

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF ENERGY MARKET REGULATION

NRG Energy, Inc.
NRG Berrians East Development LLC
Docket No. ER17-2049-000

Issued: 7/28/17

King & Spalding LLP
1700 Pennsylvania, Ave., NW
Washington, DC 20006

Attention: David G. Tewksbury
Counsel for NRG Energy, Inc. and NRG Berrians East Development LLC

Reference: Order Granting Uncontested Waiver

Dear Mr. Tewksbury:

On July 3, 2017, you submitted, on behalf of NRG Energy, Inc. and NRG Berrians East Development LLC (jointly, NRG), a request for waiver of the procedural deadline set forth in Attachment H, section 23.4.5.7.9.3.2 of the New York Independent System Operator, Inc.'s (NYISO) Market Administration and Control Area Services Tariff to allow NYISO to review and act on NRG's request for a Competitive Entry Exemption for the Berrians East Replacement project. In support of its request for waiver, you assert that, due to an administrative oversight, NRG inadvertently missed the deadline for submitting a Competitive Entry Exemption request and that the waiver is limited only to the one-time procedural deadline. You also state that without a Competitive Entry Exemption, there is a risk that the Berrians Replacement's capacity may not clear in NYISO's capacity auctions.

NRG's filing was noticed on July 6, 2017, with interventions and protests due on or before July 24, 2017. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹ any notices of intervention and timely filed, unopposed motions to intervene

¹ 18 C.F.R. § 385.214 (2016).

serve to make the filer a party to this proceeding. No protests were filed, and the request for waiver is therefore uncontested.

Pursuant to the authority delegated to the Director, Division of Electric Power Regulation - East, Office of Energy Market Regulation, in the Commission's February 3, 2017 Order Delegating Further Authority to Staff in Absence of Quorum,² NRG's uncontested request for waiver is granted. 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.³ Those criteria are satisfied here.

The grant of waiver herein shall not be construed as constituting approval of any rate, charge, classification, or any rule, regulation, or practice affecting such rate or service contained in your filing; nor shall it be deemed as recognition of any claimed contractual right or obligation associated therewith; and such grant is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against NRG.

Consistent with Rule 1902 of the Commission's Rules of Practice and Procedure,⁴ requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order.⁵

Sincerely,

Kurt Longo, Director
Division of Electric Power
Regulation - East

² *Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135 (2017).

³ *See, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Serv., Inc.*, 154 FERC ¶ 61,082, at P 12 (2016); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

⁴ 18 C.F.R. § 385.1902 (2016).

⁵ 18 C.F.R. § 385.713 (2016).