152 FERC ¶ 61,164
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

FirstEnergy Solutions Corp. Docket Nos. ER15-1510-000
ER15-1510-001

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE SCHEDULE AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued August 31, 2015)

1. On April 15, 2015, FirstEnergy Service Company (FirstEnergy), on behalf of FirstEnergy Solutions Corp. (FES), submitted revisions to its Rate Schedule FERC No. 1 (Reactive Power Schedule), which sets forth the cost-based revenue requirement for the provision of Reactive Supply and Voltage Control from Generation Sources Service (Reactive Power Service) to PJM Interconnection, LLC (PJM). In this order, we accept for filing FirstEnergy's proposed Reactive Power Schedule and suspend it for five months, effective November 16, 2015, subject to refund. We deny FirstEnergy's request for waiver of the Commission's 60-day notice requirement.[1] We also establish hearing and settlement judge procedures.

I. FirstEnergy's Filing

2. Schedule 2 of PJM's Open Access Transmission Tariff (PJM Tariff), 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.[2]

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[1] 18 C.F.R. § 35.3 (2015).

[2] PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

3. FirstEnergy states that it indirectly owns generating units in PJM, and provides Reactive Power Service to PJM from the following electric generating units located in the American Transmission Systems, Incorporated Zone (ATSI Zone): Bayshore Plant Unit 1, Beaver Valley Power Station, Davis-Besse Nuclear Power Station, Perry Nuclear Power Plant, Bruce Mansfield Plant, W.H. Sammis Plant, and West Lorain Plant (collectively, Generators). FirstEnergy states that it is entitled to all of the output produced by the Generators. Additionally, FirstEnergy states that it indirectly owns and operates generating units in PJM, and provides Reactive Power Service to PJM from the following electric generating units located in the ATSI Zone: Ashtabula Plant, R.E. Burger Plant EMD, Eastlake Plant Units 1-3, Lake Shore Plant, and Lake Shore Plant EMD (collectively, Retiring Generators). FirstEnergy states that the Retiring Generators will be deactivated and their last day of operation was April 15, 2015.[3]

4. FirstEnergy states that on March 15, 2004, in Docket No. ER04-652-000, it submitted a Reactive Power Service rate schedule for its generating facilities located in the ATSI control area.[4] On February 14, 2005, the Commission issued an order approving an uncontested black box settlement establishing an annual revenue requirement for FES's provision of Reactive Power Service in the ATSI Zone of $12,153,945.00.[5]

5. On May 2, 2014, FirstEnergy filed to update its Reactive Power Service revenue requirement to reflect transfers of facility ownership and deactivations of units.[6] The Commission accepted the updated annual Reactive Power Service revenue requirement of $10,697,485.70 on June 9, 2014.[7] FirstEnergy states that it has been developing an updated Reactive Power Service revenue requirement to reflect current operating costs and considerations.[8] FirstEnergy notes that the instant filing includes an updated revenue

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[3] FirstEnergy April 15, 2015 Transmittal Letter (Transmittal Letter) at 2-3.

[4] FirstEnergy Solutions Corp., Docket No. ER04-652-000 (Mar. 15, 2004). FirstEnergy notes that in 2004 the ATSI Zone was part of MISO and that the ATSI Zone became part of PJM in 2011.

[5] *FirstEnergy Solutions Corp.*, 110 FERC ¶ 61,142 (2005).

[6] FirstEnergy Solutions Corp., Docket No. ER14-1886-000, May 5, 2014 Filing (May 2014 filing) at 8-9.

[7] *FirstEnergy Solutions Corp.*, Docket No. ER14-1886-000 (June 9, 2014) (delegated letter order).

[8] FirstEnergy's April 15, 2015 Filing at 3 (citing May 2014 filing at n.3).

requirement of $21,703,349.81, which FirstEnergy states is based upon the actual cost of providing Reactive Power Service and also reflects the retirement of the Retiring Generators.

6. FirstEnergy states that the updated Reactive Power Service revenue requirement for FES is calculated using the methodology approved by the Commission in *AEP* and *Dynegy*,[9] and consists of two components: (1) the fixed cost attributable to reactive power production capability (Fixed Capability Component) and (2) the increased generator and generator step-up (GSU) transformer heating losses that result from the production of reactive power (Heating Loss Component).

7. FirstEnergy states that the Fixed Capability Component consists of the portion of plant costs that are attributable to the production of Reactive Power Service. FirstEnergy developed an allocation factor to apportion costs between real and reactive functions for generator and associated exciter equipment, generator step-up (GSU) transformers, accessory electrical equipment, and the balance of plant. FirstEnergy states that for merchant generators such as the Generators, it has been the Commission's general policy to allow an [independent power producer] to use the authorized rate of return and return on common equity of an interconnected utility for reactive power compensation, since an interconnected utility's return is a conservative estimate of a merchant generator's return because the merchant generator faces more risk. FirstEnergy states that it used the interconnected utility's cost structure and rate of return as a proxy, and has therefore utilized the return on equity and capital structure included in ATSI's currently effective transmission formula rate.[10]

8. FirstEnergy states that the Heating Loss Component is designed to recover the cost of increased heating losses associated with the armature winding and field winding of the generators associated with Reactive Power Service production. Further, FirstEnergy states that heating losses also occur in real power production in the GSU. Therefore, FirstEnergy states that a portion of these losses are attributable to Reactive Power Service supply and are included in a portion of the GSU transformer losses for the Heating Loss Component of the revenue requirement.

9. On June 2, 2015, Commission staff issued a letter informing FirstEnergy that its submittal was deficient and that additional information was required to process its filing

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[9] *See American Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999) ("*AEP*"), *withdrawal of reh'g granted*, 92 FERC ¶ 61,001 (2000); *Dynegy Midwest Generation, Inc.*, 121 FERC ¶ 61,025 (2007) (Opinion No. 498) ("*Dynegy*"), *order on reh'g*, 125 FERC ¶ 61,280 (2009).

[10] Transmittal Letter at 4-5.

(Deficiency Letter). Commission staff requested additional information related to: (1) the Generators nameplate MVARs and MVAs; (2) how FirstEnergy derived the generator and exciter cost for each of the Generators; (3) the power factor values FirstEnergy used in its filing to calculate the reactive allocator for the Bay Shore, Beaver Valley, Davis Besse, Mansfield, Perry, Sammis, and West Lorain generators; (4) the heating loss costs described in the filing; (5) how costs for the remaining seven generators have increased in comparison to the FES filing in Docket No. ER04-652-000; and (6) why the tariff record cannot contain the revenue requirement as allocated to each unit in addition to the overall revenue requirement. On July 2, 2015, FirstEnergy filed a response to the Deficiency Letter (Deficiency Letter Response).

II. Notice and Responsive Pleadings

10. Notice of FirstEnergy's April 15, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 22,175 (2015), with interventions and protests due on or before May 6, 2015. Notice of FirstEnergy's Deficiency Letter Response was published in the *Federal Register*, 80 Fed. Reg. 40,052 (2015), with interventions and protests due on or before July 23, 2015. On April 21, 2015, PJM submitted a motion to intervene.

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[11] PJM's unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

12. We find that FirstEnergy's proposed Reactive Power Schedule raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

13. Our preliminary analysis indicates that FirstEnergy's proposed Reactive Power Schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In *West Texas Utilities Co.*, the Commission explained that, when its preliminary analysis indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, the Commission will generally impose a maximum suspension (i.e., five months).[12] In this

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[11] 18 C.F.R. § 385.214 (2015).

[12] *W. Tex. Utils. Co.*, 18 FERC ¶ 61,189, at 61,374-75 (1982).

proceeding, we find that FirstEnergy's proposed Reactive Power Schedule may yield substantially excessive rates. Accordingly, we accept FirstEnergy's proposed Reactive Power Schedule for filing, suspend it for the maximum five-month period, to be effective November 16, 2015, subject to refund, and the outcome of hearing and Settlement Judge procedures.[13]

14. While we are setting these matters for a trial-type evidentiary hearing, we encourage the participants to make every effort to settle their dispute before hearing procedures are commenced. To aid the participants 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.[14] If the participants desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.[15] The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the participants with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

15. Furthermore, as discussed in the Commission's November 20, 2014 Order to Show Cause in Docket No. EL15-15-000,[16] given that FirstEnergy may have continued to receive payments for Reactive Service for units that were "no longer capable of providing that service," we have referred such concern to the Commission's Office of Enforcement for further examination and inquiry as may be appropriate.

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[13] Since we are suspending FirstEnergy's filing for the maximum period, we deny FirstEnergy's request for waiver of the Commission's 60-day notice requirement.

[14] 18 C.F.R. § 385.603 (2015).

[15] If the participants decide to request a specific judge, they must make their joint request to the 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).

[16] *See PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,132, at P 10 (2014); *see also Duke Energy Conesville, LLC*, 150 FERC ¶ 61,229, at P 8 (2015); *Desoto Cnty. Generating Co., LLC*, 151 FERC ¶ 61,009, at P 14 (2015) (referring to the Commission's Office of Enforcement the matter of the resource owner possibly receiving payments for Reactive Power Service while its facility was incapable of providing that service).

The Commission orders:

(A) We deny waiver of the Commission's 60-day notice requirement, accept FirstEnergy's proposed Reactive Power Schedule for filing, and suspend it for a five-month period, to become effective November 16, 2015, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of FirstEnergy's proposed Reactive Power 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.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), the Chief 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 Chief Judge designates the settlement judge. If the participants decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the 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 Chief Judge of the participants' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the 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.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.