

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Rockingham Power, L.L.C.

Docket No. ER05-1129-000

ORDER ACCEPTING AND SUSPENDING FILING, AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued August 18, 2005)

1. On June 20, 2005, Rockingham Power, L.L.C. (Rockingham)¹ filed a proposed rate schedule specifying its annual and monthly revenue requirements for providing cost-based Reactive Supply and Voltage Control from Generation Sources Service (reactive power). As discussed below, we will accept the proposed rate schedule for filing, and suspend it for a nominal period, to become effective on July 1, 2005, subject to refund, and establish hearing and settlement judge procedures.

Background

2. Rockingham owns and operates an approximately 800 MW natural gas peaking generation facility (Rockingham Facility) located in Rockingham County, North Carolina, which is interconnected with the Duke Electric Transmission (Duke ET) system, a division of Duke Energy Corporation (Duke Energy). The Rockingham Facility began commercial operations in July 2000.

¹ Rockingham, a wholly-owned indirect subsidiary of Dynegy Inc., is an exempt wholesale generator under section 32 of the Public Utility Holding Company Act of 1935. See *Rockingham Power, L.L.C.*, 85 FERC ¶ 62,207 (1988). Rockingham is also authorized to make wholesale sales of power at market-based rates. See *Rockingham Power, L.L.C.*, 86 FERC ¶ 61,337 (1999).

The Instant Filing

3. Rockingham states that its Interconnection Agreement (IA) with Duke ET provides that Rockingham will be compensated for providing reactive power.² The proposed rate schedule sets forth Rockingham's cost-based revenue requirements for providing reactive power to Duke ET. Rockingham claims that it has utilized the *AEP* methodology³ for seeking compensation for its proposed reactive power service rate schedule. Rockingham states that its revenue requirement consists of two components: (1) fixed costs attributable to reactive power production capability (fixed capability component) and (2) lost opportunity costs in the event the Rockingham Facility is called upon to curtail its real power output in order to provide reactive power (lost opportunity cost component).

4. Rockingham, however, claims that its proposed rate schedule differs from "others" in two respects. First, Rockingham states that it has utilized straight-line depreciation in calculating its annual carrying charges, rather than levelizing the annual carrying costs. Second, Rockingham states that it has not included a heating loss component in the calculation of its revenue requirement.

5. Rockingham states that the fixed capability component of the revenue requirement represents the portion of the plant investment in the Rockingham Facility that can be attributed to the production of reactive power. Rockingham claims that it analyzed the costs associated with the reactive portion of its investment in the generator/exciter system and the generator step-up transformers, accessory electric equipment, and the balance of the plant costs. Rockingham asserts that an allocation factor was calculated and applied to the investment cost of the: (i) generator/exciter, (ii) step-up transformers, and (iii) accessory electric equipment to determine the reactive portion of this investment. Rockingham states that the allocation factor was calculated based on the relationship between real and reactive power to determine the portion of plant investment properly assigned to the reactive power service function. Rockingham further states that this type of allocation factor has been recognized by the Commission to be an appropriate means

² Citing section 5.8.4(a) of IA: "In the event that the FERC, or any other applicable regulatory authority, issues an order or approves a tariff establishing a specific compensation to be paid to Customer [Rockingham] for reactive support service, Duke ET shall pay Customer [Rockingham] pursuant to such order or tariff."

³ See *American Electric Power Service Corp.*, 88 FERC ¶ 61,141 (1999) (*AEP*).

to assign such costs.⁴ Rockingham states that to determine its annual revenue requirement, a fixed charge rate was developed to apply to the reactive power production costs. Lastly, Rockingham claims that the operation and maintenance and administrative and general components were determined using 12 months of actual costs for the facilities combined for the period ending November 30, 2004.

6. Rockingham states that, because it is a non-utility generator not subject to traditional rate regulation, it has incorporated in its annual carrying costs a conservative return on equity (ROE) and capital structure based on a proxy. Rockingham uses a hypothetical capital structure of 50 percent debt and 50 percent equity. Rockingham states that its proposed ROE is determined by a discounted cash flow analysis of a group of proxy companies whose risk indicators are average for the electric utility industry.

7. Rockingham requests waiver of the Commission's 60-day prior notice requirement so that its proposed rate schedule may become effective on July 1, 2005.

Notice of Filing, Interventions and Protests

8. Notice of Rockingham's filing was published in the *Federal Register*, 70 Fed. Reg. 37,387 (2005), with interventions and protests due on or before July 11, 2005. Duke Power, a division of Duke Energy, filed a timely motion to intervene and protest. Rockingham filed an answer to Duke Power's protest.

9. Duke Power notes that there is a propensity for reactive power cases to be settled among the parties and it hopes to be able to reach an accord with Rockingham. However, since Duke Power has been unable to fully discuss the proposed rate schedule with Rockingham, Duke Power protests certain rates, terms and conditions of Rockingham's proposed rate schedule claiming that they are unjust and unreasonable and requests that Rockingham's proposed rate schedule be accepted and suspended, subject to refund, and hearing/settlement procedures be established.

10. Specifically, Duke Power claims that the IA does not require Rockingham to provide Duke Power the same level of control as Duke Power has over its generators and does not obligate Rockingham to provide the same level of service that Duke Power can demand of its own generation. Further, Duke Power states that since Rockingham is seeking compensation under the AEP methodology, Rockingham's obligations should be comparable to the obligations of Duke Power's generators. Duke Power states that

⁴ Citing, e.g., *id.*; *Liberty Electric Power, LLC*, Docket No. ER03-88-000 (unpublished letter order) (December 30, 2002).

comparability would mean that it would be able to start Rockingham units (with appropriate compensation), alter voltage schedules on shorter notice, and order the Rockingham Facility to be operated outside the power factor requirements, if needed to maintain the reliability of the transmission system. Duke Power asserts that without such authority, it must be able to supply the entire reactive power requirement of its transmission system from its own generation. Further, Duke Power states that it could file an amendment to the IA to provide the same level of control over the Rockingham Facility as it has over its own generation, but Duke Power prefers to resolve the matter through settlement discussions.

11. Duke Power claims that it has several concerns with Rockingham's cost support, such as the reactive power allocation factor and nominal power allocation factor, which may impact several elements of the revenue requirements.

12. Duke Power states that Rockingham's provision in its proposed rate schedule that provides for the recovery of lost opportunity costs is impermissibly vague and is not in accord with the *AEP* methodology. Further, Duke Power asserts that this provision seems to provide for compensation that would be duplicative of the compensation received under section 5.8.4(c) of the IA.⁵ Duke Power claims that both forms of compensation are not appropriate.

⁵ *Citing* section 5.8.4(c) of IA:

In the event that the Voltage Schedule is not being maintained as a result of actions not of Customer, but of others, such that Customer is required to alter the MW output of any of the Facility's generating units or operate any of the Facility's generating units outside the Power Factor Range in order to maintain the Voltage Schedule, Customer shall promptly notify Duke ET of such circumstances and Duke ET shall take those actions necessary to correct such situation and insure that the Voltage Schedule is maintained and, in addition to the compensation set forth in clause (b) above, Duke ET shall compensate Customer so as to keep Customer whole for providing such additional reactive support. Furthermore, during any period that Customer is required to alter the MW output of any of the Facility's generation units in order to maintain the Voltage Schedule, Generation Imbalance Service shall not apply.

13. Further, Duke Power asserts that Rockingham's proposed rate schedule does not provide Duke Power the right to ensure that Rockingham is capable of providing the services purported to be provided. Duke Power states that the rate schedule creates the risk that Duke Power must pay for a service that cannot even be physically provided. Duke Power requests that the rate schedule be amended to provide Duke Power the right to require an initial test (such as the form proposed to be used by Southeastern Electric Reliability Council (SERC)) and then require yearly attestations that nothing has changed that would affect the output of MVARs. Duke Power notes that Rockingham is not a SERC member and thus not subject to SERC requirements.

14. Duke Power also states that Rockingham provides no basis for a waiver of the 60-day prior notice requirement in the instant filing, where the customer has not consented. Duke Power requests that if the Commission grants the requested waiver that it should make clear that upon the effective date of the rate schedule, Duke Power will no longer have an obligation to provide compensation under section 5.8.4(b) of the IA.⁶ Lastly, Duke Power states that whether section 5.8.4(c) of the IA remains effective depends on the Commission's treatment of the Rockingham's request for recovery of lost opportunity costs.

Discussion

Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. Rule 213(a)(2) of the Commission's Rules of Practices and Procedure, 18 C.F.R. § 385.213(a)(2)(2005), prohibits an answer to a protest and/or answer unless otherwise

⁶ *Citing* section 5.8.4(b) of IA:

In the absence of such an order or tariff, and subject to any applicable rules and regulations of FERC, Duke ET shall pay Customer for the reactive power absorbed by the Facility and the reactive power produced by the Facility on a per Mvar-hr basis for the total Mvar-hrs for the month at a rate of \$0.50 per Mvar-hr. The total Mvar-hrs for a given month shall be equal to the sum of the absolute value of the reactive power absorbed or the reactive power produced, as the case may be, by the Facility in each hour of the month.

ordered by the decisional authority. We are not persuaded to accept Rockingham's answer and will, therefore, reject it.

Proposed Rate Schedule

17. Rockingham'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.

18. Our preliminary analysis indicates that Rockingham'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 Rockingham's proposed rate schedule for filing, suspend it for a nominal period, to become effective on July 1, 2005, subject to refund, and set it for hearing and settlement judge procedures.

19. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes 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 a 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 the 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 the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

The Commission orders:

(A) Rockingham'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 on July 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 Rockingham'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 Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (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 presiding judge's decision, convene a pre-hearing conference in this proceeding in a hearing room of the Commission, 888 First Street, N.E. Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural

schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.