162 FERC ¶ 61,016
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

January 12, 2018

In Reply Refer To:
C.P. Crane LLC
Docket No. ER18-344-000

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Attention: Tyler Brown, Esq.

Dear Mr. Brown:

1. On November 29, 2017, C.P. Crane LLC (CP Crane) filed a request for limited waiver (Waiver Request) of the deadline set forth in section 6.6(g) of Attachment DD of PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (Tariff), which requires that a preliminary exception request to the must-offer requirement for the Base Residual Auction (BRA) for the 2021/2022 delivery year be submitted by no later than September 1, 2017.[1] CP Crane states that waiver of the deadline for submission of a preliminary exception request is needed for its generating units, Units 1, 2, and 3 located in Baltimore County, Maryland (the Crane Units), which it intends to deactivate. As discussed below, we grant CP Crane's Waiver Request.

2. CP Crane states that it has not successfully sold its capacity from the Crane Units into the PJM capacity markets for the 2018/2019 delivery year and 2020/2021 delivery year and that continuing to operate the units beyond May 2020 would require significant pollution control investment.[2] CP Crane intends to deactivate Crane Units 1 and 2 by June 1, 2018 and Crane Unit 3 by October 31, 2019.[3]

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[1] PJM Tariff, Attachment DD, section 6.6(g), Offer Requirement for Capacity Resources (15.0.0).

[2] Waiver Request at 3.

[3] *Id.* at 1.

3. 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 auction."[4] 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 the PJM Office of Interconnection for evaluation, along with supporting data and documentation indicating the reasons and conditions upon which the Capacity Market Seller is relying in its analysis of whether to retire such resource, no later than September 1 that last precedes the Base Residual Auction (i.e., September 1, 2017 for the 2021/2022 Delivery Year); (2) 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 the PJM Office of the Interconnection consistent with section 113.1 of the Tariff;[5] and (3) submitting a notice in writing to the PJM IMM and PJM Office of Interconnection either withdrawing its preliminary exception request or demonstrating that it has met the requirements to have a documented plan in place and to have a timely notice of deactivation submitted, no later than December 1 that last precedes the Base Residual Auction (i.e., December 1, 2017 for the 2021/2022 Delivery Year).[6]

4. CP Crane requests waiver only of the first notice requirement, i.e., to submit a preliminary exception request by September 1, 2017.[7] CP Crane states that it made the business decision to deactivate the Crane Units on October 26, 2017 and that it could not submit a timely preliminary exception request by September 1, 2017 because it had not made the business decision to retire the Crane Units prior to October 26, 2017. However, CP Crane states that it provided a notice of deactivation to the IMM and PJM on

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[4] PJM Tariff, Attachment DD, section 6.6(g), Offer Requirement for Capacity Resources (15.0.0).

[5] Waiver Request at 2. Section 113.1 requires notice of a proposed generator deactivation in writing to PJM no later than 90 days prior to the proposed deactivation date. PJM Tariff, section 113.1, Generation Owner Notices (1.0.0).

[6] PJM Tariff, Attachment DD, section 6.6(g), Offer Requirement for Capacity Resources (15.0.0).

[7] Waiver Request at 5.

October 27, 2017.[8] CP Crane also notes that it will be in a position to meet the requirement to provide a final exception request by the December 1, 2017 deadline.[9]

5. CP Crane states that the Commission considers the following four factors when evaluating requests for waiver: (1) whether the applicant acted in good faith; (2) whether the waiver is of limited scope; (3) whether a concrete problem must be remedied; and (4) whether the waiver has undesirable consequences, such as harm to third parties.[10] CP Crane argues that good cause exists to grant its request because it did not make the business decision to deactivate the Crane Units until after the September 1, 2017 deadline and acted in good faith to promptly notify PJM and the IMM the following day of its intentions once it had made the decision.[11] CP Crane asserts that its Waiver Request is limited in scope in both time period and capacity amount, applying only as a one-time waiver of the preliminary request deadline for the Crane Units participating in the BRA for the 2021/2022 delivery year. CP Crane contends that granting the waiver would remedy a concrete problem by ensuring that the Crane Units, which will not be operational for the 2021/2022 delivery year, are not committed to provide capacity that they will be unable to deliver.[12] Finally, CP Crane argues that granting the request will not have undesirable consequences for PJM, the IMM, or any other third parties, noting that since the Crane Units have failed to clear in previous BRAs, their removal from the upcoming BRA will likely not impact any bids or results from that auction.[13] CP Crane requests that the Commission grant this waiver request by no later than January 15, 2018.[14]

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[8] CP Crane states that PJM responded to its deactivation request on November 22, 2017, and stated in its responding letter that the Crane Units were not required for system reliability and could be deactivated as scheduled. *Id.* at 3.

[9] *Id.* at 5-6.

[10] *Id.* at 4 (citing *PJM Interconnection, L.L.C.*, 125 FERC ¶ 61,279, at P 8 (2008); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,078, at P 38 (2014)).

[11] *Id.* at 4-5.

[12] *Id.* at 6.

[13] *Id.* at 6-7.

[14] *Id.* at 1.

6. Notice of the Waiver Request was published in the *Federal Register*, 82 Fed. Reg. 57,435 (2017), with protests or interventions due on or before December 20, 2017. None was filed.

7. For the reasons discussed below, we grant CP Crane's Waiver Request. The Commission has previously granted one-time waivers of tariff provisions in situations where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver did not have undesirable consequences, such as harming third parties.[15]

8. We find that the Waiver Request satisfies these criteria. First, we find that CP Crane's failure submit a timely request for a preliminary exception of the must-offer requirement was made in good faith, as CP Crane did not make the business decision to retire the Crane Units until after the September 1, 2017 deadline. CP Crane provided immediate notice to PJM and the IMM of its decision to deactivate these units and committed to timely comply with the requirement to provide a final exception request to the IMM and PJM 90 days prior to the proposed deactivation date pursuant to section 113.1 of the Tariff. Second, we find that CP Crane's Waiver Request is limited in scope in that it seeks a one-time waiver of the preliminary request deadline for the Crane Units participating in the BRA for the 2021/2022 delivery year. Third, we find that granting the waiver will remedy a concrete problem by ensuring that the Crane Units are not committed to provide capacity that they will be unable to deliver. Finally, we note that Crane Units have failed to clear in previous BRAs and we thus find that their removal from the upcoming BRA will likely not impact any bids or results from that auction. Thus, we find that granting the Waiver Request will not have undesirable consequences for PJM, the IMM, or any other third parties. Accordingly, we grant CP Crane's Waiver Request.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[15] *See, e.g.*, *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Serv., Inc.*, 154 FERC ¶ 61,082, at P 12 (2016); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).