

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

**PSEG Energy Resources & Trade LLC     )**  
**PSEG Nuclear LLC                             )**

**Docket No. ER19-1251-000**

**PROTEST OF  
THE ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission” or “FERC”),<sup>1</sup> the Electric Power Supply Association (“EPSA”)<sup>2</sup> hereby protests the request for waiver filed by PSEG Energy Resources & Trade LLC (“PSEG ER&T”), on behalf of its affiliate, PSEG Nuclear LLC (“PSEG Nuclear”) (together, “PSEG”), on March 12, 2019 in the above-captioned proceeding.<sup>3</sup> EPSA understands that tariff waivers are sometimes necessary and appropriate, and, in principle, EPSA has no objection to the Commission waiving the applicable deadlines for deactivation-related exceptions to the must-offer requirement set forth in the PJM Interconnection, L.L.C. (“PJM”) Open Access Transmission Tariff (the

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<sup>1</sup> 18 C.F.R. § 385.211 (2018).

<sup>2</sup> Launched over 20 years ago, EPSA is the national trade association representing leading independent power producers and marketers. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. Power supplied on a competitive basis collectively accounts for 40 percent of the U.S. installed generating capacity. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue. EPSA has separately moved to intervene in this proceeding. See (doc-less) Motion to Intervene of the Electric Power Supply Association, Docket No. ER19-1251-000 (filed Mar. 13, 2019).

<sup>3</sup> Request by PSEG Energy Resources & Trade LLC and PSEG Nuclear LLC for a Waiver to Extend Timetable for Submitting Must Offer Exception Requests and Notices of Deactivation, Docket No. ER19-1251-000 (filed Mar. 12, 2019) (the “Waiver Request”).

“Tariff”)<sup>4</sup> if and when PSEG has actually decided to deactivate any or all of the Existing Generation Capacity Resources at issue. With PSEG having yet to make any such decision, however, its request is premature and should be denied, without prejudice to PSEG’s seeking a waiver if and when PSEG can demonstrate that it has made a good faith effort to comply with the Tariff and that there is a concrete problem to be addressed.

## **I. BACKGROUND**

Section 6.6(a) of Attachment DD to PJM’s Tariff requires that all Existing Generation Capacity Resources be offered into PJM’s Reliability Pricing Model (“RPM”) auctions. Section 6.6(g) of Attachment DD, in turn, sets forth the methods by which a Capacity Market Seller may obtain an exception from the must offer requirement, including, but not limited to, by demonstrating that the resource “is reasonably expected to be physically unable to participate in the relevant Delivery Year” because “[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 the Office of the Interconnection . . . .”<sup>5</sup> For the Base Residual Auction (“BRA”) that is currently scheduled to take place in August 2019 for the 2022/2023 Delivery Year (the “2022/2023 BRA”), a Capacity Market Seller desiring a must-offer exception was required to submit a preliminary request for must offer exceptions by March 17, 2019, and is required to submit a final exception request by April 16, 2019.<sup>6</sup>

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<sup>4</sup> Capitalized terms not otherwise defined herein have the meaning set forth in the Tariff.

<sup>5</sup> Tariff, Attachment DD, § 6.6(g).

<sup>6</sup> See RPM Auction Schedule, 2022-2023 BRA, <https://www.pjm.com/-/media/markets-ops/rpm/rpm-auction-info/rpm-auction-schedule.ashx?la=en>.

In the Waiver Request, PSEG states that PSEG Nuclear has filed applications with the New Jersey Board of Public Utilities (the “BPU”) for Zero Emission Certificates (“ZECs”) for the Hope Creek Generating Unit (“Hope Creek”) and Units 1 and 2 of the Salem Nuclear Generating Station (“Salem”), and that the BPU is anticipated to render decisions on those applications by April 18, 2019.<sup>7</sup> PSEG repeats assertions it has made elsewhere to the effect that it will “retire the plants . . . unless all three plants are awarded ZECs . . . .”<sup>8</sup>

## II. PROTEST

As PSEG recognizes, the Commission employs a four-part test under which waiver will be granted if:

- (i) The waiver applicant has been unable to comply with the tariff provision at issue in good faith; (ii) The waiver is of limited scope; (iii) A concrete problem will be remedied by granting the requested waiver; and, (iv) The waiver does not have undesirable consequences, such as harming third parties.<sup>9</sup>

PSEG nonetheless fails to demonstrate in the Waiver Request that it is unable to comply with the applicable Tariff provisions or that the requested waiver is required to address a concrete problem.

In its most recent Form 10-K filing with the Securities and Exchange Commission, PSEG’s parent, Public Service Enterprise Group Incorporated, stated:

Given the anticipated timing of the BPU’s decision on which nuclear plants, if any, have been selected to receive ZECs, which is expected in April 2019, in March 2019 [PSEG Power LLC (“Power”)] will submit to the PJM Independent Market Monitor and the PJM Office of Interconnection a request for a

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<sup>7</sup> See Waiver Request at 2-3.

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

<sup>9</sup> *Id.* at 5.

preliminary exception to PJM's RPM must-offer requirement with respect to Power's interest for each of the Salem 1, Salem 2 and Hope Creek plants in connection with the 2022/2023 capacity auction expected to be held in August 2019. Power will also submit a deactivation notice to the extent that its filing deadline occurs prior to the award of ZECs by the BPU. If all of the Salem and Hope Creek plants are selected to receive ZECs, the preliminary exception and requested deactivation notice, as applicable, would be withdrawn.

In the event that any of the Salem 1, Salem 2 and Hope Creek plants is not selected to receive ZEC payments in April 2019 by the BPU and do not otherwise experience a material financial change, Power will take all necessary steps to retire all of these plants at or prior to their refueling outages scheduled for the Fall 2019 in the case of Hope Creek, Spring 2020 in the case of Salem 2 and Fall 2020 in the case of Salem 1. Alternatively, if all of the Salem 1, Salem 2 and Hope Creek plants are selected to receive ZEC payments in April 2019 but the financial condition of the plants is materially adversely impacted by potential changes to the capacity market construct being considered by FERC (absent sufficient capacity revenues provided under a program approved by the BPU in accordance with a FERC authorized capacity mechanism), Power would still take all necessary steps to retire all of these plants.<sup>10</sup>

In the Waiver Request, PSEG makes baseless claims that it "could be forced to bid the units into the August 2019 BRA" if it does not receive ZECs and decides to deactivate them.<sup>11</sup> At the outset, the PSEG 10-K indicates that PSEG had intended to comply with the Tariff by submitting notices of Deactivation and must offer exemption requests if it was not awarded ZECs before the applicable deadlines, with the entirely correct understanding that these could later be withdrawn if PSEG decided not to

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<sup>10</sup> Public Service Enterprise Group Incorporated, Form 10-K at 47 (filed Feb. 28, 2019) (the "PSEG 10-K"), <http://app.quotemedia.com/data/downloadFiling?ref=12741727&type=PDF&symbol%E2%80%8C=PEG&companyName%E2%80%8C=Public+Service+Enterprise+Group+Incorporated&formType=10-K&formDescription=Annual+report+with+a%E2%80%8C+comprehensive+%E2%80%8Coverview+%E2%80%8Cof+the+company&dateFiled=2019-02-28>. See also *id.* at 105 (same).

<sup>11</sup> Waiver Request at 4.

deactivate the units. Nowhere in the Waiver Request does PSEG even attempt to explain why it could not have submitted a preliminary must-offer exception request prior to the March 17, 2019 deadline, as contemplated in the PSEG 10-K that was filed on February 28, 2019. Nonetheless, based on the Waiver Request, EPSA can only assume that PSEG did not, in fact, elect to pursue this option, although it is not clear what change occurred in the short time between February 28, 2019 and March 12, 2019 to precipitate the Waiver Request.

More importantly, even if PSEG elected to let the deadline pass, there is still no “concrete problem” to be addressed by the requested waiver, as both the Tariff and Commission precedent provide PSEG with ample means of addressing any concrete problem in this area that might arise in the future. As both the Waiver Request and PSEG 10-K make clear, PSEG has not yet made any final decision on whether it will deactivate Hope Creek or Salem, and, unless and until it does so, it will not need a must-offer exception.<sup>12</sup> In any event, notwithstanding PSEG’s suggestions to the contrary, the passing of the must-offer exception deadlines does not irrevocably commit PSEG to offering the units into the August 2019 BRA. Section 6.6(g) of Attachment DD to the Tariff expressly gives PSEG the ability to seek relief from the Commission, stating:

If a Capacity Market Seller doesn’t timely seek to remove a Generation Capacity Resource from Capacity Resource status or timely submit a request for an exception to the RPM must-offer requirement, the Generation Capacity Resource shall only be removed from Capacity Resource status, and may only be approved for an exception to the RPM must-offer requirement, upon the Capacity Market Seller requesting and receiving an order from FERC, prior to the close of the offer period for the applicable RPM Auction, directing the Office of

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<sup>12</sup> See Waiver Request at 4 (“if ZECs are granted, PSEG ER&T anticipates that PSEG Nuclear would not retire the plants and there would not be a need for the ‘must offer’ exceptions”).

the Interconnection to remove the resource from Capacity Resource status and/or granting an exception to the RPM must-offer requirement or a waiver of the RPM must-offer requirement as to such resource.<sup>13</sup>

In addition, the Commission routinely grants requests for waiver of the must-offer exception deadlines where applicants have only made a final decision on deactivation after those deadlines have passed.<sup>14</sup>

The bottom line is that PSEG has failed to demonstrate that it is unable to comply with the Tariff in good faith or that there is any concrete problem that would be addressed by the requested waiver. PSEG may very well have a “specific problem”<sup>15</sup> but that problem is not concrete and, if it should ever become concrete, both the Tariff and Commission precedent provide more than adequate remedies. Indeed, PSEG’s Waiver Request appears to have less to do with any legitimate concern about being “forced to bid the units into the August 2019 BRA”<sup>16</sup> than with political considerations, such as concerns about the inferences that the BPU or others might draw from the fact that (1) the deadline for submitting a preliminary must-offer exception request has passed; (2) PSEG

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<sup>13</sup> Tariff, Attachment DD, § 6.6(g).

<sup>14</sup> See, e.g., *Evergreen Cmty. Power, LLC*, 163 FERC ¶ 61,067 (2018) (granting Feb. 9, 2018 request for waiver of Sept. 1, 2017 deadline for notice of intent to seek a deactivation-related must offer exception); *NextEra Energy Mktg., LLC*, 162 FERC ¶ 61,142 (2018) (granting Dec. 15, 2017 request for waiver of Sept. 1, 2017 deadline for notice of intent to seek a deactivation-related must offer exception); *Talen Energy Mktg., LLC*, 162 FERC ¶ 61,079 (2018) (granting Dec. 4, 2017 request for waiver of Sept. 1, 2017 deadline for notice of intent to seek a deactivation-related must offer exception); *Westmoreland Partners*, 159 FERC ¶ 62,112 (2017) (granting Mar. 21, 2017 request for waiver of Sept. 1, 2016 deadline for notice of intent to seek a deactivation-related must offer exception); *James River Genco, LLC*, 158 FERC ¶ 61,008 (2017) (granting Nov. 10, 2016 request for waiver of Sept. 1, 2016 deadline for notice of intent to seek a deactivation-related must offer exception); *Owensboro Mun. Utils.*, 154 FERC ¶ 61,044 (2016) (granting Dec. 1, 2015 request for waiver of Oct. 1, 2015 deadline for notice of intent to seek a deactivation-related must offer exception).

<sup>15</sup> Waiver Request at 5.

<sup>16</sup> *Id.* at 4.

has not received ZECs subsidies for Hope Creek or Salem; and (3) despite the threats made in the PSEG 10-K and elsewhere, PSEG apparently did not submit preliminary must-offer exception requests for Hope Creek or Salem.

### III. CONCLUSION

**WHEREFORE**, for the reasons set forth herein, EPSA respectfully requests that the Commission deny the Waiver Request as premature, without prejudice to PSEG submitting another request if and when appropriate.

Respectfully submitted,

#### **ELECTRIC POWER SUPPLY ASSOCIATION**

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On behalf of the  
**Electric Power Supply Association**

Dated: March 22, 2019

**CERTIFICATE OF SERVICE**

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

Dated at Washington DC, this 22<sup>nd</sup> day of March, 2019.

/s/ David G. Tewksbury  
David G. Tewksbury