

155 FERC ¶ 61,181
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Constellation Power Source Generation, LLC

Docket Nos. ER16-746-001
EL16-57-000

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

(Issued May 19, 2016)

1. On January 19, 2016, Constellation Power Source Generation, LLC (Constellation) submitted for filing its FERC Rate Schedule No. 2, pursuant to section 205 of the Federal Power Act (FPA)¹ and Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT). Constellation seeks to adjust its revenue requirement for reactive supply and voltage control service (Reactive Service) to reflect the retirement of units that currently receive cost-based Reactive Service payments as part of its fleet in the Baltimore Gas and Electric (BGE) Zone of PJM (Revised Reactive Rate Schedule). Constellation also requests a one-time waiver (Waiver Request) of the 90-day prior notice requirement set forth in Schedule 2 of the PJM OATT to facilitate the retirement of Perryman Unit CT 2, scheduled for February 1, 2016, and in anticipation of the subsequent retirement of Riverside Unit 4, scheduled for June 1, 2016. In this order, we accept the Revised Reactive Rate Schedule for filing,² to become effective February 1, 2016, and grant the Waiver Request. We also institute a proceeding pursuant to section 206 of the FPA³ in Docket No. EL16-57-000 regarding

¹ 16 U.S.C. § 824d (2012).

² Constellation Power Source Generation, LLC, Tariffs and Rate Schedules, FERC Rate Schedule No. 2 (1.0.0).

³ 16 U.S.C. § 824e (2012).

the justness and reasonableness of Constellation's reactive power rate for its fleet in the BGE Zone of PJM, establish a refund effective date, and establish hearing and settlement judge procedures.

I. Constellation's Filing

2. Schedule 2 of the PJM OATT, 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. Schedule 2 requires that at least 90 days before deactivating or transferring a resource receiving compensation for reactive supply and voltage support, 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.⁴

3. Constellation states that it currently owns and operates the following generation facilities located in the BGE Zone of the PJM balancing authority area: Gould Street Unit 3, Notch Cliff (Units CT 1 – CT 8), Perryman (Units CT 1 – CT 4), Perryman (Unit CT 6), Perryman (Unit 51), Philadelphia Road (Units CT 1 – CT 4), Riverside (Unit 4), Riverside (Units CT 7 – CT 8), and Westport Unit CT 5 (Constellation Units). Constellation states that the Constellation Units have a combined generation capacity of approximately 968 MW (summer rating).⁵ Constellation states that it is an indirect, wholly owned subsidiary of Exelon Generation Company, LLC (Exelon Generation). Constellation explains that although it is a member of PJM, Exelon Generation acts as the market participant in PJM for Constellation and the Constellation Units. Constellation's current annual revenue requirement (ARR) for providing Reactive Service to PJM is \$1,464,999, which is the remaining balance of the 1998 fleet-wide, Commission-approved revenue requirement.⁶

4. Constellation states that on June 1, 2014, Riverside Unit CT 6 retired; however, the OATT did not require reactive suppliers to revise existing Commission-approved

⁴ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

⁵ Constellation January 19, 2016 Transmittal Letter at 3 (Transmittal Letter).

⁶ *Id.*

rates as a result of changes in their fleet. Subsequently, on June 18, 2015, the Commission accepted for filing revisions to Schedule 2 of the OATT that adopted a new process for reactive power suppliers deactivating or transferring a generation unit.⁷

5. Constellation submits the filing due to the upcoming retirement of Perryman Unit CT 2 and in anticipation of the retirement of Riverside Unit 4.⁸ Constellation explains that the current ARR does not associate Reactive Service payments with individual units, but rather provides Constellation a fleet-wide revenue requirement for Reactive Service. In order to comply with Schedule 2, Constellation proposes to estimate per-unit revenue requirements by pro-rating the current ARR among its units based on the MVAR calculated from the MVA nameplate ratings of the units.⁹

6. Constellation states that the ARR for the retired Riverside Unit CT 6 is \$82,623, and the ARR for the retiring Perryman Unit CT 2 is \$71,981. Deducting these amounts from the current ARR results in the revised ARR of \$1,310,393, effective February 1, 2016. Constellation proposes to further revise the ARR, effective June 1, 2016, to reflect the retirement of Riverside Unit 4, for which the revenue requirement is \$70,124. Accordingly, Constellation states that effective June 1, 2016, the revised ARR will become \$1,240,269.¹⁰

II. Waiver Request

7. Constellation seeks waiver of the Schedule 2 requirement that a filing revising an existing reactive power cost-based revenue requirement be submitted at least 90 days prior to the date of retirement or transfer of a generation facility.¹¹ Constellation states that the Commission has previously granted limited waivers of electric tariff provisions, including the Schedule 2 prior notice requirement, when: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem needed

⁷ *Id.* at 4-5 (citing *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,224 (2015)).

⁸ Constellation further states that, on December 1, 2013, Constellation notified PJM of its intent to retire Riverside Unit 4 and identified June 1, 2016 as the target date for deactivation. *Id.* at 5.

⁹ *Id.*

¹⁰ *Id.* at 6; *see also* Exhibit A.

¹¹ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

to be remedied; and (4) the waiver did not have undesirable consequences, such as harming third parties.¹²

8. Constellation states that its failure to make the filing 90 days prior to the anticipated retirement of Perryman Unit CT 2 was the result of a failure to finalize processes to identify and meet the 90-day notice requirement. Constellation explains that the requirement became effective on June 18, 2015, and that not all relevant employees involved in the process of the retirement of a generating unit were adequately informed of the requirement. Constellation states that it has since revised its compliance processes to ensure that, in the event of the retirement or sale of a generation unit in PJM that receives reactive power compensation, the need to make a filing with the Commission is promptly identified and any necessary filing is timely submitted. Constellation asserts that the waiver is limited in scope because it pertains only to the new Schedule 2 90-day notice requirement and does not affect any other provision regarding either the retirement of Perryman Unit CT 2 or the compensation that Constellation receives for providing Reactive Service. Constellation states that the Waiver Request also remedies a concrete problem—that by granting waiver, the lower revised ARR can go into effect so as to coincide with the actual retirement of Perryman Unit CT 2. Constellation further states that the waiver will have no undesirable consequences and will not harm or otherwise affect third parties, and will benefit rate payers by allowing the rate to go into effect immediately.¹³

III. Deficiency Letter Response

9. On February 18, 2016, Commission staff, pursuant to delegated authority, issued a deficiency letter to Constellation requesting additional information. Specifically, Commission staff sought the following information: (1) a list of generation facilities owned by BGE at the time the Commission approved the original \$8,344,846 revenue requirement; (2) the D-curves (Reactive Capability Curve) for each generator unit and the latest copies of the PJM test reports, which depict the MVARs for both leading and lagging for each generator unit; (3) the generator's specific V-curve; and (4) a description of each generator including: the name of the manufacturer and model number, the type of generator (i.e. gas turbine, steam turbine), and nameplate MWs, MVARs, and MVAs.

¹² Transmittal Letter at 8 (citing *Innoventive Power LLC*, 152 FERC ¶ 61,057 (2015); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011); *Reliant Energy Seward, LLC*, 154 FERC ¶ 61,017, at PP 12-13 (2016) (granting waiver of the 90 day prior notice requirement of Schedule 2 to the OATT)).

¹³ *Id.* at 8.

10. On March 21, 2016, Constellation submitted its response to the deficiency letter. Regarding the first question, Constellation states that the following generating facilities were owned by BGE when the Commission approved the settlement establishing the \$8,344,846 fleet-wide ARR: Brandon Shores, Calvert Cliffs Nuclear Power Plant, C.P. Crane, H.A. Wagner, Gould Street, Notch Cliff, Perryman, Philadelphia Road, Riverside, and Westport. Constellation states the balance of the original facilities is included in the Rate Schedule and the difference between the original ARR and the sum of the allocated ARRs is Constellation's current ARR of \$1,464,999.¹⁴

11. Regarding the second question, Constellation attached D-Curves in Exhibit A of its answer to the deficiency letter. Constellation states that PJM test reports for the balance of the Remaining Facilities (Notch Cliff CT 2 – CT 4 and CT 6 – CT 8, Perryman CT 1 – CT 4, and Philadelphia Road CT 2 – CT 4) are not available. Constellation states that prior to October 1, 2014, the requirement to perform a reactive capability test as set forth in Attachment E of PJM Manual 14D: Generator Operational Requirements, applied to individual units with a nominal capacity greater than 70 MW, wind generating stations connected at a common bus with an aggregate rating greater than 70 MW, and all black start units.¹⁵

12. Regarding question three, Constellation states that the V-curves for the remaining facilities, with the exception of those for Perryman CT 1 – CT 4, Riverside CT 6, and Westport CT 5, are attached in Attachment C of its answer to the deficiency letter.¹⁶

13. Regarding question four, Constellation states that the requested generator data for the remaining facilities is attached in a table in Attachment D of its answer to the deficiency letter.

IV. Notice and Responsive Pleadings

14. Notice of Constellation's January 19, 2016 filing was published in the *Federal Register*, 81 Fed. Reg. 4284 (2016), with interventions and protests due on or before February 9, 2016. PJM submitted a timely motion to intervene.

¹⁴ Constellation March 21, 2016 Deficiency Letter Response at 2 (Response).

¹⁵ Response at 3.

¹⁶ *Id.*

15. Notice of Constellation's deficiency letter response in Docket No. ER16-746-001 was published in the *Federal Register*, 81 Fed. Reg. 18,618 (2016), with interventions and protests due on or before April 11, 2016. None were filed.

V. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁷ PJM's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

17. As Constellation's proposed Revised Reactive Rate Schedule is a rate decrease, we will accept it.¹⁸ Nevertheless, our preliminary analysis indicates that Constellation's proposed Revised Reactive Rate Schedule has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We also find that Constellation's proposed revenue requirement for Reactive Service provided by the Constellation Units raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in hearing and settlement judge procedures. Therefore, while we will accept Constellation's proposed Reactive Power Schedule, because a further rate decrease may be warranted,¹⁹ we will institute a section 206 proceeding in Docket No. EL16-57-000 with respect to the

¹⁷ 18 C.F.R. § 385.214 (2015).

¹⁸ We will waive the Commission's 60-day prior notice requirement. 18 C.F.R. § 35.3 (2015).

¹⁹ We note that the difference between Constellation BGE Zone Fleet's current MVAR capability and the MVAR capability that was originally used to calculate the revenue requirement for this fleet suggests degradation in reactive power output capability has occurred. For example, reactive power output capability at Perryman 51 and Gould Street generation facilities have degraded by 54.5 percent and 36 percent, respectively.

We further note that Commission staff will convene a workshop to discuss compensation for Reactive Service in the markets operated by Independent System Operators and Regional Transmission Organizations. *See* Notice of Workshop, Docket No. AD16-17-000 (March 17, 2016).

justness and reasonableness of Constellation's proposed rates,²⁰ establish a refund effective date, and set the filing for hearing and settlement judge procedures.²¹

18. We grant Constellation's request for waiver of the 90-day prior notice requirement in Schedule 2 of the PJM OATT. The Commission has granted 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.²²

19. We find that the circumstances of the instant case satisfy the foregoing criteria. First, we find that Constellation has acted in good faith and revised its compliance processes to ensure that, in the event of the retirement or sale of a generation unit in PJM that receives reactive power compensation, the need to make a filing with the Commission is promptly identified and any necessary filing is timely submitted. Second, we find that the waiver is limited in scope as it does not affect any other provision regarding either the retirement of Perryman Unit CT 2 or the compensation that Constellation receives for providing Reactive Service. Third, we find that the waiver addresses a concrete problem by allowing the lower revised ARR to have an effective date coinciding with the actual retirement of Perryman Unit CT 2. Finally, we find that the waiver does not harm a third party, and will only benefit rate payers by allowing the reduced rate to go into effect. Accordingly, we accept Constellation's proposed Reactive Power Schedule for filing, to be effective February 1, 2016, as requested.²³

20. 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

²⁰ See, e.g., *DATC Path 15, LLC*, 147 FERC ¶ 61,035, at P 19 (2014).

²¹ The Commission recently provided guidance on establishing or revising rates for Reactive Service. *Wabash Valley Power Association, Inc.*, 154 FERC ¶ 61,245, at PP 24-29 (2016); *Wabash Valley Power Association, Inc.*, 154 FERC ¶ 61,246, at PP 23-28 (2016).

²² See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Serv., Inc.*, 154 FERC ¶ 61,082, at P 12 (2016); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

²³ The Reactive Power Schedule provides for a revised ARR of \$1,310,393, effective February 1, 2016, and a revised ARR of \$1,240,269, effective June 1, 2016, as described above.

of notice of its intention to initiate such proceeding nor later than five months after the publication date.²⁴ 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.²⁵ That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL16-57-000 in the Federal Register.

21. Furthermore, as discussed in the Commission's November 20, 2014 Order to Show Cause in Docket No. EL15-15-000,²⁶ given that Constellation may have continued to receive payments for Reactive Service for units that were "no longer capable of providing that service," we have referred such concern to the Commission's Office of Enforcement for further examination and inquiry as may be appropriate.

22. 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. EL16-57-000 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, 2016, we expect that, if the proceeding does not settle, we would be able to render a decision by October 31, 2017.

23. 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

²⁴ 16 U.S.C. § 824e (b) (2012).

²⁵ 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).

²⁶ See *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,132, at P 10 (2014); see also *Duke Energy Conesville, LLC*, 150 FERC ¶ 61,229, at P 8 (2015); *Desoto Cnty. Generating Co., LLC*, 151 FERC ¶ 61,009, at P 14 (2015) (both referring to the Commission's Office of Enforcement the matter of a resource owner possibly receiving payments for Reactive Power Service while its facility was incapable of providing that service).

Commission's Rules of Practice and Procedure.²⁷ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise the Acting Chief Judge will select a judge for this purpose.²⁸ The settlement judge shall report to the Acting 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 Acting 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) Constellation's proposed Revised Reactive Rate Schedule is hereby accepted for filing, to become effective February 1, 2016, 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 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 proceeding in Docket No. EL16-57-000, concerning the justness and reasonableness of Constellation's Revised Reactive 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 (2015), the Chief Administrative Law 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

²⁷ 18 C.F.R. § 385.603 (2015).

²⁸ If the parties decide to request a specific judge, they must make their joint request to the Acting 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>).

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) 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. EL16-57-000.

(G) The refund effective date in Docket No. EL16-57-000 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 (F) above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.