

168 FERC ¶ 61,187
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

All Dams Generation, LLC	Docket Nos. ER16-2365-004
Mahoning Creek Hydroelectric Co., LLC	ER16-2366-002
York Haven Power Co., LLC	ER19-2454-000
Lake Lynn Generation, LLC	ER19-2453-000
York Haven Power Co., LLC	EL19-98-000
Lake Lynn Generation, LLC	EL19-99-000
	(Consolidated)

ORDER ACCEPTING INFORMATIONAL FILINGS, GRANTING WAIVER,
INSTITUTING SECTION 206 PROCEEDINGS, AND ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES

(Issued September 20, 2019)

1. On July 24, 2019, pursuant to Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff), All Dams Generation, LLC (All Dams), Lake Lynn Generation, LLC (Lake Lynn), Mahoning Creek Hydroelectric Company, LLC (Mahoning Creek), and York Haven Power Company, LLC (York Haven) (collectively, Project Companies) each submitted an informational filing, in advance of the sale of 100 percent of the indirect upstream ownership interests in the Project Companies (Proposed Transaction) to OPG Eagle Creek Holdings LLC (Buyer),¹ regarding their electric generating facilities' revenue requirement for reactive supply and voltage control from generation sources (Reactive Service). In addition, the Project Companies seek a limited, one-time waiver of the 90-day notice requirement set forth in Schedule 2 of the PJM Tariff, in order to accommodate the Proposed Transaction, which is expected to occur on or around September 30, 2019. Additionally, Lake Lynn and York Haven request that the Commission accept their existing Commission-approved rate

¹ Black River Hydroelectric, LLC, Joint Application for Authorization pursuant to Section 203 of the Federal Power Act and Request for Expedited Action, Docket No. EC19-116-000 (filed July 24, 2019).

schedules as baseline power tariffs in the Commission's eTariff system, effective September 23, 2019.

2. In this order, we accept the informational filings for informational purposes only and grant the waiver request. We also accept Lake Lynn and York Haven's Reactive Service Rate Schedules as baseline tariffs in eTariff, effective September 23, 2019, as requested, and institute a proceeding pursuant to section 206 of the Federal Power Act (FPA),² regarding the continued justness and reasonableness of Lake Lynn's and York Haven's rate schedules for Reactive Service, 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.³ Schedule 2 requires that at least 90 days before deactivating or transferring a resource receiving compensation for Reactive Service, the resource owner: (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

II. Informational Filings and Waiver Request

4. In accordance with Schedule 2, the Project Companies submitted an informational filing explaining the basis for not terminating or revising their generating facilities' reactive power cost-based rate schedules.

5. The Project Companies state that All Dams owns and operates the 6 MW Allegheny Lock & Dam No. 5 and the 8 MW Allegheny Lock & Dam No. 6 Hydroelectric Projects (All Dams Facilities), in Armstrong County, Pennsylvania. The All Dams Facilities are interconnected to the transmission system owned by American Transmission Systems, Incorporated (ATSI) and operated by PJM. The Project

² 16 U.S.C. § 824e (2018).

³ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

⁴ *Id.*

Companies state that the All Dams Facilities began commercial operations in 1989. The Project Companies state that All Dams' Reactive Service rate schedule was accepted in March 2017 in Docket No. ER16-2365.⁵

6. The Project Companies state that Lake Lynn owns and operates a 52 MW hydroelectric generation facility between Fayette County, Pennsylvania and Monongahela County, West Virginia (Lake Lynn Facility). The Lake Lynn Facility is interconnected to the transmission system owned by Allegheny Power and operated by PJM. Lake Lynn began commercial operations in 1926. The Project Companies state that the Commission accepted a settlement that included Lake Lynn's Reactive Service rate in February 2005 in Docket No. ER04-81 as part of Allegheny Energy Supply Company, LLC's (AE Supply) reactive power revenue requirement for its fleet and Lake Lynn succeeded to the revenue requirement of AE Supply.⁶

7. The Project Companies state that Mahoning Creek owns and operates the 6.4 MW Mahoning Creek hydroelectric facility in Armstrong County, Pennsylvania (Mahoning Creek Facility). The Mahoning Creek Facility is interconnected to the transmission system owned by ATSI and operated by PJM. The Project Companies state that the Mahoning Creek Facility began commercial operations in 2013 and Mahoning Creek's Reactive Service rate schedule was accepted in March 2017 in Docket No. ER16-2365.⁷

8. The Project Companies state that York Haven owns and operates a 19 MW hydroelectric generation facility in York Haven, Pennsylvania (York Haven Facility). The York Haven Facility is interconnected to the transmission system owned by Metropolitan Edison Company (MetEd) and operated by PJM.⁸ The Project Companies state that the York Haven Facility began commercial operations in 1901 and MetEd's legacy rate for reactive power was accepted in May 2006 in Docket No. ER06-833.⁹

9. The Project Companies state that the Proposed Transaction involves the transfer of 100 percent of the indirect upstream ownership interests in the Project Companies. The Project Companies state the Project Companies currently are indirectly owned by Cube

⁵ Informational Filings at 2 (citing *All Dams Generation, LLC*, 158 FERC ¶ 62,221 (2017)).

⁶ *Id.* at 3.

⁷ *Id.* (citing *All Dams Generation, LLC*, 158 FERC ¶ 62,221).

⁸ *Id.*

⁹ *Id.*

Hydro Partners, LLC (Cube Hydro), which is owned by Cube Hydro Holdco LLC (Cube Hydro Holdco) and a minority interest owner (together with Cube Hydro Holdco, Cube Sellers). The Project Companies state that, on July 24, 2019, in Docket No. EC19-116, Lake Lynn, Black River Hydroelectric, LLC, Cube Yadkin Generation LLC, Cube Yadkin Transmission LLC,¹⁰ PE Hydro Generation, LLC, and Buyer filed a joint application pursuant to FPA section 203 and Part 33 of the Commission's regulations seeking Commission approval of the Proposed Transaction.¹¹ In that pending filing, the joint applicants sought Commission approval of the Proposed Transaction by September 23, 2019. The Project Companies explain that the Proposed Transaction will be consummated as soon as possible, once they obtain all required approvals.¹²

10. The Project Companies state that the Proposed Transaction does not propose any physical changes to the All Dams, Lake Lynn, Mahoning Creek, or York Haven Facilities and that the Proposed Transaction will have no effect on the Project Companies' facilities or their Reactive Service rate schedules.¹³

11. Project Companies seek a one-time limited waiver of the 90-day prior notice requirement set forth in Schedule 2 of the PJM Tariff. Project Companies request that the Commission issue an order granting the waiver on or before September 23, 2019, in order to facilitate closing the Proposed Transaction by September 30, 2019.¹⁴

12. Project Companies assert that good cause exists to grant their waiver request. The Project Companies state that they acted in good faith, the waiver is of limited scope, the waiver would address a concrete problem, and the waiver does not have undesirable consequences, such as harming third parties. Project Companies state that they are acting in good faith by making the submission promptly upon executing an agreement for the Proposed Transaction. The Project Companies further argue that the waiver request is limited in scope, as it is a request for a one-time waiver of the procedural deadline set forth in Schedule 2 of the PJM Tariff. Project Companies maintain that the waiver

¹⁰ All Dams, Mahoning Creek, and York Haven are indirect subsidiaries of the Cube Companies.

¹¹ Black River Hydroelectric, LLC, Joint Application for Authorization pursuant to Section 203 of the Federal Power Act and Request for Expedited Action, Docket No. EC19-116-000 (filed July 24, 2019).

¹² *Id.* at 2.

¹³ Informational Filings at 4.

¹⁴ *Id.* at 7-8.

request does not involve any substantive requirements under Schedule 2 of the PJM Tariff. Finally, the Project Companies argue that absent the waiver, the Proposed Transaction could not be consummated until October 22, 2019.¹⁵

III. Notice and Responsive Pleadings

13. Notice of York Haven and Lake Lynn's Informational Filing was published in the *Federal Register*, 84 Fed. Reg. 37,271 (2019), with interventions and protests due on or before August 14, 2019. PJM filed a timely motion to intervene. No protests were filed.

14. Notice of All Dams and Mahoning Creeks' Informational Filing was published in the *Federal Register*, 84 Fed. Reg. 45,487 (2019), with interventions and protests due on or before August 27, 2019. None were filed.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), PJM's timely, unopposed motion to intervene serves to make it a party to the proceedings in the dockets in which it intervened.

B. Substantive Matters

16. We accept the informational filings for informational purposes only and grant the waiver request, as discussed below. We also accept Lake Lynn's and York Haven's proposed rate schedules as baseline tariffs in eTariff, effective September 23, 2019, as requested. However, the informational filings and proposed rate schedules raise concerns about the continued justness and reasonableness of Lake Lynn's and York Haven's Reactive Service rate schedules, including, but not limited to: possible degradation in the reactive output capability of the generating units because the reactive power test reports were not provided; the heating loss calculation is based upon Locational Marginal Pricing, which is not allowed;¹⁶ and the outdated federal income tax rate.¹⁷ Also, no explanation has been provided regarding the depreciation associated with components of the Lake Lynn and York Haven facilities that are 96 and 118 years old, respectively, the

¹⁵ *Id.* at 8.

¹⁶ *Dynegy Midwest Generation, Inc.*, Opinion No. 498, 121 FERC ¶ 61,025, at PP 69-71 (2007), *order on reh'g*, 125 FERC ¶ 61,280, at P 35 (2008).

¹⁷ 26 U.S.C. § 11(b) (2018) (lowering the corporate tax rate from 35 to 21 percent).

purchase price of the facilities, or the possible expenditures on upgrades made to the facilities. Accordingly, we institute a proceeding pursuant to FPA section 206 in Docket Nos. EL19-98-000 and EL19-99-000, to determine whether Lake Lynn's and York Haven's Reactive Service rate schedules remain just and reasonable. We further establish a refund effective date and hearing and settlement judge procedures.

17. We also grant the Project Companies requested waiver. 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.¹⁸ We find that the Project Companies' waiver request satisfies these criteria.

18. First, we find that the Project Companies acted in good faith by submitting their waiver request promptly upon executing a definitive sales agreement. Second, we find that the waiver request is limited in scope, because the Project Companies seek a one-time, limited waiver of the 90-day notice requirement under Schedule 2 of the PJM Tariff. Third, we find that the waiver requests address 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.

19. In cases where, as here, the Commission institutes a FPA section 206 investigation on its own motion, FPA section 206(b) 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.¹⁹ In such cases, in order to give maximum protection to customers, and consistent with our precedent, we have historically tended to establish the FPA section 206 refund effective date at the earliest date allowed by FPA section 206, and we do so here as well.²⁰ That date is the date of publication of notice of initiation of the FPA section 206 proceedings in Docket Nos. EL19-98-000 and EL19-99-000 in the *Federal Register*.

20. 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 FPA section 206

¹⁸ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

¹⁹ 16 U.S.C. § 824e(b).

²⁰ 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).

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 proceedings in Docket Nos. EL19-98-000 and EL19-99-000 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 September 30, 2020, we expect that, if the proceeding does not settle, we would be able to render a decision by July 30, 2021.

21. 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.²¹ 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.²² 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 Project Companies' waiver request is hereby granted, as discussed in the body of this order.

(B) The informational filings are hereby accepted for informational purposes only and Lake Lynn's and York Haven's proposed Reactive Service rate schedules are accepted as a baseline tariffs in eTariff, effective September 23, 2019, as requested, 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

²¹ 18 C.F.R. § 385.603 (2019).

²² 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>).

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 proceedings in Docket Nos. EL19-98-000 and EL19-99-000, concerning the justness and reasonableness of Lake Lynn's and York Haven's Reactive Service rate schedules, 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,²³ 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 (5) 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 Nos. EL19-98-000 and EL19-99-000 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

²³ 18 C.F.R. § 385.603.

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.

(H) 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 Nos. EL19-98-000 and EL19-99-000.

(I) The refund effective date in Docket Nos. EL19-98-000 and EL19-99-000 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)

Kimberly D. Bose,
Secretary.