

154 FERC ¶ 61,281
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Big Sandy Peaker Plant, LLC
Wolf Hills Energy, LLC
Middle River II, LLC

Docket Nos. ER16-947-000

Big Sandy Peaker Plant, LLC

ER16-960-000

Wolf Hills Energy, LLC

ER16-961-000
(Not Consolidated)

ORDER GRANTING WAIVER
AND ACCEPTING INFORMATIONAL FILINGS

(Issued March 31, 2016)

1. On February 16, 2016, Big Sandy Peaker Plant, LLC (Big Sandy), Wolf Hills Energy, LLC (Wolf Hills), and Middle River Power II LLC (Middle River) (collectively, Filing Parties) submitted a joint request for a one-time waiver (Waiver Request) of the 90-day prior notice requirement, described below, as set forth in Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff). The Waiver Request relates to Big Sandy's and Wolf Hills' informational filings submitted in Docket Nos. ER16-960-000 and Docket No. ER16-961-000 (Informational Filings). These Informational Filings were submitted in anticipation of a planned transaction involving the indirect transfer of the Big Sandy and Wolf Hills generating facilities (Facilities) from TPF Genco Holdings, LLC (TPF Genco) to Middle River. Both generating facilities provide reactive supply and voltage control service (Reactive Service) pursuant to Schedule 2 of the PJM Tariff. In the Waiver Request, Filing Parties request that the Commission grant waiver of the 90-day prior notice requirement on or before April 1, 2016, or as soon as possible thereafter, to facilitate the transaction without unnecessary delay. As discussed below, we grant the Waiver Request and accept the Informational Filings.

I. Background

2. Schedule 2 of the Tariff, which covers Reactive Service, 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.¹ Schedule 2 requires that at least 90 days before deactivating or transferring a resource receiving compensation for reactive supply and voltage support, 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 (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.²

II. Informational Filings and Waiver Request

3. On February 16, 2016, Filing Parties submitted the Waiver Request of the 90-day prior notice requirement set forth in Schedule 2 of the Tariff as it relates to Big Sandy's and Wolf Hills' informational filings that were subsequently submitted on February 17, 2016. Big Sandy and Wolf Hills each own or control a generating facility that receives compensation for Reactive Service pursuant to Schedule 2 of the Tariff and each has a stand-alone (i.e., non-fleet) Reactive Service rate schedule (Reactive Rate Schedule). Filing Parties explain that pursuant to a planned transaction, Middle River will acquire 100 percent of the membership interests in TPF Genco Holdings, LLC, which indirectly owns 100 percent of the membership interests in Big Sandy and Wolf Hills (Transaction).³ Filing Parties state that no revisions to the Reactive Rate Schedules are being proposed for the following reasons: (1) the revenue requirements set forth in the Reactive Rate Schedules were established solely for the Facilities, the entirety of which are included in the Transaction; (2) the revenue requirements have, at all times, been based solely on the stand-alone cost of service for the Facilities, and the Facilities are

¹ PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

² *Id.*

³ Filing Parties, Joint Request for Waiver, Docket No. ER16-947-000, at 5 (filed February 16, 2016) (Waiver Request); Big Sandy Peaker Plant, LLC, Informational Filing Regarding Planned Transfer, Docket No. ER16-960-000, at 1 (filed February 17, 2016) (Big Sandy Informational Filing); Wolf Hills Energy, LLC, Informational Filing Regarding Planned Transfer, Docket No. ER16-961-000, at 1 (filed February 17, 2016) (Wolf Hills Informational Filing).

being indirectly transferred intact and will remain wholly controlled by Big Sandy and Wolf Hills; (3) the entities that collect revenues under the Reactive Rate Schedules will not change as a result of the Transaction; (4) no portion of either of the Facilities has been permanently deactivated since the Facilities entered into commercial operation and their respective Reactive Rate Schedules were accepted for filing; and (5) following the consummation of the Transaction, the Facilities will continue to provide Reactive Service to PJM on the same basis and using the same equipment as they did when the Reactive Rate Schedules went into effect and as they do today.⁴

4. Filing Parties seek waiver of the 90-day prior notice requirement, which requires Big Sandy and Wolf Hills to have submitted the Informational Filings at least 90 days prior to the planned transfer of the Facilities. Filing Parties request that the Commission issue an order granting waiver, with immediate, prospective effect, on or before April 1, 2016, or as soon as possible thereafter.⁵

5. Filing Parties state that good cause exists to grant waiver of the 90-day prior notice requirement under Schedule 2 of the Tariff in order to allow the parties to consummate the Transaction as soon as possible after other regulatory approvals and third-party consents have been obtained.⁶ Filing Parties state that in past cases the Commission has granted tariff waivers under similar circumstances where the: (1) movants have 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.⁷

6. Filing Parties assert that they have acted in good faith with respect to the requirements of Schedule 2 of the Tariff and are bringing this issue to the Commission's attention as soon as possible, explaining that they submitted the Informational Filing and Waiver Request quickly after the issuance of a Commission order clarifying the application of the Schedule 2 filing requirement.⁸ Filing Parties note that they have maximized prior notice to the Commission, PJM, and the public of the proposed

⁴ Big Sandy Informational Filing at 4; Wolf Hills Informational Filing at 4; Waiver Request at 7-8.

⁵ Waiver Request at 1.

⁶ *Id.* at 8.

⁷ *Id.* (citations omitted).

⁸ *Id.* at 10 (citing *Talen Energy Mktg., LLC*, 154 FERC ¶ 61,087 (2016)).

upstream change in control of Big Sandy and Wolf Hills.⁹ Filing Parties state that the waiver is limited in scope, and that Filing Parties are only requesting a one-time waiver of the deadline under Schedule 2 of the Tariff.¹⁰ Filing Parties explain that the requested waiver is necessary to address the concrete problem that, absent a waiver, Filing Parties will not be able to consummate the Transaction until 90 days after the submittal of the Informational Filings.¹¹ Finally, Filing Parties assert that the Waiver Request will have no undesirable consequences, such as harming third parties.¹²

III. Notice and Responsive Pleadings

7. Notice of the Waiver Request in Docket No. ER16-947-000 was published in the *Federal Register*, 81 Fed. Reg. 8951 (2016), with interventions, comments and protests due on or before March 8, 2016. PJM submitted a timely motion to intervene.

8. Notice of the Informational Filing in Docket No. ER16-960-000 and Docket No. ER16-961-000 was published in the *Federal Register*, 81 Fed. Reg. 9180 (2016), with interventions, comments and protests due on or before March 9, 2016. PJM submitted a timely motion to intervene in each proceeding.

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), PJM's timely, unopposed motions to intervene serve to make it a party to each proceeding.

⁹ *Id.*

¹⁰ *Id.* at 11.

¹¹ *Id.*

¹² *Id.* at 11-12.

B. Substantive Matters

10. We accept the Informational Filings for informational purposes only.¹³ As discussed below, we also find good cause exists to grant the Waiver Request of the 90-day prior notice requirement set forth in Schedule 2 of the Tariff.

11. The Commission has previously granted requests for waiver from a Regional Transmission Organization's tariff requirements in situations where: (1) the applicant is unable to comply with the tariff provision at issue 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

12. Here, we find that Filing Parties have acted in good faith by bringing the issue to the Commission's attention in a timely manner in attempting to maximize the prior notice to the Commission and to the public of the transfer of the Facilities. We also find that the Waiver Request is of limited scope, as it is a one-time waiver of the deadline required under Schedule 2 of the Tariff. In addition, we find that the waiver will remedy a concrete problem. Absent this waiver Filing Parties will not be able to consummate the Transaction until 90 days after the submittal of the Informational Filings by Big Sandy and Wolf Hills. Finally, we find that granting the Waiver Request will not lead to undesirable consequences. The Reactive Rate Schedules set forth revenue requirements for Reactive Service that are specific to the Facilities. The Facilities are being indirectly transferred intact and will remain wholly controlled by Big Sandy and Wolf Hills. The entities that collect revenues under the Reactive Rate Schedules will not change as a result of the Transaction. For these reasons, we grant the Waiver Request.

¹³ These acceptances for filing shall not be construed as constituting approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service contained in the Informational Filings; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such action is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Big Sandy or Wolf Hills.

¹⁴ *E.g.*, *Reliant Energy Seward, LLC*, 154 FERC ¶ 61,017, at P 12 (2016) (citing *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,033 (2014); and *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011)).

The Commission orders:

(A) Filing Parties' request for waiver of the 90-day prior notice requirement set forth in Schedule 2 of the PJM Tariff is hereby granted, as discussed in the body of this order.

(B) Big Sandy's and Wolf Hills' Informational Filings are hereby accepted for informational purposes only, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.