

152 FERC ¶ 61,192  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

RC Cape May Holdings, LLC

Docket No. ER15-2368-000

ORDER GRANTING WAIVER

(Issued September 11, 2015)

1. On August 3, 2015, pursuant to section 207(a)(5) of to the Commission's Rules of Practice and Procedure,<sup>1</sup> RC Cape May Holdings, LLC. (RC Cape May) filed a request for a waiver of the must-offer requirement which is contained in section 6.6 of Attachment DD to the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (PJM Tariff). Specifically, RC Cape May seeks waiver of the requirement to offer the B.L. England Generating Station's (Generating Station) output in the Reliability Pricing Model Incremental Auctions (Incremental Auctions) pertaining to the 2017/2018 delivery year. For the reasons discussed below, we grant RC Cape May's request for waiver.

**Background**

2. Section 6.6(g) of Attachment DD to the PJM Tariff sets forth the terms and conditions that govern the auction for the PJM Region. A capacity market seller may seek approval for an exception to the must-offer requirement in the PJM Reliability Pricing Model auction by submitting a written request to the Independent Market Monitor (IMM) and the PJM Office of Interconnection, provided it can establish that the resource "is reasonably expected to be physically unable to participate in the relevant auction."<sup>2</sup>

3. On April 30, 2014, the Commission granted waiver of section 6.6(g) of Attachment DD to the PJM Tariff to relieve RC Cape May of the obligation to offer the Generation Station's output in the May 2014 Base Residual Auction pertaining to

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<sup>1</sup> 18 C.F.R. § 385.207(a)(5) (2015).

<sup>2</sup> PJM Tariff, Attachment DD § 6.6(g).

the 2017/2018 delivery year.<sup>3</sup> RC Cape May states that the repowered Generating Station is considered an Existing Generation Capacity Resource because RC Cape May offered the expected output of the planned repowered Generating Station into the Reliability Pricing Model Base Residual Auction for the 2016/2017 delivery year as a Planned Generation Capacity Resource and that the offered capacity cleared in that Base Residual Auction.<sup>4</sup> As a result, RC Cape May states that it is a Capacity Market Seller as to the Generating Station, which subjects RC Cape May to a must-offer obligation for the Generating Station's capacity for the 2017/2018 Base Residual Auction and all subsequent Reliability Pricing Model Auctions, absent receipt of a waiver or exception to the must-offer requirement.<sup>5</sup>

4. RC Cape May states that it does not expect the Generating Station to be available to provide capacity in the 2017/2018 delivery year, and thus the circumstances that necessitated the waiver granted in the 2014 Waiver Order have not changed. RC Cape May states that the Generating Station remains unable to provide such capacity because South Jersey Gas Company has not received all of the permits required to construct a twenty-two mile, twenty-four inch natural gas high pressure transmission pipeline necessary to serve the Generating Station and permit repowering.<sup>6</sup> RC Cape May states that, while the New Jersey Board of Public Utilities approved of the pipeline construction plans, the New Jersey Pinelands Commission (Pinelands Commission) has not done so.<sup>7</sup>

5. RC Cape May further states that it anticipated having to make an additional waiver request, to the extent the *status quo* remained at the time the Incremental Auctions were set to occur and informed the Commission of such probability.<sup>8</sup> RC Cape May also explains that the regulatory barriers to constructing the pipeline have not been fully

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<sup>3</sup> *RC Cape May Holdings, Inc.*, 147 FERC ¶ 61,085 (2014) (granting waiver of section 6.6(g) of the PJM Tariff for the May 2014 Base Residual Auction for delivery year 2017/2018) (2014 Waiver Order).

<sup>4</sup> Transmittal at 3.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 3-4.

<sup>7</sup> *Id.* at 4. RC Cape May states that the Pinelands Commission has not executed a Memorandum of Agreement with the New Jersey Board of Public Utilities to allow South Jersey Gas Company to construct the pipeline. *Id.* Attachment A at 7-8.,

<sup>8</sup> Transmittal at 4.

removed, and thus prevent the Generating Station from being in service for the 2017/2018 delivery year.<sup>9</sup>

6. RC Cape May explains that on May 21, 2015, South Jersey Gas Company informed the Pinelands Commission that it would relocate the interconnect station for the pipeline to an area outside of the Pinelands forest area to address concerns raised when the Memorandum of Agreement was being developed.<sup>10</sup> RC Cape May states that the Pinelands Commission has not yet acted on the amended application.<sup>11</sup>

7. RC Cape May also explains that on July 22, 2015, the New Jersey Board of Public Utilities issued an order approving South Jersey Gas Company's petition to relocate the pipeline interconnection outside of the Pinelands forest area.<sup>12</sup> RC Cape May states that despite this progress, it does not expect that the pipeline and Generating Station will be operational for the 2017/2018 delivery year.<sup>13</sup>

### **Notice of Filing and Responsive Pleadings**

8. Notice of RC Cape May's filing was published in the *Federal Register*, 80 Fed. Reg. 47,483 (2015), with protests and interventions due on or before August 24, 2015. PJM filed a timely intervention.

### **Waiver Request**

9. RC Cape May requests that the Commission grant waiver of the must-offer requirement, set forth in section 6.6(g) of Attachment DD of the PJM Tariff, that is otherwise applicable to its Generating Station for the Incremental Auctions concerning delivery year 2017/2018.

10. RC Cape May states that there is good cause for the Commission to grant its waiver request. First, RC Cape May claims it diligently pursued regulatory permits for repowering the Generating Station including pursuing approvals from the New Jersey Board of Public Utilities and the Pinelands Commission to construct the South Jersey Gas Company pipeline. RC Cape May adds that it acted in good faith when it participated in

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 4-5.

<sup>11</sup> *Id.* at 5.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

the Reliability Pricing Model Auction for the 2016/2017 delivery year.<sup>14</sup> RC Cape May states that it had every expectation that it would achieve commercial operation before the relevant delivery year and did not reasonably expect that the Pinelands Commission would prevent construction of the pipeline and delay completion of the Generating Station.<sup>15</sup> Second, RC Cape May claims that its waiver request is limited to the Incremental Auctions of a single, discrete delivery year. Third, RC Cape May states that the requested waiver is necessary to address a specific problem, namely, that RC Cape May is faced with bidding capacity into Incremental Auctions that it now does not reasonably believe will be available, which would be inconsistent with the goal of the Base Residual Auction and PJM to provide reliable capacity. Fourth, RC Cape May states that, if granted, the waiver will not result in any adverse consequences and will not have undesirable consequences that would harm PJM, the IMM or third parties since the waiver will fulfill the intent of the PJM Tariff by allowing PJM to plan its capacity needs on a three-year forward basis.<sup>16</sup>

### **Commission Determination**

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>17</sup> the timely-filed, unopposed motion to intervene serves to make PJM a party to this proceeding.

12. We find good cause to grant the request for waiver. The Commission has previously granted requests for waiver of tariffs in situations where, as relevant here: (1) the applicant has been unable to comply with the tariff provision at issue in good faith; (2) the requested waiver is of limited scope; (3) the waiver would remedy a concrete problem; and (4) the waiver would not harm third parties or have other undesirable consequences.<sup>18</sup>

13. We find that the requested waiver satisfies the aforementioned conditions. RC Cape May's attempt to obtain all necessary approvals and permits including final approval of the construction of the gas pipeline was made in good faith. The lack of final approval and execution of the Memorandum of Agreement between the Pinelands

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<sup>14</sup> *Id.* at 7.

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

<sup>16</sup> *Id.* at 11.

<sup>17</sup> 18 C.F.R. § 385.214 (2015).

<sup>18</sup> See, e.g., *Southwest Power Pool, Inc.*, 146 FERC ¶ 61,110, at P 10 (2014); *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,060, at P 12 (2013).

Commission and the New Jersey Board of Public Utilities was beyond RC Cape May's control. RC Cape May's request is also limited in scope because it seeks a waiver of section 6.6(g) of Attachment DD to the PJM Tariff for the Incremental Auctions of one delivery year only, and the waiver would be applicable only to RC Cape May.

RC Cape May's request remedies a concrete problem by avoiding the requirement that RC Cape May offer capacity into delivery year 2017/2018 that it cannot reasonably provide, and which PJM cannot rely on for reliability planning purposes. We further find that granting the waiver will have no undesirable consequences for PJM nor any other third parties. Finally, we note that no party filed in opposition to the requested waiver.

The Commission orders:

RC Cape May's request for waiver of section 6.6(g) of Attachment DD to the PJM Tariff is hereby granted.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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