

146 FERC ¶ 61,245
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 31, 2014

In Reply Refer To:
City of Dover, Delaware
Docket No. ER14-1367-000

Kirk Howard Betts
Betts & Holt LLP
1100 17th Street, NW
Washington, DC 20036

Dear Mr. Betts:

1. On February 25, 2014, City of Dover, Delaware (Dover) filed a request for limited waiver (Waiver Request) of the deadlines set forth in section 6.6(g) of Attachment DD to PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (Tariff).¹ Specifically, Dover seeks a one-time waiver of the deadlines for requesting a unit-specific exemption from the must-offer requirement. Dover asserts that it consulted with PJM and the PJM Independent Market Monitor (Market Monitor) and reports the Market Monitor does not oppose the request. As discussed below, we grant Dover's request for limited waiver, with the deadlines specified by PJM for submission and review of Dover's exemption request.
2. Dover states that the limited waiver is necessary to allow Dover to secure an exception to the must-offer requirement with respect to its generating units, two 17 MW turbine generators at the McKee Run Station (the Units), for the May 2014 Reliability Pricing Model (RPM) Base Residual Auction (Auction) for Delivery Year 2017-2018, because the Units are reasonably expected to be physically unable to participate in the 2014 Auction.²

¹ PJM Tariff Attachment DD, section 6.6(g), Market Power Mitigation (8.0.0).

² Waiver Request at 1.

3. Dover states that this request reflects the deactivation filing to be submitted to PJM and the Market Monitor stating that the Units would be deactivated prior to May 11, 2017, and is necessary to allow PJM and the Market Monitor to process Dover's requests for exceptions to the must-offer requirement for the 2014 Auction.³

4. Dover explains that the Units are 51 years old and a study presented by The Energy Authority, Inc. (the Authority) in November 2013 indicated that the operating costs and the cost of essential turbine overhauls would render the Units uneconomic by 2017. According to Dover, after extensively reviewing the Authority's evaluation, repair and overhaul estimates, and market conditions, the Dover City Council voted on February 10, 2014, to begin the process of deactivating the Units. Dover states that it plans to continue operating the Units or arranging for replacement capacity through the 2016-2017 PJM planning year.

5. Dover asserts that, under 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 in any PJM RPM auction by submitting a written request to the Market Monitor 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. Dover states that, in this case, it submitted a Notice of Deactivation to the Office of Interconnection on February 19, 2014. However, for the 2014 Auction, which begins on May 12, 2014, Capacity Market Sellers were required to submit a preliminary exception request by November 1, 2013, and a final notification by December 1, 2013. Dover states that it did not submit timely requests for exception for the 2014 Auction because the City Council did not vote to retire the Units until its meeting on February 10, 2014. Therefore, Dover is seeking a limited waiver of section 6.6(g) of Attachment DD of the PJM Tariff to allow for the submission of its request after the December 1, 2013 deadline.⁴

6. Consistent with the provision in section 6.6(g) of Attachment DD, Dover requests that the Commission grant this limited waiver so that PJM and the Market Monitor may consider the must-offer exception requests for the Units for the 2014 Auction. Dover is also requesting waiver of the other deadlines for processing the must-offer exception requests that are contained in section 6.6(g).

7. Dover argues that good cause exists to grant its request because: (1) it acted diligently to obtain an evaluation of the feasibility of the Units being available for the 2014 Auction, and in good faith promptly requested an exception from the must-offer

³ *Id.* at 3.

⁴ Waiver Request at 3-4.

requirement to redress the missed December 1, 2013, deadline quickly after the City Council voted on February 10, 2014 to retire the Units; (2) its request is limited in scope in that it is asking for waiver of the procedural provisions of the Tariff for the 2014 Auction, not for a substantive provision; (3) granting the waiver would remedy a concrete problem by allowing Dover to claim an exception to the must-offer requirement that it is otherwise entitled to claim under the Tariff and ensure that the Units, which will be physically decommissioned, are not committed to provide capacity that it will be unable to deliver; and (4) granting the request will not have undesirable consequences for PJM, the Market Monitor or any other third parties.

8. Dover requests that the Commission issue an order granting this Waiver Request, so that Dover may obtain a must-offer exception for the Units in the 2014 Auction beginning on May 12, 2014. Dover also commits to cooperate closely with PJM and the Market Monitor regarding the efficient processing of its request. After conferring with PJM and the Market Monitor, Dover submits that the following dates will apply to the consideration of the substance of its must-offer exception requests, if the Waiver Request is granted: (1) the Market Monitor will notify Dover and PJM of its determination whether the Units qualify for an exception to the must-offer requirement by March 21, 2014; (2) Dover will notify the Market Monitor and PJM in writing if it disagrees with the Market Monitor's determination by March 31, 2014; and (3) PJM will notify Dover and the Market Monitor whether the must-offer exception request is denied by April 15, 2014.⁵

9. Notice of Dover's February 25, 2014, filing was published in the *Federal Register*,⁶ with protests or interventions due on or before March 18, 2014. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁷ notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. PJM and Monitoring Analytics, LLC (Market Monitor) each submitted a motion to intervene on March 6, 2014. No protests or adverse comments were filed.

10. We find that good cause exists to grant Dover's request for waiver of the deadline for seeking an exemption to the must-offer requirement for the 2014 Auction, set forth in section 6.6(g) of Attachment DD of the PJM Tariff. Dover's failure to meet PJM Tariff's requirements in a timely manner was unintentional and in good faith. As Dover explains, it did not submit timely requests for exemption by the December 1, 2013, deadline

⁵ *Id.* at 5.

⁶ 79 Fed. Reg. 48 (2014).

⁷ 18 C.F.R. § 385.214 (2013).

because the City Council did not vote to retire the Units until its meeting on February 10, 2014. Thereafter, Dover promptly requested the exemption. Dover's request is limited in scope in that it seeks waiver of the procedural provisions of the PJM Tariff only for the 2014 Auction. We further find that granting the waiver will remedy a concrete problem by allowing Dover to obtain an exception to the must-offer requirement that it is otherwise entitled to claim under the PJM Tariff, thereby ensuring that the Units are not committed to provide capacity that they will be unable to deliver. Finally, granting the waiver will not have undesirable consequences for PJM, the Market Monitor or any other third parties, and no parties oppose the request. Accordingly, we grant Dover's request for limited waiver of the deadlines set forth in section 6.6(g) of Attachment DD of the PJM Tariff, and further establish the deadlines specified by PJM for submission and review of Dover's exemption request.

By direction of the Commission.

Kimberly D. Bose,
Secretary.