

146 FERC ¶ 61,220
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Lackawanna Energy Center LLC

Docket No. ER14-1256-000

ORDER GRANTING WAIVER

(Issued March 21, 2014)

1. On February 4, 2014, pursuant to section 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ Lackawanna Energy Center LLC (Lackawanna 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 of PJM Interconnection, L.L.C. (PJM). In particular, Lackawanna Energy seeks waiver of the December 28, 2013 deadline for its electric generating plant for the May 2014 Base Residual Auction for the 2017/2018 Delivery Year. Lackawanna Energy also requests expedited action by March 21, 2014 on its request for waiver. For the reasons discussed below, we grant Lackawanna Energy's request for waiver.

Background

2. PJM secures capacity commitments under the Reliability Pricing Model through a Base Residual Auction, held three years before a delivery year.³ PJM's minimum offer price rule imposes minimum offer prices for new generation capacity resources participating in the Base Residual Auction. Under section 5.14(h)(7) of Attachment DD of the PJM Tariff, a Capacity Market Seller can seek to qualify for an exemption to the

¹ 18 C.F.R. § 385.207(a)(5) (2013).

² 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, Intra-PJM Tariffs, OATT, OATT Attachment DD.2, Definitions, 15.0.0, §§ 2.5 and 2.34, available at <http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=1731&sid=154931>.

minimum offer price rule for an upcoming Base Residual Auction by submitting a written request, along with supporting data and documentation, to the Market Monitoring Unit and PJM's Office of Interconnection.

3. If a Capacity Market Seller seeks a Competitive Entry Exemption, it must fulfill the substantive criteria for a Competitive Entry Exemption set forth in the Tariff,⁴ as well as 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. Lackawanna is developing a natural gas generating facility located in Lackawanna County, Pennsylvania. The generating facility will have a capacity of 1,000 MW and will interconnect to the PPL Electric Utilities Corporation's Lackawanna Substation.⁶ Lackawanna Energy states that it was not in a position to commit its participation in PJM's Base Residual Auction for the 2017/2018 Delivery Year until the completion of the Facilities Study and tendering of the Interconnection Service Agreement and Construction Service Agreement. Lackawanna Energy explains that the Interconnection Service Agreement and Construction Service Agreement were not tendered until January 30, 2014, after the exemption deadline. Lackawanna Energy also states that, based on the Interconnection Service Agreement and Construction Service Agreement, it is possible for the plant to be operational by June 1, 2017.⁷

5. Lackawanna Energy seeks a waiver of the deadline in section 5.14(h)(9)(ii) of Attachment DD of the PJM Tariff, in order to allow PJM's Office of Interconnection and the Market Monitor to consider its request for a Competitive Entry Exemption. Acknowledging that it missed the deadline for submission of the written request for a Competitive Entry Exemption, Lackawanna Energy argues that there is good cause to grant waiver. Lackawanna Energy claims that the error was made in good faith because it had not yet been tendered Interconnection Service Agreement and Construction Service Agreement reflecting the Facilities Study results and setting out the scope and timing for

⁴ PJM, Intra-PJM Tariffs OATT, OATT Attachment DD.5.14, Clearing Prices and Charges, 12.0.0, § Section 5.14(h)(7), *available at* <http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=1731&sid=154934>.

⁵ *Id.* § 5.14(h)(9)(ii).

⁶ Lackawanna Energy Transmittal at 2.

⁷ *Id.* at 3.

upgrades that would affect its ability to participate in the Base Residual Auction for the 2017/2018 Delivery Year.⁸

6. Lackawanna Energy states that the waiver request is limited in scope because it is related to procedural rules for participation in PJM's capacity auction and is for one auction only. Lackawanna Energy explains that the waiver would remedy a concrete problem since the Interconnection Service Agreement and Construction Service Agreement for the Lackawanna Facility were not available until shortly after the exemption deadline. Lackawanna Energy also asserts that granting waiver will not cause any undesirable consequences, stating that it has consulted with both PJM and the Market Monitoring Unit on the scope of its request.⁹

7. Furthermore, as PJM and the Market Monitoring Unit will require sufficient time to process and evaluate Lackawanna Energy's request before the May 2014 Base Residual Auction begins, Lackawanna Energy requests expedited action by the Commission on its limited waiver request by March 21, 2014.¹⁰

Notice of Filing and Responsive Pleadings

8. Notice of the filing was published in the *Federal Register*, at 79 Fed. Reg. 8995 (2014), with interventions and protests due on or before February 25, 2014. No interventions or protests were filed.

Commission Determination

9. 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.¹¹

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ 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).

10. We find that the requested waiver satisfies the aforementioned conditions. Lackawanna Energy's failure to timely submit its request for a Competitive Energy Exemption was made in good faith given that the Interconnection Service Agreement and Construction Service Agreement were not tendered until after the Competitive Entry Exemption deadline had passed. Thus, Lackawanna Energy only recently determined that its electric generating plant could be in service for the 2017/2018 Delivery Year. Lackawanna Energy's request is limited in scope in that Lackawanna Energy seeks a waiver of the deadline in one PJM Tariff provision for one auction only, and would be a waiver applicable only for its own request for a Competitive Entry Exemption. Lackawanna Energy's request remedies a concrete problem, as the Interconnection Service Agreement and Construction Service Agreement for the Lackawanna Facility were not available until shortly after the exemption deadline. Moreover, this waiver should not have undesirable consequences such as harming third parties. Finally, we note that neither PJM, nor any entity oppose this waiver request.

The Commission orders:

Lackawanna 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.