

FILE

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Date of Hearing: 10/5/11

Case No. 10-2376-EL-UNC

PUCO Case Caption: Ohio Power and
Columbus Southern Power

List of exhibits being filed:

FES Ex 7, 8, 9

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Reporter's Signature: Karen Sue Gibson
Date Submitted: 10/19/11

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
Application of Ohio Power :
Company and Columbus Power :
Company for Authority to : Case No. 10-2376-EL-UNC
Merge and Related :
Approvals. :

In the Matter of the :
Application of Columbus :
Southern Power Company :
and Ohio Power Company :
for Authority to Establish :
a Standard Service Offer : Case No. 11-346-EL-SSO
Pursuant to §4928.143, : Case No. 11-348-EL-SSO
Ohio Rev. Code, in the :
Form of an Electric :
Security Plan. :

In the Matter of the :
Application of Columbus :
Southern Power Company : Case No. 11-349-EL-AAM
and Ohio Power Company : Case No. 11-350-EL-AAM
for Approval of Certain :
Accounting Authority. :

In the Matter of the :
Application of Columbus :
Southern Power Company to : Case No. 10-343-EL-ATA
Amend its Emergency :
Curtailement Service :
Riders. :

In the Matter of the :
Application of Ohio Power :
Company to Amend its : Case No. 10-344-EL-ATA
Emergency Curtailement :
Service Riders. :

In the Matter of the :
Commission Review of the :
Capacity Charges of Ohio : Case No. 10-2929-EL-UNC
Power Company and Columbus :
Southern Power Company. :

1 In the Matter of the :
 Application of Columbus :
 2 Southern Power Company for:
 Approval of a Mechanism to: Case No. 11-4920-EL-RDR
 3 Recover Deferred Fuel :
 Costs Ordered Under Ohio :
 4 Revised Code 4928.144. :
 :

5 In the Matter of the :
 Application of Ohio Power :
 6 Company for Approval of a :
 Mechanism to Recover : Case No. 11-4921-EL-RDR
 7 Deferred Fuel Costs :
 Ordered Under Ohio Revised:
 8 Code 4928.144. :
 :

9 - - -

10 PROCEEDINGS

11 before Ms. Greta See and Mr. Jonathan Tauber,
 12 Attorney Examiners, at the Public Utilities
 13 Commission of Ohio, 180 East Broad Street, Room 11-A,
 14 Columbus, Ohio, called at 9 a.m. on Wednesday,
 15 October 5, 2011.

16 - - -

17 VOLUME II

18 - - -

21 ARMSTRONG & OKEY, INC.
 22 222 East Town Street, Second Floor
 Columbus, Ohio 43215-5201
 23 (614) 224-9481 - (800) 223-9481
 Fax - (614) 224-5724

24 - - -
 25

FES Exhibit 7

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Docket

PART 1 OF 2

October 25, 2010

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: *Southwestern Electric Power Company.*
Docket Nos. ER08-1501-~~000~~ and ER09-86-~~000~~

FILED
SECRETARY OF THE
COMMISSION
2010 OCT 25 P 4:45
FEDERAL ENERGY
REGULATORY COMMISSION

Dear Secretary Bose:

Pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2010), *Southwestern Electric Power Company* ("SWEPCO") hereby submits for Commission approval an executed Settlement Agreement between and among SWEPCO, the City of Prescott, Arkansas ("Prescott"), and the City of Minden, Louisiana ("Minden") (Prescott and Minden may be referred to as the "Customers," and SWEPCO, Minden, and Prescott may be referred to as the "Parties"). The Settlement Agreement is submitted as Attachment A hereto. As discussed in more detail below and as set out in the Settlement Agreement, Commission approval of the Settlement Agreement consistent with its terms and conditions will dispose of all of the issues pending before the Commission in these dockets and thereby eliminate the need for any further litigation.

In accordance with Rule 602(c)(1)(ii), this transmittal letter will serve as the Explanatory Statement. Submitted with this transmittal letter and the Settlement Agreement are two "Revised Agreements," as discussed below and in the Settlement Agreement, and a draft letter order approving the Settlement Agreement and accepting for filing the Revised Agreements. SWEPCO is submitting the requisite number of copies for filing of the Revised Agreements, as required under Rule 602(c)(2).

I. BACKGROUND

This proceeding has its origin in SWEPCO's filing of two rate schedules for wholesale service to the Customers. In Docket No. ER08-1501-000, SWEPCO submitted the Power Supply Agreement By and Between Southwestern Electric Power Company and the City of Prescott, Arkansas, dated June 30, 2008 ("Prescott Agreement"). In Docket No. ER09-86-000, SWEPCO submitted the Power Supply Agreement By and Between Southwestern Electric Power Company and the City of Minden, Louisiana, dated October 14, 2008 ("Minden

The Honorable Kimberly D. Bose
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Agreement"). Prescott is a municipal corporation organized and existing under the laws of the State of Arkansas. Prescott's system is interconnected with the Entergy Corporation transmission system and Prescott has operated within the Entergy balancing authority area. Minden is a municipal corporation organized and existing under the laws of the State of Louisiana. Minden's system also is interconnected to the Entergy transmission system and Minden likewise has operated within the Entergy balancing authority area.

Prescott and Minden are established municipal utilities with a long history of managing their power supply requirements. Prior to entering into its agreement with SWEPCO, Prescott was served by the Arkansas Electric Cooperative Corporation. Minden previously purchased wholesale power from SWEPCO but in anticipation of the expiration of that arrangement, Minden conducted a request for proposals for alternative power supply arrangements, and ultimately selected SWEPCO. While separately negotiated, the Prescott Agreement and the Minden Agreement each provides for SWEPCO to supply "Requirements Service," which the agreements define generally as the capacity and firm energy necessary for Prescott and Minden to serve their respective retail loads (including associated transmission and distribution losses). The agreements each require SWEPCO, for the term of the agreements, to plan for the Customers' respective loads in the same manner as SWEPCO plans for and serves its retail customers. The Prescott Agreement has a thirty-year term, while the Minden Agreement has a twenty-year term.

As filed, the Prescott Agreement and the Minden Agreement each included an agreed-upon cost-of-service formula intended to enable SWEPCO to recover the costs it incurs to provide Requirements Service under the agreements. These formulas were modeled after formulas set out in agreements entered into by SWEPCO and certain of its utility affiliates that previously had been accepted for filing by the Commission.

SWEPCO submitted the Prescott Agreement and the Minden Agreement for filing on September 5, 2008, and October 17, 2008, respectively. Minden filed a timely motion to intervene; no other interventions or protests were filed in either docket. On December 30, 2008, the Commission issued an order accepting the Prescott Agreement and Minden Agreement for filing and establishing hearing and settlement judge procedures. *Southwestern Electric Power Co.*, 125 FERC ¶ 61,329 (2008). Paragraph 15 of that order stated that SWEPCO had not "adequately supported its proposed formula-based ROE" that was included as part of the cost-of-service formulas in each of the agreements.

Prescott and SWEPCO filed timely requests for rehearing of that order, and Minden filed comments in support of SWEPCO's request for rehearing. The Parties indicated in those pleadings that the bilateral agreements had been negotiated at arms-length, and they urged the Commission to accept the agreements as filed and without the need for further proceedings, consistent with the Supreme Court's ruling in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. ___, 128 S. Ct. 2733, 2746 (2008) ("*Morgan Stanley*"). On March 2, 2010, SWEPCO filed an unopposed motion requesting expedited ruling of the pending rehearing requests, contending that the Supreme Court's second *Mobile-Sierra* ruling, in *NRG Power Marketing, LLC v. Maine Public Utilities Commission*,

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558 U.S. ___, 130 S.Ct. 693 (2010) ("*NRG Power Marketing*"), confirmed the holding in *Morgan Stanley*. The Commission has not acted on these pleadings.¹

On January 6, 2009, the Chief Administrative Law Judge designated Judge Karen V. Johnson as the Settlement Judge in this proceeding. On February 18, 2009, representatives of the Parties and the Commission's Trial Staff participated in an initial settlement conference before Judge Johnson. Thereafter, the Parties and the Trial Staff continued negotiations. The executed Settlement Agreement and the executed Revised Agreements, which are discussed in detail below, are the product of those discussions.

II. THE SETTLEMENT AGREEMENT AND THE REVISED AGREEMENTS

In accordance with its terms, the Settlement Agreement disposes of all issues related to the rates, terms, and conditions under the Prescott Agreement and the Minden Agreement and, when approved by the Commission, will terminate the proceedings pending in these dockets. Set out below is an overview of the settlement and a brief explanation of the Settlement Agreement and the Revised Agreements.²

A. Settlement Agreement

Article I of the Settlement Agreement provides a brief background of this proceeding. The key provisions of the Settlement Agreement are set out in Article II. In particular, Sections II.1 and II.2 provide that (i) SWEPCO will continue to provide Requirements Service to Prescott pursuant to the "Revised and Restated Power Supply Agreement By and Between Southwestern Electric Power Company and the City of Prescott, Arkansas" (Attachment B hereto), and will serve Minden pursuant to the "Revised and Restated Power Supply Agreement By and Between Southwestern Electric Power Company and the City of Minden, Louisiana" (Attachment C hereto) (collectively, the "Revised Agreements"), and (ii) the cost-of-service formulas originally included in the Prescott Agreement and the Minden Agreement will be replaced and superseded by the formulas agreed to as part of this settlement and included in the Revised Agreements (referred to in the Settlement Agreement as the "Settlement Formulas").

The remaining provisions in Article II provide for implementation of the Settlement Agreement. For example, Section II.3 provides that the Parties will not be obligated to provide or take service under the Settlement Agreement and the Revised Agreements unless the Commission approves the Settlement Agreement and accepts for filing the Revised Agreement

¹ If the Commission approves the Settlement Agreement without condition or modification, and thereby permits the Revised Agreements to become effective as agreed to by the Parties, SWEPCO's request for rehearing may be treated as having been withdrawn. SWEPCO stresses, however, that such withdrawal is made without prejudice to SWEPCO or any of its utility affiliates asserting the positions raised in that request in any future Commission proceeding.

² The Settlement Agreement and the Revised Agreements speak for themselves and nothing herein is intended to vary or modify the terms and conditions of those documents. Because there are only minor differences between the two Revised Agreements, for purposes of this explanatory statement they generally are discussed in tandem.

The Honorable Kimberly D. Bose
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without condition or modification. Section II.4 provides that SWEPCO will begin implementing the Settlement Formulas for service rendered on the first day of the month after the month in which the Commission approves the Settlement Agreement in accordance with its terms. Any refunds or surcharges resulting from any differences between the charges that SWEPCO collected for service provided in 2009 under the Prescott Agreement and the Minden Agreement as originally filed and the charges that would have been calculated under the Settlement Formulas will be reimbursed/surcharged within 45 days of the issuance of a Commission order approving the settlement; any such differences applicable to the charges that SWEPCO collected for service provided after 2009 will be reimbursed/surcharged in accordance with the annual "true-up" provisions in the Revised Agreements. Finally, Section II.5 memorializes the Parties' agreement that the provisions of the Settlement Agreement shall not be subject to change under Sections 205 or 206 absent the written agreement of the Parties, and that the standard of review for changes unilaterally proposed by a Party or the Commission, acting *sua sponte* or at the request of a third party, shall be the public interest standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), *Morgan Stanley*, 554 U.S. ___, 128 S.Ct. 2733 (2008), and *NRG Power Marketing*, 558 U.S. ___, 130 S.Ct. 693 (2010).

The final provisions of the Settlement Agreements, in Article III, contain the standard provisions under Commission Rule 602. For example, the provisions make clear that nothing in the Settlement Agreement or the Revised Agreements constitutes the position of a Party or a "settled practice," as that term was interpreted in *Public Service Commission of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980); that the Settlement Agreement and the Revised Agreements are for the purpose of this proceeding only and cannot be relied on in other proceedings; that the discussions leading to the settlement are confidential; and that the Parties agree that SWEPCO may withdraw the Settlement Agreement and the Revised Agreements if the Commission does not approve the Settlement Agreement and accept the Revised Agreements without conditions or modifications.

B. The Revised Agreements

Although the Commission's December 30, 2008 order addressed only the ROE provision in the Prescott Agreement and the Minden Agreement, at the urging of the Trial Staff, the Parties agreed to a substantial number of revisions to the agreements and to the cost-of-service formulas originally included in the agreements. As a result, the Parties agreed to restate the agreements (the Revised Agreements) and the formulas (the Settlement Formulas).³ The Revised Agreements, once accepted by the Commission, are made effective back to January 1, 2009, and run through the terms provided in the original agreements, although Section 2.02 now provides

³ In accordance with Order No. 614, the revised Prescott Agreement has been designated as SWEPCO's "First Revised FERC Rate Schedule No. 127" and the revised Minden Agreement has been designated as SWEPCO's "First Revised FERC Rate Schedule No. 128." In addition, because the effective date of the Revised Agreements pre-dates the effectiveness of Order No. 714, SWEPCO is not submitting the Revised Agreements in the eTariff format. SWEPCO will make the necessary conforming filing no later than forty-five days after the Commission issues an order approving this settlement in accordance with its terms.

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SWEPCO with the right to provide the Customers with three years' prior written notice to terminate the Revised Agreements. SWEPCO will continue to provide the basic Requirements Service, albeit at rates that are calculated in a substantially different manner than under the original agreements. Below, SWEPCO provides an overview of certain of the more substantial revisions to the agreements.

In various places, the Revised Agreements include language that expressly confirms the Commission's various filing requirements. For example, Section 2.03 provides for the filing of termination notices if required by Commission regulation. Similarly, requirements to file revised rates under Sections 205 and/or Section 206 are included in Section 3.01 (rates for new service to load in excess of normal load growth); Section 3.06 (rate changes to reflect certain orders by state regulatory commissions); Section 4.11 (Prescott)/Section 4.13 (Minden) (changes to the rate formulas to reflect changes in FERC Form 1); Section 4.13 (Prescott)/Section 4.15 (Minden) (changes to the rate formulas to reflect changes in the Southwest Power Pool, Inc.'s treatment of certain interconnection costs); and Section 15.02 (changes to rates and terms resulting from arbitration awards). Section 14.01 includes new language confirming the Commission's Federal Power Act authority, including the ability to require changes to the Settlement Formulas consistent with the *Mobile-Sierra* provisions in Section 15.03. The *Mobile-Sierra* provisions themselves were amended to more accurately reflect the Supreme Court decisions in *Morgan Stanley* and *NRG Power Marketing*.

In response to the concern raised in the Commission's December 30, 2008 order, the return on common equity ("ROE") provision (Section 4.03 for Prescott; Section 4.05 for Minden) sets out a stated ROE of 11.1% and provides that the ROE may be changed only through filings under Section 205 and/or 206 (any such filings to be reviewed under the "just and reasonable" standard).

The Parties also revised the provisions under which SWEPCO recovers expenditures for construction work in progress ("CWIP") (Section 4.04 for Prescott; Section 4.06 for Minden). SWEPCO will include: (a) 100 percent of expenditures for Pollution Control Facilities and Fuel Conversion Facilities (as defined in Section 35.25 of the Commission's regulations) recorded on SWEPCO's books and records as CWIP, and (b) 50 percent of SWEPCO's expenditures for all other CWIP expenditures. SWEPCO will file annually with the Commission projected (i.e., budgeted) and actual CWIP expenditures with supporting workpapers (which also will be supplied to the Customers). The projected expenditures will be used to derive the projected formula rates beginning each April 1st of the then-current calendar year in the same manner as are other projected costs that populate the formula for that calendar year. Likewise, the actual CWIP expenditures for that calendar year will be used along with other actual costs to perform the true-up that SWEPCO completes by May 31st each year for the prior year. SWEPCO will charge and collect rates based on the true-up CWIP costs subject to further recalculation if subsequently required by the Commission. This process is very similar to the Commission-approved process that SWEPCO uses for its adjustment of "post-employment benefits other than pensions" (or PBOPs), and it was accepted for filing in *Southwestern Electric Power Company*, Docket Nos. ER10-207 and ER10-208, by Letter Order issued December 16, 2009. The revised CWIP provision also states that SWEPCO will adjust its production invested capital to ensure that the Customers will not be charged for capitalized AFUDC and corresponding amounts of CWIP included in rate base.

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Revised provisions addressing PBOPs and Post Employment Benefits (PEBs) also are included in the Revised Agreements (Section 4.05 for Prescott; Section 4.07 for Minden). These provisions are consistent with SWEPCO's practice for other wholesale requirements contracts, as evidenced by Commission's most recent Letter Order issued June 25, 2010, in *Southwestern Electric Power Co.*, Docket No. ER10-1298. Like the CWIP expenditures, SWEPCO will file annually with the Commission the company's projected and actual PBOP and PEB expenditures with supporting workpapers that also will be supplied to the Customers. The projected PBOP and PEB expenditures will be used to derive SWEPCO's projected formula rates beginning each April 1 and trued-up in connection with the annual adjustment made in May of the following year. SWEPCO will revise its PBOP and PEB costs subject to further recalculation if subsequently required by the Commission. SWEPCO proposes to include the Prescott and Minden dockets with its annual PBOP/PEB filings and include in those filings the CWIP information discussed above.

The Revised Agreements include new provisions for the sharing of certain off-system sales ("OSS") margins (Section 4.06 for Prescott; Section 4.08 for Minden). At the outset, it is important to stress that this provision applies only to the margins (the portion of the revenues above the incremental costs allocated to the sales) realized from SWEPCO's off-system energy sales), and to the extent that SWEPCO makes off-system sales that include a capacity charge, that portion of the sales will be directly credited to the customers. So, for example, if SWEPCO makes an off-system market-based energy sale for \$50 MWh during an hour in which SWEPCO's incremental cost was \$40 MWh, only the \$10 margin is covered by this provision, as \$40 will be credited toward SWEPCO's fuel costs for the month. The Parties have agreed that the fifty percent of the OSS margins will be shared by SWEPCO, but only in years in which SWEPCO earns total-company OSS margins in excess of \$10,500,000; SWEPCO will not be entitled to share in OSS margins in any calendar year when total-company OSS margins do not exceed \$10,500,000. All amounts retained by the Customers will reduce the total production cost calculated in the formula rates. As with CWIP and PBOPs/PEBs, SWEPCO will provide the Customers with supporting workpapers each year supporting the projected and actual calculation of the OSS Margins and the amounts, if any, to be retained by SWEPCO.

A new provision has been included (Section 4.12 for Prescott/Section 4.14 for Minden) that sets out a framework for the Customers to review SWEPCO data supporting the annual formula rate adjustments. The Customers may request such data within 60 days after SWEPCO provides the Customers with the adjusted rates and supporting information in accordance with the annual adjustment provisions, and SWEPCO will make reasonable efforts to respond to such information requests within 30 days. Any disputes concerning the reasonableness of the information requests or SWEPCO's responses will be resolved in accordance with the Revised Agreements' dispute resolution provisions.

Finally, Section 4.11 of the Prescott Revised Agreement and Section 4.13 of the Minden Revised Agreement provide that no changes to the ROE, CWIP percentages, OSS margin provision, depreciation rates, or amortizations set out in the agreements or in the cost of service formulas may be implemented prior to Commission acceptance or approval under Sections 205 and/or 206. The *Mobile-Sierra* provision in Section 15.03 states that a Party shall not unilaterally apply to change the provisions relating to CWIP expenses, PBOP/PEB expenses, and OSS margins; absent agreement of the Parties to change those provisions, the standard for review

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 October 25, 2010
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for such changes unilaterally proposed by a Party or by the Commission (whether acting on behalf of itself or a non-contracting third party) will be the "public interest" standard as articulated in *Mobile*, *Sierra*, *Morgan Stanley*, and *NRG Power Marketing*.

C. Revised Formulas

The Revised Formulas reflect the various substantive changes to the Revised Agreements discussed above. In addition, with the Staff's assistance, SWEPCO made numerous edits and revisions designed to clarify the presentation of the formulas and more explicitly state the various Form 1 references to cost data that will populate the formulas. These changes will make it easier for the Customers to review the annual adjustments and verify that SWEPCO has correctly implemented the formulas. Also included, as Attachment D hereto, are versions of the Prescott and Minden Revised Formulas populated with SWEPCO's actual 2008 cost data that illustrate the implementation of the Revised Formulas.

III. CONCLUSION

For all of the reasons provided herein, SWEPCO submits that the Settlement Agreement and the Revised Agreements are fair and reasonable and in the public interest. These documents have been carefully reviewed and executed by the Customers. As such, the Commission should approve the Settlement Agreements and accept for filing the Revised Agreements without condition or modification.

As required under the Chief Judge's Notice to the Public of Information to be Provided with Settlement Agreements, SWEPCO states that (a) the settlement does not raise any major implications or policy implications, (b) approval of the settlement should not affect any other pending cases, (c) the settlement does not raise issues of first impression and there are no previous reversals on the issues involved, and (d) the Revised Agreements carefully delineate those provisions that are subject to change, either by the Parties or the Commission (acting on behalf of itself or third parties), only pursuant to the *Mobile Sierra* public interest standard of review set forth in *Morgan Stanley* and *NRG Power Marketing*. Changes to the Settlement Agreement likewise are subject to that same public interest standard.

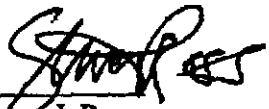
The Settlement Agreement and the Revised Agreements have been served on the Customers and the Trial Staff. Pursuant to Rule 602(f)(2), Initial Comments must be filed within twenty days, or by November 15, 2010, and Reply Comments within thirty days, or by November 24, 2010. As set forth in Rule 602(f)(3), failure to file comments within these time periods will be deemed a waiver of the right to file comments on the Settlement Agreement or the Revised Agreements. Finally, included as Attachment E hereto is a draft letter approving the Settlement Agreement and accepting for filing each of the Revised Agreements.

The Honorable Kimberly D. Bose
October 25, 2010
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If there are any questions concerning any aspect of this letter or the attached Settlement Agreement or the Revised Agreements, please do not hesitate to contact the undersigned.

Respectfully submitted,



Steven J. Ross

Counsel for
Southwestern Electric Power Company

Attachments

cc: The Honorable Karen V. Johnson
All parties
(w/attachments)

FES Exhibit 8

ATTACHMENT A

**SETTLEMENT AGREEMENT BY AND AMONG SWEPCO,
PRESCOTT, AND MINDEN**

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Southwestern Electric Power Company))	Docket Nos. ER08-1501-000 ER09-86-000
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**SETTLEMENT AGREEMENT
October 20, 2010**

This Settlement Agreement, entered into pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, ("Commission"), is between and among the City of Prescott, Arkansas ("Prescott"), the City of Minden, Louisiana ("Minden"), and Southwestern Electric Power Company ("SWEPCO"). Prescott, Minden, and SWEPCO collectively may be referred to as "Parties" and individually as a "Party." When approved by the Commission in full accordance with the terms herein, this Settlement Agreement will dispose of, with finality, the matters described herein.

I. BACKGROUND

1. This Settlement Agreement disposes of all issues concerning the rates, terms and conditions under the two SWEPCO rate schedules pending before the Commission in these dockets:

A. *Power Supply Agreement By and Between Southwestern Electric Power Company and the City of Prescott, Arkansas, Dated as of June 30, 2008 ("Prescott Agreement"); and*

B. *Power Supply Agreement By and Between Southwestern Electric Power Company and the City of Minden, Louisiana, Dated as of October 14, 2008 ("Minden Agreement").*

2. Prescott is a municipal corporation organized and existing under the laws of the State of Arkansas. Prescott's system is interconnected with the Entergy Corporation transmission system and Prescott has operated within the Entergy balancing authority area. Minden is a municipal corporation organized and existing under the laws of the State of Louisiana. Minden's system also is interconnected to the Entergy transmission system and Minden has operated within the Entergy balancing authority area.

3. The Prescott Agreement and the Minden Agreement provide for SWEPCO to supply Requirements Service as necessary for Prescott and Minden to serve their respective retail loads. As originally executed, the Prescott Agreement and the Minden Agreement each included agreed-upon cost-of-service formulas ("Original Formulas") intended to enable SWEPCO to recover the costs incurred by SWEPCO in connection with providing Requirements Service under the agreements.

4. The Prescott Agreement and the Minden Agreement were submitted for filing with the Commission on September 5, 2008 (Docket No. ER08-1501) and October 17, 2008 (Docket No. ER09-86), respectively. Minden filed a timely motion to intervene on November 7, 2008. No other interventions or protests were filed in either docket. On December 30, 2008, the Commission issued an order accepting the Prescott Agreement and Minden Agreement for filing and establishing hearing and settlement judge procedures. *Southwestern Electric Power Co.*, 125 FERC ¶ 61,329 (2008). Paragraph 15 of that order stated that SWEPCO had not "adequately supported its proposed formula-based

ROE" that was included as part of the Original Formulas in each of the agreements. Prescott and SWEPCO filed timely requests for rehearing of that order, and Minden filed comments in support of SWEPCO's request for rehearing. The Commission has not yet acted on those pleadings.

5. On February 18, 2009, representatives of the Parties and the Commission's Trial Staff participated in an initial settlement conference before Settlement Judge Karen V. Johnson. Thereafter, the Parties continued negotiations with the intention of reaching an agreement that would dispose of the issues that were set for hearing by the Commission. This Settlement Agreement reflects those negotiations.

II. THE TERMS OF THE SETTLEMENT

1. SWEPCO will continue to provide Requirements Service to Prescott and Minden under the Prescott Agreement and the Minden Agreement, each as revised and restated in accordance with this Settlement Agreement ("Revised Agreements").

2. The Original Formulas will be replaced and superseded by the formulas agreed to as part of this settlement ("Settlement Formulas"). SWEPCO will submit to the Commission with this Settlement Agreement the Revised Agreements, which will include the Settlement Formulas.

3. It is expressly understood and agreed that if the Commission does not issue a final order that (i) approves this Settlement Agreement in full accordance with its terms, and (ii) accepts the Revised Agreements for filing

without condition or modification ("Approval Order"), then neither Party will be obligated to provide or take any service under the terms of the Settlement Agreement or the Revised Agreements. A Commission order approving this Settlement Agreement that is subject to one or more requests for rehearing shall not be deemed an "Approval Order" unless and until the Commission issues an order on rehearing that (i) approves this Settlement Agreement in full accordance with its terms, and (ii) accepts the Revised Agreements for filing without condition or modification.

4. SWEPCO will begin implementing the Settlement Formulas for service rendered on the first day of the month immediately following the month in which the Commission issues an Approval Order. For charges collected by SWEPCO in 2009, any differences between (i) the charges collected by SWEPCO under the Prescott Agreement and the Minden Agreement as originally filed with the Commission and (ii) the charges that would have resulted under the Settlement Formulas will be reimbursed/surcharged within forty five (45) days of the issuance of an Approval Order. For charges collected by SWEPCO after 2009, any differences between (i) the charges collected by SWEPCO under the Prescott Agreement and the Minden Agreement as originally filed with the Commission and (ii) the charges that would have resulted under the Settlement Formulas will be reimbursed/surcharged in accordance with the annual "true-up" provisions in the Revised Agreements.

5. It is the intent of the Parties that, to the maximum extent permitted by law, the provisions of this Settlement Agreement shall not be subject to

change under Sections 205 and 206 absent the written agreement of the Parties, and that the standard of review for changes unilaterally proposed by a Party or the Commission, acting *sua sponte* or at the request of a third party, shall be the public interest standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. ___, 128 S.Ct. 2733 (2008), and *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. ___, 130 S.Ct. 683 (2010).

III. GENERAL SETTLEMENT PROVISIONS

1. The making of this Settlement Agreement shall not be deemed in any respect to constitute an admission by any of the Parties that any allegation or contention made or raised in the proceeding by any of the Parties or the Trial Staff is valid. It is further specifically understood that no element of this settlement (including this Settlement Agreement, the Revised Agreements, or the Settlement Formulas) constitutes precedent or should be deemed "settled practice" as that term was interpreted in *Public Service Commission of New York v. FERC*, 842 F.2d 1335 (D.C. Cir. 1980).

2. The Settlement Agreement constitutes a negotiated settlement and neither the Settlement Agreement, the Revised Agreements, nor the Settlement Formulas shall be regarded as establishing any principles or precedents as to the

appropriate rate formulas, costs, expenses, revenues, or rates for use in any other proceeding.

3. The discussions among the Parties, as well as between the Parties or any Party and the Trial Staff, which resulted in this Settlement Agreement, the Revised Agreements, and the Settlement Formulas have been conducted with the explicit understanding and agreement, pursuant to Rule 602(e) of the Commission's Rules of Practice and Procedure, that all offers of settlement and discussions relating hereto are and shall be privileged to the extent allowed by law, and are not to be used in any manner in connection with this proceeding or otherwise, except as strictly necessary to enforce the terms of this Settlement Agreement or the Revised Agreements consistent with the Commission's Rules.

4. This Settlement Agreement is submitted on the express condition that the Parties agree that SWEPCO will be entitled to withdraw the Settlement Agreement and the Revised Agreements in the event that the Commission does not approve the Settlement Agreement and accept the Revised Agreements without conditions or modifications. In the event that the Settlement Agreement and the Revised Agreements are withdrawn, they shall not constitute any part of the record in this proceeding and shall not be used by any participant in this proceeding for any other purpose in this proceeding.

[The next page is the signature page]

The Parties have caused their duly authorized representatives to execute this Settlement Agreement on their behalves as of the date first above written.

The Settlement Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

City of Prescott, Arkansas

By: _____

Name: _____

Zachary D. Wilson, atty for Prescott
ZACHARY D. WILSON

City of Minden, Louisiana

By: _____

Name: _____

Southwestern Electric Power Company

By: _____

Name: _____

The Parties have caused their duly authorized representatives to execute this Settlement Agreement on their behalves as of the date first above written. The Settlement Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

City of Prescott, Arkansas

By: _____

Name: _____

City of Minden, Louisiana

By: Kirk Howard Bette, General
Bette & Hall LLC

Name: Kirk Howard Bette

Southwestern Electric Power Company

By: _____

Name: _____

The Parties have caused their duly authorized representatives to execute this Settlement Agreement on their behalves as of the date first above written. The Settlement Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

City of Prescott, Arkansas

By: _____

Name: _____

City of Minden, Louisiana

By: _____

Name: _____

Southwestern Electric Power Company

By: SA ROSS

Name: STEVEN ROSS

STEPH & JOHNSON LLP
ATTY FOR SWEPCO

FES Exhibit 9

135 FERC ¶ 61,092
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 29, 2011

In Reply Refer To:
Southwestern Electric Power Company
Docket Nos. ER08-1501-000,
ER08-1501-001,
ER09-86-000, and
ER09-86-001

Steptoe and Johnson, LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

Attention: Steven J. Ross,
Counsel for Southwestern Electric Power Company

Reference: Stipulation and Agreement

Dear Mr. Ross:

1. On October 25, 2010, you filed a Settlement Agreement (Settlement) with the Commission by and among the Southwestern Electric Power Company (SWEPCO) and the cities of Prescott, Arkansas (Prescott) and Minden, Louisiana (Minden).
2. On November 15, 2010, Commission Trial Staff and Prescott filed comments in support of the Settlement. No other comments were filed. On December 2, 2010, the settlement judge in this proceeding certified the Settlement to the Commission as uncontested. The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved.
3. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The applicable standard of review for proposed modifications to the terms and conditions of the Settlement by any party to the Settlement, the Commission, or any third party shall be the public interest standard of review. The Commission retains the right to investigate the rates, terms, and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act, 16 U.S.C. § 824e (2006).

Docket Nos. ER08-1501-000, *et al.*

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4. SWEPCO is directed to make refunds in accordance with the terms of the Settlement, and shall submit a compliance refund report to the Commission within 15 days of the date the refunds are made.

5. Pursuant to the requirements of Order No. 714, SWEPCO is directed to make a compliance filing in eTariff format to reflect the Commission's action in this order.¹ Such a compliance filing also is necessary for any settlement filing containing *pro forma* tariff sheets, but is not necessary if the settlement was filed in eTariff format with actual tariff records (as opposed to *pro forma* records).

6. The Settlement Agreement disposes of all disputes concerning the rates, terms, and conditions of the SWEPCO rate schedules in Docket Nos. ER08-1501-000 and ER09-86-000. SWEPCO's requests for rehearing in Docket Nos. ER08-1501-001 and ER09-86-001 are withdrawn, pursuant to SWEPCO's request, and Prescott's requests for rehearing in Docket Nos. ER08-1501-001 and ER09-86-001 are moot and therefore denied. Docket Nos. ER08-1501-000, ER08-1501-001, ER09-86-000, and ER09-86-001 are hereby terminated.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹ See *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 96 (2008).