

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Mirant Zeeland, LLC

Docket No. ER04-1110-000

ORDER ACCEPTING RATE SCHEDULE FOR FILING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued October 8, 2004)

1. On August 10, 2004, Mirant Zeeland, LLC (Mirant) filed a proposed rate schedule under which it specifies its revenue requirement for providing cost-based reactive power service under Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Schedule 21 (which Midwest ISO filed with the Commission on June 25, 2004, in Docket No. ER04-961-000). As discussed below, we accept the proposed rate schedule for filing and suspend it for a nominal period, to become effective on the date Midwest ISO's revised Schedule 2 in Docket No. ER04-961-000 becomes effective, subject to refund, and 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. Midwest ISO filed proposed Schedule 21, in Docket No. ER04-961-000, to supplement the existing Schedule 2 of the Midwest ISO Open Access Transmission Tariff (OATT), which compensates generators under the control of transmission owners for providing reactive power. Under proposed Schedule 21, Midwest ISO sought to compensate those generation resources not currently covered by Schedule 2, i.e., independent power producers (IPPs).

3. Subsequently, Mirant filed in this proceeding for cost recovery for the reactive power that it provides pursuant to Midwest ISO's proposed Schedule 21. Mirant states that Midwest ISO's proposed Schedule 21 is intended to implement "a regional solution" that will "maintain reliability and equitably compensate generators for being

required to possess the capability to provide this service.”¹ Mirant states that proposed Schedule 21 provides that generators seeking compensation must give the Midwest ISO written notice of their compliance with both the technical requirements set forth in the proposed Schedule and the Commission's acceptance of their revenue requirements. Mirant asserts that, as contemplated by Midwest ISO's proposed Schedule 21, it is submitting its annual revenue requirement for reactive power capability (\$1,659,170) for Commission acceptance. Mirant states that its revenue requirement reflects the methodology set forth in *AEP*² for reactive power and consists of a fixed capability component that is designed to recover the portion of plant fixed costs attributable to its facilities.³

4. Mirant requests an effective date of October 1, 2004, which it points out is the effective date Midwest ISO sought in its proposed Schedule 21 filing. Mirant adds that because it is filing a tariff for compensation for a new service, (Midwest ISO Schedule 21 – Reactive Supply and Voltage Control from Independent Generation Resources Services), before service has commenced, it satisfies the Commission's standards for waiver of notice.

II. Notice of Filing, Interventions, Comments and Protests

5. Notice of Mirant's filing was published in the *Federal Register*, 69 Fed. Reg. 51,662 (2004), with comments, interventions, and protests due on or before August 31, 2004. Midwest ISO, LG&E Energy, LLC, Michigan Electric Transmission Company, LLC, and Wisconsin Electric Power Company filed timely motions to intervene. Consumers Energy Company (Consumers) filed a timely motion to intervene and comments. Michigan Public Power Agency (MPPA) filed a timely motion to intervene,

¹ Citing Midwest ISO Schedule 21 Transmittal Sheet at 6.

² *American Electric Power Service Corp.*, 88 FERC ¶ 61,141 (1999) (*AEP*).

³ Mirant owns and operates a 298 MW natural gas-fired generating facility (Phase I Facility) and a 566 MW natural gas-fired generating facility (Phase II Facility), which are both located at the same site in Zeeland, Michigan. The Phase I Facility commenced commercial operations in June 2001, while the Phase II Facility commenced commercial operations in August 2002. These facilities are interconnected with Michigan Electric Transmission Company LLC, which is a member of Midwest ISO. Mirant is an exempt wholesale generator that has received Commission authorization to make sales of energy and capacity at market-based rates.

protest, and comments. Mirant filed an answer to the comments and protest. Detroit Edison Company and the Midwest ISO Transmission Owners filed motions to intervene out-of-time.

III. Discussion

A. Procedural Matters

6. 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. We will accept Detroit Edison Company's and the Midwest ISO Transmission Owners' motions to intervene out-of-time, given their interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 384.213 (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Mirant's answer and will, therefore, reject it.

B. Reasonableness of Proposed Rates

8. Consumers and MPPA argue there are a number of problems with Mirant's filing. Specifically, they find problems in: (1) Mirant's use of proxy figures for its return on equity and capital structure; (2) Mirant's use of budgeted rather than actual figures for O&M, A&G and plant investment expenses; (3) Mirant's failure to provide supporting documentation and the resulting inability to independently verify Mirant's calculations and data; and (4) Mirant's failure to provide an officer-sponsor to attest under oath to the accuracy of the data and calculations as required under the Commission's regulations.

C. Analysis

9. Mirant's proposed rate schedule presents issues of material fact that are best addressed in the hearing and settlement judge procedures ordered below.

10. Our preliminary analysis of Mirant's filing 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 Mirant's proposed rate schedule for filing, suspend it for a nominal period, to become effective on the date

Midwest ISO's revised Schedule 2 in Docket No. ER04-961-000⁴ becomes effective, subject to refund, and set it for hearing and settlement judge procedures.⁵

11. In order to provide the parties an opportunity to resolve this matter among themselves, we will hold the hearing in abeyance and direct settlement judge procedures pursuant to Rule 603 of the Commission's Rules of Practice and Procedure. If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise the Chief Judge will select a judge for this purpose.⁶ 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

⁴ The Commission rejected Midwest ISO's proposed Schedule 21 in Docket No. ER04-961-000, finding that it was unduly discriminatory. The Commission also found that Midwest ISO's Schedule 2 was unduly discriminatory under section 206 of the FPA because it compensated generators under the control of transmission owners for providing reactive power but had no mechanism to compensate non-transmission owners or IPPs for providing reactive power. The Commission directed Midwest ISO to replace existing Schedule 2 with a revised Schedule 2 that must provide compensation for all generators, including IPPs. Further, the Commission found that given that transmission owners under Schedule 2 receive compensation for reactive power based on cost-based revenue requirements that are filed with the Commission and that IPPs did not have cost-based revenue requirements on file with the Commission, the Commission directed Midwest ISO to include language in its Schedule 2 that provides for IPPs to file cost-based revenue requirements with the Commission prior to their being compensated. *See Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,005 (2004) (Docket No. ER04-961-000).

⁵ Given that we have rejected Schedule 21, the parties should address in the hearing and settlement judge procedures ordered below, what changes need to be made to Mirant's revenue requirement to reflect that service will now be under a revised Schedule 2 rather than proposed Schedule 21.

⁶ 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. FERC's website contains a listing of the Commission's judges and a summary of their background and experience (www.ferc.gov -- click on Office of Administrative Law Judges).

settlement discussions or provide for 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 Midwest ISO's revised Schedule 2 in Docket No. ER04-961-000 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 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 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 in Docket No. ER04-1110-000 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 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 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 Federal Energy Regulatory 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 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)

Magalie R. Salas,
Secretary.