

149 FERC ¶ 61,286
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 31, 2014

In Reply Refer To:
FirstEnergy Service Company
Docket No. ER15-516-000

Anne M. Rericha
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Dear Ms. Rericha:

1. On November 26, 2014, FirstEnergy Service Company (FirstEnergy) requested a waiver of the preliminary must-offer exception request deadline set forth in Section 6.6 of Attachment DD¹ of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff). Specifically, FirstEnergy seeks waiver for its 6.3-megawatt combustion turbine located at the R.E. Burger power plant (Burger CT) for the Base Residual Auction (BRA) commencing May 2015 for the 2018/2019 Delivery Year. FirstEnergy also requests that the Commission grant the requested waiver by no later than December 31, 2014. For the reasons discussed below and for good cause shown, the Commission grants FirstEnergy's request for waiver.

2. FirstEnergy explains that, pursuant to Section 6.6 of Attachment DD of the Tariff, a market participant seeking to qualify for an exception to the must-offer requirement for the BRA for the 2018/2019 Delivery Year must (1) submit a preliminary exception request in writing to the Independent Market Monitor (IMM) and PJM by no later than September 1, 2014, and (2) have a documented plan in place to retire the resource prior to or during the Delivery Year and submit a notice of deactivation to PJM pursuant to Section 113.1² of the Tariff by December 1, 2014.

¹ Tariff, ATT DD.6, OATT Attachment DD.6. Market Power Mitigation, 8.0.0.

² Tariff, 113, OATT 113 Notices, 0.0.0.

3. FirstEnergy explains that on September 1, 2011, FirstEnergy retired the existing generating capacity at the R.E. Burger power plant, except for the 6.3 megawatts associated with the Burger CT. FirstEnergy asserts that the Burger CT has a capacity supply obligation through and including the 2017/2018 Delivery Year.

4. FirstEnergy states that after September 1, 2014, it made a business decision to decommission the Burger CT before the 2018/2019 Delivery Year. FirstEnergy states that because of the timing of this decision, it was unable to submit a preliminary must-offer exception request to PJM by the September 1, 2014, deadline. FirstEnergy asserts that it will, however, comply with the substantive deactivation requirements of the Tariff.

5. FirstEnergy argues that its waiver request satisfies each of the four criteria previously used by the Commission to evaluate similar waiver requests:³ (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem shall be remedied; and (4) the waiver has no undesirable consequences, such as harming third parties. First, FirstEnergy states that its failure to submit a preliminary must-offer exception request by the September 1, 2014, deadline was in good faith because it had not yet decided to decommission the Burger CT by that date. FirstEnergy also states that once it made the decision to decommission the unit, it promptly notified PJM and the IMM of its intentions. Second, FirstEnergy asserts that its waiver request is of limited scope both in terms of time period, because the request is for a one-time waiver applicable to a procedural deadline, and in terms of capacity amount, because the 6.3-megawatt capacity of the Burger CT represents a *de minimis* amount of capacity in the PJM market. Third, FirstEnergy states that granting its requested waiver will remedy a concrete problem by avoiding an outcome in which FirstEnergy may be forced to assume a capacity supply obligation for a resource that will no longer be operational in the associated Delivery Year. Finally, FirstEnergy states that granting the waiver will not have undesirable consequences or harm any third party given the small capacity quantity of the Burger CT and the timing of the instant waiver request well in advance of the May 2015 BRA.

6. Notice of FirstEnergy's filing was published in the *Federal Register*, 79 Fed. Reg. 73,290 (2014), with protests or interventions due on or before December 17, 2014. PJM filed a motion to intervene. No protests were filed.

7. 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

³ Transmittal at 4 n.5 (citing *East Kentucky Power Cooperative, Inc.*, 147 FERC ¶ 61,075, at P 9 (2014); *City of Dover*, 146 FERC ¶ 61,245, at P 10 (2014); *Virginia Elec. & Power Co.*, 146 FERC ¶ 61,226, at P 10 (2014); *Sunbury Generation LP*, 146 FERC ¶ 61,011, at P 9 (2014)).

waiver in the event of a missed deadline. As FirstEnergy explains, it missed the September 1, 2014, deadline to submit a preliminary must-offer exception request due to the timing of a business decision to decommission the Burger CT, and it subsequently submitted a final exception request by the December 1, 2014, deadline. We therefore find that FirstEnergy's choice to act after the September 1, 2014, deadline was made in good faith. We also find it appropriate to grant this one-time waiver of the deadline for submitting a preliminary must-offer exception request for Delivery Year 2018/2019 for the Burger CT because of the limited scope of FirstEnergy's request and because the waiver will allow FirstEnergy 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 third parties, oppose the requested waiver.

8. Accordingly, we grant waiver of the preliminary must-offer exception deadline in Section 6.6 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 direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.