

143 FERC ¶ 61,028
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 8, 2013

In Reply Refer To:
Calpine Energy Services, L.P.
Docket No. ER13-1025-000

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

Dear Mr. Levy:

1. On March 1, 2013, Calpine Energy Services, L.P. (Calpine) filed a request for limited waiver (Waiver Request) of the deadlines set forth in sections 5.14(h)(5)(i) and (iv) of Attachment DD to PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (Tariff).¹ Specifically, Calpine seeks a one-time waiver of the deadlines for requesting a unit-specific exemption from the Minimum Offer Price Rule (MOPR).² PJM does not oppose the request for limited waiver, but requests that if the Commission grants waiver, that it establish certain deadlines for the submission of the exception request and supporting documentation. As discussed below, we will grant Calpine's request for limited waiver, with the deadlines specified by PJM.
2. Calpine states that it is developing and evaluating the possibility of constructing a new project, a generating facility with less than 350 MW of capacity.³ Calpine asserts

¹ PJM Tariff Attachment DD, sections 5.14(h)(5)(i) and (iv), Clearing Prices and Charges (7.1.0).

² The MOPR was implemented in 2006 as part of PJM's capacity market to address the concern that certain resources seeking to participate in the market might have an incentive to suppress market clearing prices by offering supply at less than a competitive level. *See PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at P 103 (2006).

³ Waiver Request at 1, 3.

the project is a new, competitive resource that is not supported by state sponsored contracts or other subsidies.⁴ Calpine states that, without a unit-specific exemption for the 2016-2017 Base Residual Auction (BRA), there is a substantial risk that the capacity associated with the project would not clear the 2016-2017 BRA.⁵

3. Calpine explains that the MOPR imposes minimum offer prices for new generation capacity resources. On December 7, 2012, PJM filed revisions to the current MOPR unit-specific exemption process with the Commission (MOPR Revisions). In that proceeding, PJM argued that the unit-specific exemption process under the existing MOPR was not serving the long-term interests of the capacity market and should be replaced as soon as possible with two new categorical exemptions, including a “Competitive Entry Exemption.”⁶ PJM further stated that it would (a) receive and process MOPR exemption requests under the proposed Tariff terms while the MOPR Revisions were pending before the Commission, and (b) continue to process MOPR exemption requests under the existing exemption terms.⁷ For the 2016-2017 BRA, the deadline to submit a MOPR exemption request was January 13, 2013.

4. Calpine states that it assumed, based on overwhelming stakeholder support for the proposed MOPR Revisions, that the Commission would approve the MOPR Revisions and would do so on or before February 5, 2013. Calpine states that it did not take into account the possibility that the Commission might issue a deficiency letter and that the ensuing delay could result in the proposed revisions not taking effect in time for the 2016-2017 BRA. Consequently, although Calpine submitted a timely request for a Competitive Entry Exemption for its project under the proposed MOPR Revisions, Calpine failed to request a unit-specific MOPR exemption under the existing MOPR Tariff provisions.⁸

5. Accordingly, Calpine requests waiver of section 5.14(h)(5)(i) of Attachment DD to the Tariff, which requires a request for a MOPR exemption to be submitted no later than 120 days prior to the commencement of the offer period for the BRA. Calpine also requests waiver of the additional deadlines in section 5.14(h)(5)(iv) for PJM and the Independent Market Monitor (IMM) to act on such a request.

⁴ *Id.* at 8.

⁵ *Id.* at 6.

⁶ PJM Transmittal Letter, Docket No. ER13-535-000, at 9, 21-24.

⁷ *Id.* at 17.

⁸ Waiver Request at 5-6.

6. Calpine argues that good cause exists to grant its request because: (1) it reasonably anticipated that the proposed MOPR Revisions would be approved by the Commission on or before February 5, 2013, (2) its request is limited in scope in that it relates solely to procedural deadlines and does not extend to waivers or rulings related to the substantive merits of the requested exemption, (3) the waiver addresses a concrete problem of a procedural barrier to entry to a new resource in PJM, and (4) granting the request will not have undesirable consequences or harm third parties.

7. Calpine requests that the Commission issue an order as soon as possible, so that its request for a MOPR exemption can be processed in time for the May 2013 BRA. Calpine commits to cooperate closely with PJM and the IMM regarding the efficient processing of its request.

8. Notice of Calpine's March 1, 2013 filing was published in the *Federal Register*,⁹ with protests or interventions due on or before March 22, 2013. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁰ notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. PJM submitted a motion to intervene and comments on March 14, 2013. No protests or adverse comments were filed.

9. PJM filed comments stating that it does not object to the Waiver Request, provided that Calpine agree to certain firm deadlines, so that PJM and the IMM have adequate time to consider the request and provide their determinations prior to the commencement of the May 2013 BRA. PJM requests that the Commission, in its order specify the following deadlines: (1) a deadline of March 18, 2013, by which Calpine must submit its exception request and required supporting documentation to PJM and the IMM;¹¹ (2) a deadline of April 10, 2013, by which the IMM must review the request and supporting documentation and provide its findings, in writing, to Calpine and PJM; (3) a deadline of April 22, 2013, by which PJM must review the exception request and supporting documentation and provide to Calpine and the IMM, in writing, its determination whether the request is acceptable; and (4) if PJM determines that the

⁹ 78 Fed. Reg. 9904 (2013).

¹⁰ 18 C.F.R. § 385.214 (2012).

¹¹ PJM Comments at 4. PJM understands that the Commission may not issue its order on the Waiver Request prior to PJM's requested March 18, 2013 deadline for the submission of a fully documented exception request to PJM and the IMM, but PJM argues that Calpine will not be harmed by the imposition of such deadline since it submitted its request and documentation on March 12, 2013.

request is acceptable, a deadline of April 24, 2013, by which Calpine must notify the IMM and PJM of the minimum level of Sell Offer to which it agrees to commit.

10. We find that good cause exists to grant Calpine's request for waiver of the deadline for seeking an exemption under the MOPR, found in section 5.14(h)(5)(i) of the Tariff, and the procedural deadlines described in section 5.14(h)(5)(iv) of the Tariff, with the deadlines established by PJM. Calpine's failure to meet the deadline for submitting a request for an exemption appears to have been unintentional and in good faith. While parties should not presume any Commission action based on stakeholder votes, we will grant Calpine's waiver request on its merits since PJM does not oppose it and it will not have adverse effects on other parties. We find that the waiver request is limited in time, limited in scope to procedural deadlines, and does not relate to the substantive merits of PJM's administration of MOPR. Granting the requested waiver will allow Calpine the opportunity to seek a MOPR exemption and will not have undesirable consequences for PJM, IMM, or harm third parties. PJM supports the waiver of its tariff provisions as long as it is subject to specified deadlines that permit proper review of the material. Accordingly, we grant the requested waiver with the deadlines specified by PJM in its comments, as detailed above.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.