

169 FERC ¶ 61,207
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Exelon Corporation

Docket No. ER20-153-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued December 19, 2019)

1. On October 21, 2019, pursuant to Rule 207(a)(5) of the Commission’s Rules of Practice and Procedure,¹ Exelon Corporation, on behalf of its subsidiary, Exelon Generation Company, LLC (Exelon), filed a petition for a limited waiver of the requirement to submit a preliminary request for exception to the must-offer requirement in Section 6.6(g) of Attachment DD of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff) with respect to three generating stations: Riverside Generating Station Unit 8 (Riverside 8); Westport Generating Station Unit 5 (Westport 5); and Notch Cliff Generating Station Units 1-8 (Notch Cliff) (collectively, Exelon Generators). Exelon states the waiver would remedy an administrative oversight, support its decision to retire the Exelon Generators, and allow PJM and the Independent Market Monitor (IMM) to process Exelon’s request for exception to the must-offer requirement for each of the Exelon Generators for the third Incremental Auction for the 2020/2021 delivery year.² As discussed below, we grant Exelon’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(a)(5) (2019).

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

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 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 later 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. Exelon states that it owns and operates the Exelon Generators, which are located in Baltimore County, Maryland.⁵ Exelon states that Riverside 8 is an approximately 20 MW combustion turbine, Westport 5 is an approximately 116 MW natural gas-fired generator, and Notch Cliff is an approximately 117 MW natural gas-fired generation station. Exelon states that each of the Exelon Generators is an existing generation resource and is scheduled to retire during the 2020/2021 delivery year.

4. According to Exelon, on November 30, 2018, it submitted notices of deactivation for each of the Exelon Generators to retire on June 1, 2020.⁶ Exelon avers that PJM responded on December 28, 2018, approving the deactivations on the proposed date after finding no reliability violations. Exelon contends that on February 14, 2019, the IMM

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

⁴ *Id.* This Tariff provision 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.” *Id.*

⁵ Waiver Request at 2.

⁶ *Id.*

notified Exelon that there were no market power issues with the proposed retirements of the Exelon Generators.

5. Exelon states that because it had already submitted the notices of deactivation for the Exelon Generators, it intended to seek, pursuant to Section 6.6(g) of Attachment DD, an exception from the must-offer requirement for the third Incremental Auction for the 2020/2021 delivery year.⁷ According to Exelon, PJM publishes schedules for each of its capacity auctions on its capacity market website, including the date on which an Incremental Auction will commence and the deadline to submit preliminary requests for an exception to the must-offer requirement, and that Exelon routinely relies on the schedules published by PJM on its website.⁸ Exelon states that the deadline to submit a preliminary request for exception from the must-offer requirement is 240 days prior to the commencement of the offer period for the applicable Incremental Auction. Exelon contends that PJM posted the schedule for the third Incremental Auction for the 2020/2021 delivery year on its website on August 29, 2019, two months past the June 29, 2019, deadline contained in the schedule for preliminary must-offer exception requests. Exelon states that, while it could have estimated the date independently, in Exelon's experience, the capacity market auction schedule published on PJM's website has been a reliable way to track submittal deadlines. Exelon explains that it relied on the capacity market auction schedule that was posted at that time, expected that the deadline would be postponed, and missed the deadline. Further, Exelon states that many of the capacity market auction deadlines are currently in flux, adding to confusion on the topic. Exelon contends it was not aware that the deadline had passed until after PJM published the calendar for the third Incremental Auction for the 2020/2021 delivery year on August 29, 2019.⁹

6. Exelon seeks a limited waiver of Section 6.6(g) of Attachment DD of the Tariff for the submission of its preliminary request for exception to the must-offer requirement for the Exelon Generators.¹⁰ In support of its waiver request, Exelon cites 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

⁷ *Id.* at 3.

⁸ *Id.* at 4.

⁹ *Id.*

¹⁰ *Id.* at 5.

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.¹¹

7. According to Exelon, the Commission has granted waivers to other sellers who provided similar evidence of the need for a waiver based on administrative error. Exelon states that it commits to cooperate with PJM and the IMM regarding the efficient processing of its request for exception from the must-offer requirement.¹² Exelon states that the Commission has granted waivers where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem must be remedied; and (4) the waiver does not have undesirable consequences.¹³

8. First, Exelon states that good cause exists to grant a waiver of the requirement to submit a preliminary request for a must-offer exception by June 29, 2019.¹⁴ Exelon states that its failure to meet the preliminary must-offer exception request deadline was due to a good faith error. According to Exelon, it intended to submit a timely preliminary must-offer exception request and relied on information published on PJM's website to determine the deadline. Exelon contends that upon discovering in late August that it missed the deadline, it acted to remedy the problem and notified PJM and the IMM. Exelon states that it intends to submit a timely final must-offer exception request on October 27, 2019, and follow all other administrative deadlines related to excluding these units for the 2020/2021 delivery year.¹⁵

9. Second, Exelon states that its waiver is of limited scope because it relates to a discrete procedural provision of the Tariff for the third Incremental Auction for the 2020/2021 delivery year (i.e., the deadline requiring submittal of a preliminary request for an exception from the must-offer requirement). According to Exelon, the Commission has stated that a waiver is limited in scope if it relates to procedural rules for participation in a capacity auction and is for one auction only.¹⁶ Exelon asserts

¹¹ *Id.* (citing PJM, Intra-PJM Tariffs, OATT, Attachment DD, 6 Market Power Mitigation (22.0.0), § 6.6(g)).

¹² *Id.* Exelon also states that it intends to develop more robust internal tracking procedure for auction deadlines so that it will be less dependent on PJM's posting of auction calendars in the future.

¹³ *Id.*

¹⁴ *Id.* at 6.

¹⁵ *Id.*

¹⁶ *Id.*

that it requests only that the Commission waive the provision requiring submittal of the preliminary request. Exelon states that its requests to deactivate the Exelon Generators have been reviewed by both the IMM and PJM with no concerns identified. Exelon states that it is not requesting waiver of any substantive requirement of the Tariff.¹⁷

10. Third, Exelon states that granting the waiver remedies a concrete problem by allowing each of the Exelon Generators to be eligible for an exception to the must-offer requirement for which they otherwise would be eligible due to their timely notices of deactivation and intended final must-offer exception requests. Exelon contends that waiver of the preliminary notice deadline would ensure that PJM and the IMM could consider Exelon's request and that the Exelon Generators are not committed to provide capacity that they will be unable to deliver.¹⁸

11. Finally, Exelon states that granting the waiver would have no undesirable consequences for PJM, the IMM, or any other party, especially considering that PJM has determined there will be no reliability issues as a result of the retirements and the IMM has determined there will be no market power issues.¹⁹ Exelon also states that it provided notice to PJM and the IMM of its intent to submit this waiver request and is not aware of any objection from either.

12. Exelon requests that the Commission grant the request for waiver by December 20, 2019, so that Exelon's request for a must-offer exception for the Exelon Generators in advance of the third Incremental Auction for the 2020/2021 delivery year, scheduled to begin on February 24, 2020, may be processed by PJM and the IMM. Exelon states that granting such waiver will also provide certainty to all three parties with respect to available installed capacity that will participate in the third Incremental Auction.²⁰ Exelon states that granting the waiver request by December 20, 2019, is necessary because sellers are obligated to report to PJM and the IMM what capacity is being excluded under a must-offer exception no later than December 21, 2019.

¹⁷ *Id.* at 7.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 2.

III. Notice of Filing and Responsive Pleadings

13. Notice of the filing was published in the *Federal Register*, 84 Fed. Reg. 57,722 (2019), with interventions and protests due on or before November 12, 2019. PJM and Monitoring Analytics, LLC, acting in its capacity as the IMM for PJM, filed timely motions to intervene. No protests or comments were filed.

IV. Discussion

A. Procedural Matters

14. 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.

B. Substantive Matters

15. For the reasons discussed below, we grant Exelon's 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.²¹

16. We find the Exelon's waiver request satisfies these criteria. First, we find that Exelon's error was made in good faith. Exelon states that it relied upon PJM's posted auction schedules to determine the deadline for its exception request and that the schedule was posted after the deadline had passed. Exelon explains that upon discovering that that it missed the deadline, Exelon acted to remedy the problem and notified PJM and the IMM. Further, Exelon states it intends to submit a timely final must-offer exception request on October 27, 2019 and follow all other administrative deadlines related to excluding these units for the 2020/2021 delivery year.

17. Second, we find that Exelon's waiver request is limited in scope. Exelon's request pertains to a discrete, procedural deadline – the deadline for a capacity market seller to submit a preliminary must-offer exception request for the third Incremental Auction for the 2020/2021 delivery year.

²¹ See, e.g., *New Brunswick Energy Marketing Corp.*, 167 FERC ¶ 61,252, at P 12 (2019); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

18. Third, we find that granting the waiver request addresses a concrete problem by ensuring that the Exelon Generators are not committed to provide capacity that they will be unable to deliver.

19. Finally, we find that granting the waiver request will not have undesirable consequences, such as harming third parties. According to Exelon, PJM determined that there will be no reliability issues and the IMM determined there will be no market power issues associated with the deactivation of the Exelon Generators. 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:

Exelon'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.