

173 FERC ¶ 61,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James P. Danly, Chairman;
Neil Chatterjee and Richard Glick.

Pattern Energy Wind Development LLC

Docket No. ER21-30-000

ORDER GRANTING WAIVER REQUEST

(Issued November 19, 2020)

1. On October 5, 2020, Pattern Energy Wind Development LLC (Pattern Energy Wind) filed a request for prospective waiver of certain provisions of the Midcontinent Independent System Operator, Inc.'s (MISO) generator interconnection procedures (GIP) in order to provide Pattern Energy Wind with additional time to obtain site control in light of the emergency conditions caused by COVID-19. Specifically, Pattern Energy Wind requests waiver of sections 7.2.1 and 7.2.1.3 of Attachment X in the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to allow Pattern Energy Wind more time to obtain sufficient site control for its planned wind generating facility. Pattern Energy Wind requests waiver from the current site control deadline of November 27, 2020 for the East (ATC) Group of MISO's first 2020 Definitive Planning Phase (DPP) study cycle (DPP-2020 Cycle 1).¹ Pattern Energy Wind also requests waiver of the January 25, 2021 deadline for MISO to review the sufficiency of site control requirements for the East (ATC) Group. For the reasons discussed below, we grant Pattern Energy Wind's request for waiver.

I. Background

2. Section 7.2.1 of MISO's GIP requires interconnection customers to submit to MISO either proof of site control for the generating facility or a cash deposit in lieu of site control at least 90 days prior to the kick-off of DPP Phase I.² The site control deadline for interconnection customers in the East (ATC) Group of DPP-2020 Cycle 1 is

¹ The DPP is the final phase of MISO's generator interconnection study process, during which MISO conducts reliability and deliverability studies that determine whether there is available transmission capacity to accommodate the interconnection of a new, proposed generating facility or whether network upgrades are needed. The DPP is a sequential three-phase group study process.

² MISO Tariff, Attach. X, § 7.2.1.

November 27, 2020. MISO's Generator Interconnection Business Practice Manual contains the site control acreage requirement for wind generating facilities, which is 50 acres/MW, as compared to the requirement for other fuel types, which ranges from 0.1 to 10 acres/MW.³

3. Section 7.2.1.3 of MISO's GIP requires that, if MISO finds an interconnection customer's evidence of site control to be insufficient, MISO must provide the interconnection customer with a written explanation of its finding at least 30 calendar days before DPP Phase I. Thus, MISO has approximately 60 days to review the site control information provided by the interconnection customer.⁴ For the East (ATC) Group of DPP-2020 Cycle 1, MISO must review the site control information provided by interconnection customers by January 25, 2021.

4. As discussed further below, Pattern Energy Wind requests waiver of these two Tariff provisions due to business interruptions and delays in the land acquisition process caused by governmental orders, health and safety concerns, and illness of key personnel resulting from COVID-19.⁵

5. Pattern Energy Wind states that it is a project developer seeking to develop, construct, operate, and maintain the Uplands Wind Project (Project), a 600 MW wind electric generation facility in Iowa and Lafayette Counties, Wisconsin.⁶ Pattern Energy Wind states that, on June 22, 2020, it submitted two generator interconnection requests to MISO to interconnect the Project via two queue positions: (1) an interconnection to American Transmission Company's Hill Valley to Cardinal 345kV line; and (2) an interconnection to the Hill Valley 345kV substation. Pattern Energy Wind asserts that MISO placed these generator interconnection requests in the East (ATC) Group of DPP-2020 Cycle 1, which is scheduled to begin Phase I on February 24, 2021.⁷ Pattern Energy Wind avers that, due to the 50 acre/MW site control requirement for wind generating facilities, it must demonstrate site control for at least 30,000 acres by November 27, 2020. MISO will then have until January 25, 2021 to complete its review of Pattern Energy Wind's submission. If MISO determines that Pattern Energy Wind has

³ See MISO, Business Practices Manual No. 15, Generator Interconnection, § 5.1.2 (effective May 13, 2020).

⁴ MISO Tariff, Attach. X, § 7.2.1.3.

⁵ Waiver Request at 2.

⁶ *Id.* at 4.

⁷ *Id.* at 6.

failed to provide adequate proof of site control, Pattern Energy Wind would then have 15 business days to cure the deficiency or initiate dispute resolution procedures.⁸

6. Pattern Energy Wind states that its efforts to obtain site control for the Project were underway in January 2020, when it began hiring local representatives to acquire easements for land, land acquisition specialists, and a title processing specialist.⁹ Pattern Energy Wind states that, within four days of their March 10, 2020 arrival at the Project site, all of these specialists had to be removed from the field due to the increasing number of business restrictions being implemented in the State of Wisconsin because of COVID-19, which remained in effect through May 13, 2020.¹⁰ Pattern Energy Wind asserts that, recognizing the severe health and safety risks associated with COVID-19 and the restrictions imposed by the State of Wisconsin, it attempted to contact landowners remotely near the end of April 2020.¹¹ Pattern Energy Wind states that its agents were able to sign several thousand acres of land, despite not being able to take any in-person meetings.

7. Pattern Energy Wind asserts that it was able to safely reintroduce its land acquisition team to the Project site beginning on July 6, 2020, but its title specialist became severely ill in late July/early August 2020, and a land agent was hospitalized for an extended period in late August 2020.¹² Pattern Energy Wind contends that these illnesses made it difficult to maintain the consistent dialogue necessary to negotiate a land easement and then register the easement with the local authority. Pattern Energy Wind states that it has worked diligently to make up lost time by holding outdoor engagements with township boards, individual landowners, small landowner groups, and nonprofit groups. Pattern Energy Wind asserts that, while its land acquisitions have increased since resuming operations, there has simply been too much time lost for it to establish site control for 30,000 acres of land by November 27, 2020.

⁸ *Id.* at 7.

⁹ *Id.*

¹⁰ *Id.* at 7-8.

¹¹ *Id.* at 8.

¹² *Id.* at 9.

8. Pattern Energy Wind states that it began discussing this waiver with MISO in late August 2020 when it became clear that it would not be able to meet site control deadlines, and that it has authority to represent that MISO supports its requested relief.¹³

II. Waiver Request

9. Pattern Energy Wind requests that the Commission grant prospective waiver of two Tariff provisions.¹⁴ First, Pattern Energy Wind requests waiver of section 7.2.1 of Attachment X to extend the pre-DPP Phase I site control deadline from November 27, 2020 to January 19, 2021. Pattern Energy Wind contends that the requested waiver will allow it to remain eligible to participate in MISO's DPP-2020 Cycle 1 for the East (ATC) Group. Pattern Energy Wind states that it expects that it will lose its queue positions without the waiver. Second, Pattern Energy Wind requests waiver of section 7.2.1.3 of Attachment X to extend MISO's deadline to review Pattern Energy Wind's site control documentation by 30 days, i.e., from January 25, 2021 until February 24, 2021. Pattern Energy Wind notes that MISO ordinarily has 60 days to review these materials; however, granting the requested waiver of section 7.2.1 would reduce this review period to six days. Pattern Energy Wind asserts that the requested waiver of section 7.2.1.3 thus eliminates the potential prejudice to MISO's ability to review the submitted materials in compliance with its Tariff obligations. Pattern Energy Wind further asserts that the Commission has itself recognized the difficulties created by COVID-19 and has recently granted similar requests for extensions of MISO's site control demonstration deadlines based on COVID-19-related business disruptions.¹⁵ Pattern Energy Wind asks the Commission to act on its waiver request by November 27, 2020, which is the deadline to demonstrate site control for the East (ATC) Group of DPP-2020 Cycle 1.

10. Pattern Energy Wind argues that its waiver request meets the Commission's four criteria for granting waiver. First, Pattern Energy Wind asserts that it has fully complied with all requirements under MISO's GIP and has acted in good faith in attempting to

¹³ *Id.* at 2, 9.

¹⁴ *Id.* at 10.

¹⁵ *Id.* at 2 (citing *Extension of Non-Statutory Deadlines*, Notice of Extension of Time, Docket No. AD20-11-000 (Mar. 19, 2020); *Supplemental Extension of Non-Statutory Deadlines*, Notice of Extension of Time, Docket No. AD20-11-000 (Apr. 2, 2020); *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER20-1794-000 (May 20, 2020) (delegated order) (granting MISO's waiver request for a 60-day extension for the interconnection customers with projects in the 2020 South DPP study group to demonstrate site control); *Crossover Wind LLC*, 172 FERC ¶ 61,219 (2020) (granting a waiver request for a 65-day extension of the site control deadline for MISO's 2020 South DPP study group)).

acquire the land development rights necessary to establish site control under section 7.2.1 of Attachment X.¹⁶ Pattern Energy Wind reiterates that its efforts to obtain site control were severely undermined by COVID-19, the resulting government shutdown in the State of Wisconsin, and the illness of key personnel.¹⁷ Additionally, Pattern Energy Wind notes that it held multiple consultations with MISO in advance of the site control deadline in order to develop a waiver approach for extensions for demonstrating and reviewing site control that does not impact orderly queue processing.

11. Second, Pattern Energy Wind argues that its waiver request is of limited scope and duration.¹⁸ Pattern Energy Wind notes that its requested extension of the deadline for demonstrating site control in section 7.2.1 of Attachment X from November 27, 2020 to January 19, 2021 constitutes a 53-day extension for a single project in a single DPP cycle.¹⁹ Additionally, Pattern Energy Wind argues that the waiver of section 7.2.1.3 is limited in scope because it gives MISO a total of 36 days to complete its site control review – a process that the Tariff ordinarily provides 60 days to complete.²⁰

12. Third, Pattern Energy Wind asserts that the requested waiver resolves a concrete problem.²¹ Pattern Energy Wind states that the State of Wisconsin shutdown and limitations imposed on businesses in response to COVID-19 caused significant delay. Pattern Energy Wind argues that such orders and policies created a concrete problem that has prevented it from demonstrating site control. As a result, Pattern Energy Wind notes that it currently has the rights to 15,000 of the 30,000 required acres and expects to be able to obtain the rights to the remaining acres at an average rate of 5,000 acres per month, based on prior experience.²² Pattern Energy Wind explains that, if the waiver request is not granted, Pattern Energy Wind could lose its queue positions, which would jeopardize the Project, and MISO would not have sufficient time to perform its site control review.

¹⁶ *Id.* at 11.

¹⁷ *Id.* at 11-12.

¹⁸ *Id.* at 12.

¹⁹ *Id.* at 12-13.

²⁰ *Id.* at 13.

²¹ *Id.*

²² *Id.* at 14.

13. Fourth, Pattern Energy Wind argues that the requested waiver will not cause undesirable consequences, such as harm to third parties.²³ Pattern Energy Wind explains that the request only impacts the timing for demonstrating and reviewing site control for its Project. In addition, Pattern Energy Wind states that such demonstration would occur, even under the requested waiver, prior to the initiation of any interconnection studies within the relevant MISO DPP cluster group. Pattern Energy Wind notes that Phase I of MISO's DPP-2020 Cycle 1 for the East (ATC) Group is scheduled to kick off on February 24, 2021, which is more than a month after the January 19, 2021 proposed deadline for site control demonstration. Similarly, Pattern Energy Wind states, granting the waiver of MISO's review deadline will enable MISO to complete its evaluation before the end of the model development period for Phase I studies, thus avoiding impacts to other interconnection customers.²⁴ Pattern Energy Wind asserts that this approach balances its need for the extension due to COVID-19 and MISO's interest in maintaining its current DPP schedule, while ensuring that MISO has sufficient time to review Pattern Energy Wind's submission of proof of site control.²⁵ Additionally, Pattern Energy Wind asserts that the Commission's approval of the waiver request will not set a negative precedent, because the waiver is narrowly tailored to Pattern Energy Wind's specific needs based on its experience and COVID-19-related delays in the State of Wisconsin.²⁶

III. Notice and Responsive Pleadings

14. Notice of the request for waiver was published in the *Federal Register*, 85 Fed. Reg. 65,035 (Oct. 14, 2020), with interventions and protests due on or before October 26, 2020.

15. MISO filed a timely motion to intervene and comments in support of the request for waiver. MISO states that Pattern Energy Wind's filing shows how schedule delays are attributable to COVID-19 impacts, and how the waiver, if granted, would solve these problems.²⁷ MISO asserts that Pattern Energy Wind's waiver request will not prejudice MISO's review or negatively impact MISO's ability to process other interconnection requests in accordance with current schedules. MISO contends that the requested waiver of GIP section 7.2.1.3 is a necessary component of the requested extension for submitting

²³ *Id.*

²⁴ *Id.* at 14-15.

²⁵ *Id.* at 15.

²⁶ *Id.* at 15-16.

²⁷ MISO Comments in Support at 3-4.

site control because, without this second waiver, MISO would receive the site control materials with too little time to complete its own review.²⁸

IV. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2020), MISO's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Matters

17. We grant the request for waiver. The Commission has granted waiver of tariff provisions where: (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.²⁹ We find that the circumstances of Pattern Energy Wind's waiver request satisfy these criteria.

18. First, we find that Pattern Energy Wind acted in good faith in requesting a waiver of the site control requirements set forth in section 7.2.1 of MISO's GIP, as well as the waiver of the deadline for MISO to review the sufficiency of site control requirements for the East (ATC) Group set forth in section 7.2.1.3 of MISO's GIP. Pattern Energy Wind has made reasonable efforts to satisfy MISO's site control requirements in a timely manner, having already obtained a total of 15,000 acres of site control for the Project. We note that Pattern Energy Wind has identified several impacts of COVID-19 that have prevented travel, site visits, and landowner meetings, thereby negatively affecting Pattern Energy Wind's ability to obtain sufficient acreage for its Project by the November 27, 2020 deadline.³⁰

19. Second, we find that the waiver request is limited in scope. Pattern Energy Wind's requested extension of the deadline for demonstrating site control in section 7.2.1 of Attachment X due to the COVID-19-related delays constitutes a one-time, 53-day extension for a single project in a single DPP cycle. Additionally, the requested waiver

²⁸ *Id.* at 4-5.

²⁹ *See, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

³⁰ *See supra* PP 6-7.

of section 7.2.1.3 would provide MISO with a one-time, one-month extension to complete its site control review.

20. Third, we find that the requested waiver addresses a concrete problem. Pattern Energy Wind asserts that various orders and policies have been implemented by the State of Wisconsin and businesses in light of COVID-19 that have caused significant delays in Pattern Energy Wind's ability to satisfy MISO's site control requirements. By granting waiver, Pattern Energy Wind will be given additional time to meet the site control requirements prior to the initiation of any interconnection studies for the East (ATC) Group of DPP-2020 Cycle 1. In addition, the requested waiver allows MISO time to review Pattern Energy Wind's site control documentation prior to the end of the model development period for Phase I studies.

21. Fourth, we find that the requested waiver will not have undesirable consequences, such as harm to third parties. We agree that, under these circumstances, permitting Pattern Energy Wind to continue site control efforts and permitting MISO to review Pattern Energy Wind's site control documentation prior to the beginning of the DPP-2020 Cycle 1 Phase I study for the East (ATC) Group balances Pattern Energy Wind's need for an extension due to COVID-19 with MISO's interest in maintaining its current DPP schedule, while also ensuring that MISO has time to review Pattern Energy Wind's submission of proof of site control. Furthermore, because MISO has not yet begun its interconnection studies for the East (ATC) Group of DPP-2020 Cycle 1, granting this waiver will not delay any other customers in that study group.

The Commission orders:

Pattern Energy Wind's request for waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.