

170 FERC ¶ 61,103
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

AEP Generation Resources Inc.
AES Ohio Generation, LLC

Docket No. ER20-822-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued February 14, 2020)

1. On January 15, 2020, pursuant to Rule 207(a)(5) of the Commission’s Rules of Practice and Procedure,¹ American Electric Power Service Corporation, on behalf of AEP Generation Resources Inc. (AEP Generation), and AES Ohio Generation, LLC (AES Ohio) (together, Petitioners), filed a petition for a limited waiver of deadlines in section 6.6(g) of Attachment DD of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff) to submit a preliminary and final must-offer exception request for the Third Incremental Auction (Third IA) for the 2020/2021 delivery year and to submit a preliminary must-offer exception request for the Second Incremental Auction (Second IA) for the 2021/2022 delivery year for Conesville Unit 4. Petitioners state the waiver would remedy an administrative oversight related to the Conesville Unit 4, which will be retired on June 1, 2020.² As discussed below, we grant Petitioners’ waiver request.

I. Background

2. Under section 6.6(g) of Attachment DD of the Tariff, a capacity market seller may seek approval for an exception from the must-offer requirement by establishing that the resource “is reasonably expected to be physically unable to participate in the relevant Delivery Year.”³ The capacity market seller can establish such a showing by, among other things, demonstrating that it has a documented plan in place to retire the resource

¹ 18 C.F.R. § 385.207(a)(5) (2019).

² PJM, Intra PJM Tariffs, OATT, I-J-K, OATT Definitions – I – J - K (9.0.0) (defining Incremental Auction).

³ PJM, Intra-PJM Tariffs, OATT, Attachment DD, 6 Market Power Mitigation (22.0.0), § 6.6(g) Offer Requirement for Capacity Resources.

prior to or during the delivery year and submitting a notice of deactivation to PJM consistent with the Tariff. In order to obtain an exception from the must-offer requirement for this reason, a capacity market seller must submit a preliminary request for exception before submitting either a withdrawal of that preliminary request or a demonstration that the capacity market seller has a documented plan in place to retire the resource prior to or during the relevant delivery year. The preliminary request for exception is due no later than 240 days prior to the commencement of the offer period for the applicable Incremental Auction. The withdrawal of that request or demonstration that the capacity market seller has a documented plan in place to retire the resource is due no later than 120 days prior to the same offer period.⁴

II. Filing

3. Petitioners state that the Conesville Power Plant is located in Coschocton County, Ohio, and that there is one remaining coal-fired unit at the plant, Conesville Unit 4.⁵ Petitioners state that AEP Generation and AES Ohio jointly own Conesville Unit 4, a 780-megawatt (MW) unit that will be retired on June 1, 2020, because it is no longer economic to operate.⁶

4. Petitioners state that, on January 23, 2019, they provided notice of the unit's planned deactivation to PJM and PJM's market monitor (Monitoring Analytics, LLC (IMM)). According to Petitioners, in February, PJM and the IMM informed the Petitioners that they had no concerns with the planned retirement. Petitioners state that

⁴ *Id.* Section 6.6(g) states that, if a capacity market seller does not timely take actions to remove its resource from the capacity market or exempt its resource from the must-offer requirements, a generation capacity resource:

may only be approved for an exception to the [Reliability Pricing Model (RPM)] must-offer requirement, upon . . . requesting and receiving an order from [the Commission], prior to the close of the offer period for the applicable [capacity market auction], directing the Office of the Interconnection to remove the resource from Capacity Resource status and/or granting an exception to the RPM must-offer requirement or a waiver of the RPM must-offer requirement as to such resource.

⁵ Waiver Request at 2.

⁶ *Id.* Petitioners state that AEP Generation owns 83.5 percent and AES Ohio owns 16.5 percent of Conesville Unit 4, and that each offers its share into the PJM capacity market independently.

AEP Generation and AES Ohio have been granted preliminary and final must-offer exception requests for Conesville Unit 4 for several earlier auctions.⁷ Petitioners state that they must receive the waiver prior to the close of the offer period for the applicable auction.⁸ According to Petitioners, June 29, 2019 was the deadline for the preliminary exception request, and October 27, 2019 was the deadline for the final exception request for the Third IA for delivery year 2020/2021.⁹ Petitioners further state that for the Second IA for delivery year 2021/2022, the deadline for the preliminary exception request was November 9, 2019 and, as of the date of Petitioners' filing here, the deadline for the final exception has not yet passed.¹⁰

5. Petitioners seek a waiver of the deadlines in section 6.6(g) of Attachment DD of the Tariff for submitting preliminary and final must-offer exception requests for the Third IA for the 2020/2021 delivery year and a preliminary must-offer exception request for the Second IA for the 2021/2022 delivery year for Conesville Unit 4.¹¹ In support of their waiver request, Petitioners cite section 6.6(g), which provides that, if a capacity market seller does not timely take actions to remove its resource from the capacity market or request an exception for its resource from the must-offer requirements, a generation capacity resource may only be approved for an exception to the must-offer requirement if the seller requests and receives an order from the Commission prior to the close of the offer period for the applicable auction.¹²

⁷ *Id.* at 3. Petitioners state that they have been granted preliminary and final must-offer exception requests for Conesville Unit 4 for the Second IA for delivery year 2020/2021 and the First Incremental Auction for delivery year 2021/2022, as well as a must-offer exception for the Base Residual Auction for delivery year 2022/2023. Petitioners also state that AEP Generation has submitted a must-offer exception request for the Base Residual Auction for delivery year 2023/2024 that is pending.

⁸ *Id.* at 4. Petitioners state that the offer window for the Third IA for delivery year 2020/2021 is February 24, 2020 through February 28, 2020 and for the Second IA for delivery year 2021/2022 the offer window is from July 6, 2020 through July 10, 2020. *Id.* at 4-5.

⁹ *Id.* at 2-3.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 1, 4-5.

¹² *Id.* at 4-5 (citing PJM, Intra-PJM Tariffs, OATT, Attachment DD, 6 Market Power Mitigation (22.0.0), § 6.6(g)).

6. Petitioners explain that the Commission has granted one-time waivers of tariff provisions in similar situations.¹³

7. First, Petitioners state that they are requesting waiver in good faith.¹⁴ Petitioners state that they mistakenly believed that they had already submitted timely notifications to meet the preliminary and final must-offer exception deadlines associated with the Third IA for the 2020/2021 delivery year and the preliminary exception request for the Second IA for the 2021/2022 delivery year. Petitioners state that they discovered the errors on January 13, 2020. Petitioners explain that they have already received five approved exceptions from PJM for various auctions for the 2020/2021, 2021/2022, and 2022/2023 delivery years.¹⁵ Petitioners state that AEP Generation and AES Ohio take responsibility for the oversight, and note that the overlapping nature of the Incremental Auction must-offer exception request deadlines and the need to repeatedly request exceptions despite confirmation from PJM and the IMM that the unit will be deactivated increase the potential for confusion. Petitioners state that the request encompasses the remaining Incremental Auctions prior to Conesville Unit 4 retiring, and the one remaining, future must-offer exception request deadline has been satisfied and that a similar error will not occur in the future.¹⁶

8. Second, Petitioners state that the waiver is of limited scope because it is for three procedural deadlines, two preliminary exception requests and the other for a final exception request related to a unit that will be retired June 1, 2020.¹⁷ Petitioners state that the request is a one-time waiver caused by administrative oversight and that Petitioners have met numerous other relevant deadlines.

9. Third, Petitioners state that granting the waiver will remedy a concrete problem in that, absent waiver, Petitioners would be obligated to offer capacity into an incremental auction from a unit that will be unable to provide that capacity, given its retirement date. Petitioners contend that granting waiver will allow them to claim an out-of-time exception to the must-offer requirements for which Petitioner would otherwise qualify under the PJM Tariff.

¹³ *Id.* at 5.

¹⁴ *Id.*

¹⁵ *See supra* note 7.

¹⁶ *Id.* at 5-6.

¹⁷ *Id.* at 6.

10. Finally, Petitioners state that granting the waiver would have no undesirable consequences for PJM, the IMM, or any other market participant or third party, nor will it have any impact on the results of future auctions.¹⁸ Petitioners state that it is public knowledge that Conesville Unit 4 is retiring June 1, 2020, and that granting the waiver will allow PJM to accurately account for capacity that can actually be physically committed during the 2020/2021 and 2021/2022 delivery years.¹⁹

11. Petitioners request that the Commission grant the request for waiver by February 14, 2020, in advance of the offer window for the Third IA for delivery year 2020/2021 which opens February 24, 2020 and closes February 28, 2020.²⁰ Petitioners further state that PJM and the IMM already have been notified of the filing, and no other market participant will be impacted.

III. Notice of Filing and Responsive Pleadings

12. Notice of the filing was published in the *Federal Register*, 85 Fed. Reg. 4964 (2020), with interventions and protests due on or before January 27, 2020. PJM and IMM filed timely motions to intervene.²¹ No protests or comments were filed.

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), PJM's and the IMM's timely, unopposed motions to intervene serve to make them parties to this proceeding.

¹⁸ *Id.* at 6-7.

¹⁹ *Id.* at 7.

²⁰ *Id.*

²¹ Exelon Corporation also filed a motion to intervene and subsequently, a notice of withdrawal of its intervention. Pursuant to Rule 216 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.216 (2019), the withdrawal is effective at the end of 15 days from the date of filing of the notice of withdrawal, if no motion in opposition to the notice is filed within that period and the decisional authority does not issue an order disallowing the withdrawal within that period.

B. Substantive Matters

14. For the reasons discussed below, we grant Petitioners' waiver request. The Commission has granted waiver of tariff provisions where: (1) the underlying error was made 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.²²

15. We find that the Petitioners' waiver request satisfies these criteria. First, we find that Petitioners' error was made in good faith. Petitioners state that, upon discovering on January 13, 2020 that they missed the deadlines, Petitioners acted to remedy the problem and, prior to filing, shared the waiver request with PJM and the IMM. Petitioners further explain that they already have received approval from PJM for five must-offer exceptions for various auctions for Conesville Unit 4, and that PJM and the IMM have provided confirmation that the unit will be deactivated.

16. Second, we find that Petitioners' waiver request is limited in scope. Petitioners' request pertains to discrete, procedural deadlines for a capacity market seller to submit two preliminary must-offer exception requests and one final must-offer exception request related to a unit that will be retired June 1, 2020.

17. Third, we find that granting the waiver request addresses a concrete problem by ensuring that the Petitioners will not be obligated to offer capacity into an incremental auction from a unit that will be unable to provide that capacity because of its approved retirement.

18. Finally, we find that granting the waiver request will not have undesirable consequences, such as harming third parties. According to the Petitioners, PJM and the IMM previously informed the Petitioners that they had no concerns with the planned retirement of Conesville Unit 4. In making this finding of no undesirable consequences, such as harm to third parties, we also note that no party opposes the waiver request.

²² See, e.g., *New Brunswick Energy Mktg. Corp.*, 167 FERC ¶ 61,252, at P 12 (2019); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

The Commission orders:

Petitioners' 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.