

172 FERC ¶ 61,051
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Constellation Power Source Generation, LLC

Docket Nos. ER17-801-006
ER17-801-008
ER17-801-009
EL20-34-000

ORDER ACCEPTING INFORMATIONAL FILINGS, INSTITUTING PROCEEDING
UNDER SECTION 206, AND ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES

(Issued July 16, 2020)

1. On August 29, 2019, Constellation Power Source Generation, LLC (CPSG) submitted an informational filing, pursuant to Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (PJM Tariff),¹ relating to CPSG's rate schedule for Reactive Supply and Voltage Control from Generation or Other Sources Service (Reactive Service).² The informational filing provides notice of the planned deactivation of Riverside Unit 8 at the Riverside Generating Station (Riverside Informational Filing). On November 27, 2019, CPSG submitted an informational filing, pursuant to Schedule 2 of the PJM Tariff regarding the planned accelerated retirement and status of Notch Cliff Units 5-8 at the Notch Cliff Generating Station (Notch Cliff Informational Filing). CPSG seeks a one-time waiver of the 90-day notice requirement in Schedule 2 of the PJM Tariff. On March 2, 2020, CPSG submitted an informational filing, pursuant to Schedule 2 of the PJM Tariff, providing notice of the planned deactivation of Notch Cliff Units 1-4 at the Notch Cliff Generating Station and Westport Unit 5 at the Westport Generating Station (Westport Informational Filing). In this order, we accept CPSG's informational filings for informational purposes only, institute a proceeding pursuant to section 206 of the Federal Power Act (FPA)³ to examine the

¹ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (4.0.0).

² Constellation Power Source Generation, LLC, Reactive Rate Schedule, FERC Rate Schedule No. 2 (4.0.0).

³ 16 U.S.C. § 824e (2018).

continued justness and reasonableness of CPSG's rate schedule for Reactive Service, establish a refund effective date, 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 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.⁴ Schedule 2 requires that at least 90 days before deactivating or transferring a resource receiving compensation for Reactive Service, the resource owner must 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.

II. Riverside Informational Filing

3. CPSG states that it owns a number of fossil-fueled generation facilities in the Baltimore Gas and Electric Company zone. CPSG states that Riverside Unit 8 is a 23.8 MW (nameplate) oil-fired combustion turbine at the Riverside Generating Station, which is located in Dundalk, Maryland. CPSG states that it plans to retire Riverside Unit 8 and will deactivate it on November 30, 2019.⁵

4. CPSG explains that, on April 22, 2019, it and two of its affiliates filed a settlement addressing, among other things, CPSG's fleetwide reactive power revenue requirements. CPSG states that, also on April 22, 2019, it and two of its affiliates filed a motion to implement the settlement rates on an interim basis, which was granted. CPSG further explains that the Settlement Judge certified the settlement to the Commission on June 12, 2019. CPSG states that it is submitting this filing rather than a rate filing to remove Riverside Unit 8 from its rate schedule to avoid submitting an amended rate schedule that will supersede the interim rate schedule in effect while a settlement is pending with the Commission. CPSG states that it wanted to avoid making a rate filing that would remove the Riverside Unit 8 revenue requirement but restore the pre-interim rates for the balance of CPSG's units. CPSG states that, once the Commission approves the settlement, CPSG will first file the settlement rate schedule as a compliance filing, and then submit a compliance filing of the settlement rate schedule that provides for the elimination of Riverside Unit 8 to be effective on November 30, 2019. CPSG states that, if CPSG

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

⁵ Riverside Informational Filing at 1-2, 4.

receives compensation for Riverside Unit 8 for Reactive Service provided from the unit as of November 30, 2019, CPSG shall refund such compensation with interest calculated pursuant to section 35.19a of the Commission's regulations.⁶

III. Notch Cliff Informational Filing

5. CPSG states that Notch Cliff Units 5-8 are each approximately 18 MW (nameplate) natural gas-fired combustion turbines at the Notch Cliff Generating Station, which is located in Baltimore, Maryland. CPSG states that, on October 20, 2019, Notch Cliff Units 5-8 entered a forced outage as a result of an internal fault in a transformer, which CPSG later determined to be a catastrophic failure. CPSG states that it has determined that Notch Cliff Units 5-8 would be uneconomic if CPSG made the necessary project investment to return these units to operation prior to the previously planned retirement on June 1, 2020. CPSG states that it is requesting that PJM accelerate the retirement of these units from June 1, 2020 to March 1, 2020. CPSG states that these units will remain on forced outage until the retirement date.⁷

6. CPSG explains that it is submitting this filing rather than a rate filing to remove Notch Cliff Units 5-8 from its rate schedule because CPSG has committed to submit a compliance filing that addresses the retirement of Riverside Unit 8, and that will include Notch Cliff Units 5-8. Subject to Commission action on the compliance filing for Riverside Unit 8, CPSG states, it will then file a compliance filing for Notch Cliff Units 5-8 that provides for the elimination of the revenue requirements for Notch Cliff Units 5-8 on the outage date of October 20, 2019. CPSG states that, if CPSG receives compensation for Notch Cliff Units 5-8 for Reactive Service provided from the units as of October 20, 2019, CPSG shall refund such compensation with interest calculated pursuant to section 35.19a of the Commission's regulations.⁸

⁶ *Id.* at 3-5 & n.17. After CPSG submitted the Riverside Informational Filing, the Commission approved the settlement. *Constellation Power Source Generation, LLC*, 169 FERC ¶ 61,025 (2019). In accordance with the Commission's order approving the settlement, CPSG filed its rate schedule in a compliance filing, which was accepted on January 16, 2020.

⁷ Notch Cliff Informational Filing at 4.

⁸ *Id.* at 4-6 & n.19.

7. CPSG seeks a one-time waiver of the 90-day notice requirement in Schedule 2 of the PJM Tariff. CPSG argues that the waiver request meets all four waiver criteria.⁹

IV. Westport Informational Filing

8. CPSG states that Notch Cliff Units 1-4 are each approximately 18 MW (nameplate) natural gas-fired combustion turbines at the Notch Cliff Generating Station located in Baltimore, MD. Westport Unit 5 is an approximately 121.5 MW (nameplate) natural gas-fired combustion turbine at the Westport Generating Station located in Baltimore, MD. CPSG states that it plans to deactivate these five units as of June 1, 2020.¹⁰

9. CPSG states that following acceptance of the Riverside Informational Filing and the Notch Cliff Informational Filing, after the filing of the compliance filings for Riverside Unit 8 and Notch Cliff Units 5-8, and subject to Commission action on the Westport Informational Filing, it will then file a compliance filing for Notch Cliff Units 1-4 and Westport Unit 5 that provides for the elimination of the revenue requirements for these five units on June 1, 2020. CPSG states that, if CPSG receives compensation for Notch Cliff Units 1-4 or Westport Unit 5 for Reactive Service provided from these units as of June 1, 2020, CPSG shall refund such compensation with interest calculated pursuant to section 35.19a of the Commission's regulations.¹¹

V. Notice and Responsive Pleadings

10. CPSG served the Riverside Informational Filing, the Notch Cliff Informational Filing and the Westport Informational Filing on all persons designated on the official service list by the Secretary.¹² Notice of the Notch Cliff Informational Filing was published in the *Federal Register*, 84 Fed. Reg. 66,666 (Dec. 5, 2019), with interventions and protests due on or before December 18, 2019. None was filed. Notice of the Westport Informational Filing was published in the *Federal Register*, 85 Fed. Reg.

⁹ For example (1) acting 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.

¹⁰ Westport Informational Filing at 2, 5.

¹¹ *Id.* at 5-6 & n.19.

¹² See Riverside Informational Filing at 7; Notch Cliff Informational Filing at 9; Westport Informational Filing at 8.

13,156 (Mar. 6, 2020), with interventions and protests due on or before March 23, 2020. No interventions or protests were filed.

VI. Discussion

11. We accept the informational filings for informational purposes only. We note that CPSG submitted the Notch Cliff Informational Filing more than 90 days prior to the planned accelerated retirement date of the units and explained the unique circumstances surrounding the catastrophic failure of the units. Under these circumstances, we find that CPSG met the notice requirements of Schedule 2.

12. We will institute a proceeding under section 206 of the FPA as the informational filings and rate schedule raise concerns about the continued justness and reasonableness of CPSG's rate schedule.¹³ As CPSG acknowledges, CPSG's current rate schedule reflects the provision of Reactive Service from multiple units CPSG states have been deactivated. As a result, such rate schedule may be unjust and unreasonable. We therefore institute a proceeding under section 206 of the FPA in Docket No. EL20-34-000, to examine the continued justness and reasonableness of CPSG's rate schedule, establish a refund effective date, and establish hearing and settlement judge procedures.

13. 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 publication by the Commission of 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.¹⁴ That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL20-34-000 in the Federal Register.

14. 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. EL20-34-000 for

¹³ We note that interim rates or the pendency of Commission action on a filing should not pose an obstacle to making all appropriate section 205 filings through eTariff. Any questions as to how to make such filings can be directed to the Commission's eTariff help line at (202) 502-6501 or via email at etariffresponse@ferc.gov.

¹⁴ 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).

hearing and settlement 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 June 30, 2021, we expect that, if the proceeding does not settle, we would be able to render a decision by April 30, 2022.

15. 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.¹⁵ 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.¹⁶ The settlement judge shall report to the Chief Judge and the Commission within thirty 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.

The Commission orders:

(A) CPSG's informational filings are hereby accepted for informational purposes only, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory 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. EL20-34-000, concerning the justness and reasonableness of CPSG's rate schedule for Reactive Service, 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 Order Paragraphs D and E below.

¹⁵ 18 C.F.R § 385.603 (2019).

¹⁶ 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>).

(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 a 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.

(G) Any interested person desiring to be heard in Docket No. EL20-34-000 must file a notice of intervention or a 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.

(H) 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. EL20-34-000.

(I) The refund effective date in Docket No. EL20-34-000 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).

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.