

155 FERC ¶ 61,109  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Lakewood Cogeneration, L.P.  
Essential Power Rock Springs, LLC  
Essential Power OPP, LLC

Docket Nos. ER14-199-001  
ER14-714-001  
ER14-715-001  
EL16-54-000

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

(Issued April 28, 2016)

1. On March 1, 2016, in Docket Nos. ER14-199-001, ER14-714-001, and ER14-715-001, Lakewood Cogeneration, L.P. (Lakewood), Essential Power Rock Springs, LLC (Rock Springs), and Essential Power OPP, LLC (OPP) (collectively, the PJM Project Companies), and Nautilus Generation, LLC (Nautilus), submitted an informational filing pursuant to Schedule 2 to the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff) with respect to the PJM Project Companies' rate schedules for reactive supply and voltage control service (Reactive Service) (Informational Filing), in anticipation of a planned sale to Nautilus of upstream ownership interests in the PJM Project Companies.<sup>1</sup> In this order, we accept the Informational Filing. We also institute a proceeding pursuant to section 206 of the Federal Power Act (FPA)<sup>2</sup> regarding the continued justness and reasonableness of the PJM Project Companies' reactive power rates, establish a refund effective date, and establish hearing and settlement judge procedures.

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<sup>1</sup> Informational Filing at 1.

<sup>2</sup> 16 U.S.C. § 824e (2012).

## **I. Background**

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>3</sup> Schedule 2 requires that at least 90 days before deactivating or transferring a resource receiving compensation for Reactive Service, 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. The PJM Project Companies each have an effective rate schedule for Reactive Service on file with the Commission (Reactive Power Rate Schedule), specifying the reactive power revenue requirements for OPP,<sup>4</sup> Rock Springs,<sup>5</sup> and Lakewood.<sup>6</sup>

4. On February 29, 2016, in Docket No. EC16-82-000 (which remains pending), Essential Power, LLC, Essential Power Massachusetts, LLC, Essential Power Newington, LLC, the PJM Project Companies, and Nautilus requested Commission authorization for the disposition of the OPP, Rock Springs, and Lakewood Reactive Power Rate Schedules, among other jurisdictional facilities, that will result from the transfer of 100 percent of the direct membership interests in Essential Power Investments, LLC from IFM Global Infrastructure Fund (Seller) to Nautilus (the Proposed Transaction).<sup>7</sup> As relevant here, following the consummation of the Proposed Transaction, Nautilus will

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<sup>3</sup> PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

<sup>4</sup> Essential Power OPP, LLC, Rate Schedule FERC No. 2, Reactive Power (0.0.0).

<sup>5</sup> Essential Power Rock Springs, LLC, Rate Schedule FERC No. 2, Reactive Power (0.0.0).

<sup>6</sup> Lakewood Cogeneration, L.P., Reactive Power, Rate Schedule (0.0.0).

<sup>7</sup> Informational Filing at 1-2.

indirectly own 100 percent of OPP and Rock Springs, and 80 percent of Lakewood, and Seller will no longer hold any ownership interests in the PJM Project Companies.<sup>8</sup>

## II. Informational Filing

5. On March 1, 2016, the PJM Project Companies and Nautilus submitted the Informational Filing pursuant to Schedule 2 in advance of the Proposed Transaction. The PJM Project Companies and Nautilus assert that no revisions to the Reactive Power Rate Schedules are necessary in association with the Proposed Transaction. They assert that the Proposed Transaction is purely an upstream ownership change; the cost-based rates previously accepted by the Commission will not change as a result of the Proposed Transaction; the PJM Project Companies will not seek to recover any costs attributable to the Proposed Transaction through their Reactive Power Rate Schedules; and none of the generating units owned by the PJM Project Companies will be retired or de-rated, and no equipment associated with reactive power will be retired or de-rated, as a result of the Proposed Transaction.<sup>9</sup>

6. The PJM Project Companies and Nautilus also state: (1) each Reactive Power Rate Schedule pertains to the recovery of the reactive power revenue requirement for each PJM Project Company's respective generating units and no other sources; (2) no units are, or have been, subject to each Reactive Power Rate Schedule other than the units listed in Section 4 of the Informational Filing; and (3) the generating units covered by the reactive power revenue requirement under each Reactive Power Rate Schedule will not change as a result of the Proposed Transaction.<sup>10</sup>

7. The PJM Project Companies and Nautilus report that the reactive power nameplate rating for each of the two OPP units and each of the two Rock Springs units<sup>11</sup> is 123.3 megavolt-amperes reactive (MVAR).<sup>12</sup> The actual tested maximum reactive power capability output is 18 MVARs for each generator unit at OPP, and 75 MVARs for

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<sup>8</sup> *Id.* at 2. The Proposed Transaction will not affect the remaining 20 percent ownership interest in Lakewood, which is indirectly held by Osaka Gas Energy America Corporation. *Id.* at 2 n.5.

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.* at 4-5.

<sup>11</sup> The in-service date for the OPP and Rock Springs facilities is 2003, and the in-service date for the Lakewood facility is 1994.

<sup>12</sup> *Id.* at 6.

each generator unit at Rock Springs.<sup>13</sup> The PJM Project Companies and Nautilus also state that the reactive power nameplate ratings for Lakewood's units 1, 2, and 3 are 62.79 MVARs, 62.79 MVARs, and 64.20 MVARs, respectively, for a total reactive power nameplate rating of 189.78 MVARs.<sup>14</sup> The total actual tested maximum reactive power capability output of all three Lakewood units is 99 MVARs.<sup>15</sup>

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

8. Notice of the Informational Filing was published in the *Federal Register*, 81 Fed. Reg. 12,096 (2016), with interventions and protests due on or before March 22, 2016. PJM filed a timely motion to intervene in both Docket Nos. ER14-715-001 and ER14-714-001.

### **IV. Discussion**

#### **A. Procedural Matters**

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

#### **B. Substantive Matters**

10. We accept the Informational Filing for informational purposes only.<sup>16</sup> We find that the Informational 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. Accordingly, we also establish a proceeding under section 206 of the FPA to determine whether the PJM Project

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<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* at 6.

<sup>15</sup> *Id.* at 5. The Lakewood Facility is tested and modeled as a single facility. *Id.* at 5 n.17.

<sup>16</sup> 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 the PJM Project Companies.

Companies' reactive power rates remain just and reasonable. We further establish a refund effective date and hearing and settlement judge procedures.

11. The Informational Filing contains information that raises concerns about the justness and reasonableness of the PJM Project Companies' reactive power rates, including, but not limited to, the degradation of the facilities' current MVAR capability as compared with the MVAR capability that was originally used to calculate the revenue requirement for Reactive Service included in the PJM Project Companies' reactive power rates.<sup>17</sup> We therefore institute a proceeding under FPA section 206 in Docket No. EL16-54-000 to examine the justness and reasonableness of the PJM Project Companies' reactive power rates.

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.<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. EL16-54-000 in the *Federal Register*.

13. 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. EL16-54-000 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 February 28, 2017, we expect that, if the proceeding does not settle, we would be able to render a decision by December 31, 2017.

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<sup>17</sup> The Commission recently provided guidance on establishing or revising rates for Reactive Service. *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,245, at PP 24-29 (2016); *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,246, at PP 23-28 (2016).

<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).

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 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>20</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>21</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) The Informational Filing is hereby accepted for informational purposes 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. EL16-54-000, concerning the justness and reasonableness of the PJM Project Companies' reactive power rates, 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

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<sup>20</sup> 18 C.F.R. § 385.603 (2015).

<sup>21</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>).

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. EL16-54-000.

(G) The refund effective date in Docket No. EL16-54-000 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 )

Kimberly D. Bose,  
Secretary.