

170 FERC ¶ 61,061
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Hickory Run Energy, LLC

Docket Nos. ER20-490-000
EL20-17-000

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

(Issued January 28, 2020)

1. On November 27, 2019, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² Hickory Run Energy, LLC (Hickory Run) submitted a proposed reactive power tariff (Rate Schedule) 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).³ In this order, we accept for filing Hickory Run's proposed Rate Schedule, to become effective the later of February 1, 2020 or the date of commercial operation of the Hickory Run facility, as requested, subject to Hickory Run submitting an informational filing to replace the placeholder date with the actual effective date, within fifteen (15) days of the commercial operation date, as discussed below. We also institute a proceeding pursuant to FPA section 206,⁴ establish a refund effective date, and establish hearing and settlement judge procedures.

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. pt. 35 (2019).

³ Hickory Run Energy, LLC, Tariffs, [Reactive Power Tariff, RATE SCHEDULE FERC NO. 2 \(1.0.0\)](#).

⁴ 16 U.S.C. § 824e.

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.⁵

II. Filing

3. Hickory Run 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.⁶ Hickory Run also states that it owns, and will operate, the Hickory Run Energy Center, a 1000 MW natural gas-fired combined cycle power plant under construction in New Castle, Pennsylvania (Facility). Hickory Run states that the Facility is interconnected to the transmission system owned by American Transmission Systems, Inc. and operated by PJM.⁷ Hickory Run further states that the Facility is expected to commence commercial operation by April 1, 2020.

4. Hickory Run states that its proposed Rate Schedule includes a revenue requirement for the Facility's provision of Reactive Service that it derived using the Commission-approved *American Electric Power Service Corp.* methodology.⁸ Hickory Run asserts that its Reactive Service revenue requirement consists of two components: (1) its fixed production costs attributable to reactive power production capability (Fixed Capability Component); and (2) its variable production costs attributable to increased generator and generator step-up transformer heating losses resulting from the production of reactive power (Heating Losses Component).⁹

⁵ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (4.0.0).

⁶ Transmittal at 2.

⁷ *Id.*

⁸ *Id.* at 3 (citing *Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999), *order on reh'g*, 92 FERC ¶ 61,001 (2000)).

⁹ *Id.*

5. Hickory Run states that it calculated the Facility's Fixed Capability Component by analyzing the reactive portion of investment in: (1) the generator and associated exciter equipment; (2) generator step-up transformers; (3) accessory electrical equipment that supports the operation of the generator-exciter system; and (4) the balance of the plant. Included in these fixed costs are Hickory Run's costs associated with 90,000 Dth/day of firm transportation capacity on Tennessee Gas Pipeline Company's system.¹⁰ Hickory Run explains that it summed and multiplied these amounts by an allocation factor to determine the reactive power portion of the investments.¹¹ Hickory Run states that it calculated the Facility's Heating Loss Component based on the Facility's projected operating hours and conservative assumptions regarding the expected operating characteristics of the facility.¹²

6. Hickory Run states that it incorporated in its annual carrying charge the return on equity (ROE), cost of debt, and capital structure PJM used in its most recent cost of new entry study.¹³

7. Hickory Run states that it calculated a fixed annual revenue requirement for Reactive Service of \$4,829,223.60, and a monthly revenue requirement of \$402,435.30.¹⁴

8. Hickory Run requests an effective date of the later of February 1, 2020 or the date that the Facility commences commercial operation.¹⁵

III. Notice and Responsive Pleadings

9. Notice of Hickory Run's filing was published in the *Federal Register*, 84 Fed. Reg. 66,396 (2019), with interventions and protests due on or before December 18, 2019. Monitoring Analytics, LLC, acting in its capacity as the Market Monitor for PJM, and PJM each filed timely motions to intervene. No protests were filed.

¹⁰ *Id.* at 4.

¹¹ *Id.* at 3-4.

¹² *Id.* at 5.

¹³ *Id.* at 4 (citing *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,029, at PP 105-11 (2019)).

¹⁴ *See id.*, Attachment A, Reactive Service Tariff.

¹⁵ *Id.* at 5.

IV. Discussion

A. 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.

B. Substantive Matters

11. We accept for filing Hickory Run's proposed Rate Schedule to become effective the later of February 1, 2020 or the date of commercial operation of the Facility, subject to Hickory Run submitting an informational filing to replace the placeholder date with the actual effective date, within fifteen (15) days of the commercial operation date. Our preliminary analysis, however, indicates that Hickory Run's proposed Rate Schedule may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Hickory Run's proposed 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 FPA section 206 in Docket No. EL20-17-000, establish a refund effective date, and set the Rate Schedule for hearing and settlement judge procedures.

12. While we are setting the Rate Schedule for hearing in its entirety, we note that Hickory Run'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, heating losses, and a fixed charge rate that may be excessive.¹⁶ We further note that Hickory Run has not provided underlying support for the costs claimed.¹⁷

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 publication by the Commission of notice of its intention to initiate such proceeding nor later than five (5) 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

¹⁶ *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,245, at P 29 (2016).

¹⁷ *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 the rate") (quoting 18 C.F.R. § 35.12(b)(2)(ii)).

refund effective date at the earliest date allowed by section 206, and we do so here as well.¹⁸ That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL20-17 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 one hundred eighty (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. EL20-17 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 (8) 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 January 31, 2021, we expect that, if the proceeding does not settle, we would be able to render a decision by November 30, 2021.

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.¹⁹ 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.²⁰ 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.

¹⁸ 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).

¹⁹ 18 C.F.R. § 385.603 (2019).

²⁰ 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 Commission orders:

(A) Hickory Run's proposed Rate Schedule is hereby accepted for filing effective the later of February 1, 2020 or the date of commercial operation of the Hickory Run Facility, subject to Hickory Run submitting an informational filing, 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. EL20-17-000 concerning the justness and reasonableness of Hickory Run's proposed 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 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. EL20-17-000 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 twenty-one (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. EL20-17-000.

(H) The refund effective date in Docket No. EL20-17-000 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.