

143 FERC ¶ 61,021
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 5, 2013

In Reply Refer To:
Brandon Shores LLC and C.P. Crane LLC
Docket No. ER13-1018-000

Vinson & Elkins LLP
Attention: John S. Decker
2200 Pennsylvania Avenue, NW
Washington, DC 20037-1701

Dear Mr. Decker:

1. On March 1, 2013, Brandon Shores LLC (Brandon Shores) and C.P. Crane LLC (CP Crane, and collectively, Raven Companies) requested a limited, temporary waiver of the deadline for the submission of information to support unit-specific Avoidable Cost Rates (ACR) contained in Attachment DD of the Open Access Transmission Tariff (Tariff) of PJM Interconnection, L.L.C. (PJM). Raven Companies state that they have been authorized to represent that the Independent Market Monitor (IMM) for PJM and PJM do not oppose their request. For good cause shown, the Commission grants the waiver, with the deadlines specified by PJM, as explained below.
2. Brandon Shores is a Delaware limited liability company that owns a coal-fired generating facility in Anne Arundel County, Maryland. Brandon Shores' facility consists of two units with an aggregate 1,286 MW of nameplate capacity. Brandon Shores is authorized to sell electricity, capacity, and ancillary services at market-based rates.¹ CP Crane is a Delaware limited liability company that owns a coal and oil-fired generating facility in Baltimore County, Maryland. CP Crane's facility consists of three units with an aggregate 399 MW of nameplate capacity. CP Crane is authorized to sell electricity, capacity, and ancillary services at market-based rates.² The generating

¹ *Brandon Shores LLC, et al.*, Docket No. ER12-2510-000, *et al.* (Oct. 19, 2012) (unpublished letter order).

² *Id.*

resources of Brandon Shores and CP Crane were acquired in November 30, 2012 and the two companies became the Raven Companies.³

3. Raven Companies state that PJM operates the Reliability Pricing Model (RPM) capacity market to procure capacity to meet future requirements through a Base Residual Auction (BRA) and incremental auctions. Each existing generating resource that seeks to submit a bid in the BRA must provide certain data and documentation to the IMM and PJM to establish the level of the Market Seller Offer Cap applicable to the resource.⁴ The Market Seller Offer Cap either can be based on: (i) the ACR minus expected energy and ancillary service market revenues; or (ii) opportunity cost.⁵ The ACR is calculated pursuant to the formula set forth in Section 6.8 of Attachment DD and includes various cost components, including the Avoidable Project Investment Recovery Rate (APIR).⁶ A resource may request a unit-specific ACR or choose the default ACR for the applicable class of resource.⁷ The timing and type of information required to be submitted for establishing the Market Seller Offer Cap is set forth in Section 6.7 of Attachment DD, which states specifically that a resource that intends to submit a non-zero price in its Sell Offer in any such auction shall submit a calculation of the Avoided Cost Rate and Projected PJM Market Revenues together with detailed supporting documentation, no later than 120 days prior to the auction.⁸ For the auction in question, that deadline was January 13, 2013. If the information submitted by the generation resource in support of a unit-specific ACR is incomplete, the default ACR will apply in calculating the Market Seller Offer Cap.⁹

4. Raven Companies state that prior to the January 13, 2013, deadline, Raven Power Holdings, LLC, an affiliate of Raven Companies submitted, on its behalf, data to support unit-specific ACRs for the upcoming 2016/2017 BRA. According to Raven Companies, although they worked diligently to gather and submit all of the data required to meet the requirements for unit-specific ACRs, as result of the short time period between the

³ See *Constellation Power Source Generation, Inc., et al.*, 141 FERC ¶ 62,017 (2012); see also *Notice of Disposition of Jurisdictional Facilities*, Docket No. EC12-137-000 (Nov. 30, 2012).

⁴ Tariff, Attachment DD § 6.4(b).

⁵ *Id.* § 6.4(a).

⁶ *Id.* § 6.8.

⁷ *Id.* § 6.7(b).

⁸ *Id.*

⁹ *Id.* § 6.7(c).

acquisition and the January 13, 2013 deadline, they were unable to provide all of the data in the form required by PJM and the IMM.

5. Raven Companies received a letter from PJM stating that their submission was missing evidence of corporate commitment for APIR and other documentation, and as a result, their submission had not satisfied the information requirements for the unit-specific ACRs. PJM further stated that the default ACR would be utilized to determine their Market Seller Offer Cap unless Raven Companies received a waiver from the Commission of the Tariff requirements for timely data submission.

6. Raven Companies are requesting a waiver of the requirements for timely data submission under Section 6.7(b) of Attachment DD of the PJM Tariff. Raven Companies argue that they meet the Commission's criteria for granting waiver of RTO tariff deadlines, asserting that the Commission grants waiver when certain conditions are met:

- a. The failure to comply with the Tariff was due to an error, which was made in good faith;
- b. The waiver is of limited scope;
- c. a concrete problem must be remedied; and
- d. The waiver does not have undesirable consequences.¹⁰

7. Raven Companies argue that the Commission has previously granted waivers for parties that failed to satisfy requirements for other capacity auctions.¹¹ Raven Companies believe good cause exists to grant their limited waiver requested because, despite their diligent efforts following the acquisition, they were unable to meet the timely data submission requirements of Section 6.7(b). Failure to meet the deadline was inadvertent and Raven Companies continue to work with PJM and the IMM to submit the required information. Raven Companies assert that the waiver requested is of limited scope and remedies a concrete problem because Raven Companies is only seeking waiver related to the timely data submission for a specific capacity auction, the 2016/2017 BRA. The need for waiver arises from the limited amount of time following the acquisition, thus these events will not repeat themselves and the one-time waiver of the 120-day deadline will permit the Raven Companies to submit the requisite data to justify their unit specific ACRs. Raven Companies state that the waiver will not have undesirable consequences because the information provided by them relates to unit-specific ACRs related to

¹⁰ Waiver Request at 4.

¹¹ See *Pittsfield Generating Company, L.P.*, 130 FERC ¶ 61,182, at P 10 (2010); *ISO New England-EnerNOC, Inc.*, 122 FERC ¶ 61,297, at P 14 (2008).

generation resources owned by those units that will affect the Market Seller Offer Cap for only those units.

8. Notice of Raven Companies' filing was issued on March 4, 2013, with protests or interventions due on or before March 15, 2013. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹² the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. The IMM submitted a motion to intervene on March 13, 2013. PJM submitted a motion to intervene and comments on March 14, 2013.

9. PJM states in its comments that it does not object to the waiver request. However, PJM states that Raven Companies failed to request an extension of the deadlines by which they must submit their requests and documentation for a Market Seller Offer Cap and Opportunity Cost for a resource or of the deadlines by which PJM and the IMM are required to make their determinations and provide their notifications for their requests. PJM further states that Raven Companies also failed to request that the Commission establish a specific deadline by which they would be required to submit their requests with all supporting documentation required by the Operating Agreement. Therefore, PJM requests that if the Commission determines that good cause exists to grant the request, the Commission in its order: (a) specify a deadline of March 18, 2013, by which Raven Companies must submit their requests for a unit-specific ACR, Market Seller Cap and Opportunity Costs, along with all required supporting documentation;¹³ (b) grant an extension of the deadline by which the IMM must review the request and supporting documentation and provide its findings as to the unit-specific ACR, Market Seller Offer Cap and Opportunity Cost, in writing, to Raven Companies and PJM to April 15, 2013; (c) specify that the deadline by which Raven Companies must notify the IMM and PJM of the level of Market Seller Offer Cap to which it agrees to commit is extended to April 20, 2013; and (d) grant an extension of the deadline by which PJM must review the requests and supporting documentation and provide to Raven Companies and the IMM, in writing, its determination whether the unit-specific ACR and Market Seller Offer Cap are acceptable to April 27, 2013.

10. We find that good cause exists to grant Raven Companies' request for waiver of the tariff deadline with the deadlines established by PJM. The Commission has previously granted limited, temporary waivers in similar situations.¹⁴ We particularly

¹² 18 C.F.R. § 385.214 (2012).

¹³ PJM notes that Raven Companies have verbally advised both PJM and the IMM that they intend to submit their fully documented requests by March 15, 2013.

¹⁴ See *supra* n.11; see also *PPL EnergyPlus, LLC*, 142 FERC ¶ 61,177 (2013) at P 8 n.10.

note that PJM and the IMM have authorized Raven Companies to state that they support the request for waiver, and that no parties have intervened to oppose the request or challenge Raven Companies' assertions. Based on the record before us, it therefore appears that Raven Companies' failure to meet the Tariff requirement in a timely manner was indeed due to a good faith error, that the requested waiver is limited in nature, that it would allow Raven Companies, PJM and the IMM to remedy a concrete problem, and that it would have no undesirable consequences for the IMM, PJM, or any third parties. PJM supports the waiver of its tariff provisions as long as it is subject to firm deadlines related to Raven Companies' submission of material and subsequent review of such material.

11. Accordingly, we grant waiver of Attachment DD of the PJM Tariff for the limited purpose of extending Raven Companies' deadline for the submission of information until March 18, 2013 to support the unit-specific ACR Market Seller Offer Cap, and Opportunity Cost, and extending the IMM's deadline for reviewing such information until April 15, 2013, and further establish the deadlines specified by PJM in its comments, as detailed above.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.