UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Orion Power MidWest, L.P. Docket No. ER04-717-000

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

(Issued May 28, 2004)

1. On April 6, 2004, Orion Power MidWest, L.P. (OPMW) filed a revised rate schedule for the supply of Reactive Supply and Voltage Control from Generation Sources Service (reactive power service) from its generating facilities within the American Transmission System, Incorporated (ATSI) control area. As discussed below, we accept the proposed rate schedule for filing, suspend it for a nominal period, to become effective the later of July 1, 2004 or the beginning of the calendar month following OPMW's receipt of necessary authorizations from its lenders, and set it for 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. OPMW is an indirect subsidiary of Reliant Resources, Inc., and owns and operates three generating facilities (Avon Lake, Newcastle and Niles) within the ATSI control area. The three facilities together have a combined capacity of approximately 1310 MW. OPMW is an Exempt Wholesale Generator[1] and is authorized by the Commission to sell electric power at market-based rates.[2]

3. ATSI is a subsidiary of FirstEnergy Corp. and was formed in 2000 for the purpose of owning and operating the transmission facilities formerly owned by the FirstEnergy Operating Companies. ATSI is a transmission-only company and, accordingly, must purchase generation-based ancillary services it needs to support transmission service on its system, including reactive power service, from third parties. FirstEnergy Solutions

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[1] Orion Power MidWest, L.P., 91 FERC ¶ 62,046 (2000).

[2] AmerGen Vt., L.L.C., et al., 90 FERC ¶ 61,307 (2000).

Corp. (Solutions) has a tariff on file with the Commission pursuant to which it supplies reactive power service to its affiliate, ATSI.[3] Solutions purchases the output of certain generation resources owned by the FirstEnergy Operating Companies and FirstEnergy Generation Corporation, and it supplies ancillary services from those resources to ATSI at cost-based rates.

4. Solutions' rates to ATSI were based upon the costs of generation assets owned by the FirstEnergy Operating Companies, including the Avon Lake, Newcastle and Niles facilities, prior to an asset swap with Duquesne Light Company (Duquesne). Following the asset swap, OPMW purchased the generation assets of Duquesne, including the Avon Lake, Newcastle and Niles facilities. Thus, the rates in Solutions' tariff were based, in part, on costs associated with what were now the OPMW facilities located within the ATSI control area. In recognition of the fact that a portion of the revenues Solutions receives for the provision of reactive power service to ATSI reflect the cost of assets now owned by OPMW, ATSI entered into an agreement with OPMW which compensated OPMW for reactive power service supplied by those plants by reducing the transmission charge to OPMW under the ATSI open access transmission tariff (OATT) by an amount equal to the value of the reactive power supplied by OPMW to Solutions.[4]

5. On October 1, 2003, ATSI transferred control of its transmission system to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). Since ATSI no longer provides transmission service under its own OATT, it can no longer compensate OPMW for reactive power service through a reduction to the transmission service charge to OPMW under the ATSI OATT. To address this change in circumstances, Solutions and OPMW entered into an Agreement For Sharing Revenue From Reactive Supply and Voltage Control From Generation Sources Within the FirstEnergy Control Area (Agreement) which recognizes and provides compensation to OPMW for the reactive power service it supplies. The Agreement was filed with the Commission on January 30, 2004, in Docket No. ER04-500-000, and was accepted on February 25, 2004, to become effective October 1, 2003.

6. Midwest ISO has not established a mechanism to compensate independent generators for providing reactive power service. Midwest ISO is currently working with its stakeholders to develop a methodology for compensating independent generators for the provision of reactive power service, but that filing has yet to be made.

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[3] ATSI recovers the costs of ancillary services, including reactive power services, from transmission customers who use the ATSI transmission system.

[4] See FirstEnergy Operating Companies and Orion Power MidWest, L.P., Docket No. ER00-2650-000.

7. In the meantime, on March 4, 2004, in Docket No. ER04-618-000, ATSI filed revisions to Schedule 2, Reactive Supply and Voltage Control from Generation Sources Service, to its OATT to compensate independent generators directly for the supply of reactive power service, until a provision for compensating independent generators for the provision of reactive power service under the Midwest ISO OATT becomes effective. By order issued May 6, 2004, the Commission accepted ATSI's revised Schedule 2, suspended it for a nominal period to become effective May 1, 2004, subject to refund, and set it for hearing and settlement judge procedures.[5]

II. OPMW's Proposal

8. In its revised rate schedule, OPMW proposes a revenue requirement for supply of reactive power service consisting of three components, based on an updated cost-of-service analysis. The fixed component is designed to recover the portion of plant costs attributable to the reactive power capability of the facility. OPMW states that it followed the method to determine the plant costs attributable to reactive power service adopted in American Electric Power Service Corporation.[6] The heating loss component is designed to recover the cost of the increased generator heating losses that result from the production of reactive power. Lastly, the lost opportunity component would allow recovery of start up costs and lost opportunity costs in the event that ATSI or Midwest ISO directs OPMW to start a unit or modify its energy output to produce additional reactive power.

9. OPMW explains that it is subject to the terms of certain credit instruments that require lender approval of the instant filing before OPMW can accept payments under the proposed rate schedule. Assuming timely approval by its lender(s), OPMW requests that the proposed rate schedule be accepted to become effective coincident with the effective date of ATSI's revised Schedule 2, or alternatively, no later than the first day of the month following the expiration of the sixty-day notice period, to facilitate the incorporation of OPMW's revenue requirement into ATSI's monthly billing and settlement system without the need for retroactive billing adjustments. OPMW requests that, if necessary, the Commission waive the 60-day prior notice requirement to accommodate the requested effective date.

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[5] American Electric Power Service Corporation, 107 FERC ¶ 61,111 (2004).

[6] American Electric Power Service Corporation, 88 FERC ¶ 61,141 (1999).

III. Notice of Filing, Interventions and Comments

10. Notice of OPMW's filing was published in the Federal Register, 69 Fed. Reg. 20,869 (2004), with comments, interventions and protests due on or before April 27, 2004. Consumers Energy Company filed a timely motion to intervene. Midwest ISO and and FirstEnergy Service Company (FirstEnergy) filed timely motions to intervene and comments.

11. Midwest ISO states that it is working with stakeholders to develop a methodology for compensating independent power producers for the provision of reactive power service. It adds that there should be a methodology in the Midwest ISO OATT for compensating independent power producers for providing reactive power service and anticipates that this methodology will be similar to those provisions previously accepted by the Commission for other independent system operators or regional transmission organizations.

12. In its comments, FirstEnergy states that, from its review of OPMW's filing, it is unable to verify that OPMW followed the Commission's pricing policies for the development of rates for reactive power service from generating units.

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. OPMW's Proposal

14. FirstEnergy states that, from its review of the filing, it is unclear whether OPWM has followed Commission policy for developing rates for reactive service from generating units. OPMW's proposal presents issues of material fact regarding the reasonableness of the proposed rates that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below.

15. Our preliminary analysis of OPMW's proposal indicates that it has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the revised rate schedule for filing, suspend it for a nominal period to become effective the later of July 1, 2004, the beginning of the calendar month following the 60-day prior notice period, or the beginning of the calendar month following OPMW's receipt of necessary

authorizations from its lenders,[7] subject to refund, and set it for a hearing. OPMW is directed to file a revised rate schedule reflecting the actual effective date within seven days of receiving the necessary lender approvals or, if such approvals have already been received as of the date of this order, within seven days of the date of this order.

16. While we are setting the filing 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, the hearing will be held in abeyance and a settlement judge shall be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[8] 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.[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 the 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) OPMW's proposed rate schedule is hereby accepted for filing, and suspended for a nominal period, to take effect the later of July 1, 2004, or the beginning of the calendar month following OPMW's receipt of necessary authorizations from its lenders, subject to refund.

(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 the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commissions Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be

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[7] OPMW has not made the strong showing of good cause required to grant waiver of the 60-day prior notice requirement for a rate increase. See Central Hudson Gas & Electric Corporation, et al., 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992).

[8] 18 C.F.R. § 385.603 (2003).

[9] 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).

held to address the reasonableness of the proposed rate schedule, as discussed in the body of this order. However, the hearing will 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, the Chief Administrative Law Judge is 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 within five (5) days of the date of this order.

(D) Within sixty 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 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 the 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 Federal Energy Regulatory Commission at 888 First Street, NE, Washington, D.C. Such 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.

(F) The request of OPMW to waive the 60-day prior notice requirement is hereby denied.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.