

142 FERC ¶ 61,098
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.

PJM Interconnection, L.L.C.
American Electric Power Service Corporation
Appalachian Power Company

Docket No. ER13-539-000

ORDER ACCEPTING FORMULA RATE PROPOSAL AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued February 8, 2013)

1. On December 10, 2012, American Electric Power Service Corporation (AEP) filed, on behalf of Appalachian Power Company (APCO), a formula rate template¹ (formula rate) under Section D.8 of Schedule 8.1 to the PJM Interconnection, L.L.C. (PJM) Reliability Assurance Agreement (RAA). The purpose of the proposed formula rate is to calculate compensation for capacity made available to Competitive Service Providers (CSP) by APCO in accordance with the Fixed Resource Requirement (FRR) Alternative of the PJM Reliability Pricing Model (RPM). As discussed below, the Commission accepts the filing, suspends the tariff revisions for a five-month period, to be effective July 9, 2013, subject to refund, and to the outcome of hearing and settlement judge proceedings. The Commission grants AEP's request for waiver of section 35.13 of the Commission's regulations.

¹ For purposes of this docket, "formula rate template" includes APCO's following proposed RAA Schedule 8.1 Tariff revisions: (1) Appendix 2A: APCO Capacity Compensation Formulate Rate Implementation Protocols; (2) Appendix 2B: APCO Capacity Compensation Formula Rate; and (3) Appendix 2C: APCPO Capacity Compensation Formula Rate Workpapers.

Background

Restructuring of AEP East

2. AEP explains that the formula rate is one of several discrete but interrelated filings by AEP currently under various stages of Commission consideration. According to AEP, these filings comprise AEP's efforts to achieve regulatory approval for an internal restructuring of significant portions of the AEP East utilities,² along with its subsidiary, AEP Generation Resources, Inc.

Virginia Retail Competition

3. AEP notes that in 1999, the state legislature passed the Virginia Electric Utility Restructuring Act authorizing retail electric competition.

4. Currently, Virginia's Choice program is limited to any non-residential customer or group whose peak annual demand is no less than 5 MW but no more than 1 percent of the incumbent utility's load.³ To date, there has been no CSP load in the APCO Virginia service territory.

FRR Alternative

5. AEP states that APCO currently meets its PJM capacity obligations via the FRR Alternative. The FRR, defined within the RAA, requires a load-serving entity (LSE) to submit a capacity plan for all load in its service area. AEP notes that, to the extent a Virginia CSP secures shopping load and chooses to have that load reflected in APCO's FRR capacity plan, the CSP would be required to compensate APCO for its capacity obligation in accordance with Section D.8 of Schedule 8.1 of the RAA.

6. Section D.8 of Schedule 8.1 of the RAA states:

In a state regulatory jurisdiction that has implemented retail choice, the FRR Entity must include in its FRR Capacity Plan all load, including expected load growth, in the FRR Service Area, notwithstanding the loss of any such load to or among alternative retail LSEs. In the case of load

² APCO, Indiana Michigan Power Company (I&M), Kentucky Power Company (KYPCO) and Ohio Power Company (Ohio Power) are the principle AEP subsidiaries which comprise the AEP East utilities.

³ The law also provides an exception to the 1 percent native load limit for customers with demand of 90 MW or greater, and an exception to the 5 MW threshold for customers who purchase their entire load from renewable energy.

reflected in the FRR Capacity Plan that switches to an alternative LSE, where the state regulatory jurisdiction requires switching customers or the LSE to compensate the FRR Entity for its FRR capacity obligations, such state compensation mechanism will prevail.

7. Section D.8 of Schedule 8.1 of the RAA further provides:

In the absence of a state compensation mechanism, the applicable alternative retail LSE shall compensate the FRR Entity at the capacity price in the unconstrained portions of the PJM Region, as determined in accordance with Attachment DD to the PJM Tariff, provided that the FRR Entity may, at any time, make a filing with FERC under Sections 205 of the Federal Power Act proposing to change the basis for compensation to a method based on the FRR Entity's cost or such other basis shown to be just and reasonable, and a retail LSE may at any time exercise its rights under Section 206 of the FPA.

8. AEP states that, to date, the Virginia State Corporate Commission (Virginia Commission) has not established a state compensation mechanism for FRR capacity. Consequently, a CSP providing retail service to eligible load within the APCO service territory would compensate APCO for FRR capacity at the current default rate equal to the RPM clearing price in the unconstrained portions of the PJM Region. The RPM Base Residual Auction (Auction) for the PJM 2016/2017 Delivery Year does not open until May 13, 2013.

9. Pursuant to its rights under Section D.8. Of RAA Schedule 8.1, APCO elects to establish a cost-based method as the basis for its FRR compensation.

AEP's Filing

10. AEP requests the Commission issue an order accepting the proposed formula rate and permitting a new FRR capacity compensation rate of \$478.53844/MW-day⁴ to become effective on February 9, 2013. AEP also requests waiver of those provisions in section 35.13 of the Commission's regulations that would require it to submit any additional cost-of-service data specified in the regulations.

⁴ As stated in AEP's filing, \$478.53844/MW-day represents the capacity compensation charge calculated using AEP's 2011 FERC Form 1 data as inputs into the proposed formula rate. AEP states that, from June 1, 2013 through May 31, 2014, this rate will adjust according to costs identified in AEP's 2012 FERC Form 1.

11. AEP asserts that Virginia has not established a compensation mechanism for FRR capacity and that APCO, pursuant to Section D.8, elects to establish a cost-based method as the basis for compensation for its capacity obligation.
12. AEP states that the Formula Rate Implementation Protocols (Protocols), which are attached to the formula, provide the procedures under which APCO will prepare and circulate annual updates to the formula (Annual Update). AEP notes that, according to the Protocols, APCO must post the Annual Update on an AEP website and submit the Annual Update as an informational filing with the Commission. In addition, AEP states the Protocols provide that CSPs will have the opportunity to review the Annual Update, request information related to the inputs, and confirm that APCO correctly applied the formula.
13. AEP states that the proposed formula rate is designed to recover from Virginia CSPs the appropriate share of APCO's total generation revenue requirement through an annually-adjusted formula that tracks actual capacity costs from the previous year.
14. AEP notes a significant difference between the formula rate proposed in this proceeding and the typical two-step formula rate process: the formula rate is based on actual data shown on the most current FERC Form 1 submitted by APCO, rather than on projected costs, and therefore will not require true-up calculations and potential surcharges. AEP states the input data are in most cases FERC Form 1 data, but in certain cases are also derived from work papers provided in Attachment D to AEP's filing. AEP notes that under the proposed formula rate, the FRR capacity rate will adjust each June 1 and remain in effect through the following May 31.
15. AEP states that the proposed formula rate uses year-end plant balances, to determine the annual net revenue requirement. AEP notes that the formula rate neither provides for recovery of costs related to energy or fuel, nor includes transmission costs. AEP comments that, except for exclusion of Construction Work in Progress from the rate base, an off-system sales margin sharing percentage that mirrors the sharing provisions in Virginia retail rates, and setting the Postemployment Benefits Other than Pensions expense to be recovered in the formula at a constant amount reflective of 2011 costs, the formula rate is virtually identical to the filing that AEP submitted in Docket No. ER12-1173-000.⁵

⁵ *PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,078 (2012).

16. AEP proposes an initial rate of return on common equity (ROE) of 10.4 percent, and provides the affidavit of Dr. Avera in support of the reasonableness of this figure.⁶ AEP notes that the proposed ROE is the same ROE approved by the Virginia Commission in setting APCO's Virginia retail rates and that, in this case, use of the same ROE is reasonable because the RAA capacity charges ultimately will be recovered from retail customers located within APCO's service territory who have the choice of being served by APCO or by a CSP.

Notice of Filing and Responsive Pleadings

17. Notice of APCO's filing was published in the Federal Register, 77 Fed. Reg. 74,840 (2012), with interventions and protests due on or before December 31, 2012. Subsequent notice extended the deadline until January 8, 2013.

18. American Municipal Power, Inc. (AMP) filed timely comments, requesting filed verification by APCO that municipal utilities (or municipals' customers, if they are served by a CSP) will not be subject to APCO's proposed formula rate. Collegiate Clean Energy, LLC (Collegiate) filed a timely protest, requesting rejection or maximum suspension and evidentiary hearings of APCO's proposed formula rate template.

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notices of intervention and timely unopposed motions to intervene serve to make the entities filing them parties to the proceeding.

20. On January 24, 2013, AEP filed, on behalf of APCO, an answer to Collegiate's protest which argues that the protest is without merit and thus fails to support its request for rejection, suspension or hearing. In the same filing, AEP responds to AMP's request by affirming that municipal utilities' customers, whether shopping or non-shopping, will not be subject to APCO's proposed formula rate.

21. On February 1, 2013 Collegiate filed a Motion for Leave to Answer in response to AEP's January 24, 2013 filing.

Discussion

22. As discussed more fully below, the Commission will accept the filing and suspend it for the maximum suspension period of five months, subject to refund and to the outcome of hearing and settlement judge proceedings.

⁶ AEP states that the proposed ROE falls well below the top of a range of just and reasonable ROEs calculated by Dr. Avera using the Commission's standard discounted cash flow methodology.

Formula Rate

23. Collegiate argues that APCO's proposed formula rate template should be rejected or, at a minimum, set for evidentiary hearing because the filing fails to demonstrate that the proposed charge is just and reasonable. Collegiate's primary arguments include: (1) the RAA does not entitle APCO to a capacity charge based on fully distributed embedded costs; (2) the proposed formula rate contains allocation factors, cost items and cost classifications which are not adequately explained; (3) automatic annual updates do not require a section 205 FPA filing which places the burden of proof on APCO customers; (4) the filing fails to justify allocation of APCO capacity between its retail and wholesale loads within Virginia; and (5) the proposed 10.4 percent ROE may be high given the relative risk between wholesale and retail sales.

24. In response to Collegiate's protest, AEP refutes all of Collegiate's arguments. AEP's responses include, but are not limited to: (1) the RAA does not include provisions which restrict an FRR entity's right to fully recover its embedded capacity costs; (2) APCO's formula rate inputs are transparent and provide Commission-approved protocols which provide interested parties the right to verify the formula rate information; (3) rather than prejudice customers by placing a burden of proof on them, APCO's formula rate protocols provide customers with the ability to understand both the formula rate and its inputs; (4) APCO's allocation of costs to CSPs based off of PJM's cost allocation process⁷ is appropriate because it results in the CSP charges based on their retail customers' contribution to peak load; and (5) AEP's proposed ROE of 10.4 percent is reasonable because it falls well within the 6.1 to 15.2 percent zone of reasonableness it produced by applying the Commission-approved discounted cash-flow approach to a national proxy group of 30 risk comparable electric utilities.

25. In response to AEP, Collegiate's Motion to Leave for Answer argues that: (1) the Reliability Assurance Agreement (RAA) does not confer a right on a FRR entity's right to recover its embedded capacity costs; (2) Appalachian Power Company's (APCO) embedded cost proposal is inconsistent with the basic framework of the RPM and would frustrate development of Virginia retail competition; and (3) Section D.8 of the RAA holds open the possibility of several permissible just and reasonable methods for compensating a FRR entity.

26. The RAA provides that, in the absence of a state compensation mechanism, an alternative electric supplier "shall compensate the FRR Entity at the capacity price in the unconstrained portions of the PJM Region," provided that "the FRR Entity may, at any time, make a filing with FERC under Sections 205 of the Federal Power Act proposing to

⁷ Specifically, this refers to PJM's Average 5-CP Demand method as referenced in Section 4.4 of the PJM Manual 19: Load Forecasting and Analysis.

change the basis for compensation to a method based on the FRR Entity's cost or such other basis shown to be just and reasonable." AEP has made just such a filing, in accordance with the RAA. However, the proposed formula rate template raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed through an evidentiary hearing. We will therefore accept the tariff records for filing and suspend their effectiveness, make subject to refund, and set for hearing and settlement procedures as ordered below.

27. The Commission will grant the requested waiver of the filing requirements under section 35.13 (with the exception of the attestation). The filing by AEP is to establish a formula rate using a combination of sources of data including company records and FERC Form No. 1 data. However, this finding does not preclude parties at the hearing from demonstrating the need for additional specific information to allow for a full evaluation of this proposal.

Hearing and Settlement Proceedings

28. 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 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 30 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.

⁸ 18 C.F.R. § 385.603 (2012).

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

Suspension

29. AEP requests that the proposed formula rate become effective February 9, 2013. Collegiate argues that, absent Commission rejection of the filing, the proposed formula rate should be suspended for a maximum period of five months. In support of this position, Collegiate cites the sheer magnitude of the proposed formula rate increase, the negative effect on future CSP activity in Virginia and the questionability of certain components of APCO's cost of service.

30. In response to Collegiate's protest, AEP argues that the Commission should deny the request for maximum suspension. AEP states that it has demonstrated that the proposed formula rate increase is not substantially excessive because it does not exceed the "cost-justified" increase by 10 percent or more.

31. Based upon a review of this filing, the Commission finds that the proposed tariff language has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. The Commission's policy regarding suspensions is that filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.¹⁰ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.¹¹ Such circumstances do not exist here, especially where preliminary analysis in this proceeding indicates that the proposed rate may be substantially excessive.¹² Accordingly, the Commission shall suspend the effectiveness of the referenced tariff records for the full five months, until July 9, 2013, or an earlier date if set by a subsequent Commission order, and sets them for hearing and settlement judge procedures.

¹⁰ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). See also *W. Tex. Utils. Co.*, 18 FERC ¶ 61,189, at 61,374 (1982) (*West Texas*). ("rate filings should generally be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust and unreasonable.")

¹¹ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

¹² *West Texas*, 18 FERC ¶ 61,189 at 61,374-61,375; accord *Tucson Elec. Power Co.*, 76 FERC ¶ 61,235, at 62,147 n.25 (1996); see also *Ky. Utils. Co. v. FERC*, 125 FERC ¶ 61,242 (2008).

The Commission orders:

(A) APCO's proposed Formula Rate is hereby accepted for filing and suspended for five months, to become effective July 9, 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 AEP's proposed Formula Rate. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering 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 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 thirty (30) days of the appointment of the settlement judge, 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 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.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.