

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Indiana Municipal Power Agency

Docket No. EL05-153-000

ORDER INSTITUTING SECTION 206 PROCEEDING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued January 5, 2006)

1. On September 28, 2005, the Indiana Municipal Power Agency (IMPA) filed a petition requesting that the Commission accept its proposed revenue requirement for providing Reactive Supply and Voltage Control from Generation Sources (reactive power) to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). For the reasons discussed below, we will institute, under section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e (2000), an investigation into the justness and reasonableness of this proposed revenue requirement for rate recovery purposes, and we will establish hearing and settlement judge procedures. The effective date for any revenue requirement will be the date the Commission makes a revenue requirement effective when it issues an order approving a revenue requirement following the hearing and settlement judge procedures.

I. Background

2. IMPA states that is a municipal joint action agency established pursuant to Indiana Code § 8-1-2.2, and consequently not a public utility subject to Commission regulation under the FPA. IMPA adds, however, that it is a transmission-owning member of the Midwest ISO and a Market Participant in the Midwest ISO.

3. IMPA states that it owns a 12.88 percent undivided interest in Trimble County Unit 1 (TC-1), which is a 514 MW coal-fired unit. IMPA states that the other joint owners of TC-1 are Louisville Gas & Electric (LG&E) and the Illinois Municipal Electric Agency (IMEA), which own 75 percent and 12.12 percent shares, respectively.

4. IMPA states that TC-1 is located in Trimble County, Kentucky, near the City of Bedford, Kentucky, in the LG&E control area within the Midwest ISO region. IMPA

also states that TC-1 is operated by LG&E and interconnected to transmission facilities owned by LG&E. IMPA adds that LG&E is also a transmission-owning member of the Midwest ISO and has transferred operational control of its facilities to the Midwest ISO.

5. IMPA states that TC-1 provides reactive power to the Midwest ISO to assist in maintaining transmission voltages within acceptable limits in the Midwest ISO footprint. IMPA states that TC-1 has long provided reactive power to the facilities now operated by the Midwest ISO, dating back to before the Midwest ISO began operations in 2002. However, IMPA states that it has not previously been compensated for providing reactive power from TC-1.

6. IMPA states that, on November 1, 2004, in Docket No. ER04-961-002, the Midwest ISO filed proposed revisions to Schedule 2 of the Midwest ISO Open Access Transmission Tariff permitting Qualified Generators that provide reactive power to recover their costs of providing such service. IMPA states that, because TC- 1 is an existing “electric facility” that was included under LG&E’s cost-based rate schedule for reactive power as of May 1, 2004, it is a Qualified Generator under revised Schedule 2, and thus eligible to recover its share of TC-1’s costs of providing reactive power.

7. IMPA states that it has filed its initial Rate Schedule No. 4 and supporting cost data to establish its annual revenue requirement for providing reactive power, from its share of TC-1, for such Commission acceptance as may be required, pursuant to FPA section 205¹ or otherwise.

8. IMPA’s proposed revenue requirement consists of two components: (1) the fixed capability component, which includes the fixed plant costs associated with production of reactive power; and (2) heating losses, which include the increased generator and step-up transformer heating losses that result from the production of reactive power.

9. IMPA adds that the costs associated with the reactive power portion of TC-1’s generator/exciter systems and the generator step-up transformers have been calculated using an allocation factor based on the relationship between real and reactive power production.² To determine an annual revenue requirement, IMPA states that it developed an annual fixed charge to apply to the total amount of plant investment associated with providing reactive power.

¹ 16 U.S.C. § 824d (2000).

² *American Electric Power Service Corp.*, 88 FERC ¶ 61,141 (1999) (AEP).

10. IMPA further states that, since it is not a public utility whose rates are regulated by the Commission, it used an overall rate of return that was based on a proxy derived from the capital structure and return on equity (and overall rate of return) of LG&E, the owner of the transmission facilities with which TC-1 interconnects.
11. IMPA requests waiver of the Commission's 60-day prior notice requirement so that the proposed revenue requirement may be effective on November 1, 2005.

II. Notice of Filing, Interventions, and Protests

12. Notice of IMPA's filing was published in the *Federal Register*, 70 Fed. Reg. 59,062 (2005), with interventions and protests due on or before October 14, 2005. The Midwest ISO filed a timely motion to intervene. LG&E Energy LLC (LG&E Energy)³ filed a timely motion to intervene and protest. IMPA filed an answer to LG&E Energy's protest. LG&E Energy filed an answer to IMPA's answer. IMPA then filed an answer to LG&E Energy's answer.

13. In its protest, LG&E Energy requests that IMPA's filing be set for hearing. It argues that IMPA has not demonstrated that the existing interconnection agreement is unjust and unreasonable. LG&E Energy explains that IMPA operates under an existing interconnection agreement and a grandfathered transmission service agreement under the Midwest ISO's Transmission and Energy Markets Tariff (TEMT). It states that neither the grandfathered transmission service agreement nor any other agreements dictating the conditions of IMPA's ownership of TC-1 provide for the purchase of reactive power from IMPA. Further, LG&E Energy adds that although IMPA seeks to impose a charge to be collected through the Midwest ISO's TEMT on transmission customers of the Midwest ISO, IMPA has declined to take transmission service under the TEMT.

14. In addition, LG&E Energy argues that IMPA has not demonstrated that its proposed reactive power revenue requirement is cost-based and will result in just and reasonable rates. Specifically, it states that IMPA improperly relied on proxies for its costs, such as a proxy capital structure and rate of return. It argues that IMPA has actual operating experience from which to derive its costs to support its revenue requirement, even though it does not maintain accounts in accordance with the Commission's Uniform System of Accounts because it is not a public utility. Further, LG&E Energy claims that

³ LG&E Energy filed on behalf of its utility operating companies, LG&E and Kentucky Utilities Company.

IMPA: (1) does not use current cost information; (2) failed to provide the proper analysis or data to support its claimed return on equity; and (3) overstates some of the cost input data.

15. Also, LG&E Energy claims that IMPA's proposed filing may not be timely. It states that Midwest ISO claims that revised Schedule 2 may be superseded pending final Commission action in Docket No. ER04-961-002.

III. Discussion

Procedural Matters

16. 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.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 384.213(a)(2) (2005), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the various answers of IMPA and LG&E Energy and will, therefore, reject them.

Interconnection Agreement and Qualified Generator Status Arguments

18. On October 1, 2004, the Commission issued an order directing the Midwest ISO to compensate all generators for reactive power service under Schedule 2 of its Tariff.⁴ This order required both transmission owners and independent power producers (IPPs) that provided such service to be compensated by the Midwest ISO. The Midwest ISO submitted a filing providing a mechanism for the transmission owners to be compensated, but that mechanism did not allow IPPs to be compensated. Subsequently, the Midwest ISO filed Schedule 2 revisions which provided a mechanism for IPPs to be compensated. On October 17, 2005, in Docket No. ER04-961-002, the Commission issued an order that accepted these revisions.⁵ LG&E Energy argues that existing agreements with IMPA do not provide for the purchase of reactive power from IMPA. We find that this argument is

⁴ *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,005 (2004), *order on reh'g*, 110 FERC ¶ 61,267 (2005).

⁵ *Midwest Independent Transmission System Operator, Inc.*, 113 FERC ¶ 61,046 (2005) (October 17 Order), *reh'g pending*. In light of the Commission's acceptance of Midwest ISO's revisions to its Schedule 2, we find LG&E Energy's "untimeliness" argument to be moot.

misplaced, as LG&E Energy has not shown that existing agreements preclude IMPA from receiving compensation for providing reactive power. And here, IMPA is simply filing its reactive power revenue requirement for Commission approval, consistent with the Tariff revisions approved in the October 17 Order.

19. Also, in the October 17 Order, the Commission required Midwest ISO to amend its proposal by removing language from the definition of a Qualified Generator that required a generator be registered as a transmission customer in order to receive compensation for providing reactive power service.⁶ We therefore find that LG&E Energy's argument that IMPA is seeking to use Midwest ISO's Tariff in order to impose a charge on transmission customers of the Midwest ISO, even though IMPA has declined to take transmission service itself under the Tariff, to be moot.

Proposed Revenue Requirement

20. We find that LG&E Energy raises issues of material fact with regard to the cost information and analysis used to develop IMPA's proposed revenue requirement, and thus, we will institute an investigation and set the proposed revenue requirement for rate recovery purposes for hearing, as ordered below. However, we disagree with LG&E Energy's argument that IMPA's use of a proxy is inappropriate. The Commission has accepted the use of proxies by non-public utility generators like IMPA that are not subject to traditional rate regulation.⁷

Hearing and Settlement Judge Procedures

21. In light of the issues raised by IMPA's filing and by LG&E Energy's protest, we will institute an investigation under section 206 of the FPA. In addition, because this investigation will involve issues of material fact, we will set the matter for a trial-type evidentiary hearing.

22. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle the 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 under Rule 603 of the

⁶ *Id.* at P 75.

⁷ *Calpine Fox, LLC*, 113 FERC ¶ 61,047 at P 17 (2005) (citing, e.g., *City of Vernon*, 93 FERC ¶ 61,103 (2000), *reh'g denied*, 94 FERC ¶ 61,148 (2001); *New England Power Pool*, 92 FERC ¶ 61,020 at 61,041 (2000)).

Commission's Rules of Practice and Procedure.⁸ 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.⁹ 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.

23. In cases where the Commission institutes an investigation on a filing under section 206 of the FPA such as a complaint to reduce rates or similarly such as the filing at issue here to establish a revenue requirement for rate recovery of costs associated with the production of reactive power, section 206(b), as amended by section 1285 of the Energy Policy Act of 2005,¹⁰ requires that the Commission must establish a refund effective date, and that date must be no earlier than the date the filing was made but no later than five months after the date the filing was made. Consistent with our general practice,¹¹ we will set a refund effective date at the earliest date possible, *i.e.*, the date of the filing, which is September 28, 2005.¹²

⁸ 18 C.F.R. § 385.603 (2005).

⁹ 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).

¹⁰ Pub. L. No. 109-58, § 1285, 119 Stat. 594, 980-81 (2005).

¹¹ See, e.g., *Seminole Electric Cooperative, Inc. v. Florida Power & Light Company*, 65 FERC ¶ 61,413 at 63,139 (1993); *Canal Electric Company*, 46 FERC ¶ 61,153 at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

¹² While section 206 of the FPA, as amended, requires the Commission to specify a refund effective date, which we have done above, here, where we are not dealing with a complaint asking that the Commission lower existing rates but rather where we are dealing with a request essentially to adopt new increased rates, IMPA's proposed revenue requirement can be effective no earlier than the date the Commission makes any such revenue requirement effective when it issues an order approving a revenue requirement following the hearing and settlement judge procedures.

24. Section 206(b) of the FPA also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state the best estimate as to when it reasonably expects to make such a decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within nine months of the commencement of hearing procedures or, if the case were to go to hearing immediately, by September 30, 2006. We thus estimate that if the case were to go to hearing immediately we would be able to issue our decision within approximately 4 months of the filing of briefs on exceptions and briefs opposing exceptions, or by March 30, 2007.

The Commission orders:

(A) 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 FPA, particularly section 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, in Docket No. EL05-153-000, concerning IMPA's proposed revenue requirement for rate recovery of costs associated with the production of reactive power, 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 Paragraphs (B) and (C) below.

(B) 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.

(C) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Chief Judge and 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 discussion, 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 Chief Judge and the Commission of the parties' progress toward settlement.

(D) If the 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 convene a conference in this proceeding to be held within approximately fifteen (15) days of the date 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.

(E) The refund effective date established pursuant to section 206(b) of the FPA, as amended by section 1285 of the Energy Policy Act of 2005, is September 28, 2005.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.