

119 FERC ¶ 61,283
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Williams Power Company, Inc.

Docket No. ER07-770-000

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

(Issued June 19, 2007)

1. In this order, we accept for filing Williams Power Company, Inc.'s (Williams) proposed rate schedule for providing Reactive Supply and Voltage Control from Generation Sources Service (reactive power) to Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and suspend it for a nominal period, to become effective on July 1, 2007, as requested, subject to refund. We also establish hearing and settlement judge procedures.

Background

2. On April 20, 2007, pursuant to section 205 of the Federal Power Act (FPA),¹ Williams filed a proposed rate schedule that specifies its revenue requirement for providing reactive power from a 653 MW natural gas-fired combined cycle electric generating facility located in Jackson, Michigan (Generating Facility).²

3. The proposed revenue requirement consists of: (1) a fixed capability component of \$1,727,925 per year, which includes the fixed costs of those facilities needed for reactive power production; and (2) a heating loss component of \$128,637 per year,

¹ 16 U.S.C. § 824d (2000).

² Triton Power Michigan (Triton) leases the Generating Facility from the facility's owner, AlphaGen Power LLC (AlphaGen). Williams states that Triton has authorized Williams to state in its filing that Triton acknowledges Williams' exclusive right pursuant to a long-term Capacity Sale and Tolling Agreement (Tolling Agreement) between Williams and Triton, to provide reactive power from the Generating Facility and to receive compensation for such service pursuant to Schedule 2 of Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT).

designed to recover the costs associated with increased generator heating losses that result from reactive power production. According to Williams, it is not seeking to recover lost opportunity costs caused by its reduction of actual energy output when called upon to produce reactive power. However, Williams reserves the right to seek such cost recovery in a future filing.

4. Williams states that its proposed Reactive Supply Service revenue requirement was calculated using: (1) the methodology established in *American Electric Power Service Corporation*³ for allocating production plant investment costs to reactive power supply; and (2) a levelized fixed charge rate based on 20-year plant life, state and federal tax rates, and operation and maintenance (O&M) and administrative and general (A&G) expenses based on accounting data for the test year ending June 30, 2006, and a proxy rate of return that reflects the cost of capital of Consumers Energy Company (Consumers), the primary supplier of reactive power in the Michigan Joint Pricing Zone under Schedule 2 of Midwest ISO's TEMT. The proposal utilizes an overall rate of return of 8.102 percent based on a proxy of Consumers' capital structure and returns as follows: 55.13 percent long term debt with a cost of 5.70 percent, 0.65 percent preferred stock with a cost of 4.46 percent and 44.21 percent common equity with a cost of 11.5 percent.

5. Williams request an effective date of the first day of the month immediately following acceptance of its filing or, if the Commission's acceptance occurs on the first day of a month, the first day of the month.

Notice of Filing and Responsive Pleadings

6. Notice of Williams' filing was published in the *Federal Register*, 72 Fed. Reg. 24,285 (2007), with interventions and protests due on or before May 11, 2007. Midwest ISO and Michigan Electric Transmission Company, LLC (METC) filed timely motions to intervene raising no substantive issues. Consumers and Michigan Public Power Agency (MPPA) filed timely motions to intervene with protests.

7. Protesters argue that Schedule 2 of Midwest ISO's TEMT was established to provide compensation to independent power producers and municipal utilities on a comparable basis. Protesters assert that Williams does not own the Generating Facility, nor has it established that it has rights equivalent to ownership, or that it actually incurred or incurs the investment, O&M and A&G costs. Thus, it argues, Williams has not demonstrated that it is entitled to receive compensation under Schedule 2 of the TEMT. Consumers notes that while Williams indicates that it has rights to the reactive power provided by the Generating Facility under the Tolling Agreement, that agreement was not

³ Opinion No. 440, 88 FERC ¶ 61,141 (1999) (*AEP*).

included in the filing. According to protesters the filing does not support a finding that Williams is incurring the investment, O&M, or A&G costs for the Generating Facility and that Williams should therefore receive a cost-based revenue requirement for reactive power service.

8. Protesters argue that Williams' filing lacks the necessary details to determine the validity of the proposed revenue requirement. MPPA states that there is no support for Williams' determination that 87 percent of O&M expenses were fixed rather than variable. MPPA argues that Williams should identify in detail its proposed O&M expenses using either the Uniform System of Accounts, or an equivalent, so that an independent determination can be made regarding the extent to which such costs are properly included. MPPA also asserts that Williams provided no detail for the A&G expenses included in its proposed revenue requirement so that it can be determined how such costs were allocated to this facility compared to other Williams' assets, and whether any elements of the A&G expenses are unrelated to reactive power supply. Both MPPA and Consumers question the reasonableness of the 20-year plant life underlying the depreciation component of Williams' proposed revenue requirement. Consumers argues that a plant life of 35 or 40 years is more common. Consumers asserts that Williams should not calculate its revenue requirement using a plant life shorter than the 40 year term of the lease arrangement between Triton and AlphaGen. Consumers also argues that further explanation and supporting documentation of the overall cost of the Generating Facility is required.

9. Consumers also questions the capacity of the Generating Facility used to derive Williams' proposed revenue requirement. According to Consumers, Williams' application indicates that the Generating Facility has a nominal capacity of 653 MW. However, according to Consumers, the interconnection agreement for the Generating Facility provides for delivery of only up to 560 MW. Consumers argues that there is no indication in Williams' application that the costs of the plant were scaled down to reflect the fact that only 560 MW can be put on the grid rather than the purported 653 MW.

10. Protesters argue that Williams' proposal to recover heating loss costs is improper because Schedule 2 of Midwest ISO's TEMT does not provide for recovery of such costs. MPPA argues that other independent generators in the Michigan Joint Pricing Zone who receive compensation for reactive power under Schedule 2 of the Midwest ISO TEMT are not compensated for heating losses and neither should Williams. Even if heating losses are properly included, Protesters find fault with how Williams calculates costs associated with heating losses. For example, MPPA argues, Williams assumes that the facility operates at full reactive capability for all hours in which the Generating Facility is projected to operate. However, according to MPPA, heating losses are a factor of actual hourly real and reactive output of the facility. Consumers argues that Williams' valuation of heating losses based on market prices is inappropriate for a cost-based revenue requirement for Reactive Supply Service.

11. Williams filed an answer to MPPA's and Consumers' protests. METC filed an answer to Williams' answer.

Discussion

Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene by Midwest ISO, METC, MPPA and Consumers serve to make them parties to this proceeding.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Williams' or METC's answers and will, therefore reject them.

Hearing and Settlement Judge Procedures

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

15. Our preliminary analysis indicates that Williams' proposed rate schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Therefore, we will accept Williams' proposed rate schedule for filing, suspend it for a nominal period, make it effective July 1, 2007, as requested, subject to refund, and set it for hearing and settlement judge procedures.

16. 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.⁴ 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.⁵ The settlement judge

⁴ 18 C.F.R. § 385.603 (2006).

⁵ 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 the date of this order. The Commission's website contains a list of Commission judges and a

shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, 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.

The Commission orders:

(A) Williams' proposed rate schedule for reactive power and voltage control service is hereby accepted for filing and suspended for a nominal period, to become effective on July 1, 2007, 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 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 Williams' proposed rate schedule for reactive power and voltage control services. 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 (2006), 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.

summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

(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 this proceeding in a hearing room of the Commission, 888 First Street, N.E., 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.