

121 FERC ¶ 61,201
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PPM Energy Inc.

Docket No. ER07-1414-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE SCHEDULE AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued November 27, 2007)

1. In this order, we accept for filing PPM Energy Inc.'s (PPM) proposed rate schedule for supplying outside the deadband reactive supply and voltage control service (Reactive Supply Service) to Bonneville Power Administration (BPA), and suspend it for a nominal period, to become effective October 1, 2007, as requested, subject to refund. We also establish hearing and settlement judge procedures.

Background

2. On September 28, 2007, PPM filed its Rate Schedule FERC No. 3. Rate Schedule FERC No. 3 specifies the revenue requirement for two generators that provide outside the deadband Reactive Supply Service from two generation facilities to BPA.¹ PPM explains that it made this filing because PPM Rate Schedule FERC No. 2 terminates effective October 1, 2007, pursuant to the Commission's order in *Bonneville Power Administration*, 120 FERC ¶ 61,211 (2007) (September 4 Order).

¹ Both generators are operated as part of the BPA control area and are located in Klamath Falls, Oregon. The first unit is a 484 MW natural gas fired combined cycle plant owned by the City of Klamath Falls (City), Oregon. On October 12, 2007, the Commission authorized Klamath Energy LLC, an affiliate of PPM, to acquire the jurisdictional facilities associated with the plant from the City, 121 FERC ¶ 62,031 (2007). PPM is authorized to act on behalf of the City with respect to reactive power matters. The second generator is a 100 MW natural gas fired combustion turbine plant peaker unit, also owned by Klamath Energy LLC.

3. The September 4 Order stemmed from a complaint BPA filed in which it requested that the Commission find that the rates generators were charging BPA for inside the deadband Reactive Supply Service were no longer just and reasonable. In the September 4 Order, the Commission reduced such rates to zero effective October 1, 2007. The Commission also observed that: “BPA notes that despite its intention to cease paying for within the deadband, it will remain obligated to compensate the IPPs if it requests them to provide outside the deadband.”² PPM states that its proposal follows from the September 4 Order.

4. To support its rate in Rate Schedule FERC No. 3, PPM allocates its reactive power capacity costs between within the deadband service and outside the deadband service based on the relative power factor range associated with each service, and then removes the capacity costs attributable to within the deadband service.

5. PPM requests that the Commission make its proposed rate schedule effective on October 1, 2007.

Notice of Filing and Responsive Pleadings

6. Notice of PPM’s filing was published in the *Federal Register*, 72 Fed. Reg. 57,549 (2007), with interventions and protests due on or before October 19, 2007. BPA filed a timely motion to intervene and protest. PPM filed an answer to BPA’s protest.

7. BPA asserts that PPM’s proposed revenue requirements are unsupported and a novel application of the methodology established in *American Electric Power Service Corp.* (the AEP Methodology), and are not appropriate for solely outside the deadband service.³ BPA also states that it has not asked PPM to provide outside the deadband service. It argues that PPM’s entitlement to compensation for outside the deadband Reactive Supply Service is contingent on two prerequisites: (1) that the service actually be provided, and (2) that the service be provided at the direction of BPA.⁴ BPA further asserts that, when the Commission has allowed compensation for service outside the deadband, it has been via an hourly rate, not a monthly charge. It concludes that the Commission cannot approve PPM’s proposed rate as it would require compensation for service that has yet to be provided. According to BPA, PPM’s failure to demonstrate that it is actually providing the service at issue violates Commission precedent.

² September 4 Order at P 22.

³ 88 FERC ¶ 61,141 (1999).

⁴ *Id.* at 6.

8. Even if a capability-based rate were appropriate, BPA argues, there are numerous flaws in PPM's proposal. First, BPA states that it is not clear that it has any obligation to pay PPM for Reactive Supply Service, even outside the deadband, because the facilities at issue are not directly interconnected with the BPA system.⁵ Second, BPA states that PPM has failed to demonstrate that the applicable deadband is 0.95 leading and lagging for Reactive Supply Service compensation. BPA states that its control area services agreements with PPM do not specify a deadband, while the applicable Western Electricity Coordinating Council guide provides for a different bandwidth. Third, even if the AEP Methodology had any applicability in this case, BPA argues, PPM has failed to justify numerous cost components, including its costs of production plant, capital structure, rate of return and cost of debt.

Discussion

Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), BPA's timely, unopposed motion to intervene serves to make it a party to this proceeding.

10. 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 are not persuaded to accept PPM's answer and will, therefore, reject it.

Hearing and Settlement Judge Procedures

11. PPM's proposed rate schedule raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

12. Our preliminary analysis indicates that PPM's proposed rate schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Therefore, we will accept PPM's proposed rate schedule for filing, suspend it for a nominal period, make it effective October 1, 2007, as requested, subject to refund, and set it for hearing and settlement judge procedures.

13. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute 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

⁵ *Id.* at 9.

of the Commission's Rules of Practice and Procedure.⁶ 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.⁷ 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) PPM's proposed rate schedule for reactive power and voltage control service is hereby accepted for filing and suspended for a nominal period, to become effective October 1, 2007, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning PPM's proposed rate schedule for Reactive Supply Service. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) 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 in this proceeding 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 in writing or by telephone within five (5) days of the date of this order.

⁶ 18 C.F.R. § 385.603 (2007).

⁷ 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).

(D) Within thirty (30) days of the date of 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.

(E) 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 this proceeding in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a 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.