

151 FERC ¶ 61,282
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Peetz Logan Interconnect, LLC

Docket Nos. ER11-2970-004
ER11-2970-005

ORDER ACCEPTING COMPLIANCE FILINGS

(Issued June 30, 2015)

1. On February 19, 2013, Peetz Logan Interconnect, LLC (Peetz Logan) submitted a compliance filing (February 19 Compliance Filing) in response to the Commission's January 17, 2013 order in this proceeding.¹ On April 5, 2013, Peetz Logan amended its February 19 Compliance Filing (April 5 Amendment). In this order, we accept Peetz Logan's February 19 Compliance Filing and April 5 Amendment, effective March 1, 2011.

I. Background

2. This proceeding began on February 28, 2011, when Peetz Logan submitted its proposed open access transmission tariff (OATT) in response to a request for third-party interconnection and transmission services over its existing 78.2 mile, 230 kV generator interconnection facility (the Peetz Logan Facility) made by Arion Energy, LLC (Arion). In an order issued on August 2, 2011, the Commission conditionally accepted several of Peetz Logan's proposed tariff deviations as consistent with or superior to the Commission's *pro forma* OATT, while rejecting several other proposed deviations that it determined were not consistent with or superior to the *pro forma* OATT.² In response, on September 2, 2011, Peetz Logan submitted a compliance filing containing tariff revisions that it claimed met all the requirements of the August 2011 Order, except for those

¹ *Peetz Logan Interconnect, LLC*, 142 FERC ¶ 61,035 (2013) (January 2013 Order).

² *Peetz Logan Interconnect, LLC*, 136 FERC ¶ 61,075 (2011) (August 2011 Order).

related to Attachment C (Methodology to Access Available Transfer Capability). On September 14, 2011, Peetz Logan submitted an additional compliance filing providing revisions to its Attachment C.

3. In the January 2013 Order, the Commission conditionally accepted Peetz Logan's compliance filings subject to modifications in a subsequent compliance filing. The Commission directed Peetz Logan to remove from its OATT the new language that it had proposed for the preamble to section 13, Nature of Point-To-Point Transmission Service.³ The Commission also directed Peetz Logan to remove from its OATT the provision in Attachment C that defines the grandfathering of transmission service.⁴ In addition, the Commission directed Peetz Logan to include, under section 19.3 (System Impact Study Procedures), the *pro forma* OATT provision for redispatch options.⁵ Finally, the Commission directed Peetz Logan to submit a separate section 205 filing identifying any revisions it had made to its OATT that it had not specifically identified to the Commission in its transmittal letter to its September 2, 2011 compliance filing.⁶

4. In the February 19 Compliance Filing, Peetz Logan states that, as directed, it removed the new language in the section 13 preamble, Nature of Firm Point-to-Point Transmission Service. In addition, Peetz Logan notes that it removed the phrase "Grandfathered Transmission Service" from Attachment C and replaced it with the newly defined term "Preexisting Transmission Service."⁷

5. With respect to the directive to include under section 19.3 (System Impact Study Procedures) the *pro forma* OATT provision for redispatch options, Peetz Logan argues that, as a single circuit radial generation tie, Peetz Logan does not have the option of, or technical capability to, redispatch its limited system. Peetz Logan contends that because

³ January 2013 Order, 142 FERC ¶ 61,035 at P 13.

⁴ *Id.*

⁵ *Id.* P 14.

⁶ *Id.* P 15. Peetz Logan made the filing on March 18, 2013 in Docket No. ER13-1121-000. The Commission conditionally accepted Peetz Logan's filing in an order issued on May 16, 2013. *Peetz Logan Interconnect, LLC*, 143 FERC ¶ 61,122 (2013) (May 2013 Order). In the May 2013 Order, the Commission required an additional compliance filing, which was submitted on June 17, 2013 and accepted in a letter order issued on September 19, 2014 by the Director, Division of Electric Power Regulation – West. Rehearing was never sought of either the May 2013 Order or the letter order.

⁷ February 19 Compliance Filing at 2-3.

redispatch service technically cannot be provided, rather than simply including these *pro forma* provisions Peetz Logan requests that it be permitted to address this issue in the section 205 filing that was also directed in the January 2013 Order.⁸

II. Notice of Filings and Responsive Pleadings

6. Notice of the February 19 Compliance Filing (Docket No. ER11-2970-004) was published in the *Federal Register*, 78 Fed. Reg. 13,335 (2013), with interventions and protests due on or before March 12, 2013. On March 5, 2013, Arion filed a protest to this filing (March 5 Protest).

7. In response to Arion's protest, on April 5, 2013, Peetz Logan submitted an amendment to the February 19 Compliance Filing and motion for leave to answer and answer to Arion's protest (the "April 5 Amendment" (Docket No. ER11-2970-005)). Notice of Peetz Logan's April 5 Amendment was published in the *Federal Register*, 78 Fed. Reg. 22,538 (2013), with interventions and protests due on or before April 26, 2013. None was filed.⁹

III. Discussion

A. Procedural Matters

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Peetz Logan's answer to Arion's protest because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Peetz Logan's February 19 Compliance Filing

9. In the February 19 Compliance Filing, Peetz Logan states that its filing complies with the directive in the January 2013 Order to remove the new language in the section 13 preamble and the phrase "Grandfathered Transmission Service" from Attachment C. Peetz Logan substitutes the phrase "Preexisting Transmission Service" for

⁸ *Id.* at 3.

⁹ On April 8, 2013, Arion filed a protest of Peetz Logan's section 205 filing in Docket No. ER13-1121-000 (*see* n.6, *supra*). This protest additionally cited the closed proceeding in Docket No. ER11-2970-000 in its caption. However, the issues raised in Arion's protest were addressed in the order that addressed Docket No. ER13-1121-000. *See* May 2013 Order, 143 FERC ¶ 61,122 at PP 11-12, 16.

“Grandfathered Transmission Service” because Peetz Logan still needs to account for the 575 MW of transmission service currently provided to its three affiliates in its calculation of available transfer capability (ATC) in Attachment C. According to Peetz Logan, this is true regardless of whether it uses the term “Grandfathered” to describe the service provided or the rights conferred.¹⁰

2. Arion’s March 5 Protest

10. On March 5, 2013, Arion filed a protest challenging Peetz Logan’s February 19 Compliance Filing. According to Arion, Peetz Logan’s OATT still contains troubling language regarding curtailment and priority rights. Additionally, Arion does not believe that Peetz Logan’s ATC/Total Transmission Capability calculations have met a non-discriminatory threshold. Arion argues that Peetz Logan should be directed to revise the Large Generator Interconnection Procedures in its OATT to add a “first ready, first served” provision.¹¹ Arion contends that this provision has been included in many other tariffs and such language would protect Arion against potential discrimination if its project is complete before the Peetz Logan affiliates are ready for interconnection.¹² Arion also notes that, while Peetz Logan removed the provision in Attachment C, section 2.2, defining grandfathered service from the OATT, as directed by the Commission, the phrase “grandfathered transmission rights” is still retained elsewhere in the tariff. Arion also objects to the existing definition “Existing Transmission Commitments,” contending that the definition continues to use the phrase “grandfathered transmission rights” which might still allow Peetz Logan to favor its affiliates.¹³

11. In addition, Arion renews its argument that Peetz Logan should be directed to modify how it calculates ATC for its system to reflect the impact of wind events on ambient temperature. Arion argues that power flows on the Peetz Logan Facility increase proportionally as the wind blows; however, wind events, which produce more power on the transmission line, also decrease the ambient temperature allowing more capacity to flow on the transmission line. Arion contends that this physical reality needs to be

¹⁰ Peetz Logan also notes that on January 17, 2013, the Commission granted a petition for declaratory order concerning priority rights sought by an affiliate of Peetz Logan to use capacity over the Peetz Logan Facility. *See NextEra Energy Resources, LLC, et al.*, 142 FERC ¶ 61,043 (2013).

¹¹ Arion March 5 Protest at 2.

¹² *Id.* at 2 and 6-7.

¹³ *Id.* at 5.

reflected in the ATC calculation.¹⁴ Finally, Arion objects that Peetz Logan's ATC calculation favors affiliates over others because it conditions all firm and non-firm requests on the assumption that the Peetz Logan Facility is in service.¹⁵

3. Peetz Logan's April 5 Amendment

12. In the April 5 Amendment, Peetz Logan notes that, while it removed the defined term "Grandfathered Transmission Service" from Attachment C, as directed by the Commission, the phrase "grandfathered transmission rights" as pointed out by Arion, continues to be used in the definition of the term "Existing Transmission Service – Firm."¹⁶ In addition, Peetz Logan also states that a similar term "grandfathered non-firm transmission rights" continues to be used in the definition of the term "Existing Transmission Commitments - Non-Firm." Peetz Logan proposes, consistent with the intent of the January 2013 Order, to replace the phrase "grandfathered transmission rights" with "Preexisting Transmission Service" and the phrase "grandfathered non-firm transmission rights" with "non-firm Preexisting Transmission Service" in the OATT to correct the error highlighted by Arion.¹⁷ According to Peetz Logan, these revisions will ensure that it is clear that the preexisting transmission service agreements totaling 575 MW will be correctly accounted for in determining ATC.¹⁸ Peetz Logan requests, in the alternative, that if the Commission determines that these changes exceed the scope of the January 2013 Order, that the Commission accept them in the pending section 205 proceeding in Docket No. ER13-1121-000.

13. Peetz Logan also argues that Arion's March 5 Protest constitutes a collateral attack on the Commission's January 2013 Order, which made the policy calls to which Arion objected and yet chose not to seek rehearing. In Peetz Logan's view, the proper forum for objections to the January 2013 Order would have been in a request for rehearing of that order, and not in a protest of a compliance filing implementing the findings of that order. Additionally, Peetz Logan argues that Arion fails to support its assertion that the phrase "Preexisting Transmission Service" could serve as a barrier to entry for third parties. Peetz Logan also disputes the accuracy of this contention, pointing out that Peetz

¹⁴ *Id.* at 8.

¹⁵ *Id.* at 8-9.

¹⁶ April 5 Amendment at 2.

¹⁷ *Id.*

¹⁸ *Id.* at 3.

Logan's affiliates face the same curtailment rules and rules for obtaining conditional service under the OATT as faced by third parties.

C. Commission Determination

14. The proper question before us in reviewing Peetz Logan's February 19 Compliance Filing and April 5 Amendment is whether Peetz Logan's filings complied with the Commission's directives and findings in the January 2013 Order. We find that they do comply with those directives and therefore accept them. While the additional revisions made in the April 5 Amendment were not specifically dictated by the Commission, they are consistent with the findings in the January 2013 Order. Therefore, we accept this additional OATT revision for filing, as requested by Peetz Logan, effective on March 1, 2011, as provided in the August 2011 Order.

15. We agree with Peetz Logan that, if Arion was not satisfied with the findings that the Commission made in the August 2011 Order, the January 2013 Order, or the May 2013 Order, its proper recourse would have been to file requests for rehearing of those orders. We concur that Arion's protests of the compliance filings implementing the Commission's substantive findings in those orders regarding the ATC methodology constitute impermissible collateral attacks on those orders and that Arion's request to add a "first ready, first served" provision is beyond the scope of the compliance filing.

The Commission orders:

Peetz Logan's February 19 Compliance Filing and April 5 Amendment are hereby accepted effective March 1, 2011, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.