

110 FERC ¶ 61,139
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

CMS Generation Michigan Power, L.L.C.

Docket No. ER05-341-000

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

(Issued February 11, 2005)

1. On December 15, 2004, CMS Generation Michigan Power, L.L.C. (CMS Generation)¹ filed a proposed rate schedule specifying its cost-based revenue requirement for providing reactive power service for its generation facilities within the Midwest Independent System Operator, Inc. (MISO). As discussed below, we accept the proposed rate schedule for filing, and suspend it for a nominal period, to become effective on January 1, 2005, subject to refund. We also establish hearing and settlement judge procedures. This order benefits customers by ensuring a timely inquiry into whether the proposed rate schedule is just and reasonable.

I. Background

2. CMS Generation owns and operates two generating facilities, Kalamazoo River Generating Station (Kalamazoo) and Livingston Generating Station (Livingston) (collectively, the Facilities) within the MISO control area. The Facilities have a combined capacity of approximately 200 MW. Both Kalamazoo and Livingston are interconnected to the Michigan Electric Transmission Company LLC (METC) transmission system. METC is a transmission owner member of MISO, which has transferred the operational control of its facilities to MISO.

3. On December 31, 1998, CMS Generation entered into identical Facilities Agreements with Consumers Energy Company (Consumers) for the interconnection of Livingston and Kalamazoo to Consumers' power grid. Effective April 1, 2001, all rights

¹ CMS Generation is an exempt wholesale generator (EWG) and is authorized by the Commission to sell electric power at market-based rates. CMS Generation is an indirect subsidiary of CMS Energy Corporation (CMS).

and responsibilities under the agreements were assumed by METC. Under the Facilities Agreements, Kalamazoo and Livingston are required to provide reactive power on the METC system.

4. MISO makes arrangements through Schedule 2 of its Open Access Transmission Tariff (OATT) with control area operators, such as METC, to obtain ancillary services from generation resources. CMS Generation explains that on June 25, 2004, in Docket No. ER04-961-000, MISO filed with the Commission a proposed Schedule 21, Reactive Supply and Voltage Control from Independent Generation Resources Service, to supplement Schedule 2 of the MISO OATT. Schedule 21 proposed to implement a regional approach to compensate all generators not already being compensated under Schedule 2 in the MISO footprint for their ability to provide reactive supply and voltage control services under the MISO OATT. However, on October 1, 2004, the Commission rejected MISO's proposal as unduly discriminatory and directed the Midwest ISO to file an amended Schedule 2 which would compensate transmission owners and independent power producers on the same basis.² On November 1, 2004, MISO submitted a revised Schedule 2 of its OATT in response to the June 28 Order.³

5. CMS Generation seeks to have the Commission approve additions to its tariff to permit it to establish a revenue requirement that would be collected by METC on CMS Generation's behalf from customers located in the METC zone taking service under the MISO OATT. CMS Generation also states that, even if the proposed amended Schedule 2 is not approved by the Commission, CMS Generation requests that its proposed tariff go into effect to permit compensation based on its interconnection agreements with METC.

6. CMS Generation also seeks compensation for heating loss which it claims is a cost directly attributable to the production of reactive power. In addition, CMS Generation requests to be compensated for startup costs, opportunity costs and synchronous condenser running costs but only when these costs are actually incurred when providing reactive power services.

7. CMS Generation requests waiver of the Commission's 60 day notice requirement in order to accommodate a requested effective date of January 1, 2005.

² See *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,005 (2004), *reh'g pending* (June 28 Order).

³ MISO's compliance filing is pending before the Commission in Docket No. ER04-961-002.

II. Notice of Filing, Interventions and Comments

8. Notice of CMS Generation's filing was published in the *Federal Register*, 69 Fed. Regs. 78,011 (2004), with interventions and protests due on or before January 5, 2005. MISO and the Midwest ISO Transmission Owners filed timely motions to intervene.

9. Consumers filed comments stating that several aspects of CMS Generation's application are unclear, inappropriate or not adequately supported. METC filed comments pointing out that its Rate Schedules 19 and 20 with CMS Generation do not provide that METC compensate CMS Generation for reactive power services.

10. The Michigan Public Power Agency (Michigan Public Power) filed a protest arguing that supporting documentation for CMS Generation's revenue requirements is inadequate, that there is a discrepancy regarding the effective date, and that CMS Generation has not established a basis for the assessment of charges independent of MISO's proposed revised Schedule 2.

11. On January 19, 2005, CMS Generation filed an answer to the protests and comments.

Protest, Comments, and Answer

12. According to Michigan Public Power, CMS Generation's filing lacks the necessary detail to determine the validity of the proposed revenue requirement. Michigan Public Power states that CMS Generation does not provide cost and expense information in the instant filing, but relies on insufficient data from its filing in Docket No. ER99-1970-000, dated February 26, 1999 (1999 Power Sales Tariff)⁴ for its revenue requirement for reactive power support. Michigan Public Power states that it is not just or reasonable to base a newly proposed cost-based reactive power revenue requirement on figures that were estimated five years ago for a Power Sales Tariff. Michigan Public Power also argues that the Commission should reject CMS Generation's request for waiver of the Commission's requirement to provide historical cost-of-service data. CMS Generation claims it does not have the historical cost of service data because it is not required to maintain its books in accordance with the Uniform System of Accounts. Michigan Public Power states that this explanation does not justify failing to provide the requisite information and CMS Generation should be required to submit actual and current cost-based data related to the production of reactive power supply to support its revenue requirement.

⁴ Docket No. ER99-1970-000 was accepted by the Commission in a letter order dated May 26, 1999.

13. Michigan Public Power further argues that CMS Generation fails to provide adequate support of its proposed carrying charge of 14.45 percent because this was the rate used by CMS Generation in its 1999 Power Sales Tariff. Michigan Public Power also states that CMS Generation's power factor calculation should be based on the requirement at the METC connection point and not the Facilities' rated power factor.

14. Michigan Public Power observes that there is a discrepancy regarding the exact date for which CMS Generation seeks approval.⁵ Michigan Public Power states that if CMS Generation is seeking an effective date of January 1, 2004, such date constitutes retroactive rate-making and violates the Commission's policies against such practices. According to Michigan Public Power, if CMS Generation is seeking an effective date of January 1, 2005, then such date violates the Commission's notice requirements because CMS Generation has not established good cause for waiving the Commission's requirements for waiver.

15. Michigan Public Power also argues that CMS Generation should only be permitted to collect its revenue requirements under the provisions of Schedule 2 of the MISO tariff. But CMS Generation seeks approval for the revenue requirement to be charged initially to METC under the two facilities agreement between CMS Generation and METC and then, after following approval by the Commission of MISO's pending revised Schedule 2, to MISO. Michigan Public Power notes that CMS Generation fails to explain the basis for its belief that it is entitled to compensation under the existing facilities agreements. Michigan Public Power points out that the facilities agreements have been in place since December 31, 1998, without compensation for reactive power services to CMS Generation. Michigan Public Power also states that MISO's revised Schedule 2 was filed to provide a mechanism for independent generators like CMS Generation, who were not already being compensated. Finally, Michigan Public Power states that CMS Generation's efforts to seek compensation on the basis of Schedule 2, but collect those revenues independent of the requirements of Schedule 2, are therefore inappropriate, have not been substantiated and should be rejected.

16. In its comments, METC states that while both METC rate schedules with CMS Generation provide that CMS will cooperate with METC to regulate the voltage level at the point of delivery by controlling its generator in accordance with METC's instructions, neither rate schedule provides that METC is to compensate CMS Generation for reactive power services. METC believes that any compensation CMS Generation is to receive for reactive power services should only be pursuant to MISO's revised Schedule 2. METC also states that the Commission should grant CMS Generation the same effective date it grants to MISO's revised Schedule 2.

⁵ Page 1 of the transmittal letter indicates that CMS Generation is requesting an effective date of January 1, 2005. Page 6 identifies the requested effective date as January 1, 2004.

17. Consumers points out that there are problems with the way in which CMS Generation calculates and supports its proposed reactive power revenue requirement. Consumers states that CMS Generation uses 1999 data and improper and unsupported allocation factors. Consumers questions whether CMS Generation should have updated its plant capital costs by depreciating those costs from 1999 through the present. Consumers also observes that CMS Generation is improperly seeking to recover heating loss costs which is not provided for under MISO's revised Schedule 2. Consumers states that when calculating reactive power revenue requirements, only capital costs are considered, and operating costs, such as heating losses, are not considered.

18. In its answer, CMS Generation states that it utilized the correct power factor in computing its reactive power allocation factor. CMS Generation asserts that the values used are plant nameplate values which CMS Generation claims appear to be the standard created by other EWGs filing for similar rate justification.

19. CMS Generation also maintains that it correctly utilized an undepreciated capital cost as the basis for its fixed rate calculation. CMS Generation disagrees with Consumers' belief that an asset that was put into service in 1999 should be depreciated to its 2005 value. CMS Generation argues that it would make sense if CMS Generation had been collecting revenues for reactive power service since its plants went into service in 1999. But CMS Generation asserts that it has not received any revenues for reactive power service. CMS Generation claims that it has made a substantial capital investment in its facilities in order to provide reactive power service. According to CMS Generation, if it does not begin to earn revenue for reactive power service until 2005, CMS Generation should not be forced to forsake part of its capital investment by reducing the value of the capital assets by the amount of depreciation between 1999 and 2005. Therefore, CMS Generation asserts that it has based this rate filing on the original costs filed in Docket No. ER99-1970 because that filing captured the cost of the investment in those assets prior to depreciation.

20. CMS Generation clarifies in its answer that it is requesting an effective date of January 1, 2005 and, therefore, requests waiver of the Commission's 60 day notice requirement. In seeking waiver, CMS Generation points out that it has been providing reactive power service since 1999 without compensation and should be permitted to commence revenue recovery at the earliest practicable date.

III. Discussion

Procedural Matters

21. 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. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept CMS Generation's answer because it has provided information that assisted us in our decision-making process.

Commission Determination

22. The proposed rate schedule submitted by CMS Generation raises issues of material fact that cannot be resolved on the record before us, and is more appropriately addressed in the hearing and settlement judge procedures ordered below.⁶

23. Our preliminary analysis indicates that the proposed rate schedule has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept CMS Generation's proposed rate schedule for filing, suspend it for a nominal period, to become effective on January 1, 2005, subject to refund, and set it for hearing and settlement judge procedures as ordered below.⁷

24. 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 of the Commission's Rules of Practice and Procedure.⁸ If the parties desire, they may, by

⁶ Among the issues that should be considered at the hearing or before a settlement judge are: (1) whether CMS Generation's annual request for \$581,294 in revenue requirements for reactive power services is excessive given the amount of reactive power produced and the costs CMS Generation incurs to produce it; (2) whether the methodology identified in *AEP* is appropriate given the type of facility at issue in this filing; (3) whether recovery for heating losses due to reactive power production is justified in this instance, and (4) whether any compensation CMS Generation is to receive for reactive power services should only be pursuant to MISO's revised Schedule 2.

⁷ See *Central Hudson Gas and Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

⁸ 18 C.F.R. § 385.603 (2004).

mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.⁹ 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 the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The proposed rate schedule is hereby accepted for filing, and suspended for a nominal period, to become effective on the date a revised Midwest ISO rate schedule for reactive power compensation becomes effective, 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 Commission by section 402(a) of the Department of Energy Organization Act and 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 the justness and reasonableness of the proposed rate schedule. However, the hearing will 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 (2004), 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 by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and with the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with

⁹ If the parties decide to request a specific judge, they must make their 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 listing of Commission judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

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 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(E) If settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within approximately fifteen (15) days of the date on which the Chief Judge designates the presiding judge, in a hearing room of the Commission, 888 First Street, N.E. Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding administrative law 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)

Linda Mitry,
Deputy Secretary.