

170 FERC ¶ 61,185  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

North Jersey Energy Associates,  
A Limited Partnership

Docket Nos. ER20-756-000  
EL20-24-000

ORDER ACCEPTING INFORMATIONAL FILING, GRANTING WAIVER,  
INSTITUTING SECTION 206 PROCEEDING, AND ESTABLISHING HEARING  
AND SETTLEMENT JUDGE PROCEDURES

(Issued March 6, 2020)

1. On January 8, 2020, North Jersey Energy Associates, A Limited Partnership (North Jersey) submitted an informational filing, pursuant to Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff), regarding the planned indirect transfer of control (Proposed Transaction) of North Jersey's 387 MW (nameplate) combined cycle gas-fired cogeneration facility located in Sayreville, New Jersey (Facility). Pursuant to the Proposed Transaction, Dynegy Northeast Generation GP, Inc. and Dynegy Associates Northeast LP, Inc. (collectively, the Dynegy Companies) which currently indirectly hold 50% of the interests in North Jersey will acquire the remaining outstanding interests of North Jersey currently held by ESI Northeast Energy GP, Inc. and ESI Northeast Energy LP, LLC (collectively, NextEra). Additionally, North Jersey requests acceptance of its existing Commission-approved rate schedule (Rate Schedule) for Reactive Supply and Voltage Control from Generation or Other Sources Service (Reactive Service) as a baseline tariff in the Commission's eTariff system, effective March 9, 2020.<sup>1</sup> North Jersey also seeks a one-time limited waiver of the 90-day notice requirement set forth in Schedule 2 of the PJM Tariff with respect to this informational filing.

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<sup>1</sup> North Jersey Energy Associates, A Limited Partnership, Electric Agreements and Schedules, [FERC Electric Tariff, Original Volume No. 1, 0.0.0.](#)

2. In this order, we accept the informational filing for informational purposes only and grant the waiver request. We accept North Jersey's Rate Schedule as a baseline tariff in eTariff with an effective date of March 9, 2020, as requested. We also institute a proceeding pursuant to section 206 of the Federal Power Act (FPA),<sup>2</sup> regarding the continued justness and reasonableness of North Jersey's Rate Schedule, establish a refund effective date, and establish hearing and settlement judge procedures.

### **I. Background**

3. 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 that resource owner an amount equal to the resource owner's monthly revenue requirement, as accepted or approved by the Commission.<sup>3</sup> 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 either 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.<sup>4</sup>

### **II. Informational Filing**

4. North Jersey states that it is a New Jersey limited partnership that was formed to develop, own and operate the Facility.<sup>5</sup> North Jersey also states that it is an exempt wholesale generator and owns and operates the Facility within the PJM market. North Jersey states that its interests currently are held by a partnership, Northeast Energy, LP (Partnership). North Jersey also states that the Dynegy Companies and NextEra each own a one percent general partner and 49% limited partner interest in the Partnership.<sup>6</sup> North Jersey further states that the Dynegy Companies and NextEra entered into an agreement on December 13, 2019, wherein the Dynegy Companies will redeem their

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<sup>2</sup> 16 U.S.C. § 824e (2018).

<sup>3</sup> PJM, Intra-PJM Tariffs, OATT, Schedule 2 (4.0.0).

<sup>4</sup> *Id.*

<sup>5</sup> Informational Filing at 3.

<sup>6</sup> *Id.* North Jersey states that the Dynegy Companies are currently wholly owned indirect subsidiaries of Vistra Energy Corp. and that NextEra GP and NextEra LP are wholly owned indirect subsidiaries of NextEra Energy, Inc.

ownership interests in the Partnership in exchange for 100% of NextEra's interests in North Jersey. According to North Jersey, upon the Proposed Transaction closing, the Dynegy Companies will own 100% of North Jersey.<sup>7</sup>

5. North Jersey explains that the Commission has authorized North Jersey to sell electric energy, capacity, and certain ancillary services at market-based rates.<sup>8</sup> North Jersey states that it provides reactive power pursuant to Schedule 2 of the PJM Tariff and in accordance with a FERC-approved rate schedule in Docket No. ER05-845-000, which includes the stand-alone revenue requirement for Reactive Service for the Facility.<sup>9</sup> North Jersey explains that the Proposed Transaction does not change the underlying costs associated with reactive supply and voltage control service and, therefore, does not require any changes to the Rate Schedule other than minor revisions to conform the format to current requirements.<sup>10</sup>

6. North Jersey states that, on January 7, 2020, in Docket No. EC20-29-000, it and its affiliates filed a joint application under section 203 of the FPA seeking Commission approval of the Proposed Transaction.<sup>11</sup> In that filing, which remains pending before the Commission, North Jersey and the joint applicants sought Commission approval of the Proposed Transaction by no later than March 7, 2020, in order to allow the Proposed Transaction to close shortly thereafter.<sup>12</sup> North Jersey explains that after the Commission issues an order approving the 203 application, it is expected that the Dynegy Companies and NextEra will consummate the Proposed Transaction, and the Dynegy Companies will then own 100% of North Jersey.<sup>13</sup> North Jersey explains that the Proposed Transaction

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* (citing *N. Jersey Energy Assocs., L.P.*, Docket Nos. ER04-187-000 and ER04-187-001 (Dec. 29, 2003) (delegated order)).

<sup>9</sup> *Id.* at 1, 3 (citing *N. Jersey Energy Assocs., L.P.*, Docket No. ER05-845-000 (May 26, 2005) (delegated order)).

<sup>10</sup> *Id.* at 2, 6.

<sup>11</sup> *Id.* at 1 n.2.

<sup>12</sup> *Id.* at 4, 7.

<sup>13</sup> *Id.* at 3-4.

will only result in an increase in the Dynegy Companies' interest in North Jersey and will not change North Jersey's ownership of the Facility.<sup>14</sup>

7. North Jersey states that it is not proposing any revisions to the Rate Schedule because the revenue requirement set forth therein was established solely for the Facility, the entirety of which is included in the Proposed Transaction by virtue of the Partnership's current 100% ownership of North Jersey.<sup>15</sup> North Jersey also states that the revenue requirement set forth in the Rate Schedule has been based solely on the stand-alone cost-of-service for the Facility, and the Facility is being indirectly transferred intact and will remain wholly controlled by North Jersey. North Jersey further states that the entity with the right to collect revenues under the Rate Schedule is not changing as a result of the Proposed Transaction, and no portion of the Facility has been permanently deactivated since the Facility entered into commercial operation in 1991, and the Commission's acceptance of the Rate Schedule for filing. North Jersey states that following the consummation of the Proposed Transaction, the Facility will continue to provide reactive service to PJM on the same basis and using the same equipment as it did when the Rate Schedule went into effect.

8. North Jersey also seeks a one-time limited waiver of the 90-day notice requirement set forth in Schedule 2 of the PJM Tariff.<sup>16</sup> North Jersey asserts that good cause exists to grant its waiver request. North Jersey argues that it has acted in good faith by submitting the informational filing promptly after executing the transaction agreement for the Proposed Transaction and one day after filing the section 203 application. North Jersey further argues that the waiver request is limited in scope, as it is a one-time waiver of the procedural deadline and does not affect any of the substantive requirements under Schedule 2 of the PJM Tariff. Additionally, North Jersey argues that the waiver request will address a concrete problem because absent the requested waiver, the consummation of the Proposed Transaction could be delayed.<sup>17</sup> Finally, North Jersey asserts that the waiver request does not have undesirable consequences, such as harming third parties, and in fact, the waiver advances the public interest by facilitating timely consummation of the Proposed Transaction.

9. North Jersey states that its Reactive Service Rate Schedule is not yet in eTariff, and it is submitting a copy of the currently effective Reactive Power Rate Schedule as a tariff record in eTariff pursuant Commission precedent, with a requested March 9, 2020

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<sup>14</sup> *Id.* at 1.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.* at 6-7.

<sup>17</sup> *Id.* at 7.

effective date.<sup>18</sup> North Jersey explains that the only changes to the Rate Schedule are minor revisions to conform the format to current requirements.<sup>19</sup>

10. North Jersey requests that the Commission accept North Jersey's informational filing and issue an order on or before March 7, 2020, granting a one-time waiver of the 90-day notice requirement set forth in Schedule 2 of the PJM Tariff with respect to this informational filing.<sup>20</sup>

### **III. Notice and Responsive Pleadings**

11. Notice of North Jersey's Informational Filing was published in the *Federal Register*, 85 Fed. Reg. 2124 (2020), with interventions and protests due on or before January 29, 2020. Timely filed motions to intervene were submitted by PJM and Monitoring Analytics, LLC, acting in the capacity as PJM's Independent Market Monitor. No protests were filed.

### **IV. Discussion**

#### **A. Procedural Matters**

12. 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**

13. We accept the informational filing for informational purposes only and grant the waiver request, as discussed below. We also accept North Jersey's Rate Schedule as a baseline tariff in eTariff, with an effective date of March 9, 2020, as requested. However, the informational filing and Rate Schedule raise concerns about the continued justness and reasonable of North Jersey's Rate Schedule, including, but not limited to, possible degradation in the reactive output capability of the generating units, the heating loss calculation which is based upon Locational Marginal Pricing,<sup>21</sup> generator and exciter costs, accessory electric equipment allocator and costs, generator step-up transformer costs, operation and maintenance costs, balance of plant costs, fixed charge rate, all of

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<sup>18</sup> *Id.* at 2, 6.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Dynegy Midwest Generation, Inc.*, Opinion No. 498, 121 FERC ¶ 61,025 (2007), *order on reh'g*, 125 FERC ¶ 61,280 (2008).

which may be excessive,<sup>22</sup> and an outdated federal income tax rate. Accordingly, we institute a proceeding pursuant to section 206 of the FPA in Docket No. EL20-24-000, to determine whether North Jersey's Rate Schedule remains just and reasonable. We further establish a refund effective date and hearing and settlement judge procedures.

14. As stated above, we grant North Jersey's waiver request. The Commission has granted a waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.<sup>23</sup> We find that North Jersey's waiver request satisfies these criteria.

15. First, we find that North Jersey acted in good faith by submitting its waiver request promptly upon executing an agreement for the Proposed Transaction. Second, we find that the waiver request is limited in scope, because North Jersey seeks a one-time, limited waiver of the 90-day notice requirement under Schedule 2 of the PJM Tariff. Third, we find that the waiver request addresses a concrete problem, because absent the requested waiver, the Proposed Transaction could be delayed. Finally, we find that the waiver request will not result in any undesirable consequences, such as harming third parties, as the Proposed Transaction, involves an upstream change in indirect ownership.

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.<sup>24</sup> That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL20-24-000 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

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<sup>22</sup> See *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,245, at PP 28-29 (2016).

<sup>23</sup> See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

<sup>24</sup> 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).

decision. As we are setting the section 206 proceeding in Docket No. EL20-24-000 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 November 30, 2020, we expect that, if the proceeding does not settle, we would be able to render a decision by September 30, 2021.

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.<sup>25</sup> 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.<sup>26</sup> 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) The informational filing is hereby accepted for informational purposes only and the Rate Schedule is accepted as a baseline tariff in eTariff, effective March 9, 2020, as requested, as discussed in the body of this order.

(B) North Jersey's waiver request is hereby granted, as discussed in the body of this order.

(C) 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 by 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

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<sup>25</sup> 18 C.F.R. § 385.603 (2019).

<sup>26</sup> 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 proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

proceeding in Docket No. EL20-24-000, concerning the justness and reasonableness of North Jersey'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 (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure,<sup>27</sup> 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 parties decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

(E) Within thirty 30 days of the appointment of the settlement judge, the settlement judge shall file reports with the Commission and the Chief Judge on the status of the settlement discussions. Based on the reports, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign the cases to a presiding judge for trial-type evidentiary hearings, if appropriate. If settlement discussions continue, the settlement judge shall file reports at least every sixty 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) 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 conference shall be held for the purpose of establishing procedural schedules. 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.

(G) Any interested person desiring to be heard in Docket No. EL20-24-000 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.

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<sup>27</sup> 18 C.F.R. § 385.603.



(H) 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. EL20-24-000.

(I) The refund effective date in Docket No. EL20-24-000 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 (H) above.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.