

152 FERC ¶ 61,224
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.

RC Cape May Holdings, LLC

Docket Nos. ER15-746-002
EL15-101-000

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

(Issued September 21, 2015)

1. On December 29, 2014, RC Cape May Holdings, LLC (RC Cape May) submitted revisions to its Rate Schedule FERC No. 2 (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) from the B.L. England Generating Station (B.L. England). In this order, we accept RC Cape May's revised Reactive Power Schedule for filing,¹ to become effective January 1, 2015, and direct RC Cape May to repay PJM Interconnection, L.L.C. (PJM) any payments, with interest, RC Cape May received above the proposed revenue requirement for providing Reactive Power Service after January 1, 2015, as discussed below. We will also establish hearing and settlement judge procedures. In addition, because RC Cape May is proposing a reduction in its revenue requirement, and a further decrease may be warranted, we are instituting an investigation pursuant to section 206 of the Federal Power Act (FPA)² in Docket No. EL15-101-000 to determine whether RC Cape May's proposed rate reduction is just and reasonable.

I. RC Cape May's Filing

2. Schedule 2 of PJM's Open Access Transmission Tariff (PJM Tariff), which covers Reactive Power Service, provides that PJM will compensate owners of generation and

¹ RC Cape May Holdings, LLC, Tariff Database, First Revised Rate Schedule FERC No. 2 (3.0.0).

² 16 U.S.C. § 824e (2012).

non-generation resources for maintaining the capability to provide reactive power to PJM. Specifically, Schedule 2 states that, for each month of Reactive Power 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.³

3. RC Cape May, an Exempt Wholesale Generator⁴ with market-based rate authority,⁵ was created for the sole purpose of owning and operating B.L. England, which it acquired from Atlantic City Electric Company (Atlantic City) in 2006.⁶ B.L. England is an electric generating facility located in New Jersey, within PJM, that is interconnected to Atlantic City's transmission system.

4. RC Cape May states that, in conjunction with the transfer of ownership of B.L. England from Atlantic City, a filing was made with the Commission to transfer a portion of Atlantic City's revenue requirement for Reactive Power Service collected pursuant to Schedule 2 of the PJM Tariff to RC Cape May.⁷ RC Cape May notes that PPL EnergyPlus, LLC, a non-affiliate of RC Cape May and the scheduling agent for B.L. England, receives payments for Reactive Power Service from PJM and remits such payments to RC Cape May.⁸ According to RC Cape May, at the time it acquired B.L. England, the station was a 450 MW facility with a Commission-approved annual revenue requirement of \$2,625,947.86. RC Cape May explains that, on April 30, 2014, it retired Unit 1 of B.L. England, reducing the facility's nameplate rating to 323 MW.⁹

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

⁴ RC Cape May December 29, 2014 Filing at 2 (citing *Ewington Energy Systems LLC, et al.*, Docket Nos. EG07-1-000, *et al.* (Jan. 23, 2007) (delegated letter order)).

⁵ RC Cape May December 29, 2014 Filing at 2 (citing *RC Cape May Holdings, LLC*, Docket Nos. ER07-30-000, *et al.* (Nov. 16, 2006) (delegated letter order)).

⁶ RC Cape May December 29, 2014 Filing at 2 (citing *Atl. City Elec. Co.*, 117 FERC ¶ 62,161 (2006)).

⁷ RC Cape May December 29, 2014 Filing at 2 (citing *PJM Interconnection, L.L.C.*, Docket No. ER07-602-000 (Mar. 5, 2007) (delegated letter order)).

⁸ RC Cape May December 29, 2014 Filing at 3.

⁹ RC Cape May December 29, 2014 Filing at 2-3.

5. RC Cape May proposes to adjust the annual revenue requirement in its Reactive Power Schedule on a pro rata basis based on the retirement of Unit 1 of B.L. England, which reduced the capacity of the station from 450 MW to 323 MW. RC Cape May proposes to use the effective rate of \$0.48/kW-month to make the pro rata reduction, which it calculated by dividing the Commission-approved annual revenue requirement by the 450 MW rating of B.L. England when the Commission approved the existing Reactive Power Schedule.¹⁰ RC Cape May applies the \$0.48/kW-month rate to the current capacity of B.L. England—323 MW—yielding a new monthly revenue requirement of \$155,040.00, a reduction from the current monthly revenue requirement of \$218,828.99.¹¹ RC Cape May asks that the Commission designate the effective date for the proposed Reactive Power Schedule.

II. Deficiency Letter Responses

6. On January 20, 2015, Commission staff, pursuant to delegated authority, issued a deficiency letter requesting RC Cape May to provide additional information in order to process its filing. Specifically, Commission staff requested additional information related to the retirement of Unit 1 of B.L. England.

7. On February 10, 2015, RC Cape May filed a response (First Deficiency Letter Response). In the First Deficiency Letter Response, RC Cape May states that, at the time it acquired B.L. England, various documentation, including that provided to the Commission, described the facility as “approximately 450 MW.”¹² RC Cape May explains that, for this reason, it used a 450 MW figure in its December 29, 2014 Filing. According to RC Cape May, the more appropriate measure is the nameplate rating of B.L. England, which was 483 MW when RC Cape May acquired the facility; given that the nameplate rating of the retired Unit 1 generator is 136 MW, the current nameplate

¹⁰ RC Cape May December 29, 2014 Filing at 3 (citing Attachment C, Maiz Test. at 3:21-4:7).

¹¹ RC Cape May December 29, 2014 Filing at 3-4 citing Attachment C, Maiz Test. at 4:11-25).

¹² RC Cape May February 10, 2015 Deficiency Letter Response at 2-3 (citing *Atl. City Elec. Co.*, 117 FERC ¶ 62,161 at 64,466; Atlantic City Electric Company and RC Cape May Holdings, LLC, Application for Authorization for Disposition of an Existing Generation Facility and Related Jurisdictional Assets, Docket No. EC07-3-000, at 3 (filed Oct. 11, 2006)).

rating of B.L. England is 347 MW.¹³ RC Cape May provides in its First Deficiency Letter Response revised calculations that show that the revenue requirement for Reactive Power Service on a per-MW basis based on the nameplate rating of the facility at the time RC Cape May acquired it is \$0.453062/kW-month, rather than \$0.48/kW-month. Applying this reduced rate to the 347 MW nameplate rating of B.L. England after the Unit 1 retirement yields a new annual revenue requirement of \$1,886,550.00 and monthly revenue requirement of \$157,212.50.¹⁴

8. On June 24, 2015, Commission staff, pursuant to delegated authority, issued a second deficiency letter requesting RC Cape May to provide additional information in order to process its filing. In particular, Commission staff requested additional information related to: (1) each generator included in the existing Reactive Power Schedule's nameplate MWs and nameplate mega volt-ampere reactive (MVAR) output; (2) legible photographs of each generator's entire nameplate depicting the nameplate MVARs and MVAs; (3) each generator's specific V-curve; (4) each generator's specific D-curve; and (5) the latest copies of the PJM test reports which depict the MVARs for both leading and lagging for each generator unit including the retired generator unit.

9. On July 21, 2015, RC Cape May filed a response (Second Deficiency Letter Response). In the Second Deficiency Letter Response, RC Cape May described Units 1, 2, and 3 and the four diesel generators at B.L. England, including providing the manufacturer and model number, the type of generator, the nameplate MWs of the generator, and the nameplate MVAR output.¹⁵ RC Cape May also attached photographs

¹³ RC Cape May February 10, 2015 Deficiency Letter Response at 2-3. However, RC Cape May has described the "nameplate capacity" of B.L. England differently in other filings with the Commission. *See, e.g.*, Eagle Point Power Generation LLC, Elgin Energy Center, LLC, Hazle Spindle, LLC, RC Cape May, Stephentown Spindle, LLC, and Vineland Energy LLC, Notice of Change in Status and Asset Appendix Update, Docket Nos. ER10-3099-010, *et al.*, at 5, Attach. A-1 (filed Jan. 29, 2015); Eagle Point Power Generation LLC, Elgin Energy Center, LLC, Hazle Spindle, LLC, RC Cape May, Stephentown Spindle, LLC, and Vineland Energy LLC, Triennial Market-Based Rate Update Filing, Docket Nos. ER10-3099-009, *et al.*, at 5, Attach. A-1, Attach. A-2 (filed June 23, 2014); RC Cape May, Application for Market-Based Rate Authority, Docket No. ER07-30-000, at 2 (filed Oct. 11, 2006); Atlantic City Electric Company and RC Cape May, Application for Authorization for Disposition of an Existing Facility, Docket No. EC07-3-000, at 3 (filed Oct. 11, 2006).

¹⁴ RC Cape May February 10, 2015 Deficiency Letter Response at 2.

¹⁵ RC Cape May July 21, 2015 Deficiency Letter Response at 1-2.

of the generator nameplates, V-curves and D-curves for each generator, and the latest PJM test reports depicting the MVARs for each generator.¹⁶

III. Notice and Responsive Pleadings

10. Notice of RC Cape May's December 29, 2014 Filing was published in the *Federal Register*, 80 Fed. Reg. 218 (2015), with interventions and protests due on or before January 20, 2015. On January 16, 2015, PJM submitted a motion to intervene and comments.

11. In its comments, PJM requests that the Commission designate an effective date for the revised Reactive Power Schedule that is the first day of a month. According to PJM, such an effective date will facilitate the incorporation of RC Cape May's revised revenue requirement into PJM's monthly billing and settlement.¹⁷

12. Notice of the First Deficiency Letter Response was published in the *Federal Register*, 80 Fed. Reg. 8,634 (2015), with interventions and protests due by March 3, 2015. No protests or interventions were filed.

13. Notice of the Second Deficiency Letter Response was published in the *Federal Register*, 80 Fed. Reg. 44,950 (2015), with interventions and protests due by August 11, 2015. No protests or interventions were filed.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁸ PJM's unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

15. Our preliminary analysis indicates that RC Cape May'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; RC Cape May's proposed Reactive Power Schedule raises issues of material fact that cannot be resolved based on

¹⁶ RC Cape May February 10, 2015 Deficiency Letter Response at 2-3, Attachments A, B, C, D-1, and D-2.

¹⁷ PJM January 16, 2015 Comments at 2.

¹⁸ 18 C.F.R. § 385.214 (2015).

the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Accordingly, we set RC Cape May's proposed Reactive Power Schedule for hearing and settlement judge procedures to afford RC Cape May and interested parties an opportunity to provide information and develop a record upon which the Commission may address these issues.

16. RC Cape May asks that the Commission designate the effective date for its proposed Reactive Power Schedule. In its comments, PJM requests that the Commission designate an effective date that is the first day of a month. We will waive the Commission's 60-day notice requirement¹⁹ and make the proposed Reactive Power Schedule effective on the first day of the month following RC Cape May's filing. Accordingly, we accept RC Cape May's proposed Reactive Power Schedule for filing, to become effective January 1, 2015. Further, to the extent that RC Cape May received payments from PJM above the proposed revenue requirement for providing Reactive Power Service after the January 1, 2015 effective date, we direct RC Cape May to repay to PJM the difference between the revenue requirement effective as of January 1, 2015, and the revenue requirement RC Cape May received. PJM is also entitled to receive interest on all Reactive Service payments paid to RC Cape May after the effective date of the proposed Reactive Power Schedule, at the Commission interest rate.²⁰ RC Cape May must submit a refund report to the Commission within 30 days of issuing such refunds.

17. Also, because RC Cape May is proposing a rate reduction, but a further rate decrease may be warranted, we are instituting a section 206 investigation in Docket No. EL15-101-000 with respect to the justness and reasonableness of RC Cape May's proposed rates.²¹ Given the common issues of law and fact, we will consolidate Docket Nos. ER15-746-002 and EL15-101-000 for purposes of settlement, hearing, and decision.

18. 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 of the notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months after the publication date.²² We will establish a refund effective date of the

¹⁹ 18 C.F.R. § 35.3 (2015).

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

²¹ See, e.g., *DATC Path 15, LLC*, 147 FERC ¶ 61,035, at P 19 (2014).

²² 16 U.S.C. § 824e (b) (2012).

earliest date possible in order to give maximum protection to customers, i.e., the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL15-101-000 in the *Federal Register*.

19. 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. EL15-101-000 for hearing and settlement judge procedures, we expect that, if the proceeding does not settle, we would be able to render a decision within 8 months of the date of filing of briefs opposing exceptions to the Initial Decision.

20. Regarding the retired Unit 1 of B.L. England, we note that RC Cape May may have continued to receive payments for Reactive Power Service from Unit 1 after it retired that Unit, and, thus, after “the unit [was] no longer capable of providing that service.”²³ We have referred such concern to the Commission’s Office of Enforcement for further examination and inquiry as may be appropriate.

21. 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.²⁴ 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.²⁵ The

²³ 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) (referring to the Commission’s Office of Enforcement the matter of the resource owner possibly receiving payments for Reactive Power Service after its units had retired and thus were no longer capable of providing that service); *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).

²⁴ 18 C.F.R. § 385.603 (2015).

²⁵ 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 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>).

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.

The Commission orders:

(A) RC Cape May's proposed Reactive Power Schedule is hereby accepted for filing, to become effective January 1, 2015, subject to the outcome of the hearing and settlement judge procedures ordered herein, as discussed in the body of this order.

(B) RC Cape May is hereby directed to repay to PJM any Reactive Power Service payments received from PJM, with interest, RC Cape May received above the proposed revenue requirement for providing Reactive Power Service after January 1, 2015, within 30 days of the date of a final order in Docket No. ER15-746-002, as discussed in the body of this order.

(C) RC Cape May is 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 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 RC Cape May'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.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure,²⁶ 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.

²⁶ 18 C.F.R. § 385.603 (2015).

(F) 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.

(G) 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.

(H) 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. EL15-101-000, concerning the justness and reasonableness of RC Cape May's Reactive Power Schedule, as discussed in the body of this order.

(I) 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. EL15-101-000.

(J) The refund effective date in Docket No. EL15-101-000 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 (I) above.

(K) Docket Nos. ER15-746-002 and EL15-101-000 are hereby consolidated for purposes of settlement, hearing, and decision.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.