

154 FERC ¶ 61,087
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Talen Energy Marketing, LLC

Docket Nos. ER08-1462-001
EL16-32-000

ORDER ACCEPTING INFORMATIONAL FILING, INSTITUTING SECTION 206
PROCEEDING, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued February 5, 2016)

1. On October 30, 2015, in Docket No. ER08-1462-001, Talen Energy Marketing, LLC (Talen Energy) submitted an informational filing pursuant to Schedule 2 to the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT) supporting the revenue requirement for reactive supply and voltage control service (Reactive Service) of Talen Ironwood, LLC (Ironwood) (herein, Informational Filing). Talen Energy states that it is submitting the Informational Filing in anticipation of the planned sale of its interests in Ironwood to TransCanada Facility USA, Inc. (TransCanada).¹ In this order, we accept the Informational Filing.² We also institute a proceeding pursuant to

¹ Informational Filing at 1.

² We take this opportunity to clarify the Commission filing requirements for utilities making informational filings under Schedule 2. Utilities that have established an eTariff for reactive power should make their informational filing using eTariff Type of Filing Code 80 (Compliance Filing) using the same filing number used for the reactive power tariff. This will assure that the filing receives a subdocket related to the original reactive power tariff filing. Companies whose reactive power tariffs are not yet in eTariff also should make their informational filing using eTariff Type of Filing Code 80 (Compliance Filing), without a referenced filing number, and are encouraged to put their current reactive power rate schedule into eTariff in the same filing. In addition, we encourage companies with reactive power rate schedules who are currently in the M (market based rate) program in company registration to change their program registration to the E (traditional cost of service).

section 206 of the Federal Power Act (FPA),³ regarding the continued justness and reasonableness of Ironwood's reactive power rates.

I. Informational Filing

2. Schedule 2 of the 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.⁴ 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 either 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 Power Supplier not to terminate or revise its cost-based rate schedule.

3. On October 30, 2015, Talen Energy submitted the Informational Filing pursuant to Schedule 2 in advance of the expected sale of the interests in Ironwood to TransCanada. Talen Energy states that it currently receives reactive revenue requirement payments from PJM in the Metropolitan Edison Company Zone for Ironwood's three-unit facility located in South Lebanon Township, PA (Facility).⁵ It states that the Facility has never been part of a larger fleet with respect to its revenue requirement for Reactive Service, and that the revenue requirement has at all times been based on the stand alone cost of service for the Facility.

4. Talen Energy states that, following receipt of all necessary regulatory approvals and satisfaction of other conditions, TransCanada will become the new upstream owner of Ironwood and its Facility.⁶ It also states that it anticipates TransCanada or its designated marketing affiliate will file a notice of succession to the Facility's reactive rate schedule. Talen Energy explains that no revisions to the existing cost-based reactive power rate are being proposed because the approved reactive revenue requirement was established for the Facility, and upstream ownership of the entire Facility is being

³ 16 U.S.C. § 824e (2012).

⁴ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

⁵ Informational Filing at 2.

⁶ *Id.* at 4.

transferred. Moreover, it states that the Facility is being transferred completely intact as none of the units have been retired or de-rated, and none of the equipment associated with reactive power has been retired or de-rated.⁷ Lastly, Talen Energy explains that all of the units and equipment that the reactive power rate is based on will continue to service PJM, and that no other units are, or have been, subject to this reactive revenue requirement. Talen Energy states that the reactive power nameplate rating for each of the three units is 125.5 megavolt-amperes reactive (MVAR), and that the actual capability of units 1, 2, and 3 is 67 MVARs, 67 MVARs, and 68 MVARs, respectively.⁸

5. Talen Energy states that, because the interests in Ironwood rather than the Facility are being sold, it is not clear that the expected transaction with TransCanada actually triggers the requirement for an informational filing pursuant to Schedule 2 of the PJM OATT.⁹ Nevertheless, it states that it is submitting the Informational Filing given the possibility that the PJM OATT contemplates an informational filing would be made even for indirect dispositions of a generation facility.

II. Notice and Responsive Pleadings

6. Notice of Talen Energy's Informational Filing was published in the *Federal Register*, 80 Fed. Reg. 78,220 (2015) with interventions and protests due on or before December 31, 2015.¹⁰ No interventions or protests were filed.

III. Discussion

A. Procedural Matters

7. 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.

⁷ *Id.* at 4.

⁸ *Id.* at 5-6.

⁹ *Id.* at 3.

¹⁰ Notice of Talen Energy's filing inadvertently referenced Docket No. ER16-504-000. On December 11, 2015, the Commission issued an errata notice correcting the docket number.

B. Substantive Matters

8. We accept Talen Energy's Informational Filing for informational purposes only.¹¹ We also establish a proceeding under section 206 of the FPA to determine whether Ironwood's reactive power rates remain just and reasonable. We further establish a refund effective date and hearing and settlement judge procedures.

9. As an initial matter, Talen Energy, in its Informational Filing, states that it is not clear whether the transfer of interests in a company, rather than the direct transfer of a facility, triggers the requirement for a filing pursuant to Schedule 2 of the PJM Tariff. We take this opportunity to clarify and state our understanding that the Schedule 2 filing requirement does in fact apply to transfers of interests in a company where, as a result, a facility is transferred from the downstream ownership of one company to another.

10. The Informational Filing contains information that raises concerns about the justness and reasonableness of Ironwood's reactive power rate, including, but not limited to, the degradation of the Facility's current MVAR capability as compared with the MVAR capability that was originally used to calculate the revenue requirement for Reactive Service included in Ironwood's reactive power rate.¹² We therefore are instituting a section 206 proceeding to examine the justness and reasonableness of Ironwood's reactive power rate. This inquiry 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.

11. 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

¹¹ This acceptance for filing shall not be construed as constituting approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service contained in the Informational Filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such action is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Ironwood.

¹² Additionally, we note that the use of Locational Marginal Price to calculate Heating Losses may result in over-recovery. See *PPL Energy Plus, LLC*, Docket No. ER08-1462-000, at 5 (filed Aug. 28, 2008); *Dynegy Midwest Generation, Inc.*, 125 FERC ¶ 61,280, at P 35 (2008).

publication date.¹³ 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.¹⁴ That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL16-32-000 in the *Federal Register*.

12. 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. EL16-32-000 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.

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.¹⁵ If the participants 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.¹⁶ The settlement judge shall report to the Acting Chief Judge and the Commission within thirty 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 participants with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

¹³ 16 U.S.C. § 824e (b) (2012).

¹⁴ 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).

¹⁵ 18 C.F.R. § 385.603 (2015).

¹⁶ If the participants 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 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) Talen Energy's Informational Filing is hereby accepted as an informational filing only, 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 (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL16-32-000, concerning the justness and reasonableness of Ironwood's reactive power rate, 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 Acting Chief Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen 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 days of the date of this order.

(D) Within thirty 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 days thereafter, informing the Commission and the Acting 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 Acting Chief Judge, shall, within fifteen 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. EL16-32-000.

(G) The refund effective date in Docket No. EL16-32-000 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.