

156 FERC ¶ 61,136  
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 Nos. ER16-2095-000  
EL16-66-000  
(Consolidated)

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE SCHEDULE,  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES AND  
CONSOLIDATING PROCEEDINGS

(Issued August 29, 2016)

1. On June 30, 2016, Midwest Generation, LLC (Midwest) filed, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> a revised rate schedule (Revised Rate Schedule) increasing its rates for Reactive Supply and Voltage Control From Generation Sources Service (Reactive Service). The filing sets forth a proposed revenue requirement for the provision of Reactive Service by its facilities in the Commonwealth Edison (ComEd) zone of PJM Interconnection, L.L.C. (PJM).<sup>2</sup> In this order, we accept the Revised Rate Schedule for filing and suspend it for a nominal period, to become effective August 1, 2016, as requested, subject to refund. We also establish hearing and settlement judge procedures. In addition, we consolidate Docket No. ER16-2095-000 with Docket No. EL16-66-000 for purposes of hearing and settlement judge procedures and decision.<sup>3</sup>

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<sup>1</sup> 16 U.S.C. § 824(d) (2012).

<sup>2</sup> Midwest Generation, LLC, Tariff Database, [Reactive Rate Schedule, FERC Electric Tariff, Original Volume No. 3, 2.0.0.](#)

<sup>3</sup> *Midwest Generation, LLC*, 155 FERC ¶ 61,289 (2016) (June 21 Order). In Docket EL16-66-000, the Commission established a section 206 proceeding to investigate the rate to be charged by Midwest. While we are consolidating these dockets for the purposes of the hearing, service lists and other docket-related material are not consolidated. Therefore, parties should make all filings in both dockets and serve all

(continued...)

Finally, we grant Midwest's request for waiver of the Commission's 60-day notice requirement.<sup>4</sup>

## **I. Background**

2. Schedule 2 of PJM's Open Access Transmission 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 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.<sup>5</sup>

3. On June 21, 2016, the Commission issued the June 21 Order in Docket No. EL16-66-000 initiating a proceeding under section 206 of the FPA<sup>6</sup> and also directing Midwest to: (1) make a compliance filing setting forth its calculation of the amount of payments it received by failing to follow the terms and conditions of the Settlement Agreement requiring it to restate its rates when it suspends generating units, or show cause why it should not be found to have received payments in violation of the Settlement Agreement;<sup>7</sup> 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.<sup>8</sup> Finally, the Commission stated that "given that Midwest may have continued to receive payments for deactivated units, we have

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participants in both dockets. Any tariff revision filed in eTariff must be made as a compliance filing in Docket No. ER16-2095-000, but service must still be made to parties in both dockets.

<sup>4</sup> 18 C.F.R. § 35.3 (2016).

<sup>5</sup> PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

<sup>6</sup> 16 U.S.C. § 824e (2012).

<sup>7</sup> The Commission accepted a Settlement Agreement in 2004 establishing rates for Reactive Service provided by facilities owned by Midwest.

<sup>8</sup> June 21 Order, 155 FERC ¶ 61,289, at P 7. A full background on the basis for the initiation of Docket No. EL16-66-000 is discussed in the June 21 Order.

referred such concern to the Commission's Office of Enforcement for further examination and inquiry as may be appropriate."<sup>9</sup>

## II. Midwest's Filing

4. Midwest asserts that it is making a FPA section 205 filing to meet the Commission's second directive in the June 21 Order as well as to increase its Reactive Service rates to reflect the addition of new generation. On July 21, 2016, Midwest made a separate compliance filing in Docket No. EL16-66-000 to reflect refunds resulting from its failure to abide by the terms of its Settlement Agreement to restate rates upon the suspension of a generation unit.

5. With respect to the filing in Docket No. ER16-2095-000, Midwest states that its existing revenue requirement was accepted in Docket No. ER05-105-000,<sup>10</sup> and was based on a Commission-approved Settlement Agreement in Docket No. ER04-190-000,<sup>11</sup> which was itself based on a settlement approved by the Commission in Docket No. ER99-4470-000.<sup>12</sup> Midwest asserts that the units included in the existing revenue requirement set forth in Original Volume No. 3 are Crawford Units 7 and 8; Fisk Units 19, 31, 32, 33, and 34; Joliet Units 6, 7, and 8; Powerton Units 5 and 6; Waukegan Units 6, 7, and 8; and Will County Units 1, 2, 3, and 4. Midwest states that, of these units: (1) Crawford Units 7 and 8 were retired on August 28, 2012 and August 24, 2012, respectively; (2) Fisk Unit 19 was retired on August 30, 2012; (3) Fisk Unit 34-1 is no longer an active unit and last operated on March 10, 2005; (4) Waukegan Unit 6 was retired on December 31, 2007; (5) Will County Units 1 and 2 were retired on December 30, 2010; and (6) Will County Unit 3 was deactivated on April 15, 2015. Midwest asserts that it has two units, Waukegan Units 31 and 32, which are not included in its existing revenue requirement.

6. In addition to reflecting the suspended or deactivated units as required by the Settlement Agreement, Midwest states that it has revised its revenue requirement to add Waukegan Units 31 and 32.<sup>13</sup> Midwest contends that the revenue requirement proposed

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<sup>9</sup> *Id.* P 13.

<sup>10</sup> Transmittal at 4 (citing *Midwest Generation, LLC*, Docket No. ER05-105-000 (Dec. 16, 2004) (delegated letter order)).

<sup>11</sup> *Id.* (citing *Midwest Generation EME, LLC*, 108 FERC ¶ 61,166 (2004)).

<sup>12</sup> *Id.* (citing *Commonwealth Edison Co.*, 92 FERC ¶ 61,113 (2000)).

<sup>13</sup> *Id.*

in its filing represents its facilities' revenue requirement for Reactive Service, and that the rates proposed are consistent with the methodology the Commission approved in *Am. Elec. Power Serv.*<sup>14</sup> Midwest notes that, while the revenue requirement for reactive service typically consists of costs attributable to reactive power production capability (fixed capability component) and the increased generator and step-up transformer heating losses that result from the production of reactive power (heating losses), it is not seeking to recover the costs associated with heating losses at this time. Midwest states that the Revised Rate Schedule contains the revenue requirement attributable to each unit located at each facility within its fleet. Midwest proposes to increase its annual revenue requirement for Reactive Service provided to the ComEd zone of PJM from \$2,295,794 to \$6,945,216.74. Midwest requests that the Revised Rate Schedule be accepted effective August 1, 2016 and that the Commission grant any necessary waivers to permit the August 1, 2016 effective date.

### **III. Notice and Responsive Pleadings**

7. Notice of Midwest's filing was published in the *Federal Register*, 81 Fed. Reg. 44,858 (2016), with interventions and protests due on or before July 21, 2016. PJM filed a timely motion to intervene.

### **IV. Discussion**

#### **A. Procedural Matters**

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), PJM's timely, unopposed motion to intervene serves to make it a party to this proceeding.

#### **B. Substantive Matters**

9. As further discussed below, we accept Midwest's Revised Rate Schedule, suspend it for a nominal period, to become effective August 1, 2016, as requested, subject to refund, and establish hearing and settlement judge procedures. Given the common issues of law and fact, we will consolidate the hearing and settlement judge procedures established herein in Docket No. ER16-2095-000 with the FPA section 206 investigation

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<sup>14</sup> *Id.* at 5 (citing *Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999), *order on reh'g*, 92 FERC ¶ 61,001 (2000)).

in Docket No. EL16-66-000 for purposes of hearing and settlement judge procedures and decision.<sup>15</sup>

10. Our preliminary analysis indicates that Midwest's Revised Rate Schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Midwest's 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. Accordingly, we accept Midwest's Revised Rate Schedule for filing, suspend it for a nominal period, to be effective August 1, 2016,<sup>16</sup> as requested, subject to refund, and set it for hearing and settlement judge procedures. Although we are setting the entire rate for hearing and settlement judge procedures, we note that Midwest has not provided the PJM test reports supporting its Reactive Service capability figures,<sup>17</sup> and that it has not provided sufficient detail in its filing to support the cost information used.<sup>18</sup>

11. While we are setting these matters for a trial-type evidentiary hearing, we encourage the participants to make every effort to settle their dispute before hearing procedures are commenced. To aid the participants in their settlement efforts, we will

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<sup>15</sup> The refund effective date as established in Docket No. EL16-66-000 begins on July 1, 2016, which will not be covered by Midwest's filing in Docket No. ER16-2095-000, which is effective August 1, 2016. Moreover, Midwest's FPA section 205 filing would not permit the Commission to establish a rate, or order refunds, should the Commission determine that the just and reasonable rate is lower than the currently effective just and reasonable rate (i.e., Midwest's rates as calculated under the Settlement Agreement). The Commission will address in a separate order Midwest's compliance filing in Docket No. EL16-66-000, which calculates refunds resulting from Midwest's failure to abide by the terms of its Settlement Agreement and addresses the period prior to July 1, 2016.

<sup>16</sup> We will waive the Commission's 60-day prior notice requirement. 18 C.F.R. § 35.3 (2016).

<sup>17</sup> To support their capability figures, generator owners should provide the Reactive Service test reports produced in compliance with Standard MOD-025-2 adopted by the North American Electric Reliability Corporation.

<sup>18</sup> See 18 C.F.R. § 35.12(b)(2)(ii) (2016). 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).

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.<sup>19</sup> 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.<sup>20</sup> The settlement judge shall report to the Chief Judge and the Commission within 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 participants with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Midwest's Revised Rate Schedule filed in Docket No. ER16-2095-000 is hereby accepted for filing and suspended for a nominal period, to become effective August 1, 2016, subject to refund and hearing and settlement judge procedures, as discussed in the body of this order.

(B) Docket Nos. ER16-2095-000 and EL16-66-000 are hereby consolidated for purposes of hearing and settlement judge procedures and decision, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of Midwest's proposed Revised Rate Schedule and also concerning Midwest's current reactive power rates, 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 (D) and (E) below.

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<sup>19</sup> 18 C.F.R. § 385.603 (2016).

<sup>20</sup> If the participants decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five 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>).

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure,<sup>21</sup> the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in these proceedings 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.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>21</sup> 18 C.F.R. § 385.603 (2016).