

155 FERC ¶ 61,170
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

City of West Memphis, Arkansas

Docket No. EL16-17-000

ORDER CONDITIONALLY ACCEPTING PROPOSED REVENUE REQUIREMENTS
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued May 19, 2016)

1. On November 19, 2015, as supplemented on February 10, 2016, and April 13, 2016, pursuant to section 35.13 of the Commission's regulations¹ and section 205(d) of the Federal Power Act (FPA),² the City of West Memphis, Arkansas (West Memphis) submitted proposed revenue requirements for the provision of Reactive Supply and Voltage Control from Generation or Other Sources Service (Reactive Supply Service) from certain generating units at the Independence Steam Electric Station (Independence) and the White Bluff Generating Station (White Bluff) in the Midcontinent Independent System Operator, Inc. (MISO) region. In this order, we conditionally accept for filing West Memphis' proposed revenue requirements, to become effective June 1, 2016, subject to West Memphis submitting a compliance filing within 15 days of the date of this order reflecting West Memphis' commitment to provide refunds.³ We also establish hearing and settlement judge procedures.

¹ 18 C.F.R. § 35.13 (2015).

² 16 U.S.C. § 824d (2012).

³ Alternatively, the effective date will be the date the Commission makes West Memphis' proposed revenue requirements effective when it issues an order approving West Memphis' proposed revenue requirements following the hearing and settlement judge procedures ordered below.

I. West Memphis' Filing

2. West Memphis states that it is an Arkansas First Class City,⁴ which owns and operates an electric utility. According to West Memphis, it holds ownership interests and/or rights to the output of multiple generating facilities including Independence and White Bluff. West Memphis states that it has been a Market Participant and asset owner in MISO as of December 19, 2013. West Memphis also states that it is a transmission-dependent utility on the transmission facilities owned by Entergy Arkansas, Inc. (Entergy Arkansas), which are in MISO.

3. West Memphis seeks to recover, pursuant to Schedule 2 of the MISO Open Access Transmission, Energy, and Operating Reserve Markets Tariff (MISO Tariff), cost-based revenue requirements for Reactive Supply Service provided in the Entergy Arkansas transmission pricing zones of MISO.⁵ The West Memphis generating units at issue in this proceeding are the following: (1) Independence Unit 1 and Independence Unit 2; and (2) White Bluff Unit 1 and White Bluff Unit 2. West Memphis states that it owns a one percent interest in each of the above units.⁶ West Memphis explains that, consistent with Commission precedent and Schedule 2, it is eligible to recover its costs of providing Reactive Supply Service to MISO upon establishing that it satisfies the relevant eligibility requirements.⁷

4. West Memphis proposes that the annual revenue requirements for its MISO area generating units are the following:

⁴ See Ark. Code Ann. § 14-37-104 (2015).

⁵ West Memphis November 19, 2015 Application, Transmittal at 2 (November 19 Application). West Memphis notes that it currently does not recover its costs of providing Reactive Supply Service from the Independence and White Bluff facilities. *Id.* n.5.

⁶ *Id.* at 2.

⁷ West Memphis states that the eligibility requirements include obtaining Commission acceptance of the cost-based Reactive Supply Service revenue requirements and attaining Qualified Generator status with MISO. *Id.*

Independence Unit 1	\$8,457
Independence Unit 2	\$13,003
Independence Common ⁸	\$282
White Bluff Unit 1	\$6,945
White Bluff Unit 2	\$7,105
White Bluff Common	\$472

The annual Reactive Supply Service revenue requirements for West Memphis' MISO area generating units total \$36,264.⁹

5. West Memphis states that its proposed revenue requirements are calculated in accordance with the Commission's *American Electric Power Service Corp.* methodology (*AEP Methodology*),¹⁰ as shown by the testimony and accompanying attachments and workpapers of Mr. Alan C. Heintz. Under the *AEP Methodology*, Mr. Heintz developed the calculation by: (1) identifying all equipment associated with West Memphis' Reactive Supply Service capability in its one percent share in Independence and White Bluff (i.e., generator and exciter, step-up transformers, accessory electrical equipment, and balance of plant); (2) calculating the reactive allocator¹¹ to be applied to the above equipment; (3) describing how the reactive allocator is applied to each category of equipment to determine the total Reactive Supply Service investment; and (4) calculating the fixed carrying charges also used to determine West Memphis' proposed Reactive Supply Service revenue requirements.¹²

⁸ Independence Common and White Bluff Common refer to shared aspects of the facilities separate from the generating units themselves.

⁹ West Memphis February 10, 2016 Supplement, Ex. WM-5 (Feb. 10 Supplement).

¹⁰ November 19 Application, Transmittal at 3 (citing *Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141, at 61,436 (1999), *order on reh'g*, 92 FERC ¶ 61,001 (2000)).

¹¹ Mr. Heintz explains that the reactive allocator equals the square of the Reactive Supply Service rating (mega volt ampere reactive, or MVAR) divided by the square of the total power rating for each plant. November 19 Application, Transmittal, Ex. WM-1 at 7.

¹² West Memphis also notes that its proposed revenue requirements are determined for each of the generating units, not for each generating station, most of which have more than one generating unit. November 19 Application, Transmittal at 3. *See also City (continued ...)*

6. West Memphis' proposed revenue requirements use a return on equity (ROE) of 10.57 percent. West Memphis explains that Commission precedent allows municipal utilities like West Memphis to use the presently effective ROE of the transmission owner with which they are interconnected (i.e., Entergy Arkansas), which would mean using the MISO ROE.¹³ West Memphis notes that the ROE is lower than the 12.38 percent requested by Entergy in its filing for Reactive Supply Service revenue requirements.¹⁴

7. Additionally, West Memphis explains that, pursuant to Schedule 2, West Memphis will be eligible to recover its Reactive Supply Service costs on the first day of the month immediately following the Commission's acceptance of its revenue requirements, or the first day of the month if the Commission accepts its revenue requirements on the first day of the month. West Memphis requests that the Commission accept its proposed Reactive Supply Service revenue requirements effective as of the first day of the first month following Commission acceptance, so that West Memphis may begin recovering its Reactive Supply Service costs as soon as it obtains Qualified Generator status.¹⁵ West Memphis also proposes to make its Reactive Supply Service revenue requirements subject to the outcome of the MISO-wide ROE complaint proceeding in Docket No. EL15-45-000 and commits to provide refunds based on the outcome of that proceeding.¹⁶

8. West Memphis submitted two supplements in addition to its original filing. In its February 10 Supplement, West Memphis states that revisions are limited to lines 8 and 16 of Schedule 3 of the workpapers and the resulting changes to the outputs of the workpapers. West Memphis also provided an excerpt from its financial statements showing its investment in Independence and White Bluff.¹⁷ In its supplement filed on

Water and Light Plant of the City of Jonesboro, 152 FERC ¶ 61,092 (2015) (*Jonesboro*).

¹³ West Memphis states that the Commission has permitted municipal utilities, like West Memphis, to utilize the Commission-approved MISO Tariff Attachment O ROE for the purpose of establishing their Reactive Supply Service revenue requirements under Schedule 2. November 19 Application, Transmittal at 3-4.

¹⁴ *Id.* at 4 (citing *Entergy La., LLC*, 150 FERC ¶ 61,135 (2015); *ITC Holdings Corp.*, 143 FERC ¶ 61,257, at PP 60-61 (2013)). *See also Jonesboro*, 152 FERC ¶ 61,092; *Entergy La., LLC*, 145 FERC ¶ 61,219 (2013).

¹⁵ West Memphis states that it will certify to MISO its eligibility for status as a Qualified Generator pursuant to MISO Tariff Schedule 2 and that it satisfies the technical criteria identified in Schedule 2. November 19 Application, Transmittal at 2 n.6.

¹⁶ *Id.* at 4.

¹⁷ February 10 Supplement, Exs. WM-5, WM-6.

April 13, 2016, West Memphis provided, among other things, nameplate and testing data on the Reactive Supply Service capability of Independence and White Bluff.¹⁸

II. Notice and Responsive Pleadings

9. Notice of West Memphis' filing was published in the *Federal Register*, 80 Fed. Reg. 74,100 (2015), with interventions and protests due on or before December 11, 2015. Entergy filed a motion to intervene on December 1, 2015. Notice of West Memphis' February 10 Supplement was published in the *Federal Register*, 81 Fed. Reg. 8191 (2016), with interventions and protests due on or before February 17, 2016. Notice of West Memphis' April 13 Supplement was published in the *Federal Register*, 81 Fed. Reg. 23,289 (2016), with interventions and protests due on or before April 20, 2016. None was filed.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), Entergy's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

11. West Memphis' proposed revenue requirements for Reactive Supply Service raise 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. For example, West Memphis' revenue requirements are calculated using the

nameplate MVAR capability and, therefore, do not account for the degradation of the facilities' current MVAR capability compared to the nameplate MVAR capability.¹⁹

12. Our preliminary analysis indicates that West Memphis' proposed revenue requirements have not been shown to be just and reasonable and may be unjust,

¹⁸ West Memphis April 13, 2016 Supplement at 2 (April 13 Supplement).

¹⁹ The Commission recently provided guidance on establishing or revising rates for Reactive Supply Service. See *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,246, at PP 23-28 (2016); *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,245, at PP 24-29 (2016).

unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we conditionally accept West Memphis' proposed revenue requirements for filing, to be effective June 1, 2016, subject to West Memphis submitting a compliance filing within 15 days of the date of this order reflecting West Memphis' commitment to provide refunds as of June 1, 2016, to the extent it receives revenues for the Reactive Supply Service that exceed the amount ultimately found to be just and reasonable, and set the proposed revenue requirements for hearing and settlement judge procedures.²⁰

Alternatively, if such a compliance filing is not submitted, the effective date will be the date the Commission makes the proposed revenue requirements effective when it issues an order approving the proposed revenue requirements following the hearing and settlement judge procedures ordered below.²¹

13. In addition, while West Memphis commits to provide refunds based on the outcome of the proceeding in Docket No. EL15-45-000, we note that, procedurally, an outcome in the complaint proceeding in Docket No. EL14-12-000 will also impact the complaint proceeding in Docket No. EL15-45-000. As a result, we accept West Memphis' proposed revenue requirements subject to the outcome of the proceedings in Docket No. EL14-12-000 as well as Docket No. EL15-45-000.

14. While we are setting these matters for a trial-type evidentiary hearing, we encourage the participants to make every effort to settle their dispute before hearing procedures commence. To aid the participants 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.²² If the participants 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.²³ The

²⁰ While West Memphis commits to provide refunds based on the outcome of the proceeding in Docket No. EL15-45-000, West Memphis did not otherwise commit to make refunds for any Reactive Supply Service revenues that may exceed the amount ultimately found to be just and reasonable.

²¹ We note that in other instances the Commission has established a prospective effective date when non-public utilities have submitted their proposals for cost recovery for Commission review without committing to provide refunds. *See Lively Grove Energy Partners, LLC*, 140 FERC ¶ 61,252, at P 2 (2012).

²² 18 C.F.R. § 385.603 (2015).

²³ If the participants decide to request a specific judge, they must make their joint request to the Acting Chief Judge by telephone at (202) 502-8500 within five days of this (*continued ...*)

settlement judge shall report to the Chief Judge and the Commission within thirty 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 participants 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) West Memphis' proposed revenue requirements are hereby conditionally accepted for filing, to become effective June 1, 2016, subject to the outcome of the proceedings in Docket Nos. EL14-12-000 and EL15-45-000 and subject to West Memphis submitting a compliance filing within 15 days of the date of this order reflecting West Memphis' commitment to provide refunds as of June 1, 2016. Alternatively, the effective date will be the date the Commission makes the proposed revenue requirements effective when it issues an order approving the proposed revenue requirements following hearing and settlement judge procedures, 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 FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of West Memphis' revenue requirements, as discussed in the body of this order. 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 (2015), 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 participants 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.

order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(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 participants 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 participants' progress toward settlement.

(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 these proceedings in a hearing room of the Commission, 888 First Street, NE, 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.