

152 FERC ¶ 61,076
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 27, 2015

In Reply Refer To:
Clean Energy Future - Lordstown,
LLC
Docket No. ER15-1915-000

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

Dear Mr. Levy:

1. On June 12, 2015, Clean Energy Future – Lordstown, LLC (CEFL) 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).¹ The waiver would allow CEFL to apply for, and PJM and PJM’s Independent Market Monitor’s (Market Monitor) to review, a Competitive Entry Exemption² from the Minimum Offer Price Rule (MOPR) with respect to the Lordstown Energy Center that is being developed by CEFL. CEFL requests action as soon as possible, but no later than July 27, 2015 in order to obtain an exemption in time for the upcoming 2015 Base Residual Auction (2015 Auction and BRA). As discussed below, the Commission grants in part and denies in part 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.³ 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

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

² *Id.*, § 5.14(h)(7).

³ PJM Tariff, Attachment DD, § 5.14(h)(1).

135 days prior to the commencement of the offer period for the RPM auction in which it seeks to submit its Sell Offer.⁴ For the 2015 Auction, which was initially scheduled to commence on May 10, 2015, the deadline for submission of a MOPR exemption request was December 27, 2014. Although PJM sought, and the Commission granted, waiver of the Tariff so that the 2015 Auction will now begin on August 10, 2015,⁵ the deadlines for submitting requests for MOPR exemptions and exceptions remained unaffected.

3. CEFL explains that it is developing, and will own and operate, the Lordstown Energy Center, which will be a 940 MW natural-gas fired, combined-cycle facility located within the American Transmission Systems, Inc. (ATSI) zone of PJM.

4. CEFL 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 CEFL to submit a Competitive Entry Exemption request for the Lordstown Energy Center by June 19, 2015. In support of the request, CEFL contends that its request for waiver is consistent with prior situations in which the Commission has granted a waiver.⁶

5. CEFL states that the underlying error was committed in good faith. According to CEFL, as of the December 27, 2014 deadline for submitting MOPR exemption and exception requests, it was still in the preliminary stages of applying for major permits necessary for the development of the Lordstown Energy Center. Since that time, however, substantial progress has been made with respect to the permitting process, with a draft air permit having been issued by the Ohio Environmental Protection Agency, and the Ohio Power Siting Board nearing completion of its review process. Accordingly, CEFL now anticipates that the Lordstown Energy Center will commence commercial operations in May 2018, and is moving forward on a development schedule to achieve that targeted in-service date in time for the start of the 2015 Auction for the 2018-2019 Delivery Year.

⁴ *Id.*, § 5.14(h)(9)(ii).

⁵ See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015); PJM News Release, *FERC Approves PJM Capacity Performance Proposal* (June 10, 2015), available at <http://www.pjm.com/~media/about-pjm/newsroom/2015-releases/20150610%20-%20FERC-approves-Capacity%20Performance.ashx>.

⁶ See, e.g., *Dynegy Kendall Energy, LLC*, 147 FERC ¶ 61,094 (2014) (granting waiver of MOPR exemption deadlines for the BRA held in 2014); *Dynegy Kendall Energy, LLC*, 147 FERC ¶ 61,095 (2014) (same); *Keys Energy Center, LLC*, 146 FERC ¶ 61,154 (2014) (same); *Calpine Energy Servs., L.P.*, 143 FERC ¶ 61,028 (2013) (granting waiver of the MOPR exemption deadlines for the BRA held in 2013); *Green Energy Partners*, 142 FERC ¶ 61,158 (2013) (same).

6. CEFL 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 Competitive Entry Exemptions set forth in section 5.14(h)(7) of Attachment DD to the Tariff, including the requirements to provide supporting documentation.

7. CEFL also asserts that the requested waiver would remedy a specific problem, which is its current inability to obtain a MOPR exemption for the Lordstown Energy Center and the associated risk of such capacity not clearing in the 2015 Auction as a result of CEFL’s inability to provide the information required to apply for such exemption by the prescribed deadline.

8. In addition, CEFL asserts that granting the waiver request will not result in any adverse consequences, delay the 2015 Auction or interfere in the administration of the 2015 Auction, or affect PJM’s or the Market Monitor’s substantive determination as to whether the Lordstown Energy Center qualifies for an exemption from the MOPR. CEFL further states that the waiver will not cause any harm to third parties; to the contrary, the waiver may benefit ratepayers by allowing the Lordstown Energy Center, a highly efficient new generating facility, to participate in the 2015 Auction and by facilitating the development of new capacity in the ATSI zone, where a number of coal-fired facilities have recently retired or are seeking to retire.

9. Notice of the CEFL’s filing was published in the *Federal Register*, 80 Fed. Reg. 35,335 (2015), with interventions and protests due on or before July 6, 2015. PJM filed a motion to intervene on July 6, 2015. No protests were filed. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,⁷ PJM’s timely, unopposed motion to intervene serves to make it a party 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.⁸

11. We find that good cause exists to grant the request for waiver of section 5.14(h)(9)(ii) and allow CEFL to submit a Competitive Entry Exemption

⁷ 18 C.F.R. § 385.212 (2014).

⁸ See, e.g., *PJM Interconnection, L.L.C.*, 150 FERC ¶ 61,122, at P 45 (2015); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,078, at P 38 (2014); *Southwest Power Pool, Inc.*, 146 FERC ¶ 61,110, at P 10 (2014); *New York Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,061, at P 20 (2014).

request by June 19, 2015. First, we find that CEFL acted in good faith. The deadline for submission of a MOPR exemption request was December 27, 2014. At that time, CEFL was unable to commit the capacity of the Lordstown Energy Center into the 2015 Auction. After determining that the Lordstown Energy Center would be ready to begin commercial operations in time for the start of the 2018/2019 delivery year, CEFL promptly sought the Competitive Entry Exemption for the 2015 Auction. Second, the requested waiver is a one-time waiver, and is limited in scope, in that it is limited solely to procedural deadlines for the 2015 Auction only and does not relate to the substantive requirements for the Competitive Entry Exemption. Third, the waiver will remedy a concrete problem and enable CEFL to seek a MOPR exemption for the Lordstown Energy Center in time to allow it to offer the capacity into the 2015 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. We note that no one opposes the requested waiver.

12. CEFL requests waiver of section 5.14(h)(9)(iii) out of an abundance of caution because the deadlines for PJM and the Market Monitor to act on an exemption request are tied to the date the request is received. We are not persuaded that waiver of section 5.14(h)(9)(iii) is necessary for PJM and the Market Monitor to review and act on CEFL's request. The procedural deadlines in section 5.14(h)(9)(iii) do not prevent early action by PJM or the Market Monitor. For example, section 5.14(h)(9)(iii) sets dates by which PJM and the Market Monitor must act by: (1) PJM at *no later than* sixty-five days after receipt of an exemption or exemption request; and (2) the Market Monitor at *no later than* forty-five days after receipt of an exemption or exemption request. Based on CEFL's representation that its waiver request would allow it to submit a Competitive Entry Exemption request by June 19, 2015, PJM may have less than the full 65-day window provided under section 5.14(h)(9)(iii) to review the exemption request prior to the 2015 Auction. In the event PJM and the Market Monitor are not able to complete their review of CEFL's request within this abbreviated review time, PJM should not accept the exemption request or delay the 2015 Auction.

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

By direction of the Commission.

Kimberly D. Bose,
Secretary.