

155 FERC ¶ 61,094
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. ER16-200-001

ORDER DENYING REHEARING

(Issued April 25, 2016)

1. On December 30, 2015, the Commission accepted for filing Duke Energy Indiana, Inc.'s (Duke) proposed reactive tariff, suspended it for a nominal period, subject to refund, and established settlement judge and hearing procedures.¹ The Commission also identified a concern regarding Duke's reactive service, which it referred to its Office of Enforcement for examination and inquiry as may be appropriate.
2. On January 29, 2016, Duke sought rehearing of the December 30 Order. Duke argues that the Commission acted arbitrarily and capriciously by "rejecting" Duke's reactive power service return on equity (ROE) proposal when it had accepted a virtually identical proposal from Northern Indiana Public Service Company (NIPSCO) one day earlier.² Duke also alleges that the Commission erred in referring Duke to the Commission's Office of Enforcement.³ Duke contends that the basis for the referral identified in the December 30 Order – that Duke may have continued to receive payments for reactive service for units that were no longer capable of providing such service – fails as a matter of fact and law.⁴ As discussed below, we deny Duke's request for rehearing.

¹ *Duke Energy Ind, Inc.*, 153 FERC ¶ 61,349 (2015) (*Duke*).

² Duke Request for Rehearing at 1-2, 6, 22 (citing *N. Ind. Pub. Serv. Co.*, Docket Nos. ER15-2426-000 and ER16-442-000, (Dec. 29, 2015) (delegated letter order)).

³ *Id.* at 11.

⁴ *Id.*

Procedural Matters

3. On February 3, 2016, Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier) filed a motion for leave to answer and answer in response to Duke's request for rehearing. Rule 713(d) (1) of the Commission's Rules of Practice and Procedure prohibits an answer to a request for hearing.⁵ Therefore, we reject Hoosier's answer.

Commission Determination

4. Duke's assertion that the Commission erred "by rejecting Duke's ROE Proposal" is incorrect.⁶ The Commission did not "reject" Duke's ROE proposal. Instead, the Commission accepted Duke's proposed reactive tariff for filing, subject to a nominal suspension, refund, and hearing and settlement judge procedures.⁷

5. We disagree with Duke's contention that the Commission acted arbitrarily and capriciously by not accepting Duke's filing, in particular its ROE proposal, without a hearing or suspension, as occurred in the NIPSCO reactive tariff proceeding.⁸ Duke contends that, because its filing is substantially identical to that of NIPSCO, the two entities are "similarly situated" and must be treated in the same manner.⁹ However, there are material differences between the two proceedings that warrant disparate treatment of the two reactive power rate proposals.

6. The record in the NIPSCO proceeding is far more robust than the record in the Duke proceeding. After first submitting its reactive tariff application on October 12, 2015, NIPSCO proposed two revised tariff filings that, *inter alia*, contained detailed information regarding the status of all NIPSCO generating units providing reactive power within MISO. In particular, the December 1, 2015 NIPSCO filing included "unit-specific

⁵ 18 C.F.R. § 385.713(d)(1) (2015).

⁶ Duke Request for Rehearing at 22.

⁷ *Duke*, 153 FERC ¶ 61,349 at PP 20-23.

⁸ *NIPSCO*, Docket Nos. ER15-2426-000 and ER16-442-000 (Dec. 29, 2015) (delegated letter order).

⁹ Duke Request for Rehearing at 6-8.

data, including its investment in and expenses relating to each unit and associated equipment.”¹⁰ Duke did not provide comparable data.

7. Thus, the Duke and NIPSCO tariff filings are not “similarly situated.” Moreover, the Commission has broad discretion regarding procedural matters, including whether or not to set a matter for hearing.¹¹ Therefore, the Commission did not act arbitrarily and capriciously in setting Duke’s filing for hearing to resolve Hoosier’s protest and to further develop the record to assess the justness and reasonableness of Duke’s filing.

8. In referring Duke to the Office of Enforcement, the Commission did not “impermissibly attempt[] to mandate a Section 205 filing,” as Duke contends.¹² Rather, based on information submitted by Duke, the Commission asked its Office of Enforcement to conduct an examination and inquiry, as appropriate, whether, under Duke’s previous reactive power rate schedule, Duke received payments for units that were no longer capable of providing reactive service.

9. Duke’s arguments regarding the rule against retroactive ratemaking, the manner in which its rates for reactive service are designed, and notification to the Commission of unit retirements are premature. A referral for examination and inquiry is not a final order on the merits of an investigation “as it imposes no obligation, denies no right nor fixes a legal relationship,” and “does not affect or determine rights” because it “merely develops facts which can be brought to bear on rights only in subsequent adjudication.”¹³

¹⁰ Northern Indiana Public Service Company, Supplemental Filing Regarding Reactive Power Revenue Requirements, Docket No. ER16-442-000, at 2 (Dec. 1, 2015).

¹¹ See *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 524-25 (1978) (agencies have broad discretion over the formulation of their procedures); *Mich. Pub. Power Agency v. FERC*, 963 F.2d 1574, 1578-79 (D.C. Cir. 1992) (the Commission has discretion to mold its procedures to the exigencies of the particular case); *Woolen Mill Assoc. v. FERC*, 917 F.2d 589, 592 (D.C. Cir. 1990) (the decision as to whether to conduct an evidentiary hearing is in the Commission’s discretion).

¹² Duke Request for Rehearing at 22.

¹³ *GenOn Energy Mgmt., LLC*, 154 FERC ¶ 61,113, at P 9 (2016) (internal quotations omitted).

10. Duke also requests that the hearing on its reactive tariff be deferred and subject to a stay until its request for rehearing is acted upon. Because the Commission in this order has now acted on Duke's request for rehearing, the stay request is moot.

The Commission orders:

Duke's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.