

170 FERC ¶ 61,191
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Wheelabrator Frackville Energy Company Inc.

Docket No. ER20-899-000

ORDER GRANTING REQUEST FOR LIMITED WAIVER

(Issued March 13, 2020)

1. On January 28, 2020, pursuant to Rule 207 of the Commission’s Rules of Practice and Procedure,¹ Wheelabrator Frackville Energy Company, Inc. (Wheelabrator Frackville) filed a petition for a limited waiver of the deadlines set forth in Section 6.6(g) of Attachment DD of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff)² for requesting an exception to the must-offer requirement for the Base Residual Auction (BRA) and all subsequent incremental auctions for the 2022-2023 delivery year. Wheelabrator Frackville states that its electric generation facility in Frackville, Pennsylvania (Facility) will be deactivated by March 1, 2020, and will be physically unable to participate in the 2022-2023 delivery year.³ As discussed below, we grant Wheelabrator Frackville’s 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

¹ 18 C.F.R. § 385.207 (2019).

² PJM, Intra-PJM Tariffs, OATT, Attachment DD, 6 Market Power Mitigation (22.0.0), § 6.6(g) Offer Requirement for Capacity Resources.

³ Waiver Request at 1.

Delivery Year.”⁴ 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 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 by September 1 of the year that last precedes the BRA for a delivery year or 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 by December 1 of the year that last precedes the BRA for a delivery year or no later than 120 days prior to the same offer period.⁵

3. On July 25, 2019, in Docket No. EL16-49-000, et al., the Commission directed PJM not to run the BRA for the 2022-2023 delivery year that previously had been delayed and scheduled for August 2019.⁶ Subsequently, on December 19, 2019, in an order establishing the just and reasonable rate in the proceeding, the Commission directed PJM to submit a compliance filing within 90 days that among other things would include

⁴ PJM, Intra-PJM Tariffs, OATT, Attachment DD, 6 Market Power Mitigation (22.0.0), § 6.6(g) Offer Requirement for Capacity Resources.

⁵ *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.

⁶ *Calpine Corp. v. PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,051 (2019). On August 13, 2018, the Commission granted PJM’s request to waive the auction timing requirements of its Tariff to allow for a delay of the 2019 BRA for the 2022-2023 delivery year from May 2019 to August 14-28, 2019, and waiver of the must-offer exception request deadlines. *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,153 (2018).

revised dates and timelines for the BRA for the 2022-2023 delivery year and related incremental auctions.⁷

II. Filing

4. Wheelabrator Frackville states that it is a Delaware corporation that currently owns the Facility, a 48 MW (nameplate) electric generation facility.⁸ Wheelabrator Frackville states that the Facility currently operates as a qualifying facility under the Public Utility Regulatory Policies Act of 1978, as amended, and is interconnected to the transmission system owned by PPL Electric Utilities Corporation and operated by PJM.

5. Wheelabrator Frackville explains that the electrical output of the Facility is sold on a merchant basis into the PJM markets.⁹ According to Wheelabrator Frackville, on August 30, 2019, it notified PJM of its intent to deactivate the Facility effective March 1, 2020, and, on October 2, 2019, PJM authorized the proposed deactivation after confirming that there would be no associated reliability violations.¹⁰ Wheelabrator Frackville states that it currently has a documented plan in place to retire the Facility by March 1, 2020, prior to the 2022-2023 delivery year, and will be physically unable to participate in the 2022-2023 delivery year.¹¹

6. Wheelabrator Frackville explains that, with the delay of the BRA for the 2022-2023 delivery year to August 2019, the must-offer exception deadlines for that auction changed from September 2018 and December 2018 to March 17, 2019, for preliminary exception requests, and April 16, 2019, for final confirmations.¹² Wheelabrator Frackville states that subsequent Commission orders directed PJM not to run the BRA for the 2022-2023 delivery year and directed PJM to submit a compliance

⁷ *Calpine Corp. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239, at PP 4, 219 (2019), *reh 'g pending*.

⁸ Waiver Request at 2.

⁹ *Id.* at 2-3. Wheelabrator Frackville states that the thermal energy output of the Facility is sold to the Commonwealth of Pennsylvania Department of Corrections to power the Pennsylvania State Correctional Institution at Frackville, under a contract that expires on February 29, 2020. *Id.* at 3.

¹⁰ *Id.* at 3, 5.

¹¹ *Id.* at 3.

¹² *Id.* at 3 & n.8.

filing with revised dates and timelines for that auction and related incremental auctions.¹³ Wheelabrator Frackville states that it is unclear whether the compliance filing will include new deadlines for the submission of preliminary and final must-offer requests.¹⁴

7. Wheelabrator Frackville states that, on August 30, 2019 and November 26, 2019, it timely submitted preliminary and final exception requests to the must-offer requirements for the BRA for the 2023-2024 delivery year and all subsequent BRA auctions. Wheelabrator Frackville states that it was, however, unable to seek a must-offer exception for the BRA for the 2022-2023 delivery year because it decided to retire the Facility only after the March 17, 2019 and April 16, 2019 deadlines for preliminary exceptions and final confirmations.¹⁵

8. Wheelabrator Frackville states that, because no revised deadlines for must-offer exceptions have been set, it seeks a one-time limited waiver of the March 17, 2019 and April 16, 2019 Tariff deadlines to allow for the submission and processing of its preliminary and final must-offer exception requests for the BRA and all subsequent incremental auctions for the 2022-2023 delivery year. Wheelabrator Frackville states that it has notified PJM and the Independent Market Monitor (Market Monitor) of this request for a limited waiver, which is necessary to carry out Wheelabrator Frackville's deactivation plan for the Facility.

9. Wheelabrator Frackville requests that the Commission grant this limited waiver so that PJM and the Market Monitor may consider a must-offer exception request for the Facility for the BRA and all subsequent incremental auctions for the 2022-2023 delivery year.¹⁶ Wheelabrator Frackville also requests waiver of the applicable Tariff deadlines for processing its must-offer exception request.

10. Wheelabrator Frackville states that the Commission has found that a one-time waiver is appropriate in similar situations.¹⁷

11. First, Wheelabrator Frackville states that it acted in good faith in seeking and obtaining authorization to deactivate the Facility as of March 1, 2020. Wheelabrator Frackville states that it complied with all of the Tariff requirements for deactivating the

¹³ *Id.* at 3-4.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 4-5.

¹⁶ *Id.* at 6.

¹⁷ *Id.*

Facility and timely requested must-offer exceptions for the BRA for the 2023-2024 delivery year and all subsequent RPM auctions. Wheelabrator Frackville states that it was unable to timely submit the preliminary exception request and final exception confirmation for the BRA for the 2022-2023 delivery year because it decided to request to deactivate the Facility after the March 17, 2019 and April 16, 2019 must-offer exception deadlines had already passed.

12. Second, Wheelabrator Frackville states that its request for a waiver is limited and discrete. Wheelabrator Frackville states that it is seeking a one-time waiver of the procedural deadlines for a must-offer exception set forth in Section 6.6(g) of Attachment DD to the Tariff, as modified by the Commission orders regarding the BRA for the 2022-2023 delivery year.¹⁸ Wheelabrator Frackville states that the waiver will permit PJM and the Market Monitor to process an exception request for the Facility after such deadlines have passed. Wheelabrator Frackville also states that it is not seeking waiver from any of the substantive Tariff requirements for obtaining a must-offer exception. Wheelabrator Frackville further states that it commits to provide any necessary supporting documentation and data required by PJM and the Market Monitor to expeditiously process its exception request.

13. Third, Wheelabrator Frackville states that the waiver would remedy a concrete problem, because absent a waiver, PJM and the Market Monitor cannot consider Wheelabrator Frackville's must-offer exception request for the BRA for the 2022-2023 delivery year and any incremental auctions. Wheelabrator Frackville also states that the waiver will allow it to pursue an exception from the requirement to offer capacity that cannot be delivered because the Facility will be physically decommissioned by March 1, 2020 and unable to deliver any capacity during the 2022-2023 delivery year.

14. Finally, Wheelabrator Frackville states that the waiver will not create undesirable consequences because it merely allows Wheelabrator Frackville to request a must-offer exception, which remains subject to PJM's and the Market Monitor's review and determination. Wheelabrator Frackville also states that the waiver will not result in any delay in the BRA for the 2022-2023 delivery year or any incremental auctions or interfere with PJM's administration of the RPM auctions. Wheelabrator Frackville further states that the waiver will not harm any third parties, and will ensure that only resources that are capable of performing during the 2022-2023 delivery year will be offered into the BRA for the 2022-2023 delivery year and any incremental auctions.

¹⁸ *Id.* at 6-7.

15. Wheelabrator Frackville states that it provided notice to PJM and the Market Monitor of its intent to submit this request for waiver and is not aware of any objection from either.¹⁹ Wheelabrator Frackville requests that the Commission grant the waiver request by March 13, 2020, to allow Wheelabrator Frackville to submit an exception request for the BRA and all subsequent incremental auctions for the 2022-2023 delivery year to PJM and the Market Monitor as soon as possible.

III. Notice of Filing and Responsive Pleadings

16. Notice of the filing was published in the *Federal Register*, 85 Fed. Reg. 6149 (Feb. 4, 2020), with interventions and protests due on or before February 18, 2020. PJM filed a timely motion 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 (2019), PJM's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

18. For the reasons discussed below, we grant Wheelabrator Frackville's 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.²⁰

19. We find that Wheelabrator Frackville's waiver request satisfies these criteria. First, we find that Wheelabrator Frackville acted in good faith. Wheelabrator Frackville states that it complied with all of the Tariff requirements for deactivating the Facility and timely submitted must-offer exception requests for the BRA for the 2023-2024 delivery year and all subsequent RPM auctions. Wheelabrator Frackville states that it was unable to timely submit the preliminary exception request and final exception confirmation for the BRA for the 2022-2023 delivery year because it decided to deactivate the Facility only after the last PJM posted March 17, 2019 and April 16, 2019 must-offer exception

¹⁹ *Id.* at 8.

²⁰ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

deadlines for that auction had passed.

20. Second, we find that Wheelabrator Frackville's waiver request is limited in scope. Wheelabrator Frackville's request pertains to a one-time waiver of discrete, procedural deadlines to allow submission of must-offer exception requests for the RPM auctions for the 2022-2023 delivery year.

21. Third, we find that granting the waiver request addresses a concrete problem by ensuring that PJM and the Market Monitor can consider Wheelabrator Frackville's must-offer exception request for the BRA and any incremental auctions for the 2022-2023 delivery year, and that Wheelabrator Frackville will not be obligated to offer capacity into auctions from the Facility, which will be unable to provide that capacity because of its approved deactivation.

22. Finally, we find that granting the waiver request will not have undesirable consequences, such as harming third parties. The waiver allows Wheelabrator Frackville to request a must-offer exception, which remains subject to PJM's and the Market Monitor's review and determination. According to Wheelabrator Frackville, PJM previously informed it that there would be no associated reliability violations with the deactivation of the Facility. In making this finding of no undesirable consequences, such as harm to third parties, we also note that no party opposes the waiver request.

The Commission orders:

Wheelabrator Frackville'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.