

168 FERC ¶ 61,002  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Garrison Energy Center LLC

Docket No. ER15-2735-005

ORDER ACCEPTING INFORMATIONAL FILING AND GRANTING WAIVER

(Issued July 2, 2019)

1. On April 30, 2019, Garrison Energy Center LLC (Garrison) submitted an informational filing, pursuant to Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (PJM Tariff), in advance of an upstream change in control over Garrison and its Commission-jurisdictional facilities (Proposed Transaction).<sup>1</sup> The Proposed Transaction, pending in Docket No. EC19-79-000, provides for Cobalt Power, L.L.C. (Cobalt) to acquire the outstanding interests in Garrison, including Garrison's Rate Schedule FERC No. 1 setting forth Garrison's revenue requirement for reactive supply and voltage control from generation sources service (Reactive Service) under Schedule 2 of the PJM Tariff. Garrison also requests that the Commission issue an order on or before July 2, 2019, granting a one-time waiver of the 90-day notice requirement set forth in Schedule 2 of the PJM Tariff, in order to accommodate the consummation of the Proposed Transaction. In this order, we accept the informational filing for informational purposes only and grant the waiver request.

**I. Background**

2. Schedule 2 of the PJM Tariff provides that PJM will compensate owners of generation and non-generation resources for 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.<sup>2</sup> Schedule 2

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<sup>1</sup> Informational Filing at 1.

<sup>2</sup> PJM, Intra-PJM Tariffs, OATT, Schedule 2 (4.0.0).

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.<sup>3</sup>

## II. Details of Filing

3. Garrison states that it is an exempt wholesale generator that owns and operates an approximately 316 MW natural gas and oil-fired generation facility in Dover, Delaware (Facility),<sup>4</sup> consisting of one combustion turbine and one steam turbine.<sup>5</sup> By order issued January 18, 2018, the Commission accepted an informational filing regarding a transaction whereby a subsidiary of ECP ControlCo, LLC would merge with and into Calpine Corporation (Calpine), instituted a Section 206 proceeding, and established hearing and settlement judge procedures.<sup>6</sup> On February 26, 2019, the settlement judge reported that the parties and participants in the settlement proceedings had reached an impasse and, on February 28, 2019, the Chief Administrative Law Judge issued an order terminating settlement judge procedures and setting the proceedings for hearing before an administrative law judge.<sup>7</sup> Garrison represents that the administrative litigation process and additional settlement discussions are ongoing.<sup>8</sup>

4. Garrison states that it is currently an indirect subsidiary of Calpine, and the Proposed Transaction provides for Cobalt, a subsidiary of funds controlled by Starwood Energy Group Global, L.L.C., to acquire the outstanding interests in Garrison.<sup>9</sup> Garrison also states that the Proposed Transaction does not change the underlying costs associated with the provisions of Reactive Service and will not require any changes to the Rate

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

<sup>4</sup> Informational Filing at 2.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Calpine Bethlehem, LLC*, 162 FERC ¶ 61,031 (2018).

<sup>7</sup> Order of Chief Judge Terminating Settlement Judge Procedures, Designating Presiding Administrative Law Judge, Consolidating Proceedings, and Establishing Track III Procedural Time Standards, Docket No. EL18-25-000 (filed Feb. 28, 2019).

<sup>8</sup> Informational Filing at 3.

<sup>9</sup> *Id.* at 1, 3.

Schedule.<sup>10</sup> Garrison further asserts that the Facility will continue to provide Reactive Service to PJM on the same basis and using the same equipment as when the Rate Schedule went into effect and as it does today.<sup>11</sup> Garrison states that on April 18, 2019, Cobalt, Garrison, and Garrison's affiliate, RockGen Energy LLC, filed an application for approval of the Proposed Transaction under section 203 of the Federal Power Act in Docket No. EC19-79-000 (Section 203 Application).<sup>12</sup>

5. Garrison also seeks waiver of the 90-day notice filing requirement under Schedule 2 in order to allow the Proposed Transaction to be consummated without delay as soon as all regulatory approvals and third-party consents have been obtained.<sup>13</sup> Garrison requests that the Commission expeditiously issue an order granting the waiver request on or before July 2, 2019, the same date by which the Commission approval of the Section 203 Application is being requested.<sup>14</sup>

6. Garrison argues that they have acted in good faith by submitting the informational filing promptly after executing a purchase and sale agreement for the Proposed Transaction and 12 days after filing the Section 203 Application.<sup>15</sup> Garrison also asserts that the waiver request is limited in scope because it is a one-time waiver of the procedural deadline, and does not affect any of the substantive requirements under Schedule 2 of PJM Tariff.<sup>16</sup> Additionally, Garrison argues that the waiver request addresses a concrete problem because, absent the requested waiver, the consummation of the Proposed Transaction, which is in the public interest, could be delayed.<sup>17</sup> Finally, Garrison contends that granting the waiver request does not have undesirable

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<sup>10</sup> *Id.* at 1, 4.

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

<sup>12</sup> *Id.* at 1 n.1.

<sup>13</sup> *Id.* at 5.

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

<sup>15</sup> *Id.* Garrison explains that this informational filing was first filed with the Commission on April 19, 2019, one day after the filing of the Section 203 Application, but that it was withdrawn and subsequently refiled under a different Filing Code at the request of Commission Staff. *Id.* at 5 n.11.

<sup>16</sup> *Id.* at 5-6.

<sup>17</sup> *Id.* at 6.

consequences, such as harming third parties, and, in fact, the waiver request advances the public interest by facilitating timely consummation of the Proposed Transaction.<sup>18</sup>

### **III. Notice and Responsive Pleadings**

7. Notice of Garrison's filing was published in the *Federal Register*, 84 Fed. Reg. 19,775 (2019), with interventions and protests due on or before May 21, 2019. No interventions or protests were filed.

### **IV. Discussion**

8. We accept Garrison's informational filing for informational purposes only and 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>19</sup>

9. We find that the circumstances of the instant case satisfy the foregoing criteria. First, we find that the Garrison acted in good faith, as Garrison submitted the informational filing promptly after executing the purchase and sale agreement for the Proposed Transaction. Second, we find that the requested waiver is limited in scope, because it is a one-time waiver of the 90-day notice requirement under Schedule 2. Third, we find that the requested waiver addresses a concrete problem; in the absence of a waiver, the consummation of the Proposed Transaction could be delayed. Finally, we find that granting waiver does not have any undesirable consequences, such as harming third parties, as the Proposed Transaction involves an upstream change in control and will not affect the Garrison Facility nor will it impact their Reactive Service Rate Schedule.

The Commission orders:

(A) The informational filing is hereby accepted for informational purposes only, as discussed in the body of this order.

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<sup>18</sup> *Id.*

<sup>19</sup> See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

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

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.