111 FERC ¶ 61,082
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Wayne-White Counties Electric Cooperative Docket No. ER05-597-000

ORDER ACCEPTING AND SUSPENDING PROPOSED REVISIONS TO OPEN ACCESS TRANSMISSION TARIFF AND PROPOSED FORMULA RATES

(Issued April 18, 2005)

1. On February 17, 2005, Wayne-White Counties Electric Cooperative (Wayne-White)[1] filed certain changes to the rate and non-rate terms and conditions of its Open Access Transmission Tariff (OATT), which include new formula rates. As discussed below, we accept and suspend the proposed revisions to the OATT and the proposed new formula rates, to become effective on May 1, 2005, subject to refund, and subject to further Commission orders. This order benefits customers by ensuring a timely inquiry into whether the filing is just and reasonable.

I. Background

2. In March 1999, Wayne-White paid off all of its debt to the Rural Utilities Service of the Department of Agriculture and, in doing so, became a public utility subject to the Commission's jurisdiction.[2] Wayne-White filed its first OATT in October 1999 and used

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[1] Wayne-White is a consumer-owned transmission and distribution cooperative that provides electric service to over 13,000 retail member-owners located in eleven Illinois Counties. In 2003, Wayne-White had a peak load of approximately 70 MW, and had electric sales of approximately 316,762 Mwhs.

[2] Wayne-White has two wholesale transmission customers: Illinois Power Company d/b/a AmerenIP, and Constellation Energy Commodities Group, Inc., formerly known as Constellation Power Source.

traditional utility cost-of-service ratemaking principles to derive rates for transmission service.[3] The OATT tracked language found in the *pro forma* tariff and also indicated in Schedules 1 through 6 that, because Wayne-White's control area services were performed by its control area operator, costs to the transmission customer would, for those various services, reflect only a pass-through of the costs charged to Wayne-White by the control area operator. The tariff also proposed Wayne-White-specific terms in Attachment C (method for determining available transmission capability), Attachment D (method for conducting system impact studies), Attachment F (network service agreement) and Attachment G (network operating agreement), as permitted by the Commission.

3. By order dated December 17, 1999, the Commission accepted Wayne-White's OATT for transmission service across Wayne-White's transmission system, and also authorized the Cooperative to sell wholesale power at market-based rates.[4] In the same order, the Commission granted Wayne-White's request for waiver of the requirements of Order Nos. 889 and 889-A OASIS and standards of conduct requirements.[5] Wayne-White's OATT, which remains in effect as of the instant filing, established a transmission rate of $1.097/kW-month for firm point-to-point (PTP) service, based on an annual transmission revenue requirement of $758,349.

II. <u>Instant Filing</u>

4. As indicated above, the existing OATT applies traditional cost-of-service ratemaking principles to derive stated transmission rates. Wayne-White now seeks authorization to implement an automatically-adjusting formula rate. The proposed formula rate uses the same basic rate methodology that was used to develop Wayne-White's original OATT rates, but it would automatically adjust Wayne-White's rates annually based on input from Wayne-White's Form No. 1. Specifically, the following changes to Wayne-White's OATT have been proposed.

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[3] At the time of its original OATT filing, Wayne-White had an additional wholesale customer, the City of Fairfield, Illinois, which purchased wholesale service from the Cooperative pursuant to an Operation Agreement. Service to Fairfield pursuant to that agreement terminated on January 1, 2005.

[4] *Wayne-White Counties Electric Cooperative*, 89 FERC ¶ 61,282 (1999).

[5] *Id.* at 61,817.

5. Wayne-White proposes changes to Schedules 7 and 8 and Attachment H. As already stated, Wayne-White has proposed new formula rates that would produce a rate of $1.501/kW-month firm PTP service based on an annual transmission revenue requirement of $987,408, which is an increase of $0.404/kW-month. Wayne-White proposes automatically-adjusting rates that would take effect each year on July 1, based on the data submitted in Wayne-White's Form No. 1. Wayne-White explains that it is making the change to a formula rate primarily because an automatically-adjusting formula rate will permit Wayne-White to recover its costs without the administrative expenses associated with repeated individual rate filings as Wayne-White's costs shift over time. Because of Wayne-White's limited size the administrative costs can be quite large relative to the size of the rate increase when a stated-rate approach is used. The proposed formula rate approach will likewise spare the Commission the costs associated with addressing periodic Wayne-White transmission rate cases.[6] Wayne-White states that this approach is consistent with the Commission's precedent, which permits use of transparently-constructed formula rates that adjust automatically without a section 205 rate filing.[7]

6. Wayne-White proposes a new schedule, Schedule 9, which contains a sample sheet that demonstrates how the formula appearing in Schedules 7 and 8 will be applied.

7. Wayne-White also proposes a number of minor changes to the non-rate terms and conditions of its OATT, in Schedules 1, 2, and 3. Wayne-White has made some minor changes to the provisions governing Scheduling System Control and Dispatch Service, Reactive Supply and Voltage Control from Generation Sources Service, and Regulation and Frequency Response Service, in order to remove outdated references to Soyland Power Cooperative (Soyland). When the OATT was originally filed, Soyland provided Wayne-White's full power supply requirements. The proposed changes reflect the fact that Wayne-White no longer purchases ancillary services from Soyland and, therefore, delete the outdated references to Soyland, but leave the generic references to Wayne-

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[6] Exhibit No. WWC-1, Aff. of Derick Colgan, p. 5-8.

[7] Wayne-White at 3 n.2 (citing *Public Utilities Commission v. FERC*, 254 F.3d 250, 254 (D.C. Cir. 2001); *San Diego Gas & Elec. Co.*, 104 FERC ¶ 61,149, at P 2, 3, 7 (2003)).

White's current provider for these services. Wayne-White also states that this new generic language will not need to be updated if its provider of ancillary services changes again.

8. Wayne-White requests elimination of the Index of Point-to-Point Transmission Service Customers (Attachment E) and Index of Network Integration Transmission Service Customers (Attachment I). Wayne-White states that these two indices are no longer necessary because the same information is provided to the Commission in Wayne-White's Electric Quarterly Reports and the Commission has approved the deletion of these Attachments in other cases.[8]

9. Section 28.5, which addresses real power losses for network integration transmission service, does not state a particular loss factor, but rather contains only a parenthetical notation that the loss factor will be completed by the Transmission Provider. Wayne-White proposes to revise section 28.5 to provide that the real power loss factor for network integration transmission service will be determined by Wayne-White based on the best available information at the time of the transaction. Wayne-White further states that the new language mirrors the real power loss provision that currently appears in section 15.7 for PTP transmission service.

10. Because of the limited size of the requested rate increase, Wayne-White states that its filing falls within the abbreviated filing threshold provided by 18 C.F.R. § 35.13(a)(2) (2004), and, therefore, seeks waiver of any additional Part 35.13 filing requirements. In addition, Wayne-White requests waiver of the Commission's prior notice requirement in order to permit an effective date of April 18, 2005.

III. Notice of Filing, Interventions and Protests

11. Notice of Wayne-White's filing was published in the *Federal Register*, 70 Fed. Reg. 10,390 (2005), with interventions and protests due on or before March 10, 2005.

Constellation Energy Commodities Group, Inc. (Constellation) filed a timely motion to intervene and protest.

[8] *See* Wayne-White at 4 n.3 (*citing Virginia Elec. and Power Co.*, 108 FERC ¶ 61,108, at P 30-31 (2004) (approving the deletion of OATT Attachments E and I as a "ministerial change," on the grounds that the transmission Provider was already required to submit Electric Quarterly Reports)).

12. Constellation argues that Wayne-White has not complied with the Commission's regulations regarding construction work-in-progress (CWIP). Wayne-White has proposed to include $1.2 million dollars of CWIP in its plant-in-service, which accounts for more than 29 percent of the proposed rate increase. While the Commission allows utilities to propose the inclusion of 50 percent of non-pollution control CWIP in rate base, such proposals must meet the specific requirements set forth in Part 35 of the Commission's regulations. Specifically, section 35.13(h)(38), 18 C.F.R. § 35.13(h)(38) (2004), requires the submission of Statement BM – Construction Program Statement, and section 35.25, 18 C.F.R. § 35.25 (2004), requires that the utility develop forward looking allocators for CWIP expenses. This information must be in sufficient detail to permit the examination and verification of the forward looking ratios' recognition of each customer's plans for alternative supply arrangements. Constellation states that the utility must also demonstrate that it has discontinued Allowance for Funds Used During Construction on the date that it proposes to include CWIP in rate base, must adopt certain accounting procedures, and must address certain anticompetitive consequences of its CWIP proposal. Constellation argues that since Wayne-White has not complied with these regulations, the Commission should reject Wayne-White's proposed inclusion of CWIP in its formula rate, and direct Wayne-White to submit a compliance filing reflecting the elimination of CWIP from its revenue requirement.

13. Constellation contends that Wayne-White failed to properly adjust its rate divisor in developing the unit charge to reflect the conversion of the City of Fairfield to PTP service. In the past, Wayne-White served the City of Fairfield's load using network service to provide bundled requirements service. Currently, Constellation serves the City of Fairfield's load pursuant to a 21 MW reservation for firm PTP service. Constellation further contends that, while the proposed formula rate correctly recognizes that the rate divisor used to develop the unit charge for PTP service should be the sum of the average monthly transmission peak for network service and total billing demand for PTP service, Wayne-White has not proposed any adjustment to its proposed rate divisor to reflect the fact that, in 2003 and 2004, the City of Fairfield was served using network service, but is now served under PTP service. Constellation argues that this results in a mismatch between the way that Wayne-White's rate is derived and the manner in which the rate is assessed, which ensures that Wayne-White will recover significantly in excess of its costs, with the greatest bulk of that excess being collected from Constellation.

14. Constellation argues that Wayne-White has failed to adequately support its inclusion of retail customer service expenses in its transmission revenue requirement. In 2003, Wayne-White had only one transmission customer taking service under its OATT (Illinois Power for 2 MW), and its total salaries and wages booked directly to

transmission amounted to only $31,000; however, Wayne-White now proposes to include over $100,000 (more than 10 percent of its total proposed revenue requirement and 37 percent of its proposed rate increase) of "Customer Account" and "Customer Service & Informational" costs in its transmission revenue requirement. Constellation contends that these costs are not explained and are typically related primarily to retail service. Constellation states that the inclusion of these costs in Wayne-White's transmission revenue requirement contradicts established principles of cost causation, and appears to be designed to improperly shift costs to competing wholesale suppliers such as Constellation.

15. Constellation further argues that Wayne-White has not demonstrated that the facilities included in the transmission revenue requirement are properly characterized as transmission facilities. Constellation states that, based on a review of Wayne-White's transmission line statistics included in Wayne-White's Form No. 1, many of the transmission lines appear to be radial in nature in that they either originate or terminate in substations from which no other transmission lines originate. Constellation maintains that in its 2003 Form No. 1, Wayne-White classified 100 percent of its substations as "distribution," which suggests that radial transmission lines that terminate in those substations, and that are utilized exclusively to deliver retail power to end use customers, should also be classified as distribution facilities, notwithstanding their 69 kV voltage.

16. Furthermore, Constellation contends that Wayne-White has not adequately supported its 2.3 percent rate of return on equity (ROE) adder. In his affidavit, Wayne-White's witness Mr. William K. Edwards discusses how Wayne-White is in financial trouble because it has allowed its equity (*i.e.*, patronage capital) to fall below the level desired by Wayne-White's lender, the National Rural Utilities Cooperative Finance Corporation. Therefore, Mr. Williams proposes a 2.3 percent adder derived in accordance with the established practice for cooperatives, in order to raise Wayne-White's equity level to 40 percent of its total capitalization.[9] Constellation states that, while it appreciates Wayne-White's desire to increase its patronage capital, Constellation questions the propriety of Wayne-White's attempt to recover a historical patronage capital shortfall through current transmission rates. Further, Constellation argues that the proposed adder does not constitute part of Wayne-White's current cost of providing transmission service, and appears designed to improperly increase the rate paid by Constellation.

[9] Exhibit No. WWC-2, Aff. of William K. Edwards, p. 14.

17. Constellation argues that Wayne-White's proposed rate increase is excessive and warrants the maximum suspension. Further, Constellation states that Wayne-White's proposed cost of service, when adjusted to account for improper rate treatments, demonstrates that the rate should be reduced, not increased.

18. On April 4, 2005, Wayne-White and Constellation filed a joint motion requesting that the Commission suspend Wayne-White's proposed changes for thirteen days, so that any rate increase will not take effect before May 1, 2005, and would take effect subject to refund on that date. Further, Wayne-White and Constellation request that the Commission defer further action and proceedings in this docket until a settlement between the parties (which the movants advise has been reached in principle) is filed, as acceptance of the settlement would moot Constellation's protest. Movants state that they intend to file the settlement, which will incorporate lower rates than Wayne-White had originally proposed in its February 17, 2005 filing, by April 22, 2005.

IV. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Proposed Revisions

20. While the Commission broadly supports parties using formula rates, Wayne-White's filing raises issues of material fact that cannot be resolved based on the record before us.Our preliminary analysis of Wayne-White's filing indicates that it has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Wayne-White and Constellation also state that they have reached a settlement in principle that is intended to resolve all issues in this proceeding. They have filed a joint motion requesting that the Commission suspend the filing for thirteen days, make it effective thereafter, subject to refund, and defer further action in this docket until the settlement is filed. Accordingly, we will accept Wayne-White's proposed revisions for filing, and suspend them and make them effective May 1, 2005, subject to refund and subject to further Commission orders, as requested.

The Commission orders:

The proposed revisions to Wayne-White's OATT and the proposed formula rates are hereby accepted for filing, and suspended, to become effective on May 1, 2005, subject to refund, and subject to further Commission orders, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.