

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

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

Oregon Clean Energy, LLC

Docket No. ER16-1504-000

ORDER GRANTING WAIVER

(Issued May 10, 2016)

1. On April 26, 2016, Oregon Clean Energy, LLC (OCE) submitted, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,¹ a petition 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). Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure,³ OCE also requests expedited action on its petition by May 10, 2016. For the reasons discussed below, we grant OCE'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 Capacity Market Seller can seek to qualify for a Competitive Entry Exemption to the Minimum Offer Price Rule for an upcoming BRA.⁴

¹ 18 C.F.R. § 385.207 (2015).

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

³ 18 C.F.R. § 385.212 (2015).

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

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 Specifically, the Capacity Market Seller 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.⁶ For the May 11, 2016 BRA (2016 BRA), the deadline for requesting a Competitive Entry Exemption was December 28, 2015.

4. OCE is undertaking a project to increase the capacity of an existing gas-fired combined cycle generation facility (Project), identified as the Oregon Energy Center, from its current nameplate capacity of 799 MW to a total capacity of 845 MW – an addition of 46 MW. The 799 MW of capacity for the existing facility has already been offered into and cleared a prior auction.⁷ The additional 46 MW have not previously been offered into a Reliability Pricing Model auction. OCE anticipates the Project will commence commercial operation by June 2017.⁸

II. Waiver Request

5. OCE 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. OCE also requests expedited action on its petition by May 10, 2016. OCE asserts that expedited action is warranted to provide the MMU and PJM's Office of Interconnection time for consideration of its Competitive Entry Exemption request in advance of the 2016 BRA.⁹

6. OCE asserts that good cause exists to grant its requested waiver. OCE notes that the Commission has previously granted waiver where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) the waiver would remedy a

⁵ *Id.*

⁶ *Id.* § 5.14(h)(9)(ii).

⁷ OCE Petition at 3.

⁸ *Id.*

⁹ *Id.* at 2, 7.

concrete problem; and (4) the waiver does not have undesirable consequences such as harming third-parties.¹⁰

7. OCE argues that its failure to timely submit its request for a Competitive Entry Exemption was inadvertent. OCE explains that its belated request was due, in part, to uncertainty about the completion of the Interconnection Service Agreement, which was only recently executed for the additional 46 MW.¹¹ OCE states that it acted diligently and has acted in good faith to promptly request a waiver of the procedural deadline.¹²

8. OCE 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. OCE further states that the requested waiver would apply only to OCE's Competitive Entry Exemption request.¹³

9. OCE 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. OCE 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.¹⁴

10. In addition, OCE asserts that granting waiver will not cause any undesirable consequences or harm to third parties. OCE explains that the requested waiver would not prevent other generation resources from participating in the 2016 BRA.¹⁵ OCE states that it discussed its petition for waiver with the MMU prior to filing.¹⁶

¹⁰ *Id.* at 5 (citing *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)).

¹¹ *Id.* at 6.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 7.

¹⁵ *Id.*

¹⁶ *Id.* at 2.

III. Notice of Filing and Responsive Pleadings

11. Notice of OCE's filing was published in the *Federal Register*, 81 Fed. Reg. 26,539 (2016), with interventions and protests due on or before May 3, 2016. PJM filed a motion to intervene on May 2, 2016.

IV. Commission Determination

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁷ PJM's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

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.¹⁸

14. We find that OCE's waiver request satisfies the foregoing criteria. We find that OCE acted in good faith by filing its waiver request promptly upon execution of the Interconnection Service Agreement. We also find that OCE'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 OCE to seek a Competitive Entry Exemption for the 2016 BRA. Finally, we find that granting the requested waiver does not have undesirable consequences, such as harm to third parties, as it will not prevent other generation resources from participating in the 2016 BRA.

15. For these reasons, we grant OCE'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.

¹⁷ 18 C.F.R. § 385.214 (2015).

¹⁸ 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); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

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The Commission orders:

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)

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