

170 FERC ¶ 61,087
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER20-543-000

ORDER ACCEPTING NOTICE OF CANCELLATION

(Issued February 7, 2020)

1. On December 9, 2019, PJM Interconnection, L.L.C. (PJM) filed a notice of cancellation of an Interconnection Service Agreement (ISA) entered into among it, Gateway Energy Center, LLC (Gateway) and Jersey Central Power & Light Company (JCPL), designated as Second Revised Service Agreement No. 3476 (Gateway ISA), for the interconnection of the Gateway Energy Center located in Sayreville, New Jersey (Gateway Project).¹ As discussed below, we accept the notice of cancellation terminating the Gateway ISA, effective February 10, 2020.

I. Notice of Cancellation

2. PJM states that the Gateway ISA is being cancelled because project milestones in the Gateway ISA were breached and not cured resulting in default of the Gateway ISA pursuant to Appendix 2, section 16.1.3. PJM requests the cancellation be made effective as of November 27, 2019, consistent with the notice PJM provided to Stonegate Power, LLC (Stonegate), the ultimate owner of Gateway, in a November 22, 2019 notice of default letter. PJM also requests a waiver of the Commission's 60 day notice to permit the requested effective date. PJM asserts that the parties have no remaining obligations under the Gateway ISA.

¹ See *PJM Interconnection, LLC*, Docket No. ER18-324-000 (Jan. 10, 2018) (delegated order). The revised ISA superseded a prior ISA among the same parties and increased the Maximum Facility Output from 460 MW to 480 MW. The Gateway Project consists of a 460 MW natural gas-fueled combined cycle generating facility associated with Queue Nos. R11 and AC1-109, and a 20 MW battery storage facility associated with Queue No. Z2-109. PJM Transmittal, Docket No. ER18-324-000, at 3.

II. Notice of Filing and Interventions

3. Notice of PJM's filing was published in the *Federal Register*, 84 Fed. Reg. 68928-02 (2019) with answers, interventions, and comments due on or before December 30, 2019. A timely motion to intervene was filed by Stonegate.
4. On December 30, 2019, Stonegate filed a protest. On January 21, 2020, PJM filed an answer.
5. In its protest, Stonegate states that it is currently developing a 560-MW natural gas, dual-fuel, combined cycle power generation facility in the Borough of Sayreville, Middlesex County, New Jersey (the Middlesex Project).² Stonegate states that on March 25, 2016, it notified PJM of its intention to acquire Gateway, owner of the Gateway Project, which had interconnection rights and a fully executed Gateway ISA and Interconnection Construction Service Agreement for queue positions R11 and Z2-109. Stonegate stated its intention to assign those rights from the Gateway Project to the Middlesex Project.³
6. Stonegate states that it acquired the Gateway Project on June 2, 2016.⁴ Stonegate states that on January 9, 2017, PJM confirmed that the Gateway ISA had 695 days of suspension time remaining, and that relying on this confirmation, Stonegate adopted a business development plan. Stonegate explains that plan called for placing the Gateway ISA into suspension for the full remaining 695 days and using that time to effectively complete all development activities, secure construction financing, order equipment, and commence construction of the project.⁵
7. Stonegate states that it notified PJM on January 24, 2017 of its intention to suspend the Gateway ISA for up to 695 days and PJM confirmed receipt of the request on January 25, 2017. Stonegate asserts that on September 14, 2017 PJM informed Stonegate that it was limiting the Gateway ISA's suspension to one year, due to its

² Stonegate witness Michael V. DeFelice states that the MEC Project is shovel-ready, having obtained all permits and regulatory approvals required to commence construction. Protest, Attach. A (Affidavit of Michael V. DeFelice (DeFelice Aff.)) at P 3.

³ Stonegate Protest at 4-5.

⁴ *Id.*, Attach. A, DeFelice Aff. at P 12.

⁵ *Id.* at 5-6.

materially-adverse impact on a later-queued project.⁶ Stonegate states that PJM informed Stonegate that the material modification at issue was the additional carrying cost of a letter of credit that CPV Shore, LLC (CPV Shore), owner of the later-queued Woodbridge Energy Center (Woodbridge Project) project, had posted with PJM to secure construction of the n3647 network upgrade assigned to the Woodbridge Project.⁷

8. Stonegate asserts that in the fall of 2017, its potential construction funding vendors notified Stonegate that they would need confirmation that the Gateway ISA had been placed back into full suspension in order for them to continue considering construction funding for the Gateway Project.

9. Stonegate states that in an effort to address a November 15, 2018 Gateway ISA construction milestone for 20 percent site work completion, Stonegate filed a Complaint against PJM in Docket No. EL19-9-000 (Stonegate Complaint) seeking extension of the Gateway Project milestones and a finding that both the PJM Tariff and PJM's implementation of its tariff were unjust and unreasonable, among other counts.⁸

10. Stonegate states that on November 11, 2018, PJM notified Stonegate that it had re-studied the transmission system and determined that network upgrade n3647 was no longer needed.⁹ Accordingly, CPV Shore was no longer required to maintain security for the upgrade, and the material modification causing the suspension period for the Gateway Project to be reduced to one year had been eliminated.¹⁰ In response, Stonegate states it immediately notified PJM of its intention to place the Gateway Project back into suspension, but advised PJM that simply placing the project back into full suspension did not adequately remedy the harm caused to Stonegate due to its time out of full suspension, which hindered Stonegate's ability to secure construction funding.¹¹

⁶ *Id.* at 7.

⁷ *Id.* at 7-8.

⁸ *Id.* at 9-10.

⁹ Stonegate states that PJM explained that in the fall of 2018, three generating plants in northern New Jersey located near the proposed Gateway Project construction site announced retirement plans, and as a result, PJM restudied the need for upgrades to the transmission system in that area related to the Gateway and Middlesex Projects. *Id.* at 23.

¹⁰ *Id.* at 10.

¹¹ *Id.* at 11-12.

11. Stonegate explains that allowing the Gateway Project to re-enter suspension moved the 20 percent site work completion milestone from November 2018 to October 2019, but PJM did not agree to extend the milestone dates to reflect the period of time lost while the Gateway Project was out of full suspension or due to Stonegate's inability to secure construction funding.¹² Stonegate states that on November 19, 2018, it sent PJM a letter proposing a 14-month extension to the milestones, but that on December 20, 2018, PJM informed Stonegate that it would only extend the milestones if directed to do so by the Commission.¹³

12. Stonegate states that the Commission issued an order on the Complaint on April 4, 2019 denying the relief sought¹⁴ and subsequently issued an order denying rehearing on July 16, 2019 finding, in part, that Stonegate's Complaint was premature because PJM had not yet filed to terminate the Gateway ISA.¹⁵ Stonegate appealed these orders to the United States Court of Appeals for the District of Columbia on September 5, 2019, and the appeal remains pending.¹⁶

13. Stonegate states that PJM issued to it a notice of breach of the milestones on October 25, 2019, and a notice of termination of the Gateway ISA on November 25, 2019.

14. Stonegate asserts that the Commission has long followed a policy of allowing cancellation or termination of an ISA only if the applicant demonstrates that the termination is just, reasonable, not unduly discriminatory or preferential, and is consistent with the public interest.¹⁷ In determining whether termination is just, reasonable, not

¹² *Id.* at 11-12.

¹³ *Id.* at 12.

¹⁴ *Id.* (citing *Stonegate Power LLC v. PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,014, at PP 37-38 (2019) (Order on Complaint)).

¹⁵ *Id.* (citing *Stonegate Power LLC v. PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,019, at P 40 (2019) (Rehearing Order)).

¹⁶ Stonegate Protest at 13. Stonegate requested that its appeal be held in abeyance pending the outcome of this proceeding. *See* Petition for Review of Stonegate Power, *Stonegate Power v. FERC*, No. 19-1178 (filed D.C. Cir. Sept. 5, 2019); Petitioner Motion to Hold Petition in Abeyance, *Stonegate Power LLC v. FERC*, No. 19-1178 (filed D.C. Cir. Jan. 8, 2020).

¹⁷ Stonegate Protest at 15 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,008, at P 25 (2011), *order on reh'g and clarification*, 141 FERC ¶ 61,097 at P 15 (2012) (*Lakeswind*) (citing *Allegheny Power Sys., Inc.*, 102 FERC ¶ 61,318, at P 9

unduly discriminatory or preferential and in the public interest, Stonegate asserts that the Commission “has taken into account many factors, including whether the extension would harm generators lower in the interconnection queue and any uncertainty that speculative projects may present to other projects in the queue.”¹⁸ Stonegate states that additional critical factors in *Lakeswind* include whether the interconnection customer had made good faith efforts to cure the breach, and whether the interconnection customer had engaged in “breach-default-delay” tactics.

15. Consistent with such precedent, Stonegate argues that PJM’s notice of termination lacks support for a finding that termination would be just and reasonable, not unduly discriminatory or preferential, and in the public interest.¹⁹ Stonegate argues that no lower queued projects would be harmed, that the Gateway Project is not speculative and does not present uncertainty to other projects in the interconnection queue, that it has made good faith efforts to cure the breach, and that it has not engaged in tactics to “breach-default-delay.” Stonegate also argues the Gateway Project provides fuel-security reliability and additional local capacity benefits that are in the interest of the public in northern New Jersey.

16. Stonegate also requests an extension of the Gateway ISA milestones for each day lost between the date of PJM’s notification that the Gateway Project’s suspension would be limited to one year, September 14, 2017, and the date of an order in this docket (i.e., approximately 2.5 years).²⁰ Stonegate states that to the extent the Commission determines there are factual disputes at issue, this case should be set for evidentiary hearing.²¹

17. Stonegate argues it has made significant progress towards curing the default because it has secured all necessary permits and regulatory approvals required for the

(2003) (Commission precedent supports acceptance of an application for termination if the applicant demonstrates that the proposed termination is not unjust, unreasonable, or unduly discriminatory or preferential)); *see also Duke Energy Moss Landing, LLC*, 83 FERC ¶ 61,318, at 62,306 (1998), *order on reh’g*, 86 FERC ¶ 61,227 (1999) (Commission precedent supports acceptance of an application for termination if the applicant demonstrates that the proposed termination is in the public interest)).

¹⁸ Stonegate Protest at 15 (citing *Lakeswind*, 141 FERC ¶ 61,097 at P 15).

¹⁹ *Id.* at 13-15.

²⁰ *Id.* at 36.

²¹ Stonegate states its understanding is that there are no factual disputes at issue. *Id.* at 39.

construction of the Gateway Project. Stonegate states that it has been working aggressively and in good faith for more than two years toward satisfying its milestones under the Gateway ISA and is very close to securing the financing necessary to allow it to move forward with satisfying those milestones.²² For example, Stonegate says it has acquired all federal and state permits and studies, demonstrated site control for the construction site, executed a 30-year financial agreement with the Borough of Sayreville for property taxes, executed an equipment supply agreement with General Electric for power island equipment, acquired all pre-construction site approvals from Middlesex County and the Borough of Sayreville, and applied for incremental interconnection rights that are under a Facilities Study with PJM.

18. Overall, Stonegate reports it has invested more than \$15 million in the Gateway Project to date, which could be lost if the milestones are not extended as a result of the Gateway ISA being terminated. Stonegate argues it has done everything possible to finalize financing efforts, and has received “expressions of interest” from leading financial institutions for provision of senior loans representing approximately 55 percent of the project and “verbal indications of interest” for up to 75 percent of the required equity investment.²³

19. Stonegate argues that no lowered-queued projects would be harmed by the extension. Stonegate argues that because a network upgrade required for the lower-queued Woodbridge Project was cancelled after a restudy, CPV Shore’s interests would not be harmed if an extension to milestones was granted, as argued by CPV Shore in earlier proceedings.²⁴

20. Stonegate argues that the public interest would be harmed if the notice of cancellation were accepted. Stonegate asserts that the Gateway Project provides dual-fuel and black start capability benefits that are critical for the congested northern New Jersey region. Stonegate explains if the Gateway ISA is terminated, these benefits would be irreparably lost because the current air permit granted for the Gateway Project would be lost. Stonegate also argues that clearing prices in the northern New Jersey region could be reduced by the Gateway Project. Stonegate states there is insufficient local generation to meet demand in the northern New Jersey region, and the region is in a locational deliverability area in which prices separate during PJM’s capacity auctions,

²² *Id.* at 1.

²³ *Id.* at 19; *id.*, Attach. A, DeFelice Aff. at P 53.

²⁴ Previously, network upgrade n3647 was the responsibility of CPV Shore which would have been impacted by an extension of milestones, as the extension would require CPV Shore to post additional credit and security to cover the longer period of time. *Id.* at 22-24.

leading to higher capacity prices for that area. Stonegate argues the Gateway Project would provide new generation that could mitigate transmission constraints in the area and thus reduce capacity market clearing prices for northern New Jersey.²⁵ Stonegate also argues that terminating the Gateway ISA would result in the loss of local community benefits to the Borough of Sayreville.

21. Stonegate argues the facts in this case are similar to cases where the Commission denied a termination of ISA.²⁶ Stonegate also seeks to distinguish cases in which the Commission has accepted notices of cancellation.²⁷

22. Stonegate explains that although PJM allowed it to regain the full suspension period of 695 days, the 27-month period since PJM's notice has hindered the ability of Stonegate to move forward with the financing required to begin construction. Stonegate explains that a significant portion of development time was lost between January and November in 2018 when the project was placed on a one-year limited suspension timeline, due to investor concerns that milestones were unrealistic without a full suspension period of 695 days. Stonegate states that without an extension of milestones in the Gateway ISA it will face irreparable harm as \$15 million in investment will be at risk, and it will default on existing interim financing loans due to a lack of long-term construction financing.²⁸

23. Finally, Stonegate notes that the facts of this case satisfy the Commission criteria for granting waivers of tariff language. In support, Stonegate argues its requested extension of the construction milestones: (1) is in good faith because Stonegate has continuously worked to secure financing for the Gateway Project, and the underlying breach occurred outside of Stonegate's control; (2) is limited in scope because it is a one-time extension; (3) remedies its breach of the construction milestone, which is a concrete

²⁵ *Id.* at 24-29.

²⁶ *Id.* at 15-16, 29-30 (citing *Lakeswind*, 137 FERC ¶ 61,008, *order on reh'g*, 141 FERC ¶ 61,097; *Illinois Power Co.*, 120 FERC ¶ 61,237 (2007) (*Illinois Power*)).

²⁷ *Id.* at 30-36 (citing *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,243, at P 19, *reh'g denied*, 164 FERC ¶ 61,206 (2018) (*Moncada NJ Solar*); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,172, at P 35 (2016), *order denying reh'g*, 161 FERC ¶ 61,077 (2017) (*Merricourt*); *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,198, at P 28 (2014) (*New Era Wind*); *Midcontinent Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,114, *reh'g denied*, 145 FERC ¶ 61,038 (2013) (*Ellerth*)).

²⁸ *Id.* at 36-38.

problem; and (4) would not have undesirable consequences (such as harm to third parties) because there is no evidence of later-queued projects that would be harmed.²⁹

24. In its answer, PJM states Stonegate has made no demonstration that PJM violated the terms of its Tariff.³⁰ PJM explains Stonegate did not meet its milestone to complete at least 20 percent of project site construction by October 11, 2019 as required by section 6.1 of the Gateway ISA. PJM explains Stonegate has also not met its milestone to deliver generating equipment by January 10, 2020. As a result, PJM explains it provided notice of default to Stonegate in accordance with Appendix 2, section 16.1.3, and subsequently filed its notice of cancellation to terminate the Gateway ISA, which is in accordance with its filed rate. PJM states that Stonegate does not refute this fact in its protest.³¹

25. PJM argues Stonegate requests PJM to depart from its filed rate and recognizes that fact through its waiver request of the Gateway ISA terms included in a footnote of its protest. Otherwise, PJM argues, Stonegate's support of its request is based on arguments, formerly raised in the Stonegate Complaint.³² PJM asserts that Stonegate's arguments continue to fail because Stonegate has provided no verification that the one-year suspension limit was the only obstacle to financing the Gateway Project, and does not explain why it could not alter its development plan in response to investor concerns over this one-year suspension limits. Therefore, PJM argues that Stonegate has not demonstrated the inability to meet its milestones was beyond Stonegate's control.³³ PJM explains this is distinct from *Lakeswind* because Stonegate has not meet any of its milestones, and unlike *Illinois Power*, Stonegate has not demonstrated that circumstances beyond its control caused it to not meet its milestones.³⁴

26. PJM argues that while an earlier network upgrade identified in the Stonegate Complaint is no longer needed, there will still be harm to lower-queued projects through increased scope and costs if the Commission does not accept the notice of cancellation. PJM provides an affidavit³⁵ that explains that the Gateway Project uses headroom that

²⁹ *Id.* at 36 n.143.

³⁰ PJM Answer at 2.

³¹ *Id.* at 3-5.

³² *Id.* at 2, 6.

³³ *Id.* at 6-8.

³⁴ *Id.* at 8-9.

³⁵ *Id.*, Ex. A (Affidavit of Susan McGill)

could be available to lower queued projects but that cannot be used on an interim basis. Thus, PJM explains, if the Gateway Project remains in the queue the lower queued projects will pay for network upgrades for greater scope and cost.³⁶ In addition, PJM contends that commercial operation dates for lower queued projects will be delayed if the Gateway Project remains in the queue. PJM argues that, contrary to *Illinois Power*, the Commission should recognize that harm is caused by the Gateway Project remaining in the queue, versus harm to extending its milestones, because the Gateway Project has capacity interconnection rights that it would continue to hold, preventing lower queued projects to use that headroom.³⁷

27. Finally, PJM argues there are no relevant facts in dispute, as acknowledged by Stonegate, and therefore the Commission should reject Stonegate's request for evidentiary hearing.³⁸

III. Discussion

A. Procedural Matters

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), Stonegate's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

29. As discussed below, we accept PJM's notice of cancellation terminating the Gateway ISA, effective February 10, 2020. In rendering our determination, we reject Stonegate's arguments and deny its request to extend the project milestones and its request for waiver of the terms of the Gateway ISA.

30. Section 212.5 of PJM's Tariff authorizes PJM to include milestone dates in an ISA for the construction of the interconnection customer's generation project that, "if not met, shall relieve the Transmission Provider and the Transmission Owners from the requirement to construct the necessary facilities and upgrades and be deemed a

³⁶ PJM states it will not conduct a formal restudy of the lower queued projects until the Commission accepts its notice of cancellation of the Gateway Project, but its analysis is based on feasibility study reports for the lower queued projects that are attached to PJM's answer. *Id.* at 9-11.

³⁷ *Id.* at 12 (citing *Illinois Power*, 120 FERC ¶ 61,237 at P 23).

³⁸ *Id.* at 13-14.

termination and withdrawal of the Interconnection Request.”³⁹ In addition, Appendix 2, section 16.1.3 of the Gateway ISA states “[t]ransmission [p]rovider may terminate the Interconnection Service Agreement upon the Default of Interconnection Customer of its obligations under the Interconnection Service Agreement by providing Interconnection Customer and the Interconnected Transmission Owner prior written notice of termination.”⁴⁰

31. Stonegate does not dispute that the Gateway ISA includes a milestone that requires at least 20 percent of the project site construction to be completed by October 2019.⁴¹ Stonegate also does not deny that the Gateway Project is in breach of this milestone. Accordingly, we find that PJM’s notice of cancellation is proper under the plain terms of the Gateway ISA. We decline to review the other factors suggested by Stonegate, for example, whether the requested extension will harm lower queued projects or whether Stonegate has made good faith efforts to cure the breach. Consistent with the Commission’s decision in *Merricourt*, we find that adhering to the terms of the Gateway ISA and PJM Tariff provides an appropriate framework for considering PJM’s notice of cancellation, as opposed to the factors suggested by Stonegate.⁴²

32. We also find that PJM has reasonably exercised its discretion not to extend the Gateway Project’s milestones under Section 212.5 of PJM’s Tariff and deny Stonegate’s request for an extension day-for-day for each day lost between September 14, 2017, when PJM first notified Stonegate it was limiting its suspension to one year, and the date of an order in this docket granting an extension of the milestones. Section 212.5 of PJM’s Tariff provides that PJM “may reasonably extend any such milestone dates... in the event

³⁹ PJM, Intra-PJM Tariffs, OATT, Milestones (0.0.0), § 212.5.

⁴⁰ Gateway ISA, App. 2, § 16.1.3.

⁴¹ *Id.* § 6.1. The Gateway Project’s milestones were extended coextensively with Stonegate’s re-entry into full suspension from November 2018 to October 2019. *See* Stonegate Protest, Attach. A, DeFelice Aff. at P 42.

⁴² *Merricourt*, 161 FERC ¶ 61,077 at P 19 (denying rehearing of order accepting notice of termination of a generator interconnection agreement based on the “plain terms” of the MISO tariff and declining to review whether interconnection customer has made consistent progress towards developing its generating facility or whether the request for Commercial Operation Date extension will not harm lower queued projects). In *Merricourt*, the Commission acknowledged that its prior consideration of other factors beyond the plain language of the tariff or contract introduced uncertainty regarding how the Commission would review requests for extensions. *Id.*; *see also Moncada NJ Solar*, 162 FERC ¶ 61,243 at PP 18-19 (finding that termination was appropriate based on a strict reading of the wholesale market participant agreement).

of delays not caused by the Interconnection Customer, such as unforeseen regulatory or construction delays that could not be remedied by the Interconnection Customer through the exercise of due diligence.” Stonegate argues that PJM’s denial of Stonegate’s requested extension is unreasonable in light of (a) Stonegate’s lack of control over the obstacles imposed by PJM’s limitation of the Gateway ISA suspension to one year and the cloud of uncertainty raised by that decision, (b) the significant progress Stonegate has made toward project completion, and (c) the need for fuel-secure generation such as the dual-fuel project in the PJM market. Stonegate states that its requested milestone extension is necessary given its efforts to secure financing were “thwarted by the fact that PJM’s limitation on the suspension led to concerns by potential investors/lenders that the milestones without the full 695 days of suspension were unrealistic.” Stonegate claims that “providing certainty to the [Gateway] Project by extending the Gateway ISA milestones would greatly facilitate reaching financial closure in the very near term with investor and lender discussions currently ongoing.” As with our analysis above, we find that adhering to the terms of the PJM Tariff provides an appropriate framework for considering Stonegate's requested extension.

33. As shown above, section 212.5 provides PJM the option to extend milestone dates but does not require that PJM do so. Based on our review of the record, we are not persuaded that the project’s inability to meet its construction milestone was not caused by the project, could not be foreseen, or could not have been remedied by Stonegate through the exercise of due diligence. In the Rehearing Order, the Commission found that “PJM acted consistent with Schedule M of the [Gateway] ICSA,” and “[g]iven the language in Schedule M of the [Gateway] ICSA and PJM’s Manual, ... it was unreasonable for Stonegate to presume that PJM could not restrict Stonegate to a one-year suspension.”⁴³ Given these findings, we find that Stonegate’s inability to obtain financing was the result of Stonegate’s action (or inaction) alone.⁴⁴ The Gateway ISA specifically provided for the possibility of a one-year suspension and it is reasonable to expect that Stonegate would have provided for the possibility of such an event with respect to the development

⁴³ Rehearing Order, 168 FERC ¶ 61,019 at PP 26, 30.

⁴⁴ As PJM points out, Stonegate provides no verification or independent sources of confirmation from potential investors or lenders that the limitation of suspension to one year was the dispositive obstacle to obtaining financing of the Gateway Project, nor does Stonegate explain why it could not alter its development plan for the Gateway Project once its investors and lenders notified it that the development plan was unworkable under a one-year suspension. Answer at 8.

of the project. But, in fact, the Stonegate Project was able to use its full 695-day suspension period.⁴⁵ It is unclear what uncertainty existed after November 12, 2018 when the Gateway Project re-entered full suspension and during the next 330 days such that Stonegate could not obtain construction financing. Even today, despite the fact that it is “very close” to obtaining constructing funding, Stonegate is asking for an extension of more than two years.⁴⁶ In light of the foregoing, we deny Stonegate’s requested extension.

34. Consistent with this determination, we also find that the public interest is served in this case by accepting PJM’s notice of cancellation. The Gateway Project has not met the milestones under its ISA and as a result, is in default. For the reasons discussed above, Stonegate has not demonstrated that an extension is warranted under Section 212.5 of PJM’s Tariff.

35. Finally, we deny Stonegate’s request for waiver. The Commission has granted waiver of tariff provisions when: (1) the applicant acted 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.⁴⁷ Here, we find Stonegate has failed to demonstrate that the waiver requested is of limited scope or addresses a concrete problem.

36. Stonegate argues that its request is limited in scope because it is a one-time extension and remedies a concrete problem because it addresses the breach of the milestone in the Gateway ISA. In its request, Stonegate provides no finite timeframe by which it can secure the financing needed to meet this milestone, nor is the requested milestone extension (of more than two years) based on a prediction of time needed to secure financing.⁴⁸ Instead, Stonegate requests an extension based on harm it purports to have experienced due to time lapsed from September 14, 2017, when PJM notified Stonegate that it would truncate the suspension period to one year, until

⁴⁵ Stonegate used the 695 days remaining in the full suspension period that PJM had explained was available to it in January 2017 (i.e., 365 days from January 25, 2017 through January 24, 2018, and 330 days starting November 12, 2018.)

⁴⁶ See Stonegate Protest, Attach. A, DeFelice Aff. at P 55.

⁴⁷ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

⁴⁸ Cf. *Milligan 3 Wind LLC*, 170 FERC ¶ 61,009, at PP 15-16 (2020) (finding, in part, Milligan 3 Wind LLC’s waiver request limited in scope as an eight-month extension needed to obtain and install wind turbines when they become available from the manufacturer).

November 11, 2018, when PJM informed Stonegate that 330 days of the remaining full suspension period would be restored. Rather than utilize the remaining suspension period to execute its business development plan, Stonegate continues to argue that the uncertainty it experienced during this period continues to hinder its ability to secure financing today. Stonegate's argument indicates a level of uncertainty and speculation surrounding the Gateway Project that an extension to the milestone will not remedy.

37. Finally, although we accept the notice of cancellation, we deny PJM's request for waiver of the 60-day prior notice requirement for failure to show good cause. Other than being consistent with the notice of default it provided Stonegate, PJM has provided no basis for its requested November 27, 2019 effective date. Absent waiver, public utilities must provide the Commission at least 60 days prior notice before any proposed rate, term, or condition is to become effective.⁴⁹ Therefore, the earliest date that the proposed rates, terms, or conditions may become effective, absent waiver, is the 61st day after filing, i.e., the day after the 60-day prior notice period has expired. Thus, given that we are denying waiver of the 60-day prior notice requirement, the earliest permissible effective date is February 10, 2020, 61 days after PJM's filing of this notice of cancellation. Accordingly, we establish an effective date for the notice of cancellation of February 10, 2020.

The Commission orders:

- (A) PJM's Notice of Cancellation is accepted effective February 10, 2020.
- (B) Stonegate's request to extend the Gateway Project's milestones is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴⁹ 16 U.S.C. § 824d(d) 2018; 18 C.F.R. § 35.15 (2019).