

147 FERC ¶ 61,095  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

May 5, 2014

In Reply Refer To:  
Dynergy Kendall Energy, LLC  
Docket No. ER14-1586-000

Neil L. Levy  
King & Spalding LLP  
1700 Pennsylvania Avenue, NW  
Washington, DC 20006

Dear Mr. Levy:

1. On March 25, 2014, Dynergy Kendall Energy, LLC (Dynergy Kendall) filed a request for a one-time, limited waiver of the procedural deadlines set forth in sections 5.14(h)(9)(ii) and 5.14(h)(9)(iii) of the Reliability Pricing Model (RPM) rules (Attachment DD) of PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (Tariff).<sup>1</sup> The waiver would allow Dynergy Kendall to apply for, and PJM to grant, a Competitive Entry Exemption<sup>2</sup> from the Minimum Offer Price Rule (MOPR) with respect to 80 MW of capacity from planned upgrades (Upgrade Capacity) to its Kendall County Generation Facility (Kendall Facility). Dynergy Kendall requests action as soon as possible, but no later than May 5, 2014 in order to obtain an exemption in time for the upcoming 2014 Base Residual Auction (2014 Auction). As discussed below, the Commission grants the requested waiver.

2. The MOPR is a PJM rule that imposes minimum offer prices on certain Generation Capacity Resources, in order to prevent price suppression.<sup>3</sup> Under the PJM Tariff, a Capacity Market Seller seeking this exemption 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 RPM auction in which it seeks to submit its

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<sup>1</sup> PJM Interconnection, L.L.C., Intra-PJM Tariffs (Attachment DD), [OATT ATTACHMENT DD.5.14 Clearing Prices and Charges, \(12.0.0\)](#).

<sup>2</sup> *Id.*, § 5.14(h)(7).

<sup>3</sup> PJM Tariff, Attachment DD, § 5.14(h)(1).

Sell Offer.<sup>4</sup> For the 2014 Auction, which is scheduled to commence on May 12, 2014, the deadline for submission of a MOPR exemption request was December 28, 2013.

3. Dynegey Kendall states that it is in the process of upgrading the Kendall Facility by adding four separate Advanced Gaspath Protection (AGP) installations at each of the four Kendall Facility units. According to Dynegey Kendall, each of the upgrades is anticipated to result in an increase in output of approximately 20 MW, for a total increase of approximately 80 MW. Dynegey Kendall further states that it has considered each of the AGP upgrades to be a separate project and, therefore, it submitted separate interconnection requests for each of the planned upgrades. Dynegey Kendall explains that, depending on the results of the interconnection studies, it was prepared to go ahead with any individual upgrade, or combination of the upgrades. Dynegey Kendall states that it received the results of the System Impact Studies on March 14, 2014 and then decided to proceed with the upgrades to all four of the Kendall Facility units. Dynegey Kendall further explains that it determined that it is possible for the upgrades to be installed prior to the 2017/2018 Delivery Year. Dynegey Kendall also states that it has been in discussions with PJM and the Independent Market Monitor for PJM (Market Monitor) to determine the steps that would be required in order for it to offer the approximately 80 MW of Upgrade Capacity into the 2014 Auction.

4. Dynegey Kendall requests a one-time, limited waiver of the procedural deadlines set forth in sections 5.14(h)(9)(ii) and 5.14(h)(9)(iii) of Attachment DD to the Tariff in order to allow Dynegey Kendall to apply for, and PJM to grant, a Competitive Entry Exemption from the MOPR. In support of the request, Dynegey Kendall contends that its request for waiver is consistent with prior Commission orders granting similar waivers of the MOPR exemption deadlines.

5. Dynegey Kendall asserts that the underlying error was committed in good faith. According to Dynegey Kendall, it did not submit its MOPR exemption requests by the prescribed deadline because it was unclear if upgrades to PJM's system would have to be made to accommodate the proposed upgrades to the Kendall Facility and what the timing and costs of such system upgrades would be. Dynegey Kendall further explains that it was unable to commit the new capacity that would result from the Kendall Facility upgrades in the 2014 Auction until it received the System Impact Study results, which it did on March 14, 2014.

6. Dynegey Kendall asserts that the waiver request is "very limited in scope" because it is only requesting a one-time waiver of the procedural deadlines in sections 5.14(h)(9)(ii) and 5.14(h)(9)(iii), and is not requesting waiver of any of the substantive requirements applicable to the Competitive Entry Exemption set forth in

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<sup>4</sup> *Id.*, § 5.14(h)(9)(ii).

section 5.14(h)(7) of Attachment DD to the Tariff, including the requirements to provide supporting documentation.

7. Dynege Kendall also asserts that the requested waiver would remedy the specific problem, which is Dynege Kendall's current inability to obtain a MOPR exemption for the Upgrade Capacity and the associated risk of its capacity not clearing in the 2014 Auction as a result of Dynege Kendall's inability to provide the information required to apply for such exemption by the prescribed deadline.

8. In addition, Dynege Kendall asserts that granting the waiver request will not result in any adverse consequences, delay the 2014 Auction or interfere in the administration of the 2014 Auction, or affect PJM's or the Market Monitor's substantive determination as to whether the Upgrade Capacity qualifies for an exemption from the MOPR. Dynege Kendall further states that it has been authorized to represent that the Market Monitor does not oppose the request for limited waiver.

9. Notice of Dynege Kendall's filing was published in the *Federal Register*, 79 Fed. Reg. 18,680 (2014), with interventions and protests due on or before April 15, 2014. PJM filed a motion to intervene on April 2, 2014. No protests or adverse comments were filed. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>5</sup> notices of interventions and timely, unopposed motions to intervene serve to make the entities that filed them, parties to this proceeding.

10. The Commission has previously granted market participants one-time waivers of tariff provisions in situations where: (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>6</sup>

11. We find that good cause exists to grant the request for waiver. First, we find that Dynege Kendall acted in good faith. Dynege Kendall did not receive the System Impact Study results until March 14, 2014, after the deadline for submitting requests for exemption had passed. Thereafter, after it confirmed that the capacity would be eligible for the 2014 Auction, Dynege Kendall promptly sought the Competitive Entry Exemption for the Upgrade Capacity. Second, the requested waiver is a one-time waiver,

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<sup>5</sup> 18 C.F.R. § 385.214 (2013).

<sup>6</sup> See, e.g., *Southwest Power Pool, Inc.*, 146 FERC ¶ 61,110, at P 10 (2014); *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,060, at P 12 (2013).

and is limited in scope, in that it is limited solely to procedural deadlines for the 2014 Auction only, and does not relate to the substantive requirements for the Competitive Entry Exemption. Third, the waiver will remedy Dynegy Kendall's concrete problem and enable it to seek a MOPR exemption for the Upgrade Capacity in time to allow Dynegy Kendall to offer the capacity into the 2014 Auction. Fourth, we find that granting the requested waiver will not lead to undesirable consequences for PJM, the Market Monitor or any other third parties. According to Dynegy Kendall, it has been authorized to represent that the Market Monitor does not oppose the request.<sup>7</sup> Furthermore, no other parties oppose the request.

12. Accordingly, we grant Dynegy Kendall's request for a limited, one-time waiver of the procedural deadlines set forth in sections 5.14(h)(9)(ii) and 5.14(h)(9)(iii) of Attachment DD to the PJM Tariff.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>7</sup> Transmittal at 1.