

164 FERC ¶ 61,018
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

PSEG Energy Resources & Trade, LLC

Docket Nos. ER18-1222-001
ER18-1222-002
EL18-149-000

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

(Issued July 9, 2018)

1. On March 29, 2018, as amended on May 24, 2018 and June 6, 2018, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² PSEG Energy Resources & Trade LLC (PSEG ER&T) filed initial rates for reactive power revenue for its PSEG Fossil Sewaren Urban Entity LLC (Sewaren 7) and PSEG Keys Energy Center LLC (KEC) facilities (Facilities). PSEG ER&T requests that the specific tariff records for Sewaren 7 and KEC be incorporated into its Rate Schedule FERC No. 3 (Reactive Rate Schedule), which sets forth the cost-based revenue requirements on a generation facility specific basis for the provision of Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service) under Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (PJM Tariff).³

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. pt. 35 (2017).

³ PSEG Energy Resources & Trade LLC, Rate Schedule FERC No. 3 Reactive Supply and Voltage Control From Generation Sources Service, [Sewaren 7 Generating Unit, Sewaren 7 Generating Unit, 1.0.0, Keys Generating Unit, Keys Generating Unit, 1.0.0.](#)

2. In this order, we accept for filing PSEG ER&T's proposed Reactive Service rates for KEC to become effective as of the date of commercial operation of KEC, and for Sewaren 7 to become effective June 7, 2018. We also institute a proceeding pursuant to section 206 of the FPA,⁴ establish a refund effective date, and establish hearing and settlement judge procedures.

I. Background

3. Schedule 2 of the PJM Tariff, which covers Reactive Service, provides that PJM will compensate owners of generation and non-generation resources for maintaining the capability to provide reactive power to PJM. 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.⁵

4. PSEG ER&T states that Sewaren 7 is a dual-fuel 585 MW combined-cycle electric generation plant currently under construction in the Sewaren section of Woodbridge Township, New Jersey, and the cost to construct Sewaren 7 is in excess of \$650 million. KEC is a new natural gas-fired 812 MW combined-cycle electric generation plant that is under construction in Prince George's County, Maryland, and the cost to construct KEC is approximately \$860 million. The Facilities are wholly owned by PSEG Fossil, which is wholly-owned by PSEG Power, which is a wholly-owned subsidiary of PSEG Enterprise Corp. Sewaren 7 will be interconnected with PJM in the Public Service Electric & Gas Company (PSE&G) transmission zone, and KEC will be interconnected with PJM in the Potomac Electric Power Company (PEPCO) transmission zone.

II. Filing

5. The Reactive Rate Schedule sets forth the proposed cost-based revenue requirements to be recovered under Schedule 2 of the PJM Tariff for each PSEG ER&T affiliated generation facility within PJM. PSEG ER&T states that, on June 15, 2015, it filed with the Commission to revise its Reactive Rate Schedule to convert the revenue requirement from a fleet-wide revenue requirement to individual generating facility revenue requirements. On August 7, 2015, the Commission issued an order accepting and suspending the proposed Reactive Rate Schedule and establishing hearing and settlement judge procedures.⁶ On February 24, 2016, the Commission approved PSEG

⁴ 16 U.S.C. § 824e (2012).

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

⁶ *PSEG Energy Resources & Trade, LLC*, 152 FERC ¶ 61,113 (2015).

ER&T's offer of settlement, which provided that, among other things, for newly constructed generation units or newly acquired units added to PSEG ER&T's generation fleet (including generators owned by any affiliate of PSEG ER&T) which have not previously supplied reactive power services to PJM, PSEG ER&T shall have the right to file under FPA section 205 to establish an "initial" rate for each new generation unit effective as of the date of commercial operation of such unit.⁷

6. PSEG ER&T asserts that the proposed Reactive Service rates for Sewaren 7 and KEC were developed consistent with the Commission-approved methods described in *AEP*.⁸ PSEG ER&T proposes Reactive Service annual revenue requirements of \$2,243,165 for Sewaren 7 and \$3,045,415 for KEC.

7. According to PSEG ER&T, the Reactive Service revenue requirements for the Facilities are based on the fixed costs attributable to reactive power production capability (Fixed Capability Component). The Fixed Capability Component of the Reactive Service revenue requirements represents the portions of the plant investment in Sewaren 7 and KEC that can be attributable to the production of reactive power.⁹ PSEG ER&T asserts that it determined the costs associated with the reactive portion of Sewaren 7 and KEC's investment in the generator/exciter system and the generator step-up transformer, accessory electric equipment, and the balance of plant costs. PSEG ER&T further asserts that the costs are based upon budget costs for the construction contractor and PSEG because Sewaren 7 and KEC are still under construction.

8. PSEG ER&T asserts that, to determine the annual revenue requirement, a fixed charge rate specific to each generating facility has been developed to apply to the Reactive Service production cost. The fixed charge rate includes the following components: fixed operations and maintenance, real estate tax and property insurance, sinking fund depreciation, levelized tax factor, prepayments, cash working capital, return, and accumulated deferred income taxes. PSEG ER&T asserts that it is not seeking the

⁷ See *PSEG Energy Resources & Trade, LLC*, 154 FERC ¶ 63,008 (2016).

⁸ See *Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999) (*AEP*), order on reh'g, 92 FERC ¶ 61,001 (2000).

⁹ Transmittal at 6.

recovery of generator and step-up transformer heating losses that result from the production of reactive power.¹⁰

9. PSEG ER&T states that Sewaren 7 commenced commercial operations on June 6, 2018 and that PSEG ER&T will inform the Commission once an operations date is known for KEC.¹¹

III. Notice and Responsive Pleadings

10. Notice of PSEG ER&T's March 29, 2018 filing was published in the *Federal Register*, 83 Fed. Reg. 14,457 (2018), with interventions and protests due on or before April 19, 2018. PJM and the Independent Market Monitor (IMM) filed timely motions to intervene. No protests or comments were filed.

11. Notice of PSEG ER&T's May 24, 2018 filing was published in the *Federal Register*, 83 Fed. Reg. 24,987 (2018), with interventions and protests due on or before June 14, 2018. No interventions or comments were filed.

12. Notice of PSEG ER&T's June 6, 2018 filing was published in the *Federal Register*, 83 Fed. Reg. 27,319 (2018), with interventions and protests due on or before June 27, 2018. On June 11, 2018, the Commission issued an errata notice correcting the comments due date to June 14, 2018. No interventions or comments were filed.

¹⁰ PSEG ER&T states that it is not seeking cost recovery for heating losses because the calculation of the heating losses value is time-consuming, controversial and not a significant amount.

¹¹ PSEG ER&T stated in its initial filing that Sewaren 7 and KEC were expected to commence commercial operations and the provision of Reactive Service on or about June 1, 2018, subject to delay, and on or before June 1, 2018, respectively. On May 24, 2018, PSEG ER&T amended its filing to reflect that KEC would not achieve commercial operation on or before June 1, 2018 and to revise the effective date for KEC to 12/31/9998. On June 6, 2018, PSEG ER&T amended its filing to reflect that Sewaren 7 achieved commercial operation and to revise the effective date for Sewaren 7 to June 7, 2018.

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), PJM's and the IMM's timely, unopposed motions to intervene serve to make them parties to this proceeding.

B. Substantive Matters

14. We accept PSEG ER&T's initial rates¹² for Reactive Service for KEC to become effective as of the date of commercial operation of KEC, and for Sewaren 7 to become effective June 7, 2018. We direct PSEG ER&T to inform the Commission of the actual effective date of the KEC rate and to submit an informational filing in eTariff to replace the placeholder date with an effective date for the proposed revenue requirement, within 30 days of the known operation date of KEC.¹³ Our preliminary analysis indicates, however, PSEG ER&T's proposed Reactive Service rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. PSEG ER&T's filing raises issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Accordingly, we institute a proceeding pursuant to section 206 of the FPA in Docket No. EL18-149-000, regarding the justness and reasonableness of the proposed Reactive Service rates, establish a refund effective date, and set the filing for hearing and settlement judge procedures.

15. Although we are setting the Reactive Service rates for hearing in their entirety, we note that PSEG ER&T's generator and exciter component costs may be excessive and the underlying costs are not supported. PSEG ER&T states that the generator and exciter costs have not been finalized.¹⁴ In addition, the accessory electric equipment costs also may be excessive and lack underlying cost support.

¹² As discussed above, PSEG ER&T's settlement agreement provides that it shall have the right to file under FPA section 205 to establish an "initial" rate for each new generation unit.

¹³ See *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

¹⁴ Transmittal, Exhibit No. PSEG-1 at 7.

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.¹⁵ 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, as we do so here as well.¹⁶ That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL18-149-000 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. EL18-149-000 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 December 31, 2018, we expect that, if the proceeding does not settle, we would be able to render a decision by October 31, 2019.

18. 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.¹⁷ 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.¹⁸ The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of

¹⁵ 16 U.S.C. § 824e(b) (2012).

¹⁶ *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).

¹⁷ 18 C.F.R. § 385.603 (2017).

¹⁸ 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>).

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) PSEG ER&T's proposed Reactive Service rates for Sewaren 7 and KEC and are hereby accepted for filing to become effective June 7, 2018 and as of the date of commercial operation of KEC, respectively, as requested, as discussed in the body of this order. PSEG ER&T is also directed to file an informational filing in eTariff, within 30 days of the known operation date of KEC, to replace the placeholder date with an effective date for the proposed revenue requirement.

(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 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. EL18-149-000 concerning the justness and reasonableness of PSEG ER&T's Reactive Service rate, 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 (2017), 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. No. EL18-149-000 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 (2017), 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 proceedings under section 206 of the FPA in Docket No. EL18-149-000.

(H) The refund effective date in Docket No. No. EL18-149-000 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.