

156 FERC ¶ 61,009
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Armstrong Power, LLC	Docket Nos. ER16-1631-000 ER14-1218-001 EL16-79-000 ER16-1760-000
Calumet Energy Team, LLC	ER16-1632-000 EL16-80-000 ER16-1761-000
Northeastern Power Company	ER12-1587-002 EL16-81-000 ER16-1762-000
Pleasants Energy, LLC	ER16-1633-000 EL16-82-000 ER16-1763-000
Troy Energy, LLC	ER16-1634-000 EL16-83-000 ER16-1764-000

ORDER ACCEPTING INFORMATIONAL FILINGS, GRANTING WAIVER,
INSTITUTING SECTION 206 PROCEEDINGS, AND ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES

(Issued July 5, 2016)

1. In Docket Nos. ER14-1218-001, ER16-1632-000, ER12-1587-002, ER16-1633-000, ER16-1634-000, Armstrong Power, LLC (Armstrong), Calumet Energy Team, LLC (Calumet), Northeastern Power Company (NEPCO), Pleasants Energy, LLC (Pleasants), and Troy Energy, LLC (Troy), respectively (collectively, the Movants) submitted Informational Filings pursuant to Schedule 2 to the PJM Interconnection, L.L.C. (PJM)

Open Access Transmission Tariff (OATT), regarding the reactive power rates for their respective generating facilities¹ as a result of the planned indirect transfer of those facilities. Pursuant to the above transaction, Atlas Power Finance, LLC (Atlas) will acquire 100 percent of the issued and outstanding shares of common stock of GDF SUEZ Energy North America, Inc. (GDF).²

2. On May 4, 2016, in Docket No. ER16-1631-000, the Movants submitted a request for a one-time waiver of the 90-day prior notice requirement set forth in Schedule 2 of the PJM OATT to facilitate the planned indirect transfer of the facilities (Waiver Request).

3. On May 23, 2016, in Docket Nos. ER16-1760-000, ER16-1761-000, ER16-1762-000, ER16-1763-000, and ER16-1764-000 the Movants submitted a Database Migration and Request for Administrative Cancellation (eTariff Administration and Cancellation).

4. In this order, we accept the Informational Filings for informational purposes only and grant the Waiver Request. We also institute proceedings, pursuant to section 206 of the Federal Power Act (FPA),³ regarding the continued justness and reasonableness of the Movants' reactive power rates. We also grant the Movants' eTariff Administration and Cancellation request, effective May 24, 2016, as requested.

I. Informational Filings

5. 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

¹ These five Informational Filings represent five separate reactive power revenue requirements. Docket Nos. ER14-1218-001 and ER12-1587-002 were filed on May 5, 2016, and Docket Nos. ER16-1632-000, ER16-1633-000, and ER16-1634-000, were filed on May 6, 2016.

² GDF has an indirect 100 percent ownership interest in each of the Movants, which, in turn, each own or control a generating facility located in PJM that receives compensation for reactive supply and voltage control service pursuant to Schedule 2 of the PJM Tariff. Following the transaction between GDF and Atlas, GDF will be merged into Atlas Finance Merge Co. LLC, a wholly-owned subsidiary of Atlas Power, with GDF being the surviving company. The proposed transaction is pending before the Commission in Docket No. EC16-93-000.

³ 16 U.S.C. § 824e (2012).

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.⁴ 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 Power Supplier not to terminate or revise its cost-based rate schedule.

6. Armstrong, NEPCO, Calumet, Pleasants, and Troy submitted Informational Filings regarding the planned indirect transfers of control of Armstrong's 720 MW natural gas-fired generating facility; NEPCO's 62 MW waste coal-fired generating facility; Calumet's 300MW natural gas-fired generating facility; Pleasant's 354 MW natural gas-fired generating facility; and Troy's 936 MW natural gas-fired generating facility. The Movants are indirect, wholly-owned subsidiaries of GDF. The Movants state that the revenue requirements for reactive supply and voltage control service provided from their respective facilities have always been held by the Movants and will continue to be held by the Movants following the consummation of the transaction. The Movants state that the revenue requirements for their Reactive Power Rate Schedule have, at all times, been based solely on the stand-alone cost-of-service for the Movants' Facilities, and the facilities are being indirectly transferred intact and will remain wholly-controlled by the Movants.⁵ The Movants state that no revisions to their Reactive Power Rate Schedule are being proposed.

7. In the eTariff Administration and Cancellation request, the Movants state they created new tariff databases in order to consolidate their Market-Based Rates Tariff and Reactive Power and Voltage Control from Generation Sources Service rate schedules into one database.⁶

II. Waiver Request

8. The Movants also seek waiver of the Schedule 2 requirement that a filing revising an existing reactive power cost-based revenue requirement be submitted at least 90 days

⁴ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

⁵ Armstrong and NEPCO May 5, 2016 Informational Filings at 1-2. Calumet, Pleasants and Troy Informational Filings at 1-3.

⁶ Request at 1-2.

prior to the date of retirement or transfer of a generation facility.⁷ The Movants state that the Commission has previously granted limited waivers of electric tariff provisions, including the Schedule 2 prior notice requirement, when: (1) the applicants have acted in good faith; (2) the waiver is of limited scope; (3) the waiver would address a concrete problem; and (4) the waiver did not have undesirable consequences, such as harming third parties.⁸

9. The Movants state they have acted in good faith by working diligently to prepare and verify all the data contained in the Informational Filings, to ensure the accuracy of all information contained therein while attempting to maximize the prior notice to the Commission and to the public of the transfer of the Movants' Facilities. The Movants state the request is limited in scope because they are only requesting a one-time waiver of the deadline under Schedule 2 to allow the Informational Filings to be submitted less than 90 days prior to the anticipated upstream change in control of the Movants. The Movants' assert that their request for waiver by July 23, 2016 is only 11 days shorter than the 90-day period contemplated by Schedule 2. The Movants state the requested waiver responds to a concrete problem: namely, the fact that regulatory approvals and consents for the proposed transactions may all be obtained by July 23, 2016 and the 90-day notice period then becomes a critical path item to closing the proposed transaction. The Movants state the waiver should not have any unexpected or undesirable consequences, such as harming third parties. The Movants state that in the Informational Filings, the Reactive Power Rate Schedules set forth revenue requirements for reactive supply and voltage control service that are specific to the Armstrong Facility, Calumet Facility, NEPCO Facility, Pleasants Facility, and Troy Energy Facility, respectively, and those generation facilities will remain with Armstrong, Calumet, NEPCO, Pleasants, and Troy, respectively, following the proposed transaction.⁹

⁷ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

⁸ Waiver Request Transmittal Letter (Waiver Request) at 9 (citing *Big Sandy Peaker Plant, LLC*, 154 FERC ¶ 61,281 (2016) (granting waiver of the 90-day prior notice requirement contained in Schedule 2 of the PJM Tariff, with an effect approximately six weeks after submission of the information filings); *Reliant Energy Seward, LLC*, 154 FERC ¶ 61,017, at PP 11-13 (2016) (Seward) (granting waiver of the 90-day prior notice requirement set forth in Schedule 2 of the PJM Tariff)).

⁹ Waiver Request at 9-11. The Proposed Transaction between Atlas and GDF is an indirect transfer of control over each Facility and the Facilities themselves will remain intact and will continue to be wholly-owned and operated by each of the Movants, respectively, in the same way before and after the proposed transaction.

III. Notice and Responsive Pleadings

10. Notice of the Informational Filings was published in the *Federal Register*, 81 Fed. Reg. 29,560 (2016) with interventions and protests due on or before May 26, 2016.¹⁰ PJM and Atlas each submitted a timely motion to intervene.

11. Notice of the eTariff Administration and Cancellation request was published in the *Federal Register*, 81 Fed. Reg. 35,010 (2016) with interventions and protests due on or before May 13, 2016. None were filed.

12. Notice of the Movants' Waiver Request was published in the *Federal Register*, 81 Fed. Reg. 29,560 (2016), with interventions and protests due on or before May 25, 2016. PJM and Atlas each submitted a timely motion to intervene.

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

14. We accept the Movants' Informational Filings for informational purposes only.¹¹ These filings, however, include information indicating that the reactive power rates may have become unjust and unreasonable. The Informational Filings raise 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. For example, some of the issues raised by the filings are the apparent use of Locational Marginal Price (LMP) in Heating Loss calculations for the Armstrong, Calumet,

¹⁰ Comments on the Informational Filing of Calumet, Pleasant, and Troy were due on May 27, 2016.

¹¹ 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 Movants.

Pleasants, and Troy units, the use of unsupported costs by NEPCO,¹² and possible reactive power output degradation of 30 and 36 percent for Calumet's River Energy Unit #1 and Unit #2, respectively.¹³ Accordingly, we are instituting proceedings pursuant to section 206 of the FPA in Docket Nos. EL16-79-000, EL16-80-000, EL16-81-000, EL16-82-000, and EL16-83-000 to inquire into the justness and reasonableness of the Movants' power rates. We further establish hearing and settlement judge procedures.

15. We also grant the Movants' request for waiver of the 90-day prior notice requirement in Schedule 2 of the PJM OATT. 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.¹⁴

16. We find that the circumstances of the instant case satisfy the foregoing criteria. First, we find that the Movants have acted in good faith by working diligently to prepare and verify all the data contained in the Informational Filings. Second, we find that the waiver is limited in scope as it does not affect any other provision regarding the compensation that the Movants receive for providing Reactive Service. Third, we find that the waiver addresses a concrete problem because the fact that regulatory approvals and consents for the proposed transaction may all be obtained by July 23, 2016 and the 90-day notice period will then become a critical path item to closing the proposed transaction. Finally, we find that the waiver does not harm a third party, and there are no changes to the Reactive Rate Schedules.

¹² NEPCO costs appear to be substantially higher than the proxies it provided for comparison purposes in Docket No. ER12-1587-000 Exhibit No. NEPCO-2. Furthermore, NEPCO appears to include variable costs in its Fixed Charge Rate. Further, analysis of NEPCO's work papers highlighted a potentially high generator step-up transformer allocator.

¹³ The Commission recently provided guidance on establishing or revising rates for Reactive Service. *Wabash Valley Power Association, Inc.*, 154 FERC ¶ 61,245, at PP 24-29 (2016); *Wabash Valley Power Association, Inc.*, 154 FERC ¶ 61,246, at PP 23-28 (2016).

¹⁴ *See, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Serv., Inc.*, 154 FERC ¶ 61,082, at P 12 (2016); *Seward*, 154 FERC ¶ 61,017 at PP 11-13; *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

17. 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 or later than five months after the publication date.¹⁵ 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 206.¹⁶ Accordingly, we set the refund effective date as the date of publication of notice of initiation of the section 206 proceedings in Docket Nos. EL16-79-000, EL16-80-000, EL16-81-000, EL16-82-000, and EL16-83-000 in the Federal Register.

18. 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 proceedings in Docket Nos. EL16-79-000, EL16-80-000, EL16-81-000, EL16-82-000, and EL16-83-000 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.

19. 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.¹⁷ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based

¹⁵ 16 U.S.C. § 824e (b) (2012).

¹⁶ *See, e.g., Idaho Power Co.*, 145 FERC ¶ 61,122 (2013); *Canal Electric Co.*, 46 FERC ¶ 61,153, *order on reh'g*, 47 FERC ¶ 61,275 (1989).

¹⁷ 18 C.F.R. § 385.603 (2015).

20. on workload requirements which determine judges' availability¹⁸ The settlement judge shall report to the 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 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.

V. Guidance on Making eTariff Informational Filings and Tariff Title Changes

A. Informational Filings by Market Based Rate Filers

21. We previously provided guidance for utilities making Informational Filings for reactive power service under Schedule 2.¹⁹ However, based on further experience, we are updating that guidance to include revised procedures for companies in the Market Based Rate Program.²⁰

(i) Informational Filings should be made as a Compliance Filing Type using either eTariff Type of Filing Code 80 (Compliance Filing) for companies registered in the Commission's company registration database as traditional cost of service companies or Code 70 (Compliance Filing) for companies registered as Market Based Rate filers.

(ii) Utilities that have established an electronic Tariff for reactive power need not include a tariff record when making the compliance filing. However, filers should use as an Associated Filing Identifier, the same Filing Identifier used in establishing their original reactive power tariff record. This will ensure that the informational compliance filing receives a subdocket related to the original reactive power tariff filing.

¹⁸ 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>).

¹⁹ *Reliant Energy Seward, LLC*, 154 FERC ¶ 61,017, at P 1 n.1 (2016) (*Reliant*).

²⁰ We also no longer suggest, as we did in *Reliant*, that Market Based Rate filers with only a reactive power rate schedule change their company registration to the E (Traditional Cost of Service) program. After further review of our internal processes, we no longer find changing programs is necessary.

(iii) Utilities whose reactive power tariffs are not yet in eTariff should make their compliance filing under an existing Tariff Identifier. These filings should not have an Associated Filing Identifier. These companies must include a tariff record for their effective reactive power rate schedule.²¹ We do not encourage companies to establish separate eTariff Reactive Power Tariff Identifiers²² for Reactive Power tariffs, but to include them in an existing Tariff Identifier and, if necessary, modify the Tariff Title as discussed below.

(iv) Utilities filing Informational Filings and waivers at the same time need not submit two separate filings, but may include the waiver request in the transmittal letter of the Informational Filing, with a reference to the Request for Waiver in the title of the transmittal letter.

B. Procedures for Changing Tariff Titles

22. Many filers, including the Movants in this proceeding, initially established eTariff databases with narrowly defined Tariff Titles. For example, the applicants here titled their tariff databases, Market Based Rate Tariffs. Choosing such narrow or restrictive Tariff Titles may create difficulties when companies need to file additional tariffs. A company with a tariff database entitled “Market Based Rate Tariff” may not want to file its reactive power cost of service tariff or other rate schedules under that tariff database. As a result, we are seeing a proliferation of unnecessary tariff databases that may create difficulties for filers in making future filings.²³

23. As illustrated by the filings in these dockets,²⁴ companies that wish to create more inclusive Tariff Titles should make an administrative filing using the following

²¹ See *Electronic Tariff Filings*, 73 FR 57,515 (Oct.3, 2008), FERC Stats. & Regs. ¶ 31,276, at P 93 (2008) (tariffs and rate schedules not included as part of an initial baseline tariff must be filed when they are part of a new filing).

²² For the definitions of these terms, see *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings*, at Data Dictionary (Mar. 2016) <http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf>

²³ For example, companies must make separate filings to revise provisions of a rate schedule, tariff, or service agreement if they are housed in separate tariff databases.

²⁴ ER16-1760-000, ER16-1761-000, ER16-1762-000, ER16-1763-000, and ER16-1764-000.

procedures to establish a new database, with an inclusive Tariff Title, and cancel their existing databases:

- (i) Create a new tariff database, with a new Tariff Identifier, using the appropriate eTariff codes for their program for refiling a baseline tariff.²⁵
- (ii) Use an inclusive Tariff Title for the new database, such as “Tariff Database.”
- (iii) Include all tariffs as new Tariff Record Parent Identifiers under the new database.
- (iv) State in the Transmittal Letter that you request the Commission to close existing tariff databases administratively, and provide the Tariff Title and Tariff Identifiers of the databases that should be canceled.

The Commission orders:

(A) The Movants’ Informational Filings are hereby accepted for informational purposes, as discussed in the body of this order.

(B) The request for waiver of the 90-day prior notice requirement set forth in Schedule 2 of the PJM OATT is hereby granted, as discussed in the body of this order.

(C) The Movants’ eTariff Administration and Cancellation request is hereby granted, effective May 24, 2016 as requested.

(D) 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 proceedings in Docket Nos. EL16-79-000, EL16-80-000, EL16-81-000, EL16-82-000, and EL16-83-000, concerning the justness and reasonableness of the Movants’ Reactive Rate Schedule,

²⁵ Code 370 “Refile Tariff (Baseline Filing)” in the E program; Code 360 “Refile Tariff (Baseline Filing)” in the M program; Code 740 “Compliance new tariff (Baseline)” in the G program; Code 970 “New company Tariff (Baseline)” in the O program; Code 380 “Refile Tariff (Baseline Filing)” in the F program; “Code 990 “Rate & SOC chg (Baseline)” in the K program.

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 (E) and (F) below.

(E) 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.

(F) 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.

(G) 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.

(H) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceedings under section 206 of the FPA in Docket Nos. EL16-79-000, EL16-80-000, EL16-81-000, EL16-82-000, and EL16-83-000.

(I) The refund effective date in Docket Nos. EL16-79-000, EL16-80-000, EL16-81-000, EL16-82-000, and EL16-83-000 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 (H) above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.