

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

FPL Energy Marcus Hook, L.P.

Docket No. ER05-316-001

ORDER ON REHEARING

(Issued May 6, 2005)

1. Exelon Corporation (Exelon) seeks rehearing of an order issued in this proceeding on January 31, 2005.¹ For the reasons discussed below, we will grant, in part, and deny, in part, rehearing.

Background

2. On December 8, 2004, FPL Energy Marcus Hook, L.P. (Marcus Hook) filed a proposed rate schedule specifying its revenue requirement for providing cost-based Reactive Support and Voltage Control from Generation Sources Service (Reactive Power). Marcus Hook stated that because it is a non-utility generator not generally subject to traditional rate regulation, it had incorporated a return on equity and overall rate of return based on a proxy, derived from the capital structure and return on equity for PECO Energy Company (PECO), the owner of the transmission system with which it is connected. Marcus Hook also stated that it had performed its cost calculations in accordance with the ratemaking methodology prescribed by the Commission in *American Electric Power Service Corp.*²

¹ *FPL Energy Marcus Hook, L.P.*, 110 FERC ¶ 61,087 (2005) (January 31 Order).

² 88 FERC ¶ 61,141 (1999) (*AEP*). The *AEP* methodology relies on an allocation factor to segregate the reactive power function from the real power production function and is based on the capability of a given generator (as opposed to its hours of operation). See *Principles for Efficient and Reliable Reactive Power Supply and Consumption*, Staff Report, Docket No. AD05-1-000 (February 4, 2005).

3. Marcus Hook's filing was protested by Exelon. In its protest, Exelon questioned, among other things, whether the methodology identified by the Commission in *AEP* is appropriate in this case, given the type of facility that will be operated by Marcus Hook. Exelon also asserted that Marcus Hook's calculation of its proposed Fixed Charge Rate failed to account for the existence of Accumulated Deferred Income Taxes (ADIT).

4. In the January 31 Order, we accepted Marcus Hook's proposed rate schedule for filing, suspended it for a nominal period, subject to refund, and set for hearing and settlement judge procedures a number of issues.³ In doing so, we rejected Exelon's request that the appropriateness of applying the *AEP* methodology should be set for hearing. We stated that *all* generators seeking to recover a Reactive Power revenue requirement based on actual cost data are required to use the methodology employed in *AEP*. We also rejected Exelon's request that we summarily rule on Exelon's argument that an ADIT adjustment be required in this case.

Request for Rehearing

5. On rehearing, Exelon requests clarification that in setting the justness and reasonableness of Marcus Hook's Reactive Power rate for hearing, the Commission did not intend to limit the inquiry to the specific issues enumerated by the Commission in the January 31 Order. Instead, Exelon urges the Commission to clarify that the hearing should be open to any and all issues entailed in determining whether Marcus Hook's rates are just and reasonable. Exelon also asserts as error the Commission's determination not to decide, as a matter of law, that an ADIT adjustment is a necessary component of

³ Specifically, we set for hearing: (i) whether Marcus Hook's proposed revenue requirement is excessive given the amount of Reactive Power produced by the Marcus Hook Facility and the costs Marcus Hook incurs to produce it; (ii) whether reliance on PECO's overall rate of return and its individual components is appropriate; (iii) whether Marcus Hook has adequately supported its proposed Operations Expense, Maintenance Expense, and Administrative and General Expenses; (iv) whether Marcus Hook has failed to include cost data required by the Commission's Uniform System of Accounts; (v) whether Marcus Hook's proposed rate should reflect an ADIT adjustment; (vi) whether Marcus Hook's proposed power factor has been justified; and (vii) whether Marcus Hook has properly allocated its costs to the generator portion of its combustion turbine. *See* January 31 Order, 110 FERC ¶ 61,087 at P 15.

Marcus Hook's proposed rate.⁴ Exelon argues that because Marcus Hook relied on a levelized ratemaking methodology in calculating its proposed rate, it should be required to make an ADIT adjustment, regardless of whether its facility has commenced operations.⁵

6. Exelon argues that applying a levelized ratemaking methodology, Marcus Hook took the present value of the capital costs attributable to its facility (*e.g.*, return on equity, income taxes, depreciation) and then spread out the recovery of these costs in its proposed rates over the life of its facility. Exelon asserts, however, that this calculation must include an adjustment for deferred taxes in order to reflect the value that Marcus Hook will receive over the life of the facility, as created by the difference between the book and tax depreciation of the facility.⁶ Exelon notes that, by contrast, had Marcus Hook used a non-levelized ratemaking methodology to calculate its proposed rate, based on a single test year, only in that case would the appropriate ADIT adjustment be zero (assuming, that is, that the ADIT balance over that test year was, in fact, zero).

7. Finally, Exelon requests that the Commission clarify its holding that the method for developing Marcus Hook's revenue requirement be calculated in accordance with *AEP*, without regard to the Commission's decision in *Duke Energy Vermillion*.⁷ Exelon points out that in *Duke Vermillion*, the Commission established a hearing, on its own motion, to determine the justness and reasonableness of the Reactive Power rate proposed in that case and also set for hearing the issue of whether the methodology identified in

⁴ As noted above, the Commission set the issue for hearing, namely, "whether Marcus Hook's proposed rate should reflect an ADIT adjustment[.]" *Id.*

⁵ Exelon notes that in the January 31 Order, the Commission relied on this factor, *i.e.*, the commencement of operations, as the determinative factor in deciding whether an ADIT adjustment will be required. *See Id.* at P 16 ("Marcus Hook asserts in its answer, and we agree, that an adjustment in this case may not be required to the extent that the facility at issue has not commenced operations.").

⁶ Exelon request for rehearing at 3, *citing Maine Public Service Co.*, 85 FERC ¶ 61,412 at 62,564 (1998) and *Ozark Gas Transmission System*, 53 FERC ¶ 61,451, *order on remand*, 50 FERC ¶ 61,252 (1990).

⁷ 109 FERC ¶ 61,370 (2004) (*Duke Vermillion*).

AEP should be applied. Exelon argues that here, as well, the Commission should set for hearing the issue of whether the *AEP* methodology is appropriately applied to the rate proposed by Marcus Hook.

Discussion

8. We will grant, in part, and deny, in part, rehearing of the January 31 Order. First, we will grant Exelon's request that we expand the scope of the evidentiary hearing established in the January 31 Order to include all issues relating to the justness and reasonableness of Marcus Hook's proposed rate. While as noted above, we identified a number of issues that can and should be explored at hearing (in the event settlement of these issues is not possible), we agree that there may be additional, related issues concerning Marcus Hook's proposed rate that may also warrant exploration at hearing.

9. We will also grant, in part, Exelon's request concerning the need to make an ADIT adjustment in this case. Specifically, we agree that in accordance with long-established Commission policy,⁸ deferred taxes must be reflected in the determination of Marcus Hook's cost-based rates. To the extent Marcus Hook proposes to include the cost of its facilities in rate base, it must likewise reflect any ADIT associated with those facilities in rate base, including any ADIT generated in its 2005 test year.⁹ As such, we hereby clarify that issues relating to the appropriate amount of ADIT to be included in the determination of rate base should be considered at hearing.

10. Finally, we will deny Exelon's request for rehearing regarding our reliance on *AEP*. While Exelon relies on *Duke Vermillion* for the proposition that the applicability of *AEP* should be treated as a fact issue in this case, we clarified our policy on this issue in the January 31 Order. Specifically, we stated that all generators seeking to recover a Reactive Power revenue requirement based on actual cost data are required to use the

⁸ See, e.g., *Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes*, Order No. 144, 15 FERC ¶ 61,133 (1981).

⁹ In its filing, at Schedule 3, Marcus Hook relies on projected test year data for 2005, reflecting a fixed federal tax component of 35 percent.

methodology employed in *AEP*.¹⁰ The purpose and function of this ratemaking methodology was addressed by the Commission in *Westwood Generation*. As we explained, the *AEP* methodology creates a standardized method that generators of all types can use, produces greater clarity in future requests for Reactive Power recovery, and more efficiently utilizes Commission resources. *Duke Vermillion* is inconsistent with our general policy, as set forth in *Westwood Generation* and applied in numerous cases.¹¹ *Duke Vermillion* also set this issue for hearing in a footnote, without explanation as to why it was deviating from our existing policy rationale in *Westwood Generation*, and therefore, we find no basis for following *Duke Vermillion* here. Nor does Exelon cite any countervailing considerations in its rehearing request, or propose an alternative methodology.

11. We recognize that parties have concerns with the *AEP* methodology, but such concerns are with policy and, as we provided in *Westwood Generation*, need to be applied on a standardized basis. These issues, therefore, are not specific factual questions amenable to individual case-by-case litigation. Rather, any changes need be implemented on a generic basis, and the Commission is continuing to examine the potential need for such changes in Docket No. AD05-1-000. Until the Commission finds that a change is warranted, the *AEP* methodology has been shown to provide a just and reasonable method for evaluating the costs to be included in determining reactive power payments.

¹⁰ January 31 Order, 110 FERC ¶ 61,087 at P 5, citing *WPS Westwood Generation, L.L.C.*, 101 FERC ¶ 61,290 (2002) (*Westwood Generation*) (standardizing the methodology for reactive power compensation by indicating that generators seeking reactive power recovery that have actual cost data and support should use the method employed in *AEP*).

¹¹ See, e.g., *CED Rock Springs, LLC*, 110 FERC ¶ 61,083 at P 14 (2005); *PPL University Park, LLC*, 108 FERC ¶ 61,122 at P 19 (2004); and *Rolling Hills Generating, L.L.C.*, 109 FERC ¶ 61,069 at P 12 (2004).

The Commission orders:

Exelon's request for rehearing of the January 31 Order is hereby granted, in part, and denied, in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.