

156 FERC ¶ 61,230
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

All Dams Generation, LLC,
Mahoning Creek Hydroelectric Company, LLC

Docket Nos. ER16-2365-000
ER16-2366-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE SCHEDULES AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 27, 2016)

1. On August 2, 2016, All Dams Generation, LLC (All Dams) and Mahoning Creek Hydroelectric Company, LLC (Mahoning Creek) each filed a proposed Rate Schedule FERC No. 2 (Rate Schedules)¹ under section 205 of the Federal Power Act and the Commission's regulations.² In this order, we accept for filing the proposed Rate

¹ [FERC Electric Tariffs All Dams Generation, LLC, Reactive Service Tariff, 0.0.0 A 10/1/2016, Reactive Power Tariff Mahoning Creek Hydro, Reactive Service Tariff, 0.0.0 A, 10/1/2016.](#)

² 16 U.S.C. § 824d (2012). All Dams characterized its filing as pursuant to section 35.13 of the Commission's regulations, 18 C.F.R. § 35.13 (2016), which addresses the filing of revised rates. Mahoning Creek, by contrast, characterized its filing as pursuant to section 35.12 of the Commission's regulations, 18 C.F.R. § 35.12 (2016), which addresses the filing of initial rates. The joint transmittal letter submitted in both dockets cited to section 35.12, but not to section 35.13. To the extent that All Dams and Mahoning Creek contend that either filing is an initial rate, we disagree. We conclude that the filing is instead a proposed rate change under section 205(d) of the Federal Power Act because the facilities that are the subject of these filings have both been providing Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service) to PJM Interconnection, L.L.C. (PJM) prior to this filing, *see All Dams Generation, LLC*, 145 FERC ¶ 61,096 (2013); *PJM Interconnection, L.L.C.*, Docket No. ER12-1798-000 (July 5, 2012) (delegated letter order). Accordingly, the rates in these filings are not for a new service to a new customer and, therefore, are not initial

(continued ...)

Schedules and suspend them for a nominal period, to become effective October 1, 2016, as requested, subject to refund. We also establish hearing and settlement judge procedures.

I. All Dams' and Mahoning Creek's Filings

2. Schedule 2 of the PJM 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

3. All Dams states that it owns and operates the 9.2 MW (nameplate) Allegheny Lock & Dam No. 5 and No. 6 Hydroelectric Projects located in Armstrong County, Pennsylvania. Mahoning Creek states that it owns and operates a 6 MW (nameplate) Hydroelectric Project that is also in Armstrong County, Pennsylvania. All Dams and Mahoning Creek further state that the Reactive Power Rates proposed are derived using the AEP methodology developed in Opinion No. 440.⁴ All Dams proposes a Reactive Service annual revenue requirement payment of \$114,094.79 for the All Dams Facilities. Mahoning Creek proposes a Reactive Service annual revenue requirement payment of \$33,595.01 for the Mahoning Facility. Both proposed rate schedules reflect the Fixed Capability Component for the resources and do not include a Heating Losses Component.⁵

rates. *See Chehalis Power Generating, L.P.*, 152 FERC ¶ 61,050, at P 14 (2015) (“In order for a rate to be considered an initial rate, it must provide for a new service to a new customer.” (citing *Sw. Elec. Power Co.*, 39 FERC ¶ 61,099, at 61,293 (1987))); *Calpine Oneta Power, L.P.*, 103 FERC ¶ 61,338, at P 11 (2003) (“The Oneta Project has been providing reactive power service to PSO under Section 3.5 of its Interconnection Agreement, albeit without charge. Thus, the proposed rates for Reactive Power Service in the instant proceeding are not initial rates, but are changed rates.”).

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

⁴ *Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141, at 61,456-57 (1999).

⁵ Aug. 2, 2016 Transmittal Letter at 5-6.

II. Notice and Responsive Pleadings

4. Notice of All Dams' and Mahoning Creek's August 2, 2016 filings were published in the *Federal Register*, 81 Fed. Reg. 52,844, 52,844 (2016) with interventions and protests due on or before August 23, 2016. PJM filed timely interventions in both proceedings.

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 (2016), the timely, unopposed motion to intervene serves to make PJM a party to this proceeding.

B. Substantive Matters

6. Our preliminary analysis indicates that All Dams' and Mahoning Creek's proposed Rate Schedules have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that All Dams' and Mahoning Creek's proposed revenue requirements for Reactive Service raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in hearing and settlement judge procedures. Accordingly, we accept the proposed Rate Schedules for filing, suspend them for a nominal period, to become effective October 1, 2016, subject to refund, and establish hearing and settlement judge procedures. Although we are setting the Rate Schedules for hearing in their entirety, we note that All Dams' filing did not provide the required test data relating to MVAR, MVA, and MW capability of the All Dams Facilities or cost support for the turbogenerator, and that the accessory equipment allocator appears to be excessive.⁶ We further note that Mahoning Creek's filing did not provide the required test data relating to MVAR, MVA, and MW capability of the Mahoning Facility, and the turbogenerator cost information and support were also not provided.

7. 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

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).

abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁷ 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.⁸ 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.

The Commission orders:

(A) All Dams' and Mahoning Creek's filings are hereby accepted for filing and suspended for a nominal period, to become effective October 1, 2016, as requested, subject to refund, as discussed in the body of this order.

(B) 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 FPA, particularly sections 205 and 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), a public hearing shall be held concerning the justness and reasonableness of All Dams' and Mahoning Creek's Rate Schedules, 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 (2016), 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

⁷ 18 C.F.R. § 385.603 (2016).

⁸ 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>).

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.

By the Commission. Commissioner Clark is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.