

157 FERC ¶ 61,074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

FPL Energy Marcus Hook, L.P.

Docket Nos. ER16-2376-000

FPL Energy MH50, L.P.

ER16-2377-000
(Not Consolidated)

ORDER GRANTING WAIVER

(Issued October 31, 2016)

1. On August 4, 2016, FPL Energy Marcus Hook, L.P. (Marcus Hook), in Docket No. ER16-2376-000, and FPL Energy MH50, L.P. (MH50), in Docket No. ER16-2377-000, submitted an informational filing pursuant to Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff), regarding a planned transaction that would result in a change in upstream ownership of Marcus Hook and MH50 (Informational Filing).¹ As relevant here, the Informational Filing included a request for a one-time waiver of the 90-day prior-notice requirement set forth in Schedule 2 of the Tariff, to allow a planned transaction to close as early as November 1, 2016 (Waiver Request).² In this order, we grant the Waiver Request.³

¹ Marcus Hook and MH50 (together, Applicants) supplemented the Informational Filing on September 22, 2016 and October 19, 2016.

² The Informational Filing was submitted on August 4, 2016. Under the Commission's time counting rule, 18 C.F.R. § 385.2007 (2016), the 90-day prior-notice period would end on November 2, 2016, enabling the transaction to close on November 3, 2016, absent the grant of a waiver.

³ As stated below, this order does not address the Informational Filing, as supplemented. Because the Applicants submitted identical informational filings and waiver requests in each docket, for ease reference, they will be referred to as the Informational Filing and the Waiver Request.

I. Background

2. Under Schedule 2 of the PJM OATT, at least 90 days before deactivating or transferring a resource receiving compensation for Reactive Service, the resource owner must 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 Service supplier not to terminate or revise its cost-based rate schedule.⁴

3. Applicants submitted the Informational Filing pursuant to Schedule 2. In their filing, Applicants explain that Marcus Hook developed and owns a natural gas-fired facility located in Marcus Hook, Pennsylvania and in New Castle County, Delaware that has been in commercial operation since 2004. MH50 owns a natural gas-fired cogeneration facility located in Marcus Hook, Pennsylvania that has been in commercial operation since 1987, and was acquired by NextEra in mid-1999. The two facilities (Facilities) are distinct from one another, and each has an independent reactive power rate schedule (Rate Schedule) on file with the Commission.⁵ Marcus Hook and MH50 are wholly owned, indirect subsidiaries of ESI Energy, LLC (ESI), which is wholly owned by NextEra Energy Resources, LLC, which in turn is a wholly owned, indirect subsidiary of NextEra Energy, Inc. (NextEra).⁶

4. Applicants state that, pursuant to the terms of a June 20, 2016 purchase and sale agreement between ESI and Natgas Holdings 2, L.L.C., NextEra has agreed to sell all of its downstream ownership interests in Marcus Hook and MH50 (Transaction), subject to Commission authorization in Docket No. EC16-159-000.⁷ Applicants explain that the

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

⁵ Marcus Hook initially filed its reactive power rate schedule in Docket No. ER05-316-000 on December 8, 2004. Following settlement procedures, the Commission approved a settlement agreement establishing Marcus Hook's reactive power revenue requirement in *FPL Energy Marcus Hook, L.P.*, 113 FERC ¶ 61,039 (2005). MH50 initially filed its reactive power rate schedule ER01-1676-000 on March 30, 2001, as subsequently revised on May 18, 2001, in Docket No. ER01-1676-001. The Commission accepted the revised reactive power revenue requirement. *FPL Energy MH50, L.P.*, 96 FERC ¶ 61,035 (2001).

⁶ Informational Filing and Waiver Request at 2; *see also* Joint Application for Authorization Under Section 203 of the Federal Power Act, Docket No. EC16-159-000, at 5 (filed July 29, 2016).

⁷ The transaction has been authorized subject to conditions. *FPL Energy Marcus Hook, L.P.*, 156 FERC ¶ 62,235 (2016) (delegated letter order).

Transaction, which will result in the upstream change in ownership of Marcus Hook and MH50, will not close until November 1, 2016, at the earliest.⁸ Applicants state that Marcus Hook and MH50 will continue to own their respective Facilities and there will be no direct change in ownership of those Facilities because of the Transaction. Thus, Applicants state that they do not propose to terminate or revise the rate schedules; Marcus Hook and MH50 will each continue to hold the reactive power rate schedules for their respective Facilities.⁹

II. Waiver Request

5. In the Waiver Request, Applicants seek waiver of the 90-day prior-notice requirement under Schedule 2 to allow the Transaction to close as early as November 1, 2016. Applicants assert that good cause exists to grant the Waiver Request. Specifically, Applicants assert that they have acted in good faith with respect to the requirements of Schedule 2. They explain that they initially submitted their Informational Filing via e-filing in the Rate Schedules' original dockets. After being notified that an eTariff submission was required, however, the Applicants submitted the Informational Filing in eTariff the following day, resulting in a one-day delay.¹⁰ Applicants also assert that the requested waiver is limited in scope, as they only request grant of a one-time waiver of the timing requirements under Schedule 2.¹¹ Additionally, Applicants assert that the requested waiver will address the concrete problem that, in the absence of waiver, the closing of the Transaction could be delayed. Finally, Applicants assert that granting the waiver will have no undesirable consequences, such as harming third parties. They aver that the Rate Schedules set forth revenue requirements that are specific to the Facilities, which will continue to provide reactive service on the same basis as they do today.¹²

III. Notice and Responsive Pleadings

6. Notice of the Informational Filing containing the Waiver Request submitted in Docket Nos. ER16-2376-000 and ER16-2377-000 was published in the *Federal Register*, 81 Fed. Reg. 53,132 (2016), with comments, interventions, and protests due on or before August 25, 2016. PJM filed timely motions to intervene in both proceedings.

⁸ Informational Filing and Waiver Request at 3.

⁹ *Id.*

¹⁰ *Id.* at 5-6.

¹¹ *Id.* at 6.

¹² *Id.*

IV. Discussion

A. Procedural Matters

7. 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

8. As discussed below, we grant the Applicants' 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

9. We find that the circumstances of this case satisfy the foregoing criteria. First, we find that Applicants have acted in good faith, as they submitted the Informational Filing in eTariff promptly after learning of the requirement for an eTariff submission. Second, we find that the waiver is limited in scope, as it is a one-time waiver of the 90-day prior notice requirement under Schedule 2. Third, we find that the waiver addresses a concrete problem; in the absence of a waiver, the parties would not be able to consummate the Transaction until 90 days after the submittal of the Informational Filing. Finally, we find that granting the waiver to prevent a short potential delay in consummation of the Transaction does not have any undesirable consequences, such as harming third parties.

10. We do not, here, address the Applicants' Informational Filing, as supplemented. Any Commission action on those filings will be set forth in a separate order.

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); *N.Y. Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

The Commission orders:

The Applicants' request for waiver of the 90-day prior notice requirement set forth in Schedule 2 of the PJM Tariff is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.