

155 FERC ¶ 61,242  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Northampton Generating Company, L.P.

Docket Nos. ER13-1431-001  
EL16-65-000

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

(Issued June 3, 2016)

1. On April 7, 2016, in Docket No. ER13-1431-001, Northampton Generating Company, L.P. (Northampton) submitted an informational filing pursuant to Schedule 2 to the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff), regarding the planned transfer of indirect, upstream ownership interests in its 114.1 MW (nameplate) generating facility located in Northampton, Pennsylvania (Facility) (Informational Filing). Northampton also requests a one-time waiver of the 90-day prior notice requirement set forth in Schedule 2 of the PJM Tariff to facilitate the planned transfer (Waiver Request). In this order, we accept the Informational Filing for informational purposes only and grant the Waiver Request. We also institute a proceeding pursuant to section 206 of the Federal Power Act (FPA)<sup>1</sup> regarding the justness and reasonableness of Northampton's reactive power rates.

**I. Background**

2. Schedule 2 of the PJM Tariff, which covers Reactive Supply and Voltage Control from Generation or Other Sources Service (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

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<sup>1</sup> 16 U.S.C. § 824e (2012).

monthly revenue requirement, as accepted or approved by the Commission.<sup>2</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.<sup>3</sup>

3. Northampton owns and operates the Facility, which is interconnected to the transmission system owned by PPL Electric Utilities Corporation and operated by PJM.<sup>4</sup> The primary energy source of the Facility is waste in the form of anthracite culm acquired from local sources under fuel supply contracts.<sup>5</sup> The Facility currently operates as a qualifying small power production facility under the Public Utility Regulatory Policies Act of 1978.<sup>6</sup> The revenue requirement for Reactive Service provided from the Facility pursuant to Schedule 2 is set forth in a stand-alone, single-asset (non-fleet) rate schedule (Reactive Power Rate Schedule).<sup>7</sup>

4. Northampton states that all of the partnership interests of Northampton are owned by special-purpose subsidiaries of its indirect parent, EIF Northampton, LLC.<sup>8</sup> Pursuant to a purchase-and-sale agreement to be executed by and among Halibut Energy Holdings, LLC (Halibut) and EIF Northampton, LLC, the indirect interests in Northampton will be sold to Halibut (Transaction). Under this agreement Northampton will retain its ownership of the Facility and its status as the filer of the Reactive Power Rate Schedule.<sup>9</sup>

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

<sup>3</sup> *Id.*

<sup>4</sup> Informational Filing at 3.

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

<sup>6</sup> *Id.* at 3-4.

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.* at 4.

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

## II. Informational Filing and Waiver Request

5. On April 7, 2016, Northampton submitted the Informational Filing pursuant to Schedule 2. In the Informational Filing, Northampton asserts that it proposes no revisions to its Reactive Power Rate Schedule in association with the Transaction because the revenue requirement set forth in the Reactive Power Rate Schedule was established solely for the Facility, and no feature, component, or element of the Reactive Power Rate Schedule has been or is proposed to be modified or itself transferred. Northampton further asserts that the revenue requirement continues to be based solely on the stand-alone cost of service for the Facility, as accepted by the Commission, and no reactive power-related (or other material) portion of the Facility has been modified, removed, or deactivated since the filing of the Reactive Power Rate Schedule.<sup>10</sup> Northampton states that following the Transaction, Northampton will continue to provide Reactive Service from the Facility on the same basis using the same equipment.<sup>11</sup>

6. Northampton also requests expedited waiver of the 90-day prior filing requirement under Schedule 2 in order to allow the parties to consummate the Transaction as soon as possible after other regulatory approvals and third-party consents have been obtained.<sup>12</sup> Northampton asserts that the Commission has waived tariff requirements of this nature in similar circumstances. Northampton asserts that good cause for such waiver exists because, as in past cases in which the Commission has granted tariff waivers, here: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver would address a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.<sup>13</sup>

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

<sup>11</sup> *Id.* at 3, 5.

<sup>12</sup> *Id.* at 6-10.

<sup>13</sup> *Id.* at 7 (citing *Reliant Energy Seward, LLC*, 154 FERC ¶ 61,017, at PP 11-13 (2016); *Dunkirk Power LLC*, 147 FERC ¶ 61,146, at P 13 (2014); *Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,063, at P 36 (2015); *RC Cape May Holdings, LLC*, 152 FERC ¶ 61,192, at P 12 (2015); *Ne. Energy Assocs.*, 152 FERC ¶ 61,175, at P 14 (2015); *Clean Energy Future – Lordstown, LLC*, 152 FERC ¶ 61,076, at P 10 (2015); *Innoventive Power LLC*, 152 FERC ¶ 61,057, at P 19 (2015); *PJM Interconnection L.L.C.*, 135 FERC ¶ 61,069, at PP 8-9 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010)).

7. Northampton argues it acted in good faith because it submitted the Informational Filing as promptly as reasonably possible; has complied with all applicable requirements of Schedule 2; and communicated with PJM prior to submitting the Informational Filing.<sup>14</sup> Northampton also asserts that the Waiver Request is limited in scope, as it requests an expedited grant of a one-time waiver of the deadline under Schedule 2 and does not seek waiver of any substantive requirements under Schedule 2.<sup>15</sup> Additionally, Northampton explains that the Waiver Request addresses a concrete problem and that, without a waiver, the parties will not be able to consummate the Transaction until 90 days after the submittal of this Informational Filing, which could be commercially disadvantageous. Finally, Northampton asserts that granting waiver will have no undesirable consequences, such as harming third parties.<sup>16</sup>

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

8. Notice of Northampton's April 7, 2016 filing was published in the *Federal Register*, 81 Fed. Reg. 23,290 (2016), with interventions and protests due on or before April 28, 2016. None were filed.

### **IV. Discussion**

9. We accept Northampton's Informational Filing for informational purposes only, and, as discussed below, we grant Northampton's Waiver Request.<sup>17</sup> We find that the Informational Filing raises 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 Northampton's reactive power rates are just and reasonable. We further establish a refund effective date and hearing and settlement judge procedures.

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<sup>14</sup> Informational Filing at 7.

<sup>15</sup> *Id.* at 7-8.

<sup>16</sup> *Id.* at 8-9.

<sup>17</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 Northampton.

10. We grant Northampton's request for waiver of the 90-day prior notice requirement in Schedule 2 of the PJM Tariff. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.<sup>18</sup>

11. We find that the circumstances of the instant case satisfy the foregoing criteria. First, we find that Northampton acted in good faith by submitting the Informational Filing promptly. Second, we find that the waiver is limited in scope, as it is a one-time waiver of the 90-day prior notice requirement under Schedule 2. Third, we find that the waiver addresses a concrete problem; in the absence of a waiver, Northampton and Halibut would not be able to consummate the Transaction until 90 days after the submittal of this Informational Filing. Finally, we find that the waiver does not have any undesirable consequences, such as harming third parties. Northampton will continue to hold the Reactive Power Rate Schedule, which sets forth revenue requirements for Reactive Service that are specific to the Facility, and the Facility will continue to provide Reactive Service without modification.

12. We are instituting a proceeding under section 206 of the FPA in Docket No. EL16-65-000 to examine the justness and reasonableness of the Facility's reactive power rate. Although we are setting for hearing Northampton's reactive power rate in its entirety, we note that the use of locational marginal price to calculate the Heating Losses component of a reactive power revenue requirement is contrary to Commission precedent.<sup>19</sup>

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>20</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

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<sup>18</sup> See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Serv., L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

<sup>19</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>20</sup> 16 U.S.C. § 824e(b) (2012).

well.<sup>21</sup> That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL16-65-000 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. EL16-65-000 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. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. To aid the parties 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>22</sup> If the parties 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>23</sup> The settlement judge shall report to the Acting 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 Acting Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

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<sup>21</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>22</sup> 18 C.F.R. § 385.603 (2015).

<sup>23</sup> If the parties 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 (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>).

The Commission orders:

(A) Northampton's 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. EL16-65-000, concerning the justness and reasonableness of Northampton's Reactive Power Rate 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.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), the Chief Administrative Law 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. EL16-65-000.

(G) The refund effective date in Docket No. EL16-65-000 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.

(H) Northampton's request for waiver of the 90-day prior notice requirement set forth in Schedule 2 of the PJM Tariff is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.