

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Reliant Energy Wholesale Generation, LLC                      Docket Nos. ER04-1066-000  
ER04-1066-001  
ER04-1066-002

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

(Issued October 7, 2004)

1. In this order we accept for filing Reliant Energy Wholesale Generation, LLC's (Reliant Energy) proposed rate schedule, suspend it for a nominal period, to become effective the later of October 1, 2004 or the first day of the month following the date Reliant Energy<sup>1</sup> becomes a member of PJM Interconnection, L.L.C. (PJM), subject to refund. We also establish hearing and settlement judge procedures. This order benefits customers by ensuring a timely inquiry into whether the proposed rates are just and reasonable.

**Background**

2. Reliant Energy's affiliate, Reliant Energy Aurora, LP, owns and operates an 873 MW natural gas-fired electric generating station in Aurora, Illinois, which is within the Northern Illinois control area operated by PJM and is interconnected with Commonwealth Edison Company's (ComEd) transmission facilities.<sup>2</sup> The Aurora generating station is the subject of this order.

3. Schedule 2 of PJM's Open Access Transmission Tariff (OATT) allows generation owners to specify revenue requirements for reactive power and provides that PJM will pay "each generation owner an amount equal to generation owner's monthly revenue requirement as accepted or approved by the Commission."<sup>3</sup>

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<sup>1</sup> See P 5, *infra*.

<sup>2</sup> See PJM Interconnection, L.L.C. *et al.*, 107 FERC ¶ 61,087 (2004). On May 1, 2004, ComEd integrated into the PJM control area.

<sup>3</sup> PJM FERC Electric Tariff, Sixth Rev. Vol. 1, First Rev. Sheet No. 229.

**Reliant Energy's Filing**

4. On July 30, 2004, Reliant Energy filed a rate schedule stating its revenue requirement for providing cost-based Reactive Supply and Voltage Control from Generation Sources Service that it will provide to PJM under Rate Schedule No. 2 of PJM's OATT. Reliant Energy acknowledges that PJM membership is required by PJM prior to receipt of payment for reactive services, and requests an effective date of September 1, 2004 or, alternatively, the first day of the month following the expiration of the 60-day notice period (October 1, 2004).<sup>4</sup> It asserts that it expects to complete its application for membership with PJM during the first week of August 2004. It further asserts that its intent is to make the tariff effective on the first day of a PJM billing cycle in order to avoid billing complications.

5. Reliant Energy amended its July 30 filing on August 24, 2004, and subsequently corrected the August 24 filing on August 25, 2004. According to the amended filing, Reliant Energy's plan to merge with Reliant Energy Aurora would not take place as expected; for this reason, Reliant Energy filed the August 24 and 25 amendments to change the party in interest on the rate schedule from Reliant Energy to Reliant Energy Aurora.<sup>5</sup> Reliant Energy states that all other information from the July 30 filing remains unchanged.

6. Reliant Energy states it developed its reactive power revenue requirement using three components: (1) a fixed capability component which represents that portion of the plant fixed costs attributed to reactive power;<sup>6</sup> (2) the heating loss component which allows for recovery of the increased generator heating losses resulting from producing reactive power;<sup>7</sup> and (3) additional compensation for lost opportunity costs if PJM directs Reliant Energy to restrict its real power output to increase reactive power support to PJM.<sup>8</sup>

7. Regarding the first component, fixed capability, Reliant Energy states that the Aurora generating station is a non-utility generator not generally subject to traditional rate regulation. It uses a return on equity and overall rate of return based on a proxy that is derived from the capital structure and return on equity of ComEd, the utility with which the Aurora generating station is interconnected.<sup>9</sup> Reliant Energy asserts that the

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<sup>4</sup> See Reliant Energy July 30 filing at 1-2.

<sup>5</sup> All references herein to Reliant Energy refer also to Reliant Energy Aurora.

<sup>6</sup> See Reliant Energy July 30 filing, Attachment 1 at 6-15.

<sup>7</sup> See *id.* at 16-19.

<sup>8</sup> See *id.* at 19-21.

<sup>9</sup> See Reliant Energy July 30 filing at 3.

use of this proxy is a conservative approach because the Aurora generating station is a merchant plant and faces greater market risks than those faced by a monopoly transmission service owner such as ComEd.<sup>10</sup>

8. With regard to the heating loss component, Reliant Energy states that when a generator produces reactive power, there are significant heating losses associated with the generator and the generator step-up transformer. Reliant Energy states these losses can be calculated as the real power consumed to produce reactive power, are costs directly attributable to the production of reactive power, and are properly included in the revenue requirement.

9. Reliant Energy does not include charges for the lost opportunity cost component, but reserves the right to amend its tariff to include such costs in the event that the Commission subsequently approves their inclusion in a reactive power tariff.

#### **Notice of Filings and Responsive Pleadings**

10. Notice of Reliant Energy's July 30, 2004 filing was published in the *Federal Register*, 69 Fed. Reg. 50,378 (2004), with protests or interventions due on or before August 20, 2004. Midwest Independent Transmission System Operator, Inc. (MISO) filed a motion to intervene. PJM and Consumers Energy Company (Consumers) filed motions to intervene and comments. American Municipal Power-Ohio, Inc. (AMP-Ohio) filed a motion to intervene and protest. Exelon Corporation (Exelon) filed a motion to intervene and protest out of time. Reliant Energy, under the name "Reliant Energy Aurora, LP," filed a motion for leave to respond to protests and comments

11. Notices of Reliant Energy's August 24 and 25, 2004, amended filings were published in the *Federal Register*, 69 Fed. Reg. 53,911 and 69 Fed. Reg. 54,663 (2004), respectively, with protests or interventions due on or before September 14, 2004. Exelon filed a motion to intervene and protest, and additional comments.

12. PJM notes that Reliant Energy acknowledges PJM membership is required to receive payment for reactive services. As of the date of PJM's intervention, PJM asserts, it had not received Reliant Energy's membership application. PJM requests that Reliant Energy's reactive service revenue requirement filed in this proceeding be made effective contingent upon Reliant Energy becoming a member of PJM. PJM states that it does not

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<sup>10</sup> Reliant Energy also reserves the right to later present evidence to increase this rate of return proxy, or to propose a different methodology in the future if market conditions warrant.

object to Reliant Energy's proposed September 1, 2004, effective date, provided Reliant Energy becomes a PJM member prior to the effective date. In response, Reliant Energy states that it filed an application for PJM membership on September 2, 2004.<sup>11</sup>

13. Consumers raises no objections to Reliant Energy's proposed recovery of the reactive revenue requirement through PJM's tariff.

14. AMP-Ohio asserts that it hopes the Commission will undertake a full cost-of-service analysis of Reliant Energy's filing.

15. Exelon states that Reliant Energy's filing raises numerous rate issues that can only be resolved by means of an evidentiary hearing. Exelon also claims that Reliant Energy has failed to show that the proposed rate is just and reasonable.

## **Discussion**

### **Procedural Matters**

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant Exelon's motion to intervene out of time given its interest in this proceeding, the early stage of this proceeding and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Reliant Energy's answer because it has provided information that assisted us in our decision-making process.

### **Hearing Procedures**

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

18. Our preliminary analysis indicates that Reliant Energy's rate schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept the rate schedule for filing, suspend it for a nominal period, make it effective the later of October 1, 2004 or the first day of the month following the date Reliant Energy becomes a PJM member, subject to refund, and set it for hearing and settlement judge procedures.

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<sup>11</sup> See Reliant Energy Response at 17.

19. 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, 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.<sup>12</sup> 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.<sup>13</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 the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The proposed rate schedule is hereby accepted for filing, suspended for a nominal period, to become effective the later of October 1, 2004 or the first day of the month following the date Reliant Energy becomes a member of PJM, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred on 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 the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Reliant Energy's proposed rate schedule. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(C) 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 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

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<sup>12</sup> 18 C.F.R. § 385.603 (2004).

<sup>13</sup> If the parties decide to request a specific judge, they must make their 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 Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or 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 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 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.

(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 Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 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,  
Acting Secretary.