

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dynegy Midwest Generation, Inc.

Docket Nos. ER05-270-002
EL05-72-001

ORDER HOLDING IN ABEYANCE
SETTLEMENT JUDGE AND HEARING PROCEDURES, AND
ALLOWING FURTHER ARGUMENT

(Issued May 5, 2005)

1. Dynegy Midwest Generation, Inc. (Dynegy) requests rehearing of the Commission's March 25, 2005 order¹ that instituted an investigation, under section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e (2000), into the continued justness and reasonableness of a Dynegy rate schedule. The order also established a refund effective date, and hearing and settlement judge procedures. We will hold in abeyance the settlement judge and hearing procedures ordered in the March 25 Order. We will permit Dynegy to file arguments concerning whether the settlement judge and hearing procedures should proceed, and parties to file answers.

Background

2. On November 30, 2004, in Docket No. ER05-270-000, Dynegy submitted a rate schedule proposing a cost-based revenue requirement for providing reactive power in the control area of Illinois Power Company (Illinois Power), using eight fossil-fueled generating units (Rate Schedule). No entity filed comments or protests in response to the Commission's December 3, 2004 notice of Dynegy's submittal. The Rate Schedule was accepted for filing by delegated letter order, with an effective date of January 1, 2005.²

¹ *Dynegy Midwest Generation, Inc.*, 110 FERC ¶ 61,358 (2005) (March 25 Order).

² January 25, 2005 Letter Order by the Director, Division of Tariffs and Market Development-Central.

3. Illinois Power, an intervenor in the proceeding and a former owner of the eight generating units, filed a rehearing request, alleging that the Rate Schedule had not been shown to be just and reasonable, and may be unjust, unreasonable, or unduly discriminatory. Illinois Power compared Dynegy's numerical data, for net plant book value, level of non-fuel operations and maintenance (O&M) expenses, and allocation of fixed O&M expenses, to its own data. Illinois Power then stated that Dynegy's revenue requirement was nearly three-and-one half times greater than the revenue requirement that it had calculated, in 1998, for largely the same units. It asked the Commission to make acceptance of the Rate Schedule subject to refund and hearing procedures, and to suspend the hearing procedures pending settlement discussions among interested parties.

4. In the March 25 Order, the Commission denied Illinois Power's rehearing request, explaining that the Rate Schedule, which was currently in effect, had been accepted without suspension.³ Nevertheless, because of concern over Illinois Power's statements, the Commission acted upon its own motion, under section 206 of the FPA, to initiate an investigation and establish hearing and settlement judge procedures and a refund effective date of 60 days after publication in the *Federal Register* of notice of the initiated proceeding⁴ Dynegy's request for rehearing of the Commission's order followed.

Rehearing Request

5. Dynegy recognizes that the Commission has the authority to initiate the ordered section 206 investigation. It nevertheless asks the Commission to hold in abeyance its directives establishing a refund effective date and hearing and settlement judge procedures, so as to provide Dynegy an opportunity to respond substantively to Illinois Power's allegations before being required to participate in settlement and hearing procedures. Dynegy offers that if the Commission does this, Dynegy will file its answer within five days of a Commission order. It states that if, after review of Dynegy's response, the Commission is still of the opinion that these directives should be implemented, it can so direct. Dynegy states that the existing Rate Schedule involves a material amount of revenue, and asks that this revenue not be put at risk unnecessarily without first affording Dynegy due process.

³ See section 205(e) of the FPA, 16 U.S.C. § 824d(e) (2000).

⁴ Docket No. EL05-72-001. The Commission's notice of the initiated proceeding was printed in the *Federal Register* on April 8, 2005. 70 Fed. Reg. 17,986. The refund effective date is therefore June 7, 2005.

6. Dynegy asserts that the extraordinary measures implemented by the Commission are not consistent with the typical treatment accorded a party who raises objections for the first time on rehearing. It points out that Illinois Power first raised its allegations on rehearing. Dynegy explains that it did not respond then because of the Commission's prohibition on responses to rehearing requests, and states that it is disadvantaged by the late allegations. It further maintains that the allegations equate to a complaint, and that, under longstanding Commission precedent, the Commission should have directed Illinois Power to raise its allegations in a separate complaint proceeding to which Dynegy could file an answer. It continues that Illinois Power's allegations pertain to accounting issues, and that no material issues of fact exist. Dynegy urges the Commission to hear a substantive response to Illinois Power's allegations before implementing the measures of the March 25 Order.

Illinois Power's Answer

7. On April 4, 2005, Illinois Power filed an answer, contending that because Dynegy's rehearing request asks the Commission to hold the ordered settlement and hearing procedures in abeyance, Dynegy has, in effect, filed a motion, to which Commission rules permit response. Alternatively, Illinois Power submits that good cause exists for the Commission to permit it to respond to Dynegy's rehearing request.

Discussion

8. We will exercise our discretion, under Rule 713(d)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. ¶ 385.713(d) (2004), and afford Dynegy, as it has requested, an opportunity to submit arguments to the Commission, within five days of the date of issuance of this order, concerning whether the settlement judge and hearing procedures ordered in the March 25 Order should proceed. Answers may be filed within 15 days of the date of Dynegy's submittal. To this purpose, we will hold in abeyance the settlement judge and hearing procedures ordered in the March 25 Order, pending further Commission order.

The Commission orders:

(A) The settlement judge and hearing procedures ordered in the March 25 Order are hereby held in abeyance pending further Commission order.

(B) Dynegy is hereby permitted to file, with five days from the date of issuance of this order, arguments concerning whether the hearing and settlement judge procedures ordered in the March 25 Order should proceed.

(C) Parties are hereby permitted to file answers within 15 days of the date of Dynegey's submittal.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.