

158 FERC ¶ 61,059
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Kelly Creek Wind, LLC

Docket No. ER17-400-000
EL17-28-000

ORDER ACCEPTING PROPOSED RATE SCHEDULE, INSTITUTING SECTION 206
PROCEEDING AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued January 25, 2017)

1. On November 21, 2016, pursuant to section 205 of the Federal Power Act¹ and Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (PJM OATT), Kelly Creek Wind, LLC (Kelly Creek) submitted a proposed rate schedule (Rate Schedule),² which specifies Kelly Creek's rate for Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service) from the Kelly Creek wind turbine facility (Facility).³ In this order, we accept for filing Kelly Creek's proposed Rate Schedule, to become effective February 1, 2017, institute a proceeding pursuant to section 206 of the Federal Power Act (FPA),⁴ establish a refund effective date, and set the filing for hearing and settlement judge procedures.

I. Background

2. Schedule 2 of the PJM OATT provides that PJM will compensate owners of generation and non-generation resources for providing Reactive Service. Specifically,

¹ 16 U.S.C. § 824d (2012).

² Kelly Creek Wind, LLC, Tariffs, Agreements, and Rate Schedules, [Rate Schedule FERC No. 1, Reactive Supply & Voltage Control, 0.0.0.](#)

³ The Facility is a 184 MW (nameplate) wind-powered electric generation facility and related generation interconnection facilities to be located in Kankakee County, Ford County, and Iroquois County, Illinois.

⁴ 16 U.S.C. § 824e (2012).

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 Service, 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.⁵

3. Kelly Creek is a limited liability company that will own and operate the Facility.⁶ Kelly Creek states that the Facility consists of 92 Vestas wind turbine generators, each with a nameplate rating of 2.0 MW. Kelly Creek states that the facility is in the final stages of construction and is scheduled to commence commercial operation in December 2016. The Facility is interconnected to transmission facilities owned by Commonwealth Edison Company (ComEd) and operated by PJM.

4. Kelly Creek states that the Facility is being constructed to provide reactive power support to the PJM grid within the 0.95 leading to 0.95 lagging power factor requirement. Kelly Creek further explains the Vestas wind turbine generators, which are Type 3 machines, contain a power electronics system that regulates the Facility's voltage and power in real time and is able to make the facility operate more like a conventional synchronous generator.⁷

5. Kelly Creek states that it calculated the Facility's Fixed Capability Component in accordance with the methodology for determining the cost-of-service associated with providing Reactive Service capability that the Commission adopted in *American Electric Power Service Corp.*,⁸ and has been applied in subsequent Reactive Service fixed revenue requirement cases (*AEP* methodology). Kelly Creek notes that the *AEP* methodology

⁵ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

⁶ Kelly Creek Transmittal at 2 (Transmittal).

⁷ *Id.* at 3.

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

considers the costs associated with four groups of plant investments: (1) generators/excitors; (2) generator step-up (GSU) transformers; (3) accessory electric equipment; and (4) remaining production plant investment.⁹

6. Kelly Creek asserts that the underlying principle of the *AEP* methodology is to establish a cost-of-service for providing reactive power capability by identifying the costs of the generators/excitors, GSU transformers, and accessory electric equipment at the facility, then allocating those costs between real and reactive power using an allocation factor. Although the *AEP* methodology was developed in the context of synchronous generators, Kelly Creek argues that it is equally applicable to a non-synchronous generator that is designed with the capability of providing Reactive Service, such as the Facility.¹⁰

7. Kelly Creek explains that, for purposes of reactive power production, the primary difference between a synchronous generator and a non-synchronous generator is that a non-synchronous wind turbine facility consists of many more turbines and associated generator/excitors than a synchronous generator of similar capacity. Kelly Creek also notes that, due to the lack of required auxiliary and supporting equipment necessary in a conventional synchronous generator, the wind turbine generator/exciter costs constitute a higher percentage of the total plant investment than in a comparably sized synchronous generator. Kelly Creek states that, because of the higher percentage of such equipment in a wind turbine facility, the percentage of the total cost of production plant, particularly generator/exciter equipment, allocable to reactive power production in a wind turbine facility will generally be greater than that associated with a synchronous generator of similar capacity.¹¹

8. Kelly Creek argues that the fact that a wind turbine facility will generally have relatively more equipment, and therefore a higher reactive power revenue requirement compared to a synchronous generator with an identical nameplate capacity, does not suggest that the *AEP* methodology is deficient or inapplicable. Kelly Creek argues that, to the contrary, it is appropriate that owners and operators of non-synchronous generators be able to recover all of their costs associated with the provision of reactive power capability to the system, which are generally higher for non-synchronous generators such as wind turbine facilities than for synchronous generators.¹²

⁹ Transmittal at 5.

¹⁰ *Id.* at 5-6.

¹¹ *Id.* at 6.

¹² *Id.* at 6-7.

9. Kelly Creek states that based on the calculation of the Fixed Capability Component, the Annual Reactive Service Revenue Requirement is \$1,657,090.97. Kelly Creek further states that it used the rate of return and capital structure for ComEd, the transmission owner with which the Facility is interconnected, which includes a rate of return of 8.47 percent and a return on common equity of 11.5 percent.¹³

II. Notice and Responsive Pleadings

10. Notice of Kelly Creek's November 21, 2016 filing was published in the *Federal Register*, 81 Fed. Reg. 85,554 (2016), with interventions and protests due on or before December 12, 2016. PJM and Exelon Corporation (Exelon) submitted timely motions to intervene.

III. 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 and Exelon's unopposed motions to intervene serve to make them parties to this proceeding.

B. Substantive Matters

12. Our preliminary analysis suggests that Kelly Creek's 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 Kelly Creek's 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. We further note that Kelly Creek is a new seller that has not previously provided services and has no prior transactions and no prior customers.¹⁴ Accordingly, we accept for filing Kelly Creek's proposed Rate Schedule, to become effective February 1, 2017, institute a proceeding pursuant to section 206 of the FPA in Docket No. EL17-28-000, establish a refund effective date, and set the filing for hearing and settlement judge procedures. Although we are setting the matter for hearing in its entirety, we note that Kelly Creek appears to have included costs in its generator investment calculations that are unrelated

¹³ *Id.* at 13.

¹⁴ See *Chehalis Power Generating, L.P.*, 152 FERC ¶ 61,050, at P 14 (2015) ("In order for a rate to be considered an initial rate, it must provide for a new service to a new customer." (citing *Sw. Elec. Power Co.*, 39 FERC ¶ 61,099, at 61,293 (1987))).

to the provision of Reactive Service, including “SCADA and Training,” “Turbine Storage,” “Turbine Delivery,” and “Turbine Erection.”

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 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.¹⁵ That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL17-28-000 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. EL17-28-000 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 30, 2018.

15. While we are setting Kelly Creek’s Rate Schedule 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.¹⁶ 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 judge for this purpose.¹⁷ The

¹⁵ 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).

¹⁶ 18 C.F.R. § 385.603 (2016).

¹⁷ 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>).

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) Kelly Creek's Rate Schedule is hereby accepted, to become effective February 1, 2017, as requested, 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 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), a public hearing shall be held concerning the justness and reasonableness of Kelly Creek'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. EL17-28-000 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. EL17-28-000.

(H) The refund effective date in Docket No. EL17-28-000 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 (G) above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.