

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

PJM Interconnection, L.L.C.

: Docket No. ER12-640-000

**MOTION FOR LEAVE TO ANSWER AND RESPONSE OF
PJM INTERCONNECTION, L.L.C.**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure¹ of the Federal Energy Regulatory Commission (“Commission”), PJM Interconnection, L.L.C. (“PJM”) respectfully moves for leave to answer and answer to the Protest filed on behalf of Lancaster Wind Farm, LLC (“Lancaster”),² in response to the Notice of Cancellation of the Original Service Agreement No. 1378³ filed by PJM on December 19, 2011 (“Notice of Cancellation”) in the captioned matter.

I. Motion for Leave to Answer

To the extent the Commission’s Rules of Practice and Procedure do not expressly authorize this answer, PJM respectfully requests leave to submit this response to the Lancaster Protest filed in this matter in order to aid the Commission’s decision-making process. The Commission has frequently accepted responses to protests when doing so will ensure a more accurate and complete record or will assist the Commission in its deliberative process by

¹ See 18 C.F.R. §§ 385.212 and .213 (2010).

² See Motion to Intervene and Protest of Lancaster Wind Farm, LLC, PJM Interconnection, L.L.C., Docket No. ER12-640-000 (filed Jan 9, 2012) (“Lancaster Protest”).

³ Interconnection Service Agreement By and Among PJM, Lancaster Wind Farm, LLC and Commonwealth Edison Company (“ComEd”) (“Lancaster ISA”). See *PJM Interconnection, L.L.C.*, Docket No. ER05-1474-000 (accepted by unpublished letter order issued on Oct. 13, 2005).

correcting errors and clarifying the issues.⁴ Here PJM's answer should be permitted as it clarifies certain issues raised by Lancaster and, therefore, provides a more complete record to assist the Commission in reaching its decision.

II. Background

The Lancaster project has been active in the PJM interconnection queue since 2004 as Queue No. K04_CE19. Initially, Lancaster was an active interconnection project in the ComEd queue at the time ComEd integrated into PJM. In May 2005, PJM issued a System Impact Study Report stating that the Lancaster project is "scheduled for commercial operation in 2006."⁵ The fully executed ISA was filed with the Commission on September 12, 2005, requesting an effective date of August 12, 2005. The ISA contained project specific milestones (at Section 6.0), which included initiation of construction on or before May 15, 2006 and completion of construction on or before October 15, 2006.⁶ To date, Lancaster has not initiated construction on any portion of its project.

Under the terms of the ISA, PJM may reasonably extend any of the project specific milestone dates set forth in Section 6.0 "in the event of delays that Interconnection Customer (i) did not cause and (ii) could not have remedied through the exercise of due diligence." The ISA

⁴ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,144 at P 8 (2009) (accepting an answer to an answer "because it assisted [the Commission] in [its] decision-making process."); see also, *Me. Pub. Utils. Comm'n v. ISO New England, Inc.*, 126 FERC ¶ 37 (2009); *Idaho Power Co.*, 95 FERC ¶ 61,482 at 62,717-18 (2001); accord *Cambridge Elec. Light Co.*, 95 FERC ¶ 61,162 at 61,523 (2001).

⁵ See *PJM Generator Interconnection K04_CE19 Freeport 80 MW (16 MW Capacity and 64 MW Energy) Impact Study Report Re-study for K02_CE17 Lena Withdrawal* dated May 2005. The K04_CE19 Impact Study Report was re-issued after a previous queued project (K02_CE17) withdrew from the interconnection queue. The restudy was necessary as the withdrawn queue project was in close proximity to the Lancaster project.

⁶ Section 6.1 of the Lancaster ISA provided that initiation of construction included pouring the foundation for the transformer and high voltage breakers in the substation. See Lancaster ISA at Section 6.1. Section 6.2 of the Lancaster ISA provided that completion of construction required that Lancaster was ready for testing. See *Id.*, at Section 6.2.

milestone dates may also be extended “coextensively with any suspension of work initiated by Interconnection Customer in accordance with Section 83.4 of the Tariff.”⁷

The suspension provision is set forth in the Interconnection Construction Service Agreement and provides that an Interconnection Customer has the right at any time to request suspension of all work by the Interconnected Transmission Owner in connection with the construction and installation of the Transmission Owner Interconnection Facilities. The Interconnection Customer has the right to request one or more suspensions of work, however, such suspension period(s) may not exceed a cumulative period of up to three years.⁸ During such suspension period, all milestones are extended coextensively with such suspension.

Lancaster requested to exercise its suspension rights under the Lancaster ICSA. Lancaster commenced suspension on August 31, 2006 for a one year period in order to allow Lancaster time to lease additional land. The suspension period was subsequently extended for two additional years to address a lawsuit brought by local objectors seeking to terminate the Special Use Permit issued on February 28, 2007 by Stephenson County for the Lancaster project.⁹ As a result, Lancaster expended all of its project’s allowable three-year suspension period.

Under the suspension period, Sections 6.1 and 6.2 were coextensively extended three years or until May 15, 2009 for initiation of construction and October 15, 2009 for completion of

⁷ Since the signing of the Lancaster ISA and Interconnection Construction Service Agreement (“ICSA”), the PJM Open Access Transmission Tariff (“PJM Tariff”) has been amended. The suspension provisions previously contained in Section 83.4 of the *pro forma* ICSA at Attachment P at Appendix 2, are now contained in Attachment P at Appendix 2, Section 3.4.

⁸ See Interconnection Construction Service Agreement entered into By and Among PJM, Lancaster Wind Farm, LLC and Commonwealth Edison Company (“Lancaster ICSA”). See *PJM Interconnection, L.L.C.*, Docket No. ER05-1474-000 (accepted by unpublished letter order issued on Oct. 13, 2005).

⁹ See Case No. 2007MR7, the Circuit Court of the Fifteenth Judicial Circuit, Stephenson County Illinois.

construction. Lancaster Wind requested and was permitted an additional extension of approximately two years *via* a scope change¹⁰ until April 15, 2011 for initiation of construction and October 15, 2011 to allow Lancaster to get its project operational.

As of April 15, 2011, Lancaster had not initiated engineering or construction on any of its facilities as agreed to by Lancaster under the August 26 Scope Change. By letter dated June 7, 2011 (“June 7th Letter”), PJM advised Lancaster that since Lancaster had not initiated construction on or before April 15, 2011 or provided any further justification to extend such milestone date, the June 7th Letter served as notice to Lancaster that it was in breach of Section 6.1 of the Lancaster ISA.¹¹ As provided for under the breach provisions of the Lancaster ISA,¹² Lancaster was permitted 30 days to comply with Section 6.1. As of July 7, 2011, Lancaster did not provide any evidence that it had commenced construction of the project. By letter dated September 6, 2011, PJM notified Lancaster that the project was in default and the Lancaster ISA would terminate effective September 14, 2011. At no time during the breach period, or thereafter, did Lancaster provide PJM with any additional information, including a plan to cure the breach. Nor was PJM notified that Lancaster was in “final negotiations on a power sales arrangement for the output of the Lancaster project.”¹³

III. Response to Protest

Lancaster is in default of its ISA because it failed to commence construction of the project not because it was unable to finalize negotiations of a power purchase agreement

¹⁰ See Generator and Merchant Transmission Project ISA/CSA Phase Scope Change Form for PJM Queue No. K04CE19SC1 dated August 25, 2009 (“August 25 Scope Change”).

¹¹ See Lancaster ISA, Appendix 2 at Section 65.3, which provision is now contained in Attachment O, Appendix 2 at Section 15.3.

¹² See *Id.* at Section 65.4, which provision is now contained in Attachment O, Appendix 2 at Section 15.4.

¹³ See Lancaster Protest at 1.

(“PPA”) with a potential off-taker. Even if the Commission were to grant the requested extension, Lancaster proffers no evidence that it is ready to commence construction of its project any time soon. Consequently, granting an extension to allow Lancaster time to secure and finalize a PPA to obtain financing for construction of its Facility only means that once those negotiations are completed, Lancaster will still require an additional extension to commence construction and bring the Lancaster project into commercial operation.

In its Protest, Lancaster asserts that even though PJM denied its request for an extension and pursued cancellation of the Lancaster project, “Lancaster has continued negotiations with the potential off-taker and is in the process of finalizing a PPA for the full output of the Facility.”¹⁴ Based on its Protest, Lancaster has been in negotiations for at least nine months and has still not finalized such negotiations.¹⁵ Nor has Lancaster given PJM or the Commission any indication when it anticipates finalizing a PPA or initiating construction of the project.

In support of its Protest, Lancaster cites to *PSEG Power In-City I, LLC v. Consolidated Edison Co. of New York (“In-City”)* for the proposition that the Commission has traditionally favored the granting of reasonable extensions. However, there are some significant differences between *In-City* and Lancaster. Specifically,

1. *In-City* noted that the Commission’s interconnection policy permits “reasonable” extensions of interconnection agreements for up to three years “under certain circumstances.”¹⁶ Lancaster has already received an extension of Sections 6.1 and 6.2 milestones totaling 5 years, 8 months, or 32 months more than the Commission interconnection policy cited to by Lancaster.

¹⁴ See *Id.* at 2 and 3.

¹⁵ See *Id.* at 2.

¹⁶ See *Id.* at n. 2.

2. *In-City* requested an extension for a specific timeframe of 18 months; Lancaster left its request for an extension of time to finalize negotiations of a PPA open ended.

3. *In-City* provided evidentiary support that its delays were due to a number of events beyond its control.¹⁷ Lancaster provides no evidence in support of its Protest upon which the Commission can rely. Nor does Lancaster represent that the delay causing the need for this additional extension is due to any events beyond its control. Instead, Lancaster qualifies its progress with statements such as it (i) has “*continued negotiations with [a] potential off-taker;*”¹⁸ (ii) is “*in the process of finalizing a PPA;*”¹⁹ and (iii) “*believes that it can obtain a PPA.*” (Emphasis added).²⁰

Lancaster further asserts that the Commission should grant an extension of the milestones as it will not harm lower-queued generators because Lancaster has committed to construct the Facility and any related system upgrades in a manner that will not adversely impact others in the PJM interconnection queue.²¹ However, in the *In-City case*, there were no competing Interconnection Customers with projects sufficiently advanced to be affected by an 18 month extension of the *In-City* milestones. In Lancaster, there are numerous other interconnection projects in the PJM interconnection queue in the ComEd Zone. The Lancaster project has been holding on to 16 MW of Capacity Interconnection Rights for almost seven years without constructing a single wind turbine. Moreover, it is unclear to PJM how Lancaster is able to state

¹⁷ See *PSEG Power In-City I, LLC v. Consolidated Edison Co. of New York, Inc.*, Affidavit of Thomas Piascik in Support of Complaint, Docket No. EL04-126-000 (Aug. 23, 2004); see also, *PSEG Power In-City I, LLC v. Consolidated Edison Co. of New York, Inc.*, Affidavit of Andrew Gilbert in Support of Complaint, Docket No. EL04-126-000 (Aug. 23, 2004).

¹⁸ See *Id.* at 2.

¹⁹ See *Id.* at 3.

²⁰ See *Id.* at 4.

²¹ See *Id.* at 3.

with any certainty that an extension “will not harm lower-queued generators.”²² Lancaster’s statement is particularly troubling in light of the fact there are later queued projects tying into the same substation as the Lancaster project. Specifically, there is a wind farm (Queue No. P-46) that signed an ISA, which required numerous upgrades at the same substation used by Lancaster.²³ Additionally, there is a subsequent queued project (Queued No. R-16) that is still active in the PJM interconnection queue that may have impacts in the same area as the Lancaster project.²⁴ Allowing generators, such as Lancaster, to continue to extend milestone deadlines in order to stay in the queue while it secures financing after almost six and one-half years from when Lancaster executed its ISA seems patently unreasonable. In this instance, the obvious harm would be the continued uncertainty to projects that have attempted to advance in the queue during this six years plus period. Accordingly, Lancaster’s request that the Commission reject the Notice of Cancellation and permit “the continuation of the Lancaster ISA” should be denied.

²² See *Id.* at 4.

²³ Interconnection Service Agreement By and Among PJM, EcoGrove Wind, LLC and Commonwealth Edison Company, designated as Original Service Agreement No. 2118, effective Feb. 5, 2009 (“EcoGrove ISA”). The EcoGrove project has completed construction and commenced commercial operation of its generating facility in March 2009.

²⁴ See PJM Generator Interconnection Queue #R16 Lena 138 kV (126 MW Energy and 25.2 MW Capacity) System Impact Re-Study Report dated August 2010.

IV. Conclusion

For the reasons stated herein, the Commission should accept the Notice of Cancellation of Original Service Agreement No. 1378 as submitted on December 19, 2011 in the captioned matter and dismiss Lancaster's Protest.

Respectfully submitted,



By: _____

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Dated: January 24, 2012

*Counsel on behalf of
PJM Interconnection, L.L.C.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Norristown, PA, this 24th day of January 2012.



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