

150 FERC ¶ 61,241
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Occidental Power Services, Inc.

Docket No. ER15-878-000

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

(Issued March 31, 2015)

1. On January 20, 2015, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² Occidental Power Services, Inc. (Occidental) filed a proposed rate schedule (January 20 Filing),³ 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 April 1, 2015, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. Occidental states that it will provide the reactive service to the Midcontinent Independent System Operator, Inc. (MISO) from the Taft Cogeneration Facility (Taft Facility), a natural gas, combined cycle generation facility with a total generator rating of 894.20 megawatts (MW), located in Hahnville, Louisiana. The Taft Facility is interconnected with Entergy Louisiana, LLC (Entergy Louisiana) and is located in the MISO market. Occidental states that the Taft Facility has been certified as a qualifying facility.

3. Occidental states that Schedule 2 of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) governs its right to compensation

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.13 (2014).

³ Occidental Power Services, Inc., FERC FPA Electric Tariff, [Rate Schedule, No. 1, 0.0.0.](#)

for reactive service and provides, among other things, for the supplier to make all appropriate filings with the Commission to justify its cost-based revenue requirement for reactive services, and for MISO to “pass-through” the reactive power revenues it receives to the supplier providing the service.

4. Occidental states that the proposed reactive service revenue requirement recovers the portion of the Taft Facility’s costs associated with its reactive power capability known as the fixed capability component. However, Occidental states that it reserves the right to seek compensation for other reactive power production costs, including a heating loss component, at a later date.⁴

5. Occidental explains that the fixed capability component has been calculated by first determining the portion of the Taft Facility’s generator/excitation systems, accessory electric equipment and the generator step-up transformers used to produce reactive power consistent with the *AEP* methodology.⁵ Occidental then applies an allocator to apportion the cost of this plant between real and reactive power. Finally, Occidental determines an annual revenue requirement by applying a fixed charge rate, which it developed through a levelized annual carrying cost approach.

6. Occidental contends that, for merchant generators like Occidental, “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, Occidental proposes to use the return on equity and capital structure for the area transmission operator with which the Taft Facility is interconnected, the Louisiana Transmission pricing zone in MISO, which consists of three Entergy Operating Companies⁷ – Entergy Gulf States Louisiana, Entergy Louisiana, and Entergy New Orleans. Occidental states that it calculated the weighted average capital structure and

⁴ January 20 Filing at 2-3.

⁵ *Id.* at 3 (citing *American Electric Power Service Corp.*, 88 FERC ¶ 61,141 (1999), *order on reh’g*, 92 FERC ¶ 61,001 (2000) (*AEP*)).

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

⁷ The Entergy Operating Companies include: Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana), Entergy Louisiana, Entergy Mississippi, Inc., Entergy Texas, Inc. and Entergy New Orleans, Inc. (Entergy New Orleans).

cost rates from the companies' FERC Form 1s and used the return on equity currently authorized for transmission services in MISO of 12.38 percent.⁸

7. Occidental proposes a total reactive service annual revenue requirement of \$2,828,839, to be collected in monthly installments of \$235,737. Occidental states that, pursuant to Schedule 2 of the MISO Tariff, Occidental 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, Occidental requests waiver of any additional requirements under Part 35 of the Commission's regulations to allow an effective date for the proposed rate schedule of April 1, 2015.

II. Notice of Filing and Responsive Pleadings

8. Notice of the January 20 Filing was published in the *Federal Register*, 80 Fed. Reg. 3960 (2015), with interventions and protests due on or before February 10, 2015. MISO filed a timely motion to intervene and comments. Entergy Services, Inc. (Entergy), on behalf of itself and the Entergy Operating Companies, filed a timely motion to intervene and protest. On February 20, 2015, Occidental filed a motion for leave to answer and answer to Entergy's protest.

9. MISO states that it takes no position on the overall request submitted by Occidental, but that, as Tariff Administrator, MISO comments in order to clarify the manner in which Market Participants are compensated under Schedule 2 of the MISO Tariff. MISO notes that the testimony attached to Occidental's filing states that "[f]or this [reactive power supply] service, . . . MISO collects the Commission approved Reactive Service revenue requirements of qualified generators with a Commission approved rate from transmission customers of MISO and pays the generators supplying the reactive power their Reactive Service revenue requirements."⁹ MISO clarifies that it distributes to each Qualified Generation Owner a *pro rata* allocation of the amounts collected, based on the Qualified Generator's respective share of its gross annual reactive power revenue requirement among all Qualified Generators providing service under

⁸ Prepared Direct Testimony of Robert B. Smith (Smith Testimony), Attachment B to January 20 Filing at 19. Occidental states that it voluntarily agrees to make its reactive service revenue requirement subject to the outcome of the MISO return on equity complaint currently pending in Docket No. EL14-12. January 20 Filing at 3.

⁹ MISO Comments at 2 (citing Smith Testimony at 8).

Schedule 2. MISO explains that it does not pay the exact amount of the revenue requirement, but rather pays a share of the total amounts collected.

10. Entergy argues that Occidental's proposed reactive service revenue requirement will expose customers in the Louisiana Transmission pricing zone to excessive and unjustified costs. As an initial matter, Entergy states that Entergy Louisiana and Occidental's affiliate, Occidental Chemical Corporation, are parties to a 10-year contingent purchase power transaction for the purchase of 480-520 MW of capacity and associated energy from the Taft Facility, executed on July 23, 2008 (2008 Agreement), that already provides Occidental with reactive power compensation.¹⁰

11. Entergy also argues that Occidental fails to justify the revenue requirement, and therefore, if the Commission finds that Occidental should be entitled to reactive power compensation, Entergy requests that the Commission suspend the proposed rate schedule for the maximum period and set it for hearing. Specifically, Entergy questions Occidental's application of the *AEP* methodology. Entergy notes that Occidental developed its proposed annual revenue requirement using estimated values and proxy information from other generators' reactive power filings, but argues that more information is needed about why actual information was not available and about how the data used in arriving at the proxy were selected.¹¹

12. Entergy also argues that Occidental's proposed reactive power allocation factor of 27.75 percent is excessive and unsupported and leads to unjust and unreasonable allocations.¹² Entergy argues that these estimated allocation figures should be carefully scrutinized and that, due to the lack of actual cost support provided with the filing, it is difficult to determine if the approximated allocation percentages are reasonable. Moreover, Entergy submits that the use of proxy figures for a merchant generator without a regulated rate of return is a question of fact that must be resolved at hearing.¹³

13. In its answer, Occidental responds that the 2008 Agreement does not include the purchase and sale of reactive power and that Entergy provides no citation to the 2008 Agreement to support its claim.¹⁴ Occidental also responds that its application of the

¹⁰ Entergy Protest at 4-6.

¹¹ *Id.* at 6-7.

¹² *Id.* at 7 (citing Smith Testimony at 13).

¹³ *Id.* at 7-9.

¹⁴ Occidental Answer at 4.

AEP methodology yields a revenue requirement that is just, reasonable and consistent with Commission precedent. Specifically, Occidental argues that its use of proxy information from other generators' reactive power filings is consistent with Commission precedent, as noted in the Smith Testimony.¹⁵ Further, Occidental notes that, as described in the Smith Testimony, Occidental developed the proposed reactive power allocation factor as directed by the Commission in *AEP* and *Dynegy*.¹⁶ Finally, Occidental argues that the use of a proxy for the overall rate of return and capital structure is conservative because, as the owner of a merchant generating facility, Occidental faces market risks that are greater than those normally associated with the service provided by a transmission provider like Entergy.

III. Discussion

A. Procedural Matters

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

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority.¹⁸ We accept the answer filed by Occidental because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

16. Occidental'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 Occidental'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 Occidental's proposed rate schedule for filing, suspend it for a nominal period to become

¹⁵ *Id.* at 6 (citing Smith Testimony at 13-14).

¹⁶ *Id.* at 7 (citing *AEP*, 92 FERC ¶ 61,001; *Dynegy Energy Midwest Generation, Inc.*, 121 FERC ¶ 61,025 (2007), *order on reh'g*, 125 FERC ¶ 61,280 (2009) (*Dynegy*)).

¹⁷ 18 C.F.R. § 385.214 (2014).

¹⁸ 18 C.F.R. § 385.213(a)(2) (2014).

effective April 1, 2015, 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 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.¹⁹ 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.²⁰ 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) Occidental's proposed reactive service rate schedule is hereby accepted for filing and suspended for a nominal period to become effective April 1, 2015, 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 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 Occidental'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.

¹⁹ 18 C.F.R. § 385.603 (2014).

²⁰ 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>).

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)

Kimberly D. Bose,
Secretary.