

Birdsboro Power may submit its Competitive Entry Exemption.⁵ Expedited action on this petition is warranted in order to provide the Office of the Interconnection and the MMU with sufficient time to consider Birdsboro Power's request for a Competitive Entry Exemption in time for the 2019/2020 BRA, which begins on May 11, 2016. Birdsboro Power acted diligently and in good faith to promptly request a waiver of Section 5.14(h)(9)(ii) once it determined the feasibility of achieving an in-service date for the Project in time for the 2019/2020 delivery year. In addition, Birdsboro Power has discussed this petition for waiver with the MMU prior to filing.

I. COMMUNICATIONS

Birdsboro Power requests that the following individuals be placed on the Commission's Official Service List and that all communications and correspondence in this proceeding be addressed to:⁶

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⁵ Birdsboro Power anticipates that it will submit the Competitive Entry Exemption request to the PJM and MMU on or before March 25, 2016 on a conditional basis pending Commission action on this petition.

⁶ Birdsboro Power requests waiver of Rule 203(b)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(b)(3), to permit designation of more than two persons for service and communication.

II. BACKGROUND

Birdsboro Power is developing a new 450 MW natural gas and steam electric power plant in Birdsboro, Berks County, Pennsylvania. The Project will use either General Electric or Siemens H-Series gas turbine technology in a single shaft 1x1 configuration comprised of a gas turbine, heat recovery steam generator, and steam turbine. The Project will utilize wet cooling and evaporative cooling facilities.

The Project site is a 99-acre parcel formerly home to an army tank factor. The community has been uniformly supportive of the Project to-date given the prior industrial nature of the location and the opportunity to redevelop abandoned land. The Project has secured site control and derives many benefits from the location including proximity to the Texas Eastern Transmission natural gas pipeline, which provides an outlet for Marcellus and Utica natural gas production, availability of onsite water resources suitable for the Project's water cooling advantage, and proximity to a suitable electrical interconnection point.

The Project has an active Generation Interconnection Request with PJM with Queue Position AA2-115 and received its Feasibility Study in September 2015. The System Impact Study is expected to be released in March 2016, with the Facilities Interconnection Study and Interconnection Services Agreement expected to be completed in the first quarter of 2017. The interconnection point is a new Metropolitan Edison Company 230 kV ring-bus substation to be constructed between the South Reading and North Boyertown 230 kV substations. Birdsboro Power anticipates that it will receive the Construction Service Agreement in the first quarter of 2017 and estimates that the plant will become operational in April 2019.

III. REQUEST FOR WAIVER OF THE COMPETITIVE ENTRY EXEMPTION DEADLINE

Under Section 5.14(h)(7) of Attachment DD of the PJM Tariff, a Capacity Market Seller, such as Birdsboro Power, can qualify a MOPR Screened Generation Resource for a Competitive Entry Exemption in any PJM Reliability Pricing Model (“RPM”) Auction for any delivery year by submitting a written request, along with supporting data and documentation, to the MMU and the Office of the Interconnection at least 135 days before the commencement of the offer period for the RPM Auction in which the Capacity Market Seller seeks to submit its Sell Offer.⁷ For the 2019/2020 BRA, the deadline for requesting the Competitive Entry Exemption was December 28, 2015.

A request for a Competitive Entry Exemption must demonstrate that the MOPR Screened Generation Resource satisfies the following four criteria:⁸

- (i) No costs of the MOPR Screened Generation Resource are recovered from customers either directly or indirectly through a non-bypassable charge, unless Section 5.14(h)(7)(ii) and (iii) are satisfied;
- (ii) No costs of the MOPR Screened Generation Resource are supported through any contracts with a term of one year or more obtained in any state-sponsored or state-mandated procurement processes that are not Competitive and Non-Discriminatory;
- (iii) The Capacity Market Seller does not have any formal or informal agreements or arrangements to seek, recover, accept, or receive any (A) material payments, concessions, rebates, or subsidies directly or indirectly from any governmental entity connected with the construction, or clearing in any RPM Auction, of the MOPR Screened Generation Resource, or (B) other material support through contracts having a term of one year or more obtained in any state-sponsored or state-mandated procurement processes, connected to the construction, or clearing in any RPM Auction, of the MOPR Screened Generation Resource; and
- (iv) The Capacity Market Seller must submit a sworn, notarized certification of a duly authorized officer, certifying that the officer has personal knowledge of, or

⁷ PJM Tariff, Attachment DD, Section 5.14(h)(9)(ii).

⁸ PJM Tariff, Attachment DD, Section 5.14(h)(7).

has engaged in a diligent inquiry to determine, the facts and circumstances supporting the Capacity Market Seller's decision to submit a Sell Offer into the RPM Auction for the MOPR Screened Generation Resource and seek an exemption from the MOPR Floor Offer Price for such resource, and, to the best of his or her knowledge and belief: (A) the information submitted in support of the exemption is true and correct and the resource is being constructed or contracted for purposes of competitive entry by the Capacity Market Seller, (B) the Capacity Market Seller has disclosed all material facts relevant to the request for exemption, and (C) the exemption request satisfies the criteria for the exemption.⁹

Under Section 5.14(h)(9)(iii) of Attachment DD of the PJM Tariff, the Office of the Interconnection has sixty-five (65) days to review the Competitive Entry Exemption request and supporting documentation and to provide its determination.¹⁰ The MMU must review the exemption request and provide its determination by no later than forty-five (45) days after receipt of the exemption request.

Birdsboro Power seeks a limited waiver of the 135-day deadline set forth in Section 5.14(h)(9)(ii) of Attachment DD of the Tariff for submission of the Competitive Entry Exemption to the Office of the Interconnection and the MMU. Birdsboro Power will be filing a request for a Competitive Entry Exemption with both the Office of the Interconnection and the MMU for the 2019/2020 BRA. Birdsboro Power commits to cooperate closely with the Office of the Interconnection and the MMU to facilitate the efficient processing of its request for a Competitive Entry Exemption.

IV. GOOD CAUSE EXISTS TO GRANT THE REQUESTED WAIVER

The Commission has granted waivers of tariff provisions where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) the waiver would remedy a

⁹ PJM Tariff, Attachment DD, Section 5.14(h)(7)(i)–(iv).

¹⁰ PJM Tariff, Attachment DD, Section 5.14(h)(9)(iii).

concrete problem; and (4) the waiver does not have undesirable consequences such as harming third-parties.¹¹ All four criteria are satisfied here.

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, and PJM to grant, a Competitive Entry Exemption.¹² In both *Lackawanna Energy Center LLC* and *Keys Energy Center, LLC*, the Capacity Market Sellers filed petitions for a one-time limited waiver of the procedural deadline in Section 5.14(h)(9)(ii) to allow them to apply for, and PJM to grant, a Competitive Entry Exemption and requested expedited consideration of the petitions. FERC granted the Capacity Market Sellers' requests for a limited, one-time waiver of the procedural deadline.¹³

Good cause exists to grant a waiver of the Competitive Entry Exemption deadline. Birdsboro Power's error was made in good faith. In *Keys Energy Center, LLC*, the Capacity Market Seller requested a waiver of the Competitive Entry Exemption deadline in Section 5.14(h)(9)(ii) and explained that it was developing a natural gas-fired, electric generation plant, and that it determined it was possible to achieve an in-service date prior to the capacity delivery year in which it sought to participate. Similarly, Birdsboro Power is currently developing the Project and only recently submitted the System Impact Study to PJM. It 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. Birdsboro Power submits

¹¹ *FirstEnergy Service Co.*, 144 FERC ¶ 61,149 at P 8 (2013); *Southern Indiana Gas & Electric Co.*, 143 FERC ¶ 61,091 at P 5 (2013); *In re Appalachian Power Co., et al.*, 143 FERC ¶ 61,015 at P 8 (2013); *American Municipal Power, Inc.*, 140 FERC ¶ 61,102 at P 10 (2012); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184 at PP 13–18 (2011); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 at PP 31–34 (2007).

¹² *Clean Energy Future – Lordstown, LLC*, 152 FERC ¶ 61,076 (2015); *Tenaska, Inc.*, 147 FERC ¶ 61,023 (2014); *Dynegy Kendall Energy, LLC, et al.*, 147 FERC ¶ 61,094 (2014); *Lackawanna Energy Center, LLC*, 146 FERC ¶ 61,220 (2014); *Keys Energy Center, LLC*, 146 FERC ¶ 61,154 (2014).

¹³ *Lackawanna Energy Center, LLC*, 146 FERC ¶ 61,220 (2014); *Keys Energy Center, LLC*, 146 FERC ¶ 61,154 (2014).

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. Birdsboro Power has acted diligently and in good faith to promptly request a waiver of the procedural deadline.

The waiver is of limited scope. Birdsboro Power is requesting waiver of only limited provisions of the PJM Tariff, Section 5.14(h)(9)(ii) of Attachment DD for only one auction. Additionally, the waiver would be applicable only to Birdsboro Power's own request for a Competitive Entry Exemption.¹⁴

The waiver would also remedy a concrete problem by allowing Birdsboro Power to become eligible for an exemption from the MOPR, which requires all new, non-exempted resources to bid at a floor price or higher. As Birdsboro Power will demonstrate in its request for a Competitive Entry Exemption, Birdsboro Power is a MOPR Screened Generation Resource that satisfies all of the criteria required to qualify for a Competitive Entry Exemption. Without the waiver, Birdsboro Power would be unable to seek a MOPR exemption, creating the risk that Birdsboro Power would be unable to clear in the 2019/2020 BRA.

Finally, granting the waiver will not cause any undesirable consequences. Other generation resources that seek to participate in the 2019/2020 BRA would not be prevented from doing so, and no third-party will be harmed. Furthermore, the limited extension requested in this waiver is sufficiently in advance of the May 11, 2016 commencement of the 2019/2020 BRA to avoid causing delay in administration of the BRA. Additionally, as noted above, Birdsboro Power has discussed this petition for waiver with the MMU prior to filing.

¹⁴ See *Tenaska, Inc.*, 147 FERC ¶ 61,023 at P 10 (2014); *Lackawanna Energy Center, LLC*, 146 FERC ¶ 61,220 at P 10 (2014).

For the reasons set forth above, good cause exists for the Commission to grant Birdsboro Power a waiver of the 135-day deadline contained in Section 5.14(h)(9)(ii) of Attachment DD of the PJM Tariff.

V. REQUEST FOR SHORTENED COMMENT PERIOD AND EXPEDITED ACTION BY BIRDSBORO POWER

Birdsboro Power also respectfully requests expedited action on this petition and a shortened comment period for the petition of seven (7) days. Expedited action will provide the Office of the Interconnection and the MMU sufficient time to process and evaluate Birdsboro Power's request for a Competitive Entry Exemption before the commencement of the 2019/2020 BRA on May 11, 2016.

VI. CONCLUSION

WHEREFORE, for foregoing reasons, Birdsboro Power respectfully requests that the Commission grant this Petition for Limited Waiver of Section 5.14(h)(9)(ii) of Attachment DD of the PJM Tariff no later than April 8, 2016.

Respectfully submitted,

/s/ Joseph W. Lowell

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document via electronic mail

upon the following persons:

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Dated at Washington, D.C., this 18th day of March, 2016.

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