

155 FERC ¶ 61,017  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Birdsboro Power LLC

Docket No. ER16-1237-000

ORDER GRANTING WAIVER

(Issued April 7, 2016)

1. On March 18, 2016, Birdsboro Power LLC (Birdsboro Power) submitted, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,<sup>1</sup> a petition for a one-time, limited waiver of the Competitive Entry Exemption<sup>2</sup> deadline set forth in Section 5.14(h)(9)(ii) of Attachment DD of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff). Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure,<sup>3</sup> Birdsboro Power also requests expedited action on its petition by April 8, 2016. For the reasons discussed below, we grant Birdsboro Power's request for waiver.

**I. Background**

2. PJM secures capacity commitments under the Reliability Pricing Model through a Base Residual Auction (BRA), held three years before a delivery year. PJM's Minimum Offer Price Rule imposes minimum offer prices for new generation capacity resources participating in the BRA. Under Section 5.14(h)(7) of Attachment DD of the Tariff, a

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<sup>1</sup> 18 C.F.R. § 385.207 (2015).

<sup>2</sup> Capitalized terms used but not defined herein are intended to have the meaning given to such terms in the Tariff.

<sup>3</sup> 18 C.F.R. § 385.212 (2015).

Capacity Market Seller can seek to qualify for a Competitive Entry Exemption to the Minimum Offer Price Rule for an upcoming BRA.<sup>4</sup>

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,<sup>5</sup> and must submit its exemption request, along with supporting data and documentation, to the Market Monitoring Unit (MMU) and PJM's Office of Interconnection at least 135 days before the commencement of the offer period for the BRA in which the Capacity Market Seller seeks to submit its offer.<sup>6</sup> For the May 11, 2016 BRA (2016 BRA), the deadline for requesting a Competitive Entry Exemption was December 28, 2015.

4. Birdsboro Power is developing a new 450 MW natural gas and steam electric power plant in Birdsboro, Berks County, Pennsylvania (Project).<sup>7</sup> Birdsboro Power explains that the Project has an active Generation Interconnection Request with PJM and received its Feasibility Study in September 2015. Birdsboro Power expects the System Impact Study to be released in March 2016. Birdsboro Power also anticipates completion of the Facilities Interconnection Study and Interconnection Services Agreement, and receipt of the Construction Service Agreement, in the first quarter of 2017. Birdsboro Power estimates the project will become operational in April 2019.<sup>8</sup>

## II. Waiver Request

5. Birdsboro Power requests waiver of the December 28, 2015 deadline to request a Competitive Entry Exemption for its Project for the 2016 BRA for the 2019/2020 delivery year. Birdsboro Power also requests expedited action on its petition by April 8, 2016. Birdsboro Power asserts that expedited action is warranted to provide the MMU

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<sup>4</sup> PJM, Intra-PJM Tariffs, OATT, Attachment DD.5.14, Clearing Prices and Charges (20.0.0), § 5.14(h)(7).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* § 5.14(h)(9)(ii).

<sup>7</sup> Birdsboro Power Petition at 3.

<sup>8</sup> *Id.*

and PJM's Office of Interconnection sufficient time for consideration of its Competitive Entry Exemption request in advance of the 2016 BRA.<sup>9</sup>

6. Birdsboro Power asserts that good cause exists to grant its requested waiver. In support of its request, Birdsboro Power notes prior situations in which the Commission has granted one-time, limited waivers of the procedural deadline set forth in Section 5.14(h)(9)(ii) to allow a Capacity Market Seller to apply for a Competitive Entry Exemption.<sup>10</sup>

7. Birdsboro Power argues that its error was made in good faith. Birdsboro Power explains that its failure to timely submit its request for a Competitive Entry Exemption was inadvertent and was due, in part, to uncertainty about the feasibility of the project being in service by the 2019/2020 delivery year.<sup>11</sup> Birdsboro Power anticipates that it will receive the Interconnection Service Agreement and Construction Service Agreement in the first quarter of 2017, and that the Project will be in service by April 2019.<sup>12</sup> Birdsboro Power states that it acted diligently and in good faith to promptly request a waiver of the deadline once it determined the feasibility of achieving an in-service date for the Project in time for the 2019/2020 delivery year.<sup>13</sup>

8. Birdsboro Power asserts that its waiver request is limited in scope because it is only requesting a one-time waiver of Section 5.14(h)(9)(ii) of Attachment DD of the Tariff. Birdsboro Power further states that the requested waiver would apply only to Birdsboro Power's Competitive Entry Exemption request.<sup>14</sup>

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<sup>9</sup> *Id.* at 2. Birdsboro Power anticipates that it will submit a Competitive Entry Exemption request to PJM and the MMU for the Project on or before March 25, 2016, on a conditional basis, pending Commission action on its waiver request. *Id.* n.5.

<sup>10</sup> *Id.* at 6 & n.12 (citing *Clean Energy Future – Lordstown, LLC*, 152 FERC ¶ 61,076 (2015); *Tenaska, Inc.*, 147 FERC ¶ 61,023 (2014); *Dynegy Kendall Energy, LLC*, 147 FERC ¶ 61,094 (2014); *Lackawanna Energy Center, LLC*, 146 FERC ¶ 61,220 (2014); *Keys Energy Center, LLC*, 146 FERC ¶ 61,154 (2014)).

<sup>11</sup> Birdsboro Power Petition at 6-7.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *Id.* at 7.

9. Birdsboro Power also argues that the waiver will remedy a concrete problem by allowing the Project to become eligible for exemption from the Minimum Offer Price Rule. Birdsboro Power explains that, without the waiver, it would be unable to seek a Competitive Entry Exemption, creating the risk that it would be unable to clear in the 2016 BRA.<sup>15</sup>

10. In addition, Birdsboro Power asserts that granting waiver will not cause any undesirable consequences or harm to third parties. Birdsboro Power explains that the requested waiver would not prevent other generation resources from participating in the 2016 BRA, nor would it cause delay in administration of the auction.<sup>16</sup> Birdsboro Power states that it has discussed its petition for waiver with the MMU prior to filing.<sup>17</sup>

### **III. Notice of Filing and Responsive Pleadings**

11. Notice of Birdsboro Power's filing was published in the *Federal Register*, 81 Fed. Reg. 16,172 (2016), with interventions and protests due on or before March 28, 2016. PJM filed a motion to intervene on March 28, 2016. An out-of-time motion to intervene was filed by Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM, on March 30, 2016.

### **IV. Commission Determination**

#### **A. Procedural Matters**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>18</sup> PJM's timely, unopposed motion to intervene serves to make it a party to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,<sup>19</sup> the Commission will grant Monitoring Analytics, LLC's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 2.

<sup>18</sup> 18 C.F.R. § 385.214 (2015).

<sup>19</sup> *Id.* § 385.214(d).

**B. Substantive Matters**

13. The Commission has previously granted waiver of a tariff requirement where: (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.<sup>20</sup>

14. We find that Birdsboro Power's waiver request satisfies the criteria the Commission has applied in granting waiver. We find that Birdsboro Power acted in good faith by filing its waiver request promptly after it determined the feasibility of having the Project in service in time for the 2019/2020 delivery year. We also find that Birdsboro Power's requested waiver is limited in scope, as it is a one-time waiver of procedural deadlines for requesting a Competitive Entry Exemption for the 2016 BRA and does not relate to the substantive requirements for the Competitive Entry Exemption. In addition, we find that the requested waiver addresses a concrete problem because it will enable Birdsboro Power to seek a Competitive Entry Exemption for the 2016 BRA. Finally, we find that granting the requested waiver will not harm third parties or lead to undesirable consequences, as it will not adversely affect the administration of the 2016 BRA.

15. For these reasons, we grant Birdsboro Power'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.

**The Commission orders:**

Birdsboro Power's request for waiver is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>20</sup> *E.g.*, *Tenaska Inc.*, 147 FERC ¶ 61,023, at P 9 (2014); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,033, at P 9 (2014); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184, at P 13 (2011).