

144 FERC ¶ 61,142  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

August 22, 2013

In Reply Refer To:  
Hess Corporation  
Docket No. ER13-2038-000

Thomas Thackston  
Associate General Counsel  
Hess Corporation  
One Hess Plaza  
Woodbridge, NJ 07095

Dear Mr. Thackston:

1. On July 26, 2013, Hess Corporation (Hess) requested 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 (OATT). Specifically, Hess seeks waiver of the 120-day deadline for submission of a request for an exception to the must-offer requirement for the upcoming September 2013 Incremental Auction with respect to the Glades Pike Landfill Gas Cogeneration Plant (Glades Pike). Hess states that it has been authorized to represent that the Independent Market Monitor (IMM) for PJM does not oppose its request for waiver. For the reasons discussed below and for good cause shown, the Commission grants Hess' request for limited waiver and accepts PJM's deadlines for submission and review of Hess' requested exception to the must-offer requirement.

2. Hess is, among other things, a retail energy marketer in the Mid-Atlantic region and an active participant in the PJM, New York Independent System Operator, Inc., and ISO New England Inc. markets. Glades Pike is a landfill gas cogeneration plant that provides energy to a prison facility in Pennsylvania. Pursuant to a Request for Quote for Electricity Supply (RFQ), Hess was awarded a contract to manage Glades Pike's excess generation and capacity in the markets operated by PJM. Glades Pike is currently subject to a must-offer obligation into PJM's Reliability Pricing Model (RPM) auctions for 5.7 MWs.

3. Attachment DD of the PJM OATT sets forth the terms and conditions governing RPM for the PJM Region. Pursuant to Section 6.6(g) of Attachment DD of the OATT, a Capacity Market Seller may seek approval for an exception to the must-offer requirement in any PJM RPM auction if the resource is reasonably expected to be physically unable to participate in the relevant auction. The Capacity Market Seller must demonstrate that there are significant operational restrictions that cause long term changes to the installed capacity value of the resource. Section 6.6(g) of Attachment DD states that a Capacity Market Seller may seek such an exception by submitting a written request, along with supporting data and documentation, to PJM and the IMM by no later than 120 days prior to the start of the applicable RPM auction. However, Section 6.6(g) also provides for the following exception to allow filings after the deadline:

[i]f a Capacity Market Seller doesn't timely seek to remove a Generation Capacity Resource from Capacity Resource status or timely submit a request for an exception to the must-offer requirement, the Generation Capacity Resource shall only be removed from Capacity Resource status, and may only be approved for an exception to the must-offer requirement, upon the Capacity Market Seller requesting and receiving an order from FERC, prior to the close of the offer period for the applicable RPM Auction, directing the Office of the Interconnection to remove the resource from Capacity Resource status and/or granting an exception to the must-offer requirement or a waiver of the must-offer requirement as to such resource.<sup>1</sup>

4. With respect to Glades Pike, in the time leading up to the Base Residual Auction (BRA) for Delivery Year 2015-16, the facility experienced a number of start-up challenges and could not produce the amount of MWs initially expected. The shortfall occurred because the amount of methane gas that was expected to be produced from the landfill has not materialized. Currently, Glades Pike is producing approximately 3 MWs of gross capacity, of which 1.5 MWs are provided to the prison adjacent to the property, resulting in excess capacity available to the PJM markets of only 1.5 MWs. Hess requested and PJM granted an exception to reduce the must-offer obligation for Glades Pike for the 2015-16 BRA. However, Hess mistakenly believed that the exception applied to the incremental auctions for Delivery Year 2015-16 as well, and it did not request an exception to reduce the must offer obligation for Glade Pike for the upcoming September 2013 Incremental Auction.<sup>2</sup> Subsequently, Hess learned that Glades Pike

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<sup>1</sup> OATT ATT DD.6, OATT ATTACHMENT DD.6. MARKET POWER MITIGATION, 7.0.0.

<sup>2</sup> The deadline for requesting an exception was May 12, 2013.

continues to be subject to a must-offer requirement of 5.7 MWs for the upcoming September 2013 Incremental Auction and, therefore, requires an exception to this auction.

5. Hess states that the Commission has granted similar waivers in the past.<sup>3</sup> Hess believes good cause exists to grant the requested waiver. Hess states that, although it missed the May 12, 2013 deadline for submitting its request for a waiver, the error was made in good faith. Hess asserts that it missed the May 12, 2013 deadline because it mistakenly believed that its timely filed exception granted for the BRA for Delivery Year 2015-16 would also apply to September 2013 Incremental Auction for the 2015-16 Delivery Year. Hess argues that the waiver request is of limited scope because it is asking for waiver of one provision of the PJM OATT in order to change the must-offer obligation for one generating unit by 4.2 MWs (from 5.7 MWs to 1.5 MWs). Hess avers that granting the waiver will resolve a concrete problem because the Glades Pike facility is not capable of providing 5.7 MWs and should not be forced to offer that amount of capacity into the September 2013 Incremental Auction for Delivery Year 2015-16. Hess states that granting the waiver would allow Hess to seek an exception to the must-offer requirement that it is otherwise entitled to claim under the OATT. Hess contends that the request for limited waiver is being filed well before the start of the September 2013 Incremental Auction and will have the desirable consequence of permitting PJM to grant an exception for the purposes of ensuring that Glades Pike is bid into the September 2013 Incremental Auction for Delivery Year 2015-16 at a capacity value that accurately reflects the capability of the facility.

6. Hess requests that the Commission grant the limited waiver request by no later than August 23, 2013. Hess states that expedited action is necessary to enable Hess to seek an exception to the must-offer rule from PJM in time for the first incremental auction for Delivery Year 2015-16, which begins on September 9, 2013.

7. Notice of Hess' filing was published in the *Federal Register*, 78 Fed. Reg. 46,937 (2013), with protests or interventions due on or before August 2, 2013. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>4</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

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<sup>3</sup> Hess Transmittal at 4. Hess states the Commission has granted such 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 (citing *Appalachian Power Co.*, 143 FERC ¶ 61,032, at P 10 (2013); *Am. Mun. Power, Inc.* 140 FERC ¶ 61,102, at P 10 (2012); *Central Vermont Public Service Corp.* 121 FERC ¶ 61,225, at P 28 (2007)).

<sup>4</sup> 18 C.F.R. § 385.214 (2013).

The IMM submitted a motion to intervene on July 31, 2013. PJM submitted a motion to intervene on July 26, 2013 and filed comments on July 31, 2013.

8. In its comments, PJM states that it does not object to the waiver request. However, PJM asserts that Hess failed to request that the Commission establish a specific deadline by which Hess would be required to submit its exception request with all the documentation required to support its request. PJM states that Hess also failed to request that the Commission grant an extension of the deadlines by which PJM and the IMM are required to make their determinations and provide their notifications, and an extension of the deadline by which Hess must notify the IMM and PJM whether it intends to exclude from its Sell Offer some or all of the subject capacity of its Generation Capacity Resource on the basis of an identified exception.

9. Therefore, PJM requests that, if the Commission determines that good cause exists to grant Hess' limited waiver request, that in its order the Commission establish the following deadlines:

- A. Hess submits its request for exception by July 30, 2013;<sup>5</sup>
- B. IMM notifies Hess and PJM of its determination as to whether the unit qualifies for an exception to the must-offer requirement by August 16, 2013;
- C. PJM notifies Hess and the IMM whether the must-offer exception for the unit will be granted or denied by August 27, 2013; and
- D. Hess notifies PJM and the IMM whether it intends to exclude from its Sell Offers for the unit some or all of the subject capacity on the basis of an identified exception by August 27, 2013.

10. PJM states that the IMM and Hess have indicated to PJM that they support the proposed deadlines. PJM also asserts that Hess has given PJM permission to state that it does not oppose this filing or the requested deadlines.

11. We find Hess has shown good cause to grant the request for waiver. As noted above, Section 6.6(g) authorizes a Capacity Market Seller to file for an order that grants an exception or waiver in the event of a missed deadline. As Hess explains, it inadvertently missed the deadline due to its belief that the waiver it was granted for the BRA for Delivery Year 2015-16 would also apply to the first incremental auction for Delivery Year 2015-16; therefore, we find that granting the waiver to extend Hess' deadline is appropriate and will correct an error made in good faith. Additionally, we find that it is appropriate to grant this one-time waiver to reduce the must-offer obligation

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<sup>5</sup> PJM notes that Hess submitted its request and supporting documentation to PJM and the IMM on July 30, 2013.

for the Glades Pike Facility by 4.2 MW because of the limited scope of Hess' request, and because the waiver will allow Hess, PJM, and the IMM to remedy a concrete problem. We further find that granting the waiver will have no undesirable consequences for PJM, the IMM, or any other third parties. And both PJM and its IMM support the requested relief, and no parties opposed the request.

12. Accordingly, we grant waiver of the 120-day deadline in Section 6.6(g) of Attachment DD of the PJM OATT for the limited purpose of extending Hess' deadline for the submission of information until July 30, 2013 and further establish the deadlines specified by PJM in its comments, as detailed above.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.