

139 FERC ¶ 61,087
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Diamond State Generation Partners, LLC

Docket No. ER12-1420-000

ORDER GRANTING WAIVER

(Issued April 30, 2012)

1. On March 30, 2012, Diamond State Generation Partners, LLC (Diamond) filed a request for a one-time, limited waiver of a provision in the Open Access Transmission Tariff (Tariff) of PJM Interconnection, L.L.C. (PJM) concerning the Minimum Offer Price Rule.¹ Diamond states that it needs the waiver to enable its participation in the upcoming PJM capacity auction. Diamond requests expedited action by April 27, 2012, in order to participate in the May 2012 auction for the 2015-2016 delivery year. For the reasons discussed below, we grant Diamond a one-time, limited waiver for the May 2012 auction, as requested.

Request for Waiver

2. Diamond is developing and will own and operate two fuel cell electric generating facilities in New Castle County, Delaware, with a total capacity of 30 MW. Diamond states that its solid oxide fuel cells will be capable of using multiple fuel sources, including natural gas, biogas, and hydrogen. Diamond states that its fuel cells will be connected to Delmarva Power & Light Company in the PJM footprint. Diamond expects to begin selling electricity as early as June 2012.

3. Diamond claims that its fuel cells should emit half the carbon dioxide of traditional natural gas-fired generation facilities, with virtually no nitrogen oxide or sulfur oxide emissions, and without need of a continuous supply of water. Diamond states that

¹ Section 5.14(h) of Attachment DD of the PJM Tariff.

this technology meets the requirements of the Delaware Public Service Commission under Delaware's Renewable Energy Portfolio Standard.

4. Diamond requests a one-time waiver so that, for the May 2012 PJM capacity auction, PJM may treat Diamond's sell offers as it treats offers based on hydroelectric, wind, and solar facilities for the limited purpose of applying section 5.14(h)(1) of Attachment DD of the PJM Tariff.² This provision establishes the Minimum Offer Price Rule for certain capacity resources, and specifies that certain types of resources, including certain renewable resources, shall have their Net Asset Class Cost of New Entry set at zero.

5. Diamond argues that good cause exists to grant a waiver. Diamond notes that the waiver is limited in scope to one Tariff provision as applied to only a single PJM auction, that is, the capacity auction for the delivery year that begins June 1, 2015, and will apply only to Diamond's fuel cells, which are recognized by the State of Delaware as conferring environmental benefits akin to those conferred by renewable resources.

6. Diamond further argues that a waiver would have no undesirable consequences. Diamond states further that granting waiver will benefit PJM customers, because, under Delaware's Qualified Fuel Cell Provider tariff, all PJM energy and capacity market revenues will flow directly back to customers,³ and because of the project's expected environmental benefits.

7. Diamond states that it has informed both PJM and PJM's Independent Market Monitor of the requested waiver, and that they have authorized Diamond to state that they do not oppose it.⁴

² Diamond's request refers to section 5.14(h)(1), and also makes reference to non-existent provisions of the PJM Tariff, namely, sections 4.14(h)(1) and 15.14(h)(1) of Attachment DD and section 15.14(h)(1) of Attachment D. We presume that Diamond intends to refer throughout its filing to section 5.14(h) of Attachment DD.

³ Diamond Request for Waiver at 5. Diamond states that under this Delaware tariff, Qualified Fuel Cell Providers such as Diamond are paid a fixed price for energy and capacity, which will be offset by the sales of energy, capacity, and ancillary services revenues in the PJM market, thereby flowing these PJM market revenues directly back to customers.

⁴ Diamond Request for Waiver at 6.

Notice and Responsive Pleadings

8. Notice of Diamond's filing was issued on April 3, 2012, and published in the *Federal Register*, with interventions and protests due on or before April 13, 2012.⁵

9. The Delaware Department of Natural Resources and Environmental Control and the Delaware Public Service Commission each filed comments in support of the request for waiver.

Discussion

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁶ the timely filed unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Section 5.14(h)(1) of Attachment DD of the PJM Tariff provides that the Minimum Offer Price Rule applies to combustion turbine generators and combined cycle generators. It further provides that "the Net Asset Class Cost of New Entry shall be zero for: (i) Sell Offers based on nuclear, coal or Integrated Gasification Combined Cycle facilities; or (ii) Sell Offers based on hydroelectric, wind, or solar facilities."⁷ Diamond, with the concurrence of PJM, requests that its fuel cell electric generating facilities be permitted to participate in the upcoming PJM capacity auction in the same manner as the facilities using renewable energy resources identified in this Tariff provision.

12. The Commission finds that good cause exists to grant the requested one-time limited waiver. The waiver will apply to these fuel cell generating facilities alone, for the single upcoming PJM capacity auction in May 2012, for the delivery year that begins June 1, 2015.⁸ The waiver is thus limited in scope, and there are no undesirable consequences. There are also evident benefits to customers. According to Diamond, PJM and PJM's Independent Market Monitor do not oppose this waiver request. The Delaware Public Service Commission and the Delaware Department of Natural

⁵ 77 Fed. Reg. 21,553 (April 10, 2012).

⁶ 18 C.F.R. § 385.214 (2011).

⁷ [OATT Attachment DD.5.14 Clearing Prices and Charges, 6.3.0.](#)

⁸ We encourage PJM to consider through its stakeholder process whether additional resources, such as fuel cells, should be added to the group of resources that have their Net Asset Class Cost of New Entry set at zero.

Resources and Environmental Control further support the request for waiver. No party opposes it.

The Commission orders:

Diamond is hereby granted a one-time waiver of section 5.14(h) of Attachment DD of the PJM Tariff, limited to the May 2012 capacity auction, as requested, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.