

section 206 of the Federal Power Act (FPA),⁵ regarding its continued justness and reasonableness. We also accept AES Ohio's Revised Reactive Rate Schedule and suspend it for a five-month period, to become effective April 8, 2017, subject to refund. In addition, we establish consolidated hearing and settlement judge procedures addressing both Revised Reactive Rate Schedules. Finally, we establish a refund effective date for the section 206 proceeding into Dayton's Revised Reactive Rate Schedule.

I. Background

2. Schedule 2 of the PJM OATT, which covers reactive supply and voltage control service (Reactive Service), 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. Schedule 2 requires that, at least 90 days before deactivating or transferring a resource receiving compensation for reactive supply and voltage support, the resource owner either: (1) submit a filing to 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.⁶

3. Applicants have filed four sets of tariff sheets: two sets for Dayton and two sets for AES Ohio. Applicants state that the first set of tariff sheets for each company is in eTariff format and has a requested effective date of November 8, 2016. These tariff sheets propose revisions to Applicants' current Reactive Service Rate Schedules. Specifically, Dayton proposes to decrease its \$6,692,774.40 revenue requirement to \$5,753,527.08, a reduction of \$939,247.32. AES Ohio proposes to increase its \$1,377,038.78 revenue requirement to \$2,647,707.89, an increase of \$1,270,669.89. Applicants state that the net effect of these changes is an increase of \$387,619.18.⁷

⁵ 16 U.S.C. § 824e (2012).

⁶ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

⁷ Applicants amended their original filings to include these numbers following a deficiency letter issued by the Commission, which is described further below. *See* Dayton and AES Ohio October 27 Filing at 3.

4. Applicants explain that the second set of tariff sheets for each company reflects a proposed transaction wherein Dayton will transfer the generation facilities covered by its Reactive Service revenue requirement to AES Ohio. These tariff sheets will cancel Dayton's Reactive Service revenue requirement and increase AES Ohio's revenue requirement to \$8,401,234.97. Applicants state that the second sets of tariff sheets for each company are contingent on (1) the acceptance of their filing in Docket No. EC16-173-000 that seeks Commission approval for the planned transfer, and (2) the actual close of the transaction, which is scheduled for January 1, 2017.

5. Applicants assert that the revenue requirements addressed herein have been calculated in accordance with the *AEP* methodology,⁸ and consist of the fixed cost attributable to the production of reactive power (Fixed Capability Component) and a heating loss calculation (Heating Loss Component). For each facility's revenue requirement, Applicants state that the respective Fixed Capability Component was calculated by determining the portion of plant costs attributable to the production of reactive power and applying a fixed charge rate. Dayton and AES Ohio explain that they analyzed the reactive portion of investment in: (1) the generator and its exciter and supporting equipment, (2) generator step-up transformers, and (3) investment in the rest of the plant.⁹ With regard to the Heating Losses Component, Applicants have included this component in the revenue requirement in order to recover the costs associated with losses that occur from resistive heating. Applicants explain that losses are a function of the generator current which itself is a function of the reactive power production from the unit. Applicants further state that the reactive power output of a generator is changed by adjusting the exciter current.¹⁰

II. Deficiency Letter Response

6. On September 29, 2016, Commission staff, pursuant to delegated authority, issued a deficiency letter to Applicants requesting the following additional information: (1) the D-curves (Reactive Capability Curve) for each generator unit and the latest copies of the PJM test reports, which depict the MVARs for both leading and lagging for each generator unit; (2) the generator's specific V-curve; (3) a description of each generator including: the name of the manufacturer and model number, the type of generator (i.e. gas turbine, steam turbine), and nameplate MWs, MVARs, and MVAs; (4) cost

⁸ *Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141, at 61,456-57 (1999) (*AEP*).

⁹ Applicants' September 9, 2016 Filing, Ex. RL-2 at 2-4.

¹⁰ *Id.* at 6.

support for the generator, exciter, and turbine or diesel engine for facility; (5) a list of generators or other sources that have received compensation under the revenue requirement from the date that requirement was established until the filing of Docket Nos. ER16-2569-000 and ER16-2570-000; and (6) an explanation as to how the Heating Loss calculations comply with the Commission's guidance.¹¹

7. Applicants responded to the deficiency letter on October 27, 2016. Applicants state that their response includes the data requested in items 1-5 in the previous paragraph. In response to item 6, Applicants state that they used locational marginal price (LMP) as a proxy for computing generating heating losses. Applicants further clarify that they have supplemented the original study to show the results if heating loss are recomputed based on fuel and other incremental costs of production in the revised work papers contained in Attachment 6.¹²

III. Protest

8. Buckeye Power, Inc. (Buckeye) contends that both Dayton's and AES Ohio's proposed revenue requirements reflect errors and questionable assumptions. Specifically, Buckeye argues that the reactive power revenue requirement for Tait Units 4-7 is overstated based on erroneous Power Factor calculations, which caused an overstatement of \$331,688.¹³ Furthermore, Buckeye argues that Dayton has tripled the cost of the turbogenerator for the Montpelier units without cost support, based on its original filing in ER08-1039-000.

9. In addition, Buckeye argues that Applicants' filing does not explain which operation and maintenance (O&M) costs are considered fixed and which are considered variable.¹⁴ Buckeye asserts that, for the purposes of the calculating depreciation, the estimated lives of some of the generators are irrational. For example, Buckeye points out that Applicants list the estimated life of the Hutchings 7 unit as 954 years.¹⁵

¹¹ September 29, 2016 Deficiency Letter at 2 (citing *Wabash Valley Power Association, Inc.*, 154 FERC ¶ 61,245, at PP 24-29 (2016) and *Wabash Valley Power Association, Inc.*, 154 FERC ¶ 61,246, at PP 23-28 (2016)).

¹² Applicants' October 27, 2016 Deficiency Letter Response at 1-3.

¹³ Buckeye's November 17, 2016 Protest at 5.

¹⁴ *Id.* at 8.

¹⁵ *Id.* at 9.

IV. Applicants' Answer

10. In their answer, Applicants contend, *inter alia*, that Buckeye misapplied the AEP methodology by utilizing nameplate power factor. Applicants reiterate their understanding that their approach is consistent with the AEP methodology.¹⁶ Applicants also dispute Buckeye's contention that their filing tripled the cost of the turbogenerator and exciter of the Montpelier station. They assert that Buckeye erroneously relied on a 2008 filing that contained a clerical error, which has been adjusted in this filing.¹⁷

11. Applicants similarly reject Buckeye's contention that they determined that Hutching Unit 7 has a useful life of 954 years. Applicants state that this plant, which was originally placed in service in 1968, is nearly fully depreciated and that the annual depreciation amount over its remaining useful life is only \$3,657 per year. They contend that the 954-year depreciation schedule is irrelevant and that what matters for the purposes of this proceeding is the actual annual depreciation amount, i.e., \$3,657.¹⁸

V. Notice and Responsive Pleadings

12. Notice of Dayton's and AES Ohio's September 9, 2016 filings was published in the *Federal Register*, 81 Fed. Reg. 63,455 (2016) and 81 Fed. Reg. 63,475 (2016), respectively, with interventions and protests due on or before September 30, 2016. PJM, American Municipal Power, Inc. (AMP), and Buckeye submitted timely motions to intervene.

13. Notice of Dayton's and AES Ohio's deficiency letter responses in Docket Nos. ER16-2569-001 and ER16-2570-001 was published in the *Federal Register*, 81 Fed. Reg. 76,343 (2016), with interventions and protests due on or before November 17, 2016. On November 17, 2016, Buckeye protested Applicants' response to the deficiency letter. Applicants filed an answer to Buckeye's protest on November 28, 2016. Buckeye submitted an answer to Applicants' answer on December 9, 2016.

¹⁶ Applicants' November 28, 2016 Answer at 2.

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 9.

VI. Discussion**A. Procedural Matters**

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), PJM's, AMP's, and Buckeye's timely unopposed motions to intervene serve to make them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Applicants' answer because it has provided information that assisted us in our decision-making process. We are not persuaded to accept Buckeye's answer and will, therefore, reject it.

B. Substantive Matters**1. Dayton's Proposed Rate Schedule**

15. Our preliminary analysis suggests that Dayton's Revised Reactive Rate Schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We also find that Dayton's Revised Reactive Rate Schedule raises 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. Although we are setting the matter for hearing in its entirety, we note that the Reactive Service capability of Dayton's Killen facility appears to have substantially degraded and that the revenue requirement appears to be based on nameplate capability. Also, for each of the diesel generators in Dayton's generator facilities, the cost of the diesel engine was impermissibly included in the generator and exciter cost. We further note that the use of LMP in Heating Loss calculations is contrary to Commission guidance.¹⁹ Nevertheless, because Dayton's Revised Reactive Rate Schedule represents a rate decrease, we will accept it for filing, to become effective on November 8, 2016, as requested. However, because a further rate decrease may be warranted, we will institute a section 206 proceeding in Docket No. EL17-25-000, establish a refund effective date, and establish hearing and settlement judge procedures.

¹⁹ *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.

16. 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. 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.²⁰ That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL17-25-000 in the Federal Register.

17. 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. EL17-25-000 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 April 28, 2018.

2. AES Ohio's Proposed Rate Schedule

18. Our preliminary analysis also suggests that AES Ohio's Revised Reactive Rate Schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Here too, we find that AES Ohio's Revised Reactive Rate Schedule raises 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. Although we are setting the matter for hearing in its entirety, we note that the reactive power revenue requirement for AES Ohio's Tait Units 4-7 and Montpelier Units 1-4 appear to be excessive due to Applicants' calculation error with regard to the reactive power allocator. We further note that the Reactive Service capability of AES Ohio's Tait Unit 5 appears to have substantially degraded and that the revenue requirement appears to be based on nameplate capability.

²⁰ 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).

19. In *West Texas Utilities Co.*, the Commission explained that, when its preliminary analysis indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, the Commission will generally impose a maximum suspension (i.e., five months).²¹ In this proceeding, we find that AES Ohio's proposed Revised Reactive Rate Schedule may yield substantially excessive rates. Accordingly, we accept AES Ohio's proposed Revised Reactive Rate Schedule for filing and suspend it for the maximum five-month period to be effective April 8, 2017, subject to refund. We also establish hearing and settlement judge procedures.

20. Finally, we note that the contemplated date for transfer of Dayton's facilities to AES Ohio is January 1, 2017. Because it is possible that the transfer of facilities from Dayton to AES Ohio will be completed before either set of hearing and settlement judge procedures are resolved, we will consolidate the hearing and settlement judge procedures for Docket Nos. ER16-2569-001, ER16-2570-001, and EL17-25-000.²²

3. Matters Applicable to both Proposed Rate Schedules

21. Applicants have each submitted a second set of tariff sheets, not in eTariff format, that would cancel Dayton's Reactive Rate Schedule and transfer it to AES Ohio if (1) the Commission accepts their filing in Docket No. EC16-173-000, and (2) the transaction closes, as planned, on January 1, 2017. We do not address those sheets in this order. Instead, we require Dayton and AES Ohio to submit a compliance filing in eTariff format within 30 days of an acceptance of Applicants' filing in Docket No. EC16-173-000 or the close of the transaction, whichever is later.

22. While we are setting both Dayton's and AES Ohio's Reactive Service Rate Schedules 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.²³ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise the Chief Judge will select a

²¹ *W. Tex. Utils. Co.*, 18 FERC ¶ 61,189, at 61,374-75 (1982).

²² We note that the Chief Administrative Law Judge may, if appropriate, sever hearing and settlement judge proceedings pursuant to Rule 503 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.503 (2016).

²³ 18 C.F.R. § 385.603 (2016).

judge for this purpose.²⁴ 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.

23. Furthermore, Applicants' response to the Commission's deficiency letter suggests that Dayton may have received Reactive Service payment for units that were no longer capable of providing that service.²⁵ Accordingly, consistent with the Commission's November 20, 2014 Order to Show Cause in Docket No. EL15-15-000,²⁶ we have referred such concern to the Commission's Office of Enforcement for further examination and inquiry as may be appropriate.

The Commission orders:

(A) Dayton's proposed Revised Reactive Rate Schedule is hereby accepted, to become effective November 8, 2016, as discussed in the body of this order. AES Ohio's proposed Revised Reactive Rate Schedule is also hereby accepted and suspended for a five-month period, to become effective April 8, 2017, subject to refund, as discussed in the body of this order.

²⁴ 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>).

²⁵ See Applicants' October 27, 2016 Deficiency Letter Response, Attachment 5, at 2.

²⁶ 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 (2015); *Desoto Cnty. Generating Co., LLC*, 151 FERC ¶ 61,009, at P 14 (2015) (referring to the Commission's Office of Enforcement the matter of the resource owner possibly receiving payments for Reactive Power Service while its facility was incapable of providing that service).

(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 concerning the justness and reasonableness of Dayton and AES Ohio's Rate Schedule, as discussed in the body of this order.

(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.

(F) Any interested person desiring to be heard in Docket No. EL17-25-000 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.

(G) 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. EL17-25-000.

(H) The refund effective date in Docket No. EL17-25-000 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.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.