

150 FERC ¶ 61,256
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.

Arkansas Electric Cooperative Corporation

Docket No. ER15-953-000

ORDER ACCEPTING AND SUSPENDING PROPOSED REVENUE
REQUIREMENTS, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued March 31, 2015)

1. In this order, we accept, for rate recovery purposes, Arkansas Electric Cooperative Corporation's (AECC) proposed revenue requirements for providing Reactive Supply and Voltage Control From Generation or Other Sources Service (reactive service), and suspend them for a nominal period, to become effective April 1, 2015, as requested, subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. AECC is a non-profit electric generating and transmission cooperative headquartered in Little Rock, Arkansas. AECC provides wholesale electricity to its 17 electric distribution cooperative members. These distribution cooperatives in turn provide electricity at retail to approximately 500,000 consumers, primarily in Arkansas. AECC states that it has a diverse portfolio of generating assets which includes three hydroelectric plants, three natural gas/oil-based plants, and four natural gas-based plants. AECC also states that it co-owns portions of four low-cost coal-based plants.

3. The AECC generating units at issue in this proceeding are: (1) Carl E. Bailey Generating Station (Bailey); (2) Harry L. Oswald Generating Station at Wrightsville (Oswald); (3) Independence Steam Electric Station (ISES Unit 1 and ISES Unit 2); (4) John L. McClellan Generating Station (McClellan); (5) Magnet Cove Generating Station (Magnet Cove); (6) Carl S. Whillock Hydroelectric Station (Whillock); (7) White Bluff Steam Electric Station (White Bluff Unit 1 and White Bluff Unit 2); and (8) Electric Cooperatives of Arkansas Hydropower Generation Station (EOA). AECC states that it has a 35 percent ownership share in the four units at ISES and at White

Bluff, and wholly owns all of the other generating units. The generating units are located in the Entergy Arkansas, Inc. (Entergy Arkansas) transmission pricing zone in Midcontinent Independent System Operator, Inc. (MISO).

4. On January 30, 2015, AECC made a filing seeking Commission approval to permit AECC to recover its cost-based revenue requirements for the reactive service production capability associated with its ownership interests in its MISO area generating units. AECC seeks to recover the costs of reactive service under Schedule 2 of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).

5. AECC states it is submitting its proposed reactive service revenue requirements in accordance with the Commission's orders accepting Schedule 2 of the MISO Tariff, where the Commission explained that "to qualify to receive payment for [reactive service] . . . a non-public utility must submit its revenue requirements for acceptance by the Commission."¹ AECC states that it is not waiving any rights arising from its status as an entity exempt from Commission jurisdiction under Part II of the Federal Power Act (FPA).²

6. AECC states that the annual revenue requirements for its MISO area generating units are as follows:

Bailey	\$15,465
Oswald	\$529,012
ISES Unit 1	\$173,858
ISES Unit 2	\$153,620
McClellan	\$32,428
Magnet Cove	\$1,135,949
Whillock	\$139,299
ECO A	\$206,638
White Bluff Unit 1	\$133,772
White Bluff Unit 2	\$134,787

¹ Application at 2 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,046 (2005), *reh'g denied*, 114 FERC ¶ 61,192 (2006)).

² *Id.* (citing 16 U.S.C. § 824 et seq. (2012)). AECC states that, solely for purposes of this filing, AECC consents to follow procedures similar to the refund procedures applicable to public utilities subject to the jurisdiction under Part II of the FPA in the event that the Commission permits the proposed revenue requirements to take effect subject to refund and later establishes a lower revenue requirement for the subject facilities.

AECC states that the total annual reactive service revenue requirement for its MISO area generating units is \$2,654,828. AECC explains that the revenue requirements were developed based on the *AEP* methodology of determining reactive investment at each unit and the cost of service is based on a net plant method of determining rate base.³

7. AECC states that revenue requirements for reactive service typically consist of two components: (1) a fixed capability component, which is designed to recover the portion of the plant investment associated with the reactive capability of the facility; and (2) a heating loss component, which is designed to recover the cost of incremental generator and generator step-up transformer heating losses that result from the production of reactive service. AECC notes that it is not seeking a heating loss component at this time, but it reserves the right to amend its revenue requirements in a subsequent filing should it decide to seek compensation for such costs.

8. AECC explains that the fixed capability component was calculated by first determining the investment on AECC's books for the turbine generator and generator step-up transformers for each unit. Second, the portion of investment that represents the costs of the generator/exciter system of each unit was determined. Third, because the turbine generator and the generator step-up transformers both contribute to the generation of both real and reactive service, the total amount of investment in these plant assets was multiplied by a reactive service allocation factor to determine the portion of such assets that are associated with the capability to produce reactive service. Fourth, an appropriate portion of the costs associated with the remaining balance of production plant investment based on the *AEP* methodology was identified and allocated to the revenue requirement calculation. Finally, the annual revenue requirements associated with reactive investment for each AECC MISO-area unit was calculated. AECC explains that, because the exciter and generator provide both real and reactive service, an allocation factor was applied to the generators, accessory electric equipment and the generator step-up transformers at the AECC units.⁴

9. AECC proposes to use the actual long-term-debt cost rates and capitalization amounts from AECC's books and records to determine the rate of return to apply to reactive rate base. For the return on equity (ROE), AECC proposes to use AECC's

³ Prepared Direct Testimony of Robert B. Smith (Smith Testimony), Exhibit No. AEC-1 to Application at 27 (citing *American Electric Power Service Corp.*, 88 FERC ¶ 61,141 (1999), *order on reh'g*, 92 FERC ¶ 61,001 (2000) (*AEP*)).

⁴ Application at 6.

balance of patronage capital and the ROE currently authorized for transmission services in MISO of 12.38 percent.⁵

II. Notice of Filing and Responsive Pleadings

10. Notice of AECC's filing was published in the *Federal Register*, 80 Fed. Reg. 7444 (2015), with interventions and protests due on or before February 20, 2015. MISO filed a timely motion to intervene and comments. Entergy Services, Inc. (Entergy), on behalf of itself and the Entergy Operating Companies,⁶ filed a timely motion to intervene and protest. On March 9, 2015, AECC filed a motion for leave to answer and answer.

11. MISO states that it takes no position on the overall request submitted by AECC, 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 AECC's filing states that, "[t]o price Reactive Supply under Schedule 2, MISO collects the Commission approved [reactive service] revenue requirements of Qualified Generators with [] Commission-approved revenue requirements from transmission customers of MISO, and pays the generators providing the Reactive Supply their annual revenue requirements."⁷ 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 service revenue requirement among all Qualified Generators providing service under 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.

12. Entergy is concerned that AECC's proposed reactive service filing will expose customers in the Entergy Arkansas transmission pricing zone to excessive and unjustified costs. Entergy asserts that AECC failed to justify the revenue requirement, making it impossible for Entergy to undertake a thorough review of the proposed rates. Entergy

⁵ *Id.* AECC proposes to make its reactive service revenue requirement subject to the outcome of the MISO ROE complaint currently pending in Docket No. EL14-12.

⁶ 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.

⁷ MISO Comments at 2 (citing Smith Testimony at 13).

therefore requests that the Commission suspend the filing for the maximum period and set it for hearing.⁸

13. Entergy states that it does not dispute AECC's use of the *AEP* methodology. Rather, Entergy questions AECC's application of the *AEP* methodology. Entergy argues that AECC's estimated allocation figures should be carefully scrutinized and that more precision is required before they can be used to set just and reasonable rates. Entergy argues that it is difficult to determine if AECC's approximated allocation percentages are reasonable due to the lack of actual cost support provided with AECC's filing. Entergy asserts that the issue of the appropriate allocation of the investment components is a question of fact that must be resolved at hearing if the reactive supply revenue requirements are not rejected outright.⁹

14. Entergy states that, under the *AEP* methodology, the level of generator/exciter investment is developed using the Commission's Uniform System of Accounts. Entergy notes, however, that AECC employs the Rural Utilities Service (RUS) system of accounts, and argues that AECC has not demonstrated that its methodology results in a just and reasonable cost-based rate. With regard to the ROE, Entergy states that it agrees with AECC that, should the Commission ultimately determine that AECC's proposed use of the Commission-approved ROE for transmission services in MISO is appropriate, the ROE should be subject to the outcome of the MISO ROE complaint currently pending in Docket No. EL14-12 and adjusted to reflect the ROE adopted in that proceeding.¹⁰

15. In its answer, AECC responds that it calculated a unit-specific allocation factor for each of the generating facilities included in its reactive service revenue requirements. AECC asserts that its approach is wholly consistent with the method used to develop the reactive service allocation factor in *AEP*.¹¹ AECC argues that Entergy offers no support for the assertion that AECC's allocation percentages are estimated. AECC states that there are, in fact, no approximated allocation percentages included in AECC's filing. AECC asserts that its filing contains all of the cost support necessary to demonstrate that its proposed revenue requirement is just and reasonable. AECC notes that Entergy's

⁸ Entergy Protest at 4, 6 (citing *Cottonwood Energy Co. LP*, 147 FERC ¶ 61,170 (2014); *Plum Point Energy Associates, LLC*, 148 FERC ¶ 61,151 (2014); *Troy Energy, LLC*, 105 FERC ¶ 61,250 (2003)).

⁹ *Id.* at 4-5.

¹⁰ *Id.* at 5-6.

¹¹ AECC Answer at 3.

concern with AECC's data appears to be rooted in the fact that AECC utilized the RUS system of accounts and not the Commission's Uniform System of Accounts. However, AECC contends that the RUS system of accounts is largely based on the Commission's Uniform System of Accounts and, as a non-jurisdictional entity, AECC is not required to use the Commission's Uniform System of Accounts; rather, because it is a RUS borrower, AECC is required to use the RUS system of accounts. AECC also notes that the Commission has previously approved reactive service revenue requirements filed by non-jurisdictional entities and based on RUS financial data.¹²

16. With regard to the effective date, AECC argues that the arguments raised in Entergy's protest are without merit and that there is no reason to delay Commission approval of AECC's reactive service revenue requirements. AECC argues that, even if Entergy had shown that the AECC reactive service revenue requirements should be suspended, Entergy has not justified a five-month suspension.¹³ In particular, AECC argues that Entergy ignores the inappropriateness of suspension orders to filings by non-public utilities. AECC argues that assuming the precedent cited by Entergy were applicable, Entergy's argument still fails. AECC notes that each of the suspension orders cited by Entergy was based on a showing that the proposed rates were substantially excessive and therefore merited a full five-month suspension in accordance with *West Texas*.¹⁴ AECC argues that nowhere in the Entergy protest is there any attempt to quantify the amount by which Entergy alleges the AECC revenue requirements are overstated, and thus no showing that the proposed revenue requirements are overstated by more than 10 percent as required under *West Texas*. AECC further argues that Entergy ignores the fact that AECC's filing is not a rate change – another reason why the *West Texas* analysis is inapposite here.

III. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁵ the timely, unopposed motions to intervene serve to make MISO and Entergy parties to this proceeding.

¹² *Id.* at 5 (citing *Big Rivers Electric Corp.*, 145 FERC ¶ 61,102 (2013)).

¹³ *Id.*

¹⁴ *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982) (*West Texas*).

¹⁵ 18 C.F.R. § 385.214 (2014).

18. 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.¹⁶ We accept the answer filed by AECC because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

19. AECC's proposed revenue requirements raise 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 AECC's proposed revenue requirements have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept AECC's proposed revenue requirements for filing, suspend them for a nominal period to become effective April 1, 2015, as requested, subject to refund, and set them 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.¹⁷ 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.¹⁸ 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.

¹⁶ 18 C.F.R. § 385.213(a)(2) (2014).

¹⁷ 18 C.F.R. § 385.603 (2014).

¹⁸ 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>).

The Commission orders:

(A) AECC's proposed reactive service revenue requirements are hereby accepted and suspended for a nominal period to become effective April 1, 2015, 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 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 AECC's proposed revenue requirements, 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.