

189 FERC ¶ 61,110
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;
Mark C. Christie, David Rosner,
Lindsay S. See and Judy W. Chang

PJM Interconnection, L.L.C.

Docket Nos. ER24-3076-000
ER24-3078-000

ORDER ACCEPTING NOTICES OF CANCELLATION

(Issued November 18, 2024)

1. On September 19, 2024, PJM Interconnection, L.L.C. (PJM) separately filed two notices of cancellation of Wholesale Market Participation Agreements (WMPAs): (1) a WMPA among PJM, Marengo Solar, LLC (Marengo), and Commonwealth Edison Company (ComEd), designated as Service Agreement No. 6111 and accepted by the Commission effective September 3, 2021 (Marengo WMPA);¹ and (2) a WMPA among PJM, Cherry Valley Solar Project, LLC (Cherry Valley), and ComEd, designated as Service Agreement No. 6114 and accepted by the Commission effective December 3, 2020 (Cherry Valley WMPA).² As discussed below, we accept the notices of cancellation terminating the Marengo WMPA and the Cherry Valley WMPA (collectively, the WMPAs), effective November 19, 2024, as requested.

I. Background

2. The WMPAs facilitate the participation of the Marengo and Cherry Valley facilities in PJM's organized wholesale markets via wholesale sales. Marengo's 20 MW generating facility is located in McHenry County, Illinois (Marengo I Project).³

¹ PJM, Service Agreements Tariff, PJM SA No. 6111, PJM SA No. 6111 among PJM, Marengo Solar and ComEd (0.0.0) (Marengo WMPA); *see also PJM Interconnection, L.L.C.*, Docket No. ER21-2506-000 (Sept. 3, 2021) (delegated order).

² PJM, Service Agreements Tariff, PJM SA No. 6114, PJM SA No. 6114 among PJM, Cherry Valley Solar and ComEd (1.0.0) (Cherry Valley WMPA); *see also PJM Interconnection, L.L.C.*, Docket No. ER24-830-000 (Mar. 7, 2024) (delegated order).

³ Marengo Protest, Docket No. ER24-3076-000 at 2 (filed Oct. 10, 2024) (Marengo Protest) (citing Marengo WMPA, Specifications § 1.0).

Cherry Valley's 12.5 MW generating facility is located in Boone County, Illinois (Cherry Valley Project).⁴ The Marengo I Project and the Cherry Valley Project would interconnect through the distribution system of ComEd, and, through their respective WMPAs, Marengo and Cherry Valley plan to participate directly in PJM's organized wholesale markets. On April 29, 2017, the Marengo I Project entered PJM's interconnection queue⁵ and on September 28, 2017, the Cherry Valley Project entered PJM's interconnection queue.⁶

3. The terms and conditions of the WMPAs include, among other things, effective dates, obligations pursuant to the PJM Open Access Transmission Tariff (Tariff), milestones, suspension, and termination provisions.⁷ Relevant here, section 3.1 of the WMPAs establishes the project-specific milestones, including the requirement that Marengo and Cherry Valley enter into a two-party interconnection agreement with the Transmission Owner, here, ComEd. Specifically, section 3.1.4 of the WMPAs state that "[o]n or before July 31, 2021, Wholesale Market Participant must enter into an Interconnection Agreement with the Transmission Owner in order to effectuate the WMPA. This WMPA shall automatically terminate upon the termination of the two-party Interconnection Agreement between the Wholesale Market Participant and Transmission Owner."⁸

4. On June 15, 2021, ComEd and Marengo entered into the state-jurisdictional Interconnection Agreement providing for the Marengo facility's interconnection with ComEd's distribution facilities. On May 10, 2022, PJM placed the Marengo I Project into suspension, which temporarily froze certain milestones in the interconnection process with PJM.⁹ On June 15, 2021, ComEd and Cherry Valley entered into the state-jurisdictional Interconnection Agreement providing for the Cherry Valley facility's

⁴ Cherry Valley Protest, Docket No. ER24-3078-000 at 2 (filed Oct. 10, 2024) (Cherry Valley Protest) (citing Cherry Valley WMPA, Specifications § 1.0).

⁵ Marengo Protest at 2.

⁶ Cherry Valley Protest at 2.

⁷ Marengo WMPA, art. 1 (Definitions and Other Documents) §§ 1.1, 1.3, & 1.4; Cherry Valley WMPA, art. 1 (Definitions and Other Documents), §§ 1.1, 1.3, & 1.4.

⁸ See Marengo WMPA, art. 3 (Responsibility for Network or Local Upgrades), § 3.1.4; *see also* Cherry Valley WMPA, art. 3 (Responsibility for Network or Local Upgrades), § 3.1.4.

⁹ Marengo Protest at 3.

interconnection with ComEd's distribution facilities. On May 10, 2022, PJM similarly placed the Cherry Valley Project into suspension.¹⁰

II. Filings

5. PJM states that it is cancelling the Marengo WMPA and the Cherry Valley WMPA because Marengo's and Cherry Valley's respective Interconnection Agreements were terminated as of May 9, 2024.¹¹ Therefore, PJM states that the WMPAs are automatically terminated pursuant to section 3.1.4 of those agreements. PJM requests that the cancellation of the WMPAs be made effective November 19, 2024.

III. Notice of Filings and Responsive Pleadings

6. Notice of PJM's filings was published in the *Federal Register*, 89 Fed. Reg. 78862 (Sept. 26, 2024), with interventions and protests due on or before October 10, 2024. Timely motions to intervene were filed by Marengo and Exelon Corporation, on behalf of ComEd. On October 10, 2024, Marengo filed a protest in Docket No. ER24-3076-000. On October 10, 2024, Cherry Valley filed a protest in Docket No. ER24-3078-000. On October 25, 2024, PJM filed answers to both the Marengo Protest and the Cherry Valley Protest. Also on October 25, 2024, ComEd filed an answer to both the Marengo Protest and the Cherry Valley Protest (ComEd Answer). On November 8, 2024, Marengo and Cherry Valley filed an answer to PJM's answer and ComEd's answer (Marengo and Cherry Valley Answer). On November 18, 2024, PJM filed an answer to Marengo and Cherry Valley's November 8 answer.

A. Marengo & Cherry Valley Protests

7. Marengo and Cherry Valley each assert that following their respective suspension periods and discussions with ComEd relating to the schedules and milestones for the Marengo I Project and Cherry Valley Project, they received notices from ComEd alleging that the Marengo I Project and Cherry Valley Project were each in default under their state-jurisdictional Interconnection Agreement and that ComEd was "purporting to terminate the Interconnection Agreements, effective May 9, 2024."¹² Marengo and Cherry Valley argue that ComEd attempted to impermissibly terminate the Interconnection Agreements and improperly allege that the Marengo I Project and the Cherry Valley Project were no longer in ComEd's state-jurisdictional interconnection queue. Marengo and Cherry Valley state that, in response to ComEd's notices of termination, on June 19, 2024, they timely filed a

¹⁰ Cherry Valley Protest at 3.

¹¹ Transmittal at 1.

¹² Marengo Protest at 3; Cherry Valley Protest at 3.

“Verified Formal Complaint” with the Illinois Commerce Commission (ICC) challenging ComEd’s impermissible attempted termination of the Interconnection Agreements (ICC Complaint).¹³ According to Marengo and Cherry Valley, the ICC Complaint proceeding remains ongoing, and the ICC has not yet ruled on the ICC Complaint.¹⁴

8. Marengo and Cherry Valley argue that PJM has not satisfied its burden to demonstrate that the notices of cancellation of the WMPAs are just and reasonable and not unduly discriminatory or preferential, or if they are consistent with the public interest.¹⁵ Marengo and Cherry Valley contend that PJM’s assumption that the Interconnection Agreements were terminated is incorrect because the termination of the Interconnection Agreements are subject to an ongoing dispute before a state commission, and as such, may not serve as justification for the Commission to accept the notices of cancellation.¹⁶

9. Marengo and Cherry Valley state that ComEd’s attempt to terminate the Interconnection Agreements is impermissible under the plain terms of the Interconnection Agreements as it: (1) violates section 5.3 of the Interconnection Agreements, which requires ComEd to “not unreasonably withhold agreement” to milestone amendments;¹⁷ (2) violates section 6.5.2 of the Interconnection Agreements by not recognizing Marengo’s and Cherry Valley’s timely and valid cure that included proposing new milestone dates prior to ComEd’s proposed May 9, 2024 termination date;¹⁸ and (3) ComEd failed to provide timely notice of alleged default claims in accordance with the requirements of the Interconnection Agreement.¹⁹ Marengo and Cherry Valley therefore contend that they still

¹³ See Verified Formal Complaint Regarding Improper Termination of Interconnection Agreement by Commonwealth Edison Company, Illinois Commerce Commission Docket No. 24-0460, at P 21 (June 19, 2024). The ICC Complaint and its exhibits are attached to the Marengo Protest in this proceeding as Attachment A.

¹⁴ Marengo Protest at 3; Cherry Valley Protest at 3.

¹⁵ Marengo Protest at 5; Cherry Valley Protest at 5.

¹⁶ Marengo Protest at 5; Cherry Valley Protest at 5.

¹⁷ Marengo Protest at 5 (citing ICC Complaint at PP 43-46); Cherry Valley Protest at 5 (citing ICC Complaint at PP 43-46).

¹⁸ Marengo Protest at 5-6 (citing ICC Complaint at PP 47-53); Cherry Valley Protest at 5-6 (citing ICC Complaint at PP 47-53).

¹⁹ Marengo Protest at 6 (citing ICC Complaint at PP 54-58); Cherry Valley Protest at 6 (citing ICC Complaint at PP 54-58).

have valid Interconnection Agreements pursuant to applicable state law.²⁰ Marengo and Cherry Valley maintain that whether or not the Interconnection Agreements were validly terminated, is at best, inconclusive and depends on the state proceeding. Marengo and Cherry Valley argue that ComEd's position that the Interconnection Agreements are terminated is "far from a conclusive state commission ruling on the issue."²¹

10. For these reasons, Marengo and Cherry Valley request that the Commission reject PJM's notices of cancellation or, in the alternative, hold these proceedings in abeyance pending the outcome of the ICC Complaint proceeding, as they argue the Commission has done in similar circumstances.²² Marengo and Cherry Valley state that to the extent that the Commission holds the notices of cancellation in abeyance, they request to reserve all their rights under the WMPAs during any such abeyance period, and prior to any potential termination of the notices of cancellation.²³

B. PJM's Answer to Protests

11. PJM contends that it acted properly in filing the notices of cancellation and that the Commission should accept them without deference to the outcome of the ICC Complaint proceeding.²⁴ PJM disputes Marengo's and Cherry Valley's reliance on *DTE Electric* in support of their argument that the Commission should hold the notices of cancellation in abeyance pending the outcome of a state commission proceeding. PJM states that the issue in *DTE Electric* involved classification of a facility as either

²⁰ Marengo Protest at 6; Cherry Valley Protest at 6.

²¹ Marengo Protest at 6; Cherry Valley Protest at 6.

²² Marengo Protest at 6-7; Cherry Valley Protest at 6-7 (citing *DTE Elec. Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 175 FERC ¶ 61,068, at PP 48-49 (2021) (*DTE Electric*)).

²³ Marengo Protest at 7; Cherry Valley Protest at 7 (citing *DTE Electric*, 175 FERC ¶ 61,068 at P 51 (refraining from ordering facilities to be removed from transmission expansion plan pending abeyance and until culmination of state proceeding)).

²⁴ PJM Answer to Marengo Protest, Docket No. ER24-3076-000 at 1, 3 (filed Oct. 25, 2024) (PJM Answer to Marengo); PJM Answer to Cherry Valley Protest, Docket No. ER24-3078-000 at 1, 3 (filed Oct. 25, 2024) (PJM Answer to Cherry Valley).

transmission or interconnection whereas the issue in this case involves a matter of contract.²⁵

12. PJM asserts that the fact these Interconnection Agreements were terminated is not a matter for dispute.²⁶ PJM argues that, in fact, part of Marengo's and Cherry Valley's requested relief in their ICC Complaint is for the ICC to "declare ComEd's *termination* [of the Interconnection Agreement] improper."²⁷ Further, PJM adds that regardless of the ICC Complaint, it is bound by its Tariff and not the ICC.²⁸ PJM reiterates that section 3.1.4 of the WMPAs provides that "the Wholesale Market Participant must enter into an Interconnection Agreement with the Transmission Owner in order to effectuate the WMPA[s]."²⁹

C. ComEd's Answer

13. ComEd argues that the Commission should reject Marengo's and Cherry Valley's arguments and accept, without modification or condition, cancellation of the WMPAs.³⁰ ComEd argues that the plain terms of the WMPAs and the PJM Tariff provide the applicable framework for considering the notices of cancellation, and Marengo and Cherry Valley misinterpret the standard the Commission uses in evaluating such filings.³¹ ComEd further argues that Marengo's and Cherry Valley's contention that ComEd invalidly terminated the Interconnection Agreements under Illinois law is beyond the scope of the Commission's Federal Power Act (FPA) section 205 review process.

14. ComEd states that both Marengo and Cherry Valley completed the distribution-level interconnection study process for their respective projects and entered into an Agreement for Interconnection of Distributed Generation Facilities with ComEd, which required, among other things, that construction for the projects commence

²⁵ PJM Answer to Marengo at 3; PJM Answer to Cherry Valley at 3.

²⁶ PJM Answer to Marengo at 2; PJM Answer to Cherry Valley at 2.

²⁷ PJM Answer to Marengo at 2 (emphasis in pleading); PJM Answer to Cherry Valley at 2 (emphasis in pleading).

²⁸ PJM Answer to Marengo at 4; PJM Answer to Cherry Valley at 4.

²⁹ PJM Answer to Marengo at 4; PJM Answer to Cherry Valley at 4.

³⁰ ComEd Answer at 1-2.

³¹ *Id.* at 6.

by April 1, 2022.³² ComEd asserts that the construction milestones were not met and on February 9, 2024, nearly two years after the construction was required to start, ComEd sent notices indicating that the projects were in default for failure to start construction.³³ Following the notices of default, ComEd: (1) received notices of dispute from Marengo and Cherry Valley on February 27, 2024 asserting, among other things, that the Interconnection Agreements have been effectively suspended; (2) held a dispute meeting with Marengo and Cherry Valley on March 28, 2024; (3) sent letters to Marengo and Cherry Valley stating that the Interconnection Agreements and the projects' distribution interconnection applications were terminated effective May 9, 2024;³⁴ and (4) notified PJM of this termination on May 10, 2024.

15. ComEd argues that the record reflects that termination of the Interconnection Agreements has occurred, and thus the plain terms of the WMPAs deem the WMPAs automatically terminated.³⁵ ComEd asserts that the WMPAs' automatic termination is not conditioned on the outcome of a state proceeding, that Marengo and Cherry Valley are attempting to use a pending state-jurisdictional complaint to hold up the Commission and PJM processes, and granting relief would potentially set a dangerous precedent and undermine efficient queue administration.³⁶ ComEd further asserts that rejecting the notices of cancellation would inherently require the Commission to ascertain relevant facts about the terminations and interpret Illinois law, thereby prejudging a state jurisdictional matter.³⁷

D. Marengo and Cherry Valley Answer

16. Marengo and Cherry Valley argue that PJM and ComEd are rushing the Commission to reach a legal conclusion that the state-jurisdictional Interconnection

³² *Id.* at 3-4.

³³ *Id.* at 4.

³⁴ In these letters, ComEd justifies the terminations by stating that the Interconnection Agreements had not been suspended, applicable Illinois law does not allow for such suspensions, and the defaults outlined in the notices of default had not been cured.

³⁵ ComEd Answer at 6.

³⁶ *Id.* at 7.

³⁷ *Id.*

Agreements have been terminated as a matter of fact.³⁸ Marengo and Cherry Valley contend that the Commission should not entertain PJM's and ComEd's invitation to render such legal conclusion on a pending state-jurisdictional contractual matter before the ICC.³⁹

17. Marengo and Cherry Valley argue that PJM's attempt to differentiate the Commission's action in *DTE Electric* from this proceeding is no more than a distinction without a difference.⁴⁰ Marengo and Cherry Valley explain that whether the issue warranting state commission deference concerns the classification of distribution facilities (as was the case in *DTE Electric*), or the effectiveness of a state-jurisdictional contract (as is the case here), the Commission's policy remains the same; it will defer to the state commission's determination.⁴¹ Marengo and Cherry Valley reiterate that the Commission has withheld ruling on issues when such issues have depended in part on the outcome of a state commission.⁴² Marengo and Cherry Valley argue that a ruling in favor of PJM and ComEd would create a perverse incentive, allowing any utility to unilaterally terminate a WMPA or any other agreement, subject to the Commission's jurisdiction, conditioned in part on a state-jurisdictional contract.⁴³

18. Marengo and Cherry Valley argue that contract law provides that when a party's duty to perform under a contract is extinguished upon the occurrence of a condition subsequent, that party must prove that the condition subsequent has occurred.⁴⁴ Marengo and Cherry Valley assert that the burden rests on ComEd and PJM to demonstrate that the Interconnection Agreements were effectively terminated.⁴⁵ However, Marengo and Cherry Valley argue that because the ICC has not yet ruled on whether the Interconnection Agreements have been properly terminated, the Commission should

³⁸ Marengo and Cherry Valley Answer at 3.

³⁹ *Id.*

⁴⁰ *Id.* at 4.

⁴¹ *Id.*

⁴² *Id.* at 3-4.

⁴³ *Id.* at 4.

⁴⁴ Marengo and Cherry Valley state that ComEd's and PJM's duties to Marengo and Cherry Valley under the WMPAs extinguish upon the termination of the Interconnection Agreements—a condition subsequent. *Id.* at 5.

⁴⁵ *Id.*

conclude that neither ComEd nor PJM has met their burden to show that the Interconnection Agreements have been terminated.⁴⁶

E. PJM's Answers to Answers

19. PJM reiterates its position that all parties agree that a termination has occurred. According to PJM, this is demonstrated in Marengo's and Cherry Valley's ICC Complaint, where their requested relief is for the ICC to either: (1) declare ComEd's termination of the Interconnection Agreements improper; or (2) award compensation for loss or damage caused by ComEd's wrongful termination of the Agreements.⁴⁷ PJM argues that the termination of the WMPAs is not conditioned on the Interconnection Agreements being terminated to the satisfaction of Marengo and Cherry Valley.⁴⁸ PJM asserts that the WMPAs cannot operate without an effective Interconnection Agreement. Thus, PJM asserts that the WMPAs were terminated automatically upon the termination of the Interconnection Agreements. PJM adds that its basis for filing the notices of cancellation is justified.⁴⁹

20. PJM argues that Marengo and Cherry Valley mischaracterize PJM's answer by suggesting that PJM invites the Commission to render a legal conclusion on the state jurisdictional Interconnection Agreements. PJM clarifies that it asks the Commission to enforce the terms of the WMPAs, which were accepted and subject to the Commission's jurisdiction.⁵⁰ PJM reiterates that the issue presented in *DTE Electric* was not subject to the Commission's jurisdiction. PJM adds that there is a clear difference in *DTE Electric*, where the Michigan Commission found and the Commission agreed that the facility should be classified as a distribution facility, and therefore subject to Michigan jurisdiction.⁵¹ PJM asserts that in this proceeding, the jurisdictional lines of the WMPAs

⁴⁶ *Id.*

⁴⁷ PJM Answer to Marengo Answer at 3; PJM Answer to Cherry Valley Answer at 3.

⁴⁸ PJM Answer to Marengo Answer at 3; PJM Answer to Cherry Valley Answer at 3.

⁴⁹ PJM Answer to Marengo Answer at 3; PJM Answer to Cherry Valley Answer at 3.

⁵⁰ PJM Answer to Marengo Answer at 3-4; PJM Answer to Cherry Valley Answer at 3-4.

⁵¹ PJM Answer to Marengo Answer at 4-5; PJM Answer to Cherry Valley Answer at 4-5.

are not in question, so deferring to the ICC's judgment is not appropriate nor is it consistent with the Commission's policies as Marengo and Cherry Valley suggest.⁵² PJM therefore asserts that the Commission should enforce the terms of the WMPAs by accepting the notices of cancellation without deference to the ICC.⁵³

IV. Discussion

A. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2024), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2024), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers of PJM, ComEd, Cherry Valley, and Marengo because they provided information that assisted us in our decision-making process.

B. Substantive Matters

23. Based on the facts and circumstances in this matter, we accept PJM's notices of cancellation of both the Marengo WMPA and the Cherry Valley WMPA, effective November 19, 2024, as requested.

24. Section 3.1.4 of the WMPAs states that "[o]n or before July 31, 2021, Wholesale Market Participant must enter into an Interconnection Agreement with the Transmission Owner in order to effectuate the WMPA."⁵⁴ Section 3.1.4 further states that "[t]his WMPA *shall automatically terminate* upon the termination of the two-party

⁵² PJM Answer to Marengo Answer at 5; PJM Answer to Cherry Valley Answer at 5.

⁵³ PJM Answer to Marengo Answer at 4-5; PJM Answer to Cherry Valley Answer at 4-5.

⁵⁴ See Marengo WMPA, Article 3 (Responsibility for Network or Local Upgrades) § 3.1.4; see also Cherry Valley WMPA, art. 3 (Responsibility for Network or Local Upgrades), § 3.1.4.

Interconnection Agreement between the Wholesale Market Participant and Transmission Owner.”⁵⁵

25. Here, the record reflects that ComEd sent notices of termination of the Interconnection Agreements to Marengo and Cherry Valley and notified PJM of such notices.⁵⁶ We find that this is sufficient to demonstrate that a termination of the Interconnection Agreements has, in fact, occurred under the plain terms of the Interconnection Agreements and that the relevant condition for automatic termination of the WMPAs set forth in section 3.1.4 has been met. As PJM states in each filing, the WMPA “is being cancelled because the two-party Interconnection Agreement between the Wholesale Market Participant and Transmission Owner was terminated as of May 9, 2024.”⁵⁷

26. Finally, given our finding that the WMPAs were terminated under the plain terms of the WMPAs, we decline to hold the proceeding in abeyance pending the outcome of the state commission proceeding.⁵⁸

The Commission orders:

PJM’s notices of cancellation are hereby accepted, effective November 19, 2024, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.

⁵⁵ See Marengo WMPA, art. 3 (Responsibility for Network or Local Upgrades), § 3.1.4 (emphasis in pleading); *see also* Cherry Valley WMPA, art. 3 (Responsibility for Network or Local Upgrades), § 3.1.4.

⁵⁶ See ComEd Answer at attach. C.

⁵⁷ Transmittal at 1.

⁵⁸ While Marengo and Cherry Valley rely on *DTE Electric* to support their argument that the pending notices of cancellation should be held in abeyance, we note that in *DTE Electric*, the Commission also considered the comments of the Michigan Commission. *DTE Electric*, 175 FERC ¶ 61,068 at PP 10, 40, 48-49. In the instant proceeding, the ICC did not file comments.

Document Content(s)

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September 19, 2024

The Honorable Debbie-Anne Reese, Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, D.C. 20426-0001

*Re: PJM Interconnection, L.L.C., Docket No. ER24-____-000
Notice of Cancellation of Service Agreement No. 6111, Queue No. AD1-016*

Dear Secretary Reese:

PJM Interconnection, L.L.C. (“PJM”) submits this filing to notify the Federal Energy Regulatory Commission (“Commission”) of the cancellation of a Wholesale Market Participation Agreement (“WMPA”) among PJM, Marengo Solar, LLC (“Wholesale Market Participant” or “Marengo Solar”), and Commonwealth Edison Company (“Interconnected Transmission Owner”), designated as Service Agreement No. 6111, filed with and accepted by the Commission in Docket No. ER21-2506-000 (the “Marengo Solar WMPA”).¹ The Marengo Solar WMPA is being cancelled, because the two-party Interconnection Agreement between the Wholesale Market Participant and Transmission Owner was terminated as of May 9, 2024. Pursuant to section 3.1.4 of the Marengo Solar WMPA, “[t]his WMPA shall automatically terminate upon the termination of the two-party Interconnection Agreement between the Wholesale Market Participant and Transmission Owner.”² Therefore, PJM submits this filing to notify the Commission that Service Agreement No. 6111 is terminated effective November 19, 2024.

¹ See *PJM Interconnection, L.L.C.*, Letter Order, Docket No. ER21-2506-000 (Sept. 3, 2021).

² See Marengo Valley Solar WMPA, section 3.1.4

I. EFFECTIVE DATE

PJM requests an effective date of November 19, 2024 for the cancellation, sixty-one (61) days from the date of this submission, in accordance with the sixty day (60) notice requirement specified in section 35.15 of the Commission's regulations.³ The parties have no remaining obligations under Service Agreement No. 6111.

II. CORRESPONDENCE AND COMMUNICATION

The following individuals are designated for inclusion on the official service list⁴ in this proceeding, and for receipt of any communications regarding this filing:

³ 18 C.F.R. § 35.15 (2022).

⁴ To the extent necessary, PJM requests a waiver of Commission Rule 203(b)(3) (18 C.F.R. § 385.203(b)(3)) so that each named person may be included on the official service list.

III. SERVICE

PJM has served a copy of this filing on Wholesale Market Participant, Transmission Owner, and the state utility regulatory commissions within the PJM Region.

By: /s/ Salvia Yi

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All state utility regulatory commissions within the PJM Region

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY MARKET REGULATION

PJM Interconnection, L.L.C.
Docket No. ER21-2506-000

Issued: September 3, 2021

Mark J. Stanisz, Esq.
PJM Interconnection, L.L.C.
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Reference: Wholesale Market Participation Agreement - Service Agreement No. 6111

On July 26, 2021, PJM Interconnection, L.L.C. (PJM) filed a Wholesale Market Participation Agreement (WMPA) among PJM, Marengo Solar, LLC (Marengo), and Commonwealth Edison Company (ComEd), designated as Original Service Agreement No. 6111.¹ PJM states that it is submitting the WMPA for filing because Marengo requested interconnection of its generating facility connected to ComEd's non-jurisdictional distribution facilities to engage in wholesale sales in the PJM markets.

Pursuant to the authority delegated to the Director, Division of Electric Power Regulation – East, under 18 C.F.R. § 375.307, your submittal is accepted for filing, effective June 25, 2021, as requested.

The filing was noticed on July 26, 2021, with comments, interventions, and protests due on or before August 16, 2021. Pursuant to Rule 214 (18 C.F.R. § 385.214), to the extent that any timely filed motions to intervene and any motion to intervene out-of-time were filed before the issuance date of this order, such interventions are granted. Granting late interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

This acceptance for filing shall not be construed as constituting approval of the referenced filing or of any rate, charge, classification, or any rule, regulation, or practice

¹ PJM Interconnection, L.L.C., FERC FPA Electric Tariff, PJM Service Agreements Tariff, [PJM SA No. 6111](#), [PJM SA No. 6111 among PJM, Marengo Solar and ComEd, 0.0.0](#).

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affecting such rate or service contained in your filing; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against PJM.

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Issued by: Kurt M. Longo, Director, Division of Electric Power Regulation – East

Document Content(s)

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July 26, 2021

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, D.C. 20426

*Re: PJM Interconnection, L.L.C., Docket No. ER21-2506-000
Original WMPA, SA No. 6111; Queue No. AD1-016*

Dear Secretary Bose:

Pursuant to section 205 of the Federal Power Act (“FPA”),¹ and part 35 of the regulations of the Federal Energy Regulatory Commission (“Commission”),² PJM Interconnection, L.L.C. (“PJM”) submits for filing an executed Wholesale Market Participation Agreement (“WMPA”) entered into among PJM, Marengo Solar, LLC (“Marengo”) as Wholesale Market Participant, and Commonwealth Edison Company (“ComEd”) as Transmission Owner, executed on June 25, 2021 (“Marengo WMPA”).³ PJM is submitting the Marengo WMPA for filing because Marengo requested interconnection of its generating facility connected to ComEd’s non-jurisdictional distribution facilities to engage in wholesale sales in the PJM markets, and the WMPA, the appropriate agreement for the circumstances, is a form of agreement not presently contained in either the Tariff or any other PJM governing document. The WMPA applies only to wholesale transactions and is not intended to govern the actual physical interconnection of a generating

¹ 16 U.S.C. § 824d.

² 18 C.F.R. part 35.

³ Capitalized terms not defined herein have the meaning set forth by the PJM Open Access Transmission Tariff (“Tariff”).

facility to the distribution system. PJM requests waiver of the Commission's rules and regulations⁴ to permit an effective date of June 25, 2021, for this WMPA, which is designated as Original Service Agreement No. 6111, and attached to this filing.⁵

I. BACKGROUND

A. PJM's WMPA Process

On February 22, 2006, the Commission issued an order⁶ which rejected two Interconnection Service Agreements filed by PJM on the basis that the interconnection of the underlying generators to non-jurisdictional distribution facilities was not, in and of itself, action regulated by the FPA.⁷ The Commission pointed out that in Order No. 2003,⁸ it determined that it does not have jurisdiction over an interconnection where an interconnection customer seeks to interconnect to a "local distribution" facility that is not used to provide transmission service under a Commission-approved open access transmission tariff at the time the interconnection request is submitted.⁹ The Commission also stated that in order to assert jurisdiction over such an interconnection, there must be a preexisting interconnection and a wholesale transaction over such facilities.¹⁰

⁴ 18 C.F.R. § 35.3(a)(2).

⁵ A copy of the Marengo WMPA is included as Attachment A. Because the Marengo WMPA being electronically filed with this transmittal letter contains electronic signatures and not the original signatures of the parties, a copy of the sheet containing the original signatures is included as Attachment B to this transmittal letter.

⁶ *PJM Interconnection, L.L.C.*, 114 FERC ¶ 61,191, at P 14 ("GSG Order I"), *order denying rehearing*, 116 FERC ¶ 61,116 (2006) ("GSG Order II", and with the GSG Order I, the "GSG Orders").

⁷ GCG Order I at PP 14-16; *see also* GSG Order II P 19 (denying rehearing and clarification and noting the FPA denies the Commission jurisdiction "over facilities used in local distribution").

⁸ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Utils. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

⁹ GCG Order I at P 14 (citing Order No. 2003 at P 804; Order No. 2003-C at P 53).

¹⁰ GCG Order I at P 14 (citing Order No. 2003 at P 804); *see also* Order No. 2003-A at P 710.

PJM routinely receives Interconnection Requests from generation developers seeking to interconnect at a distribution level in order to participate in sales to the PJM markets. These include requests to interconnect to distribution facilities that, consistent with the GSG Orders and Order No. 2003, are considered non-jurisdictional. In light of the GSG Orders and Order No. 2003, PJM developed the WMPA as a contractual means to address these requests and provide a process to properly track and study these distribution-level interconnections, and facilitate the generator's participation in PJM's organized wholesale markets. WMPAs also allow PJM to establish and set forth any necessary security and metering provisions. In instances when a non-jurisdictional interconnection could affect the integrated transmission system, the WMPA process allows PJM to ensure that this contingency is studied and corrected, if necessary.

PJM developed its first WMPAs in 2006 and filed those agreements pursuant to the Commission's jurisdiction under FPA section 205 and the Commission's independent jurisdictional authority over wholesale sales of electric energy and related products in PJM's markets.¹¹ The Commission accepted those filings and has routinely accepted the numerous WMPAs PJM has filed since then.¹² The instant filing is also being submitted pursuant to such jurisdiction and authority, and establishes the terms and conditions necessary to facilitate the Wholesale Market Participant's ability to make wholesale sales into PJM markets. PJM

¹¹ See *PJM Interconnection, L.L.C.*, Submission of Executed Wholesale Market Participation Agreement, Docket No. ER06-1343 (Aug. 4, 2006) (accepted in *PJM Interconnection, L.L.C.*, Letter Order, Wholesale Market Participation Agreement, Docket Nos. ER06-1343-000 and -001 (Dec. 27, 2006)); *PJM Interconnection, L.L.C.*, Submission of Executed Wholesale Market Participation Agreement, Docket No. ER06-1453-000 (Aug. 31, 2006) (accepted in *PJM Interconnection, L.L.C.*, Letter Order, Wholesale Market Participation Agreement, Docket Nos. ER06-1453-000, -001 and -002 (Mar. 9, 2007)); *PJM Interconnection, L.L.C.*, Submission of Executed Market Participation Agreement, Docket No. ER07-332-000 (Dec. 18, 2006) (accepted in *PJM Interconnection, L.L.C.*, Letter Order, Wholesale Market Participation Agreement, Docket No. ER07-332-000 (Jan. 31, 2007)).

¹² See, e.g., *PJM Interconnection, L.L.C.*, Letter Order, Wholesale Market Participant Agreement No. 5966, Docket No. ER21-1084-000 (Apr. 7, 2021); *PJM Interconnection, L.L.C.*, Letter Order, Wholesale Market Participation Agreement, Service Agreement No. 5855, Docket No. ER21-614-000 (Jan. 27, 2021); *PJM Interconnection, L.L.C.*, Letter Order, Original Service Agreement No. 5857, Docket No. ER21-535-000 (Jan. 25, 2021).

respectfully requests that Commission accept this WMPA, to be effective June 25, 2021, as requested.

B. Description of the WMPA

The Marengo WMPA facilitates Marengo's participation in PJM's organized wholesale markets via wholesale sales from its 20 megawatt ("MW") Marengo Solar, LLC Participant Facility located in McHenry County, Illinois.¹³

The Marengo WMPA provides that Marengo will have Capacity Interconnection Rights in the amount of 7.6 MW.¹⁴ It further provides that nothing in the WMPA establishes any rights for Marengo with respect to the use of distribution facilities.¹⁵ The Marengo WMPA also provides that to the extent any portion of the Participant Facility is not a Capacity Resource with Capacity Interconnection Rights, such portion of the Participant Facility is an Energy Resource, and Marengo will be permitted to sell energy into PJM's markets in an amount equal to the Participant Facility's Maximum Facility Output (20 MW); however, PJM reserves the right to limit injections in the event reliability would be affected by output greater than such quantity.¹⁶

Other provisions of the WMPA establish the agreement's general and commercial terms. This includes effective date and termination provisions (section 1.1), notice provisions (section 1.1), and amendment and assignment provisions (sections 2.4. and 2.6). Section 3.0 establishes the security provisions and states there is no security required with the Marengo WMPA. Section 3.1 establishes the project-specific milestones, including the requirement that Marengo enter into

¹³ See Marengo WMPA, Specifications section 1.0.

¹⁴ *Id.*, Specifications section 2.1.

¹⁵ *Id.*

¹⁶ *Id.*, Specifications section 2.0; *see supra* n. 14 (accepting WMPAs granting similar Energy Resource rights).

a two-party Interconnection Agreement with ComEd by July 31, 2021 to effectuate the WMPA. The Schedules include a single-line diagram (Schedule A), and indicate that Schedules B (metering equipment), C (Local/Network Upgrades) and D (Applicable Technical Requirements and Standards) are not required. Schedule E lists the safe harbor provisions. Each of these terms and conditions is similar to those contained in other WMPAs accepted by the Commission.¹⁷

II. WAIVER AND EFFECTIVE DATE

PJM requests that the Commission grant any and all waivers of the Commission's rules and regulations that are necessary for acceptance of this filing and the enclosed WMPA. Consistent with the Commission's notice requirements for service agreements, 18 C.F.R. § 35.3(a)(2), PJM requests that the Commission grant an effective date for the Marengo WMPA of June 25, 2021, as this filing is being submitted within 30 days of the requested effective date.

To the extent necessary, PJM also requests waiver of the Commission's 60-day prior notice requirement. 18 C.F.R. § 35.3(a)(1), to allow this effective date. Waiver is appropriate because this effective date is consistent with the intent of the parties, as set forth in section 1.1 of the Marengo WMPA. Furthermore, the requested waiver is limited in scope and will result in no harm to third parties. The Commission has allowed waivers of its prior notice requirements when the filing is uncontested and does not change rates,¹⁸ and for other filings involving WMPAs.¹⁹

¹⁷ See *supra* n. 14.

¹⁸ See *ISO New England Inc.*, 116 FERC ¶ 61,308, at P 8 (2006); see also *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338 (1992) (waiving prior notice requirement when uncontested filings do not change rates).

¹⁹ See *supra* n. 12. If the Commission does not allow an effective date of June 25, 2021, PJM requests that the Commission grant the earliest effective date possible, and no later than July 27, 2021 one day after this filing. The Commission has allowed jurisdictional agreements to become effective one day after filing. See *Palo Duro Wind Interconnection Servs., LLC*, 149 FERC ¶ 61,205, at P 9 (2014); *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,032, at P 49 (2013).

III. DOCUMENTS ENCLOSED

In addition to this transmittal letter, PJM encloses the following:

1. Attachment A: Marengo WMPA, Original Service Agreement No. 6111; and
2. Attachment B: Copy of Sheet Containing Original Signatures to the Marengo WMPA.

IV. SERVICE

Copies of this filing have been served upon the parties, Marengo, and ComEd, as well as on the affected state utility commissions within the PJM region.

V. CORRESPONDENCE AND COMMUNICATIONS

All notices, communications, or correspondence addressed to PJM regarding this matter should be directed to, and PJM requests that the Secretary include on the Commission's official service list, the following:²⁰

Craig Glazer
Vice President – Federal Government Policy
PJM Interconnection, L.L.C.
1200 G Street, NW, Suite 600
Washington, DC 20005
202-423-4743 (phone)
202-393-7741 (fax)
craig.glazer@pjm.com

Mark J. Stanisz
Senior Counsel
PJM Interconnection, L.L.C.
2750 Monroe Blvd
Audubon, PA 19403-2497
(610) 666-4707
mark.stanisz@pjm.com

²⁰ To the extent necessary, PJM requests waiver of Rule 203(b)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(b)(3), to permit all of the persons listed to be placed on the official service list for this proceeding.

VI. CONCLUSION

For the foregoing reasons, PJM requests that the Commission accept the Marengo WMPA with an effective date of June 25, 2021.

Respectfully submitted,

By: /s/ Mark J. Stanisz

Craig Glazer
Vice President – Federal Government Policy
PJM Interconnection, L.L.C.
1200 G Street, NW, Suite 600
Washington, DC 20005
202-423-4743 (phone)
202-393-7741 (fax)
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Mark J. Stanisz
Senior Counsel
PJM Interconnection, L.L.C.
2750 Monroe Blvd
Audubon, PA 19403-2497
(610) 666-4707
mark.stanis@pjm.com

cc (via email):

Marengo
Gaurav Mehta – gaurav.mehta@enel.com

ComEd
Scott Razze – scott.razze@pepcoholdings.com
Amy Blauman – amy.blauman@exeloncorp.com

ATTACHMENT A

**WMPA - Original Service Agreement No. 6111
(Clean Format)**

(PJM Queue #AD1-016)

WHOLESALE MARKET PARTICIPATION AGREEMENT
Among
PJM INTERCONNECTION, L.L.C.
And
MARENGO SOLAR, LLC
And
COMMONWEALTH EDISON COMPANY

WHOLESALE MARKET PARTICIPATION AGREEMENT

**By and Among
PJM Interconnection, L.L.C.**

And

Marengo Solar, LLC

And

**Commonwealth Edison Company
(PJM Queue Position #AD1-016)**

This Wholesale Market Participation Agreement (“WMPA”) including the Specifications, and Schedules attached hereto and incorporated herein, is entered into in order to effectuate sales of energy and/or capacity into PJM’s wholesale markets, by and between PJM Interconnection, L.L.C., the Regional Transmission Organization for the PJM Region (“Transmission Provider”), Marengo Solar, LLC (“Wholesale Market Participant”) and Commonwealth Edison Company (“Transmission Owner” or “ComEd”) (referred to individually as “Party” or collectively as “the Parties”).

WITNESSETH

WHEREAS, Wholesale Market Participant is developing generation that it intends to use to engage in Wholesale Transactions in PJM’s markets and desires to maintain its proposed generation in the queue that PJM studies for potential reliability impacts to the Transmission System;

WHEREAS, Wholesale Market Participant is seeking to interconnect at a local distribution or sub-transmission facility, which at this time is not subject to FERC jurisdiction; and

WHEREAS, Wholesale Market Participant and Transmission Owner or its affiliate must enter into a separate two-party interconnection agreement (“Interconnection Agreement”) in order to address issues of physical interconnection and local charges that may be presented by the interconnection of Wholesale Market Participant’s generation to the distribution facility.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, together with other good and valuable consideration, the receipt and sufficiency is hereby mutually acknowledged by Transmission Provider, Transmission Owner and Wholesale Market Participant and the parties agree to assume all of the rights and obligations consistent with the rights and obligations relating to Network Upgrades, Local Upgrades and metering requirements set forth in Part VI of the Tariff, as of the effective date of this WMPA, required for Wholesale Market Participant to make Wholesale Transactions in PJM’s markets. The Parties mutually covenant and agree as follows:

Article 1 – DEFINITIONS and OTHER DOCUMENTS

- 1.0 Defined Terms.** All capitalized terms herein shall have the meanings as set forth in the definitions of such terms as stated in Part I, Article 1 or Part VI of the PJM Open Access Transmission Tariff (“Tariff”), except Wholesale Market Participant which shall be defined in this WMPA as a participant in a Wholesale Transaction.
- 1.1 Effective Date.** This WMPA shall become effective on the date it is executed by all Parties, or, if this WMPA is filed with FERC unexecuted, upon the date specified by FERC. This WMPA shall terminate on such date as mutually agreed upon by the parties, unless earlier terminated consistent with Section 1 in Attachment O, Appendix 2, Part VI of the Tariff.
- 1.2 Assumption of Tariff Obligations.** Wholesale Market Participant agrees to abide by all rules and procedures pertaining to generation and transmission in the PJM Region, including but not limited to the rules and procedures concerning the dispatch of generation or scheduling transmission set forth in the Tariff, the Operating Agreement and the PJM Manuals.
- 1.3 Incorporation Of Other Documents.** All portions of the Tariff and the Operating Agreement pertinent to the subject matter of this WMPA and not otherwise made a part hereof are hereby incorporated herein and made a part hereof.

Article 2 - NOTICES and MISCELLANEOUS

- 2.0 Notices.** Any notice, demand or request required or permitted to be given by any Party to another and any instrument required or permitted to be tendered or delivered by any Party in writing to another may be so given, tendered or delivered by recognized national courier or by depositing the same with the United States Postal Service, with postage prepaid for delivery by certified or registered mail addressed to the Party, or by personal delivery to the Party, at the address specified below. Such notices, if agreed to by the Parties, may be made via electronic means, with e-mail confirmation of delivery.

Transmission Provider:

PJM Interconnection, L.L.C.
2750 Monroe Blvd.
Audubon, PA 19403-2497

Wholesale Market Participant:

Marengo Solar, LLC
Brickstone Square, Suite 300
Andover, MA 01810
Attn: Mr. Gaurav Mehta

Email: gaurav.mehta@enel.com
Phone: (978) 719-0069

Transmission Owner:

Commonwealth Edison Company
Two Lincoln Centre, 9th Floor
Oakbrook Terrace, IL 60181-4260
Attn: Mr. Scott Razze – Manager, Interconnection & System Studies
Email: scott.razze@pepcoholdings.com
Phone: (302) 283-6036

Either Party may change its address or designated representative for notice by notice to the other Parties in the manner provided for above.

- 2.1 Construction With Other Parts Of The Tariff.** This WMPA shall not be construed as an application for service under Part II or Part III of the Tariff.
- 2.2 Warranty for Facilities Study.** In analyzing and preparing the System Impact Study, and in designing and constructing the Local Upgrades and/or Network Upgrades described in Part II of the Tariff and in the Specifications attached to this WMPA, Transmission Provider, the Transmission Owner(s), and any other subcontractors employed by Transmission Provider have had to, and shall have to, rely on information provided by Wholesale Market Participant and possibly by third parties and may not have control over the accuracy of such information. Accordingly, NEITHER TRANSMISSION PROVIDER, THE TRANSMISSION OWNER(s), NOR ANY OTHER SUBCONTRACTORS EMPLOYED BY TRANSMISSION PROVIDER OR TRANSMISSION OWNER MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, WHETHER ARISING BY OPERATION OF LAW, COURSE OF PERFORMANCE OR DEALING, CUSTOM, USAGE IN THE TRADE OR PROFESSION, OR OTHERWISE, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE ACCURACY, CONTENT, OR CONCLUSIONS OF THE FACILITIES STUDY OR THE SYSTEM IMPACT STUDY IF A FACILITIES STUDY WAS NOT REQUIRED OR OF THE LOCAL UPGRADES AND/OR THE NETWORK UPGRADES, PROVIDED, HOWEVER, that Transmission Provider warrants that the Transmission Owner Facilities described in the Specifications will be designed and constructed (to the extent that Transmission Owner is responsible for design and construction thereof) and operated in accordance with Good Utility Practice, as such term is defined in the Operating Agreement. Wholesale Market Participant acknowledges that it has not relied on any representations or warranties not specifically set forth herein and that no such representations or warranties have formed the basis of its bargain hereunder.
- 2.3 Waiver.** No waiver by any party of one or more defaults by the other in performance of any of the provisions of this WMPA shall operate or be construed as a waiver of any other or further default or defaults, whether of a like or different character.

2.4 Amendment. This WMPA or any part thereof, may not be amended, modified, or waived other than by a written document signed by all parties hereto.

2.5 Addendum of Wholesale Market Participant's Agreement to Conform with IRS Safe Harbor Provisions for Non-Taxable Status. To the extent required, in accordance with Section 24.1 in Attachment O, Appendix 2 in Part VI of the Tariff, Schedule E to this WMPA shall set forth the Wholesale Market Participant's agreement to conform with the IRS safe harbor provisions for non-taxable status.

2.6 Assignment

2.6.1 Assignment with Prior Consent:

If the Interconnection Agreement between the Wholesale Market Participant and the Transmission Owner, as referenced in section 3.1.4 herein, provides that such Interconnection Agreement may be assigned, and such Interconnection Agreement was assigned, then, except as provided in Section 2.6.2 of this WMPA, no Party shall assign its rights or delegate its duties under this WMPA without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned, or delayed; and any such assignment or delegation made without such prior written consent shall be null and void. A Party may make an assignment in connection with the sale, merger, or transfer of all of its properties, including the Participant Facility, which it owns, so long as the assignee in such a sale, merger, or transfer assumes in writing all rights, duties and obligations arising under this WMPA. In addition, the Transmission Owner shall be entitled, subject to applicable laws and regulations, to assign the WMPA to an Affiliate or successor that owns and operates all or a substantial portion of the Transmission Owner's transmission facilities.

2.6.2 Assignment without Prior Consent

2.6.2.1 Assignment to Owners:

If the Interconnection Agreement between the Wholesale Market Participant and the Transmission Owner, as referenced in section 3.1.4 herein, provides that such Interconnection Agreement may be assigned, and such Interconnection Agreement was assigned, then the Wholesale Market Participant may assign its rights or delegate its duties under this WMPA without the Transmission Owner's or Transmission Provider's prior consent to any Affiliate or person that purchases or otherwise acquires, directly or indirectly, all of the Participant Facility, provided that prior to the effective date of any such assignment: (1) the assignee shall demonstrate that, as of the effective date of the assignment, the assignee has the technical and operational competence to comply with the requirements of this WMPA; and (2) in writing to the Transmission Owner and Transmission Provider, assignee assumes all rights, duties, and obligations of Wholesale Market Participant arising under this WMPA. However, any assignment described herein

shall not relieve or discharge the Wholesale Market Participant from any of its obligations hereunder absent the written consent of the Transmission Provider, such consent not to be unreasonably withheld, conditioned or delayed.

2.6.2.2 Assignment to Lenders:

If the Interconnection Agreement between the Wholesale Market Participant and the Transmission Owner, as referenced in section 3.1.4 herein, provides that such Interconnection Agreement may be assigned to any Project Finance Entity(ies), and such Interconnection Agreement was assigned, then the Wholesale Market Participant may, without consent of the Transmission Provider or the Transmission Owner, assign this WMPA to such Project Finance Entity(ies), provided that such assignment does not alter or diminish Wholesale Market Participant's duties and obligations under this WMPA. If Wholesale Market Participant provides the Transmission Owner and Transmission Provider with notice of an assignment to such Project Finance Entity(ies) and identifies such Project Finance Entity(ies) as a contact for notice of Breach consistent with section 15.3 of Attachment O, Appendix 2 in Part VI of the Tariff, the Transmission Provider or Transmission Owner shall provide notice and reasonable opportunity for such Project Finance Entity(ies) to cure any Breach under this WMPA in accordance with this WMPA. Transmission Provider or Transmission Owner shall, if requested by such Project Finance Entity(ies), provide such customary and reasonable documents, including consents to assignment, as may be reasonably requested with respect to the assignment and status of this WMPA, provided that such documents do not alter or diminish the rights of the Transmission Provider or Transmission Owner under this WMPA, except with respect to providing notice of Breach consistent with section 15.3 of Attachment O, Appendix 2 in Part VI of the Tariff, to such Project Finance Entity(ies). Upon presentation of the Transmission Provider and/or Transmission Owner's invoice therefor, Wholesale Market Participant shall pay the Transmission Provider and/or the Transmission Owner's reasonable documented cost of providing such documents and certificates as requested by such Project Finance Entity(ies). Any assignment described herein shall not relieve or discharge the Wholesale Market Participant from any of its obligations hereunder absent the written consent of the Transmission Owner and Transmission Provider.

2.6.3 Successors and Assigns:

This WMPA and all of its provisions are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

ARTICLE 3 – Responsibility for Network or Local Upgrades

- 3.0 Security for Network or Local Upgrades.** Consistent with Section 212.4 in Part VI of the Tariff, Wholesale Market Participant, on or before the effective date of this WMPA, shall provide the Transmission Provider (for the benefit of the Transmission Owner) with

a letter of credit from an agreed provider or other form of security reasonably acceptable to the Transmission Provider and that names the Transmission Provider as beneficiary (“Security”) in the amount of **\$0**. This amount represents the sum of the estimated Costs, determined consistent with Section 217 in Part VI of the Tariff, of (i) the Local Upgrades and/or Network Upgrades less any Costs already paid by the Wholesale Market Participant. Should Wholesale Market Participant fail to provide Security in the amount or form required in the first sentence of this Section, this WMPA shall be terminated. Wholesale Market Participant acknowledges that its ultimate cost responsibility consistent with Section 217 in Part VI of the Tariff will be based upon the actual Costs of the facilities described in the Specifications to this WMPA, whether greater or lesser than the amount of the Security provided under this Section.

3.1 Project Specific Milestones. During the term of this WMPA, Wholesale Market Participant shall ensure that it meets each of the following milestones:

3.1.1 Substantial Site work completed. On or before **June 1, 2022**, Wholesale Market Participant must demonstrate completion of at least 20% of project site construction.

3.1.2 Commercial Operation. (i) On or before **August 31, 2022**, Wholesale Market Participant must demonstrate commercial operation of all generating units; (ii) On or before **September 30, 2023**, Wholesale Market Participant must demonstrate commercial sale or use of energy and, if applicable obtain capacity qualification consistent with the requirements of the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region.

3.1.3 Documentation. Within one (1) month following commercial operation of generating unit(s), Wholesale Market Participant must provide certified documentation demonstrating that “as-built” Participant Facility are consistent with applicable PJM studies and agreements. Wholesale Market Participant must also provide PJM with “as-built” electrical modeling data or confirm that previously submitted data remains valid.

3.1.4 Interconnection Agreement. On or before **July 31, 2021**, Wholesale Market Participant must enter into an Interconnection Agreement with the Transmission Owner in order to effectuate the WMPA. This WMPA shall automatically terminate upon the termination of the two-party Interconnection Agreement between the Wholesale Market Participant and Transmission Owner.

Wholesale Market Participant shall demonstrate the occurrence of each of the foregoing milestones to Transmission Provider’s reasonable satisfaction. Transmission Provider may reasonably extend any such milestone dates, in the event of delays that Wholesale Market Participant (i) did not cause and (ii) could not have remedied through the exercise of due diligence.

If (i) the Wholesale Market Participant suspends work pursuant to a suspension provision contained in an interconnection and/or construction agreement with the Transmission Owner or (ii) the Transmission Owner extends the date by which Wholesale Market Participant must enter into an interconnection agreement relative to this WMPA, and (iii) the Wholesale Market Participant has not made a wholesale sale under this WMPA, the Wholesale Market Participant may suspend this WMPA by notifying the Transmission Provider and the Transmission Owner in writing that it wishes to suspend this WMPA, with the condition that, notwithstanding such suspension, the Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and Transmission Provider's safety and reliability criteria. Wholesale Market Participant's notice of suspension shall include an estimated duration of the suspension period and other information related to the suspension. Pursuant to this section 3.1, Wholesale Market Participant may request one or more suspensions of work under this WMPA for a cumulative period of up to a maximum of three years. If, however, the suspension will result in a Material Modification as defined in Part I, Section 1.18A.02 of the Tariff, then such suspension period shall be no greater than one (1) year. If the Wholesale Market Participant suspends this WMPA pursuant to this Section 3.1 and has not provided written notice that it will exit such suspension on or before the expiration of the suspension period described herein, this WMPA shall be deemed terminated as of the end of such suspension period. The suspension time shall begin on the date the suspension is requested or on the date of the Wholesale Market Participant's written notice of suspension to Transmission Provider, if no effective date was specified. All milestone dates stated in this Section 3.1 shall be deemed to be extended coextensively with any suspension period permitted pursuant to this provision.

IN WITNESS WHEREOF, Transmission Provider, Wholesale Market Participant and Transmission Owner have caused this WMPA to be executed by their respective authorized officials. By each individual signing below, each represents to the other that they are duly authorized to sign on behalf of their company and have the actual and/or apparent authority to bind the respective company to this WMPA.

(PJM Queue Position #AD1-016)

Transmission Provider: **PJM Interconnection, L.L.C.**

By: <u>/s/ Jason Shoemaker</u>	<u>Manager, Interconnection Projects</u>	<u>6/25/2021</u>
Name	Title	Date

Printed name of signer: Jason Shoemaker

Wholesale Market Participant: **Marengo Solar, LLC**

By: <u>/s/ Georgios Papadimitriou</u>	<u>President & CEO</u>	<u>4/14/2021</u>
Name	Title	Date

Printed name of signer: Georgios Papadimitriou

Transmission Owner: **Commonwealth Edison Company**

By: <u>/s/ Doug Dale</u>	<u>Manager, Interconnection Contracts</u>	<u>6/25/2021</u>
Name	Title	Date

Printed name of signer: Doug Dale

**SPECIFICATIONS FOR
WHOLESALE MARKET PARTICIPATION AGREEMENT**

**By and Among
PJM INTERCONNECTION, L.L.C.**

And

Marengo Solar, LLC

And

**Commonwealth Edison Company
(PJM Queue Position # AD1-016)**

1.0 Description of generating unit(s) (the “Participant Facility” or “Participant’s Facility”) to be used for the provision of wholesale sales into the PJM markets:

a. Name of Participant Facility:

Marengo Solar, LLC

b. Location of Participant Facility:

McHenry County, Illinois

42.2496900, -88.6546900

c. Size in megawatts of Participant Facility:

Maximum Facility Output of **20.0** MW

d. Description of the equipment configuration:

A ground mounted, inverter-based, solar photovoltaic generating facility consisting of solar arrays and step up transformation with a high side voltage of 34.5 kV.

2.0 Rights for Generation Wholesale Market Participant

2.1 Capacity Interconnection Rights:

Consistent with the applicable terms of the Tariff, the Wholesale Market Participant shall have Capacity Interconnection Rights at the point(s) of interconnection specified in Schedule A of this Wholesale Market Participant Agreement in the amount of **7.6** MW; provided however, nothing in this WMPA provides any rights with regard to the use of distribution facilities.

To the extent that any portion of the Participant Facility described in Section 1.0 is not a Capacity Resource with Capacity Interconnection Rights, such portion of the Participant Facility shall be an Energy Resource. Pursuant to this WMPA, the

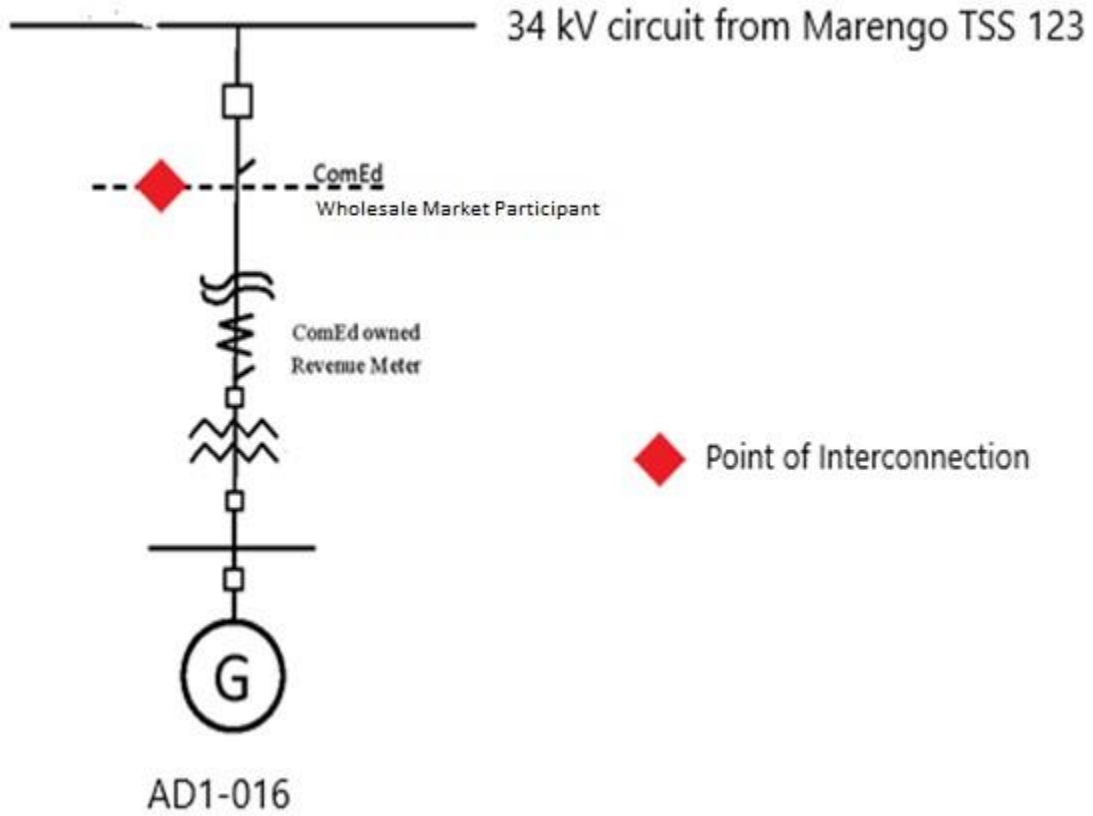
Wholesale Market Participant may sell energy into PJM's markets in an amount equal to the Participant Facility's Maximum Facility Output indicated in Section 1.0c of the Specifications for this WMPA. PJM reserves the right to limit injections in the event reliability would be affected by output greater than such quantity.

3.0 Ownership and Location of Metering Equipment. The metering equipment to be constructed, the capability of the metering equipment to be constructed, and the ownership thereof, as required for the Wholesale Transactions shall be identified on the attached Schedule B to this WMPA, and provided consistent with the PJM manuals.

SCHEDULES:

- **SCHEDULE A - SINGLE-LINE DIAGRAM (Showing point of interconnection)**
- **SCHEDULE B - LIST OF METERING EQUIPMENT**
- **SCHEDULE C - LIST OF LOCAL/NETWORK UPGRADES**
- **SCHEDULE D - APPLICABLE TECHNICAL REQUIREMENTS AND STANDARDS**
- **SCHEDULE E - WHOLESALE MARKET PARTICIPANT AGREEMENT TO CONFORM WITH IRS SAFE HARBOR PROVISIONS FOR NON-TAXABLE STATUS**
- **SCHEDULE F – SCHEDULE OF NON-STANDARD TERMS & CONDITIONS**

SCHEDULE A
SINGLE-LINE DIAGRAM



SCHEDULE B

LIST OF METERING EQUIPMENT

The Wholesale Market Participant will be required to install telemetry and communication equipment to provide real-time telemetry and revenue (settlements) data to PJM as well as having the ability to receive and respond to PJM operational command and control signals. The Wholesale Market Participant may elect to have the Transmission Owner install, own, operate, test and maintain the metering equipment at the Wholesale Market Participant's expense. The requirements for this equipment are listed in Appendix 2, Section 8 of Attachment O to the Tariff, as well as PJM Manuals 01 and 14D.

Should the Wholesale Market Participant wish to participate in the ancillary services market (regulation), communications equipment will need to be installed along with additional metering equipment.

SCHEDULE C
LIST OF LOCAL/NETWORK UPGRADES

Not Required.

SCHEDULE D

APPLICABLE TECHNICAL REQUIREMENTS AND STANDARDS

ComEd DER Interconnection Guidelines for Customers Interconnection for Parallel
Generation 7/20/2018 Rev. 0

<https://www.pjm.com/-/media/planning/plan-standards/private-ce/der-interconnection-guidelines-for-customers.ashx>

SCHEDULE E

WHOLESALE MARKET PARTICIPANT'S AGREEMENT TO CONFORM WITH IRS SAFE HARBOR PROVISIONS FOR NON-TAXABLE STATUS

As provided in Section 24.1 in Attachment O, Appendix 2 in Part VI of the Tariff and subject to the requirements thereof, Wholesale Market Participant represents that it meets all qualifications and requirements as set forth in Section 118(a) and 118(b) of the Internal Revenue Code of 1986, as amended and interpreted by Notice 2016-36, 2016-25 I.R.B. (6/20/2016) (the "IRS Notice"). Wholesale Market Participant agrees to conform with all requirements of the safe harbor provisions specified in the IRS Notice, as they may be amended, as required to confer non-taxable status on some or all of the transfer of property, including money, by Wholesale Market Participant to Transmission Owner with respect to the payment of the Costs of construction and installation of the Transmission Owner Interconnection Facilities specified in this WMPA.

Nothing in Wholesale Market Participant's agreement pursuant to this Schedule E shall change the indemnification obligations under Section 24.2 in Attachment O, Appendix 2 in Part VI of the Tariff.

SCHEDULE F
SCHEDULE OF NON-STANDARD TERMS & CONDITIONS

Not Required.

ATTACHMENT B

Copy of Sheet Containing Original Signatures

IN WITNESS WHEREOF, Transmission Provider, Wholesale Market Participant and Transmission Owner have caused this WMPA to be executed by their respective authorized officials. By each individual signing below, each represents to the other that they are duly authorized to sign on behalf of their company and have the actual and/or apparent authority to bind the respective company to this WMPA.

(PJM Queue Position #AD1-016)

Transmission Provider: **PJM Interconnection, L.L.C.**

Manager, Interconnection Projects

By: Jason Shoemaker 6/25/2021
Name Title Date

Printed name of signer: Jason Shoemaker

Wholesale Market Participant: **Marengo Solar, LLC**

President & CEO

By: Georgios Papadimitriou 4/14/2021
Name Title Date

Printed name of signer: Georgios Papadimitriou

Transmission Owner: **Commonwealth Edison Company**

Manager, Interconnection Contracts

By: Doug Dale 6/25/2021
Name Title Date

Printed name of signer: Doug Dale