

168 FERC ¶ 61,019
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Stonegate Power, LLC

Docket Nos. EL19-9-000
EL19-9-001

v.

PJM Interconnection, L.L.C.

ORDER DENYING REHEARING AND DISMISSING REQUEST FOR STAY

(Issued July 16, 2019)

1. On November 1, 2018, Stonegate Power, LLC (Stonegate) filed a complaint against PJM Interconnection, L.L.C. (PJM) arguing that PJM arbitrarily, unreasonably, and unlawfully limited to one year Stonegate's right to suspend its Gateway Energy Center (GEC) project,¹ in violation of PJM's Open Access Transmission Tariff (Tariff), the PJM *pro forma* Interconnection Construction Service Agreement (ICSA),² the GEC Interconnection Construction Service Agreement (GEC ICSA), PJM Manual 14C, and PJM's confirmation in January 2017 that the GEC project had 695 days of suspension remaining. Separately, Stonegate filed a request for interim relief in the form of an emergency order to stay any adverse action by PJM pending the issuance of a final order on the complaint.

2. On November 14, 2018, Stonegate filed a notice of withdrawal of its request for interim relief, explaining that PJM informed Stonegate on November 12, 2018, that the circumstances giving rise to its one-year suspension were no longer applicable and that the GEC project could re-enter suspension. On November 29, 2018, in response to

¹ Stonegate listed the queue position of the GEC project as PJM Queue Position R11/Z2-109-AC1-029 (hereinafter referred to as queue position R11). Stonegate Complaint at 1.

² PJM, Intra-PJM Tariffs, OATT, Attachment P (3.1.0).

PJM's motion to dismiss the complaint, Stonegate filed an answer arguing that, while certain of the issues and requests for relief in the complaint are moot, it still sought an extension of its milestone deadlines as a result of PJM's unlawful action to limit the GEC project's suspension period to one year.

3. In an order dated April 4, 2019, the Commission dismissed Stonegate's complaint as moot in part and denied the complaint in part.³ On May 3, 2019, Stonegate timely filed a request for rehearing of the Complaint Order and a request for stay of the Complaint Order pending rehearing. For the reasons discussed below, we deny Stonegate's request for rehearing and dismiss as moot Stonegate's request for stay of the Complaint Order.

I. Background

A. Stonegate's Complaint

4. In its complaint, Stonegate stated that the GEC project first entered PJM's transmission queue in September 2006, under different ownership, and was assigned queue position R11.⁴ Stonegate stated that, in February 2016, it approached Gateway Holdings LLC, a subsidiary of NextEra, about acquiring the GEC project. Stonegate stated that Gateway Energy Center, LLC, owned the GEC project and the electric grid interconnection rights by virtue of a fully executed Interconnection Service Agreement (ISA)⁵ and the fully executed GEC ICSA, both among PJM, Gateway Energy Center, LLC, and Jersey Central Power & Light Company.⁶ Stonegate stated that it acquired the GEC project on June 2, 2016.⁷

³ *Stonegate Power, LLC v. PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,014 (2019) (Complaint Order).

⁴ Stonegate Complaint at 17, n.55; *id.*, Attachment B at 1.

⁵ PJM SA No. 3476, PJM SA No. 3476 Among PJM, Gateway Energy, LLC and JCPL (2.0.0).

⁶ Stonegate Complaint, Attachment A, Affidavit of Michael DeFelice on Behalf of Stonegate at P 8. In September, 2015, PJM filed with the Commission the GEC ICSA. The GEC ICSA, which was not protested, was accepted via delegated letter order on October 15, 2015, with an effective date of August 19, 2015. *PJM Interconnection, L.L.C.*, Docket No. ER15-2675-000 (Oct. 15, 2015) (delegated order).

⁷ Stonegate Complaint at 10.

5. Stonegate stated that, on January 9, 2017, PJM confirmed via email that the GEC project had 695 days of exercisable suspension time remaining.⁸ Stonegate stated that, on January 24, 2017, it notified PJM of its intention to suspend the GEC project for up to 695 days,⁹ and on January 25, 2017, PJM confirmed receipt of this request. Stonegate stated that, in reliance on PJM's confirmation of remaining suspension time, it established a development plan based on the GEC project being in suspension for 695 days, and financial investors and equipment suppliers relied on this development plan.¹⁰

6. Stonegate further stated that, on September 14, 2017, PJM notified Stonegate that, pursuant to Schedule M of the GEC ICSA, PJM was limiting the GEC project's suspension period to one year, ending on January 24, 2018, due to the suspension request's material adverse impact on a later-queued project (Notice of One-Year Suspension).¹¹ Stonegate stated that PJM informed it that the later-queued project was

⁸ Stonegate Complaint, Attachment MD-04 at 4; *see also* Stonegate Complaint at 9-10.

⁹ Stonegate Complaint, Attachment MD-03.

¹⁰ Stonegate Complaint at 10-11.

¹¹ Stonegate Complaint at 10-11 and Attachment MD-07. Schedule M of the GEC ICSA, which includes non-conforming language governing the suspension rights with respect to the GEC project, provides as follows:

Under section 3.4.2 of Appendix 2 of the ICSA, Interconnection Customer may request one or more suspensions of work for a cumulative period of up to (i) three years for an Interconnection Request for which the Transmission Provider determines that such suspension would not be deemed a Material Modification, or (ii) one year for an Interconnection Request for which the Transmission Provider determine that such suspension would be deemed a Material Modification. To date, the Queue No. R11 project has used 400 days of suspension time. Interconnection Customer has 695 days remaining to suspend work if the Interconnection Customer seeks to exercise its suspension rights under the ICSA.

PJM SA No. 3477 among PJM, Gateway Energy Center and JCPL, Schedule M (0.0.0) (GEC ICSA). A "Material Modification" is defined as "[a]ny modification to an Interconnection Request that has a material adverse effect on the cost or timing of

owned by CPV Shore, LLC (CPV Shore) and the material adverse impact was the additional carrying cost of a letter of credit that CPV Shore had posted with PJM to secure construction of a network upgrade assigned to CPV Shore's project (the n3647 network upgrade).¹² According to Stonegate, PJM's Notice of One-Year Suspension impeded Stonegate's effort to raise the final financing for the GEC project, blocking its ability to bring the project to completion.¹³

7. Based on these asserted facts, Stonegate contended that PJM violated its Tariff when it notified Stonegate that it would be limiting the suspension period to one year because Section 3.4 of Appendix 2 of PJM's Tariff states that interconnection customers whose projects entered the New Services Queue prior to February 1, 2011, may request one or more suspensions of work for a cumulative period of up to three years.¹⁴ Stonegate also contended that PJM unreasonably relied on Schedule M of the GEC ICSA for authority to limit the suspension period for the GEC project to one year, and that the Commission should have, when it accepted the non-conforming GEC ICSA, rejected the non-conforming language as arbitrary, unjust, unreasonable, and unlawful.¹⁵

Interconnection Studies related to, or any Network Upgrades or Local Upgrades needed to accommodate, any Interconnection Request with a later Queue Position." PJM, OATT, Definitions – L - M - N (19.0.0).

¹² *Id.* at 11. PJM has represented that once it "identified the material impact to the CPV project, it notified Stonegate, on September 14, 2017, that the GEC Project's suspension was limited to one year (consistent with the GEC ICSA, Schedule M) and would therefore end on January 24, 2018." PJM Motion to Dismiss at 5.

¹³ Stonegate Complaint at 24. Stonegate asserted that numerous equity investment and debt lending institutions had declined to proceed further until the project was placed back into suspension in order to avoid a notice of default. *Id.*

¹⁴ *Id.* at 29-30. Section 3.4 of Appendix 2 of Attachment P of PJM's Tariff provides different suspension rights depending upon when the interconnection request entered the New Services Queue. For projects that entered the New Services Queue prior to February 1, 2011, an interconnection customer may request one or more suspensions of work for a cumulative period of up to three years. Interconnection customers with projects that entered the queue after February 1, 2011 have the same rights, except if PJM determines that such suspension would be deemed a Material Modification, in which case the suspension period is limited to one year. PJM, Intra-PJM Tariffs, OATT, Attachment P, Appendix 2, Section 3.4 (3.0.0) (Suspension).

¹⁵ Stonegate Complaint at 18.

8. Stonegate also argued that PJM's Tariff does not allow it to revoke or limit a suspension once confirmed.¹⁶ Stonegate further argued that there was no material adverse effect on CPV Shore because an increase to the cost of financing of a letter of credit is not a cost contemplated under PJM's Tariff definition of "Material Modification."¹⁷

9. Stonegate further asserted that PJM violated its Tariff because it limited the GEC project to only a four-month suspension from the September 14, 2017 date of the Notice of One-Year Suspension. Stonegate stated that had PJM properly directed Stonegate to take the GEC project out of suspension one year from the September 2017 notification letter, it would have given the GEC project a critical additional eight months to revise its development plan and to secure final financing for the project.¹⁸ Stonegate requested that the Commission find PJM violated its Tariff in limiting the suspension period for the GEC project to one year, and find that PJM's implementation of its Tariff with respect to suspension was arbitrary, unjust, unreasonable, and unduly discriminatory and preferential.

10. As a remedy, Stonegate requested that the Commission direct PJM to extend construction milestone dates for the GEC project day-for-day for the period beginning on the date of the Notice of One-Year Suspension and ending on the date of the Commission's final ruling on this matter; affirm that the GEC project has a minimum 330 days of suspension available; and direct PJM to place the GEC project into suspension for 330 days without further limitation commencing on the date of the final ruling on this matter. Stonegate requested that the Commission grant its contemporaneous request for interim relief in the form of an emergency order (Request for Interim Relief).¹⁹ On November 14, 2018, Stonegate filed a notice of withdrawal of its Request for Interim Relief, stating that on November 12, 2018, PJM provided notice to

¹⁶ *Id.* at 34.

¹⁷ *Id.* at 39-41.

¹⁸ *Id.* at 43-44.

¹⁹ In its Request for Interim Relief, Stonegate asked for an emergency Commission Order: (1) directing PJM to take no action adverse to the GEC project pending issuance of a final order in this proceeding; (2) suspending immediately the GEC construction calendar on a day-for-day basis back to September 14, 2017 (the date of the Notice of One-Year Suspension); and (3) extending the ISA milestone dates accordingly pending issuance of a final order on Stonegate's complaint. Stonegate Request for Interim Relief at 1.

Stonegate that the n3647 network upgrade was no longer necessary and that the GEC project could re-enter full suspension.²⁰

B. Complaint Order

11. The Commission in the Complaint Order dismissed in part and denied in part Stonegate's complaint.

12. The Commission disagreed with Stonegate's assertion that there were remaining issues in Stonegate's amended complaint that either were not moot or otherwise entitled Stonegate to relief. The Commission found moot the issue of whether the CPV Shore project was materially adversely affected by suspension of the GEC project because PJM determined that the Material Modification that limited the GEC project suspension to one year was eliminated.²¹

13. The Commission also rejected Stonegate's assertions regarding (1) whether PJM violated its Tariff in applying the one-year suspension criteria for interconnection projects entering the queue on and after February 1, 2011, to a pre-February 1, 2011 queued project; (2) whether Stonegate had a right to reasonably rely on PJM's confirmation that the GEC project had 695 days of suspension remaining; (3) whether the non-conforming term added to the GEC ICSA in 2015 is reasonable and necessary; and (4) whether PJM had authority under its Tariff to revoke confirmation of a suspension. The Commission, observing that no parties protested the GEC ICSA as accepted by the Commission by delegated letter order, rejected these arguments because it found that Schedule M of the GEC ICSA is the applicable filed rate.²²

14. The Commission also observed that Section 212.5 of the Tariff provides that a project's milestones are suspended coextensively with the project itself and also provides that PJM "may reasonably extend" milestone dates under certain circumstances, which, consistent with its ability under the Tariff, PJM chose not to do here.²³ Because the Commission denied or found to be moot the remaining issues in Stonegate's complaint, the Commission also denied Stonegate's requested relief for an extension of the construction milestones.²⁴

²⁰ Stonegate Request for Expedited Ruling at 1.

²¹ Complaint Order, 167 FERC ¶ 61,014 at P 37.

²² *Id.*

²³ *Id.* at P 38 (citing PJM, OATT, 212.5, OATT, § 212.5 Milestones (0.0.0)).

²⁴ *Id.*

II. Discussion

A. Procedural Matters

15. On May 13, 2019, CPV Shore filed an answer in opposition to Stonegate's request for stay of the Complaint Order. On May 20, 2019, Stonegate filed an answer to CPV's answer.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We accept Stonegate's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. PJM's Discretion to Limit Stonegate's Suspension

a. Request for Rehearing

17. Stonegate argues that the Commission failed to consider Stonegate's arguments that PJM acted unreasonably in waiting eight months to limit the GEC project suspension to one year and that this unreasonable action merits an extension of the GEC project ISA construction milestones. Stonegate argues that, contrary to the Commission's finding, this issue is not moot because even if PJM had authority under its Tariff to limit the GEC project's suspension, PJM is liable because it exercised that authority in an unjust and unreasonable manner, to the detriment of Stonegate and the GEC project.²⁵

18. Stonegate states that it is not reasonable for PJM to wait two-thirds of the way through the first year of the GEC project suspension (i.e., eight months) to assess the effect of the suspension on other upgrades and notify Stonegate of its concerns. Stonegate asserts that, under that logic, PJM could wait until the last day before the suspension expires to announce its intent to limit the suspension to one year, thereby providing an interconnection customer notice of one day that the suspension would be limited to one year. Stonegate asserts that PJM, pursuant to its Business Manual, must conduct an assessment of whether a suspension is consistent with PJM's Tariff and will have an impact on the network upgrades to be constructed by later-queued projects at the time an interconnection customer provides notice of suspension. Stonegate states that PJM has provided no evidence that it conducted that analysis at the time of Stonegate's notice of suspension, even though PJM had the opportunity to do so when Stonegate requested confirmation that it had 695 days of suspension remaining and when Stonegate

²⁵ Request for Rehearing at 5.

notified PJM that it was placing the GEC project in suspension for the remainder of the 695-day suspension period.²⁶

19. Stonegate represents that it reasonably relied on PJM to comply with its own rules and that the Commission has often found reasonable a market participant's reliance on a regional transmission organization's Business Manual.²⁷ Stonegate describes its development plan for the GEC project as relying on the full 695-day suspension period and the remaining time for construction in the ISA to complete construction of the GEC project. Stonegate describes this reliance as reasonable given that PJM provided no contrary information about concerns with the length of suspension, and no public information on PJM's website existed to enable Stonegate or any other market participant to determine whether a project suspension would have a material adverse impact on a lower-queued project. Stonegate represents that between January 2017 and September 2017, neither a lower-queued project's construction responsibility for the n3647 network upgrade nor the specifications for the GEC project and cost of related network upgrades changed. Given PJM's unreasonable implementation of its suspension authority, Stonegate argues that an extension of the GEC ISA milestones was reasonable under either Section 212.5 of PJM's Tariff or Commission precedent.²⁸

20. Stonegate argues that the Commission failed to consider Stonegate's argument that PJM lacked authority under its Tariff to limit a suspension once confirmed. Stonegate argues that, contrary to the Commission's finding, whether PJM has authority to limit the GEC project suspension is not moot because PJM does not have authority to revoke or limit a suspension once confirmed.²⁹

21. Stonegate states that PJM provided no justification for its eight-month delay in notifying Stonegate that the suspension would materially impact a later-queued project. According to Stonegate, that delay impaired Stonegate's ability to construct the GEC project consistent with the development plan Stonegate created at the time it notified PJM of its suspension. Stonegate asserts that there is no rational connection between the Commission's finding that Schedule M of the GEC ICSA is the filed rate and the Commission's conclusion that the challenge to PJM's implementation of that tariff

²⁶ *Id.* at 8-10.

²⁷ *Id.* at 10-11 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,185, at P 74 (2010) (*MISO*), *reh'g denied*, 155 FERC ¶ 61,127, at P 32 (2016), *aff'd sub nom. Ameren Servs. Co. v. FERC*, 739 F. App'x 646 (D.C. Cir. 2018)).

²⁸ *Id.* at 11-14.

²⁹ Request for Rehearing at 5.

language is moot. Stonegate states that, even if the basis for PJM's unlawful conduct causing Stonegate's harm has dissipated, the Commission may not foreclose access to a remedy for that harm or encourage PJM to cause this harm to the detriment of all interconnection customers. Stonegate states that only an extension of milestones to restore time Stonegate lost would return it to a position to move forward with the GEC project.³⁰

22. Even if the GEC ICSA language permits PJM to limit the GEC project suspension to one year, Stonegate asserts that it was unreasonable for PJM to do so under these circumstances. Stonegate states that it and the financial partners and equipment suppliers with whom it was negotiating reasonably relied on PJM's confirmation that the GEC project was suspended. Given PJM's obligation to conduct analysis of the suspension on network upgrades and other projects at the time PJM receives notice of the suspension, Stonegate states that the revocation of its notice of suspension with less than four months left in the suspension period is inconsistent with any reasonable market expectation.³¹

b. Commission Determination

23. As discussed below, we deny rehearing. Stonegate contends that the only reasonable interpretation of PJM's Manual 14C is that PJM must conduct the assessment of whether the suspension is a Material Modification at the time the interconnection customer provides notice that it is entering suspension. Stonegate argues that it reasonably relied on PJM undertaking such analysis when it notified PJM on January 24, 2017 that it was placing the Project into suspension and that its reliance on the availability of the full 695-day suspension period was reasonable given PJM's silence following such notice. Stonegate also argues that PJM lacked authority to revoke or limit its suspension "once confirmed." Lastly, Stonegate contends that PJM acted unreasonably.³²

24. Schedule M of the GEC ICSA provides that Stonegate had "695 days remaining to suspend work," and permits Stonegate to request a three-year suspension where PJM

³⁰ *Id.* at 14-15.

³¹ *Id.* at 16-17.

³² Stonegate previously stated that the question whether PJM acted unreasonably was not relevant to its request for an extension of the Project's construction milestone deadlines. Stonegate Answer to PJM Motion to Dismiss at 10 n.34 ("Additional issues raised in the Complaint that are not as relevant to the outstanding construction milestone extension issue include . . . whether PJM provided GEC adequate advance notice of the one-year limitation . . .").

determines that the suspension would not be deemed a Material Modification.³³ Schedule M of the GEC ICSA also provides that where PJM determines that a suspension would be deemed a Material Modification, suspension is limited to one year.³⁴ Schedule M does not require that PJM's Material Modification determination be made prior to or at the time the GEC project entered suspension. Similarly, PJM's Manual 14C does not specify that PJM's Material Modification determination must be made prior to or at the time the GEC project entered suspension. Rather, Manual 14C states, in relevant part, that in the event an interconnection customer "initiates project suspension," PJM will facilitate the completion of certain tasks, including assessing the impact of Network Upgrades/baseline upgrades.³⁵ Accordingly, PJM's analysis could only take place *after* Stonegate's January 24, 2017 notice of suspension. Stonegate also does not offer any evidence that PJM was aware of such Material Modification at the time the GEC project entered suspension.

25. We also find unpersuasive Stonegate's reliance on PJM's January 9, 2017 email to Stonegate. Following a meeting held on January 5, 2017, PJM emailed Stonegate on January 9, 2017 regarding certain follow-up items from the meeting, one of which was a request for confirmation of the GEC project's available suspension time. In its January 9, 2017 email, PJM confirmed only that the GEC project "has a total of 695 days of unused suspension time (as stated in the Construction Service Agreement)."³⁶ PJM did not indicate whether Stonegate's requested suspension would entail any Material Modification. Then, on January 24, 2017, Stonegate sent a formal notice to PJM stating its intent to suspend the Project until further notice.³⁷ PJM responded the next day stating that it "received [Stonegate's] suspension notification letter, and would start the process

³³ GEC ICSA at Schedule M.

³⁴ *Id.*

³⁵ See PJM, Manual 14C, section 3.7 (13) ("In the event that an Interconnection Customer initiates project suspension, the PJM Interconnection Coordinator will facilitate the completion of the following activities in accordance with the PJM Tariff: . . . Assess impact on Network Upgrades/baseline upgrades . . .").

³⁶ Complaint, Attachment MD-02, Email from Chibuzor Ofoegbu, to Anthony Lopez-Lopez et al. (Jan. 9, 2017).

³⁷ Complaint, Attachment MD-03, Letter from David B. Himelman, to Chibu Ofoegbu (Jan. 24, 2017).

of putting the project in suspension.”³⁸ Again, PJM did not indicate whether Stonegate’s requested suspension would constitute a Material Modification.

26. Stonegate essentially argues that PJM’s January 9, 2017 email should be read to override the provisions of Schedule M. We reject this argument. The email only restates the final sentence of Schedule M the GEC ICSA, containing the remaining suspension time, and it includes an express reference to the GEC ICSA as the source of the remaining suspension time. It would be unreasonable for Stonegate to rely on PJM’s January 9, 2017 email as superseding the complete provisions of Schedule M, including the limitation in the event PJM determines the suspension would be a Material Modification. In addition, the email precedes Stonegate’s January 24, 2017 notice of suspension. PJM’s January 9, 2017 email cannot reasonably be viewed as confirmation of a notice of suspension that was sent weeks later. For the above reasons, we also find that PJM acted consistent with Schedule M of the GEC ICSA.

2. **Uncertainty and Lack of Transparency in the Interconnection Process**

a. **Request for Rehearing**

27. Stonegate argues that the Commission’s denial of Stonegate’s complaint was arbitrary and capricious because it creates significant uncertainty and lack of transparency in the interconnection process, which is inconsistent with the Commission’s goals in Order No. 845.³⁹

28. Stonegate contends that interconnection customers must have confidence that PJM will apply its market rules in a timely and reasonable manner. Stonegate states that a two- to three-year lead time is necessary to arrange financing, site acquisition, permits, project design, generating equipment procurement, and construction of the project. Stonegate asserts that because any interruption at any milestone in a project can damage that project’s ability to meet its timelines, developers must know at the start of suspension whether PJM is limiting the suspension to one year. Stonegate represents that PJM’s waiting eight months to conduct the analysis disturbed Stonegate’s ability to proceed with potential investors to raise necessary financing for the GEC project. Stonegate states that the Commission’s rejection of Stonegate’s complaint provided PJM

³⁸ Complaint, Attachment MD-04, Email from Chibuzor Ofoegbu, to David Himelman et al. (Jan. 25, 2017).

³⁹ Request for Rehearing at 5 (citing *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 (2018), *order on reh’g and clarification*, Order No. 845-A, 166 FERC ¶ 61,137 (2019)).

with unfettered discretion to disrupt project schedules, and will discourage investment in new generation in PJM.⁴⁰

29. Stonegate states that its complaint echoes concerns about market participant certainty and lack of transparency in the interconnection process that are similar to those behind the Commission's interconnection process reforms in Order No. 845.⁴¹

b. Commission Determination

30. We disagree with Stonegate's argument that the Commission's denial of Stonegate's complaint results in uncertainty and a lack of transparency in the interconnection process. As explained above, Stonegate's interconnection rights are governed by Schedule M of the GEC ICSA. Schedule M of the GEC ICSA provides that, where PJM determines that a suspension would be deemed a Material Modification, that suspension is limited to one year. PJM's Manual provides that PJM will assess the impact of Network Upgrades/baseline upgrades following the interconnection customer's initiation of project suspension.⁴² As described above, PJM restored the remaining days of suspension to Stonegate in connection with the cancellation of network upgrade n3647 and therefore resolved Stonegate's asserted loss of suspension time. Given the language in Schedule M of the GEC ICSA and PJM's Manual, we conclude that it was unreasonable for Stonegate to presume that PJM could not restrict Stonegate to a one-year suspension.

31. We also dismiss Stonegate's argument about whether the Complaint Order is consistent with the goals of Order No. 845. First, Stonegate raises this argument for the first time on rehearing. The Commission looks with disfavor on parties raising issues for the first time on rehearing, in part, because other parties are not permitted to respond to a

⁴⁰ *Id.* at 17-18.

⁴¹ *Id.* at 18-20 (citing, *e.g.*, Order No. 845, 163 FERC ¶ 61,043 at PP 19, 20, 24, 25, 37).

⁴² *See* PJM, Manual 14C, section 3.7 (13) ("In the event that an Interconnection Customer initiates project suspension, the PJM Interconnection Coordinator will facilitate the completion of the following activities in accordance with the PJM Tariff . . .").

request for rehearing.⁴³ Second, Stonegate did not allege that PJM's actions at issue violate specific requirements of Order No. 845. We disagree with Stonegate's contention that the goals of a Commission rulemaking may be enforced independent of the requirements of that rulemaking.⁴⁴

3. The GEC Project's Position in PJM's Interconnection Queue

a. Request for Rehearing

32. Stonegate argues that the Commission failed to address whether PJM misapplied to Stonegate's GEC project the language in Schedule M of the GEC ICSA limiting suspensions to one year, because the 2010 and 2011 CPV Shore projects were not later-queued than the GEC project, which was modified in 2014 and 2017.⁴⁵

33. According to Stonegate, PJM may only invoke the language in Schedule M limiting suspensions to one year if PJM determined that the suspension would have a material adverse effect on a later-queued project. Stonegate states that PJM, in determining the CPV Shore projects were later-queued, was required to find that the CPV Shore projects held queue positions that were later in time than the GEC project. Stonegate concedes that the CPV Shore projects entered the PJM interconnection queue in 2010 (queue position W4-009) and 2011 (queue position X4-005), respectively, and that the GEC project entered the PJM interconnection queue in 2006. Stonegate represents, however, that the GEC project proposed modifications to add battery storage in 2014 (queue position Z2-109) and to increase the project capacity by 20 MW in 2017 (queue position AC1-029). Stonegate argues that, given the GEC project's later modifications and queue positions compared to the CPV Shore projects, the GEC project should be considered later-queued, and PJM should not have applied the one-year suspension language in Schedule M of the GEC ICSA. Stonegate urges the Commission to extend the GEC ISA construction milestones to make Stonegate whole for the time lost

⁴³ See, e.g., *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,030, at P 15 n.10 (2009) ("The Commission has held that raising issues for the first time on rehearing is disruptive to the administrative process and denies parties the opportunity to respond."); *Allegheny Energy Supply Co., LLC*, 122 FERC ¶ 61,104, at P 6 (2008) (same); 18 C.F.R. § 385.713(d) (2018) ("The Commission will not permit answers to requests for rehearing.").

⁴⁴ PJM's filing in response to the requirements of Order No. 845 is pending before the Commission in a separate proceeding. See PJM, Order No. 845 Compliance Filing, Docket No. ER19-1958-000 (filed May 22, 2019).

⁴⁵ Request for Rehearing at 6.

in its ISA construction schedule between September 14, 2017, and the date of a final order in this proceeding.⁴⁶

b. Commission Determination

34. We dismiss Stonegate's argument that the Commission erred by not addressing whether PJM misapplied the one-year limitation in Schedule M of the GEC ICSA to the GEC project, and specifically by failing to determine whether the CPV Shore projects or the GEC project are later-queued for purposes of determining the existence of a Material Modification.

35. In its rehearing request, Stonegate argues that, if the GEC project queue position were determined by the 2014 and 2017 modifications, then these subsequent queue positions would be controlling because the GEC project's 2014 and 2017 queue positions post-date the CPV 2010 and 2011 queue positions. Stonegate asserted in its complaint that the GEC Project entered the queue in 2006 and as a result, Stonegate argued, it was entitled to suspension rights provided in the PJM Tariff to projects that entered the queue prior to February 1, 2011.⁴⁷ Stonegate also argued that, if it was subject to suspension rules in the PJM Tariff that are applicable to projects that entered the queue after February 1, 2011, PJM would have to consider the modifications to GEC to add the battery storage component and the additional capacity as giving it new queue dates in 2014 and 2017.⁴⁸

36. As explained in the Complaint Order, there is no need to determine whether a Material Modification exists because "PJM determined that the Material Modification that limited the GEC project suspension to one year was eliminated."⁴⁹ Because PJM restored suspension time to Stonegate, and Stonegate's request for a suspension beyond one year is no longer a live issue, determining at this point whether the GEC project is later-queued than the CPV Shore projects would not alter the outcome of PJM's response to Stonegate's requests. And, in any event, we reaffirm the Commission's finding that Schedule M of the GEC ICSA, not the *pro forma* Tariff, is the applicable filed rate.⁵⁰

⁴⁶ *Id.* at 21-23.

⁴⁷ Complaint at 17.

⁴⁸ *Id.* at 26.

⁴⁹ Complaint Order, 167 FERC ¶ 61,014 at P 37.

⁵⁰ *Id.* P 37 & n.55 (noting the absence of any protests to the non-conforming Schedule M).

Moreover, Stonegate does not provide any support for its assertion that its 2014 and 2017 modifications should be controlling for purposes of determining the GEC Project's queue position.⁵¹ Given this lack of support, together with Stonegate's assertion in its complaint that the GEC Project entered the queue in 2006, we reject Stonegate's arguments.⁵²

4. Extension of Construction Milestones under Commission Policy

a. Request for Rehearing

37. Stonegate argues that the Commission failed to consider Stonegate's argument that the extension of ISA construction milestones fulfills the Commission's long-held policy of granting extensions where there is no harm to lower-queued projects and the evidence demonstrates significant progress toward project completion.⁵³

38. Stonegate argues that the Commission in the Complaint Order departed from Commission precedent in *Lakeswind*⁵⁴ and *Illinois Power*.⁵⁵ Stonegate interprets this precedent as permitting extension of milestones where a lower-queued project will not be harmed and, where there is harm, permitting extension of milestones where the requesting party takes action that mitigates such harms and has made progress in construction.⁵⁶

⁵¹ Stonegate's obligation is to "set forth specifically the ground or grounds upon which" its request for rehearing is "based." 16 U.S.C. § 825l(a) (2012). *See also Constellation Energy Commodities Group, Inc. v. FERC*, 457 F.3d 14, 22 (D.C. Cir. 2006) ("Each quoted passage states a conclusion; neither makes an argument. Parties are required to present their arguments to the Commission in such a way that the Commission knows 'specifically . . . the ground on which rehearing [i]s being sought.'").

⁵² Complaint at 17.

⁵³ Request for Rehearing at 6.

⁵⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,008 (2011) (*Lakeswind*), *order on reh'g*, 141 FERC ¶ 61,097 (2012).

⁵⁵ *Illinois Power Co.*, 120 FERC ¶ 61,237 (2007) (*Illinois Power*).

⁵⁶ Request for Rehearing at 23-25 (citing *Lakeswind*, 137 FERC ¶ 61,008 at PP 25 & n.26, 28-29; *Illinois Power*, 120 FERC ¶ 61,237 at P 22 n.23).

39. As relevant here, Stonegate states that PJM has determined that the GEC project will harm no lower-queued project because the n3647 network upgrade is no longer necessary. Stonegate states that its offer to compensate CPV Shore for the increased carrying costs of a letter of credit mitigated PJM's stated alleged harm to CPV Shore. Stonegate also states that CPV Shore's alleged harm would increase were the GEC project to leave the queue, and that increased carrying costs from a letter of credit are indirect costs that do not constitute a Material Modification under Schedule M of the GEC ICSA. Stonegate represents that, as of November 1, 2018, it has spent over \$13 million developing the GEC project and has entered into long-term agreements with municipal entities. According to Stonegate, those agreements include (1) a 30-year financing agreement with payments to the Borough of Sayreville, New Jersey (Sayreville) totaling \$60 million; (2) an agreement with Sayreville to provide water to the GEC project for 35 years; and (3) a redevelopment agreement with the Sayreville Economic Redevelopment Agency that includes quarterly fees paid through the period of development and construction. Stonegate represents that it has conducted all pre-construction activities for the GEC project and only needs construction financing to complete substantial site work, order generating equipment, and build the plant. Like the project delayed by restudies conducted by the Midwest Independent Transmission System Operator, Inc., in *Lakeswind*, Stonegate argues that the Commission should grant an extension of milestones.⁵⁷

b. Commission Determination

40. We find unpersuasive Stonegate's argument that *Lakeswind* and *Illinois Power* establish a long-standing Commission policy of granting milestone extensions. In more recent cases in both the PJM and MISO regions, the Commission has accepted notices of termination in light of missed deadlines.⁵⁸ Moreover, the cases to which Stonegate cites

⁵⁷ *Id.* at 25-28 (citing, e.g., *Lakeswind*, 137 FERC ¶ 61,008 at PP 14-15, 25, 27-30).

⁵⁸ See *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,243, at P 19, *reh'g denied*, 164 FERC ¶ 61,206 (2018) (accepting PJM's notice of termination because PJM was able to demonstrate, over the interconnection customer's objection, that the three year suspension period contained in PJM's wholesale market participation agreement had expired); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,172, at P 35 (2016) (accepting MISO's notice of termination because the Generation Interconnection Procedures expressly preclude extension of the commercial operation date beyond three years); *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,198, at P 28 (2014) (finding that the interconnection customer failed to meet a required milestone under the interconnection agreement and that Commission precedent supports acceptance of a notice of termination if the applicant demonstrates that the proposed termination is not

are distinguishable on their facts from Stonegate's situation. In those cases, the regional transmission organization or independent system operator had sought to terminate an interconnection agreement based upon a missed milestone. Here, Stonegate still had 160 days of suspension remaining on the day it filed its request for rehearing. Construction milestones were also extended coextensively.⁵⁹

5. Request for Stay

a. Stonegate's Request

41. Stonegate requests a stay of the Complaint Order's denial of Stonegate's complaint to enjoin PJM from declaring Stonegate and the GEC project in default of the GEC ISA milestones or from terminating the GEC ISA and ICSA pending potential favorable Commission action on Stonegate's request for rehearing.⁶⁰

42. Stonegate states that the first major construction milestone in the GEC ISA must be satisfied by mid-October 2019, and Stonegate will be unable to meet the first GEC ISA construction milestones unless the Commission issues an order on rehearing within a month of Stonegate's rehearing request. To meet that milestone, Stonegate states that it must be able to raise the final construction financing necessary to complete the GEC project. Stonegate represents that its financial partners would not proceed with negotiations unless and until the GEC project was returned to suspension and the ISA milestones were extended.⁶¹

43. Stonegate alleges that PJM has previously stated that it would declare Stonegate in default if it fails to meet any construction milestones. Stonegate states that a declared default "would irreversibly doom the project by triggering a cascade of events that would in . . . all likelihood result in the cancellation of the project, loss of a viable source of clean, efficient and lower-cost power for New Jersey consumers, and ultimately, the bankruptcy and dissolution of Stonegate, GEC and other affiliate companies connected to

unjust, unreasonable, or unduly discriminatory or preferential, or if it is consistent with the public interest).

⁵⁹ See Complaint Order, 167 FERC ¶ 61,014 at P 35 (citing PJM Motion to Dismiss at 7).

⁶⁰ Request for Stay at 1-2.

⁶¹ *Id.* at 3.

the GEC project.”⁶² Stonegate argues that no other party would be substantially harmed by a grant of stay pending rehearing because PJM has already declared no other project as being impacted by the GEC project entering suspension and PJM itself would suffer no harm in its processing of interconnection requests.⁶³

44. Stonegate argues that granting stay of the April 4 Order would protect the public interest “in access to new, clean, efficient and lower-cost supplies of electricity” and by allowing the GEC project to remain viable pending rehearing.⁶⁴ Stonegate describes cancellation of the GEC project as harming the citizens of Sayreville, New Jersey, given the GEC project’s redevelopment of a former landfill site, fees paid to the Borough of Sayreville, and employment opportunities. In addition, Stonegate describes cancelling the GEC project as harmful to all electricity consumers in New Jersey given the project’s location in a PJM region with chronically-constrained transmission facilities and insufficient local generating capacity that lead to higher capacity market clearing prices than those in unconstrained areas.⁶⁵

b. CPV Shore Answer

45. CPV Shore argues that the Commission should not grant a stay of the Complaint Order. CPV Shore states that a stay would put the CPV Shore projects in a confusing and uncertain position, raising the possibility that PJM could reverse its earlier determination and impose on CPV Shore cost responsibility for network upgrade n3647. CPV Shore asserts that granting a stay would provide private benefits to Stonegate at the expense of CPV Shore and PJM and tenuous interconnection rights to which the Commission has already determined Stonegate is not entitled.⁶⁶

c. Stonegate Answer

46. Stonegate concedes that PJM’s November 2018 determinations that the n3647 network upgrade was unnecessary and that CPV was no longer responsible for that network upgrade mooted Stonegate’s suspension request. Stonegate argues, however, that its request for extension of construction milestones was not moot. Stonegate asserts

⁶² *Id.* at 6.

⁶³ *Id.* at 8-9.

⁶⁴ *Id.* at 9.

⁶⁵ *Id.* at 9-11.

⁶⁶ CPV Shore Answer to Request for Stay at 1-3.

that neither the Complaint Order nor any pleadings in this proceeding challenged PJM's decision to cancel the network upgrade or CPV's cost responsibility for it. Consequently, Stonegate states that a stay of the Complaint Order would not affect those decisions by PJM or affect CPV's cost responsibility. Stonegate maintains that a stay would only prevent PJM from declaring Stonegate in default of construction milestones or terminating the GEC ISA until Stonegate's rehearing request is resolved.⁶⁷

d. Commission Determination

47. Because we deny Stonegate's request for rehearing of the Complaint Order, we dismiss as moot Stonegate's request for stay of the Complaint Order pending rehearing.

The Commission orders:

(A) Stonegate's request for rehearing of the Complaint Order is hereby denied, as discussed in the body of this order.

(B) Stonegate's request for stay of the Complaint Order is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶⁷ Stonegate Answer to CPV Shore Answer at 3-6.