

157 FERC ¶ 61,215
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Darby Power, LLC	Docket Nos. ER17-259-000
Gavin Power, LLC	ER17-260-000
Lawrenceburg Power, LLC	ER17-261-000
Waterford Power, LLC	ER17-262-000
	(not consolidated)

ORDER ACCEPTING SUBJECT TO CONDITION AND SUSPENDING PROPOSED
RATE SCHEDULE AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued December 16, 2016)

1. On November 1, 2016, Darby Power, LLC (Darby Power), Gavin Power, LLC (Gavin Power), Lawrenceburg Power, LLC (Lawrenceburg Power), and Waterford Power, LLC (Waterford Power) (collectively, Lightstone Companies) submitted in Docket Nos. ER17-259-000, ER17-260-000, ER17-261-000, and ER17-262-000, respectively, pursuant to section 35.13 of the Commission's regulations and section 205 of the Federal Power Act (FPA),¹ proposed schedules setting forth their rates for providing Reactive Supply and Voltage Control Service (Reactive Service) to

¹ 18 C.F.R. § 35.13 (2016); 16 U.S.C. § 824d (2012).

PJM Interconnection, L.L.C. (PJM).² In this order, we accept for filing the Reactive Service Rate Schedules and suspend them for a nominal period, to become effective on the date the proposed transaction closes, subject to condition and to refund, and establish hearing and settlement judge procedures. We also direct a compliance filing.

I. Background

2. Schedule 2 of the PJM Open Access Transmission Tariff 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. Lightstone Companies state that they intend to acquire four electric generating facilities – Darby, Gavin, Lawrenceburg, and Waterford (collectively, the Facilities) – from AEP Generation Resources, Inc. and AEP Generating Company. Lightstone Companies assert that the Reactive Service Rate Schedules set forth the rates for Reactive Service that the Facilities provide. Lightstone Companies state that they are filing their own Reactive Service rate schedules to adopt the currently effective rates for the Facilities, and that, effective upon consummation of the acquisition of the Facilities (Transaction), the rates for the Facilities under AEP Generation Resources, Inc.'s Reactive Service rate schedule will be terminated.⁴

4. Lightstone Companies state that Darby is a six-unit natural-gas-fired simple-cycle generating station with a real power capability of approximately 553 MW and a nameplate reactive power capability of 342 MVAR, located near Mount Sterling, Ohio. Lightstone Companies state that Gavin is a two-unit coal-fired station with a real power

² Darby Power, LLC, FERC Electric Tariff - Darby, Reactive Service, DARBY POWER, LLC FERC ELECTRIC TARIFF, ORIGINAL VOLUME NO. 2, 1.0.0; Gavin Power, LLC, FERC Electric Tariff - Gavin, Reactive Service, GAVIN POWER, LLC FERC ELECTRIC TARIFF, ORIGINAL VOLUME NO. 2, 1.0.0; Lawrenceburg Power, LLC, FERC Electric Tariff - Lawrenceburg, Reactive Service, LAWRENCEBURG POWER, LLC FERC ELECTRIC TARIFF, OR. VOL. NO. 2, 1.0.0; Waterford Power, LLC, FERC Electric Tariff - Waterford, Reactive Service, WATERFORD POWER, LLC FERC ELECTRIC TARIFF, ORIG. VOL. NO. 2, 1.0.0. We will collectively refer to the proposed schedules as "Reactive Service Rate Schedules."

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

⁴ Transmittal at 2.

capability of 2,600 MW and a nameplate reactive power capability of 1,260 MVAR, located in Cheshire, Ohio. Lightstone Companies state that Lawrenceburg is a natural-gas-fired combined-cycle generating station with a real power capability of approximately 1,154 MW and a nameplate reactive power capability of 715 MVAR, located in the City of Lawrenceburg, Indiana. Lightstone Companies state that Waterford is a natural-gas-fired combined cycle generating station with real power capability of 922 MW and nameplate reactive power capability of 532 MVAR, located in Waterford Township, Washington County, Ohio.⁵

5. Lightstone Companies state that the Reactive Service rates for the Darby, Lawrenceburg, and Waterford facilities were first accepted by the Commission in Docket Nos. ER08-1521-000, ER08-1521-001, and ER08-1521-002, and were part of the fleet-wide rate recently accepted by the Commission in Docket No. ER15-1432-001. Lightstone Companies state that the Reactive Service rate for the Gavin facility was established as part of a fleet-wide, black-box settlement in Docket No. ER05-751-001, and was also recently accepted as part of the fleet-wide rate in Docket No. ER15-1432-001.⁶

6. Lightstone Companies request contingent effective dates for each of the Reactive Service Rate Schedules to allow the Lightstone Companies to begin collecting revenues upon acquisition of the Facilities, and has entered into eTariff proposed effective dates of December 31, 9998.⁷ Lightstone Companies state that they will submit, within 30 days after closing of the Transaction, compliance filings in eTariff to replace the contingent effective dates with the actual effective date, and that AEP Generation Resources, Inc. will seek the same contingent effective date for its filing to remove the Facilities and their rates from its Reactive Service rate schedule once the Transaction closes.

⁵ *Id.* at 3-4.

⁶ *Id.*

⁷ *See* Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings, at 10 (Nov. 14, 2016), <http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf> (“If the effective date is not known at the time of the filing, such as the effective date is contingent on FERC approval, the closing of a plant sale, etc., the date of 12/31/9998 must be used.”).

II. Notice and Responsive Pleadings

7. Notice of Lightstone Companies' November 1, 2016 filings was published in the *Federal Register*, 81 Fed. Reg. 78,133-34 (2016) with interventions and protests due on or before November 22, 2016. PJM submitted a timely motion to intervene in each proceeding.

III. 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 unopposed motions to intervene serve to make it a party to these proceedings.

B. Substantive Matters

9. Our preliminary analysis indicates that Lightstone Companies' Reactive Service rates in the Reactive Service 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 Lightstone Companies' rates for Reactive Service provided by the facilities 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. We therefore accept the Reactive Service Rate Schedules for filing and suspend them for a nominal period, to become effective on the date the Transaction closes, subject to condition and to refund, and establish hearing and settlement judge procedures.⁸ We also direct Lightstone Companies to make an informational filing, within 30 days of the closing of the Transaction, specifying the effective dates of the tariff sheets being accepted herein.⁹

10. Although we are setting the Reactive Service Rate Schedules for hearing in their entirety, we note that the rates for Darby Power, Lawrenceburg Power, and Waterford Power are based on nameplate reactive power capability rather than their tested reactive

⁸ The Commission can revise a proposal filed under section 205 of the Federal Power Act as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

⁹ The informational filing should include tariff sheets with proposed effective dates. In the interim, we accept the eTariff proposed effective dates of December 31, 9998, as filed.

power capability, and that the rates include heating losses based on locational marginal price.¹⁰ We also note that the reactive power capability of the Gavin facility may have degraded since the rate was established in 2005.

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 commence. 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 Rule 603 of the Commission's Rules of Practice and Procedure.¹¹ 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.¹² 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) Lightstone Companies' Reactive Service Rate Schedules are hereby accepted for filing and suspended for a nominal period, to become effective on the date the Transaction closes, subject to condition and 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

¹⁰ The Commission recently provided guidance on establishing or revising rates for Reactive Service. *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,245, at PP 24-29 (2016); *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,246, at PP 23-28 (2016).

¹¹ 18 C.F.R. § 385.603 (2016).

¹² 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>).

concerning the justness and reasonableness of Lightstone Companies' Reactive Service 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 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.

(S E A L)

Kimberly D. Bose,
Secretary.