

152 FERC ¶ 61,188
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.

Newark Energy Center, LLC

Docket Nos. ER15-1706-001
EL15-97-000

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

(Issued September 11, 2015)

1. On May 13, 2015, as amended on July 15, 2015, Newark Energy Center, LLC (Newark) filed a new baseline Reactive Power Tariff,¹ which sets forth its revenue requirement for the provision of Reactive Supply and Voltage Control from Generation or Other Sources Service (Reactive Service) by its facility located in Newark, New Jersey (Facility). In this order, we accept for filing Newark's proposed Reactive Power Tariff, to become effective July 1, 2015, institute a proceeding pursuant to section 206 of the Federal Power Act (FPA),² establish a refund effective date, and set the filing for hearing and settlement judge procedures.

I. Newark's Filing

2. Schedule 2 of PJM Interconnection, L.L.C.'s (PJM) 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,

¹ Newark Energy Center, LLC, Reactive Power Tariff (0.1.0).

² 16 U.S.C. § 824e (2012).

PJM shall pay each resource owner an amount equal to the resource owner's monthly revenue requirement, as accepted or approved by the Commission.³

3. Newark states that the Facility is a newly constructed 702 MW natural gas-fired, combined-cycle electric generation facility consisting of one steam turbine generator rated at 280.5 MW and two combustion turbine generators each rated at 210.8 MW. Newark states that the Facility will be interconnected to the transmission system owned by Public Service Electric and Gas Company (PSE&G) and operated by PJM. Newark states that the Facility is scheduled to go in-service and begin producing energy and providing Reactive Service on July 1, 2015.⁴ Newark requested an effective date of July 1, 2015.⁵

4. Newark states that the Facility's revenue requirement has been calculated in accordance with the *AEP* methodology,⁶ and includes (1) a component related to the fixed cost of that portion of the plant investment in the Facility that is attributed to the production of reactive power (Fixed Capability Component); and (2) a component related to heating losses that result from the production of reactive power (Heating Losses Component).⁷ Newark proposes an annual revenue requirement of \$3,146,949, which includes \$2,512,939 for the Fixed Capability Component and \$634,010 for the Heating Losses Component.

5. Newark states that the Fixed Capability Component was calculated by determining the portion of plant costs attributable to the production of reactive power and applying a fixed charge rate. Newark analyzed the reactive portion of investment in: (1) the generator and associated exciter equipment, (2) generator step-up transformers, (3) accessory electrical equipment that supports the operation of the generator-exciter system, and (4) the balance of plant. Newark states that because, as an independent power producer, it is not subject to cost-of-service accounting, the Commission's Uniform System of Accounts, or a Commission-established rate of return, it used the

³ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

⁴ Newark May 13, 2015 Transmittal Letter (Transmittal Letter) at 3.

⁵ *Id.* at 2.

⁶ *Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141, at 61,456-57 (1999).

⁷ Transmittal Letter at 4.

authorized rate of return and return on equity of the utility to which the Facility is interconnected, i.e., PSE&G.⁸

6. Newark states that the Heating Losses Component is included in the revenue requirement in order to recover costs associated with losses resulting from “ohm heating associated with the armature winding and field winding of the generator and losses in the [generator step-up] transformers.” Newark states that the “real power that is consumed by ohm heating losses is a cost that is directly attributable to reactive power production.”⁹

7. On July 2, 2015, Commission staff issued a letter informing Newark that its submittal was deficient and that additional information was required to process its filing (Deficiency Letter). Commission staff requested additional information related to: (1) the power factor applicable to the Facility under its interconnection agreement; (2) how the hours of operation for the Facility as used in determining the Heating Losses Component were calculated; and (3) why indirect cost components were allocated based on the ratio of turbine generator costs rather than the Remaining Production Plant Investment Allocator. On July 15, 2015, Newark filed a response to the Deficiency Letter (Deficiency Response).

II. Notice and Responsive Pleadings

8. Notice of Newark’s May 13, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 28,990 (2015), with interventions and protests due on or before June 3, 2015. Notice of Newark’s Deficiency Response was published in the *Federal Register*, 80 Fed. Reg. 43,083 (2015), with interventions and protests due on or before August 5, 2015. On June 2, 2015, PJM submitted a motion to intervene and comments.

9. PJM explains in its comments that it determines the monthly revenue requirement for Reactive Service pursuant to Schedule 2 of the PJM Tariff by dividing the annual revenue requirement approved by the Commission by twelve and rounding to the second decimal. PJM notes that, if Newark’s proposed revenue requirement is approved by the Commission, the application of PJM’s methodology would provide Newark an amount \$0.25 lower than its proposed monthly revenue requirement.¹⁰

⁸ *Id.* at 5.

⁹ *Id.* at 6.

¹⁰ PJM June 2, 2015 Comments at 2.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), PJM's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

11. We find that Newark's proposed revenue requirement for Reactive Service provided by the Facility 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. Accordingly, as Newark is a new seller with no prior transactions and thus both has no prior customers and has provided no prior services, while we will accept Newark's proposed Reactive Power Schedule for filing, to be effective July 1, 2015,¹¹ we institute a section 206 proceeding in Docket No. EL15-97-000, establish a refund effective date, and set the filing for hearing and settlement judge procedures.

12. 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.¹² 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 refund effective date at the earliest date allowed by section 206, and we do so here as well.¹³ That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL15-97-000 in the *Federal Register*. Section 206(b) of the FPA also requires that, if no final decision is rendered by the conclusion of the

¹¹ An initial rate filing, as distinct from a changed rate filing, is one which provides for a new service to a new customer. *E.g.*, *Southwestern Electric Power Co.*, 39 FERC ¶ 61,099, at 61,293 (1987). An initial rate filing is not subject to suspension. *E.g.*, *Commonwealth Edison Co.*, 44 FERC ¶ 61,038, at 61,112 (1988), *reh'g dismissed*, 49 FERC ¶ 61,308 (1989).

¹² 16 U.S.C. § 824e (b) (2012).

¹³ *See, e.g.*, *Idaho Power Company*, 145 FERC ¶ 61,122 (2013); *Canal Electric Co.*, 46 FERC ¶ 61,153, *order on reh'g*, 47 FERC ¶ 61,275 (1989).

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. EL15-97-000 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 (8) 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 July 31, 2016, we expect that, if the proceeding does not settle, we would be able to render a decision by May 31, 2017.

13. 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 commence. 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 thirty (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.

The Commission orders:

(A) Newark's proposed Reactive Power Tariff is hereby accepted for filing, to become effective July 1, 2015, as discussed in the body of this order.

(B) 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

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>).

(18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL15-97-000, concerning the justness and reasonableness of Newark's Reactive Power Tariff, 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.

(F) 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. EL15-97-000.

(G) The refund effective date in Docket No. EL15-97-000 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 (F) above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.