

168 FERC ¶ 61,074  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Fresh Air Energy II, LLC

Docket No. ER19-1801-000

ORDER DENYING REQUEST FOR WAIVER

(Issued August 1, 2019)

1. On May 7, 2019, Fresh Air Energy II, LLC (Fresh Air) submitted a request, pursuant to Rule 207(a)(5) of the Commission’s regulations,<sup>1</sup> for a one-time, limited waiver of a data-submission deadline in section 204.3 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff)<sup>2</sup> to allow its Brunswick PV1 project (Project) to remain in the interconnection queue with its currently assigned AE1-135 queue position. As discussed below, we deny Fresh Air’s waiver request.

**I. Background**

2. Under section 204.3 of the PJM Tariff, upon completion of an interconnection feasibility study, PJM must tender a system impact study (SIS) agreement to the interconnection customer. 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 If these requirements are not met, the “Interconnection Request shall be deemed terminated and withdrawn.”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) (2018).

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

<sup>3</sup> *Id.* Section 204.3 also provides, however, that in the event certain information, such as the machine modeling data, “is provided and deemed to be deficient by [PJM], Interconnection Customer may provide additional information acceptable to [PJM] within 10 Business Days.”

## II. Request for Waiver

3. On May 7, 2019, Fresh Air submitted a request for a one-time, limited waiver of the deadline in section 204.3 of the PJM Tariff for submitting machine modeling data to initiate the SIS process. Fresh Air states that the waiver is needed so that its Project can be included in the SIS process based on its original assigned queue position, AE1-135.<sup>4</sup> The Project is a 200 MW-ac solar and DC-coupled storage facility that is being built within PJM's footprint in Greensville, Virginia. Fresh Air states that it initiated the interconnection process for the Project on September 18, 2018, that the feasibility study process started on October 16, 2018, and that PJM completed the feasibility study on January 31, 2019.

4. Fresh Air states that PJM delivered the feasibility study results on January 31, 2019, along with a cover letter and a copy of the SIS agreement, with instructions that the \$100,000 deposit and SIS Agreement were due by close of business on Monday, March 4, 2019.<sup>5</sup> According to Fresh Air, it submitted the SIS agreement and the \$100,000 deposit along with other information on February 28, 2019, four calendar days before the material was due.<sup>6</sup> Fresh Air explains that it reached out via email to PJM to confirm that PJM had received the documentation, but did not receive a response by the close of business on the March 4, 2019 due date.<sup>7</sup> Fresh Air states that, on March 13, 2019, PJM called Fresh Air, asking about the machine modeling data required under section 204.3. Fresh Air states that while it initially thought it had submitted the data, upon further investigation, Fresh Air determined that the data was not submitted and informed PJM of this. According to Fresh Air, no more than three hours later that same day, it submitted the machine modeling data to PJM.<sup>8</sup> Fresh Air states that the Project was withdrawn from the PJM queue effective March 19, 2019, for failure to submit the

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<sup>4</sup> Waiver Request at 3.

<sup>5</sup> *Id.* at 4. Fresh Air notes that the Project is its first project to reach this stage in the PJM interconnection process. *Id.* at 4 n.8.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.* at 5, Ex. C, *E-mail from Shawn Grimsley, Fresh Air to Robert Price, PJM* (Mar. 4, 2019 at 3:42pm). Fresh Air states it received automated email reminders on Feb. 25, 2019 and Feb. 28, 2019. *Id.* at 5 & n.10, Ex. D, *E-mail from donotreply@pjm to Shawn Grimsley, Fresh Air* (Feb. 25, 2019 at 2:00pm, and Feb. 28, 2019 at 2:00pm).

<sup>8</sup> *Id.* at 5, Ex. E, *Email from PJM Queue Point to Shawn Grimsley, Fresh Air* (Mar. 13, 2019 at 3:34pm).

SIS machine modeling data by the due date.<sup>9</sup> According to Fresh Air, it informed PJM that it would “move forward on a waiver of section 204.3 of the PJM [Tariff].”<sup>10</sup>

5. Fresh Air states that it recognizes that the Commission will grant waiver of tariff deadlines under the following standards: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) granting the waiver would remedy a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.<sup>11</sup> Fresh Air contends that the requested waiver meets these standards<sup>12</sup> and follows Commission precedent granting tariff waiver under similar facts.<sup>13</sup>

6. First, Fresh Air asserts that its underlying error was made in good faith. Fresh Air states that its failure to submit the machine modeling data on March 4, 2019 was an error, not a “covert effort to skirt” the PJM Tariff requirements.<sup>14</sup> Fresh Air states that it timely paid the required \$100,000 deposit and submitted the executed SIS agreement. Fresh Air states that it reached out to PJM personnel prior to the due date with questions regarding the feasibility study results and next steps.<sup>15</sup> Fresh Air contends that it submitted the missing machine modeling data within three hours after receiving a call from PJM about the missing data. Fresh Air states that the Commission has previously found good faith under similar circumstances.<sup>16</sup>

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<sup>9</sup> *Id.* at 5-6, Ex. G, *E-mail from Marcia Gritmon, PJM to Shawn Grimsley, Fresh Air* (Mar. 19, 2019 at 2:24pm).

<sup>10</sup> *Id.* at 6; *see also id.* at Ex. H, *E-mail from Mike Wallace, Fresh Air to Robert Price, PJM* (Mar. 19, 2019 at 9:46am).

<sup>11</sup> *Id.* at 6.

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

<sup>13</sup> *Id.* at 1 (citing *Ameresco, Inc.*, 167 FERC ¶ 61,077 (2019) (*Ameresco*)).

<sup>14</sup> *Id.* at 6-7.

<sup>15</sup> *Id.* at 7.

<sup>16</sup> *Id.* (citing *Ameresco*, 167 FERC ¶ 61,077 at P 17 (*Ameresco, Inc. (Ameresco)* submitted the required data one day after learning of the error from PJM’s notification that the data had not been submitted); *First Solar Dev., LLC*, 161 FERC ¶ 61,256, at P 21 (2017) (*First Solar*); *Aragonne Wind, LLC*, 145 FERC ¶ 61,106, at P 18 (2013) (*Aragonne Wind*) (granting waiver and finding good faith where requesting party missed

7. Second, Fresh Air argues that the waiver request is of limited scope, as it would be only a one-time limited extension of the deadline, and limited to the narrow circumstances of this proceeding. Fresh Air explains that it timely submitted its executed agreement and deposit, and immediately remedied the missing machine modeling data. Fresh Air also argues that the waiver does not expand the scope of waivers previously granted by the Commission and thus would create no new waiver precedent.<sup>17</sup>

8. Third, Fresh Air contends that granting the waiver request would resolve a “concrete and narrow problem” by waiving a specific portion of the PJM Tariff so that Fresh Air can proceed with its interconnection request.<sup>18</sup> Fresh Air states that it is reaching out to the Commission for the first time to solve such a problem because, without the requested waiver, it would need to restart the PJM interconnection process, thereby delaying the Project six to 12 months.<sup>19</sup>

9. Finally, Fresh Air asserts that the waiver will not harm any third parties. Fresh Air states that it is not attempting to jump ahead of any PJM market participant in the interconnection queue; and is seeking only to be put back into the queue position that it would have continued to have but for the error in timely providing the machine modeling data.<sup>20</sup> Fresh Air argues that the business expectations of PJM market participants did not change because Fresh Air did not submit the machine modeling data on March 4, 2019. Fresh Air asserts that there was only a nine-day period in which the data was not provided. Fresh Air argues that market participants recognize that there is generally a 10 business day cure period before an entity is terminated from the queue if “deficient”

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a deadline due to failing to update its internal alert system, but attempted to correct the error the very next day)).

<sup>17</sup> *Id.*

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

<sup>19</sup> *Id.* at 7-8. Fresh Air states that it started the interconnection process over by submitting a new interconnection request on March 13, 2019, which was assigned queue position AE2-60 and is currently in the feasibility stage. *Id.* at 8 n.19.

<sup>20</sup> *Id.* at 8 (citing *Ameresco*, 167 FERC ¶ 61,077 at P 17 (finding that the waiver request will not have undesirable consequences, such as harming third parties, because “[t]he other queue positions and any third-party interests will be in the same position as they would have been had Ameresco’s Projects moved forward to the SIS phase and had not been removed from the queue.”)).

machine modeling data is provided to PJM.<sup>21</sup> Fresh Air states that it cured its deficiency by March 13, 2019, well within the 10 business day cure period.

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

10. Notice of Fresh Air's filing was published in the *Federal Register*, 84 Fed. Reg. 21,338 (2019), with interventions and protests due on or before May 28, 2019. On May 28, 2019, PJM filed a timely motion to intervene and protest.

11. On June 10, 2019, Fresh Air filed a motion to answer and answer to PJM's protest.

#### **A. PJM Protest**

12. PJM states that the Commission denies waiver requests where the public utility requesting the waiver fails to satisfy any of the four criteria.<sup>22</sup> PJM argues that Fresh Air's waiver request fails to satisfy the Commission's criteria for granting waivers because granting waiver will cause harm to third parties.<sup>23</sup>

13. PJM asserts that Fresh Air's Project contributes to more than 50 violations in the AE1 Queue SIS analysis and AE2 Queue feasibility study analysis.<sup>24</sup> PJM contends that withdrawing the Project from the queue alleviated certain transmission line overloads. Reinstating the Project, PJM argues, will cause the lines to be overloaded and change the projects with cost responsibility for reinforcing the line and, as a result, reimpose costs on

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<sup>21</sup> *Id.* According to Fresh Air, section 204.3 provides interconnection customers the ability to cure machine model data "deemed to be deficient by the Transmission Provider [PJM]" within 10 business days. *Id.* at 8 n.23. Fresh Air states that no cure was available to Fresh Air because it submitted "no" machine modeling information on March 4, 2019. Fresh Air also states that, under the Tariff, submitting no machine modeling information is not "deemed to be deficient" by PJM and thus there is no ability to cure prior to terminating a queue position. Fresh Air further contends that only submitting some information, regardless of how deficient, would be "deemed to be deficient." *Id.*

<sup>22</sup> PJM Protest at 4 (citing *GDF SUEZ Energy Marketing, NA*, 149 FERC ¶ 61,165 (2014); *Mass. Mun. Wholesale Elec. Co.*, 148 FERC ¶ 61,277 (2014); *Seneca Energy II, LLC*, 138 FERC ¶ 61,226 (2012); *Vermont Elec. Power Co., Inc.*, 132 FERC ¶ 61,068 (2010)).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 5.

other projects.<sup>25</sup> For example, PJM asserts that one violation is an overload on the Locks to Harrowgate 230 kV line, which will require reconductoring the line at an estimated cost of \$6,000,000. PJM argues that if Fresh Air's Queue No. AE1-135 is reinstated, Queue Nos. AE1-173 and AE1-249 would be required, in accordance with PJM cost allocation rules, to fund the upgrade<sup>26</sup> and, because Queue No. AE1-173 would be the first project to cause the overload, it would be responsible for providing the full amount of the required security, \$6,000,000, at the time that Queue No. AE1-173 executes its interconnection service agreement. PJM states that, with Fresh Air's Project withdrawn, Queue No. AE1-173 would not bear any cost responsibility for the upgrade, and instead, at this point in time, Queue No. AE1-249 would bear the full responsibility of funding the upgrade. However, because Queue No. AE1-249 puts the overload just over 100 percent, at 100.42 percent, there is potential that Queue No. AE1-249 also would not bear any cost responsibility if: (1) it reduced its output sufficient to eliminate the need for the upgrade; or (2) certain other projects withdraw or reduce their output.<sup>27</sup> PJM asserts that, given the number of violations to which Fresh Air's Project contributes, it is probable that various other parties would also be tangibly harmed by reinstating the Project.<sup>28</sup> PJM argues that the Commission should deny the waiver request because of the adverse impact reinstating the Project would have on such third parties.

14. Further, PJM argues that "the delay from the date PJM withdrew the Project from the queue to the date Fresh Air filed the waiver request, in it of itself, has a negative impact to the queue management process."<sup>29</sup> PJM asserts that Fresh Air submitted the waiver request more than two months after the machine modeling data was due (March 4,

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 5 & n.17 (Queue No. AE1-173 would be responsible for \$2,163,522.01 of the estimated upgrade cost).

<sup>27</sup> *Id.* at 5 & n.18 (PJM states that "the upgrade may ultimately not even be required if (1) Queue No. AE1-249 reduces its output enough to cause the overload to drop below 100%, pursuant to Tariff, Part IV, 36.2.A.1 or (2) any other earlier project in the geographic area withdraws from the queue or reduces its output. Additionally, to the extent projects in queues subsequent to the AE1 queue contribute to the overload, such projects would share in the cost of the upgrade in accordance with Tariff, Part VI, section 219.").

<sup>28</sup> *Id.* at 5-6 & n.19 (PJM states that it is in the process of conducting system impact studies for the AE1 Queue and, therefore, is unable to know the full extent of the harm that would be caused by reinstating Fresh Air's Project at this time).

<sup>29</sup> *Id.* at 6.

2019), and seven weeks after PJM formally withdrew the Project from the queue (March 19, 2019), and that it is “unclear” when the Commission will ultimately issue an order regarding the waiver request.<sup>30</sup> PJM further argues that if the Commission grants the waiver request, it will adversely impact the queue process. According to PJM, reinserting projects into the queue this far along in the process makes it challenging for PJM and its transmission owners to meet target date requirements in the PJM Tariff and can cause a cascading effect on the facilities study process.<sup>31</sup>

15. PJM further contends that granting the waiver request would put the queue in a constant state of instability because it would signal that the deadlines in the Tariff are meaningless, and an interconnection customer could seek and obtain a waiver at potentially any undefined future point in time, no matter how long after the missed Tariff deadline, and regardless of the impact on the interconnection queue.<sup>32</sup> PJM also argues that granting the waiver request will result in unfair treatment as compared to other similarly-situated PJM interconnection customers whose projects were withdrawn from the queue for failing to comply with the Tariff, but did not also seek a waiver from the Commission.<sup>33</sup>

16. PJM argues that granting the waiver request will result in additional untimely waiver requests considering the number of queue projects withdrawn from the queue because of late and/or deficient submittals during the various study phases.<sup>34</sup> PJM contends that Fresh Air’s waiver request is an example of such behavior, as it promptly followed the Commission’s granting a waiver request from another interconnection customer also seeking waiver of section 204.3 in the same AE1 Queue.<sup>35</sup> PJM further

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.* (PJM states that the SIS is based upon a dynamic progression model, and therefore, PJM needs adequate time to evaluate changes, such as reinstating queue projects, in order to reduce delays to the SIS process timeline for interconnection customers in a particular queue study group).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 6-7 & n.23 (PJM states that 27 projects have been withdrawn from the AE1 Queue for failure to meet a Tariff deadline and that some of these projects may have had no intention to continue through the queue process).

<sup>34</sup> *Id.* at 7.

<sup>35</sup> *Id.* (citing *Ameresco*, 167 FERC ¶ 61,077). PJM notes that Fresh Air cites to *Ameresco* in its waiver request. *Id.* at 7 n.24.

argues that granting such waiver requests will further erode the Tariff deadlines, which would result in PJM missing additional study targets, particularly if the waiver request is granted well after the deadline for submission of the required information, which PJM argues would be the case for Fresh Air's waiver request. PJM asserts that granting Fresh Air's waiver request will introduce uncertainty into PJM's administration of its planning queue.

17. PJM argues that the Commission has previously denied similar waiver requests because granting such a request "could have broad ramifications, by allowing waiver of Tariff provisions based on nothing more than an applicant's bare claim of administrative oversight, and by granting waiver over the objections of the public utility whose tariff is being waived."<sup>36</sup> PJM asserts that Fresh Air's waiver request does not present the type of extraordinary, rare, or discrete circumstances that warrant a waiver, and the Commission should further deny the waiver because of the adverse impact of Fresh Air's failure to act promptly in seeking the waiver would have on other parties, including other projects in the queue and PJM, and on the integrity of the queue process.<sup>37</sup>

18. PJM also clarifies that there are differences in the data required in the feasibility study phase and the SIS phase.<sup>38</sup> PJM explains that, because it performs a more detailed analysis during the SIS phase, PJM requires that interconnection customers submit additional project electrical data with the SIS Agreement that is not submitted in the feasibility study phase. For example, during the SIS phase PJM requires collector system, dynamic model, and attachment line data but does not require these data during the feasibility study phase.<sup>39</sup> PJM asserts that Fresh Air indicates it had "previously . . . provided [PJM all of the machine modeling data] during the Feasibility Study process . . ." <sup>40</sup> PJM contends that Fresh Air "also admits that it had not actually previously provided all machine modeling data required at the System Impact Study phase."<sup>41</sup> PJM asserts that Fresh Air would not have been required to previously provide

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<sup>36</sup> *Id.* (citing *Mass. Mun. Wholesale Elec. Co.*, 148 FERC ¶ 61,277 (2014)).

<sup>37</sup> *Id.* at 7-8.

<sup>38</sup> *Id.* at 4, 8.

<sup>39</sup> *Id.* at 8.

<sup>40</sup> *Id.* (quoting Waiver Request at 2).

<sup>41</sup> *Id.* at 8 & n.27 ("While Mr. Grimsley [of Fresh Air] initially thought he had submitted the required data, upon further investigation, he determine[d] no machine



such data to PJM prior to commencement of the SIS phase. PJM explains that the Tariff requires that the data be provided at the SIS submittal phase because this is a means by which PJM confirms that the interconnection customer has not made any changes to the project.

19. PJM contends that Fresh Air is fully aware of the requirement to submit the machine modeling data at the SIS phase, as Fresh Air has timely submitted such data at the SIS phase on at least three other previous occasions.<sup>42</sup> PJM also contends that even if Fresh Air was not aware of the requirement, it does not change the fact that the requirement exists and must be satisfied in order for PJM to perform the analyses and to confirm that the interconnection customer has not made any changes to the project.

**B. Fresh Air Answer**

20. In its answer to PJM's protest, Fresh Air states that no other entity, including later queued projects, opposed Fresh Air's waiver request.<sup>43</sup> Fresh Air argues that PJM's sole basis for its objection is its contention that the waiver will harm third parties, but it asserts that PJM has not identified any basis for the Commission to find third-party harm.<sup>44</sup> Fresh Air argues that PJM is equating restoring the pre-deadline status quo with harm. Fresh Air contends that such an argument would prohibit granting any waiver, because all waivers would cause third-party harm and thus be prohibited.<sup>45</sup> Fresh Air asserts that, in prior decisions, the Commission has rejected the same argument, noting that a later-queued protester would be in the same position as it would have been and that there is no demonstration of harm where the protesting party would be no worse off than when it submitted its request.<sup>46</sup>

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modeling data was submitted. Mr. Grimsley inform[ed PJM] that the data had not been submitted." *Id.* at 8 n.27 (quoting Waiver Request at 5)).

<sup>42</sup> *Id.* at 9 & n.31 (PJM states that Ecoplexus, Inc., the company developing Queue No. AE1-135, previously timely submitted the required data at the SIS phase for Queue Nos. AB2-147, AB2-149, and AB2-150).

<sup>43</sup> Fresh Air Answer at 1.

<sup>44</sup> *Id.* at 1-3.

<sup>45</sup> *Id.* at 3-4.

<sup>46</sup> *Id.* at 4 (citing *Gateway Cogeneration 1, LLC*, 161 FERC ¶ 61,028, at PP 8 & n.6, 18 (2017) (*Gateway*); *Aragonne Wind*, 145 FERC ¶ 61,106 at P 19).

21. Fresh Air further argues that PJM did not identify any specific harm to the study process or the timing of a specific study process as a result of Fresh Air's waiver request.<sup>47</sup> Fresh Air contends that PJM's argument related to the timing of Fresh Air's filing of the waiver request rests on generalized claims of harm and does not identify a specific delay in the study process that would be caused by granting the waiver. Fresh Air contends that PJM previously has made such arguments, which the Commission rejected.<sup>48</sup> Fresh Air also argues that even assuming a specific delay, PJM could have moved forward assuming the waiver would be granted, as PJM had notice the waiver request would be filed, knew the Commission granted waivers in similar situations, and had the required electrical data.<sup>49</sup>

22. Fresh Air also seeks to clarify the record, explaining that it had previously submitted to PJM collector line data and attachment line data in its feasibility study submission, and also provided dynamic modeling data to PJM in December 2018.<sup>50</sup>

#### **IV. Discussion**

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

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

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.217(a)(2) (2018), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Fresh Air's answer because it has provided information that assisted us in our decision-making process.

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<sup>47</sup> *Id.* at 5.

<sup>48</sup> *Id.* (citing *First Solar*, 161 FERC ¶ 61,256 at P 22 (granting waiver and rejecting PJM arguments that grant of waiver would challenge PJM meeting target date requirements in the PJM Tariff, and can cause a cascading effect on the facilities study process stating that based on the record "we are not persuaded . . . that granting waiver would delay the interconnection study process for the projects in the AC2 Queue"))).

<sup>49</sup> *Id.* at 5-6.

<sup>50</sup> *Id.* at 3 n.11.

**B. Substantive Matters**

25. For the reasons discussed below, we deny Fresh Air's waiver request.

26. 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>51</sup> We conclude that, under the particular circumstances of this case, Fresh Air has not shown that the waiver request satisfies the fourth prong of these waiver criteria, and therefore, we deny the request for waiver.

27. We find that Fresh Air has not demonstrated that granting the waiver request will not have undesirable consequences and harm third parties. Based on the record here, it appears that granting the waiver would harm PJM's interconnection study process and could delay the interconnection studies for the other projects in the AE1 Queue. As PJM explains, Fresh Air's delay in filing its waiver request has a negative impact to PJM's queue management process. Fresh Air filed the waiver request approximately two months after the machine modeling data was due, and seven weeks after PJM formally withdrew the Project from the queue. PJM explains that the SIS is based upon a dynamic progression model that requires PJM to have adequate time to evaluate changes, such as reinstating queue projects, in order to reduce delays to the SIS process time for interconnection customers in a particular queue study group.<sup>52</sup> We agree with PJM that reinserting projects under these circumstances makes it difficult for PJM and its transmission owners to meet target date requirements in the PJM Tariff.

28. Fresh Air's waiver request is distinguishable from the waivers that the Commission granted in *Ameresco*, *First Solar*, *Gateway*, and *Aragonne*, which Fresh Air cites in its pleadings.<sup>53</sup> While *Ameresco* and *First Solar* addressed waiver requests of the machine modeling data-submission deadline in section 204.3 of the PJM Tariff, each of those waiver requests was submitted within approximately one week after PJM made the interconnection customer aware of the error.<sup>54</sup> Similarly, in *Gateway*, the interconnection

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<sup>51</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).

<sup>52</sup> PJM Protest at 6.

<sup>53</sup> See *Ameresco*, 167 FERC ¶ 61,077; *First Solar*, 161 FERC ¶ 61,256; *Gateway*, 161 FERC ¶ 61,028; *Aragonne Wind*, 145 FERC ¶ 61,106.

<sup>54</sup> Similar to *Ameresco* and *First Solar*, Fresh Air submitted the executed SIS agreement and deposit by the deadline, and submitted the machine modeling data after

customer's request for waiver of the interconnection deposit deadline in sections 212.4(a) and (b) of the PJM Tariff, where the interconnection customer failed to make the deposit deadline due to Hurricane Harvey, was filed less than a week after the missed deadline. Here, without explanation, Fresh Air waited eight weeks from being made aware of its error and approximately seven weeks from the date that PJM removed the Project from the queue to file its waiver request.

29. Further, unlike in *Ameresco* and *First Solar*, Fresh Air submitted its waiver request after the date PJM was required to commence the SIS.<sup>55</sup> Pursuant to section 205.3 of the PJM Tariff,<sup>56</sup> PJM is required to commence the SIS on May 1, 2019. Fresh Air submitted its waiver request on May 7, 2019, although it had been aware of its error since March 13, 2019.

30. We also find Fresh Air's reliance on *Aragonne* unpersuasive. The waiver request in *Aragonne* was related to the renewal notification deadline of a transmission service request under Public Service Company of New Mexico's Open Access Transmission Tariff.<sup>57</sup> Thus, unlike here, *Aragonne* does not address the consequences of waiver of a missed deadline in the context of a regional transmission organization's interconnection study process.<sup>58</sup>

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being notified by PJM that it had not been submitted. Machine modeling data sometimes is referred to as electrical data sheets.

<sup>55</sup> *Ameresco*, 167 FERC ¶ 61,077 at P 1 (*Ameresco* submitted its waiver request on March 21, 2019 regarding interconnection projects in the AE1 Queue, for which the SIS was required to commence on May 1, 2019 per section 205.3 of the PJM Tariff); *First Solar*, 161 FERC ¶ 61,256 at P 1 (*First Solar Development, LLC* submitted its waiver request on October 23, 2017 regarding interconnection projects in the AC2 Queue, for which the SIS was required to commence on November 1, 2017 per section 205.3 of the PJM Tariff).

<sup>56</sup> PJM, Intra-PJM Tariffs, OATT, OATT 205.3 Timing of Studies (2.0.0), § 205.3.

<sup>57</sup> *Aragonne*, 145 FERC ¶ 61,106 at P 4.

<sup>58</sup> *See id.* P 21 (finding that granting the waiver did not interfere with the overall purpose and goal of the one-year rollover requirement in Public Service Company of New Mexico's Open Access Transmission Tariff).

31. In light of the foregoing, we find it would be disruptive to the SIS process and PJM's queue management process to grant the requested waiver. Accordingly, we deny Fresh Air's request for waiver.

The Commission orders:

Fresh Air's request for waiver of section 204.3 of PJM's Tariff is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.