

157 FERC ¶ 61,227  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

December 21, 2016

In Reply Refer To:  
West Deptford Energy, LLC  
Docket Nos. ER14-1193-002  
ER17-317-000

King & Spalding LLP  
1700 Pennsylvania Ave., NW  
Washington, DC 20006

Attn: Neil L. Levy, Esq. and David G. Tewksbury, Esq.  
Attorneys for West Deptford Energy, LLC

Dear Mr. Levy and Mr. Tewksbury:

1. On November 7, 2016, pursuant to Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (PJM OATT), West Deptford Energy, LLC (West Deptford) submitted an informational filing regarding the planned indirect transfer of an interest in West Deptford's 669 MW (summer rating) natural gas-fired generating facility located in West Deptford Township, New Jersey (the West Deptford Facility) (Informational Filing). The same day, West Deptford made a separate filing requesting a one-time waiver of the 90-day prior notice requirement also set forth in Schedule 2 of the PJM OATT (Waiver Request).<sup>1</sup> We accept the Informational Filing for informational purposes only and grant the Waiver Request.

2. Schedule 2 of the PJM OATT provides that PJM will compensate owners of generation and non-generation resources for providing Reactive Service. 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.<sup>2</sup> Schedule 2 requires that at least 90 days before

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<sup>1</sup> The Informational Filing was submitted in Docket No. ER14-1193-002. The Waiver Request was submitted in Docket No. ER17-317-000.

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

deactivating or transferring a resource receiving compensation for reactive supply and voltage support, the resource owner: (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 Power Supplier not to terminate or revise its cost-based rate schedule.

3. In the Informational Filing, West Deptford explains that it is an Exempt Wholesale Generator that leases and operates the West Deptford Facility. West Deptford further explains that its membership interests are owned entirely by West Deptford Energy Holdings, LLC. The membership interests of West Deptford Energy Holdings, LLC are owned entirely by Pirlo Energy Investments, LLC, whose membership interests are owned by Pirlo Energy Holdings, LLC (Pirlo). The Class A membership interests of Pirlo are owned by various entities, including MC West Deptford Energy Investments, LLC (MC West Deptford), which owns a 35 percent share.<sup>3</sup>

4. West Deptford states that Pirlo's current investors acquired their interests in a transaction that was completed on September 13, 2016.<sup>4</sup> That transaction produced an informational filing required by Schedule 2 of the PJM OATT. The Commission accepted that informational filing on August 1, 2016, and also instituted a separate proceeding pursuant to section 206 of the Federal Power Act<sup>5</sup> into the justness and reasonableness of West Deptford's revenue requirement for Reactive Service and established a refund effective date and hearing and settlement judge procedures.<sup>6</sup>

5. In the instant Informational Filing, West Deptford states that MC West Deptford has agreed to transfer half of its 35 percent interest in Pirlo to KPIC USA, LLC.<sup>7</sup> West Deptford further states that it anticipates obtaining all other required regulatory approvals and third-party consents on or before December 27, 2016.<sup>8</sup> West Deptford claims that no change in the Reactive Service revenue requirement is necessary because neither the rate,

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<sup>3</sup> Informational Filing at 2.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> 16 U.S.C. § 824e (2012).

<sup>6</sup> *West Deptford Energy, LLC*, 156 FERC ¶ 61,084, at P 10 (2016).

<sup>7</sup> Informational Filing at 1. On November 7, 2016, West Deptford also submitted an application pursuant to section 203 of the Federal Power Act, 16 U.S.C. § 824b (2012), in Docket No. EC17-29-000 seeking Commission approval of the transfer.

<sup>8</sup> Informational Filing at 4.

nor the name or identity of the entity collecting the rate will change as a result of the transaction.<sup>9</sup> West Deptford explains that its Reactive Service revenue requirement is based solely on the stand-alone cost for the West Deptford Facility and that no portion of that facility has been permanently deactivated since the Commission accepted the current revenue requirement. Finally, West Deptford contends that it would be inefficient to make tariff revisions given that West Deptford's Reactive Service revenue requirement is already the subject of a section 206 proceeding in Docket No. EL16-100-000.

6. In the Waiver Request, West Deptford seeks waiver of the 90-day notice requirement in Schedule 2 of the PJM OATT.<sup>10</sup> West Deptford argues that it meets the Commission's requirements for granting a waiver because (1) it has acted in good faith, (2) the Waiver Request is of limited scope, (3) the Waiver Request addresses a concrete problem, and (4) the Waiver Request will not have any undesirable consequences such as harm to third parties.<sup>11</sup> West Deptford asserts that it acted in good faith by preparing the Informational Filing as soon as possible after the documentation for the transfer of interest was executed. West Deptford states that the Waiver Request is of limited scope as it is a one-time waiver of the PJM Schedule 2 90-day notice requirement and does not apply to any of Schedule 2's substantive requirements.<sup>12</sup> West Deptford contends that the Waiver Request is required to avoid a concrete problem, namely that without a waiver the transaction would be delayed, which West Deptford states would be commercially disadvantageous. Finally, West Deptford contends that the Waiver Request would have no adverse consequences, since the unchanged Reactive Service revenue requirement will remain with West Deptford and no resources are being transferred out of its generation fleet.

7. Notice of the Waiver Request was published in the *Federal Register*, 81 Fed. Reg. 80,659 (2016), with interventions and comments due on or before November 28, 2016. Notice of the Informational Filing was published in the *Federal Register*, 81 Fed. Reg. 81,751 (2016), with interventions and comments also due on or before November 28, 2016. PJM intervened in the Waiver Request proceeding.

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the timely, unopposed motion to intervene serves to make PJM a party to the Waiver Request proceeding.

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<sup>9</sup> *Id.* at 3.

<sup>10</sup> Waiver Request at 1.

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

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

9. We accept West Deptford's Informational Filing for informational purposes only. As West Deptford notes, its Reactive Service revenue requirement is currently the subject of a FPA section 206 proceeding in Docket No. EL16-100-000. Nothing in this order is intended to prejudge the outcome of that proceeding.

10. We also grant the 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.<sup>13</sup> We find that the circumstances of the instant case satisfy the foregoing criteria, and we therefore grant the Waiver Request. First, we find that West Deptford has demonstrated good faith by expeditiously submitting the Waiver Request and Informational Filing. Second, we find that the waiver is limited in scope as it is a one-time waiver of the deadline required in Schedule 2 of the PJM OATT. Third, we find that the waiver addresses a concrete problem, namely that the consummation of the transaction would likely be delayed absent a waiver. Finally, we conclude that nothing on the record here indicates that the waiver will result in undesirable consequences.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>13</sup> See, e.g., *Calpine Energy Servs., L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *N.Y. Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).