

146 FERC ¶ 61,226  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

March 26, 2014

In Reply Refer To:  
Virginia Electric and Power  
Company  
Docket No. ER14-1162-000

Schiff Hardin LLP  
Attn: Jesse Halpern  
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901 K Street, NW  
Suite 700  
Washington, DC 20001

Dear Ms. Halpern:

1. On January 27, 2013, Virginia Electric and Power Company (VEPCO), filed a petition for limited waiver of the deadlines for the must-offer exception request set forth in Section 6.6(g) of Attachment DD of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff). Specifically, VEPCO seeks waiver for its generating units, Chesapeake Energy Center Units 1, 2, 3, and 4 and Yorktown Units 1 and 2 (collectively, the Units) to secure an exception to the must-offer requirement for the Units from the base residual auction commencing May 2014 and for the 2017-18 delivery year. VEPCO states that PJM does not oppose this waiver request. For the reasons discussed below, the Commission grants VEPCO's request for waiver.

2. VEPCO states that it is a transmission-owning member of PJM with a generation portfolio of more than 19,000 MW, which is transmitted over approximately 6,000 miles of electric transmission lines and approximately 65,000 miles of electric distribution facilities to serve customers in Virginia and North Carolina. VEPCO adds that it is the owner of the Chesapeake Energy Center generation station, which consists of four coal-fired generation units with a total rated net demonstrated capacity of 576 MW, located in Chesapeake, Virginia. VEPCO is also the owner of the Yorktown station, which consists of two coal-fired generation units with a total rated net demonstrated capacity of 323 MW, located in Yorktown, Virginia. VEPCO states that it is a load serving entity that takes transmission service under the Tariff and a market participant that fully participates in the PJM markets. VEPCO offers the generation it owns or controls into the wholesale markets operated by PJM, including the base residual auction.

VEPCO explains that it made the determination to deactivate the Units because their operation is no longer economically justifiable, in part because they require additional environmental controls to comply with the U.S. Environmental Protection Agency's Mercury and Air Toxics final rule promulgated on December 21, 2011.

3. VEPCO states that Section 6.6(g) of Attachment DD of the Tariff sets forth the terms and conditions governing the base residual auction for the PJM Region, where a capacity market seller, such as VEPCO, may seek approval for an exception to the must-offer requirement in any PJM Reliability Pricing Model auction by submitting a written request to the PJM Independent Market Monitor (IMM) and the PJM Office of Interconnection, provided it can establish that the resource "is reasonably expected to be physically unable to participate in the relevant auction" and thus qualifies for an exception to the must-offer obligation.

4. Pursuant to Section 6.6(g) of Attachment DD of the 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. Additionally, 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.

5. Subject to the terms and conditions of Section 6.6(g) of Attachment DD of the Tariff, capacity market sellers were required to submit a preliminary exception request by November 1, 2013, and a final notification by December 1, 2013, for the 2017-2018 base residual auction. VEPCO explains that it timely submitted and received an exemption for the Units for the 2015-2016 base residual auction and for the 2016-2017 base residual auction. However, VEPCO states that it inadvertently did not submit its request for exception for the 2017-2018 base residual auction until January 17, 2014; therefore it seeks a limited waiver of Section 6.6(g) of Attachment DD of the Tariff. VEPCO explains that this request reflects the deactivation filing submitted to PJM and the PJM

IMM stating that the Units would be deactivated on or around December 31, 2014, and that it is necessary to allow PJM and the IMM to process VEPCO's request for an exception for the Units to the must-offer requirement for the 2017-2018 base residual auction.

6. VEPCO asserts 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.<sup>1</sup> VEPCO states that it met the deadline for the 2015-2016 and 2016-2017 base residual auctions but through inadvertent oversight missed the deadline for submitting the request for exemption of the 2017-2018 base residual auction. VEPCO states that after realizing its inadvertent oversight, it acted diligently and in good faith to promptly request an exception from the must-offer requirement. VEPCO also states that the waiver is of limited scope because VEPCO requests only that the Commission waive the provision requiring the submittal of the preliminary notification by November 1, 2013 and the final request by December 1, 2013 for the applicable Reliability Pricing Model auction and the associated deadlines for processing the request. VEPCO explains that granting this waiver would remedy a concrete problem by allowing VEPCO to claim an exception to the must-offer requirement that it is otherwise entitled to claim under the Tariff and, thus, to ensure that the Units, which will be physically decommissioned, are not committed to provide capacity that they will be unable to deliver. VEPCO also explains that this waiver would have no undesirable consequences for PJM, the IMM, or any other third parties. VEPCO believes that all four conditions under the Tariff are therefore satisfied.

7. VEPCO requests that the Commission grant the limited waiver request no later than March 28, 2014. VEPCO states that this date is appropriate since it allows the IMM to determine if the Units qualify for an exception to the must-offer requirement, allows VEPCO to notify the IMM and PJM in writing if it disagrees with the IMM's decision, and allows for PJM to notify VEPCO and the IMM if the exception to the waiver is granted. VEPCO states that granting the petition by this date provides PJM and the IMM with the 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.

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<sup>1</sup> VEPCO Transmittal at 5 n.5 (citing *First Energy Serv. Co.*, 144 FERC ¶ 61,149, at P 8 (2013); *Appalachian Power Co.*, 143 FERC ¶ 61,015, at PP 8-9 (2013); *S. Ind. Gas & Elec. Co.*, 143 FERC ¶ 61,091, at P 8 (2013); *ISO New England Inc.*, 142 FERC ¶ 61,051, at P 34 (2013); *Am. Mun. Power, Inc.*, 140 FERC ¶ 61,102, at P 10 (2012); *Cent. Vt. Pub. Serv. Corp.*, 121 FERC ¶ 61,225, at P 28 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007, at P 31 (2007)).

8. Notice of VEPCO's filing was published in the *Federal Register*, 79 Fed. Reg. 6,580 (2014), with protests or interventions due on or before February 18, 2014. PJM and the IMM both filed timely motions to intervene, but neither protested the filing. No adverse comments or protests were filed. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>2</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. We find that VEPCO 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 VEPCO explains, it inadvertently missed the deadline to submit a preliminary and final must-offer exception request due to inadvertent oversight. After discovering its error, VEPCO timely submitted a final exception request for the Units. VEPCO plans to deactivate the Units on or around December 31, 2014 and has already submitted and received an exemption for the Units for both the 2015-2016 base residual auction and the 2016-2017 base residual auction. 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 Units because of the limited scope of VEPCO's request and because the waiver will allow VEPCO and PJM to remedy a concrete problem of otherwise having to offer electric energy from its units that are to be deactivated. We further find that granting the waiver will have no undesirable consequences for PJM or any other third parties. We note that no party has opposed the request.

10. Accordingly, we grant waiver of the preliminary must-offer exception requirement deadlines 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 does not constitute established precedent that would allow market participants to avoid these or other terms and conditions set forth in the Tariff.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>2</sup> 18 C.F.R. § 385.214 (2013).