

157 FERC ¶ 61,225
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)

EL17-19-000

ORDER ACCEPTING INFORMATIONAL FILINGS, INSTITUTING SECTION 206
PROCEEDING, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued December 21, 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 two informational filings 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 Filings).¹ In this order, we accept the Informational Filings for informational purposes only. We also institute a proceeding, pursuant to section 206

¹ Marcus Hook and MH50 (together, Applicants) submitted identical transmittal letters in each docket, however, the rate schedules setting forth the revenue requirements are different. Applicants supplemented the Informational Filings on September 22, 2016 and October 19, 2016. The Informational Filings 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. On October 31, 2016, the Commission granted the waiver request. *FPL Energy Marcus Hook, L.P.*, 157 FERC ¶ 61,074 (2016).

of the Federal Power Act (FPA),² regarding the justness and reasonableness of MH50's rates for Reactive Supply and Voltage Control Service (Reactive Service).

I. Background

2. Under Schedule 2 of the PJM Tariff, 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.³

3. Applicants submitted the Informational Filings pursuant to PJM's Schedule 2. In their filing, Applicants explain that Marcus Hook developed and owns a natural gas-fired facility consisting of four generating units 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 consisting of one generating unit located in Marcus Hook, Pennsylvania that has been in commercial operation since 1987, and was acquired by NextEra in 1999. Applicants state that 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.⁴ 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).⁵

² 16 U.S.C. § 824e (2012).

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

⁴ 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).

⁵ Informational Filings 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).

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 agreed to sell all of its downstream ownership interests in Marcus Hook and MH50 (Transaction), subject to Commission authorization in Docket No. EC16-159-000.⁶ Applicants explain that the Transaction, which would result in the upstream change in ownership of Marcus Hook and MH50, would not close until November 1, 2016, at the earliest.⁷ Applicants state that Marcus Hook and MH50 would continue to own their respective Facilities and there would 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 Rate Schedules for their respective Facilities.⁸

II. Informational Filings and Supplemental Filings

5. In the Informational Filings, Applicants state that they do not propose to terminate or revise the Rate Schedules, explaining that no direct change in ownership of the Facilities will occur as a result of the Transaction.⁹ The Applicants assert that, to the extent the upstream change in ownership of Marcus Hook and MH50 is deemed a transfer of each of their respective Facilities, the entirety of each Facility is being transferred along with the corresponding Rate Schedule. The Applicants explain that the revenue requirements for the Facilities at all times have been based solely on the stand-alone cost of service for each Facility, and that no portion of either Facility has been permanently deactivated since the Commission accepted the Rate Schedules.¹⁰

6. On September 22, 2016, in response to requests by Commission staff for the most recent reactive power capability test results provided to PJM for the Facilities, Marcus Hook and MH50 submitted supplemental information in the captioned dockets (September 22 Filing). On October 19, 2016, in response to requests by Commission staff for additional clarifying and rate support information, Marcus Hook and MH50 submitted further supplemental information (October 19 Filing).

⁶ The transaction has been authorized subject to conditions. *FPL Energy Marcus Hook, L.P.*, 156 FERC ¶ 62,235 (2016).

⁷ Informational Filings 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 3-4.

7. In the September 22 Filing, Applicants state that the capabilities reflected in the Reactive Capability Testing Forms for Marcus Hook generating units (CT1, CT2, CT3, and ST1) are not indicative of the actual site-rated capabilities of the units because they reflect minimum load test points and are not comparable with the units' full operational capabilities.¹¹ Applicants state that Reactive Capability Testing Forms are not available for the MH50 unit. Applicants also state that Marcus Hook and MH50 relied on actual site-rated MW data as reported to the Energy Information Agency to calculate the MW, MVA and MVAR capabilities provided in the Informational Filings.¹²

8. In the October 19 Filing, with respect to Marcus Hook, Applicants clarify that the Marcus Hook generating units are not pseudo-tied to the New York Independent System Operator, Inc. (NYISO), and they further state that a long-term contract between Marcus Hook and the Long Island Power Authority (LIPA) for the sale of capacity does not provide dispatch rights to, or reactive power compensation from, NYISO.¹³ With respect to MH50, Applicants state that MH50 relied on information provided by the manufacturer of the MH50 generating unit to attribute 37.5 percent of the aggregate turbine-generator investment to the generator/excitation system in its initial Reactive Service Rate Schedule filing. Applicants state that MH50 has been unable to locate the relevant supporting documentation from the manufacturer, but they assert that, in MH50's experience, the 37.5 percent allocation is reasonable.¹⁴ Additionally, in response to Commission staff's request for data on actual heating loss costs, Applicants aver that MH50 typically operates at unity power factor without the production of reactive power and, as a result, MH50 does not have data regarding actual heating loss costs from actual reactive power production.¹⁵

III. Notice and Responsive Pleadings

9. Notice of the Informational Filings 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.

¹¹ September 22 Filing at 1.

¹² *Id.* at 2.

¹³ October 19 Filing at 2.

¹⁴ *Id.*

¹⁵ *Id.*

10. Notice of the September 22 Filing in Docket Nos. ER16-2376-000 and ER16-2377-000 was published in the *Federal Register*, 81 Fed. Reg. 66,647 (2016), with comments, interventions, and protests due on or before October 13, 2016. Notice of the October 19 Filing in Docket Nos. ER16-2376-000 and ER16-2377-000 was published in the *Federal Register*, 81 Fed. Reg. 74,415 (2016), with comments, interventions, and protests due on or before November 9, 2016. No other interventions or comments were filed.

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), PJM's timely, unopposed motions to intervene serve to make it a party to these proceedings.

B. Substantive Matters

12. As discussed below, we accept the Applicants' Informational Filings for informational purposes only.¹⁶ It appears, based on the Informational Filing in Docket No. ER16-2377-000, as supplemented, that MH50's Reactive Service rate may be unjust, unreasonable, unduly discriminatory or preferential. For example, the rate appears to include heating loss calculations based on Locational Marginal Pricing, which is at odds with Commission policy, and the filing fails to provide support for the cost of the generator and exciter.¹⁷ The informational filing, as supplemented, raises disputed 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 institute a proceeding pursuant to section 206 of the FPA in Docket No. EL17-19-000 to inquire into the justness and reasonableness of MH50's Reactive Service rates. We further establish hearing and settlement judge procedures. At hearing, the parties should

¹⁶ This acceptance for filing shall not be construed as constituting approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service contained in the Informational Filings; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such action is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the Applicants.

¹⁷ 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).

examine all issues relating to the justness and reasonableness of Applicants' reactive power rate, including the determination of heating loss and plant costs discussed above.

13. 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 or later than five months after the publication date.¹⁸ 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 206.¹⁹ Accordingly, we set the refund effective date as the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL17-19-000 in the *Federal Register*.

14. 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. EL17-19-000 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 May 31, 2017, we expect that, if the proceeding does not settle, we would be able to render a decision by January 31, 2018.

15. 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 Commission's Rules of Practice and Procedure.²⁰ 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

¹⁸ 16 U.S.C. § 824e(b) (2012).

¹⁹ See, e.g., *Idaho Power Co.*, 145 FERC ¶ 61,122 (2013); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *order on reh'g*, 47 FERC ¶ 61,275 (1989).

²⁰ 18 C.F.R. § 385.603 (2016).

based on workload requirements which determine judges' availability.²¹ 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) The Applicants' Informational Filings are hereby accepted for informational purposes, as discussed in the body of this order.

(B) 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. EL17-19-000, concerning the justness and reasonableness of MH50's Reactive Service 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 (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 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 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,

²¹ 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>.

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 this proceeding 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.

(F) 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. EL17-19-000.

(G) The refund effective date in Docket No. EL17-19-000 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 (F) above.

(H) Any interested person desiring to be heard in Docket No. EL17-19-000 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.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.