121 FERC ¶ 61,018
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Jon Wellinghoff.

Bluegrass Generation Company, L.L.C. Docket Nos. ER05-522-002
ER05-522-003
ER06-1382-003

ORDER DENYING REHEARING AND CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued October 4, 2007)

1. On April 16, 2007, E.ON U.S. LLC (E.ON)[1] requested rehearing of the *March Order* issued in Docket No. ER05-522-001.[2] In a separate filing, also on April 16, 2007, Bluegrass Generation Company, L.L.C. (Bluegrass) submitted a compliance filing in Docket Nos. ER05-522-003 and ER06-1382-003[3] pursuant to the *March Order*, *Bluegrass I*, and *Bluegrass II*. For the reasons discussed below, we deny E.ON's rehearing request and conditionally accept Bluegrass' compliance filing.

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[1] E.ON filed its request for rehearing on behalf of its operating companies, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU). At earlier stages in this proceeding, the Commission has followed E.ON's lead and referred to it as LG&E or LG&E/KU. In its request for rehearing, however, E.ON no longer refers to itself as LG&E. We will again follow E.ON's lead and refer to it as E.ON in this order. We will also refer to LG&E and KU collectively as LG&E.

[2] *Bluegrass Generation Co., L.L.C.*, 115 FERC ¶ 63,015 (2006) (*Initial Decision*), *order aff'g initial decision*, 118 FERC ¶ 61,214 (2007) (*March Order*).

[3] *See Bluegrass Generation Co., L.L.C.*, 117 FERC ¶ 61,052 (2006) (*Bluegrass I*), *order on reh'g*, 118 FERC ¶ 61,215 (2007) (*Bluegrass II*).

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I. Background

2. Bluegrass is an independent power producer (IPP) that leases a natural gas-fired peaking generating facility from Oldham County, Kentucky. Bluegrass' facility is interconnected with the transmission system of E.ON's subsidiary, LG&E. LG&E was, until recently, a transmission-owning member and control area operator of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). LG&E withdrew from Midwest ISO effective September 1, 2006.[4]

3. Bluegrass filed a proposed cost-based revenue requirement (Initial Rate Schedule) for Reactive Supply and Voltage Control from Generation Sources Service (reactive power) in Docket No. ER05-522-000 after the Commission ordered Midwest ISO to revise Schedule 2 of its Open Access Transmission and Energy Markets Tariff (TEMT) to compensate IPPs for providing reactive power.[5] Previously, Bluegrass was compensated for providing reactive power according to its Generator Interconnection and Operating Agreement (Interconnection Agreement) with LG&E.[6]

4. The Commission accepted the Initial Rate Schedule for filing,[7] suspended it for a nominal period, effective March 1, 2005, subject to refund, and ordered hearing and settlement judge procedures.[8] The case went to hearing, and Presiding Judge Charlotte J. Hardnett (Presiding Judge) issued the *Initial Decision* finding that the Initial Rate Schedule, as modified in the *Initial Decision*, was just and reasonable under section 205

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[4] *See Louisville Gas and Electric Co*., 114 FERC ¶ 61,282, *order on reh'g sub nom*. *E.ON U.S. LLC*, 116 FERC ¶ 61,020 (2006).

[5] *See Midwest Indep*. *Transmission Sys*. *Operator*, *Inc*., 109 FERC ¶ 61,005 (2004) (*October 2004 Order*), *order on reh'g*, 110 FERC ¶ 61,267 (2005), *order on compliance filing*, 113 FERC ¶ 61,046 (2005) (*MISO I*), *order on reh'g and compliance filing*, 114 FERC ¶ 61,192 (2006) (*MISO II*), *order on reh'g and compliance filing*, 116 FERC ¶ 61,283 (2006) (*MISO III*).

[6] The Commission approved the Interconnection Agreement on August 16, 2001. *See LG&E Operating Companies*, Docket No. ER01-2579-000 (Aug. 16, 2001) (unpublished letter order).

[7] At the time Bluegrass filed the Initial Rate Schedule, the Commission had received, but not yet acted on Midwest ISO's compliance filing revising Schedule 2 of the Midwest ISO TEMT.

[8] *Bluegrass Generation Co*., *L.L.C*., 110 FERC ¶ 61,349, at P 1 (2005).

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of the Federal Power Act (FPA).[9] The Presiding Judge also directed Bluegrass to submit a compliance filing revising the Initial Rate Schedule to conform to the conclusions of the *Initial Decision* within 30 days of the Commission issuing an order on the *Initial Decision*. In the *March Order*, the Commission affirmed the *Initial Decision* in its entirety.

5. While the proceedings over the Initial Rate Schedule were still ongoing, Bluegrass filed a revised rate schedule (Revised Rate Schedule) in a new docket, Docket No. ER06-1382-000. The Revised Rate Schedule addressed LG&E's then-impending departure from Midwest ISO, and responded to information developed in the then-ongoing proceeding in Docket No. ER05-522-000. In *Bluegrass I*, the Commission accepted the Revised Rate Schedule for filing, suspended it for a nominal period, effective September 1, 2006,[10] subject to refund, and subject to the outcome of the proceeding in Docket No. ER05-522-000.[11] The Commission further directed Bluegrass to make a compliance filing within 30 days of the Commission issuing an order on the *Initial Decision* in Docket No. ER05-522-000. E.ON filed a request for rehearing.

6. In *Bluegrass II*, the Commission granted rehearing in part and denied rehearing in part. As relevant here, the Commission granted rehearing on the question of Bluegrass' appropriate return on equity (ROE) as of September 1, 2006. On rehearing, the Commission held that Bluegrass should use LG&E's 10.88 percent ROE as a proxy as of September 1, 2006.[12] Accordingly, the Commission directed Bluegrass to make a compliance filing reducing the ROE in the Revised Rate Schedule from 12.38 percent to 10.88 percent.[13]

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[9] 16 U.S.C. § 824d(a) (2000).

[10] As a consequence, the Initial Rate Schedule is applicable only to the period from March 1, 2005 through August 31, 2006.

[11] *Bluegrass I*, 117 FERC ¶ 61,052 at P 21.

[12] *Bluegrass II*, 118 FERC ¶ 61,215 at P 14; *See also March Order*, 118 FERC ¶ 61,214 at P 86 (finding that it has been the Commission's general policy to allow an IPP to use the authorized rate of return and return on common equity of an interconnected utility for reactive power compensation. The Commission reasoned that because an interconnected utility's return is a conservative estimate of a merchant generator's return because the merchant generator faces more risk).

[13] Because the *March Order* and *Bluegrass II* were issued simultaneously, the compliance filings ordered in the *March Order*, *Bluegrass I*, and *Bluegrass II* were all due on April 16, 2007.

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II. E.ON's Request for Rehearing in Docket No. ER05-522-001

A. Procedural Matters

7. Bluegrass filed an answer to E.ON's rehearing request, and E.ON filed an answer to Bluegrass' answer. Pursuant to Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, answers to requests for rehearing are prohibited.[14] Accordingly, we will reject Bluegrass' answer to E.ON's rehearing request, as well as E.ON's answer to Bluegrass' answer.

B. Substantive Matters

8. E.ON's rehearing request generally restates arguments E.ON previously made in its brief on exceptions challenging the *Initial Decision*. As discussed more fully below, we deny E.ON's request for rehearing of the *March Order*.

1. Use of the *AEP* Methodology

a. *Initial Decision* and *March Order*

9. In the *Initial Decision*, the Presiding Judge held that Bluegrass was required to calculate its reactive power compensation according to the *AEP* methodology. In its brief on exceptions, E.ON argued that Bluegrass was ineligible to use the *AEP* methodology because of its limited operations. E.ON also argued that the Presiding Judge failed to independently determine whether the Initial Rate Schedule was just and reasonable apart from any reference to the *AEP* methodology. In the *March Order*, the Commission affirmed the Presiding Judge. The Commission reiterated its long-standing policy that all generators seeking to recover a reactive power revenue requirement must use the *AEP* methodology.[15] The Commission also explained that the *AEP* methodology is based on the capability of a given generator, not on the generator's actual operations.

b. Arguments on Rehearing

10. On rehearing, E.ON challenges what it characterizes as the Commission's finding that "mere use of the *AEP* method results *per se* in a just and reasonable rate."[16] E.ON

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[14] 18 C.F.R. § 385.713(d)(1) (2007).

[15] *March Order*, 118 FERC ¶ 61,214 at P 16.

[16] Request for Clarification and/or Rehearing of E.ON U.S. LLC at 8 (E.ON's Rehearing Request) (emphasis in original).

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argues that the Commission's policy requiring generators to use the *AEP* methodology is simply an administrative convenience, and does not absolve the Commission of its statutory obligation to independently determine that the rate in any particular case is just and reasonable.[17] E.ON contends that the Initial Rate Schedule is not just and reasonable because it grants Bluegrass a 699 percent rate increase "in a case where the facility at issue rarely provides reactive power service and has not demonstrated any cost increases associated with providing this service."[18]

c. Commission Determination

11. We deny rehearing. E.ON has advanced no new arguments challenging the use of the *AEP* methodology. Instead, E.ON has merely repeated its previous claims that the Commission's use of the *AEP* methodology in this case is an abdication of its statutory duties, and that the Initial Rate Schedule must be unjust and unreasonable because it entails a percentage rate increase that E.ON alleges is unjustified by Bluegrass' level of reactive power output. In reasserting these claims, however, E.ON continues to ignore and attack established Commission precedent, and refuses to recognize that Bluegrass must be compensated on a capability basis for the period governed by the Initial Rate Schedule, given Midwest ISO's Schedule 2.

12. We first reject E.ON's assertion that use of the *AEP* methodology in this case entails an abdication of the Commission's statutory duties. As the Commission recently re-stated, Commission precedent clearly dictates that the *AEP* methodology should be employed to calculate reactive power revenue requirements for all generators.[19] This policy is not simply a matter of administrative convenience, as E.ON alleges, but the result of the Commission's deliberate determination that the *AEP* methodology is a just and reasonable manner of calculating a reactive power revenue requirement.[20]

13. We also reject E.ON's implication that the *AEP* methodology is inapplicable here because of Bluegrass' limited operations. As the Commission has previously explained,

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[17] *Id*. at 9.

[18] *Id*.

[19] *Calpine Oneta Power, L.P.*, 116 FERC ¶ 61,282 (2006) (*Calpine Oneta I), order on reh'g*, 119 FERC ¶ 61,177, at P 26 (2007) (*Calpine Oneta II*).

[20] *Calpine Oneta II*, 119 FERC ¶61,177 at P 24 (2007); *see also WPS Westwood Generation, LLC*, 101 FERC ¶ 61,290, at P 14 (2002).

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the *AEP* methodology is based on a generator's capability, not on its actual operations.[21] Moreover, the Commission has previously held that a generator's filed rates based on reactive power capability are not unjust or unreasonable because the reactive power that the generator is capable of producing is not being used at a given time.[22] Thus, the Commission has previously accepted reactive power rate schedules similar to the Initial Rate Schedule from other independent generators that run infrequently. In *Rolling Hills*, for example, the Commission accepted a proposal for reactive power compensation using the *AEP* methodology from the owner of a peaking plant that operated only 181 hours in a four month period.[23]

14. Finally, E.ON objects to the percentage increase in the Initial Rate Schedule because "the facility at issue rarely provides reactive power service." We note that this objection demonstrates that E.ON's concept of a just and reasonable rate in this case is tethered to a compensation regime that would result in non-comparable treatment for the period governed by the Initial Rate Schedule. As we explained in the *March Order*, Midwest ISO's Schedule 2 compensates IPPs based on their reactive power capability. Bluegrass, therefore, must receive compensation based on its reactive power capability for the period at issue. Applying a "needs" or "use" test to Bluegrass that is not applied to other generators during that period, which is the type of test implicit in E.ON's objection, would deny Bluegrass comparable treatment and constitute undue discrimination under the circumstances of this case.

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[21] *See, e.g.*, *Calpine Oneta I*, 116 FERC ¶ 61,282 at P 49-50 & n.59; *MISO II*, 114 FERC ¶ 61,192 at n.5; *MISO III*, 116 FERC ¶ 61,283 at P 20.

[22] *See Calpine Oneta I*, 116 FERC ¶ 61,282 at P 28; *MISO II*, 114 FERC ¶ 61,192 at P 19.

[23] *Rolling Hills Generating, L.L.C.*, 109 FERC ¶ 61,069, at P 10, 12 (2004). (*Rolling Hills*).

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2. Order No. 2003, the Initial Rate Schedule, and the Interconnection Agreement

a. *Initial Decision* and *March Order*

15. In the *Initial Decision*, the Presiding Judge held that the comparability principle set forth in Order No. 2003-A[24] applied to the Initial Rate Schedule, and as applied, required that Bluegrass receive reactive power compensation on a capability basis. In its brief on exceptions, E.ON opposed Bluegrass being compensated on a capability basis because Bluegrass would effectively be compensated for producing reactive power *both inside and outside the bandwidth*, while, according to E.ON, Order No. 2003 and the Interconnection Agreement required that Bluegrass be compensated only for producing reactive power *outside the bandwidth*. In the *March Order*, the Commission affirmed the Presiding Judge. The Commission explained that because Midwest ISO's Schedule 2 compensates all generators on its system on a capability basis, the principle of comparability requires that Bluegrass must be compensated on a capability basis. The Commission further observed that while E.ON's then-existing Schedule 2 rates were the product of a settlement agreement (Settlement),[25] E.ON had not shown that these rates were not designed to compensate its own generators for reactive power produced within the bandwidth.

b. Arguments on Rehearing

16. On rehearing, E.ON argues that an annual revenue requirement is inconsistent with the Interconnection Agreement's compensation provisions, which E.ON argues limits Bluegrass to receiving reactive power compensation only for reactive power produced outside the bandwidth.[26] E.ON further contends that Order No. 2003 requires that Bluegrass be compensated for reactive power produced within the bandwidth only if

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[24] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs., ¶ 31,146, at P 21 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs., ¶ 31,160, at P 416 (2004) (Order No. 2003-A), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004) (Order No. 2003-B), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005) (Order No. 2003-C), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

[25] The Settlement was reached in Docket No. ER98-114.

[26] The relevant portion of the Interconnection Agreement, section 8.4.4, states:

(i) In the event that FERC, or any other applicable Governmental

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E.ON so compensates its affiliates, which E.ON states has not been demonstrated. With respect to whether its own Schedule 2 rate while it was still a member of Midwest ISO was designed to compensate its affiliates for reactive power within the bandwidth, E.ON claims that "[b]y its very nature as a negotiated number, it is not possible to say definitively what the [S]ettlement did or did not include."[27]

17. E.ON also argues that "[t]he Commission has stated in Order No. 888-A that generators compensated for reactive power must be under the control of the control area operator,"[28] but that E.ON lacks operational control over Bluegrass' reactive power output. E.ON points to provisions in the Interconnection Agreement that grant E.ON the right to require Bluegrass to produce reactive power outside the bandwidth only if there is an emergency and Bluegrass's facility is already on line and synchronized to the grid. E.ON states that if Bluegrass is to be compensated according to the annual revenue requirement in the Initial Rate Schedule, then the Commission should direct that

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> Authority, issues an order or approves a tariff establishing specific compensation to be paid to Applicant for reactive power support service, [LG&E] shall pay Applicant pursuant to such order or tariff; or
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> (ii) In the absence of such an order or tariff, and subject to any applicable rules and regulations of FERC, [LG&E] shall pay Applicant for the reactive power absorbed by the Applicant Facilities and the reactive power produced by the Applicant Facilities on a per MVARh basis for the total MVARh for the hours operated under 8.4.2(ii) and 8.4.3 above at a rate of $0.50 per MVARh; provided, however, if [LG&E], its successors or assigns pay, under any agreement with any other similarly situated generator, for reactive power and voltage control at a rate that is higher than $0.50 per MVARh, Applicant shall be compensated for providing such reactive support at a rate that is equal to the highest rate [LG&E], its successors or assigns pay for reactive power and voltage control to any other similarly situated generator. The total MVARh for a given month shall be equal to the sum of the absolute value of the reactive power absorbed or the reactive power produced, as the case may be, by the Applicant Facilities in each hour of the month during which reactive power was absorbed or produced by Applicant under 8.4.2(ii) or 8.4.3.

[27] E.ON's Rehearing Request at 14.

[28] *Id*. at 12.

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Bluegrass "respond to all dispatch instructions at any time provided by the control area operator."[29]

c. Commission Determination

18. We deny rehearing. E.ON's assertion that an annual revenue requirement is inconsistent with the Interconnection Agreement's compensation provisions is incorrect. In the *March Order*, the Commission found that the Interconnection Agreement's compensation provisions, sections 8.4.4 (i) and 8.4.4 (ii), give Bluegrass the contractual right to file a rate schedule with the Commission. Although E.ON has not directly disagreed with this finding on rehearing, its assertion that an annual revenue requirement is inconsistent with sections 8.4.4 (i) and 8.4.4 (ii) implicitly challenges our conclusion that these provisions expressly contemplate the possibility that Bluegrass will be compensated for reactive power according to a subsequent Commission-approved rate schedule.

19. We deny rehearing and affirm our conclusion that sections 8.4.4 (i) and 8.4.4 (ii) give Bluegrass a contractual right to file a rate schedule with the Commission. According to its own terms, the compensation scheme established in these sections applies only if there is no subsequent Commission-approved rate schedule. Moreover, it follows both necessarily, and as a function of the Interconnection Agreement's express language, that the compensation scheme established in sections 8.4.4 (i) and 8.4.4 (ii) ceases to apply when the Commission approves a subsequent rate schedule. Furthermore, we note that sections 8.4.4 (i) and 8.4.4 (ii) place no limitations on the type of compensation Bluegrass may seek in a subsequently filed Commission rate schedule. Thus, the Interconnection Agreement protects Bluegrass' right to seek an annual revenue requirement, and provides that, if successful, the annual revenue requirement will supersede the default compensation structure built into the Interconnection Agreement. Accordingly, it makes no sense to argue, as E.ON does here, that an annual revenue requirement is inconsistent with the Interconnection Agreement.

20. Similarly, we affirm our previous conclusion that Order No. 2003's comparability principle requires that Bluegrass receive compensation on a capability basis for the period governed by the Initial Rate Schedule. As we have explained, the Commission accepted Midwest ISO's proposal to compensate all generators on its system on a capability basis, thus assuring comparable treatment. Accordingly, in order for Bluegrass to receive comparable treatment for the period governed by the Initial Rate Schedule and to be treated in a not unduly discriminatory manner, it must receive compensation based on its

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[29] *Id*.

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capability of providing reactive power.[30] We further note that E.ON still has not denied that it sought to compensate its affiliates for reactive power within the bandwidth in negotiating LG&E's previous Schedule 2 while it was still a member of Midwest ISO.

21. We also reject E.ON's claim regarding its alleged lack of operational control over Bluegrass's facility. The Commission has previously explained that Order No. 888-A does not require the level of operational control that E.ON suggests. In Order No. 2003-C, the Commission stated that:

> Although the Transmission Provider's or its affiliate's generators may be required to operate when others are not, this distinction in availability is not so significant as to eliminate the need to compensate other generators . . . . Order No. 2003-B clarified that while the Transmission Provider cannot demand that the Interconnection Customer operate its Generating Facility solely to provide reactive power, it may require the Interconnection Customer to provide reactive power from time to time when its Generating facility is in operation. The requirement to pay exists only as long as the Generating Facility follows the Transmission Provider's reactive power instructions. This is a sufficient level of control to warrant compensation for providing reactive power as described in Order Nos. 888-A and 888-B.[31]

3. Bluegrass' Reactive Power Capability

a. *Initial Decision* and *March Order*

22. In the *Initial Decision*, the Presiding Judge found, based on the results of the November 3, 2005 East Central Area Reliability (now Reliability*First*) (ECAR) test, that Bluegrass is capable of producing 360.33 MVARhs of reactive power. In its brief on exceptions, E.ON challenged the probative value of the ECAR test results and questioned

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[30] *See MISO II*, 114 FERC ¶ 61,192 at P 18; *Calpine Oneta I*, 116 FERC ¶ 61,282 at P 35. *See also Michigan Electric Transmission Co*., 97 FERC ¶ 61,187, at 61,852-53 (2001) ("the need to treat all generation interconnection customers comparably underlies the need for a *pro forma* tariff. To that end, it is hardly consistent to allow an affiliate to have different and/or superior terms and conditions for interconnection than non-affiliates . . . we direct Michigan Electric to compensate Generators for providing reactive power to the same degree that it will compensate its affiliate, Consumers, for providing reactive power."). *See also* Order No. 2003-A at P 416 (comparability of compensation); *accord* Order No. 2003-B at P 113, 119.

[31] Order No. 2003-C at P 43 (footnote omitted).

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Bluegrass' reactive power capability. Specifically, E.ON asserted that the Commission should discount the ECAR test results because they were achieved in a controlled environment, while Bluegrass was fully staffed. E.ON contends that because Bluegrass normally operates on a minimal basis, generally lacks full-time staff, and does not have remote start-up capability, it cannot produce 360.33 MVARhs under normal circumstances, and cannot meet the requirements of Midwest ISO's Schedule 2.

23. In the *March Order*, the Commission affirmed the Presiding Judge. The Commission found that because Bluegrass *actually produced* 360.33 MVARhs of reactive power, it has the *capability* of producing 360.33 MVARhs of reactive power. The Commission further noted that E.ON's arguments were actually directed to Bluegrass' ability to produce 360.33 MVARhs under unpredictable circumstances, not to its reactive power capability per se, and that by raising issues such as Bluegrass' lack of a full-time staff, E.ON was attempting to impose extra-tariff obligations on Bluegrass.

b. Arguments on Rehearing

24. On rehearing, E.ON reasserts its argument that the Commission should discount the results of the ECAR test as an aberration. E.ON argues that Bluegrass had advance notice of the test date, which occurred during an off-peak month, had the opportunity to arrange a fuel supply for the test date, and was fully staffed for the test date. E.ON claims that Bluegrass' performance during the ECAR test was anomalous, and cannot be reproduced under normal, non-test conditions.

c. Commission Determination

25. We deny rehearing. E.ON has advanced no new arguments prompting us to reconsider our finding that because Bluegrass produced 360.33 MVARhs it necessarily has the capability to produce 360.33 MVARhs. As in its brief on exceptions, E.ON's argument on rehearing amounts to a challenge of Bluegrass' ability to consistently perform at the level of its optimal capability; it is not a challenge to its capability per se. As such, E.ON's argument on rehearing contains the same implicit attempt to impose extra-tariff obligations on Bluegrass that we rejected in the *March Order*. Accordingly, we deny rehearing.

4. Qualified Generator Requirements

a. *Initial Decision* and *March Order*

26. In the *Initial Decision*, the Presiding Judge held that Bluegrass should begin receiving reactive power compensation under the Initial Rate Schedule as of March 1, 2005, the Commission-determined rate effective date. In its brief on exceptions, E.ON argued that Bluegrass should begin receiving compensation on November 21, 2005, the

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date Bluegrass completed Midwest ISO's compensation eligibility requirements. In the *March Order*, the Commission affirmed the Presiding Judge. The Commission stated it would be unreasonable to deny Bluegrass compensation back to March 1, 2005, under the circumstances of this case. The Commission explained that Bluegrass filed the Initial Rate Schedule on March 25, 2005, and promptly completed the certification process after the Commission accepted Midwest ISO's Schedule 2,[32] which contained the technical requirements for a generator to obtain Qualified Generator Status as a prerequisite to obtaining reactive power compensation.

27. The Commission further observed that its decision was consistent with *MISO I*, where it found that there was no reason to require generators with Commission-accepted revenue requirements to provide uncompensated service for a 60-day review period. Applying the same principle in the *March Order*, the Commission held that there was no reason that Bluegrass should not receive compensation for the service it had provided since the Commission accepted and made the Initial Rate Schedule effective. The Commission stated that to hold otherwise would exalt form over substance.

b. Arguments on Rehearing

28. On rehearing, E.ON reasserts its claim that the Commission's decision to permit Bluegrass to receive reactive power compensation prior to November 21, 2005 is contrary to Midwest ISO's Schedule 2. E.ON observes that Bluegrass did not test its facility for reactive power capability until November 3, 2005, and did not self-certify as a Qualified Generator until November 21, 2005. E.ON contends that Bluegrass should have tested its facility at the same time it applied for reactive power compensation in January 2005, or at the least, prior to November 2005.

c. Commission Determination

29. We deny rehearing. E.ON has not advanced any new arguments prompting us to reconsider our previous decision. Accordingly, we remain persuaded that, given the circumstances of this case, it would be unreasonable to deny Bluegrass compensation under the Initial Rate Schedule effective March 1, 2005.

III. Bluegrass' Compliance Filing

[32] The Commission finally accepted Schedule 2 in *MISO I* on October 17, 2005.

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A. Instant Filing

30. In the instant compliance filing, Bluegrass has submitted two substitute rate schedules with cost support. The first substitute rate schedule was filed in compliance with the *March Order* and replaces the Initial Rate Schedule. It is therefore applicable from March 1, 2005 through August 31, 2006. In this substitute rate schedule, Bluegrass lowered its annual revenue requirement for reactive power service from $1,086,509 to $742,001.[33]

31. The second substitute rate schedule, filed in compliance with *Bluegrass I* and *Bluegrass II*, replaces the Revised Rate Schedule and is therefore applicable from September 1, 2006 through June 30, 2007. In this substitute rate schedule, Bluegrass lowered its annual revenue requirement for reactive power service from $762,135 to $671,312, [34] and removed a provision requiring the reactive power service it provides to be consistent with LG&E's Schedule 2.

B. Notice of Compliance Filing and Responsive Pleadings

32. Notice of Bluegrass' compliance filing was published in the *Federal Register*,[35] with interventions and comments due on or before May 7, 2007. E.ON filed comments opposing the compliance filing. Bluegrass subsequently filed a motion for leave to answer, and an answer to E.ON's comments.

33. In its comments, E.ON states that the Commission ordered Bluegrass to reduce its reactive power ROE from 12.38 percent to 10.88 percent. E.ON asserts, however, that Bluegrass has insufficiently updated its ROE because Bluegrass did not reflect a $110 million pre-tax impairment charge related to its facility. Dynegy, Bluegrass' parent, reported this charge on its 10-K Form filed with the Securities and Exchange Commission for the year ending December 31, 2006.[36] E.ON argues that the pre-tax

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[33] The revenue requirement includes a rate of return reflecting the authorized rate of return of the interconnecting utility, LG&E, when it was a member of the Midwest ISO. The ROE was 12.38 percent.

[34] The revenue requirement includes a lower rate of return reflecting the rate of return of the interconnecting utility, LG&E, after it withdrew from the Midwest ISO. The ROE was reduced to 10.88 percent.

[35] 72 Fed. Reg. 23,812 (2007).

[36] According to E.ON, Bluegrass' 10-K Form indicates that the impairment associated with the Bluegrass facility was recorded in September 2006 ($96 million) and

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impairment affects the calculation of the total return, and failure to reflect the pre-tax impairment will result in rates that are not cost based.[37] Consequently, E.ON argues that Bluegrass' total cost of plant should be reduced.

34. In its answer, Bluegrass contends that E.ON's request is a departure from the Commission's policy on compliance filings. Bluegrass argues that under the Commission's policy Bluegrass is limited to carrying out the Commission's specific directives in its compliance filing. Bluegrass states that it was not ordered to make any adjustment to its ROE other than the reduction from 12.38 percent to 10.88 percent, and that no further adjustment is warranted.

35. Bluegrass further states that the impairment relates to Bluegrass' ability to sell real power due to the fact that since LG&E withdrew from Midwest ISO, Bluegrass' costs have increased because it must now pay for transmission to Midwest ISO markets.[38] Bluegrass argues that LG&E's departure from Midwest ISO does not impact either Bluegrass' reactive power capability or its right to continue to receive compensation for reactive power based on the *AEP* methodology using original cost reduced by accumulated depreciation. Bluegrass states that the impairment is not connected to the Commission's decision to permit cost recovery (*i.e*., not a Commission required rate impairment), that E.ON's position is contrary to Commission precedent, and that Commission precedent requires that all generators must use the *AEP* methodology to calculate their reactive power revenue requirements.

C. Commission Determination

1. Procedural Matters

36. Rule 213(a)(2) of the Commission Rules of Practice and Procedure[39] prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Bluegrass answer because it has provided information that assisted us in our decision-making process.

December 2006 ($14 million).

[37] E.ON states that it will also require customers to subsidize a cost that is no longer being carried by the company.

[38] Bluegrass' Answer at 4-5 (citing Dynegy's Form 10-K).

[39] 18 C.F.R. § 385.213(a)(2)(2007).

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2. Substantive Matters

37. We conditionally accept Bluegrass' compliance filing. In the *Initial Decision*, the Presiding Judge ordered Bluegrass to submit a compliance filing revising the Initial Rate Schedule within 30 days of the Commission ruling on the *Initial Decision*. In *Bluegrass II*, the Commission ordered Bluegrass to make a compliance filing reducing the ROE in the Revised Rate Schedule from 12.38 percent to 10.88 percent. Bluegrass has complied with these directives.

38. Parties filing compliance filings may only include in a compliance filing those changes required by the Commission.[40] The Commission did not direct Bluegrass to submit a compliance filing reducing its total cost of plant to reflect the impairment in either the *March Order* or *Bluegrass II*; therefore, we will not reject Bluegrass' compliance filing for failing to make a revision the Commission did not order. Accordingly, we reject E.ON's argument. Moreover, we note that in its compliance filing in response to *Bluegrass II*, Bluegrass has removed a provision requiring the Revised Rate Schedule to be consistent with LG&E's Schedule 2. We did not direct Bluegrass to delete this provision. Thus, we reject that modification and require Bluegrass to file another compliance filing restoring the deleted provision.

39. Our review of the revenue requirements and workpapers indicates that Bluegrass has otherwise complied with our directives in its compliance filing. Thus, we conditionally accept Bluegrass' compliance filing, subject to the modifications discussed above, and we order Bluegrass to submit a further compliance filing within 30 days of the date of this order.

The Commission orders:

(A) E.ON's request for rehearing of the *March Order* is hereby denied.

(B) Bluegrass' compliance filing is conditionally accepted, subject to the modifications discussed in the body of this order.

(C) Bluegrass is hereby directed to submit a further compliance filing, as discussed in the body of this order, within 30 days of the date of this order.

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[40] *See*, e.g., *Indiana & Michigan Municipal Distributors Ass'n*, 61 FERC ¶ 61,351, at 62,373 (1992); *MISO III*, 114 FERC ¶ 61,192 at n.24.

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By the Commission. Commissioner Moeller not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.