

146 FERC ¶ 61,011
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 9, 2014

In Reply Refer To:
Sunbury Generation LP
Docket No. ER14-615-000

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Attention: Kurt L. Krieger, Esq.
Counsel for Sunbury Generation LP

Dear Mr. Krieger:

1. On December 12, 2013, Sunbury Generation LP (Sunbury) requested a limited waiver of the preliminary must-offer exception request deadline set forth in Section 6.6(g) of Attachment DD of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (PJM Tariff). Specifically, Sunbury seeks waiver for its coal-fired generating units, Units 1, 2, 3, and 4 (the Subject Units) for the Base Residual Auction (BRA) commencing May 2014 and for the 2017-18 Delivery Year. Sunbury also requests expedited action by January 12, 2014 on its request for waiver. Finally, Sunbury states that PJM does not oppose this waiver request.¹ For the reasons discussed below and for good cause shown, the Commission grants Sunbury's request for limited waiver.

2. Sunbury is the owner of Sunbury Station (Station), an existing generating facility having a demonstrated capacity of approximately 436 MW. The Station is located in Shamokin Dam, Snyder County, Pennsylvania. Sunbury is engaged exclusively in the wholesale sale of electric energy, capacity, and ancillary services generated by the Station within the market administered by PJM. Sunbury recently adopted a new repowering

¹ Sunbury asserts that, given time constraints and the need to file this petition promptly, counsel for Sunbury and the Independent Market Monitor (IMM) were unable to communicate sufficiently for Sunbury to be able to state herein that the IMM does not oppose the request. However, Sunbury states that, at this time, it does not have any information that would lead it to believe that the IMM opposes the granting of this petition.

plan, which limits the development of additional generation capacity and alters certain capacity commitments. As such, Sunbury has been working with PJM and making the required submissions to PJM in order to obtain needed must-offer exceptions from PJM for the Subject Units, and for certain additional units, for the 2015-16, 2016-17, and 2017-18 Delivery Years, pursuant to the terms of the PJM Tariff.

3. Attachment DD of the PJM Tariff sets forth the terms and conditions governing the BRA for the PJM Region. Pursuant to Section 6.6(g) of Attachment DD of the PJM Tariff, a Capacity Market Seller may seek approval for an exception to the must-offer requirement if the Capacity Market Seller demonstrates that it: (i) is reasonably expected to be physically unable to participate in the relevant Delivery Year; (ii) has a financially and physically firm commitment to an external sale of its capacity; or (iii) was interconnected to the transmission system as an energy resource and not subsequently converted to a capacity resource. With respect to item (i), in order to establish that a resource is reasonably expected to be physically unable to participate in the relevant auction as required, the Capacity Market Seller must demonstrate that it can satisfy one of four criteria: (A) it has a documented plan in place to retire the resource prior to or during the Delivery Year; (B) significant physical operational restrictions cause long term or permanent changes to the installed capacity value of the resource; (C) the Capacity Market Seller is involved in an ongoing regulatory proceeding specific to the resource and has received an order, decision, final rule, opinion or other final directive from the regulatory authority that will result in the retirement of the resource; or (D) the resource is considered an Existing Generating Capacity Resource because it cleared a Reliability Pricing Model Auction for a Delivery Year prior to the Delivery Year of the relevant auction, but is not yet in service and is unable to achieve full commercial operation prior to the Delivery Year of the relevant auction.

4. Sunbury explains that it has been working with PJM and making submissions to demonstrate that it has a documented plan in place to retire the Subject Units, in accordance with the exception criteria specified in item (A). In order to obtain an exception to the must-offer requirement for the reason specified in item (A), a Capacity Market Seller must submit a preliminary must-offer request by no later than November, 1, 2013, and a final request by December 1, 2013 for the BRA for the Delivery Year 2017-18. Sunbury states that it missed the November 1, 2013 deadline for the preliminary must-offer exception requests for the Subject Units; however, Sunbury has separately met the submission deadline for final requests for the Subject Units.

5. Sunbury states that the Commission has granted similar waivers in the past 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.² Sunbury believes that all four conditions are satisfied.

6. Sunbury states that, although it missed the preliminary must-offer exception deadline of November 1, 2013, the error was made in good faith, due in part to Sunbury's adoption of new repowering plans at the Station and its unfamiliarity with the recently modified exception request procedures approved effective October 15, 2013, requiring both a preliminary and final exception request for PJM Tariff Section 6.6(g) of Attachment DD, paragraph (A) requests.³ Sunbury contends that its waiver request is limited in scope, and it is timely submitting this petition for waiver after it became clear that doing so was the appropriate course of action, and well before the May 2014 BRA. Moreover, Sunbury asserts that granting the waiver will resolve any confusion created from Sunbury submitting its preliminary request late and that granting the waiver allows Sunbury to claim an exception it is otherwise entitled to claim under the PJM Tariff. Finally, Sunbury avers that, because it timely submitted its final request for a must-offer exception by the December 1, 2013 deadline for the Subject Units, granting the waiver does not have any undesirable consequences and will not impact any third parties.

7. In addition, Sunbury requests that the Commission grant the limited waiver request by no later than January 12, 2014. Sunbury states that expedited action on the petition is necessary since January 12, 2014 is the date that all requests for an exception to the must-offer requirement, other than those related to a proposed deactivation, must be submitted to PJM. Sunbury contends that granting the petition by this date provides PJM and the IMM with the PJM Tariff-specified amount of time to conduct their evaluations of the exception request, notify the Capacity Market Seller of their determinations, and give the Capacity Market Seller time to petition the Commission if PJM determines that the exception request should not be granted.

8. Notice of Sunbury's filing was published in the *Federal Register*, 78 Fed. Reg. 77,117 (2013), with protests or interventions due on or before December 23, 2013. PJM filed a motion to intervene. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴ PJM's timely, unopposed motion to intervene serves to make PJM a party to this proceeding. No protests were filed.

² Sunbury Transmittal at 7 (citing *FirstEnergy Serv. Co.*, 144 FERC ¶ 61,149 (2013); *Appalachian Power Co.*, 143 FERC ¶ 61,015, at PP 8-9 (2013); *Southern Ind. Gas & Elec. Co.*, 143 FERC ¶ 61,091, at P 34 (2013); *American Mun. Power, Inc.*, 140 FERC ¶ 61,102, at P 10 (2012); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 18 (2011); *Cent. Vermont Pub. Serv. Corp.*, 121 FERC ¶ 61,225, at P 28 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007, at P 31 (2007)).

³ See *PJM Interconnection, L.L.C.*, 145 FERC ¶ 61,035 (2013).

⁴ 18 C.F.R. § 385.214 (2013).

9. We find good cause to grant the request for waiver. Section 6.6(g) of Attachment DD authorizes a Capacity Market Seller to file for an order that grants an exception or waiver in the event of a missed deadline. As Sunbury explains, it inadvertently missed the deadline to submit a preliminary must-offer exception request due to its adoption of new repowering plans at the Station and also due to unfamiliarity with the procedures requiring the submittal of both a preliminary and a final exception request. After discovering its error, Sunbury timely submitted a final exception request for the Subject Units. Therefore, we find that granting waiver will correct an error made in good faith. We also find it appropriate to grant this one-time waiver of the deadline for submitting a preliminary exception request for Delivery Year 2017-18 for the Subject Units because of the limited scope of Sunbury's request and because the waiver will allow Sunbury and PJM to remedy a concrete problem. We further find that granting the waiver will have no undesirable consequences for PJM or any other third parties. Neither PJM, nor any other third parties, oppose the requested waiver.

10. Accordingly, we grant waiver of the preliminary must-offer exception requirement deadline in Section 6.6(g) of Attachment DD of the PJM Tariff for the limited purpose described herein. We note that this waiver is limited to the specific and unique facts presented here and should not be viewed as authorizing market participants to avoid these or other terms and conditions set forth in the PJM Tariff.

By the direction of the Commission.

Kimberly D. Bose,
Secretary.