

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dynegy Midwest Generation, Inc.

Docket Nos. ER05-270-002
EL05-72-001

ORDER REQUIRING SETTLEMENT JUDGE AND
HEARING PROCEDURES TO PROCEED

(Issued June 20, 2005)

1. In this order, we consider the arguments of Dynegy Midwest Generation, Inc. (Dynegy) and the responses by Illinois Power Company (Illinois Power) and Trial Staff concerning whether previously-ordered settlement judge and hearing procedures should proceed.¹ For the reasons discussed below, we will no longer hold the proceeding in abeyance and will require that the settlement judge and hearing procedures ordered in the March 25 Order proceed. This order benefits customers because it ensures that Dynegy's revenue requirement will have a forum in which to be addressed.

Background

2. On November 30, 2004, Dynegy submitted a rate schedule proposing its cost-based revenue requirement for providing reactive power from eight fossil-fueled generating units (Rate Schedule) located in Illinois Power's control area. No entity having filed comments or protests in response to the Commission's

¹ See *Dynegy Midwest Generation*, 110 FERC ¶ 61,358 (2005) (March 25 Order), *abeyance order*, 111 FERC ¶ 61,143 (2005) (May 5 Order).

notice of Dynegy's submittal, the Rate Schedule was accepted for filing by delegated letter order, with an effective date of January 1, 2005.²

3. Illinois Power, a former owner of the generating units, filed a rehearing request, alleging that the Rate Schedule had not been shown to be just and reasonable, and may be unjust, unreasonable, or unduly discriminatory. Illinois Power compared Dynegy's numerical data, for net plant book value, level of non-fuel operations and maintenance (O&M) expenses, and allocation of fixed O&M expenses, to its own data. It stated that Dynegy's revenue requirement was nearly three-and-one-half times greater than the revenue requirement that it had calculated, in 1998, for largely the same units. Illinois Power therefore asked the Commission to make acceptance of the Rate Schedule subject to refund and hearing procedures, and to suspend the hearing procedures pending settlement discussions among interested parties.

4. The Commission denied Illinois Power's rehearing request, on March 25, 2005, explaining that the Rate Schedule, which was currently in effect, had been accepted without suspension. Nevertheless, in light of the concerns raised by Illinois Power, and upon further consideration, the Commission instituted an investigation and established a refund effective date and hearing and settlement judge procedures.³

5. Dynegy sought rehearing of the March 25 Order. It asked the Commission to hold in abeyance the directives establishing a refund effective date and hearing and settlement judge procedures so that Dynegy could respond substantively to Illinois Power's allegations before being required to participate in settlement or hearing procedures. Dynegy offered that it would file its response within five days of a Commission order so permitting. It said that if, after review of Dynegy's response, the Commission is still of the opinion that these directives should be implemented, the Commission can so direct.

6. On May 5, 2005, the Commission exercised its discretion and held the settlement judge and hearing procedures in abeyance, pending further Commission order. The Commission also afforded Dynegy the requested five days to submit arguments, and permitted parties 15 days from the date of Dynegy's submittal to file answers.⁴

² January 25, 2005 Letter Order by the Director, Division of Tariffs and Market Development-Central.

³ March 25 Order at P 5.

⁴ May 5 Order at P 8.

7. Dynegey filed its arguments on May 10, 2005 (May 10 Filing). On May 25, 2005, Illinois Power filed an answer.⁵ Also on May 25, 2005, Trial Staff filed an answer, which it requested the Commission to consider, explaining that it had reviewed and analyzed Dynegey's May 10 Filing in order to participate in the settlement negotiations previously ordered.⁶ On May 31, 2005, Dynegey filed a motion asking the Commission to reject Illinois Power's and Trial Staff's answers, or to grant Dynegey 20 days in which to file a further response (May 31 Motion). On June 9, 2005, Illinois Power filed an answer to Dynegey's May 31 Motion (June 9 Answer).

Parties' Positions

8. Dynegey argues that the Commission should decline to open a new proceeding and should direct that hearing and settlement judge procedures are not warranted. It maintains that none of the issues raised by Illinois Power supports an investigation of the Rate Schedule. Dynegey asserts that Illinois Power supports its allegation, that the revenue requirement in Dynegey's filing is suspect when compared to the revenue requirement calculated by Illinois Power for largely the same power plants in 1998, with only three specific errors: (1) an inflated net book value; (2) unusually high non-fuel O&M expenses; and (3) an over-allocation of O&M expenses to fixed as opposed to variable O&M. Dynegey maintains that none of these issues warrants continuing this case.

9. Dynegey states that the origin of the dispute between itself and Illinois Power over Dynegey's reactive power revenue requirement stems from Ameren's quasi-reorganization, when various assets were revalued, and that Dynegey and Illinois Power use different valuations for the eight generating units. Dynegey states that it has made substantial capital improvements, and that the value of its construction work in progress should be considered. It states that inflation explains a seemingly large difference between its and Illinois Power's figures, and that the two companies follow different approaches to classifying non-fuel O&M and additional personnel. Finally, Dynegey states that it includes in fixed O&M several items that Illinois Power excludes.

⁵ The actual filer is AmerenIP (Ameren), owner of Illinois Power since 2004.

⁶ While the May 5 Order used the term "parties" in permitting answers to be filed, the Commission did not intend to exclude participants, such as Trial Staff. Therefore, we will accept Trial Staff's answer.

10. Illinois Power answers that the May 10 Filing does not explain Dynegy's revenue requirement results. Illinois Power questions whether Dynegy properly followed the accounting method it claims to have used, and says that Dynegy should have provided a detailed explanation of how it mapped its costs before the results can be considered accurate. Illinois Power states that Dynegy provided no documentation showing that its capital expenditures relate to reactive power production or that these expenditures are properly reflected in the accounting methodology. Illinois Power states that Dynegy's reactive power rates are conspicuously higher than those of most other entities in the region that recently filed reactive power rates. Lastly, Illinois Power lists added concerns with Dynegy's calculation beyond those previously brought to the Commission's attention, i.e., use of turbo-generator net book values versus generator-exciter net book values, and Dynegy's heating loss calculations.

11. Trial Staff answers that a staff economist and a staff electrical engineer examined the May 10 Filing and concluded that Dynegy had not included enough information to support its rates. In addition to the issues identified by Illinois Power, Trial Staff is concerned with Dynegy's request to recover heating losses and with the unsupported components of Dynegy's fixed-charge rate. Trial Staff proposes a set of data requests for Dynegy to answer, and asks the Commission to direct hearing and settlement judge procedures to determine whether Dynegy's reactive power revenue requirement is fair and reasonable.

12. Dynegy's May 31 Motion argues that the Commission should reject Illinois Power's and Trial Staff's answers because the filings are not answers but late-filed protests. Should the Commission not reject the answers and terminate this proceeding, Dynegy requests a Commission order permitting Dynegy 20 days to respond to the new allegations before proceeding with hearing and settlement procedures.

13. Illinois Power's June 6 Answer asks the Commission to reject Dynegy's May 31 Motion and to direct that the hearing and settlement judge procedures established in the March 25 Order proceed.

Discussion

14. Dynegy's response to Illinois Power's arguments in its rehearing request, and Dynegy's assertion that the Commission should deny Illinois Power's rehearing request⁷ and decline to open an investigation into Dynegy's filing are

⁷ We consider Dynegy's request that we deny Illinois Power's rehearing request an error given that the Commission previously denied Illinois Power's rehearing request in the March 25 Order.

unavailing. Dynegy has taken too narrow an approach in its response. Even had Dynegy convinced us that Illinois Power's arguments raised no issues that required an investigation and hearing, which it has not, Dynegy ignores the fact that the Commission itself determined, upon its own further consideration of Dynegy's Rate Schedule, that an investigation and hearing were necessary. While Illinois Power's filing may have initiated the Commission's review of Dynegy's previously-accepted Rate Schedule, it was only upon further consideration of the Rate Schedule that the Commission determined that an investigation and hearing were necessary. Indeed, that there is more to the Rate Schedule than just the concerns raised by Illinois Power has been brought to the forefront by Trial Staff, which points out still more issues that require investigation and hearing. Moreover, Illinois Power's response to Dynegy also highlights that there are issues of material fact that require an investigation and hearing.

15. We have given Dynegy more than a sufficient opportunity to present its case as to why the Commission should not institute an investigation and establish hearing and settlement judge procedures. Dynegy has not convinced us otherwise. Indeed, the record before us supports the institution of an investigation and the commencement of hearing and settlement judge procedures.

16. Upon consideration of Dynegy's May 10 Filing and the answers of Illinois Power and Trial Staff, we conclude that issues of material fact exist that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures previously ordered in the March 25 Order. Therefore, we will no longer hold this proceeding in abeyance, as ordered in the May 5 Order. We will require that the settlement judge and hearing procedures ordered in the March 25 Order proceed.

17. Moreover, we will deny Dynegy's May 31 Motion. No further information is needed at this stage of the proceeding. We have reviewed Dynegy's relevant revenue requirement and the record in this proceeding and exercised our discretion in instituting an investigation and establishing hearing and settlement judge procedures.⁸ Dynegy will have every opportunity to present evidence during those proceedings concerning the continued justness and reasonableness of its cost-based revenue requirement for providing reactive power from eight fossil-fueled generating units.

⁸ See, e.g., *Michigan Public Power Agency v. FERC*, 963 F.2d. 1574, 1579 (D.C. Cir. 1992) (agencies are accorded substantial deference in ordering their proceedings).

The Commission orders:

(A) The hearing and settlement judge procedures in these proceedings, ordered by the Commission on March 25, 2005, but held in abeyance by the Commission on May 5, 2005, are hereby no longer held in abeyance and should proceed, as discussed in the body of this order.

(B) Dynege's May 31 Motion is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.