

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

Welcome Solar, LLC)	
Welcome Solar II, LLC)	
Welcome Solar III, LLC)	
Complainants,)	Docket No. EL25-5-000
)	
v.)	
)	
PJM Interconnection, L.L.C.)	
Respondent.)	

ANSWER OF PJM INTERCONNECTION, L.L.C.

PJM Interconnection, L.L.C. (“PJM”), pursuant to Rule 213 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure,¹ submits this answer to the Complaint filed by Welcome Solar, LLC, Welcome Solar II, LLC, and Welcome Solar III, LLC (collectively, “Welcome Solar” or “Complainants”) in the captioned proceeding.² Welcome Solar has not shown that PJM violated the Federal Power Act (“FPA”) or the PJM Open Access Transmission Tariff (“Tariff”)³ in issuing the September 5, 2024 notices of breach referenced in the Complaint.⁴ Therefore, the Commission should deny the Complaint.

¹ 18 C.F.R. § 385.213.

² *Welcome Solar, LLC v. PJM Interconnection, L.L.C.*, Complaint and Request for Fast Track Processing of Welcome Solar, LLC, Welcome Solar II, LLC, and Welcome Solar III, LLC, Docket No. EL25-5-000 (Oct. 4, 2024) (“Complaint”).

³ Terms not otherwise defined in this answer shall have the meaning set forth in the Tariff.

⁴ *PJM Interconnection, L.L.C.*, Original Service Agreement No. 6475; Queue No. AE1-079, Docket No. ER22-2112-000 (June 14, 2022); *PJM Interconnection, L.L.C.*, Original Service Agreement No. 6454; Queue No. AE1-237, Docket No. ER22-1908-000 (May 19, 2022); *PJM Interconnection, L.L.C.*, Amendment to Service Agreement No. 6239; Queue Position No. AE2-343, Docket No. ER23-1126-000 (Feb. 16, 2023) (collectively, “Welcome Solar Interconnection Service Agreements (“ISAs”)”).

Despite Welcome Solar's histrionic claims of discriminatory treatment, the Complaint is premature, lacks an actionable remedy, and constitutes a collateral attack on the Commission's prior orders affirming PJM's sole discretion under the Tariff to extend project milestone dates. PJM followed its Tariff in its course of dealings with Welcome Solar and in issuing the notices of breach of the Welcome Solar ISAs, and Welcome Solar does not allege otherwise. Rather than focus its efforts on demonstrating cure of its breaches, Welcome Solar filed the Complaint, *one day before expiration of the 30-day cure period*, alleging that PJM's refusal to grant milestone extensions to which Welcome Solar is not entitled is unjust and unreasonable.⁵

The Commission should not indulge Welcome Solar's gamesmanship. The decision to file the Complaint before expiration of the cure period suggests that Welcome Solar does not intend to cure its breaches and instead seeks to distract from its failure to engage in cure efforts. As of the date of this answer, PJM has not yet exercised its authority under the Tariff to terminate the Welcome Solar ISAs—they remain in full force and effect, and will continue to remain in effect until the Commission issues an order accepting notices of cancellation of the Welcome Solar ISAs.⁶ For all of these reasons, the Complaint should be denied.

I. BACKGROUND

A. Breach Procedures Under the Tariff and Welcome Solar ISAs

The Complaint concerns Welcome Solar's ongoing breach of its obligation to satisfy certain project-specific milestones set forth in three ISAs, for three generation

⁵ Complaint at 46.

⁶ See 18 C.F.R. § 35.15(a).

projects that Welcome Solar seeks to interconnect to the PJM Transmission System.⁷ The Welcome Solar ISAs, each of which were filed with and accepted by the Commission,⁸ provide the terms and conditions under which the Welcome Solar ISAs may interconnect to the PJM Transmission System. Each of the Welcome Solar ISAs contain project-specific milestones that Welcome Solar, as Interconnection Customer, must “demonstrate . . . to [PJM’s] reasonable satisfaction” it has satisfied by the dates specified.⁹ Those milestones include: “Site permits”; “Acquisition of major electrical equipment”; and “Substantial Site work completed” (collectively, “Applicable Milestone Provisions”).

Breach and default on obligations set forth in an ISA are governed both by the Tariff and the terms and conditions set forth in Appendix 2 of the ISA. Section 212.5 of PJM’s Tariff authorizes PJM to include “milestone dates in [an ISA] for the construction of the Interconnection Customer’s generation project that, if not met, shall relieve [PJM] and the Transmission Owners from the requirement to construct the necessary facilities and upgrades and be deemed a termination and withdrawal of the Interconnection Request.”¹⁰

Both Tariff, Attachment O, Appendix 2, section 15.1 and Appendix 2 of the Welcome Solar ISAs provide that breach of an ISA includes “[t]he failure to comply with

⁷ Complaint at 10-12 (describing the projects associated with the Welcome Solar ISAs).

⁸ *PJM Interconnection, L.L.C.*, Letter Order, Interconnection Service Agreement, Service Agreement No. 6239, Docket No. ER22-617-000 (Feb. 10, 2022); *PJM Interconnection, L.L.C.*, Letter Order, Interconnection Service Agreement, Docket No. ER22-1908-000 (July 12, 2022); *PJM Interconnection, L.L.C.*, Letter Order, Interconnection Service Agreement, Docket No. ER22-2112-000 (July 27, 2022).

⁹ Welcome Solar ISAs, section 6.6.

¹⁰ Tariff, section 212.5. Milestones for the construction of an Interconnection Customer’s generation project “may include site acquisition, permitting, regulatory certifications (if required), acquisition of any necessary third-party financial commitments, commercial operation, and similar events.” *Id.*

any material term or condition of th[e] . . . [ISA].”¹¹ Appendix 2, section 15.3 requires an Interconnection Party not in breach to provide written notice of the breach setting forth, “in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach.”¹² Appendix 2, section 15.4.1 provides, in relevant part, that “the Breaching Interconnection Party (a) may cure the Breach within thirty days from the receipt of such notice; or (b) if the Breach cannot be cured within thirty (30) days, may commence in good faith all steps that are reasonable and appropriate to cure the Breach within such thirty day time period and thereafter diligently pursue such action to completion.”¹³

It is important to note that the Tariff does not permit the automatic termination of an ISA when an Interconnection Customer is in default. Appendix 2, section 16.1.3, which provides for the termination of the ISA upon default of Interconnection Customer, states that PJM “*may terminate the [ISA] upon the Default of Interconnection Customer of its obligations under the [ISA] by providing Interconnection Customer and the Interconnected Transmission Owner prior written notice of termination . . .*”¹⁴

B. Prior Proceedings and the May 28 Order

PJM filed Notices of Cancellation of each of the Welcome Solar ISAs with the Commission on January 24, 2024, and January 25, 2024, based on Welcome Solar’s

¹¹ Tariff, Attachment O, section 15.1; Welcome Solar ISAs, Appendix 2, section 15.1. All references in this section I.A to Appendix 2 shall refer to both Tariff, Attachment O, Appendix 2 and Appendix 2 of the Welcome Solar ISAs.

¹² Welcome Solar ISAs, Appendix 2, section 15.3.

¹³ Welcome Solar ISAs, Appendix 2, section 15.4.1.

¹⁴ Welcome Solar ISAs, Appendix 2, section 16.1.3 (emphasis added).

ongoing breach of the Applicable Milestone Provisions.¹⁵ Welcome Solar protested the Notices of Cancellation, and separately filed a complaint against PJM alleging, among other things, that PJM acted unjustly and unreasonably in exercising its discretion to not extend the Applicable Milestone Provisions.¹⁶

On May 28, 2024, the Commission issued an order rejecting the Notices of Cancellation without prejudice and dismissing the EL24-73 Complaint.¹⁷ The Commission made no finding as to whether Welcome Solar had satisfied the Applicable Milestone Provisions. Instead, the Commission held that “PJM *has not demonstrated* that Welcome Solar has failed to satisfy the milestones under the Welcome Solar ISAs, and, as a result, we find that PJM has not met its burden under section 205 to demonstrate, *on the current record*, that the cancellation of the Welcome Solar ISAs is warranted.”¹⁸ With respect to the issue of whether PJM reasonably exercised its discretion in declining to extend the Applicable Milestone Provisions, the Commission denied the EL24-73 Complaint and upheld PJM’s exclusive discretion in evaluating milestone date extensions:

Based on the record, we find that Welcome Solar has not met its burden under section 206 of the FPA to demonstrate that PJM acted unjustly and unreasonably in exercising its discretion to not extend Welcome Solar’s milestones. *PJM*

¹⁵ See *PJM Interconnection, L.L.C.*, Notice of Cancellation of Service Agreement No. 6475; Queue No. AE1-079, Docket No. ER24-994-000 (Jan. 24, 2024); *PJM Interconnection, L.L.C.*, Notice of Cancellation of Service Agreement No. 6454; Queue No. AE1-237, Docket No. ER24-995-000 (Jan. 25, 2024); *PJM Interconnection, L.L.C.*, Notice of Cancellation of Service Agreement No. 6239; Queue No. AE2-343, Docket No. ER24-1001-000 (Jan. 25, 2024) (collectively, “Notices of Cancellation”).

¹⁶ See generally *Welcome Solar, LLC v. PJM Interconnection, L.L.C.*, Complaint and Request for Fast Track Processing of Welcome Solar, LLC, Welcome Solar II, LLC, and Welcome Solar III, LLC, Docket No. EL24-73-000 (Feb. 14, 2024) (“EL24-73 Complaint”).

¹⁷ *PJM Interconnection, L.L.C. v. PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,118 (“May 28 Order”); *reh’g denied*, 188 FERC ¶ 62,053 (2024).

¹⁸ May 28 Order at P 80 (emphasis added).

*was under no obligation to extend Welcome Solar's milestones under the tariff, as the provision allowing for these extensions is wholly within PJM's discretion. As any extension is wholly within PJM's discretion, PJM may determine, at its discretion, to continue to consider whether or not such an extension is warranted upon determining how it wishes to proceed in this matter.*¹⁹

C. Discussions with Welcome Solar Following the May 28 Order

Immediately following issuance of the May 28 Order, Welcome Solar adopted the position that the Applicable Milestone Provisions had been satisfied and requested extension of the commercial operation date milestones in each of the Welcome Solar ISAs.²⁰ PJM responded indicating that extension of milestones was premature given that Welcome Solar had yet to demonstrate to PJM's satisfaction that the Applicable Milestone Provisions had been met.²¹ PJM requested evidence to support Welcome Solar's claimed achievement of the Applicable Milestone Provisions, and provided suggestions of evidence acceptable to PJM to demonstrate satisfaction.²² Since then, PJM and Welcome Solar have engaged in discussions regarding Welcome Solar's progress toward meeting the Applicable Milestone Provisions, with PJM requesting specific evidence to demonstrate achievement.²³ Rather than provide the requested evidence, Welcome Solar initiated an Alternative Dispute Resolution process pursuant to Tariff, section 12, reiterating the same request for extension of its commercial operation milestone dates.²⁴

¹⁹ *Id.* at P 82 (emphasis added).

²⁰ See Complaint, Exhibit A, Attachment B.

²¹ See Complaint, Exhibit A, Attachment C.

²² See Complaint, Exhibit A, Attachment A.

²³ See Complaint at 22-25.

²⁴ Complaint at 5.

Following review of the evidence provided to demonstrate satisfaction of the Applicable Milestone Provisions, PJM concluded that Welcome Solar had not yet demonstrated achievement of the Applicable Milestone Provisions, and was further in breach of an additional milestone: “Delivery of major electrical equipment.”²⁵ Therefore, on September 5, 2024, PJM issued notices of breach of the Welcome Solar ISAs, and provided Welcome Solar with specific guidance as to PJM’s expectations for demonstrating cure within 30 days.²⁶ Without demonstrating cure or “commenc[ing] in good faith all steps that are reasonable and appropriate to cure the Breach,”²⁷ Welcome Solar filed the Complaint on October 4, 2024: 29 days after the notices of breach were issued. Only *after* the Complaint was filed did Welcome Solar contact PJM to provide materials it believed to be responsive to the notices of breach.²⁸

II. ANSWER TO COMPLAINT

Welcome Solar fails to meet its burden under section 206 of the FPA to demonstrate that PJM has engaged in any conduct with respect to the Welcome Solar ISAs that is unjust, unreasonable, or unduly discriminatory. The Complaint is premature, lacks a concrete remedy for the relief sought, and constitutes a collateral attack on the

²⁵ See *id.*, Exhibit B. The ISA associated with PJM Queue No. AE1-079 is in breach of milestones 6.2 (Acquisition of major electrical equipment); 6.3 (Substantial Site work completed); and 6.4 (Delivery of major electrical equipment). The ISA associated with PJM Queue No. AE1-237 is in breach of milestones 6.1 (Acquisition of major electrical equipment); 6.3 (Substantial Site work completed); and 6.4 (Delivery of major electrical equipment). The ISA associated with PJM Queue No. AE2-343 is in breach of milestones 6.1 (Substantial Site work completed); 6.3 (Acquisition of major electrical equipment); and 6.4 (Delivery of major electrical equipment).

²⁶ See *id.*

²⁷ See Complaint, Exhibit B at 2.

²⁸ See Attachment A (Email from Steven Shparber, MINTZ, to Jeffrey M. Gray, PJM (Oct. 4, 2024, 4:53 PM) (providing notice of filed complaint and link to materials Welcome Solar believed to be responsive to notices of breach)).

May 28 Order’s finding that PJM has sole discretion as to whether to extend milestone dates. The Commission therefore should deny the Complaint.

Despite the fact that PJM has not yet filed notices of cancellation of the Welcome Solar ISAs based on failure to cure,²⁹ the Complaint seeks fast track processing under 18 C.F.R. §§ 385.206(b)(11) and 385.206(h) to “prevent irreparable harm to Welcome Solar.”³⁰ Welcome Solar requests that the Commission: (1) direct PJM to withdraw the September 5 breach notices; (2) direct PJM to convene a meeting with American Transmission Systems, Inc. (“ATSI”) and Welcome Solar within 10 business days; and (3) direct PJM to file amended ISAs reflecting a revised commercial operation milestone.³¹ Welcome Solar further requests that the Commission direct PJM to “revise the PJM Tariff and manuals in a manner that will rectify PJM’s conduct.”³²

As an initial matter, the Complaint is plainly premature. As explained above, the Tariff does not automatically trigger termination of an ISA following expiration of the breach period. Instead, PJM “may” terminate upon default of an Interconnection Customer by providing written notice.³³ No written notice of termination has been provided to Welcome Solar, or to the Commission, indicating that Welcome Solar is in default. Unless and until PJM provides such written notice to Welcome Solar, *and the Commission accepts such notice*, the Welcome Solar ISAs remain in full force and

²⁹ 18 C.F.R. § 35.15.

³⁰ Complaint at 42.

³¹ *Id.* at 45.

³² *Id.* at 46.

³³ Welcome Solar ISAs, Appendix 2, section 16.1.3.

effect.³⁴ The Commission has previously dismissed a similarly premature complaint regarding potential termination of an interconnection agreement.³⁵ In *Merricourt*, the Commission denied a complaint filed by an interconnection customer claiming that Midcontinent Independent System Operator, Inc. (“MISO”) unjustly and unreasonably refused to let the customer know that MISO would not terminate the agreement by a specific date.³⁶ The Commission held that the complaint was premature because MISO had not yet filed to terminate the agreement, and therefore declined to “pre judge the merits” of such termination.³⁷ Here, as in *Merricourt*, the proper procedural avenue for Welcome Solar to contest the merits of PJM’s conclusions with respect to whether the Welcome Solar ISAs are in Default is to protest the “written notice” provided for in the Tariff and filed with the Commission of such terminations.³⁸ No such written notice has been provided or filed.

That Welcome Solar chose to file its Complaint before the end of the 30-day period, and immediately before providing PJM with its purported cure materials, is telling. Rather than demonstrate cure or good faith efforts to cure its breaches, Welcome Solar seeks safe haven from the Commission based on its Complaint asserting harm that has not yet occurred. The Commission should reject Welcome Solar’s hyperbole, and deny the Complaint.

³⁴ See 18 C.F.R. § 35.15; see also *N.Y. Indep. Sys. Operator*, 155 FERC ¶ 61,113, at P 29 (2016) (providing that transmission provider has the right to terminate until a breach is cured, and a notice of termination filing “does not become effective until accepted by the Commission”).

³⁵ See *Merricourt Power Partners, LLC v. Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,082 (2015) (“*Merricourt*”).

³⁶ *Merricourt* at P 1.

³⁷ *Id.* at P 34.

³⁸ See 18 C.F.R. § 35.8 (providing for protests of rate filings by interested parties).

Moreover, the relief requested in the Complaint provides no tangible remedy for Welcome Solar. Welcome Solar does not argue that the notice of breach provisions in the Welcome Solar ISAs are themselves unjust and unreasonable or unduly discriminatory, nor does it argue that PJM failed to comply with its Tariff in issuing the notices of breach; it simply contends that the *contents* of the notices are, from its perspective, unfair.³⁹ Even if the Commission were to order PJM to withdraw its notices of breach, such withdrawal would not absolve Welcome Solar of its obligation to satisfy the milestones as reflected in the Welcome Solar ISAs.⁴⁰ As the May 28 Order reiterates, PJM’s discretion as to whether to extend milestone dates is unequivocal.⁴¹ PJM reasonably concluded that extension of any milestone dates is premature until Welcome Solar demonstrates satisfaction of the Applicable Milestone Provisions, and Welcome Solar has not yet done so.⁴² As such, requiring PJM to file amended versions of the Welcome Solar ISAs with revised milestone dates would directly contravene Commission precedent, and Welcome Solar’s request constitutes a collateral attack on the May 28 Order.⁴³

Finally, PJM has no authority to force ATSI to meet with Welcome Solar. While ATSI is a Transmission Owner within the PJM footprint, the Tariff does not empower

³⁹ See Complaint at 27-35.

⁴⁰ See Tariff, section 212.5 (PJM “may reasonably extend any such milestone dates . . . in the event of delays not caused by the Interconnection Customer, such as unforeseen regulatory or construction delays that could not be remedied by the Interconnection Customer through the exercise of due diligence.”).

⁴¹ May 28 Order at P 82.

⁴² See *supra* note 28 and accompanying text.

⁴³ See May 28 Order at P 82; see also *PJM Interconnection, L.L.C.*, 172 FERC ¶ 61,231, at P 22 (2020) (citing *Modesto Irrigation Dist.*, 125 FERC ¶ 61,174, at P 10 n.16 (2008)); *NSTAR Elec. Co. v. ISO New England, Inc.*, 120 FERC ¶ 61,261, at P 33 (2007) (“Collateral attacks on final orders and relitigation of applicable precedent, especially by parties that were active in the earlier case, thwart the finality and repose that are essential to administrative efficiency, and are therefore strongly discouraged.”).

PJM to compel any party to negotiate milestone extensions when an Interconnection Customer is in breach. PJM has not, as Welcome Solar contends, “prevented” ATSI from engaging with Welcome Solar as to its requested milestone extension.⁴⁴ To the extent that ATSI declines to engage with Welcome Solar while it is in breach of the Welcome Solar ISAs, that determination is exclusively within ATSI’s purview.

III. ADMISSIONS AND DENIALS PURSUANT TO 18 C.F.R. § 385.213(c)(2)(i)

Pursuant to Rule 213(c)(2)(i) of the Commission’s Rules of Practice and Procedure,⁴⁵ PJM affirms that any allegation in the Complaint that is not specifically and expressly admitted above is denied.

IV. AFFIRMATIVE DEFENSES PURSUANT TO 18 C.F.R. § 385.213(c)(2)(ii)

PJM’s affirmative defenses are set forth above in this answer, and include the following, subject to amendment and supplementation.

1. Welcome Solar, as the Complainant, has failed to satisfy its burden of proof under FPA section 206 (16 U.S.C. § 824e).

V. COMMUNICATIONS AND SERVICE

PJM requests that the Commission place the following individuals on the official service list for this proceeding:⁴⁶

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Vice President–Federal Government Policy
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⁴⁴ See Complaint at 23.

⁴⁵ 18 C.F.R. § 385.213(c)(2)(i).

⁴⁶ To the extent necessary, PJM requests a waiver of Commission Rule 203(b)(3), 18 C.F.R. § 385.203(b)(3), to permit more than two persons to be listed on the official service list for this proceeding.

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VI. CONCLUSION

For the reasons set forth in this answer, the Commission should deny the Complaint.

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Respectfully submitted,

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*Attorneys for
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October 24, 2024

Attachment A

From: Shparber, Steven <SShparber@mintz.com>

Sent: Friday, October 4, 2024 4:53 PM

To: Gray, Jeffrey, M <Jeffrey.Gray@pjm.com>

Cc: Holt, Christopher <Christopher.Holt@pjm.com>; O'Hara, Chris <Chris.OHara@pjm.com>; Matthew Bogart <Matthew.Bogart@abcarval.com>; Colleen Ryan <Colleen.Ryan@abcarval.com>; Bustami, Omar <OBustami@mintz.com>

Subject: Welcome Solar Response to September 5 Notices of Breach

⚠ External Email! Think before clicking links or attachments.

Contact the Support Center immediately if you click on a link or open an attachment that appears malicious.

Good afternoon, Jeff, I am writing on behalf of Welcome Solar, LLC; Welcome Solar II, LLC and Welcome Solar III, LLC (collectively, "Welcome Solar") with respect to PJM's September 5, 2024, Notices of Breach (the "Notices of Breach"), which are attached hereto. Welcome Solar disputes the validity of the Notices of Breach, as well as their justness and reasonableness. Accordingly, this afternoon Welcome Solar filed the attached complaint against PJM related to the Notices of Breach (the "Complaint").

Notwithstanding the arguments raised and positions taken in the Complaint, Welcome Solar is providing information that is responsive to the Notices of Breach, which demonstrates significant additional progress made on the Welcome Solar Facilities, organized by milestone. The information is available in the data

room: <https://carvalinvestors.sharefile.com/home/shared/fo225890-653b-48e5-a4fe-b96ba1a6f420> - please advise if anyone at PJM has any trouble accessing the data room or requires access. Further, Welcome Solar can make itself available at PJM's convenience to answer any questions with respect to the information provided in the data room.

While Welcome Solar is providing information that is responsive to the Notices of Breach, the provision of such information to PJM should not be interpreted by PJM as a waiver of any arguments or positions set forth in the Complaint, or admission of any facts related to Welcome Solar's dispute with PJM.

Further, despite the filing of today's Complaint against PJM, Welcome Solar reiterates its longstanding and strong preference to give PJM the assurances it needs to know that the Welcome Solar Facilities will be built as soon as practicable and proceed with building them, rather than resorting to continued litigation at FERC. Accordingly, Welcome Solar stands ready to discuss a mutually agreeable resolution of its longstanding dispute with PJM concerning the Welcome Solar Facilities, including a resolution of the Complaint.

Steven Shparber
Member

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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 Washington, D.C., this 24th day of October 2024.

/s/ Elizabeth P. Trinkle _____

***Attorney for PJM Interconnection,
L.L.C.***