

169 FERC ¶ 61,261
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

CPV Fairview, LLC

Docket Nos. ER20-287-000
EL20-12-000

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

(Issued December 30, 2019)

1. On November 1, 2019, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² CPV Fairview, LLC (CPV Fairview) submitted a proposed reactive power tariff (Rate Schedule)³ to provide Reactive Supply and Voltage Control from Generation or Other Sources Service (Reactive Service) as defined in Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (PJM Tariff).⁴ In this order, we accept for filing CPV Fairview's proposed Rate Schedule, to become effective no earlier than the date of commercial operation of the CPV Fairview Facility, subject to the condition that CPV Fairview submit a revised Rate Schedule with the revised effective date, as discussed below. We

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. pt. 35 (2019).

³ CPV Fairview is a new seller that has not previously provided reactive power services to PJM and has no prior transactions and no prior customers. *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)).

⁴ CPV Fairview, LLC, Reactive Power Tariff, [CPV Fairview, LLC, Reactive Power Tariff \(0.0.0\)](#).

also institute a proceeding pursuant to section 206 of the FPA,⁵ establish a refund effective date, and establish hearing and settlement judge procedures.

I. Background

2. Schedule 2 of the PJM Tariff provides that PJM will compensate owners of generation and non-generation resources for the capability to provide reactive power to PJM to maintain transmission voltages. 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.⁶

II. Filing

3. CPV Fairview states that it is an exempt wholesale generator authorized by the Commission to sell electric energy, capacity and certain ancillary services at market-based rates.⁷ CPV Fairview further states that it owns and operates a natural gas and ethane-fueled, combined-cycle, electric generation facility, with a nameplate capacity of approximately 1,197 MW, located in Jefferson Township, Cambria County, Pennsylvania (Facility), which is within the PJM region. Specifically, CPV Fairview states that the Facility is located within the PJM transmission zone of the Pennsylvania Electric Company, and is interconnected with the Mid-Atlantic Interstate Transmission, LLC (MAIT) transmission system. CPV Fairview states that the Facility is currently in the commissioning phase, but is not expected to commence commercial operations until on or before January 2020.⁸

4. CPV Fairview states that the cost-based revenue requirement included in its Rate Schedule is designed to recover costs directly associated with its provision of Reactive Service, consisting of the fixed cost attributable to reactive power production capability (Fixed Capability Component) and the costs associated with increased generator and step-up transformer heating losses that result from the production of reactive power (Heating Loss Component). CPV Fairview adds that, in calculating the fixed costs

⁵ 16 U.S.C. § 824e (2018).

⁶ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (4.0.0).

⁷ Transmittal at 2.

⁸ *Id.* at 3.

associated with the Facility's reactive capability, it has followed the *American Electric Power Service Corp.* methodology.⁹

5. CPV Fairview states that the Fixed Capability Component is designed to recover the portion of plant costs attributable to the Facility's reactive power capability. CPV Fairview also states that, in calculating the Fixed Capability Component, and consistent with *AEP*, it first determined the portion of the generator/exciter systems, accessory electric equipment, and the generator step-up transformers used to produce reactive power.¹⁰ CPV Fairview further states that it applied a fixed charge rate and a levelized annual carrying cost. In addition, CPV Fairview states it uses MAIT's return on equity and capital structure as a proxy to establish its capital costs.

6. CPV Fairview states that it calculated the Facility's Heating Loss Component reflecting the active power losses that occur in the generator, exciter, and associated step-up transformer. CPV Fairview states that these losses are a cost that are directly attributable to the production of reactive power.

7. CPV Fairview states that it calculated a fixed annual revenue requirement for Reactive Service of \$5,205,209.88, and a monthly revenue requirement of \$433,767.49.¹¹

8. Finally, CPV Fairview requests waiver of the Commission's 60-day notice requirement,¹² to permit the Rate Schedule to become effective December 1, 2019.¹³ CPV Fairview states that its requested effective date is consistent with PJM's practice of incorporating new revenue requirements into Schedule 2 of the PJM Tariff on the first day of the month in which the Commission accepts or approves the revenue requirement.

III. Notice and Responsive Pleadings

9. Notice of CPV Fairview's filing was published in the *Federal Register*, 84 Fed. Reg. 60,077 (2019), with interventions and protests due on or before November 22, 2019. Timely-filed motions to intervene were submitted by PJM and

⁹ *Id.* (citing *Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999), *order on reh'g*, 92 FERC ¶ 61,141 (2000) (*AEP*)).

¹⁰ *Id.* at 3-4.

¹¹ Filing at Exh. No. FEC-1 at 17, Direct Testimony of Adrian J. Kimbrough.

¹² 18 C.F.R. § 35.3 (2019).

¹³ Transmittal at 1, 7-8.

Monitoring Analytics, LLC, acting in its capacity as PJM's Independent Market Monitor. No protests were filed.

IV. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

V. Discussion

11. We accept for filing CPV Fairview's Rate Schedule to become effective no earlier than the date of commercial operation of the Facility, subject to the condition that CPV Fairview submit in eTariff a revised Rate Schedule with an indeterminate effective date¹⁴ or the actual effective date, if known, within 30 days of the date of this order. If CPV Fairview files a revised Rate Schedule with an indeterminate effective date, CPV Fairview is required to submit an informational filing in eTariff to replace the placeholder date with the actual effective date, within 15 days of the known commercial operation date of the Facility. Our preliminary analysis, however, indicates that CPV Fairview's Rate Schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. CPV Fairview's Rate Schedule raises issues of material fact that cannot be resolved based on the record before us and 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. EL20-12-000, establish a refund effective date, and set the Rate Schedule for hearing and settlement judge procedures.

12. Although we are setting the Rate Schedule for hearing in its entirety, we note that CPV Fairview's filing includes generator and exciter costs, accessory electric equipment allocator and costs, generator step-up transformer costs, operation and maintenance costs, balance of plant costs, and costs associated with incremental heating losses, all of which may be excessive.¹⁵ We further note that CPV Fairview has not provided underlying support for the costs claimed.¹⁶

¹⁴ See *Implementation Guide for Electronic Filings of Parts 35, 154, 284, 300 Tariff Filings at 10*, <https://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf> (last updated on Nov. 14, 2016) (establishing 12/31/9998 as the effective date for filings with indeterminate effective dates).

¹⁵ *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,245, at P 29 (2016).

¹⁶ *Id.* (explaining that reactive power revenue requirement filings must provide cost information for all equipment used to produce reactive power in order to satisfy Commission regulations requiring a "summary statement of all cost . . . computations involved in arriving at the derivation of the level of the rate, in sufficient detail to justify

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 its 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.¹⁷ That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL20-12-000 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. EL20-12-000 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.

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.¹⁸ 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

the rate”) (quoting 18 C.F.R. § 35.12(b)(2)(ii) (2019)); *Ariz. Pub. Serv. Co.*, 156 FERC ¶ 61,006, at P 36 (2016) (noting FPA section 205 and 18 C.F.R. § 35.13 and explaining that rate changes require “cost support and Commission review”), *order on reh'g and clarification*, 161 FERC ¶ 61,022 (2017), *vacated on other grounds*, *Ariz. Pub. Serv. Co. v. FERC*, 777 F. App'x 196 (9th Cir. 2019).

¹⁷ 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).

¹⁸ 18 C.F.R. § 385.603 (2019).

based on workload requirements which determine judges' availability.¹⁹ 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) CPV Fairview's proposed Rate Schedule is hereby accepted for filing to become effective no earlier than the date of commercial operation of the Facility, subject to the condition that CPV Fairview submit a revised effective date for the Rate Schedule, 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 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. EL20-12-000 concerning the justness and reasonableness of CPV Fairview's 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 (2019), 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

¹⁹ 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>).

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. EL20-12-000 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 (2019), within 21 days of the date of issuance of this order. The Commission encourages electronic submission of interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and three copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

(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. EL20-12-000.

(H) The refund effective date in Docket No. EL20-12-000 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.