

155 FERC ¶ 61,014
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

East Kentucky Power Cooperative, Inc.

Docket No. ER16-1103-000

ORDER GRANTING WAIVER

(Issued April 7, 2016)

1. On March 7, 2016, East Kentucky Power Cooperative, Inc. (East Kentucky) filed a request for a one-time limited waiver of the procedural deadlines from the Minimum Offer Price Rule (MOPR) set forth in sections 5.14(h)(9)(ii) and 5.14(h)(9)(iii) of Attachment DD to the PJM Interconnection, LLC (PJM) Open Access Transmission Tariff (Tariff) (Waiver Request). As discussed below, we will grant East Kentucky's request for waiver.

I. Background

2. East Kentucky states that it is a not-for-profit electric generation and transmission cooperative that owns and purchases approximately 2,800 MW of net summer generating capability and approximately 3,000 MW of net winter electric generating capability to serve approximately 525,000 homes, businesses, and industries in Kentucky through its 16 member electric distribution cooperatives. In addition, East Kentucky provides that it owns 2,938 miles of electric transmission lines. East Kentucky notes that it is not a Commission-jurisdictional public utility under the Federal Power Act. East Kentucky states that it integrated into PJM and has been a participating PJM Transmission Owner since June 1, 2013.¹

¹ Waiver Request at 3.

II. Waiver Request

3. East Kentucky seeks waiver of the Tariff deadlines that concern PJM's review of East Kentucky's request to obtain a self-supply exemption from the PJM MOPR.² Specifically, East Kentucky's Waiver Request concerns an exemption for 165 MW of Unit 3 of its recently acquired Bluegrass Generating Station (Bluegrass Unit 3).

4. East Kentucky explains that the MOPR is intended to prevent market participants from suppressing Reliability Pricing Model (RPM) clearing prices through un-competitively low offers.³ Under the Tariff, capacity market sellers may obtain three types of exemptions from the MOPR: (1) a Self-Supply Exemption,⁴ (2) a Competitive Entry Exemption,⁵ or (3) a Unit-Specific Exception.⁶ East Kentucky states that under the procedures established in Attachment DD of the Tariff, all requests for the self-supply exemption for the 2016 Base Residual Auction (BRA) for the 2019/2020 delivery year were due to PJM on December 28, 2015.⁷

5. East Kentucky states that on December 29, 2015, it acquired a three-unit, gas-fired peaking facility called Bluegrass Generating Station, from LS Power. Units 1 and 2 were timely offered by the previous owner, LS Power, into the 2013 RPM auction for the 2016/2017 delivery year and cleared. Bluegrass Unit 3 remains committed to a third-party purchaser until April 30, 2019, under a pre-existing contract. Although at the time of acquisition the December 28, 2015 deadline had passed, East Kentucky asserts that it

² See Waiver Request at 5. “[East Kentucky], therefore, respectfully requests a one-time limited waiver of: (1) the deadline set forth in Section 5.14(h)(9)(ii) in order to allow [East Kentucky] to submit a Self-supply Exemption request to the MOPR for the Bluegrass Unit 3 by March 18, 2016 and (2) the deadlines set forth in Section 5.14(h)(9)(iii) in order to allow the [Independent Market Monitor] and PJM to expeditiously consider, and PJM to grant if appropriate, this exemption request.”

³ *Id.* at 4.

⁴ PJM Tariff, Attachment DD, § 5.14(h)(6).

⁵ See *id.*, § 5.14(h)(7).

⁶ See *id.*, § 5.14(h)(8).

⁷ Waiver Request at 5.

notified PJM and the Independent Market Monitor (IMM) of its intent to submit a self-supply exemption request no later than March 18, 2016.⁸

6. East Kentucky argues that good cause exists to grant its request because: (1) its failure to meet the deadline to seek a MOPR exemption was unintentional and made in good faith, as it had not closed on the acquisition of the Bluegrass Unit 3 until after the exemption deadline;⁹ (2) its request is limited in scope, as it concerns a one-time waiver of procedural deadlines established in sections 5.14(h)(9)(ii) and (iii) of Attachment DD to the Tariff;¹⁰ (3) the Waiver Request addresses the specific problem of East Kentucky's newly acquired Bluegrass Unit 3 clearing the 2016 BRA;¹¹ and (4) the Waiver Request will not have any undesirable consequences or harm third parties.¹²

7. East Kentucky requests that the Commission issue an order by April 7, 2016, so that its request may be processed in time for the 2016 BRA for the 2019/2020 delivery year. East Kentucky intends to submit its exemption application to PJM and the IMM at the earliest date possible, no later than March 18, 2016, and has advised PJM and the IMM that it is proposing an expedited schedule for processing its exemption application.¹³

⁸ See Waiver Request at 5, 6. According to East Kentucky, the request would be submitted to PJM in advance of receiving Commission waiver in order to make it possible for PJM's review to be conducted in time for the 2016 BRA for the 2019/2020 delivery year.

⁹ *Id.* at 6.

¹⁰ *Id.*

¹¹ *Id.* at 7. East Kentucky explains that without a Self-Supply Exemption, it is possible that Bluegrass Unit 3 would not clear the 2016 BRA for the 2019/2020 delivery year and East Kentucky would be forced to acquire more capacity to meet its load obligations.

¹² *Id.*

¹³ *Id.* at 5. East Kentucky is proposing that the IMM review the request and provide its findings by April 11, 2016, followed by PJM review and determination of whether the exemption application is acceptable by April 25, 2016.

III. Notice of Filing

8. Notice of East Kentucky's filing was published in the *Federal Register*, 81 Fed. Reg. 13,783 (2016), with interventions and protests due on or before March 21, 2016. A timely motion to intervene was filed by PJM. No comments or protests were filed.

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motion to intervene serves to make PJM a party to this proceeding.

B. Commission Determination

10. The Commission has previously granted market participants one-time limited waivers of tariff provisions where: (1) the applicant is unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹⁴

11. We find that East Kentucky's requested waiver satisfies the foregoing criteria. First, we find that East Kentucky has acted in good faith in filing the Waiver Request as soon as possible after acquiring Bluegrass Unit 3 and following discussions with PJM and the IMM. Second, we find that East Kentucky's Waiver Request is limited in scope because it concerns a one-time waiver of procedural deadlines established in sections 5.14(h)(9)(ii) and (iii) of the Tariff. Third, we find that the requested waiver addresses a concrete problem because it will facilitate East Kentucky's participation in the 2016 BRA for the 2019/2020 delivery year. Finally, we find that granting the requested waiver will not lead to undesirable consequences because it will not adversely affect the ability of PJM to administer the BRA for the 2019/2020 delivery year, and will not harm third parties.

¹⁴ See, e.g., *Reliant Energy Seward, LLC*, 154 FERC ¶ 61,017, at P 12 (2016) (citing *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,033 (2014) and *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011)).

The Commission orders:

East Kentucky's request for waiver of sections 5.14(h)(9)(ii) and 5.14(h)(9)(iii) of the PJM Tariff is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Clark is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.