UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Hollow Road Solar, LLC	)	**Docket No. EL21-35-000**

MOTION TO INTERVENE AND ANSWER
OF PJM INTERCONNECTION, L.L.C.

Pursuant to the Rule 213 and 214 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure,[1] and the Commission's December 28, 2020, Notice of Petition for Declaratory Order in this docket, as modified by the Commission's January 8, 2021 Errata Notice, PJM Interconnection, L.L.C. ("PJM") hereby submits this Motion to Intervene and Answer to the Expedited Petition for Declaratory Order ("Petition") filed by Hollow Road Solar, LLC ("Hollow Road") in the above-referenced proceeding.[2]

I. BACKGROUND

PJM is diligently working to ensure that the recently accepted Minimum Offer Price Rule[3] ("MOPR") is implemented in full compliance with those Commission Orders.[4] As part of this effort, and consistent with the Commission's order,[5] PJM is actively collaborating with the

[1] 18 C.F.R. § 385.213; 18 C.F.R. § 214.

[2] Hollow Road Solar, Expedited Petition for Declaratory Order, Docket No. EL21-35-000 (December 22, 2020).

[3] For the purpose of this filing, capitalized terms not defined herein shall have the meaning as contained in the PJM Open Access Transmission Tariff ("Tariff"), Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., or the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region.

[4] While the capacity market construct and the newly adopted MOPR will result in workably competitive market outcomes and remains just and reasonable, PJM acknowledges that the current rules are not optimal given the complexity of various state and local regulations, statutes, or orders that may impact any given Capacity Resource and PJM's role in reviewing such laws. As a result, PJM has begun discussions with PJM stakeholders that may further evolve the MOPR and the Reliability Pricing Model generally.

[5] *See Calpine Corp. v. PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,061 (Oct. 15, 2020) at P 324.

Independent Market Monitor for PJM ("Market Monitor") in reviewing various state and local programs submitted by stakeholders to provide independent non-binding opinions to Market Participants regarding whether or not each is viewed as a State Subsidy.[6] Through this process, the Virginia Certified Pollution Control Equipment and Facilities section of the Virginia Code on taxation ("Virginia Pollution Control Statute") was previously brought to PJM and the Market Monitor for review by stakeholders. Upon examination of this particular property tax exemption program and the Commission's prior orders, PJM opined that the specific targeted provisions to stand-alone solar facilities of the Virginia Pollution Control Statute appear to be a State Subsidy as defined under the Tariff. As such, PJM, along with the Market Monitor, indicated this position in a non-binding opinion document posted for stakeholders.[7]

On December 22, 2020, Hollow Road filed this instant Petition asking the Commission to confirm that it will not be subject to the application of the MOPR as a consequence of being granted local property tax relief pursuant to the Virginia Pollution Control Statute.[8] Below, PJM provides its rationale for why tax exemptions for stand-alone solar facilities under the Virginia

[6] As explained by the Commission, the non-binding opinions provided to stakeholders "do[] not foreclose PJM from finding that any particular program does or does not meet the Tariff definition of a State Subsidy if good reason exists to do so." *Id*. Ultimately, it is up the Capacity Market Seller to make a good faith determination as to whether it is receiving a State Subsidy. *Id*. at P 323.

[7] PJM maintains a list containing PJM and the Market Monitor's non-binding opinion of whether certain state programs are deemed a State Subsidy. The programs on this list were submitted by various stakeholders to PJM and the Market Monitor for review and input. Available at: https://pjm.com/-/media/markets-ops/rpm/rpm-auction-info/non-binding-mopr-subsidy-opinions.ashx

[8] Hollow Road Solar, Expedited Petition for Declaratory Order, Docket No. EL21-35-000 (December 22, 2020). It is noted that while representatives of Hollow Road discussed this Petition with PJM prior to it being filed, the issue in those discussions was primarily focused on whether a qualifying facility that makes a sale under the Public Utility Regulatory Policies Act to a Self-Supply Entity would have that sale be exempt from the MOPR, as noted in footnote 6 of the Petition. It is also appropriate to clarify Hollow Road's statement that revenues associated with renewable energy credits ("RECs") "pursuant to a voluntary arrangement . . . will not fall within the definition of State Subsidy." *See* Petition at fn. 6. While it is true that resources that receive revenues from voluntary RECs may be able to offer below the applicable MOPR Floor Offer Price (assuming they are not entitled to receive any other form of State Subsidy), the Capacity Market Seller of such resource must first affirmatively certify that the resource is entitled to a State Subsidy and then subsequently elect the competitive exemption indicating that the RECS will only be used for voluntary purposes.

Pollution Control Statute constitute a State Subsidy based on the Commission's prior orders and PJM's Tariff filed in compliance with those orders,.

Irrespective of the outcome of this Petition, PJM intends to commence the next Base Residual Auction ("BRA") for the 2022/2023 Delivery Year beginning on May 19, 2021.[9] The next BRA must proceed without any further delay to ensure resource adequacy in the PJM Region and maintain the stability of PJM's capacity market. Accordingly, in the event this Petition remains outstanding by the requested date and Hollow Road does not certify whether or not it is a Capacity Resource with State Subsidy by the applicable deadline, the Tariff allows PJM to treat Hollow Road as a Capacity Resource with State Subsidy for purposes of the upcoming BRA.[10] In short, this Petition does not necessitate a delay of the next BRA.[11]

II. MOTION TO INTERVENE

PJM moves to intervene in this proceeding in accordance with Rule 214 of the Commission's Rules of Practice and Procedure.[12] As the administrator of the Tariff and RPM Auctions, PJM has an interest in this proceeding that no other party can represent. Further, the outcome of this petition impacts how PJM will administer the MOPR for Hollow Road. Accordingly, the Commission should grant this motion to intervene and accept PJM's Answer.

[9] As noted previously, PJM's determination is non-binding on the Capacity Market Seller. Rather, the actual certification from the Capacity Market Seller (subject to review by PJM and the Market Monitor) is controlling on the Capacity Resource as to the impact of both present and future acceptance of State Subsidies.

[10] *See* Tariff, Attachment DD, section 5.14(h-1)(1)(C)(i) ("A Capacity Resource shall be deemed a Capacity Resource with State Subsidy if the Capacity Market Seller fails to timely certify whether or not a Capacity Resource is entitled to a State Subsidy . . . ."

[11] PJM urges the Commission to reject any requests for further delay of the already delayed 2022/23 auction should such action be requested in this docket.

[12] 18 C.F.R. § 214.

III. NOTICES AND COMMUNICATIONS

All communications and correspondence with respect to this Motion to Intervene and Answer should be served upon the following individuals and PJM requests that the following individuals be placed on the Secretary's service list in this proceeding:

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IV. ANSWER

In this Petition, Hollow Road requests that the Commission find the Virginia Pollution Control Statute not be deemed a State Subsidy for purposes of the MOPR. Hollow Road asserts, in part, that the Virginia Pollution Control Statute should not be considered a State Subsidy because it is generally available to all businesses and not directly aimed at wholesale energy market participants.[13]

Under the Commission accepted Tariff, the definition of State Subsidy is defined, in relevant part, as:

> a direct or indirect payment, concession, rebate, subsidy, non-bypassable consumer charge, or other financial benefit that is as a result of any action, mandated process, or sponsored process of a state government, a political subdivision or agency of a state, or an electric cooperative formed pursuant to state law, and that
> (1) is derived from or connected to the procurement of (a) electricity or electric generation capacity sold at wholesale in interstate commerce, or (b) an attribute of the generation process for electricity or electric generation capacity sold at wholesale in interstate commerce; or

[13] *Id*. at p. 10.

(2) will support the construction, development, or operation of a new or existing Capacity Resource; or
(3) could have the effect of allowing the unit to clear in any PJM capacity auction

This definition further goes on to provide specific instances of state actions that would be excluded as a State Subsidy notwithstanding the general language described above. One of these carve-outs from the definition of State Subsidy pertains to general industrial development which can include "payments, concessions, rebates, subsidies, or incentives designed to incent, or participation in a program, contract or other arrangement that utilizes criteria designed to incent or promote, general industrial development in an area or designed to incent siting facilities in that county or locality rather than another county or locality . . . ."[14]

The Virginia Pollution Control Statute, attached as Exhibit A of this Answer, exempts "certified pollution control equipment and facilities" from state and local taxation.[15] In Virginia, certified pollution control equipment and facilities encompass traditional pollution control equipment that are generally available to any entity, but also explicitly includes "solar energy equipment, facilities, or devices owned or operated by a business that collect, generate, transfer, or store thermal or electric energy . . . ."[16] In a separate section of the Virginia Pollution Control Statute, however, the law further specifies tax exemptions for stand-alone solar facilities in particular and explains that the magnitude of the property tax exemption varies based on the size and timing of when the solar facilities are developed.[17] These additional provisions of Virginia's property tax exemption law specifically pertain to how such exemptions would only be applied to stand-alone solar resources.

[14] *See* definition of State Subsidy ("State Subsidy shall not include (a)

[15] Va. Code Ann. § 58.1-3660(A).

[16] Va. Code Ann. § 58.1-3660(B).

[17] *See* Va. Code Ann. § 58.1-3660(C); Va. Code Ann. § 58.1-3660(D).

Given the fact that the Virginia Pollution Control Statute contains separate sections that specifically address property tax exemptions rules that are applicable *only* to stand-alone solar facilities, this particular component of the statute does not appear to fall under the general industrial development carve-out that is "designed to provide an incentive or promote *general industrial development* in an area."[18] Furthermore, the Virginia Pollution Control Statute was already addressed in the underlying MOPR dockets,[19] as the Commission declined to extend a State Subsidy carve-out for any "tax relief or other concessions that are not generally applicable" in responding to those arguments.[20]

V. CONCLUSION

This answer is intended to assist the Commission as it considers Hollow Road's Petition and provides PJM's rationale for why the Virginia Pollution Control Statute, as applied to stand-alone solar facilities, appears to be a State Subsidy in accordance with the Commission accepted Tariff definition and the Commission's prior orders.

Respectfully submitted,

/s/ Chenchao Lu

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[18] *See Calpine Corp. v. PJM Interconnection, L.L.C.*, 173 FERC ¶ 61,061 (Oct. 15, 2020) at P 45 (emphasis added).

[19] *See* Request for Rehearing and Clarification of Dominion Energy Services, Inc., at pp.19-20, Docket Nos. EL19-48, EL18-178) (Jan. 21, 2020); *see* Request for Rehearing and Clarification of the Clean Energy Associations, at p. 60, Docket Nos. EL19-48, EL18-178) (Jan. 21, 2020).

[20] *See Calpine Corp. v. PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035 (Apr. 16, 2020) at P 109.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Audubon, PA, this 12th day of January 2021.

/s/ Chenchao Lu

Chenchao Lu

EXHIBIT A

VA Code Ann. § 58.1-3660

§ 58.1-3660. Certified pollution control equipment and facilities

Effective: July 1, 2020

A. Certified pollution control equipment and facilities, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other such classification of real or personal property and such property. Certified pollution control equipment and facilities shall be exempt from state and local taxation pursuant to Article X, Section 6 (d) of the Constitution of Virginia.

B. As used in this section:

"Certified pollution control equipment and facilities" means any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth and which the state certifying authority having jurisdiction with respect to such property has certified to the Department of Taxation as having been constructed, reconstructed, erected, or acquired in conformity with the state program or requirements for abatement or control of water or atmospheric pollution or contamination, except that in the case of equipment, facilities, devices, or other property intended for use by any political subdivision in conjunction with the operation of its water, wastewater, storm water, or solid waste management facilities or systems, including property that may be financed pursuant to Chapter 22 (§ 62.1-224 et seq.) of Title 62.1, the state certifying authority having jurisdiction with respect to such property shall, upon the request of the political subdivision, make such certification prospectively for property to be constructed, reconstructed, erected, or acquired for such purposes. Such property shall include, but is not limited to, any equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as mulch, compost, landfill gas, synthetic or natural gas recovered from waste or other fuel, and equipment used in collecting, processing, and distributing, or generating electricity from, landfill gas or synthetic or natural gas recovered from waste, whether or not such property has been certified to the Department of Taxation by a state certifying authority. Such property shall also include solar energy equipment, facilities, or devices owned or operated by a business that collect, generate, transfer, or store thermal or electric energy whether or not such property has been certified to the Department of Taxation by a state certifying authority. All such property as described in this definition shall not include the land on which such equipment or facilities are located.

"State certifying authority" means the State Water Control Board or the Virginia Department of Health, for water pollution; the State Air Pollution Control Board, for air pollution; the Department of Mines, Minerals and Energy, for solar energy projects and for coal, oil, and gas

production, including gas, natural gas, and coalbed methane gas; and the Virginia Waste Management Board, for waste disposal facilities, natural gas recovered from waste facilities, and landfill gas production facilities, and shall include any interstate agency authorized to act in place of a certifying authority of the Commonwealth.

C. For solar photovoltaic (electric energy) systems, this exemption applies only to (i) projects equaling 20 megawatts or less, as measured in alternating current (AC) generation capacity, for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or before December 31, 2018; (ii) projects equaling 20 megawatts or less, as measured in alternating current (AC) generation capacity, that serve any of the public institutions of higher education listed in § 23.1-100 or any private college as defined in § 23.1-105; (iii) 80 percent of the assessed value of projects for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization (a) between January 1, 2015, and June 30, 2018, for projects greater than 20 megawatts or (b) on or after July 1, 2018, for projects greater than 20 megawatts and less than 150 megawatts, as measured in alternating current (AC) generation capacity, and that are first in service on or after January 1, 2017; (iv) projects equaling five megawatts or less, as measured in alternating current (AC) generation capacity, for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or after January 1, 2019; and (v) 80 percent of the assessed value of all other projects equaling more than five megawatts and less than 150 megawatts, as measured in alternating current (AC) generation capacity for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or after January 1, 2019.

D. The exemption for solar photovoltaic (electric energy) projects greater than five megawatts, as measured in alternating current (AC) generation capacity, shall not apply to any such project unless an application has been filed with the locality for the project before July 1, 2030, regardless of whether a locality assesses a revenue share on such project pursuant to the provisions of § 58.1-2636. If a locality adopts an energy revenue share ordinance under § 58.1-2636, the exemption for solar photovoltaic (electric energy) projects greater than five megawatts, as measured in alternating current (AC) generation capacity, shall be 100 percent of the assessed value. If a locality does not adopt an energy revenue share ordinance under § 58.1-2636, the exemption for solar photovoltaic (electric energy) projects greater than five megawatts, as measured in alternating current (AC) generation capacity, for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization, shall be 80 percent of the assessed value when an application has been filed with the locality prior to July 1, 2030. For purposes of this subsection, “application has been filed with the locality” means an applicant has filed an application for a zoning confirmation from the locality for a by-right use or an application for land use approval under the locality’s zoning ordinance to include an application for a conditional use permit, special use permit, special exception, or other application as set out in the locality’s zoning ordinance.

E. For pollution control equipment and facilities certified by the Virginia Department of Health, this exemption applies only to onsite sewage systems that serve 10 or more households, use nitrogen-reducing processes and technology, and are constructed, wholly or partially, with public funds.

F. Notwithstanding any provision to the contrary, for any solar photovoltaic project described in clauses (iii) and (v) of subsection C for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or after January 1, 2019, the amount of the exemption shall be as follows: 80 percent of the assessed value in the first five years in service after commencement of commercial operation, 70 percent of the assessed value in the second five years in service, and 60 percent of the assessed value for all remaining years in service.