

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.)
)
) Docket No. ER14-1475-000

COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 of the Commission's Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM ("Market Monitor"),² submits these comments on the request submitted on March 12, 2014, by Invenergy Nelson, LLC ("Nelson"), for waiver of the deadlines for requesting an exception from the RPM must offer requirement for its proposed 600 MW combined-cycle gas turbine facility ("Nelson Facility") for the Base Residual Auction ("BRA") for the 2017/2018 Delivery Year. The Market Monitor opposes the request for waiver because Nelson did not enter into the agreement for export until two months after the applicable deadline. Nelson has not indicated a valid reason for granting a waiver.

I. COMMENTS

As Nelson explains (at 3), the Nelson Facility is subject to the must offer requirement in the 2017/2018 BRA because it will receive payment for capacity from PJM customers in the 2016/2017 Delivery Year. All capacity MW from the Nelson Facility are considered an Existing Generation Capacity Resource in the 2017/2018 BRA. The current rules permit an Existing Generation Capacity Resource to request an exception from the RPM must offer

¹ 18 CFR § 385.211 (2013).

² Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff ("OATT").

requirement for the 2017/2018 BRA, provided that they submitted the request by January 12, 2014. This deadline was established to provide an opportunity for the IMM and PJM to evaluate, respectively, any market power and tariff compliance issues raised by the request.

Nelson executed an agreement to export approximately 90 MW of capacity subject to the must offer requirement on March 12, 2014, two months after the applicable deadline for requesting an exception to the must offer requirement for the 2017/2018 BRA.³ Nelson's justification for requesting a waiver is that it agreed to export capacity two months after the applicable deadline and therefore could not meet the applicable deadline.⁴ The basis for Nelson's request is not valid and should be rejected. Accepting export arrangements entered into after the deadline for an exception to permit such exports nullifies the deadlines.

Nelson argues: "The Commission has granted waivers where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) a concrete problem must be remedied; and (4) the waiver does not have undesirable consequences."⁵ Nelson has not shown or claimed that it made an error. Nelson fails to show limited scope, because its rationale would apply indefinitely and for any participant who finds the rules inconvenient. No concrete problem needing a remedy existed until two months after the deadline that Nelson seeks to waive, at which point Nelson created the problem. Granting this waiver would create a harmful precedent, as it would allow participants to disregard the tariff rules in the expectation of a waiver. Nelson has not satisfied any of the elements needed in its request for a waiver of the tariff deadline.

³ See Nelson at 2–4.

⁴ See *Id.* at 6–7.

⁵ Nelson at 6 (citing, *e.g.*, *PPL EnergyPlus, LLC*, 145 FERC ¶ 61,210 at P 9 (2013); *Appalachian Power Co.*, 143 FERC ¶ 61,015 at PP 8-9 (2013); *Am. Mun. Power, Inc.*, 140 FERC ¶ 61,102 at P 10 (2012); *Cent. Vt. Pub. Serv. Corp.*, 121 FERC ¶ 61,225 at P 28 (2007).)

The Commission has received a number of requests for waivers of deadlines for the 2017/2018 BRA. The Market Monitor has not opposed these deadlines because the participants made credible claims that they did not understand that the deadlines applied to units in their circumstances (e.g., units that had given notice of deactivation prior to the relevant delivery year but would have to offer the unit due to the failure to obtain a timely exception to the must offer requirement) and, without a waiver, would be required to offer capacity that would be physically unable to be delivered. The Market Monitor has not opposed waivers under those circumstances, and it takes no position on whether those waiver requests meet all of the criteria that the Commission applies in evaluating requests for waiver of tariff rules.

Nelson's request for waiver can be distinguished from others that have been filed in connection with deadlines for submittals for the 2017/2018 BRA, which involved problems existing before the applicable RPM deadline. In this case, it appears that Nelson did not consider the deadline when it agreed to export capacity subject to the deadline two months after the deadline passed. Accordingly, Nelson's request for waiver should be denied.

II. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to these comments as the Commission resolves the issues raised in this proceeding.

Respectfully submitted,



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Dated: March 26, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Eagleville, Pennsylvania,
this 26th day of March, 2014.



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