

169 FERC ¶ 61,016  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Lincoln Clean Energy, LLC

Docket No. ER19-2776-000

ORDER GRANTING WAIVER

(Issued October 9, 2019)

1. On September 9, 2019, Lincoln Clean Energy, LLC (LCE), on behalf of its subsidiary Cabin Point Solar Center, LLC (Cabin Point Solar), submitted a request, pursuant to Rule 207(a)(5) of the Commission's regulations,<sup>1</sup> for a limited waiver of a procedural deadline in Section 204.3 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff)<sup>2</sup> to allow Cabin Point Solar's proposed 75 MW battery storage facility (Project) to remain in the interconnection queue with its currently assigned queue position number AE2-150. As discussed below, we grant LCE's waiver request.

**I. Background**

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 If these requirements are not met, the "Interconnection Request shall be deemed terminated and withdrawn."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

**II. Request for Waiver**

3. LCE states that Cabin Point Solar is a wholly-owned subsidiary of LCE and is developing the Project, in Sussex County, Virginia. LCE explains that the Project will be

---

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

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

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

co-located and share the same interconnection point as Cabin Point Solar's approximately 75 MW solar photovoltaic generating facility under development under PJM queue number AE1-085.<sup>4</sup> LCE states that Cabin Point Solar is anticipated to achieve commercial operation in June 2022. LCE avers that the combined output from both projects onto the PJM transmission system will be limited to 75 MW and any network upgrades necessary to accommodate the combined output will be addressed in the interconnection agreement for the combined project. LCE states that the Project was assigned PJM queue position number AE2-150 and that PJM provided the feasibility study and the unexecuted SIS agreement to Cabin Point Solar on July 17, 2019.<sup>5</sup> According to LCE, the deadline for Cabin Point Solar to satisfy the requirements in Section 204.3 of the PJM Tariff, including the submission of electrical data via PJM's Queue Point system, in order to maintain the queue position was August 19, 2019.<sup>6</sup>

4. LCE states that on July 31, 2019, LCE executed the SIS agreement on behalf of Cabin Point Solar and provided the executed SIS agreement to PJM along with the required \$15,000 deposit.<sup>7</sup> LCE states that due to LCE's mistaken belief as to the applicable data requirements, LCE did not submit the required electrical data through PJM's Queue Point on August 19, 2019.<sup>8</sup> LCE states that its staff assigned to the Project was new to the PJM interconnection process and was not aware of the additional modeling data required for the Project. LCE avers that its staff had believed that LCE had already satisfied all data requirements for the Project by providing the modeling data during the feasibility study phase and did not need to submit additional modeling data for the SIS process.<sup>9</sup>

5. LCE states that on August 21, 2019, two days after the submission deadline, PJM contacted LCE via email inquiring why the modeling data required under Section 204.3

---

<sup>4</sup> Waiver Request at 3. LCE states that the solar photovoltaic project has completed the SIS process and is expected to begin the facility study phase of PJM generator interconnection on September 30, 2019. *Id.* at 3 n.7.

<sup>5</sup> *Id.* at 1, 4.

<sup>6</sup> *Id.* at 4 & n.11. LCE states that the required data is referred to as both "machine modeling data" by the PJM Tariff and project "electrical data" in PJM's cover letter with the SIS agreement. *Id.* at 1 n.2.

<sup>7</sup> *Id.* at 4.

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

<sup>9</sup> *Id.* at 4-5.

was not submitted by the required deadline.<sup>10</sup> LCE states that an hour after receiving this email, LCE responded to PJM explaining that LCE did not realize that additional modeling data was required and that it believed it had already satisfied applicable data requirements. LCE states that LCE acknowledged its error and asked PJM to confirm the additional data needed so that LCE could provide the data to PJM as soon as possible.<sup>11</sup> LCE states that it did not immediately receive a response from PJM, and sent a follow-up email on August 26, 2019 offering to provide any required data to maintain its queue position.<sup>12</sup> According to LCE, PJM replied via email on August 26, 2019, informing LCE that “the Tariff does not provide any discretion for cases where one of the three required items is missing,” and that the Project would be withdrawn from the PJM queue.<sup>13</sup> LCE states that once withdrawn from the queue, LCE was unable to submit the required data to PJM, but LCE is ready and willing to provide the required data to PJM.

6. LCE asserts that the Commission has previously granted waiver of tariff requirements when: (1) the underlying error was made in good faith, (2) the scope of the waiver is limited, (3) a concrete problem will be remedied, and (4) approval of the waiver would not have undesirable consequences to third parties.<sup>14</sup> LCE argues that the Commission has granted waivers in the event of administrative oversights related to express tariff deadlines when the applicant expeditiously attempted to correct its inadvertent and good faith error and otherwise complied with the tariff requirements.<sup>15</sup> LCE states that the Commission has granted similar waivers of Section 204.3 to other generation interconnection customers when they missed a deadline for submission of modeling data due to an inadvertent error like LCE’s error.<sup>16</sup> LCE contends that its

---

<sup>10</sup> *Id.* at 5. LCE asserts that PJM suggests in the email that the SIS data was due August 12, 2019, but the actual due date was August 19, 2019. *Id.* at 5 n.13.

<sup>11</sup> *Id.* at 5.

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

<sup>13</sup> *Id.* at 6.

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

<sup>15</sup> *Id.* (citing *Dominion Energy Generation Marketing, Inc.*, 162 FERC ¶ 61,281 (2018); *Robinson Power Co., LLC*, 162 FERC ¶ 61,092 (2018); *Ameresco, Inc.*, 167 FERC ¶ 61,077 (2019) (*Ameresco*)).

<sup>16</sup> *Id.* at 2 (citing *Ameresco*, 167 FERC ¶ 61,077 at P 16; *First Solar Dev., LLC*, 161 FERC ¶ 61,256 (2017) (*First Solar*)).

requested waiver satisfies the Commission's four-part waiver test and is consistent with Commission precedent.<sup>17</sup>

7. First, LCE asserts that its failure to submit the required modeling data was a good-faith error, and was not done to avoid PJM Tariff requirements.<sup>18</sup> LCE explains that the LCE staff assigned to the Project was not aware that any additional Project data was required to be submitted with the executed SIS agreement and deposit. LCE claims that LCE did not disregard directions from PJM or the requirements of Section 204.3 of the PJM Tariff, but rather mistakenly believed it had already satisfied the data requirements and that the data requirements specified therein were not applicable.<sup>19</sup> LCE contends that it complied with other requirements (providing the executed SIS agreement and study deposit) under Section 204.3 by the submission deadline and offered to work with PJM to provide the required data within one hour of receiving PJM's notice of the deficiency.<sup>20</sup> LCE also states that it previously submitted all required data and project information required in a timely manner.<sup>21</sup>

8. Second, LCE argues that the waiver request is limited in scope, because it is a one-time waiver of one discrete timing requirement in Section 204.3.<sup>22</sup>

9. Third, LCE contends that granting the waiver would resolve a concrete and narrow problem by allowing the Project to maintain its queue position and on-schedule development. LCE states that the Commission has found that requests for waiver of Section 204.3 address a concrete problem "because it will enable [the interconnection customer] to proceed with its interconnection requests, remain in the queue, and continue in the SIS phase of PJM's interconnection study process."<sup>23</sup> LCE adds that, without the waiver, LCE would need to restart the PJM interconnection process, and commercial

---

<sup>17</sup> *Id.* at 6.

<sup>18</sup> *Id.* at 7.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 7-8.

<sup>21</sup> *Id.* at 8.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 8-9 (citing *Ameresco*, 167 FERC ¶ 61,077 at P 17; *First Solar*, 161 FERC ¶ 61,256 at P 21).

operations of the Project would be “significantly delay[ed] and may ultimately jeopardize the Project’s viability.”<sup>24</sup>

10. Fourth, LCE asserts that granting the limited waiver will not harm third parties. LCE argues that it previously provided all other required information and is not attempting to manipulate the PJM queue or the Project’s queue position, but rather to reinstate the Project’s queue position.<sup>25</sup> LCE further contends that the Project adds energy storage to LCE’s solar photovoltaic generating facility at the same site and does not increase the existing 75 MW of interconnection rights or the injection capacity at the interconnection point beyond what PJM is already studying for LCE’s solar facility.<sup>26</sup> LCE argues that because LCE is not increasing the injection rights at the point of interconnection that is already being studied, granting the requested waiver will have no effect on the business expectations of other parties.<sup>27</sup> LCE contends that all other projects will be in the same position as they would have been had the Project not been removed from the PJM queue.

11. LCE requests that the Commission issue an order granting waiver as early as possible, but no later than October 9, 2019. LCE states that granting expedited approval will provide LCE and PJM with certainty with respect to the Project’s queue position and development status.<sup>28</sup>

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

12. Notice of LCE’s filing was published in the *Federal Register*, 84 Fed. Reg. 48,923 (2019), with interventions and protests due on or before September 23, 2019. Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (IMM), and PJM filed timely motions to intervene. No protests were filed.

---

<sup>24</sup> *Id.* at 9.

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

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 9-10.

<sup>28</sup> *Id.* at 10.

#### IV. Discussion

##### A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the IMM and PJM parties to this proceeding.

##### B. Substantive Matters

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

15. The Commission has previously granted waiver of tariff provisions where: (1) the underlying error was made in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.<sup>29</sup>

16. We find that the circumstances of LCE's waiver request satisfy these criteria. First, we find that the error made by LCE in failing to timely submit the electrical data was made in good faith. LCE timely submitted both the interconnection study deposit and the signed SIS agreement and asked PJM how LCE could correct its inadvertent data submission error within an hour of learning of the error. Second, we find that LCE'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 LCE otherwise met, including financial transfers and contracts that clearly indicated LCE's intent to proceed. Third, we find that granting the waiver request addresses a concrete problem because it will enable LCE to proceed with the Project's interconnection request and allow the Project to remain in the queue and continue in the SIS phase of PJM's interconnection study process. Finally, we find that granting the waiver request will not have undesirable consequences, such as harming third parties. The other queue positions and any third-party interests will be in the same position as they would have been had the Project moved forward to the SIS phase and had not been removed from the queue.

---

<sup>29</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).

The Commission orders:

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

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.