

150 FERC ¶ 61,050  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Bayonne Plant Holding, L.L.C.

Docket No. ER15-468-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued January 29, 2015)

1. On November 24, 2014, Bayonne Plant Holding, L.L.C. (Bayonne) filed a request for a limited waiver of section 6.6(g) of Attachment DD to PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (PJM Tariff). The requested waiver will provide Bayonne Generating Facility (Bayonne Facility) a unit-specific exception to the capacity must-offer requirement for the Base Residual Auction (BRA) for the 2018/2019 delivery year, scheduled for May 2015. As discussed below, the Commission grants the requested waiver.

**I. Background**

2. Pursuant to the PJM Tariff, existing generation capacity resources located in the PJM region, such as the Bayonne Facility, are required to be offered into all Reliability Pricing Model (RPM) auctions for each delivery year.<sup>1</sup> However, any amount determined by PJM to be eligible for an exception to the must-offer requirement is exempt from offering into the auctions. One way a capacity market seller can be eligible for an exception is if it demonstrates that its resource is reasonably expected to be physically unable to participate in the relevant delivery year.<sup>2</sup> Further, the PJM Tariff provides that a resource may be considered physically unable to participate if it has a

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<sup>1</sup> PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT, Attachment DD, § 6.6(a) (8.0.0).

<sup>2</sup> PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT, Attachment DD, § 6.6(g) (8.0.0).

documented plan in place to retire the resource prior to, or during the delivery year, and has submitted a notice of deactivation to PJM.<sup>3</sup>

3. Before a resource can obtain an exception to the must-offer requirement, the PJM Tariff requires that it must submit a preliminary exception request, in writing, to PJM and to PJM's Market Monitoring Unit (Market Monitor). The request must include supporting data and documentation indicating the reasons and conditions for why the resource is retiring.<sup>4</sup> The deadline for filing an exception request for the BRA for the 2018/2019 delivery year was September 1, 2014.

## II. Filing

4. The Bayonne Facility is a natural gas- and kerosene-fired combined-cycle cogeneration facility located in Bayonne, New Jersey, on real property leased from Bayonne Industries Inc. and IMTT-Bayonne (collectively, Lessor). The current lease agreement, dated October 18, 1986, as amended on December 1, 2003, expires on October 31, 2018 (Bayonne Lease).<sup>5</sup> Bayonne states that it engaged in discussions with the Lessor with the hope of renewing the Bayonne Lease. However, Bayonne states that on October 16, 2014, the Lessor gave Bayonne notice that it did not intend to renew the Bayonne Lease.<sup>6</sup>

5. On November 17, 2014, Bayonne explains that it submitted a notice of deactivation to PJM, in which it stated its intent to deactivate the Bayonne Facility effective November 1, 2018. In addition, Bayonne submitted, that same day, a request for exception from the capacity must-offer requirement for the May 2015 BRA and all other RPM auctions for the 2018/2019, 2019/2020, 2020/2021, and 2021/2022 delivery years.<sup>7</sup> However, Bayonne was unable to submit a preliminary exception request for the 2018/2019 BRA because the deadline had already passed.

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<sup>3</sup> PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT, Attachment DD, § 6.6(g) (8.0.0).

<sup>4</sup> PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT, Attachment DD, § 6.6(g) (8.0.0).

<sup>5</sup> Bayonne Plant Holding, L.L.C. November 24, 2014 Request for Waiver at 3 (Bayonne Request for Waiver).

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

<sup>7</sup> *Id.*

6. Bayonne states that while it was unable to meet the preliminary exception request deadline, it met subsequent deadlines. Bayonne explains that the requested waiver will allow the Market Monitor to make a determination – consistent with the tariff requirements – on the exception request by February 10, 2015.

### **III. Request for Waiver**

7. Bayonne requests a limited waiver of section 6.6(g) of Attachment DD of the PJM Tariff. In particular, Bayonne states that it seeks waiver of the September 1, 2014, deadline to submit a preliminary exception request to PJM and the Market Monitor for the 2018/2019 delivery year.

8. Bayonne states that the Commission has previously granted requests for waiver of the PJM Tariff's requirements in situations where: (1) the applicant has been unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) the waiver would address a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.

9. Bayonne explains that it was unable to comply with the September 1, 2014, deadline in good faith. Although it knew the expiration date of the Bayonne Lease, Bayonne states that it was still evaluating various options for the Bayonne Facility, including continued operation under a renewed lease, and hence had not conducted the analysis of whether to retire the Bayonne Facility before receiving notice from the Lessor that the lease would not be renewed.<sup>8</sup> In addition, Bayonne asserts that it would have been inappropriate to submit a preliminary exception request to PJM and the Market Monitor, given the circumstances.<sup>9</sup>

10. Bayonne states that its waiver request is of limited scope because it is only seeking a one-time waiver of the procedural deadline in section 6.6(g) of Attachment DD to the PJM Tariff, and not of any substantive requirements. Further, Bayonne asserts that it is not seeking waiver of subsequent deadlines. As such, according to Bayonne, its waiver request is narrower than others the Commission has granted for the same section of the PJM Tariff.<sup>10</sup>

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<sup>8</sup> *Id.* at 7.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 7–8 (citing *East Kentucky Power Coop., Inc.*, 147 FERC ¶ 61,075, at PP 5, 9 (2014), *City of Dover, Delaware*, 146 FERC ¶ 61,245, at PP 5, 10 (2014), and *Va. Elec. & Power Co.*, 146 FERC ¶ 61,226, at PP 5, 9–10 (2014)).

11. Bayonne claims that its requested waiver addresses a specific problem because without the waiver, Bayonne would be required to offer capacity into the May 2015 BRA. However, the Bayonne Facility would not be capable of performing during the second half of the 2018/2019 delivery year.<sup>11</sup> Bayonne clarifies that it is not asking the Commission to determine if the Bayonne Facility is eligible for the exception from the capacity must-offer requirement. Bayonne is only asking that the Commission waive the deadline for the preliminary exception request requirement so that PJM and the Market Monitor can determine Bayonne's eligibility.<sup>12</sup>

12. Finally, Bayonne contends that the waiver would not have any adverse consequences. On the contrary, Bayonne argues that granting the waiver will benefit third-parties by ensuring that resources offering into the May 2015 BRA will actually be available to perform during the 2018/2019 delivery year.<sup>13</sup> In addition, Bayonne states that this unit-specific exception will not result in any delay in the May 2015 BRA or otherwise interfere with the orderly administration of the auction.<sup>14</sup>

#### **IV. Notice of the Filing and Responsive Pleadings**

13. Notice of the Bayonne's November 24, 2014, filing was published in the *Federal Register*, 79 Fed. Reg. 71,993 (2014), with interventions and protests due on or before December 15, 2014. None was filed.

#### **V. Discussion**

14. We find Bayonne has demonstrated good cause to grant a waiver of the September 1, 2014, deadline in section 6.6(g) of Attachment DD to the PJM Tariff to submit a preliminary exception request for its must-offer requirement for the Bayonne Facility. We conclude that Bayonne's failure to comply with the September 1, 2014, deadline at issue was in good faith. Bayonne did not want to prematurely submit a preliminary exception request to PJM and the Market Monitor and did not receive notice that the Lessor would not renew the Bayonne Lease until after the deadline had passed. In addition, Bayonne's request is limited in scope because the waiver only applies to the September 1, 2014, deadline for the May 2015 BRA, and not to any substantive provisions or subsequent deadlines. Moreover, we find that granting the waiver will

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<sup>11</sup> *Id.* at 8.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

remedy a concrete problem by allowing Bayonne to submit an exception request to the must-offer requirement for a delivery year, in which the Bayonne Facility will not be capable of performing during the latter half of the 2018/2019 delivery year. Finally, we find that granting the waiver would not have any adverse consequences to third parties. For these reasons, we grant Bayonne's request for waiver.<sup>15</sup>

The Commission orders:

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

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>15</sup> See *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); *N.Y. Indep. Sys. Operator, Inc.*, 144 FERC ¶ 61,147, at P 8 (2013); *N.Y. Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011); *ISO New Eng. Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010).