

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Union Power Partners, L.P.

Docket No. ER05-977-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued July 15, 2005)

1. In this order, we will accept for filing Union Power Partners, L.P.'s (Union Power) proposed rate schedule for its cost-based revenue requirement for providing Reactive Support and Voltage Control from Generation Sources Service (reactive power) and suspend it for a nominal period, to become effective May 18, 2005, subject to refund. We will also establish hearing and settlement judge procedures.

I. Background

2. Union Power states that it owns a natural gas-fired generator in Union County, Arkansas, which is in the Entergy Arkansas, Inc. (Entergy Arkansas) control area. Union Power states that its Amended and Restated Interconnection and Operating Agreement (IOA) with Entergy Arkansas obligates Union Power to provide reactive power to Entergy Arkansas and also establishes its right to receive compensation for such service. Union Power states that Order No. 2003-A¹ further establishes its right to receive compensation for reactive power because Entergy-owned generation receives payment for reactive power.

¹ *Citing Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004) (Order No. 2003-A), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005) (Order No. 2003-B), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005) (Order No. 2003-C). *See also Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

3. Union Power's proposed rate schedule consists of three components: (1) the Fixed Capability Component, which includes the fixed plant costs for those facilities needed for reactive power production; (2) Heating Losses, which includes the increased generator and step-up transformer heating losses that result from the production of reactive power; and (3) the Lost Opportunity Cost Component, which is intended to account for any foregone energy revenues when the generator is directed to restrict real power output in order to provide a certain level of reactive power. Union Power states that the receipt of any revenues in the Lost Opportunity Cost Component would not alter its revenue requirement for reactive power.

4. Union Power is filing to recover an annual revenue requirement of approximately \$4.153 million, including approximately \$3.697 million for the Fixed Capability Component and approximately \$456,000 for the Heating Losses Component.² Union Power states that its capital structure includes a return on equity of 11 percent, which is based on the most recent return on equity for Entergy Arkansas as reported by Entergy Services, Inc. (Entergy).³

5. Union Power requests any necessary waivers of the Commission's regulations to permit its proposed rate schedule to become effective on May 18, 2005.

II. Notice, Interventions, and Protests

6. Notice of Union Power's filing was published in the *Federal Register*, 70 Fed. Reg. 30,431 (2005) with interventions and protests due on or before June 7, 2005. Entergy, on behalf of itself and the Entergy Operating Companies, filed a motion to intervene and protest. Union Power filed an answer to Entergy's protest.

7. Entergy argues that Union Power's proposed rate schedule would impose an excessive and unjustified rate on Entergy and its customers without Entergy or its customers benefiting from the service. Entergy argues that Union Power seeks to force Entergy to pay for a service that Entergy self-supplies and does not need or require from Union Power.

² Union Power states that \$4.15 million is a significant reduction when compared to a filing based on Union Power's original installed costs, which would produce an annual revenue requirement of approximately \$8.84 million. Union Power states that this difference is the result of a reduction of 36.7 percent in original installed costs resulting from a corporate restructuring.

³ Entergy Services, Inc. is a service company affiliate of the Entergy Operating Companies, which includes, among others, Entergy Arkansas.

8. Entergy further argues that Union Power's filing did not note that Union Power had established its own generation-only control area, effective as of June 2, 2005. Thus, Union Power, according to Entergy, is seeking compensation from an adjacent control area for the reactive power capability that it is required to maintain under North American Electric Reliability Council (NERC) criteria within its own control area. Entergy states that the NERC criteria do not allow for one control area operator to unilaterally decide to supply reactive power to another control area operator. Entergy states that pursuant to its establishment of its own generation-only control area, Union Power no longer operates as a generator within Entergy's control area, but now operates under the direction of its own control area operator.

9. Entergy argues that section 4.7 of the IOA does not provide any right for Union Power to receive compensation for reactive power. Entergy states that section 4.7 only provides for compensation for Union Power for reactive power that Union Power actually supplies to Entergy and that such compensation would be in the form of a pass-through of the amount that Entergy receives. Entergy also argues that the IOA does not permit the cost-based rate that Union Power has submitted.

10. Entergy further argues that Union Power's proposed charges are excessive as they are based on the entirety of Union Power's fixed costs in the form of a demand charge and not based on the reactive power actually needed and delivered by Union Power to Entergy. Entergy argues that the reactive power charge would permit Union Power to double recover its reactive power costs. In addition, Entergy argues that Union Power's proposed revenue requirement is unsupported and appears to be flawed.

11. Entergy asserts that the Commission should deny Union Power's request for waiver of the notice requirements and suspend the proposed rates for the maximum period. Entergy concludes that Union Power's filing should be rejected or alternatively suspended and set for hearing.

12. In its answer, Union Power states that Entergy's arguments do not warrant rejection of Union Power's proposed rate schedule. Union Power states that the rate schedule is consistent with the IOA and Order Nos. 2003-A and 2003-C. Union Power also states that its rate schedule revenue requirement is appropriate and consistent with the treatment of matters in reactive power filings previously accepted by the Commission.⁴ It further states that no examination of need is necessary in the development of reactive service rate schedules. Additionally, Union Power states that Entergy incorrectly characterizes Union Power as a control area when it is actually a balancing area and not subject to the obligations of a control area.

⁴ Union Power states that it has adhered to the AEP methodology in the development of its rate schedule. *American Electric Power Service Corporation*, 88 FERC ¶ 61,141 (1999), *order on reh'g*, 92 FERC ¶ 61,001 (2000).

III. Discussion

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answer of Union Power because it has provided information that assisted us in our decision-making process.

14. Union Power's filing 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. These material issues of fact include, but are not limited to, the issue of whether the IOA provides for compensation for reactive power service and whether the proposed charges are excessive.

15. Our preliminary analysis indicates that Union Power's proposed rate schedule has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept the proposed rate schedule for filing, suspend it for a nominal period, make it effective May 18, 2005, subject to refund, and set it for hearing and settlement judge procedures.

16. While we are setting these matters 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 parties 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.⁵ If the parties 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.⁶ 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 commencement of a hearing by assigning the case to a presiding judge.

⁵ 18 C.F.R. § 385.603 (2005).

⁶ 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. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

The Commission orders:

(A) Union Power's proposed rate schedule is hereby accepted for filing and suspended for a nominal period, to become effective May 18, 2005, 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 by 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 Union Power's proposed rate schedule for reactive power and voltage control services. However, the hearing shall 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 (2005), 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.

(D) Within sixty (60) days of the date of this order, 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.

(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 conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., 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)

Linda Mitry,
Deputy Secretary.