

167 FERC ¶ 61,262
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Diamond State Generation Partners, LLC

Docket Nos. ER14-1421-001
EL19-74-000

ORDER ACCEPTING INFORMATIONAL FILING, INSTITUTING SECTION 206
PROCEEDING, DISMISSING WAIVER, AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued June 25, 2019)

1. On January 29, 2019, Diamond State Generation Partners, LLC (Diamond State) 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 Diamond State's rate schedule for Reactive Supply and Voltage Control from Generation or Other Sources Service (Reactive Service).² The informational filing provides notice of a planned indirect transfer of an upstream ownership interest in Diamond State to the Canada Pension Plan Investment Board (CPPIB) in a transaction submitted for Commission approval in Docket No. EC19-51-000 (Transaction). Diamond State seeks a one-time waiver of the 90-day notice requirement in Schedule 2 of the PJM Tariff. In this order, we accept Diamond State's informational filing for informational purposes only, institute a proceeding pursuant to section 206 of the Federal Power Act (FPA)³ regarding the continued justness and reasonableness of Diamond State's rate for providing Reactive Service in PJM, establish a refund effective date, and establish hearing and settlement judge procedures. We also dismiss the waiver request as moot.

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

² Diamond State Generation Partners, LLC, Volume 1, RSS Tariff (0.0.0).

³ 16 U.S.C. § 824e (2012).

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.

3. If a resource owner submits an informational filing, Schedule 2 requires that the resource owner provide certain information regarding the facility(ies) included in the resource owner's cost-based rate schedule including, among other things, "the actual (site-rated) megavolt-ampere reactive (MVAR) capability, megavolt-ampere (MVA) capability, and megawatt capability of each generator or other source, as supported by test data."⁵

II. Filing

4. Diamond State states that it is a Delaware limited liability company that owns and operates two solid oxide fuel cell generating facilities located on two sites in New Castle County, Delaware (Facilities). Diamond State states that the Facilities are interconnected to the Delmarva Power & Light Company transmission and distribution system, within the balancing area authority of PJM. Diamond State explains that its Reactive Service rate schedule provides a cost-based revenue requirement for the provision of Reactive Service solely from Diamond State's Red Lion Energy Center Project (Red Lion Facility), located in New Castle, Delaware, which has a generating capacity of 27 MW. Diamond State states that its Reactive Service rate schedule does not include any revenue requirement for its other generating facility, the Brookside Facility, which is located in

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

⁵ *Id.*

Brookside, Delaware.⁶ Diamond State states that the Commission accepted its Reactive Service rate schedule in 2014.⁷

5. Diamond State states that the Transaction involves a conversion by CPPIB of certain debt to equity in Bloom Energy Corporation (Bloom), of which Diamond State is an indirect subsidiary. Upon conversion, Diamond State explains, CPPIB will hold a greater than 10 percent equity interest in Bloom, which will give CPPIB a greater than 10 percent voting interest in Bloom and, indirectly, Diamond State.⁸

6. Diamond State alleges that there is no basis to revise or terminate its Reactive Service rate schedule as a result of the Transaction because the Transaction will have no direct impact on Diamond State or its provision of Reactive Service.⁹ Therefore, consistent with Schedule 2, it is submitting this informational filing together with the information required under Schedule 2. With respect to Schedule 2's requirement to provide with the informational filing "the actual (site-rated) megavolt-ampere reactive (MVAR) capability, megavolt-ampere (MVA) capability, and megawatt capability of each generator or other source, as supported by test data," Diamond State maintains that this facility is not subject to PJM reactive capability testing. Noting PJM's manual, Diamond State alleges that PJM generally only performs reactive capability testing on individual generating units with a nameplate rating greater than 20 MVA, or plants/facilities with an aggregate MVA rating greater than 75 MVA.¹⁰ Diamond State argues that the Red Lion Facility does not meet either threshold. Diamond State explains that the Red Lion Facility is comprised of no more than 135 individual fuel cells, each with nameplate capacity values of 250 kW or less. Moreover, Diamond State states, the aggregate nameplate MVA rating of all the individual fuel cells in this facility is 30 MVA. Thus, Diamond State concludes, the Red Lion Facility is not subject to testing.¹¹

⁶ Informational Filing at 3-4.

⁷ *Id.* at 4; see *Diamond State Generation Partners, LLC*, Docket No. ER14-1421-000 (Apr. 25, 2014) (delegated order).

⁸ Informational Filing at 4-5.

⁹ *Id.* at 8.

¹⁰ *Id.* at 9 (citing PJM, PJM Manual 14D: Generator Operational Requirements (rev. 47, 2018), at 117).

¹¹ *Id.*

7. Diamond State seeks a one-time waiver of the 90-day notice requirement in Schedule 2 of the PJM Tariff. Diamond State states that good cause exists to grant its waiver request. Diamond State 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. Diamond State further maintains that the waiver request addresses a concrete problem because, absent the waiver, the parties will not be able to consummate the Transaction until 90 days after the submittal of the informational filing. Finally, Diamond State states that the waiver request will have no undesirable consequences, such as harming third parties. Diamond State requests that the Commission act on the informational filing by March 11, 2019, the date requested by Diamond State for Commission approval of the Transaction.¹²

III. Notice and Responsive Pleadings

8. Notice of the filing was published in the *Federal Register*, 84 Fed. Reg. 2211 (2019), with interventions and protests due on or before February 19, 2019. None was filed.

IV. Discussion

9. We accept the informational filing for informational purposes only. We find, however, that Diamond State's Reactive Service rate schedule may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Diamond State's informational 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 institute a proceeding under section 206 of the FPA in Docket No. EL19-74-000, to examine the justness and reasonableness of Diamond State's rate for Reactive Service, establish a refund effective date, and establish hearing and settlement judge procedures.

10. Although we are setting Diamond State's rate for Reactive Service for hearing in its entirety, we note that Diamond State did not include test reports in support of the Red Lion Facility's reactive power capability, as required by Schedule 2 of the PJM Tariff.¹³ As the Commission has explained, if the reactive power capability of a generating unit has degraded since the Commission approved the relevant reactive power revenue requirement (and the generating unit has not been refurbished or had generating equipment replaced), the payment for Reactive Service from that generating unit should

¹² *Id.* at 5-7.

¹³ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (4.0.0).

reflect such circumstance.¹⁴ Absent the test data required by Schedule 2, we cannot determine whether such degradation has occurred with respect to the Red Lion Facility and, therefore, must set Diamond State's Reactive Service rate for hearing and settlement judge procedures. Diamond State contends that it is not required to include with its informational filing such test data because the fuel cells that comprise the Red Lion Facility do not meet the threshold requirement for testing, as outlined in the PJM manual (i.e., the fuel cells that comprise the Red Lion Facility do not, individually, have a nameplate rating greater than 20 MVA or, in the aggregate, have a rating greater than 75 MVA).¹⁵ Schedule 2, however, does not include any threshold requirement regarding the requirement to include test data to support the resource's MVAR, MVA, and MW capability, and in the event of a conflict between a filed tariff and an unfiled business practice manual, the tariff governs.¹⁶

11. We also dismiss the waiver request as moot. Absent waiver, the 90-day notice period ended on April 29, 2019. Moreover, the Commission approved the Transaction on March 14, 2019.¹⁷

12. 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 established the section 206 refund

¹⁴ See *Wabash Valley Power Ass'n, Inc.*, 154 FERC ¶ 61,245, at PP 28-29 (2016) (explaining that, if the reactive output capability of a generating unit has degraded since the Commission approved the relevant reactive power revenue requirement (and the generating unit has not been refurbished or had generating equipment replaced), the payment for Reactive Service from that generating unit should reflect such circumstance).

¹⁵ Informational Filing at 9 (citing PJM, PJM Manual 14D: Generator Operational Requirements (rev. 47, 2018), at 117).

¹⁶ *Cal. Indep. Sys. Operator Corp.*, 154 FERC ¶ 61,122, at P 16 (2016) ("Commission precedent has long held that when a conflict exists between a filed tariff and an unfiled business practice manual, the tariff governs") (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,113, at P 47 (2006) ("the filed and accepted tariff is the governing document and not the Business Practice Manuals - the former has precedence over the latter and not the other way around"))).

¹⁷ *Bloom Energy Corp.*, 166 FERC ¶ 62,120 (2019) (delegated order).

effective date at the earliest date allowed by section 206, and we do so here as well.¹⁸ That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL19-74-000 in the *Federal Register*.

13. 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. EL19-74-000 for 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, 2020, we expect that, if the proceeding does not settle, we would be able to render a decision by April 30, 2021.

14. 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.¹⁹ 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.²⁰ 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.

¹⁸ 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).

¹⁹ 18 C.F.R. § 385.603 (2018).

²⁰ 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 orders:

(A) Diamond State's informational filing is 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. EL19-74-000, concerning the justness and reasonableness of Diamond State's Reactive Service revenue requirement, 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, 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) Any interested person desiring to be heard in Docket No. EL19-74-000 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 (2018), 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 <https://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 proceeding under section 206 of the FPA in Docket No. EL19-74-000.

(H) The refund effective date in Docket No. EL19-74-000 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.

(I) Diamond State's Waiver Request is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.