

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Dynegy Midwest Generation, Inc.

Docket Nos. ER05-270-001  
EL05-72-000

ORDER DENYING REHEARING,  
INSTITUTING INVESTIGATION, AND  
ESTABLISHING REFUND EFFECTIVE DATE AND  
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued March 25, 2005)

1. Illinois Power Company (Illinois Power) requests rehearing of the January 25, 2005 delegated letter order<sup>1</sup> that accepted the filing of a proposed rate schedule, submitted by Dynegy Midwest Generation, Inc. (Dynegy), to specify a cost-based revenue requirement for providing reactive power service. For the reasons discussed below, we will deny the request for rehearing. However, we will institute, under section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e (2000), an investigation into the continued justness and reasonableness of this accepted rate schedule, and will establish a refund effective date. We will also establish hearing and settlement judge procedures.

**Background and Rehearing Request**

2. On November 30, 2004, Dynegy filed a proposed rate schedule to provide cost-based reactive support and voltage control from eight fossil-fueled generating facilities with an aggregate generating capacity of approximately 4,042 MW. No protests were filed. On January 25, 2005, the Director, Division of Tariffs and Market Development-Central, acting under delegated authority,<sup>2</sup> accepted the rate filing.

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<sup>1</sup> January 25, 2005 Letter Order by the Director, Division of Tariffs and Market Development-Central.

<sup>2</sup> See 18 C.F.R. § 375.307(k)(1) (2004).

3. Illinois Power now files a rehearing request contending that Dynegy's rate schedule has not been shown to be just and reasonable, and may be unjust, unreasonable, or unduly discriminatory. Illinois Power states that Dynegy's revenue requirement is nearly three-and-one-half times greater than the revenue requirement that Illinois Power had calculated for largely the same eight fossil-fueled generating units when it owned them, in 1998, the year before it transferred them to Dynegy's predecessor-in-interest. Illinois Power questions Dynegy's calculations in its November 30, 2004 submittal, in particular: (1) a net book value that is over three times greater than the net book value of substantially the same facilities in 1998; (2) non-fuel operations and maintenance (O&M) expenses that are nearly double the non-fuel O&M expenses experienced by Illinois Power when it owned the facilities; and (3) allocation of fixed (as opposed to variable) O&M expenses as 90 percent of total O&M expenses, whereas, when Illinois Power had owned the facilities, the allocation of fixed expenses had been only approximately 48 percent of total O&M expenses.

4. Illinois Power reminds the Commission that in eight proceedings concerning proposed reactive power revenue requirements, over the past year or so, the Commission accepted the rate schedules only subject to refund and trial-type proceedings. Illinois Power continues that in each case the involved parties engaged in settlement discussions, and that all but two cases have reached an uncontested settlement. Moreover, Illinois Power adds, settlement discussions enable all parties to the issue to understand the data supporting the rate filing and can produce a more accurate measure of the revenue requirement. Illinois Power says that failure to require hearing and settlement procedures in this proceeding, as was done in the prior proceedings constitutes error. It asks the Commission to make acceptance of Dynegy's rate schedule subject to refund and hearing procedures, and to suspend hearing procedures pending settlement discussions among interested parties.

### **Discussion**

5. Dynegy's rate schedule was accepted, without suspension, and is currently in effect.<sup>3</sup> Thus, we cannot grant Illinois Power's request that we accept and suspend Dynegy's rate schedule, make it effective subject to refund, and set it for hearing procedures. However, in light of the concerns raised by Illinois Power, and upon further consideration, we will institute an investigation, under section 206 of the FPA, into the continued justness and reasonableness of Dynegy's previously-accepted rate schedule, and will establish a refund effective date. In addition, because this investigation will involve issues of material fact, we will set the matter for a trial-type evidentiary hearing.

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<sup>3</sup> See section 205(c) of the FPA, 16 U.S.C. § 824d(c) (2000).

6. Although we are instituting an investigation and establishing hearing procedures, we believe that it would be in the best interest of the parties to resolve this dispute expeditiously and consensually rather than through litigation. Accordingly, 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, 18 C.F.R. § 385.603 (2004). 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.<sup>4</sup> 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.

7. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the Commission's investigation in the *Federal Register*, and no later than five months subsequent to the expiration of the 60-day period. In order to give maximum protection to consumers, and consistent with our precedent,<sup>5</sup> we will establish the refund effective date at the earliest date allowed. This date will be 60 days from the date on which notice of our initiation of the proceeding in Docket No. EL05-72-000 is published in the *Federal Register*.

8. Section 206 also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon the initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it failed to do so and shall state its best estimate of when it reasonably expects to make such a decision. To implement that requirement, we will direct the settlement judge or presiding judge, as appropriate, to provide a report to the Commission no later than 15 days in advance of the refund effective date in the event the settlement judge or presiding judge, as appropriate, has not, by that date: (1) certified to the

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<sup>4</sup> 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 listing of the Commission's judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) – click on Office of Administrative Law Judges).

<sup>5</sup> See, e.g., *PJM Interconnection, L.L.C.*, 90 FERC ¶ 61,137 (2000); *Cambridge Electric Light Co.*, 75 FERC ¶ 61,177, *clarified*, 76 FERC ¶ 61,020 (1996); *Canal Electric Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

Commission a statement which, if accepted, would dispose of the proceeding; or (2) issued an initial decision. The judge's report, if required, shall advise the Commission of the status of the investigation and provide an estimate of the expected date of certification of a settlement or issuance of an initial decision.

The Commission orders:

(A) Illinois Power's request for rehearing is hereby denied, 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 section 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), an investigation is hereby instituted, in Docket No. EL05-72-000, concerning the continued justness and reasonableness of Dynege's previously-accepted rate schedule for reactive power services, as discussed in the body of this order.

(C) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding ordered in Ordering Paragraph (B) above, under section 206 of the Federal Power Act, in Docket No. EL05-72-000.

(D) The refund effective date in Docket No. EL05-72-000, established pursuant to section 206(b) of the Federal Power Act, shall be sixty (60) days following publication in the *Federal Register* of the notice ordered in Ordering Paragraph (C) above.

(E) 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 the proceeding ordered in Ordering Paragraph (B) above 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.

(F) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and 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 discussion, 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 Chief Judge and the Commission of the parties' progress toward settlement.

(G) If the settlement judge procedures fail, and a formal 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, at 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 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,  
Deputy Secretary.