130 FERC ¶ 61,239
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

T.E.S. Filer City Station Limited Partnership Docket No. EL10-35-000

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

(Issued March 26, 2010)

1. On January 20, 2010, T.E.S. Filer City Station Limited Partnership (Filer)[1] filed a petition requesting that the Commission accept Filer's proposed revenue requirement for the provision of cost-based reactive power. For the reasons discussed below, we will institute, under section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e (2006), an investigation into the proposed revenue requirement for rate recovery purposes, and establish hearing and settlement judge procedures.

I. Background

2. Filer seeks to recover its costs in supplying and absorbing reactive power through an annual cost-based revenue requirement pursuant to the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). Filer states that it developed its revenue requirement in conformity to the method approved by the Commission in *American Electric Power Service Corp*.[2] Filer's proposed revenue requirement recovers production costs that are attributable to reactive power capability from the following plant categories: (1) the generator/exciter and step-up transformers; (2) accessory electrical equipment; and (3) balance of plant investment in production-related assets.

[1] Filer states that it owns and operates a qualifying cogeneration facility and that it is not a public utility under the Federal Power Act.

[2] 88 FERC ¶ 61,141 (1999), *order on reh'g*, 92 FERC ¶ 61,001 (2000).

3. Filer states that it uses a conservative factor of 27 percent to separate the generator/excitation system from the overall steam turbine costs.[3] Filer further states that because the generator/exciter system and step up transformers perform functions associated with both real and reactive power, it is necessary to determine a reactive allocator to calculate that portion of plant investment assigned to the reactive function. Thus, Filer uses a 27.8 percent factor to allocate the total costs associated with the generator/exciter and step-up transformers to reactive power capability.[4] With regard to investment in accessory equipment, Filer states that 10 percent of this plant is directly attributable to real and reactive power.[5] Filer then applies the 27.8 percent factor to determine that portion of accessory equipment allocable to reactive power. Filer uses a reactive allocator of 0.15 percent to isolate the reactive portion of the installed cost of the balance of plant investment in production related assets. To the cost of reactive power producing facilities, Filer applies an annual carrying cost of 19.77 percent for an annual revenue requirement of $265,990, to be recovered in equal monthly installments.

4. Filer's proposal does not include a provision for the recovery of heating losses or foregone opportunity costs resulting from supplying reactive power services, but Filer states that it reserves the right to petition the Commission to recover such costs in the future.

5. Filer requests an effective date of "the first month following the Commission order, or at such other time as the Commission deems to be appropriate."[6] Filer states that this will also insure compliance with the Midwest ISO Schedule 2 Tariff.

II. <u>Notice of Filing and Responsive Pleadings</u>

6. Notice of Filer's filing was published in the *Federal Register*, 75 FR 5314 (2010), with motions to intervene and protests due on or before February 10, 2010. On

---

[3] *See* Exhibit No. Filer-1 at 9 and Exhibit No. Filer-4. Filer states that its proposed reactive allocator is based upon a review of several previously approved filings, specifically the WPS Resource Operating Companies filing in Docket No. ER01-320-000 and the Calpine Fox, L.L.C. filing in Docket No. ER05-1361-000. Exhibit No. Filer-1 at 9.

[4] *See* Exhibit No. Filer-3 and Workpaper Filer - WP-3 for the derivation of this allocator and supporting workpapers.

[5] *See* Exhibit No. Filer-1 at 10.

[6] Filer's Transmittal Letter at 5.

January 27, 2010, Midwest ISO filed a timely motion to intervene, raising no substantive issues.

7. On February 9, 2010, Consumers Energy Company (Consumers Energy) filed a timely motion to intervene and comments. Consumers Energy argues that the instant filing should be set for hearing and/or settlement procedures to allow for formal or informal discovery and further exploration and explanation of the figures submitted by Filer.

8. With respect to the proposed 27 percent allocator used to segregate the cost of the generator/excitation components from the cost of the rest of the steam turbine, Consumers Energy argues that Filer's use of a proxy is inappropriate because the factor is plant specific and can vary significantly from generating plant to generating plant. Consumers Energy argues that Filer should produce a manufacturer's letter specifically covering Filer's plant and that Filer has offered no reason for not doing so and no justification for proposing a proxy. Consumers Energy also contends that the proposed 27 percent allocator is more likely to be excessive than understated. Consumers Energy also contends that the documentation from other cases relied upon by Filer provides a weak basis for its proxy.[7] Thus, Consumers Energy argues that the proposed 27 percent proxy should be rejected.

9. Consumers Energy also argues that the instant filing lacks explanation and sources for cost data, thus making it impossible to analyze and evaluate many of the cost figures provided in the petition. For example, Consumers Energy argues, in support of a total production plant cost of $62,850,000, Filer cites "Income Statements" and the original contract with the manufacturer in its exhibits, but Filer does not provide copies of those documents.

10. Consumers Energy also argues that Filer's fixed charge rate calculation is deficient and probably produces an excessive fixed charge rate. It cites the lack of information about what depreciable life is used or whether a salvage value is factored in that would justify the 2.25 percent depreciation component of the fixed charge rate.

---

[7] Consumers Energy states that, in one of the cases cited by Filer, the manufacturer provided only a rough approximation of its reactive allocator based on actual reactive allocators for plants significantly older than Filers' plant. According to Consumers Energy, the reactive allocators used in the other case cited by Filer were 14.27 percent and 23 percent, which do not support use of a 27 percent proxy. Consumers Energy February 9, 2010 Comments at 4.

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities who filed them parties to this proceeding.

B. Revenue Requirements

12. We find that Filer's proposed revenue requirement raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

13. 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.[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 decisions. 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.

14. 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 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

---

[8] 18 C.F.R. § 385.603 (2009).

[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 web site contains a list of Commission judges and a summary of their background and experience (www.ferc.gov, click on about/offices/oalj/oalj-dj.asp).

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

months after the date the filing was made. Consistent with our general practice, we will set a refund effective date at the earliest date possible, i.e., the date of the filing, which is January 20, 2010.[11]

15. Section 206(b) of the FPA also requires that, if no 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 December 30, 2010. We thus estimate that if the case were to go to hearing immediately we would be able to issue our decision within approximately four months of the filing of briefs on exceptions and briefs opposing exceptions, or by June 30, 2011.

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 Federal Power Act (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 concerning Filer's proposed revenue requirements 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 Ordering Paragraphs (B) and (C) below.

---

[11] 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, Filer'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. We note that Schedule 2 of Midwest ISO's Tariff provides that Qualified Generator Status is "effective on the first day of the month immediately following acceptance of the revenue requirement by the Commission or the first day of the month if Commission acceptance of such revenue requirement is on the first day of the month."

(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 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.

(D) 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 prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, 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.

(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 January 20, 2011.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.