

UNITED STATES OF AMERICA 110 FERC ¶62,083
FEDERAL ENERGY REGULATORY COMMISSION

United States Department of Energy
Western Area Power Administration
Amistad and Falcon Projects

Docket No. EF04-5101-000

ORDER CONFIRMING AND APPROVING RATE SCHEDULE
ON A FINAL BASIS

(Issued January 31, 2005)

Summary:

On April 23, 2004, the Deputy Secretary of Energy (Deputy Secretary) filed a request for final confirmation and approval of Western Area Power Administration's (Western) extension of the formula rate contained in Contract No. 7-07-50-P0890 (Contract), applicable to the sale of power and energy from the Amistad and Falcon Projects.¹ The Deputy Secretary placed the power rate formula into effect on an interim basis effective June 8, 2004,² and requests final confirmation and approval of the rate for the period June 8, 2004, through June 7, 2009.³

The charges for fiscal year 2004, calculated pursuant to the formula contained in the Contract, are estimated to be \$4,454,758. Under the Contract,

¹The Amistad and Falcon Projects are two multipurpose hydroelectric projects whose power output is sold to preference customers in Texas.

²Rate Order No. WAPA-111, placing the power rate formula into effect on an interim basis, was issued on April 20, 2004, under authority delegated to the Deputy Secretary by Department of Energy Delegation Order No. 00-037.00 (Delegation Order).

³The rate extension supersedes the present rate, which was approved on a final basis in *United States Department of Energy – Western Area Power Administration (Amistad and Falcon Projects)*, Docket No. EF99-5101-000, 90 FERC ¶ 62,042 (2000).

fixed monthly charges are assessed regardless of the amounts of power and energy made available. This order will benefit customers because it ensures the power sales rate is consistent with applicable law and is the lowest possible rate to customers consistent with sound business principles.

Notice of the application was published in the *Federal Register*, 68 Fed. Reg. 2,347 (2003), with comments, protests, or motions to intervene due on or before May 24, 2004. None were received. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to operation of Rule 214 of the Commission's Rule of Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

Standard of Review:

The Secretary of Energy has delegated the authority to confirm and approve Western's rates on a final basis to the Commission,⁴ and established the scope of Commission review. 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.⁵

The Commission is prohibited from reviewing policy judgments and interpretations of laws and regulations made by the power generating agencies.⁶

⁴Department of Energy Delegation Order No. 00-037.00, 1 FERC Stats. & Regs. ¶ 9,919 (2001).

⁵*Id.*

⁶The power generating agencies include the Bureau of Reclamation, the Army Corps of Engineers, and the International Boundary and Water Commission.
(continued)

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. 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.⁷

Discussion:

The terms of the Contract provide that all excess power and energy generated by the Amistad and Falcon Projects is sold to South Texas Electric Cooperative, Inc. and Medina Electric Cooperative, Inc. Under the formula, these entities pay the following, regardless of the amounts of energy and power made available:

- 1) the amount necessary to amortize the remaining investment costs of the power facilities at Amistad and Falcon over the remaining repayment periods; and
- 2) the projects' annual operation, maintenance, and replacement costs and the administrative costs of the International Boundary and Water Commission and Western.

By statute,⁸ Western must repay the federal investment within a reasonable

These agencies build and operate various projects. The Power Marketing Administrations, such as Western, market the output of the projects.

⁷See, e.g., *U.S. Department of Energy - Western Area Power Administration (Boulder Canyon Project)*, 61 FERC ¶ 61,229 at 61,844 (1992), *aff'd in relevant respects, Overton Power District No. 5, et al. v. Watkins, et al.*, 829 F. Supp. 1523 (D. Nevada 1993), *vacated and remanded with directions to dismiss, Overton Power District No. 5, et al. v. O'Leary, et al.*, 73 F. 3d 253 (1996); *U.S. Department of Energy - Western Area Power Administration (Salt Lake City Area Integrated Projects)*, 59 FERC ¶ 61,058 at 61,240-41 & nn17 and 20, *reh'g denied*, 60 FERC ¶ 61,002 (1992).

⁸ 46 U.S.C. § 825s (2000).

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period of time, which as a general practice is 50 years. Our review of Western's Power Repayment Study (PRS) indicates that the revenues to be collected under the proposed rate will 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 proposed rate recover no more than Western's annual costs and the remaining federal investment, the rate is the lowest possible to customers. Our review also indicates that the PRS was prepared in a manner consistent with Department of Energy Order No. RA 6120.2, which requires that Western's financial statements must be prepared in accordance with generally accepted accounting principles, as appropriate, and that its PRS be prepared using sound forecasting techniques designed to approximate as closely as possible actual results.

The Commission's review indicates the proposed formula rate will ensure Western will be able to meet its financial obligations. Therefore, the proposed rate is confirmed and approved as requested.

The Director:

Confirms and approves on a final basis Western's proposed formula rate contained in the Contract for the period June 8, 2004, through June 7, 2009.

Authorities:

This action is taken pursuant to authority delegated to the Director, Division of Tariffs and Market Development – West, under 18 C.F.R. § 375.307 of the Commission's Regulations. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Jamie L. Simler
Director
Division of Tariffs and Market Development – West