

170 FERC ¶ 61,197
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Panda Liberty LLC	Docket Nos. ER20-870-000
Panda Patriot LLC	ER20-871-000

Panda Liberty LLC	ER20-873-000
Panda Patriot LLC	
Hamilton Projects Acquiror, LLC	

ORDER ACCEPTING INFORMATIONAL FILINGS AND GRANTING WAIVER

(Issued March 17, 2020)

1. On January 24, 2020, pursuant to Schedule 2 of the PJM Interconnection, L.L.C. (PJM Tariff),¹ Panda Liberty LLC (Panda Liberty) and Panda Patriot LLC (Panda Patriot) in Docket Nos. ER20-870-000 and ER20-871-000, respectively (Project Companies) each submitted an informational filing regarding the planned transfer (the Proposed Transaction) of the Panda Liberty facility and Panda Patriot facility, respectively. The informational filings relate to the Project Companies' rate schedules for Reactive Supply and Voltage Control from Generation or Other Sources Service (Reactive Service).²

2. Also, on January 24, 2020, in Docket No. ER20-873-000, pursuant to Rule 212 of the Commission's Rules of Practice and Procedure,³ the Project Companies and Hamilton Projects Acquiror, LLC (Movants) filed a motion seeking a one-time, partial waiver of the 90-day notice requirement set forth in Schedule 2 of the PJM Tariff with respect to the Project Companies' informational filings.

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

² Panda Liberty LLC, Panda Liberty LLC Market-Based Rate Tariff Database, Reactive Power Tariff, Reactive Power Rate Schedule (2.0.0); Panda Patriot LLC, Panda Patriot LLC Market-Based Rate Tariff Database, Reactive Power Tariff, Reactive Power Rate Schedules (2.0.0).

³ 18 C.F.R. § 385.212 (2019).

3. In this order, we accept the Project Companies' informational filings for informational purposes only and grant the waiver request.

I. Background

4. 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 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.⁵

II. Panda Liberty Informational Filing

5. Panda Liberty states that it owns and operates an approximately 756 MW (summer rating) natural gas-fired generating facility located in Bradford County, Pennsylvania. Panda Liberty states that the Panda Liberty facility is interconnected to the transmission system owned by Pennsylvania Electric Company and operated by PJM. Panda Liberty states that it is an exempt wholesale generator (EWG) under the Public Utility Holding Company Act of 2005 (PUHCA). Panda Liberty states that the Commission has authorized Panda Liberty to sell energy, capacity, and certain ancillary services at market-based rates.⁶

6. Panda Liberty states that it is a wholly-owned direct subsidiary of Panda Liberty Intermediate Holdings III LLC, which is a wholly-owned direct subsidiary of Panda Liberty Intermediate Holdings II LLC (Panda Liberty Intermediate II), which is currently a wholly-owned direct subsidiary of Panda Liberty Intermediate Holdings I LLC. Panda Liberty states that, through the Proposed Transaction, Buyer will acquire 100% of the direct equity interests in Panda Liberty Intermediate II and as a result will indirectly own 100% of the equity interests in Panda Liberty. Panda Liberty states that the Proposed Transaction does not change the underlying costs associated with the Panda Liberty

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

⁵ *Id.*

⁶ Panda Liberty Informational Filing at 2-3.

facility's provision of Reactive Service, and it will not require any changes to the rate schedule.⁷

III. Panda Patriot Informational Filing

7. Panda Patriot states that it owns and operates an approximately 765 MW (summer rating) natural gas-fired facility located in Montgomery, Pennsylvania. Panda Patriot states that the Panda Patriot facility is interconnected to the transmission system owned by PPL Electric Utilities Corporation and operated by PJM. Panda Patriot states that it is an EWG under PUHCA. Panda Patriot states that the Commission has authorized Panda Patriot to sell energy, capacity, and certain ancillary services at market-based rates.⁸

8. Panda Patriot states that it is a wholly-owned direct subsidiary of Panda Patriot Intermediate Holdings III LLC, which is a wholly-owned direct subsidiary of Panda Patriot Intermediate Holdings II LLC (Panda Patriot Intermediate II), which is currently a wholly-owned direct subsidiary of Panda Patriot Intermediate Holdings I LLC. Panda Patriot states that, through the Proposed Transaction, Buyer will acquire 100% of the direct equity interests in Panda Patriot Intermediate II and as a result will indirectly own 100% of the equity interests in Panda Patriot. Panda Patriot states that the Proposed Transaction does not change the underlying costs associated with the Panda Patriot facility's provision of Reactive Service, and it will not require any changes to the rate schedule.⁹

IV. Waiver Request

9. Movants request a one-time, partial waiver of the 90-day notice requirement under Schedule 2 of the PJM Tariff. Movants explain that, other than the expiration of the 90-day notice period that is the subject of the waiver request, all of the Movants' approvals and consents are expected to be obtained by March 17, 2020. Movants note that the most time-consuming of these other approvals and consents is likely to be Movants' joint application for approval under section 203 of the Federal Power Act

⁷ *Id.* at 3.

⁸ Panda Patriot Informational Filing at 2-3.

⁹ *Id.* at 3.

(FPA),¹⁰ which was filed on January 17, 2020, and for which Movants seek Commission action by March 17, 2020.¹¹

10. Movants argue the Commission should grant the waiver because, as in past cases in which the Commission has granted tariff waivers: (1) Movants acted in good faith; (2) the waiver is of limited scope; (3) the waiver would address a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹² Movants argue that they acted in good faith by submitting this filing as quickly as possible after the filing of the FPA section 203 application. Movants next argue that the waiver is limited in scope, as it is a one-time, partial waiver of a procedural deadline, and does not affect any of the substantive requirements under Schedule 2 of the PJM Tariff. Movants further argue that the waiver addresses a concrete problem because, absent the requested waiver, the consummation of the Proposed Transaction could be unnecessarily delayed, which would be commercially disadvantageous to the Movants. Finally, Movants argue that the waiver does not have undesirable consequences but in fact advances the public interest by ensuring that the Proposed Transaction may be promptly consummated following receipt of approval of the FPA section 203 application. Movants request that the Commission act on the waiver request on or before March 17, 2020.¹³

V. Notice and Responsive Pleadings

11. Notice of the Project Companies' informational filings was published in the *Federal Register*, 85 Fed. Reg. 5417 (Jan. 30, 2020), with interventions and protests due on or before February 14, 2020. None was filed. Notice of Movants' waiver request was published in the *Federal Register*, 85 Fed. Reg. 5655 (Jan. 31, 2020), with interventions and protests due on or before February 7, 2020. PJM and Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM filed timely motions to intervene.

¹⁰ 16 U.S.C. § 824b(a)(1) (2018).

¹¹ See Movants, Application for Authorization of Transaction Pursuant to FPA Section 203, Docket No. EC20-33-000 (filed Jan. 17, 2020).

¹² Waiver Request at 6, 8.

¹³ *Id.* at 8-9.

VI. Discussion**A. Procedural Matters**

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

B. Substantive Matters

13. We accept the Project Companies' informational filings for informational purposes only. As discussed below, we grant Movants' 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.¹⁴ We find that the circumstances of the instant case satisfy the foregoing criteria.

14. First, we find that the Movants acted in good faith by submitting this filing soon after filing the FPA section 203 application. Second, we find that the waiver request is limited in scope because Movants seek a one-time, limited waiver of the 90-day notice requirement in Schedule 2 of the PJM Tariff. 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.

The Commission orders:

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

¹⁴ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

(B) Movants' waiver request is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.