

147 FERC ¶ 61,023
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tenaska, Inc.

Docket No. ER14-1335-000

ORDER GRANTING WAIVER

(Issued April 8, 2014)

1. On February 18, 2014, Tenaska, Inc. (Tenaska) filed a request for a limited waiver of the procedural deadlines for a competitive entry exemption from the minimum offer price rule set forth in sections 5.14(h)(9)(ii) and 5.14(h)(9)(iii) of Attachment DD to the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (PJM Tariff).¹ Specifically, Tenaska seeks waiver for the Westmoreland Generating Station for the May 2014 base residual auction for the 2017-2018 delivery year. Tenaska states that the Independent Market Monitor (IMM) for PJM does not oppose this waiver request. For the reasons discussed below, we grant Tenaska's request for waiver.

I. Background

2. Under the PJM Tariff, a capacity market seller seeking an exemption or exception from the minimum offer price rule must submit its request, together with the required documentation and officer's certification, no later than 135 days prior to the commencement of the offer period for the base residual auction in which it seeks to submit its sell offer. For the 2014 base residual auction, which is scheduled to commence on May 12, 2014, this translates into a deadline for exemption and exception requests of December 28, 2013. Following this submittal, the IMM will review the request and

¹ Tenaska states that since the deadlines for PJM and the IMM to review the exemption request are tied to the date of receipt, it is not clear whether waiver of section 5.14(h)(9)(iii) of Attachment DD to the PJM Tariff is necessary if the requested waiver of section 5.14(h)(9)(ii) is granted. Nonetheless, Tenaska requests waiver of this section out of an abundance of caution and in light of the fact that the schedule posted on PJM's website suggests that, at least in one instance, a specific deadline may apply.

supporting documentation and provide its determination as to whether the request is acceptable no later than 45 days after receipt of the exemption or exception request. PJM will also review the exemption or exception request and provide its determination to the capacity market seller, with a copy to the IMM, within 65 days of receipt of the request.

3. Tenaska is a Delaware corporation that is, together with certain of its affiliates, developing the Westmoreland Generating Station (Westmoreland Station), a 930 MW natural gas-fired generating facility, in South Huntington Township, Pennsylvania. Tenaska explains that, although no final decision has been reached to construct the Westmoreland Station, it has determined that it is possible to achieve an in-service date prior to the 2017-2018 capacity delivery year, and has decided to continue developing the Westmoreland Station to target that date. Tenaska explains that, in order for the Westmoreland Station to become a realistic possibility from an economic perspective, the capacity would need to clear in PJM's 2014 base residual auction for the 2017-2018 delivery year, which might not occur without a minimum offer price rule exemption.

II. Notice of Filing and Responsive Pleadings

4. Notice of Tenaska's filing was published in the *Federal Register*, 79 Fed. Reg. 11,427 (2014), with protests or interventions due on or before March 11, 2014. PJM and the PJM IMM filed timely motions to intervene. No protests were filed.

III. Waiver Request

5. Tenaska requests the Commission grant limited waiver of the procedural deadlines for a competitive entry exemption from the minimum offer price rule set forth in sections 5.14(h)(9)(ii) and 5.14(h)(9)(iii) of Attachment DD for the Westmoreland Station for the May 2014 base residual auction.

6. Tenaska states that there is good cause for the Commission to grant its waiver request. Tenaska claims the underlying error was committed in good faith because Tenaska inadvertently failed to submit its minimum offer price rule exemption request by the prescribed deadline, though it timely requested and received a competitive entry exemption for the Westmoreland Station in the last base residual auction. Tenaska adds that its mistake was due, in part, to uncertainty about whether the project schedule would support an in-service date prior to the 2017-2018 delivery year. Tenaska claims this waiver request is limited in scope, because Tenaska is only requesting a one-time waiver of the procedural deadlines in sections 5.14(h)(9)(ii) and 5.14(h)(9)(iii) of Attachment DD to the Tariff for the 2014 base residual auction and it is not requesting waiver of any of the substantive requirements applicable to competitive entry exemptions set forth in section 5.14(h)(8) of Attachment DD to the Tariff.

7. Tenaska states the requested waiver is necessary to address a specific problem, namely, Tenaska's inability to obtain a minimum offer price rule exemption for the Westmoreland Station and the associated risk of its capacity not clearing in the 2014 base residual auction. Tenaska explains that, if the capacity of the Westmoreland Station does not clear the 2014 base residual auction, further development of the Westmoreland Station would be, at a minimum, delayed, or ended altogether. Tenaska adds that it has been preparing the required documentation and expects to submit such information to PJM and the IMM no later than February 21, 2014. Tenaska states that, if granted, the waiver will not result in any adverse consequences and does not affect PJM's or the IMM's substantive determination as to whether the Westmoreland Station qualifies for an exemption from the minimum offer price rule. In addition, Tenaska states that the waiver will not result in any delay or interfere in the administration of the 2014 base residual auction, nor will the waiver cause any harm to third parties.

IV. Commission Determination

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,² PJM and the IMM's timely, unopposed motions to intervene serve to make PJM and the IMM parties to this proceeding.

B. Substantive Matters

9. We find good cause to grant the request for waiver. The Commission has previously granted requests for waiver of tariffs in situations where, as here: (1) the underlying error was made in good faith; (2) the requested waiver was of limited scope; (3) the waiver would remedy a concrete problem; and (4) the waiver would not harm third parties or have other undesirable consequences.³

10. We find that the requested waiver satisfies the aforementioned conditions. Tenaska's failure to timely submit its request for a competitive energy exemption was inadvertent and was due, in part, to Tenaska's uncertainty about whether the Westmoreland Station could be in service by the 2017-2018 delivery year. Tenaska's request is limited in scope in that Tenaska seeks a waiver of the procedural deadlines contained in sections 5.14(h)(9)(ii) and 5.14(h)(9)(iii) of the Tariff for one auction

² 18 C.F.R. § 385.214 (2013).

³ 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).

only, and the waiver would be applicable only to Tenaska's own request for a competitive entry exemption. Tenaska's request remedies a concrete problem, as the Westmoreland Station would not be eligible for a minimum offer price rule exemption without receiving such waiver. We further find that granting the waiver will have no undesirable consequences for PJM or any other third parties. Neither PJM, nor any other entity, opposes the requested waiver.

The Commission orders:

Tenaska's request for waiver of sections 5.14(h)(9)(ii) and 5.14(h)(9)(iii) of the PJM Tariff is hereby granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.