

155 FERC ¶ 61,289
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Generation, LLC

Docket No. EL16-66-000

ORDER TO REVISE TARIFF RATE OR SHOW CAUSE

(Issued June 21, 2016)

1. In this order, pursuant to sections 205, 206, and 309 of the Federal Power Act (FPA),¹ and Rule 209(a) of the Commission's Rules of Practice and Procedure,² the Commission directs Midwest Generation, LLC (Midwest) to: (1) make a compliance filing setting forth its calculation of the amount of payments it received in violation of the terms and conditions of the Settlement Agreement establishing its rate for Reactive Supply and Voltage Control Service (Reactive Supply) for the Commonwealth Edison (ComEd) zone of PJM Interconnection, L.L.C. (PJM) due to suspended units, or show cause why it should not be found to have received payments in violation of the Settlement Agreement; and (2) either revise its tariff rate in the ComEd zone of PJM to reflect the costs of the generating units continuing to provide reactive power capability, or show cause why it should not be required to do so.

I. Background

2. On November 20, 2014, the Commission issued an Order to Show Cause expressing the concern that PJM may be continuing to pay generation and non-generation resources for reactive power capability after units have been deactivated or transferred out of a fleet.³ The Commission directed PJM to "address payments related to deactivated or transferred units that do not comprise the entirety of the generation fleet

¹ 16 U.S.C. §§ 824d, 824e, 825h (2012).

² 18 C.F.R. § 385.209(a) (2015).

³ *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,132, at P 7 (2014).

under the applicable Reactive Service tariff.”⁴ PJM subsequently submitted revisions to its Open Access Transmission Tariff (OATT) to address this concern.⁵

3. In 2003, Midwest filed a proposed tariff setting forth its revenue requirement for its provision of Reactive Supply from its facilities interconnected to the ComEd transmission system. The Commission accepted and suspended the proposed tariff, to become effective January 13, 2004, subject to refund, and established hearing and settlement judge procedures.⁶ Following settlement procedures, the Commission accepted a Settlement Agreement establishing a Reactive Supply revenue requirement for Midwest.⁷ Two Reactive Supply tariffs accompanied the Settlement Agreement, including Volume No. 3, applicable to “certain coal-fired generating facilities [Midwest] owns that are interconnected to [the ComEd] transmission system.”⁸ The Settlement Agreement stipulated the following:

⁴ *Id.* P 9.

⁵ See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,224 (2015); *PJM Interconnection, L.L.C.*, Docket No. ER15-696-001 (Aug. 20, 2015) (delegated letter order). Specifically, PJM revised Schedule 2 of its OATT, which covers Reactive Supply, to require that at least 90 days before deactivating or transferring a resource receiving compensation for Reactive Supply, 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 Supply supplier not to terminate or revise its cost-based rate schedule. PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

⁶ *Midwest Generation EME, LLC*, 106 FERC ¶ 61,011 (2004).

⁷ *Midwest Generation EME, LLC*, 108 FERC ¶ 61,166 (2004) (accepting Midwest Generation, LLC, Uncontested Offer of Settlement, Docket No. ER04-190-000 (filed May 14, 2004) (Settlement Agreement)).

⁸ Settlement Agreement, Attachment A (Midwest Generation, LLC, FERC Electric Tariff, Original Volume No. 3). The other Reactive Supply tariff accompanying the settlement was Volume No. 4, applicable to “certain oil/gas-fired generating facilities [Midwest] owns that are interconnected to [the ComEd] transmission system.” Settlement Agreement, Attachment A (Midwest Generation, LLC, FERC Electric Tariff, Original Volume No. 4). Volume No. 4 was cancelled effective October 1, 2004. *Midwest Generation, LLC*, Docket No. ER04-1246-000 (Nov. 16, 2004) (delegated letter order).

If a Unit that is currently not in Suspended Operation is placed in Suspended Operation, [Midwest] shall (1) notify ComEd and [Mid-America Interconnected Network (MAIN)] at least 60 days prior to placing such Unit in Suspended Operation; and (2) file an amendment to [Midwest] Tariff Vol. No. 3 . . . and/or request that PJM amend the [Midwest] portion of the Schedule 2 of the PJM OATT for the ComEd Zone, at least 60 days prior to placing the Unit in Suspended Operation, reducing the Capability Charge for any such Unit.⁹

4. The annual revenue requirement under Volume No. 3 was \$975,157 for the period January 13, 2004 through December 31, 2004, and \$2,212,656 for January 1, 2005 and thereafter. Attachment B to the Settlement Agreement lists the specific units associated with Volume No. 3 and provides a “Capability Charge” for each unit.¹⁰ The Volume No. 3 units listed in Attachment B that comprise the annual revenue requirement are: Waukegan 6, Waukegan 7, Waukegan 8, Fisk 19 (S), Crawford 7, Crawford 8, Powerton 5, Powerton 6, Will Co. 3, Will Co. 4, Joliet 6, Joliet 7, and Joliet 8 (collectively, Volume No. 3 Units).¹¹

5. On October 29, 2004, Midwest filed a revised Volume No. 3 to reflect the return of Will Co. Units 1 and 2 to service. The Commission accepted Midwest’s revised tariff, which increased the annual revenue requirement applicable beginning January 1, 2005 from \$2,212,656 to \$2,295,784.¹² In compliance with Order No. 714,¹³ Midwest electronically filed Volume No. 3 in 2010.¹⁴ This tariff record is currently effective and

⁹ Settlement Agreement § 3.5. The Settlement Agreement defines Suspended Operation to mean “the state of a Unit that [Midwest] has determined has been removed from service for an extended duration for reasons other than an Outage or a Forced Outage. . . .” *Id.* § 1.14.

¹⁰ *Id.* § 3.3 & Attachment B.

¹¹ *See also id.* §§ 2.1-2.3 (identifying “Units Covered”).

¹² *Midwest Generation, LLC*, Docket No. ER05-105-000 (Dec. 16, 2004) (delegated letter order).

¹³ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 93 (2008).

¹⁴ *Midwest Generation, LLC*, Docket Nos. ER10-2782-000, ER10-2782-001 (Dec. 6, 2010) (delegated letter order).

provides for an annual revenue requirement of \$2,295,784.¹⁵ For this revenue requirement in the ComEd zone, PJM lists the “Generator or Other Source” as “NRG Power Marketing LLC (Midwest Generation).”¹⁶ Midwest was acquired by NRG Energy Holdings, Inc. in a transaction approved by the Commission in 2014.¹⁷

6. According to PJM’s website, the following Volume No. 3 Units have deactivated: Waukegan 6 deactivated on December 31, 2007; Crawford 7 deactivated on August 28, 2012; Crawford 8 deactivated on August 24, 2012; Will Co. 1 deactivated on December 30, 2010; Will Co. 2 deactivated on December 30, 2010; Fisk 19 deactivated on August 30, 2012; and Will Co. 3 deactivated on April 15, 2015.¹⁸ Based on Attachment B to the Settlement Agreement and Midwest’s subsequent tariff revisions, the Capability Charges for these units appear to be included in Midwest’s currently effective Volume No. 3 annual revenue requirement.

II. Discussion

7. Pursuant to sections 205, 206, and 309 of the FPA¹⁹ and Rule 209(a) of the Commission’s Rules of Practice and Procedure,²⁰ we direct Midwest to: (1) make a compliance filing setting forth its calculation of the amount of payments it received in violation of the terms and conditions of the Settlement Agreement due to suspended units, or show cause why it should not be found to have received payments in violation of the Settlement Agreement; and (2) either revise its tariff rate in the ComEd zone of PJM

¹⁵ Midwest Generation, LLC, Tariff Database, Reactive Supply Tariff, FERC Electric Tariff (0.1.0).

¹⁶ PJM, Reactive Supply and Voltage Control from Generation or Other Sources Service Revenue Requirements (Apr. 2016), <http://www.pjm.com/~media/markets-ops/settlements/reactive-revenue-requirements-table-mar-2016.ashx>. PJM posts updated lists of annual revenue requirements for Reactive Supply on its website. PJM, Billing, Settlements & Credit, <http://www.pjm.com/markets-and-operations/billing-settlements-and-credit.aspx>.

¹⁷ *NRG Energy Holdings, Inc.*, 146 FERC ¶ 61,196 (2014).

¹⁸ PJM, Generator Deactivations (Apr. 22, 2016), <http://www.pjm.com/~media/planning/gen-retire/generator-deactivations.ashx>.

¹⁹ 16 U.S.C. §§ 824d, 824e, 825h (2012).

²⁰ 18 C.F.R. § 385.209(a) (2015).

to reflect the costs of the generating units continuing to provide reactive power capability, or show cause why it should not be required to do so.

A. Violation of Settlement Agreement

8. Attachment B to the Settlement Agreement establishing Midwest's reactive power revenue requirement in the ComEd zone of PJM lists the units covered under the revenue requirement and the units' Capability Charges, which comprise the revenue requirement. Section 3.5 of the Settlement Agreement requires Midwest, prior to placing a unit in Suspended Operation, to seek a tariff amendment "reducing the Capability Charge for any such [u]nit."²¹ No such tariff amendment was filed with respect to the Volume No. 3 Units identified by PJM as having been deactivated, i.e., placed in suspended operation. Thus we direct Midwest to, within 30 days of the date of this order, make a compliance filing setting forth its calculation of the amount of payments it received in violation of the terms and conditions of the Settlement Agreement due to suspended units, or show cause why it should not be found to have received payments in violation of the Settlement Agreement. Midwest should include workpapers and any supporting documentation with its filing.

B. Revised Reactive Supply Tariff

9. Revenue requirements established pursuant to Schedule 2 of the *pro forma* OATT for Reactive Supply are based on a particular level of reactive power capability for a particular generating unit or group of units, even if the Commission-approved reactive power revenue requirement was established through a settlement. This is because the settled rate would have been for a particular set of generating units and a particular level of reactive power capability.²² For this reason, the rate paid for reactive power initially based on a particular set of units may be unjust and unreasonable where, as appears to be the case here, one or more of the units has deactivated. We therefore direct Midwest to, within 30 days of the date of this order, to either revise its Reactive Supply tariff rate in the ComEd zone of PJM to reflect the costs of the generating units continuing to provide reactive power capability, including workpapers showing the calculation of such rates, or show cause why it should not be required to do so.

²¹ See *supra* note 9.

²² *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,245, at P 28 & n.36 (2016); *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,246, at P 27 & n.34 (2016).

10. In support of its revised rate or as justification for its current rate, Midwest must provide the following information: (i) the acquisition date, suspension date, and transfer date of the generator or other source; (ii) a list of all of the generators or other sources covered by Midwest's cost-based tariff from the date the revenue requirement was first established until the date of the informational filing; (iii) the type (i.e., fuel type and prime mover) of each generator or other source; (iv) the actual (site-rated) megavolt-ampere reactive (MVAR) capability, megavolt-ampere (MVA) capability, and megawatt capability of each generator or other source, as supported by test data; (v) the nameplate MVAR rating, nameplate MVA rating, nameplate megawatt rating, and nameplate power factor for each generator or other source; and (vi) workpapers showing the methods and costs used to derive a revised rate or justify its existing rate.

11. In cases where, as here, the Commission institutes a section 206 proceeding 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.²³ 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.²⁴ That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL16-66-000 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. The Commission expects to issue a final order in this proceeding within approximately three months of the filings required under this order.

²³ 16 U.S.C. § 824e(b) (2012).

²⁴ 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).

13. Finally, given that Midwest may have continued to receive payments for deactivated units, we have referred such concern to the Commission's Office of Enforcement for further examination and inquiry as may be appropriate.²⁵

The Commission orders:

(A) Pursuant to FPA sections 205, 206, and 309, within 30 days of the date of this order, Midwest must make a compliance filing setting forth its calculation of the amount of payments it received in violation of the terms and conditions of the Settlement Agreement due to suspended units, or show cause why it should not be found to have received payments in violation of the Settlement Agreement. With its filing, Midwest must provide the information requested in the body of this order.

(B) Pursuant to FPA section 206, within 30 days of the date of this order, Midwest must either revise its tariff rate in the ComEd zone of PJM to reflect the costs of the generating units continuing to provide reactive power capability, or show cause why it should not be required to do so. With its filing, Midwest must provide the information requested in the body of this order.

(C) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of this proceeding in Docket No. EL16-66-000.

(D) The refund effective date established pursuant to section 206(b) of the FPA will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (C) above.

(E) Any interested person wishing to become a party to this proceeding (Docket No. EL16-66-000) must file a notice of intervention or motion to intervene, as appropriate, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214) within 21 days of the date of issuance of this order. The Commission encourages electronic submission of interventions in lieu of paper using

²⁵ See *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,132 at P 10; *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 deactivated and thus were no longer capable of providing that service); *Desoto Cty. 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).

the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and three copies of the protest or interventions to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.