy Services, Inc. (Xcel) and SPS corporate overhead costs associated with commodity trading from the wholesale cost of service rates.

36. SPS states that it allocated corporate overheads using the labor allocator and excluded all direct labor associated with proprietary transactions. Further, SPS contends that it is common rate making practice to allocate corporate overhead costs because such amounts are not recorded by function.

f. SLCA Energy Rider Credit

37. SPS proposes to eliminate the current $1.44 megawatt hour (MWh) rider credit under the Salt Lake City Area Integrated Projects Energy Rider (SLCA Energy Rider Credit), negotiated in the 2006 Rate Case settlement for Central Valley, Farmers, Lea County and Roosevelt County. SPS states that the effectiveness of the 2006 Rate Case settlement, including the rider credit, ends on the effective date of this filing.

38. New Mexico Cooperatives state that elimination of the SCLA Energy Rider Credit is unjust and unreasonable and that SPS does not provide any real justification for the elimination of the credit. Moreover, New Mexico Cooperatives contend that, without the rider credit, they will end up paying twice for transmission losses resulting from their

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[15] *Southern Company Services, Inc.*, 122 FERC ¶ 61,218, at P 21 (2008).

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allocations of WAPA power and that the issue of the rider credit should be set for hearing.

39. In its answer, SPS states that New Mexico Cooperatives already receive a credit against their fuel bill for the deliveries from WAPA. SPS reiterates that the rider credit was simply part of an overall financial consideration associated with lower rates negotiated in the 2006 Rate Case settlement.

g. Sharing of Intersystem Sales Margins

40. SPS proposes to credit the Full Requirements Customers' bills with 75 percent of their proportionate share of the margins SPS receives from generation book (intersystem) sales. SPS states that each credit will be reflected as a separate item on each Full Requirements Customer's monthly invoice.

41. WTMPA contends that SPS has not justified limiting Full Requirements Customers' share of intersystem sales margins to 75 percent and not 100 percent and has not provided a pass through mechanism or allocation methodology for the credits in the rate schedule. Furthermore, WTMPA states that SPS does not describe how the credit will be allocated among Full Requirements Customers or between wholesale customers and retail customers.

42. In its answer, SPS states that sharing the proportional wholesale share of intersystem sales margins encourages SPS to proactively seek out opportunities to make such sales and to reduce the cost of service to its Full Requirements Customers and other wholesale and retail customers. SPS states that customers are generally better served with a smaller share of a bigger pot of dollars used to reduce the cost of service than with 100 percent of a smaller pot of dollars. With respect to WTMPA's concern about the crediting mechanism, SPS states that it showed the operation of the bill credit on all three pages of Statement BG (Revenue Data to Reflect Changed Rates). SPS notes that if WTMPA requires more detail, the crediting mechanism is perhaps a matter for discussion.

h. Demand and Energy Sales to New Mexico Cooperatives

43. New Mexico Cooperatives contend that SPS's projected peak demands appear to over-estimate wholesale peak load and under-estimate retail peak load. New Mexico Cooperatives state that SPS provides no basis for the assumption that wholesale loads will increase at a rate approximately 40 percent greater than that for retail loads.

44. With respect to peak load growth, SPS states that in recent years, it has experienced higher growth rates for the wholesale class compared to the retail class. SPS asserts that the test year forecast reflects and continues this historical trend. Further, SPS emphasizes that if load growth was overstated in any way, any overstatement would work

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to the Company's detriment, not to the customers' detriment. SPS states that it faces a possible under recovery if the recent trend of greater wholesale growth reverses itself.

i. Multiplier to Lubbock's Billing Determinants

45. WTMPA supports the removal of the 2.5 percent multiplier to Lubbock Power and Light's (Lubbock) billing determinants, because the multiplier unreasonably increases the charges to Lubbock, and the current rates provide for coincident peak billing making the conversion factor no longer justified. SPS denies applying the 2.5 multiplier to Lubbock's billing determinants.

j. Limitations on Right to File with the Commission

46. WTMPA challenges SPS's proposal in which it retains full section 205 rights but limits WTMPA's section 206 rights by requiring SPS to first file for a rate increase before WTMPA may seek rate changes, in section 3 of the Total Requirements Transaction Agreement. SPS answers that it is willing to work with WTMPA to devise appropriate contractual provisions in the WTMPA agreement.

6. Rejection, Suspension and Hearing

a. SPS's Proposal

47. SPS seeks an effective date of June 1, 2008. SPS argues that its projected revenues resulting from the proposed rates are not substantially excessive and should warrant only a nominal suspension period under the Commission's suspension policy.[16]

b. Protests

48. New Mexico Cooperatives assert that the Commission should reject SPS's filing because it fails to provide any support for key elements of the filing and fails to comply with applicable Commission regulations. New Mexico Cooperatives emphasize three key reasons as to why SPS's filing should be rejected: (1) SPS's use of a 3 CP demand allocator instead of a 12 CP allocator; (2) SPS's elimination of the $1.44/MWh rider credit is unjust and unreasonable; and (3) SPS's filing provides inadequate data to

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[16] SPS notes that the requested effective date coincides with the projected in-service date for the Lea Power generator, meaning that the associated fuel savings will begin to flow through the fuel adjustment clause in the June 2008 reconciliation. SPS states that because the Full Requirements Customers will begin to benefit from the substantially lower system fuel costs associated with the Lea Power energy in June 2008, they should also begin to pay for the fixed costs of the Lea Power generator that SPS will incur to produce such fuel savings, effective June 1, 2008.

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determine whether SPS's projected plant additions are reasonable. In the alternative, New Mexico Cooperatives request partial summary disposition and suspension of the proposed rate increase for the full five-month period. New Mexico Cooperatives subsequently argue that, even with the 10.25 percent ROE and 12 CP allocator, SPS's proposal will still fail the Commission's *West Texas Utilities Company*[17] analysis because the ROE is too high and the Lea Power facility costs should be excluded. For these reasons, New Mexico Cooperatives contend that SPS's request for a nominal suspension should be denied. WTMPA also states that the proposed rates are excessive, and WTMPA supports a five month suspension and should be set for hearing.

c. Answer

49. SPS asserts that no aspect of the SPS filing is patently deficient and that there is no basis for rejection of the filing. As discussed above, in light of Opinion No. 501, SPS does not oppose New Mexico Cooperatives' request to use a 12 CP demand allocator for the rates at issue. Furthermore, SPS seeks rejection of New Mexico Cooperatives' motion for summary disposition regarding the projected additions to plant in rate base. SPS states that the Commission should summarily deny the motion of New Mexico Cooperatives and instead, affirm SPS's right to eliminate the $1.44 rider credit.

50. In addition, SPS renews its request for a nominal suspension in its answer. SPS asserts that it will experience significant financial burden if it must pay the substantial fixed costs of the Lea Power generator for five months without the contribution from the Full Requirements Customers who will benefit from the associated fuel savings through the Fuel Cost Adjustment Clause during the same period. SPS further contends that the *West Texas* analysis, using the 10.25 percent ROE and 12 CP allocator will yield a result that is not excessive and therefore merits a nominal suspension. SPS also argues that the Lea Power facility should not be excluded from the *West Texas* analysis. If the filing is set for hearing, SPS requests a 90-day period of settlement discussions before trial-type procedures begin.

d. Commission Determination

51. We find that SPS's proposed rate schedules raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

52. In *West Texas,* we explained that when our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive,

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[17] *West Texas Utilities Company*, 18 FERC ¶ 61,189, at 61,374 (1982) (*West Texas*).

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as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination indicates that the proposed rates may not yield substantially excessive revenues. Accordingly, the Commission will accept the proposed rates for filing, suspend them for a nominal period, to become effective on June 1, 2008, subject to refund, and set them for hearing, as ordered below.

53. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[18] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[19] The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, 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 a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) SPS's proposed rates, as discussed herein, are hereby conditionally accepted for filing and nominally suspended, to become effective June 1, 2008, subject to refund and subject to the outcome of hearing and settlement judge procedures as discussed in the body of this order.

(B) Within thirty days of the date of this order, SPS shall make a compliance filing to reflect all changes to which it has already agreed, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred on 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

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[18] 18 C.F.R. § 385.603 (2007).

[19] 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 this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

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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 SPS's proposed tariff sheet revisions. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2007), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within fifteen (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. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the date of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. 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 sixty (60) days thereafter informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If 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, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings 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)

Kimberly D. Bose,
Secretary.

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