

157 FERC ¶ 61,239
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Sabine Cogen, LP

Docket No. ER17-210-002

ORDER ACCEPTING, SUBJECT TO CONDITION, AND SUSPENDING PROPOSED
RATE SCHEDULE AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued December 23, 2016)

1. On October 28, 2016, as amended on October 31, 2016, Sabine Cogen, LP (Sabine) submitted, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² an amended Reactive Revenue Rate Schedule (Reactive Tariff),³ which sets forth Sabine's revenue requirement for the provision of Reactive Supply and Voltage Control from Generation or Other Sources Service (Reactive Service) from certain Sabine generating units in the Midcontinent Independent System Operator, Inc. (MISO) region. In this order, we accept for filing Sabine's Reactive Tariff, subject to condition, and suspend it for a nominal period, to become effective January 1, 2017, subject to refund. We also establish hearing and settlement judge procedures and direct a compliance filing.

I. Background

2. Sabine is a Delaware limited partnership that is wholly-owned by Bayou Power, LLC, a wholly-owned direct subsidiary of Rockland Power Partners, LP, an equity fund.⁴

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. pt. 35 (2016).

³ Sabine Cogen, LP, FERC FPA Electric Tariff, Market-Based Rate Tariff, [Reactive Rate Schedule, Reactive Rate Schedule, 1.1.0.](#)

⁴ October 28 Filing at 3.

Sabine states that it owns a three-unit 101.8 MW topping-cycle cogeneration facility (Facility) that is interconnected to the transmission system of Entergy Texas, Inc. (Entergy Texas) in the MISO market.⁵

3. Sabine states that the Facility is capable of being dispatched and operated to provide Reactive Service to MISO.⁶ Sabine explains that the Facility's revenue requirement has been calculated in accordance with the *AEP* Methodology,⁷ and consists of a Fixed Capacity Component and a Heating Losses Component.⁸ Sabine proposes an annual revenue requirement of \$450,792 for its Fixed Capacity Component and an annual Heating Losses Component of \$17,849.⁹

4. Sabine explains that it calculated the Fixed Capability Component by: (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 by the reactive allocation factor; and (3) determining a fixed carrying charge rate to apply to the allocated reactive power production equipment and multiplying that fixed charge rate by the reactive power production equipment investment.¹⁰ Sabine states that it analyzed the reactive portion of investments in the following: (1) the generator and associated exciter equipment; (2) the generator step-up transformers; (3) accessory electrical equipment that supports the operation of the generator exciter systems; and (4) the balance of the plant.¹¹

⁵ *Id.* at 2-3.

⁶ Schedule 2 of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), which covers Reactive Service, provides that MISO will compensate owners of generation and non-generation resources for maintaining the 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.

⁷ *See Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141, at 61,456-57 (1999) (*AEP*).

⁸ October 28 Filing at 4.

⁹ October 31 Filing at 3.

¹⁰ October 28 Filing at 5.

¹¹ *Id.*

5. Sabine further states that the Heating Losses Component recovers the costs of incremental heating losses that result from the production of reactive power. Sabine 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.¹²

6. In determining the cost of capital, Sabine states that it used the current Commission-approved, MISO-wide return on equity (ROE) of 12.38 percent because Sabine is a merchant generator within the Entergy Texas region.¹³ Sabine states that it has been the general policy of the Commission to allow an independent power producer to use the ROE of an interconnected utility.¹⁴ Sabine notes that the Entergy Texas ROE is set forth in Attachment 2 of the MISO Tariff, and that the MISO-wide ROE is currently the subject of a complaint, under section 206 of the FPA,¹⁵ which has been set for hearing in Docket No. EL15-45-000.¹⁶ Sabine states that, to the extent that the proceeding in Docket No. EL15-45-000 results in a change of the Entergy Texas ROE, Sabine will amend its Reactive Tariff to reflect such an outcome, and Sabine commits to make a compliance filing within 30 days of issuance of a Commission order in that complaint proceeding. Sabine also states that it will make the necessary refunds of reactive compensation that it may have collected between the effective date of its Reactive Tariff and resolution of the proceeding in Docket No. EL15-45-000.¹⁷

7. Sabine requests expedited approval of the Reactive Tariff to allow an effective date of December 1, 2016. Sabine states that it requests expedited approval because it originally made a filing seeking recovery for Reactive Service on July 29, 2016, in Docket No. ER16-2319-000, and review of the instant filing can be accomplished promptly because review of the original filing already occurred and because the changes in the instant filing are discrete.

¹² October 28 Filing, Attachment B-1 at 10.

¹³ October 28 Filing at 6.

¹⁴ *Id.*

¹⁵ 16 U.S.C. § 824e (2012).

¹⁶ October 28 Filing at 7; *see also Arkansas Elec. Coop. Corp. v. ALLETE, Inc.*, 151 FERC ¶ 61,219 (2015) (setting for hearing a complaint regarding the ROE for certain of MISO's transmission-owning members).

¹⁷ October 28 Filing at 7.

II. Notice and Responsive Pleadings

8. Notice of Sabine's filing was published in the *Federal Register*, 81 Fed. Reg. 76,939 (2016), with interventions and protests due on or before November 21, 2016. Entergy Services, Inc. (Entergy) submitted a timely motion to intervene and protest on behalf of Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy Texas, and Entergy New Orleans, Inc. MISO submitted a timely motion to intervene and comments.

9. MISO states that it takes no position on the overall request relating to the Reactive Tariff submitted by Sabine.¹⁸ However, MISO states that it is concerned about Sabine stating that, if the approved MISO ROE decreases, Sabine will submit a compliance filing describing any amount of refunds due to MISO within 30 days. MISO states that, in such a case, Sabine's commitment to file an amended revenue requirement seems appropriate, but refunds would be undertaken by MISO.¹⁹ MISO explains that this situation results from MISO's *pro rata* allocation of the amounts collected for reactive power supply, not simply the allocation according to revenue requirements. MISO asserts that the 30-day filing requirement regarding refunds would be reasonable after MISO determines that refunds are due, but that the filing requirement would not be triggered by a Commission order in the complaint proceeding.²⁰

10. Entergy states that it contests the basis for Sabine's proposed annual revenue requirement. Entergy contends that Sabine fails to justify the revenue requirement proposed in the Reactive Tariff consistent with Commission precedent, making Entergy unable to make a thorough review of Sabine's proposed rates. Entergy requests that the Commission suspend the proposed Reactive Tariff for the maximum period and set it for hearing.²¹

11. Entergy states that it does not dispute Sabine's use of the *AEP* Methodology, but Sabine's application of it.²² Entergy argues that Sabine's proposed Reactive Power Allocation Factor of 27.75 percent is excessive and unsupported and leads to unjust and unreasonable allocations. Further, Entergy notes that, under the *AEP* Methodology,

¹⁸ MISO Comments at 2.

¹⁹ *Id.* at 2-3.

²⁰ *Id.* at 3.

²¹ Entergy Protest at 2.

²² *Id.*

generator/exciter investment is developed using the Commission's Uniform System of Accounts, and Entergy argues that Sabine has not demonstrated that its methodology results in a just and reasonable cost-based rate.²³ Entergy states that Sabine's utilization of a 12.38 percent ROE should be adjusted, as the Commission in proceedings regarding the standard figure in the MISO region recently concluded that the MISO-standard ROE is 10.32 percent.²⁴ Entergy also states that Sabine's annual revenue requirement has not been shown to be just and reasonable in light of the inclusion of heating losses. Entergy contends that Sabine has failed to establish that it is entitled to any recovery for heating losses due to reactive power production.²⁵

12. On November 28, 2016, Sabine filed a motion for leave to answer and answer to Entergy's protest. Sabine argues that its proposed Reactive Power Allocation Factor is consistent with the *AEP* Methodology. Sabine disputes Entergy's assertion that its proposed Reactive Power Allocation Factor is excessive and argues that Entergy's position amounts to a collateral attack on the *AEP* Methodology.²⁶

13. Sabine also argues that Entergy raises unsubstantiated concerns that Sabine's reactive rate schedule is inadequately supported because Sabine is not required to use the Commission's Uniform System of Accounts and requests that the Commission subject Sabine's filing to special scrutiny. Sabine argues that Entergy's position is inherently unreasonable and discriminatory as to all entities that do not use the Uniform System of Accounts and reflects another collateral attack on Commission precedents. Sabine asserts that the Commission regularly approves reactive revenue requirements to qualifying facilities and exempt wholesale generators that are not required to follow the Uniform System of Accounts.²⁷

14. With respect to Entergy taking exception to Sabine's use of the MISO 12.38 percent ROE to calculate its revenue requirements, Sabine notes that Opinion No. 551, the order setting the MISO ROE at 10.32 percent, is pending rehearing and the ROE has not yet been included in MISO's Tariff. Sabine states that, as made clear in its original

²³ *Id.* at 3.

²⁴ *Id.* at 4 (citing *Association of Businesses Advocating Tariff Equity, et al. v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 551, 156 FERC ¶ 61,234 (2016)).

²⁵ *Id.* at 5.

²⁶ Sabine Answer at 2-3.

²⁷ *Id.* at 3.

filing, Sabine is committed to use of the Commission's final and non-appealable ROE determination.²⁸

15. In response to Entergy's argument that Sabine's incorporation of heating losses in its proposed reactive revenue requirement is improper because Sabine has failed to establish that it is entitled to any recovery for heating losses due to reactive power production, Sabine states that it followed Commission precedent in doing so.²⁹

16. Finally, Sabine argues that Entergy provides no justification for a five-month suspension of Sabine's proposed rate schedule. Sabine also asserts that a five-month suspension would be inequitable as Sabine would be harmed because it would continue to receive no compensation for a service it is providing.³⁰

III. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³¹ the timely, unopposed motions to intervene serve to make MISO and Entergy parties to this proceeding. 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.³² We accept the answer filed by Sabine because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

18. As further discussed below, we will accept Sabine's proposed Reactive Tariff, subject to condition,³³ suspend it for a nominal period, to become effective January 1,

²⁸ *Id.* at 3-4.

²⁹ *Id.* at 4.

³⁰ *Id.* at 5-6.

³¹ 18 C.F.R. § 385.214 (2016).

³² 18 C.F.R. § 385.213(a)(2) (2016).

³³ The Commission can revise a proposal filed under section 205 of the Federal Power Act as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

2017, subject to refund, and establish hearing and settlement judge procedures. We will also direct a compliance filing.

19. As discussed above, Sabine's proposed Reactive Tariff raises 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 Sabine'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. For example, Sabine does not provide sufficient justification for its allocation factors and the operations and maintenance costs included in its reactive power revenue requirement.³⁴ Accordingly, we will accept Sabine's proposed Reactive Tariff for filing, and suspend it for a nominal period to be effective January 1, 2017, subject to refund. We also will establish hearing and settlement procedures.

21. Further, we will accept Sabine's proposed Reactive Tariff subject to the condition that it revise its tariff records to reflect the current, Commission-approved base ROE of 10.32 percent. In Opinion No. 551, the Commission found that the just and reasonable base ROE for transmission owners in MISO is 10.32 percent.³⁵ While Opinion No. 551 is currently pending rehearing, section 313(c) of the FPA expressly provides that the filing of a request for rehearing does not operate as a stay of the order of which rehearing is sought.³⁶ Accordingly we direct Sabine to make a compliance filing within 30 days of the date of this order revising its tariff records to reflect the current, Commission-approved base ROE of 10.32 percent. We further direct that, should the Commission-approved base ROE change, Sabine must update its Reactive Tariff to reflect the new base ROE.

22. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties 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.³⁷ If the parties desire, they may, by

³⁴ The Commission has recently reiterated how the heating loss component and fixed charge rate should be calculated. See *Wabash Valley Power Assn. Inc.*, 154 FERC ¶ 61,246 at PP 23-28 (2016).

³⁵ Opinion No. 551, 156 FERC ¶ 61,234 at P 67.

³⁶ [16 U.S.C. § 8251\(c\) \(2012\)](#).

³⁷ 18 C.F.R. § 385.603 (2016).

mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.³⁸ 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) Sabine's proposed Reactive Tariff is hereby accepted for filing, subject to condition, and suspended for a nominal period, to become effective January 1, 2017, subject to refund, as discussed in the body of this order.

(B) Sabine is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(C) 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 Sabine's proposed 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 (D) and (E) below.

(D) 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 parties 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.

³⁸ 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 (5) 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>).

(E) 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 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 sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) 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.