

157 FERC ¶ 61,177
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pinewood Wind, LLC
Long Prairie Wind I, LLC
Rocky Forge Wind, LLC

Docket No. ER17-324-000

ORDER GRANTING REQUEST FOR LIMITED WAIVER

(Issued December 2, 2016)

1. On November 8, 2016, Pinewood Wind, LLC, Long Prairie Wind I, LLC, and Rocky Forge Wind, LLC (collectively, Applicants) submitted a request for a limited one-day waiver of the October 31, 2016 New Services Queue Closing Date deadline for submission of their Generation Interconnection Feasibility Study Agreements (Agreements), as set forth in the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT).¹ For the reasons discussed below, we grant waiver.

I. Background

2. Applicants state that they are developing three wind energy projects located in Virginia and Ohio that will interconnect with PJM. According to Applicants, these projects have been under development for a significant period of time and were previously in the PJM queue, but withdrawn to address development delays. All three projects have a planned commercial operation date of December 2019.²

3. Applicants state that their interconnection requests have been timely filed with PJM and that, on October 28, 2016, PJM received Applicants' initial deposits, as required by PJM's OATT.³ Applicants assert that they attempted to comply with PJM's New

¹ See PJM OATT at section 36.1.01 (defining the term "New Services Queue Closing Date").

² Applicants' Petition for Limited Waiver at 3.

³ *Id.* at 1.

Service Queue Closing Date of October 31, 2016. Specifically, Applicants explain that on Friday, October 28, 2016, the Agreements were shipped to PJM by Federal Express, utilizing a “two-day A.M.” express service. Applicants state that due to their mistaken but inadvertent error in interpreting the applicable Federal Express delivery policy, the Agreements were not received by PJM until Tuesday, November 1, 2016, i.e., two business days following their shipment.⁴

II. Request for Limited Waiver

4. Applicants seek a one-day waiver of the October 31, 2016 New Services Queue Closing Date for submission of the Agreements in order to allow their projects to continue to be processed by PJM as part of PJM’s upcoming queue.⁵ Applicants state that the Commission has granted waivers of this sort where: (i) the underlying error was made in good faith; (ii) the waiver is of limited scope; (iii) the waiver would remedy a concrete problem; and (iv) the waiver does not have undesirable consequences such as harming third-parties.⁶

5. Applicants assert that their request satisfies each of these requirements. First, Applicants contend that their failure to submit the Agreements as of the required deadline was due to a good faith and an inadvertent delivery error. Second, Applicants argue that their waiver request is limited in scope, given that it will only apply to the Agreements. Third, Applicants contend that the waiver is needed to address a concrete issue, that is, to ensure that studies are completed and interconnection facilities constructed in time to meet their planned commercial operation dates. Finally, Applicants assert that granting the waiver will not harm third parties because it will not delay PJM’s review process.⁷

⁴ *Id.* at 3-4.

⁵ *Id.* at 1, 7.

⁶ *See id.* at 4 (citing *Oregon Clean Energy, LLC*, 155 FERC ¶ 61,156, at P 13 (2016)).

⁷ *Id.* at 6.

III. Notice of Filing and Responsive Pleadings

6. Notice of Applicants' filing was published in the *Federal Register*, 81 Fed. Reg. 80,660 (2016), with interventions and protests due on or before November 22, 2019.⁸ Timely-filed motions to intervene were submitted by PJM, American Electric Power Service Corporation and Buckeye Power, Inc. Motions to intervene out-of-time were submitted by the Dayton Power and Light Company, the Public Utilities Commission of Ohio, Old Dominion Electric Cooperative, Rockland Electric Company, NextEra Energy Resources, LLC, E. ON Climate & Renewables North America, LLC, EDF Renewable Energy, Inc., and Invenergy Companies. PJM filed a protest. On November 29, 2016, Applicants submitted an answer to PJM's protest.

7. PJM argues that Applicants' waiver request should be denied, asserting that Applicants have failed to demonstrate their inability to comply in good faith with the relevant deadline and have not shown that no harm will be caused to third parties. PJM asserts that the Applicants had six months to submit their interconnection requests but delayed in doing so until the business day before the new services queue deadline. PJM contends that, even then, Applicants failed to diligently research and obtain the proper Federal Express delivery service necessary to meet the deadline.⁹ PJM asserts that, under these circumstances, good faith has not been established.

8. With respect to harm to third parties, PJM argues that it recently revised its OATT to reduce deficient interconnection requests and alleviate harm caused by interconnection requests being submitted late in the queue window, including the practice of submitting knowingly deficient submissions in advance of the deadline to secure a favorable queue position.¹⁰ PJM argues that the late submittal of interconnection requests and deficient requests results in cascading delays in the study processes for all new service requests.¹¹ Finally, PJM asserts that granting the requested waiver will allow the Applicants' projects to avoid the Commission's recently adopted reactive power standards, requiring that all non-synchronous generators provide dynamic reactive power within the range of 0.95 leading to 0.95 lagging at the high-side of the generator substation.¹² PJM states

⁸ See Errata Notice Shortening Comment Date, Docket No. ER17-324-000 (issued Nov. 18, 2016).

⁹ PJM Protest at 10.

¹⁰ *Id.* at 3-4 (citing *PJM Interconnection, L.L.C.*, Docket No. ER16-2518-000, (Oct. 7, 2016) (delegated letter order)).

¹¹ *Id.* at 5-6.

that on October 14, 2016, it submitted a compliance filing in Docket No. ER17-108-000 to implement these requirements.¹³ PJM seeks a November 1, 2016 effective date for its compliance filing to apply to future wind projects.

9. Applicants, in their answer, renew the arguments raised in their waiver request. In addition, Applicants respond to PJM's argument that Applicants' waiver request, if granted, would harm third parties. Applicants argue that the harm alleged by PJM is a speculative harm that is not at issue here, given that it would involve future, hypothetical waiver requests as submitted on behalf of possible future projects. Applicants emphasize that they are not seeking a broad waiver that would apply to other interconnection customers.

IV. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, given their interests in this proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay, we grant the unopposed, late-filed interventions, as submitted by the entities noted above.

11. 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 a protest unless otherwise ordered by the decisional authority. We will accept the answer submitted by Applicants because it has provided information that assisted us in our decision-making process.

V. Commission Determination

For the reasons discussed below, we grant Applicants' limited waiver request. The Commission has granted waiver of tariff provisions where: (i) the applicant acted in good faith; (ii) the waiver is of limited scope; (iii) the waiver addresses a concrete problem; and (iv) the waiver does not have undesirable consequences, such as harming third parties.¹⁴

¹² See *Reactive Power Requirements for Non-Synchronous Generation*, Order No. 827, 81 Fed. Reg. 40,793 (June 23, 2016), FERC stats. & Regs. ¶ 31,385 (2016).

¹³ PJM Protest at 9.

¹⁴ 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*

12. We find that Applicants' waiver request satisfies these criteria. First, we agree that Applicants acted in good faith, given their timely tender of their initial interconnection request deposits, their satisfaction of other processing requirements, and their attempt to transmit the Agreements to PJM as of the requisite deadline.¹⁵ We disagree with PJM that this showing required Applicants to submit their Agreements weeks, or even months, in advance of the deadline prescribed by PJM's OATT. Second, we find that Applicants' requested waiver is limited in scope, as it is a one-day, one-time waiver of a procedural deadline that will only apply to the Agreements. In addition, we find that the requested waiver addresses a concrete problem because it will enable Applicants to proceed with their interconnection requests.

13. Finally, we consider whether Applicants' requested waiver will have undesirable consequences, including harm to third parties. PJM asserts that Applicants' waiver request fails this criterion, as evidenced by PJM's recent OATT revisions, in Docket No. ER16-2518-000, and their underlying intent: to curb the submission of knowingly deficient interconnection requests, including those filed near or at the end of the queue window. The Commission reviews each request for waiver on a case-by-case basis, and while we acknowledge PJM's concern about challenges to meeting target dates in the interconnection study process, PJM has not demonstrated that Applicants' limited waiver request here will result in a delay to the interconnection study phases. PJM also does not suggest that Applicants knowingly submitted a deficient interconnection request for the purpose of securing a queue status (with the aid of a waiver) that they could not have otherwise obtained. Further, we reject PJM's argument that third parties will be harmed if Applicants are not made subject to the reactive power requirements that will apply under PJM's pending proposal in Docket No. ER17-108-000. In assessing undesirable consequences under the circumstances presented here, our focus is limited to those tariff provisions in effect as of October 31, 2016, not on the requirements that may apply to future applicants in a subsequent interconnection queue cycle. Accordingly, we find that granting the requested waiver does not have undesirable consequences, such as harm to third parties, because it will not cause any delay to the interconnection studies to be completed by PJM.

Power Auth., 152 FERC ¶ 61,058, at P 22 (2015).

¹⁵ We note that these Agreements were in the custody of Federal Express three days ahead of the deadline.

The Commission orders:

Applicants' request for limited waiver of the PJM OATT is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.