

149 FERC ¶ 61,086
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Pine Bluff Energy LLC

Docket No. ER14-2762-000

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

(Issued October 30, 2014)

1. On September 3, 2014, Pine Bluff Energy LLC (Pine Bluff) filed a proposed rate schedule,¹ which sets forth its cost-based revenue requirement for Reactive Supply and Voltage Control from Generation Sources Service (reactive service). In this order, we accept for filing the proposed rate schedule, and suspend it for a nominal period, to become effective November 1, 2014, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. Pine Bluff states that it is a qualifying facility with market-based rate authority that owns and operates a natural gas-fired combined-cycle facility with a total generator rating of 230.09 MW located in Pine Bluff, Arkansas (the Facility).² The Facility interconnects to the Entergy Arkansas, Inc. (Entergy Arkansas) transmission grid and is located in the Midcontinent Independent System Operator, Inc. (MISO) market.

3. Pine Bluff asserts that its obligation to provide reactive service to Entergy Arkansas and to receive compensation for such service is set forth in section III.B.2 of

¹ Pine Bluff, FERC Electric Tariff, [Reactive Rate Schedule, Rate Schedule FERC No. 1, 0.0.0.](#)

² Transmittal letter at 2 (citing *Carville Energy LLC*, Docket No. ER06-741-000, *et al.*, (Apr. 24, 2006) (unpublished letter order granting market-based rate authority)).

the Interconnection and Operating Agreement accepted by the Commission on June 13, 2000 in Docket Nos. ER00-2212-000 and ER00-2212-001.

4. Pine Bluff further asserts that on September 2, 2005, Entergy Services, Inc. (Entergy) filed a petition for declaratory order seeking confirmation from the Commission that if Entergy did not compensate its own or affiliated generators for reactive service within the required power factor dead band, then Entergy need not compensate non-affiliated generators for reactive service within the dead band. Entergy also filed to eliminate the reactive service rates in Schedule 2 of its Open Access Transmission Tariff. On October 14, 2005, the Commission granted Entergy's petition and accepted the filing to eliminate reactive service rates effective November 1, 2005.³

5. Pine Bluff states that as a result of the December 19, 2013 integration of Entergy Arkansas' transmission assets into MISO, MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) now governs Pine Bluff's right to compensation for reactive service. Pine Bluff further states that Schedule 2 of the MISO Tariff provides, among other things, for the supplier to make all appropriate filings with the Commission to justify its cost-based revenue requirement for reactive service and for MISO to "pass-through" the reactive power revenues it receives to the supplier providing the service.⁴

II. The Filing

6. Pine Bluff states that the proposed rate schedule consists of an annual revenue requirement with two components: (1) a fixed capability component, which is a fixed cost attributable to reactive power production capability; and (2) a heating loss component, which reflects the increased generator and step-up transformer heating losses that result from the production of reactive power. Pine Bluff also states that it reserves the right to file in a subsequent docket to amend its rate schedule to seek further compensation if the Facility is directed to modify its energy output to produce additional reactive power.

7. Pine Bluff explains that the fixed capability component has been calculated by first determining the portion of the Facility's generator/excitation systems, accessory electric equipment and the generator step-up transformers used to produce reactive power

³ *Id.* at 3 (citing *Entergy Services, Inc.*, 113 FERC ¶ 61,040 (2005), *order on reh'g*, 114 FERC ¶ 61,303, *order on reh'g*, 115 FERC ¶ 61,378 (2006)).

⁴ *Id.*

consistent with the *AEP* methodology.⁵ Pine Bluff then applies an allocator to apportion the cost of this plant between real and reactive power. Finally, Pine Bluff determines an annual revenue requirement by applying a fixed charge rate, which it developed through a levelized annual carrying cost approach.

8. Pine Bluff contends that, for merchant generators like Pine Bluff, “it has been the Commission’s general policy to allow [an independent power producer] to use the authorized rate of return on common equity of an interconnected utility for reactive power compensation, because... an interconnected utility’s return is a conservative estimate of a merchant generator’s return because the merchant generator faces more risk.”⁶ Therefore, Pine Bluff proposes to use the return on equity (ROE) and capital structure included in Entergy Arkansas’ recent rate filing,⁷ the utility with which the Facility is interconnected. Pine Bluff proposes a total reactive power annual revenue requirement for the fixed capability component of \$772,410.35.

9. Pine Bluff explains that the heating loss component of its proposed revenue requirement includes losses that occur from resistive heating associated with armature winding and field winding of generators, and of increased eddy currents in the generator and associated step-up transformer. Pine Bluff states that these losses can be calculated as the real power consumed to produce reactive power, and therefore constitute a cost that is directly attributable to the production of reactive power. Pine Bluff proposes a total annual revenue requirement for its heating loss component of \$57,368.00.

10. Pine Bluff states that, pursuant to Schedule 2 of the MISO Tariff, Pine Bluff will be eligible to begin recovering its cost of providing reactive service within MISO on the first day of the month immediately following Commission acceptance of the proposed rate schedule or the first day of the month if the Commission accepts it effective the first day of the month. Therefore, Pine Bluff requests waiver of the Commission’s notice requirements to allow an effective date for the proposed rate schedule of November 1, 2014.

⁵ *Id.* at 4 (citing *American Electric Power Service Corp.*, 88 FERC ¶ 61,141 (1999), *order on reh’g*, 92 FERC ¶ 61,001 (2000) (*AEP*)).

⁶ *Id.* (quoting *Bluegrass Generation Co., L.L.C.*, 118 FERC ¶ 61,214, at P 86 (2007)).

⁷ Prepared Direct Testimony of Michael J. DelCasale, Attachment B to Pine Bluff September 3, 2014 Filing at 14-15 (citing *Entergy Services, Inc.*, Docket No. ER14-108-000 (filed Oct. 16, 2013); *ITC Holdings Corp.*, 143 FERC ¶ 61,257 (2013) (approving MISO’s 12.38 percent ROE for Entergy in connection with Entergy joining MISO)).

III. Notice of Filing and Responsive Pleadings

11. Notice of Pine Bluff's filing was published in the *Federal Register*, 79 Fed. Reg. 54,274 (2014), with comments, interventions and protests due on or before September 24, 2014. MISO filed a timely motion to intervene. Entergy, on behalf of itself and the Entergy Operating Companies,⁸ filed a timely motion to intervene and protest. On October 9, 2014, Pine Bluff filed a motion for leave to answer and answer to Entergy's protest.

12. Entergy argues that, to the extent Pine Bluff seeks to utilize the MISO-standard ROE that is currently set at 12.38 percent, Pine Bluff's reactive service rate should be subject to the outcome of the pending complaint proceeding in Docket No. EL14-12-000, challenging that ROE, and adjusted accordingly.⁹

13. Entergy also questions whether Pine Bluff is entitled to any recovery for heating losses due to reactive power production. Entergy states that the inclusion of this heating losses component is not consistent with the *AEP* methodology, adding that Pine Bluff has not demonstrated that lost energy sales at market-based rates is an appropriate item for inclusion in a cost-based power charge. Therefore, Entergy requests that the Commission direct Pine Bluff to demonstrate that it is entitled to recovery for such heating losses. Alternatively, Entergy requests that the Commission accept Pine Bluff's proposed rate only subject to refund, suspend it for five months, and set it for hearing.

14. In its answer, Pine Bluff responds that it relied on the currently-effective ROE for MISO to calculate its reactive service revenue requirement, and that it should not be required to "supplement the record" to take into account how its rate schedule may change in the future. Pine Bluff notes that in the event the proceeding in Docket No. EL14-12-000 yields a different ROE, Entergy has the right to make a filing under section 206 of the FPA to seek to revise the reactive service rate at that time.¹⁰

15. Pine Bluff also asserts that it followed Commission precedent in incorporating heating losses in its reactive service revenue requirement. Citing *Dynegy Midwest Generation, Inc.*, Pine Bluff argues that the Commission has unequivocally determined

⁸ The Entergy Operating Companies include: Entergy Arkansas, Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana LLC, Entergy Mississippi, Inc., Entergy Texas, Inc., and Entergy New Orleans, Inc.

⁹ Entergy Protest at 4.

¹⁰ Pine Bluff Answer at 3.

that utilities are entitled to recover heating losses.¹¹ Because Entergy has not challenged Pine Bluff's calculation of the heating loss component, Pine Bluff argues that its rate schedule should be accepted as proposed.

16. Finally, Pine Bluff asserts that Entergy has failed to establish a basis to suspend the proposed rate schedule for the maximum statutory period of five months. Pine Bluff contends that Entergy has failed to establish that any element of Pine Bluff's proposed rate schedule is excessive, much less that the proposed rate is substantially excessive, as required by *West Texas*.¹² Pine Bluff argues that even if it were to make the counter-factual assumption that it is not automatically permitted to recover the proposed \$4,780.67 per month for heating losses, its proposed rate would still not be considered unreasonably imprecise under *West Texas*, as the heating loss component accounts for only 6.9 percent of the revenue requirement. Pine Bluff also notes that a five-month suspension would create the inequitable result of causing Pine Bluff to remain uncompensated for the service it must provide. By contrast, Pine Bluff states that Entergy would not be harmed by a decision to suspend the rate for only a nominal period.¹³

IV. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁴ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority.¹⁵

¹¹ *Id.* at 4 (citing *Dynegy Midwest Generation Inc.*, 125 FERC ¶ 61,280, at P 29 (2008)).

¹² *Id.* at 5 (citing *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982) (*West Texas*)).

¹³ *Id.* at 6-7.

¹⁴ 18 C.F.R. § 385.214 (2014).

¹⁵ 18 C.F.R. § 385.213(a)(2) (2014).

We accept the answer filed by Pine Bluff because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

19. Pine Bluff'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.

20. Our preliminary analysis indicates that Pine Bluff's proposed revenue requirement 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 Pine Bluff's proposed rate schedule for filing, suspend it for a nominal period to become effective November 1, 2014, subject to refund, and set it for hearing and settlement judge procedures.

21. 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.¹⁶ 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.¹⁷ The settlement judge shall report to the Chief Judge and the Commission within 30 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.

The Commission orders:

(A) Pine Bluff's proposed reactive service rate schedule is hereby accepted for filing and suspended for a nominal period to become effective November 1, 2014, subject to refund, as discussed in the body of this order.

¹⁶ 18 C.F.R. § 385.603 (2014).

¹⁷ 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 list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/availjudge.asp>).

(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 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 Pine Bluff's proposed rate schedule, as discussed in the body of this order. 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 (2014), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 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 days of the date of this order.

(D) Within 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 every 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 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, NE, 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.