

167 FERC ¶ 61,211  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Spruance Genco, LLC

Docket No. ER19-1564-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued June 6, 2019)

1. On April 11, 2019, Spruance Genco, LLC (Genco) filed a request for a limited waiver of certain deadlines set forth in Section 6.6(g) of Attachment DD of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff),<sup>1</sup> as extended by the Commission’s order issued in Docket No. ER18-2222-000 (Extension Order).<sup>2</sup> Specifically, Genco requests a waiver of (1) the submission deadline for a preliminary exception request to a must-offer requirement for the August 2019 Reliability Pricing Model (RPM) Base Residual Auction (BRA) for the 2022-2023 delivery year, and (2) the submission deadline for a confirmation of the request. Genco states that waiver of both deadlines is needed for its generation facility (Facility) in Richmond, Virginia, which it intends to retire. As discussed below, we grant the waiver request.

**I. Background**

2. Under Section 6.6(g) of Attachment DD of the PJM Tariff, a capacity market seller of a resource in the BRA 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.” The capacity market seller can establish such a showing by, among other things: (1) submitting a preliminary exception request in writing to the PJM Independent Market Monitor (IMM) and PJM for evaluation, along with supporting data and documentation indicating the reasons and

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<sup>1</sup> PJM Tariff, Attachment DD, § 6.6(g), Offer Requirement for Capacity Resources (21.1.0).

<sup>2</sup> *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,153 (2018).

conditions upon which the seller is relying in its analysis of whether to retire such resource, no later than September 1 that last precedes the BRA (i.e., September 1, 2018, for the 2022-2023 delivery year); and (2) submitting a notice in writing to the IMM and PJM demonstrating that it has a documented plan in place to retire the resource prior to or during the delivery year and that it submitted a timely notice of deactivation to PJM consistent with Section 113.1 of the PJM Tariff, no later than December 1 that last precedes the BRA (i.e., December 1, 2018, for the 2022-2023 delivery year).<sup>3</sup>

3. In the Extension Order, the Commission granted PJM's requested waiver of the PJM Tariff to allow a delay of the 2019 BRA for the 2022-2023 delivery year from May 2019 to August 14-28, 2019.<sup>4</sup> In the same proceeding, PJM requested a waiver of Section 6.6(g), changing the deadline for the preliminary exception request from September 1, 2018, to March 17, 2019, and changing the deadline for confirmation from December 1, 2018, to April 16, 2019.<sup>5</sup>

## II. Waiver Request

4. Genco states that it seeks a waiver of the procedural deadlines in Section 6.6(g), as extended by the Extension Order, for requesting an exception for the Facility from the must-offer requirement. Genco explains that the Facility will be deactivated by January 12, 2020, and therefore will be physically unable to participate in the 2022-2023 delivery year and all subsequent delivery years.<sup>6</sup> According to Genco, PJM has approved Genco's request to deactivate the Facility, and the IMM has concluded that the deactivation "does not appear to raise market power issues."<sup>7</sup> Genco requests that the

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<sup>3</sup> PJM Tariff, Attachment DD, § 6.6(g), Offer Requirement for Capacity Resources (21.1.0). 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." *Id.*

<sup>4</sup> Extension Order at P 1.

<sup>5</sup> *Id.* P 4 & n.7.

<sup>6</sup> Transmittal at 1, 4.

<sup>7</sup> *Id.* at 3 & n.6.

Commission grant the waiver request on an expedited basis so that it can submit an exception request as soon as possible.<sup>8</sup>

5. Genco states that it timely submitted an exception request to the must-offer requirements for the 2021-2022 BRA. However, due to an inadvertent error, Genco states that it missed the March 17, 2019 deadline for submitting a preliminary exception request for the Facility for the 2022-2023 delivery year.<sup>9</sup> In its April 11, 2019 filing, Genco stated its intent to submit the associated must-offer confirmation by the April 16, 2019 deadline, but because PJM and the IMM might not accept the confirmation ahead of Genco's preliminary exception request, Genco seeks a one-time limited waiver of both the March 17, 2019 deadline for the preliminary exception request and, to the extent necessary, the April 16, 2019 deadline for the confirmation.<sup>10</sup>

6. Genco states 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.<sup>11</sup> Genco adds that the Commission also has granted waiver requests where an unintentional administrative oversight was the cause of the situation.<sup>12</sup>

7. Genco argues that its inadvertent error was made in good faith. Genco states that it complied with all of the Tariff requirements for deactivating the Facility but, due to an administrative oversight, failed to submit a preliminary exception request. Genco further argues that its waiver request is limited and discrete. Genco asserts that it is seeking a one-time waiver for the Facility from the procedural deadlines for requesting exception

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<sup>8</sup> *Id.* at 1-2.

<sup>9</sup> *Id.* at 3-4.

<sup>10</sup> *Id.* Genco states that it has notified PJM and the IMM of its request for a limited waiver, which is necessary for it to pursue deactivation of the Facility.

<sup>11</sup> *Id.* at 5 (citing *James River Genco, LLC*, 158 FERC ¶ 61,008 (2017); *EDP Renewables North America LLC*, 149 FERC ¶ 61,069, at P 12 (2014); *New York 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)).

<sup>12</sup> *Id.* (citing *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)).

from the must-offer requirement and that it is not seeking waiver from any of the more substantive Tariff requirements.<sup>13</sup>

8. Genco asserts that the waiver request would remedy a concrete problem because, absent a waiver, PJM and the IMM cannot consider a request for an exception to the must-offer requirement for the 2022-2023 RPM BRA. If an exception is not obtained, Genco explains, the capacity of the Facility must be offered into the auction even though the Facility will be decommissioned by January 2020. Therefore, Genco states, granting the waiver request will allow it to pursue an exception from the requirement to offer capacity that cannot be delivered.<sup>14</sup>

9. Genco argues that granting the waiver request will not create any undesirable consequences because the waiver merely allows Genco to pursue a must-offer exception that ultimately will be determined by PJM and the IMM. Genco adds that granting the waiver request will not harm third parties or cause any delay in the 2022-2023 RPM BRA or otherwise interfere with PJM's administration of the auction.<sup>15</sup>

### **III. Notice and Interventions**

10. Notice of Genco's waiver request was published in the *Federal Register*, 84 Fed. Reg. 16,251 (2019), with interventions and protests due on or before May 2, 2019. PJM and Monitoring Analytics, LLC, acting in its capacity as the IMM for PJM, submitted timely motions to intervene. No protests were filed.

### **IV. Discussion**

#### **A. Procedural Matters**

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the IMM's and PJM's timely, unopposed motions to intervene serve to make them parties to this proceeding.

#### **B. Substantive Matters**

12. For reasons discussed below, we grant Genco's waiver request. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith;

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<sup>13</sup> *Id.* at 5-6.

<sup>14</sup> *Id.* at 6.

<sup>15</sup> *Id.*

(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.<sup>16</sup> We find that the waiver request satisfies these criteria.

13. First, we find that Genco acted in good faith. Genco filed the waiver request upon discovery of the oversight and has otherwise complied with all of the Tariff requirements for deactivating the Facility.

14. Second, we find that the waiver request is limited in scope, as it is a one-time waiver of a procedural deadline to allow Genco to apply for an exception from PJM's must-offer requirement.

15. Third, we find that granting the waiver request remedies a concrete problem. Specifically, granting the waiver request allows Genco to avoid offering capacity into the 2022-2023 RPM BRA that it cannot reasonably provide.

16. Finally, we find based upon the record here that granting the waiver request will not create undesirable consequences or harm third parties because the waiver merely allows Genco to pursue an exception to the 2022-2023 delivery year must-offer requirement from PJM and the IMM, both of which will then determine whether to grant the exception. In making this finding, we note that no parties oppose the waiver request.

The Commission orders:

Genco'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.

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<sup>16</sup> See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).