

158 FERC ¶ 61,008
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

James River Genco, LLC

Docket No. ER17-341-000

ORDER GRANTING TARIFF WAIVER

(Issued January 5, 2017)

1. On November 10, 2016, James River Genco, LLC (James River) requested a limited waiver of the deadlines set forth in section 6.6(g) (section 6.6(g)) of Attachment DD of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT)¹ with respect to the Hopewell Generating Station (Facility) (Waiver Request). James River states that the Waiver Request is necessary to allow PJM and the Market Monitoring Unit (Market Monitor) to process James River's request for the Facility to be excepted from the must-offer requirement for the May 2017 Reliability Pricing Model (RPM) Base Residual Auction (BRA) for Delivery Year 2020-2021 and all subsequent RPM auctions. For the reasons discussed below, we grant the Waiver Request.

I. Background

2. James River states that, under section 6.6(g), a capacity market seller may seek an exception to the must-offer requirement by submitting a written request to PJM and the Market Monitor with supporting data and documentation demonstrating that the resource is reasonably expected to be physically unable to participate in the relevant delivery year.² James River notes that, for the 2020-2021 BRA, the deadlines for submitting the preliminary and final exception requests to PJM and the Market Monitor were September 1, 2016, and December 1, 2016, respectively.³

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

² Waiver Request at 3.

³ *Id.* at 4.

II. Waiver Request

3. James River seeks a waiver of the procedural deadlines in section 6.6(g) for requesting exception for the Facility from the must-offer requirement. James River explains that the Facility will be deactivated by May 31, 2017. Thus, it will be physically unable to participate in the BRA that is scheduled to commence on May 10, 2017, and in all subsequent RPM auctions. According to James River, it submitted a notice of deactivation to PJM, which PJM approved.⁴ It states that, on July 29, 2016, the Market Monitor concluded that deactivating the Facility does not appear to raise market power issues.⁵

4. According to James River, its Waiver Request stems from an inadvertent error. Specifically, James River explains that an administrative oversight resulted in it missing the deadline for submitting a timely, preliminary exception request for the 2020-2021 BRA. James River states that, once the oversight was discovered, it acted diligently to correct the error by seeking a waiver.⁶

5. James River asserts that the Commission has found that a one-time waiver is appropriate where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) the waiver would remedy a concrete problem; and (4) the waiver does not have undesirable consequences.⁷ James River states that the Commission has also granted tariff waivers where an unintentional administrative oversight was the cause of the situation.⁸

6. James River argues that its inadvertent error was made in good faith, and that its Waiver Request is limited and discrete. James River asserts that it is seeking a one-time

⁴ *Id.* at 3.

⁵ *Id.* at 3 & n.5.

⁶ *Id.* at 5-6.

⁷ *Id.* (citing *EDP Renewables North America LLC*, 149 FERC ¶ 61,069, at P 12 (2014); *N.Y. Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,122, at P 18 (2014); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,132, at P 14 (2010); *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,031, at P 19 (2008)).

⁸ *Id.* at 5 (citing *EDP Renewables North America LLC*, 145 FERC ¶ 61,076 (2013); *S.w. Power Pool, Inc.*, 138 FERC ¶ 61,054 (2012); *ISO New England, Inc.*, 117 FERC ¶ 61,171 (2006); *see also S.w. Power Pool, Inc.*, 131 FERC ¶ 61,055 (2010); *S.w. Power Pool, Inc.*, 126 FERC ¶ 61,088 (2009)).

waiver for the Facility from the procedural deadlines for requesting exception from the must-offer requirement. PJM and the Market Monitor may then process James River's request that the Facility be excepted from the 2020-2021 BRA. James River states that it is not seeking waiver from any of the more substantive requirements. James River further commits to provide all necessary supporting documentation and data required by PJM and the Market Monitor to process its exception request.⁹

7. James River asserts that the Waiver Request will remedy a concrete problem because, absent a waiver, PJM and the Market Monitor cannot consider a request for an exception to the must-offer requirement for the 2020-2021 BRA. James River explains that, if an exception is not obtained, the capacity of the Facility must be offered into the 2020-2021 BRA even though the Facility will be physically decommissioned by May 2017 and unable to deliver any capacity during the 2020-2021 delivery year and all subsequent delivery years. Therefore, James River states that granting the Waiver Request will allow it to pursue an exception from the requirement to offer capacity that cannot be delivered.¹⁰

8. James River argues that granting the Waiver Request will not create undesirable consequences because the waiver merely allows James River to pursue an exception to the 2020-2021 delivery year must-offer requirement from PJM and the Market Monitor who will decide whether to grant the exception. James River adds that granting the Waiver Request will not harm third parties or cause any delay in the 2020-2021 BRA or otherwise interfere with PJM's administration of the BRA.¹¹

III. Notice and Intervention

9. Notice of James River's Waiver Request was published in the *Federal Register*, 81 Fed. Reg. 81,752 (2016), with interventions and protests due on or before December 1, 2016. PJM submitted a timely motion to intervene.

⁹ *Id.* at 6.

¹⁰ *Id.*

¹¹ *Id.* at 6-7.

IV. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), PJM's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

11. For the reasons discussed below, we grant James River's Waiver Request. The Commission has previously granted one-time waivers of tariff provisions in situations where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver did not have undesirable consequences such as harming third parties.¹²

12. We find that the Waiver Request satisfies these criteria. First, we find that James River acted in good faith, given its prompt filing of the Waiver Request upon discovery of the oversight.¹³ Second, we find that the Waiver Request is limited in scope, as it is a one-time waiver of a procedural deadline to allow James River to apply for an exception from PJM's must-offer requirement.

13. Third, we find that granting the Waiver Request will remedy a concrete problem. Specifically, granting the Waiver Request allows PJM and the Market Monitor to consider James River's request for an exception to the must-offer requirement for the 2020-2021 BRA where the generator is scheduled to be decommissioned by May 2017. Finally, we find that granting the Waiver Request will not create undesirable consequences or harm third parties because the waiver merely allows James River to pursue an exception to the 2020-2021 delivery year must-offer requirement from PJM and the Market Monitor, who will then determine whether to grant the exemption.

¹² See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Serv., Inc.*, 154 FERC ¶ 61,082, at P 12 (2016); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

¹³ We further note that James River timely pursued deactivation of the Facility, and that both PJM and the Market Monitor were aware of the planned decommissioning.

The Commission orders:

James River's Waiver Request is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.