

146 FERC ¶ 61,154
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Keys Energy Center, LLC

Docket No. ER14-1207-000

ORDER GRANTING WAIVER

(Issued March 4, 2014)

1. On January 29, 2014, pursuant to the Commission's Rules of Practice and Procedure,¹ Keys Energy Center, LLC (Keys Energy) filed a petition for a waiver of the Competitive Entry Exemption² deadline in section 5.14(h)(9)(ii) of Attachment DD of the Open Access Transmission Tariff (Tariff) of PJM Interconnection, L.L.C. (PJM). In particular, Keys Energy seeks waiver of the December 28, 2013 deadline for its electric generating plant for the Base Residual Auction commencing May 2014 and for the 2017/2018 Delivery Year. Keys Energy also requests expedited action by March 3, 2014 on its request for waiver. For the reasons discussed below, the Commission grants Keys Energy's request for waiver.

I. Background

2. PJM secures capacity commitments under the Reliability Pricing Model through a Base Residual Auction, held three years before a Delivery Year.³ Under section 5.14(h)(7) of Attachment DD of the PJM Tariff, a resource (Capacity Market Seller) can seek to qualify for an exemption to the minimum offer price rule (MOPR) for an upcoming Base Residual Auction by submitting a written request, along with

¹ 18 C.F.R. § 385.207(a)(5) (2013).

² The Competitive Entry Exemption requirements are set forth in Section 5.14(h)(9)(ii) of Attachment DD of the PJM Tariff. Capitalized terms used but not defined herein are intended to have the meaning given to such terms in the Tariff.

³ A Delivery Year is a twelve-month period beginning on June 1 and ending on May 31. See PJM Tariff, Attachment DD, §§ 2.5 and 2.34.

supporting data and documentation to the Market Monitoring Unit (MMU) and PJM's Office of Interconnection.

3. In addition to fulfilling the substantive criteria for a Competitive Entry Exemption,⁴ the Capacity Market Seller must submit the exemption request at least 135 days before the commencement of the offer period for the Base Residual Auction in which the Capacity Market Seller seeks to submit its offer.⁵ For the May 2014 Base Residual Auction, the deadline for the Competitive Entry Exemption was December 28, 2013.

4. Keys Energy is developing a 735 MW two-on-one combined-cycle, natural gas-fired, electric generation plant in Prince George's County, Maryland.⁶ Keys Energy states that last year, the project received approval from PJM and MMU to participate in the May 2013 Base Residual Auction, but Keys Energy did not actually participate due to permitting delays.⁷ Keys Energy states that the plant will be operational in April 2017 if it can participate in the upcoming May 2014 Base Residual Auction and closes on construction financing this summer.⁸

5. Keys Energy seeks a waiver of the 135-day deadline in section 5.14(h)(9)(ii) of Attachment DD of the PJM Tariff to allow PJM's Office of Interconnection and the MMU to consider its request for a Competitive Entry Exemption. Acknowledging that it missed the deadline for submission of the written request for Competitive Entry Exemption, Keys Energy argues that there is good cause to grant waiver. Keys Energy claims that the error was made in good faith because the Competitive Entry Exemption is a new Tariff rule, approved in May 2013, and that Keys Energy was not aware until January 22, 2014, that it would need to file a timely request in order to be considered for a Competitive Entry Exemption.⁹

⁴ PJM Tariff, Attachment DD, Section 5.14(h)(7).

⁵ PJM Tariff, Attachment DD, Section 5.14(h)(9)(ii); *see* Keys Energy Transmittal at 3.

⁶ Keys Energy Transmittal at 2.

⁷ Keys Energy Transmittal at 3.

⁸ Keys Energy Transmittal at 3.

⁹ Keys Energy Transmittal at 6 & n.12.

6. Keys Energy states that the waiver request is limited in scope because it is seeking waiver of only one provision of the PJM Tariff. Keys Energy explains that the waiver would remedy a concrete problem by allowing the project to become eligible for an exemption from the MOPR's bidding strictures, since the MOPR requires that, absent exemption, all new, non-exempted resources must bid at a floor price or higher. Keys Energy also asserts that granting waiver will not cause any undesirable consequences, stating that it has consulted with both PJM and the MMU, and that neither entity opposes Keys Energy's request.

7. Furthermore, as PJM and the MMU will require sufficient time to process and evaluate Keys Energy's request before the May 2014 Base Residual Auction begins, Keys Energy requests expedited action by the Commission by March 3, 2014.

II. Notice of Filing and Responsive Pleadings

8. Notice of the filing was published in the *Federal Register*, 79 Fed. Reg. 7,445 (2014), with interventions and protests due on or before February 19, 2014. Timely motions to intervene were filed by the Monitoring Analytics, LLC (MMU) and PJM on January 31, 2014, and February 2, 2014, respectively.

III. Commission Determination

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely-filed, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We find good cause to grant waiver, as requested. The Commission has previously granted requests for waiver of tariffs in situations where, as relevant here: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) the waiver would address a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹⁰

10. We find that the requested waiver satisfies the aforementioned conditions. Keys Energy's error was made in good faith because the Competitive Energy Exemption is a

¹⁰ See, e.g., *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,147, at P 8 (2013); *New York Independent System Operator, Inc.*, 139 FERC ¶ 61,108, at P 14 (2012); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,004, at P 10 (2010).

new categorical exemption made possible by the most recent MOPR requirements.¹¹ Keys Energy's request is limited in scope in that Keys Energy only seeks a one-time waiver of the deadline in one PJM Tariff provision. Keys Energy's request remedies a concrete problem because, without the waiver of the deadline, the project would not be able to seek an exemption and thus would only be able to bid at a floor price or higher.¹² The waiver should, moreover, not have undesirable consequences such as harming third parties. In this regard, Keys Energy states that the request for waiver is unopposed and estimates that the plant will become operational in April 2017 if it can participate in the May 2014 Base Residual Auction and close on construction financing this summer. Keys Energy states, in fact, that it has been authorized by both PJM and the MMU to state that they do not oppose the petition.¹³

The Commission orders:

Keys Energy's request for waiver of Section 5.14(h)(9)(ii) of the PJM Tariff is hereby granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹¹ PJM proposed revisions to its Tariff on December 7, 2012 in Docket No. ER13-535-000 to implement stakeholder revisions to the MOPR. PJM proposed adding two new categorical exemptions through which a resource may be exempt from PJM's MOPR requirements: (1) a self-supply exemption for load-serving entities that meet certain net short and net long criteria and that are operating under longstanding business models that predate the RPM; and (2) an exemption for competitive entry projects that are receiving no out-of-market payments related to the construction of new generation, i.e., the Competitive Entry Exemption. On May 2, 2013, the Commission issued an order conditionally accepting in part and rejecting in part the proposed tariff revisions. *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 (2013).

¹² Keys Energy Transmittal at 7.

¹³ Keys Energy Transmittal at 5.