

168 FERC ¶ 61,073
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 No. ER14-1421-002

ORDER ACCEPTING INFORMATIONAL FILING AND GRANTING WAIVER

(Issued August 1, 2019)

1. On June 20, 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 controlling ownership interest in Diamond State to Southern Power Company (Southern Power) in a transaction submitted for Commission approval in Docket No. EC19-105-000 (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 and grant the waiver request.

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.³ 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

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

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

3. 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, 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 Brookside, Delaware.⁴ Diamond State states that the Commission accepted its Reactive Service rate schedule in 2014.⁵

4. Diamond State states that pursuant to the Transaction, Diamond State will grant Southern Power 100 percent of the passive Class B membership interests in Diamond State, and Southern Power will make certain investments in Diamond State over a period of approximately six to nine months. In connection with these investments, Diamond State explains, Diamond State will proportionally redeem Diamond State Generation Holdings, LLC's (Diamond State Holdings) Class A membership interests in Diamond State such that the respective membership interests held by Diamond State Holdings and Southern Power will reflect such entities' respective investments in Diamond State.⁶ Diamond State explains that, once the Commission authorizes the change in control of Diamond State from Diamond State Holdings to Southern Power pursuant to the

⁴ Informational Filing at 3; June 21, 2019 Errata at 1.

⁵ Informational Filing at 4; see *Diamond State Generation Partners, LLC*, Docket No. ER14-1421-000 (Apr. 25, 2014) (delegated order).

⁶ Informational Filing at 5. Diamond State states that Diamond State Holdings is an indirect, wholly-owned subsidiary of Bloom Energy Corporation (Bloom). *Id.* at 1. As Diamond State explained in another recent informational filing, Diamond State is an indirect subsidiary of Bloom. Informational Filing, Docket No. ER14-1421-001, at 1 (filed Jan. 29, 2019).

Transaction, and 100 percent of Diamond State Holdings' membership interests have been redeemed, Southern Power will become the managing member of Diamond State.⁷

5. Diamond State alleges that there is no basis to revise or terminate its Reactive Service rate schedule as a result of the Transaction. Therefore, Diamond State explains, it is submitting this informational filing together with the information required under Schedule 2.⁸

6. 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 August 5, 2019, the date requested by Diamond State for Commission approval of the Transaction.⁹

III. Notice and Responsive Pleadings

7. Notice of the filing was published in the *Federal Register*, 84 Fed. Reg. 30,710 (2019), with interventions and protests due on or before July 11, 2019. Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (IMM), 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 (2018), the IMM's timely, unopposed motion to intervene serves to make it a party to this proceeding.

⁷ Informational Filing at 5-6.

⁸ *Id.* at 7.

⁹ *Id.* at 6.

B. Substantive Matters

9. We accept the informational filing for informational purposes only.¹⁰

10. As discussed below, we grant Diamond State'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.¹¹ We find that the circumstances of the instant case satisfy the foregoing criteria.

11. First, we find that Diamond State acted in good faith by submitting the informational filing concurrently with the filing of the Transaction. Second, we find that the waiver request is limited in scope as Diamond State 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 Transaction could be delayed. Finally, we find that the waiver request does not result in undesirable consequences, such as harm to third parties.

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) Diamond State's waiver request is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁰ In Docket No. EL19-74-000, there are ongoing hearing and settlement judge procedures concerning the justness and reasonableness of Diamond State's Reactive Service revenue requirement. *See Diamond State Generation Partners, LLC*, 167 FERC ¶ 61,262 (2019).

¹¹ *See, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).