

147 FERC ¶ 61,085  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

RC Cape May Holdings, LLC

Docket No. ER14-1454-000

ORDER GRANTING WAIVER

(Issued April 30, 2014)

1. On March 7, 2014, pursuant to section 207(a)(5) of the Commission's Rules of Practice and Procedure,<sup>1</sup> RC Cape May Holdings, LLC. (RC Cape May) filed a request for a waiver of the must-offer requirement which is contained in section 6.6 of Attachment DD to the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (PJM Tariff). Specifically, RC Cape May seeks waiver of the requirement to offer the B.L. England Generating Station's (Generating Station) output in the Base Residual Auction (May 2014 Auction) for the 2017/2018 delivery year. RC Cape May states that the Independent Market Monitor (IMM) for PJM does not oppose this waiver request. For the reasons discussed below, we grant RC Cape May's request for waiver.

**Background**

2. Section 6.6(g) of Attachment DD to the PJM Tariff sets forth the terms and conditions that govern the auction for the PJM Region. A capacity market seller may seek approval for an exception to the must-offer requirement in the PJM Reliability Pricing Model auction by submitting a written request to the 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"<sup>2</sup>

3. RC Cape May states that in 2007 it acquired a Generating Station currently comprised of one oil-fired and two coal-fired generating units, as well as four 2 MW diesel generators. RC Cape May claims that, pursuant to an Administrative Consent Order issued by the New Jersey Department of Environmental Protection, it was required

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<sup>1</sup> 18 C.F.R. § 385.207(a)(5) (2013).

<sup>2</sup> PJM Tariff, Attachment DD § 6.6(g).

to cease operations of the two coal-fired generation units by September 30, 2013, and May 1, 2015, respectively. According to RC Cape May, the Administrative Consent Order also permitted the repowering of the Generating Station and it opted to pursue repowering by retiring the two coal-fired generation units and replacing them with a new state-of-the-art combustion turbine and heat recovery steam generator.<sup>3</sup>

4. RC Cape May further states that PJM completed the interconnection queue process and expected the repowered Generating Station to be completed by May 1, 2016. RC Cape May further states that, in 2013, the New Jersey Board of Public Utilities (NJBPU) granted South Jersey Gas Company (South Jersey Gas) authorization to construct a pipeline to provide natural gas to the Generating Station and provide reliability to other customers. As a result, RC Cape May offered the output of the Generating Station into the May 2013 Base Residual Auction (May 2013 Auction) for the 2016/2017 delivery year, and it cleared. Therefore, the repowered Generating Station is subject to the must-offer obligation for May 2014 Auction because it is considered an existing generation capacity resource for the 2017/2018 delivery year.<sup>4</sup>

5. RC Cape May explains that, in addition to the NJBPU's approval to construct the natural gas pipeline, South Jersey Gas sought permission of a regional planning and management body, the New Jersey Pinelands Commission (Pinelands Commission) to construct the pipeline under a Memorandum of Agreement which included certain conditions and oversight by the NJBPU. However, despite continued consultations and efforts by RC Cape May and South Jersey Gas with the Pinelands Commission and other interested stakeholders, RC Cape May states that the Pineland Commission has failed to execute the Memorandum of Agreement and the pipeline cannot be constructed. RC Cape May states that, due to the Pinelands Commission's decision, it does not expect that the repowered Generating Station will, in fact, be able to provide capacity in the 2017/2018 delivery year, and as a result RC Cape May qualifies for a waiver of the PJM Tariff's must offer requirement for the May 2014 Auction.<sup>5</sup>

#### **Notice of Filing and Responsive Pleadings**

6. Notice of RC Cape May's filing was published in the *Federal Register*, 79 Fed. Reg. 14,699 (2014), with protests and interventions due on or before March 28, 2014. None was filed.

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<sup>3</sup> Transmittal at 3-4.

<sup>4</sup> *Id.* at 4-6.

<sup>5</sup> *Id.* at 6-8.

### **Waiver Request**

7. RC Cape May requests that the Commission grant waiver of the must-offer requirement, set forth in section 6.6(g) of Attachment DD of the PJM Tariff, that is otherwise applicable to its Generating Station for the May 2014 Auction for delivery year 2017/2018.

8. RC Cape May states that there is good cause for the Commission to grant its waiver request. First, RC Cape May claims it diligently pursued regulatory permits for repowering the Generating Station including the NJBPU's and the Pinelands Commission's approval to construct the South Jersey Gas pipeline. RC Cape May states that, based on its expectations, it participated in the May 2013 Auction in good faith and, in fact, had every expectation that it would achieve commercial operation before the relevant delivery year. Second, RC Cape May claims that its waiver request is limited to a single, discrete delivery year. Third, RC Cape May states the requested waiver is necessary to address a specific problem, namely, that RC Cape May was faced with bidding capacity into the May 2014 Auction that it now does not reasonably believe will be available, which would be inconsistent with the goal of the Base Residual Auction and PJM to provide reliable capacity. Fourth, RC Cape May states that, if granted, the waiver will not result in any adverse consequences and will not have undesirable consequences that would harm PJM, the IMM or third parties since the waiver will fulfill the intent of the PJM Tariff by allowing PJM to plan its capacity needs on a three-year forward basis.<sup>6</sup>

### **Commission Determination**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>7</sup> the timely-filed, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. We find good cause to grant the request for waiver. The Commission has previously granted requests for waiver of tariffs in situations where, as relevant here: (1) applicant has been unable to comply with the tariff provision at issue in good faith; (2) the requested waiver was of limited scope; (3) the waiver would remedy a concrete problem; and (4) the waiver would not harm third parties or have other undesirable consequences.<sup>8</sup>

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<sup>6</sup> *Id.* at 12-15.

<sup>7</sup> 18 C.F.R. § 385.214 (2013).

<sup>8</sup> *See, e.g., Southwest Power Pool, Inc.*, 146 FERC ¶ 61,110, at P 10 (2014); *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,060, at P 12 (2013).

11. We find that the requested waiver satisfies the aforementioned conditions. RC Cape May's attempt to obtain all necessary approvals and permits including final approval of the construction of the gas pipeline was made in good faith. The lack of final approval and execution of the Memorandum of Agreement with the Pinelands Commission was beyond RC Cape May's control. RC Cape May's request is also limited in scope in that seeks a waiver of section 6.6(g) of Attachment DD to the PJM Tariff for one auction only, and the waiver would be applicable only to RC Cape May. RC Cape May's request remedies a concrete problem by avoiding the requirement that RC Cape May offer capacity into May 2014 Auction that it cannot reasonably provide, and which PJM cannot rely on for reliability planning purposes. We further find that granting the waiver will have no undesirable consequences for PJM nor any other third parties. Finally, we note that neither PJM, nor any other entity, opposes the requested waiver.

The Commission orders:

RC Cape May's request for waiver of sections 6.6(g) of Attachment DD to the PJM Tariff is hereby granted.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.