

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Calpine Oneta Power, L.P.

Docket No. ER03-765-000

ORDER ACCEPTING PROPOSED RATE SCHEDULE AND ESTABLISHING
HEARING AND SETTLEMENT PROCEDURES

(Issued June 20, 2003)

1. As discussed below, the Commission accepts and suspends, for a nominal period, the proposed rate schedule for the provision of Reactive Supply from Generation Sources Service (Reactive Power Service), to become effective June 21, 2003, subject to refund, and establishes hearing and settlement judge procedures. This order allows the parties to conduct an investigation to determine the reasonableness of the proposed rates.

Background

2. On April 22, 2003, Calpine Oneta Power, L.P. (Oneta)¹ filed a rate schedule under which it will provide Southwest Power Pool (SPP) Reactive Power Service from the Oneta Project. Oneta proposes an annual revenue requirement of \$2,743,958 per year, or \$228,663 per month, for the provision of Reactive Power Service. Oneta states that its proposed revenue requirement is consistent with the methodology adopted by the

¹Oneta is a wholly owned subsidiary of Calpine Corporation (Calpine) that owns and operates the Oneta Energy Center (Oneta Project), a 1150 MW generating station located in Wagoner County, Oklahoma. The Oneta Project has two power blocks, each consisting of two combustion turbines and one steam turbine, with a total capacity of approximately 575 MW. The first power block commenced commercial operation on July 1, 2002, while the second was scheduled to commence commercial operation on June 1, 2003. The Oneta Project interconnects with the Oneta Substation of Public Services Company of Oklahoma (PSO), an operating company of American Electric Power Service Corporation (AEP), in SPP.

Commission in Opinion No. 440.² In addition, to establish the return on capital component of its proposed revenue requirement, Oneta has adopted the overall rate of return proposed by AEP in Docket No. ER03-242-000.³ Oneta requests waiver of the 60-day prior notice requirement in order to allow the rate schedule to become effective June 1, 2003.

Notice of Filings and Responsive Pleadings

3. Notice of the Oneta's filing was published in the Federal Register,⁴ with comments, protests, and interventions due on or before May 13, 2003. The Electric Power Supply Association (EPSA) filed a timely motion to intervene. InterGen Services, Inc. (InterGen) and Duke Energy Corporation (Duke) filed timely motions to intervene with comments. AEP and SPP filed timely motions to intervene and protest. On May 30, 2003, Oneta filed an answer to the protests.

4. InterGen and Duke both support Oneta's initiative in seeking appropriate compensation for generators providing Reactive Power Service within SPP. In addition, both parties believe that SPP should accept responsibility for administering appropriate tariff mechanisms to facilitate payment to all generators, including merchant generators, for services rendered in support of the transmission system, if it aspires to meet the requirements of Order No. 2000. Both parties also stress that acceptance of Oneta's filing should not deter the Commission from approving other rate schedules filed with the Commission which utilize alternative compensation methodologies, such as those employed by PJM Interconnection, LLC, New York Independent System Operators, Inc., and ISO New England, Inc.

5. AEP challenges Oneta's proposed rates. AEP objects to Oneta basing its proposed revenue requirement on the entire Oneta Project, when only one of the power blocks is commercially operational. AEP also objects to Oneta's reliance on AEP's cost of capital, given the varying differences (e.g., market risks) between the two companies and the fact that the issue regarding the cost of capital was set for hearing in Docket No. ER03-242-000. AEP argues that if suspension and a hearing were justified in Docket No. ER03-242-000, then the same must hold true for Oneta's requested cost of capital in this docket.

²See American Electric Power Service Corporation, 88 FERC ¶ 61,141 (1999).

³See American Electric Power Service Corporation, 103 FERC ¶ 61,009.

⁴68 Fed. Reg. 23,298 (2003).

6. AEP argues that Schedule 2 of SPP's Open Access Transmission Tariff (OATT), Reactive Supply and Voltage Control from Generation Sources Service, only reimburses for reactive power when the reactive power is deemed necessary. AEP questions the need for Reactive Power Service from the Oneta Project. AEP submits that the Oneta Project has demonstrated low availability during its initial operation and that studies performed for the interconnection of the Oneta Project showed that PSO's transmission system is able to maintain adequate voltage levels during normal operations without the project. AEP argues that, therefore, Oneta should not expect to be reimbursed for unnecessary Reactive Power Service.

7. SPP argues that Oneta's proposal to charge SPP for its revenue requirement and incorporate it into Schedule 2 of SPP's OATT is flawed. SPP submits that generators are not automatically entitled to compensation for Reactive Power Service simply because they site a generating plant in a particular area.⁵ SPP argues that Oneta has not made an adequate showing that it is entitled to compensation for Reactive Power Service. SPP also argues that Oneta has misinterpreted SPP's tariff. SPP explains that it does not pay generators their revenue requirements for the provision of Reactive Power Service, but, rather, it acts as a conduit to collect Reactive Power Service charges and pass the revenues to the provider of the service.

Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure do not permit answers to protests.⁶ We are not persuaded to accept Oneta's answer and, therefore, reject it.

B. Hearing and Settlement Judge Procedures

9. Intervenors have raised issues of material fact concerning Oneta's proposed rate schedule that cannot be resolved based on the record before us, and are more

⁵See SPP protest at 3, citing Florida Power & Light Co., 98 FERC ¶ 61,326 at P 74 (2002) (stating that a generator must file a rate tariff with the Commission prior to charging for reactive power, other than reactive power within its design limits).

⁶18 C.F.R. § 385.213 (a)(2)(2002).

appropriately addressed in the hearing ordered below. 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. In West Texas Utilities Company, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary review indicates that the proposed rates may be unjust and unreasonable, but not substantially excessive, we would generally impose a nominal suspension. Here, our preliminary review suggests that the proposed rate schedule may not yield substantially excessive revenues. Therefore, we will accept the proposed rate schedule for filing, suspend it for a nominal period, to become effective on June 21, 2003, as discussed below, subject to refund, and set the matter for hearing.

10. 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.⁷ 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.⁸ 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.

⁷18 C.F.R. § 385.603 (2002).

⁸If the parties decide to request a specific judge, they must make their joint request to the Chief Judge in writing or 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).

C. Other Matters

11. Oneta characterizes its tariff as an initial rate schedule. We disagree. An initial rate schedule must involve a new customer and a new service.⁹ Oneta's provision of reactive power under the proposed rate schedule is not a new service. The Oneta Project has been providing reactive power service to PSO under Section 3.5 of its Interconnection Agreement, albeit without charge. Thus, the proposed rates for Reactive Power Service in the instant proceeding are not initial rates, but are changed rates.¹⁰

12. Further, Oneta has failed to demonstrate good cause for waiver of the 60-day prior notice requirement.¹¹ Therefore, we deny the requested waiver of the Commission's regulations, and will accept the proposed rates schedule to become effective, subject to refund, on June 21, 2003, 60 days from the date Oneta made its filing.

The Commission orders:

(A) The proposed rate schedule is hereby accepted for filing, suspended for a nominal period, to become effective June 21, 2003, subject to refund, as discussed in the body of this order.

(B) Oneta's request for waiver of the Commission's regulations is hereby denied, as discussed in the body of this order.

(C) 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 1), a public hearing shall be held in Docket No. ER03-765-000 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 (D) and (E) below.

⁹See Florida Power & Light Company, 65 FERC ¶ 61,411 at 63,128 n.28 (1993).

¹⁰See Florida Power & Light Company v. FERC, 617 F.2d 809, 813-17 (1980).

¹¹See 18 C.F.R. § 35.3 (2002). See also Central Hudson Gas & Electric Corporation, *et al.*, 60 FERC ¶ 61,106 at 61,338-39, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and procedure, 18 C.F.R. § 385.603 (2001), 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.

(E) 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.

(F) 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 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)

Linda Mitry,
Acting Secretary.

