

155 FERC ¶ 61,122
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

MidAmerican Energy Company

Docket Nos. ER16-1062-000
EL16-59-000

ORDER ACCEPTING PROPOSED RATE SCHEDULE, INSTITUTING SECTION 206
PROCEEDING, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued May 2, 2016)

1. On March 3, 2016, pursuant to section 205 of the Federal Power Act (FPA)¹ and section 35.13 of the Commission regulations,² MidAmerican Energy Company (MidAmerican) submitted proposed revisions to Schedule 2 (Reactive Supply and Voltage Control from Generation or Other Sources Service) of its Services Tariff, to reflect the retirement of four MidAmerican generating units. In this order, we accept the proposed revisions for filing, to become effective, April 1, 2016, as requested. This order also establishes hearing and settlement judge procedures. Further, because MidAmerican is proposing a rate reduction and a further decrease may be warranted, we are instituting an investigation pursuant to section 206 of the FPA³ in Docket No. EL16-59-000 to determine whether MidAmerican's proposed rate reduction is just and reasonable, and we establish a refund effective date.

I. Background

2. MidAmerican explains that it is a transmission-owning member of Midcontinent Independent System Operator, Inc. (MISO) and that it owns an extensive transmission system over which MISO provides transmission service. MidAmerican states that, while

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.13 (2015).

³ 16 U.S.C. § 824e (2012).

MISO has functional control of MidAmerican's transmission system, MidAmerican has on file with the Commission a Services Tariff pursuant to which MidAmerican provides, among other things Reactive Supply and Voltage Control Service (Reactive Service).⁴

3. MidAmerican explains that, effective April 1, 2015, it retired two generating units, and that a *pro rata* reduction in MidAmerican's revenue requirement to reflect the retirement of these generators did not affect MidAmerican's current rate for Reactive Service. MidAmerican states that "the reduction in compensation associated with such units was within the round-off range of MidAmerican's tariffed rate" and was "too small to reflect in a tariff filing," but notes that MidAmerican did not continue to receive compensation for the retired units.⁵

4. MidAmerican states that it will retire two additional units effective April 16, 2016. MidAmerican states that a *pro rata* reduction in MidAmerican's revenue requirement to reflect these units, when coupled with the previous retirements, will result in a change in MidAmerican's rate for Reactive Service. MidAmerican states that the retirement of these four units will result in a reduction of the current rate of \$0.18/MWh to a revised rate of \$0.16/MWh.⁶

5. MidAmerican states that, in adjusting rates for reactive supply to account for retirements, the Commission has previously accepted a "reasonable and logical approach" rather than requiring an owner to "expend resources on developing a revised new revenue requirement for the joint service."⁷ MidAmerican states that the Commission has noted that additions of resources not currently reflected in rates for reactive power may offset the effect of retirements, and therefore, the Commission has permitted reactive power suppliers the opportunity to identify all new reactive power capability in an informational filing showing that the additions offset the capability lost from a unit retirement.⁸

⁴ Transmittal at 2.

⁵ *Id.* at 4-5.

⁶ *Id.* at 5.

⁷ *Id.* at 4.

⁸ *Id.*

6. While MidAmerican proposes to reduce its rate for Reactive Service in the instant proceeding, it notes that the reactive capability being retired is more than offset by the reactive capability of resources that have been installed since MidAmerican initially established its rate for Reactive Service.⁹

7. MidAmerican requests a waiver of any portion of the Commission's rules that requires the submission of cost of service statements in connection with the requested tariff changes. MidAmerican argues that good cause exists for such a waiver because its revisions do not involve a rate increase. MidAmerican also requests a waiver of the Commission's 60-day notice requirement, under section 35.3(a) of the Commission's regulations,¹⁰ to make the proposed revisions effective April 1, 2016.¹¹

II. Notice and Responsive Pleadings

8. Notice of MidAmerican's filing was published in the *Federal Register*, 81 Fed. Reg. 12,727 (2016), with interventions and protests due on or before March 24, 2016. None was filed.

III. Discussion

9. We find that MidAmerican's proposed rate for Reactive Service for its facilities, as set forth in the Services Tariff, raises 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.¹²

10. Our preliminary analysis indicates that MidAmerican's proposed rate for its Services 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 MidAmerican's proposed revisions to its Services Tariff for filing, to be effective on April 1, 2016, as requested, and set them for hearing and settlement judge procedures.

⁹ *Id.* at 5.

¹⁰ 18 C.F.R. § 35.3(a) (2015).

¹¹ Transmittal at 6.

¹² The Commission recently provided guidance on establishing or revising rates for Reactive Service. *See, e.g., Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,246, at PP 23-28 (2016); *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,245, at PP 24-29 (2016).

11. In addition, because MidAmerican is proposing a rate reduction, but a further rate decrease may be warranted, we are instituting a section 206 investigation in Docket No. EL16-59-000 with respect to the justness and reasonableness of MidAmerican's proposed rate.¹³ Given the common issues of law and fact, we will consolidate Docket Nos. ER16-1062-000 and EL16-59-000 for purposes of settlement, hearing, and decision. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than the date of publication of the notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months after the publication date.¹⁴ We will establish a refund effective date of the earliest date possible in order to give maximum protection to customers, i.e., the date of the notice of initiation of the section 206 proceeding in Docket No. EL16-59-000 is published in the *Federal Register*.

12. Section 206(b) of the FPA also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. Since we are setting the section 206 proceeding in Docket No. EL16-59-000 for hearing and settlement judge procedures, we expect that, if the proceeding does not settle, we would be able to render a decision within eight months of the date of filing of briefs opposing exceptions to the Initial Decision.

13. Regarding the retired units, we note that MidAmerican may have continued to receive payments for Reactive Service based on a revenue requirement that included the retired units, after it retired those units,¹⁵ and, thus, after "the unit [was] no longer

¹³ See, e.g., *RC Cape May Holdings, LLC*, 152 FERC ¶ 61,224 (2015).

¹⁴ 16 U.S.C. § 824e(b) (2012).

¹⁵ MidAmerican represents that it did not receive reactive power payments for the retired Walter Scott, Jr. Energy Center Unit Nos. 1 and 2 because its then-effective reactive power rate would not have changed following a *pro rata* adjustment to account for those units' retirement. However, as MidAmerican acknowledges, the retirement of those units resulted in a reduction in its total reactive power revenue requirement, which is part of its filed rate. We believe it is appropriate for the Office of Enforcement to determine whether MidAmerican did, in fact, receive compensation for its retired units, notwithstanding its assertion that the applicable \$/MWh rate would not have changed.

capable of providing that service.”¹⁶ We have referred this concern to the Commission’s Office of Enforcement for further examination and inquiry as may be appropriate.

14. 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.¹⁷ 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.¹⁸ The 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.

The Commission orders:

(A) MidAmerican’s proposed Services Tariff is hereby accepted for filing, to become effective April 1, 2016, subject to the outcome of the hearing and settlement judge procedures ordered herein, 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

¹⁶ See *Duke Energy Conesville, LLC*, 150 FERC ¶ 61,229, at P 8 (2015); see also *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,132, at P 10 (2014) (referring to the Commission's Office of Enforcement the matter of the resource owner possibly receiving payments for Reactive Power Service after its units had retired and thus were no longer capable of providing that service); *Desoto Cnty. Generating Co., LLC*, 151 FERC ¶ 61,009, at P 14 (2015) (referring to the Commission's Office of Enforcement the matter of the resource owner possibly receiving payments for Reactive Power Service while its facility was incapable of providing that service).

¹⁷ 18 C.F.R. § 385.603 (2015).

¹⁸ 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>).

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 MidAmerican's Services 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.

(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.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 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), the Commission hereby institutes a proceeding in Docket No. EL16-59-000, concerning the justness and reasonableness of MidAmerican's rate for Reactive Service, as discussed in the body of this order.

(G) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of section 206 proceedings in Docket No. EL16-59-000.

(H) The refund effective date established pursuant to section 206(b) of the Federal Power Act will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (G) above.

(I) Docket Nos. ER16-1062-000 and EL16-59-000 are hereby consolidated for purposes of settlement, hearing, and decision.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.