

109 FERC ¶ 61,004
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Holland Energy, LLC

Docket No. ER04-1075-000

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

(Issued October 1, 2004)

1. On August 2, 2004, Holland Energy, LLC (Holland),¹ which owns a generating facility, filed a proposed rate schedule specifying its revenue requirement for providing cost-based reactive power service under Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Schedule 21 (which Midwest ISO filed with the Commission on June 25, 2004, in Docket No. ER04-961-000). As discussed below, we accept the proposed rate schedule for filing and suspend it for a nominal period, to become effective on the date Midwest ISO's revised Schedule 2 in Docket No. ER04-961-000 becomes effective, subject to refund, and establish hearing and settlement judge procedures. This order benefits customers by ensuring a timely inquiry into whether the proposed rate schedule is just and reasonable.

I. Background

2. Holland owns a natural gas-fired combined cycle electric generating facility located in the control area of Ameren Services Company (Ameren) and interconnected with transmission facilities that are owned by Central Illinois Public Service Company (d/b/a AmerenCIPS). Ameren is a participant in an independent transmission company, GridAmerica LLC. The transmission systems owned by AmerenUE and AmerenCIPS, as participants in GridAmerica, were integrated into Midwest ISO effective May 1, 2004.

3. In this proceeding, Holland has filed for cost recovery for the reactive power it provides pursuant to Midwest ISO's proposed Schedule 21. Midwest ISO filed proposed Schedule 21, in Docket No. ER04-961-000, to supplement the existing Schedule 2 of the

¹ Holland is a wholly-owned indirect subsidiary of Constellation Energy Group (CEG).

Midwest ISO Open Access Transmission Tariff (OATT), which compensates generators under the control of transmission owners for providing reactive power. Under proposed Schedule 21, Midwest ISO sought to compensate those generation resources not currently covered by Schedule 2, i.e., independent power producers (IPPs).

4. As compensation for reactive power service, Holland requests an annual revenue requirement of \$1,090,982 for its Fixed Capability Component and an annual revenue requirement of \$37,802 for its Heating Loss Component, for a total annual revenue requirement of \$1,128,784.

5. Holland requests an effective date of the later of October 1, 2004 or the effective date of Schedule 21.

II. Notice of Filing and Responsive Pleadings

6. Notice of the filing was published in the *Federal Register*, 69 Fed. Reg. 51,661 (2004), with protests and interventions due on or before August 23, 2004. Wisconsin Electric Power Company and Midwest ISO filed motions to intervene. American Municipal Power-Ohio, Inc. (AMP) filed a motion to intervene and protest. Louisville Gas and Electric Company and Kentucky Utilities Company (collectively LG&E) and the Midwest ISO Transmission Owners² filed motions to intervene out-of-time. On September 7, 2004, Holland filed an answer to AMP's protest.

² For purposes of this filing, the Midwest ISO Transmission Owners include Energy Corporate Services; Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, and Central Illinois Light Co. d/b/a AmerenCilco, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); Aquila, Inc. d/b/a Aquila Networks (f/k/a Utilicorp United, Inc.); Cinergy Services, Inc. (for Cincinnati Gas & Electric Co., PSI Energy, Inc., and Union Light Heat & Power Co.); City Water, Light & Power (Springfield, IL); Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; Lincoln Electric System; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company and Northern States Power Company (Wisconsin), subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Corporation d/b/a Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); and Wabash Valley Power Association, Inc.

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant the motions to intervene out-of-time of LG&E and the Midwest ISO Transmission Owners given their interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer of Holland because it has provided information that assisted us in our decision-making process.

B. Reasonableness of Proposed Rates

1. Protests and Comments

8. AMP protests the filing and asserts that Holland's calculation of heating losses substantially overstates reactive-related heating losses. Specifically, AMP takes issue with Holland's method of calculating heating losses based on the differential losses with output at unity power factor versus output at the subject unit's minimum designed power factor but apparently at maximum loading. AMP states that a valid analysis of heating losses must first compute losses on the basis of actual hourly operating conditions and that any computation of heating losses must take into account the non-linear relationships between losses and unit MW and MVAR output. AMP states that it expects that Holland has overstated its revenue requirement and asks that the Commission develop a full cost-of-service analysis.

9. Holland states in its answer to AMP that AMP does not challenge any of the underlying data used to calculate Holland's revenue requirement and that Holland provided a detailed cost-of-service justification for its revenue requirement. Holland states that its method of calculation for determining heat loss is consistent with Commission precedent and Holland's use of the maximum output of its generating facility most accurately reflects the actual operation of the Facility.

2. Commission Determination

10. Holland's proposed rate schedule presents issues of material fact that cannot be resolved based on the record before us, and are best addressed in the hearing and settlement judge procedures ordered below.

11. Our preliminary analysis of Holland's filing indicates that it 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 the proposed rates for

filing, suspend them for a nominal period, to become effective on the date Midwest ISO's revised Schedule 2 in Docket No. ER04-961-000³ becomes effective, subject to refund, and set them for hearing.⁴

12. In order to provide the parties an opportunity to resolve this matter among themselves, we will hold the hearing in abeyance and direct settlement judge procedures pursuant to Rule 603 of the Commission's Rules of Practice and Procedure. If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise the Chief Judge will select a judge for this purpose.⁵ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this

³ The Commission rejected Midwest ISO's proposed Schedule 21 in Docket No. ER04-961-000, finding that it was unduly discriminatory. The Commission also found that Midwest ISO's Schedule 2 was unduly discriminatory under section 206 of the FPA because it compensated generators under the control of transmission owners for providing reactive power but had no mechanism to compensate non-transmission owners or IPPs for providing reactive power. The Commission directed Midwest ISO to replace existing Schedule 2 with a revised Schedule 2 that must provide compensation for all generators, including IPPs. Further, the Commission found that given that transmission owners under Schedule 2 receive compensation for reactive power based on cost-based revenue requirements that are filed with the Commission and that IPPs did not have cost-based revenue requirements on file with the Commission, the Commission directed Midwest ISO to include language in its Schedule 2 that provides for IPPs to file cost-based revenue requirements with the Commission prior to their being compensated. *See Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,105 (2004) (Docket No. ER04-961-000).

⁴ Given that we have rejected Schedule 21, the parties should address in the hearing and settlement judge procedures ordered below, what changes need to be made to Holland's revenue requirement to reflect that service will now be under a revised Schedule 2 rather than proposed Schedule 21.

⁵ 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 days of this order. FERC's website contains a listing of the Commission's judges and a summary of their background and experience (www.ferc.gov -- click on Office of Administrative Law Judges).

report, the Chief Judge shall provide the parties 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) Holland's proposed rate schedule is hereby accepted, and suspended for a nominal period, to become effective on the date Midwest ISO's revised Schedule 2 in Docket No. ER04-961-000 becomes effective, 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 Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. ER04-1075-000 to address the reasonableness of the proposed rate schedule, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in 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 (2004), 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 by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and with the Commission 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 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(E) If settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within approximately fifteen (15) days of the date on which the Chief Judge

designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426. Such 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)

Linda Mitry,
Acting Secretary.