

144 FERC ¶ 61,149  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

August 23, 2013

In Reply Refer To:  
FirstEnergy Service Company  
Docket No. ER13-1958-000

Akin Gump Strauss Hauer & Feld LLP  
Attention: Carrie Hill Allen, Esq.  
1333 New Hampshire Avenue, NW  
Washington, DC 20036

Dear Ms. Allen:

1. On July 11, 2013, FirstEnergy Service Company, on behalf of its affiliate FirstEnergy Solutions Corporation (together, FirstEnergy), filed a petition for limited waiver of a deadline in the Open Access Transmission Tariff (Tariff) of PJM Interconnection, L.L.C. (PJM). Specifically, FirstEnergy seeks waiver of the deadline for filing a request that PJM and its Market Monitoring Unit (MMU) grant FirstEnergy an exception of the must-offer requirement, so that certain FirstEnergy generation units in the process of being deactivated may have their status properly reflected in the First Incremental Auction for Delivery Year 2015-2016. For the reasons discussed below and good cause shown, the Commission grants a one-time waiver, extending FirstEnergy's deadline to July 10, 2013, as requested.
2. Attachment DD of the PJM Tariff sets forth the terms and conditions governing the Reliability Pricing Model (RPM) for the PJM Region. Section 6.6 requires every Capacity Market Seller (that is, the owner of any Existing Generation Capacity Resources located in the PJM Region) to offer its capacity in all RPM Auctions for each Delivery Year, less any amount determined by the Office of the Interconnection to be eligible for an exception to the must-offer requirement. Section 6.6(g) describes what demonstration a Capacity Market Seller must make in order to establish that a resource is reasonably expected to be physically unable to participate in the relevant auction.
3. Under Section 6.6(g), the Capacity Market Seller must submit its complete filing no later than 120 days prior to the commencement of the offer period for the applicable RPM Auction. However, Section 6.6(g) also provides for the following exception to allow filings after the deadline:

If 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. FirstEnergy seeks waiver from the Commission pursuant to the above paragraph of the PJM Tariff, for its Hatfield<sup>2</sup> and Mitchell<sup>3</sup> units, which will be deactivated by October 9, 2013,<sup>4</sup> in order to allow PJM and the MMU to consider its requests for must-offer exceptions for these units. In particular, FirstEnergy requests that the following dates apply to the consideration of the substance of its must-offer exception requests: (1) FirstEnergy submits the requests for exception by July 10, 2013;<sup>5</sup> (2) the MMU notifies FirstEnergy and PJM of its determination whether the units qualify for an exception to the must-offer requirement by August 16, 2013; (3) FirstEnergy notifies the MMU and PJM whether it disagrees with the MMU's determination by August 20, 2013; (4) PJM notifies FirstEnergy and the MMU whether the must-offer exceptions for the units will be approved or denied by August 27, 2013; and (5) FirstEnergy notifies PJM and the MMU whether it intends to exclude from its sell offers for the units some or all of

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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 Hatfield units are three 570 MW coal-fired generators at Hatfield's Ferry in Masontown, PA, owned by FirstEnergy affiliate Allegheny Energy Supply, LLC.

<sup>3</sup> The Mitchell units are an oil-fired 82 MW generator and a coal-fired 288 MW generator at Courtney, PA, owned by FirstEnergy affiliate Allegheny Energy Supply, LLC.

<sup>4</sup> FirstEnergy petition at 1.

<sup>5</sup> FirstEnergy notes that it completed its must-offer exception requests for the units on July 10, 2013.

the subject capacity on the basis of an identified exception by August 27, 2013. Accordingly, FirstEnergy requests that the Commission grant waiver by August 23, 2013.

5. FirstEnergy argues that good cause exists to grant the waiver, because its decision to deactivate the Hatfield and Mitchell units is based on information obtained after the original May 12, 2013 deadline, and that FirstEnergy has since then acted promptly. In particular, FirstEnergy explains that the Hatfield and Mitchell units “have been on the edge of financial viability,” and that once “PJM posted [] the results for the Base Residual Auction [] for 2016-2017 Delivery Year on May 24, 2013,” FirstEnergy reassessed the financial viability of the units.<sup>6</sup> Based on this new information, FirstEnergy decided to deactivate the units; it notified PJM of its decision on July 9, 2013. Accordingly, FirstEnergy argues that it acted diligently and in good faith.

6. FirstEnergy argues that the Commission has granted waivers in similar circumstances, both under Section 6.6(g) of Attachment DD of the PJM Tariff,<sup>7</sup> and under analogous provisions of other tariffs.<sup>8</sup> FirstEnergy also notes that the waiver is limited in scope, and that it would remedy a concrete problem. Finally, FirstEnergy states that “neither PJM nor the MMU opposes the limited request for waiver in this petition,” and therefore, it argues, “granting the waiver at this stage will not have undesirable consequences.”<sup>9</sup>

7. Notice of the filing was published in the *Federal Register*, 78 Fed. Reg. 43,191 (2013), with interventions and protests due on or before August 1, 2013. PJM submitted timely, a motion to intervene. Duquesne Light Company submitted a motion to intervene out-of-time on August 8, 2013. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,<sup>10</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d),<sup>11</sup> the Commission will grant Duquesne Light Company’s late-filed motion to intervene given

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<sup>6</sup> FirstEnergy petition at 6.

<sup>7</sup> FirstEnergy petition at 6 (citing *S. Indiana Gas & Elec. Co.*, 143 FERC ¶ 61,091 (2013)).

<sup>8</sup> FirstEnergy petition at 6 (citing *ISO New England Inc.*, 142 FERC ¶ 61,051, at P 34 (2013)).

<sup>9</sup> FirstEnergy petition at 7.

<sup>10</sup> 18 C.F.R. § 385.214 (2013).

<sup>11</sup> 18 C.F.R. § 385.214(d) (2013).

its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. No protests or adverse comments were filed.

8. We find FirstEnergy has shown good cause to grant the request for waiver. As noted above, Section 6.6(g) authorizes a Capacity Market Seller to file with the Commission for an order that grants an exception or waiver in the event of a missed deadline. As FirstEnergy explains, it missed the deadline because it was not able to make a determination whether to deactivate the units, which FirstEnergy states had been on the edge of financial viability, until after May 24, 2013, the date that PJM posted the results of the Base Residual Auction for the 2016-2017 Delivery Year; therefore, we find that granting the waiver to extend FirstEnergy's deadline is appropriate. Additionally, we find that it is appropriate to grant this one-time waiver for the Hatfield and Mitchell units that are in the process of being deactivated because the waiver will allow FirstEnergy, PJM, and the MMU to remedy a concrete problem of otherwise having to offer electric energy from units that are to be deactivated. It further appears that the waiver would have no undesirable consequences for PJM, its MMU, or any other third parties, and both PJM and its MMU support the requested relief and no parties oppose the request. Accordingly, we grant the request for limited waiver, such that the request by FirstEnergy is considered timely under Section 6.6(g) of Attachment DD of the PJM Tariff and further establish the deadlines specified by FirstEnergy in its waiver request, as detailed above.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.