

Client Alert

Corporate Practice Group

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FERC Reaffirms Filing Requirement For Jurisdictional Service Where No Compensation Is Received

The Federal Energy Regulatory Commission (FERC) recently issued an Order on Rehearing in *Chehalis Power Generating, L.P.*, Docket No. ER05-1056-008, where it reaffirmed its October 17, 2013 finding that Chehalis Power Generating, L.P.'s (Chehalis) May 2005 filing of a rate schedule was a changed rate and not an initial rate. The Rehearing Order has potential implications with respect to FERC-jurisdictional service provided for no compensation.

Background

The background of this proceeding spans more than a decade, beginning in May 2005, when Chehalis filed a rate schedule for the provision of Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service) to Bonneville Power Administration (BPA) as an initial rate filing under Section 35.12 of FERC's regulations. In its July 2005 Order Accepting and Suspending Proposed Rate Schedule and Establishing Hearing and Settlement Procedures (July Order), FERC disagreed with Chehalis' characterization that the rate schedule was an initial rate schedule. Specifically, FERC stated that an initial rate schedule must involve a new customer and a new service, but because Chehalis had been providing Reactive Service to BPA without compensation under the interconnection agreement, the rate schedule was for a changed rate.

In its December 2005 Order Denying Request for Rehearing, FERC reaffirmed its finding. Chehalis petitioned the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit), which remanded the case back to FERC to address whether or not the zero rate for Reactive Service should have been filed with FERC. In its February 2011 Order on Remand, FERC found that Chehalis should have filed a rate schedule for service to BPA and affirmed that the May 2005 rate schedule filing was a changed rate. In its November 2012 Order Denying Rehearing, FERC reaffirmed its prior finding.

Chehalis again petitioned the DC Circuit, but FERC moved for a voluntary remand to consider Chehalis' arguments. FERC issued its Order on Voluntary Remand and Clarifying Policy on Filing of Reactive Power Service Rate Schedule in October 2013 (October 2013 Order), wherein it (i) reaffirmed its prior finding that Chehalis' rate schedule was a changed rate and (ii) clarified its policy with respect to jurisdictional Reactive Service rate

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schedules for which no compensation is provided, stating that such rate schedules containing the rates, terms, and conditions are to be filed with FERC on a prospective basis. FERC also directed its Staff to conduct a workshop to explore the mechanics for filing Reactive Service rate schedules for which there is no compensation.

In October 2013, FERC issued its Notice Announcing Workshop in Zero Rate Reactive Power Rate Schedules, Docket No. AD14-1-000 (Workshop Notice). The workshop was held in December 2013 and comments filed in January 2014. No further FERC action has been taken in that docket.

The Rehearing Order was issued in response to the October 2013 Order.

Rehearing Order

In continuing to hold that Chehalis' May 2005 rate schedule filing was for a changed rate, FERC focuses on the distinction between an initial rate and a changed rate. Applying the same criteria as it did in the July Order, FERC restates the criteria that must be applied for a rate schedule to be considered an initial rate: the rate schedule must be a new service to a new customer. Because Chehalis had been providing Reactive Service to BPA under the interconnection agreement prior to the May 2005 rate schedule filing, FERC states that it properly deemed the filing a changed rate. Focusing on Chehalis' argument that a document cannot be considered to be a schedule showing rates and charges for service if no rates and charges are prescribed, FERC states that its:

regulations provide that utilities must submit to the Commission rate schedules governing *not just* rates and charges, but also the provision of "electric service." 18 C.F.R. § 35.1(a) thus provides: "Every public utility shall file with the Commission ... full and complete rate schedules and tariffs ... clearly and specifically setting forth all rates and charges for any transmission or sale of electric energy subject to the jurisdiction of this Commission, *the classifications, practices, rules and regulations affecting such* rates, charges, classifications, *services*, rules, regulations or practices."

Chehalis Power Generating, L.P., 152 FERC ¶ 61,050 at P 15 (2015). FERC cites Section 35.2 of its regulations and Section 205 of the Federal Power Act as additional support that the filing of tariffs and rate schedules includes filing non-rate terms and conditions of service regardless of the rate.

Potential Implications

Although Chehalis' May 2005 filing was for Reactive Service and the Commission issued the Workshop Notice to address filing options for Reactive Service rate schedules with zero compensation, the analysis in the Rehearing Order could certainly apply to all FERC-jurisdictional services. While many generation-based services may be subsumed under agreements for the sale of power at market-based rates, this may not be the case in all situations. For example, in February 2015, FERC issued a notice of proposed rulemaking in Third Party Provision of Primary Frequency Response Service, Docket No. RM15-2-000 (NOPR). In the NOPR, FERC describes primary frequency response to be "the autonomous, automatic, and rapid action of a generator, or other resource, to change its output (within seconds) to rapidly dampen large changes in frequency." Citing North American Electric Reliability Corporation's BAL-003-1 Frequency Response and Frequency Bias Setting Reliability Standard, FERC explains that it is the Balancing Authority with the obligation to maintain frequency. With its approval of BAL-003-1, FERC is exploring whether the sale of frequency response service should be at market-based rates or cost-based rates. Now, in light of the Rehearing Order, should a generator that is currently providing this service, albeit at zero compensation, have an agreement in place with a Balancing Authority? Would the filing be a cost-based filing with FERC or could it be captured under the generator's market-based rate filing and included in the Electric Quarterly Reports filed with FERC?

While frequency response is one example that raises questions with respect to the application of FERC's filing requirements, generators should evaluate whether there are other generation-based services being provided at zero compensation that should be subject to FERC's "newly clarified" filing requirements.

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