

168 FERC ¶ 61,044
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

Hoosier Energy Rural Electric Cooperative, Inc.

Docket No. EL19-55-000

ORDER ACCEPTING PROPOSED RATE SCHEDULE, ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES, AND DIRECTING
COMPLIANCE FILING

(Issued July 22, 2019)

1. On March 20, 2019, and as supplemented on May 23, 2019, Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier),¹ a non-public utility² providing service through the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff), submitted a proposed revenue requirement for the provision of Reactive Supply and Voltage Control from Generation or Other Sources Service (Reactive Service) under Schedule 2 in the PJM region by its Livingston Generating Station (Livingston) and Orchard Hills Generating Station (Orchard Hills) (together, the Facilities). In this order, we accept Hoosier's proposed Reactive Service revenue requirement for filing, to become effective for Livingston April 1, 2019, and to become effective for Orchard Hills as of the date of its return to service, with the revenue requirements for the Facilities subject to refund,

¹ Hoosier states that it is a member-owned generation and transmission cooperative utility, which provides electric energy to its 18 member distribution cooperatives in central and southern Indiana and southeastern Illinois. Hoosier states that its funding is provided by its member/customers and from long-term debt payable to the Rural Utilities Service, among others. Transmittal at 2.

² While over the years the Commission has referred to them sometimes as "non-public utilities" or sometimes as "non-jurisdictional utilities" or sometimes as "exempt utilities," we here refer to market participants that are utilities that fall within the scope of section 201(f) of the Federal Power Act (FPA) as "non-public utilities." *See* 16 U.S.C. § 824(f) (2012).

and the outcome of hearing and settlement judge procedures.³ We also direct Hoosier to make a compliance filing with live tariff records, in eTariff format as explained in this order, for the Facilities.

I. Background

2. Schedule 2 of the PJM Tariff provides that PJM will compensate owners of generation and non-generation resources for the capability to provide reactive power to PJM to maintain transmission voltages. Specifically, Schedule 2 states that, for each month of Reactive Service provided by generation and non-generation resources in the PJM region, PJM shall pay each resource owner an amount equal to the resource owner's monthly revenue requirement, as accepted or approved by the Commission.⁴

3. Hoosier states that it is not a public utility directly subject to the Commission's jurisdiction under the Federal Power Act (FPA).⁵ Hoosier states that Livingston is a baseload, landfill methane-gas-fired facility consisting of three 5.3 MW Solar Taurus 60 turbine engines. Hoosier states that Orchard Hills consists of six General Electric Jenbacher 620 reciprocating internal combustion engines totaling 17.03 MW. Hoosier states that the Facilities provide capacity and energy to the PJM grid through interconnections with Commonwealth Edison Company.⁶

4. Hoosier explains that Livingston has been providing reactive service to support the PJM grid, without compensation, since Livingston began operations.⁷ Hoosier states that Orchard Hills also provided reactive power service without compensation, then suspended operations.⁸ Hoosier states that it expects Orchard Hills to resume operations in May 2019 and to provide reactive service again.⁹

³ Hoosier has committed to pay refunds as of the effective date to the extent that the Reactive Service rate it filed exceeds the rate determined at hearing.

⁴ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (4.0.0).

⁵ Transmittal at 2, 5.

⁶ *Id.* at 2.

⁷ *Id.* at 2-3.

⁸ *Id.*

⁹ *Id.*

5. Hoosier states that it calculated a total annual revenue requirement for Reactive Service of \$419,244 and that its proposed revenue requirement is consistent with *American Electric Power Service Corp.*¹⁰ Hoosier states that this revenue requirement consists only of the fixed costs attributable to the reactive power capability of the Facilities (Fixed Capability Component). Hoosier states that it is not seeking compensation for heating losses at this time.¹¹ Hoosier notes that in following the *AEP Methodology*, it determined four components associated with providing Reactive Service: (1) generators and exciters; (2) generator step-up transformers; (3) accessory electric equipment; and (4) balance-of-plant/remaining production plant investment.¹² Hoosier also states that, to determine the amount of investment properly attributed to reactive power production capability, it used a reactive allocation factor.¹³

6. Hoosier requests that the Commission accept the proposed revenue requirement and allow it to be effective as of March 1, 2019 or the first day of the month in which the Commission issues an order accepting the revenue requirement. Hoosier further requests that, if Orchard Hills has not returned to service as of the date of the Commission's order, the Commission accept Orchard Hills' revenue requirement effective as of the date of Hoosier's notification to PJM that Orchard Hills has returned to service. Hoosier also requests, if the Commission requires compliance with any filing requirements by Hoosier, a non-public utility, that the Commission waive those requirements to the extent necessary to permit Hoosier's proposed revenue requirement to become effective as requested herein.¹⁴

II. Supplemental Filing

7. Hoosier explains that it supplements its filing to provide one corrected exhibit and photographs of nameplates for the Facilities' generators. Hoosier also states that it now expects that testing of the Facilities will occur during the second week of June 2019. Hoosier further explains that it did not submit a tariff sheet because it is a non-public

¹⁰ *Id.* at 4-5 (citing *Am. Elec. Power Serv. Corp.*, 88 FERC ¶ 61,141 (1999), *order on reh'g*, 92 FERC ¶ 61,001 (2000) (*AEP Methodology*)).

¹¹ *Id.* at 3.

¹² *Id.* at 4.

¹³ *Id.*

¹⁴ *Id.* at 7.

utility. But, Hoosier states, it would be willing to submit a tariff sheet if the Commission requests one.¹⁵

III. Notice and Responsive Pleadings

8. Notice of Hoosier's filing was published in the *Federal Register*, 84 Fed. Reg. 11,757 (2019), with interventions and protests due on or before April 10, 2019. PJM and Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (IMM), each filed timely motion to intervene.

9. PJM states that Hoosier proposes an annual revenue requirement but does not explicitly identify a proposed monthly revenue requirement. PJM explains that, under Schedule 2 of the PJM Tariff, PJM must pay the monthly revenue requirement approved by the Commission. Thus, PJM states, if the Commission approves Hoosier's proposed annual revenue requirement, PJM will determine the monthly revenue requirement by dividing that value by 12 and rounding to the second decimal. PJM explains that, for Hoosier's proposed annual revenue requirement of \$419,244, if approved by the Commission, PJM would provide Hoosier \$34,937.00 per month.¹⁶

IV. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), PJM's and the IMM's timely, unopposed motions to intervene serve to make them parties to this proceeding.

B. Substantive Matters

11. Our preliminary analysis indicates that Hoosier's proposed Reactive Service revenue requirement has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Hoosier's filing raises 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. Accordingly, we accept Hoosier's proposed revenue requirement for filing, to become effective April 1, 2019 for Livingston, and effective for Orchard Hills as of the date of its return to service, subject to refund, and establish hearing and settlement judge procedures as to the revenue requirements for the Facilities.

¹⁵ Transmittal to Supplemental Filing at 1-2.

¹⁶ Comments at 2.

12. We find Hoosier has not provided adequate justification for its request to waive the 60-day prior notice requirement to allow its proposed Reactive Service revenue requirement for Livingston to become effective retroactively on March 1, 2019, prior to the date of filing.

13. However, we will waive the 60-day prior notice requirement and allow Hoosier's proposed Reactive Service revenue requirement to take effect for Livingston on April 1, 2019 (the earliest date falling on the first of the month after the date of filing), and for Orchard Hills on the date it returns to service, with the revenue requirements for the Facilities subject to refund and the outcome of hearing and settlement judge procedures.¹⁷ We direct Hoosier to make a compliance filing with live tariff records, in eTariff format, with the effective date of April 1, 2019 for Livingston, within 30 days of this order, to reflect the Commission's action in this order. In this compliance filing, we also direct Hoosier to submit live tariff records, in eTariff format, with the date of Orchard Hills' return to service, if known. If this date is unknown, Hoosier should use as the Tariff Record Proposed Effective Date 12/31/9998. If Hoosier uses the effective date of 12/31/9998 in the compliance filing, we direct Hoosier to submit, within 10 days of Orchard Hills' return to service, an informational filing in eTariff to specify the effective date for Orchard Hills' rate.

14. Although we are setting the Rate Schedule for hearing in its entirety, we note that Hoosier has not provided the reactive power test data to support Hoosier's calculation of the reactive power allocator, which may be excessive.¹⁸ We also note that the calculations do not describe the accessory electrical components and that the fixed charge rate may be excessive. We further note that Hoosier has not provided underlying support for the costs claimed.¹⁹ Lastly, we note that, in the exhibit provided in Hoosier's supplemental filing,

¹⁷ See *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

¹⁸ *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,245, at P 29 (2016) (explaining that reactive power revenue requirement filings must include reactive power test reports to support the reactive power allocator used in the *AEP* Methodology).

¹⁹ *Id.* (explaining that reactive power revenue requirement filings must provide cost information for all equipment used to produce reactive power in order to satisfy Commission regulations requiring a "summary statement of all cost . . . computations involved in arriving at the derivation of the level of the rate, in sufficient detail to justify the rate") (quoting 18 C.F.R. § 35.12(b)(2)(ii) (2018)); *Ariz. Pub. Serv. Co.*, 156 FERC ¶ 61,006, at P 36 (2016) (noting FPA section 205 and 18 C.F.R. § 35.13 and explaining that rate changes require "cost support and Commission review"), *order on reh'g and*

the fixed charge rates are inconsistent with the fixed charge rates provided in the corresponding exhibit in Hoosier's March 20, 2019 filing.

15. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. 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.²⁰ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.²¹ The settlement judge shall report to the Chief Judge and the Commission within thirty (30) 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 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) Hoosier's proposed Reactive Service revenue requirement is hereby accepted for filing, to become effective for Livingston on April 1, 2019, and for Orchard Hills on the date it returns to service, subject to refund, as discussed in the body of this order.

(B) Hoosier is directed to make a compliance filing within 30 days of this order, as discussed in the body of this order. If in the compliance filing Hoosier uses as the Tariff Record Proposed Effective Date 12/31/9998 for Orchard Hills, then Hoosier is also directed to submit, within 10 days of Orchard Hills' return to service, an informational filing in eTariff to specify the effective date for Orchard Hills' rate.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy

clarification, 161 FERC ¶ 61,022 (2017), *vacated on other grounds*, *Ariz. Pub. Serv. Co. v. FERC*, No. 17-73244, 2019 WL 2484164 (9th Cir. June 14, 2019) (mem.).

²⁰ 18 C.F.R. § 385.603 (2018).

²¹ 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 (5) days of this 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>).

Organization Act and by 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 Hoosier's Rate Schedule, 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 (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2018), the Chief 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.

(E) 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 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.

(F) 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.