

157 FERC ¶ 61,007
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

GenOn Energy Management, LLC

Docket Nos. ER16-1827-001
EL16-118-000

ORDER ACCEPTING PROPOSED RATE SCHEDULE, INSTITUTING SECTION 206
PROCEEDING, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued October 4, 2016)

1. On May 31, 2016, as amended on August 11, 2016, GenOn Energy Management, LLC (GenOn) submitted for filing its FERC Electric Tariff, Original Volume No. 2 (Revised Reactive Rate Schedule), pursuant to section 205 of the Federal Power Act (FPA)¹ and Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT). GenOn seeks to adjust its revenue requirement for reactive supply and voltage control service (Reactive Service) to reflect the deactivations of Shawville units 1-4; Portland units 1 and 2; Titus units 1-3; Gilbert units A-D; Glen Gardner units 1-8; and Werner units A-D (collectively, Retired Units). In this order, we accept for filing the Revised Reactive Rate Schedule,² to become effective June 1, 2016, as requested, institute a proceeding pursuant to section 206 of the FPA³ in Docket No. EL16-118-000 regarding the justness and reasonableness of GenOn's Reactive Service rate for its fleet in the Jersey Central Power and Light Company (JCP&L), Metropolitan Edison Company (MetEd), and Pennsylvania Electric Company (Penelec)

¹ 16 U.S.C. § 824d (2012).

² GenOn Energy Management, LLC, GenOn Energy Management, LLC, FERC Electric Tariffs, Reactive Rate Schedule, FERC Electric Tariff, Original Volume No. 2, 1.0.0.

³ 16 U.S.C. § 824e (2012).

zones of PJM, establish a refund effective date, and establish hearing and settlement judge procedures. Finally, we grant GenOn's request for waiver of the Commission's 60-day notice requirement.⁴

I. GenOn's Filing

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.⁵

3. GenOn states that it is a wholly-owned indirect subsidiary of NRG Energy, Inc., and that it is a power marketer authorized to sell energy, capacity, and certain ancillary services. GenOn states that the current rate for Reactive Service was filed on March 6, 2007, in Docket No. ER07-599-000, which was accepted through delegated authority.⁶ GenOn states that, since that time, units that formerly provided Reactive Service under the current rate have retired. Specifically, within the JCP&L zone, Shawville units 1, 2, 3, and 4 retired on June 12, 2015, June 14, 2015, June 7, 2015, and June 2, 2015, respectively. Within the MetEd zone, Portland units 1 and 2 retired on June 1, 2014, and Titus units 1-3 retired on September 1, 2013. Within the Penelec zone, Gilbert units A-D, Glen Gardner units 1-8, and Werner units A-D retired on May 1, 2015. GenOn states that it is filing to reduce the Reactive Service rate to reflect these retirements.⁷

4. GenOn states that it reduced the current Reactive Service rate using the allocations included in the tariff filing made in 2007. GenOn states that, as a result of the removal of the revenue requirements associated with the Retired Units, the annual revenue requirement is reduced from: (1) \$864,714.45 to \$537,690.76 in the JCP&L zone; (2) \$1,223,751.00 to \$622,106.20 in the MetEd zone; and (3) \$266,844.36 to \$58,415.39 in the Penelec zone. GenOn requests an effective date for the Revised Reactive Rate Schedule of June 1, 2016, and notes that the Commission will generally grant waiver of its 60-day prior notice requirement for a filing that reduces the rate. GenOn states that, if

⁴ 18 C.F.R. § 35.3 (2016).

⁵ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

⁶ *Reliant Energy, Inc.*, ER07-599-000, (April 27, 2007) (delegated letter order).

⁷ GenOn Transmittal at 3-4.

the retroactive effective date is granted, and to the extent PJM has paid revenue to GenOn associated with Reactive Service for the Retired Units on or after June 1, 2016, GenOn will refund to PJM the revenue amount associated with the Retired Units together with interest calculated in accordance with section 35.19a of the Commission's regulations⁸ or adopt PJM's preferred refund method to account for any overpayment.

II. Deficiency Letter

5. On July 11, 2016, the Commission issued a deficiency letter requesting that GenOn provide additional information in order to process its filing. Specifically, the Commission requested information related to the underlying cost basis for the Revised Reactive Rate Schedule, as well as information related to the generators providing Reactive Service, including their capability to provide Reactive Service and their most recent PJM test data.

6. On August 11, 2016, GenOn filed a response (Deficiency Letter Response). GenOn states that the origin of the existing rate for Reactive Service was a settlement in Docket No. ER97-3189-004, and that testimony filed in that docket included cost detail that appears to follow the AEP methodology. GenOn states, moreover, that the information related to the generators' capability to provide Reactive Service is provided in Attachment 2 of the Deficiency Letter Response, and that Reactive Service test data is not available for Gilbert units 4-7, Sayreville units 1-4, and Warren unit 3. According to Attachment 2 of GenOn's Deficiency Letter Response, while the total nameplate Reactive Service capability of the non-retired units is 2,551.5 MVARs, the actual site-rated Reactive Service capability as recorded in the PJM eDART system is 1,774 MVARs.

III. Notice and Responsive Pleadings

7. Notice of GenOn's May 31, 2016 filing was published in the *Federal Register*, 81 Fed. Reg. 36,904 (2016), with interventions and protests due on or before June 21, 2016. PJM submitted a timely motion to intervene.

8. Notice of the Deficiency Letter Response was published in the *Federal Register*, 81 Fed. Reg. 54,796 (2016), with interventions and protests due by September 1, 2016. No protests or interventions were filed.

⁸ *Id.* at 4-6 (citing 18 C.F.R. § 35.19a (2016)).

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁹ PJM's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

10. Because GenOn's proposed Revised Reactive Rate Schedule represents a rate decrease, we will accept it for filing, effective June 1, 2016, as requested.¹⁰ However, we note that the Reactive Service capability of the remaining units may have degraded since 2007, when the current rate was established.¹¹ Our preliminary analysis indicates that GenOn's Reactive Service rate may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will institute a section 206 proceeding in Docket No. EL16-118-000 with respect to the justness and reasonableness of GenOn's Reactive Service rate,¹² establish a refund effective date, and set the filing for hearing and settlement judge procedures.

11. Further, we accept GenOn's commitment to repay to PJM any Reactive Service payments received for the Retired Units on or after the effective date of the Revised Reactive Rate Schedule. PJM is also entitled to receive interest on any such Reactive Service payments paid to GenOn after the effective date, at the Commission interest rate.¹³ GenOn must submit a refund report to the Commission within 30 days of issuing such refunds. Finally, as discussed in the Commission's November 20, 2014 Order to

⁹ 18 C.F.R. § 385.214 (2016).

¹⁰ *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106 at 61,338, *order on reh'g*, 61 FERC ¶ 61,089 (1992). We will waive the Commission's 60-day prior notice requirement. 18 C.F.R. § 35.3 (2016).

¹¹ 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; *Wabash Valley Power Association, Inc.*, 154 FERC ¶ 61,246, at PP 23-28 (2016).

¹² *See, e.g., DATC Path 15, LLC*, 147 FERC ¶ 61,035, at P 19 (2014).

¹³ 18 C.F.R. § 35.19a (2016); Federal Energy Regulatory Commission, *Interest Rates* (June 2016), <https://www.ferc.gov/enforcement/acct-matts/interest-rates.asp>.

Show Cause in Docket No. EL15-15-000,¹⁴ given that GenOn may have continued to receive payments for Reactive Service for units that were “no longer capable of providing that service,” we have referred such concern to the Commission’s Office of Enforcement for further examination and inquiry as may be appropriate.

12. 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.¹⁵ 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.¹⁶ That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL16-118-000 in the Federal Register.

13. 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. EL16-118-000 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.

14. 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

¹⁴ See *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,132, at P 10 (2014); see also *Duke Energy Conesville, LLC*, 150 FERC ¶ 61,229 at P 8; *DeSoto Cnty. Generating Co., LLC*, 151 FERC ¶ 61,009, at P 14 (2015).

¹⁵ 16 U.S.C. § 824e(b) (2012).

¹⁶ 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).

Commission's Rules of Practice and Procedure.¹⁷ 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.¹⁸ The settlement judge shall report to the Acting 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 Acting 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) GenOn's proposed Revised Reactive Rate Schedule is hereby accepted for filing, to become effective June 1, 2016, as discussed in the body of this order.

(B) GenOn is hereby directed, within 30 days of the date of this order, to repay to PJM any payments received from PJM, with interest, for Reactive Service associated with the Retired Units on or after June 1, 2016, as discussed in the body of this order.

(C) GenOn is hereby directed to, within 30 days of making such refunds, submit a refund report, as discussed in the body of this order.

(D) 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. EL16-118-000, concerning the justness and reasonableness of GenOn's Revised 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 (E) and (F) below.

¹⁷ 18 C.F.R. § 385.603 (2016).

¹⁸ If the parties decide to request a specific judge, they must make their joint request to the Acting 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>).

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2016), the Acting Chief Administrative Law 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 Acting Chief Judge designates the settlement judge. If the participants decide to request a specific judge, they must make their request to the Acting Chief Judge within five (5) days of the date of this order.

(F) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Acting Chief Judge on the status of the settlement discussions. Based on this report, the Acting 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 Acting Chief Judge of the participants' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Acting 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.

(H) Any person seeking to be a party in Docket No. EL16-118-000 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.

(I) 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. EL16-118-000.

(J) The refund effective date in Docket No. EL16-118-000 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 (I) above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.