

112 FERC ¶ 61,182
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Doswell Limited Partnership

Docket No. ER05-1119-000

ORDER ACCEPTING, IN PART, AND REJECTING, IN PART,
PROPOSED RATE SCHEDULE, SUBJECT TO SUSPENSION, AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued August 12, 2005)

1. On June 15, 2005, Doswell Limited Partnership (Doswell) filed a proposed rate schedule pursuant to section 205 of the Federal Power Act (FPA),¹ specifying its revenue requirement for providing cost-based Reactive Support and Voltage Control from Generation Sources Service (Reactive Power Service) to PJM Interconnection, L.L.C. (PJM). For the reasons discussed below, we will accept, in part, and reject, in part, Doswell's proposed rate schedule and suspend it for a nominal period, to become effective August 1, 2005, subject to refund. We will also establish hearing and settlement judge procedures.

Background

2. Doswell states that it is an indirect subsidiary of FPL Energy, LLC, formed for the purpose of owning and operating certain generating facilities located in Doswell, Virginia, including two 300 MW gas-fired, combined cycle units and a 170 MW gas-fired, combustion turbine generator (Doswell Facility).² Doswell states that the Doswell

¹ 16 U.S.C. § 824d (2000).

² On December 7, 2000, in Docket No. EG01-10-000, the Commission granted Doswell status as an exempt wholesale generator. On June 15, 2000, in Docket No. ER00-2391-000, the Commission granted Doswell market-based rate authority for sales of energy and capacity.

Facility is connected to transmission facilities owned by the Virginia Electric and Power Company (Dominion) and that, as of May 1, 2005, these transmission facilities became integrated with the transmission grid operated by PJM. Doswell states that it has not previously filed the Reactive Power revenue requirements for the Doswell Facility with the Commission and that the Doswell Facility has never been included in any utility's rates.

3. Doswell states that in an order issued by the Commission in Docket No. ER00-3327-000, the Commission approved a revised methodology proposed by PJM in connection with PJM's use of Reactive Power Service. Doswell states that this revised methodology also established procedures for compensating non-transmission owner generators, such as Doswell, for the Reactive Power Service it provides to PJM. Specifically, Doswell states that under Schedule 2 of the PJM open access transmission tariff (OATT), as approved by the Commission in Docket No. ER00-3327-000, PJM is required to pay each generation owner an amount equal to the generation owner's Commission-accepted monthly revenue requirement for Reactive Power Service.

4. Doswell states that its proposed monthly revenue requirement was developed using three cost components: (i) a fixed capability component, representing that portion of the plant fixed costs attributed to its proposed Reactive Power Service; (ii) a heating loss component, allowing for recovery of the increased generator heating losses resulting from producing Reactive Power; and (iii) a lost opportunity cost component, allowing for recovery of lost opportunity costs, as authorized under the PJM Operating Agreement. In support of its filing, Doswell states it has performed its cost calculations in accordance with *American Electric Power Service Corp.*³ Doswell claims that utilizing this methodology, its total annual Reactive Power Service costs are \$1,636,944. Doswell requests waiver of the Commission's 60-day prior notice requirement in order to permit its proposed rate schedule to become effective August 1, 2005.

³ 80 FERC ¶ 63,006 at 65,071 (1997) (*AEP*).

Notice of Filing and Responsive Pleadings

5. Notice of Doswell's filing was published in the *Federal Register*⁴ with interventions and protests due on or before July 6, 2005. Dominion filed a motion to intervene and a protest. PJM filed a motion to intervene and comments.

6. In its protest, Dominion asserts that Doswell's filing should be rejected in its entirety because the compensation Doswell seeks from PJM for Reactive Power Service is rightfully due to Dominion, not Doswell, and is already payable to Dominion pursuant to prior Commission orders.⁵ Dominion argues that prior to its recent integration into PJM, Dominion was authorized to recover from its transmission customers a Commission-approved Schedule 2 charge for Reactive Power under Dominion's OATT covering, in part, the Doswell Facility. Dominion asserts that following its integration into PJM, it has also received payments from PJM for the services it provides to PJM from the Doswell Facility as a transmission provider, while paying PJM for the portion of that service that it uses as a transmission customer. Dominion argues that Doswell's filing represents a collateral attack of these Commission-approved authorizations.

7. Dominion asserts that its rights giving rise to these rate arrangements are set forth in two sets of agreements entered into between Dominion and Doswell addressing, respectively, Doswell's combined cycle units (collectively, the Combined Cycle Agreements) and Doswell's 170 MW combustion turbine generator (Combustion Turbine Agreement). Dominion explains that the Combined Cycle Agreements were executed with Dominion's predecessor-in-interest in 1986, pursuant to which Dominion agreed to purchase all of the electrical output of these facilities and obtained the right to fully dispatch these units. Dominion states that the Combined Cycle Agreements were

⁴ 70 Fed. Reg. 36,931 (2005).

⁵ Dominion Protest at 10-11, citing *Virginia Electric and Power Company*, Docket No. OA96-52-000, Letter Order (June 11, 1997); *Virginia Electric and Power Company*, 111 FERC ¶ 61,340 (2005); and PJM Interconnection, L.L.C. and Virginia Electric and Power Company, 109 FERC ¶ 61,302 (2004).

subsequently assigned to Doswell in 1989 and were filed with the Commission as Doswell's initial rate schedules in Docket No. ER90-80-000.⁶

8. Dominion states that the Combustion Turbine Agreement was entered into by the parties in April 2000, pursuant to which Dominion agreed to purchase all of the electrical output of Doswell's 170 MW combustion turbine unit. Dominion states that this agreement was accepted by the Commission in Docket No. ER01-1182-000 and is due to expire December 31, 2005.⁷

9. Dominion argues that under both the Combined Cycle Agreements and the Combustion Turbine Agreement, Dominion, not Doswell, is the exclusive owner of the ancillary service products that Doswell purports to provide in its filing and that Dominion, not Doswell, is exclusively entitled to compensation for these services under Schedule 2 of the PJM OATT. Dominion argues that given Doswell's contractual obligations to Dominion, Doswell's filing and the assumptions on which it relies would also violate the requirements of the PJM Operating Agreement, which obligate market participants to represent that their participation in PJM's markets will not conflict with any contract to which the participant is a party.

10. PJM, in its comments, requests that the Commission address the contract dispute issue raised by Dominion in its protest. Specifically, PJM seeks clarification regarding the entity to whom it owes Reactive Power compensation.

11. On July 18, 2005, Doswell filed an answer to Dominion's protest asserting, among other things, that the issues in dispute in this case concern only the Combined Cycle Agreements. Doswell concedes that under the Combustion Turbine Agreement, Doswell sold all ancillary services, including Reactive Power Service, to Dominion and that, as such, Dominion is entitled to the Reactive Power revenue associated with this agreement

⁶ Dominion notes that these agreements were subsequently consolidated into a single agreement in 1998, in Docket No. ER98-3606-000, and then further modified in 2001 in Docket No. ER01-3060-000. Dominion notes that the term of the Combined Cycle Agreements is scheduled to terminate on May 5, 2017.

⁷ Dominion states that revisions to the Combustion Turbine Agreement were approved by the Commission in Docket Nos. ER01-1182-000 and ER01-3059-000.

for the term of the contract, *i.e.*, through December 31, 2005.⁸ Doswell argues that, by contrast, Dominion has no such rights in connection with the Combined Cycle Agreements, which address only a sale of energy and capacity rights. Doswell notes, in this regard, that the Combined Cycle Units were executed by the parties prior to the Commission's recognition of an unbundled Reactive Power Service in Order No. 888.⁹

12. Doswell further argues that the sale of energy and capacity rights, as provided for in the Combined Cycle Agreements, is not the equivalent to the sale of Reactive Power.¹⁰ Doswell argues that if the parties had intended for the Combined Cycle Agreements to include Reactive Power revenue rights, they could have so provided in the Second Amendment to the Combined Cycle Agreement, which was entered into following the issuance of Order No. 888.

13. Doswell also challenges Dominion's claim that prior Commission orders approving Dominion's Schedule 2 rates, including Dominion's Order No. 888 compliance filing in 1996 and its PJM integration filing, preclude Doswell from receiving Reactive Power revenue pursuant to its filing in this proceeding. Doswell asserts that, in fact, Dominion's costs attributable to non-utility generation in Docket No. OA96-52-000 were based on imputed data and were accepted by the Commission in the context of a non-precedential settlement agreement.

⁸ Accordingly, Doswell offers to reimburse Dominion for the revenues attributable to the Combustion Turbine Agreement.

⁹ See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in part and rev'd in part sub nom.* Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom.*, New York v. FERC, 535 U.S. 1 (2002).

¹⁰ Doswell Answer at 5, *citing Mirant Chaulk Point, LLC*, 96 FERC ¶ 61,310 (2001) (*Mirant*).

14. On July 25, 2005, Dominion filed an answer to Doswell's answer and on July 27, 2005, Doswell filed an answer to Dominion's answer.

Discussion

Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹¹ the timely, unopposed motions to intervene submitted by PJM and Dominion serve to make these entities parties to this proceeding. Rule 213(a) of the Commission's Rules of Practice and Procedure,¹² prohibits an answer to a protest and an answer to an answer, unless otherwise permitted by the decisional authority. We will accept the above-noted answers submitted by Doswell and Dominion because they have assisted us in our determinations, as discussed below.

Analysis

16. For the reasons discussed below, we will reject Doswell's proposal to include in its Reactive Power revenue requirement costs attributable to its Combustion Turbine generator. In addition, our preliminary analysis of the remaining cost components included in Doswell's filing indicates that these claimed costs have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Specifically, we find that issues of material fact have been raised regarding Doswell's entitlement to provide Reactive Power Service to PJM under the Combined Cycle Agreements.¹³ Accordingly, we will accept, in part, and reject, in part, Doswell's proposed revenue requirement for Reactive Power, suspend it for a nominal period, subject to refund and conditions, and set it for hearing and settlement judge procedures as ordered below. Doswell is required to file within 30 days of the date of this order a revised revenue requirement that removes the costs attributable to the Combustion Turbine generator. We will grant waiver of the notice requirement, as

¹¹ 18 C.F.R. § 385.214 (2005)

¹² *Id.* at § 385.213(a)(2).

¹³ *See* P 7–P 9, *supra*.

requested, to permit Doswell's proposed rate schedule, as modified herein, to become effective August 1, 2005.¹⁴

17. Dominion asserts in its protest that Doswell's filing should be rejected in its entirety because Doswell is not entitled to compensation for Reactive Power Service in connection with the Doswell Facility. Dominion argues that under its two agreements with Doswell (namely, the Combined Cycle Agreement and the Combustion Turbine Agreement), Doswell has contractually committed all of the electrical output of the Doswell Facility to Dominion, including the right to Reactive Power Service. Dominion further asserts that compensation for Reactive Power Service is already being provided by PJM to Dominion pursuant to a Commission-approved rate schedule.

18. We agree with Dominion that under the Combustion Turbine Agreement, Doswell is required to provide to Dominion the full electrical output of Doswell's 170 MW combustion turbine unit, including Reactive Power. This entitlement is set forth at section 5.16 of the Combustion Turbine Agreement¹⁵ and is not disputed by Doswell.¹⁶ Accordingly, we will condition our acceptance of Doswell's filing on the requirement

¹⁴See *Central Hudson Gas and Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

¹⁵ Section 5.16 of the Combustion Turbine Agreement provides as follows:

From and after the Capacity Payment Start Date, [Dominion] shall be entitled, at no additional cost, to all ancillary services relating to the Dependable Capacity and Net Electrical Output (as such services are described in [Dominion's OATT] as filed with FERC) that the Facility is capable of providing consistent with the applicable requirements of SERC, NERC, and ISO and any successors to the functions thereof (including reactive supply and voltage control from generation sources, regulation and frequency response, operating spinning reserve and supplemental operating reserve); provided, however, that such ancillary services shall be limited to those that the Facility can provide in accordance with the Design Limits, the Operating Procedures and Prudent Practices.

¹⁶ See Doswell Answer at 6 ("Doswell agrees with Dominion that Dominion is entitled to the reactive power revenue associated with the [Combustion Turbine unit] for the term of the [Combustion Turbine Agreement].").

that Doswell remove from its revenue requirement costs arising under the Combustion Turbine Agreement.

19. By contrast, we find that the parties' rights and obligations under the Combined Cycle Agreements cannot be resolved here. Dominion claims that under the Combined Cycle Agreement, it is entitled to purchase all of the electrical output attributable to Doswell's Combined Cycle units, including Reactive Power. However, Dominion is unable to cite to any language in the agreements expressly addressing this claimed entitlement. Doswell, for its part, asserts that the Combined Cycle Agreements were not intended to include Reactive Power. However, Doswell fails to adequately address the intent of the parties at the time these agreements were executed, which occurred *prior* to the Commission's adoption of Order No. 888.

20. Based on this limited record, we are unable to determine the meaning and intent of the Combined Cycle Agreements as they relate to the parties' respective entitlements to receive Reactive Power revenues. For example, electrical output under these agreements is defined as: (i) Dependable Capacity; and (ii) Net Electrical Output. Section 1.24 of the Combined Cycle Agreements define Dependable Capacity as "[t]he capacity of the [Combined Cycle units] expressed in kilowatts, as determined by testing pursuant to Article XI." Article XI, which addresses testing and capacity ratings, appears to describe procedures for estimating Dependable Capacity during different periods of the year. Section 1.76 defines "Net Electrical Output" by reference to the energy output, as measured by Dominion's metering facilities. None of these provisions, however, expressly address Reactive Power, nor do the pleadings submitted by the parties adequately address the parties' intent as it relates to this issue. In order to develop a fuller and more complete record on this issue, then, we will set this issue for hearing.

21. While we are setting the above-noted issues 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 hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁷ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding;

¹⁷ 18 C.F.R. § 385.603 (2005).

otherwise the Chief Judge will select a judge for this purpose.¹⁸ 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) Doswell's proposed rate schedule is hereby rejected, in part, and accepted, in part, subject to suspension for a nominal period, to become effective August 1, 2005, subject to refund, as discussed in the body of this order. Waiver of the notice requirement is hereby granted.

(B) Within 30 days of the date of this order, Doswell is hereby directed to make a compliance filing removing the cost attributable to the Combustion Turbine Agreement from its proposed rate schedule.

(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 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 (D) and (E) below.

(D) 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

¹⁸ 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 - 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.

(E) 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.

(F) 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)

Magalie R. Salas,
Secretary.