

156 FERC ¶ 61,231
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Talen Energy Marketing, LLC	Docket Nos. ER16-277-004
	ER16-1456-001
Montour, LLC	ER16-2202-000
	ER16-2203-000
Bayonne Plant Holding, L.L.C.	ER10-2432-010
Camden Plant Holding, L.L.C.	ER10-2435-010
Elmwood Park Power, LLC	ER10-2442-010
Newark Bay Cogeneration Partnership, L.P.	ER10-2444-010
Lower Mount Bethel Energy, LLC	ER10-3272-002
York Generation Company LLC	ER10-2449-008
Pedricktown Cogeneration Company LP	ER16-2438-000
H.A. Wagner LLC	ER16-2439-000
Brandon Shores LLC	ER16-2440-000
Chief Conemaugh Power, LLC	ER16-2219-000
Chief Keystone Power, LLC	ER16-2220-000
	EL16-116-000

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

(Issued September 27, 2016)

1. On July 15, 2016, and August 17, 2016, Talen Energy Marketing, LLC, Montour, LLC (Montour), Bayonne Plant Holding, L.L.C., Camden Plant Holding, L.L.C., Elmwood Park Power, LLC, Newark Bay Cogeneration Partnership, L.P., Lower Mount Bethel Energy, LLC, York Generation Company LLC, Pedricktown Cogeneration Company LP, H.A. Wagner LLC, Brandon Shores LLC (collectively, Talen Entities), Chief Keystone Power, LLC (Chief Keystone), and Chief Conemaugh Power, LLC (Chief Conemaugh) submitted Informational Filings pursuant to Schedule 2 to the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT), regarding the rates for Reactive Supply and Voltage Control Service (Reactive Service) for their respective generating facilities. These filings were submitted as a result of the expected acquisition of additional ownership shares in Talen Energy Corporation by Raven Power

Holdings LLC, C/R Energy Jade, LLC, and Sapphire Power Holdings LLC (RJS Entities).¹ The applicants also request a one-time waiver of the 90-day prior notice requirement set forth in Schedule 2 of the PJM OATT (Waiver Request).

2. In this order, we accept the Informational Filings for informational purposes only. We also institute proceedings, pursuant to section 206 of the Federal Power Act (FPA),² regarding the continued justness and reasonableness of the Talen Entities', Chief Keystone's, and Chief Conemaugh's Reactive Service revenue requirements, and we establish a refund effective date. Finally, we grant the Waiver Request.

I. Informational Filings

3. Schedule 2 of PJM's OATT provides that PJM will compensate owners of generation and non-generation resources for providing Reactive Service. 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 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.

4. According to Talen Entities, RJS Entities will be acquiring a 100 percent ownership stake in Talen Energy Corporation.⁴ Talen Entities explain that the expected transaction will not result in any new affiliations because the RJS Entities currently hold 35 percent of the outstanding common stock of Talen Energy Corporation. They state that the identity of the entities providing Reactive Service and the quantity of Reactive

¹ These 15 Informational Filings represent 13 separate reactive power revenue requirements. Docket Nos. ER16-277-004, ER16-1456-001, ER16-2202-000, ER16-2203-000, ER10-2432-010, ER10-2435-010, ER10-2442-010, ER10-2444-010, ER10-3272-002, ER10-2449-008, ER16-2219-000, and ER16-2220-000 were filed on July 15, 2016, and Docket Nos. ER16-2438-000, ER16-2439-000, and ER16-2440-000, were filed on August 17, 2016.

² 16 U.S.C. § 824e (2012).

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

⁴ July 15, 2016 Joint Transmittal at 2 in Docket No. ER16-277-004.

Service being supplied will remain unchanged.⁵ Accordingly, Talen Entities do not propose any changes to the Reactive Service revenue requirements set forth in the applicable rate schedules. Chief Keystone and Chief Conemaugh submitted similar Informational Filings because they are party to a joint Reactive Service rate schedule with Montour for the Keystone and Conemaugh facilities, respectively.

II. Waiver Request

5. Talen Entities, Chief Keystone, and Chief Conemaugh also seek waiver of the Schedule 2 requirement that an informational filing be submitted at least 90 days prior to the date of retirement or transfer of a generation facility.⁶ They request that the Commission grant the Waiver Request on or before October 1, 2016, in order to allow the relevant parties to consummate the transaction without unnecessary delay. They 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.⁷

6. Talen Entities, Chief Keystone, and Chief Conemaugh state they have acted in good faith by bringing the Informational Filings to the Commission as quickly as possible in order to maximize the prior notice to the Commission and the public of the transaction. They further state the request is limited in scope because they are only requesting a one-time waiver of the deadline under Schedule 2, and the Waiver Request does not involve any substantive requirements in the PJM OATT. They also claim that the waiver would address a concrete problem, namely that the anticipated transaction would be delayed if regulatory approval and third-party consent is not obtained within 90 days of the date on which the Informational Filings were submitted. Lastly, Talen Entities, Chief

⁵ *Id.* at 3.

⁶ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

⁷ Joint Transmittal at 14 (citing *Big Sandy Peaker Plant, LLC*, 154 FERC ¶ 61,281, at PP 10-12 (2016) (granting waiver of the 90-day prior notice requirement contained in Schedule 2 of the PJM OATT, with an effect approximately six weeks after submission of the informational filings); *Reliant Energy Seward, LLC*, 154 FERC ¶ 61,017, at PP 12-13 (2016) (*Seward*) (granting waiver of the 90-day prior notice requirement set forth in Schedule 2 of the PJM OATT)).

Keystone, and Chief Conemaugh assert that the waiver will not have any unexpected or undesirable consequences, such as harming third parties.⁸

III. Notice and Responsive Pleadings

7. Notice of the Informational Filings submitted in Docket Nos. ER16-277-004, ER16-1456-001, ER16-2202-000, ER16-2203-000, ER10-2432-010, ER10-2435-010, ER10-2442-010, ER10-2444-010, ER10-3272-002, ER10-2449-008, ER16-2219-000, and ER16-2220-000 was published in the *Federal Register*, 81 Fed. Reg. 48,785, 48,785-87 (2016), with interventions and protests due on or before August 5, 2016. PJM filed timely motions to intervene in Docket Nos. ER16-2202-000, ER16-2203-000, ER10-2432-010, ER10-2435-010, ER10-2442-010, ER10-2444-010, ER10-2372-002, ER10-2449-008, ER16-2219-000, and ER16-2220-000.

8. Notice of the Informational Filings submitted in Docket Nos. ER16-2438-000, ER16-2439-000, and ER16-2440-000 was published in the *Federal Register*, 81 Fed. Reg. 57,896, 57,896-98 (2016), with interventions and protests due on or before September 7, 2016. None were filed.

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 (2016), PJM's timely, unopposed motions to intervene serve to make it a party to the proceedings in which those motions were filed.

B. Substantive Matters

10. We accept for informational purposes only the Informational Filings made by Talen Entities, Chief Keystone, and Chief Conemaugh.⁹ These filings, however, include

⁸ Joint Transmittal at 15.

⁹ Talen Entities, Chief Keystone, and Chief Conemaugh submitted blank tariff records as part of their Informational Filings. We note our previous guidance that for utilities making informational filings for Reactive Service under Schedule 2 of the PJM OATT, utilities do not need to include a tariff record when making the compliance filing. *Armstrong Power, LLC*, 156 FERC ¶ 61,009 at P 21 (2016). Accordingly, we will reject the tariff records submitted in Docket Nos. ER16-277-004, ER16-1456-001, ER16-2202-000, ER16-2203-000, ER10-2432-010, ER10-2435-010, ER10-2442-010, ER10-2444-010, ER10-3272-002, ER10-2449-008, ER16-2219-000, and ER16-2220-000.

information indicating that the Reactive Service revenue requirements for these entities may have become unjust and unreasonable. The Informational Filings raise 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. Although we are setting the revenue requirements for hearing in their entirety, we note that the issues raised by the filings include, but are not limited to, the degradation of the several units' current MVAR capability as compared with the MVAR capability that was originally used to calculate the revenue requirement for Reactive Service included in Talen Entities', Chief Keystone's, and Chief Conemaugh's reactive power rates.¹⁰ Accordingly, we are instituting proceedings pursuant to section 206 of the FPA in Docket No. EL16-116-000¹¹ to inquire into the justness and reasonableness of these Reactive Service revenue requirements.¹² We also establish hearing and settlement judge procedures and establish a refund effective date.

11. In addition, we grant the Waiver Request. 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.¹³

¹⁰ To support their capability figures, generator owners should provide the most recent Reactive Service test reports produced in compliance with Standard MOD-025-2 adopted by the North American Electric Reliability Corporation. 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).

¹¹ Although we are setting all the revenue requirements addressed in this order for hearing in a single 206 proceeding, we note that the Chief Administrative Law Judge may, if appropriate, sever one or more for separate hearing and settlement judge procedures pursuant to Rule 503 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.503 (2016).

¹² We will not institute new proceedings pursuant to section 206 for Docket Nos. ER16-277-004 and ER16-1456-001 as the Commission has already instituted such proceedings for these Reactive Service revenue requirements. *Talen Energy Marketing, LLC*, 154 FERC ¶ 61,226 (2016); *Talen Energy Marketing, LLC*, 155 FERC ¶ 61,297 (2016).

¹³ 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); *Seward*, 154 FERC ¶ 61,017 at PP 11-13; *N.Y. Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

12. We find that the circumstances of the instant case satisfy the foregoing criteria. First, we find that the Talen Entities, Chief Keystone, and Chief Conemaugh have acted in good faith by submitting the Informational Filing as expeditiously as possible. Second, we find that the waiver is limited in scope as it is a one-time waiver of the deadline required in Schedule 2 of the PJM OATT. Third, we find that the waiver addresses a concrete problem as regulatory approvals and consents for the proposed transaction may all be obtained by October 1, 2016, and, therefore, failure to waive the 90-day notice requirement could delay the closing of the proposed transaction. Finally, we find that, as there are no changes to the Reactive Service revenue requirements, the waiver will not result in undesirable consequences, such as harm to third parties.

13. 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 nor later than five months after the publication date.¹⁴ 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.¹⁵ That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL16-116-000 in the *Federal Register*.

14. 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. EL16-116-000 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 June 30, 2017, we expect that, if the proceeding does not settle, we would be able to render a decision by February 28, 2018.

15. 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 hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to

¹⁴ 16 U.S.C. § 824e(b) (2012).

¹⁵ See, e.g., *Idaho Power Co.*, 145 FERC ¶ 61,122 (2013); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *order on reh'g*, 47 FERC ¶ 61,275 (1989).

Rule 603 of the Commission's Rules of Practice and Procedure.¹⁶ 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.¹⁷ 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) The Informational Filings submitted by Talen Entities, Chief Keystone, and Chief Conemaugh 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) 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. EL16-116-000 concerning the justness and reasonableness of the Talen Entities', Chief Keystone's, and Chief Conemaugh's Reactive Service revenue requirements, 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.

¹⁶ 18 C.F.R. § 385.603 (2016).

¹⁷ 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,¹⁸ 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.

(G) Any interested person desiring to be heard in Docket No. EL16-116-000 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 (2016)) 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. EL16-116-000.

¹⁸ 18 C.F.R. § 385.603 (2016).

(I) The refund effective date in Docket No. EL16-116-000 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. Commissioner Clark is not participating

(S E A L)

Kimberly D. Bose,
Secretary.