

171 FERC ¶ 61,169  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Eastern Landfill Gas, LLC

Docket No. ER20-1525-000

ORDER ON WAIVER REQUEST

(Issued May 27, 2020)

1. On April 8, 2020, as amended April 13, 2020 and May 11, 2020, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,<sup>1</sup> Eastern Landfill Gas, LLC (Eastern Landfill) filed a petition for a limited waiver of the procedural deadlines set forth in Section 6.6(g) of Attachment DD of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff),<sup>2</sup> specifically, the preliminary and associated submission deadlines for a unit to request to be removed permanently from capacity resource status, to be effective prior to the 2020/2021 delivery year.<sup>3</sup> As discussed below, we dismiss Eastern Landfill's waiver request as unnecessary.

**I. Background**

2. Under Section 6.6(g) of Attachment DD of the Tariff, a capacity market seller may seek approval to remove a generation capacity resource from capacity resource status.<sup>4</sup> In order to remove a generation capacity resource from capacity resource status, a capacity market seller must submit a preliminary request in writing, along with supporting data and documentation, to the market monitoring unit (Market Monitor) for evaluation, notifying PJM by copy of the same, by no later than (a) the September 1 that

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<sup>1</sup> 18 C.F.R. § 385.207(a)(5) (2019).

<sup>2</sup> PJM, Intra-PJM Tariffs, OATT, Attach. DD, 6 Market Power Mitigation (23.0.0), § 6.6(g) Offer Requirement for Capacity Resources.

<sup>3</sup> April 13 Waiver Request at 2 (Waiver Request).

<sup>4</sup> PJM, Intra-PJM Tariffs, OATT, Attach. DD, 6 Market Power Mitigation (23.0.0), § 6.6(g) Offer Requirement for Capacity Resources. Section 6.6(g) generally sets forth procedures for a capacity market seller to seek approval for an exception from the must-offer requirement for Reliability Pricing Model (RPM) auctions.

last precedes the base residual auction (BRA), and (b) 240 days prior to the commencement of the offer period for the applicable incremental auction. For the BRA for the 2023/2024 delivery year, a capacity market seller that seeks to remove a generation capacity resource from capacity resource status shall first submit such preliminary request by no later than November 1, 2019. The capacity market seller shall, by not later than (a) December 1 that last precedes the BRA for the applicable delivery year, or (b) 120 days prior to the commencement of the offer period for the applicable incremental auction, notify PJM and the Market Monitor in writing whether it is withdrawing its preliminary request to withdraw or confirming its preliminary decision to remove the capacity resource status.<sup>5</sup>

## II. Waiver Request

3. Eastern Landfill states that it is a Delaware limited liability company that owns a three megawatt landfill gas to electricity facility (Facility) located at the Eastern Sanitary Landfill in White Marsh, Maryland.<sup>6</sup> Eastern Landfill states that the Facility is a qualified facility under Docket No. QF17-499-001. Eastern Landfill further states that the Facility is a contingent renewable energy generator which is not subject to RPM must-offer requirements.<sup>7</sup> Eastern Landfill states that it was purchased by Energy Power Investment Company, LLC (EPIC) on September 24, 2019 from Exelon Generation Company, LLC. Eastern Landfill states that prior to EPIC's purchase, the unit was not operating, in disrepair, and due to be deactivated on September 30, 2020, and then decommissioned.<sup>8</sup> Eastern Landfill explains that after the purchase by EPIC, Eastern

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<sup>5</sup> *Id.* Section 6.6(g) states that, if a capacity market seller does not timely take actions to remove its resource from capacity resource status or exempt its resource from the must-offer requirements, a generation capacity resource:

shall only be removed from Capacity Resource status, and may only be approved for an exception to the 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.

<sup>6</sup> Waiver Request at 3.

<sup>7</sup> May 11 Filing at 2.

<sup>8</sup> Waiver Request at 1, 4; May 11 Filing at 4.

Landfill cancelled the deactivation request, and the unit was thoroughly reviewed for future potential use.<sup>9</sup> Eastern Landfill states that the Facility has significant physical operational restrictions and is in need of major repairs. Eastern Landfill states that in March 2020, it determined that the major repairs would take six to 12 months to complete and will cost millions of dollars. Eastern Landfill further explains that the decision was made to pursue re-purposing the unit as behind the meter generation.<sup>10</sup> Eastern Landfill states that the first step in the re-purposing process would be to remove the unit from capacity resource status.

4. Eastern Landfill states that under the previous owner, the Facility had cleared capacity in prior auctions and has a capacity obligation through May 31, 2020.<sup>11</sup> Eastern Landfill states that the Facility “submitted a zero capacity commitment” for the 2020/2021 delivery year, which starts on June 1, 2020, and has zero capacity obligation after May 31, 2020.<sup>12</sup> Eastern Landfill states that it does not intend to submit capacity commitments for the Facility for any future delivery years.<sup>13</sup>

5. Eastern Landfill asserts that it acted in good faith to remove the unit from PJM for the upcoming and future delivery years.<sup>14</sup> Eastern Landfill states that it filed a deactivation request with PJM on March 20, 2020, but after review of that request with PJM it was determined that was not the appropriate process to follow.<sup>15</sup> Eastern Landfill also states that it sent notice to PJM of its intent to terminate its interconnection service agreement (ISA) with PJM on March 24, 2020, as allowed under the agreement.<sup>16</sup> Eastern Landfill contends that upon notice to PJM of the termination, PJM advised Eastern Landfill that it needs to also file in accordance with Section 6.6(g) of Attachment DD of the PJM Tariff for the removal of the unit as a capacity resource as part of the ISA

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<sup>9</sup> May 11 Filing at 4.

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

<sup>11</sup> May 11 Filing at 3.

<sup>12</sup> Waiver Request at 5, May 11 Filing at 3.

<sup>13</sup> Waiver Request at 5.

<sup>14</sup> *Id.* (citing Interconnection Service Agreement No. 3608, App. 2, Standard Terms and Conditions for Interconnections, § 16.2.1); *see id.* at Ex. 2 (Interconnection Service Agreement No. 3608).

<sup>15</sup> May 11 Filing at 4.

<sup>16</sup> Waiver Request at 5; May 11 Filing at 4.

termination process.<sup>17</sup> Eastern Landfill states that it did not realize there were additional notification requirements to terminate the ISA, and made a good faith error in following the guidelines.<sup>18</sup> Eastern Landfill explains that the purchase of the project on September 24, 2019 (after the September 1 preliminary deadline for Section 6.6(g)) and receiving a budget and timing estimate to repair the facility in March 2020 (after the December 1 deadline) made these deadlines impractical to meet. Eastern Landfill explains that at the time it submitted its waiver request, the preliminary and associated submission deadlines in Section 6.6(g) of Attachment DD of the PJM Tariff to request a generation capacity resource to be removed permanently from capacity resource status had passed for the 2020/2021 delivery year.<sup>19</sup>

6. Eastern Landfill contends that granting the waiver request will ensure that Eastern Landfill will not be committed to provide capacity it is unable to provide and does not result in any undesirable result for PJM, the Market Monitor, or any other market participant.<sup>20</sup> Eastern Landfill also states that the Facility is a “very small resource that has barely run over the last several years under prior ownership.”<sup>21</sup>

7. Eastern Landfill states that it has been in communications with PJM since the purchase of the unit and that, more recently, PJM contacted the Market Monitor about its request for removal of the Facility as a capacity resource.<sup>22</sup> Eastern Landfill also states that along with the waiver request, it has submitted a formal request for review of the unit to be removed as a capacity resource to PJM and the Market Monitor as required under the PJM Tariff. Eastern Landfill asserts that granting the waiver request will allow the Facility to be reviewed by PJM and the Market Monitor and, if approved, to be removed as a capacity resource also by June 1, 2020.<sup>23</sup>

8. Eastern Landfill requests that the Commission grant the request for waiver of the preliminary and associated submission deadlines for a unit to request to be removed from

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<sup>17</sup> May 11 Filing at 4.

<sup>18</sup> Waiver Request at 6.

<sup>19</sup> May 11 Filing at 2.

<sup>20</sup> Waiver Request at 5.

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

<sup>22</sup> *Id.* at 6.

<sup>23</sup> May 11 Filing at 3.

capacity resource status no later than May 25, 2020.<sup>24</sup> Eastern Landfill explains that it must remove the unit as a capacity resource prior to the 2020/2021 delivery year, starting June 1, 2020, as part of the ISA termination.<sup>25</sup>

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

9. Notices of the filings were published in the *Federal Register*, 85 Fed. Reg. 20,994 (Apr. 15, 2020), 85 Fed. Reg. 21,845 (Apr. 20, 2020), and 85 Fed. Reg. 29,708 (May 18, 2020), with interventions and protests due on or before April 29, 2020 and May 18, 2020, respectively. PJM filed a timely motion to intervene. No protests or comments were filed.

### **IV. Discussion**

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

10. 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**

11. For the reasons discussed below, we dismiss Eastern Landfill's waiver request as unnecessary.

12. Eastern Landfill is an intermittent resource that is not subject to the must-offer requirement for RPM auctions and does not have a capacity obligation for the 2020/2021 delivery year or subsequent years.<sup>26</sup> Section 6.6(g) establishes the process for a capacity market seller to seek approval to remove a generation capacity resource from capacity resource status. Section 6.6(g) requires the capacity market seller to submit a preliminary request in writing, along with supporting data and documentation, to the Market Monitor

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<sup>24</sup> *Id.* at 4.

<sup>25</sup> Waiver Request at 6; May 11 Filing at 4.

<sup>26</sup> Section 6.6A(c) of Attachment DD provides that intermittent resources are not required to offer as a capacity performance resource, and thus not subject to the capacity performance resources must-offer requirement. The PJM Tariff defines intermittent resource as "a Generation Capacity Resource with output that can vary as a function of its energy source, such as wind, solar, run of river hydroelectric power and other renewable resources." PJM, Intra-PJM Tariff, OATT, I-J-K, OATT Definitions – I-J-K (9.0.0) (definition of "Intermittent Resource").

for evaluation by certain deadlines prior to an RPM auction and, confirm or withdraw such request by certain deadlines prior to the RPM auctions.<sup>27</sup> The Market Monitor is required to analyze the effects of the request with regard to potential market power issues and to notify the capacity market seller and PJM of its determination. If the Market Monitor determines that the generation capacity resource meets the applicable criteria and PJM agrees with the determination, the capacity market seller may remove the generation capacity resource from capacity resource status. After such determination, the capacity interconnection rights associated with such resource will be subject to termination and PJM shall amend the applicable ISA to reflect any such removal.

13. The deadlines to request to remove a generation capacity resource from capacity resource status in Section 6.6(g) of Attachment DD of the PJM Tariff were added to the PJM Tariff effective September 23, 2019.<sup>28</sup> The only auction for the 2020/2021 delivery year conducted after September 23, 2019 was the third incremental auction, which commenced on February 24, 2020. Therefore, Eastern Landfill does not need a waiver.

The Commission orders:

Eastern Landfill's waiver request is hereby dismissed, 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>27</sup> See *supra* P 2.

<sup>28</sup> *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,155 (2019) (accepting proposed revisions to section 6.6(g) to establish a process by which capacity market sellers may request removal of the capacity resource status from existing generation capacity resources). In its transmittal in Docket No. ER19-2417-000, PJM stated, as the reason for the filing, that the PJM Tariff provided that a seller may remove a resource from capacity resource status, but did not provide a process for doing so. PJM noted that, while section 6.6(g) "suggests that a Capacity Market Seller may remove the Capacity Resource status from a Generation Capacity Resource, it is silent on what documentation, along with the requisite timelines, such Capacity Market Seller must submit to PJM and the Market Monitor." *PJM Interconnection, L.L.C., Transmittal Letter Proposed Tariff Amendments*, Docket No. ER19-2417-000, at 5 n.8 (filed July 18, 2019).