

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Duke Energy Vermillion, LLC

Docket No. ER05-123-000

ORDER ACCEPTING RATE SCHEDULE FOR FILING AND ESTABLISHING  
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 28, 2004)

1. On October 29, 2004, Duke Energy Vermillion, LLC (Duke)<sup>1</sup> filed a proposed rate schedule specifying its cost-based revenue requirement for providing reactive power service under Midwest Independent System Operator, Inc.'s (Midwest ISO) open access transmission tariff (OATT).<sup>2</sup> 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 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.

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<sup>1</sup> Duke is an affiliate of Duke Energy North America. Duke owns 75% of a 640 MW gas-fired peaking power plant located in Vermillion County, Indiana (Facility).

<sup>2</sup> The Commission has found that Midwest ISO's system of compensating generators for reactive power (Schedule 2) is unjust and unreasonable since it compensated some generators for providing reactive power support, while not compensating others. *See Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,005 (2004), *reh'g pending (Midwest ISO Reactive Power Order)*. Midwest ISO's revised reactive power compensation filing (Revised Schedule 2) is currently pending before the Commission in Docket No. ER04-961-002.

## **I. Background**

2. The reactive power compensation portions of Midwest ISO's OATT are currently in flux.<sup>3</sup> Duke nevertheless anticipates that Midwest ISO's Revised Schedule 2, consistent with the Commission's directive in the *Midwest ISO Reactive Power Order*,<sup>4</sup> will provide independent power producers (such as Duke) compensation for the reactive power they produce. Duke explains that as a consequence it has filed its cost-based revenue requirement for its reactive power production in order to establish a level of compensation it should receive once Revised Schedule 2 takes effect.

3. In support of its filing, Duke states that it developed its reactive power revenue requirement using actual cost data, and performed its cost calculations in accordance with *American Electric Power Service Corp.*, 80 FERC ¶ 63,006 at 65,071 (1997) (*AEP*).<sup>5</sup> Duke claims that its fixed capability reactive power costs amount to \$1,483,896 per year and that its heating loss expenses related to reactive power production amount to \$13,077 per year. Duke requests waiver of the 60-day prior notice requirement so that the proposed rate schedule becomes effective November 1, 2004.

## **II. Notice of Filing**

4. Notice of Duke's filing was published in the *Federal Register*, 69 Fed. Reg. 65,422 (2004), with interventions and protests due on or before November 19, 2004. Midwest ISO filed a timely motion to intervene. Cinergy Services, Inc. and Midwest Transmission Owners filed motions to intervene out of time.

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<sup>3</sup> See *supra* note 2.

<sup>4</sup> 109 FERC ¶ 61,005 at P 39.

<sup>5</sup> Duke also includes an affidavit and worksheets detailing the development of its revenue requirement.

### III. Discussion

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motion of Midwest ISO to intervene serves to make it a party to this proceeding. Given their interests, the early stage of this proceeding and the lack of undue prejudice or delay, the untimely motions to intervene are granted.<sup>6</sup>

6. The reactive power revenue requirement submitted by Duke raises issues of material fact that are best addressed in the hearing and settlement judge procedures ordered below.<sup>7</sup>

7. The Commission's preliminary analysis of Duke'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 Duke's proposed rate schedule for filing, suspend it for a nominal period, to become effective on the date a revised Midwest ISO rate schedule for reactive power compensation becomes effective, subject to refund, and set it for hearing and settlement judge procedures as ordered below. We will grant waiver of the notice requirement to permit Duke's proposed rate schedule to become effective on that date.<sup>8</sup>

8. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the

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<sup>6</sup> See 18 C.F.R. § 385.214(d) (2004).

<sup>7</sup> Among the issues that should be considered at the hearing or before a settlement judge are: (1) whether Duke's request for \$1.5 million in reactive power costs is excessive given the amount of reactive power produced and the costs Duke incurs to produce it; (2) whether the methodology identified in *AEP* is appropriate given the type of facility at issue in this filing; and (3) whether recovery for heating losses due to reactive power production is justified in this instance.

<sup>8</sup> See *Central Hudson Gas and Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

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>9</sup> If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.<sup>10</sup> 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 report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The proposed rate schedule is hereby accepted for filing, and suspended for a nominal period, to become effective on the date a revised Midwest ISO rate schedule for reactive power compensation becomes effective, subject to refund, as discussed in the body of this order. Waiver of the notice requirement is hereby granted.

(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 concerning the justness and reasonableness of the proposed rate schedule. 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

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<sup>9</sup> 18 C.F.R. § 385.603 (2004).

<sup>10</sup> If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) - click on Office of Administrative Law Judges).

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 administrative law 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,  
Deputy Secretary.