

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

AmerGen Energy Company, LLC

Docket No. ER05-1050-000

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

(Issued July 21, 2005)

1. AmerGen Energy Company, LLC (AmerGen) filed a proposed rate schedule, on May 31, 2005, specifying its cost-based revenue requirement for providing Reactive Support and Voltage Control from Generation Sources (reactive power), and asking the Commission to make the rate schedule effective on June 1, 2005. As discussed below, we will accept the proposed rate schedule for filing, suspend it for a nominal period, to become effective on June 1, 2005, subject to refund, and will establish hearing and settlement judge procedures.

**Background**

2. AmerGen<sup>1</sup> is the current owner of the approximately 1,138 MW Clinton Nuclear Generating Station (Clinton Station), owned until December 1999 by Illinois Power Company (Illinois Power).<sup>2</sup> Clinton Station is in Illinois Power's control area, which in turn is part of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) footprint. Clinton Station is interconnected with Illinois Power's transmission facilities, which Midwest ISO operates.

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<sup>1</sup> AmerGen, a wholly owned subsidiary of Exelon Corporation, is an exempt wholesale generator under section 32 of the Public Utility Holding Company Act of 1935. *See AmerGen Energy Co., L.L.C.*, 91 FERC ¶ 62,049 (2000). It is authorized to make wholesale sales of power at market based rates. *See Exelon Generation Co., L.L.C.*, 93 FERC ¶ 61,140 (2000), *reh'g denied*, 95 FERC ¶ 61,309 (2001); 112 FERC ¶ 61,027 (2005).

<sup>2</sup> Illinois Power participates in the Midwest ISO markets and is a transmission owning member of Midwest ISO. *See Ameren Corp.*, 108 FERC ¶ 61,094 at P 68 (2004), *reh'g denied*, 111 FERC ¶ 61,055 (2005).

### **AmerGen's Filing**

3. AmerGen states that it is filing its proposed reactive power rates pursuant to Schedule 2, "Reactive Supply and Voltage Control from Generation Sources Service," of the Midwest ISO FERC Electric Tariff. AmerGen describes Schedule 2 as permitting suppliers of reactive power to recover their costs for providing this service to Midwest ISO.

4. AmerGen's proposed rate schedule consists of two components: (1) a monthly fixed capacity component of \$664,020, or \$7,968,236 annually, which is designed to recover the portion of plant costs attributable to the reactive power capability of the facility; and (2) a lost opportunity cost component to allow recovery of lost opportunity costs in the event that Midwest ISO directs that the Clinton Station modify its energy output to produce additional reactive power.

5. AmerGen states that the procedure it employed for the fixed capacity component to calculate the level of Clinton Station investment used to produce vars is consistent with the procedure required by the Commission. It states that because it lacked the actual investment costs of some Clinton Station components, it derived these costs from Illinois Power's 1997 and 1998 FERC Forms No. 1, or estimated the cost using actual historical data from a similar facility. AmerGen states that should it incur lost opportunity costs, it will provide Midwest ISO with detailed records substantiating these costs.

6. AmerGen asks the Commission to waive its 60-day prior notice requirement so that the proposed rate schedule may become effective on June 1, 2005.

### **Notice and Responsive Filings**

7. Notice of AmerGen's May 31, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 34,752 (2005), with comments, interventions, and protests due on or before June 21, 2005. Midwest ISO and the Midwest ISO Transmission Owners (Transmission Owners)<sup>3</sup> filed motions to intervene. Illinois Power filed a motion to intervene and protest. On July 6, 2005, Dynegy Power Marketing, Inc. and Dynegy Midwest Generation, Inc. (together, Dynegy) filed a motion to intervene out of time. On July 7, 2005, AmerGen filed a motion for leave to answer Illinois Power's protest.

8. In its protest, Illinois Power explains that Midwest ISO recovers the reactive power compensation it pays to generators that supply reactive power through charges levied on entities with transmission transactions sinking in the control area where the generators are located. Thus, because Illinois Power engages in the vast majority of transmission transactions sinking in its control area, it will bear the brunt of AmerGen's reactive power

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<sup>3</sup> Transmission Owners consist of a group of vertically integrated transmission owners, cooperatives, and municipals that are load serving entities within Midwest ISO.

costs. Illinois Power objects that AmerGen's proposed rates resulting from the \$7,968,236 annual revenue requirement may be unjust, unreasonable, or unduly discriminatory, and asks the Commission to establish trial-type hearing procedures to resolve these issues.

9. Illinois Power challenges AmerGen's use, in calculating its revenue requirement, of 1998 FERC Form No. 1 data that show the total gross (un-depreciated) plant value as \$3,773 million. Illinois Power points out that, in 1999, AmerGen paid only \$20 million for Clinton Station, less than one percent of the claimed gross book value, and doubts that even if that amount were "grossed up" for depreciation, it would be \$3,773 million.

10. Secondly, Illinois Power states that AmerGen's revenue requirement, on a per unit basis, of \$14,453 per MVar of reactive power capability, is significantly higher than that of every other entity in the Midwest ISO footprint with a recently filed reactive power requirement. Since January 2004, according to Illinois Power, the largest revenue requirement for reactive power has been \$5,032 per MVar, and the weighted average is \$2,297 per MVar.

11. Lastly, Illinois Power states that AmerGen is using a non-standard means to calculate heating losses, an approach that differs significantly from that taken by most other entities seeking reactive power cost recovery in the Midwest ISO footprint. Illinois Power criticizes AmerGen's method as not yet shown to be just and reasonable.

## **Discussion**

### **Procedural Matters**

12. 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. We will grant Dynegy's untimely motion to intervene, given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept AmerGen's July 7, 2005 answer and will, therefore, reject it.

### **Proposed Rate Schedule**

13. AmerGen's proposed rate schedule raises issues of material fact that cannot be resolved on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

14. Our preliminary analysis indicates that the proposed rate schedule has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept AmerGen's proposed rate

schedule for filing, suspend it for a nominal period, make it effective on June 1, 2005, subject to refund, and set it for hearing and settlement judge procedures, as requested. The issues to be addressed should include, among others, the following: (1) the proposed monthly \$7,968,236 fixed capacity component; (2) the lost opportunity cost component should Midwest ISO direct modification of Clinton Station's energy output; (3) the procedures AmerGen employed to calculate the level of Clinton Station investment used to produce vars; (4) the proposed 8.92 percent return on equity; (5) heat losses; and (6) the lack of actual investment costs for certain Clinton Station components.

15. 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 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>4</sup> If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.<sup>5</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 the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) AmerGen's proposed rate schedule is hereby accepted for filing and suspended for a nominal period, to become effective on June 1, 2005, as requested, 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 Commission by section 402(a) of the Department of Energy Organization Act and 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 the justness and

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<sup>4</sup> 18 C.F.R. § 385.603 (2005).

<sup>5</sup> If the parties decide to request a specific judge, they must make their 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 listing of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) - click on Office of Administrative Law Judges).

reasonableness of AmerGen's proposed rate schedule. 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 (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 in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and with 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 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 Chief Judge and the Commission of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding administrative judge, to be designated by the Chief Judge, shall convene a prehearing conference in this proceeding, within fifteen (15) days of the date of the presiding judge's designation, in a hearing room of the 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.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.