

167 FERC ¶ 61,267
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Hecate Energy Highland LLC

Docket No. ER19-1979-000

ORDER GRANTING REQUEST FOR LIMITED WAIVER

(Issued June 27, 2019)

1. On May 23, 2019, Hecate Energy Highland LLC (Hecate) submitted a request, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ for a limited waiver of a procedural deadline in section 212.4 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff)² to allow it to maintain its currently assigned AC1-085 queue position. As discussed below, we grant Hecate's waiver request.

I. Background

2. Under section 212.4(a) of the PJM Tariff, in order for an interconnection customer to retain its assigned queue position, within 60 days after receipt of a completed facilities study, or system impact study if no facilities study was required, the interconnection customer must execute the interconnection service agreement (ISA) and return the ISA to PJM, or request either dispute resolution under the PJM Tariff or that the ISA be filed unexecuted. Under section 212.4(b), the interconnection customer also must provide, within the same 60-day time period, unless otherwise deferred under section 212.4(c), security for the estimated costs for certain upgrades and work the transmission owner will be responsible for completing for the interconnection. Under section 212.4(c), an interconnection customer may request to defer providing security until no later than 120 days after the interconnection customer executes the ISA, provided that the

¹ 18 C.F.R. § 385.207(a)(5) (2018).

² PJM, Intra-PJM Tariffs, OATT, 212.4, OATT 212.4 Retaining Priority and Security: (3.0.0), § 212.4.

interconnection customer is required to pay a deposit of the greater of \$200,000 or 125 percent of the estimated costs that will be incurred during the 120-day period, with \$100,000 of such deposit being non-refundable. If these requirements are not met, the interconnection request “shall be deemed terminated and withdrawn.”³

II. Waiver Request

3. Hecate states that it is developing a 400 MW solar generating facility to be located in Highland County Ohio (Project) that would interconnect with Dayton Power and Light Company (DPL). Hecate explains that the Project entered PJM’s interconnection queue on September 30, 2016 and was assigned queue position AC1-085.⁴ Hecate states that PJM completed the feasibility study for the Project in February 2017 and issued the system impact study for the Project initially in November 2017 before revising it in September 2018 and October 2018. Hecate states that PJM provided it the results of the facilities study and the draft ISA on November 7, 2018. Hecate states that the facilities study specified that Hecate would be required to pay security in the amount of \$2,099,862. Hecate further states that PJM informed Hecate that, pursuant to section 212.4 of the PJM Tariff, it must execute the ISA within 60 days (i.e., by January 7, 2019), in order to maintain its queue position.

4. Hecate states that it executed the ISA on Friday, January 4, 2019, and, having elected to pay deferred security pursuant to section 212.4(c) of the PJM Tariff, wired \$200,000 to PJM.⁵ Hecate states that PJM and DPL executed the ISA on Monday, January 7, 2019, making January 7, 2019 the effective date for the ISA. Hecate states that, on January 8, 2019, PJM contacted Hecate to inform Hecate that the ISA had been executed by PJM and DPL on January 7, 2019, and that the remaining security would be due on May 6, 2019.

5. Hecate states that on April 23, 2019, an affiliate of D.E. Shaw Renewable Investments (DESRI) acquired ownership of the Project. Hecate avers that, believing that deferred security was required to be posted 120 days from the effective date of the ISA, Hecate wired \$199,862 and DESRI wired the remaining \$1,900,000 of security to PJM on May 7, 2019. Hecate states that, on May 8, 2019, PJM informed Hecate that because

³ *Id.* § 212.4(d). Under certain circumstances after such withdrawal or termination, PJM is required to reevaluate the need for facilities and upgrades indicated by the facilities study and re-determine cost responsibility for other customers for the necessary facilities and upgrades, and amend those customers’ ISAs. *Id.*

⁴ Waiver Request at 3.

⁵ *Id.* at 4.

the security had not been received by May 6, 2019, PJM would need to terminate the ISA. Hecate states that it was PJM's position that the security was due on May 6, 2019, 120 days after Hecate had executed the ISA.

6. Hecate requests a one-time limited waiver of the procedural deadline in section 212.4 of the PJM Tariff in order to allow the Project to maintain its previously-awarded queue position.⁶ Hecate requests that the Commission rule on the waiver request by June 23, 2019 to provide certainty with respect to the Project's queue position, which will allow the parties to move forward with development of the Project.⁷ Hecate states that, while Hecate paid the security on May 7, 2019, PJM terminated its ISA because PJM did not receive payment of security on May 6, 2019. Hecate also states that PJM filed to terminate the ISA on May 21, 2019 in Docket No. ER19-1913-000.

7. Hecate asserts that the Commission grants waivers of tariff provisions where: (1) the error was made in good faith; (2) the waiver is of limited scope; (3) granting waiver will remedy a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.⁸ Hecate argues that the Commission regularly grants waivers where the requesting party has immediately corrected the error and otherwise complied with requirements.⁹ Hecate also argues that the Commission has granted one-time waivers of deposit deadlines under similar circumstances.¹⁰

8. Hecate argues that its waiver request fully satisfies all four criteria and is consistent with Commission precedent.¹¹ First, Hecate states that its waiver request is made in good faith. Hecate asserts that it has complied with each step of the Tariff-based process since the Project was assigned its queue position and that it has not expressed any interest in terminating or abandoning its queue position for the Project. Hecate states that it and DESRI understood that they needed to pay deferred security and did so in full, prior to receiving notification from PJM that it had not received the security. Hecate argues that this is a matter of misconstruing the due date for payment of security by

⁶ *Id.* at 1.

⁷ *Id.* at 2, 7.

⁸ *Id.* at 5.

⁹ *Id.*

¹⁰ *Id.* (citing *Invenergy Solar Dev. N. Am. LLC*, 164 FERC ¶ 61,095 (2018); *Ne. Energy Assoc., Ltd. P'ship*, 152 FERC ¶ 61,175, at P 15 (2015)).

¹¹ *Id.* at 2, 5.

one day. Second, Hecate asserts that the waiver is of limited scope because it is a one-time, one-day modification of one procedural deadline.¹² Third, Hecate submits that extending the deadline by one day fully remedies a concrete problem. Hecate asserts that it needs to maintain its queue position for the Project in order to assure that it can meet the deadline for commercial operation of the Project under its power sale agreement with Ohio Power Company that covers 300 MW of the Project's output.¹³ Hecate argues that, absent waiver, the Project's queue position will be terminated and Hecate will need to go back to square one for a process that began over two-and-a-half years ago. Fourth, Hecate asserts that granting the requested waiver will not have any undesirable consequences or harm third parties. Hecate argues that the payment of deferred security on May 7, 2019, has had no consequence as compared to payment on May 6, 2019. Hecate believes that the one-day delay in the payment has not affected PJM's ability to move forward with the interconnection process for the Project or other projects in the PJM queue. Hecate explains that, without a waiver, the Project will lose its queue position and be set back in its development by at least one year, which would have a direct impact on those with interests in the Project, including citizens of Ohio.¹⁴

III. Notice of Filing and Responsive Pleadings

9. Notice of Hecate's filing was published in the *Federal Register*, 84 Fed. Reg. 25,796 (2019), with interventions and protests due on or before June 3, 2019. On June 3, 2019, PJM filed a timely motion to intervene. No protests or comments were filed.

IV. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), PJM's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

11. We grant Hecate's waiver request. The Commission has previously granted waiver of tariff provisions where: (1) the underlying error was made in good faith;

¹² *Id.* at 5-6.

¹³ *Id.* at 6.

¹⁴ *Id.*

(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.¹⁵

12. We find that the circumstances of Hecate's waiver request satisfy these criteria. First, we find that the error made by Hecate was in good faith. Though Hecate and DESRI understood that they needed to pay deferred security—and did so in full—they misconstrued the payment due date, which resulted in payment of the required security one day late. Second, we find that Hecate's waiver request is of limited scope because it is a one-day, one-time waiver of the procedural deadline set forth in section 212.4 of the PJM Tariff. Third, we find that granting the waiver request addresses a concrete problem by ensuring that the Project maintains its queue position in order to assure it can meet the deadline for commercial operation. 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 Hecate provided the deferred security one day earlier and PJM not terminated the ISA.

The Commission orders:

Hecate's waiver request is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁵ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).