

168 FERC ¶ 61,094  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Hickory Run Energy, LLC

Docket No. ER19-2438-000

ORDER GRANTING LIMITED WAIVER

(Issued August 19, 2019)

1. On July 22, 2019, Hickory Run Energy, LLC (Hickory Run) submitted a request, pursuant to Rules 207(a)(5) and 212 of the Commission's Rules of Practice and Procedure,<sup>1</sup> for a limited waiver of certain procedural deadlines in Section 5.14(h)(5) of Attachment DD of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff).<sup>2</sup> Hickory Run seeks waiver to allow it to apply for, and PJM to grant, a unit-specific exception to the minimum offer price rule (MOPR) for 90 MW of incremental capacity from its nominal 1,000 MW natural gas-fired combined cycle power plant that is currently under construction in Lawrence County, Pennsylvania (Facility) for the 2022/2023 Base Residual Auction (BRA) and the 2021/2022 first incremental auction (IA) (2021/2022 First IA). As discussed below, we grant Hickory Run's waiver request.

**I. Background**

2. PJM secures capacity commitments under the Reliability Pricing Model (RPM) through a BRA, which is held three years before a delivery year and IAs, which are held closer in time to the relevant delivery year.<sup>3</sup> In order to prevent buyer-side market power, PJM's MOPR imposes minimum offer prices for new generation capacity resources participating in any RPM auction. Under Section 5.14(h)(5) of Attachment DD of the PJM Tariff, a capacity market seller can submit a request for a unit-specific exception to the MOPR for an RPM auction for any delivery year, along with supporting data and

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<sup>1</sup> 18 C.F.R. §§ 385.207(a)(5) (2018), 18 C.F.R. § 385.212 (2018)

<sup>2</sup> PJM, Intra-PJM Tariffs, OATT, OATT ATT DD.5.14, OATT ATTACHMENT DD.5.14 Clearing Prices and Charges (25.1.0), § 5.14(h)(5).

<sup>3</sup> See PJM, Intra-PJM Tariffs, ATTACHMENT DD.5.4, OATT ATTACHMENT DD.5.4 Reliability Pricing Model Auctions (5.0.1), § 5.4(a) & (b).

documentation to Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (IMM), and to PJM. If a capacity market seller obtains a determination from PJM prior to the RPM auction that its sell offer meets the unit-specific exception criteria and that the sell offer is consistent with the competitive, cost-based, fixed, net cost of new entry if the resource relied solely on revenue from PJM-administered markets, the sell offer will be permitted and will not be re-set to the MOPR floor offer price.<sup>4</sup>

3. Under Section 5.14(h)(5)(ii), a capacity market seller may request a unit-specific exception no later than 120 days prior to the commencement of the offer period for the RPM auction for which it seeks to submit its sell offer. The IMM is required to provide its findings of whether the proposed sell offer is acceptable no later than 90 days prior to the commencement of the offer period for the relevant auction.<sup>5</sup> PJM is required to provide its determination to the capacity market seller and IMM no later than 65 days prior to the commencement of the offer period for the relevant auction. If PJM determines that the request is acceptable, the capacity market seller is required to notify the IMM and PJM of the minimum level of sell offer that it will commit to no later than 60 days prior to the commencement of the relevant auction.<sup>6</sup>

4. Under Section 5.14(h)(4)(i), the MOPR's default offer floor does not apply to a sell offer based on a generation capacity resource if a sell offer based on that resource has cleared an RPM auction for that or any prior delivery year or that and any subsequent delivery year.<sup>7</sup>

## II. Waiver Request

5. Hickory Run states that construction of the Facility is nearing completion and the first test power is expected to be generated in mid-October 2019.<sup>8</sup> Hickory Run states that the Facility will be interconnected to the transmission system owned by American Transmission Systems, Inc. (ATSI), take interconnection service from PJM, and sell electricity, capacity, and/or ancillary services into PJM-administered markets. According

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<sup>4</sup> PJM, Intra-PJM Tariffs, OATT, OATT ATT DD.5.14, OATT ATTACHMENT DD.5.14 Clearing Prices and Charges (25.1.0), § 5.14(h)(5).

<sup>5</sup> *Id.* § 5.14(h)(5)(iv).

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

<sup>7</sup> *Id.* § 5.14(h)(4)(i).

<sup>8</sup> Waiver Request at 4.

to Hickory Run, the Facility has a planned maximum facility output of 1,000 MW and Hickory Run sought only 870 MW of capacity interconnection rights (CIRs) in its initial interconnection request because of the uncertainty regarding the final design and specifications of the Facility's generating units and to reduce the potential for incurring capacity resource deficiency charges.<sup>9</sup> Hickory Run states that the Facility received 870 MW of CIRs under its original interconnection service agreement (ISA), which became effective on May 2, 2017.

6. Hickory Run states that it submitted sell offers for the Facility reflecting the 870 MW of CIRs in the two most recent PJM BRAs, the 2020/2021 BRA and the 2021/2022 BRA, and cleared all 870 MW in both auctions.<sup>10</sup> Hickory Run further states that, for the 2020/2021 BRA, it requested from PJM and was granted an exemption from the MOPR's default offer floor pursuant to the Competitive Entry Exemption that was available under the PJM Tariff at that time. Hickory Run also notes that, because the Facility had cleared a previous auction, its sell offer in the 2021/2022 BRA was not subject to the MOPR's default offer floor.

7. Hickory Run explains that, as the design and performance of the Facility's generating units became more certain, Hickory Run requested that PJM increase its CIRs to 1,000 MW. Hickory Run states that, on February 4, 2019, Hickory Run, PJM, and ATSI entered into an amended ISA, which included the increased CIRs and did not require Hickory Run to pay for transmission upgrades. Hickory Run states that PJM filed the amended ISA with the Commission on March 6, 2019, and the Commission accepted it on April 17, 2019, the day after the deadline for submitting requests for a unit-specific exception in the 2022/2023 BRA.<sup>11</sup>

8. Hickory Run states that, having secured an additional 130 MW of CIRs, it planned to offer an incremental 90 MW into the 2020/2021 Second IA and to continue offering this incremental 90 MW into future RPM auctions.<sup>12</sup> Hickory Run asserts that, pursuant to the PJM Tariff, once a generation capacity resource has cleared an RPM auction, future sell offers for that resource are no longer subject to the MOPR's default offer floor.<sup>13</sup> Hickory Run explains that the Facility had cleared 870 MW in two prior BRAs,

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<sup>9</sup> *Id.* at 5.

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

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

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

<sup>13</sup> *Id.* at 7 (citing PJM Tariff, Attachment DD, Section 5.14(h)(4)(i)).

with its sell offer in the 2021/2022 BRA accepted without submission of a request for exception from the MOPR's default offer floor. Hickory Run avers that based on the prior sell offers of the Facility's capacity, it had a good faith belief that the MOPR's default offer floor would not apply to sell offers covering either or both the previously cleared 870 MW or the incremental 90 MW.<sup>14</sup> According to Hickory Run, on July 12, 2019, the final day for submitting sell offers into the 2020/2021 Second IA, Hickory Run learned that the incremental 90 MW of capacity would be subject to the MOPR's default offer floor. Hickory Run states that its sell offer for the 2020/2021 Second IA had been set below the applicable minimum offer price. Hickory Run avers that after PJM informed Hickory Run that it was subject to the MOPR, and given that it was the last day to submit sell offers for the auction, Hickory Run submitted its sell offer at the MOPR default offer floor price which did not clear the 2020/2021 Second IA.<sup>15</sup>

9. Hickory Run states that the dates for submitting a request for a unit-specific exception for: (1) the 2022/2023 BRA was April 16, 2019, with the auction window from August 14, 2019 through August 20, 2019; and (2) the 2021/2022 First IA was May 12, 2019, with the auction window from September 9, 2019 through September 13, 2019.<sup>16</sup>

10. Hickory Run requests waiver of the applicable deadlines in Section 5.14(h)(5) of Attachment DD of the PJM Tariff for requesting and reviewing unit-specific exceptions to the MOPR for the 2022/2023 BRA and 2021/2022 First IA. Hickory Run argues that the Commission has granted requests for waiver of similar deadlines in the PJM Tariff for requesting exceptions and/or exemptions from the MOPR's default offer floor.<sup>17</sup>

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

<sup>15</sup> *Id.* at 7 & n.18.

<sup>16</sup> *Id.* at 4. On July 25, 2019, the Commission issued an order directing PJM not to hold the RPM auction scheduled for August 14-28, 2019. *Calpine Corporation v. PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,051 (2019). That order did not address the 2021/2022 First IA, which Hickory Run states has an auction window of September 9, 2019 through September 13, 2019. See Waiver Request at 4.

<sup>17</sup> Waiver Request at 8 (citing *Robinson Power Co., LLC*, 162 FERC ¶ 61,092 (2018); *Ohio River Partners Shareholder, LLC*, 162 FERC ¶ 61,093 (2018); *Springdale Energy LLC*, 162 FERC ¶ 61,077 (2018); *Aurora Generation, LLC*, 162 FERC ¶ 61,076; *Clean Energy Future – Lordstown, LLC*, 152 FERC ¶ 61,076 (2015); *Robinson Power Co., LLC*, 150 FERC ¶ 61,123 (2015); *Dynegy Kendall Energy, LLC*, 147 FERC ¶ 61,095 (2014)).

11. Hickory Run argues that its waiver request satisfies the Commission's waiver criteria and is consistent with Commission precedent.<sup>18</sup> First, Hickory Run asserts that its failure to submit a request for a unit-specific exception by the applicable deadlines was made in good faith. Hickory Run states that its personnel had a good faith belief that sell offers for an incremental 90 MW of the Facility's capacity from the same generating units would not be subject to the MOPR's default offer floor. Hickory Run asserts that this belief was based on the Facility clearing two prior RPM auctions, that the Facility had cleared the most recent BRA without the need for an exception, and that Hickory Run had increased the Facility's CIRs to 1,000 MW without modifying its previously cleared generating units.<sup>19</sup> Hickory Run states that it was not until July 12, 2019 that it learned that its sell offer for the additional MW above the 870 MW would be subject to the MOPR's default offer floor. Hickory Run states that it has worked to prepare the waiver request since learning of the requirement.

12. Second, Hickory Run argues the waiver is limited in scope. Hickory Run states that it is seeking only to waive the applicable procedural deadlines for the next two RPM auctions. Hickory Run states that, to the extent its sell offers in future auctions thereafter for additional MW in excess of the 870 MW that previously cleared in earlier auctions are subject to the MOPR's default offer floor, Hickory Run will comply with the applicable deadlines for submitting a request for a unit-specific exception in such auctions.<sup>20</sup>

13. Third, Hickory Run asserts that the requested waiver is necessary to address a concrete problem. Hickory Run argues that its inability to obtain a unit-specific exception for the Facility's incremental 90 MW of capacity on the same generating units creates a substantial risk that the capacity will not clear the 2022/2023 BRA and 2021/2022 First IA. Hickory Run notes that its sell offer for the 2020/2021 Second IA, which it submitted at the applicable minimum offer price, failed to clear the auction. Hickory Run argues that granting the requested waiver will help ensure that the incremental capacity, which it states is not supported by state-sponsored contracts or other subsidies, is able to compete in these RPM auctions.

14. Fourth, Hickory Run argues that granting the waiver will not have any undesirable consequences. Hickory Run asserts that the "waiver will merely allow Hickory Run to request a Unit-Specific Exception for the" 2022/2023 BRA and 2021/2022 First IA and will not affect PJM's or the IMM's substantive determination as to whether the

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

<sup>19</sup> *Id.* at 8-9.

<sup>20</sup> *Id.* at 8.

incremental capacity qualifies for the exception.<sup>21</sup> Hickory Run also states that it is not requesting that the auctions be delayed to accommodate this waiver request.<sup>22</sup> According to Hickory Run, granting waiver will provide benefits to ratepayers and serve PJM's objectives by allowing additional efficient competitive capacity to be offered into and potentially clear in upcoming RPM auctions.

15. Hickory Run also requests that the Commission act on the waiver request as soon as possible, though no later than August 12, 2019.<sup>23</sup> Hickory Run asserts that the requested timeline is consistent with Commission precedent in other cases addressing time-sensitive requests for waiver of deadlines for seeking a MOPR exception. Hickory Run states that the expedited action is necessary to allow Hickory Run to obtain a unit-specific exception for the 2022/2023 BRA, which Hickory Run states is scheduled to open on August 14, 2019.<sup>24</sup>

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

16. Notice of Hickory Run's filing was published in the *Federal Register*, 84 Fed. Reg. 36,909 (2019), with interventions and protests due on or before August 1, 2019. On July 23, 2019 and July 24, 2019, PJM and Monitoring Analytics, LLC, acting in its capacity as the PJM IMM, respectively, filed timely motions to intervene. No protests or comments were filed.

### **IV. Discussion**

#### **A. Procedural Matters**

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 8-9.

<sup>23</sup> *Id.* at 1, 10.

<sup>24</sup> *See supra* note 16 (explaining that on July 25, 2019, the Commission issued an order directing PJM not to hold the RPM auction scheduled for August 14-28, 2019, and did not address the 2021/2022 First IA, with an auction window of September 9, 2019 through September 13, 2019).

**B. Substantive Matters**

18. We grant Hickory Run's waiver request. The Commission has previously 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>25</sup>

19. We find that the circumstances of Hickory Run's waiver request satisfy these criteria. First, we find that Hickory Run's failure to timely submit unit-specific exception requests for the Facility's incremental 90 MW of capacity was made in good faith, as Hickory Run had a good faith belief that sell offers for an incremental 90 MW of the Facility's capacity from the same generating units that previously cleared two RPM auctions would not be subject to the MOPR's default offer floor. Further, Hickory Run learned that its sell offer for the incremental 90 MW of capacity was subject to the MOPR default offer floor on July 12, 2019, during the 2020/2021 Second IA.

20. Second, we find that Hickory Run's requested waiver is limited in scope, as it is a one-time waiver of procedural deadlines for seeking unit-specific exceptions for two auctions, and it does not relate to the substantive requirements for a unit-specific exception. Third, we find that the waiver request addresses a concrete problem, in that it ensures an opportunity for Hickory Run to submit competitive offers for the Facility's incremental 90 MW of capacity into the 2022/2023 BRA and the 2021/2022 First IA. Finally, we find that granting the waiver request will not have undesirable consequences, such as harming third parties. Waiver of the procedural deadlines will permit Hickory Run to apply for a unit-specific exception and will not result in delay or interference with the 2022/2023 BRA or 2021/2022 First IA.

**The Commission orders:**

Hickory Run's 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.

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<sup>25</sup> See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).