

150 FERC ¶ 61,018
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Brookfield Energy Marketing, LP

Docket No. ER15-736-000

ORDER GRANTING WAIVER

(Issued January 16, 2015)

1. On December 22, 2014, Brookfield Energy Marketing, LP (Brookfield) filed a request for waiver of the deadline to submit Market Seller Offer Cap¹ data in section 6.7 (Data Submission) of Attachment DD (Reliability Pricing Model) to PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (Tariff). Specifically, Brookfield requests that the Commission grant waiver of the January 11, 2015, deadline and allow Brookfield to submit the required data by January 19, 2015. As discussed more fully below, and for good cause shown, the Commission grants Brookfield's requested waiver.

I. Background

2. PJM secures capacity commitments under the Reliability Pricing Model (RPM) through the Base Residual Auction² held three years before the delivery year.³

¹ Market Seller Offer Cap is calculated by the Market Monitoring Unit based on the data and calculations submitted by the capacity market seller for each existing Generation Capacity Resource and the formulas specified in section 6.7 (d) of Attachment DD of PJM Tariff and provided to the capacity market seller and the Office of the Interconnection by no later than 90 days before the commencement of the offer period for the applicable auction.

² The Base Residual Auction is conducted to allow for the procurement of resource commitments to satisfy the PJM region's unforced capacity obligation for the Delivery Year and allocates the cost of those commitments to Load Serving Entities through a locational reliability charge.

³ A delivery year is a twelve-month period beginning on June 1 and ending on May 31.

Attachment DD of the PJM Tariff sets forth the terms and conditions governing the Reliability Pricing Model. Section 6.7 of Attachment DD provides that potential participants in the Base Residual Auction for the 2018-2019 Delivery Year (2018-2019 Auction) must submit Market Seller Offer Cap data to PJM and the PJM Independent Market Monitor (IMM) no later than 120 days prior to the start of the Base Residual Auction. In this case, the 120th day falls on January 11, 2015.

3. Brookfield is a power marketer with market-based rate authorization to sell energy, capacity and ancillary services. Brookfield engages in energy and capacity transactions in the PJM markets, including PJM Reliability Pricing Model Auction (RPM Auction).

II. Waiver Request

4. Brookfield requests an extension of the deadline to submit Market Seller Offer Cap data, from January 11, 2015 to January 19, 2015. Brookfield explains that, on December 12, 2014, PJM submitted a filing in Docket No. ER15-623-000 that proposes significant reforms to the RPM (Capacity Performance Proposal), including the introduction of a new capacity product, the Capacity Performance Resource product, and a new category of resources, Capacity Storage Resources. Brookfield states that, given the pending Capacity Performance Proposal, it was uncertain as to whether it must calculate, and if so, how to calculate the Market Seller Offer Cap data for its hydroelectric generation facilities. Brookfield explains that it is communicating with PJM and the IMM regarding these issues but it does not expect that it will have the data ready by the January 11, 2015, deadline.

5. Brookfield states that the Commission considers the following four factors when evaluating requests for waiver from tariff requirements: (1) the applicant was not able to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) a concrete problem will be remedied; and (4) a waiver does not have undesirable consequences, such as harming third parties.

6. Brookfield argues that good cause exists to grant its request for waiver because it satisfies each of the four criteria and that the Commission has granted similar requests for waivers in the past.⁴ Specifically, Brookfield states that its request is made in good faith because it filed for waiver more than three weeks in advance of the data submission deadline and one week following the submission of the Capacity Performance Proposal. Brookfield explains that it is unclear about the must-offer requirements and associated Market Seller Capacity Performance Proposal and that it reached out to PJM and the

⁴ Brookfield Filing at 5 (citing *Brandon Shores LLC*, 143 FERC ¶ 61,021 (2013); *PPL Energy Plus, LLC*, 142 FERC ¶ 61,177 (2013)).

IMM in an effort to clarify its obligations as soon as possible.⁵ Furthermore, Brookfield asserts that its request for waiver is of limited scope because it is requesting a waiver of the deadline for submission of Market Seller Offer Cap data as a result of PJM filing its Capacity Performance Proposal and its request is to extend the deadline for only eight days.

7. Additionally, Brookfield states that its request for waiver is needed to remedy a concrete problem because while it is preparing to submit comments on the Capacity Performance Proposal to seek clarification on its questions, given the timing of that proceeding, it will not receive clarification by January 11, 2015. Lastly, Brookfield asserts that its request for waiver will not have undesirable consequences, such as harm third party because for the upcoming 2018-2019 Auction sell offers are not due until May 11, 2015.⁶

III. Notice of Filing and Responsive Pleadings

8. Notice of Brookfield's December 22, 2014 filing was published in the *Federal Register*, 80 Fed. Reg. 214 (2015), with protests or interventions due on or before January 5, 2015. Timely motions to intervene were filed by the IMM and Exelon Corporation. No adverse comments were filed.

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Commission Determination

10. We find that good cause exists to grant Brookfield's requested waiver. The Commission has previously granted requests for waiver in situations where, as here: (1) the applicant was not able to comply with the tariff provision at issue in good faith;

⁵ Brookfield Filing at 5.

⁶ Brookfield Filing at 6-7.

(2) the waiver is of limited scope; (3) a concrete problem must be remedied; and (4) the waiver does not have undesirable consequences, such as harming third parties.⁷

11. First, we find that Brookfield acted in good faith. Brookfield submitted its waiver request in advance of the Market Seller Cap Offer data submission deadline. Brookfield states that it is unclear about how PJM's Capacity Performance Proposal might impact must-offer requirements related to Brookfield's hydroelectric facilities and discussions with PJM about that issue are ongoing at this time. Second, the waiver is limited in scope, as it would provide Brookfield with a one-time, eight-day extension to submit the Market Seller Cap Offer data. Third, the waiver will remedy a concrete problem. Granting an eight-day extension will allow Brookfield to fully comply with the requirements of the PJM Tariff without substantial delay. Fourth, we find that granting the requested waiver will not lead to undesirable consequences for PJM or any third party. As noted by Brookfield, sell offers are not due for the 2018-2019 Auction until May 11, 2015, and therefore, extending the deadline for Brookfield to submit Market Seller Offer Cap data by another eight days should not impact the level of sell offers for the 2018-2019 Auction. We further note that no party has filed adverse comments in this proceeding.

The Commission orders:

Brookfield's request for waiver is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷ See *East Kentucky Power Coop, Inc.*, 147 FERC ¶ 61,075 (2014); *Dynegy Kendall Energy, LLC*, 147 FERC ¶ 61,094 (2014); *Calpine Corp.*, 147 FERC ¶ 61,205 (2014); *EDP Renewables North America, LLC*, 149 FERC ¶ 61,069 (2014).