

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Orion Power Midwest, L.P.

Docket Nos. ER06-993-002
ER06-993-003
ER06-993-004

ORDER ON COMPLIANCE AND GRANTING CLARIFICATION

(February 16, 2007)

1. On November 1, 2006, as amended on January 3, 2007, Orion Power MidWest, L.P. (Orion) filed revised tariff sheets in compliance with the Commission's October 13, 2006 order.¹ On November 13, 2006, Orion filed a request for clarification of the October 13 Order. In this order, the Commission accepts the revised tariff sheets for filing, effective May 16, 2006, and grants Orion's request for clarification.

Background

2. On May 15, 2006, Orion submitted for filing, pursuant to section 119 of PJM Interconnection, LLC's (PJM) Open Access Transmission Tariff (OATT)² and section 205 of the Federal Power Act (FPA),³ tariff sheets to implement cost of service recovery rates for the 244 megawatt combined cycle generating facility at its Brunot Island generating station (BI Facilities) located in Pennsylvania. In the October 13 Order, the

¹ *Orion Power MidWest, L.P.*, 117 FERC ¶ 61,049 (2006) (October 13 Order).

² *PJM Interconnection, LLC*, FERC Electric Tariff Sixth Revised Volume No. 1, Original Sheet No. 224I.

³ 16 U.S.C. § 824d (2000).

Commission accepted and suspended the tariff sheets for filing, effective May 16, 2006, subject to refund, and to the conditions discussed in the order.⁴

3. In the October 13 Order, the Commission rejected Orion's proposal to increase its annual O&M expense by \$2,169,000 annually. The Commission found that the expenses Orion proposed to recover were extraordinary maintenance expenses and that Orion did not provide sufficient support that the costs for the projects would actually be incurred during the effective period of Orion's rates, or that Orion had accurately calculated the costs of the projects. The Commission required Orion to remove the proposed increase and stated that it was without prejudice to Orion's making a section 205 filing to collect for project-specific costs once such costs were known.⁵

4. Also in the October 13 Order, the Commission rejected Orion's proposed monthly project investment tracker.⁶ Based on Orion's statement that it did not anticipate any project investments during the proposed term of the cost of service recovery,⁷ the Commission ordered Orion to remove the tracker, and stated that Orion could file under section 205 if future events triggered the need to collect project investment costs.⁸

5. In its November 1 compliance filing, Orion submitted revised tariff sheets that decreased its Annual Fixed Revenue Requirement to remove the proposed O&M expense increase and removed the proposed monthly project investment tracker and the proposed

⁴ Orion was directed to make a compliance filing to (1) remove the provision allowing it to collect up to \$10 million in unspecified project investments from its tariff; and (2) remove the annual cost of \$2,169,000 from its operation and maintenance expenses (O&M).

⁵ *Orion Power MidWest, L.P.*, 117 FERC ¶ 61,049 at P 17.

⁶ The tracker had been designed to permit Orion to recover the costs of project investments, which were either planned capital projects necessary to maintain the reliability of the BI Facilities or unplanned capital projects necessary to return the BI Facilities to service following a forced outage.

⁷ The tracker was also rejected based on the fact that it was inconsistent with cost of service recovery rates under PJM's OATT; instead, the tracker was presented in the context of a Deactivation Avoidable Cost Credit (DACC) formula under section 114 of the PJM OATT. Further, even if Orion had elected to file under the DACC formula, its request for \$10 million is outside of what is permitted by the PJM OATT.

⁸ *Orion Power MidWest, L.P.*, 117 FERC ¶ 61,049 at P 16.

project investment cap. On January 3, 2007, Orion submitted revised tariff sheets to correct typographical errors and an incorrect rate schedule designation.

6. In its November 13 filing, Orion asked the Commission to clarify that Orion may submit a limited section 205 filing, consistent with the Commission's abbreviated filing requirements set forth in section 35.13(a)(2)(ii) of the Commission's regulations,⁹ to collect only those costs associated with specific maintenance projects, rather than a general rate case. Orion also asked the Commission to clarify that Orion could make a limited section 205 filing to recover the costs of any future project investment through the use of a monthly project investment tracker, rather than a general rate case.

Notice and Responsive Pleadings

7. Notice of Orion's November 1 compliance filing was published in the *Federal Register*, 71 Fed. Reg. 66,765 (2006), with interventions and protests due on or before November 22, 2006. Notice of Orion's January 3 amended compliance filing was published in the *Federal Register*, 72 Fed. Reg. 1,717 (2007), with interventions and protests due on or before January 24, 2007. No interventions or protests were filed.

Commission Determination

8. The revised tariff sheets submitted by Orion are in compliance with the October 13 Order and are accepted, effective May 16, 2006, as requested.

9. We will allow Orion to make a limited section 205 filing to recover the costs of any future project investments, including related O&M expenses, through the use of a monthly project investment tracker. In the October 13 Order, the Commission indicated that it would be appropriate for Orion to file under section 205 to recover the costs of project investments and related O&M expenses once these costs are known.¹⁰ An abbreviated filing is appropriate in this circumstance because rate recovery is anticipated to be in effect for a short amount of time (less than two years), and the projects and their costs cannot be predicted in advance.¹¹ However, we note that, if Orion files to collect these costs, it is still required to demonstrate that any costs will actually be incurred during the effective period of the rates, and to support its calculation of these costs. Additionally, if Orion files to recover costs pursuant to a monthly project investment tracker, it must file the tracker at that time.

⁹ 18 C.F.R. § 35.13(a)(2)(ii) (2006).

¹⁰ *Orion Power MidWest, L.P.*, 117 FERC ¶ 61,049 at P 17.

¹¹ *See* 18 C.F.R. § 35.13(a)(2)(ii) (2006).

The Commission orders:

(A) The revised tariff sheets are accepted, effective May 16, 2006, as discussed in the body of the order.

(B) The Commission grants clarification of its October 13 Order, as discussed in the body of the order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.