

169 FERC ¶ 61,107  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

Duke Energy Kentucky, Inc.

Docket No. ER20-91-000

ORDER GRANTING WAIVER

(Issued November 12, 2019)

1. On October 11, 2019, Duke Energy Kentucky, Inc. (Duke Kentucky) submitted a request, pursuant to Rule 207(a)(5) of the Commission’s regulations,<sup>1</sup> for a limited waiver of a procedural deadline in Section 204.3 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff)<sup>2</sup> to allow its proposed 50 MW solar generation facility (Project) to remain in the interconnection queue with its currently assigned queue position number AE2-267. As discussed below, we grant Duke Kentucky’s waiver request.

**I. Background**

2. Under Section 204.3 of the PJM Tariff, PJM must tender a system impact study (SIS) agreement to the interconnection customer upon completion of an interconnection feasibility study agreement. In order to retain its assigned queue position, the interconnection customer must, within 30 days of receiving the SIS agreement, execute and return the agreement to PJM, remit any past-due study costs, pay deposit amounts, and provide certain specified data. If these requirements are not met, the “Interconnection Request shall be deemed terminated and withdrawn.”<sup>3</sup>

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<sup>1</sup> 18 C.F.R. § 385.207(a)(5) (2019).

<sup>2</sup> PJM, Intra-PJM Tariffs, OATT, 204.3 Interconnection Requests (3.0.0), § 204.3.

<sup>3</sup> *Id.*

## II. Request for Waiver

3. Duke Kentucky states that it is developing the Project in Butler County, Ohio.<sup>4</sup> Duke Kentucky states that PJM provided the feasibility study and the unexecuted SIS agreement to Duke Kentucky on July 22, 2019.<sup>5</sup> According to Duke Kentucky, the deadline for it to satisfy the requirements in Section 204.3 of the PJM Tariff, including the submission of the Project's electrical data sheets via PJM's Queue Point system, in order to maintain the queue position, was August 22, 2019.<sup>6</sup>

4. Duke Kentucky states that on August 19, 2019, it submitted the executed SIS agreement to PJM along with the required \$25,000 deposit.<sup>7</sup> Duke Kentucky states that it did not submit the electrical or modeling data via Queue Point because Duke Kentucky did not think it was necessary because PJM already had the information from the feasibility study. According to Duke Kentucky, it received a communication from PJM on July 25, 2019 stating that no additional modeling studies were necessary in response to Duke Kentucky's email seeking confirmation that PJM had what it needed. Duke Kentucky explains that it thought that PJM had all of the modeling and electrical data sheet information needed based on the July 25 communication and that the information Duke Kentucky already submitted for the feasibility study had not changed.

5. Duke Kentucky states that, on September 3, 2019, PJM contacted Duke Kentucky via email informing it that the system impact data was due on August 22, 2019, that PJM did not receive the required information, and without proof that the information was provided via Queue Point, the project would be withdrawn by September 4, 2019. Duke Kentucky states that, on the same day, it sent an email in response stating that Duke Kentucky did not believe any additional information was needed by PJM and referenced the July 25 email stating that PJM did not need additional modeling information.<sup>8</sup> According to Duke Kentucky, on September 4, 2019, PJM responded that the SIS data requirement is separate from the dynamic modeling data requirement referenced in the July 25 email, and that Duke Kentucky was required to submit this information via

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<sup>4</sup> Waiver Request at 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* Duke Kentucky states that the required machine modeling data is also referred to as "electrical data sheets" in PJM's cover letter with the SIS agreement. *Id.* at 1 n.2.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at 3-4.

Queue Point. Duke Kentucky states that shortly after it became aware of its mistake it resubmitted the information in Queue Point on September 6, 2019.<sup>9</sup> Duke Kentucky states that on September 12, 2019, PJM notified Duke Kentucky that the Project had been withdrawn from the queue.

6. Duke Kentucky asserts that the Commission has previously granted waiver of tariff requirements when: (1) the underlying error was made in good faith; (2) the scope of the waiver is limited; (3) a concrete problem will be remedied; and (4) approval of the waiver would not have undesirable consequences to third parties.<sup>10</sup> Duke Kentucky argues that the Commission has granted waivers of tariff provisions where the violation was based on administrative oversight, an applicant expeditiously seeks to correct an inadvertent and good faith error, and the applicant otherwise complied with the tariff requirements.<sup>11</sup> Duke Kentucky contends that its requested waiver satisfies the requirements for a one-time, limited waiver and is consistent with Commission precedent.<sup>12</sup>

7. First, Duke Kentucky asserts that its failure to submit the required modeling data was a good-faith error, and was not done to skirt the PJM Tariff requirements.<sup>13</sup> Duke Kentucky explains it submitted the SIS agreement and required deposit on August 19, 2019 and timely satisfied all other requirements to maintain the Project's queue position and that Duke Kentucky misunderstood the requirements to resubmit the electrical data via Queue Point. Further, Duke Kentucky avers that after being notified by PJM that the SIS data was not complete, Duke Kentucky immediately contacted PJM to understand the issue. Duke Kentucky claims that once it realized it had misunderstood the requirements to resubmit the data in Queue Point, it uploaded the information and resubmitted the information on September 6, 2019. Duke Kentucky contends that while it acknowledges its error, the failure to submit the data was inadvertent and in good faith and that Duke Kentucky otherwise complied with and satisfied all other requirements of Section 204.3. Duke Kentucky states that the Commission previously has found that, in the case of failure to submit information required under Section 204.3, an interconnection customer's

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<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* (citing *Dominion Energy Generation Marketing, Inc.*, 162 FERC ¶ 61,281 (2018); *Robinson Power Co., LLC*, 162 FERC ¶ 61,092 (2018); *Ameresco, Inc.*, 167 FERC ¶ 61,077 (2019) (*Ameresco*)).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 4-5.

timely submission of deposits, timely satisfaction of all other requirements, and its prompt correction of the inadvertent data submission error are indicators of good faith.<sup>14</sup>

8. Second, Duke Kentucky argues that the waiver request is limited in scope, because it is a one-time waiver of one discrete timing requirement in Section 204.3, and is not a request for a broad waiver of the PJM Tariff requirements applicable to generation interconnections.<sup>15</sup>

9. Third, Duke Kentucky contends that granting waiver would remedy a concrete problem by allowing the project to maintain its queue position and remain on schedule for development.<sup>16</sup> Duke Kentucky states that the Commission has found that requests for waiver of Section 204.3 address a concrete problem “because it will enable [the interconnection customer] to proceed with its interconnection requests, remain in the queue, and continue in the SIS phase of PJM’s interconnection study process.”<sup>17</sup> Duke Kentucky adds that, without the waiver, Duke Kentucky would need to restart the PJM interconnection process, which would “significantly delay the construction schedule of the project.”<sup>18</sup>

10. Fourth, Duke Kentucky asserts that granting the limited waiver will not harm any third parties. Duke Kentucky argues that with the exception of the modeling data not being provided via Queue Point by the deadline, Duke Kentucky provided PJM with the other required information under Section 204.3. Duke Kentucky also states it previously supplied the modeling data required by PJM through Queue Point in a timely manner during the feasibility phase. Duke Kentucky states that no additional deficiencies or needed upgrades were identified in the feasibility report for the Project. According to Duke Kentucky, the Project is a small 50 MW project located on the site of existing generation facilities that total 1,181 MW which connect directly into a robust 345 kV portion of the PJM grid.<sup>19</sup> Duke Kentucky notes that it is submitting the waiver request

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<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.* at 5-6.

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.* (citing *Ameresco*, 167 FERC ¶ 61,077 at P 17).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 6-7.

prior to the date of the next PJM system impact study which is November 1, 2019 per Section 205.3 of the PJM Tariff.<sup>20</sup>

11. Duke Kentucky requests that the Commission issue an order granting waiver as early as possible, but no later than November 10, 2019. Duke Kentucky states that granting expedited approval will provide Duke Kentucky and PJM with certainty with respect to the Project's queue position and development status.<sup>21</sup>

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

12. Notice of Duke Kentucky's filing was published in the *Federal Register*, 84 Fed. Reg. 56,188 (2019), with interventions and protests due on or before October 25, 2019. PJM filed a timely motion to intervene. No protests were filed.

### **IV. Discussion**

#### **A. Procedural Matters**

13. Pursuant to Rule 214 of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.214 (2019), PJM's timely, unopposed motion to intervene serves to make it a party to this proceeding.

#### **B. Substantive Matters**

14. For the reasons discussed below, we grant Duke Kentucky's waiver request.

15. The Commission has previously granted waiver of tariff provisions where: (1) the underlying error was made 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.<sup>22</sup>

16. We find that the circumstances of Duke Kentucky's waiver request satisfy these criteria. First, we find that the error made by Duke Kentucky in failing to timely submit the electrical data was made in good faith. Duke Kentucky timely submitted both the interconnection study deposit and the signed SIS agreement, sought clarification about the data the same day it learned of the error, and submitted the data three days after learning of the error. Second, we find that Duke Kentucky's waiver request is limited in

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<sup>20</sup> *Id.* at 7.

<sup>21</sup> *Id.*

<sup>22</sup> See, e.g., *New Brunswick Energy Mktg. Corp.*, 167 FERC ¶ 61,252, at P 12 (2019); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

scope, as it is a one-time waiver of a procedural deadline relating to only one of several interrelated deadlines that Duke Kentucky otherwise met, including financial transfers and contracts that clearly indicated Duke Kentucky's intent to proceed. Third, we find that granting the waiver request addresses a concrete problem because it will enable Duke Kentucky to proceed with the Project's interconnection request and allow the Project to remain in the queue and continue in the SIS phase of PJM's interconnection study process. Finally, we find that granting the waiver request will not have undesirable consequences, such as harming third parties. The other queue positions and any third-party interests will be in the same position as they would have been had the Project moved forward to the SIS phase and had not been removed from the queue.

The Commission orders:

Duke Kentucky's request for waiver of Section 204.3 of PJM's Tariff is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.