

154 FERC ¶ 61,044
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Owensboro Municipal Utilities

Docket No. ER16-447-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued January 27, 2016)

1. On December 1, 2015, Owensboro Municipal Utilities (OMU) filed a request for a limited waiver of section 6.6(g) of Attachment DD of the PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (PJM Tariff). Specifically, OMU requests a one-time waiver of the deadline for request of a unit-specific exemption from the must-offer obligation for Elmer Smith Unit 1. As discussed below, we grant OMU's request for a limited waiver.

I. Background

2. Pursuant to the PJM Tariff, all of the installed capacity of existing generation capacity resources located in the PJM region is required to be offered in the Reliability Pricing Model (RPM) auction (Auction) for each delivery year unless some or all of that capacity is eligible for an exemption to the must-offer requirement.¹ Although an external resource is not subject to the must-offer requirement, it may voluntarily commit to be subject to the requirement to qualify for an exception to the capacity import limits that would otherwise apply to external resources.²

3. The PJM Tariff also requires that, before a resource can obtain an exception to the must-offer requirement, it must submit a written preliminary exception request to PJM's Independent Market Monitor Unit (Market Monitor). A request must include supporting data and documentation indicating the reasons and conditions for why the resource will

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

² PJM Interconnection, L.L.C., Intra-PJM Tariffs, Reliability Assurance Agreement, § 1.7A.

be deactivated.³ Most must-offer exception requests are due 120 days prior to the relevant Auction for which the exception is sought (i.e., January 12, 2016 for the 2019-2020 Auction), but PJM Tariff section 6.6(g) of Attachment DD establishes earlier deadlines for resources that are requesting a deactivation-related exception from the must-offer requirement.⁴ The deadline for submission of the preliminary requests for resources planning to be deactivated is September 1 of the year preceding the Auction. The final exception requests must be submitted by December 1. For the 2019-2020 Auction, however, PJM extended the deadline for submitting a pre-notification of a deactivation-related must offer exception request to October 1, 2015, leaving the December 1, 2015 deadline for submitting final requests unchanged.⁵

II. Filing

4. OMU serves more than 26,000 electric customers with an annual peak load of approximately 200 MW in the Louisville Gas & Electric Company (LG&E) and Kentucky Utilities Company (KU) (collectively, LG&E/KU) balancing authority area. OMU owns and operates the Elmer Smith power plant (Elmer Smith), a coal-fired generation station with the total capacity in excess of 400 MW combined for two of its units, Unit 1 and Unit 2. Since Elmer Smith produces more energy than needed to serve its native load, OMU purchases and relies upon Firm and Non-Firm Point-to-Point transmission service⁶ from LG&E/KU to reach markets outside of the LG&E/KU balancing authority area to deliver its excess energy. Since June 1, 2010, OMU has had a 53 MW Firm Point-to-Point reservation. On September 1, 2012, OMU added two more Firm Point-to-Point reservations for 52 MW each.⁷

5. OMU has participated in the PJM Auction and is presently providing capacity to PJM from both units of Elmer Smith. OMU requested and was granted an exception to the capacity import limits that otherwise would apply to external resources. As part of that request, OMU committed to pseudo-tie the Elmer Smith units into PJM and comply

³ PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT, Attachment DD, § 6.6(g) (D) (8.0.0).

⁴ PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT, Attachment DD, § 6.6(g) (A) (8.0.0).

⁵ *PJM Interconnection, L.L.C.*, 152 FERC ¶ 61,151, at PP 1-9 (2015).

⁶ According to the PJM Tariff, Point-to-Point Transmission Service is the reservation and transmission of capacity and energy on either a firm or non-firm basis from the Point(s) of Receipt to the Point(s) of Delivery under Part II of the Tariff.

⁷ OMU Waiver Request at 2-3.

with PJM's must-offer obligation. Additionally, PJM's Market Monitor has informed OMU that both of its Elmer Smith units have a must-offer obligation for the 2017-2018 and 2018-2019 Delivery Years.⁸

6. In late September, 2015, OMU determined that an economic shutdown of Elmer Smith Unit 1 should occur after the OMU's capacity obligation for the 2018-2019 Delivery Year has been satisfied. Therefore, OMU submitted a request for an exception from the must-offer obligation for 2019-2020 Delivery Year and beyond. When Elmer Smith Unit 1 is deactivated, OMU will need more capacity from Elmer Smith Unit 2 to serve its native load, so it also will be seeking an exception from the must-offer obligation for part of its capacity from Elmer Smith Unit 2.⁹

7. In mid-November, 2015, OMU advised PJM of its plan to deactivate Elmer Smith Unit 1 and PJM suggested that it submit both deactivation requests under section 113.1 of the PJM Tariff¹⁰ and the must-offer exception request under section 6.6(g) of Attachment DD by December 1, 2015.¹¹ Additionally, PJM advised OMU to submit a waiver request, given that OMU did not submit a pre-notification of a deactivation-related must offer exception request by October 1, 2015.

III. OMU's Request for a Waiver

8. OMU requests a one-time, limited waiver of the procedural requirement in section 6.6(g) of Attachment DD of the PJM's Tariff. Specifically, OMU states that it seeks waiver of the October 1, 2015 deadline to submit a preliminary exception request for the must-offer requirement. OMU states that the Commission has previously granted waivers in the 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.¹²

⁸ OMU Waiver Request at 3.

⁹ OMU Waiver Request at 5.

¹⁰ Section 113.1 (Generation Owner Notice) provides deactivation requirements for generation units located in the PJM Region.

¹¹ *Id.* at 5.

¹² OMU Waiver Request at 6-7.

9. OMU states that it was unable to comply with the October 1, 2015 deadline in good faith. OMU explains that the OMU's draft integrated resource plan was released in late September 2015, showing a need for an economic shutdown of Elmer Smith Unit 1. In November 2015, OMU had made a decision to seek a must-offer exception based on a deactivation of Elmer Smith Unit 1. After this decision, OMU states that it promptly contacted PJM and began making arrangements to submit the appropriate requests by the December 1, 2015 deadline for submitting a final request.¹³

10. OMU states that its waiver request is of limited scope because it is requesting a one-time waiver of one of the procedural deadlines in section 6.6(g) of Attachment DD, which sets forth the requirement to submit a preliminary exception request for the 2019-2020 Auction by October 1, 2015. OMU further states that it does not request waiver of any substantive requirement for an exception from the capacity must-offer requirement, or the requirement to submit a deactivation request.¹⁴

11. OMU asserts that the waiver will remedy a concrete and specific problem because it will prevent OMU from being required to offer capacity into the 2019-2020 Auction from a facility that is not expected to be physically available to participate in the Delivery Year.¹⁵

12. Finally, OMU contends that, if granted, the waiver will not have any adverse consequences, such as harming third parties, because OMU commits to comply with the deadline to submit a final exception request by December 1, 2015.¹⁶ OMU argues that PJM stated that the reason for this deadline is to provide PJM enough time to establish planning parameters which must be completed by February 1, 2016 and to provide market participants with sufficient notice to develop and submit new resources to replace deactivated resources. OMU further argues that, its limited waiver request for just one resource outside of the PJM region should not frustrate PJM's goals, similar to PJM's own request to move the preliminary deadline from September 1, 2015 to October 1, 2015.¹⁷

¹³ OMU Waiver Request at 7.

¹⁴ OMU Waiver Request at 7-8.

¹⁵ OMU Waiver Request at 8.

¹⁶ According to the information posted by PJM on its website, OMU timely submitted a final exception request for its Elmer Smith 1 unit (<http://www.pjm.com/~media/planning/gen-retire/pending-deactivation-requests.ashx>).

¹⁷ OMU Waiver Request at 8.

IV. Notice of Filing and Responsive Pleading

13. Notice of OMU's filing was published in the *Federal Register*, 80 Fed. Reg. 76,282 (2015), with interventions, protests, and comments due on or before December 22, 2015. PJM filed a timely intervention. No protests or adverse comments were filed.

V. Discussion

14. We find that good cause exists to grant OMU a waiver of the October 1, 2015 deadline in section 6.6(g) of Attachment DD to the PJM Tariff, for submitting a preliminary exception request for its must-offer requirement for the Elmer Smith Unit 1 facility. The Commission has previously granted requests for waiver in situations where: (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 must be remedied; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹⁸ We find that these conditions have been satisfied here.

15. First, we conclude that OMU's failure to comply with the October 1, 2015 deadline at issue was in good faith because a decision to deactivate the Elmer Smith Unit 1 facility was made after the October 1, 2015 deadline to submit pre-notification exception request. Second, the waiver is limited in scope because OMU requests a limited and one-time waiver of the October 1, 2015 deadline in section 6.6(g) of Attachment DD to the PJM Tariff, to allow it to submit a pre-notification exception request for its must-offer requirement for the Elmer Smith Unit 1 facility. OMU does not request waiver of any substantive requirement for an exception from the capacity must-offer requirement, including the requirement to submit a deactivation request. Third, we find that the waiver will remedy a concrete problem because it will prevent OMU from being required to offer capacity into the 2019-2020 Auction from a facility that is not expected to be physically available to participate in the Delivery Year. Lastly, the waiver does not have undesirable consequences, such as harming third parties, because OMU complied with the deadline to submit a final exception request by December 1, 2015, which allows adequate time for PJM and PJM's Market Monitor to evaluate the request in advance of the Auction in May 2016. Finally, in rendering our determination here, we note that neither PJM nor any other party has objected to OMU's waiver request.

¹⁸ 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).

The Commission orders:

OMU'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.