

157 FERC ¶ 61,079  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Dynegy Midwest Generation, LLC

Docket Nos. ER16-2566-001  
EL17-4-000

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

(Issued November 1, 2016)

1. On September 8, 2016, as amended September 30, 2016, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and Part 35 of the Commission's regulations,<sup>2</sup> Dynegy Midwest Generation, LLC (Dynegy Midwest) submitted a revised Rate Schedule FERC No. 5 (Second Revised Rate Schedule), which sets forth its cost-based revenue requirement for Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service) provided under Schedule 2 for Reactive Supply and Voltage Control from Generation or Other Sources Service (Schedule 2) of the Midcontinent Independent System Operator, Inc. (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).<sup>3</sup> In this order, we accept the Second Revised Rate Schedule for filing, to become effective October 17, 2016, as requested, subject to the outcome of the proceeding in Docket Nos. ER16-2187-000 and EL16-61-000. Further, because Dynegy Midwest is proposing a rate reduction and a further decrease may be warranted, we are instituting hearing and settlement judge procedures pursuant to

---

<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. pt. 35 (2016).

<sup>3</sup> Schedule 2 of the MISO Tariff, which governs the provision and compensation for Reactive Supply and Voltage Control Service, contains eligibility criteria necessary for a generator to receive reactive power compensation.

section 206 of the FPA<sup>4</sup> in Docket No. EL17-4-000 to determine whether Dynegy Midwest's rate is just and reasonable, and we establish a refund effective date.

## **I. Background**

2. Dynegy Midwest states that it is a Delaware limited liability company and an indirect, wholly-owned subsidiary of Dynegy Inc., a Delaware corporation.<sup>5</sup> Dynegy Midwest states that it is an exempt wholesale generator and that it is authorized to sell energy, capacity, and certain ancillary services at market-based rates.<sup>6</sup>

3. Dynegy Midwest states that on April 21, 2016, Dynegy Marketing and Trade, LLC (Dynegy Marketing and Trade), the MISO Market Participant designated for Dynegy Midwest, submitted to MISO a Tariff Attachment Y Notification of Potential Generation Resource/Synchronous Condenser Unit (SCU) Change of Status, notifying MISO of the proposed suspension of Unit 1 at Dynegy Midwest's Baldwin fossil-fueled generating facility (Baldwin Unit 1) effective October 17, 2016 and the resuming of operations at Baldwin Unit 1 on October 17, 2019.<sup>7</sup> Dynegy Midwest states that by letter dated June 27, 2016, MISO notified Dynegy Marketing and Trade that the proposed suspension would not result in violations of applicable reliability criteria and that the unit would not need to be designated as a System Support Resource unit as defined in the Tariff.

4. Dynegy Midwest states that on September 13, 2016, Dynegy Marketing and Trade submitted to MISO a Tariff Attachment Y Notification of Potential Generation Resource/SCU Change of Status to (i) notify MISO of the proposed suspension of Unit 3 at Dynegy Midwest's Baldwin fossil-fueled generating facility (Baldwin Unit 3) effective March 13, 2017, and the resuming of operations at Baldwin Unit 3 on March 13, 2020 and (ii) request that MISO consider the earlier suspension date of October 17, 2016, and return to service date of October 17, 2019, to apply to Baldwin Unit 3 in lieu of MISO's previous approval of those dates for Baldwin Unit 1.<sup>8</sup> Dynegy Midwest states that this Attachment Y Notification included a notice of rescission for the Baldwin Unit 1 suspension conditional upon approval of the earlier effective date for the Baldwin Unit 3

---

<sup>4</sup> 16 U.S.C. § 824e.

<sup>5</sup> Filing at 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 4.

<sup>8</sup> Amended Filing at 2.

suspension. Dynegy Midwest states that by letter dated September 15, 2016, MISO notified Dynegy Midwest that the proposed suspension of Baldwin Unit 3 based on the effective date of October 17, 2016, would not result in violations of applicable reliability criteria and that Baldwin Unit 3 would not need to be designated as a System Support Resource unit as defined in the MISO Tariff. Dynegy Midwest states that, accordingly, it has submitted its Second Revised Rate Schedule, which reflects a suspension of the portion of the annual revenue requirement for Reactive Service attributable to Baldwin Unit 3, rather than Baldwin Unit 1.

5. Dynegy Midwest's annual revenue requirement for Reactive Service includes the revenue requirement for the Baldwin generating facility, as well as all other Dynegy Midwest generating facilities currently in operation.<sup>9</sup> Dynegy Midwest proposes to reduce its annual revenue requirement for Reactive Service during the suspension of Baldwin Unit 3.<sup>10</sup> Dynegy Midwest states that as a result of the suspension of Baldwin Unit 3, Dynegy Midwest's annual revenue requirement for Reactive Service will be reduced from \$2,361,540 to \$1,894,348.27 for the duration of the suspension.

6. Dynegy Midwest states that its revenue requirement continues to consist of two components: the fixed cost attributable to reactive power production capability (Fixed Capability Component) and the increased generator and step-up transformer heating losses that result from the production of reactive power (Heating Losses Component).<sup>11</sup> Dynegy Midwest states that in order to separate out the amount associated with Baldwin Unit 3 from the revenue requirement, the costs currently in the annual Fixed Capability Component associated with the Baldwin generating facility were isolated based on the exhibits from the hearing in Docket No. EL05-72-000, adjusted to reflect the Commission's requirements in Opinion No. 498,<sup>12</sup> and on the Commission's rehearing order<sup>13</sup> in that proceeding.<sup>14</sup> Dynegy Midwest states that the annual Fixed Capability

---

<sup>9</sup> Filing at 3.

<sup>10</sup> Amended Filing at 3.

<sup>11</sup> Filing at 4.

<sup>12</sup> *Dynegy Midwest Generation, Inc.*, Opinion No. 498, 121 FERC ¶ 61,205 (2007).

<sup>13</sup> *Dynegy Midwest Generation, Inc.*, 125 FERC ¶ 61,280 (2008).

<sup>14</sup> Filing at 4-5; *see also* Amended Filing at 3. Dynegy notes that its Amended Filing calculates the Baldwin Unit 3-specific revenue requirement following the same process described in the Filing for Baldwin Unit 1. Amended Filing at 3.

Component attributable to the Baldwin generating facility is \$1,434,059. Dynege Midwest explains that to isolate the revenue requirement associated with Baldwin Unit 3, Dynege Midwest proposes to estimate the unit revenue requirements by pro-rating the Baldwin generating facility Fixed Capability Component among the Baldwin units based on the megavolt-ampere reactive (MVAR) nameplate ratings of the units.

7. Dynege Midwest states that it has further adjusted its annual revenue requirement for Reactive Service to reflect a reduction in the Heating Losses Component.<sup>15</sup> Dynege Midwest states that as with the Fixed Capability Component, Dynege Midwest uses the nameplate MVAR rating to allocate a portion of the Heating Losses Component revenue requirement for the Baldwin generating facility to Baldwin Unit 3.

8. Dynege Midwest requests expedited treatment and any necessary waivers of the Commission's regulations to permit an effective date of October 17, 2016, to coincide with the start of the suspension of Baldwin Unit 3.<sup>16</sup> Dynege Midwest notes that the Commission has granted waiver of its notice requirements where a filing reflects a rate decrease.<sup>17</sup> Dynege Midwest states that if the requested effective date is granted, and to the extent MISO has paid revenue to Dynege Midwest associated with Reactive Service from Baldwin Unit 3 on or after October 17, 2016, Dynege Midwest will refund to MISO the revenue amount associated with Baldwin Unit 3 including interest calculated in accordance with section 35.19a of the Commission's regulations or adopt MISO's preferred refund method to account for any overpayment.

## **II. Notice and Responsive Pleadings**

9. Notices of Dynege Midwest's September 8 and September 30, 2016 filings were published in the *Federal Register*, with interventions and protests due on or before October 21, 2016.<sup>18</sup> Ameren Services Company (Ameren) submitted a timely motion to intervene.

---

<sup>15</sup> Filing at 5; *see also* Amended Filing at 3.

<sup>16</sup> Amended Filing at 4.

<sup>17</sup> *Id.* (citing *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (where the Commission explained its policy towards waiver of the 60-day prior notice requirement and stated that it would generally grant waiver of the 60-day prior notice requirement for filings that reduce the rate)).

<sup>18</sup> 81 Fed. Reg. 63,177; 81 Fed. Reg. 69,521 (2016).

### III. Discussion

#### A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), Ameren's timely, unopposed motion to intervene serves to make it a party to this proceeding.

#### B. Substantive Matters

11. Our preliminary analysis indicates that Dynegy Midwest's proposed Second Revised Rate Schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. For example, Dynegy Midwest has not supported its revised annual revenue requirement for Reactive Service, as it has not provided cost information for the equipment at the units that will continue to be used to produce reactive power, including the turbogenerators, generators, exciters, and step-up transformers, nor has it provided information about the Reactive Service capability of those units including MISO test reports supporting such Reactive Service capability figures.<sup>19</sup> We thus find that Dynegy Midwest's proposed Second Revised Rate Schedule 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.<sup>20</sup> Accordingly, as Dynegy Midwest is proposing a rate reduction, we accept Dynegy Midwest's Second Revised Rate Schedule for filing, to be effective October 17, 2016, as requested, but because a further rate decrease may be

---

<sup>19</sup> See 18 C.F.R. § 35.12(b)(2)(ii) (2016). The Commission recently provided guidance on establishing or revising rates for Reactive Service. See, e.g., *Wabash Valley Power Association, Inc.*, 154 FERC ¶ 61,245, at PP 24-29 (2016); *Wabash Valley Power Association, Inc.*, 154 FERC ¶ 61,246, at PP 23-28 (2016). See also *Midwest Generation, LLC*, 156 FERC ¶ 61,136, at P 10 and n.17 (2016).

<sup>20</sup> We also note that, in Docket Nos. ER16-2187-000 and EL16-61-000, the Commission has directed MISO to submit a further compliance filing, revising Schedule 2 of its Tariff to ensure that the generation or non-generation resource owner will no longer receive compensation for Reactive Service after it has deactivated its unit(s) or transferred its unit(s) to another owner and to clarify the treatment of Reactive Service revenue requirements for said unit(s). Our acceptance here is subject to the outcome of that proceeding. See *Midcontinent Indep. Sys. Operator, Inc.*, 157 FERC ¶ 61,014, at P 16 (2016). We also note that Dynegy Midwest has committed to provide refunds, with interest, to the extent MISO has paid revenue to Dynegy Midwest associated with Reactive Service from Baldwin Unit 3 on or after October 17, 2016. See *supra* P 8.

warranted, we are instituting hearing and settlement judge procedures pursuant to section 206 of the FPA in Docket No. EL17-4-000 with respect to the justness and reasonableness of Dynegy Midwest's rate.<sup>21</sup>

12. 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.<sup>22</sup> We will establish a refund effective date of the earliest date possible in order to give maximum protection to customers, i.e., the date the notice of initiation of the section 206 proceeding in Docket No. EL17-4-000 is published in the *Federal Register*.

13. 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. EL17-4-000 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.

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 are commenced. 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.<sup>23</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding.<sup>24</sup> The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability. The settlement judge shall report to the Chief Judge and the Commission within 30 days

---

<sup>21</sup> See, e.g., *RC Cape May Holdings, LLC*, 152 FERC ¶ 61,224, at P 19 (2015).

<sup>22</sup> 16 U.S.C. § 824e(b).

<sup>23</sup> 18 C.F.R. § 385.603 (2016).

<sup>24</sup> 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>).

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) Dynegy Midwest's proposed Second Revised Rate Schedule is hereby accepted for filing, to become effective October 17, 2016, subject to the outcome of the proceeding in Docket Nos. ER16-2187-000 and EL16-61-000, 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 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), a public hearing shall be held in Docket No. EL17-4-000 concerning the justness and reasonableness of Dynegy Midwest's Second Revised 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 (2016), 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) Any interested person desiring to be heard in Docket No. EL17-4-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), within 21 days of the date of issuance 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. EL17-4-000.

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

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.