

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

**Bayonne Plant Holding, L.L.C.** )

**Docket No. ER15-\_\_\_\_-000**

**REQUEST FOR LIMITED WAIVER**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”),<sup>1</sup> Bayonne Plant Holding, L.L.C. (“Bayonne”) respectfully requests a one-time, limited waiver of one of the preliminary procedural notice requirements set forth in Section 6.6(g) of Attachment DD to the PJM Interconnection, L.L.C. (“PJM”) Open Access Transmission Tariff (the “Tariff”)<sup>2</sup> for requesting a unit-specific exception to the capacity must-offer requirement with respect to the Base Residual Auction (“BRA”) for the 2018/2019 Delivery Year, scheduled to be held in May 11-15, 2015<sup>3</sup> (the “May 2015 BRA”). Specifically, Bayonne requests waiver of the requirement to submit a preliminary exception request to PJM’s Market Monitoring Unit (the “MMU”) by September 1, 2014, because that deadline had already passed when the lessor of the site of Bayonne’s generating facility (the “Bayonne Facility”) gave notice of its intent not to renew the lease when it expires midway through the 2018/2019 Delivery Year. While Bayonne will still need to demonstrate to PJM that the Bayonne Facility will be “physically unable to participate in the relevant Delivery Year,”<sup>4</sup> the requested waiver will ensure that Bayonne will not be required to offer the facility’s capacity into the May 2015 BRA based solely on its having missed this preliminary procedural deadline.

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<sup>1</sup> 18 C.F.R. § 385.212 (2014).

<sup>2</sup> Capitalized terms not otherwise defined herein have the meaning set forth in the Tariff.

<sup>3</sup> See PJM, RPM Schedule (Aug. 22, 2014) (“RPM Schedule”), available at <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/rpm-auction-schedule.ashx>.

<sup>4</sup> Tariff, Attachment DD, § 6.6(g).

Bayonne has been authorized to represent that the MMU does not oppose this request for limited waiver. Bayonne requests that the Commission issue an order granting the requested waiver by **February 5, 2015** in order to allow the MMU make its determination on the exception request by February 10, 2015, as required by the Tariff.<sup>5</sup> If the Commission cannot issue an order by this date, Bayonne requests issuance of an order **no later than March 5, 2015** in order to allow PJM to issue a final determination by March 7, 2014, as required by the Tariff.<sup>6</sup>

## I.

### CORRESPONDENCE AND COMMUNICATIONS

Bayonne requests that correspondence and communications regarding this filing be directed to the following persons, whose names should be placed on the Commission's official service list in this proceeding:<sup>7</sup>

Debra L. Raggio  
Senior Vice President  
Regulatory & External  
Affairs Counsel  
Topaz Power Management, LP  
117 Oronoco Street  
Alexandria, VA 22314  
(703) 778-0841  
draggio@tpmlp.com

David G. Tewksbury  
Stephanie S. Lim  
KING & SPALDING LLP  
1700 Pennsylvania Ave., NW  
Washington, DC 20006  
(202) 737-0500  
(202) 626-3737 (facsimile)  
dtewksbury@kslaw.com  
sslim@kslaw.com

<sup>5</sup> See *id.*, Attachment M – Appendix, § II.C.4 (stating that the MMU must inform the Capacity Market Seller and PJM of its “determination in writing by no later ninety (90) days prior to the commencement of the offer period for the applicable RPM Auction”). See also RPM Schedule.

<sup>6</sup> See Tariff, Attachment DD, § 6.6(g) (stating that “exception request shall be deemed to be approved by [PJM], consistent with the determination of the [MMU], unless [PJM] notifies the Capacity Market Seller and [MMU], by no later than sixty-five (65) days prior to the date on which the offer period for the applicable RPM Auction commences, that the exception request is denied”). See also RPM Schedule.

<sup>7</sup> Bayonne respectfully requests waiver of Rule 203(b)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(b)(3) (2014), to the extent necessary to permit more than two persons to be included on the official service list on its behalf in this proceeding.

## II.

### DESCRIPTION OF BAYONNE AND THE BAYONNE FACILITY

Bayonne is a Delaware limited liability company and an exempt wholesale generator (“EWG”) authorized to make wholesale sales at market-based rates.<sup>8</sup> Bayonne owns and operates the Bayonne Facility, an approximately 168 MW (summer rating) natural gas- and kerosene-fired combined-cycle cogeneration facility in Bayonne, New Jersey that was completed in 1988. The Bayonne Facility is located on real property leased from Bayonne Industries Inc. and IMTT-Bayonne (together, the “Lessor”) under a lease agreement dated October 18, 1986 and amended as of December 1, 2003 (the “Bayonne Lease”).

## III.

### BACKGROUND

#### A. The Capacity Must-Offer Requirement

As a general matter, “all of the installed capacity of [an] Existing Generation Capacity Resource[] located in the PJM Region,” such as the Bayonne Facility, is required to be offered into “all RPM Auctions for each Delivery Year, less any amount determined by [PJM] to be eligible for an exception to the must-offer requirement . . . .”<sup>9</sup> Under Section 6.6(g) of Attachment DD, exceptions to this must-offer requirement are available where:

the Capacity Market Seller that owns or controls such resource demonstrates that it: (i) is reasonably expected to be physically unable to participate in the relevant Delivery Year; (ii) has a financially and physically firm commitment to an external sale of its capacity, or (iii) was interconnected to the Transmission System

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<sup>8</sup> See *Cogen Techs. NJ Venture*, 97 FERC ¶ 62,089 (2001) (granting EWG status); *Cogen Techs. NJ Venture*, Docket No. ER02-1486-000 (May 24, 2002) (unreported) (granting market-based rate authority).

<sup>9</sup> Tariff, Attachment DD, § 6.6(a).

as an Energy Resource and not subsequently converted to a Capacity Resource.<sup>10</sup>

Paragraphs A through D of Section 6.6(g) of Attachment DD set forth four alternative means by which a Capacity Market Seller can demonstrate that a resource is “reasonably expected to be physically unable to participate in the relevant auction . . . .”<sup>11</sup> Under paragraph A of Section 6.6(g), a Capacity Market Seller’s resource may be considered physically unable to participate if “[i]t has a documented plan in place to retire the resource prior to or during the Delivery Year, and has submitted a notice of Deactivation to [PJM] consistent with Section 113.1 of the PJM Tariff . . . .”<sup>12</sup> In order to obtain an exception on this basis, the Tariff provides, in relevant part, that:

the Capacity Market Seller shall first submit a preliminary exception request in writing, 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, to the [MMU] . . . by no later than . . . the September 1 that last precedes the [BRA] for the 2018/2019 and subsequent Delivery Years . . . .<sup>13</sup>

If the Capacity Market Seller still intends to retire the resource, it must then “demonstrate that it has met the requirements specified under Paragraph A” in a final notification to be submitted on or before “the December 1 that last precedes the [BRA] for the applicable Delivery Year . . . .”<sup>14</sup>

## **B. Recent Developments Affecting Bayonne’s Ability To Participate In The May 2015 BRA**

By its terms, the Bayonne Lease expires on October 31, 2018. Bayonne had hoped to renew the lease and to continue operating the Bayonne Facility. To that end, Bayonne had

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<sup>10</sup> *Id.*, § 6.6(g).

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

<sup>12</sup> *Id.*, § 6.6(g)(A).

<sup>13</sup> *Id.*, § 6.6(g).

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

engaged in extensive discussions with the Lessor about renewal of the Bayonne Lease. By a letter dated October 16, 2014 (the “October 16 Letter”), a copy of which is provided in Attachment A hereto, the Lessor gave notice to Bayonne that it does not intend to renew the Bayonne Lease.

On November 17, 2014, Bayonne submitted a notice of deactivation to PJM pursuant to Section 113.3 of the PJM Tariff, stating its intent to deactivate the Bayonne Plant effective November 1, 2018. Also on November 17, 2014, Bayonne submitted a request for exception from the capacity must-offer requirement to PJM pursuant to Section 6.6(g) of Attachment DD to the PJM Tariff with respect to the May 2015 BRA and all other RPM auctions for the 2018/2019, 2019/2020, 2020/2021 and 2021/2022 Delivery Years.<sup>15</sup>

#### IV.

#### **REQUEST FOR LIMITED WAIVER**

Without the requested waiver, Bayonne could be required to offer the capacity of the Bayonne Facility into the May 2015 BRA, even though there is currently no reasonable expectation that the facility will be capable of providing capacity during the second half of the 2018/2019 Delivery Year. Bayonne missed the September 1, 2014 deadline for submitting a preliminary exception request because renewal of the Bayonne Lease still appeared to be a reasonable possibility until Bayonne received the October 16 Letter a month and a half after that deadline. Bayonne can still submit a timely request for exception by December 1, 2014, and barring PJM and the MMU from granting an exception based solely on the September 1, 2014 preliminary request deadline having already passed would be contrary to the recognized “need

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<sup>15</sup> This request included a preliminary exception request for all such RPM auctions, except for the 2018/2019 BRA (for which the deadline has already passed and which is the subject of this waiver request).

for PJM to ensure that offers into its [capacity] market represent physical resources . . . .”<sup>16</sup> It would force PJM to apply the capacity must-offer requirement to a resource that is unlikely to be operable for at least half of the relevant Delivery Year. Accordingly, Bayonne respectfully requests a one-time, limited waiver of the requirement under Section 6.6(g) of Attachment DD to the Tariff to submit a preliminary exception request with respect to the May 2015 BRA by September 1, 2014. This will allow Bayonne to seek an exception to the capacity must-offer requirement by submitting a final notification by the December 1, 2014 deadline demonstrating that the Bayonne Facility will be physically unable to participate in the May 2015 BRA, and will allow PJM and the MMU to grant that request, notwithstanding Bayonne’s having missed the September 1, 2014 deadline.

This waiver request is consistent with prior Commission orders granting similar waivers<sup>17</sup> and with other Commission precedent granting tariff waivers where, as here: “(1) the applicant was unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) granting waiver would remedy a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.”<sup>18</sup> As noted, Bayonne has also been authorized to represent that the MMU does not oppose this waiver.

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<sup>16</sup> *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,108 at P 68 (2014). *See also, e.g., PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,150 (2014) (stating “PJM needs to have a reasonable assurance that resources offering into RPM auctions will actually be able to provide the offered [capacity] so that PJM can meet its resource adequacy requirements”); *PJM Interconnection, L.L.C.*, 145 FERC ¶ 61,001 at 61,007 (Moeller & Clark, Comm’rs, concurring) (expressing “support [for] PJM’s efforts to ensure that offers into the capacity market represent real, physical resources that will help PJM meet reliability requirements in the delivery year”).

<sup>17</sup> *See East Ky. Power Coop., Inc.*, 147 FERC ¶ 61,075 (2014) (“*East Kentucky*”); *Invenergy Nelson LLC*, 147 FERC ¶ 61,067 (2014); *City of Dover*, 146 FERC ¶ 61,245 (2014) (“*Dover*”); *Virginia Elec. & Power Co.*, 146 FERC ¶ 61,226 (2014) (“*VEPCO*”); *Sunbury Generation LP*, 146 FERC ¶ 61,011 (2014); *Hess Corp.*, 144 FERC ¶ 61,142 (2013); *Southern Indiana Gas & Elec. Co.*, 143 FERC ¶ 61,091 (2013).

<sup>18</sup> *Dynegy Kendall Energy, LLC*, 147 FERC ¶ 61,094 at P 10 (2014). *See also, e.g., EDP Renewables N. Am. LLC*, 149 FERC ¶ 61,069 at P 12 (2014); *Calpine Corp.*, 147 FERC ¶ 61,205 at P 12 (2014); *New York Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,122 at P 18 (2014); *PJM Interconnection*,

First, Bayonne was unable to comply with the September 1, 2014 deadline in good faith. While Bayonne was, of course, aware of the termination date of the Bayonne Lease, it was still evaluating various options for the Bayonne Facility, including continued operation under a renewed lease, and hence had not conducted an “analysis of whether to retire”<sup>19</sup> before receiving the October 16 Letter.<sup>20</sup> In Bayonne’s view, submitting a preliminary exception request to the MMU under these circumstances would have been inappropriate and might even have been viewed as inconsistent with Bayonne’s obligation to ensure that communications with the MMU, a Commission-approved market monitor, are not misleading,<sup>21</sup> an obligation that Bayonne takes seriously.

Second, this waiver request is limited in scope. Bayonne is only requesting a one-time waiver of one of the procedural deadlines in Section 6.6(g) of Attachment DD to the Tariff, which sets forth the requirement to submit a preliminary exception request for the May 2015 BRA by September 1, 2014. It is not requesting waiver of any of the substantive requirements for an exception from the capacity must-offer requirement, including the requirement to submit supporting data and documentation. Nor is it seeking waiver of the December 1, 2014 deadline for submitting a final notification demonstrating that the requirements of paragraph A of Section 6.6(g) have been satisfied. In this respect, Bayonne notes that its waiver request is

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*L.L.C.*, 144 FERC ¶ 61,060 at P 12 (2013); *Green Energy Partners*, 142 FERC ¶ 61,158 at P 7 (2013); *ISO New England Inc.*, 142 FERC ¶ 61,051 at P 20 (2013); *East Kentucky Power Coop., Inc.*, 142 FERC ¶ 61,028 at P 14 (2013); *Linden VFT, LLC*, 140 FERC ¶ 61,244 at P 11 (2012); *Pittsfield Generating Co., L.P.*, 130 FERC ¶ 61,182 at P 9 (2010); *ISO New England Inc. – EnerNOC, Inc.*, 122 FERC ¶ 61,297 at P 13 (2008).

<sup>19</sup> Tariff, Attachment DD, § 6.6(g).

<sup>20</sup> Bayonne still hopes that the Lessor will reconsider its position and agree to renew the Bayonne Lease. Nonetheless, the October 16 Letter has left Bayonne with no choice but to pursue an exception from the capacity must-offer requirement for the May 2015 BRA.

<sup>21</sup> See 18 C.F.R. § 35.41(b) (2014).

narrower than many of the Section 6.6(g) waivers granted in past orders, which covered both the preliminary exception request and final notification deadlines.<sup>22</sup>

Third, the requested waiver is necessary to address a specific problem: namely, the fact that Bayonne will otherwise be required to offer capacity into the May 2015 BRA from a facility that will not be capable of performing during the latter half of the 2018/2019 Delivery Year. To be clear, Bayonne is not asking the Commission to make any determination as to whether the Bayonne Facility is eligible for the exception from the capacity must-offer requirement. Rather, it is asking only that the Commission grant waiver of a preliminary exception request requirement, so that PJM and the MMU may consider Bayonne's request for such an exception on the merits. Absent such a waiver, they could be barred from granting the exception on purely procedural grounds, because Bayonne was not in a position to submit a preliminary exception request by the September 1, 2014 deadline.

Finally, if granted, the waiver will not have any adverse consequences. As explained above, the waiver will merely permit Bayonne to apply for, and PJM and the MMU to grant, a unit-specific exception to the capacity must-offer requirement. The requested waiver will not result in any delay in the May 2015 BRA or otherwise interfere with the orderly administration of that auction. There will be no harm to third parties from granting the waiver. To the contrary, granting the waiver will have the beneficial effect of helping to ensure that the resources offering into the May 2015 BRA can actually be expected to be available to perform during the 2018/2019 Delivery Year.

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<sup>22</sup> See, e.g., *East Kentucky*, 147 FERC ¶ 61,075 at PP 5, 9; *Dover*, 146 FERC ¶ 61,245 at PP 5, 10; *VEPCO*, 146 FERC ¶ 61,226 at PP 5, 9-10.







**Attachment A**  
**The October 16 Letter**

**IMTT-Bayonne**  
A PARTNERSHIP

**Bayonne Terminal: 250 East 22nd Street, P.O. Box 67, Bayonne, N.J. 07002 (U.S.A.)**  
Phone: (201) 437-2200, Main Office Fax: (201) 339-4637, Executive Fax: (201) 339-4704

October 16, 2014

**STRICTLY CONFIDENTIAL**

Bayone Plant Holding, L.L.C.  
c/o [RIVERSTONE]  
1000 Louisiana, Suite 1000  
Houston, Texas 77002  
Attention: Stephen J. Schaefer, Managing Director  
stephen@riverstonellc.com

**RE: Notification of Intent not to Renew Lease Agreement**

Dear Mr. Schaefer:

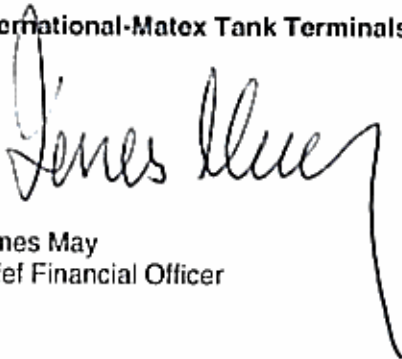
Reference is made to a Lease Agreement, dated as of October 18, 1986 and amended as of December 1, 2003 (as amended, the "Lease Agreement") between Bayonne Industries Inc. ("BII") and IMTT-Bayonne (collectively, "Lessor"), as landlord, and Bayonne Plant Holding, L.L.C., as tenant. International-Matex Tank Terminals wholly owns BII and IMTT-Bayonne.

Subject to Sections 3.4 and 15.6 thereof, the Lease Agreement will expire by its terms on October 31, 2018 unless continued by mutual agreement of the parties. Please let this letter serve as notice that Lessor does not intend to renew the Lease Agreement upon expiration.

You are permitted to disclose this letter to third parties. To the extent you have any questions on this matter, we would be pleased to discuss at your convenience.

Yours sincerely,

**International-Matex Tank Terminals**



James May  
Chief Financial Officer

Document Content(s)

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