

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

FirstEnergy Solutions Corporation

Docket No. ER04-652-000

ORDER ACCEPTING AND SUSPENDING SERVICE SCHEDULE, AS MODIFIED,  
SUBJECT TO REFUND, AND ESTABLISHING HEARING PROCEDURES

(Issued May 10, 2004)

1. In this order, we accept for filing the revised Service Schedule A – Reactive Supply and Voltage Control From Generation Sources Service (Service Schedule) filed by FirstEnergy Solutions Corporation (Solutions), as modified, suspend it for five months, to become effective five months following 60 days after filing, or October 15, 2004, and set it for hearing and settlement judge procedures.

**I. Background**

2. On March 15, 2004, Solutions filed, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup>, revised Service Schedule A – Reactive Supply and Voltage Control From Generation Sources Service under the Tariff for Ancillary Services and Interconnected Operations Services of Solutions (Tariff). The revised Service Schedule reflects increased cost based charges for reactive power services that Solutions' generation resources provide to transmission systems operated by the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) and the Pennsylvania-New Jersey-Maryland Interconnection LLC (PJM). Specifically, the Service Schedule: (1) proposes a single revenue requirement for all the Solutions generators that provide Reactive Supply Service to the American Transmission Systems, Incorporated (ATSI) control area; (2) proposes a separate revenue requirement for the Sumpter generating station located in the International Transmission Company (ITC) control area; and (3) proposes a revised revenue requirement for the Seneca pumped storage hydroelectric station located in PJM.

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<sup>1</sup> 16 USC § 824d (2001).

## **A. The Midwest ISO**

### **1. ATSI Control Area**

3. In 1999, the FirstEnergy Operating Companies transferred their electric transmission facilities to ATSI,<sup>2</sup> and on October 1, 2003, control over those transmission facilities was transferred to the Midwest ISO.<sup>3</sup>

4. ATSI is a transmission only entity and, accordingly, must purchase generation-based ancillary services it needs to support transmission service on its system, including reactive supply service, from third parties. Solutions purchases the output of certain generation resources owned by the FirstEnergy Operating Companies and the FirstEnergy Generation Corporation, and it supplies ancillary services from those resources to ATSI under the Tariff at cost-based rates. ATSI recovers the costs of these ancillary services from transmission customers who use the ATSI transmission system pursuant to the Midwest ISO OATT.

5. Troy Energy, LLC (Troy) is a merchant generator that is capable of providing reactive supply service, and it is connected to the ATSI transmission system. On September 29, 2003, Troy submitted a proposed annual revenue requirement to assess ATSI for reactive supply service from Troy's generating unit.<sup>4</sup>

6. Solutions states that the current usage based charge for reactive supply service in the Tariff is inconsistent with Troy's proposed annual revenue requirement. Solutions, as a result, have redesigned its charges for the reactive service its generators supply to the control area of the ATSI system based on an updated cost-of-service. Revised Service Schedule A establishes an annual revenue requirement of \$42,045,839 for reactive supply service supplied by Solutions from generation facilities that are connected to the ATSI transmission system.

### **2. ITC Control Area**

7. Solutions provides reactive supply service that the Sumpter station generates in the ITC transmission system control area (which – like the ATSI control area – is now under the functional control of the Midwest ISO). The proposed annual revenue requirement for reactive supply service supplied to transmission customers using the ATSI transmission system does not reflect costs of the Sumpter station reactive supply service. Solutions proposes to recover such costs through a separate annual revenue requirement

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<sup>2</sup> FirstEnergy Operating Companies, 89 FERC ¶ 61,090 (1999).

<sup>3</sup> Alliance Companies, *et al.*, 100 FERC ¶ 61,137 (2002).

<sup>4</sup> Troy Energy, LLC, 105 FERC ¶ 61,250 (2003).

of \$2,962,100 to be reflected in charges in the Midwest ISO OATT to transmission customers within the ITC control area.

## **B. PJM**

8. The Seneca station is connected to the PJM transmission system, and Solutions provides reactive supply service from the Seneca station. The proposed annual revenue requirement for reactive supply service that Solutions provides from the Seneca station is \$664,772.

## **C. Additional Facts**

9. Solutions states that it is following the method to establish the annual revenue requirement for reactive supply service adopted in American Electric Power Service Corporation.<sup>5</sup>

10. The Service Schedule also provides a basis on which Solutions may recover start-up costs and opportunity costs for reserving generating units to be restarted in order to provide reactive supply service and for reducing the real power output of any generating unit to provide reactive supply service beyond its normal operating range.

11. Solutions requests that the Commission waive the requirement under section 35.13(d)(2) of the Commission's regulations for submission of Period II projected cost information to support its proposed charges for reactive supply service as Solutions believes that the actual cost information submitted for the year ending December 31, 2002, is reasonably representative of the prospective cost to Solutions of providing reactive supply service.

12. Solutions requests a May 1, 2004, effective date and requests waiver of the 60-day prior notice requirement. Solutions explains that the requested effective date will coincide with the effective date for Troy's rate schedule for reactive supply service and will accommodate PJM's practice of making changes in the revenue requirement for reactive supply service under the PJM OATT effective on the first day of the month.

## **II. Notices and Interventions**

13. Notice of Solution's filing was published in the Federal Register<sup>6</sup> with comments, protests, and interventions due on or before April 5, 2004. On March 25, 2004, Orion Power MidWest, L.P. (OPMW) filed a motion to intervene. Dominion Resources, Inc. and Troy Energy, LLC (collectively, Dominion), collectively filed a motion to intervene on April 5, 2004. The Midwest ISO filed a motion to intervene on April 5, 2004.

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<sup>5</sup> American Electric Power Service Corporation, 88 FERC ¶ 61,141 (1999) (AEP).

<sup>6</sup> 68 Fed. Reg. 15,319 (2004)

Also on April 5, 2004, the City of Cleveland, Ohio (Cleveland) and American Municipal Power-Ohio, Inc. (AMP-Ohio) filed a motion to intervene and protest. On April 20, 2004, Solutions filed an answer to the motions for leave to intervene and other relief.

14. Pursuant to rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene of OPMW, Dominion, and the Midwest ISO serve to make them parties to this proceeding. The timely, unopposed motions for leave to intervene of AMP-Ohio and Cleveland serve to make them parties to this proceeding. The Commission's Rules of Practice and Procedure do not permit answers to protests<sup>7</sup>. However, the Commission finds good cause to admit Solutions' answer because it will not delay the proceeding, will assist the Commission in understanding the issues raised, and will insure a complete record upon which the Commission may act.

### **III. Protests**

15. AMP-Ohio believes that the Commission should find Solutions' proposed rates to be substantially excessive and should suspend the rate increase for five months from a date sixty days after the filing date. Solutions' proposed switch to a gross plant levelized rate methodology, according to AMP-Ohio, goes against this Commission precedent and should consequently be rejected. In addition, AMP-Ohio takes issue with other elements of Solutions' proposed fixed charge rate including the level of O&M costs allocated to reactive supply service and the proposed return on equity. Finally, AMP-Ohio requests that the Commission deny Solutions' request for waiver of the requirement to file Period II data.

16. Cleveland states it is an AMP-Ohio member, and, to avoid repetition, it has adopted and incorporated by reference AMP-Ohio's protest and opposition to waivers of filing requirements and sixty-day notice.

### **IV. Discussion**

17. As noted above, protesters have raised issues of material fact regarding the reasonableness of the proposed rates that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below. Our preliminary analysis of Solutions' proposal indicates that it 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,<sup>8</sup> the Commission explained that when our preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive (as defined in West Texas), the Commission would generally impose a five month suspension. In the instant proceeding,

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<sup>7</sup> 18 C.F.R. § 385.213(a)(2) (2003).

<sup>8</sup> West Texas Utilities Company, 18 FERC ¶ 61,189 (1982) (West Texas).

our preliminary examination indicates that the proposed rate increase may be substantially excessive. Accordingly, we will accept the revised Service Schedule for filing, suspend it for five months to take effect October 15, 2004,<sup>9</sup> subject to refund, and set it for a hearing.

**A. Levelized vs. Non-Levelized Rate Structure**

18. Solutions indicates in its filing that it uses the gross plant levelized rate methodology to support its proposed rates. Protesters have raised concerns about this issue. In its answer, Solutions cites to the Commission's decision in AEP as the basis for its using a gross-plant levelized rate methodology for the reactive supply service. However, the Commission precedent in that case, as well as other subsequent cases, indicates that pricing structures using gross-plant levelized rates are acceptable when the ancillary services are new services that were not previously provided and priced as separate services. In such situations, there is no concern about potential over-recovery of costs due to a switch from a non-levelized rate methodology to levelized rate methodology because there is no switching of methods involved. The precedent in that case and subsequent cases does not provide that use of the gross plant levelized methodology is acceptable when companies propose to "switch pricing methods... in mid-stream for what were similar transmission services."<sup>10</sup>

19. Furthermore, Solutions also relies on the Commission's findings in WPS Resources Operating Companies<sup>11</sup> to propose the use of a gross plant levelized rate structure. The Commission policy established in that case does not justify the application of gross plant levelized rates in this instance. While WPS had previously provided the service before filing its proposed rates in that proceeding, it had not previously charged customers for the service and, thus, there was no reason to be concerned about a switch in rate methodologies. Therefore, the Commission determined that using a gross plant levelized rate structure was acceptable in that case.<sup>12</sup> Here, where Solutions has

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<sup>9</sup> In addition, Solutions has not made the strong showing of good cause required to grant waiver of the 60 day prior notice requirement for a rate increase. See Central Hudson Gas & Electric Corporation, et al., 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992).

<sup>10</sup> AEP, 88 FERC at 61,455. See also American Electric Power Service Corporation, 103 FERC ¶ 61,009 at P 30-34 (2003).

<sup>11</sup> WPS Resources Operating Companies, 93 FERC ¶ 61,338 (2000) (WPS).

<sup>12</sup> WPS, 93 FERC at 62,147 (2000). In support of its proposal, Solutions also cites WPS Westwood Generation, LLC, 101 FERC ¶ 61,290 (2002) (WPS Westwood), where the Commission directed all generators seeking to recover costs for reactive power supply to employ the methodology adopted in AEP. However, WPS Westwood was in no way intended to modify the policy established in AEP, discussed above, to stand for the

(continued...)

previously provided and charged for reactive supply service, the Commission must ensure that the proposed rates do not reflect an unacceptable switch in rate methodologies.

20. However, it is not clear whether Solutions' current rates are based on a non-levelized rate methodology or whether this filing represents a change in rate methodology that would not be permitted under Commission policy. Solutions maintains that the existing rates for reactive supply service were the result of a 'black box' settlement in 1998.<sup>13</sup> Since the existing rates are based on this 'black box' settlement, and it is not readily apparent what methodology was used to establish the existing rates, this is an issue of fact to be examined at the hearing ordered above.

### **B. Filing of Period II Data**

21. Solutions requested in its filing that the Commission waive the requirement of filing Period II data to support the proposed charges for reactive supply service. Protesters object to this request in their protests. Section 35.13(d)(2) of the Commission's Rules of Practice & Procedure<sup>14</sup> requires that companies file Period II data unless the utility's filed rate increase is less than \$1 million or if all wholesale customers consent to the proposed rate increase. Since this proposed rate increase exceeds the \$1 million threshold and two of Solutions' customers have requested the Period II data, the Commission directs Solutions to file Period II data as part of its case-in-chief according the hearing procedures as established by the Administrative Law Judge.

### **C. Settlement Judge Procedures**

22. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, the hearing will be held in abeyance and a settlement judge shall be appointed, pursuant to rule 603 of the Commission's Rules of Practice and Procedure.<sup>15</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 the 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.

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proposition that a switch to the gross plant levelized rate methodology for reactive supply service is appropriate where a generator has previously provided and charged for the service based on a non-levelized rate methodology.

<sup>13</sup> FERC Docket Nos. ER97-412-000, et al.

<sup>14</sup> 18 C.F.R. § 35.13(d)(2) (2003).

<sup>15</sup> 18 C.F.R. § 385.603 (2003).

The Commission orders:

(A) Solutions' proposed Ancillary Services Tariff is accepted for filing, subject to refund, and suspended for a period of five months, to take effect five months following 60 days after filing or October 15, 2004.

(B) Pursuant to rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603, the Chief Administrative Law Judge is directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. To the extent consistent with this order, the designated settlement judge shall have all powers and duties enumerated in rule 603 and shall convene a settlement conference as soon as practicable.

(C) Within sixty 60 days of the date of this order, the settlement judge shall issue a report to the Commission. The settlement judge shall issue a report every sixty (60) days thereafter apprising the Commission of the parties' progress towards settlement.

(D) If the settlement discussions fail, an Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding to be held within approximately fifteen (15) days of the settlement judge's report to the Commission, in a hearing room of the Federal Energy Regulatory Commission at 888 First Street, NE, Washington, D.C. Such conference shall be held for the purpose of establishing a procedural schedule. The Presiding Judge is authorized to establish procedural dates, to rule on all motions (except motions to dismiss), and to preside over the hearing in this proceeding, as provided in the Commission's Rules of Practice and Procedure.

(E) The request of Solutions to waive the requirement of filing Period II data to support the proposed charges is denied.

(F) The request of Solutions to waive the 60-day notice requirement and allow an effective date of May, 1, 2004 is denied.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.