

149 FERC ¶ 61,018  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

CleanLight Power + Energy, LLC  
Gloucester Solar Farm, LLC

Docket No. ER14-2474-000

ORDER DENYING WAIVER

(Issue October 6, 2014)

1. On July 22, 2014, CleanLight Power + Energy, LLC (CleanLight) and Gloucester Solar Farm, LLC (Gloucester Solar) (collectively, Project Owners) filed a request for limited waiver of Part IV, Subpart G, Section 110 and Part VI, Sections 204.3 and 205.3 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff).<sup>1</sup> Specifically, Project Owners request that the Commission grant waiver of the six-month interconnection queue process to allow PJM to expedite the Feasibility and Impact Study process and enable the execution of a Wholesale Market Participation Agreement for their solar project. As discussed below, the Commission denies the requested waiver.

**I. Background**

2. Project Owners initially submitted an interconnection request to PJM in October 2010 (2010 Interconnection Request) for their proposal to develop a 7.3 MW solar project in Gloucester Township, New Jersey (Gloucester Project), which is located within the Public Service Electric and Gas Company (PSE&G) transmission zone. The project was assigned a PJM interconnection queue number, W3-129. The Gloucester Project progressed through the Feasibility and Impact Study phase of PJM's interconnection process in January 2011 and an executed Wholesale Market Participation Agreement (2011 Agreement) among CleanLight, PJM, and PSE&G was filed with the Commission on March 18, 2011.<sup>2</sup>

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<sup>1</sup> PJM Open Access Transmission Tariff, Part IV, Subpart G, Section 110, [Part VI, Section 204.3](#) and [Part VI, Section 205.3](#).

<sup>2</sup> *PJM Interconnection, L.L.C.*, Docket No. ER11-3148-000. The filing was accepted by unpublished letter order issued on May 13, 2011.

3. In November 2011, the 2011 Agreement was assigned to ToPoint CL Gloucester (ToPoint).<sup>3</sup> On August 22, 2012, PJM notified ToPoint that it was in breach of certain milestones under the 2011 Agreement. ToPoint never remedied the breach. As a result, PJM filed a notice of cancellation of the 2011 Agreement, effective September 26, 2012, which the Commission accepted on March 21, 2013.<sup>4</sup>

4. Project Owners submitted to PJM a request to renew the Gloucester Project (2014 Interconnection Request) after PJM's generation interconnection queue AA1 commenced on May 1, 2014. The six-month queue will close on October 31, 2014. According to PJM, because the project had been previously terminated, and given the passage of time and cancellation of the 2011 Agreement, the 2014 Interconnection Request was assigned to the AA1 interconnection queue.

## **II. Waiver Request**

5. Project Owners state that they must purchase the land they have identified for the Gloucester Project before October 2014, but have to execute the Wholesale Market Participation Agreement and the interconnection agreement before they can make the purchase. Project Owners, therefore, request waiver of the six-month queue process in order to expedite the Feasibility and Impact Study process and enable execution of a Wholesale Market Participation Agreement and interconnection agreement before October 2014.

6. Project Owners argue that good cause exists to grant their request because, following breach of certain milestones by ToPoint, they have continued to act in good faith by submitting the documents required by the PJM Tariff and paid the necessary deposits. Project Owners state that: (1) they acted in good faith by promptly requesting a waiver once the Gloucester Project was resubmitted to the interconnection queue; (2) the request is limited in scope in that they are asking for a one-time waiver of the six-month queue process; (3) granting the waiver would remedy a concrete problem by "avoiding considerable delay and the devastation of missed deadlines" that would occur if PJM were to review the project in strict accordance with the requirements of the six-month queue process; and (4) granting the request will not have adverse or unintended consequences for any third party. Project Owners further assert that granting the waiver would prevent "further economic hardship and waste of resources" in addition to more

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<sup>3</sup> *PJM Interconnection, L.L.C.*, Docket No. ER12-521-000. The revised 2011 Agreement was submitted to the Commission on December 2, 2011, and accepted by unpublished letter order issued on December 29, 2011.

<sup>4</sup> *PJM Interconnection, L.L.C.*, Docket No. ER13-961-000 (unpublished letter order issued on March 21, 2013).

than \$600,000 they have already expended on the Gloucester Project since it was initially submitted, which cannot be recouped. Finally, Project Owners assert that PJM stated that it would support and comply with a waiver.

### **III. Notice of Filing and Responsive Pleadings**

7. Notice of Project Owners' July 22, 2014 filing was published in the *Federal Register*,<sup>5</sup> with protests or interventions due on or before August 12, 2014.

8. On September 19, 2014, PJM filed an out-of-time motion to intervene and answer to Project Owners' waiver request. PJM asserts that its intervention and answer are late but good cause exists to grant the intervention request because it has a direct and substantial interest in this proceeding which cannot be adequately represented by any other party. Further, PJM argues that it was never served with Project Owners' request for waiver of the PJM Tariff.

9. PJM states that it does not support granting Project Owners' request for limited waiver. PJM states that Project Owners had requested that PJM utilize for the 2014 Interconnection Request the same Feasibility and Impact Study that had been completed for the 2010 Interconnection Request in queue number W3-129. PJM explains that it was, however, unable to grant this request because, even if the 2014 Interconnection Request were identical to the 2010 Interconnection Request, the transmission system topology is not the same as it was in January 2011 when the 2010 Interconnection Request studies were completed. PJM asserts that the impact of the 2014 Interconnection Request on the transmission system cannot be known until the Feasibility and Impact Study is completed for the 2014 Interconnection Request. Moreover, PJM states that its tariff requires that the studies be completed at specified times before an interconnection customer can proceed through the queue process. PJM states that it advised Project Owners that PJM was bound by its tariff and therefore unable to expedite the study process. PJM further states that, while PJM staff indicated to Project Owners that it was within their rights to request a waiver of the relevant Tariff provisions from the Commission, it "did not go so far as to endorse, or actually support, the type of relief requested by ...[Project Owners] ... in this proceeding."<sup>6</sup>

10. PJM argues that it does not support the granting of Project Owners' waiver in this proceeding because omitting or expediting the Feasibility and Impact Study queue process could have adverse impacts upon other developers in the same AA1 PJM interconnection queue. According to PJM, the 2014 Interconnection Request is currently

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<sup>5</sup> 79 Fed. Reg. 14,021 (2014).

<sup>6</sup> PJM Answer at 4.

in the AA1 queue, which is still open and receiving generation interconnection requests. PJM states that, if another developer entered an AA1 queue request on the same circuit impacted by the 2014 Interconnection Request, several issues could arise under PJM's interconnection process. First, PJM states that, under its cost allocation rules, allocations for upgrades are determined by the Feasibility and Impact Studies. Therefore, PJM contends, pursuant to the PJM Tariff, Project Owners and any subsequent impacted AA1 interconnection requests would be assigned cost allocation for upgrades for any required local network upgrades based upon the allocation as determined by the respective Feasibility and Impact Studies. PJM argues that, if Project Owners are allowed to bypass the study process in this case, any subsequent impacted AA1 interconnection request would unduly bear the full costs for any local network upgrades in that area.

11. Secondly, PJM avers that two projects impacting the same facilities may actually cause either of those projects to fail the "alternate queue process,"<sup>7</sup> thereby requiring both projects to undergo additional studies. In this case, PJM contends that allowing Project Owners to bypass the study process could potentially disadvantage a similarly situated interconnection customer on the same circuit who could be disqualified from the alternate queue process because of the Gloucester Project. PJM states that, rather than requiring both projects to undergo additional studies, only the second project would be required to do so.

12. Finally, PJM states that, since it was submitted in the AA1 queue, Project Owners' 2014 Interconnection Request has been progressing through PJM's interconnection process in a timely fashion. PJM also states that, at the close of the AA1 queue, and after it completes the alternate queue screens, it is feasible that Project Owners could receive a Wholesale Market Participation Agreement for the Gloucester Project near the end of this year.

#### **IV. Discussion**

##### **Procedural Matters**

13. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant PJM's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

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<sup>7</sup> PJM's alternate queue process allows PJM to expedite the interconnection of small generation projects (i.e., those with generating capacity of less than 20 MW) which typically connect at the distribution system level, but desire to participate in PJM's markets and will not have an impact on the PJM monitored transmission system. See PJM Tariff, Part IV, Subpart G, §§ 110 and 112.5.

### **Commission Determination**

14. We will deny the Project Owners' waiver request of the PJM Tariff. The Commission has previously granted requests for waivers of tariff provisions in situations where: (1) the applicant was unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) a concrete problem will be remedied by granting the waiver; and (4) the waiver would not have undesirable consequences, such as harming third parties.<sup>8</sup>

15. Project Owners argue, among other things, that the waiver of the six-month queue process for PJM's Feasibility and Impact Studies is limited in scope and that granting the waiver will not have undesirable consequences for third parties. We are not persuaded by these assertions. We believe that granting the requested waiver or acceleration of the six-month queue process for the Gloucester Project could have adverse consequences and potentially harm third parties. As PJM explains, omitting or expediting the process for the Gloucester Project could have adverse impacts on other parties in the same AA1 interconnection queue as the Gloucester Project. In addition, the AA1 interconnection queue is still open until October 31, 2014, and could receive additional generation interconnection requests. We agree with PJM that, in the event another developer submits an AA1 queue request on the same circuit as the Project Owners, there could be potential adverse impacts with respect to how costs are allocated for system upgrades at that location. For these reasons, we deny Project Owners' request for waiver.

#### **The Commission orders:**

Project Owners' request for limited waiver of Part IV, Subpart G, Section 110 and Part VI, Sections 204.3 and 205.3 of the PJM Tariff is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>8</sup> See, e.g., *Southwest Power Pool, Inc.*, 146 FERC ¶ 61,110, at P 10 (2014); *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,060, at P 12 (2013); *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,147, at P 8 (2013).