

169 FERC ¶ 61,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Birchwood Power Partners, L.P.

Docket No. ER19-2856-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE SCHEDULE AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued November 22, 2019)

1. On September 23, 2019, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² Birchwood Power Partners, L.P. (Birchwood) submitted a proposed rate schedule³ for Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service Tariff) which specifies Birchwood's revenue requirement for Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service) under Schedule 2 of PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (Tariff).⁴ In this order, we accept Birchwood's proposed Reactive Service Tariff for filing and suspend it for a nominal period, to become effective September 24, 2019, as requested, subject to refund, and set the filing for hearing and settlement judge procedures.⁵

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. pt. 35 (2019).

³ Birchwood Power Partners, L.P., Birchwood Market Based Rate Tariff, [Rate Schedule No. 1, Reactive Supply and Voltage Control \(0.0.0\)](#).

⁴ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (4.0.0).

⁵ Although Birchwood has not previously filed for approval of a Reactive Service tariff, we conclude that this is a proposed rate change under section 205(d) of the FPA, rather than an initial rate, because Birchwood has been providing reactive power service to PJM prior to the instant filing. See *Calpine Oneta Power, L.P.*, 103 FERC ¶ 61,338, at P 11 (2003) (stating that, as the Oneta Project has been providing reactive power service under section 3.5 of its Interconnection Agreement, albeit, without charge, "the proposed rates for Reactive Power Service in the instant proceeding are not initial rates, but are changed rates.").

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.⁶

II. Filing

3. Birchwood states that it is a Delaware limited partnership that owns and operates the 258 MW generating facility in King George County, Virginia (Facility), which began commercial operation in 1996.⁷ Birchwood states that it is an Exempt Wholesale Generation that received Commission authorization to make wholesale sales of energy, capacity, and ancillary services at market-based rates.⁸ Birchwood further states that the Facility is interconnected to Virginia Electric and Power Company's (VEPCO) transmission system, which is operated by PJM.

4. Birchwood explains that, until May 8, 2019, Birchwood sold all the electrical output of the Facility to VEPCO under a bilateral power purchase and operating agreement (PPOA). On May 8, 2019, Birchwood, VEPCO, and Consolidated Edison Energy, Inc. (ConEd) entered into an agreement that amended the PPOA, where ConEd assumed VEPCO's remaining obligations under the PPOA, with certain limited exceptions.⁹ Birchwood states that PJM is currently performing studies under its Tariff to allow Birchwood, VEPCO, and PJM to enter into a new Interconnection Service Agreement for the Facility.¹⁰

5. Birchwood states that the Facility has been providing reactive supply service to the PJM transmission grid, as required by the PPOA.¹¹ Birchwood states that, before ConEd assumed VEPCO's obligations under the PPOA, VEPCO included the Facility in its fleet-wide Reactive Service revenue. Under the terms of the assignment, VEPCO submitted an informational filing to remove the Facility from its reactive power fleet

⁶ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (4.0.0).

⁷ Filing at 1-2.

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 3.

portfolio, which the Commission accepted on June 19, 2019.¹² Birchwood asserts that under the revised PPOA, Birchwood, not ConEd, has the right to seek compensation for providing reactive service.¹³ Birchwood states that it has been providing Reactive Service in PJM without compensation in accordance with the revised PPOA and the assignment agreement.

6. Birchwood states that it submits this Reactive Service Tariff to recover the costs of providing Reactive Service in PJM.¹⁴ Birchwood further states that the Rate Schedule sets forth a cost-based revenue requirement for providing Reactive Service. Birchwood asserts that it calculated the reactive power revenue requirement using the Commission-approved *American Electric Power Service Corp. (AEP)* methodology.¹⁵ Using this method, Birchwood calculated a total annual revenue requirement for Reactive Service of \$380,642, and a monthly revenue requirement of \$31,720.¹⁶

7. According to Birchwood, its proposed reactive power revenue requirement consists of fixed cost attributable to reactive power production capability (Fixed Capability Component). Birchwood explains that the Fixed Capability Component represents the portion of plant investment in the Facility that is attributable to the production of reactive power.¹⁷ Birchwood explains that it calculated its revenue requirement by analyzing: (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. Birchwood further explains that, because this equipment contributes to both real and reactive power, it developed allocation factors to apportion the plant investment between real and reactive functions.¹⁸ Birchwood then summed and multiplied the individual allocated amounts by a fixed charge rate to determine the Fixed Capability Component of the reactive power

¹² *Id.* (citing *Va. Elec. and Power Co.*, Docket No. ER19-1817 (June 19, 2019) (delegated order)).

¹³ *Id.* at 3-4.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 5 (citing *Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999) (*AEP*), *withdrawal of reh'g granted*, 92 FERC ¶ 61,001 (2000); *see also* *Dynegy Midwest Generation, Inc.*, Opinion No. 498, 121 FERC ¶ 61,025 (2007), *order denying reh'g in part and granting reh'g in part*, 125 FERC ¶ 61,280 (2008); *Wabash Valley Power Ass'n*, 154 FERC ¶ 61,246 (2016)).

¹⁶ *Id.* at 7; Ex. No. BPP-1, Direct Testimony of Dr. Paul A. Dumais at 9: 7-9.

¹⁷ Filing at 5.

¹⁸ *Id.*

revenue requirement for the Facility.¹⁹ Birchwood further asserts that it did not include heating losses or lost opportunity costs in its revenue requirement.²⁰

8. Birchwood explains that, as an Exempt Wholesale Generation, it is not subject to cost-of service accounting or the Commission's Uniform System of Accounts.²¹ Birchwood states that, consistent with the *AEP* methodology, it used a levelized annual carrying cost approach using VEPCO's authorized return on equity, 10.90 percent, which excludes the 50 basis-point adder for participating in PJM, and Birchwood's actual capital structure to develop the annual reactive power revenue requirement.²² Birchwood also states that the levelized annual carrying charge also includes operations and maintenance expenses, administrative and general expenses, working capital, depreciation expenses, property taxes, income taxes and accumulated deferred income taxes.

9. Birchwood requests waiver of the Commission's 60-day notice requirement to permit the proposed Rate Schedule to become effective September 24, 2019.²³ In support of its request for waiver, Birchwood states that the Facility is interconnected to PJM's transmission grid and provides Reactive Supply Service to PJM without compensation.²⁴ Birchwood argues that, absent the waiver, it would be required to provide Reactive Supply Service without compensation through the 60-day prior notice period.²⁵

10. Birchwood asserts that Exhibit Nos. BPP-3, BPP-4, BPP-5, and BPP-9 contain highly sensitive commercial information that is not otherwise publicly available, therefore it requests confidential treatment pursuant to 18 C.F.R. § 388.112 (2019).

III. Notice and Responsive Pleadings

11. Notice of Birchwood's September 23, 2019 filing was published in the *Federal Register*, 84 Fed. Reg. 51,535 (2019), with interventions and protests due on or before October 15, 2019. Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM, Dominion Energy Services, Inc. (Dominion), PJM, and Old

¹⁹ *Id.* at 5-6.

²⁰ Exhibit No. BPP-1, Direct Testimony of Dr. Paul A. Dumais at 11, 6:11.

²¹ Filing at 6.

²² *Id.* at 7.

²³ *Id.* at 1, 7.

²⁴ *Id.* at 7-8.

²⁵ *Id.* at 12.

Dominion Electric Cooperative filed timely motions to intervene. Dominion, on behalf of VEPCO, filed a protest and comments. On October 30, 2019, Birchwood filed an answer.

12. Dominion argues that Birchwood has not shown the proposed rates to be just and reasonable and the rates may be unjust, unreasonable, unduly discriminatory or preferential, substantially excessive or otherwise unlawful. Therefore, Dominion requests the Commission to reject the proposed Rate Schedule or, in the alternative, accept the rate, suspend it for five months, and set it for hearing proceedings.²⁶ Dominion argues that Birchwood provided limited publicly available financial data to support its filing, making it impossible to determine whether the rate is just and reasonable. Based on the publicly-filed information, Dominion states that the rate of return calculation shows that Birchwood has no outstanding long-term debt, which may overstate Birchwood's return. Dominion also claims that because there is no significant lapse between when expenses are incurred and then paid monthly in the PJM footprint, cash working capital should be excluded from the fixed charge rate calculations.²⁷

13. In its answer, Birchwood argues that it followed the *AEP* methodology for determining the cost-of-service associated with reactive power capability and that the Rate Schedule should be accepted. In response to Dominion's claims that it could not verify the rate due to Birchwood filing redacted information, Birchwood states that Dominion has not executed the non-disclosure certificate included in its September 23 filing. Had Dominion done so, Birchwood states that it would have provided Dominion the unredacted version of the filing. Birchwood notes that two of the documents filed as privileged are contracts to which Dominion is a signor.²⁸

14. In response to Dominion's specific rate claims, Birchwood argues that, contrary to Dominion's claims, using its actual capital structure in the rate of return calculation is consistent with Commission precedent and does not overstate the return. Birchwood claims that using a hypothetical capital structure or the capital structure of another company in its reactive power revenue requirement calculations, would understate Birchwood's return. Birchwood claims that it has no long-term debt because it used the funds from the assignment of the power purchase agreement to retire its long-term debt.²⁹ Birchwood also argues that Dominion has not substantiated its claim that cash working capital is not recoverable. Birchwood claims that generation facilities in PJM frequently include cash working capital in their reactive power rates and that the Commission does

²⁶ Dominion Protest at 1.

²⁷ *Id.* at 3.

²⁸ Birchwood Answer at 3-4.

²⁹ *Id.* at 5.

not require utilities to submit detailed and complex lead/lag studies to determine working capital requirements.³⁰

15. Finally, Birchwood argues that the Commission should not set this matter for hearing and settlement judge procedures because there are no material facts at issue that cannot be resolved based on the record. However, Birchwood contends, if the Commission were to set this matter for settlement or hearing procedures, there is no basis for a five-month suspension.³¹ Birchwood argues that Dominion failed to show that Birchwood's proposed cost-based revenue requirement is excessive by more than ten percent, as required by the Commission's *West Texas* precedent.³² Birchwood states that its filed reactive rate for the Facility is 300 percent less than the reactive power revenue requirement Dominion recovered for the Facility. Birchwood also claims that a five-month suspension would "lead to harsh and inequitable results" since it would be required to continue to provide Reactive Service to PJM without receiving compensation for doing so.³³

IV. Discussion

A. Procedural Matters

16. 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.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Birchwood's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

18. Our preliminary analysis indicates that Birchwood'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. Birchwood's filing raises issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Accordingly, we accept Birchwood's proposed Rate Schedule for filing and suspend it

³⁰ *Id.* at 7.

³¹ *Id.* at 10-11.

³² *Id.* at 12 (citing *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982)).

³³ *Id.* at 13-14.

for a nominal period to become effective September 24, 2019, as requested, subject to refund, and establish hearing and settlement judge procedures.

19. Although we are setting the Rate Schedule for hearing in its entirety, we note that Birchwood's filing contains no underlying support for the costs claimed for the Facility. Additionally, Birchwood's reactive power test reports appear to show degradation in the reactive output capability of the generating facility. Birchwood's filing also incorrectly uses the leading (absorbing) MVARs from the reactive power testing data to calculate the reactive power allocator instead of using the lagging (producing) MVARs which is a lower number.³⁴ Also, the fixed charge rate and the accessory electrical equipment costs may be excessive.

20. 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.³⁵ 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.³⁶ 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) Birchwood's proposed Rate Schedule is hereby accepted for filing and suspended for a nominal period, to become effective September 24, 2019, subject to refund, 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 sections 205 and 206 thereof, and pursuant to

³⁴ *AEP*, 88 FERC at 61,457 ("We agree with AEP (and the judge) that the allocation factor should be based on the capability of the generators to produce VARs...").

³⁵ 18 C.F.R. § 385.603 (2019).

³⁶ 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's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Birchwood'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 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.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,

Deputy Secretary.