

142 FERC ¶ 61,006  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

DeSoto County Generating Co., LLC

Docket No. ER13-332-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE SCHEDULE AND  
ESTABLISHING HEARING AND SETTLEMENT PROCEDURES

(Issued January 3, 2013)

1. On November 6, 2012, DeSoto County Generating Company, LLC (DeSoto) filed Rate Schedule FERC No. 1,<sup>1</sup> which sets forth its cost-based revenue requirement for Reactive Supply and Voltage Control from Generation Sources Service (reactive power). As discussed below, the Commission accepts for filing the proposed rate schedule, and suspends it for a nominal period, to become effective January 1, 2013, subject to refund. We also establish hearing and settlement judge procedures.

**Background**

2. DeSoto is a Florida limited liability company and an indirect, wholly-owned subsidiary of LS Power Development, LLC. DeSoto is an exempt wholesale generator with market-based rate authority that owns and operates a natural gas-fired simple cycle electric generating facility with a total generator rating of approximately 399 MW near Arcadia, Florida (the Facility). The Facility is interconnected to the Florida Power & Light Company (Florida Power) transmission system.

3. DeSoto states that on July 14, 2004, Florida Power filed an amended Interconnection and Operation Agreement (Interconnection Agreement) for the purpose of connecting the Facility to its system. The Interconnection Agreement was accepted by the Commission on September 3, 2004.<sup>2</sup> DeSoto explains that section 5.7.1 of the Interconnection Agreement requires DeSoto to supply reactive power to Florida Power's system. DeSoto further explains that section 5.7.4 of the Interconnection Agreement provides that "during a system emergency, Florida Power will compensate Customer for

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<sup>1</sup> DeSoto County Generating Company, LLC, FERC Electric Tariff, Vol. No. 1.

<sup>2</sup> See *Florida Power & Light Co.*, Docket No. ER04-1019-000 (Sep. 3, 2004) (delegated letter order).

providing or absorbing reactive power outside of the design standards set forth in Section 5.7.2.”<sup>3</sup> DeSoto states that section 5.7 is otherwise silent with respect to compensation within the design standards specified in section 5.7.2. DeSoto argues, however, that section 24.4 of the Interconnection Agreement provides DeSoto the right to “make a unilateral application to FERC for a change in rates, terms, and conditions of service.”<sup>4</sup> DeSoto also argues that under Order 2003-A, the Commission’s policy provides “that if the Transmission Provider pays its own or its affiliated generators for reactive power within the established range, it must also pay the Interconnection Customer.”<sup>5</sup> DeSoto states that Schedule 2 of Florida Power’s Open Access Transmission Tariff (OATT) sets forth Florida Power’s revenue requirement for reactive service.

### **The Instant Filing**

4. DeSoto states that the proposed rate schedule consists of an annual revenue requirement with two components: (1) a fixed capability component, which is designed to recover the portion of plant costs attributable to the reactive power capability of the Facility; and (2) a heating loss component, which includes the increased generator and step-up transformer heating losses that result from the production of reactive power. DeSoto states that it reserves the right to amend its rate schedule should it elect to seek compensation if the Facility is directed to modify its energy output to produce additional reactive power.

5. DeSoto explains that the fixed capability component has been calculated by first determining the portion of the Facility’s generator/excitation system and the generator step-up transformers used to produce reactive power in accordance with the *AEP* methodology.<sup>6</sup> DeSoto then applies an allocator to apportion the cost of this plant between real and reactive power. Finally, a levelized carrying charge is applied to the

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<sup>3</sup> DeSoto Transmittal Letter at 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh’g*, Order No 2003-A, FERC Stats. & Regs. ¶ 31,160, at 31,020 (2004), *order on reh’g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh’g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008)).

<sup>6</sup> *Id.* at 3-4 (citing *American Elec. Power Serv. Corp.*, 88 FERC ¶ 61,141 (1990), *order on reh’g*, 92 FERC ¶ 61,001 (2000) (*AEP* methodology)).

costs to develop the annual revenue requirement. DeSoto proposes to bill its total reactive power annual revenue requirement of \$825,463.96 as a fixed monthly charge of \$68,789.

6. DeSoto states that public utilities are permitted to recover their cost of service with a reasonable return on investment. DeSoto contends that, for merchant generators like DeSoto, “it has been the Commission’s general policy to allow an independent power producer to use the authorized rate of return on common equity of an interconnected utility for reactive power compensation, because... an interconnected utility’s return is a conservative estimate of a merchant generator’s return because the merchant generator faces more risk.”<sup>7</sup> Therefore, DeSoto proposes an overall rate of return and a return on common equity that is derived from the capital structure and return on equity of Florida Power, the utility with which the Facility is interconnected.

7. DeSoto requests waiver of the Commission’s 60-day notice requirement to allow an effective date of January 1, 2013. DeSoto states that it has not previously filed revenue requirements for reactive power and argues that the Commission has regularly granted waiver of its notice requirement after filing a new tariff when the filing is made prior to the requested effective date.<sup>8</sup> DeSoto also requests waiver of the cost-of-service requirements set forth in Part 35 of the Commission’s regulations, 18 C.F.R. Part 35 (2012), which it claims are not necessary for a fixed monthly charge for reactive power.

#### **Notice of Filing and Responsive Pleadings**

8. Notice of DeSoto’s November 6, 2012 filing was published in the *Federal Register*, 77 Fed. Reg. 68,762 (2012), with interventions and protests due on or before November 27, 2012. Florida Power filed a timely motion to intervene and protest. On December 12, 2012, DeSoto filed an answer. On December 17, 2012, Florida Power filed an answer to DeSoto’s answer.

9. Florida Power explains that, on January 14, 2002, in Docket No. ER02-766-000, it filed an unexecuted Interconnection Agreement between Florida Power and DeSoto. DeSoto protested the filing, and after a hearing and settlement procedures, a compliance filing by Florida Power, a rehearing, another compliance filing by Florida Power, and an Offer of Settlement between the two parties, the Commission approved the settlement

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<sup>7</sup> *Id.* at 4 (citing *Bluegrass Generation Co., L.L.C.*, 118 FERC ¶ 61,214, at P 86 (2007)).

<sup>8</sup> *Id.* at 6 (citing *Rockingham Power, L.L.C.*, 93 FERC ¶ 61,310 (2000); *Union Power Partners, L.P.*, 112 FERC ¶ 61,065 (2005), *order on reh’g*, 113 FERC ¶ 61,272, at P 10 (2005); *Hot Spring Power Co.*, 113 FERC ¶ 61,088 (2005), *order on reh’g*, 115 FERC ¶ 61,027 (2006); *Las Vegas Power Company, LLC*, 137 FERC ¶ 61,161 (2001)).

and accepted a revised Interconnection Agreement in a letter order issued on November 1, 2002.<sup>9</sup> The approved Interconnection Agreement was amended in 2004 by a filing in Docket No. ER04-1019-000 solely to reflect DeSoto's cancellation of a third generating unit at the Facility site.<sup>10</sup> Florida Power claims that both parties and the Commission understood that there would be no payment for DeSoto supplying reactive power within the operating requirements in section 5.7.2 of the Interconnection Agreement and that the sole provision for payment for reactive power by Florida Power was set forth in section 5.7.4.<sup>11</sup> Florida Power contends that the Offer of Settlement embedded into the Interconnection Agreement the Commission's rejection of compensation within design standards in a parallel proceeding involving the Blue Heron Energy Center. Florida Power states that in that proceeding, Blue Heron argued that it should be compensated for reactive power for operating within design standards but the Commission rejected Blue Heron's position.<sup>12</sup>

10. Florida Power argues that longstanding Commission precedent was that generators would not be compensated for operating within required design standards. Florida Power states that in Order No. 2003-A, the Commission carved out an exception to the general rule for instances where a transmission provider was providing compensation to its own or affiliated generation based on a concept of comparable treatment for third-party generators.<sup>13</sup> However, Florida Power argues that in Order Nos. 2003-A and 2003-B, with specific regard to reactive compensation, the Commission emphasized that its decision regarding the comparability exception would not change pre-existing

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<sup>9</sup> See *Florida Power & Light Co.*, 101 FERC ¶ 61,153 (2002).

<sup>10</sup> Florida Power Protest at 3-8, n.3.

<sup>11</sup> *Id.* at 6. Section 5.7.4 of the Interconnection Agreement provides that FPL will only compensate Customer for providing or absorbing reactive power outside of the design standards.

<sup>12</sup> Florida Power Protest at 6 (citing *Florida Power & Light Co.*, 98 FERC ¶ 61,326, at P 74 (2002) (in which the Commission, quoting from an earlier decision, confirmed that "a generator need not be compensated for providing reactive power within its design limits (because) providing reactive power within design limitations . . . (a generator) is simply . . . liv(ing) up to its obligations." (citations omitted)).

<sup>13</sup> *Id.* at 9 (citing Order No 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 416).

agreements for reactive compensation.<sup>14</sup> Florida Power argues that the Interconnection Agreement was and is an “existing arrangement” as that term is used in Order No. 2003-B and an “existing agreement” as that term is used in Order No. 2003-C, and thus, Order No. 2003-A did not change the Interconnection Agreement provisions governing reactive power compensation. Florida Power further argues that, because DeSoto did not request rehearing of Order Nos. 2003-B or 2003-C regarding the applicability of the comparability exception only to newly interconnecting generators, DeSoto’s filing is nothing less than a collateral attack on those orders. Florida Power asserts that DeSoto is not entitled to the Order No. 2003-A exception for reactive compensation within the required design standards because the Interconnection Agreement does not provide for such compensation, noting that, if the agreement were otherwise, DeSoto presumably would have filed for compensation some time in the last eight years since Order No. 2003-A was issued. Florida Power also argues that it does not plan for, need, or rely upon reactive power from the Facility.

11. Florida Power maintains that if the rate filing is not rejected, it should be suspended for the maximum period and made subject to refund and an evidentiary hearing because the filing is materially deficient in multiple respects. First, Florida Power states that DeSoto’s proposed rate uses unexplained totals for Operations Expense and Maintenance Expense (O&M Expenses) and Administrative and General Expenses (A&G Expenses). Florida Power argues that there has been no substantiation or detailed breakdown of these claimed amounts and DeSoto has failed to show that the proposed rate is just and reasonable. Florida Power states that this is an issue of material fact that cannot be resolved without an evidentiary hearing.

12. Second, Florida Power argues that, although DeSoto claims to have used cost data comparable to those in the *AEP* methodology, which involves the use of costs that are accounted for under the Commission’s Uniform System of Accounts (USofA), the cost data presented by DeSoto is not in conformance with the USofA and there is no way to determine whether the costs DeSoto uses are in fact comparable to those under the *AEP* methodology. Also, Florida Power argues that DeSoto has had two prior owners and there is no mention of whether the plant and transformer values referenced on Schedule 1, page 1 are based on the USofA or some other accounting. Florida Power goes on to argue that there is no support for significant adjustment to depreciation expenses or for the use of inconsistent lives for calculating the fixed carrying charges.

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<sup>14</sup> *Id.* (citing Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 121, *order on reh’g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 at P 45 (clarifying that “Order No. 2003 does not abrogate existing agreements, and we reiterate that existing agreements for reactive power compensation need not be amended to incorporate our policy on reactive power payments for newly interconnecting generators.”)).

13. Finally, Florida Power argues that DeSoto fails to support the percentages it used to isolate production plant amounts associated with the combustion turbine generator/exciter. Florida Power notes that, in the absence of actual generator and exciter cost data, DeSoto allocated approximately 18 percent of the cost of the plant investment costs to the generator/exciter based on General Electric equipment at four similar generating facilities. Florida Power states that DeSoto does not explain why it does not obtain actual data from General Electric, or why an average of other allocators is a just and reasonable substitute for actual data.

14. DeSoto answers that neither the history of the Interconnection Agreement nor the explicit terms and conditions of the Interconnection Agreement supports Florida Power's position. DeSoto argues that the Commission's order accepting the Interconnection Agreement did not bar DeSoto from filing in the future for reactive power compensation.<sup>15</sup> With respect to Florida Power's argument about the Blue Heron proceeding, DeSoto contends that Florida Power seeks to add terms and conditions to section 5.7.4 that are simply not present in the Interconnection Agreement between Florida Power and DeSoto, based on the Commission's rejection of compensation within design standards in the Blue Heron proceeding. DeSoto states, however, that section 5.7.4 solely addresses compensation for operating outside of design standards when there is a system emergency. DeSoto also contends that Florida Power ignores the breadth of the comparability requirement and years of Commission precedent mandating that independent generators be treated comparably. DeSoto maintains that as Florida Power has an OATT Schedule 2 charge in place to compensate its own generators, DeSoto's filing of its proposed rate schedule is consistent with Commission policy. In response to Florida Power's argument that it does not rely upon reactive power from the Facility, DeSoto argues that the Commission has, on numerous occasions, addressed and rejected the concept of the so-called "needs" test.<sup>16</sup> Finally, in response to Florida Power's assertion that DeSoto's cost data are vague and unsubstantiated, DeSoto states that it is not required to maintain its books based on the USofA; that its use of the straight-line depreciation method to allocate the asset's service value over its remaining life of 19.58 years is reasonable given that DeSoto has not previously filed to recover costs for reactive power; that its use of 30-year service life in calculating accumulated deferred

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<sup>15</sup> DeSoto Answer at 5 (citing *Florida Power & Light Co.*, 98 FERC ¶ 61,276, at 62,151, *reh'g denied*, 99 FERC ¶ 61,320 (2002)).

<sup>16</sup> *Id.* at 13 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,192, at PP 17-18, *reh'g denied*, 116 FERC ¶ 61,283 (2006); *Bluegrass Generation Co., L.L.C.*, 118 FERC ¶ 61,214, at PP 33-34 (2007); *Tenaska Alabama II Partners, L.P.*, 119 FERC ¶ 61,273, at P 22 (2007); *Calpine Oneta Power, L.P.*, 116 FERC ¶ 61,282, at P 35 (2006), *order on reh'g*, 119 FERC ¶ 61,177, at P 23, *reh'g denied*, 121 FERC ¶ 61,189 (2007), *reh'g denied*, 124 FERC ¶ 61,193 (2008)).

income tax is conservative; and that it relied on Commission precedent for the use of proxy data to derive the combustion turbine generator/exciter costs.

15. In its answer to DeSoto's answer, Florida Power reiterates the arguments made in its protest and maintains that the Commission should reject DeSoto's rate filing, or if the filing is not rejected, it should be suspended and set for evidentiary hearing.

## **Discussion**

### **A. Procedural Matters**

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), Florida Power's timely, unopposed motion to intervene serves to make it a party to this proceeding.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept DeSoto's and Florida Power's answers because they have provided information that assisted us in our decision-making process.

18. For good cause, we will grant DeSoto's request for waiver of the detailed cost of service requirements of Part 35 of the Commission's Regulations. Because DeSoto's filing is limited to only a reactive power charge, we will waive our requirements for detailed cost support. However, DeSoto is on notice that it bears the burden of proving that its proposed charges are just and reasonable.

19. DeSoto requests waiver of the 60-day prior notice requirement. The Commission grants waivers of the notice requirement for reactive power service rate schedules when an agreement for new service is filed before service has commenced.<sup>17</sup> Thus, we grant the requested waiver of the 60-day notice requirement and the proposed rate schedule is accepted and suspended for a nominal period, to become effective January 1, 2013 subject to refund and hearing and settlement judge procedures as described below.

### **B. Proposed Rate Schedule**

20. Florida Power argues that the Interconnection Agreement is not subject to Order No. 2003's comparability requirement because it predates Order No. 2003, which did not abrogate or require amendments to existing interconnection agreements. While we agree that Order No. 2003 does not abrogate or require amendments to existing interconnection agreements, we disagree with Florida Power's claim that the Commission's comparability requirement cannot apply to DeSoto's filing, as there is nothing in DeSoto's Interconnection Agreement that would bar it from filing a reactive power

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<sup>17</sup> See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, at 61,338 (1992).

schedule under section 205. The Interconnection Agreement states “Notwithstanding the foregoing, nothing contained herein shall be construed as affecting in any way the right of [Florida Power] or Customer to make a unilateral application to FERC for a change in rates, terms, or conditions of service under Sections 205 and 206 of the Federal Power Act and pursuant to FERC’s Rules and Regulations promulgated thereunder.”<sup>18</sup> Further, although Florida Power argues that it does not plan for, need, or rely upon reactive power from the Facility, we note that the Commission has ruled out the application of a “needs” test in prior orders.<sup>19</sup> Thus, consistent with Commission precedent, DeSoto would have to be compensated by Florida Power on a basis comparable to the way that Florida Power compensates its own or affiliated generation.<sup>20</sup> Therefore, the rate schedule is accepted subject to the findings on issues of material fact as discussed below.

21. DeSoto’s proposed rate schedule raises issues of material fact, including, (1) whether Florida Power pays its own or its affiliated generators for reactive power, which is a necessary pre-requisite for DeSoto’s eligibility for reactive power compensation, and (2) whether DeSoto’s proposed cost of providing reactive power is just and reasonable. These issues cannot be resolved based on the record before us, and therefore are more appropriately addressed in the hearing and settlement judge procedures ordered below.

22. Our preliminary analysis indicates that DeSoto’s proposed rate schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Therefore, we will accept DeSoto’s proposed rate schedule for filing, suspend it for a nominal period, make it effective January 1, 2013, subject to refund, and set it for hearing and settlement judge procedures.<sup>21</sup>

23. 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>18</sup> Interconnection Agreement at § 24.4.

<sup>19</sup> See, e.g., *Calpine Oneta Power L.P.*, 116 FERC ¶ 61,282, at P 26 (2006), *order on reh’g*, 119 FERC ¶ 61,177 at P 29 (2007) (footnotes omitted).

<sup>20</sup> *Columbia Energy, LLC*, 124 FERC ¶ 61,189, at P 26 (2008).

<sup>21</sup> We will deny Florida Power’s request for a five-month suspension. In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that, when our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in that order, we would generally impose a nominal suspension. Here, our examination indicates that the proposed rates may not yield substantially excessive revenues.

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>22</sup> 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.<sup>23</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 commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) DeSoto's proposed rate schedule for reactive power and voltage control service is hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2013, 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 DeSoto'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 (2012), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 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 days of the date of this order.

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<sup>22</sup> 18 C.F.R. § 385.603 (2012).

<sup>23</sup> 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 the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(D) Within 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 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 15 days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding 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.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.