

167 FERC ¶ 61,239  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

ALLETE, Inc.

Docket No. ER19-283-001

ORDER DENYING REQUEST FOR CLARIFICATION

(Issued June 20, 2019)

1. This order denies a request for clarification and expedited action (Request for Clarification) by ALLETE, Inc. (ALLETE) of the Commission's December 31, 2018 order<sup>1</sup> accepting for filing ALLETE's rate schedule (Rate Schedule) containing a revenue requirement for the provision of Reactive Supply and Voltage Control from Generation or Other Sources Service (Reactive Service), suspending it for a nominal period, subject to refund, and setting it for hearing and settlement judge procedures.

**I. Background**

2. On November 2, 2018, as supplemented on December 7, 2018, ALLETE filed a revised, cost-based revenue requirement (November 2 Filing) for its provision of Reactive Service under Schedule 2 of the Midcontinent Independent System Operator, Inc. (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).

3. In the December Order, the Commission found that ALLETE's filing had not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Thus, the matters were set for a trial-type evidentiary hearing and settlement judge procedures.<sup>2</sup>

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<sup>1</sup> *ALLETE, Inc.*, 165 FERC ¶ 61,278 (2018) (December Order).

<sup>2</sup> *Id.* PP 8-9.

(continued ...)

4. On January 30, 2019, ALLETE filed the Request for Clarification, seeking a determination that sections 35.10(b) and (c)<sup>3</sup> of the Commission’s regulations “did not require ALLETE to provide a redline comparison” of the proposed reactive revenue requirement<sup>4</sup> against either (1) ALLETE’s previous system-wide reactive power Schedule 2 rate established by a 1996 “black box” settlement in the Docket No. ER96-1580-000 proceeding (Settlement Rates)<sup>5</sup> or (2) Schedule 2 of ALLETE’s Open Access Transmission Tariff (OATT) which incorporated the Settlement Rates prior to ALLETE joining MISO in 2001 (OATT Rates).<sup>6</sup> ALLETE argues that the Commission’s regulations<sup>7</sup> requiring a redline should not apply because ALLETE did not revise the Settlement Rates or the OATT Rates.<sup>8</sup> ALLETE states that, in fact, its OATT Rates were superseded when ALLETE joined MISO in 2001, so the OATT is no longer the tariff governing transmission service over ALLETE’s transmission system.<sup>9</sup> ALLETE argues that the regulations only apply to different versions of the same document and a redline would not have been useful.<sup>10</sup> ALLETE relies on Commission precedent stating that a redline is not required where a party “was not modifying tariff sheets already on file with the Commission, and thus there was nothing to redline.”<sup>11</sup>

5. In the alternative, ALLETE requests that the Commission clarify that, when accepting the November 2 Filing, the Commission determined that ALLETE satisfied all of the Commission’s filing requirements, including section 35.10, and that a redline was among the potential applicable regulatory requirements that was not necessary for the

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<sup>3</sup> 18 C.F.R. §§ 35.10(b) and (c) (2018).

<sup>4</sup> Request for Clarification at 1.

<sup>5</sup> See *Minn. Power & Light Co.*, Docket No. ER96-1580-000 (1998) (delegated order).

<sup>6</sup> See *Minn. Power & Light Co.*, Docket No. OA96-164-002 (1998) (delegated order).

<sup>7</sup> 18 C.F.R. §§ 35.10(b) and (c) (2018).

<sup>8</sup> Request for Clarification at 6.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.* at 7-9.

<sup>11</sup> *Id.* at 10 (quoting *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,164, at P 143 (2008) (*MISO*)).

(continued ...)

Commission's review of the November 2 Filing.<sup>12</sup> ALLETE notes that its November 2 Filing included a request for waiver of any part of the Commission's regulations "that might be deemed to require submittal of additional information that is not necessary for the Commission's review of ALLETE's proposed revenue requirement."<sup>13</sup>

6. Additionally, ALLETE requests that clarification be expedited "to provide certainty regarding the legal effect of the Commission's acceptance of" its Rate Schedule.<sup>14</sup>

7. On February 13, 2019, Commission Trial Staff (Trial Staff) filed an answer (Answer) opposing the Request for Clarification. Trial Staff notes that the language of section 35.10 is clear, and unambiguously states that revisions to unmarked versions of revised tariffs are void even where the Commission accepts the filing.<sup>15</sup> Trial Staff additionally notes that ALLETE had an existing tariff on file with the Commission establishing its rate for reactive service.<sup>16</sup> Trial Staff argues that there is no basis to suggest that ALLETE's filing was for a new tariff, given that the main substantive changes were to the level of compensation and the retirement of two units.<sup>17</sup> Further, Trial Staff argues that the filing does not qualify as an initial rate filing since an initial rate requires that both the service and the customer be new, whereas here both the service and the customers will be the same; thus, the service is best categorized as a rate change.<sup>18</sup>

8. Trial Staff also argues that the request should be rejected because, as a result of ALLETE's failure to redline, the public was not placed on notice of the fact that ALLETE was in fact seeking a "three-fold rate increase for provision of reactive power service from an existing annual revenue requirement of \$1,412,275.20 to

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<sup>12</sup> Request for Clarification at 2, 11.

<sup>13</sup> *Id.* at 11 (quoting November 2 Filing at 7).

<sup>14</sup> *Id.* at 2.

<sup>15</sup> Answer at 5 (citing 18 C.F.R. § 35.10(c) (acceptance of a filing that contains unmarked changes does not "constitute acceptance of such unmarked changes"))).

<sup>16</sup> *Id.* at 3.

<sup>17</sup> *Id.* at 8.

<sup>18</sup> *Id.* at 9-10.

(continued ...)

\$4,273,038.00.”<sup>19</sup> Further, according to Trial Staff, failure to provide a redline costs parties additional time and resources to understand the content and nature of the filing.<sup>20</sup>

9. On February 22, 2019, ALLETE filed a motion for leave to file an answer and answer in response to Trial Staff (ALLETE’s Answer). ALLETE argues that, contrary to Trial Staff’s view, the November 2 Filing provided sufficient notice for parties as to whether ALLETE’s proposed revenue requirement was just and reasonable.<sup>21</sup> ALLETE reiterates the argument from its Request for Clarification that a redline was not required because it was not amending a document in effect and on file with the Commission.<sup>22</sup> Similarly, ALLETE suggests that Trial Staff is incorrectly reading section 35.10, which does not apply because ALLETE does not have a document on file with the Commission.<sup>23</sup> ALLETE reiterates its alternative request for a waiver of section 35.10’s requirements.<sup>24</sup> Finally, ALLETE expresses a willingness to make a supplemental filing including the appropriate redline, as requested by Trial Staff, if so ordered by the Commission.<sup>25</sup>

## II. Discussion

10. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure prohibits an answer to an answer unless otherwise ordered by the decisional authority.<sup>26</sup> We accept ALLETE’s Answer because it has provided information that assisted us in our decision-making process.<sup>27</sup>

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<sup>19</sup> *Id.* at 1.

<sup>20</sup> *Id.* at 2.

<sup>21</sup> ALLETE’s Answer at 2-5.

<sup>22</sup> *Id.* at 5-7.

<sup>23</sup> *Id.* at 7-9.

<sup>24</sup> *Id.* at 9-12.

<sup>25</sup> *Id.* at 12.

<sup>26</sup> 18 C.F.R. § 385.213(a)(2) (2018).

<sup>27</sup> Because ALLETE filed a motion for clarification, Trial Staff’s Answer is permissible. *See PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,035, at P 16 (2015).

(continued ...)

11. As discussed below, we deny ALLETE's Request for Clarification and require ALLETE to file the redline required by 18 C.F.R. § 35.10(b) and discussed in this order within 15 days of the date of this order.

12. Section 35.10(b) of the Commission's regulations provides that, when a utility proposes to "supersede or change" a rate schedule, the utility must also file "a marked version of the rate schedule, tariff or service agreement sheets or sections showing additions and deletions."

13. We find that ALLETE filed a revised rate rather than an initial rate. The Commission has defined an initial rate as a rate which provides for new service to a new customer.<sup>28</sup> Even if a party characterizes a filing as an initial rate filing, the Commission will conclude that a filing constitutes a rate change where that service has previously been provided.<sup>29</sup> Here, ALLETE had an existing tariff on file with the Commission established by its 1996 settlement and ALLETE has been recovering its reactive power revenue requirement from MISO under the MISO Tariff. ALLETE itself stated that the November 2 Filing was providing "a revised reactive power requirement."<sup>30</sup> Further, ALLETE explained that "MISO currently applies the Schedule 2 rate included in ALLETE's ER96-1580-000 settlement to transmission customers taking service in the MP Pricing Zone."<sup>31</sup> Therefore, the service to be provided by ALLETE under the November 2 Filing is not a new service to a new customer because ALLETE has been collecting Reactive Service charges from MISO customers since 2001 using the Settlement Rates.

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<sup>28</sup> *Nevada Power Co.*, 55 FERC ¶ 61,379, at 62,152 (1991); *see also Florida Power & Light Co.*, 65 FERC ¶ 61,411, at 63,128 n.28 (1993) (holding that a new service to an existing customer is not an initial rate); *Chehalis Power Generating, L.P.*, 152 FERC ¶ 61,050, at P 14 (2015) ("In order for a rate to be considered an initial rate, it must provide for a new service to a new customer" (citing *Sw. Elec. Power Co.*, 39 FERC ¶ 61,099, at 61,293 (1987))).

<sup>29</sup> *Enel Green Power HillTopper Wind, LLC*, 166 FERC ¶ 61,234, at P 1 n.5 (2019) ("Although HillTopper explains that it has never had a Reactive Service revenue requirement included in any rate schedule or tariff filed with the Commission, we conclude that this is a proposed rate change under section 205(d) of the FPA, rather than an initial rate, because HillTopper has been providing reactive power service to PJM prior to the instant filing" (citing *Calpine Oneta Power, L.P.*, 103 FERC ¶ 61,338, at P 11 (2003))).

<sup>30</sup> November 2 Filing at 2.

<sup>31</sup> *Id.* at 3.

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14. Thus, because the November 2 Filing was a revision to the revenue requirement under which ALLETE collected Reactive Service charges from MISO customers since 2001, section 35.10(b) applies and ALLETE was required to file a redline.

15. Additionally, we disagree with ALLETE's argument that it was not required to file a redline because the Settlement Rates involved different documents rather than separate versions of the same document.<sup>32</sup> As a filing to "supersede or change the provisions of a rate schedule, tariff, or service agreement previously filed with the Commission,"<sup>33</sup> ALLETE's November 2 Filing triggered the requirements of section 35.10(b).

16. ALLETE's argument that such a redline "would not be useful"<sup>34</sup> is irrelevant. Section 35.10(b) does not permit a public utility to determine whether redlining provides benefits. Further, even if the rate schedules are vastly different, providing a redline still allows the Commission and interested parties to more easily identify changes in the applicable rate. As noted by Trial Staff, failure to provide a redline costs parties additional time and resources.

17. ALLETE claims that requiring a redline here would depart from Commission precedent applying section 35.10(b). We find the cases ALLETE cites to be distinguishable. In *MISO*, as ALLETE notes, a redlined version was not required where it "was not modifying tariff sheets already on file with the Commission, and thus there was nothing to redline."<sup>35</sup> However, in that case, the Commission noted that MISO "properly submitted redline strikeout versions of tariff sheets" that were already on file.<sup>36</sup> Here, as already noted, ALLETE revised the reactive power revenue requirement under which it collected the Settlement Rates from MISO customers. Likewise, in *Tampa Electric Co.*, the Commission granted a waiver of the section 35.10 requirements for a new Attachment K.<sup>37</sup>

18. We also reject ALLETE's alternative argument that the Commission waived the requirements of section 35.10 by accepting the November 2 Filing. ALLETE relies on its nonspecific catchall request of waivers of any part of the Commission's regulations "that

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<sup>32</sup> Request for Clarification at 6-10.

<sup>33</sup> 18 C.F.R. § 35.10(b) (2018).

<sup>34</sup> Request for Clarification at 6.

<sup>35</sup> *Id.* at 10 (quoting *MISO*, 123 FERC ¶ 61,164 at P 143).

<sup>36</sup> *MISO*, 123 FERC ¶ 61,164 at PP 143-144.

<sup>37</sup> Request for Clarification at 10-11 (citing *Tampa Electric*, 124 FERC ¶ 61,026, at PP 78-79 (2008)).

(continued ...)

might be deemed to require submittal of additional information that is not necessary for the Commission's review of ALLETE's proposed revenue requirement."<sup>38</sup> This catchall request was never granted or addressed in the December Order. Further, by the express terms of section 35.10, its requirements are not waived by the Commission's acceptance of a filing.<sup>39</sup> Thus, no waiver was granted.

19. Therefore, consistent with this finding, we require ALLETE to file the redline discussed in this order as a supplement to the record.

20. ALLETE's request for expedited treatment is likewise denied. A party's desire for certainty in advance of settlement negotiations is an insufficient basis for expedition.

The Commission orders:

(A) ALLETE's Request for Clarification is hereby denied, as discussed in the body of this order.

(B) ALLETE shall, consistent with the discussion above and in compliance with 18 C.F.R. § 35.10(b), file marked versions of its revised, cost-based revenue requirement for its provision of Reactive Service under Schedule 2, within 15 days of the date of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>38</sup> *Id.* at 11 (quoting November 2 Filing at 7).

<sup>39</sup> 18 C.F.R. § 35.10(c) (2018) ("nor will any acceptance of the filing by the Commission constitute acceptance of such unmarked changes").