

182 FERC ¶ 61,166
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

PJM Interconnection, L.L.C.

Docket No. ES23-23-000

ORDER MODIFYING AUTHORIZATION TO ISSUE SECURITIES

(Issued March 16, 2023)

1. On December 20, 2022, PJM Interconnection, L.L.C. (Applicant) filed an application pursuant to section 204 of the Federal Power Act (FPA)¹ (Application) seeking to modify a prior Commission authorization to issue an unsecured promissory note to Bank of America, N.A. in an amount not to exceed \$20.6 million pursuant to a term loan credit facility and associated swap agreement (Bank of America Term Loan). In the Application, Applicant seeks Commission authorization to amend the Bank of America Term Loan to reflect the substitution of the Secured Overnight Financing Rate (SOFR) for the London Interbank Offered Rate (LIBOR) as the reference interest rate.

2. As discussed below, we grant Applicant's request. We also provide guidance to other public utilities facing similar issues with FPA section 204 authorizations that use LIBOR as a benchmark rate.

I. Application

A. Background

3. Applicant states that, on April 27, 2018, it filed an application pursuant to FPA section 204 requesting that the Commission authorize it to issue securities in the form of an unsecured promissory note pursuant to the Bank of America Term Loan.² Applicant

¹ 16 U.S.C. § 824c.

² Application at 1-2 (citing *PJM Interconnection, L.L.C., Application of PJM Interconnection, L.L.C. under Section 204 of the Federal Power Act for an Order Authorizing the Issuance of Securities*, Docket No. ES18-34-000 (Apr. 27, 2018) (April 2018 Section 204 Application)).

explains that the Commission granted the request in a Commission order that authorized the Bank of America Term Loan upon the terms and conditions specified in the April 2018 Section 204 Application, which included a fixed interest rate, as determined on the loan execution date, but not to exceed the U.S. Dollar LIBOR, plus up to 250 basis points.³ Applicant explains that the Commission did not expressly allow for a reference interest rate other than LIBOR.⁴

B. Substitution of SOFR

4. Applicant explains that the U.S. Dollar LIBOR will cease to be published beginning July 1, 2023.⁵ Applicant states that, accordingly, amendments to the Bank of America Term Loan are required to replace LIBOR with SOFR as the reference interest rate. Applicant states its Board of Managers has authorized it to enter into amendments to the Bank of America Term Loan providing for a per annum interest rate that may not exceed the Daily SOFR plus 100 basis points (1.00%).⁶

5. Applicant maintains that no other material changes to the terms and conditions of the Bank of America Term Loan, as approved by the Commission in the Original Section 204 Order, are contemplated at this time.⁷

II. Notice of Filing

6. Notice of the Application was published in the *Federal Register*, 87 Fed. Reg. 79,295 (Dec. 27, 2022), with interventions and protests due on or before January 10, 2023. None was filed.

III. Discussion

7. We find that, with the U.S. Dollar LIBOR ceasing to be published, Applicant may substitute references to the LIBOR reference interest rate for another widely accepted interest rate, such as the SOFR, where: (1) there is no other reference rate besides

³ *Id.* at 2 (citing *PJM Interconnection, L.L.C.*, 163 FERC ¶ 62,222 (2018) (Original Section 204 Order)).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* We note that PJM's LIBOR plus 250 basis points is being changed to Daily SOFR plus 100 basis points. *Id.*

⁷ *Id.*

LIBOR stated in the instrument at issue; and (2) there are no other material changes to the terms and conditions of the securities issuance previously authorized by the Commission. Applicant represents that, here, the Original Section 204 Order does not expressly allow for a reference interest rate other than LIBOR, and that no other material changes to the terms and conditions of the Bank of America Term Loan, as approved by the Commission in the Original Section 204 Order, are contemplated at this time. We therefore authorize Applicant to amend the Bank of America Term Loan to reflect the substitution of SOFR as the reference interest rate as proposed. As long as there are no other material changes to the terms and conditions of the Bank of America Term Loan previously authorized in the Original Section 204 Order, Applicant is not required to make a further filing with the Commission with respect to the amendment authorized here.

8. Additionally, we provide guidance to other public utilities facing similar issues with FPA section 204 authorizations that use LIBOR as a reference interest rate. Where a public utility intends to substitute SOFR or another widely-accepted reference interest rate, such as the Federal Funds Rate or the Prime Rate for LIBOR in its loan documents, the public utility may do so without seeking further FPA section 204 authorization from the Commission where: (1) there is no other reference rate stated in the instrument at issue; and (2) there are no other material changes to the terms and conditions of the securities issuance previously authorized by the Commission.⁸ In such circumstances, a public utility would not be required to file with the Commission the substitution of a replacement widely-accepted reference interest rate because we do not find the substitution to be a material change to the authorizations previously granted.

⁸ In the instant case, PJM proposes a change from LIBOR plus 250 basis points to Daily SOFR plus 100 basis points. We note that the change in basis points is appropriate in the instant case of changing from LIBOR to another widely-accepted reference interest rate, but outside of this context, changes to the basis points may be considered material, and therefore revisions will remain subject to the standard set forth under FPA section 204(a). 16 U.S.C. § 824c(a) (the Commission shall approve an application under FPA section 204(a) “only if it finds that such issue or assumption (a) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes.”).

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The Commission orders:

Applicant is hereby authorized to substitute the SOFR reference interest rate in place of references to the LIBOR reference interest rate in the Bank of America Term Loan.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.

Document Content (s)

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