

156 FERC ¶ 61,104
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Elwood Energy, LLC and
Exelon Generation Company, LLC

Docket Nos. ER07-1301-002

Elwood Energy, LLC

EL16-98-000

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

(Issued August 10, 2016)

1. On June 2, 2016, Elwood Energy, LLC (Elwood) and Exelon Generation Company, LLC (Exelon) submitted an informational filing regarding the allocation of payment of reactive revenue requirements for Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service) associated with two of Elwood's nine natural gas-fired turbine units for Elwood's facility located in Elwood, Illinois (Elwood Facility). The Elwood Facility's Reactive Service filing was accepted by the Commission on October 23, 2007¹ as FERC Rate Schedule No. 2 (Reactive Rate Schedule) of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT). In this order, we accept the informational filing for informational purposes only, direct Elwood to file a tariff record for the Elwood Facility in accordance with the Commission's policies and procedures on eTariff,² and institute a proceeding pursuant to section 206 of the FPA³ regarding the continued justness and reasonableness of the

¹ *Elwood Energy, LLC*, Docket Nos. ER07-1301-000 and ER07-1301-001, (Oct. 23, 2007) (delegated letter order).

² *See Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008) (Order No. 714).

³ 16 U.S.C. § 824e (2012).

Elwood Facility's reactive power rates and establish hearing and settlement judge procedures.

I. Elwood and Exelon'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.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 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. Elwood and Exelon state that Elwood owns and operates the Elwood Facility, an approximately 1,350 MW (summer rating) electric generation facility consisting of nine gas-fired turbine units. Elwood and Exelon state that Exelon purchases the output of four of the nine units of the Elwood Facility (i.e., Unit Nos. 5, 6, 7 and 8) pursuant to power purchase agreements (PPA) and that the PPA for Unit Nos. 5 and 6 expires on August 31, 2016.⁵ Elwood receives from PJM a Reactive Service annual revenue requirement payment of \$2.7 million for the facility, \$600,000 of which is associated with Unit Nos. 5 and 6. Currently, PJM facilitates the transfer of an annual payment of \$600,000 directly to Exelon as Exelon's pro-rata share of the annual revenue requirement payment. Elwood and Exelon state that the purpose of the informational filing is to provide 90-days' notice, pursuant to Schedule 2, that PJM should pay Exelon's \$600,000 annual payment for Unit Nos. 5 and 6 directly to Elwood upon expiration of the PPA on August 31, 2016.

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

⁵ Elwood and Exelon state that the PPA for Unit Nos. 7 and 8 expires on August 13, 2017.

II. Notice and Responsive Pleadings

4. Notice of Elwood and Exelon's June 2, 2016 filing was published in the *Federal Register*, 81 Fed. Reg. 38,168 (2016), with interventions and protests due on or before June 23, 2016. None were filed.

III. Discussion

A. Procedural Matters

5. 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

1. Informational Filing and Section 206

6. We accept the Elwood and Exelon's 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. Elwood and Exelon's informational filing did not provide the required test data relating to the MVAR, MVA, and megawatt capability of the Elwood Facility. The Commission finds that the information required by Schedule 2 of PJM's OATT is necessary to determine if degradation of reactive power output is occurring. In addition, based upon Elwood's work papers filed in Docket No. ER07-1301-001, we find that heating losses are based on locational marginal pricing.⁶ Accordingly, we are instituting a proceeding pursuant to section 206 of the FPA in Docket No. EL16-98-000 to inquire into the continued justness and reasonableness of the Elwood Facility's reactive power rates. We further establish hearing and settlement judge procedures.

7. 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 publication by the Commission of notice of its intention to initiate such proceeding or later than five months after the publication date. In such cases, in order to give maximum protection to customers, and

⁶ 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).

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.⁷ That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL16-98-000 in the Federal Register.

8. 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. EL16-98-000 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 January 31, 2017, we expect that, if the proceeding does not settle, we would be able to render a decision by September 30, 2017.

9. 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.⁸ 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.⁹ 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.

⁷ 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).

⁸ 18 C.F.R. § 385.603 (2015).

⁹ 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>).

2. eTariff Compliance Filing

10. As stated previously, the tariff filing for the Elwood Facility was accepted by the Commission on October 23, 2007. Therefore, Elwood's reactive power rate schedule was an existing agreement as of 2010 when the Commission implemented its eTariff database, and Elwood was not required to file the rate schedule as part of its baseline implementation of eTariff.¹⁰ The Commission, however, indicated that utilities must file such existing tariffs and rate schedules when they are revised or amended.¹¹ As the Commission has found, a generator which does not have a reactive power schedule on file must make its informational filing in eTariff to place its reactive power rate schedule in eTariff.¹² Therefore, Elwood is required to submit its reactive power tariff as a compliance filing within fifteen (15) days of the date of this order.¹³

The Commission Orders:

(A) Elwood and Exelon's informational filing is hereby accepted for informational purposes, as discussed in the body of this order.

(B) Elwood must make a compliance filing within fifteen (15) days of the date of this order in accordance with Order No. 714 to include a tariff for the Elwood Facility in eTariff.

(C) 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 No. EL16-98-000, concerning the justness and reasonableness of the Elwood Facility's Reactive Rate Schedule, as discussed in the body of this order. However, the hearing

¹⁰ Order No. 714, FERC Stats. & Regs. ¶ 31,276 at P 93.

¹¹ *Id.*

¹² *Reliant Energy Seward, LLC*, 154 FERC ¶ 61,017 (2016). *See also, Armstrong Power, LLC*, 156 FERC ¶ 61,009 (2016) (*Armstrong Power*).

¹³ In making this filing, Elwood should follow the guidance in *Armstrong Power*, 156 FERC ¶ 61,009. The Commission notes that Elwood already has a Tariff titled Elwood Energy – DB (<http://etariff.ferc.gov/TariffBrowser.aspx?tid=1370>), and it should place its reactive power under that Tariff Title.

shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) 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.

(E) 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.

(F) 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.

(G) Any person desiring to be heard in Docket No. EL16-98-000 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.

(H) 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. EL16-98-000.

(I) The refund effective date in Docket No. EL16-98-000 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.