

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Black Rock Wind Force, LLC

Docket No. ER19-____-000

**REQUEST OF BLACK ROCK WIND FORCE, LLC FOR LIMITED WAIVER,
SHORTENED COMMENT PERIOD, AND EXPEDITED ACTION**

Pursuant to Rule 207(a)(5) of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,¹ Black Rock Wind Force, LLC (“Black Rock”) respectfully requests that the Commission grant a one-time, limited waiver of a procedural deadline set forth in Section 206.2 of the PJM Interconnection, L.L.C. (“PJM”) Open Access Transmission Tariff (“Tariff”) to allow it to maintain its assigned AD2-180 PJM queue position.

As discussed below, Black Rock submitted its executed Facilities Study Agreement (“FSA”) to PJM before the May 24, 2019 deadline for doing so. However, on June 7, 2019, PJM informed Black Rock that its interconnection request had been withdrawn from the queue because PJM had not also received the requisite \$100,000 FSA deposit for queue position AD2-180 by May 24, 2019.²

As further shown below, on May 17, 2019, Black Rock submitted to PJM its executed FSA and on that same day submitted an internal request for the \$100,000 FSA deposit to be paid to PJM by May 23, 2019. However, purely because of an internal payment processing

¹ 18 C.F.R. § 385.207(a)(5).

² Under Section 206.2 of the PJM Tariff, in order to retain its assigned queue position, the customer must, within 30 days of the System Impact Study being issued, have provided to PJM (i) any past due actual System Impact Study costs exceeding the System Impact Study deposits, if any, (ii) the executed FSA and, (iii) the FSA deposit. If these requirements are not met, the interconnection request shall be deemed withdrawn.

malfunction, the \$100,000 FSA deposit was not sent to PJM until June 5, 2019. Accordingly, Black Rock is hereby requesting a waiver allowing it to remain in the queue.

As described below, good cause exists to grant the waiver because (1) Black Rock acted in good faith; (2) it is of limited scope; (3) it addresses a concrete problem that will be remedied; and (4) it does not have undesirable consequences.³ Black Rock also requests that the Commission (1) establish a comment period no greater than ten days,⁴ and (2) issue an order granting the waiver by July 8, 2019, or as early as practicable thereafter.

I. COMMUNICATIONS

Please address all notices and communications regarding this proceeding to the following persons who are also designated for service in this proceeding:

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II. BACKGROUND

Black Rock is an indirect, wholly-owned subsidiary of Clearway Energy Group LLC (“Clearway”) that is developing a 110 MW wind facility in Mineral County, West Virginia (the “Black Rock Project”), which will be interconnected to transmission facilities owned by Monongahela Power Company and operated by PJM. The Black Rock Project entered PJM’s

³ See, e.g., *Renewable Energy Aggregators Inc.*, 167 FERC ¶ 61,013 at P 11 (2019) (“*Renewable Energy Aggregators*”); *Invenergy Solar Development North America LLC*, 164 FERC ¶ 61,095 at P 12 (2018) (“*Invenergy Solar*”); *BSW ProjectCo LLC*, 163 FERC ¶ 61,213 at P 11 (2018) (“*BSW ProjectCo*”); *First Solar Development, LLC*, 161 FERC ¶ 61,256 at P 20 (2017) (“*First Solar*”); *Lark Energy Developments, Inc.*, 158 FERC ¶ 61,009 at P 9 (2017); *Midcontinent Independent System Operator, Inc.*, 154 FERC ¶ 61,059 at P 13 (2016); *Calpine Energy Services, L.P.*, 154 FERC ¶ 61,082 at P 11 (2016).

⁴ See, e.g., *Invenergy Solar* (ten-day comment period); *Gateway Cogeneration 1, LLC*, 161 FERC ¶ 61,028 (2017) (same).

interconnection queue in March 2018 and was assigned queue position AD2-180. PJM completed the Feasibility Study in July 2018 and the System Impact Study (“SIS”) was issued on April 24, 2019.⁵ On May 7, 2019 and again on May 17, 2019, Black Rock requested a meeting with PJM to discuss the SIS, and on May 21, 2019 sent PJM a list of the SIS questions for discussion. Black Rock renewed its request to PJM for a meeting June 4, 2019 and June 7, 2019.

While its SIS questions were pending, Black Rock made every attempt to meet its FSA deadlines. Black Rock sent its executed FSA to PJM on May 17, 2019 (a week prior to the May 24, 2019 deadline specified in Section 206.2 of the PJM Tariff) and noted in that same email correspondence that it was arranging for the FSA deposit payment. A subsequent email from PJM informed Black Rock on May 21, 2019 that its interconnection request was now being handled by a new Project Manager, and Black Rock resent the executed FSA to that new Project Manager on May 22, 2019.

On May 17, 2019, Black Rock submitted a request to its accounting department for the \$100,000 FSA deposit to be paid to PJM no later than May 23, 2019. Black Rock continued to follow up with accounting, stressing the urgency of the payment request. Black Rock was informed by accounting that the wire transfer to PJM would be scheduled to go out on May 24, 2019. On June 4, 2019, Black Rock learned the payment had not been issued, due to issues that had unexpectedly arisen during the transition from NRG Energy, Inc.’s (“NRG”) accounts payable services to Black Rock’s new accounts payable system.

⁵ PJM initially issued the SIS on April 23, 2019 and issued a revised SIS on April 24, 2019.

Clearway was formed as a vehicle to acquire NRG's renewables business in 2018.⁶ On May 15, 2019, Clearway assumed standalone responsibility for certain internal administrative, accounting and payment processing functions that were previously provided by NRG under a Transition Services Agreement that had been in place since NRG sold its renewables business in 2018. In connection with this transition, Clearway experienced a temporary delay in the processing of certain payments for a subset of its payees because the related payment software could not fully reconcile the payment details and therefore withheld the completion of the payment. As a result of the software issues, the wire transfer delays were not immediately apparent, and Clearway's deposit payment for Black Rock was one of several payment requests that were temporarily delayed. Upon becoming aware of the issue, Clearway promptly corrected the matter and issued the required payment to PJM the following day; however, as a result, the Black Rock FSA deposit was not issued to PJM until June 5, 2019.

On June 7, 2019, PJM issued a notice that the Black Rock Project had been withdrawn from the queue for failure to post its deposit by the deadline.

III. REQUEST FOR WAIVER

Black Rock respectfully requests a waiver of the procedural deadline in Section 206.2 of the PJM Tariff for good cause shown. The Commission routinely grants waivers of tariff provisions where (1) the error was made in good faith; (2) the waiver was of limited scope; (3) granting the waiver would remedy a concrete problem; and (4) the waiver would not have undesirable consequences, such as harming third parties.⁷ The Commission has granted waivers or procedural deadlines where, like here, the requesting party has immediately corrected the error

⁶ This Commission-approved transaction was consummated in 2018. See *NRG Yield, Inc.*, 163 FERC ¶ 62,101 (2018).

⁷ See, n.3, *supra*.

and otherwise complied with all other tariff requirements.⁸ The Commission has granted one-time, limited waivers of study deposit deadlines in circumstances similar to those presented here.⁹ As discussed below, Black Rock's request for waiver is consistent with that precedent.

First, Black Rock acted in good faith. Black Rock submitted its executed FSA a week before the deadline and took steps to ensure that the FSA deposit would be forwarded to PJM in a timely manner, which it indicated when submitting its executed FSA to PJM. Black Rock initiated an internal payment request a week in advance of the due date and made follow up inquiries with accounting personnel, stressing the urgency of the requested payment to ensure that the wire transfer would be scheduled through the accounts payable software on a timely basis. However, due solely to an internal payment processing malfunction related to the recent internal reorganization and transition of administrative and accounting responsibilities, the FSA deposit was not timely paid.

As noted above, Clearway assumed standalone responsibility for certain internal administrative, accounting and payment processing functions that were previously provided by NRG on May 15, 2019, shortly before the FSA deposit payment request was made. When Clearway established its own accounting system to manage its wire transfers, the related payment software could not fully reconcile payment details and therefore withheld the completion of certain payments, including the FSA deposit payment to PJM. As a result of the

⁸ See e.g., *Dominion Energy Generation Marketing, Inc. and Dominion Energy Fairless, LLC*, 162 FERC ¶ 61,281 (2018); *Robinson Power Company, LLC*, 162 FERC ¶ 61,092 (2018); *Aurora Generation, LLC, Rockford Power, LLC, and Rockford Power II, LLC*, 162 FERC ¶ 61,076 (2018); *Springdale Energy, LLC and Helix Ironwood, LLC*, 162 FERC ¶ 61,077 (2018).

⁹ See, e.g., *Renewable Energy Aggregators* at P 12; *Invenegy Solar* at P 13; *Northeast Energy Associates, A Limited Partnership*, 152 FERC ¶ 61,175 at P 15 (2015) ("*Northeast Energy*"); *First Solar* at PP 21-22.

software issues, the wire transfer delays were not immediately apparent. Black Rock promptly corrected the error and issued the FSA deposit payment the following day, June 5, 2019.¹⁰

Prior to learning that the wire transfer had been delayed, Black Rock continued its ongoing communications with PJM regarding SIS questions and, after learning of a PJM personnel change, reached out to the new Project Manager regarding Black Rock's interconnection request and its outstanding meeting request.

Second, the requested waiver is limited in scope. Black Rock is requesting a one-time waiver of a procedural deadline set forth in Section 206.2 of the PJM Tariff. The waiver request only slightly modifies a single procedural deadline.

Third, the requested waiver remedies a concrete problem by allowing the Black Rock Project to maintain its existing queue position. As the Black Rock Project has moved through the interconnection process, it has met all of its obligations, including the Feasibility Study and SIS Agreement deposits. But, absent a waiver, the Black Rock Project will not be able to maintain its queue position and proceed into the Facilities Study phase of PJM's study processes.

Finally, granting the limited waiver will not have any undesirable consequences or harm any party. Black Rock understands the importance of PJM's deadlines and has been diligent in understanding and meeting its obligations to PJM with respect to its interconnection request. Up to this point, it has taken all of the steps necessary to execute the study agreements, submit technical data, and otherwise meet its financial obligations to PJM. And immediately upon learning of the accounting malfunction in processing the FSA deposit, it remitted the required funds to PJM the following day, and filed this waiver request within two business days after

¹⁰ See *Northeast Energy* at P 15 (noting that the party requesting the waiver corrected the error "as soon as possible after it discovered the omission.").

learning it had been withdrawn from the queue. The Commission has granted waivers of similar deadlines when the failure was due to an internal accounting issue and when the interconnection customer promptly rectified the error.¹¹ Black Rock submits that a seven business day delay in PJM's receipt of the FSA deposit should not affect PJM's queue processing ability, and, consistent with the Commission's determination in other proceedings involving similar facts, should not result in a viable development project losing its queue position.¹² As the Commission has found in granting similar waiver requests, granting Black Rock's requested waiver will appropriately balance the equities and not have any undesirable consequences.¹³

Black Rock has shown above that it fully satisfies the Commission's criteria for granting a limited waiver and requests that the Commission grant a waiver of the procedural deadlines set forth in Section 206.2 so that the Black Rock Project may continue into the Facilities Study phase of PJM's interconnection study procedures.

¹¹ See, e.g., *Invenergy Solar* at P 13 (finding interconnection customer acted in good faith where its "failure to submit the required payment by the deadline was the result of an internal accounting error, and upon being notified by PJM that the payment had not been received, ... immediately corrected the error and wired the full payment that same day."). See, also, *BSW ProjectCo* at P 12 (finding that BSW acted in good faith where it attempted to comply with the payment deadline); *First Solar* at P 21 (finding First Solar acted in good faith "given its timely submission of the Projects' interconnection request deposits, timely satisfaction of all other requirements, and its prompt correction of the inadvertent data submission error."); *Pinewood Wind, LLC, Long Prairie Wind I, LLC, and Rocky Forge Wind, LLC*, 157 FERC ¶ 61,177 at P 12 (2016) (finding waiver applicants acted in good faith "given their timely tender of their initial interconnection request deposits, their satisfaction of other processing requirements, and their attempt to transmit the Agreements to PJM as of the requisite deadline").

¹² See, e.g., *Ameresco, Inc.*, 167 FERC ¶ 61,077 at P 17 (2019) (finding on April 26, 2019 that waiver of PJM tariff deadline for SIS data "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 Ameresco's Projects moved forward to the SIS phase and had not been removed from the queue."); *Renewable Energy Aggregators* at P 12 (finding "other queue positions and any third party interests will be in the same position" if the requested waiver was granted); *First Solar* at P 22 (finding the requested waiver would not delay the interconnection study process and would not have undesirable consequences); *American Municipal Power, Inc.*, 140 FERC ¶ 61,102 at P 12 (2012) (noting that PJM did not object to the requested waiver "given that any affected party will be in no worse position than if AMP had moved forward to the System Impact Study phase and had not been removed from queue").

¹³ *First Solar* at P 22.

IV. REQUEST FOR EXPEDITED ACTION

It is important that PJM have certainty that the Black Rock Project will remain in the queue and allow PJM to continue with the Black Rock Project's Facilities Study as soon as possible. Black Rock requests that the Commission issue an order granting this waiver by July 8, 2019 or as soon as practicable thereafter, to provide certainty to Black Rock and PJM that the Commission has granted the requested waiver. In order to facilitate an expedited decision, Black Rock requests that the Commission establish a comment period no greater than ten days.¹⁴

V. CONCLUSION

For the foregoing reasons, Black Rock respectfully requests that the Commission grant the requested waiver no later than July 8, 2019 or as soon as practicable thereafter.

Respectfully submitted,

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¹⁴ See n.4, *supra*.

Document Content(s)

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