

UNITED STATES OF AMERICA 105 FERC ¶ 61,370
FEDERAL ENERGY REGULATORY COMMISSION

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

Allegheny Energy Supply Company, LLC
and Monongahela Power Company

Docket No. ER04-81-000

ORDER ACCEPTING FOR FILING PROPOSED RATES AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 24, 2003)

1. In this order we will accept for filing and suspend Allegheny Energy Supply Company, LLC (AE Supply) and Monongahela Power Company (Monongahela) (here after Applicants) rate schedules¹ for providing Reactive Support and Voltage Control from Generation Sources Service (Reactive Power) from their generating facilities located in the Allegheny Power Zone, which is within the control area administered by the PJM Interconnection, L.L.C. (PJM).

2. This action benefits customers because it provides an opportunity for the parties to develop a more complete factual record upon which the Commission may evaluate the justness and reasonableness of the proposed rates.

Background

3. AE Supply provides most of the generation-supplied reactive power within the Allegheny Power Zone of PJM. The AE Supply generating units located within PJM consist of units recently acquired from the historical Allegheny Power operating companies (West Penn Power Company, Monongahela Power Company and Potomac Edison Company), the “legacy units,” as well as newly constructed gas-fired generating units. Monongahela, through generation it retains, also provides reactive power.

¹ AE Supply Rate Schedule FERC No. 2, Original Sheet 1 and Monongahela Rate Schedule FERC No. 3, Original Sheet 1.

4. On July 31, 2000, PJM submitted for filing in Docket No. ER00-3327-000, a modified open access transmission tariff (OATT), to permit providers of reactive power, including non-utility generators, to recover their costs of providing this service (PJM Filing). The Commission, pursuant to delegated authority, accepted a revised Schedule 2 to the PJM OATT, which provided a mechanism to include the revenue requirements of the generator owners that are not transmission owners in the charges for reactive power and pay each generation owner an amount equal to the generation owner's monthly revenue requirement as accepted or approved by the Commission.²

5. On October 27, 2003, in Docket No. ER04-81-000, AE Supply and Monongahela filed two rate schedules for reactive power, which would allow them to collect annual revenues of \$11,724,576 and \$3,203,690, respectively, or \$14,928,266 in total. Applicants assert that these are cost-based rates to recover fixed costs associated with the production of reactive power and lost opportunity costs associated with increased generator and step-up transformer heating losses resulting from the production of reactive power. Applicants state that the reactive power revenue requirement for the Allegheny Power System, prior to joining PJM, was an \$80 per MW charge, resulting from a July 9, 1996 "black box" settlement in Docket No. ER96-58-000. When Allegheny joined PJM, this charge was converted to an annual revenue requirement of \$9,048,720.

6. Applicants state that there are two reasons that justify the increased rates proposed in this filing. They are that the Commission now has a standardized method for calculating the appropriate revenue requirement for reactive power and Applicants have added new generation within the PJM control area. Applicants also assert their proposed revenue requirements yield charges that are substantially below other PJM reactive power charges. The Applicants request that the Commission accept the proposed rate schedules, grant a waiver of the 60-day prior notice requirement, and permit an effective date of December 1, 2003.

Notice of Filing and Pleadings

7. Notice of the filing was published in the Federal Register, 68 Fed. Reg. 63,775 (November 10, 2003), with comments, protests and interventions due or before November 17, 2003. The following parties filed timely, unopposed motions to intervene, comments and protests: American Municipal Power-Ohio, Inc. (AMP-Ohio); and the Cities of Philippi and New Martinsville, West Virginia, and the Harrison Rural Electrification Association in Clarksburg, West Virginia (collectively, West Virginia Customers). PJM Interconnection, L.L.C. filed a motion to intervene. The PJM Industrial Customer Coalition, et al. (PJM Industrials) filed a late motion to intervene and protest.

² See PJM Interconnection, L.L.C., Docket No. ER00-3327-000 (September 25, 2000) (unpublished letter order).

8. The Applicants filed an answer on December 1, 2003.

Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³ the timely, unopposed motions to intervene serve to make the entities who filed them parties to this proceeding. Given the early stage of this proceeding, the absence of any undue prejudice or delay, and their interest in this proceeding, we grant the untimely, unopposed motion to intervene of the PJM Industrials.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁴ generally prohibits answers to protests, unless otherwise ordered by the decisional authority. In this instance, we will accept the Applicants' answer because it provides information that aids in understanding matters at issue in this proceeding.

B. Rate Issues

11. The West Virginia Customers argue that the Applicants have failed to show that the proposed rates are just and reasonable. They argue that the Applicant's use of proxy allocators and other information from prior filings by other generators for reactive power is a patently deficient method of fulfilling the filing requirements of 18 C.F.R. § 35.13 (2003). Both the West Virginia Customers and AMP-Ohio argue that the proposed revenue requirements appear to be excessive and the filing does not provide adequate support.⁵

12. The West Virginia Customers argue that to the extent the existing reactive power rates include depreciation expense based on the declining rate base or non-levelized method, it would be inappropriate to now allow Applicants to switch to a gross plant or levelized method. AMP-Ohio argues that the use of a levelized method is prohibited in this case because this is a new rate for an existing service and not a rate for a new service.⁶

³18 C.F.R. § 385.214 (2003).

⁴18 C.F.R. § 385.213(a)(2) (2003).

⁵ The PJM Industrials concur in the protests of AMP-Ohio and the West Virginia Customers.

⁶ AMP-Ohio cites American Electric Power Service Corp., 103 FERC ¶ 61,009 at P 40 (2003).

13. The West Virginia Customers argue that generator/exciter component of reactive rates should in principle be limited to any increased costs that the Applicants incur to purchase generators and exciters tailored to produce reactive power, rather than being limited to unity power factor. In other words, West Virginia customers believe that only the cost of equipment used to produce reactive power should be used to develop rates, whereas, the proposed method adds an allocated share of production facilities that support both real power (kWh) and reactive power (VAr) production with that allocated share derived from the nameplate ratings or capability of the equipment.⁷

14. AMP-Ohio also argues that the use of locational marginal pricing (LMPs) to determine the value of losses is inappropriate for a cost-based rate. Further, AMP-Ohio argues that Applicants' operating and maintenance expense (O&M) and the rate of return used to determine the fixed charge rate were determined using unacceptably stale data.

15. The protestors request that the filing be suspended for five months and set for hearing.

16. In their answer, the Applicants further argue that the use of a levelized or gross plant method for pricing generator-supplied reactive power in this case is reasonable and is not a switch in methodology because the previous reactive power charge is based on a black box settlement.⁸ And in such a black box settlement, parties are precluded from arguing that the settlement rate is based on either a levelized or non-levelized method.⁹

17. In their answer, the Applicants state that the West Virginia Customers' argument that reactive power rates should not be priced on the capability of the units, should be rejected because the Commission allows capability to be used to price reactive power.¹⁰

⁷ See American Electric Power Service Corp., 80 FERC ¶ 63,006 at 65,074, 65,078 (1997), aff'd in relevant part, Opinion No. 440, 88 FERC ¶ 61,141 (1999), reh'g withdrawn, 92 FERC ¶ 61,001 (2000) (AEP).

⁸ An uncontested settlement is not to be considered to be precedent, they argue. Answer at 3; see, e.g., Canyon Creek Compression Co., 103 FERC ¶ 61,232 at P 17 (2003).

⁹ The Stipulation provided that "This Joint Stipulation establishes no principles or precedents and, except as specifically provided herein, shall not be deemed to foreclose any party or trial staff from making any contention in any other proceeding or investigation. Acceptance of this stipulation . . . shall not in any respect constitute a determination as to the merits of any contentions made in this proceeding."

¹⁰ See AEP, 88 FERC at 61,457.

18. We find that the interveners have raised issues of material fact concerning the Applicants' proposed rate schedules that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below.

19. The Commission's preliminary analysis indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, the Commission will accept the proposed rates for filing, suspend them and set them for hearing, as ordered below.

20. In West Texas Utilities Company,¹¹ we explained that when our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in West Texas, we would generally impose a nominal suspension. Here, our examination indicates that the proposed rates may not yield substantially excessive revenues. Accordingly, the Commission will accept the proposed rates for filing, suspend them for a nominal period, to become effective on December 27, 2003, subject to refund, and set them for hearing, as ordered below.¹²

21. In order to provide the parties an opportunity to resolve these matters 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.¹³ 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.¹⁴ 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

¹¹ 18 FERC & 61,189 at 61,374 (1982).

¹² Applicants request a waiver of the requirement for 60-days' prior notice of proposed increased rates. No reasons were stated in the application to support the request for waiver. Consistent with Central Hudson Gas & Electric Corp., 60 FERC ¶ 61,106 at 61,339, order on reh'g, 61 FERC ¶ 61,089 (1992), we find that Applicants have not demonstrated good cause to justify waiver of the 60-day prior notice requirement for the proposed rate increases.

¹³ 18 C.F.R. § 385.603 (2003).

¹⁴ 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. The Commission's website contains a list of Commission judges and a summary of their background and experience. (<www.ferc.gov> - click on Office of Administrative Law Judges).

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) The proposed rate schedules are hereby accepted for filing, suspended for a nominal period, to become effective December 27, 2003, 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 regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed rate schedules. As discussed in the body of this order, the hearing will be held in abeyance to give the parties time to conduct settlement judge negotiations.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), the Chief Administrative Law Judge is hereby authorized 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 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 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 thirty (30) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If the 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 convene a conference in this proceeding to be held within approximately fifteen (15) days of the date 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

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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)

Linda Mitry,
Acting Secretary.