

151 FERC ¶ 61,064
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

April 22, 2015

In Reply Refer To:
Portsmouth Genco, LLC
Docket No. ER15-1352-000

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Dear Ms. Friedman:

1. On March 23, 2015, Portsmouth Genco, LLC (Portsmouth) 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, Portsmouth seeks waiver for its 115 megawatt generating facility (Facility), which will be decommissioned in 2015, for the Base Residual Auction (BRA) commencing May 2015 for the 2018/2019 Delivery Year. Portsmouth requests that the Commission grant the requested waiver by no later than April 22, 2015, so that PJM may have time to review the request before the BRA commences on May 11, 2015. For the reasons discussed below and for good cause shown, the Commission grants Portsmouth's request for waiver.

2. Section 6.6(g) of Attachment DD to the PJM Tariff sets forth the terms and conditions that govern the auction for the solicitation of Capacity Resources in the PJM Region. PJM's tariff requires that a capacity market seller seek approval for an exception to the must-offer requirement in the PJM Reliability Pricing Model auction by submitting a written request to the Market Monitoring Unit (MMU) and the PJM Office of

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

Interconnection, provided it can establish that the resource “is reasonably expected to be physically unable to participate in the relevant auction.”²

3. Portsmouth explains that it and its then-business partner Northern Virginia Electric Cooperative, in accordance with Section 6.6, submitted a timely preliminary must-offer exception request in August 2014. As part of the decommissioning of the facility, Northern Virginia Electric Cooperative’s rights were terminated in January 2015, at which point Portsmouth took over sole responsibility for reviewing the facility’s legal obligations. Subsequently, Portsmouth discovered that PJM had denied the exception request on procedural grounds, “for failure to respond to a request from PJM for additional supporting documentation,” which Portsmouth states it “was not previously aware of.”³ Portsmouth claims that it has since been working diligently and in good faith to correct this error, and that it will provide all necessary supporting documentation to PJM and the MMU.

4. Portsmouth argues that its waiver request satisfies each of the four criteria previously used by the Commission to evaluate similar waiver requests: (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, Portsmouth notes that the Commission has granted similar waivers where the source of the underlying error was an unintentional administrative oversight, as they state is the case here.⁴

5. In support of its request, Portsmouth suggests that its request is limited, discrete, and concrete. Portsmouth contends that its request pertains to a one-time waiver of a procedural deadline, and “is not seeking waiver from any of the substantive Tariff requirements for obtaining a must-offer exception.”⁵ Furthermore, the waiver is limited to solving the concrete problem that its Facility will be decommissioned, and therefore unable to deliver actual capacity, long before the 2018/2019 Delivery Year.

² *Id.* at § 6.6(g).

³ Portsmouth request at 3.

⁴ *Id.* at 5 (citing, *inter alia*, *EDP Renewables North America LLC*, 145 FERC ¶ 61,076 (2013); *Southwest Power Pool, Inc.*, 138 FERC ¶ 61,054 (2012); *ISO New England Inc.*, 117 FERC ¶ 61,171 (2006)).

⁵ *Id.* at 6.

6. Finally, Portsmouth argues that granting the waiver will not have undesirable consequences or harm any third party. Portsmouth notes that its waiver request is consistent with the principles Section 6.6(g) of PJM's tariff, which expressly contemplates the use of a Commission waiver when a party misses the procedural deadline:

If a Capacity Market Seller doesn't timely seek to remove a Generation Capacity Resource from Capacity Resource status or timely submit a request for an exception to the must-offer requirement, the Generation Capacity Resource shall only be removed from Capacity Resource status, and may only be approved for an exception to the must-offer requirement, upon the Capacity Market Seller requesting and receiving an order from FERC, prior to the close of the offer period for the applicable RPM Auction, directing the Office of the Interconnection to remove the resource from Capacity Resource status and/or granting an exception to the must-offer requirement or a waiver of the must-offer requirement as to such resource.⁶

Portsmouth contends that its request has been filed early enough to allow PJM and the MMU sufficient time to review the substance of Portsmouth's exception application on the merits prior to the BRA commencing May 2015 for the 2018/2019 Delivery Year. Portsmouth is also "authorized to represent that PJM and the MMU do not oppose this request."⁷

7. Notice of Portsmouth's filing was published March 23, 2015, and corrected on March 24, 2015, with protests or interventions due on or before April 2, 2015. No protests or interventions were filed.

8. 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 a Commission order that grants an exception or waiver in the event of a missed deadline.⁸ Portsmouth states that it made an administrative error in failing to meet the deadline, and made good-faith efforts to correct

⁶ OATT ATT DD.6, OATT ATTACHMENT DD.6. MARKET POWER MITIGATION, 8.0.0.

⁷ Portsmouth request at 3.

⁸ *E.g.*, *FirstEnergy Service Co.*, 149 FERC ¶ 61,286 (2014).

that error promptly. We also find it appropriate to grant this one-time waiver of the deadline for submitting a preliminary must-offer exception request for the 2018/2019 Delivery Year for Portsmouth's Facility because of the limited scope of the request and because the waiver will allow PJM to review Portsmouth exemption request prior to the BRA commencing May 2015 for the 2018/2019 Delivery Year. We further find that granting the waiver will have no undesirable consequences for PJM or any other third parties, and note that PJM and the MMU authorized Portsmouth to state that neither one opposes the requested waiver.

9. 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.⁹

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ *Id.*