

155 FERC ¶ 61,256  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

NRG Power Midwest, LP

Docket Nos. ER16-1443-000  
EL16-72-000

ORDER ACCEPTING PROPOSED RATE SCHEDULE, GRANTING WAIVER,  
INSTITUTING SECTION 206 PROCEEDING, AND ESTABLISHING HEARING  
AND SETTLEMENT JUDGE PROCEDURES

(Issued June 16, 2016)

1. On April 18, 2016, as amended, NRG Power Midwest, LP (NRG Midwest) submitted for filing its FERC Rate Schedule No. 2 (Revised Reactive Rate Schedule), pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT).<sup>2</sup> NRG Midwest seeks to adjust its revenue requirement for reactive supply and voltage control service (Reactive Service) to reflect the deactivation of Unit 7 at the Avon Lake fossil-fueled generating facility (Avon Lake Unit 7), for which it receives Reactive Service compensation. NRG Midwest also requests a one-time waiver (Waiver Request) of the 90-day prior notice requirement set forth in Schedule 2 of the PJM OATT to facilitate the deactivation of Avon Lake Unit 7, which is scheduled for April 16, 2016. In this order, we accept the Revised Reactive Rate Schedule for filing,<sup>3</sup> to become effective

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> In Docket No. ER16-1443-000, NRG Midwest filed both a Revised Reactive Rate Schedule and a corrected Attachment C to the Revised Reactive Rate Schedule in two filings on April 18, 2016. The correction to Attachment C in Revised Reactive Rate Schedule corrects a typographical error.

<sup>3</sup> NRG Power Midwest LP, Cost-Based Rate Schedules, Reactive Rate Schedule, Rate Schedule FERC No. 2, 5.0.0.

April 16, 2016, as requested, direct NRG Midwest to repay PJM any payments, with interest, NRG Midwest received for providing Reactive Service from Avon Lake Unit 7 on or after April 16, 2016, as discussed below, and grant the Waiver Request. We also institute a proceeding pursuant to section 206 of the FPA<sup>4</sup> in Docket No. EL16-72-000 regarding the justness and reasonableness of NRG Midwest's reactive power rate for its fleet in the American Transmission Systems, Incorporated (ATSI) Zone of PJM, establish a refund effective date, and establish hearing and settlement judge procedures.

### **I. NRG Midwest's Filing**

2. Schedule 2 of the PJM OATT, which covers Reactive Service, provides that PJM will compensate owners of generation and non-generation resources for maintaining the capability to provide reactive power to PJM. Specifically, Schedule 2 states that, for each month of Reactive Service provided by generation and non-generation resources in the PJM region, PJM shall pay each resource owner an amount equal to the resource owner's monthly revenue requirement, as accepted or approved by the Commission. Schedule 2 requires that at least 90 days before deactivating or transferring a resource receiving compensation for reactive supply and voltage support, the resource owner either: (1) submit a filing to terminate or adjust its cost-based rate schedule to account for the deactivated or transferred unit; or (2) submit an informational filing explaining the basis for the decision by the Reactive Service supplier not to terminate or revise its cost-based rate schedule.<sup>5</sup>

3. NRG Midwest states that it is an indirect, wholly owned subsidiary of NRG Energy, Inc.<sup>6</sup> NRG Midwest states that it currently owns and operates the following generation facilities: Niles, Avon Lake (Units 7, 9, and 10), and New Castle (Units 3, 4, and 5, as well as two additional diesel-fired generators) (collectively, NRG Midwest Units). NRG Midwest notes that the NRG Midwest Units have a

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<sup>4</sup> 16 U.S.C. § 824e (2012).

<sup>5</sup> PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

<sup>6</sup> NRG Midwest April 18, 2016 Transmittal Letter at 3 (citing *NRG Energy, Inc.*, 141 FERC ¶ 61,207 (2012)) (Transmittal Letter).

combined generation capacity of approximately 1,106 MW.<sup>7</sup> According to NRG Midwest, the NRG Midwest Units commenced commercial operations at different times beginning in 1949, and the current annual revenue requirement (ARR) for providing Reactive Service to PJM is \$1,769,553.83, which is the remaining balance of the 2004 fleet-wide, Commission-approved revenue requirement.<sup>8</sup>

4. NRG Midwest asserts that, on December 1, 2015, it provided notice to PJM of its intent to deactivate Avon Lake Unit 7, effective April 16, 2016, due to modifications that would be required to comply with the United States Environmental Protection Agency's Mercury and Air Toxics Standards.<sup>9</sup> NRG Midwest explains that the notice also indicated that NRG Midwest intends to convert Unit 7 from an electric generating unit to an auxiliary boiler for Avon Lake Unit 9 start-up.<sup>10</sup> NRG Midwest states that, by letter dated December 30, 2015, PJM notified NRG Midwest that Avon Lake Unit 7 would not be needed for system reliability past its deactivation date.<sup>11</sup> NRG Midwest states that if the retroactive effective date it requests is granted, and to the extent PJM has paid revenue to NRG Midwest, it will refund to PJM the revenue amount associated with Avon Lake Unit 7 together with interest calculated in accordance with Section 35.19a of the Commission's regulations or adopt PJM's preferred refund method to account for any overpayment.

5. According to NRG Midwest, the Revised Rate Schedule remains a cost-based rate schedule that reflects NRG Midwest's revenue requirement for Reactive Service after adjustment for the deactivation of Avon Lake Unit 7.<sup>12</sup> NRG Midwest explains that the ARR continues to consist of three components: (1) the fixed cost attributable to reactive power production capability; (2) the increased generator and step-up transformer heating

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 6.

losses that result from the production of reactive power; and (3) lost opportunity costs in the event a facility is directed to start units or modify its energy output to produce additional reactive power. NRG Midwest submits that, as a result of the deactivation of Avon Lake Unit 7, NRG Midwest's ARR is reduced from \$1,769,553.83 to \$1,606,687.94.<sup>13</sup>

6. In order to isolate the revenue requirement associated with Avon Lake Unit 7, NRG Midwest proposes to estimate the portion of the ARR attributable to Avon Lake and then prorate that figure among the Avon Lake units based on the MVAR calculated from the MVA and power factor nameplate ratings of the units.<sup>14</sup> Applying this approach, NRG Midwest asserts that the portion of the ARR for Avon Lake Unit 7 is \$162,865.89.<sup>15</sup> NRG Midwest states that because the proposed effective date falls on a date other than the first of a month, a mechanism has been added to the Revised Reactive Rate Schedule to calculate a partial month revenue requirement associated with the deactivation of Avon Lake Unit 7.<sup>16</sup>

## II. Waiver Request

7. NRG Midwest seeks waiver of the PJM Schedule 2 requirement that a filing revising an existing reactive power cost-based revenue requirement be submitted at least 90 days prior to the date of retirement or transfer of a generation facility.<sup>17</sup> NRG Midwest states that the Commission has previously granted limited waivers of electric tariff provisions, including the Schedule 2 prior notice requirement, when: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.<sup>18</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 7-8.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

<sup>18</sup> Transmittal Letter at 10 (citing *Big Sandy Peaker Plant, LLC*, 154 FERC ¶ 61,281, at PP 11-12 (2016) (granting waiver of the 90-day prior notice requirement of Schedule 2 to the PJM OATT); *Reliant Energy Seward, LLC*,

8. NRG Midwest states that its failure to make the filing 90 days prior to the anticipated retirement of Avon Lake Unit 7 was the result of a failure to finalize processes to identify and meet the 90-day notice requirement. According to NRG Midwest, it is revising its compliance processes to ensure that, in the event of the retirement or sale of a generation unit in PJM that receives reactive power compensation, the need to make a filing with the Commission is promptly identified and the appropriate filing is timely submitted. NRG Midwest asserts that the waiver is limited in scope because it pertains only to the PJM Schedule 2 90-day notice requirement and does not affect any other provision regarding either the deactivation of Avon Lake Unit 7 or the compensation that NRG Midwest receives for providing Reactive Service. NRG Midwest argues that the Waiver Request remedies a concrete problem: by granting waiver, the lower revised ARR can go into effect so as to coincide with the actual deactivation of Avon Lake Unit 7. NRG Midwest further contends that the waiver will have no undesirable consequences and will not harm or otherwise affect third parties. NRG Midwest asserts that the waiver will benefit rate payers by allowing the reduced rate to go into effect sooner than if the Waiver Request is not granted.<sup>19</sup>

### **III. Notice and Responsive Pleadings**

9. Notice of NRG Midwest's April 18, 2016 filing was published in the *Federal Register*, 81 Fed. Reg. 23,696 (2016), with interventions and protests due on or before May 9, 2016. PJM submitted a timely motion to intervene.

### **IV. Discussion**

#### **A. Procedural Matters**

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>20</sup> PJM's timely, unopposed motion to intervene serves to make it a party to this proceeding.

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154 FERC ¶ 61,017, at PP 12-13 (2016); *Innoventive Power LLC*, 152 FERC ¶ 61,057 (2015); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011)).

<sup>19</sup> *Id.*

<sup>20</sup> 18 C.F.R. § 385.214 (2015).

## B. Substantive Matters

11. Our preliminary analysis indicates that NRG Midwest's proposed Revised Reactive Rate Schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We also find that NRG Midwest's proposed revenue requirement for Reactive Service provided by the NRG Midwest Units raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in hearing and settlement judge procedures. For example, we note that, based upon NRG Midwest's work papers, NRG Midwest is requesting \$692,348.17 per year for heating losses based on locational marginal pricing and NRG Midwest has not provided cost support for variable costs related to heating losses. Additionally, the NRG Midwest Units may be subject to MVAR output degradation which reduces the reactive power capability of the generating facilities due to the age of the generating units. Accordingly, to the extent that NRG Midwest's proposed Revised Reactive Rate Schedule represents a rate decrease, we will accept it for filing, effective April 16, 2016, as requested.<sup>21</sup> Further, given that the Avon Lake Unit 7 was deactivated on April 16, 2016, and therefore unable to provide Reactive Service as of that date, we accept NRG Midwest's commitment to repay to PJM any Reactive Service payments received for Avon Lake Unit 7 on or after the effective date. PJM is also entitled to receive interest on any such Reactive Service payments paid to NRG Midwest after the effective date, at the Commission interest rate.<sup>22</sup> NRG Midwest must submit a refund report to the Commission within 30 days of issuing such refunds. Additionally, because a further rate decrease may be warranted, we will institute a section 206 proceeding in Docket No. EL16-72-000 with respect to the justness and reasonableness of NRG Midwest's proposed rates,<sup>23</sup> establish a refund effective date, and set the filing for hearing and settlement judge procedures. Although we are setting for hearing NRG Midwest's reactive power rate in its entirety, we note that the use of locational marginal price to calculate the heating losses component of a reactive power revenue requirement is contrary to Commission precedent.<sup>24</sup>

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<sup>21</sup> *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, at 61,338 (1992), *order on reh'g*, 61 FERC ¶ 61,089 (1992).

<sup>22</sup> 18 C.F.R. § 35.19a (2015); Federal Energy Regulatory Commission, *Interest Rates* (Sept. 2014), <https://www.ferc.gov/enforcement/acct-matts/interest-rates.asp>.

<sup>23</sup> *See, e.g., DATC Path 15, LLC*, 147 FERC ¶ 61,035, at P 19 (2014).

<sup>24</sup> The Commission recently provided guidance on establishing or revising rates for Reactive Service. *Wabash Valley Power Association, Inc.*, 154 FERC ¶ 61,245,

(continued...)

12. We grant NRG Midwest's request for waiver of the 90-day prior notice requirement in Schedule 2 of the PJM OATT. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.<sup>25</sup>

13. We find that the circumstances of the instant case satisfy the foregoing criteria. First, we find that NRG Midwest has acted in good faith and is revising its compliance processes to ensure that, in the event of the retirement or sale of a generation unit in PJM that receives reactive power compensation, the need to make a filing with the Commission is promptly identified and the appropriate filing is timely submitted. Second, we find that the waiver is limited in scope as it does not affect any other provision regarding either the deactivation of Avon Lake Unit 7 or the compensation that NRG Midwest receives for providing Reactive Service. Third, we find that the waiver addresses a concrete problem by allowing the lower revised ARR to have an effective date coinciding with the actual deactivation of Avon Lake Unit 7. Finally, we find that the waiver does not harm a third party, and will only benefit rate payers by allowing the reduced rate to go into effect. Accordingly, we accept NRG Midwest's proposed Revised Reactive Rate Schedule for filing, to be effective April 16, 2016, as requested.

14. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than the date of the publication by the Commission of notice of its intention to initiate such proceeding nor later than five months after the publication date.<sup>26</sup> In such cases, in order to give maximum protection to customers, and consistent with our precedent, we have historically tended to establish the section 206

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at PP 24-29 (2016); *Wabash Valley Power Association, Inc.*, 154 FERC ¶ 61,246, at PP 23-28 (2016).

<sup>25</sup> See, e.g., *Constellation Power Source Generation, LLC*, 155 FERC ¶ 61,181, at P 19 (2016) (*Constellation Power*); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Servs., L.P.*, 154 FERC ¶ 61,082, at PP 11-13 (2016).

<sup>26</sup> 16 U.S.C. § 824e(b) (2012).

refund effective date at the earliest date allowed by section 206, and we do so here as well.<sup>27</sup> That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL16-72-000 in the Federal Register.

15. Section 206(b) of the FPA also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. As we are setting the section 206 proceeding in Docket No. EL16-72-000 for hearing and settlement judge procedures, we expect that, if the proceeding does not settle, we would be able to render a decision within eight months of the date of filing of briefs opposing exceptions to the Initial Decision. Thus, if the Presiding Judge were to issue an Initial Decision by December 31, 2016, we expect that, if the proceeding does not settle, we would be able to render a decision by October 31, 2017.

16. Although we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>28</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise the Acting Chief Judge will select a judge for this purpose.<sup>29</sup> The settlement judge shall report to the Acting Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Acting Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

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<sup>27</sup> See, e.g., *Idaho Power Co.*, 145 FERC ¶ 61,122 (2013); *Canal Electric Co.*, 46 FERC ¶ 61,153, *order on reh'g*, 47 FERC ¶ 61,275 (1989).

<sup>28</sup> 18 C.F.R. § 385.603 (2015).

<sup>29</sup> If the parties decide to request a specific judge, they must make their joint request to the Acting Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

The Commission orders:

(A) NRG Midwest's proposed Revised Reactive Rate Schedule is hereby accepted for filing, to become effective April 16, 2016, as discussed in the body of this order.

(B) NRG Midwest is hereby directed, within 30 days of the date of this order, to repay to PJM any payments received from PJM, with interest, for Reactive Service associated with Avon Lake Unit 7 on or after April 16, 2016, as discussed in the body of this order.

(C) NRG Midwest is hereby directed to, within 30 days of making such refunds, submit a refund report, as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL16-72-000, concerning the justness and reasonableness of NRG Midwest's Revised Reactive Rate Schedule, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), the Acting Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Acting Chief Judge designates the settlement judge. If the participants decide to request a specific judge, they must make their request to the Acting Chief Judge within five (5) days of the date of this order.

(F) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Acting Chief Judge on the status of the settlement discussions. Based on this report, the Acting Chief Judge shall provide the participants with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Acting Chief Judge of the participants' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Acting Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The Secretary shall promptly publish in the Federal Register a notice of the Commission's initiation of the proceeding under section 206 of the FPA in Docket No. EL16-72-000.

(I) The refund effective date in Docket No. EL16-72-000 established pursuant to section 206 of the FPA shall be the date of publication in the Federal Register of the notice discussed in Ordering Paragraph (G) above.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.