

171 FERC ¶ 61,174
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cordova Energy Company LLC

Docket No. ER20-1455-000

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

(Issued May 29, 2020)

1. On March 31, 2020, Cordova Energy Company LLC (Cordova) made a rate change filing pursuant to section 205(d) of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations² to include a rate schedule³ for Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service), as defined in Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff).⁴ In this order, we accept Cordova's proposed Rate Schedule for filing and suspend it for a nominal period, to become effective April 1, 2020, as requested, subject to refund, and establish hearing and settlement judge procedures.

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

¹ 16 U.S.C. § 824d(d) (2018).

² 18 C.F.R. pt. 35 (2019).

³ Cordova Energy Company LLC, Market Based Rate Tariff, [Rate Schedule FERC No. 1, Reactive Rate Schedule, 0.0.0 \(Rate Schedule\)](#).

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

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. Cordova states that it is a wholly-owned subsidiary of BHE Renewables, LLC, which is a direct, wholly-owned subsidiary of Berkshire Hathaway Energy.⁶ Cordova states that it is an exempt wholesale generator that is authorized by the Commission to sell energy, capacity, and certain ancillary services at market-based rates.⁷ Cordova further states that it owns a 611.2 MW natural gas fueled, combined-cycle electric generating facility (Cordova Facility) in Rock Island County, Illinois.⁸ Cordova states that the facility is interconnected to Commonwealth Edison Company's (ComEd) transmission system and sells its output into the PJM markets. Cordova states that the Cordova Facility began commercial operations in 2001 and the costs for the Cordova Facility have not been included in the rate base of any public utility.

4. Cordova states that its proposed Reactive Service revenue requirement is derived using the methodology the Commission adopted in *American Electric Power Service Corp.*⁹ Cordova also states that its proposed Reactive Service revenue requirement for the Cordova Facility represents the portion of the plant investment attributable to reactive power production (Fixed Capability Component).¹⁰ Cordova explains that it identified the costs of generators/exciters, GSU transformers, accessory electric equipment, and balance of plant that supports the generators/exciters at the Cordova Facility and then allocated those costs between real and reactive power using allocation factors to yield the total reactive portion of the investment.¹¹ Cordova states that it then multiplied this total investment in reactive power production facilities by a levelized annual carrying cost

⁵ *Id.*

⁶ Filing at 2.

⁷ Filing, Ex. No. CE-1 at 4:2-9 (citing *Cordova Energy Company LLC, et al.*, 87 FERC ¶ 61,108 (1999) (granting Cordova authority to sell electric energy and capacity at market-based rates)).

⁸ *Id.* at 3:16-23.

⁹ *Id.* at 6:9-14 (citing *Am. Elec. Power Service Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999) (*AEP*)).

¹⁰ Filing at 2.

¹¹ *Id.* at 3.

percentage, resulting in an annual revenue requirement for the Fixed Capability Component of \$1,032,150, with a monthly revenue requirement of \$86,012.¹²

5. Cordova states that it is a merchant generator that is not subject to traditional rate regulation and has received a waiver of the requirement to follow FERC's Uniform System of Accounts.¹³ Cordova also states that the Commission allows a merchant generator to use the cost of capital of the interconnected utility as a proxy for its own cost of capital.¹⁴ Cordova states that it used ComEd's capital structure, return on equity, and cost of debt as a proxy for the Cordova Facility.

6. Cordova requests that the Commission issue an order by May 31, 2020 and requests waiver of the Commission's prior notice requirement to permit Cordova's proposed Rate Schedule to become effective April 1, 2020. Alternatively, Cordova requests that the Commission permit an effective date for the Reactive Rate Schedule of May 1, 2020, consistent with PJM practice.¹⁵

III. Notice and Responsive Pleadings

7. Notice of Cordova's filing was published in the *Federal Register*, 85 Fed. Reg. 19,470 (Apr. 7, 2020), with interventions and protests due on or before April 21, 2020. Monitoring Analytics, LLC, acting in its capacity as PJM's Independent Market Monitor (Market Monitor), and PJM each filed a timely motion to intervene.

IV. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the Market Monitor's and PJM's timely, unopposed motions to intervene serve to make them parties to this proceeding.

B. Substantive Matters

9. Our preliminary analysis indicates that Cordova'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. Cordova's proposed Rate Schedule

¹² Filing, Ex. No. CE-1 at 16:9-15.

¹³ Filing at 3.

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 6.

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 Cordova's proposed Rate Schedule for filing and suspend it for a nominal period, to be effective April 1, 2020, as requested, subject to refund, and establish hearing and settlement judge procedures.

10. Although we are setting the Rate Schedule for hearing in its entirety, we note that the operation and maintenance costs, administrative and general costs, and accessory electric equipment costs may be excessive. Additionally, Cordova's reactive power test reports are invalid since the generator units were running at substantially less than maximum real power output during the test, and Cordova has not provided the manufacturer's nameplate data for each generator unit. Therefore, Cordova has not provided data to verify its reactive allocator. We also note that Cordova's filing lacks underlying cost support.¹⁶

11. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. 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.¹⁷ 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.¹⁸ The settlement judge shall report to the Chief Judge and the Commission within 60 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.

¹⁶ *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,245, at PP 28-29 (2016).

¹⁷ 18 C.F.R. § 385.603.

¹⁸ 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 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) Cordova's proposed Rate Schedule is hereby accepted for filing and suspended for a nominal period, to become effective April 1, 2020, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Cordova's proposed Rate Schedule. However, the hearing will 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 45 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 days of the date of this order.

(D) Within 60 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 parties 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 60 days thereafter, informing the Commission and the Chief Judge of the parties' 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 45 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, or remotely (by telephone or electronically), as appropriate. 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) Given that the circumstances caused by the COVID-19 pandemic may disrupt, complicate, or otherwise change the ability of participants to engage in normal hearing procedures, the Chief Judge is hereby authorized to set or change the dates for the commencement of the hearing and the issuance of the initial decision as may be appropriate.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.