

108 FERC ¶ 61, 257
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Riverside Energy Center, LLC

Docket No. ER04-1055-000

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

(Issued September 20, 2004)

1. On July 28, 2004, Riverside Energy Center, LLC (Riverside)¹ filed a proposed rate schedule specifying its revenue requirement for providing cost-based Reactive Support and Voltage Control from Generation Sources Service (Reactive Power Service) and requests an October 1, 2004 effective date. As discussed below, the Commission will accept and suspend the proposed rates subject to refund, and establish hearing and settlement judge procedures. This order benefits customers by ensuring a timely inquiry into whether the proposed rate schedule is just and reasonable.

I. Background

2. Riverside was granted authorization by the Commission to make wholesale power sales at market-based rates from its 600 MW gas generating facility in Beloit, Wisconsin, in an unreported letter order dated December 2, 2002. The Riverside facility is interconnected to the American Transmission Company LLC (ATC) transmission system. ATC has on file with the Commission a Generator Interconnection and Operating Agreement (IA) with Riverside, which was accepted by the Commission by letter order dated June 2, 2002. Section 3.13 of the IA requires that the Riverside facility provide reactive power as necessary to maintain reactive area support, but not in excess of the amount available from the facilities in operation. The IA also contains explicit provisions

¹ Riverside is a wholly-owned indirect subsidiary of Calpine Corporation (Calpine).

at section 3.13.2 that obligate ATC as the Transmission Provider to compensate Riverside for these services. Section 3.13.2 of the IA provides:

In the event the Generating Company supplies reactive power to or absorbs reactive power from the Transmission System, Transmission Provider shall compensate Generating Company in accordance with an applicable Generating Company tariff at FERC accepted rates.

3. ATC is a Transmission Owner member and has transferred operational control of its facilities to the Midwest Independent Transmission System Operator, Inc. (MISO). MISO makes arrangements through Schedule 2 of its Open Access Transmission Tariff (OATT) with control area operators, such as ATC, to obtain ancillary services from generation resources. On June 25, 2004, in Docket No. ER04-961-000, MISO filed with the Commission a proposed Schedule 21, Reactive Supply and Voltage Control from Independent Generation Resources Service, to supplement Schedule 2 of the MISO OATT. Under Section II.A of Schedule 21, any "Independent Generation Resource" that is a "Qualified Generator" may collect charges for reactive power. Riverside will satisfy the technical qualifications under Section II.B of Schedule 21 and will submit the required notification under Section II.C. Under Section III, MISO will pass reactive power revenue through directly to each Qualified Generator. MISO requested an effective date of October 1, 2004. Riverside states that if for some reason the effectiveness of MISO's Schedule 21 is delayed, Riverside's October 1, 2004 requested effective date is still appropriate and should be granted.

4. In the filing at issue here, to obtain compensation for reactive power service, Riverside requests an annual revenue requirement of \$1,358,846.14 for its Fixed Capability Component and an annual revenue requirement of \$166,008.13 for its Heating Loss Component, for a total annual revenue requirement of \$1,524,854.27. Riverside requests that the proposed rate schedule becomes effective October 1, 2004. Riverside requests waiver of the full, detailed cost-of-service requirements of Section 35.13 of the Commission's regulations. Riverside also requests that the Commission waive those provisions of Part 35 that require full cost-of-service data as much of this information is not applicable for a reactive service tariff.

II. Notice of Filing, Interventions, Comments and Answer

5. Notice of Riverside's filing was published in the *Federal Register* on August 10, 2004, 69 Fed. Reg. 48490, with interventions and protests due on or before August 18, 2004.

6. Alliant Energy Corporate Services, Inc., Wisconsin Electric Power, Madison Gas & Electric Co. and Wisconsin Public Power, Inc., jointly (Wisconsin TDUs), filed motions to intervene and protests, MISO, ATC and Consumers Energy Corporation filed motions to intervene and comments, and Detroit Edison Company filed a motion to intervene. On August 19, 2004, LG&E Energy, LLC filed a motion to intervene one day out of time. On September 3, 2004, Riverside filed an answer.

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will accept LG&E Energy's unopposed one day out of time 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) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Riverside's answer and will, therefore, reject it.

B. Reasonableness of Proposed Rates

1. Protests and Comments

8. The protests and comments raise a number of issues and concerns that the parties have with Riverside's filing. Among the issues raised are that the application does not differentiate between the reactive power that is incidentally generated in the course of the generation of power, that the proposed cost-of-service calculations do not comply with the Commission's cost-of-service rate scheme, and that the process of individual filings by generators in conjunction with MISO's proposed section 21 is unduly burdensome for transmission customers.

9. Specifically, Wisconsin TDUs contend that Calpine seeks \$2.5M for the designed-in reactive capability, \$1.52M from Riverside, and in a parallel filing, \$.95M from RockGen Energy, LLC, in Docket No. ER04-1059. However, Wisconsin Power and Light Company (WPL) load zone paid \$2.16 M for reactive energy during 2003. The amounts in total will double the reactive charges in the WPL zone. Wisconsin TDUs contend that in both these filings they are seeking to collect a multi-million-dollar annual tax on load without citing its resources and did not give MISO or ATC a right to commit those resources during the day-ahead unit commitment process.

10. Wisconsin TDUs contend that the requested revenue requirement exceeds the cost of used and useful reactive-function investment. The investment amount allocated to the

reactive function must be not only useful for producing reactive power but also be necessary for producing real power alone. Specifically they assert that Riverside does not supply a past peak reactive usage number, but it projects peak reactive output well under the nameplate reactive capability that Calpine relied on. Thus, applying the fixed charges to the reduced allocated plant reduces the annual revenue requirements of Riverside. They assert that Riverside's implications for fixed cost functionalization and allocation should be explored further in hearing, and that Calpine's treatment of capital structure, debt cost, and equity issues are also questionable for both Riverside and RockGen.

2. Commission Determination

11. Riverside's proposed rate schedule presents issues of material fact that cannot be resolved based on the record before us, and are best addressed in the hearing and settlement judge procedures ordered below.

12. Our preliminary analysis of Riverside's filing indicates that it has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept the proposed rates for filing, suspend them for a nominal period, to become effective October 1, 2004, subject to refund, and set them for hearing.

13. In order to provide the parties an opportunity to resolve this matter among themselves, we will hold the hearing in abeyance and direct settlement judge procedures pursuant to Rule 603 of the Commission's Rules of Practice and Procedure. If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise the Chief Judge will select a judge for this purpose.² 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.

² 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. FERC's website contains a listing of the Commission's judges and a summary of their background and experience (www.ferc.gov -- click on Office of Administrative Law Judges).

The Commission orders:

(A) The proposed rate schedule is hereby accepted, and suspended for a nominal period, to become effective October 1, 2004, 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 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 in Docket No. ER04-1055-000 to address the reasonableness of the proposed rate schedule, as discussed in the body of this order. However, the hearing will 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 (2004), 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 30 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 law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within approximately fifteen (15) days of the date on which the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory 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 administrative

law 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.