

170 FERC ¶ 61,165
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Whitetail Solar 1, LLC

Docket Nos. ER20-714-000
EL20-23-000

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

(Issued February 27, 2020)

1. On December 31, 2019, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission’s regulations,² Whitetail Solar 1, LLC (Whitetail 1) filed a new rate schedule (Rate Schedule)³ setting forth the revenue requirement of the Whitetail 1 solar generating facility (Facility) to provide Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service) as defined in Schedule 2 of the PJM Interconnection L.L.C. (PJM) Open Access Transmission Tariff (PJM Tariff).⁴ We accept for filing Whitetail 1’s proposed Rate Schedule, to become effective either March 1, 2020, or the date of commercial operation of the Whitetail 1 Facility, whichever is later, subject to Whitetail Solar 1 submitting a revised Rate Schedule with the revised effective date, as discussed below.⁵ We also institute a proceeding pursuant to

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. pt. 35 (2019).

³ Whitetail Solar 1 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 Whitetail Solar 1, LLC, Rate Schedule Tariff, [Rate Schedule, Reactive Power Compensation \(0.0.0\)](#).

⁵ Although Whitetail 1 requests that the proposed Rate Schedule be made effective on February 29, 2020, which is the 60th day after filing, absent waiver, March 1, 2020 is the earliest date that Whitetail 1’s proposed Rate Schedule can be made effective (i.e., on

section 206 of the FPA,⁶ 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.⁷

II. Filing

3. Whitetail 1 states that the Facility, which is located in Franklin County, Pennsylvania, has a nameplate capacity rating of 13.5 MW.⁸ Whitetail 1 states that the Facility is interconnected with the transmission system of the Mid-Atlantic Interstate Transmission (MAIT), LLC within the PJM region. According to Whitetail 1, the Facility is expected to achieve commercial operation in late December 2019.⁹ Whitetail 1 states that in 2016, Whitetail 1, MAIT, and PJM entered into an Interconnection Service Agreement which obligates Whitetail 1 to provide Reactive Service to the transmission grid and the Facility is designed to provide reactive supply capability.¹⁰

4. In the Rate Schedule, Whitetail 1 proposes a cost-based revenue requirement to be recovered under Schedule 2 of the PJM Tariff. Whitetail 1 asserts that it derived this revenue requirement using the Commission-approved *American Electric Power Service Corp. (AEP)* methodology.¹¹ Whitetail 1 notes that the *AEP* methodology identifies costs

the 61st day after filing, after 60 days notice). *Cal. Indep. Sys. Operator Corp.*, 136 FERC ¶ 61,120, at P 1 n.4 (2011); *see Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993).

⁶ 16 U.S.C. § 824e.

⁷ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (4.0.0).

⁸ Transmittal at 2.

⁹ *Id.*

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 3, 8-10 (citing *Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC

associated with four groups of plant investment: (1) the generators/excitors; (2) generator step-up transformers; (3) accessory electric equipment; and (4) the remaining production plant investment; and then allocates those costs between real and reactive power using an allocation factor. Using this method, Whitetail 1 calculated a total annual revenue requirement for Reactive Service of \$ 177,660.91, and a monthly requirement of \$14,805.08.¹²

5. According to Whitetail 1, its Reactive Service revenue requirement for the Facility consists of the fixed cost of the plant investment in the Facility attributable to the reactive power production (Fixed Capability Component).¹³ Whitetail 1 states that it calculated the Facility's Fixed Capability Component by analyzing the reactive portion of investment in: (1) the Facility's generators and excitors (which includes the inverters and step-up transformers); (2) accessory electrical equipment that supports the operation of the generator-exciter system; and (3) the balance of the plant.¹⁴ Whitetail 1 states that it calculated a total investment attributable to reactive power production for the Facility of \$1,431,386, which consists of (1) \$1,418,537 (the reactive portions of the inverter and accessory electric equipment-collection system), and (2) \$12,849 (the portion of the remaining total production plant used to support reactive power production).¹⁵ Whitetail 1 states that it used MAIT's authorized rate of return and capital structure as a proxy to establish a rate of return for the cost of capital component of the carrying cost percentage.¹⁶

6. Whitetail 1 requests an effective date of February 29, 2020.¹⁷

¶ 61,141 (1999) (*AEP*), *order on reh'g*, 92 FERC ¶ 61,001 (2000); *Dynegy Midwest Generation, Inc.*, 121 FERC ¶ 61,025 (2007), *order on reh'g*, 125 FERC ¶ 61,280 (2009)).

¹² *Id.* at 11; Ex. No. WTS1-1, Prepared Direct Testimony of Donald J. Clayton at 18 (Ex. No. WTS1-1).

¹³ Transmittal at 8. Whitetail 1 states that its proposed Reactive Service revenue requirement does not include heating losses. Ex. No. WTS1-1 at 7.

¹⁴ Transmittal at 8-10; Ex. No. WTS1-1 at 7.

¹⁵ Transmittal at 10.

¹⁶ *Id.* at 10-11; Ex. No. WTS1-1 at 16.

¹⁷ Transmittal at 11.

III. Notice and Responsive Pleadings

7. Notice of Whitetail 1's December 31, 2019 filing was published in the *Federal Register*, 85 Fed. Reg. 706 (2020), with interventions and protests due on or before January 21, 2020. PJM, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM, and First Energy Service Company, on behalf of its affiliate MAIT, filed timely motions to intervene. No protests or comments were filed.

IV. Discussion

A. Procedural Matters

8. 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.

B. Substantive Matters

9. We accept for filing Whitetail 1's proposed Rate Schedule to become effective March 1, 2020 or the date of commercial operation of the Whitetail 1 Facility, whichever is later, subject to Whitetail 1 submitting in eTariff a revised Rate Schedule with an indeterminate effective date¹⁸ or the actual effective date, if known, within 30 days of the date of this order. If Whitetail 1 files a revised Rate Schedule with an indeterminate effective date, Whitetail 1 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 indicates, however, that Whitetail 1's proposed Rate Schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Whitetail 1's filing 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. EL20-23-000, establish a refund effective date, and set the filing for hearing and settlement judge procedures.

10. Although we are setting the Rate Schedule for hearing in its entirety, we note that accessory electric equipment allocator and costs, generator and exciter costs, balance of plant costs, administrative and general costs, and operation and maintenance costs may be

¹⁸ See *Implementation Guide for Electronic Filing 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).

excessive. In addition, we note that Whitetail 1 did not provide the manufacturer's nameplate information or reactive power test data to support the power factor and the reactive allocator and did not provide underlying support for the costs claimed for the Facility.

11. 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.¹⁹ That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL20-23-000 in the Federal Register.

12. 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. EL20-23-000 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 proceeding does not settle and the Presiding Judge were to issue an Initial Decision by June 1, 2020, we expect that we would be able to render a decision by April 1, 2021.

13. 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 based on workload requirements which determine judges' availability.²¹ The settlement

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 (2019).

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 days of this order. The Commission's website contains a list of Commission judges available for settlement

judge shall report to the Chief Judge and the Commission within 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) Whitetail 1's proposed Rate Schedule is hereby accepted for filing to become effective March 1, 2020 or the date of commercial operation of the Whitetail 1 Facility, whichever is later, subject to Whitetail 1 submitting 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. EL20-23-000 concerning the justness and reasonableness of Whitetail 1'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 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 days of the date of this order.

(D) Within 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 60 days thereafter, informing the Commission and the Chief Judge of the participants' progress toward settlement.

proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(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 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. EL20-23-000 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. EL20-23-000.

(H) The refund effective date in Docket No. EL20-23-000 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.