

149 FERC ¶ 61,069
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 23, 2014

In Reply Refer To:
EDP Renewables North America
LLC
Docket No. ER14-2703-000

Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW
Washington, DC 20007

Attention: Margaret A. Moore

Dear Ms. Moore:

1. On August 25, 2014, EDP Renewables North America LLC (Petitioner), on behalf of itself and the EDPR Market Participants,¹ filed a request for a limited waiver of the business rules of PJM Interconnection, L.L.C. (PJM) with respect to the eRPM submittal requirement for replacement transactions from June 1, 2014 through July 2, 2014 (Relevant Period).² Petitioner states that the limited waiver is necessary because of an inadvertent error and that granting waiver will preclude payment of capacity deficiency

¹ EDPR Market Participants are, collectively, the following subsidiaries of EDP Renewables: Blackstone Wind Farm, LLC; Blackstone Wind Farm II LLC; Meadow Lake Wind Farm LLC; Meadow Lake Wind Farm II LLC; Meadow Lake Wind Farm III LLC; Meadow Lake Wind Farm IV LLC; and Paulding Wind Farm II LLC.

² The PJM eRPM system is an Internet-based application used by market participants to submit resource-specific sell offers or buy bids into Reliability Pricing Model (RPM) auctions. Participants may also view auction results and create capacity transactions via the eRPM system [<http://www.pjm.com/markets-and-operations/etools/erpm.aspx>]. As discussed below, Section 8.7 of PJM Manual 18: Capacity Market Manual (PJM Manual) provides that replacement transactions be specified via the eRPM system within a specified period. This provision in the PJM Manual provides implementation details relating to replacement capacity as described in section 5.4 of Attachment DD of the PJM Open Access Transmission Tariff (Tariff).

charges assessed by PJM even though there was no actual resource deficiency. As discussed below, the Commission grants the requested waiver.

2. Petitioner states that EDPR Market Participants own and operate wind-powered generation facilities located in PJM, which participated in PJM's Reliability Pricing Model (RPM) market for the 2014/2015 Delivery Year. Petitioner asserts that, due to adjustments in the capacity values of the generators owned by the EDPR Market Participants (resulting from PJM's seasonal capability ratings), the RPM resource commitment of each unit exceeded the available capacity of each unit. Petitioner explains that, to address this shortfall, in February 2014, the EDPR Market Participants acquired replacement capacity in an amount sufficient to cover their RPM resource commitments through PJM's 2014/2015 Third Incremental Auction. Petitioner asserts that EDPR Market Participants, therefore, timely complied with all RPM requirements to have or obtain adequate capacity to cover their capacity commitments for the 2014/2015 Delivery Year.

3. Petitioner explains that, because of an inadvertent administrative oversight, the EDPR Market Participants "neglected to enter the replacement transactions in the eRPM system" prior to June 1, 2014, the start of the 2014/2015 Delivery Year, as the PJM Manual requires. Petitioner states that EDPR Market Participants discovered this error on July 1, 2014 when they received PJM's invoices assessing capacity resource deficiency charges amounting to \$417,580 for June 2014. Petitioner states that, immediately after discovering the error, the replacement transactions were logged into the eRPM system and accepted effective July 2, 2014.

4. Petitioner states that, on July 2, 2014, the EDPR Market Participants also contacted their PJM client manager, who advised them that the capacity deficiency charges could not be waived. Petitioner further states that the EDPR Market Participants sent a letter to PJM on July 23, 2014 to initiate a dispute resolution process concerning this matter. According to Petitioner, on August 6, 2014, PJM responded as follows:

As we understand the facts you provided in your July 23rd letter, and after discussing this matter internally, unfortunately there is no recourse PJM can provide EDP at this time. That is because PJM's Open Access Transmission Tariff ('Tariff') and Manuals provide that replacement transactions must be logged in the eRPM prior to the day in which such replacement transactions are to be accounted for, and we cannot, on our own accord, waive our Tariff and Manual requirements.³

³ Waiver Request at 4 (citing PJM's August 6, 2014 letter).

Petitioner states that PJM further suggested that the EDPR Market Participants seek waiver from the Commission, “if deemed appropriate, and that, based upon the facts, PJM would not oppose the waiver.”

5. Petitioner states that, under PJM’s Tariff, capacity deficiency charges only apply to market participants that do not obtain adequate replacement capacity. Petitioner further states that the EDPR Market Participants possessed sufficient capacity to fully cover their RPM commitments during the Relevant Period, and, therefore, “the deficiency charges are not justified by virtue of the explicit [Tariff] provisions.” Rather, Petitioner contends, the eRPM submission requirements are only set forth in PJM’s business practices manuals interpreting the Tariff.

6. Petitioner states that EDPR Market Participants seek a one-time, limited waiver of the eRPM submission requirement so as to preclude capacity deficiency charges for the Relevant Period. Petitioner contends that the EDPR Market Participants’ request satisfies the Commission’s criteria for granting waiver of tariff provisions. Petitioner further contends that granting waiver is consistent with prior Commission orders granting waiver where an unintentional administrative oversight was the cause of the situation.⁴

7. First, Petitioner asserts that the underlying error was committed in good faith. According to Petitioner, the EDPR Market Participants’ failure to log the replacement transactions into eRPM for the first month of the 2014/2015 Delivery Year was an unintentional error. Petitioner contends that the EDPR Market Participants timely covered their entire capacity commitments for the 2014/2015 Delivery Year and that “failure to log the replacement transactions into eRPM resulted in no harm to the PJM RPM market or any affected customers.”

8. Next, Petitioner asserts that the waiver request is limited and discrete because the EDPR Market Participants seek only a one-time waiver from the requirement in the PJM Manual to submit replacement transactions in eRPM for the Relevant Period. Petitioner states that, while EDPR Market Participants timely acquired replacement capacity in amounts necessary to cover their RPM commitments, they neglected to log the transactions into eRPM for the first month of the 2014/2015 Delivery Year. Petitioner further argues that granting waiver will remedy a discrete problem, i.e., allow PJM to waive a requirement in its business practices manual so that the EDPR Market Participants are not assessed capacity resource deficiency charges of \$417,580 for the one-month period, during which they possessed adequate capacity resources.

⁴ Waiver Request at 5 (citing *Southwest Power Pool, Inc.*, 138 FERC ¶ 61,054 (2012); *ISO New England Inc.*, 117 FERC ¶ 61,171 (2006); see also *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,055 (2010); *Southwest Power Pool, Inc.*, 126 FERC ¶ 61,088 (2009)).

9. Last, Petitioner asserts that granting the waiver will not harm PJM or any third parties, or create any undesirable consequences, because the EDPR Market Participants covered all of their capacity commitments prior to the start of the 2014/2015 Delivery Year, and the replacement resources became committed to PJM's markets as of June 1, 2014, as required by the PJM Tariff. Petitioner further contends that should the Commission "decide not to remedy this technical noncompliance," thereby requiring the EDPR Market Participants to pay the resource deficiency charges even though they "substantively covered their full capacity commitments in a timely manner," such a result "may signal greater risk to other potential RPM market participants and discourage their participation."⁵ Petitioner also asserts that, "[c]onversely, by ensuring that PJM market participants are not assessed capacity deficiency charges where no capacity deficiency exists," granting the waiver request will "continue to encourage robust participation in PJM's RPM markets and thereby further promote operation of those markets."⁶

10. Notice of Petitioner's filing was published in the *Federal Register*, 79 Fed. Reg. 52,645 (2014), with interventions and protests due on or before September 15, 2014. PJM filed a motion to intervene and comments on September 11, 2014. No protests or adverse comments were filed. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁷ notices of interventions and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. In its comments, PJM states that section 8.7 of the PJM Manual provides that replacement transactions be specified via the eRPM system after the Equivalent Demand Forced Outage Rate is locked down, i.e., on November 30 prior to the Delivery Year, but before the start of the Delivery Day. PJM also explains that, while not cross-referenced in the PJM Tariff, this provision in the PJM Manual provides implementation details relating to obtaining replacement capacity as described in section 5.4 of Attachment DD of the PJM Tariff. PJM further states that, given that replacement capacity was committed to PJM's markets as of the start of the 2014/2015 Delivery Year, it does not oppose Petitioner's waiver request.

12. The Commission has previously granted requests for waivers of tariff provisions in situations where, as here: (1) the applicant was unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) granting waiver

⁵ Waiver Request at 7-8.

⁶ *Id.* at 8.

⁷ 18 C.F.R. § 385.214 (2014).

would remedy a concrete problem; and (4) the waiver would not have undesirable consequences, such as harming third parties.⁸

13. We find that good cause exists to grant Petitioner's request for waiver. First, we find that the EDPR Market Participants acted in good faith. According to Petitioner, the EDPR Market Participants' failure to log the replacement transactions into the eRPM system for the first month of the 2014/2015 Delivery Year was an unintentional error. Upon discovery, the EDPR Market Participants promptly acted to correct the error. Second, the one-time waiver is limited in scope. The waiver is limited solely to the requirement under the PJM Manual that the EDPR Market Participants submit the replacement capacity transactions through the eRPM during the first month of the 2014/2015 Delivery Year, so that they are not assessed capacity resource deficiency charges for that one-month period. Third, the waiver will remedy a concrete problem, namely the EDPR Market Participants' technical noncompliance, which did not result in an actual capacity resource deficiency, and allow PJM to waive the \$417,580 in capacity resource deficiency charges. Fourth, we find that granting the requested waiver will not lead to undesirable consequences for PJM or any third party. As Petitioner explains, EDPR Market Participants did acquire replacement capacity in an amount sufficient to cover their RPM resource commitments through PJM's 2014/2015 Third Incremental Auction. Finally, neither PJM nor any other entity opposes the request.

14. Accordingly, we grant Petitioner's request for a limited, one-time waiver of the business rules of the PJM Manual with respect to the eRPM submittal requirement for the Relevant Period.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁸ 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).