

156 FERC ¶ 61,005
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

NRG Wholesale Generation LP

Docket Nos. ER13-1967-001

NRG Wholesale Generation LP
Aurora Generation, LLC

ER16-1736-000
(Not Consolidated)

ORDER ACCEPTING INFORMATIONAL FILING AND GRANTING WAIVER

(Issued July 1, 2016)

1. On May 18, 2016, in Docket No. ER13-1967-001, NRG Wholesale Generation LP (NRG Wholesale) submitted an informational filing pursuant to Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff), regarding the planned transfer of the Aurora Generating Station (Facility) located in Page County, Illinois, to Aurora Generation, LLC (Aurora) (Informational Filing). Also on May 18, 2016, in Docket No. ER16-1736-000, NRG Wholesale and Aurora filed a request for 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 of the Facility (Waiver Request). In this order, we accept the Informational Filing for informational purposes only and grant the Waiver Request.

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 monthly revenue requirement, as accepted or approved by the Commission.¹ Schedule 2

¹ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

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.²

3. NRG Wholesale owns and operates the Facility, which is fueled by natural gas and consists of four combustion turbine units and six aeroderivative gas turbine units.³ NRG Wholesale receives compensation for Reactive Service provided from the Facility, in accordance with the revenue requirement set forth in a stand-alone, non-fleet rate schedule (Reactive Power Rate Schedule).⁴

4. NRG Wholesale states that, pursuant to a purchase and sale agreement dated May 11, 2016, NRG Wholesale has agreed to sell, and RA Generation, LLC has agreed to acquire, among other things, the Facility and associated assets, including the Reactive Power Rate Schedule (Transaction).⁵ RA Generation, LLC intends to assign its rights to acquire the Facility and associated assets to Aurora.

II. Informational Filing and Waiver Request

5. On May 18, 2016, NRG Wholesale submitted the Informational Filing pursuant to Schedule 2. In the Informational Filing, NRG Wholesale asserts that it proposes no revisions to its Reactive Power Rate Schedule in association with the Transaction, other than a notice of succession, because the revenue requirement set forth in the Reactive Power Rate Schedule was established solely for the Facility and the entirety of the Facility and the reactive Power Rate Schedule are being transferred.⁶ NRG Wholesale asserts that no portion of the Facility has been permanently deactivated since it entered commercial operation in 2001 and the Reactive Power Rate Schedule was accepted for

² *Id.*

³ Informational Filing at 2, 4.

⁴ *Id.* at 1-2; *see* NRG Wholesale Generation LP, Rate Schedule FERC No. 5 (1.0.0). The Reactive Power Rate Schedule was subject to a settlement agreement the Commission approved on June 24, 2005, in Docket Nos. ER04-1066-000, *et al.* The most recent notice of succession concerning the Reactive Power Rate Schedule was accepted by delegated letter order in Docket No. ER13-1967-000 on September 10, 2013.

⁵ Informational Filing at 3.

⁶ *Id.* at 3-4.

filing in October 2004. According to NRG Wholesale, following the consummation of the Transaction, the Facility will continue to provide Reactive Service to PJM on the same basis and using the same equipment as it did when the Reactive Power Rate Schedule went into effect and as it does today.⁷

6. On May 18, 2016, NRG Wholesale and Aurora (Movants) filed the Waiver Request seeking 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.⁸ Movants request that the Commission issue an order granting waiver on or before July 1, 2016, or as soon as possible thereafter. Movants assert that good cause for waiver exists because: (1) Movants have 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.⁹

7. Movants assert they have acted in good faith by submitting the Informational Filing within five business days of executing the purchase and sale agreement. Movants argue that NRG Wholesale has maximized prior notice to the Commission, PJM, and the public of the Transaction.¹⁰ Movants aver that by filing the Waiver Request and Informational Filing concurrently, they have brought this issue to the Commission's attention as soon as possible. Movants also assert that the Waiver Request is limited in scope, as they only request grant of a one-time waiver of the deadline under Schedule 2 and do not seek waiver of any substantive requirements under Schedule 2.¹¹ Additionally, Movants contend that the Waiver Request addresses a concrete problem and that, without a waiver, the parties will not be able to consummate the Transaction

⁷ *Id.* at 4.

⁸ Waiver Request at 7.

⁹ *Id.* (citing *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)).

¹⁰ Waiver Request at 9.

¹¹ *Id.*

until 90 days after the submittal of this Informational Filing, which could be commercially disadvantageous.¹² Finally, Movants assert that granting waiver will have no undesirable consequences, such as harming third parties.¹³ Movants explain that the Transaction presents no concerns about PJM “paying for a service . . . where . . . the generation or non-generation resource owner is no longer capable of providing that service,” asserting that the Reactive Power Rate Schedule sets forth a revenue requirement that is specific to the Facility and will remain with the Facility as part of the Transaction.¹⁴

III. Notice and Responsive Pleadings

8. Notice of the Informational Filing in Docket No. ER13-1967-001 and Waiver Request in Docket No. ER16-1736-000 was published in the *Federal Register*, 81 Fed. Reg. 33,528 (2016), with interventions and protests due on or before June 8, 2016. PJM filed timely motions to intervene in both proceedings.

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 both proceedings.

B. Substantive Matters

10. We accept NRG Wholesale’s Informational Filing for informational purposes only.¹⁵ As discussed below, we also grant Movants’ request for waiver of the 90-day prior notice requirement. The Commission has granted waiver of tariff provisions where:

¹² *Id.* at 10.

¹³ *Id.*

¹⁴ *Id.* (quoting *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,132, at P 8 (2014)).

¹⁵ 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 NRG Wholesale.

(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.¹⁶

11. We find that the circumstances of the instant case satisfy the foregoing criteria. First, we find that Movants have acted in good faith, as NRG Wholesale submitted the Informational Filing promptly after executing the purchase and sale agreement and Movants filed the Waiver Request concurrently. 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, the parties 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, as the Reactive Power Rate Schedule sets forth a revenue requirement that is specific to the Facility, and the Facility will continue to provide Reactive Service to PJM on the same basis as it did when the Reactive Power Rate Schedule went into effect and as it does today.

The Commission orders:

(A) NRG Wholesale's Informational Filing is hereby accepted for informational purposes only, as discussed in the body of this order.

(B) NRG Wholesale and Aurora'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)

Kimberly D. Bose,
Secretary.

¹⁶ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Servs., L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *N.Y. Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).