

157 FERC ¶ 61.053
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

October 25, 2016

In Reply Refer To:
Dan's Mountain Solar, LLC
Docket No. ER16-2645-000

Gorden Feinblatt LLC
233 East Redwood Street
Baltimore, MD 21202

Attention: Todd R. Chason, Esq.

Dear Mr. Chason:

1. On September 22, 2016, Dan's Mountain Solar, LLC (Dan's Mountain) filed a request for a limited waiver (Waiver Request) of sections 212.4 and 212.5 of the PJM Interconnection, LLC (PJM) Open Access Transmission Tariff (OATT)¹ to allow it to execute an Interconnection Service Agreement (ISA) with the Potomac Edison Company (Potomac Edison) and retain its original interconnection queue position, Queue No. Z2-038. Dan's Mountain also requests a shortened notice period and expedited approval. As discussed below, we grant Dan's Mountain's request for a limited waiver and reinstatement of its queue position.
2. Under PJM's OATT, to retain its queue position, an interconnection customer, such as Dan's Mountain, must execute and return an ISA to PJM within 60 days of receiving its Facilities Study, after it has met certain milestones specified in the OATT.²

¹ PJM, Intra-PJM Tariffs, OATT, Part VI, Subpart B, §§ 212.4 and 212.5.

² PJM OATT, Part IV, Subpart B, Section 212.4(a) provides that “[t]o retain the assigned Queue Position of its Interconnection Request ... within sixty (60) days after receipt of the Facilities Study ... the Interconnection Customer must execute and return the tendered Interconnection Service Agreement to the Transmission Provider.” It further provides that “[i]n addition, to retain the assigned priority, within sixty (60) days after receipt of the Facilities Study ... the Interconnection Customer must have met the milestones specified in Section 212.5.”

One such milestone requires the interconnection customer to obtain all necessary local, county, and state site permits before executing an ISA.³

3. Dan's Mountain states that it is developing an 18.36 MW photovoltaic solar project in Allegany County, Maryland (Project). Dan's Mountain states that it initiated the PJM interconnection review process in 2014 for a connection to the Potomac Edison Frostburg – Ridgeley 138 kV transmission line, and received position No. Z2-038 (Queue No. Z2-038). Further, Dan's Mountain states that it received PJM's Feasibility Study in August 2014, its System Impact Study in April 2015, and its Facilities Study in December 2015.⁴ Having received its Facilities Study in December 2015, Dan's Mountain explains that it needed to obtain all local, county, and state permits by February 2016 to meet the ISA execution deadline and retain its queue position.

4. Dan's Mountain states that, on October 20, 2015, it applied for the primary state-level site permit in Maryland, a Certificate of Public Convenience and Necessity (CPCN), from the Maryland Public Service Commission (Maryland Commission). Dan's Mountain explains that the Maryland Commission set the application for a Public Utility Law Judge (PULJ) proceeding, which adopted a procedural schedule with April 25, 2016 as the due date for a final order, but the PULJ did not issue a final order until July 11, 2016. Dan's Mountain asserts that, as such, the Project did not receive the state permit necessary to execute the ISA, in compliance with the PJM OATT, until well after the deadline.⁵ Therefore, the PJM interconnection request was automatically deemed terminated and the Project was withdrawn from the queue.⁶

5. Dan's Mountain states that, in an effort to ensure the Project would receive a CPCN prior to the ISA execution deadline, it acted in good faith by coordinating the CPCN procedural schedule with the PJM process. Dan's Mountain states that the requested waiver is of limited scope because its request for waiver of the PJM OATT and reinstatement to Queue No. Z2-038 is based on a limited and narrow set of facts. Dan's Mountain states that the requested waiver remedies a concrete problem because,

³ Section 212.5 provides, in pertinent part, that “[i]n order to proceed with an Interconnection Service Agreement, within 60 days after receipt of the Facilities Study ... a Generation Interconnection Customer must demonstrate that it has ...obtain[ed] any necessary local, county, and state site permits.”

⁴ Dan's Mountain Waiver Request at 2-3.

⁵ Dan's Mountain states that PJM granted a request to extend the ISA execution deadline from February 2016 to June 2, 2016.

⁶ Dan's Mountain Waiver Request at 3-4.

if the Commission does not reinstate Dan's Mountain queue position, Dan's Mountain would need to restart the PJM interconnection process.⁷

6. Dan's Mountain asserts that no third parties will be harmed as a result of granting this request. In support of this claim, Dan's Mountain attached an email from PJM, which indicated that, as of September 21, 2016, the date of the e-mail, there would be no impact if the Project were to be reinstated to Queue No. Z2-038.⁸

7. Notice of Dan's Mountain's Waiver Request was published in the Federal Register, 81 Fed. Reg. 66,957 (2016), with interventions and protests due on or before October 6, 2016. PJM filed a timely motion to intervene and comments. Dan's Mountain filed an answer to PJM's comments. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), PJM's timely, unopposed motion to intervene serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2016), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept Dan's Mountain's answer because it has provided information that assisted us in our decision-making process.

8. PJM states that it filed comments to clarify that Dan's Mountain's request is based on a misrepresentation of the facts and, depending upon the timing of the Commission's determination in this proceeding, reinstating Dan's Mountain's queue position could potentially disadvantage similarly situated interconnection customers on the same circuit. PJM clarifies that Dan's Mountain did execute the ISA on February 3, 2016, but failed to pay the full security required pursuant to section 5.0 of the ISA, and therefore Queue No. Z2-038 was withdrawn from the queue on June 7, 2016. PJM states that since Dan's Mountain's project, Queue No. Z2-038, was withdrawn from the queue on June 7, 2016, PJM has proceeded to a new open queue, AC1. Therefore, PJM asserts, the probability of other projects being materially impacted by reinstatement of Queue No. Z2-038 increases with each new interconnection request between September 21, 2016 and such time as the Commission may reinstate Queue No. Z2-038.⁹

9. In its answer, Dan's Mountain attributes the discrepancy regarding execution of the ISA to its impression that without a CPCN from the Maryland Commission, a signed ISA and payment of the full security would nevertheless be inadequate to retain its queue position. Dan's Mountain states that this belief was based on the language of the PJM

⁷ *Id.* at 4-5.

⁸ Dan's Mountain Waiver Request, Attachment A.

⁹ PJM Comments at 4.

OATT and an April 8, 2016 e-mail from a PJM representative, included as an attachment to Dan's Mountain's answer, reinforcing that all required state permits for the Project were due by the ISA execution deadline along with the full security.¹⁰ Dan's Mountain also agrees with PJM's concern that the likelihood of harm to other projects increases with each potential new interconnection request between September 21, 2016 and such time as when the Commission orders the Project's reinstatement to its original queue position. Dan's Mountain concedes that it would be reasonable for the Commission to condition approval of the waiver on PJM and Potomac Edison's reexamination of negative effects on projects that may have entered the queue after September 21, 2016. Finally, Dan's Mountain reiterates its request for an expedited ruling.¹¹

10. 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.¹²

11. We find the circumstances of the instant case satisfy the foregoing criteria. First, Dan's Mountain worked in good faith throughout the PJM interconnection process to ensure compliance with the PJM OATT. Dan's Mountain filed for CPCN on October 20, 2015 with the Maryland Commission and expected to receive a final CPCN by April 25, 2016. Furthermore, Dan's Mountain accepted all conditions set forth by the Maryland Commission in an attempt to expedite the CPCN process. However, the Maryland Commission did not approve Dan's Mountain's CPCN until July 11, 2016, by which time Dan's Mountain interconnection request had been deemed terminated and withdrawn by PJM.

12. Second, the waiver request is of limited scope, as Dan's Mountain only seeks reinstatement of its queue position, which would not relieve Dan's Mountain of other requirements to interconnect to PJM. Third, granting a waiver will remediate a concrete

¹⁰ Dan's Mountain Answer at 2 n.2.

¹¹ Dan's Mountain Answer at 2-3.

¹² 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).

problem by preventing Dan's Mountain from restarting the PJM interconnection process thus postponing construction.

13. Fourth, based upon the record evidence and given the timing of this order, it appears this waiver will not harm third parties. In PJM's September 21, 2016 email to Dan's Mountain, PJM agrees that, as of that date, this waiver will not harm third parties; and, although PJM's October 6, 2016 comments assert that the potential for harm to third parties increases as time passes, PJM did not indicate that harm is imminent.

14. Due to the specific and unique facts presented above, we hereby grant Dan's Mountain's request for a limited waiver to reinstate its original interconnection queue position, Queue No. Z2-038. By granting this waiver request, the Commission is not relieving Dan's Mountain of other requirements to interconnect, including its responsibility to provide security deposits to PJM.

By direction of the Commission.

Kimberly D. Bose,
Secretary.