

169 FERC ¶ 61,162
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Oxbow Creek Energy LLC

Docket Nos. ER19-2847-000
EL20-9-000

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

(Issued November 26, 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 Oxbow Creek Energy LLC (Oxbow Creek) submitted a proposed reactive power tariff (Rate Schedule)³ 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).⁴ In this order, we accept Oxbow Creek's filing, to become effective December 1, 2019, as requested, institute a proceeding pursuant to section 206 of the FPA,⁵ 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 Oxbow Creek is a new seller that has not previously provided reactive power services to PJM and has no prior transactions and no prior customers. *See Chehalis Power Generating, L.P.*, 152 FERC ¶ 61,050, at P 14 (2015) ("In order for a rate to be considered an initial rate, it must provide for a new service to a new customer.") (citing *Sw. Elec. Power Co.*, 39 FERC ¶ 61,099, at 61,293 (1987)).

⁴ Oxbow Creek Energy LLC, Reactive Power Tariff, [Oxbow Creek Energy LLC, Reactive Power Tariff \(0.0.0\)](#).

⁵ 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.⁶

II. Filing

3. Oxbow Creek 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. Oxbow Creek states that it is constructing a natural gas-fired electric generation facility with a capacity of 22.0 MW (nameplate) and a net output of 21.2 MW, located in Wyoming County, Pennsylvania (Facility). The Facility is comprised of five Innio Jenbacher JMS 624 type natural gas-fired reciprocating engine-generator sets, with a nameplate-rated capacity of 4.4 MW. Oxbow Creek states the Facility is scheduled to commence commercial operation on or before November 26, 2019.⁷

4. Oxbow Creek states that the Facility is interconnected to the system owned by Pennsylvania Electric Company (Penelec), which is operated by PJM. Oxbow Creek further states that under its interconnection agreement with Penelec, the Facility is obligated to supply Reactive Service.⁸ Oxbow Creeks adds that the Facility is the sixth in a series of projects to be constructed, owned and operated in the PJM region by Oxbow Creek's parent company, IMG Midstream LLC. (IMG Midstream).⁹

5. Oxbow Creek states that the cost-based revenue requirement included in its Rate Schedule is designed to recover costs directly associated with its provision of Reactive

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

⁷ Transmittal at 3.

⁸ Filing at Attachment B (Ex. No. OXB-1), Prepared Direct Testimony of Joseph W. Broadwater at 3.

⁹ Transmittal at 3-4. Each of the aforementioned IMG Midstream projects has submitted a Reactive Service Rate Schedule which was accepted by the Commission, subject to the institution of a section 206 proceeding. *See Wolf Run Energy LLC*, 166 FERC ¶ 61,151 (2019); *Alpaca Energy LLC*, 158 FERC ¶ 61,087 (2017); *Beaver Dam Energy LLC*, 155 FERC ¶ 61,086 (2016); and *Roundtop Energy LLC*, 155 FERC ¶ 61,085 (2016) (collectively, IMG Midstream Orders).

Service, as contemplated by Schedule 2.¹⁰ Oxbow Creek asserts that it derived this revenue requirement using the Commission-approved *American Electric Power Service Corp. (AEP)* methodology.¹¹ Oxbow Creek states that it calculated a fixed annual revenue requirement for Reactive Service of \$434,531, and a monthly revenue requirement of \$36,210.92.¹²

6. Oxbow Creek asserts that, consistent with *AEP* and each of the Rate Schedules accepted in the IMG Midstream Orders, its Reactive Service revenue requirement for the Facility consists of two components: (i) the fixed cost of the portion of the plant investment in the Facility attributable to the reactive power production (Fixed Capability Component); and (ii) the resulting increased generator and generator step-up (GSU) transformer heating losses (Heating Loss Component).¹³

7. Oxbow Creek states that it calculated the Facility's Fixed Capability Component by analyzing the reactive portion of investment in: (i) the generator and associated exciter equipment; (ii) GSU transformers; (iii) accessory electrical equipment that supports the operation of the generator-exciter system; and (iv) the balance of the plant.¹⁴ Oxbow Creek states that because each of these components contributes to reactive and real power, it multiplied these individual amounts by a reactive allocation factor to determine the reactive power portion of the investments.¹⁵ To derive its Reactive Service revenue requirement, Birdsboro states it used Penelec's authorized capital structure and return on equity.¹⁶

8. Oxbow Creek states that, consistent with Commission precedent, it calculated the Facility's Heating Loss Component, based on added incremental fuel and variable costs

¹⁰ *Id.* at 4.

¹¹ *Id.* at 5 (citing *Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999) (*AEP*), *order on reh'g*, 92 FERC ¶ 61,001 (2000)).

¹² Ex. No. OXB-1 at 12.

¹³ Transmittal at 5.

¹⁴ *Id.* at 5-6.

¹⁵ Transmittal at 6.

¹⁶ *Id.*

incurred in producing reactive power, using proxy data from the facility owned and operated by its affiliated entity, Beaver Dam Energy LLC.¹⁷

9. Finally, Oxbow Creek requests waiver of the Commission's 60-day notice requirement,¹⁸ to permit the Rate Schedule to become effective December 1, 2019.¹⁹ Oxbow Creek states that the requested effective date is consistent with PJM's practice of incorporating new revenue requirements into Schedule 2 of the PJM Tariff on the first day of the month in which the Commission accepts or approves the revenue requirement.

III. Notice and Responsive Pleadings

10. Notice of Oxbow Creek's filing was published in the *Federal Register*, 84 Fed. Reg. 51,536 (2019), with interventions and protests due on or before October 15, 2019. A timely-filed motion to intervene was submitted by Monitoring Analytics, LLC, acting in its capacity as PJM's Independent Market Monitor. On October 21, 2019, PJM filed a motion to intervene out-of-time. No protests were filed.

IV. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding. In addition, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we will grant PJM's unopposed late-filed motion to intervene, given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

V. Discussion

12. Our preliminary analysis indicates that Oxbow Creek'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. Oxbow Creek's filing 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 accept Oxbow Creek's Rate Schedule to become effective December 1, 2019, as requested, institute a proceeding pursuant to section 206 of the FPA in Docket No. EL20-9-000, establish a refund effective date, and set the filing for hearing and settlement judge procedures.

¹⁷ *Id.* at 7 (citing *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,245, at P 27 (2016)).

¹⁸ 18 C.F.R. § 35.3 (2019).

¹⁹ Transmittal at 1, 8.

13. Although we are setting the Rate Schedule for hearing in its entirety, we note that Oxbow Creek'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, all of which may be excessive.²⁰ Oxbow Creek has also not provided support for the generator manufacturer's nameplate MVAR and MVA numbers to justify the reactive power allocator used in its reactive power revenue calculation. We further note that Oxbow Creek has not provided underlying support for the costs claimed.²¹

14. 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 its 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.²² That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL20-9-000 in the *Federal Register*.

15. 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. EL20-9-000 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.

²⁰ *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,245, at P 29 (2016).

²¹ *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) (2018)); *Ariz. Pub. Serv. Co.*, 156 FERC ¶ 61,006, at P 36 (2016) (noting FPA section 205 and 18 C.F.R. § 35.13 and explaining that rate changes require "cost support and Commission review"), *order on reh'g and clarification*, 161 FERC ¶ 61,022 (2017), *vacated on other grounds, Ariz. Pub. Serv. Co. v. FERC*, No. 17-73244, 2019 WL 2484164 (9th Cir. June 14, 2019) (mem.).

²² *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).

16. 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.²³ 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.²⁴ 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) Oxbow Creek's proposed Rate Schedule is hereby accepted for filing to become effective December 1, 2019, 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. EL20-9-000 concerning the justness and reasonableness of Oxbow Creek'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.

²³ 18 C.F.R. § 385.603 (2019).

²⁴ 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>).

(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. EL20-9-000 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.

(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. EL20-9-000.

(H) The refund effective date in Docket No. EL20-9-000 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.