

176 FERC ¶ 61,072
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

Panda Stonewall, LLC

Docket No. ER17-1821-004

ORDER ON COMPLIANCE

(Issued August 3, 2021)

1. On March 31, 2021, the Commission issued an Order on Initial Decision and Contested Offer of Settlement that addressed Panda Stonewall, LLC's (Panda) revenue requirement for providing Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service), as defined in Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff).¹ On April 30, 2021, as supplemented on May 13, 2021, Panda submitted its recalculated revenue requirement in compliance with Opinion No. 574. As discussed below, we accept Panda's compliance filing, in part, and reject it in part, subject to condition.

I. Background

2. On June 14, 2017, pursuant to section 205 of the Federal Power Act, Panda filed a proposed rate schedule for providing Reactive Service. On July 27, 2017, the Commission accepted Panda's proposed rate schedule and suspended it for a nominal period, to become effective June 15, 2017, subject to refund, and set the matter for hearing and settlement judge procedures.² Settlement judge procedures were unsuccessful, and the Chief Administrative Law Judge designated the Honorable Suzanne Krolkowski as Presiding Judge, who issued an initial decision on April 26, 2019.³

¹ *Panda Stonewall, LLC*, Opinion No. 574, 174 FERC ¶ 61,266 (2021) (Opinion No. 574).

² *Panda Stonewall, LLC*, 160 FERC ¶ 62,096 (2017).

³ *Panda Stonewall LLC*, 167 FERC ¶ 63,010 (2019) (Initial Decision).

3. On June 12, 2019, Panda, Joint Customers,⁴ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (Market Monitor), and Trial Staff filed Briefs on Exceptions. On July 25, 2019, Panda, Joint Customers, and Trial Staff filed Briefs Opposing Exceptions. On July 10, 2019, Panda unilaterally filed an Offer of Settlement (Settlement), which was opposed by Joint Customers, Trial Staff, and the Market Monitor.

4. On January 28, 2021, in Docket No. ER21-972-000, PJM filed a request to waive section 15.1.5(i) of its Amended and Restated Operating Agreement in order to allow Panda a limited ability to continue to sell capacity, energy, and ancillary services in the PJM Markets. PJM explained that waiver was necessary because Panda had defaulted on a collateral call issued by PJM. The collateral call was precipitated by Panda's audited year-end financial statements, credit rating, and potential refund liability in the then-pending disputed Commission reactive power proceeding in this docket. The Commission granted waiver and directed PJM to continue to collect weekly settlement amounts otherwise payable to Panda towards satisfying the collateral call and to submit an informational filing every 30 days regarding Panda's progress toward satisfying the collateral call.⁵

5. On March 31, 2021, the Commission issued Opinion No. 574, which rejected the Settlement and affirmed the Initial Decision in part and reversed it in part. The Commission also directed Panda to submit a compliance filing within 30 days to reflect adjustments to its reactive power rate as required by its order.⁶

II. Compliance Filing

6. Panda states that it submitted this compliance filing to address each of the Commission's findings and directives in Opinion No. 574.⁷ Panda states that it calculated its fixed capability component, heating losses component, and the total revenue requirement using assumptions and calculations consistent with the requirements

⁴ Joint Customers are Old Dominion Electric Cooperative, Northern Virginia Electric Cooperative, Inc., Dominion Energy Services, Inc., on behalf of Virginia Electric and Power Company doing business as Dominion Energy Virginia/North Carolina, and North Carolina Electric Membership Corporation.

⁵ *PJM Interconnection, L.L.C.*, 174 FERC ¶ 61,083, at P 16 (2021) (Collateral Call Order).

⁶ Opinion No. 574, 174 FERC ¶ 61,266 at P 272.

⁷ Compliance Filing at 2.

of Opinion No. 574.⁸ Panda's recalculated annual revenue requirement is \$2,051,894,⁹ as reflected in its revised tariff records with an effective date of June 15, 2017. Panda also states that the appropriate level of the refund is \$17,653,909.36.¹⁰

7. Panda requests that the Commission permit it to distribute refunds using the following payment schedule: (1) \$12,860,000 payment to PJM within 14 days of the Commission's order on compliance; and (2) remaining balance paid, pro rata, once monthly for nine months beginning July 2021, with interest.

8. Panda argues that this proceeding took four years to resolve because, unlike the bulk of reactive power filings, Panda litigated this filing to its conclusion and gave the Commission the opportunity to rule on critical issues of law and policy on a fully developed record.¹¹ Panda states that it is proposing to make a substantial initial payment of the refund balance and to make subsequent payments over time for the remaining amounts owed in order to minimize the near term cash flow burden. Panda contends that a shorter refund payment period would create immediate financial stress on cash balances and liquidity that could threaten Panda's ability to meet the requirements of its financial covenants.

9. Panda asserts that its payment plan is reasonable and secure and that this is not the first time the Commission granted flexibility where a market participant proposed a repayment arrangement to protect its financial health.¹² Panda states that it estimates that the nine monthly payments will be \$492,000 each, plus interest.¹³ Panda further states that, using its capacity and reactive services revenue, it will be able to cover the proposed monthly refund payments at least six times over.

10. Panda asserts that as a PJM Member holding valuable capacity obligations and receiving reactive services revenue, Panda has strong incentives under the PJM Operating

⁸ *See id.* at 2-5.

⁹ Panda's annual revenue requirement is the sum of Panda's fixed capability component (\$2,041,576) and heating losses component (\$10,018).

¹⁰ Panda states that it calculated this figure assuming the Commission issues its order on June 29, 2021, as requested.

¹¹ *Id.* at 5.

¹² Supplement at 1-2 (citing *PJM Interconnection, LLC.*, 135 FERC ¶ 61,069 (2011)).

¹³ *Id.* at 2.

Agreement to meet its obligations.¹⁴ Panda states as an example, in the event that Panda were to default on its refund obligations, PJM would have the right to net and/or setoff any payments due to Panda and distribute them to the appropriate customers and PJM could suspend and/or terminate Panda's right to participate in the PJM markets until Panda met its obligations.¹⁵

11. Panda also states that, as additional security, it authorizes the Commission to condition acceptance of the refund compliance plan on ordering PJM, in the event that Panda does not fulfill its refund obligations, to immediately and automatically stop making Panda's reactive services payments and to terminate Panda's Reactive Service revenue requirement.¹⁶ Additionally, Panda states that, though it believes that a bankruptcy proceeding is unlikely, it will not reject or attempt to discharge its refund obligation in bankruptcy while the refund obligation is outstanding.

III. Notice and Responsive Pleadings

12. Notice of Panda's filing was published in the *Federal Register*, 86 Fed. Reg. 24,397 (May 6, 2021), with comments due on or before May 21, 2021. PJM filed comments and Joint Customers filed a conditional protest. On June 3, 2021, Panda filed an answer in response to Joint Customers' protest. On June 16, 2021, Joint Customers filed a supplemental protest in response to Panda's answer.

13. PJM states that it supports Panda's proposed conditions for the Commission's acceptance of its compliance proposal, namely: (1) in the event that Panda does not fulfill its refund obligations, PJM will automatically cease payment to Panda for Reactive Service and terminate Panda's Schedule 2 revenue requirement; and (2) Panda will not attempt to discharge its refund obligation in bankruptcy while the refund obligation is outstanding.¹⁷ PJM states that these two conditions provide essential safeguards for PJM and its stakeholders against potential default on Panda's refund obligations.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ PJM Comments at 3.

14. PJM states that, in the absence of such conditions, it could be expected to collateralize the remaining refund obligation on a dollar for dollar basis, which in turn, could lead Panda to violate its financial covenants.¹⁸

15. PJM states that, in addition to the conditions noted, Panda utilizes a daily revenue amount to calculate its refund liability, whereas PJM's market settlement invoices calculate a partial month by determining the monthly revenue amount and then the pro rata share of that monthly amount.¹⁹ PJM states that Panda's total liability, including interest, through the proposed ruling date should be corrected to reflect \$17,287,382.92.

16. Joint Customers conditionally protest Panda's refund proposal and urge the Commission to consider Panda's conduct throughout this proceeding and act to protect customers.²⁰ Joint Customers states that as a result of filing a legally and factually unjustified revenue requirement supported by questionable veracity, Panda was able to collect a rate in excess by over \$17 million for almost four years from customers without reserving any of this amount to cover its refund liability.

17. Joint Customers state that the only reason the Dominion Zone customers are protected at all is that PJM took the significant step of holding back revenue from Panda as additional collateral to secure its refund obligation in this case.

18. Now, Joint Customers argue, Panda is asking the Commission to approve its proposal to pay its lenders and equity holders before it satisfies its refund obligations to the Joint Customers, and essentially force the customers to act as unsecured lenders to Panda. Joint Customers argue that Panda's financial predicament is entirely of its own making.²¹ Joint Customers also argue that Panda provided no evidence to support its claim of financial distress and ask the Commission to shift additional risk to customers merely on Panda's word that this payment plan is necessary. Joint Customers state Panda has no right to continue to use money, that is legally owed to customers in the Dominion Zone, for Panda's own purposes.²²

¹⁸ *Id.* at 3-4.

¹⁹ *Id.* at 4.

²⁰ Joint Customers Protest at 5.

²¹ *Id.* at 5-6.

²² *Id.* at 6.

19. Joint Customers state that they are willing to accept a refund repayment plan, solely on the following conditions.²³ First, Joint Customers state PJM must immediately refund every dollar it has withheld to date as security for Panda's Schedule 2 refund obligation, not just the \$12.86 million proposed by Panda.²⁴ Joint Customers argue that any remainder that is due after the entire amount withheld as collateral has been refunded to customers may be paid *pro rata*, once monthly for nine months, with interest.²⁵ Joint Customers argue that there is no basis for PJM to return to Panda any funding that was collected as security exactly for the purpose of ensuring Panda could meet its refund obligation, and there is no good reason to limit Panda's initial payment to \$12.86 million if PJM is holding more than that amount.²⁶

20. Second, Joint Customers argue that they will accept a nine-month payment schedule for the remainder only if the Commission rejects Panda's demand that PJM stop collecting additional funds as security.²⁷ Joint Customers state that the Commission should order PJM to withhold from Panda market revenue at an amount necessary to pay Joint Customers for the proposed nine-month period and to remit those funds directly to Dominion Zone load.

21. Third, Joint Customers state that in order to monitor Panda's compliance with its refund obligations, the Commission should require Panda or PJM to submit monthly reports explaining payments made and its plans to make the remaining payments in a timely manner.²⁸ Finally, Joint Customers argue that the Commission should reserve all remedies in case Panda defaults including possible sanctions, enforcement actions, and revocation of applicable tariff authority, if Panda fails to make full and timely payments or obstructs PJM's efforts to implement payments during this nine-month period. Joint Customers urge the Commission to require Panda to satisfy its refund obligation in full within 15 days of a Commission order if the conditions these conditions are not adopted.²⁹

²³ *Id.*

²⁴ Joint Customers claim that, in the Panda credit default proceeding, PJM has acknowledged holding more than Panda's \$12.8 million payment. *Id.* at 6 n.6.

²⁵ *Id.* at 6-7.

²⁶ *Id.* at 7.

²⁷ *Id.* at 7-8.

²⁸ *Id.* at 8.

²⁹ *Id.* at 4.

22. In Panda's answer, Panda states that the Commission must avoid any decision that forces Panda to make full refund payments immediately because it would harm Panda's goal of providing full refunds in the most timely and controlled manner possible.³⁰ Panda reiterates that such a requirement would create immediate financial stress and threaten Panda's ability to meet the requirements of its financial covenant.

23. Panda states that the Commission should reject the Joint Customers' condition that PJM pay out to customers all collateral held by PJM in connection with the Reactive Services refund obligation.³¹ Panda argues that it has quarterly financial covenants based on actual cash inflows and outflows that it must maintain.³² Panda further states that the project's credit agreement and associated financial covenant are not designed to withstand four years of cash flow adjustments within a two-quarter time frame.³³ Panda contends that the payment plan allows for a significant upfront payment towards the liability without impeding Panda's ability to comply with its credit agreements, maintain stability, and ultimately meet its refund obligations. Panda argues that, therefore, imposing the first condition would leave the customers no better off and at the cost of significant financial distress to Panda.

24. Panda states that it does not object to Joint Customers' proposal that PJM withhold its monthly payments and makes payments on its behalf.³⁴ Panda argues that a monthly reporting requirement is unnecessary, burdensome, and would not provide meaningful information. Panda argues that the proposed refund plan, Commission approval, and a final refund report once all refunds are completed should be more than enough security for the customers. Panda also argues that the Commission reserving all remedies is also unnecessary because the Commission has near-plenary authority to investigate and sanction misconduct without the requested reservation.³⁵

³⁰ Panda Answer at 3.

³¹ *Id.* at 4.

³² *Id.* at 4-5.

³³ *Id.* at 5.

³⁴ *Id.* at 6.

³⁵ *Id.* at 6-7.

25. Panda states that the Joint Customers falsely accuse Panda of malfeasance.³⁶ Panda argues that it filed its Reactive Services rate in good faith and that it had no obligation to escrow refunds and could not do so as a legal matter under its credit agreements.³⁷

26. In response to Panda's Answer, Joint Customers assert that it is now clear that Panda wants nothing less than a working capital loan from customers and that Panda has no right to appropriate the payments made by transmission customers under Schedule 2 for use as its own working capital.³⁸ Joint Customers state that Panda confirms that the dollar amount of the reactive power security that PJM is holding is greater than the \$12.86 million. Joint Customers note that Panda raises the prospect of financial distress, but this is money that Panda has never received and to which it has no legal claim.³⁹ Joint Customers contend that Panda is asking for a loan from those that have already suffered the burden of paying Panda's inflated rate for almost four years, and Panda offers no lawful foundation upon which the Commission could rely to divert those funds.⁴⁰

IV. Discussion

A. Procedural Matters

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2020), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the answers filed by Panda and Joint Customers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

28. As discussed below, we accept, in part, and reject, in part, Panda's compliance filing, subject to condition. We find that Panda's recalculated annual revenue requirement complies with the findings and determinations made by the Commission in Opinion No. 574. Accordingly, we accept Panda's revised tariff record, effective June 15, 2017. We also agree with PJM's refund calculation through the end of June 2021,

³⁶ *Id.* at 7.

³⁷ *Id.* at 7-8.

³⁸ Joint Customers Supplement at 1.

³⁹ *Id.* at 1-2.

⁴⁰ *Id.* at 2.

with which Panda agrees.⁴¹ However, as discussed further below, we reject in part Panda's proposed refund payment plan and order that all funds held in collateral by PJM for Panda's refund obligation be remitted to customers immediately, that PJM continue to withhold the amount necessary to pay the Joint Customers for the proposed nine-month period, and that Panda submit monthly refund reports.

29. While the parties generally agree that a payment plan may be appropriate in this case, they disagree on the terms and conditions of the payment plan. Panda requests that the Commission permit it to distribute refunds using the following payment schedule: (1) \$12.86 million payment to PJM within 14 days of the Commission's order on compliance; and (2) remaining balance paid, pro rata, once monthly for nine months beginning July 2021, with interest.⁴² Panda states that it authorizes the Commission to condition acceptance of the refund compliance plan on ordering PJM, in the event that Panda does not fulfil its refund obligations, to immediately and automatically stop making Panda's reactive services payments and to terminate Panda's Reactive Service revenue requirement. Panda further commits that, in the event of bankruptcy, it will not reject or attempt to discharge its refund obligations in bankruptcy while the refund obligation is outstanding.⁴³

30. Joint Customers argue that the terms and conditions of the payment plan should be as follows: (1) the Commission should order PJM to immediately refund to Dominion Zone customers every dollar it has withheld to date as security for Panda's Schedule 2 refund obligation, not just the \$12.86 million proposed by Panda.; (2) if and to the extent that PJM is currently holding less than the total refund amount due, Joint Customers will accept a nine-month payment schedule for the remaining refund obligation only if the Commission orders PJM to withhold from Panda's market revenue the amount necessary to pay the Joint Customers for the proposed nine-month period, and to remit those funds directly to Dominion Zone customers; (3) Panda must submit monthly reports to the Commission explaining payments made and plans to make the remaining payments in a timely manner; and (4) the Commission reserves all remedies, "including possible sanctions, enforcement actions, and revocation of applicable tariff authority," in the event of a default.⁴⁴

⁴¹ PJM calculates the total refund obligation to be \$17,287,382.92. PJM Comments at 4. Panda states that it has no objection to PJM's calculation. Panda Answer at 1 n. 5.

⁴² Compliance Filing at 5.

⁴³ Supplement at 2.

⁴⁴ Joint Customers Protest at 6-8.

31. We accept Panda's proposed terms and conditions of its refund payment plan subject to the following further conditions. While we find that the use of a payment plan is appropriate in this case, we reject Panda's proposal to only remit a portion of the amount currently held by PJM as collateral to customers, with the rest being released directly to Panda. We agree with Joint Customers that the entire amount currently withheld by PJM related to Panda's reactive power refund liability should be remitted to customers. PJM held funds as collateral to ensure that Panda would be able to meet its refund obligation,⁴⁵ and we find that the collateral should be used for its intended purpose. Panda's explanation for why the entire balance held in collateral should not be paid to customers immediately is that it "has quarterly financial covenants based on actual cash inflows and outflows which it must maintain" and "[t]he project credit agreement and associated financial covenant are simply not designed to withstand four years of cash flow adjustments within a two-quarter time frame."⁴⁶ Panda states that requiring more than \$12.86 million to be paid to customers "will jeopardize Stonewall's ability to meet its financial covenants, and ultimately, to repay the balance of refunds."⁴⁷ However, Panda does not provide any justification for the \$12.86 million figure itself. For example, Panda does not explain why that figure results in the availability to Panda of the funds it states it needs to protect its financial health or to meet its financial covenants. Moreover, beyond stating that it would help with cash flow, Panda does not explain why funds that it currently does not have access to, and is not entitled to, should be relevant to the Commission's decision. Furthermore, these are amounts that the Joint Customers have already paid that have been determined to be well over and above the just and reasonable rate. We find that it would not be just and reasonable to delay the Dominion Zone customers' access to these refunds any longer. Accordingly, within 7 days of the date of this order, PJM is directed to refund to Dominion Zone customers the entire amount withheld to date as security for Panda's Schedule 2 refund obligation.

32. Panda does not oppose PJM withholding from Panda's market revenues that amount necessary to pay the Dominion Zone customers for the proposed nine-month

⁴⁵ See Collateral Call Order, 174 FERC ¶ 61,083 at P 2 ("[T]he Collateral Call was precipitated by Panda Stonewall's potential refund liability in a pending disputed Commission reactive power proceeding in Docket No. ER17-1821."); PJM, Waiver Request, Docket No. ER21-972-000, at 1 (filed Jan. 28, 2021) (stating that waiver request related to Collateral Call "will support PJM's efforts to secure the additional Collateral requested from Panda Stonewall *for the protection of customers*") (emphasis added).

⁴⁶ Panda Answer at 5.

⁴⁷ *Id.*

period and remitting those funds directly to Dominion Zone customers.⁴⁸ Accordingly, if and to the extent that PJM is currently holding less than the total refund amount due, the remaining balance shall be paid, pro rata, once monthly for nine months beginning August 2021, with interest calculated pursuant to 18 C.F.R. § 35.19a (2020), and PJM is directed to withhold from Panda's market revenue the amount necessary to pay such refunds for the proposed nine-month period and to remit those funds directly to Dominion Zone customers each month.

33. We disagree with Panda that the Joint Customers' third condition requiring monthly refund reports is unnecessary and would not provide useful information. To the contrary, we find that such reports are particularly appropriate and useful in this case given the recent collateral call and the concerns expressed here by Panda regarding its current financial condition.⁴⁹ Accordingly, we require Panda to file monthly refund reports with the Commission until its refund obligation is satisfied.

34. Lastly, we agree with Panda that the Joint Customers' fourth condition, that the Commission reserve all remedies, is unnecessary as the Commission has the authority to initiate an investigation or sanction misconduct without an explicit reservation of rights.⁵⁰

The Commission orders:

(A) We accept, in part, and reject, in part, Panda's Compliance Filing, subject to condition, as discussed in the body of this order.

(B) Panda is directed to submit monthly refund reports, as directed by this order.

⁴⁸ *Id.* at 6.

⁴⁹ See *PJM Interconnection, L.L.C.*, 174 FERC ¶ 61,083, at P 16 (2021) (requiring PJM to submit an informational filing every 30 days to provide the Commission with information on Panda's progress toward satisfying the Collateral Call).

⁵⁰ See 16 U.S.C. § 825f(a) ("The Commission may investigate any facts, conditions, practices, or matters which it may find necessary or proper in order to determine whether any person, electric utility, transmitting utility, or other entity has violated or is about to violate any provision of this chapter or any rule, regulation, or order thereunder."); 18 C.F.R. § 917 (2020) (sanctions are available "[w]henver it appears to the Commission that a person is engaged ... in any act or practice which constitutes ... a violation of rule, regulation, or order, made or imposed by the Commission").

(C) PJM is directed to refund to Dominion Zone customers the entire amount withheld to date as security for Panda's Schedule 2 refund obligation within 7 days of the date of this order, as discussed in the body of this order.

(D) PJM is directed to withhold from Panda's market revenues that amount necessary to pay the Dominion Zone customers for the proposed nine-month period and remit those funds directly to Dominion Zone customers until the refund obligation is satisfied, as discussed in the body of this order.

By the Commission. Commissioner Danly is dissenting with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Panda Stonewall, LLC

Docket No. ER17-1821-004

(Issued August 3, 2021)

DANLY, Commissioner, *dissenting*:

1. I dissent from our order today denying Panda Stonewall, LLC's (Panda) proposed payment schedule for its refund obligation. That plan involves: (1) the immediate payment of \$12,860,000 of refunds from the collateral account established by PJM Interconnection, L.L.C. (PJM) to ensure that Panda can pay the required refunds; (2) the return to Panda of any additional funds—the amount is unstated but apparently is less than the remaining \$5 million of refunds owed by Panda; and (3) the payment of the remaining \$5 million, plus interest, over a nine month period. Panda asserts that this plan is necessary to ensure that it will be able to comply with the requirements of its financing arrangements.

2. I agree that Panda could have done a better job of documenting its assertion that its plan is necessary to ensure its financial solvency. Having said that, I do not see any benefit to denying Panda's request. Even though there is not good documentation, it seems likely that Panda is raising a genuine concern about its financing because it is difficult to see any other reason why it would request to have a relatively small amount of money returned from the collateral account for such a short period of time. Panda has committed not to request rejection of its refund obligation in the event it were to declare bankruptcy prior to its full payment of refunds, which means that so long as Panda does not shut down its facility upon a declaration of bankruptcy, it will generate the cash from its operations to make refunds.

3. The only reason the Commission provides for rejecting Panda's proposal is that it involves the return to Panda of some amount of funds from the collateral account, and that the collateral was collected to protect customers. But the Commission provides no explanation as to why it is necessary to immediately return the entire amount in the collateral account to protect customers, or why we are willing to potentially force Panda into bankruptcy instead of returning any money to it from the collateral account. I agree that if the circumstances were such that there was a concern that money returned from the collateral account would never be refunded, then it would be appropriate to immediately apply the entire amount in the account to Panda's refund obligation. But the Commission makes no such finding, and it appears to me that there is minimal risk that this would happen. Indeed, PJM supported Panda's proposed repayment plan, stating "PJM accepts Panda's representation that immediate payment of the total refund amount would create financial stress . . . PJM also supports Panda's proposed conditions for Commission

acceptance of its Compliance Proposal . . . [the] conditions provide essential safeguards for PJM and its stakeholders against potential default on Panda's refund obligations and are consistent with the primary intent of the Federal Power Act, which is to protect customers."¹ The Commission gives no explanation as to why, if PJM is not concerned that the repayment plan puts customers at risk, we should reach a different conclusion.

4. The Commission's order thus reaches an unusually harsh and punitive result of possibly forcing Panda into bankruptcy with no indication of wrongdoing by Panda and no discernable benefit to the customers who will get full payment of refunds in less than a year. Based on the specific facts of this case, I would have approved Panda's proposed repayment plan.

For these reasons, I respectfully dissent.

James P. Danly
Commissioner

¹ PJM Comments at 3.