

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.

Calpine Oneta Power, L.P.

Docket Nos. ER03-765-002
ER03-765-003

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued May 21, 2007)

1. On September 26, 2006, the Commission issued an order¹ finding that Calpine Oneta Power, L.P.'s (Oneta) proposed rate schedule for the provision of Reactive Supply from Generation Sources Services (reactive power) to Southwest Power Pool, Inc. (SPP), with modification, is just and reasonable.² The *September 26 Order* affirmed the finding by the presiding Administrative Law Judge (ALJ) that applying a "needs" test to Oneta's reactive power capability would deny Oneta comparable treatment, constitute undue discrimination, and would be contrary to Commission precedent.³ SPP and AEP filed requests for rehearing of the *September 26 Order*. The Commission is denying rehearing and granting clarification of the *September 26 Order*, as discussed below.

2. On October 25, 2006, as amended on October 27, 2006, Oneta submitted a compliance filing, revising its Rate Schedule FERC No. 2 (Rate Schedule) as directed by

¹ *Calpine Oneta Power, L.P.*, 116 FERC ¶ 61,282 (2006) (*September 26 Order*).

² Oneta owns a gas-fired generating facility (Oneta Facility) with a total generating capacity of approximately 1150 MW located in the Tulsa, Oklahoma area. The Oneta Facility is interconnected with American Electric Power Service Corporation's (AEP) 345 kV transmission system in the southeast corner of the 345 kV loop around Tulsa in the SPP area pursuant to an interconnection agreement between Oneta and AEP (Interconnection Agreement). Therefore, SPP is the transmission provider; AEP, a traditional utility, is the control area operator; and Oneta is the independent power producer (IPP), utilizing the transmission system in the Tulsa area.

³ *Calpine Oneta Power, L.P.*, 113 FERC ¶ 63,015 (2005) (*Initial Decision*).

the *September 26 Order*. As discussed below, the Commission finds Oneta's revised Rate Schedule to be in compliance with the *September 26 Order* and will accept the proposed revisions to become effective June 21, 2003.⁴

I. Background

3. In the *September 26 Order* the Commission upheld the Initial Decision's conclusion regarding the justness and reasonableness of Oneta's Rate Schedule. Specifically, the Commission affirmed that: (1) a needs test applied solely to Oneta is contrary to Commission precedent and is unduly discriminatory; (2) the revenue requirement was calculated according to the methodology accepted in Opinion No. 440;⁵ and (3) Oneta's reactive power capability is comparable to the reactive power capability provided by AEP. The Commission found that Oneta should receive compensation under Oneta's proposed Rate Schedule for providing reactive power on a comparable basis; however, the Commission required Oneta to submit a compliance filing within 30 days containing a revised Rate Schedule with AEP as the customer in lieu of SPP.

4. The Commission also found Schedule 2 of SPP's Open Access Transmission Tariff (OATT), which allows only generation sources affiliated with control area operators to receive compensation for providing reactive power, to be unjust, unreasonable and unduly discriminatory under section 206 of the Federal Power Act (FPA). The Commission directed SPP to compensate all generators under Schedule 2, including IPPs, on a comparable basis.⁶

5. The *September 26 Order* also stated that SPP (and other parties) may develop criteria, including a "needs" test, applied comparably and prospectively, that would determine which generators would receive reactive power compensation. The *September 26 Order* directed that any such proposal should be advanced in a separate FPA section 205 proceeding.⁷

⁴ The *September 26 Order* mistakenly referred to the effective date as June 20, 2003. *September 26 Order* at P 72.

⁵ *American Electric Power Service Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999) (AEP).

⁶ SPP filed revisions to its Schedule 2 in Docket No. ER07-371-000. These revisions are currently pending.

⁷ *Id.*

II. Discussion

A. Requests for Rehearing – Docket No. ER03-765-003

6. SPP and AEP filed requests for rehearing of our *September 26 Order*. In general, they restate the arguments they put forth in their exceptions to the ALJ's Initial Decision. They contend that, in determining whether the proposed reactive power revenue requirement is just and reasonable, the Commission erred by not applying a "needs" test to Oneta's reactive power capability, when the record showed that reactive power from the Oneta Facility is neither wanted nor needed by SPP or its ratepayers. They also generally argue that the Commission erred when it applied the comparability principles in its reactive power policy to this case, because they assert the rate is otherwise unjust and unreasonable. They contend that the Commission should either modify its comparability policy or make an exception in this case. They contend that there is no contractual basis between Oneta and AEP that would allow Oneta to charge AEP the reactive power revenue requirement. They also claim that the Commission erred in finding that SPP did not study whether reactive power was needed in the SPP region.

7. East Texas Cooperatives, Inc., Northeast Texas Electric Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc. (collectively, East Texas Cooperatives) collectively filed a Motion to Intervene Out-of-Time, Motion to Respond to Request for Rehearing of AEP and Response, and Protest of the Informational Filing that SPP submitted after our *September 26 Order*.

B. Procedural Matters

8. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 715(d)(1) (2006), we will deny the motion to intervene out-of-time in this proceeding for failure to demonstrate good cause warranting late intervention. The Commission has found that parties seeking to intervene after issuance of a Commission determination in a case bear a heavy burden. When later intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for the granting of such late intervention.⁸ The East Texas Cooperatives have not met their burden of justifying late intervention.

⁸ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003).

Moreover, even if the Commission were to grant the motion to intervene out-of-time, the Commission's Rules of Practice and Procedural do not permit an answer to a request for rehearing.⁹

C. Analysis

9. As discussed more fully below, we deny the requests for rehearing and provide clarification of the *September 26 Order*. Additionally, the Commission addresses a compliance filing by Oneta.

1. Needs Test and Commission Precedent

a. September 26 Order

10. In the *September 26 Order* the Commission affirmed the ALJ's recommendation that Commission precedent rules out the use of a "needs" test.¹⁰ The Commission further explained¹¹ that the Commission's analysis for reactive power compensation begins with determining whether the generator is providing reactive power within the dead band,¹² or outside the established power factor range.¹³ The Commission stated that in prior orders, it found that an interconnecting generator should *not* be compensated for reactive power when operating *within* the established power factor range, because it is *only* meeting its obligation.¹⁴ Further, the Commission noted that generators interconnected to a

⁹ 18 C.F.R. § 385.213(a)(2) (2006).

¹⁰ *September 26 Order* at P 26.

¹¹ *Id.*

¹² Providing reactive power within the dead band means maintaining voltage levels for energy entering the grid during normal operations.

¹³ Providing reactive power outside the established power factor range means providing reactive power across the transmission grid to serve load.

¹⁴ *September 26 Order* at P 26 citing *Consumers Energy Co.*, 93 FERC ¶ 61,339 at 62,154, *order on reh'g*, 94 FERC ¶ 61,230 at 61,834 (2001); *see also Standardization of Generator Interconnection Agreements and Procedures*, *Order No. 2003*, 68 Fed. Reg. 49,845 (2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 at P 546 (2003) (*Order No. 2003*), *order on reh'g*, *Order No. 2003-A*, 69 Fed. Reg. 15,932 (2004), FERC (continued...)

transmission provider's system need only be compensated where the transmission provider directs the generator to operate *outside* the established power factor range.¹⁵ However, the Commission explained that it has held that compensation for reactive power within the established power factor range is based on comparability and thus, if the transmission provider compensates its own or its affiliated generators for reactive power *within* the established range, it *must* also pay the interconnecting generator.¹⁶ The Commission noted that SPP's Schedule 2 allows AEP's generators to receive compensation for providing reactive power within the established power factor range, but not the Oneta Facility. The Commission concluded that, consistent with its reactive power comparability standard, Oneta must also receive compensation and that no further inquiry is required.¹⁷

Stats. & Regs., Regulations Preambles ¶ 31,160 (2004) (*Order No. 2003-A*), *order on reh'g*, 109 FERC ¶ 61,287 (2004) (*Order No. 2003-B*), *order on reh'g*, *Order No. 2003-C*, 111 FERC ¶ 61,401 (2005) (*Order No. 2003-C*).

¹⁵ *Id.* at P 26, *citing Michigan Electric Transmission Company*, 97 FERC at 61,852 (*METC*). There, the Commission stated that “To the extent that reactive power is provided as an ancillary service, and thus outside reactive design limitation, Generators would be entitled to compensation;” *see also Detroit Edison Co.*, 95 FERC ¶ 61,145 at 62,538 (2001) (“A generator is required to supply reactive power in order to operate the facility in a safe and reliable manner and in accordance with good utility practice. If, however, a transmission provider requests a generator to increase or decrease reactive power output, the generator must be compensated by the transmission provider.”).

¹⁶ *Id.*, *citing METC.*, 97 FERC ¶ 61,187 at 61,852-53 (2001). In that case, the Commission held that “the need to treat all generation interconnection customers comparably underlies the need for a *pro forma*. To that end, it is hardly consistent to allow an affiliate to have different and/or superior terms and conditions for interconnection than non-affiliates . . . we direct Michigan Electric to compensate Generators for providing reactive power to the same degree that it will compensate its affiliate, Consumers, for providing reactive power.” *See also* Order No. 2003-A at P 416 (comparability of compensation); *accord* Order No. 2003-B at P 113, 119.

¹⁷ *Id.* at P 27, *citing Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,192 at P 17 (2006) (*Midwest ISO*).

11. The Commission also explained that it has previously held that a generator is “used and useful” if the generator is *capable* of providing reactive power.¹⁸ Based on the record of these proceedings, the Commission found that, because the Oneta Facility is capable of providing reactive power, it meets the “used and useful” test.¹⁹ The fact that the reactive power that a generator is capable of producing is not used at some particular given time does not render the generator’s filed rates based on reactive power capability unjust or unreasonable.²⁰ The Commission also noted that SPP, pursuant to Schedule 2, allows generators owned by control area operators to recover compensation for reactive power based on their reactive power capability; not on the basis of whether such generators are needed or actually used.²¹

12. The Commission indicated that the approach to reactive power compensation used in this proceeding may not be appropriate in all circumstances.²² The Commission stated that, going forward, parties may propose a rate for all generators that compensates them comparably for the level of reactive power actually needed and used.²³ Therefore, the Commission indicated that SPP (and other parties) may develop criteria, including a needs test, to be applied comparably and prospectively, that would determine which

¹⁸ *Id.* at P 28, citing *Midwest ISO* at P 19.

¹⁹ *Id.* at P 28.

²⁰ *Id.*, citing *Midwest ISO* at P 19.

²¹ The Commission also noted SPP’s response to an Oneta data request, stating that the record indicates that no studies were run specifically to assess reactive needs in the SPP footprint and when asked whether SPP developed a needs test, SPP’s response was that “SPP had no reason to design a ‘needs’ test for the provision of reactive power, and the SPP OATT does not require such a test.” *Id.* at P 28.

²² *Id.* at P 50.

²³ *Id.*

generators would receive reactive power compensation.²⁴ The Commission stated that any such proposal should be advanced in a separate proceeding under section 205 of the FPA.²⁵

13. Additionally, the Commission also affirmed its existing policy of using the *AEP* methodology, which the Commission recommends generators use to calculate reactive revenue requirements. The Commission did not specifically address the merits of two alternatives to the *AEP* methodology that were mentioned during the hearing.²⁶

b. Arguments on Rehearing

14. AEP argues that, by focusing on the mere capability to provide reactive power irrespective of how much other reactive power is needed and already available, the Commission improperly ignored its own precedent. AEP asserts that a public utility can only recover the cost of items that are “used and useful” in providing service.²⁷ SPP adds that the Commission and the courts have required that a facility or service be “used and useful” in order for the associated rate to be just and reasonable,²⁸ and the Commission did not justify its deviation from such findings.²⁹ Further, SPP contends that

²⁴ *Id.*

²⁵ *Id.*

²⁶ Trial Staff submitted one proposal that provides for a three-tier approach to determine whether a generator should be compensated for reactive power. This approach would consist of: (1) a “needs” test; (2) an examination of comparability; and (3) an evaluation of the cost. AEP proposed to use the Electric Reliability Council of Texas Independent Operator methodology (referred to as the ERCOT methodology) or a reasonable variation of it. See *Initial Decision* at P 47 and Exhibit No. AEP-1, at 12-13.

²⁷ AEP Rehearing Request at 21, citing, e.g., *NEPCO Municipal Rate Committee v. FERC*, 668 F.2d 1327, 1333 (D.C. Cir. 1981); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 611-12 (1944).

²⁸ SPP Rehearing Request at 11, citing *Anaheim*, 669 F.2d at 808; *Tennessee Gas Pipeline*, 606 F.2d at 1109; *New England Power Co.*, 42 FERC ¶ 61,016 at 61,078 (1988).

²⁹ *Id.*, citing *Sithe/Independence Power Partners, L.P.*, 285 F.3d at 5; *Wisc. Valley Improvement Co. v. FERC*, 236 F.3d at 748.

the Commission's comparability principles and Order No. 2003 cannot justify a rate that is unjust and unreasonable, because it is not needed or is not used and useful.³⁰ AEP continues that by definition a resource cannot be used and useful if the ratepayer does not derive a benefit and the courts have repeatedly disallowed recovery of costs that did not provide a benefit to customers.³¹ Further, AEP contends that whether the Oneta Facility provides a benefit to consumers cannot turn on whether AEP facilities benefit consumers – either the Oneta Facility benefits consumers or it does not.³²

15. Moreover, AEP argues that, by ignoring the amount of reactive power that is needed and already available, the Commission's policy will result in customers paying an excessive amount for reactive power, a result that clearly is not just and reasonable as required by the FPA.³³ SPP states that the Commission's reactive power policy of approving reservation charges will result in Oneta being paid for every hour of every day even if the reactive power is not necessary.

16. In light of the ALJ's finding that there is more reactive capability than needed in the Tulsa area³⁴ and the Commission finding that its reactive power compensation

³⁰ *Id.* at 9, citing *Bonneville Power Admin. v. FERC*, 422 F.3d 908, 924 (9th Cir. 2005); *Pacific Gas & Electric Company v. FERC* 306 F.3d 1112, at 1116-19 (D.C. Cir. 2002).

³¹ AEP Rehearing Request at 21, citing, *e.g.*, *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,270 at PP 31, 34 (2006); *Entergy Nuclear Operations, Inc. v. Consolidated Edison Company of New York, Inc.*, 110 FERC ¶ 61,312 *reh'g denied* 112 FERC ¶ 61,117 at P 11 (2005).

³² AEP also argues that the Commission erred by not considering whether ratepayers actually received any benefit from Oneta's capability to produce reactive power. *Id.*, at 21-23.

³³ AEP Rehearing Request at 20. SPP concurs. *See* SPP Rehearing Request at 11, citing *Public Utilities Commission of California v. FERC*, 383 F.3d 1006, 1011 (9th Cir. 2004); *Municipal Light Boards*, 450 F.2d at 1348.

³⁴ SPP contends that the Commission erroneously found that SPP did not conduct studies to assess reactive power needs. SPP states that it performs real time studies, current day, next day, and seven-day out operational planning studies as well as long-term studies going out ten or more years (*citing* Transcript at 243, lines 12-25). SPP states that these are studies that it performs in the ordinary course of business in its role
(continued...)

approach may not be appropriate in all circumstances, AEP argues that the Commission erred by not addressing why its policy was appropriate as applied to the Oneta Facility. Further, AEP asserts that it is not reasoned decision making for the Commission to allow the parties to propose a different approach for reactive power compensation going forward, yet not for the instant proceeding. Cases that are alike should be treated alike, according to AEP.

17. AEP argues that the Commission should have created an exception to its policy in this case, even if it did not modify its general reactive power policy. AEP contends that an exception is warranted for the Oneta Facility because the record here demonstrates why it is improper to compensate a generator merely for operating in its dead band in the few hours of the year when the facility operates.³⁵

18. Alternatively, AEP states that given the negative impacts on ratepayers of the Commission policy on reactive power, AEP argues that the Commission should have considered the proposed alternatives to the Commission's policy of using the capability-based AEP methodology, which were proposed by Trial Staff and by AEP and mentioned in the Initial Decision. AEP argues that the Commission failed in its duty to "consider responsible alternatives to its chosen policy, and to give a reasoned explanation for its rejection of such alternatives."³⁶

19. SPP argues that, if the Commission wanted to ensure comparability and just and reasonable rates, the Commission should allow the transmission provider to file non-

as the entity in charge of maintaining reliability. SPP admits that it did not perform special studies relating to the Oneta Facility, but states that the evidence is clear that SPP did and does perform studies that show whether the Oneta Facility is needed to supply reactive power. *Id.* at 15.

³⁵ For example, AEP cites the ALJ's finding that the Tulsa region has more reactive power capability than it actually needs at any one time, and that due to the electrical and geographic location of the Oneta Facility, it does not provide any reactive power to SPP's system. AEP Rehearing Request at 2-3.

³⁶ *Id.* at 24, citing *Farmers Union Central Exchange, Inc. v. FERC*, 734 F.2d 1486, 1511 (D.C. Cir. 1984); see also, e.g., *United Illuminating Co.*, 50 FERC ¶ 61,017 at 61,034 (1990).

discriminatory tariff provisions that also result in just and reasonable rates or to reform the existing generators' rates.³⁷

20. Additionally, SPP states that the Commission cannot rely on Order No. 2003 in this proceeding because Order No. 2003 only applies prospectively to interconnection agreements entered into after the January 20, 2004 effective date of Order No. 2003. SPP states that the Oneta Facility interconnects with the AEP system pursuant to an Interconnection Agreement between AEP and the prior owner of the facility, Panda Oneta Power, L.P., dated June 5, 2000.

21. SPP argues that for wind generators the Commission has determined that the application of a needs test is appropriate to protect parties from having to pay excessive and unnecessary costs.³⁸ SPP states that the Commission's finding that a needs test is appropriate for a wind generator is based on the wind generator being remote from load, that not all generators are needed to provide reactive power and that parties should not be required to pay unnecessary reactive power costs.³⁹

³⁷ SPP states that this would be consistent with its actions in *Entergy Services Inc.*, 113 FERC ¶ 61,040 (2005), *reh'g denied*, 114 FERC ¶ 61,303 (2006). SPP Rehearing Request at 6, 12.

³⁸ See *Interconnection for Wind Energy*, Order No. 661, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,186 (Order No. 661); *order on reh'g*, Order No. 661-A, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,198 (2005) (Order No. 661-A). The Commission required public utilities to incorporate standard procedures and technical requirements for the interconnection of large wind generation including a "needs" test to determine if wind generation should be required to build reactive power capability.

³⁹ SPP cites Order No. 661-A, in which the Commission found that interconnecting wind generators are not required to meet the transmission provider's power factor standard absent a specific determination of need, stating that this would protect such generators against having to pay excessive costs. SPP states that the Commission also found that the use of a case-by-case approach would not harm reliability. SPP states that the Commission based its decision in part on the fact that wind generators were often located in areas where there was no need for the reactive power capability, and because the costs of mandating the installation of such equipment outweighed the benefits. SPP Rehearing Request at 9-10, *citing* Order No. 661-A at PP 31, 34 and 41, and *PJM Interconnection, LLC*, 116 FERC ¶ 61,021, at P 24 (2006).

c. Commission Determination

22. As the Commission explained in the *September 26 Order*, our precedent holds that a generator is “used and useful” if the generator is capable of providing reactive power.⁴⁰ We also found that the record in this proceeding indicates that the Oneta Facility is capable of providing reactive power and is therefore “used and useful.” The fact that that capability may not be utilized in a given hour does not mean that the reactive power compensation no longer meets the just and reasonable standard.⁴¹

23. Half of AEP’s generators are on-line less often than the Oneta Facility, which is on-line approximately 8.4 percent of the time. Following the logic of AEP’s argument, AEP’s generators that are off-line and thus are not used to provide reactive power service during most of the year would not be “used and useful” (despite AEP’s recovery of the fixed costs of reactive power capability of those facilities). Additionally, to the extent that SPP does not perform a “needs” test, has had no reason to design a “needs” test,⁴² and does not require in its OATT a “needs” test for generation affiliated with control area operators, we continue to believe that it is unduly discriminatory to subject the Oneta Facility to a “needs” test.⁴³

⁴⁰ *September 26 Order* at P 28. Thus, contrary to arguments raised by AEP and SPP, the Commission’s determinations in the *September 26 Order* are consistent with the “used and useful” principle of ratemaking and the Commission has no need to explain any alleged deviation from it.

⁴¹ *Id.*

⁴² SPP has not explained why it has had no reason to design a needs test given that the record indicates there is between three and ten times the amount of reactive power capability as needed in the Tulsa, not counting the Oneta Facility capability.

⁴³ The Commission did not intend to suggest that SPP failed to perform any reactive power studies for the Tulsa area. In fact, the Commission recognized that the ALJ found that there were between three and ten times the amount of reactive power capability as needed in the Tulsa area, not counting the Oneta Facility capability. Our statement in the *September 26 Order* was based on Exhibit No. KZ-20 in which SPP answered an Oneta data request stating, in part:

SPP has not performed a reactive “needs” assessment for all generation within SPP. SPP has had no reason to design a “needs” test for
(continued...)

24. The argument by AEP and SPP that the Commission's finding in the *September 26 Order* will create excessive rates is not accurate. While the result of the Commission's findings in the *September 26 Order* may be higher rates than that advocated by AEP and SPP, the accepted rates are not excessive. No party disputes that Oneta has followed the *AEP* methodology, which the Commission has established as a just and reasonable manner to calculate a reactive power requirement. Applying our reactive power policy without a needs test for IPPs will create higher rates than would be the case if we were to apply our reactive power policy with a needs test only for Oneta, as advocated in this proceeding by AEP.⁴⁴ However, as we found in the *September 26 Order* and reaffirm below, applying a needs test to only Oneta is unduly discriminatory.⁴⁵ The Commission indicated in the *September 26 Order* that it is receptive to proposals that would use pre-defined criteria (including a needs test) that can be applied prospectively and comparably to everyone's generation and can be supported as just and reasonable.

25. As explained more fully in the September 26 Order and reaffirmed below, the ALJ found that AEP provides no more of a reactive power service than the Oneta Facility and the Oneta Facility's reactive capability is comparable and no less usable than AEP's reactive capability.⁴⁶ Additionally, the record indicates that the Oneta Facility is operated

the provision of reactive power, and the SPP OATT does not require such a test.

⁴⁴ The Commission's invitation to SPP (and other parties) to develop criteria, including a needs test, to be applied prospectively and comparably does not change the fact that Oneta's revenue requirement in its Rate Schedule is just and reasonable.

⁴⁵ *September 26 Order* at P 35. See also *Midwest ISO* at P 18-19 where the Commission stated:

The Midwest ISO transmission operators effectively propose a "needs" test that would be applied only to new generation, and not to their pre-existing generation. Such a proposal would be unduly discriminatory because existing generators, most of which are owned by or affiliated with the transmission owners, would not be subject to the test; existing generators would be presumed to be needed and receive compensation for their capability, while new generators would be presumed not to be needed unless proven otherwise.

⁴⁶ *Id.* at P 48.

more often than half of AEP's generation for which AEP is paid on a reactive capability basis. Accordingly, anything that can be said about the Oneta Facility providing benefits to ratepayers could just as easily be said about AEP's generation. Nonetheless, even if a comparison of the Oneta and AEP generation were not performed, we note that the ALJ found based on the record that if the AEP units were taken off-line, there would be other units, perhaps even Oneta's, on-line taking their places to supply real power for sale to customers and the Oneta Facility has similar reactive power capability as the displaced AEP generation. Therefore, we find AEP arguments about ratepayer benefits to be simply a rehashing of their arguments recommending a "needs" test.

26. Similarly, because the Commission found Oneta's capability to be comparable to AEP's, the Commission had no basis to exempt Oneta from its reactive power compensation policy as that would essentially constitute a needs test. Developing pre-defined criteria, including a need test, to be applied prospectively and comparably, as requested by SPP⁴⁷ and as provided for in the *September 26 Order*,⁴⁸ would avoid the unduly discriminatory nature of an exemption from existing policy for a similarly situated entity as advocated by AEP. Moreover, applying the *AEP* methodology to the revenue requirements of control area operators but applying an alternative rate mechanism to similarly situated entities like Oneta would be unduly discriminatory. Commission precedent is clear that the *AEP* methodology should be employed to calculate reactive power revenue requirements for all generators.⁴⁹

27. SPP is correct that the Interconnection Agreement was filed prior to the effective date of Order No. 2003. However, the Commission's policy on reactive power service

⁴⁷ SPP states that the Commission should allow Transmission Providers to file non-discriminatory tariff revisions. SPP Rehearing Request at 6 and 11.

⁴⁸ *September 26 Order* at P 50.

⁴⁹ Nonetheless, the Commission notes that the proposed alternative rate mechanisms were not fully supported by the record. AEP proposed applying its alternative rate mechanism only to Oneta, which would be unduly discriminatory, because the reactive power rates of other entities were not at issue. Exhibit No. AEP-1, at 13, lines 4-8. Moreover, the record did not contain the details as to how the proposals would be administered. Finally, to the extent the proposals result in changes in rate design, the Commission would not apply the proposal to Oneta for prior periods, because changes in rate design are prospective. *Union Electric Company*, 71 FERC ¶ 61,229 (1995).

began prior to Order No. 2003.⁵⁰ Thus, despite SPP's concerns to the contrary, we did not rely solely on Order No. 2003 for our findings in the *September 26 Order*. Nonetheless, what we have before us is a rate schedule under which Oneta is seeking reactive power compensation and we must evaluate that Rate Schedule pursuant to the FPA to ensure that the latest terms and conditions are not unduly discriminatory. To fulfill that mandate, the Commission applied its policy on reactive power compensation to the Oneta Rate Schedule.

28. SPP's reliance on our policy requiring a needs test for wind generators is misplaced. The Commission's needs test policy for wind generators is intended to determine of whether wind developers are required to install costly equipment to provide reactive power.⁵¹ Here, the issue is whether Oneta should receive reactive power compensation to recover the cost of already installed equipment. This determination is based on comparability principles and not on a "needs" basis. Accordingly, the Commission's precedent concerning wind developers is inapposite.

2. Needs Test and Undue Discrimination

a. September 26 Order

29. The Commission agreed with the ALJ's finding that applying a "needs" test to Oneta's reactive power capability that is not also applied to all other generating plants in its vicinity would deny Oneta comparable treatment and would constitute undue

⁵⁰ *September 26 Order* at P 26.

⁵¹ In Order No. 661, the Commission states:

Requiring wind plants to maintain the required power factor only if the System Impact Study shows it to be necessary ensures that the increased reliance on wind plants does not degrade system safety or reliability. It also ensures that the Transmission Provider does not require a wind plant to install costly equipment that is not needed for grid safety or reliability. Furthermore, requiring that the System Impact Study find a need for reactive power will limit the opportunities for undue discrimination; a wind plant Interconnection Customer will not have its interconnection frustrated by unnecessary requirements that are not necessary to maintain safety or reliability. Order No. 661 at P 51.

discrimination.⁵² The Commission noted that, in calculating AEP's reactive power rates, AEP determines the percentages of its generating plants that are allocable to reactive power capability under the *AEP* methodology.⁵³ SPP charges its transmission customers those percentages of AEP's fixed costs of generation as stated rates under Schedule 2 of SPP's OATT.⁵⁴ It then passes through the amount received from transmission customers to AEP.⁵⁵ Entities that are not control area operators (*e.g.*, IPPs) do not receive compensation for providing reactive power.⁵⁶ The Commission stated that reactive power compensation is based on comparability, and the imposition of a "needs" test would be contrary to this principle.⁵⁷ Moreover, such a policy would be unduly discriminatory where others receive compensation based on capability.

30. AEP recognized during this proceeding that only Oneta's rates were at issue.⁵⁸ The Commission pointed out that AEP effectively proposes a "needs" test that would be applied only to Oneta, but not to AEP's pre-existing generation.⁵⁹ Such a proposal would be unduly discriminatory because AEP's generators would not be subject to the test; AEP's generators would be presumed to be needed and would receive compensation for their capability, while the Oneta Facility would be presumed not to be needed unless proven otherwise.⁶⁰

31. The Commission also disagreed with AEP's argument that competitive harm has to be proven in order for the Commission to find undue discrimination under the FPA.

⁵² *September 26 Order* at P 35.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id. citing Initial Decision* at P 63.

⁵⁶ *Id.* at P 35.

⁵⁷ *Id., citing Entergy Services Inc.*, 113 FERC ¶ 61,040 at P 22-24, 38-39.

⁵⁸ *See* AEP's Exhibit No. AEP-1, at 13, lines 4-8.

⁵⁹ *Id.* at P 35.

⁶⁰ *Id.*

Discrimination is undue when there is a difference in rates or services among similarly situated entities.⁶¹ The Commission found that the Oneta Facility and AEP's generators are similarly situated for reactive power compensation purposes because they have the capability of providing reactive power within their respective dead bands.⁶² Thus, compensating AEP's generators for their capability of providing reactive power and denying the Oneta Facility for similar capability is unduly discriminatory.⁶³

b. Arguments on Rehearing

32. AEP states that compensating AEP's generators in SPP for reactive power and not compensating Oneta's generator for reactive power does not constitute undue discrimination because AEP and Oneta are not similarly situated. As support, AEP states that it has a regulatory obligation to provide reactive power in order to meet the dynamic needs of its transmission customers. In contrast, Oneta has no such obligation to operate to meet system voltage needs, according to AEP.⁶⁴

33. AEP also argues that even if AEP is similarly situated with Oneta, the Commission should not have found undue discrimination. AEP asserts that there is nothing in the law of undue discrimination that allows one party to collect a rate for a service solely because another party collects such a rate, which is the effect of the Commission's decision. Further, AEP states that if the Commission thought AEP's rates were unjust and unreasonable it should institute a section 206 proceeding to change them instead of extending the same treatment to Oneta.

34. SPP also states that the Commission misunderstood AEP's position to be that it wants to apply a needs test to new generation only. SPP states that AEP recommended that generators that provide reactive power be paid a stated rate for each hour in which they provide this service.⁶⁵

⁶¹ *Id.* at P 36 citing *El Paso Natural Gas Co.*, 104 FERC ¶ 61,045 at P 115 (2005).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ AEP Rehearing Request at 11-12.

⁶⁵ SPP Rehearing Request at 13, citing Exhibit No. AEP-1 at 12, lines 10-20.

c. Commission Determination

35. As we found in the *September 26 Order* and reaffirm below, AEP and Oneta are similarly situated. We also reaffirm our finding in the *September 26 Order* that it is unduly discriminatory for the transmission provider to pay AEP for its reactive power capability and deny payment to Oneta for its reactive power capability, because both entities are similarly situated.

36. AEP's assertion that the Commission erred in finding undue discrimination is both unsupported and incorrect.⁶⁶ On the contrary, the Commission's finding of undue discrimination is based upon well settled Commission precedent regarding undue discrimination in the context of similarly situated entities, including recent orders addressing reactive power.⁶⁷

37. For SPP to reimburse AEP for its reactive capability according to the *AEP* methodology, but to deny reimbursement to Oneta for its reactive capability according to the *AEP* methodology, is unduly discriminatory. Accordingly, our responsibility is to remedy this undue discrimination. We have concluded, consistent with our precedent, that if AEP compensates its own generators on a capability basis which the Commission has found to be a just and reasonable method for compensating generators, it must also compensate all other generators, including Oneta, on the same basis as a way to remedy this undue discrimination. In this regard, the Commission has wide discretion in fashioning remedies for undue discrimination.⁶⁸

38. Finally, SPP is mistaken with regard to AEP's position.⁶⁹ AEP's witness Mr. Bethel states that all generators should be paid like IPPs, which Mr. Bethel suggests

⁶⁶ AEP cites no Commission or judicial precedent for asserting that the Commission's finding of undue discrimination essentially ignores "the laws of undue discrimination." AEP Rehearing Request at 17.

⁶⁷ *Bluegrass Generation Company, L.L.C.*, 118 FERC ¶ 61,214 (2007), at P 33.

⁶⁸ *See, e.g., Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967).

⁶⁹ The section of AEP's testimony cited by SPP indicates that AEP wants Oneta to be paid on a basis for operating outside of the dead band which would be disparate treatment for similarly situated entities.

is when they provide service to customers.⁷⁰ But he then acknowledges that “such an industry-wide recommendation is not the subject of this proceeding,” which deals with finding a just and reasonable way of treating Oneta.⁷¹ AEP acknowledged that the proceeding dealt only with the Oneta Rate Schedule and it recommended that the Commission take need into account. Thus, the Commission correctly characterized AEP’s position in this proceeding as effectively proposing a needs test that would only be applied to new generation, like Oneta.

3. Comparable Reactive Power

a. September 26 Order

39. The Commission affirmed the ALJ’s finding that Oneta provides reactive capability that is comparable to and no less useful than AEP’s reactive capability;⁷² thus, the Oneta Facility and AEP are similarly situated.⁷³ Among the evidence that supported the ALJ’s finding were the facts that the Oneta Facility operates at a power factor nameplate of .85, whereas AEP’s units typically operate at .95; the same AEP voltage schedule applies to the Oneta Facility and certain AEP generation; and for 2004 Oneta’s capacity factor was 8.4 percent, with approximately half of AEP’s units having a lower capacity factor.⁷⁴

40. In the *September 26 Order*, the Commission rejected arguments by AEP and SPP that the ALJ should have focused on the differences in “service,” as opposed to the capability of producing reactive power.⁷⁵ The Commission stated that the fact that the reactive power that a generator is capable of producing is not used at some particular given time does not render the generator’s filed rates based on reactive power capability

⁷⁰ Exhibit No. AEP-1 at 11, lines 21-23.

⁷¹ Exhibit No. AEP-1 at 11, line 23 and at 12, lines 1-6.

⁷² *September 26 Order* at P 48.

⁷³ *Id.* at P 36.

⁷⁴ *Id.* at P 48.

⁷⁵ *Id.* at P 49.

unjust or unreasonable.⁷⁶ The Commission noted that the *AEP* methodology, which Oneta used to determine its cost-based reactive power revenue requirement, focuses on the capability of the generator.⁷⁷ The Commission stated that the issue was whether AEP's generators' reactive power capability, for which AEP receives compensation, is comparable to the Oneta Facility's capability, which is not compensated. Therefore, the focus on capability was proper.⁷⁸ The Commission found that the fact that AEP has more generators than Oneta or that AEP may have a generator on-line for no other purpose than to produce reactive power is irrelevant to the issue of whether the Oneta Facility is comparable to AEP's generators. The *September 26 Order* found that if AEP receives compensation for being capable of providing reactive power within its dead band, and if Oneta is also capable of providing reactive power within its dead band, then Oneta is also eligible to receive compensation under Commission precedent.⁷⁹

b. Arguments on Rehearing

41. AEP argues that if the Commission focused on the provision of reactive power "service" instead of the capability of the units, the Commission would realize that AEP is not similarly situated with Oneta.⁸⁰ AEP asserts that AEP and Oneta are not similarly situated because Oneta in fact does not provide any reactive power reliability service support to the SPP system.⁸¹ AEP states that it has a regulatory obligation, which derives from Order No. 888,⁸² to provide reactive power for which it must plan and operate its

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ AEP Rehearing Request at 17, citing *Tesoro Alaska Petroleum Company v. FERC*, 234 F.3d 1286, 1294 (D.C. Cir. 2000).

⁸¹ *Id.* at 16, citing Exhibit No. AEP-2 at 14-15; Exhibit No. AEP-6; Exhibit No. SPP-6 and Tr. 83, 106.

⁸² Promoting Wholesale Competition Through Open Access Nondiscriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. Regulations Preambles January 1991-June 1996 ¶ 31,036 at 31,705-06 and 31,716-17 (1996)

(continued...)

generators to meet the system's voltage needs. AEP contends that Oneta does not have this same obligation, and that evidence in the record demonstrates Oneta does not provide any reliability service to customers on SPP's system. For example, AEP states that its study conclusively demonstrated that the Oneta Facility, even under peak conditions, produced no voltage support for SPP's system during the limited hours in which it was running.⁸³ Further, AEP states that SPP has never called upon Oneta to supply system voltage support.⁸⁴

42. AEP states that Commission precedent also draws a distinction between transmission providers, such as AEP, who are obligated to run their generators to meet voltage requirements and independent generators, such as Oneta, who are not so obligated.⁸⁵ Further, AEP contends that the Commission has previously acknowledged that transmission providers provide reactive power as an ancillary service for transmitting power across the grid to serve load while the IPP is merely meeting its obligation as a generator to maintain voltage levels for energy entering the grid during normal operations.⁸⁶ Further, AEP asserts that a Commission determination entitling Oneta to compensation without any showing that it provides a service not only contravenes the law of undue discrimination, but is at odds with the FPA's purpose of protecting consumers.⁸⁷

43. Moreover, AEP and SPP contend that AEP and Oneta are not similarly situated because AEP's generation is not comparable to Oneta's generation. AEP's generators provide baseload service, and thus are on-line more frequently and may go on-line for the

(Order No. 888), Order No. 888-A, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd* in relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *aff'd* sub nom. New York v. FERC, 535 U.S. 1 (2002).

⁸³ AEP Rehearing Request at 16, *citing* Exhibit AEP-2 at 14-16; Exhibit AEP-6.

⁸⁴ *Id.*, *citing* Exhibit SPP-6; Tr. 83, 106. *See Initial Decision* at P 84.

⁸⁵ *Id. citing Order No. 2003-C* at P 43.

⁸⁶ *Id.* at 13-14, *citing METC and Arizona Pub. Serv. Co.*, 95 FERC ¶ 61,128 at 61,409 (2001) (*APS*).

⁸⁷ *Id.* at 17-18.

sole purpose of providing reactive power. AEP and SPP state that AEP's generators are committed to actually providing reactive power, whereas Oneta's generation is peaking generation.⁸⁸ AEP claims that the baseload service that it provides is more valuable than peaking service, and thus the Commission's conclusion that AEP's generators and the Oneta Facility are similarly situated is in error. Additionally, AEP argues that the Commission cannot justify forcing ratepayers to pay excessive rates based on a comparison of capacity factors of AEP and Oneta's generation.⁸⁹

c. Commission Determination

44. The Commission has found that generators affiliated with transmission owners and unaffiliated generators are similarly situated for reactive power compensation purposes to the extent that they have the capability of providing reactive power service within their respective dead bands.⁹⁰ The ALJ stated that "based on the factual and expert evidence adduced in this case, it is apparent that there is no difference between the reactive power capabilities of traditional utilities and those of merchant generators under the control of the same transmission provider or control area operator."⁹¹ Thus, the Commission reaffirms its finding in the *September 26 Order* that Oneta provides reactive power capability comparable to, and no less usable than, AEP's capability.⁹²

45. On rehearing, AEP argues that the Commission should focus on the provision of reactive power "service" instead of the capability of the units.⁹³ The Commission rejected this argument in the *September 26 Order*, stating that the fact that the reactive

⁸⁸ Similarly, SPP alleges that AEP's reactive power capability was built to benefit the system but Oneta's reactive capability was built with the intent to support its own power sales. SPP Rehearing Request at 17.

⁸⁹ Approximately half of AEP's units had a lower capacity factor than Oneta's 8.4% in 2004. *September 26 Order* at P 48.

⁹⁰ *Id.* at P 35.

⁹¹ *Initial Decision* at P 105.

⁹² Thus, ratepayers receive as much benefit from Oneta's capability to produce reactive power as they receive from AEP's similarly situated generation.

⁹³ AEP Rehearing Request at 16.

power that a generator is capable of producing is not used at some particular given time does not render the generator's filed rates based on reactive power capability unjust and unreasonable.⁹⁴ The issue in this proceeding is whether AEP's generators' reactive power capability, for which AEP receives compensation, is comparable to the Oneta Facility's capability, which is not compensated; therefore, our focus on capability is appropriate.

46. Nonetheless, even if the Commission were to focus on service as AEP requests, we would still find AEP and Oneta to be similarly situated for reactive power compensation. As discussed more fully below, the Commission has previously noted that the generation of transmission providers may be required to operate when others are not required; however, this distinction in availability is not significant enough to eliminate payment to other generators.⁹⁵ AEP has not raised any new arguments that would lead us to find otherwise in this proceeding.⁹⁶ Further, we note that both AEP and Oneta are required to operate in accordance with the same SPP Criteria and SPP directives.⁹⁷ Additionally, we are not persuaded to grant rehearing on the comparability of AEP's and Oneta's generation based on AEP's studies. As the ALJ noted, "whatever can be said about the lack of need for Oneta's generators based on modeling, can be said about AEP's generators;" thus AEP's models fail to show that it is not similarly situated to Oneta.⁹⁸ Finally, AEP's argument that SPP never called upon Oneta to provide service is misplaced because, as Oneta claims, AEP requires Oneta to remain ready to provide reactive power service to AEP (and thus to SPP) as a condition of interconnection.⁹⁹

⁹⁴ September 26 Order at P 28.

⁹⁵ Order No. 2003-C at P 43. *See also Initial Decision* at P 89.

⁹⁶ The record also shows that when the Oneta Facility was operating it produced 155.1 MVAR out of the total produced 344.1 MVAR in the Tulsa area, demonstrating that it does contribute to the provision of a reliability service in the control area. *Initial Decision* at P 88 *citing* Exhibit KZ-21 at p 6.

⁹⁷ Interconnection Agreement, section 3.4 System Operation.

⁹⁸ *Initial Decision* at P 88.

⁹⁹ *Id.* at P 13.

47. AEP cites precedent to argue that the Commission makes a distinction between providing reactive power outside the dead band, (*i.e.*, an ancillary service), and service within the dead band, (*i.e.*, ensuring that a generator lives up to its obligation).¹⁰⁰ While the Commission did draw a distinction in *METC* (quoting *APS*) between the obligation between a transmission provider and an IPP, in *METC* the Commission also directed *METC* to “compensate Generators for providing reactive power to the same degree that it will compensate its affiliate.”¹⁰¹ Thus, even with the distinction argued by AEP, the Commission in *METC* still required comparability, as we have required here. AEP’s citation to Order No. 2003-C is also misguided. In Order No. 2003-C, the Commission stated:

We therefore reiterate that if the Transmission Provider’s affiliate receives a payment for providing this service within the specified range, then payments must be made to non-affiliated Interconnection Customers providing the service.¹⁰²

48. Moreover, even if the distinction between service outside the dead band and service inside the dead band was sufficient to warrant limiting compensation to Oneta, there is no need to make that distinction in this proceeding. AEP ignores the facts in the record demonstrating that:

AEP’s generators do not come close to operating near their design limits, whether 0.95 or 0.85 lagging, and 0.95 leading. While AEP considers 95% power factor the lowest level at which to operate its generators, it operated its generators on the 138 kV system in the Tulsa area at a 99.4% power factor, and its generators on the 348 kV system at close to unity (100% production of real power).¹⁰³

Therefore, because AEP does not operate its generators on its 138 kV and 348 kV system outside the dead band, even using the distinction drawn by AEP, AEP does not provide an ancillary service from these generators or at least no more of one than Oneta. As the ALJ stated, AEP’s generators supply no more a reactive power “service” than Oneta’s

¹⁰⁰ AEP Rehearing Request at 13-4, *citing METC, APS and Order No. 2003-C.*

¹⁰¹ *METC*, at 61,853.

¹⁰² *Order No. 2003-C* at P 42.

¹⁰³ *Initial Decision* at P 96.

facility.¹⁰⁴ Therefore, even if the Commission were to focus on “service” instead of capability, it would be unduly discriminatory to deny Oneta comparable rate treatment for what has been found, on the fully developed record in this proceeding, to be similar service.

49. With respect to assertions by AEP and SPP that the facilities are not similarly situated because AEP’s generation is baseload generation and Oneta’s generation is peaking generation, we remain unpersuaded. The ALJ compared Oneta’s peaking generation, which is on-line only 8.4 percent of the time, with AEP’s generation.¹⁰⁵ The ALJ found that half of AEP’s generation is on-line less than Oneta’s generation, and some of the generation is not on-line at any time during the year, yet AEP recovers the costs of these generators on a capability basis. Thus, SPP’s established practice is to provide infrequently run generation with reactive power compensation on a capability basis when such generation is affiliated with control area operators; it does not provide compensation to similarly situated generators that are not affiliated with control area operators. Clearly, this is unduly discriminatory. The Commission has accepted similar proposals for other independent generators that run infrequently. For example, in *Rolling Hills*,¹⁰⁶ the Commission accepted a proposal for reactive power compensation using the capability-based *AEP* methodology from the owner of a peaking plant that operated only 181 hours in a four month period.¹⁰⁷

50. Finally, the Commission notes that section 13.16 of the Interconnection Agreement states the following:

Company shall not require Customer to comply with standards and procedures in excess of those applied to Company’s own interconnected generating facilities that are similarly situated.” (Emphasis added).¹⁰⁸

¹⁰⁴ The ALJ also stated that AEP’s voltage schedules for its generating facilities mirror the voltage schedules for Oneta and that AEP generators do not operate anywhere near their design limits. *Initial Decision* at P 96.

¹⁰⁵ The ALJ noted that the need for reactive power is instantaneous and cannot be supplied from units that are shut down. *Id.* at P 86.

¹⁰⁶ *Rolling Hills*, 109 FERC ¶ 61,069 at P 12 (2004). (*Rolling Hills*).

¹⁰⁷ *Initial Decision* at P 67.

¹⁰⁸ Interconnection Agreement, section 13.16.

Thus, contrary to AEP's assertions that AEP and Oneta are not similarly situated, the parties to the Interconnection Agreement (including AEP) recognized that AEP has generation that is similarly situated to the Oneta Facility.

4. Contractual Obligations

a. September 26 Order

51. In the *September 26 Order*, the Commission noted that while Oneta's Interconnection Agreement with AEP states that Oneta's facility will follow AEP's reactive and voltage restrictions, the Interconnection Agreement is silent as to compensation for doing so.¹⁰⁹ The Commission interpreted section 13.16 of the Interconnection Agreement to mean that if AEP receives compensation from SPP for reactive power service, then AEP must treat the Oneta Facility as it treats AEP's similarly situated generation, for the purpose of receiving reactive power compensation under Schedule 2 of the SPP OATT.¹¹⁰

52. The Commission affirmed the ALJ's conclusion that the SPP Criteria established a sufficient contractual basis to require SPP to pay Oneta, albeit indirectly through the control area operator, for the reactive power capability provided by Oneta.¹¹¹

b. Arguments on Rehearing

53. SPP argues that the Commission erred in concluding that the SPP Criteria establish an indirect relationship through the control area operator that is sufficient to require SPP to pay Oneta for reactive power capability provided by Oneta. SPP states that while SPP Criteria require Oneta to follow a reactive power voltage schedule, this does not create a contractual arrangement between SPP and Oneta that entitles Oneta to receive its reactive power revenue requirement even indirectly through SPP. SPP states that there is nothing in the SPP Criteria that address compensation. Moreover, SPP states

¹⁰⁹ *September 26 Order* at P 69.

¹¹⁰ *Id.*

¹¹¹ The Commission stated that with the modifications ordered to the Oneta Rate Schedule, it was unnecessary for the Commission to determine if the SPP Membership Agreement established a sufficient contractual basis to require SPP to pay Oneta directly. *September 26 Order* at n.84.

that it is not a party to the Interconnection Agreement between Oneta and AEP. Thus, it argues, there is nothing in the Interconnection Agreement or in the SPP Criteria that provides a basis for Oneta to charge SPP its reactive power revenue requirement, or that would oblige SPP to pay such charges, either directly or indirectly.

54. SPP also states that it neither wants nor asked for this service from Oneta. SPP contends that Commission precedent holds that a customer has no obligation to take service it does not want, especially when no actual service has been provided.¹¹² SPP contends that the absence of a signed service agreement showed that the putative customer did not want or take the service and therefore should not be charged.¹¹³

55. In its request for rehearing AEP provides information regarding the contractual arrangements under which reactive power was provided. AEP explains that the Schedule 2 charges were derived from AEP's annual revenue requirement, which was based on the AEP methodology for the facilities that provide reactive power capability and assessed through stated rates.¹¹⁴ AEP explains that from the effective date of the Oneta Rate Schedule through December 2003, AEP's wholesale customers were taking service under the AEP OATT. AEP states that wholesale customers then transitioned to the SPP OATT through January 2005, and on September 1, 2005 AEP's retail bundled load took service under SPP's OATT. Customers served under AEP's OATT paid AEP directly, while customers under the SPP OATT paid SPP, which then passed the revenues back to AEP as the control area operator. AEP adds that under the AEP OATT and SPP OATT, transmission customers could self-supply reactive power to avoid being charged under either OATT.¹¹⁵

¹¹² SPP Rehearing Request at 19, citing *Entergy Nuclear Operations, Inc. v. Consolidated Edison Company*, 112 FERC ¶ 61,117, at P 11 (2005); *AES Somerset, LLC v. Niagara Mohawk Power Corporation*, 110 FERC ¶ 61,032, at P 56 (2005).

¹¹³ *Id.*, citing *Southwest Power Pool, Inc.*, 98 FERC ¶ 61,256, at 62,027, *reh'g granted*, 100 FERC ¶ 61,096 (2002).

¹¹⁴ AEP Rehearing Request, P 34.

¹¹⁵ AEP states that two of its wholesale customers, Oklahoma Municipal Power Authority and North Texas Electric Cooperative, qualified for the self-supply provision under the AEP OATT and SPP OATT. *Id.* at 34-35.

56. AEP argues that the Commission's reading of the Interconnection Agreement is incorrect. AEP states that nothing in the Interconnection Agreement obligates AEP to ensure that Oneta is compensated in a manner comparable to the way AEP's generation is compensated.¹¹⁶ AEP contends that the *September 26 Order* is inherently contradictory because, on the one hand, it interprets the contract to provide for compensation, and on the other hand it states that the Interconnection Agreement is silent regarding compensation. AEP states that the Commission's interpretation of section 13.16 of the Interconnection Agreement to support compensation for Oneta is not correct because the plain terms of that section do not require compensation.

57. AEP states that the Commission erred to the extent that it required SPP transmission customers to underwrite Oneta's entire annual revenue requirement and AEP to be deemed Oneta's customer. AEP states that in applying the SPP methodology for reactive power compensation, which allows for entities to self-supply their reactive power requirements, the Oneta Facility should be treated "in a manner similar to AEP's similarly situated generation."¹¹⁷ AEP contends that the only reasonable interpretation of the *September 26 Order* that would ensure comparability is that the Commission intended for Oneta, like other reactive power service providers, to receive an appropriate share of the revenues that SPP collects from customers who take and pay for service pursuant to Schedule 2 based on rates that reflect (*i.e.*, are derived in part from) Oneta's revenue requirement.¹¹⁸

58. However, AEP asserts that the *September 26 Order* goes on to state that SPP must recalculate the reactive power service rates for the AEP control area and "flow through the new reactive power revenue requirement pertaining to the Oneta facility to load."¹¹⁹ AEP states that, if the Commission intended to suggest that SPP must recover Oneta's entire annual revenue requirement from OATT customers, that outcome could not be justified on comparability grounds, as neither AEP nor any other control area operator is entitled to flow through its entire reactive power revenue requirement to SPP OATT customers.

¹¹⁶ *Id.*, citing *September 26 Order* at P 69.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*, citing *September 26 Order* at P 72.

59. AEP urges the Commission to grant rehearing to make two clarifications. First, AEP argues that Oneta's revenue requirement should be used to calculate rates and those rates should be applied in a manner comparable to the manner in which the AEP rates were calculated and applied. Correspondingly, any Schedule 2 revenues collected by SPP should be allocated to Oneta in the same manner as they are allocated to AEP and other service providers in SPP.

60. Second, AEP urges the Commission to clarify that AEP is not Oneta's customer for reactive power purposes.¹²⁰ AEP states that the requirement to identify AEP as the customer in the Oneta Rate Schedule is inconsistent with SPP's OATT. AEP states that Schedule 2 of SPP's OATT is clear that it is the transmission provider that provides reactive power service by making arrangements with the control area operator that performs this service for the transmission system.¹²¹ Thus, according to AEP, Schedule 2 specifies that transmission customers who use reactive power service pay SPP, who in turn compensates the entities who perform the service. AEP argues that Oneta should arrange directly with SPP to perform reactive power service, and then have SPP transmit payments for that service as collected from its transmission customers.¹²²

c. Commission Determination

61. In the *September 26 Order*, the Commission found that Schedule 2 and Attachment L (Treatment of Revenues) of SPP's OATT do not explicitly address payment of reactive power costs directly to generators unaffiliated with control area operators,¹²³ and that the SPP Criteria do not explicitly address compensation for reactive

¹²⁰ *Id.* at 31.

¹²¹ *Id.*, citing SPP's OATT Schedule 2.

¹²² AEP states that this approach would be consistent with SPP's OATT, would be consistent with the recognition of how SPP's OATT operates in paragraph 35 of the *September 26 Order*, and would treat Oneta comparably with control area operators such as AEP that perform the reactive power service. AEP also contends that this approach would be consistent with the plain language of section 13.16 of the Interconnection Agreement.

¹²³ *September 26 Order* at P 71.

power provided by IPPs.¹²⁴ Further, we agreed with SPP that, because SPP is not a party to the Interconnection Agreement, the Interconnection Agreement is not a contractual relationship that would require SPP to pay Oneta directly. We reaffirm these determinations.

62. We disagree with SPP that there is nothing in the SPP Criteria and Interconnection Agreement that would require it to pay Oneta indirectly. The SPP Criteria establish SPP's control over the Oneta facility, indirectly through the control area operator.¹²⁵ Moreover, the control area operator, which acts as SPP's agent under the SPP criteria and Schedule 2 of SPP's OATT, also exercises control over Oneta under the Interconnection Agreement. Thus, Oneta is providing SPP, albeit indirectly through the control area operator, with its reactive power capability pursuant to the requirements in the SPP Criteria and the Interconnection Agreement. As the Commission found in the *September 26 Order*, it is appropriate to require SPP to pay for such reactive power capability.

63. Moreover, we note that SPP has a contractual agreement with the control area operator, under Schedule 2 of SPP's OATT, which states that the control area operator provides the reactive power service within the SPP region, and the charge collected through this schedule shall represent a pass through of the costs charged by the control area operator. Schedule 2 further provides that SPP shall charge the transmission customer and pass through the revenues it receives for the service to the control area operator providing the service. To maintain the proper voltage levels contemplated in Schedule 2 of SPP's OATT, the control area operator may use its own generation as well as possibly exercising control over the Oneta Facility through the SPP Criteria¹²⁶ and

¹²⁴ Because the Commission required changes to Oneta's Rate Schedule to make AEP the customer, the Commission has not made any finding regarding whether the SPP Membership Agreement provides a contractual arrangement requiring direct payments from SPP to Oneta. *Id.* at n.84.

¹²⁵ The SPP Criteria require Oneta to maintain reactive power output as required by the control area operator and the fact that SPP has made the control area operator responsible for certain activities does not relieve Oneta of its obligation to SPP under the SPP Criteria. *Id.* at P 70.

¹²⁶ Section 7.8.2 and subsections 7.8.2.1.a and 7.8.2.1.b of the SPP Criteria require Oneta to maintain a voltage/reactive schedule specified by the control area operator. *See* Exhibit KZ-41 at 2-3.

section 3.5 of the Interconnection Agreement.¹²⁷ In other words, AEP could use affiliated and unaffiliated generation to fulfill its duties as control area operator to maintain the proper voltage levels contemplated in Schedule 2 of SPP's OATT. Accordingly, it is reasonable for SPP to pay the control area operator for the reactive power capability from generators affiliated with the control area operator and for the reactive power capability in the control area from generators unaffiliated with control area operators. The control area operator will pay the unaffiliated generator the revenue requirement associated with the IPPs' reactive power capability.¹²⁸

64. SPP also contests the charges from Oneta, stating that it cannot be forced to take a service that it does not want especially when no actual service has been provided. SPP is mistaken that Oneta does not provide a service. Oneta provides reactive power capability to SPP, indirectly through the control area operator, that is comparable to and no less useable than AEP's reactive power capability.¹²⁹ In fact, SPP requires Oneta, pursuant to the SPP Criteria, to maintain voltage/reactive schedule specified by the control area operator and Oneta must have sufficient reactive capability to meet these requirements.¹³⁰ Oneta has been providing reactive power capability in the AEP service territory of the SPP footprint, but it has not been receiving compensation prior to the filing of the Oneta Rate Schedule. By filing the Oneta Rate Schedule, Oneta is seeking compensation for providing reactive power capability.

¹²⁷ Section 3.5 states that Oneta will follow AEP's reactive and voltage restrictions.

¹²⁸ In the *September 26 Order* we found under section 206 of the FPA that Schedule 2 of the SPP OATT was unduly discriminatory, and the Commission required SPP to modify Schedule 2 to provide compensation to IPPs. Upon the effective date of SPP's compliance filing to modify Schedule 2 as required, then SPP will pay IPPs directly instead of indirectly as ordered herein.

¹²⁹ As we stated previously the fact that the reactive power which a generator is capable of producing is not used at some particular given time, does not render the generator's filed rates based on reactive power capability unjust and unreasonable. *September 26 Order* at P 28.

¹³⁰ Section 7.8.2 and subsections 7.8.2.1.a and 7.8.2.1.b of the SPP Criteria require Oneta to maintain a voltage/reactive schedule specified by the control area operator. *See Exhibit KZ-41* at 2-3.

65. SPP is also mistaken that the lack of a signed service agreement, by itself, shows that the customer should not be charged for the service taken. The Commission regularly accepts contested rate schedules that are unsigned by the contesting customer. Therefore, the fact that Oneta's filed Rate Schedule in this proceeding was unsigned by SPP and AEP does not preclude Oneta from receiving reactive power compensation for its reactive power capability.

66. AEP claims that the Commission's interpretation of section 13.16 of the Interconnection Agreement is inconsistent with the Commission's statement that section 3.5 of the Interconnection Agreement is silent concerning reactive power compensation. To address AEP's concern, the Commission will clarify our comments regarding sections 3.5 and 13.16 of the Interconnection Agreement.¹³¹ By stating that section 3.5 of the Interconnection Agreement is "silent" with respect to reactive power compensation, the Commission meant that the Interconnection Agreement did not explicitly state any rates as compensation for reactive power provided within the power factor range. However, the Interconnection Agreement did not preclude reactive power compensation; therefore, the Commission determined that the applicable reactive power compensation is set forth in Oneta's Rate Schedule, which is the contractual arrangement by which AEP must pay Oneta. The Commission interpreted section 13.16 of the Interconnection Agreement,¹³² which reflects the parties' agreement of comparable treatment for similarly situated generators, to include comparable treatment through which Oneta would receive the reactive power compensation sought in its proposed rate schedule (*i.e.*, indirectly from SPP through AEP).¹³³ The Commission explained in the *September 26 Order*:

By treating the Oneta Facility in a manner similar to AEP's similarly situated generation, for the purpose of receiving reactive power compensation under

¹³¹ *September 26 Order* at P 69.

¹³² Section 13.16 of the Interconnection Agreement states:

Company shall not require Customer to comply with standards and procedures in excess of those applied to Company's own interconnected generating facilities that are similarly situated.

¹³³ The Commission separately determined that Oneta's proposal to receive reactive power compensation was just and reasonable and not unduly discriminatory.

Schedule 2 of the SPP OATT, AEP will be holding Oneta to procedures that are not in excess of the procedures to which it holds itself and would allow AEP to comply with section 13.16 of the Interconnection Agreement.

Consequently, the Interconnection Agreement did not explicitly state the amount of reactive power compensation (as that compensation is paid under the rate schedule). However, the Interconnection Agreement requires comparable treatment in standards and procedures. With the filing of the Oneta Rate Schedule, the Commission determined that these standards and procedures include the procedures for compensation of reactive power capability provided by Oneta under the Interconnection Agreement.

67. We deny AEP's request to clarify that it is not Oneta's customer under Oneta's Rate Schedule. We reiterate that pursuant to SPP's Schedule 2, SPP provides reactive power service by arranging with control area operators that perform the service. The control area operators, in turn, utilize their own generation and exercise control over unaffiliated generation to maintain proper voltage levels.¹³⁴ Since the Oneta Facility, in the AEP control area, assists in maintaining the proper voltage levels within the control area, and the existing SPP Schedule 2 requires SPP to make arrangements with only control area operators, it is reasonable to conclude that AEP is the appropriate customer under the Oneta Rate Schedule. As Oneta's customer, AEP is required to pay Oneta the rate (or in this case the revenue requirement) stated in the accepted Rate Schedule.

68. AEP argues that allowing Oneta to fully recover its revenue requirement would not be comparable because AEP does not recover its full revenue requirement under Schedule 2. We disagree. AEP's underrecovery was the result of its own choice to self-supply reactive power, and this choice cannot be used as a basis to deny Oneta its

¹³⁴ Section 7.8.2 and subsections 7.8.2.1.a and 7.8.2.1.b of the SPP Criteria require Oneta to maintain a voltage/reactive schedule specified by the control area operator. *See* Exhibit KZ-41 at 2-3. The record also shows that when the Oneta Facility was operating it produced 155.1 MVAR out of the total produced 344.1 MVAR in the Tulsa area, demonstrating that it does contribute to the provision of a reliability service in the control area. *Initial Decision* at P 88 *citing* Exhibit KZ-21 at p 6.

reactive power revenue requirement for comparable reactive power capability.¹³⁵ In other words, there is no reason to reduce Oneta's recovery of its revenue requirement because AEP chose to reduce the recovery of its revenue requirement under Schedule 2.¹³⁶

D. Compliance Filing – Docket No. ER03-765-002

69. In the compliance filing, as amended, Oneta submitted proposed revisions to the Rate Schedule, to identify AEP as the customer in lieu of SPP. Consistent with the findings in the evidentiary hearing, the compliance filing reflects a decrease in the annual revenue requirement for the fixed capability component from \$2,743,958.26 to \$2,455,169.96. Oneta requests an effective date of June 21, 2003, which is the effective date of Oneta's Rate Schedule accepted for filing in the *Calpine Hearing Order*.¹³⁷

1. Notice of Filing and Responsive Pleadings

70. Notices of the compliance filing and amendment to the filing were published in the *Federal Register* (71 Fed. Reg. 64,696 and 71 Fed. Reg. 65,483, respectively) with comments due on or before November 20, 2006. Municipal Power Authority filed a timely motion to intervene. East Texas Cooperatives filed a motion to intervene out-of-time and a protest. AEP filed a protest. Oneta filed an answer to both East Texas Cooperative's and AEP's protests. AEP filed an answer to Oneta's answer.¹³⁸

¹³⁵ See, e.g., *Niagara Mohawk Power Corp. v. FPC*, 379 F. 2d 153, 159 (D.C. Cir. 1967).

¹³⁶ We also note that under Order 888-A, transmission customers can reduce the charges its pays under Schedule 2 through self-supplying a portion of their reactive power needs. Order 888-A does not state that a transmission customer can totally eliminate charges under Schedule 2. Order 888-A at 30,228-29.

¹³⁷ *Calpine Oneta Power, L.P.*, 103 FERC ¶ 61,338 (2003). (*Calpine Hearing Order*).

¹³⁸ Redbud Energy LP filed an answer to the protests and AEP filed a second answer. These answers were filed both in this proceeding and in Docket No. ER07-731-000, but actually pertain to the SPP compliance filing in Docket No. ER07-731-000. Because those pleadings pertain to the merits of another proceeding, the Commission will not address them in this order.

71. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant East Texas Cooperatives' motion to intervene out-of-time given its interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers of Oneta and AEP and will, therefore, reject them.

2. Analysis

a. Revenue Requirement and Comparability

72. East Texas Cooperatives contend that Oneta misinterpreted the Commission's direction in the *September 26 Order*, which states that "SPP must reflect Oneta's revenue requirement for reactive power service as part of the total revenue requirement for reactive service in AEP's control area and assess those charges to load pursuant to Schedule 2."¹³⁹ East Texas Cooperatives claim that Oneta's Rate Schedule attempts to recover a fixed monthly amount for reactive power in an effort to guarantee recovery of its entire annual reactive power revenue requirement; however, East Texas Cooperatives state there is nothing in the *September 26 Order* that would entitle Oneta to such a guarantee.

73. East Texas Cooperatives argue that guaranteeing Oneta full recovery of its reactive power revenue requirement conflicts with the core principle of cost-based rates, which provides a utility with a reasonable opportunity to recover its cost of service or revenue requirement, but does not guarantee full recovery.¹⁴⁰

74. East Texas Cooperatives further state that, because AEP and other providers of reactive power in SPP may base their reactive power rates on their reactive power revenue requirements, but are not guaranteed full recovery of their revenue requirements, carving Oneta out for special treatment would violate comparability.

¹³⁹ *September 26 Order* at P 71.

¹⁴⁰ *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 63,030 at P 138 (2006), citing *Fed. Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

75. AEP states that Oneta's revised Rate Schedule would require AEP to pay Oneta's entire annual revenue requirement each year, regardless of the level of revenues that SPP collects from its transmission customers under Schedule 2 of SPP's OATT. AEP claims that its customers will essentially be forced to underwrite Oneta's reactive power revenue requirement by making up any portion not recovered from other transmission customers under SPP's OATT.

76. AEP states that the Interconnection Agreement between AEP and Oneta does not require AEP to compensate Oneta for reactive power capability. Therefore, AEP asserts that Oneta's claim that it should receive compensation equal to its entire revenue requirement is not supported by the terms of the Interconnection Agreement. AEP asserts that Oneta's compensation should be based on principles comparable to the way in which AEP's generation is compensated.

77. AEP requests that the Commission require Oneta to modify the revised Rate Schedule to provide that AEP will compensate Oneta only after AEP has received Schedule 2 revenues from SPP. AEP asserts that the Commission envisioned that AEP would be the clearinghouse between SPP and other generators in the control area when the Commission stated "we are finding that SPP must pay AEP, the control area operator, for Oneta's provision of reactive power service, and AEP must pass that compensation through to Oneta..."¹⁴¹ Therefore, AEP argues its obligation to compensate Oneta should not extend beyond the obligation to pass through what SPP must pay AEP.

b. Bankruptcy

78. AEP notes that Oneta's parent, Calpine Corporation, filed for Chapter 11 bankruptcy on December 20, 2005, and is currently operating subject to a bankruptcy proceeding pending in the United States Bankruptcy Court for the Southern District of New York.¹⁴² AEP states that the Commission should stay AEP's payment obligation subject to AEP's agreement to post a sufficient bond to cover its obligations to Oneta pursuant to the *September 26 Order*. AEP states that if the Commission does not stay the payment obligation, the Commission risks putting AEP in undue peril.

79. AEP expresses concern as to how the bankruptcy court will treat any AEP payments to the bankruptcy estate prior to rehearing and appeal of the *September 26 Order*. AEP speculates that such payments could be considered to be a pre-petition

¹⁴¹ *September 26 Order* at P 71, n.88.

¹⁴² *In re Calpine Corporation*, Case No. 05-60200 (BRL) (Jointly Administered).

service, an unsecured claim not entitled to full repayment, should the *September 26 Order* be overturned or appealed.¹⁴³ AEP states that it is not aware that the Commission has ever distinguished between pre-petition and post-petition services in a proceeding. However, AEP claims that the distinction is crucial because, under Section 1129(a)(9)(A) of the Bankruptcy Code,¹⁴⁴ post-petition transactions are generally entitled to an administrative expense priority and are paid in full before the company exits Chapter 11 bankruptcy. AEP states that the Commission has recognized the “potential” harm resulting from funds that may be owed by parties that have sought or may seek bankruptcy protection, and the Commission has granted relief.¹⁴⁵

c. Discussion

80. We will reject East Texas Cooperatives’ and AEP’s protests as beyond the scope of this compliance filing. Essentially, their arguments are more appropriately raised in requests for rehearing of the *September 26 Order*. Neither party argues that Oneta failed to comply with the Commission’s directives in the *September 26 Order*.

81. We will also deny AEP’s request to stay AEP’s payment obligation due to Calpine Corporation’s current bankruptcy proceeding. Consistent with *San Diego*, we find AEP’s arguments to be both speculative and outside the scope of this proceeding.¹⁴⁶ The

¹⁴³ AEP protest at 7-8, citing *Rochez Bros. v. Sears Ecological Applications Co.* 326 B.R.579, 586 (Bkrpty.W.D.Pa. 2005) (*In re Rochez Bros.*); *In re Sibley*, 71 B.R.147, 150 (Bkrpty.D.Mass. 1987).

¹⁴⁴ 11 U.S.C. § 1129(a)(9)(A) (2000).

¹⁴⁵ See, e.g., *Devon Power LLC*, 102 FERC ¶ 61,314 at P 13 (2003) (*Devon Power*). Here, intervening parties raised concerns that the maintenance payments under an agreement would not be used appropriately, because the solvency of the filing party was in question. In *Devon Power*, the Commission determined the funds were to be collected and held in escrow by ISO-NE and withdrawn by the filing party upon showing ISO-NE that the funds were to be used as specified in the agreement.

¹⁴⁶ *San Diego Gas & Elec. Co.*, 106 FERC ¶ 61,263 (2004) (*San Diego*). The Commission generally found that the distribution of funds from the estate of a bankrupt entity is an issue for the Bankruptcy Court to decide, and the mere possibility that a party will not be able to make payment for its refund obligation is not sufficient reason to require a deferral of payments.

Commission is not persuaded to grant a stay of payment based on speculation as to what a bankruptcy court might, or might not, do.

82. We find that Oneta has complied with the directives of the *September 26 Order*, and we will accept Oneta's proposed compliance filing, to become effective June 21, 2003.

The Commission orders:

(A) SPP's and AEP's requests for rehearing are hereby denied, as discussed in the body of this order.

(B) Oneta's compliance filing is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.