

156 FERC ¶ 61,084
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

West Deptford Energy, LLC

Docket Nos. ER14-1193-001
ER16-1949-000
EL16-100-000

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

(Issued August 1, 2016)

1. On June 16, 2016, West Deptford Energy, LLC (West Deptford) submitted an informational filing regarding the planned indirect transfer of interests, including payment of reactive revenue requirements for Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service), in an approximately 669 MW (summer rating) natural gas-fired generating facility (West Deptford Facility). West Deptford's Reactive Service Schedule was accepted for filing by the Commission on March 26, 2014, as FERC Rate Schedule No. 2 (Reactive Rate Schedule) of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT). On June 17, 2016, West Deptford filed a request seeking waiver of the 90-day prior notice requirement set forth in Schedule 2 of the PJM OATT.¹ In this order, we accept the informational filing for informational purposes only and grant West Deptford's waiver request. In addition, we institute a proceeding pursuant to section 206 of the Federal Power Act (FPA)² regarding the continued justness and reasonableness of West Deptford's reactive power rates and establish hearing and settlement judge procedures. We also set a refund effective date.

¹ The waiver request was filed in Docket No. ER16-1949-000 while the informational filing was filed in Docket No. ER14-1193-001.

² 16 U.S.C. § 824e (2012).

I. West Deptford's Filing

2. Schedule 2 of the PJM OATT, 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.³ 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 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. West Deptford states that MC West Deptford Energy Investments, LLC, Ullico Infrastructure West Deptford Holdco, LLC, The Prudential Insurance Company of America, ASRC Capital, LLC, and Perennial West Deptford are planning to indirectly acquire equity interests in West Deptford. The West Deptford Facility consists of approximately 669 MW (summer rating) of gas-fired generation located in West Deptford Township, New Jersey. West Deptford receives from PJM a Reactive Service annual revenue requirement payment of \$2,893,940 for the West Deptford Facility.

4. West Deptford states that it is not proposing any revisions to the West Deptford Facility's Reactive Service Schedule because the revenue requirement set forth therein was established solely for the West Deptford Facility, the entirety of which is included in the transaction. West Deptford further states that the entity that collects revenues under the Reactive Rate Schedule, West Deptford, is not changing as a result of the proposed transaction; no portion of the West Deptford Facility has been permanently deactivated since it entered commercial operation in 2014 and the Reactive Rate Schedule was accepted for filing; and, following the consummation of the transaction, the West Deptford Facility will continue to provide reactive service to PJM.

II. Waiver Request

5. West Deptford seeks waiver of the PJM Schedule 2 requirement that an informational filing explaining the basis for the decision not to terminate or revise an existing reactive power cost-based revenue requirement be submitted at least 90 days

³ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

prior to the date of retirement or transfer of a generation facility.⁴ West Deptford states that the Commission has previously granted limited waivers of electric tariff provisions, including the Schedule 2 prior notice requirement, when: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needed to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.

6. West Deptford asserts that it acted in good faith by submitting the informational filing days after the transfer of interest was agreed upon. West Deptford further asserts that the waiver request is of limited scope because it is requesting only a one-time waiver of the PJM Schedule 2 90-day notice requirement. West Deptford argues that granting waiver would remedy a concrete problem because, absent a waiver, the parties would not be able to consummate the transaction until 90 days after submitting the Informational Filing, which it contends would be commercially disadvantageous. Finally, West Deptford asserts that granting waiver will not have any undesirable consequences, such as causing harm to third parties, because it is not proposing a change to the rates it receives for Reactive Service.⁵

7. West Deptford also requests waiver of its obligation to provide MVAR, MVA, and megawatt capability data as required by the PJM tariff on the grounds that the data are not yet available from PJM.⁶

III. Notice and Responsive Pleadings

8. Notice of West Deptford's June 16, 2016 and June 17, 2016 filings were published in the *Federal Register*, 81 Fed. Reg. 40886 (2016) and *Federal Register*, 81 Fed. Reg. 40887 (2016), with interventions and protests due on or before July 7, 2016 and July 8, 2016, respectively. PJM filed timely interventions 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), the timely, unopposed motions to intervene serve to make PJM a party to Docket Nos. ER14-1193-001 and ER16-1949-000.

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

⁵ West Deptford June 17, 2016 Request for Waiver at 8-9.

⁶ *See* West Deptford June 16, 2016 Informational Filing at 4, n.6.

B. Substantive Matters

10. We accept the Informational Filing for informational purposes only. We further 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. West Deptford's Informational Filing did not provide the required test data relating to MVAR, MVA, and megawatt capability of the West Deptford Facility, and based upon West Deptford's work papers in Docket No. ER14-1193-000, the balance of plant allocator, the accessory equipment allocator, and the heating losses appear to be excessive.⁷ Accordingly, we are instituting a proceeding pursuant to section 206 of the FPA in Docket No. EL16-100-000 and establish hearing and settlement judge procedures to determine whether West Deptford's reactive power rates remain just and reasonable.

11. 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 the publication by the Commission of notice of its intention to initiate such proceeding nor later than five months after the publication date. 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.⁸ That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL16-100-000 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. As we are setting the section 206 proceeding in Docket No. EL16-100-000 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

⁷ 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).

⁸ *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).

Initial Decision by January 31, 2017, we expect that, if the proceeding does not settle, we would be able to render a decision by September 31, 2017.

13. 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.⁹ 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 on workload requirements which determine judges' availability.¹⁰ 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.

14. We grant West Deptford's 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.¹¹

15. We find that the circumstances of the instant case satisfy the foregoing criteria and we therefore grant the waiver request.¹² First, we find that West Deptford acted in good faith by submitting the Informational Filing shortly after the transfer of its interest was

⁹ 18 C.F.R. § 385.603 (2015).

¹⁰ If the parties decide to request a specific judge, they must make their joint request to the 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>).

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

¹² *See, e.g., Armstrong Power, LLC*, 156 FERC ¶ 61,009, at PP 16-17 (2016); *Northampton Generating Company, L.P.*, 155 FERC ¶ 61,242, at PP 7, 12 (2016).

agreed upon. Second, we find that the waiver is limited in scope because it applies only to the PJM Schedule 2 90-day notice requirement for this Informational Filing. Third, we find that the waiver addresses a concrete problem: in the absence of a waiver, West Deptford would not be able to consummate the transfer of interest until 90 days after the submittal of this Informational Filing, which would be commercially disadvantageous. Finally, we find that granting waiver does not have any undesirable consequences, such as harming third parties. West Deptford will continue to provide Reactive Service on the same terms and conditions as before the transfer of interest, leaving third parties, including consumers, unaffected by the transfer.

The Commission orders:

(A) West Deptford's Informational Filing is hereby accepted for informational purposes, 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. EL16-100-000, concerning the justness and reasonableness of West Deptford's Reactive 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 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) Any interested person desiring to be heard in Docket No. EL16-100-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), within 21 days of the date of issuance of this order.

(G) 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. EL16-100-000.

(H) The refund effective date in Docket No. EL16-100-000 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 (G) above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.