

153 FERC ¶ 61,349
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Duke Energy Indiana, Inc.

Docket No. ER16-200-000

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

(Issued December 30, 2015)

1. On October 30, 2015, Duke Energy Indiana, Inc. (Duke) submitted revisions to its Ancillary Services Tariff (renamed Reactive Tariff), to set forth its revenue requirements for the provision of reactive supply and voltage control (Reactive Service) from various Duke generating units in the Midcontinent Independent System Operator, Inc. (MISO) region.¹ In this order, we accept Duke's proposed Reactive Tariff for filing, suspend it for a nominal period, to become effective January 1, 2016, subject to refund. We also establish hearing and settlement judge procedures.

I. Duke's Filing

2. Duke explains that it is revising its Ancillary Services Tariff (including renaming it "Reactive Tariff") because the only remaining ancillary service provided under this tariff is Reactive Service.² Further, Duke states that it proposes to remove general tariff provisions that are no longer necessary because MISO handles the billing for Reactive Services.³

¹ Duke Energy Indiana, Inc., FERC FPA Electric Tariff, Tariffs, Rate Schedules and Service Agreements, [Tariff Volume No. 10, Reactive Tariff, 2.0.0](#).

² Duke Transmittal Letter, Docket No. ER16-200-000, at 3 (filed Oct. 30, 2015) (Transmittal).

³ We note that schedule 2 of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff, which covers Reactive Service, provides that MISO will compensate owners of generation and non-generation resources for maintaining the

(continued...)

3. Duke states that it is making this Reactive Service filing to establish rates under which Duke will provide Reactive Services to MISO.⁴ Duke states that it currently owns a fleet of 13 generation stations, 12 of which support, and are interconnected directly to, the MISO transmission system.⁵ Duke states that these 12 facilities consist of a total of 48 generating units.

4. Duke states that the facilities' revenue requirements have been calculated in accordance with the *AEP Methodology*,⁶ and consist of a Fixed Capacity Component and a Heating Losses Component.⁷ Duke requests an effective date of January 1, 2016.

5. Duke explains that the Fixed Capacity Component was calculated by the following: (1) identifying equipment associated with reactive power production and determining the installed cost of each asset; (2) calculating the reactive allocation factor for each category of reactive power production equipment and multiplying the installed cost of the reactive power production equipment by the reactive allocation factor; and (3) determining a fixed charge rate to apply to the allocated reactive power production equipment and multiply that fixed charge rate by the reactive power production equipment investment. Duke states that it analyzed the reactive portion of investment in the following: (1) the generator and associated exciter equipment; (2) generator step-up transformers; (3) accessory electrical equipment; and (4) the balance of the plant. Duke states that, because each of these groups of assets involves both real power and reactive power, the *AEP* methodology includes an allocation factor to separate each of the components between real and reactive power. Duke further states that the application of

capability to provide reactive power to MISO. Specifically, Schedule 2 states that, for each month of Reactive Service provided by generation and non-generation resources in the MISO region, MISO shall pay each resource owner an amount equal to the resource owner's monthly revenue requirement, as accepted or approved by the Commission (MISO, FERC Electric Tariff, Schedule 2, Reactive Supply and Voltage Control From Generation or Other (30.0.0)).

⁴ Transmittal at 3.

⁵ *Id.* at 3-4. Duke states that the 13th generation station, Madison, supports the PJM Interconnection, L.L.C. transmission system.

⁶ *Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141, at 61,456-57 (1999).

⁷ Transmittal at 5.

this allocation factor to each of the four groups of investments results in the Fixed Capacity Component of the Reactive Service rate.

6. Duke states that, in determining the cost of capital, it used a rate of return on equity of 12.38 percent, which is the currently approved MISO-wide return on equity for transmission service, including service provided using Duke's transmission facilities.⁸ Duke asserts that the use of a 12.38 percent return on equity conforms to the Commission's general policy of allowing the use of the authorized rate of return on common equity of the interconnected utility for Reactive Service compensation.⁹

7. Duke notes that this return on equity is currently the subject of a section 206 complaint, which has been set for hearing in Docket No. EL15-45-000.¹⁰ Duke states that, to the extent that the proceeding in Docket No. EL15-45-000 results in a change to the MISO-wide return on equity, Duke will recalculate the fixed charge rate used to determine the Fixed Capacity Component, as well as the resulting revenue requirements, to reflect this outcome, and commits to make a compliance filing within 30 days of a final non-appealable order in that proceeding reflecting that outcome.¹¹ Duke also states that it will make the necessary refunds, with interest at the rate provided for in section 35.19a of the Commission's regulations, associated with this change.

8. Duke states that the Heating Losses Component recovers the cost of the increased generator and step-up transformer heating losses that result from the production of reactive power.¹² Duke explains that the creation of Reactive Power results in an incremental current that flows inside the generator armature windings, the generator field winding, and the generator step-up transformer windings.¹³ Duke states that, "[d]ue to the electrical resistance in each of the generator and [generator step-up transformer]

⁸ *Id.* at 10.

⁹ *Id.* (citing *Bluegrass Generation Co., L.L.C.*, 118 FERC ¶ 61,214, at P 86 (2007) (*Bluegrass*)).

¹⁰ *See Arkansas Elec. Coop. Corp., v. ALLETE, Inc.*, 151 FERC ¶ 61,219 (2015) (setting for hearing a complaint regarding the return on equity for certain of MISO's transmission-owning members).

¹¹ Transmittal at 10.

¹² *Id.* at 5.

¹³ *Id.* Ex. DEI-1 at 12.

windings, this incremental current causes Real Power to be consumed or ‘lost’ in the form of heat.”¹⁴

II. Notice and Responsive Pleadings

9. Notice of Duke’s filing was published in the *Federal Register*, 80 Fed. Reg. 68,528 (2015), with interventions and protests due on or before November 20, 2015. Wabash Valley Power Association, Inc. (Wabash Valley), and Indiana Municipal Power Agency (Indiana Municipal) filed timely motions to intervene and comments. Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier) submitted a timely motion to intervene and protest. On December 7, 2015, Duke filed an answer to Hoosier’s protest. On December 14, 2015, Hoosier filed an answer to Duke’s answer.

10. Wabash Valley states that it has reviewed Duke’s Reactive Filing and has no objection to the filing. Indiana Municipal notes Duke’s commitment to recalculate the fixed charge rate used to determine the Fixed Capacity Component and to provide refunds to the extent that currently ongoing rate proceedings result in a change to the MISO-wide rate of return on equity. Indiana Municipal states that, in light of this commitment, it does not object to the filing, but it requests that the Commission’s order herein expressly make the charges resulting from Duke’s filing subject to the outcomes of Dockets Nos. EL14-12 and EL15-45, and provide for associated refunds, with interest at the rate set forth in section 35.19a of the Commission’s regulations.¹⁵

11. Hoosier argues that Duke’s filing is deficient and that the Commission should either reject the filing or set it for hearing and settlement proceedings. Hoosier asserts that Duke has not supported its request to use the 12.38 percent return on equity authorized for the provision of transmission service by the MISO Transmission Owners. Moreover, Hoosier argues that Duke has not justified the use of a return on equity, set by determining the level of risk of a group of providers of interstate *transmission* service, for a return on equity for a *generation*-based service, specifically Reactive Service.¹⁶

12. Hoosier notes that Duke relies on *Bluegrass* for its use of the return on equity of the interconnected utility. However, Hoosier argues that *Bluegrass* is not on point because Duke is not an Independent Power Producer or merchant generator. Hoosier argues that *Bluegrass* provides no basis for concluding that Duke’s provision of

¹⁴ *Id.*

¹⁵ Indiana Municipal Comments at 2-3.

¹⁶ Hoosier Protest at 2-3.

generation service in Indiana, a traditionally-regulated state where Duke serves captive retail customers, is more risky than the provision of interstate transmission service.¹⁷ Additionally, Hoosier notes that Duke has not provided a Discounted Cash Flow analysis, or any other basis upon which the Commission could determine what constitutes a just and reasonable return on equity for the provision of Reactive Service from Duke's generation facilities, and asserts that the Commission should reject the application, or, at the very least, set it for evidentiary hearing and settlement proceedings.¹⁸

13. Further, Hoosier notes that, pursuant to Commission policy, a return on equity that will apply to a group of transmission owners, rather than a single utility, is generally set utilizing the midpoint of the range of Discounted Cash Flow results for members of the proxy group, while a return on equity for a single utility is set utilizing the (usually lower) median.¹⁹ Hoosier argues that Duke provides no basis for concluding that Duke is not a utility of average risk, and no other justification for use of the midpoint of a Discounted Cash Flow range to set the just and reasonable return on equity for use in calculating the rates for Reactive Service provided by a single utility. In addition, Hoosier states that, if the Commission decides to accept Duke's return on equity proposal, the reduced return on equity and refund condition should take effect upon the effective date set by the Commission in Docket No. EL15-45 for the provision of transmission service, and, contrary to Duke's refund commitment, should not be delayed until an order in that docket becomes final and non-appealable.²⁰

14. Hoosier also argues that Duke has improperly calculated investment and expenses allocable to provision of reactive service. Specifically, Hoosier argues that Duke has not justified its 15 percent allocation of turbogenerator investment to the generator and exciter, or its 10 percent allocation of accessory electrical equipment to Reactive Service.²¹ In addition, Hoosier asserts that Duke failed to justify its proposed investment in materials and supplies.²² Hoosier notes that Duke used an end of year balance from its 2014 FERC Form 1 to represent its investment in material and supplies for the test year

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 4.

¹⁹ *Id.*

²⁰ *Id.* at 2.

²¹ *Id.* at 5-6.

²² *Id.* at 7.

contrary to the Commission's regulations, which require use of a 13-month average balance for calculation of operating supplies.²³

15. In its answer, Duke responds that if the Commission finds it necessary to set Duke's filing for hearing and settlement judge procedures, it should narrow the scope and summarily resolve Duke's proposal concerning return on equity.²⁴ Regarding the implementation date for the return on equity, Duke states that it would not retain any amounts that are deemed to be unjust and unreasonable in the MISO return on equity proceeding, as Duke will utilize its proposed fixed rate until a final return on equity is determined in Docket EL15-45, but issue refunds, if any, back to January 1, 2016, with interest, after a new fixed rate can be calculated using the approved return on equity. Duke also states that Commission precedent supports Duke's right to use the approved return on equity for MISO Transmission Owners for a generation-based service such as Reactive Service.²⁵

16. Duke states that it properly calculated the allocation of various investment expenses in the analysis, and that the analysis is consistent with the *AEP* methodology.²⁶ Duke argues that the 15 percent turbogenerator investment allocator is reasonable, as it is a conservative measure based on previous filings utilities have made with the Commission. Duke also states that the 10 percent investment in accessory electrical equipment to reactive service is reasonable, given Duke's generating fleet at issue, and that an exact analysis is not necessary. Duke also states that its use of a year-end balance for material and supplies is reasonable instead of a 13 month-average because it is not utilizing a future test year.

17. In Hoosier's answer, Hoosier states that the 12.38 percent return on equity is inappropriate for Duke to use because the 12.38 percent MISO-wide return on equity is for transmission service, not generation-based service like reactive power. In addition, Hoosier states that Duke is not similarly situated to other entities authorized to use the 12.38 percent return on equity for reactive service. Hoosier also argues that Duke has failed to justify its calculations of investment and expenses allocable to the provision of reactive service.

²³ *Id.*

²⁴ Answer at 4.

²⁵ *Id.* at 6.

²⁶ *Id.* at 9-10.

III. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2015), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers of Duke and Hoosier because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

20. We find that Duke's proposed revenue requirements for Reactive Service for its facilities, as set forth in the Reactive Tariff, raise 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.

21. Our preliminary analysis indicates that Duke's proposed Reactive Tariff has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept Duke's proposed Reactive Tariff for filing, and suspend it for a nominal period to be effective January 1, 2016, subject to refund. We also will establish hearing and settlement judge procedures.

22. While we are setting these matters for a trial-type evidentiary hearing, we encourage the participants to make every effort to settle their dispute before hearing procedures commence. To aid the participants 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.²⁷ If the participants 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.²⁸ The

²⁷ 18 C.F.R. § 385.603 (2015).

²⁸ If the participants 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 available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

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 participants with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

23. Furthermore, we find that Duke may have retired units without updating its Ancillary Services Tariff.²⁹ Because Duke may have continued to receive payments for Reactive Service for units that were no longer capable of providing that service, we have referred such concern to the Commission's Office of Enforcement for further examination and inquiry as may be appropriate.

The Commission orders:

(A) Duke's proposed Reactive Tariff is hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2016, 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 the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Duke's Reactive Tariff, 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 (2015), 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 participants 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.

²⁹ See SNL Financial, *Edwardsport 6 Power Plant Profile* (March 2011); *Edwardsport 7-8 Power Plant Profile* (March 2011); *Miami Wabash Power Plant Profile* (June 2011); *R. Gallagher Power Plant Profile* (February 2012).

(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 participants 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 participants' 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, 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.