

156 FERC ¶ 61,103  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Panda Patriot LLC

Docket Nos. ER16-1958-000  
EL16-103-000

ORDER ACCEPTING PROPOSED RATE SCHEDULE, INSTITUTING SECTION 206  
PROCEEDING, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE  
PROCEDURES

(Issued August 10, 2016)

1. On June 17, 2016, Panda Patriot LLC (Panda Patriot) submitted its proposed Rate Schedule FERC No. 2 (Rate Schedule)<sup>1</sup> as an initial rate<sup>2</sup> under section 35.12 of the Commission's regulations and section 205 of the Federal Power Act (FPA).<sup>3</sup> The filing sets forth Panda Patriot's proposed revenue requirement for the provision of Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service) for its facility located in Montgomery, Pennsylvania (Facility). In this order, we accept for filing Panda Patriot's proposed Rate Schedule, to become effective July 1, 2016. In addition, we institute a proceeding pursuant to section 206 of the FPA regarding the justness and reasonableness of Panda Patriot's Reactive Service rates.<sup>4</sup> We also establish

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<sup>1</sup> Panda Patriot LLC, FERC FPA Electric Tariff, Panda Patriot LLC Market-Based Rate Tariff Database, [Reactive Power Tariff, Reactive Power Rate Schedules, 1.0.0](#).

<sup>2</sup> See *Chehalis Power Generating, L.P.*, 152 FERC ¶ 61,050, at P 14 (2015) ("In order for a rate to be considered an initial rate, it must provide for a new service to a new customer." (citing *Sw. Elec. Power Co.*, 39 FERC ¶ 61,099, at 61,293 (1987))).

<sup>3</sup> 18 C.F.R. § 35.12 (2015); 16 U.S.C. § 824d (2012).

<sup>4</sup> 16 U.S.C. § 824e (2012).

hearing and settlement judge procedures and set a refund effective date. Finally, we grant Panda Patriot's request for waiver of the Commission's 60-day notice requirement.<sup>5</sup>

### **I. Panda Patriot's Filing**

2. Schedule 2 of the PJM Open Access Transmission Tariff (PJM Tariff) of PJM Interconnection, L.L.C. (PJM) states that PJM will compensate owners of generation and non-generation resources for maintaining the capability to provide reactive power to PJM. Specifically, Schedule 2 provides 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.<sup>6</sup>

3. Panda Patriot will own and operate the Facility, which will interconnect to the transmission system owned by PPL Electric Utilities Corporation (PPL). Panda Patriot proposes to calculate the Facility's revenue requirement in accordance with the *AEP* methodology.<sup>7</sup> Panda Patriot explains that the revenue requirement consists of a Fixed Capability Component, which represents the fixed cost attributable to the production of reactive power, and a Heating Losses Component.<sup>8</sup> Panda Patriot proposes an annual revenue requirement of \$2,489,515 which includes \$2,314,833 for the Fixed Capability Component and \$138,282 for the Heating Losses Component.<sup>9</sup>

4. Panda Patriot proposes to calculate the Fixed Capability Component by calculating the portion of plant costs that are attributable to the production of Reactive Service. This includes analyzing the reactive portion of investment in the generator associated exciter equipment and generator step-up transformers. Because this equipment contributes to both real and reactive power, Panda Patriot applies an allocator to apportion plant costs between real and reactive functions. Panda Patriot states that it incorporated costs for accessory electrical equipment supporting the operation of the generator-exciter system

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<sup>5</sup> 18 C.F.R. § 35.3 (2015).

<sup>6</sup> PJM, Intra-PJM Tariffs, OATT, Schedule 2 (3.1.0).

<sup>7</sup> *Am. Elec. Power Serv. Corp.*, Opinion No. 440, 88 FERC ¶ 61,141, at 61,456-57 (1999) (AEP).

<sup>8</sup> June 17, 2016 Transmittal Letter (June 17 Transmittal) at Attachment A – Reactive Service Tariff.

<sup>9</sup> *Id.* at Attachment A, Panda Patriot Rate Reactive Service Tariff.

and balance of plant by using an allocator to attribute such costs to reactive functions.<sup>10</sup> Panda Patriot explains that individual allocated amounts attributable to Reactive Service are then summed and multiplied by a fixed charge consistent with Commission precedent to produce the Fixed Capability Component of Panda Patriot's annual revenue requirement for Reactive Service.

5. In determining the cost of capital, Panda Patriot proposes to use the authorized rate of return of PPL, the utility to which the Facility is interconnected.<sup>11</sup> With regard to the Heating Losses Component, Panda Patriot explains that it included this component in the revenue requirement in order to recover the costs associated with losses that occur from resistive heating associated with the armature winding and field winding of the generator.<sup>12</sup>

6. In support of its waiver request, Panda Patriot states that PJM Tariff Schedule 2 provides that Panda Patriot will be eligible for recovering the cost of providing reactive power within PJM on the first day of the month in which the Commission accepts or approves the revenue requirement. Panda Patriot, therefore, requests an effective date of July 1, 2016.<sup>13</sup>

7. Panda Patriot asserts that certain portions of the testimony and work papers of Mr. Robert P. O'Connell are privileged, confidential, and not publicly available and, therefore, are entitled to privileged treatment pursuant to 18 C.F.R. § 388.112.<sup>14</sup>

## **II. Notice and Responsive Pleadings**

8. Notice of Panda Patriot's June 17, 2016 filing was published in the *Federal Register*, 81 Fed. Reg. 40,888 (2016), with interventions and protests due on or before July 8, 2016. PJM submitted a timely motion to intervene.

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<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Id.* at 6.

<sup>12</sup> *Id.* at 6-7.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.* at 2.

### III. 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 motion to intervene serves to make it a party to this proceeding.

#### B. Substantive Matters

10. We find that Panda Patriot's proposed revenue requirement for Reactive Service provided by the Facility raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in hearing and settlement judge procedures. In addition, as noted, Panda Patriot is a new seller that has not previously provided services and has no prior transactions and no prior customers.<sup>15</sup> Accordingly, although we accept Panda Patriot's Rate Schedule, to become effective July 1, 2016, we institute a proceeding pursuant to section 206 of the FPA in Docket No. EL16-103-000. In addition, we establish a refund effective date, and set the Rate Schedule for hearing and settlement judge procedures.<sup>16</sup> Although we are setting the Rate Schedule for hearing in its entirety, we note that Panda Patriot's balance of plant allocator is not calculated or supported and that the Heating Losses Component has no support for the number of runtime hours used in the calculation. Also, the turbogenerator costs are unsupported, and the costs of network upgrades are included in the reactive power revenue requirement.<sup>17</sup>

11. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than the date the publication by the Commission of notice of its intention to initiate such proceeding nor later than five months after the publication date. In such cases, in order to give maximum protection to customers, and

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<sup>15</sup> See *Chehalis Power Generating, L.P.*, 152 FERC ¶ 61,050 at P 14 ("In order for a rate to be considered an initial rate, it must provide for a new service to a new customer." (citing *Sw. Elec. Power Co.*, 39 FERC at 61,293)).

<sup>16</sup> We will waive the Commission's 60-day prior notice requirement. 18 C.F.R. § 35.3 (2015).

<sup>17</sup> The Commission recently provided guidance on establishing or revising rates for Reactive Service. *Wabash Valley Power Association, Inc.*, 154 FERC ¶ 61,245, at PP 24-29 (2016); *Wabash Valley Power Association, Inc.*, 154 FERC ¶ 61,246, at PP 23-28 (2016).

consistent with our precedent, we have historically tended to establish the section 206 refund effective date at the earliest date allowed by section 206, and we do so here as well.<sup>18</sup> That date is the date of publication of notice of initiation of the section 206 proceeding in Docket No. EL16-103-000 in the Federal Register.

12. Section 206(b) of the FPA also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. As we are setting the section 206 proceeding in Docket No. EL16-103-000 for hearing and settlement procedures, we expect that, if the proceeding does not settle, we would be able to render a decision within eight months of the date of filing of briefs opposing exceptions to the Initial Decision. Thus, if the Presiding Judge were to issue an Initial Decision by March 31, 2017, we expect that, if the proceeding does not settle, we would be able to render a decision by January 31, 2018.

13. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>19</sup> If the parties desire they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.<sup>20</sup> The settlement judge shall report to the Chief Judge and the Commission within thirty (30) days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

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<sup>18</sup> See, e.g., *Idaho Power Co.*, 145 FERC ¶ 61,122 (2013); *Canal Electric Co.*, 46 FERC ¶ 61,153, *order on reh'g*, 47 FERC ¶ 61,275 (1989).

<sup>19</sup> 18 C.F.R. § 385.603 (2015).

<sup>20</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(A) Panda Patriot's proposed Rate Schedule is hereby accepted for filing, to become effective July 1, 2016, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL16-103-000, concerning the justness and reasonableness of Panda Patriot's Rate Schedule, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), the Chief Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the participants decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the participants with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the participants' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Any interested person desiring to be heard in Docket No. EL16-103-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426,

in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), within 21 days of the date of issuance of this order.

(G) The Secretary shall promptly publish in the Federal Register a notice of the Commission's initiation of the proceeding under section 206 of the FPA in Docket No. EL16-103-000.

(H) The refund effective date in Docket No. EL16-103-000 established pursuant to section 206 of the FPA shall be the date of publication in the Federal Register of the notice discussed in Ordering Paragraph (G) above.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.