

168 FERC ¶ 61,009
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Black Rock Wind Force, LLC

Docket No. ER19-2107-000

ORDER GRANTING REQUEST FOR LIMITED WAIVER

(Issued July 8, 2019)

1. On June 11, 2019, Black Rock Wind Force, LLC (Black Rock) 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 206.2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff)² to allow its project to maintain its currently assigned AD2-180 PJM queue position. As discussed below, we grant Black Rock's waiver request.

I. Background

2. Under section 206.2 of the PJM Tariff, for an interconnection customer to retain its assigned queue position, within 30 days of the issuance of the system impact study (SIS), PJM must be in receipt of: (i) all past due amounts of the actual system impact study costs exceeding the system impact study deposits, if any; (ii) the executed facilities study agreement (FSA); and (iii) the facilities study deposit required under section 206. If any of these requirements are not met, the interconnection request "shall be deemed terminated and withdrawn."³

II. Waiver Request

3. Black Rock states that it is an indirect, wholly-owned subsidiary of Clearway Energy Group LLC (Clearway) that is developing a 110 MW wind facility in Mineral

¹ 18 C.F.R. § 385.207(a)(5) (2018).

² PJM, Intra-PJM Tariffs, OATT, 206.2, OATT 206.2 Retaining Queue Position (1.0.0), § 206.2.

³ *Id.*

County, West Virginia (Project). The Project will be interconnected to transmission facilities owned by Monongahela Power Company and operated by PJM.⁴ Black Rock states that its Project entered PJM's interconnection queue in March 2018 and was assigned queue position AD2-180. Black Rock explains that PJM completed the feasibility study in July 2018 and that the SIS was issued on April 24, 2019.⁵

4. Black Rock states that it sent its executed FSA to PJM on May 17, 2019, a week prior to the May 24, 2019 deadline specified in section 206.2 of the PJM Tariff. Black Rock states that it noted in that same email correspondence that it was arranging for the FSA deposit payment.

5. Black Rock explains that PJM sent Black Rock a subsequent email on May 21, 2019, which stated that a new project manager was handling Black Rock's interconnection request. Black Rock states that on May 22, 2019, it resent the executed FSA to the new project manager.⁶

6. Black Rock states that on May 17, 2019 it submitted a request to its accounting department for the \$100,000 FSA deposit to be paid to PJM no later than May 23, 2019, and continued to follow up with its accounting department, stressing the urgency of the payment request. Black Rock avers that its accounting department informed it that the wire transfer to PJM would be scheduled to go out on May 24, 2019.

7. Black Rock states that on June 4, 2019, it learned that the deposit payment had not been made, because of issues that had unexpectedly arisen during the transition from NRG's accounts payable services to Black Rock's new accounts payable system.⁷ Black

⁴ Waiver Request at 2. Clearway was formed as a vehicle to acquire NRG Energy, Inc.'s (NRG) renewable business in 2018. *Id.* at 4.

⁵ *Id.* at 2-3.

⁶ *Id.* at 3.

⁷ *Id.* Black Rock explains that on May 15, 2019, Clearway assumed standalone responsibility for certain internal administrative, accounting and payment processing functions that were previously provided by NRG under a transition services agreement that had been in place since NRG sold its renewable business in 2018. Black Rock further explains that Clearway experienced a temporary delay in the processing of certain payments for a subset of its payees because the related payment software could not fully reconcile the payment details and therefore withheld the completion of the payment. Black Rock states that due to the software issues, the wire transfer delays were not immediately apparent and Clearway's deposit payment for Black Rock was one of several requests that were temporarily delayed. *Id.* at 4.

Rock states that upon becoming aware of the issue, Clearway corrected the matter and issued the required Black Rock FSA deposit payment to PJM the following day, June 5, 2019. Black Rock states that on June 7, 2019, PJM issued a notice that the Project had been withdrawn from the queue for failure to post its deposit by the deadline.

8. Black Rock requests a waiver of the procedural deadline in section 206.2 of the PJM Tariff to allow its Project to maintain its assigned AD2-180 queue position.⁸ Black Rock requests that the Commission issue an order granting the waiver by July 8, 2019, or as early as practicable thereafter, to provide certainty to Black Rock and PJM and to allow PJM to continue with the Project's facilities study as soon as possible.⁹

9. Black Rock argues that the Commission has granted waivers of procedural deadlines where the party requesting the waiver has immediately corrected the error and otherwise complied with all other tariff requirements.¹⁰ Black Rock also argues that the Commission has granted one-time, limited waivers of study deposit deadlines in similar circumstances.¹¹

10. Black Rock argues that its waiver request satisfies the Commission's waiver criteria and is consistent with Commission precedent.¹² First, Black Rock asserts that it acted in good faith. Black Rock states that it submitted its executed FSA a week prior to the deadline and took measures to make sure that the FSA deposit would be forwarded to PJM in a timely manner, which it indicated when submitting its executed FSA to PJM.¹³ Black Rock further states it initiated an internal payment request a week in advance of the due date and made subsequent inquiries with accounting personnel, emphasizing the urgency of the requested payment to ensure that the wire transfer would be scheduled through the accounts payable software on a timely basis. Black Rock asserts that the

⁸ *Id.* at 1-2, 4.

⁹ *Id.* at 2, 8.

¹⁰ *Id.* at 4-5 (citing *Dominion Energy Generation Mktg., Inc.*, 162 FERC ¶ 61,281 (2018); *Robinson Power Co., LLC*, 162 FERC ¶ 61,092 (2018); *Aurora Generation, LLC*, 162 FERC ¶ 61,076 (2018); *Springdale Energy, LLC*, 162 FERC ¶ 61,077 (2018)).

¹¹ *Id.* at 5 (citing *Renewable Energy Aggregators Inc.*, 167 FERC ¶ 61,013, at P 12 (2019); *Invenergy Solar Dev. N. Am. LLC*, 164 FERC ¶ 61,095, at P 13 (2018); *Ne. Energy Assoc., A Ltd. P'ship*, 152 FERC ¶ 61,175, at P 15 (2015); *First Solar Dev., LLC*, 161 FERC ¶ 61,256, at PP 21-22 (2017)).

¹² *Id.* at 2, 4-5.

¹³ *Id.* at 5.

change in Clearway's responsibility for accounting and payment processing functions on May 15, 2019, and related payment software issues resulted in the delay of the FSA deposit payment to PJM not being readily apparent. Black Rock states that it promptly corrected the error and issued the FSA deposit payment on June 5, 2019.¹⁴

11. Second, Black Rock argues that the requested waiver is limited in scope because it only slightly modifies a single procedural deadline set forth in section 206.2 of the PJM Tariff.¹⁵

12. Third, Black Rock contends that granting the requested waiver remedies a concrete problem by allowing the Project to maintain its existing queue position. Black Rock states that as its Project has moved through the interconnection process, it has met all of its obligations, including the feasibility study and SIS agreement deposits. Black Rock states that without a waiver, the Project will not be able to maintain its queue position and proceed into the facilities study phase of PJM's study processes.¹⁶

13. Fourth, Black Rock asserts that granting the limited waiver will not have any undesirable consequences or harm any party. Black Rock asserts that it understands the importance of PJM's deadlines and that it has been diligent in meeting its obligations to PJM with respect to its interconnection request, having taken all of the steps necessary to execute the study agreements, submit technical data, and otherwise meet its financial obligations to PJM.¹⁷ Black Rock states that when it learned of the accounting malfunction in processing the FSA deposit, it immediately sent the required funds to PJM the following day, and filed a waiver request within two business days after being told that it had been withdrawn from the queue.¹⁸ Black Rock argues that a seven business day delay in PJM's receipt of the FSA deposit should not affect PJM's queue processing ability and not have any undesirable consequences.¹⁹

¹⁴ *Id.* at 6. Black Rock also states that prior to learning of the wire transfer delay, Black Rock continued its ongoing communication with PJM regarding SIS questions and reached out to the new PJM project manager. *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 6-7.

¹⁹ *Id.* at 7.

III. Notice of Filing and Responsive Pleadings

14. Notice of Black Rock's filing was published in the *Federal Register*, 84 Fed. Reg. 28,296 (2019), with interventions and protests due on or before June 21, 2019. On June 20, 2019 and June 21, 2019, PJM and Monitoring Analytics, LLC, acting in its capacity as the PJM Independent Market Monitor, respectively, filed timely motions to intervene. No protests or comments were filed.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

16. We grant Black Rock's waiver request. 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.²⁰

17. We find that the circumstances of Black Rock's waiver request satisfy these criteria. First, we find that the error made by Black Rock in failing to timely make the required deposit payment was made in good faith. Black Rock submitted its executed FSA a week prior to the deadline. Though Black Rock understood the need to make the FSA deposit by the deadline and took measures to ensure that the FSA deposit would be forwarded to PJM in a timely manner, an internal payment processing malfunction resulted in the deposit not being timely paid. Black Rock corrected the error within one day of learning of the error, before being notified by PJM that it had not received the payment. Second, we find that Black Rock's waiver request is limited in scope, as it is a one-time waiver of a procedural deadline relating to only one of several interrelated deadlines that Black Rock otherwise met, including contracts and data that clearly indicated Black Rock's intent to proceed. Third, we find that granting the waiver request addresses a concrete problem because it will enable Black Rock to proceed with the Project's interconnection request, remain in the queue, and continue in the facilities study 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

²⁰ 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).

queue positions and any third-party interests will be in the same position as they would have been had Black Rock's Project moved forward and not removed from the queue.

The Commission orders:

Black Rock'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.