

168 FERC ¶ 61,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

City of Dover, Delaware

Docket No. ER19-2225-000

ORDER GRANTING PETITION FOR WAIVER

(Issued August 26, 2019)

1. On June 20, 2019, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ the City of Dover, Delaware (Dover) submitted a petition for limited waiver of the January 12, 2019 deadline to submit a preliminary request for exception to the must-offer requirement in Section 6.6(g) of Attachment DD of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff) for the first incremental auction for the 2021/2022 delivery year. Dover states that the waiver request relates to its decision to deactivate McKee Run Unit 3 (McKee 3) on June 1, 2021, before the first incremental auction for the 2021/2022 delivery year.² As discussed below, we grant Dover's waiver request.

I. Background

2. Under Section 6.6(g) of Attachment DD of the PJM Tariff, a capacity market seller may seek approval for an exception from the must-offer requirement by establishing that the resource "is reasonably expected to be physically unable to participate in the relevant Delivery Year."³ The capacity market seller can establish such a showing by, among other things, demonstrating that it has a documented plan in place to retire the resource prior to or during the delivery year and submitting a notice of deactivation to PJM consistent with the Tariff. In order to obtain an exception from the must-offer requirement for this reason, a capacity market seller must submit a

¹ 18 C.F.R. § 385.207(a)(5) (2018).

² PJM, Intra-PJM Tariffs, OATT, Attachment DD (21.1.0), § 6.6(g), Offer Requirement for Capacity Resources.

³ *Id.*

preliminary request for exception before later submitting either a withdrawal of that preliminary request or a demonstration that the capacity market seller has a documented plan in place to retire the resource prior to or during the relevant delivery year. The preliminary request for exception is due no later than 240 days prior to the commencement of the offer period for the applicable incremental auction. The withdrawal of that request or demonstration that the capacity market seller has a documented plan in place to retire the resource is due no later than 120 days prior to the same offer period.⁴

II. Filing

3. Dover states that it owns and operates McKee 3, a 44 year-old 106.9 MW dual fired, steam turbine generator that is registered with PJM as a capacity resource. Dover explains that it will retire McKee 3 on June 1, 2021, because it is no longer economic to operate the unit.⁵

4. Dover seeks limited waiver of the deadlines in Section 6.6(g) of Attachment DD to the Tariff for submitting a preliminary must-offer exception request for the first incremental auction for the 2021/2022 delivery year. Dover explains that it did not submit a timely preliminary exception request because it made the decision to retire McKee 3 in early February 2019, after the January 12, 2019 preliminary exception request deadline. Focused on notifying PJM and PJM's market monitor, Monitoring Analytics, LLC (IMM) about deactivating McKee 3, Dover states that it overlooked that the preliminary exception request was mandatory. Dover states that following its decision to retire the unit, on March 8, 2019, The Energy Authority, acting as Dover's agent, notified the IMM and PJM of its decision. Dover states on, April 2, 2019, the IMM concluded that the proposed retirement of McKee 3 did not present market power issues.⁶ The Energy Authority submitted a final request for exception to the must-offer requirement for the 2021/2022 first incremental auction on April 23, 2019. On June 11,

⁴ *Id.* This Tariff provision states that, if a capacity market seller does not timely take actions to remove its resource from the capacity market or exempt its resource from the must-offer requirements, a generation capacity resource “may only be approved for an exception to the must-offer requirement, upon . . . requesting and receiving an order from [the Commission], prior to the close of the offer period for the applicable [capacity market 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.”

⁵ Waiver Request at 2.

⁶ *Id.* at 4.

2019, the IMM notified Dover that Dover did not file the preliminary must-offer exception for McKee 3 by the January 12, 2019 deadline.⁷

5. In support of its waiver request, Dover cites to Tariff Section 6.6(g), which provides that, if a capacity market seller does not timely take actions to remove its resource from the capacity market or exempt its resource from the must-offer requirements, a generation capacity resource may only be approved for an exception to the must-offer requirement if the seller requests and receives an order from the Commission.⁸

6. Dover states that good cause exists to grant the waiver request. First, Dover states that its failure to meet the Tariff preliminary exception request deadline was due to a good faith error. Dover states that it decided to deactivate McKee 3 in February 2019, after the January 12, 2019 preliminary request deadline.⁹

7. Second, Dover states that its waiver request is of limited scope because it relates to a discrete procedural provision of the Tariff for the first incremental auction for the 2021/2022 delivery year. Dover asserts that it requests only that the Commission waive the provision requiring submission of the preliminary request and the associated deadlines for processing the request, consistent with Commission precedent.¹⁰

8. Third, Dover submits that the waiver request remedies a concrete problem by ensuring that McKee 3 is not committed to provide capacity that it will be unable to deliver.¹¹

9. Finally, Dover states that granting the waiver request will have no undesirable consequences for PJM, the IMM, or any other third party. Dover contends that it offered McKee 3 as a capacity resource for the 2020/2021 base residual auction, but the unit was

⁷ *Id.* at 2-3.

⁸ *Id.* at 4 (citing PJM, Intra-PJM Tariffs, OATT, Attachment DD (21.1.0), § 6.6(g), Offer Requirement for Capacity Resources).

⁹ *Id.* at 5.

¹⁰ *Id.* at 6 (citing *ISO New England, Inc.*, 142 FERC ¶ 61,051, at P 20 (2013)).

¹¹ *Id.*

not selected. Further, Dover avers that McKee 3 is a relatively small capacity resource that is rarely dispatched.¹²

10. Dover requests that the Commission grant its waiver request on an expedited basis to allow it to submit its exception request to PJM and the IMM as soon as possible to obtain a must-offer exception.¹³

III. Notice of Filing and Responsive Pleadings

11. Notice of the filing was published in the *Federal Register*, 84 Fed. Reg. 30,710 (2019), with interventions and protests due on or before July 11, 2019. PJM filed a timely motion to intervene. No protests or comments were filed.

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), PJM's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

13. For the reasons discussed below, we grant Dover's waiver request. The Commission has granted waiver of tariff provisions 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 does not have undesirable consequences, such as harming third parties.¹⁴

14. We find that Dover's Waiver Request satisfies these criteria. First, Dover did not decide to deactivate McKee 3 until February 2019, which was after the January 12, 2019 deadline to submit the preliminary must-offer exception request for the first incremental auction for the 2021/2022 delivery year. Upon making the decision to retire the resource, Dover promptly notified PJM and the IMM.¹⁵

¹² *Id.*

¹³ *Id.* at 1.

¹⁴ *See, e.g., New Brunswick Energy Marketing Corp.*, 167 FERC ¶ 61,252, at P 12 (2019); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

¹⁵ Waiver Request at 5.

15. Second, we find that Dover's waiver request is limited in scope. Dover's request pertains to a discrete, procedural deadline for the preliminary must-offer exception request for the first incremental auction for the 2021/2022 delivery year.

16. Third, we find that granting the waiver request addresses a concrete problem by ensuring that McKee 3 is not committed to provide capacity that it will be unable to deliver.

17. Finally, we find that granting the waiver request will not have undesirable consequences, such as harming third parties. According to Dover, McKee 3 is a relatively small capacity resource that is rarely dispatched and the IMM found that there are no market power issues associated with its deactivation.¹⁶ In making this finding of no undesirable consequences, such as harm to third parties, we also note that no party opposes the waiver request.

The Commission orders:

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁶ *Id.* at 4, 6.