

137 FERC ¶ 61,161
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Las Vegas Power Company, LLC

Docket No. ER11-4730-000

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

(Issued November 29, 2011)

1. In this order, we accept for filing Las Vegas Power Company, LLC's (Las Vegas Power)¹ proposed rate schedule for Reactive Support and Voltage Control from Generation Sources Service (reactive power) and suspend it for a nominal period, to become effective October 1, 2011, subject to refund. We also establish hearing and settlement judge procedures.

Background

2. On September 30, 2011, Las Vegas Power filed a proposed rate schedule under which it specifies its revenue requirement for providing cost-based reactive power to Nevada Power Company (Nevada Power) from Las Vegas Power's 636 MW natural gas-fired combined cycle generating facility located in Clark County, Nevada (Facility). The Facility is interconnected with Nevada Power's transmission system and located within Nevada Power's control area.

¹ Las Vegas Power, a wholly-owned subsidiary of LS Power Development, LLC, is an exempt wholesale generator. See *Mirant Las Vegas, LLC*, 102 FERC ¶ 62,008 (2003). It is authorized to make wholesale sales of power at market-based rates. See *Mirant Las Vegas, LLC*, Docket No. ER03-160-000 (December 17, 2002) (delegated letter order). In Docket No. ER07-1000-000, the Commission accepted a name change from *Mirant Las Vegas, LLC* to *Las Vegas Power Company, LLC*.

3. Las Vegas Power states that it is making this filing pursuant to an Interconnection and Operating Agreement between Nevada Power and Las Vegas Power (Interconnection Agreement).² According to Las Vegas Power, section 4.1.6 of the Interconnection Agreement requires that the Facility provide reactive power or absorb reactive power as necessary to maintain reactive area support and obligates Nevada Power to pay for such power.³

4. Las Vegas Power asserts that the proposed rate schedule consists of an annual revenue requirement with two components: (1) a fixed capability component, which is designed to recover the portion of plant costs attributable to the reactive power capability of the Las Vegas Power; and (2) a heating loss component, which includes the increased generator and step-up transformer heating losses that result from the production of reactive power. A third component, a lost opportunity cost component, which is designed to recover lost opportunity costs in the event the Facility is directed to modify its energy output to produce additional reactive power, is not included in this filing.⁴

5. Las Vegas Power proposes a total reactive power annual revenue requirement of approximately \$1.5 million. Specifically, Las Vegas Power seeks to recover approximately \$1.4 million for its fixed capability component and \$124,000 for its heating loss component for losses that occur in the generator and associated step-up transformer. Las Vegas Power explains that the fixed capability component has been calculated by first determining the portion of the Facility's generator/excitation system and the generator step-up transformers used to produce reactive power in accordance with the *AEP* methodology.⁵ Las Vegas Power then applies an allocator to fairly apportion the

²See *Nevada Power Co.*, 97 FERC ¶ 61,227 (2001).

³Las Vegas Power Filing, Transmittal Letter at 3. Section 4.1.6 of the Interconnection Agreement states: "Generator [Las Vegas Power] shall provide reactive power or absorb reactive power from the Transmission System at no charge to Company [Nevada Power]; provided, however, that if Generator incurs costs or forgoes any revenues to provide or absorb such reactive power and obtains FERC approval for a rate reflecting such costs or foregone revenues, Company shall compensate Generator at rates set forth in the Generator's FERC approved tariff."

⁴Las Vegas Power states that it reserves the right to amend its rate schedule should it elect to seek compensation for such costs. *Id.*

⁵*Id.* (citing *American Elec. Power Serv. Corp.*, 88 FERC ¶ 61,141 (1990), *order on reh'g*, 92 FERC ¶ 61,001 (2000) (*AEP Methodology*)).

cost of this plant between real and reactive power. Finally, a levelized carrying charge is applied to the costs to develop the annual revenue requirement.⁶

6. Additionally, Las Vegas Power notes that public utilities are permitted to recover their cost of service with a reasonable return on investment. However, Las Vegas Power contends that, for merchant generators like Las Vegas Power, “it has been the Commission’s general policy to allow an independent power producer to use the authorized rate of return on common equity of an interconnected utility for reactive power compensation, because ... an interconnected utility’s return is a conservative estimate of a merchant generator’s return because the merchant generator faces more risk.”⁷ Therefore, Las Vegas Power proposes an overall rate of return of 8.385 percent, and a return on common equity of 10.75 percent based on a proxy derived from the capital structure and return on equity of Nevada Power, the utility with which the Facility is interconnected.⁸

7. Las Vegas Power requests waiver of the Commission’s notice requirements to allow an effective date of October 1, 2011.⁹ Las Vegas Power also requests waiver of the cost-of-service requirements set forth in Part 35 of the Commission’s regulations, 18 C.F.R. Part 35 (2011), which it claims are not necessary to a charge for reactive power, and of various other regulations in Part 35.

Notice of Filing and Responsive Pleadings

8. Notice of Las Vegas Power’s Filing was published in the *Federal Register*, 76 Fed. Reg. 62,801 (2011), with interventions and protests due on or before October 21, 2011. Nevada Power filed a timely motion to intervene and protest. On November 7, 2011, Las Vegas Power filed an answer to Nevada Power’s protest.

⁶ Las Vegas Power Filing, Exh. B, Testimony of Edin Mandzukic at 16 (Mandzukic Test.).

⁷ Las Vegas Power Filing, Transmittal Letter at 4 (citing *Bluegrass Generation Co., L.L.C.*, 118 FERC ¶ 61,214 (2007) and *Calpine Fox, LLC*, 113 FERC ¶ 61,047 (2005)).

⁸ Mandzukic Test. at 15 and Attachment E, Schedule 3.

⁹ Las Vegas Power Filing, Transmittal Letter at 6. Las Vegas Power states that the Commission has regularly granted waiver of its notice requirements establishing effective dates less than sixty days after filing a new tariff when the filing is made prior to the requested effective date.

9. Nevada Power protests that, contrary to Las Vegas Power's assertion, the proposed rate filing is not consistent with the Interconnection Agreement. Nevada Power argues that the Interconnection Agreement specifies that when the Facility is operating and synchronized with the Transmission System, Nevada Power may require the Facility to provide reactive power or to absorb reactive power at Nevada Power's discretion; and when Las Vegas Power is required to do so by Nevada Power, Las Vegas Power may recover the costs or foregone revenues associated with such provision of reactive power.¹⁰ Therefore, Nevada Power claims that Las Vegas Power's rate proposal is contrary to the provisions of the Interconnection Agreement in that it seeks to obtain compensation for reactive service, even in the event the generator is not operating or synchronized with the transmission system.¹¹ Additionally, Nevada Power states that Las Vegas Power's testimony relies upon Order No. 2003-A as support for its proposal. However, Nevada Power claims that Order No. 2003-A does not apply here because the Interconnection Agreement predates Order No. 2003,¹² that the Order No. 2003 series of orders did not abrogate existing arrangements, and that Order No. 2003-C did not require amendments to existing interconnection agreements.¹³

10. Nevada Power adds that Las Vegas Power has not established that the proposed rate is just and reasonable and that Las Vegas Power's Filing is materially deficient in multiple respects. Nevada Power asserts that Las Vegas Power's annual revenue requirement of more than \$1.4 million is excessive, given the amount and cost incurred by Las Vegas to produce reactive power.¹⁴

11. Nevada Power raises several concerns related to the support for Las Vegas Power's proposed revenue requirement. Nevada Power questions whether the reliance on Nevada Power's retail capital structure and cost of capital is appropriate. Nevada Power

¹⁰ Nevada Power Protest at 6-7.

¹¹ *Id.* at 8.

¹² The current version of the Interconnection Agreement was accepted by the Commission as effective on April 25, 2003 and July 26, 2004. The Final Rule was issued on July 24, 2004.

¹³ Nevada Power Protest at 8 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. and Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. and Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. and Regs. ¶31,171, *order on reh'g*, Order No. 2003-C, FERC Stats. and Regs. ¶ 31,190 (2005)).

¹⁴ *Id.* at 8-9.

also claims that production operations and maintenance expenses and administrative and general expenses are unexplained and unsupported.

12. According to Nevada Power, Las Vegas Power also fails to support the percentages it used to derive the combustion turbine generator/exciter costs. Nevada Power objects that Las Vegas Power allocated approximately 24.5 percent of the cost of the plant investment costs to the generator/exciter based on General Electric equipment at three similar generating facilities owned by Duke Energy. Nevada Power states that, given the critical nature of these estimates in determining the revenue requirement, copies of this manufacturer-supplied information should have been included in the filing.¹⁵

13. Nevada Power notes that Las Vegas Power claims to have used the *AEP* Methodology, which involves the use of costs that are categorized under the Commission's Uniform System of Accounts, in deriving its proposed rates. However, Las Vegas Power claims that because it is not required to use the Uniform System of Accounts, it had to develop accounting detail that was comparable to that which would have been yielded from the Commission's account-based methodology described in *AEP*. Nevada Power argues that there is no way to determine whether the costs Las Vegas Power uses are in fact comparable to those under the *AEP* methodology.¹⁶

14. Finally, Nevada Power argues that Las Vegas Power's reactive power allocation factor substantially exceeds any obligation of Las Vegas Power under the Interconnection Agreement to operate the Facility in a manner to avoid adverse impacts on the transmission system.¹⁷ Nevada Power therefore alleges that the allocator is incorrect and would result in overcharges to Nevada Power for Las Vegas Power's contractual obligations.

15. Nevada Power requests the Commission to either reject Las Vegas Power's Filing or, if the Commission does not reject the filing, suspend Las Vegas Power's proposed reactive power rate schedule for five months and set it for an evidentiary hearing.¹⁸ Nevada Power also states that Las Vegas Power has failed to provide good cause for its requested waiver of the 60-day notice requirement.¹⁹

¹⁵ *Id.* at 10-11.

¹⁶ *Id.* at 9-10.

¹⁷ *Id.* at 11.

¹⁸ *Id.* at 12.

¹⁹ *Id.* at 3.

Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), Nevada Power's timely, unopposed motion to intervene serves to make it a party to this proceeding.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18. C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Las Vegas Power's answer and will, therefore, reject it.

18. For good cause, we will grant Las Vegas Power's request for waiver of the detailed cost of service requirements of Part 35 of the Commission's Regulations. Las Vegas Power is a non-utility generator not generally subject to traditional rate regulation. However, Las Vegas Power is on notice that it bears the burden of proving that its proposed charges are just and reasonable based on the materials included in this filing.

19. Las Vegas Power requests a waiver of the prior 60-day notice requirement. The Commission has previously granted waivers of the notice requirement for reactive power service rate schedules.²⁰ Thus, we grant the requested waiver of the 60-day notice requirement and the proposed rate schedule is accepted effective October 1, 2011.

B. Proposed Rate Schedule

20. Las Vegas Power'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.

21. Our preliminary analysis indicates that Las Vegas Power'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 Las Vegas Power's proposed rate schedule for filing, suspend it for a nominal period, make it effective October 1, 2011, subject to refund, and set it for hearing and settlement judge procedures.

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

²⁰ See, e.g., *Union Power Partners, L.P.*, 112 FERC ¶ 61,065 (2005), *order on reh'g*, 113 FERC ¶ 61,272, at P 10 (2005).

of the Commission's Rules of Practice and Procedure.²¹ 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.²² The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order 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) Las Vegas Power'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, 2011, 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 Las Vegas Power's proposed rate schedule for reactive power and voltage control services. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in 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 (2011), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 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 within five days of the date of this order.

²¹ 18 C.F.R. § 385.603 (2011).

²² 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 the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(D) Within 60 days of the date of this order, 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 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 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. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.