

157 FERC ¶ 61,216  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

AEP Generation Resources Inc.

Docket No. ER17-338-000

ORDER ACCEPTING REVISED RATE SCHEDULE SUBJECT TO CONDITION  
AND GRANTING WAIVER

(Issued December 16, 2016)

1. On November 10, 2016, pursuant to Part 35 of the Commission's regulations and section 205 of the Federal Power Act (FPA),<sup>1</sup> American Electric Power Service Corporation, on behalf of AEP Generation Resources Inc. (AEP Generation), submitted amendments to AEP Generation Rate Schedule No. 3 (Reactive Service Rate Schedule). AEP Generation's proposed revisions reduce its rate for providing Reactive Supply and Voltage Control Service (Reactive Service) to PJM Interconnection, L.L.C. (PJM) to reflect a planned transfer of generating resources.<sup>2</sup> AEP Generation also requests waiver of the 90-day prior notice requirement set forth in Schedule 2 of the PJM Tariff to facilitate the planned transfer (Waiver Request). In this order, we accept the revised Reactive Service Rate Schedule for filing to become effective on the date the proposed transaction closes, subject to condition, and grant the Waiver Request. 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.<sup>3</sup> Schedule 2 requires that at least 90 days before deactivating or transferring a resource receiving compensation for

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<sup>1</sup> 18 C.F.R. pt.35 (2016); 16 U.S.C. § 824d (2012).

<sup>2</sup> AEP Generation Resources Inc., Tariff Database, Rate Schedule No. 3, Reactive Supply and Voltage Control from Generation Service (5.0.0).

<sup>3</sup> PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

Reactive Service, 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 Service supplier not to terminate or revise its cost-based rate schedule.<sup>4</sup>

3. AEP Generation asserts that its proposed Reactive Service Rate Schedule revisions are needed because it is selling four of its generating facilities to subsidiaries of Lightstone Generation LLC (Lightstone) (Transaction).<sup>5</sup> AEP notes that the Transaction is pending Commission approval in Docket No. EC17-11-000. Once the Transaction closes, AEP Generation states that the Lightstone subsidiaries will be responsible for the facilities and will provide Reactive Service pursuant to their own Reactive Service rate schedules.<sup>6</sup>

4. AEP Generation states that the proposed revisions remove the rates for the generating facilities included in the Transaction, thereby decreasing AEP Generation's rate for Reactive Service by \$9,235,132. AEP Generation requests that the revised Reactive Service Rate Schedule be made effective on the date of the closing of the Transaction, consistent with the effective date requested by the Lightstone subsidiaries in their November 1, 2016 filings.<sup>7</sup> AEP Generation states that, consistent with Commission guidance,<sup>8</sup> it has entered into eTariff a proposed effective date of December 31, 9998. AEP Generation states that it 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.<sup>9</sup>

5. Additionally, AEP Generation seeks waiver of the requirement in Schedule 2 of the PJM Tariff specifying that at least 90 days before transferring the facilities, it either:

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<sup>4</sup> *Id.*

<sup>5</sup> The AEP Generation facilities that are included in the Transaction are the Darby, Gavin (Units 1 and 2), Lawrenceburg, and Waterford facilities.

<sup>6</sup> Transmittal at 3.

<sup>7</sup> Darby Power, LLC, Gavin Power, LLC, Lawrenceburg Power, LLC, and Waterford Power, LLC each filed Reactive Service rate schedules on November 1, 2016, in Docket Nos. ER17-259-000, ER17-260-000, ER17-261-000, and ER17-262-000, respectively. *See Darby Power, LLC*, 157 FERC ¶ 61,215 (2016).

<sup>8</sup> Transmittal at 3-4 (citing Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings at 10 (Aug. 17, 2016), <http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf>).

<sup>9</sup> *Id.* at 6.

(1) submit a filing to terminate or adjust its cost-based rate schedule to account for transfer; or (2) submit an informational filing explaining the basis for the decision not to terminate or revise its cost-based rate schedule. AEP Generation states that the Commission granted such a waiver in *West Deptford Energy, LLC*, finding that the applicant acted in good faith by submitting the filing shortly after the transfer was agreed upon; that the waiver was limited in scope; that the waiver addressed the concrete problem that the applicant otherwise would not be able to consummate the transfer of interest until 90 days after the submittal of the filing, and that granting the waiver would not have any undesirable consequences or harm third parties.<sup>10</sup> AEP Generation states that a waiver here likewise would be appropriate in the event the Transaction closes less than 90 days from the date of this filing.<sup>11</sup>

## **II. Notice and Responsive Pleadings**

6. Notice of the filing was published in the *Federal Register*, 81 Fed. Reg. 81,754 (2016), with interventions and protests due on or before December 1, 2016. PJM filed a timely motion to intervene.

## **III. 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 serve to make it a party to the proceeding.

### **B. Substantive Matters**

8. We accept AEP Generation's Reactive Service Rate Schedule to become effective on the date the Transaction closes, subject to condition, and direct a compliance filing.<sup>12</sup> AEP Generation requests that the Revised Reactive Rate Schedule be made effective on the date the Transaction closes. We therefore direct AEP to make an informational filing,

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<sup>10</sup> *Id.* at 4 n.5 (citing *W. Deptford. Energy, LLC*, 156 FERC ¶ 61,084, at PP 14-15 (2016)).

<sup>11</sup> *Id.*

<sup>12</sup> 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.

within 30 days of the closing of the Transaction, specifying the effective dates of the tariff sheets being accepted herein.<sup>13</sup>

9. 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.<sup>14</sup> We find that the circumstances of the instant case satisfy the foregoing criteria. First, we find that AEP Generation has acted in good faith by promptly submitting the filing. 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 will address the concrete problem, i.e., that the Transaction would otherwise not be able to be consummated until 90 days after the submittal of the filing. Fourth, we find that the waiver does not have any undesirable consequences, such as harming third parties, as the reduced Reactive Service rates set forth in the Reactive Service Rate Schedule will take effect on the date of the Transaction. For these reasons, we grant AEP Generation's Waiver Request.

The Commission orders:

(A) AEP Generation's Reactive Service Rate Scheduled is accepted for filing, to become effective on the date the Transaction closes, subject to condition, as discussed in the body of this order.

(B) AEP Generation's 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 )

Kimberly D. Bose,  
Secretary.

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<sup>13</sup> 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.

<sup>14</sup> 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).