

169 FERC ¶ 61,108
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tenaska Pennsylvania Partners, LLC

Docket No. ER20-17-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE SCHEDULE,
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES,
ACCEPTING INFORMATIONAL FILING, AND GRANTING WAIVER

(Issued November 18, 2019)

1. On October 1, 2019, and as supplemented on October 2, 2019, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² Tenaska Pennsylvania Partners, LLC (Tenaska Pennsylvania) submitted a rate schedule (Rate Schedule)³ for Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service) under Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff).⁴ On October 4, 2019, Tenaska Pennsylvania submitted an informational filing, pursuant to Schedule 2 of the PJM Tariff, relating to Tenaska Pennsylvania's proposed Rate Schedule for Reactive Service. The informational filing provides notice of a proposed upstream change in ownership of Tenaska Pennsylvania. Tenaska Pennsylvania seeks a one-time waiver of the 90-day notice requirement in Schedule 2 of the PJM Tariff.

2. In this order, we accept Tenaska Pennsylvania's proposed Rate Schedule for filing and suspend it for a nominal period, to become effective November 1, 2019, as requested, subject to refund, and establish hearing and settlement judge procedures. We also accept

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. pt. 35 (2019).

³ Tenaska Pennsylvania Partners, LLC, FERC FPA Electric Tariff, FERC Electric Tariffs, [Reactive, Rate Schedule FERC No. 1, 0.0.0](#).

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

Tenaska Pennsylvania's informational filing for informational purposes only and grant the waiver request.

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 each resource owner an amount equal to the resource owner's monthly revenue requirement, as accepted or approved by the Commission.⁵ 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. Filing of Rate Schedule

4. Tenaska Pennsylvania states that it is an exempt wholesale generator that owns and operates the Tenaska Westmoreland Generating Station (Facility), an approximately 1,133 MW (nameplate rating) natural gas-fired generation facility near Smithton, Westmoreland County, Pennsylvania. Tenaska Pennsylvania states that the membership interests of Tenaska Pennsylvania are owned by: (1) Tenaska Pennsylvania I, LLC (0.25 percent), (2) J-POWER Westmoreland, LLC (25 percent), (3) Tenaska Pennsylvania Holdings, LLC (24.75 percent), and (4) DGC Westmoreland, LLC (DGC Westmoreland) (50 percent). Tenaska Pennsylvania states that the Facility commenced operation in December 2018.⁶

5. Tenaska Pennsylvania states that it calculated the Facility's Fixed Capacity Component for Reactive Service using the methodology adopted in *American Electric Power Service Corp. (AEP Methodology)*.⁷ Tenaska Pennsylvania notes that the *AEP Methodology* considers the costs associated with four groups of plant investments: (1) generators/exciters; (2) generator step-up (GSU) transformers; (3) accessory electric

⁵ *Id.*

⁶ Transmittal at 3.

⁷ *Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141 (1999), *order on reh'g*, 92 FERC ¶ 61,001 (2000) (*AEP*).

equipment (AEE); and (4) remaining production plant investment.⁸ Tenaska Pennsylvania states that its total proposed annual cost-based revenue requirement for Reactive Service from the Facility is \$2,719,277.88. Tenaska Pennsylvania requests that the Commission accept the Rate Schedule for filing on or before November 29, 2019, and grant any necessary waivers of the Commission's regulations to permit an effective date for the Rate Schedule of November 1, 2019.⁹

6. Tenaska Pennsylvania states that, on October 2, 2019, it supplemented its original filing to provide one exhibit that it omitted because of problems with the Commission's eTariff filing system.

III. Informational Filing

7. Tenaska Pennsylvania states that DGC Westmoreland owns a 50 percent interest in Tenaska Pennsylvania. Tenaska Pennsylvania states that DGC Westmoreland is currently wholly owned by Diamond Generating LLC (DG LLC). Tenaska Pennsylvania explains that, in a proposed transaction, DG LLC will sell a 25 percent interest in DGC Westmoreland to Kyuden International Westmoreland, LLC. Tenaska Pennsylvania maintains that the proposed transaction does not change the underlying costs associated with the provision of Reactive Service and will not require any changes to the Rate Schedule. Tenaska Pennsylvania explains that, although the filing of the Rate Schedule is currently pending before the Commission, Tenaska Pennsylvania is submitting this informational filing because the consummation of the proposed transaction is anticipated to occur shortly after the requested effective date of the Rate Schedule.¹⁰

8. Tenaska Pennsylvania seeks a one-time waiver of the 90-day notice requirement in Schedule 2 of the PJM Tariff. Tenaska Pennsylvania states that good cause exists to grant its waiver request. Tenaska Pennsylvania argues that it acted in good faith by submitting this filing promptly after the execution of the Purchase and Sale Agreement for the proposed transaction, and the same day it filed an application for approval of the proposed transaction under FPA section 203. Tenaska Pennsylvania argues that the waiver request is limited in scope because it is a one-time waiver of a procedural deadline and does not affect any of the substantive requirements under Schedule 2 of the PJM Tariff. Tenaska Pennsylvania further maintains that the waiver request addresses a concrete problem because, absent the waiver, the consummation of the proposed transaction could be delayed. Finally, Tenaska Pennsylvania states that the waiver

⁸ Filing, Attachment B, Ex. TPP-1 at 8:18-9:1.

⁹ Transmittal at 1, 7.

¹⁰ Informational Filing at 1-3.

request will have no undesirable consequences, such as harming third parties. Tenaska Pennsylvania requests that the Commission act on the informational filing by November 18, 2019, the date requested by Tenaska Pennsylvania for Commission approval of the proposed transaction.¹¹

IV. Notice and Responsive Pleadings

9. Notice of the filing of the proposed Rate Schedule was published in the *Federal Register*, 84 Fed. Reg. 53,716 (2019), with interventions and protests due on or before October 22, 2019. Notice of the informational filing was published in the *Federal Register*, 84 Fed. Reg. 55,308 (2019), with interventions and protests due on or before October 25, 2019. PJM and Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (IMM), filed timely motions to intervene.

V. Discussion

A. Procedural Matters

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

B. Substantive Matters

11. Our preliminary analysis indicates that Tenaska Pennsylvania'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. Tenaska Pennsylvania's proposed Rate Schedule 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 Tenaska Pennsylvania's proposed Rate Schedule for filing and suspend it for a nominal period, to become effective November 1, 2019, as requested, subject to refund, and establish hearing and settlement judge procedures.

12. Although we are setting the Rate Schedule for hearing in its entirety, we note that the cash working capital, operations and maintenance costs, and administrative and general costs may be excessive. We also note that the components of the AEE are not provided and also lack cost support.¹² The filing lacks support from the generator manufacturers, including the nameplate MVARs used in calculating the reactive

¹¹ *Id.* at 5.

¹² *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,245, at PP 28-29 (2016).

allocator. Exhibit No. TPP-6 of the filing states that the MVAR capability of the plant is 702.2 MVARs; however, it also states that the maximum lagging MVARs delivered is 203.9 MVARs.

13. We accept the informational filing for informational purposes only. As discussed below, we grant Tenaska Pennsylvania's waiver request. 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.¹³

14. We find that the circumstances of the instant case satisfy the foregoing criteria. First, we find that Tenaska Pennsylvania acted in good faith by submitting the informational filing promptly after the execution of the Purchase and Sale Agreement for the proposed transaction and concurrently with the filing of the FPA section 203 application. Second, we find that the waiver request is limited in scope as Tenaska Pennsylvania seeks a limited, one-time waiver of the 90-day notice requirement in Schedule 2 of the PJM Tariff, and the request does not relate to any other requirements under Schedule 2. Third, we find that the waiver request addresses a concrete problem because, absent the requested waiver, the consummation of the proposed transaction could be delayed. Finally, we find that the waiver request does not result in undesirable consequences, such as harm to third parties.

15. While we are setting Tenaska Pennsylvania's proposed Rate Schedule 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.¹⁴ 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.¹⁵ 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

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

¹⁴ 18 C.F.R. § 385.603 (2019).

¹⁵ 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>).

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) Tenaska Pennsylvania's proposed Rate Schedule is hereby accepted for filing and suspended for a nominal period, to become effective November 1, 2019, as requested, 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 by the FPA, particularly sections 205 and 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), a public hearing shall be held concerning the justness and reasonableness of Tenaska Pennsylvania's proposed Rate Schedule. 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 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 sixty (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 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) Tenaska Pennsylvania's informational filing is hereby accepted for informational purposes, as discussed in the body of this order.

(G) Tenaska Pennsylvania's waiver request is granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.