

169 FERC ¶ 61,101
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Energy Center Dover LLC

Docket No. ER19-668-001

ORDER ACCEPTING INFORMATIONAL FILING AND GRANTING WAIVER

(Issued November 7, 2019)

1. On September 26, 2019, Energy Center Dover LLC (Dover) submitted an informational filing, pursuant to Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (PJM Tariff) with respect to Dover's rate schedule for Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service).¹ The informational filing provides notice of a planned transfer of indirect interests in Dover to DB Energy Assets, LLC (Buyer) (Proposed Transaction). Dover seeks a one-time waiver of the 90-day notice requirement in Schedule 2 of the PJM Tariff. In this order, we accept Dover'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 maintaining the capability to provide reactive power to PJM. 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.² Schedule 2 requires that at least 90 days before deactivating or transferring a resource receiving compensation for Reactive Service, the resource owner either: (1) submit a filing to either terminate or adjust its cost-based rate schedule to account for the deactivated or transferred unit; or

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

² *Id.*

(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

II. Informational Filing

3. Dover states that it is an exempt wholesale generator with market-based rate authority that owns and operates a 104 MW natural gas-fired generation facility in Dover, Delaware. Dover states that the facility consists of one steam turbine and two combustion turbines.⁴

4. Dover states that all of the membership interests of Dover are currently owned by Clearway Thermal LLC (Clearway Thermal). Dover states that, through the Proposed Transaction, Buyer will acquire all of the membership interests of Dover from Clearway Thermal. As a result, Dover states, Dover will become a wholly-owned subsidiary of Buyer. Dover states that the Proposed Transaction does not change the underlying costs associated with the facility's provision of Reactive Service and thus does not require any changes to the PJM Tariff. Therefore, Dover states, it is submitting this informational filing.⁵

5. Dover seeks a one-time waiver of the 90-day notice requirement in Schedule 2 of the PJM Tariff. Dover states that good cause exists to grant its waiver request. Dover argues that it acted in good faith by submitting this filing as soon as possible following the execution of the Purchase and Sale Agreement relating to the Proposed Transaction, and concurrently with the filing of an application for Commission approval under section 203 of the Federal Power Act.⁶ Dover also argues that its 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. Dover further claims that the waiver request addresses a concrete problem because, absent the waiver, the consummation of the Proposed Transaction could be delayed. Finally, Dover argues that the waiver request does not have undesirable consequences.⁷ Dover requests

³ *Id.*

⁴ Informational Filing at 2.

⁵ *Id.* at 2-4.

⁶ *See* Energy Center Dover LLC and DB Energy Assets, LLC, Joint Application for Authorization under Section 203 of the Federal Power Act, Docket No. EC19-142-000 (filed Sept. 26, 2019).

⁷ Informational Filing at 7.

that the Commission act on the informational filing and grant the waiver request by November 8, 2019, the date requested for Commission approval of the Proposed Transaction.⁸

III. Notice and Responsive Pleadings

6. Notice of the filing was published in the *Federal Register*, 84 Fed. Reg. 52,499 (2019), with interventions and protests due on or before October 17, 2019. Buyer filed a timely motion to intervene.

IV. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), Buyer's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

8. We accept the informational filing for informational purposes only and as discussed below, we grant Dover'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.⁹

9. We find that the circumstances of the instant case satisfy the foregoing criteria. First, we find that Dover acted in good faith by submitting this filing soon after the execution of the Purchase and Sale Agreement relating to the Proposed Transaction, and concurrently with the filing of the section 203 application. Second, we find that the waiver request is limited in scope because Dover seeks a one-time, limited waiver of the 90-day notice requirement under 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.

⁸ *Id.* at 6.

⁹ See *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

The Commission orders:

(A) Dover's informational filing is hereby accepted for informational purposes only, as discussed in the body of this order.

(B) Dover'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.