

127 FERC ¶ 61,199
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Grayling Generating Station Limited Partnership

Docket No. ER09-856-000

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

(Issued May 29, 2009)

1. In this order, we accept for filing Grayling Generating Station Limited Partnership's (Grayling) proposed rate schedule for recovery of an annual revenue requirement for Reactive Support and Voltage Control from Generation or Other Sources Service (reactive power service) pursuant to Schedule 2 of Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Open Access Transmission Energy and Operating Reserve Market Tariff (Tariff) and suspend it for a nominal period, to become effective June 1, 2009, as requested, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. Grayling states that it is a limited partnership organized under the laws of the State of Michigan. Grayling is held by CMS Generation Grayling Holdings Company (49 percent interest as a limited partner), CMS Generation Grayling Company (1 percent interest as a general partner), and Grayling Development Partners (1 percent general partnership interest and a 49 percent limited partnership interest).

3. Grayling explains that it owns and operates an electric generating facility (Grayling Facility) with a capacity of approximately 39 MW, located four miles south of Grayling, Michigan. The Grayling Facility is fueled by wood chips and Grayling sells most of the output to Consumers Energy Company (Consumers) under a long term Power Purchase Agreement. The Grayling Facility is interconnected to the local distribution system of Consumers which, in turn, is interconnected to the electric transmission system of Michigan Electric Transmission Company (METC), a subsidiary of International Transmission Company.

4. The Midwest ISO Tariff includes a mechanism for compensating independent power producers interconnected with the Midwest ISO transmission system for the

provision or absorption of reactive power. That mechanism is set forth in Schedule 2 to the Midwest ISO Tariff. Schedule 2, section II.A. provides that a “Generation Resource may collect charges associated with its Reactive Supply and Voltage Control from Generation Sources Service capability under this Schedule 2, where the Transmission Provider determines that the Generation Resource is a Qualified Generator based on the requirements of paragraphs 1-4 in [s]ection II.B.”¹

5. On March 13, 2009, Grayling submitted a proposed rate schedule and supporting cost data for recovery of an annual reactive power service revenue requirement to be collected pursuant to Schedule 2 of the Midwest ISO Tariff. Grayling states that it has been and continues to be an integral part of the network of generators which provide reactive power service within the Midwest ISO footprint. As such, Grayling seeks to have the Commission approve its rate schedule to permit it to receive payment for the reactive power service provided by its facility. In support of the proposed reactive power service payment, Grayling submitted testimony of Mr. Thomas Wiegman, describing how Grayling meets the requirements to become a Qualified Generator under paragraphs 1 through 4 of section II.B. of Schedule 2 to the Midwest ISO Tariff.

6. Mr. Wiegman’s testimony and supporting workpapers and schedules also set forth Grayling’s annual cost-based revenue requirement to be collected by Midwest ISO pursuant to its Tariff. Grayling’s proposed annual revenue requirement is \$310,920. Grayling states that it developed its revenue requirement in conformity to the method approved by the Commission in *American Electric Power Service Corp.*, 88 FERC ¶ 61,141 (1999), *order on reh’g*, 92 FERC ¶ 61,001 (2000).

7. Grayling requests an effective date of June 1, 2009 for the proposed revenue requirement.

II. Notices of Filings and Responsive Pleadings

8. Notice of Grayling’s filing was published in the *Federal Register*, 74 Fed. Reg. 17958 (2009), with interventions and protests due on or before April 20, 2009. A timely, unopposed motion to intervene was filed by Midwest ISO. A timely, unopposed motion to intervene and comments were filed by METC. A timely, unopposed motion to intervene and protest was filed by Consumers.

9. METC states that the Grayling Facility is not directly connected to the METC transmission system, but rather the Grayling Facility is interconnected to Consumers’ local distribution system. METC states that because the Grayling Facility is not directly interconnected to the METC transmission system, the generator has no tangible influence

¹ Midwest ISO Tariff, Fourth Revised Volume No. 1, Original Sheet No. 1777.

in regulating the METC transmission system voltages. METC notes that the Grayling Facility is separated from its transmission system through a 138-46kV step-down transformer and, at best, the generating facility regulates only the 46 kV distribution voltages and not the transmission system voltages.

10. METC and Consumers state that Schedule 2 to the Midwest ISO Tariff requires generators to be a grandfathered generator or a Qualified Generator to be compensated under Schedule 2. They state that, under Schedule 2 of the Midwest ISO Tariff, generating resources are required to be connected to the transmission system to operate their voltage regulators in automatic mode and respond to the voltage schedules provided by Midwest ISO or the Local Balancing Authority for the pricing zone in which the generator is located.

11. METC states that it is a Local Balancing Authority, and that it does not provide voltage schedules at the 46 kV distribution interconnection point that is described by Grayling. Since METC does not provide Grayling with voltage schedules, METC questions the ability of the Grayling Facility to provide reactive power service to the METC transmission system. Consumers adds that, as the local load serving entity and distribution provider, it provides Grayling with the voltage schedules. Consumers states that Midwest ISO does not have authority to direct either Consumers Energy or Grayling as to the voltage schedule for the Grayling Facility. Consumers conclude that the Grayling Facility is simply not a Qualified Generator and is not eligible for reactive power compensation under Schedule 2 of the Midwest ISO Tariff.

12. Consumers states that Grayling has not provided sufficient cost information to support its proposed revenue requirement and further discovery is necessary.² For example, Consumers notes that Grayling states that the installed cost of both the generator and exciter is approximately \$5.8 million but Grayling does not specify whether the \$5.8 million amount is original cost or depreciated cost. Furthermore, Consumers states that if the amount represents depreciated cost, Grayling does not provide any supporting documentation as to the derivation of the amount. Consumers also questions whether Grayling's proposed operation and maintenance expense (O&M) includes only fixed O&M or both fixed and variable O&M. Consumers also note that Grayling's fixed charge rate makes no mention of depreciation expense or a tax factor.³ Moreover, Consumers states that if Grayling is going to use Consumers' return on common equity, Grayling should have used Consumers' full capitalization structure.

² Consumers states that Grayling does not file a FERC Form No. 1.

³ Consumers notes that the fixed charge rate mentions the "Michigan Single Business Tax" which, according to Consumers, has expired.

13. METC states that the Commission should either suspend Grayling's application pending Midwest ISO's certification of the Grayling Facility as a Qualified Generator or, in the alternative, condition the effective date of the filing upon a determination by Midwest ISO that the Grayling Facility is a Qualified Generator. Consumers state that Grayling's filing should either be rejected because Grayling is not eligible to receive compensation under the Midwest ISO Tariff since the Midwest ISO has no control over its voltage schedule, or the filing should be set for hearing and/or settlement talks.

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Hearing and Settlement Judge Procedures

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

16. Our preliminary analysis indicates that Grayling'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 Grayling's proposed rate schedule for filing, suspend it for a nominal period, make it effective June 1, 2009, subject to refund, and set it for hearing and settlement judge procedures.

17. 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.⁴ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

⁴ 18 C.F.R. § 385.603 (2008).

otherwise, the Chief Judge will select a judge for this purpose.⁵ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, 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.

The Commission orders:

(A) Grayling's proposed rate schedule for reactive power service is hereby accepted for filing and suspended for a nominal period, to become effective June 1, 2009, 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 Grayling's proposed rate schedule for reactive power service. 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 (2008), 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 within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, 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

⁵ 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).

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 these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.