

156 FERC ¶ 61,028
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Clean Energy Future – Lordstown, LLC

Docket No. ER16-1829-000

ORDER GRANTING WAIVER

(Issued July 8, 2016)

1. On May 31, 2016, Clean Energy Future – Lordstown, LLC (CEFL) submitted, pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure,¹ a request for a one-time, limited waiver of the Competitive Entry Exemption² 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) (Waiver Request). CEFL also requests expedited action on its request by July 18, 2016. For the reasons discussed below, we grant CEFL’s Waiver Request.

I. Background

2. PJM secures capacity commitments under the Reliability Pricing Model (RPM) through a Base Residual Auction (BRA), which is held three years before a Delivery Year, and Incremental Auctions, which are held closer in time to the relevant Delivery Year.³ In order to prevent buyer-side market power, PJM’s Minimum Offer Price Rule (MOPR) imposes minimum offer prices for new generation capacity resources participating in any RPM auction. Under Section 5.14(h)(7) of Attachment DD of the

¹ 18 C.F.R. § 385.212 (2015).

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

³ See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at P 5, *order on reh’g*, 152 FERC ¶ 61,064 (2015) (describing PJM’s three-year forward capacity market construct).

Tariff, a Capacity Market Seller can seek to qualify for a Competitive Entry Exemption to the MOPR for an upcoming RPM Auction.⁴

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,⁵ and submit its exemption request, along with supporting data and documentation, to PJM's Market Monitoring Unit (MMU) and Office of the Interconnection at least 135 days before the commencement of the offer period for the auction in which the Capacity Market Seller seeks to submit its offer.⁶ The deadline for requesting a Competitive Entry Exemption for PJM's First Incremental Auction for the 2018/2019 Delivery Year (First Incremental Auction) was April 30, 2016.⁷

4. CEFL is developing, and will own and operate, the Lordstown Energy Center, a 940 MW natural gas-fired, combined-cycle electric generating facility located in the Village of Lordstown, Ohio (Facility).⁸ The Facility will provide capacity in the American Transmission System, Inc. zone of PJM, and is expected to achieve commercial operation on June 1, 2018, in time for the 2018/2019 Delivery Year.⁹

5. In July 2015, the Commission granted CEFL a waiver of the deadline to request a Competitive Entry Exemption for the BRA for the 2018/2019 Delivery Year.¹⁰ However,

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

⁵ *Id.*

⁶ *Id.* § 5.14(h)(9)(ii).

⁷ PJM, RPM Auction Schedule, <http://www.pjm.com/~media/markets-ops/rpm/rpm-auction-info/rpm-auction-schedule.ashx>. The First Incremental Auction commences September 12, 2016.

⁸ Waiver Request at 2.

⁹ *Id.*

¹⁰ *Clean Energy Future – Lordstown, LLC*, 152 FERC ¶ 61,076 (2015). CEFL sought waiver because, as of the December 27, 2014 deadline for submitting exemption requests for the 2018/2019 BRA, it was still in the preliminary stages of applying for major permits necessary for the development of the Facility. *Id.* P 5.

CEFL was unable to submit an offer in that BRA because financing for the Facility was not yet finalized.¹¹

II. Waiver Request

6. CEFL requests a one-time, limited waiver of the deadline to request a Competitive Entry Exemption for the First Incremental Auction of the 2018/2019 Delivery Year, to permit CEFL to submit its request by June 3, 2016. CEFL also requests expedited action on its request by July 18, 2016, to give PJM, the MMU, and CEFL sufficient time to prepare for the First Incremental Auction.¹²

7. CEFL asserts its Waiver Request is consistent with prior Commission orders granting waiver of the MOPR exemption deadlines because: (1) the underlying error was made in good faith; (2) the requested waiver is 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.¹³

8. CEFL asserts that its underlying error was made in good faith. According to CEFL, due to a change in management and transitional activities conducted after the Facility's financing was finalized in early April 2016, CEFL's new management team was not aware that the Competitive Entry Exemption granted to CEFL for the BRA for the 2018/2019 Delivery Year would not apply to subsequent Incremental Auctions.¹⁴ CEFL asserts that it submitted its Waiver Request as soon as possible after PJM, on May 11, 2016, informed CEFL that a new Competitive Entry Exemption was required for the upcoming First Incremental Auction. CEFL avers that "CEFL's management team have now familiarized themselves with the RPM deadlines, such that further waivers should not be necessary."¹⁵

9. In addition, CEFL 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

¹¹ Waiver Request at 4-5.

¹² *Id.* at 7.

¹³ *Id.* at 4.

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 5 n.14.

Tariff for the First Incremental Auction. CEFL contends that it is not requesting waiver of any substantive requirements applicable to Competitive Entry Exemptions.¹⁶

10. CEFL also asserts that the waiver will remedy the concrete problem of CEFL's inability to obtain a MOPR exemption for the Facility because it did not provide required information by the prescribed deadline. CEFL avers that without a Competitive Entry Exemption, there would be a substantial risk that the Facility would not clear in the First Incremental Auction. CEFL explains that this could delay development of the Facility.¹⁷

11. Finally, CEFL contends that granting waiver will not cause any adverse consequences. CEFL explains that the requested waiver would merely permit CEFL to apply for a Competitive Entry Exemption and does not affect the substantive exemption determination.¹⁸ According to CEFL, the requested waiver would not delay or interfere with the administration of the First Incremental Auction. CEFL asserts that, in contrast to causing adverse consequences, the requested waiver may benefit ratepayers by allowing the highly efficient new Facility to participate in the auction.¹⁹

III. Notice of Filing and Responsive Pleadings

12. Notice of CEFL's filing was published in the *Federal Register*, 81 Fed. Reg. 36,905 (2016), with interventions and protests due on or before June 21, 2016. None were filed.

IV. Commission Determination

13. The Commission has granted waiver of tariff provisions where: (1) the applicant acted 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.²⁰

¹⁶ *Id.* at 5.

¹⁷ *Id.* at 6.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Servs., L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *N.Y. Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

14. We find that the circumstances of this case satisfy the foregoing criteria. First, we find that CEFL acted in good faith by filing its Waiver Request promptly after its new management team learned of the requirement to apply for a new Competitive Entry Exemption for the First Incremental Auction. We also find that CEFL's requested waiver is limited in scope, as it is a one-time waiver of procedural deadlines for requesting a Competitive Entry Exemption for one auction, and it does not relate to the substantive requirements for a Competitive Entry Exemption. In addition, we note that CEFL now has its financing in place, whereas it did not previously. We find that the requested waiver addresses a concrete problem because it will enable CEFL to seek a Competitive Entry Exemption for the First Incremental Auction. Finally, we find that granting the requested waiver will not have undesirable consequences, such as harming third parties, as it will not adversely affect the administration of the First Incremental Auction.

15. For these reasons, 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.

The Commission orders:

CEFL'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.