

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Stonegate Power, LLC,)	
)	
Petitioner,)	
)	
v.)	No. 19-1178
)	
Federal Energy Regulatory Commission,)	
)	
Respondent.)	

**RESPONSE OF PJM INTERCONNECTION, L.L.C.
TO PETITIONER’S MOTION TO HOLD PETITION IN ABEYANCE**

Pursuant to Rule 27 of the Federal Rules of Appellate Procedure and Rule 27 of the Circuit Rules of this Court, PJM Interconnection, L.L.C. (“PJM”) hereby responds to the Motion of Petitioner Stonegate Power, LLC to Hold the Petition in Abeyance and for Expedited Orders Shortening the Time for Responses to this Motion and for a Ruling on the Merits (“Motion to Hold in Abeyance”) filed on January 8, 2020, in the captioned proceeding. PJM opposes the Motion to Hold in Abeyance as unsupported.

Stonegate Power, LLC (“Petitioner”) contends that this Court should hold the captioned case in abeyance based solely on speculation as to how the Federal Energy Regulatory Commission (“Respondent” or “FERC”) might address issues in a

separate proceeding,¹ which may or may not resolve issues in this appeal. Petitioner does not argue that the FERC orders on appeal here are not final; rather it suggests that the outcome of the proceeding in FERC Docket No. ER20-543 “could” or “is likely to” affect this case.² However, Respondent’s orders on appeal here³ are final orders as to this case, as they definitively rule against Petitioner’s complaint and requests for extension of certain milestone dates in Petitioner’s FERC-filed interconnection service agreement.

The cases Petitioner cites for its argument against “piecemeal review of inter-related issues”⁴ are inapposite, as nothing has changed in PJM’s open access transmission tariff, Petitioner’s interconnection service agreement, or the law FERC will apply between the orders on appeal here and the proceedings in FERC Docket

¹ Notice of Cancellation of Second Revised Service Agreement No. 3476; Queue No. R11/Z2-109/AC1-029 of PJM Interconnection, L.L.C., Docket No. ER20-543-000 (Dec. 9, 2019).

² Motion to Hold in Abeyance at 6.

³ *Stonegate Power, LLC v. PJM Interconnection, L.L.C.*, 167 FERC ¶ 61, 014 (Apr. 4, 2019) (“Order on Complaint”), *order on reh’g*, 168 FERC ¶ 61,019 (July 16, 2019) (“Order Denying Rehearing and Dismissing Request for Stay”).

⁴ Motion to Hold in Abeyance at 8.

No. ER20-543. Thus, unlike the circumstances cited by Petitioner⁵ in *Colorado Office of Consumer Counsel v. FERC*, 490 F.3d 954 (D.C. Cir. 2007), in which the passage of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005), after the petitions for review were filed created a question as to whether FERC would exercise the new authority given it in the Energy Policy Act of 2005 and, in the process, revise or repeal the FERC rules at issue in the petitions for review, in this proceeding there is no change in law or rules expected that would cause the outcome of the proceeding in FERC Docket No. ER20-543 to be any different than the outcome under the orders on appeal.

This very point—that Petitioner has little likelihood of success in this case on the merits—is yet another factor weighing against granting the Motion to Hold in Abeyance. Petitioner cites *Basardh v. Gates*, 545 F.3d 1068 (D.C. Cir. 2008), for the proposition that the court may issue an order to hold a proceeding in abeyance where the outcome of other pending proceedings may affect the outcome of the case before it.⁶ Conspicuously absent is any acknowledgement that the Court in *Basardh*, in determining whether to hold a petition for review in abeyance, also considered “the traditional factors in granting a stay, including the likelihood that the movant will

⁵ *Id.* at 7.

⁶ Motion to Hold in Abeyance at 8.

prevail when the case is finally adjudicated.” *Basardh*, 545 F.3d at 1069 (citing *Va. Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)).

Petitioner makes no effort to address the *Virginia Petroleum Jobbers* standards, which is not surprising since Petitioner cannot meet those standards. Petitioner cannot make a strong showing that it is likely to prevail on the merits in either this case or the proceedings in FERC Docket No. ER20-543, given that Petitioner has failed three times already in its complaint, request for rehearing, and request for a stay in the underlying FERC proceedings, which FERC dismissed as moot in part and denied in part, denied, and dismissed, respectively. Notably, Petitioner’s pleading in FERC Docket No. ER20-543 reads like a request for rehearing of the Order Denying Rehearing and Dismissing Request for Stay that is on review in this case, repeating the same arguments Petitioner made there unsuccessfully. As such, Petitioner’s latest pleading to FERC is no more likely to convince FERC to change its mind and grant Petitioner the requested extension of the milestone dates in Petitioner’s FERC-filed interconnection service agreement. Such a reversal by FERC is particularly unlikely considering that, as noted above, nothing in the law, PJM’s open access transmission tariff, or Petitioner’s interconnection service agreement has changed. There is therefore little reason to believe that FERC’s ruling in FERC Docket No. ER20-543 will moot the need for action by this Court in this case.

In addition, Petitioner does not assert that it will be harmed, much less irreparably harmed, if its Motion to Hold in Abeyance is not granted, nor is any other party, save Petitioner, served by adding further delay to a case that originally arose out of Petitioner's inability to meet deadlines. In sum, Petitioner's Motion to Hold in Abeyance should be dismissed. The Order on Complaint and Order Denying Rehearing and Dismissing Request for Stay are final and ripe for review.

WHEREFORE, PJM respectfully requests that Petitioner's Motion to Hold in Abeyance be dismissed.

Respectfully submitted,

/s/ Wendy B. Warren

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January 21, 2020

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

Pursuant to Rules 27(d)(2)(A) and 32(g)(1) of the Federal Rules of Appellate Procedure, the undersigned certifies that the foregoing Response of PJM Interconnection, L.L.C. to Petitioner's Motion to Hold in Abeyance, filed on January 21, 2020, complies with the applicable type-volume limitations. The response was prepared using a proportionally spaced type (Times New Roman, 14 point) and contains 899 words, not including the signature block, certificate of compliance, and proof of service. This certificate was prepared in reliance on the word-count function of the word-processing system (Microsoft Word 2016) used to prepare the response.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure and Rule 25 of the Rules of the Court of Appeals for the District of Columbia, I hereby certify that I have this 21st day of January 2020, served the foregoing Response of PJM Interconnection, L.L.C. to Petitioner's Motion to Hold in Abeyance via the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Respectfully submitted,

/s/ Wendy B. Warren

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