

154 FERC ¶ 61,226  
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. ER16-277-000  
ER16-277-001  
EL16-44-000

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

(Issued March 22, 2016)

1. On November 6, 2015, Talen Energy Marketing, LLC (Talen Energy) submitted revisions, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> part 35 of the Commission's regulations,<sup>2</sup> and Schedule 2 to the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT), adjusting its revenue requirement for reactive supply and voltage control service (Reactive Service) to reflect the sale of various units that currently receive cost-based Reactive Service payments as part of its fleet in the PPL Zone of PJM (Revised Reactive Rate Schedule). Talen Energy states that it proposes to reduce its fleet-wide reactive revenue requirement on a *pro rata* basis to reflect the units in its fleet that its affiliate has contracted to sell to a third party.<sup>3</sup> In this order, we accept the Revised Reactive Rate Schedule, subject to condition and direct a compliance filing. We also institute a proceeding pursuant to section 206 of the FPA<sup>4</sup> regarding the justness

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. pt. 35 (2015).

<sup>3</sup> Transmittal at 1-2.

<sup>4</sup> 16 U.S.C. § 824e (2012).

and reasonableness of Talen Energy's reactive power rate for its fleet in the PPL Zone of PJM, establish a refund effective date, and establish hearing and settlement judge procedures.

### **I. Revised Reactive Rate Schedule**

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.<sup>5</sup> 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 Service supplier not to terminate or revise its cost-based rate schedule.

3. Talen Energy states that it receives fleet-based reactive revenue requirement payments from PJM in the PPL Zone for various affiliated generating entities (PPL Zone Fleet).<sup>6</sup> On November 6, 2015, Talen Energy submitted the Revised Reactive Rate Schedule pursuant to Schedule 2 in advance of the expected sale of various generating units by its affiliate, Holtwood, LLC, to a third party (Proposed Transaction). Talen Energy states that on December 18, 2014, as part of a spin-off transaction whereby Talen Energy's former parent company, PPL Corporation, divested itself of most of its generation assets, the Commission required that Talen Energy Corporation also divest certain assets.<sup>7</sup> To comply with this directive, Talen Energy states that it is seeking to transfer 12 generating units currently part of its PPL Zone Fleet.<sup>8</sup>

4. To reflect the Proposed Transaction, Talen Energy proposes a *pro rata* reduction of the PPL Zone Fleet's annual reactive revenue requirement on a per-MW basis. Since the PPL Zone Fleet's reactive revenue requirement was established, four additional

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

<sup>6</sup> Transmittal at 1.

<sup>7</sup> *Id.* at 5 (citing *PPL Corp.*, 149 FERC ¶ 61,260, at PP 90-91 (2014)).

<sup>8</sup> Transmittal at 5. Specifically, these units are Wallenpaupack Units 1 and 2, and Holtwood Units 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10.

Holtwood units are now capable of producing reactive power while one unit, Holtwood Unit 17, has since retired.<sup>9</sup> Upon consummation of the Proposed Transaction, Talen Energy states that the PPL Zone Fleet's nameplate capacity will decrease from 8,191.20 MW to 8,038.63 MW.<sup>10</sup> Accordingly, Talen Energy proposes to reduce the annual reactive revenue requirement associated with the PPL Zone Fleet from \$9,040,000 to \$8,850,531.63.<sup>11</sup> With respect to its proposal to make this reduction on a per MW basis, Talen Energy acknowledges that Reactive Service is compensated on a cost basis and that different generating units will vary in their costs.<sup>12</sup>

5. Talen Energy requests that the Revised Reactive Rate Schedule be made effective the first day of the month after the date that the Proposed Transaction is consummated.<sup>13</sup> It also requests that the Commission direct Talen Energy to make a compliance filing to provide the date the Proposed Transaction is completed within five business days from the date of consummation.

## **II. Deficiency Letter**

6. On December 22, 2015, Commission staff, pursuant to delegated authority, issued a deficiency letter requesting Talen Energy to provide additional information in order to process its filing. Specifically, Commission staff requested that Talen Energy provide the latest PJM test reports for each generator unit in Talen Energy's PPL Zone Fleet, including those units that it has contracted to sell to a third party.

7. On January 21, 2016, Talen Energy filed a response (Deficiency Letter Response). In the Deficiency Letter Response, Talen Energy submitted the latest PJM test reports depicting the leading and lagging MVARs for various generators in the PPL Zone Fleet.<sup>14</sup> Talen Energy excluded those units in the PPL Zone that are not subject to PJM's reactive capability testing, and those that have already been sold or retired.<sup>15</sup>

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<sup>9</sup> *Id.* at 5 n.33, 6.

<sup>10</sup> *Id.* at 6 n.35.

<sup>11</sup> *Id.* at 6.

<sup>12</sup> *Id.* at 7.

<sup>13</sup> *Id.* at 8.

<sup>14</sup> Deficiency Letter Response at 1.

<sup>15</sup> Deficiency Letter Response at 2.

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

8. Notice of Talen Energy's Revised Reactive Rate Schedule was published in the *Federal Register*, 80 Fed. Reg. 70,773 (2015), with interventions and protests due on or before November 27, 2015. PJM submitted a motion to intervene. No comments or protests were filed.

9. Notice of the Deficiency Letter Response was published in the *Federal Register*, 81 Fed. Reg. 5434 (2016), with interventions and protests due by February 11, 2016. No protests or interventions were filed.

### **IV. 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 accept Talen Energy's Revised Reactive Rate Schedule, subject to condition and direct a compliance filing.<sup>16</sup> Talen Energy requests that the Revised Reactive Rate Schedule be effective the first day of the month after the date that the Proposed Transaction is consummated; we understand that this date has not yet occurred. Accordingly, we direct Talen Energy to make a compliance filing, within five days from the date of consummation of the Proposed Transaction, with notice of the actual effective date for the Revised Reactive Rate Schedule.

12. We also establish a proceeding pursuant to section 206 of the FPA to examine the justness and reasonableness of Talen Energy's reactive power rate for its PPL Zone Fleet.<sup>17</sup> The Revised Reactive Rate Schedule and the PJM test reports submitted with the Deficiency Letter Response contain information that raises concerns about the justness and reasonableness of the reactive power rate, including, but not limited to, the

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<sup>16</sup> The Commission can revise a proposal filed under section 205 of the Federal Power Act as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

<sup>17</sup> *See, e.g., DATC Path 15, LLC*, 147 FERC ¶ 61,035, at P 19 (2014) (instituting a section 206 investigative proceeding where a rate reduction was proposed but a further rate reduction potentially was warranted).

degradation of the Talen Energy PPL Zone Fleet's current MVAR capability as compared with the MVAR capability that was originally used to calculate the revenue requirement for this fleet. We therefore institute a proceeding under FPA section 206 in Docket No. EL16-44-000 to examine the justness and reasonableness of Talen Energy's reactive power rate for its PPL Zone Fleet. Talen Energy's filing raises disputed 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. 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>18</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 refund effective date at the earliest date allowed by section 206, and we do so here as well.<sup>19</sup> That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL16-44-000 in the *Federal Register*.

14. 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. EL16-44-000 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.

15. Furthermore, as discussed in the Commission's November 20, 2014 Order to Show Cause in Docket No. EL15-15-000,<sup>20</sup> given that Talen Energy may have continued

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<sup>18</sup> 16 U.S.C. § 824e(b) (2012).

<sup>19</sup> See, e.g., *Idaho Power Co.*, 145 FERC ¶ 61,122 (2013); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *order on reh'g*, 47 FERC ¶ 61,275 (1989).

<sup>20</sup> 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) (both referring to the Commission's Office of Enforcement the matter of a resource owner possibly receiving payments for Reactive Power Service while its facility was incapable of providing that service).

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.

16. 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.<sup>21</sup> 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.<sup>22</sup> 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.

The Commission orders:

(A) Talen Energy’s Revised Reactive Rate Schedule is hereby accepted for filing, subject to condition, to become effective the first day of the month after the date that the Proposed Transaction is consummated, as discussed in the body of this order.

(B) Talen Energy is hereby directed to submit a further compliance filing, within five days from the date of consummation of the Proposed Transaction, as discussed in the body of this order.

(C) 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. EL16-44-000, concerning the justness and reasonableness of Talen Energy’s reactive power rate for its PPL Zone Fleet, as discussed in the body of this order. However, the

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<sup>21</sup> 18 C.F.R. § 385.603 (2015).

<sup>22</sup> 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>).

hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) 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.

(E) 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.

(F) 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.

(G) 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. EL16-44-000.

(H) The refund effective date in Docket No. EL16-44-000 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 )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.