

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Hermiston Power Partnership

Docket No. ER05-1093-000

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

(Issued August 4, 2005)

1. In this order, we accept for filing Hermiston Power Partnership's (Hermiston) 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 June 10, 2005, Hermiston¹ filed a proposed rate schedule that contains its annual revenue requirement for supplying reactive power to BPA from Hermiston's electric generating facility (Facility), a 617 MW gas-fired combined-cycle power plant, located in Hermiston, Oregon. Hermiston 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 Hermiston is an exempt wholesale generator under section 32 of the Public Utility Holding Company Act of 1935. *See Hermiston Power Partnership*, 99 FERC ¶ 62,030 (2002). It is authorized to make wholesale sales of power at market-based rates. *See Hermiston Power Partnership*, Docket No. ER02-1257-000 (May 3, 2002) (unpublished letter order).

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

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

3. Hermiston notes that, under the terms of the Settlement Agreement, BPA agreed not to oppose Hermiston's filing seeking Commission approval of reactive power rates for Hermiston's Facility. Hermiston asserts that BPA agreed not to oppose Hermiston's right 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 existed 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. Hermiston asserts that BPA specifically reserved the right to challenge inputs into the Current *AEP* Methodology used to support Hermiston's proposed reactive power rates other than the following: (i) an initial service factor of 75 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. Hermiston states that its service factor will be recalculated each year in August based on the three-year rolling average of the operational hours of the Facility. 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. Hermiston states that its generator interconnection agreement with BPA requires it to provide reactive power to BPA. Hermiston asserts that it is entitled to be compensated for the reactive power it provides to BPA. It further claims that its filing is consistent with the Settlement Agreement.
7. According to Hermiston, the Settlement Agreement allows Hermiston to develop reactive power rates based on the Commission's approved cost-based *AEP* methodology. Hermiston's filing describes the primary components of a reactive power service revenue requirement as: (1) a fixed capability component which is designed to recover the portion of plant costs attributable to the reactive power capability of the Facility; (2) a 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) a lost opportunity costs in the event a facility is directed to modify its energy output to produce additional reactive power. Hermiston states that it has omitted the heating loss component and the lost opportunity cost component from its filing, but it is reserving the right to amend its rate schedule in a subsequent docket should it elect to seek compensation for such components.

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

8. Hermiston's proposed rate schedule calculates the fixed capability component by analyzing the reactive portion of its Facility's generator/excitation system investment and the generator step-up transformer investment. Since the generator/exciter and generator step-up investments contribute to the production of both reactive and real power, the amount of investment is multiplied by an allocation factor to determine the reactive power portion of the investment.

9. Hermiston requests that the Commission make its proposed rate schedule effective on August 1, 2005. It asserts that this is the effective date agreed upon in the Settlement Agreement. Hermiston requests waiver of the Commission's 60-day prior notice requirement to allow the proposed rate schedule to go into effect on the requested date.

Notice of Filing and Responsive Pleadings

10. Notice of Hermiston's filing was published in the *Federal Register*, 70 Fed. Reg. 35,665 (2005), with interventions and protests due on or before July 1, 2005. BPA filed a timely motion to intervene and protest. Hermiston and BPA filed a joint motion enumerating an agreement they have reached on the cost of debt issue.

11. BPA argues that Hermiston bases its filed rate of return on an excessive and unsupported cost of long-term debt. BPA claims that Hermiston has not provided any supporting data to verify its asserted actual cost of debt of 10.81 percent. Additionally, BPA states that, even if Hermiston were able to ultimately document and substantiate its asserted cost of debt, BPA protests the rate on the basis that the rate is unduly high and, therefore, is unjust and unreasonable to impose upon BPA and its customers. BPA requests that the Commission direct Hermiston to support its asserted cost of debt. In the alternative, BPA asks the Commission to set this matter for hearing to allow Hermiston to provide support for its proposed rate. BPA notes that the Settlement Agreement allows BPA to challenge Hermiston's inputs into the Current *AEP* Methodology.

12. Further, BPA asserts that it did not agree to an automatic approval of an August 1, 2005 effective date. Instead, BPA claims that the Settlement Agreement only provides that Hermiston may file a rate seeking an effective date of August 1, 2005.

13. BPA challenges Hermiston's reservation of rights to amend its rate schedule in a subsequent docket to elect to seek compensation for heating loss and lost opportunity cost components. BPA states that after the initial rate becomes effective, the Settlement Agreement expressly precludes Hermiston from filing to modify its rate (other than the annual service factor adjustment) prior to October 1, 2007.

14. In a joint motion, Hermiston and BPA state they have reached an agreement regarding BPA's protest about the specific basis for Hermiston's actual debt cost of 10.81 percent. Hermiston provided BPA with additional information to support Hermiston's debt cost of 10.81 percent. Accordingly, BPA no longer protests that Hermiston has failed to support its debt cost.

Discussion

Procedural Matters

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

Hearing and Settlement Judge Procedures

16. Hermiston's proposed rate schedule raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

17. Our preliminary analysis indicates that Hermiston's proposed rate schedule has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Hermiston'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.

18. 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.⁵ 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.⁶ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this

⁵ 18 C.F.R. § 385.603 (2005).

⁶ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. 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).

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.

Other Matters

19. As noted by BPA, Hermiston's proposed rate schedule does not explicitly seek to amend the proposed rate other than to annually adjust the service factor as required by the Settlement Agreement. However, in its filing, Hermiston attempts to reserve the right to amend its rate schedule in a subsequent docket should it elect to seek compensation for the heating loss component and the lost opportunity cost component. We agree with BPA that after the initial rate becomes effective, the Settlement Agreement expressly precludes Hermiston from filing to modify its rate (other than the annual service factor adjustment) prior to October 1, 2007, except by unanimous consent of the settling parties or to the extent necessary to allow new rates to become effective on October 1, 2007.

20. With respect to the proposed effective date, we agree with Hermiston. The Settlement Agreement specifically states that Hermiston agreed "[n]ot to file for Commission approval of a Reactive Power Service rate seeking an effective date prior to August 1, 2005." Hermiston did just that and requested an effective date of August 1, 2005. Accordingly, we will grant Hermiston's request for waiver of the Commission's prior notice requirement and permit an effective date of August 1, 2005.⁷

The Commission orders:

(A) Hermiston'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

⁷ See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,338 (1992), *reh'g denied*, 61 FERC ¶ 61,089 (1992) (Commission will generally grant waiver of notice when rate change and effective date are already prescribed).

public hearing shall be held concerning Hermiston'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.

(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 judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, 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.