

136 FERC ¶ 61,072  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

PSEG Energy Resources & Trade LLC  
PSEG Fossil LLC

Docket No. ER05-644-013

ORDER ACCEPTING INFORMATIONAL FILING

(Issued July 29, 2011)

1. On June 3, 2011, PSEG Energy Resources & Trade LLC (PSEG ER&T) and PSEG Fossil LLC (PSEG Fossil) (collectively, PSEG Companies) submitted an informational filing, which included a list of planned Project Investments and the associated projected costs relating to its reliability-must-run (RMR) rate schedule for PSEG Fossil Hudson Unit No. 1 generating unit (Hudson Unit No. 1).<sup>1</sup> In this order, we accept PSEG Companies' planned project investments and projected costs for informational purposes for calendar year (CY) 2012, and revisions to its CY 2011 project investments effective August 1, 2011, as requested.

**I. Background**

2. On February 24, 2005, the PSEG Companies filed a Cost of Service Recovery Rates Tariff (Tariff) with RMR rate schedules for five of PSEG Fossil's generating units located within the PJM Interconnection, LLC (PJM) control area in New Jersey. At that time, PJM stated that the generating units, one of which is Hudson Unit No. 1, were necessary for grid reliability through September 1, 2008, and could not be retired until

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<sup>1</sup> On June 3, 2011, the PSEG Companies also filed a motion for procedural schedule requesting a shortened comment period, a deadline for answer to comments or protests, and the issuance of an order in the instant filing by August 1, 2011 (June 3 Motion). However, the Commission need not act on this request for procedural schedule and will deny the request as moot because we are issuing an order on the June 3 Informational Filing by August 1, 2011.

specific upgrades to the transmission system were completed to address PJM's reliability needs.<sup>2</sup> On April 25, 2005, the Commission accepted and suspended the filing and established a hearing and settlement procedures.<sup>3</sup> The settlement agreement, including the accompanying Tariff, was approved by the Commission on November 28, 2005.

3. Under the terms of the settlement and Tariff, if PJM provides written notice to PSEG ER&T that the units or any particular unit will be needed for reliability purposes for any period beyond September 1, 2008 (or any other date of extension), PSEG ER&T shall, within 60 days of the notice, file an amendment to the Tariff reflecting the modified term.<sup>4</sup> Since approval of the settlement, PSEG ER&T has sought three separate amendments to the Tariff that extended the RMR term for PSEG Fossil's Hudson Unit No. 1: two additional years from September 1, 2008 to September 1, 2010, one additional year from September 1, 2010 to September 1, 2011, and most recently, one additional year from September 1, 2011 to September 1, 2012.<sup>5</sup>

4. Finally, the settlement and Tariff<sup>6</sup> requires PSEG ER&T to file an annual informational filing no later than October 1 of each year that lists its planned project investments and projected costs for the upcoming CY with respect to Hudson Unit No. 1

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<sup>2</sup> In the initial filing, the PSEG Companies stated that PJM had notified the PSEG Companies that its generating units were necessary through at least the summer of 2006. (February 24, 2005 Filing at 2 and Attachment A). Subsequently, in an April 1, 2005 Answer, the PSEG Companies stated that PJM had extended the reliability need for these units until at least through the summer of 2008. (See April 1, 2005 Answer at 12 and Attachment B).

<sup>3</sup> *PSEG Energy Resources & Trade, L.L.C., et al.*, 111 FERC ¶ 61,121 (2005) (*PSEG ER&T*); see also *PSEG Energy Resources & Trade LLC, et al.*, 113 FERC ¶ 61,213 (2005) (Settlement Order). Of the original five PSEG Fossil RMR units, only Hudson Unit No. 1 remains in service under an RMR rate schedule.

<sup>4</sup> PSEG Companies, September 23, 2005 Stipulation and Agreement, Appendix A at Section III.

<sup>5</sup> *PSEG Energy Resources & Trade L.L.C., et al.*, Docket No. ER07-506-000 (March 12, 2007) (unpublished letter order); see also *PSEG Energy Resources & Trade L.L.C., et al.*, Docket No. ER09-825-000 (May 4, 2009) (unpublished letter order); see also *PSEG Energy Resources & Trade L.L.C., et al.*, Docket Nos. ER11-2688-000 and ER11-2688-001 (May 12, 2011) (unpublished letter order).

<sup>6</sup> PSEG ER&T, FERC Electric Tariff, Original Volume No. 2. Cost of Service Recovery Rate Tariff, Article IV, Section 2 (D).

and related support for those projects.<sup>7</sup> The above section further provides that parties may object to the planned project investments or costs under section 206 of the Federal Power Act (FPA).<sup>8</sup>

5. In Docket No. ER11-2688-000, the most recent filing concerning PSEG ER&T's Tariff, PSEG ER&T filed a revision to its Tariff for the limited purpose of extending the term of the RMR Agreement for one additional year from September 1, 2011 to September 1, 2012.<sup>9</sup> Due primarily to a delay in the completion of a baseline reliability project (i.e., a new Susquehanna – Roseland 500 kV circuit),<sup>10</sup> PJM had determined that the unit continued to be essential for assuring reliability on the system. On February 22, 2011, the Commission issued a deficiency letter directing PSEG ER&T to submit additional information in support of the January 14, 2011 Filing.<sup>11</sup> On March 25, 2011, in Docket No. ER11-2688-001, PSEG ER&T responded to the Commission's deficiency letter.<sup>12</sup> Notices of the filings were issued on January 18, 2011 and March 28, 2011, with comments due February 4, 2011 and April 15, 2011,

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<sup>7</sup> Project Investments and their associated costs refer to costs that are necessary for the units to be operated in a reliable manner and to provide reasonable assurances that the units will be available on an uninterrupted basis to PJM for reliability purposes. (*See* PSEG Companies, October 7, 2005 Filing at 2).

<sup>8</sup> PSEG ER&T, FERC Electric Tariff, Original Volume No. 2. Cost of Service Recovery Rate Tariff, Article IV, Section 2 (D).

<sup>9</sup> *PSEG Energy Resources & Trade L.L.C., et al.*, Docket No. ER07-506-000 (March 12, 2007) (unpublished letter order); *see also PSEG Energy Resources & Trade L.L.C., et al.*, Docket No. ER09-825-000 (May 4, 2009) (unpublished letter order).

<sup>10</sup> Docket No. ER11-2688-000, PSEG ER&T's January 14, 2011 Filing, November 11, 2010 letter from Michael J. Kormos, Senior Vice President – Reliability Services, providing notice of the extension of the RMR tariff for the Hudson Unit No. 1 from September 1, 2011 to September 1, 2012.

<sup>11</sup> *PSEG Energy Resources & Trade LLC, et al.*, Docket No. ER11-2688-000, February 22, 2011 (unpublished deficiency letter).

<sup>12</sup> Docket No. ER11-2688-001, PSEG ER&T Response to the Commission's February 22, 2011 deficiency letter (March 25, 2011).

respectively. No protests or adverse comments were filed and the Commission accepted the filing on May 12, 2011.<sup>13</sup>

## **II. Filing**

6. On June 3, 2011, the PSEG Companies submitted their annual informational filing listing planned project investments and projected costs for CY 2012 for Hudson Unit No. 1 and related support for those projects (June 3 Informational Filing). The PSEG Companies also included as an attachment to the June 3 Informational Filing an affidavit from the Director of Engineering for PSEG Fossil in support of the additional CY 2011 project investments and costs and the CY 2012 project investments and costs. According to the filing, projected investment costs for CY 2012 total \$52.87 million. The June 3 Informational Filing also includes an estimate of additional project investment costs for CY 2011 needed to continue the operation of Hudson Unit No.1 beyond September 1, 2011.

7. The PSEG Companies state that the projected investment cost reflects a considerably larger level of upgrades than have historically been necessary because all of the short term investments to extend the life of Hudson Unit No. 1 have been exhausted and substantial work is required to extend the life of the unit through September 1, 2012.<sup>14</sup> The PSEG Companies assert that it filed the information much earlier than it traditionally has to allow itself additional time to accommodate the larger lead times needed for such major projects. Accordingly, the PSEG Companies request approval the projected costs for CY 2012 and additional costs for CY 2011 by August 1, 2011.

## **III. Notice, Protests and Answer**

8. Notice of the June 3 Informational Filing was published in the *Federal Register*, 76 Fed. Reg. 35,203 (2011), with interventions, comments and protests due on or before June 24, 2011. A timely notice of intervention with comments was filed by the New Jersey Board of Public Utilities (NJ BPU) and the New Jersey Division of Rate

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<sup>13</sup> *PSEG Energy Resources & Trade L.L.C., et al.*, Docket Nos. ER11-2688-000 and ER11-2688-001 (May 12, 2011) (unpublished letter order).

<sup>14</sup> Specifically, the PSEG Companies explain that these major projects include, but are not limited to, “the inspection and overhaul of the turbine generators, the repair of boiler ductwork, casing and lagging, the replacement of boiler tubes, repair to the boiler feeds and condensation system and installation of required modified intake screens.” See PSEG Companies June 3 Informational Filing, Affidavit of Kenneth J. Daleda on Behalf of PSEG Energy Resources & Trade LLC and PSEG Fossil LLC at 5.

Counsel (NJ Rate Counsel) filed a timely motion to intervene with comments. On July 11, 2011, the PSEG Companies filed an answer to the parties' comments.

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Rule 213 (a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to protests without leave of the decisional authority. (18 C.F.R. § 385.213(a)(2) (2011)). The Commission will grant the PSEG Companies' request because the answer has aided us in our decision making process.

**A. Protests**

11. The NJ BPU states that it takes no position with regard to the issue of whether the project investments are in fact needed or whether the costs sought by the PSEG Companies are legitimate or reasonable. Instead, the NJ BPU discusses the efficacy of PJM's Reliability Pricing Model. The NJ Rate Counsel argues that the need for the Hudson Unit No. 1 through 2012 has not been sufficiently documented. Accordingly, the NJ Rate Counsel urges the Commission to require that the PSEG Companies further support the record in this proceeding by providing or arranging for PJM and/or the PSEG Companies to provide additional analytical support associated with need for Hudson Unit No. 1 from 2012 through 2014. The NJ Rate Counsel also requests that the Commission require PSEG to clarify the costs associated with Hudson Unit No. 1's cost of service agreement (i.e. Cost of Service Recovery Rates Tariff) including total costs, how these costs flow through to New Jersey customers, and the extent to which costs are mitigated by the capacity, ancillary service and energy production value provided by the Hudson Unit No. 1. Finally, the NJ Rate Counsel requests that the Commission reject any CY 2012 Project costs after the expiration of the RMR contract period and all CY 2013-2014 Project costs.

**B. Answer**

12. In reply, the PSEG Companies state that the comments of the NJ Rate Counsel and the NJ BPU are generally beyond the scope of this proceeding. They contend that, rather than addressing the only issue before the Commission – the just and reasonableness of the submitted project costs – their comments focus on attempting to re-litigate matters that have already been addressed by the Commission or that were never part of the June 3 Informational Filing. Further, the PSEG Companies assert that none of the comments can sustain the burden under section 206 of FPA in rebutting the demonstration of the reasonableness of the project investment costs.

13. In addition, the PSEG Companies assert that in Docket No. ER11-2688-000, PSEG ER&T made a limited section 205 filing seeking to extend the term of its RMR

Tariff to September 1, 2012. The PSEG Companies aver that neither party intervened or filed comments in that proceeding (either late or timely). The PSEG Companies state the Commission issued a deficiency letter requesting that PSEG ER&T supplement the record with additional documentation in support of the proposed tariff amendment, including detailed charts proving a breakdown of project investment costs attributable to the extended term of operation as well as PJM studies and excerpts from the PJM 2010 Regional Transmission Expansion Plan (RTEP) posted on the PJM website. The PSEG Companies state the after submission of this information the Commission issued an order accepting these tariff changes.<sup>15</sup>

14. The PSEG Companies reiterate that the projected project investment costs of \$52.87 million for CY 2012 and the additional CY 2011 projected project investments costs of \$6.04 million are necessary to maintain reliability of Hudson Unit No. 1 through only September 1, 2012, as documented in the instant filing. The PSEG Companies emphasize that the affidavit included in its June 3 Informational Filing, provided a detailed breakdown of project investments and costs.<sup>16</sup> The PSEG Companies state that this informational filing was submitted much earlier than the usual October 1 date in order to allow additional time to accommodate the larger lead times needed for such major projects. Accordingly, the PSEG Companies assert that approval is needed for the projected costs for CY 2012 and additional costs for CY 2011 by August 1, 2011.

#### **IV. Discussion and Commission Determination**

##### **A. Calendar Year 2012 and Additional Calendar Year 2011 Project Investments and Costs**

15. The Commission has authorized PSEG ER&T to continue to operate these units because they are necessary for the reliability of the PJM system. In the June 3 Information Filing, the PSEG Companies have adequately supported the need for these upgrades. Therefore, we find that costs to maintain the operation of Hudson Unit No. 1 are just and reasonable and accept the additional CY 2011 project investments and the project investments and costs for CY 2012 for informational purposes.<sup>17</sup>

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<sup>15</sup> *PSEG Energy Resources & Trade L.L.C., et al.*, Docket Nos. ER11-2688-000 and ER11-2688-001 (May 12, 2011) (unpublished letter order).

<sup>16</sup> *See* PSEG ER&T's June 3 Informational Filing, Affidavit of Kenneth J. Daleda on Behalf of PSEG Energy Resources & Trade LLC and PSEG Fossil LLC at 5.

<sup>17</sup> Although we do not typically notice or issue orders on informational filings, the PSEG Companies state that they are seeking a determination regarding the appropriateness of the proposed investments in this instant filing so that work can begin  
(continued...)

16. We note that PSEG ER&T's Tariff states that project investment costs are to be recovered on the basis of actual costs incurred, with PSEG ER&T obligated to file a report with PJM detailing the actual amounts spent for project investments.<sup>18</sup> Consistent with a prior order in this proceeding, the Commission will require PSEG ER&T to file a detailed list to account for actual project investments and costs undertaken both in CY 2011 and in CY 2012.<sup>19</sup> For the additional CY 2011 costs projected in this filing, PSEG ER&T is directed to distinguish these costs as specifically associated with extending the Hudson Unit No. 1, through September 1, 2012, when it files its total actual CY 2011 project costs as directed in the February 2011 Order.<sup>20</sup>

17. NJ Rate Counsel raises comments concerning the need for the Hudson 1 facility through September 2012. This issue, however, was the very issue raised in Docket No. ER11-2688-000, when PSEG ER&T submitted its request pursuant to section 205 of the FPA for an extension of the term of the Hudson 1 facility. PJM had determined that this unit was essential for reliability and that continued operation of this unit was the most cost effective, feasible method of assuring reliability in New Jersey. In that proceeding, the Commission requested, and PSEG ER&T provided additional information on the extension of the Hudson 1 facility, including costs and justification for each project investment: both the data request and PSEG ER&T's response to it were placed on the record. There were no protests or adverse comments on either of PSEG ER&T's Filings. Accordingly, the Commission accepted the filing and extended the term of the facility for an additional year.

18. In this proceeding, therefore, the only issue is whether the costs for the extension of the term of the Hudson 1 facility identified in the June 3 Informational Filing are necessary to continue its operation for reliability purposes. The PSEG Companies submitted an affidavit from its Director of Engineering for PSEG Fossil attesting to the

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on the proposed projects. Our acceptance of this filing permits PSEG to begin construction, including the planning and purchase of long lead materials.

<sup>18</sup> PSEG ER&T, FERC Electric Tariff, Original Volume No. 2. Cost of Service Recovery Rate Tariff, Article IV, Section 2 (E).

<sup>19</sup> See *PSEG Energy Resources & Trade LLC et. al.*, 134 FERC ¶ 61,080 (February 2, 2011) at P16 (February 2011 Order). Further, consistent with the February 2011 Order at n.13, the Commission notes that this requirement is in addition to any refund report submitted by PSEG ER&T, to the extent necessary, pursuant to the requirements of settlement agreement as approved by the Commission in the Settlement Order.

<sup>20</sup> *Id.* P16.

necessity of the additional CY 2011 project investments and costs and the CY 2012 project investments and costs. The NJ Rate Counsel has not submitted any evidence rebutting this affidavit or that such costs are not necessary or prudent in order to ensure that the unit remains available when PJM determines it is need for reliability.<sup>21</sup>

**B. Additional Support for Need for the Hudson Unit No. 1 through September 1, 2012**

19. We also find the NJ Rate Counsel's request that PSEG ER&T provide further documentation as to the need for the Hudson Unit No. 1 through September 1, 2012, is unnecessary. As stated previously, the Commission accepted PSEG ER&T's Filing in Docket No. Docket No. ER11-2688, which contained the extension of PSEG ER&T's Tariff through September 1, 2012. During the course of that proceeding, the Commission required and PSEG ER&T provided adequate support justifying the continued need for Hudson Unit No. 1 for reliability purposes.

**C. Additional Support for Need and Costs for the Hudson Unit No. 1 beyond September 1, 2012**

20. We deny NJ Rate Counsel's request that the PSEG Companies provide detailed information documenting the need and CY costs for the Hudson Unit No.1 *beyond* September 1, 2012, because this request is outside of the scope of this proceeding. The costs at issue in this filing are solely for the currently approved term of the Tariff for PSEG ER&T's Hudson Unit No. 1, which expires on September 1, 2012.<sup>22</sup>

**D. Clarification of Costs Associated with Hudson Unit No. 1's Cost of Service Tariff**

21. With respect to the NJ Rate Counsel's request that the PSEG Companies provide clarification as to the costs associated with Hudson Unit No.1's cost of service

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<sup>21</sup> NJ Rate Counsel remains free to pursue any rights it may have under section 206 of the Federal Power Act. 16 U.S.C. § 824e (2004).

<sup>22</sup> If PJM anticipates that the term of the Hudson Unit No. 1 will be needed beyond 2012, PSEG ER&T's Tariff requires that PJM must provide PSEG ER&T with notice that it has determined the unit is needed for reliability before it may file to extend the term of the Tariff. PSEG must provide documentation and justification to substantiate PJM's finding of need. PSEG ER&T's Tariff also requires that it file support for its projected investments and costs needed to maintain the facility.

agreement, the Commission finds that filing this information is unnecessary.<sup>23</sup> The Tariff contains sufficient information which details the costs that the NJ Rate Counsel questions. First, article IV of the Tariff explains that the monthly cost of service recovery rate is equal to the sum of the monthly availability payment and monthly project investment costs payment minus actual net revenues for the month. Second, the Tariff states the means by which the cost of service rate is mitigated by the capacity, ancillary service and energy production value provided by the Hudson Unit No. 1. Specifically, Article IV, section 3(A) of the Tariff states that Actual Net Revenues, which mitigate the cost of service recovery rate that PJM refunds to PSEG ER&T includes, “all revenues from PJM markets and unit-specific bilateral contracts (including without limitation revenues of sales of energy, capacity and ancillary services). . . .” The Tariff also states that project investment costs will be recovered on the basis of actual cost incurred, and requires PSEG ER&T to submit a report to PJM showing the actual amounts expended for the Project Investments during the previous year.<sup>24</sup> Additionally, article IV, section 2 (D) states that refunds of project investment costs will be refunded to transmission customers on the same basis as costs are allocated under section 120 of PJM’s Open Access Transmission Tariff (PJM’s OATT).<sup>25</sup> Finally, the Tariff states that PSEG ER&T is entitled to recover the project investments it has incurred over the remaining term of the Tariff,<sup>26</sup> but must refund to PJM the costs of any project investment each month for

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<sup>23</sup> The Commission notes that to the extent that the NJ Rate Counsel’s request for details of the pass through of costs to New Jersey ratepayers is beyond what is contemplated in section 120 of PJM’s OATT, such request is outside the scope of this proceeding.

<sup>24</sup> PSEG ER&T’s Cost of Service Tariff, Article IV, Section 2 (E).

<sup>25</sup> Section 120 (Cost Allocation) of PJM’s OATT states:

The costs incurred to compensate Generation Owners pursuant to this Part V of this Tariff shall be an additional transmission charge allocated to the load in the Zone(s) of the Transmission Owner(s) that will be assigned financial responsibility for the reliability upgrades necessary to alleviate the reliability impact that would result from the Deactivation of the generating unit and this new charge shall be collected monthly from such loads in addition to all other charges for transmission service to such loads.

<sup>26</sup> See PSEG ER&T’s Cost of Service Tariff, Article III (TERM);

every month that Hudson Unit No. 1 continues to operate after PJM has informed PSEG ER&T that the unit can deactivate.<sup>27</sup>

The Commission orders:

(A) The PSEG Companies' informational filing is hereby accepted for informational purposes.

(B) PSEG ER&T is directed file a detailed list to account for actual costs incurred in 2011 and 2012, as detailed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>27</sup> See PSEG ER&T's Cost of Service Tariff, Article IV, Section 2 (F) (Refund of Project Investment Reimbursement).