

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Chehalis Power Generating, L.P.

Docket No. ER05-1056-000

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

(Issued July 27, 2005)

1. In this order, we accept for filing Chehalis Power Generating, L.P.'s (Chehalis) proposed rate schedule for supplying Reactive Supply and Voltage Control from Generation Sources Service (reactive power) to Bonneville Power Administration (BPA), and suspend it for a nominal period, to become effective August 1, 2005, as requested, subject to refund. We also establish hearing and settlement judge procedures.

Background

2. On May 31, 2005, Chehalis¹ filed a proposed rate schedule that contains a formula to calculate its revenue requirement for supplying reactive power to BPA from Chehalis's electric generating facility (Facility), a 520 MW power plant, consisting of two natural gas generators and one steam generator, located in Chehalis, Washington. Chehalis explains that it made this filing pursuant to a Settlement Agreement that the Commission approved in Docket No. ER04-810-000 that enumerates a process for all generators included in the Settlement Agreement² to be compensated for reactive power.³

¹ Chehalis is an exempt wholesale generator under section 32 of the Public Utility Holding Company Act of 1935. *See Chehalis Power Generation L.P.*, 96 FERC ¶ 62,204 (2001). It is authorized to make wholesale sales of power at market-based rates. *See Chehalis Power Generation L.P.*, Docket No. ER03-717-000 (May 9, 2003) (unpublished letter order).

² The Settlement Agreement is between BPA, Chehalis, TransAlta Centralia Generation, L.L.C. (TransAlta), Calpine Corporation (Calpine), and its subsidiaries, Goldendale Energy Center, LLC (Goldendale) and Hermiston Power Partnership (Hermiston).

³ *TransAlta Centralia Generation, L.L.C.*, 111 FERC ¶ 61,087 (2005) (*TransAlta*).

Settlement Agreement

3. Under the terms of the Settlement Agreement, BPA agreed not to oppose Chehalis's future filing seeking Commission approval of reactive power rates for Chehalis's Facility identified in the Settlement Agreement. In addition, BPA agreed not to oppose such parties' rights to seek compensation for reactive power determined pursuant to the rate methodology established by the Commission in *American Electric Power Service Corporation*,⁴ as it currently exists as of the date of the Settlement Agreement (Current *AEP* Methodology), regardless of any subsequent modifications to the methodology or new methodology adopted by the Commission.

4. Under the terms of the Settlement Agreement, BPA specifically reserved the right to challenge inputs into the Current *AEP* Methodology used to support Chehalis's proposed reactive power rates other than the following: (i) an initial service factor of 63.1 percent; (ii) an initial return on equity of 11 percent; and (iii) an initial capital structure of 50 percent equity and 50 percent debt.

5. BPA and Chehalis agreed that the service factor will be recalculated each year in August based on the three-year rolling average of the operational hours of the Facility. The initial date to begin calculation of the service factor for the Chehalis plant is January 1, 2004. The recalculated service factor for each year will be applied to the annual rate determined by the Current *AEP* Methodology to determine the rate for the next year (October through September) effective October 1 of each year.

6. The Settlement Agreement also states that BPA may not request that the Commission suspend any reactive power rate schedule filed by Chehalis pursuant to the Settlement Agreement beyond the effective date set forth in the Settlement Agreement.

Chehalis's Filing

7. Chehalis states that its generator interconnection agreement with BPA requires it to provide reactive power to BPA. Chehalis asserts that it is entitled to be compensated for the reactive power it provides to BPA. It further states that its filing is consistent with the Settlement Agreement.

8. According to Chehalis, the Settlement Agreement allows Chehalis to develop reactive power rates based on the Commission's approved cost-based *AEP* methodology. Chehalis's proposed rate schedule sets forth its revenue requirement for providing reactive power to BPA based upon three components: (1) fixed capability component

⁴ See *American Electric Power Service Corporation*, 88 FERC ¶ 61,141 (1999) (*AEP*).

which is designed to recover the portion of plant costs attributable to the reactive power capability of the Facility; (2) heating loss component which is designed to recover the value of real power lost as a result of the production of reactive power; and (3) service factor which is a mechanism resulting from the Settlement Agreement between Chehalis and BPA that is intended to represent the operational status of the Facility.

9. Chehalis's proposed rate schedule calculates the fixed capability component by first determining the portion of its Facility's generator/excitation system and the generator step-up transformers used to produce reactive power. It will determine its annual revenue requirement by applying a levelized annual carrying cost approach.

10. The heating loss component is calculated as the real power consumed to produce reactive power. The service factor will be based on the three-year rolling average for the previous three years of operation of the plant, pursuant to a specified formula. Chehalis proposes to annually update the formula rate components, which include the fixed capability component and the heating loss component. For reactive power service, it will provide the new service factor and all data needed to verify the service factor to BPA by August 15 of each year. Chehalis states that it will make an informational filing with the Commission within 30 days following the effective date of each annual recalculation of the service factor and other formula rate components.

11. Chehalis requests that the Commission make its proposed rate schedule effective on August 1, 2005. It asserts that August 1, 2005 is the date agreed upon for commencement of this rate in the Settlement Agreement between BPA and Chehalis. Chehalis further argues that the submitted rates are "initial rates" which the Commission has defined as rates for a new service to a new customer and therefore are not subject to suspension under section 205 of the Federal Power Act.

Notice of Filing and Responsive Pleadings

12. Notice of Chehalis's filing was published in the *Federal Register*, 70 Fed. Reg. 34,753 (2005), with interventions and protests due on or before June 21, 2005. BPA filed a timely motion to intervene and protest. Chehalis filed an answer to BPA's protest.

13. BPA argues that Chehalis's use of a 0.78 power factor⁵ for its gas generators and a 0.80 power factor for its steam generator to calculate the reactive power allocator is inconsistent with the Settlement Agreement. BPA states that these power factors are

⁵ A power factor is a range in which the generator is designed to operate. A high power factor means that relatively more useful real power is being produced relative to the amount of reactive power. A lower power factor means that there is more reactive power being produced than real power.

lower than the rated 0.85 power factor to which the generators are capable of operating based upon generator capability diagrams supplied by the generator manufacturers,⁶ and that Chehalis has not provided any evidence that its generators can operate below their rated 0.85 power factor to achieve the asserted 0.78/0.80 power factors. BPA argues that Chehalis's use of the lower power factors results in a significantly higher reactive power allocator.

14. In addition, BPA argues that inclusion of a heating loss component in Chehalis's proposed rate is inconsistent with the Settlement Agreement which provides that Chehalis's rate will be based only upon the Commission-approved Current *AEP* methodology, which does not include a heating loss component in its rate computation. BPA asserts that it agreed in the Settlement Agreement not to challenge rates based upon the Current *AEP* Methodology; however, BPA argues that it reserved the right to challenge rates that are not based on the Current *AEP* Methodology.

15. BPA argues that Chehalis has improperly calculated the depreciation and tax components of the fixed charge rate and, therefore, the resulting rate is unjust and unreasonable.

16. Further, BPA argues that Chehalis makes representations in its rate filing that violate the Settlement Agreement concerning rate revisions and could potentially allow a generator such as Chehalis to unilaterally revise its rates without the consent of all settling parties. BPA asserts that the Settlement Agreement expressly prevents any attempt by Chehalis to modify its rate prior to October 2007, as approved by the Commission.

17. Finally, BPA asserts that it did not agree to automatic approval of an August 1, 2005 effective date. BPA claims the Settlement Agreement only provides that Chehalis may file a rate seeking an effective date, but that the rate would be effective on the date established by the Commission provided it is on or after August 1, 2005.

Discussion

Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F. R. § 385.214 (2005), BPA's unopposed motion to intervene serves to make it a party to this proceeding.

⁶ See Chehalis May 31, 2005 Transmittal Letter, Attachment D at 12.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Chehalis's answer and will, therefore, reject it.

Hearing and Settlement Judge Procedures

20. Chehalis's proposed rate schedule raises issues of material fact that we cannot resolve based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. These material issues of fact include, but are not limited to: (1) the power factor used in Chehalis's calculation of the reactive power allocator; (2) Chehalis's inclusion of a heating loss component in its proposed rate; and (3) Chehalis's methodology used to determine the tax and depreciation components of the fixed charge rate.

21. Our preliminary analysis indicates that Chehalis's proposed rate schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Therefore, we will accept Chehalis's proposed rate schedule for filing, suspend it for a nominal period, make it effective August 1, 2005, as requested, subject to refund, and set it for hearing and settlement judge procedures.

22. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁷ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁸ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

⁷ 18 C.F.R. § 385.603 (2005).

⁸ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

Other Matters

23. Chehalis characterizes its tariff as an initial rate schedule. We disagree. An initial rate schedule must involve a new customer and a new service.⁹ Chehalis's provision of reactive power under the proposed rate schedule is not a new service. Chehalis has been providing reactive power to BPA pursuant to an interconnection agreement, albeit without charge. Thus, the proposed rates for reactive power in the instant proceeding are not initial rates, but are changed rates.¹⁰

The Commission orders:

(A) Chehalis's proposed rate schedule for reactive power and voltage control service is hereby accepted for filing and suspended for a nominal period, to become effective August 1, 2005, as requested, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning Chehalis's proposed rate schedule for reactive power and voltage control services. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), 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 in writing or by telephone within five (5) days of the date of this order.

⁹ *Calpine Oneta Power, L.P.*, 103 FERC ¶ 61,338 at P 11 (2003), citing *Florida Power & Light Co.*, 65 FERC ¶ 61,411 at 63,128 n.28 (1993). See also *WPS Canada Generation, Inc.*, 103 FERC ¶ 61,193 at P 15 (2003).

¹⁰ *Id.* at P 11 citing *Florida Power & Light Co. v. FERC*, 617 F.2d 809, 813-17 (1980). See also *WPS Canada Generation, Inc.*, 103 FERC ¶ 61,193 at P 15 (2003).

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding administrative judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's decision, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 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)

Linda Mitry,
Deputy Secretary.