

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF SOUTHWESTERN PUBLIC)
SERVICE COMPANY'S APPLICATION FOR)
APPROVAL OF ELECTRIC ENERGY EFFICIENCY)
AND LOAD MANAGEMENT PROGRAMS AND)
PROGRAM COST TARIFF RIDERS PURSUANT)
TO THE NEW MEXICO PUBLIC UTILITY ACT AND)
EFFICIENT USE OF ENERGY ACT,)
)
SOUTHWESTERN PUBLIC SERVICE COMPANY,)
)
Applicant.)
_____)

Case No. 07-00376-UT

FINAL ORDER

THIS MATTER comes before the New Mexico Public Regulation Commission ("Commission") upon the Recommended Decision of the Hearing Examiner ("Recommended Decision") issued by Lee W. Huffman on March 27, 2008. Having considered the Recommended Decision (which is attached hereto as Exhibit 1 and incorporated herein by reference), and the record in this case, and being fully informed in the premises,

THE COMMISSION FINDS AND CONCLUDES:

1. Staff timely filed Exceptions to the Recommended Decision.
2. Southwestern Public Service Company ("SPS") timely filed Responses to Staff's Exceptions.
3. The Commission has jurisdiction over the parties and the subject matter of this case.
4. The Commission accepts and adopts the Hearing Examiner's Statement of the Case through the time of the issuance of the Recommended Decision.

5. As modified herein, the Commission accepts and adopts the Hearing Examiner's Discussion as the Discussion of the Commission.
6. As modified herein, the Commission accepts and adopts the Hearing Examiner's Findings and Conclusions as the Findings and Conclusions of the Commission.
7. As modified herein, the Recommended Decision is well taken and should be adopted by the Commission.

Additional Discussion, Findings, and Conclusions

8. With respect to the Hearing Examiner's rejection, at page 17 of the RD, of the request by CCAE and Staff to limit SPS's heat pump program to existing electric space heating customers, the Commission adopts the RD's result, but with a different rationale. Although it may be true that heat pumps are more efficient for space heating in terms of BTU consumption than natural gas forced air furnaces, the Commission may not wish to endorse using funds provided by customer tariff riders to encourage fuel switching that benefits the company. This is especially true when one of the goals of electric efficiency programs is to provide systematic benefits by avoiding the need to acquire additional generation capacity. The Commission instead would rely on the testimony presented that SPS's rebate is not designed to sell more heat pumps, but rather is targeted at getting customers who are already in the market for a heat pump to purchase a more efficient unit. Tr. January 30, 2008, p.74.

9. The Commission agrees with the Recommended Decision that a public utility is entitled to benefit from load growth in its service area. *See id.* at 49. Just as it is

fair that the benefit of growth is enjoyed by a public utility, it is also fair that a public utility is not protected by regulation from smaller than expected growth in sales, or even from a decline. This inherent risk, whether due to overestimating future demand, or “due to economic factors entirely beyond management’s control” is properly borne by a regulated public utility. *Jersey Central Power & Light Co. v. FERC*, 810 F.2d 1168, at 1191-92 (D.C. Cir. 1987). This symmetry of risk and reward is consistent with Supreme Court precedent. *See, Duquesne Light Co. v. Barasch*, 488 U.S. 299, 315 (1989).

10. The Efficient Use of Energy Act (EUEA) requires that financial disincentives to utility investments in energy efficiency programs, if found by the Commission, be eliminated so “that public utilities are financially neutral in their preference for acquiring demand- or supply-side resources. NMSA 1978, § Section 62-17-5(F) (2007) [emphasis added]. We note Staff’s arguments on exceptions that determination of a disincentive can only be made after consideration of any mitigation or offset, and that retail load growth is sufficient to offset disincentive. We accept, at least for theoretical purposes, the first part of that argument. We also note SPS’s arguments in response that SPS has met its burden of showing it has a disincentive relative to recovering fixed costs, and that a utility has the right to reap the benefit of load growth because it has a duty to plan and provide for that growth through capital outlay. We accept the latter part of SPS’s argument for the reasons discussed in the preceding paragraph.

11. However, we must return to the plain wording of the statute that governs this decision. It is the acquisition of new resources, not the continued deployment of existing ones, that is intended to be financially neutral for the utility. Accordingly, we

reject, for the limited purposes of this case, Staff's argument that load growth alone is sufficient to offset disincentive. We agree with the Recommended Decision that SPS has the limited fixed cost disincentive discussed and that SPS has not precisely identified its amount.

12. The Recommended Decision finds that "SPS's shared savings proposal is rejected and SPS *shall only recover disincentives as provided in this Order.*" RD at 53, ¶ 18 [emph. added]. The Commission finds recovery of "disincentives as provided in this Order" to be ambiguous. The Recommended Decision clearly accepts that the company should be compensated for the fixed cost recovery disincentive, but also finds that the amount of this disincentive has not yet been quantified (because offsets have not been quantified). RD at 46 and 49. It is not clear whether the Recommended Decision accepts that a lost profit potential disincentive exists, or whether it has been adequately quantified. The Recommended Decision does cogently point out the problems with collecting from rate-payers in a single year the value of energy savings that will take 13 years to be realized. Based on this, the Recommended Decision appears to provide SPS, as a disincentive recovery mechanism, the ability to both recover program costs in real time from its customers through a rate rider and to recover *those same costs* a second time over a 13-year period, along with a rate of return.

13. Rate-basing energy efficiency program costs, *as an alternative to rate rider recovery*, would seem to be a plausible means of making utilities indifferent to demand-side versus supply-side investments. By providing utilities with the opportunity to make their ordinary profit on demand-side investments, it would appear targeted at the

lost profit potential disincentive discussed in the case. It would also align payments to utilities with the stream of savings.

14. However, the Recommended Decision appears to be offering up both program cost recovery through a rider, and an opportunity for the company to recover the same amounts again, plus a rate of return on the un-amortized portion of those funds (which of course, were provided by customers, not shareholders). In addition, the Recommended Decision offers the 13-year recovery option, not as a lost-profit disincentive recovery mechanism, but rather as a mechanism for mitigated lost recovery of fixed costs. Indeed, this is what SPS takes it for in its Response to Exceptions, at 5-6. However, there is no basis in the record to equate the funds derived from the mechanism proposed in the Recommended Decision with the amount of the lost recovery of fixed cost disincentive faced by the utility.

15. The Commission should permit the tariff rider, tracker mechanism, and programs as approved in the Recommended Decision to go into effect. The Commission rejects at this time any language in the Recommended Decision that would permit the recovery of any disincentives by the company based on this Order. (*Cf.*, e.g., RD at 53, ¶ 18.)

IT IS THEREFORE ORDERED:

A. As modified herein, the Orders recommended by the Hearing Examiner, as set forth in Exhibit 1 attached hereto, are ADOPTED, APPROVED, and ACCEPTED as Orders of the Commission.

B. As modified herein, the Recommended Decision is ADOPTED, APPROVED and ACCEPTED in its entirety.

C. In light of new amendments to the Efficient Use of Energy Act through the enactment of House Bill 305, this Order may be cited but shall have only such precedential effect as is consistent with House Bill 305.

D. This Order is effective immediately.

E. Copies of this Order shall be sent to all persons listed on the attached Certificate of Service.

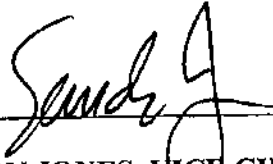
F. This Docket is closed.

ISSUED under the seal of the Commission at Santa Fe, New Mexico, this 17th
day of April, 2008.

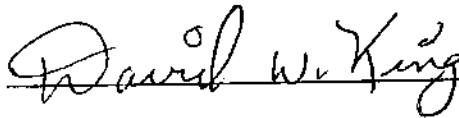
NEW MEXICO PUBLIC REGULATION COMMISSION

TELEPHONICALLY APPROVED

JASON MARKS, CHAIRMAN



SANDY JONES, VICE CHAIRMAN



DAVID W. KING, COMMISSIONER



BEN R. LUJAN, COMMISSIONER

EXCUSED

CAROL K. SLOAN, COMMISSIONER

