

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

PJM Interconnection, L.L.C.)	Docket Nos. ER24-994-000,
)	ER24-995-000, and
)	ER24-1001-000 (not
)	consolidated)

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

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission (“Commission”) Rules of Practice and Procedure,¹ PJM Interconnection, L.L.C. (“PJM”) submits this Motion for Leave to Answer and Answer in response to the February 14, 2024 protest filed by Welcome Solar, LLC (“Welcome Solar I”), Welcome Solar II, LLC (“Welcome Solar II”), and Welcome Solar III, LLC (“Welcome Solar III”) (collectively, “Welcome Solar”)² in response to PJM’s January 24 and January 25, 2024 notices of cancellation of the Interconnection Service Agreements (“ISAs”) for Welcome Solar I, Welcome Solar II, and Welcome Solar III (collectively, “Welcome Solar ISAs”).³ As demonstrated herein, Welcome Solar failed to meet certain milestones set forth in the Welcome Solar ISAs, and is in Breach and Default of each of the Welcome Solar ISAs.

¹ 18 C.F.R. §§ 385.212, 385.213.

² *PJM Interconnection, L.L.C.*, Protest of Welcome Solar, LLC Welcome Solar II, LLC, and Welcome Solar III, LLC, Docket Nos. ER24-994-000, et al. (Feb, 14, 2024) (“Protest”).

³ Notice of Cancellation of Service Agreement No. 6475; Queue No. AE1-079, Docket No. ER24-994-000 (Jan. 24, 2024); Notice of Cancellation of Service Agreement No. 6454; Queue No. AE1-237, Docket No. ER24-995-000 (Jan. 25, 2024); Notice of Cancellation of Service Agreement No. 6239; Queue No. AE2-343, Docket No. ER24-1001-000 (Jan. 25, 2024) (collectively, “Notices of Cancellation”). Capitalized terms not defined herein have the meaning set forth in the PJM Open Access Transmission Tariff (“Tariff”).

Accordingly, PJM acted properly in filing the Notices of Cancellation, and the Commission should therefore accept the Notices of Cancellation to be effective on the dates requested.⁴

I. MOTION FOR LEAVE TO ANSWER

While the Commission’s regulations allow answers to comments, an answer to a protest is not a matter of right under the Commission’s regulations.⁵ However, the Commission routinely permits such answers when the answer provides useful and relevant information that will assist the Commission in its decision-making process,⁶ assures a complete record in the proceeding,⁷ and provides information helpful to the disposition of an issue.⁸ This answer satisfies these criteria, and PJM therefore respectfully requests that the Commission accept this pleading.

II. BACKGROUND

Welcome Solar owns three solar generation projects in the PJM Region, associated with queue positions AE1-079 (Welcome Solar I), AE1-237 (Welcome Solar II), and AE2-343 (Welcome Solar III) (collectively, the “Welcome Solar Projects”). The Welcome Solar ISAs were filed with and accepted by the Commission,⁹ and provide the terms and

⁴ PJM requested an effective date of March 25, 2024, for the cancellation of the Welcome Solar I and Welcome Solar II ISAs, and an effective date of March 26, 2024, for the cancellation of the Welcome Solar III ISA. Notices of Cancellation at 2.

⁵ 18 C.F.R. §§ 385.213(a)(2)-(3).

⁶ See, e.g., *Pioneer Transmission, LLC v. N. Ind. Pub. Serv. Co.*, 140 FERC ¶ 61,057, at P 94 (2012) (accepting answers that “provided information that assisted us in our decision-making process”); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 26 (2008) (same); *Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,083, at P 23 (2007) (permitting answer to protests when it provided information that assisted the Commission in its decision-making process).

⁷ See, e.g., *Pac. Interstate Transmission Co.*, 85 FERC ¶ 61,378, at 62,443 (1998), *order on reh’g*, 89 FERC ¶ 61,246 (1999); see also *Morgan Stanley Cap. Grp., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 93 FERC ¶ 61,017, at 61,036 (2000) (accepting an answer that was “helpful in the development of the record”).

⁸ See, e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100, at 61,287 n.11 (1999).

⁹ *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,

conditions under which the Welcome Solar Projects may interconnect to the PJM Transmission System. Each of the Welcome Solar ISAs includes project-specific milestones that Welcome Solar, as Interconnection Customer, must “demonstrate . . . to [PJM’s] reasonable satisfaction” have been met by the dates specified.¹⁰ Each of the Welcome Solar ISAs includes the following milestones: “Site Permits;” “Acquisition of Major Electrical Equipment;” and “Substantial Site Work Completed” (collectively, “Applicable Milestone Provisions”). Respectively, the deadlines were December 31, 2022, July 31, 2022, and December 9, 2022, for the Welcome Solar ISA and Welcome Solar II ISA; and April 7, 2023, December 9, 2022, and December 31, 2023, for the Welcome Solar III ISA.

The bedrock of PJM’s interconnection process is efficient and diligent processing of the interconnection queue.¹¹ To process the queue efficiently, it is imperative that developers meet the milestones set forth in their ISAs. When they do not, their delays slow the processing of projects behind them by occupying valuable headroom on the Transmission System that potentially could be used for other, more viable projects.¹²

PJM determined that Welcome Solar was in Breach of the Applicable Milestone Provisions and notified Welcome Solar of its Breaches in letters sent on February 8, 2023.

Welcome Solar’s failure to cure the Breaches is precisely the kind of slowdown the

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).

¹⁰ Welcome Solar ISAs, section 6.6. As described herein, Welcome Solar never satisfied this requirement,

¹¹ See, e.g., *PJM Interconnection, L.L.C.*, 181 FERC ¶ 61,162, at P 7 (2022) (recognizing PJM’s prioritization of efficiency in the interconnection queue process).

¹² See *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,089, at P 34 (2022) (accepting cancellation of service agreement for delayed project occupying substantial Transmission System headroom).

milestone requirements are designed to avoid.¹³ PJM relied on the representations Welcome Solar made in its March 7, 2023 letters with respect to its “satisfaction” of the milestones to date, and the work it needed to do *in the near term*, to cure the respective Breaches (“March 2023 Cure Letters”).¹⁴ Specifically, PJM relied on its understanding, based on Welcome Solar’s representations, that Welcome Solar had committed to continue working to fully cure the Breaches, which required *at a minimum* that Welcome Solar (i) procure all major electrical equipment required for the projects; and (ii) execute engineering, procurement, and construction (“EPC”) contracts for each of the projects and conduct substantial construction pursuant to those contracts.¹⁵ As explained below, while Welcome Solar initially claimed to have cured these Breaches and that it was continuing cure activities, and PJM relied on Welcome Solar’s representations, PJM later determined that the Breaches had not been cured. Based on these failures, PJM filed the January 24, 2024 Welcome Solar I and Welcome Solar II Notices of Cancellation, and filed the Welcome Solar III Notice of Cancellation on January 25, 2024. PJM requested an effective date of 61 days from the date of filing for each of the Notices of Cancellation.¹⁶

¹³ On February 14, 2024, Welcome Solar filed a complaint against PJM raising the same issues it addresses in the Protest. *See* 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) (“Complaint”). PJM filed an answer to the Complaint on February 28, 2024. *See* Answer of PJM Interconnection, L.L.C., Docket No. EL24-73-000 (Feb. 28, 2024) (“Docket No. EL24-73 Answer”). Because of the commonality of issues, PJM has attached a copy of the Docket No. EL24-73 Answer to this pleading as Attachment A.

¹⁴ Protest, Exhibit J.

¹⁵ *See* Docket No. EL24-73 Answer, Affidavit of Jeffrey M. Gray (Attachment A) ¶ 22 (“Gray Aff.”).

¹⁶ Notices of Cancellation at 2.

A. Applicable Milestone Provisions.

1. Site Permits.

Each of the Welcome Solar ISAs includes a milestone providing that on or before the date provided for in the ISA, “Interconnection Customer must demonstrate that it has obtained any necessary local, county, and state site permits.”¹⁷ Welcome Solar I and Welcome Solar II were to have completed this milestone on or before December 31, 2022, with Welcome Solar III to have completed this milestone on or before by April 7, 2023.¹⁸

2. Acquisition of Major Electrical Equipment.

The “acquisition of major electrical equipment” milestone requires that on or before the date provided for in the ISA, “Interconnection Customer must demonstrate that it has acquired all major electrical equipment.”¹⁹ In order to satisfy this milestone, Interconnection Customer must demonstrate that “it has signed a memorandum of understanding for the acquisition of generating units (including wind turbines and solar inverters) and other major electrical equipment.”²⁰ Welcome Solar I and Welcome Solar II were to have completed this milestone on or before July 31, 2022, with Welcome Solar III to have completed this milestone on or before April 30, 2022.²¹

¹⁷ See Welcome Solar I ISA, section 6.1; Welcome Solar II ISA, section 6.2; Welcome Solar III ISA, section 6.2.

¹⁸ *Id.*

¹⁹ See Welcome Solar I ISA, section 6.1; Welcome Solar II ISA, section 6.1; Welcome Solar III ISA, section 6.3.

²⁰ Welcome Solar III ISA, section 6.3; *see also* System Planning Division, *PJM Manual 14C: Interconnection Facilities, and Network Upgrade Construction*, PJM Interconnection, L.L.C., § 1.1.1 (July 26, 2023), <https://pjm.com/~media/documents/manuals/m14c.ashx>.

²¹ Welcome Solar I ISA, section 6.2; Welcome Solar II ISA, section 6.1; Welcome Solar III ISA, section 6.3.

3. *Substantial Site Work Completed.*

This milestone requires that on or before the date provided for in the ISA, “Interconnection Customer must demonstrate completion of at least 20% of project site construction.”²² PJM defines “Substantial Site Work” as “[m]ajor site construction activities which are initiated with the site preparation and are typically considered complete with the end of civil construction activities.”²³ Thus, in order to complete 20% of project site construction, Interconnection Customer must have engaged in at least some major site construction activities (i.e., broken ground on the project).

In order for a project developer to engage in substantial site work, industry practice requires engagement with a contractor under an EPC contract to oversee design, procurement, and construction.²⁴ As the Commission has recognized, EPC contracts are a critical condition precedent to initiating construction of generation facilities.²⁵ All three of the Welcome Solar ISAs require completion of this milestone on or before December 9, 2022.²⁶

B. Breach and Default Provisions Under the Tariff and the Welcome Solar ISAs.

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

²² Welcome Solar I ISA and Welcome Solar II ISA, section 6.3; Welcome Solar III ISA, section 6.1.

²³ Manual 14C, § 2.2.6 (emphasis added).

²⁴ See, e.g., *PJM CONE 2026/2027 Report*, PJM Interconnection, L.L.C. (Apr. 21, 2022), <https://pjm.com/-/media/committees-groups/committees/mic/2022/20220422-special/brattle-pjm-cone-2026-27-report---final.ashx> (evaluating capital costs to build new generating plants, including EPC contracts).

²⁵ See, e.g., *Bayou Galion Solar Project, LLC*, 185 FERC ¶ 61,139 (2023) (finding that waiver of generator interconnection agreement commercial operation milestone date was proper due to delays in execution of EPC contract outside of generator’s control).

²⁶ See Welcome Solar ISA I and Welcome Solar II ISA, section 6.3; Welcome Solar III ISA, section 6.1.

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.”²⁷

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 any material term or condition of the . . . [ISA].”²⁸ 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.”²⁹ 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.*”³⁰

Appendix 2, Section 16.1.3 provides for the termination of the ISA upon Default of Interconnection Customer by providing Interconnection Customer with prior written

²⁷ Tariff § 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.*

²⁸ See Tariff, Attachment O, section 15.1; Welcome Solar ISAs, Appendix 2, section 15.1. All references in this section I.B to Appendix 2 shall refer to both Tariff, Attachment O, Appendix 2 and Appendix 2 of the Welcome Solar ISAs.

²⁹ Welcome Solar ISAs, Appendix 2, section 15.3.

³⁰ *Id.*, section 15.4.1 (emphasis added).

notice of termination.³¹ For purposes of the Welcome Solar ISAs, “Default” means “failure of a Breaching Party to cure its Breach in accordance with the applicable provisions of an [ISA].”³² In accordance with the Tariff and Commission regulations, termination does not become effective until a notice of termination has been filed with and accepted by the Commission.³³

C. Breach of the Welcome Solar ISAs and Welcome Solar’s Efforts to Cure.

In January 2023, in the course of discussions with Welcome Solar regarding extension of future milestones in the Welcome Solar ISAs, PJM determined that Welcome Solar had missed the site permits, acquisition of major electrical equipment, and substantial site work milestone dates set forth in its respective ISAs.³⁴ Counsel for PJM and Welcome Solar’s parent company, AB CarVal Investors, L.P. (“AB CarVal”), discussed the missed milestones and Welcome Solar’s request to renegotiate its future milestones via telephone conference on January 26, 2023. Counsel for Welcome Solar did not appear to have any information concerning the milestones that had been missed.

On February 2, 2023, PJM counsel recommended that PJM prepare draft Breach notices to Welcome Solar and to discuss the Breach and cure process for the Welcome Solar ISAs with AB CarVal.³⁵ PJM issued the Breach notices to Welcome Solar on February 8, 2023. That same day, counsel for AB CarVal, on behalf of Welcome Solar, indicated that Welcome Solar believed it may be able to cure the Breaches. Counsel for

³¹ Welcome Solar ISAs, Appendix 2, section 16.1.3.

³² Welcome Solar ISAs, Appendix 1; *see also* Tariff, Definitions – C – D (definition of “Default”).

³³ Welcome Solar ISAs, Appendix 2, section 16.3; 18 C.F.R. ¶ 35.15(a).

³⁴ Docket No. EL24-73 Answer, Gray Aff. ¶ 5.

³⁵ *Id.* ¶ 9.

PJM indicated during that conversation that Welcome Solar first must cure the milestone dates they already had missed to establish good standing, and then may be able to enter suspension in order to delay subsequent milestones.³⁶

On March 7, 2023, counsel for Welcome Solar sent a letter representing that it had cured the Breaches for each of the Welcome Solar ISAs (i.e., the March 2023 Cure Letters).³⁷ Notably, the March 2023 Cure Letters represented for each of the Welcome Solar ISAs that:

- all necessary local, county and state permits required for the project, except for certain immaterial, ordinary course matters and renewals, have been obtained;
- all major electrical equipment, including transformers, modules, inverters, racking, piles, and MV/HV cable for the Project, has been acquired; and
- the 20% threshold for substantial site completion has been met, based on advanced progress in permitting, procurement, design, *and contracted onsite construction activities*.³⁸

The March 2023 Cure Letters specifically stated that Welcome Solar’s Limited Notice to Proceed (“LNTP”) with Mill Creek Renewables “includes civil construction activities, as allowed under current project permits, that is expected to occur *within the next few weeks*. As is typical for construction in this region, work over the winter months was minimal due to local weather conditions and is expected to accelerate in the coming months.” The March 2023 Cure Letters also stated that Welcome Solar “has commenced EPC contract negotiations with Mill Creek Renewables and a Final Notice to Proceed is anticipated to be issued *no later than May 2023*.”³⁹

³⁶ *Id.* ¶ 10.

³⁷ *See* Protest, Exhibit J.

³⁸ *Id.* (emphasis added).

³⁹ *Id.*

Following receipt of the March 2023 Cure Letters, counsel for PJM contacted counsel for Welcome Solar by phone to discuss the completion of the ongoing cure activities as described in the March 2023 Cure Letters and the Welcome Solar Projects' eligibility for suspension *once the cure activities are completed*.⁴⁰ During that conversation, counsel for Welcome Solar indicated that Welcome Solar would diligently pursue and complete within a few weeks the Cure activities described in the March 2023 Cure Letters.⁴¹ Counsel for PJM reiterated that good standing was a condition precedent for entering suspension.⁴²

On March 10, 2023, counsel for Welcome Solar indicated by email that Welcome Solar “will likely exercise [their] suspension right for up to one year,” and will have a more detailed project timeline after they meet with their EPC contractor the following week.⁴³

Counsel for PJM responded that same day by email, stating:

*With reliance on the information you provided on March 7, 2023, PJM confirms that Welcome Solar, LLC, Welcome Solar II, LLC, and Welcome Solar III, LLC (the “Welcome Projects”) have cured their respective Breaches as set forth in the PJM Breach notices dated February 8, 2023. The Welcome Projects should continue to diligently pursue ongoing cure actions to completion, as applicable. Please continue to coordinate with the PJM and FirstEnergy project managers on the project schedule and the remaining milestones.*⁴⁴

On April 28, 2023, Welcome Solar sent notices of suspension for each of the Welcome Solar Projects.⁴⁵

⁴⁰ Docket No. EL24-73 Answer, Gray Aff. ¶ 13.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Protest, Exhibit M.

⁴⁴ *Id.*, Exhibit K (emphasis added).

⁴⁵ *Id.*, Exhibit N.

D. PJM's Response to Ongoing Breach of the Welcome Solar ISAs.

On October 3, 2023, Welcome Solar provided formal notice that it had exited suspension for each of its three projects. On November 27, 2023, following several calls with Welcome Solar regarding the status of its projects, PJM determined that Welcome Solar did not appear to have pursued further action to cure the Breaches as represented in the March 2023 Cure Letters, and immediately sought clarity on the status of the Welcome Solar ISAs and of the cure activities.

On December 21, 2023, Welcome Solar provided PJM with an unsigned letter dated December 19, 2023, with updates on the Welcome Solar ISAs.⁴⁶ The letter did not address the outstanding cure activities. On January 18, 2024, counsel for PJM and Welcome Solar held a conference call to discuss the status of the Welcome Solar ISAs. PJM indicated that Welcome Solar had failed to complete the cure activities in the second quarter of 2023 as they represented in the March 2023 Cure Letters, and as a result, PJM may be left with little option but to invoke the Default and termination provisions of the Welcome Solar ISAs.⁴⁷

PJM then reviewed documents provided by Welcome Solar to date, which showed that: (1) the LNTP for Welcome Solar was issued on April 25, 2023, not on March 7, 2023, as previously represented; (2) Welcome Solar could not possibly have completed the Acquisition of Major Electrical Equipment milestone by March 7, 2023, because the modules, inverters, racking, and cabling were to be procured by the EPC contractor and they had not yet executed the EPC contract by that date (and apparently still have not

⁴⁶ Docket No. EL24-53 Answer, Gray Aff. ¶ 19.

⁴⁷ *Id.* ¶ 21.

executed an EPC contract); and (3) Welcome Solar could not possibly have completed the Substantial Site Work Completed milestone by March 7, 2023, or even shortly thereafter, because the civil construction activities necessary to meet that milestone were to be undertaken by the EPC contractor and they had not yet executed the EPC contract by that date (and apparently still have not executed an EPC contract). Based on these facts, PJM concluded that Welcome Solar had not actually cured, in March 2023, the Breaches of the Welcome Solar ISAs identified by PJM in February 2023, and that Welcome Solar had improperly entered suspension without completing its prerequisite cure requirements. Accordingly, on January 25, 2024, PJM filed and served Notices of Cancellation of the three Welcome Solar ISAs.

III. THE NOTICE OF CANCELLATION FILINGS ARE JUST AND REASONABLE, AND PJM HAS COMPLIED WITH THE APPLICABLE REQUIREMENTS OF THE WELCOME SOLAR ISAS AND OF THE TARIFF.

A. Welcome Solar Failed to Cure Breaches of the Applicable Milestone Provisions in the Welcome Solar ISAs, Resulting in Default.

As an initial matter, the record before the Commission clearly indicates that Welcome Solar failed, in fact, to cure its Breaches of the Welcome Solar ISAs. Welcome Solar argues that “[to] the extent that any of the purported Breaches identified . . . were not actually cured, such Breaches were clearly incapable of being cured within 30 days because such delays were due primarily to global supply chain interruptions.”⁴⁸ As explained below, even if Welcome Solar’s representations are true with respect to Acquisition of Major Electrical Equipment, they are wholly inconsistent with the representations it made to PJM in its March 2023 Cure Letters, and with representations made as recently as

⁴⁸ Protest at 26.

January 2024. Moreover, with respect to Substantial Site Work Completed, any global supply chain delays are irrelevant to satisfying a crucial condition precedent: executing an EPC contract.

1. *Welcome Solar's support for acquisition of major electrical equipment includes contradictory and inconsistent statements.*

Welcome Solar asserts that the March 2023 Cure Letters “demonstrat[e] that Welcome Solar had secured all major electrical equipment.”⁴⁹ But upon close inspection, the March 2023 Cure Letters are not only internally inconsistent with respect to this milestone, they fail to square with subsequent evidence that purportedly supports its completion. The March 2023 Cure Letters assert that Welcome Solar “*has acquired* all major electrical equipment. We have *successfully procured* transformers, modules, inverters, racking, piles, and MV/HV cable for the project.”⁵⁰ Welcome Solar then lists the types of equipment it has purportedly acquired and/or procured, along with the responsible procuring entity. With the exception of the transformers, the “procuring entity” listed by Welcome Solar is “EPC,” which presumably refers to its EPC contractor.⁵¹ However, as discussed below and in Mr. Gray’s affidavit, Welcome Solar had not yet executed an EPC contract as of March 2023, and, to date, has *never* executed an EPC contract for any of the Welcome Solar Projects.⁵² Nor did Welcome Solar provide evidence of a Memorandum of Understanding with any entity regarding procurement of major electrical equipment, as required to satisfy the milestone.⁵³ As such, Welcome

⁴⁹ *Id.* at 23.

⁵⁰ *Id.*, Exhibit J (emphasis added).

⁵¹ Docket No. EL24-73 Answer, Gray Aff. ¶ 22.

⁵² *Id.*

⁵³ *See supra* note 20.

Solar's assertion in the March 2023 Cure Letters that it "has acquired" or "successfully procured" any of the items to be procured by the EPC contractor is *at best* misleading.

Welcome Solar's assertions in the March 2023 Cure Letters regarding acquisition and procurement of major electrical equipment are further contradicted by evidence from Welcome Solar provided in January 2024. For example, Welcome Solar's January 19, 2024 correspondence included attached meeting minutes from a January 9, 2024 call with PJM indicating that, with respect to AE1-079 (Welcome Solar, LLC), "no materials have been ordered."⁵⁴ Welcome Solar's project notes also indicated that permitting for the Welcome Solar ISAs was not yet complete.⁵⁵

2. *Welcome Solar failed to secure an EPC contract, a prerequisite to satisfaction of substantial site work completion.*

Contrary to Welcome Solar's assertions, Welcome Solar understood it needed to execute an EPC contract and break ground in order to satisfy completion of 20% of substantial site work. In fact, Welcome Solar's communications with PJM regarding the Breaches make clear that Welcome Solar understood that the EPC contract, and full notice to proceed, were essential requirements for satisfaction of the substantial site work completed milestone, yet Welcome Solar continued to hedge on completion of that requirement even while the Welcome Solar Projects were in suspension.

The March 2023 Cure Letters state that Welcome Solar executed an LNTP with Mill Creek Renewables allowing for civil construction activities to commence "*in the next few weeks,*" and that Welcome Solar has "commenced EPC contract negotiations with Mill Creek Renewables and a Final Notice to Proceed is anticipated to be issued *no later than*

⁵⁴ A copy of the meeting minutes accompanying Welcome Solar's January 2024 correspondence is attached as Attachment B to the Docket No. EL24-73 Answer.

⁵⁵ *See id.*

May 2023.”⁵⁶ Assuming these statements were accurate and the Welcome Solar Entities already had issued a LNTP to the EPC contractor they had selected, starting civil construction activities “within the next few weeks” when the weather improved would have been a simple matter.

Further, if Welcome Solar had issued a LNTP to Mill Creek Renewables, as represented, finalizing EPC contract negotiations leading to a Final Notice to Proceed no later than May 2023 should have been a simple matter.⁵⁷ Yet Welcome Solar indicated in September 2023 that, despite the projects being in suspension for six months, the EPC contract “will be executed 10/2023.”⁵⁸ Indeed, Welcome Solar’s own project notes indicate that as late as January 2024, the EPC contract was not yet finalized, while the LNTP had been voided, amended, and replaced multiple times.⁵⁹

Furthermore, Welcome Solar understood that execution of the EPC contract was an essential component of satisfaction of the substantial site work milestone.⁶⁰ Welcome Solar attempts to dismiss the importance of the EPC contract as “certain construction activities [that] had not commenced precisely in the manner described in the [March 2023 Cure Letters].”⁶¹ But simply put, Welcome Solar cannot “construct” much of anything without an EPC contract in place, and its repeated assertions that the EPC contract was on the cusp of being executed demonstrate efforts to stall that are wholly unrelated to any global supply chain issues affecting construction of the project.

⁵⁶ Protest, Exhibit J (emphasis added).

⁵⁷ Docket No. EL24-53 Answer, Gray Aff. ¶ 14.

⁵⁸ Protest, Exhibit O.

⁵⁹ Docket No. EL24-53 Answer, Gray Aff. ¶ 22.

⁶⁰ *Id.* ¶ 15.

⁶¹ Protest at 18.

3. *PJM’s acknowledgement of the March 2023 Cure Letters does not absolve Welcome Solar of further action to cure its Breaches.*

Welcome Solar argues that PJM “expressly agreed in writing that the Breaches . . . were cured by conveying as such in written notice”⁶² and urges the Commission to end its inquiry there. But Welcome Solar’s reading of PJM’s acknowledgement ignores two critical limitations that preserve PJM’s right to terminate the Welcome Solar ISAs in the event of Default. First, PJM explicitly tied its acknowledgement to the information provided in the March 2023 Cure Letters.⁶³ As outlined above, those letters contain multiple contradictory and inconsistent statements, rendering them largely unreliable for purposes of curing the Breaches.

Second, PJM’s acknowledgement specifically provides that “[t]he Welcome Projects should continue to diligently pursue ongoing cure actions to completion, as applicable.”⁶⁴ As demonstrated above, Welcome Solar understood that cure was a condition precedent to entering suspension, yet took no meaningful action prior to, during, or even following suspension to complete the cure of its Breaches. Welcome Solar’s request that the Commission narrowly read PJM’s acknowledgement would unreasonably prevent PJM from reserving its right to terminate service agreements in Default where, as here, representations of cure made by the defaulting party are inaccurate or misleading. Welcome Solar’s overly narrow interpretation of PJM’s acknowledgement therefore should be disregarded.

⁶² *Id.* at 24.

⁶³ *Id.*, Exhibit K.

⁶⁴ *Id.* (emphasis added).

B. Notices of Cancellation of the Welcome Solar ISAs Were Issued in Accordance with the Tariff.

Welcome Solar claims that PJM was required to provide a new notice of Breach, and a subsequent opportunity to cure, before issuing the Notices of Cancellation.⁶⁵ Welcome Solar also asserts that PJM failed to provide written notice to Welcome Solar and the relevant Interconnected Transmission Owner that it would seek to terminate the Welcome Solar ISAs.⁶⁶ These assertions are unfounded. Nothing in the Tariff or the Welcome Solar ISAs provides for PJM to issue a second notice of Breach, or permit a second cure period, when an Interconnection Customer fails to cure in the first instance and entered suspension under false pretenses. Tariff, Attachment O, Appendix 2 provides that a party that commits a Breach “and does not take steps to cure the Breach . . . is in Default.”⁶⁷ Once Default occurs, PJM may terminate the ISA “by providing Interconnection Customer . . . prior written notice of termination.”⁶⁸

Unlike the precedent cited in the Protest,⁶⁹ there is no “new Breach” at issue. Welcome Solar simply did not take steps to cure the Breaches identified in the Notices of Breach, and upon discovery of that failure, PJM issued the Notices of Cancellation. The Notices of Cancellation seeking a prospective effective date filed with the Commission constitute the “prior written notice” contemplated under the Tariff and Welcome Solar ISAs. Copies of the filings were served on both parties; and, as the Protest shows,

⁶⁵ *Id.* at 26.

⁶⁶ *Id.* at 27-28.

⁶⁷ Welcome Solar ISAs, Appendix 2, section 15.4.

⁶⁸ *Id.*, section 16.1.3.

⁶⁹ Protest at 25 nn. 85-86 (citing *N.Y. Indep. Sys. Operator*, 155 FERC ¶ 61,113 (2016) (“*NYISO*”) and *Duke Energy Fla., LLC*, 165 FERC ¶ 61,012 (2018) (“*Duke*”). In both *NYISO* and *Duke*, the Commission found that the generator had cured the prior breaches identified in the relevant breach letters. *NYISO*, 155 FERC ¶ 61,113, at PP 28-30; *Duke*, 165 FERC ¶ 61,012, at PP 25-26.

Welcome Solar is an active participant in those ongoing proceedings. PJM therefore met its obligations under the Tariff and Welcome Solar ISAs with respect to notice, and the Commission should deny the claims in the Protest as groundless.

C. Welcome Solar’s Default Preempted Any Discussion of Milestone Extensions.

Welcome Solar also argues that PJM’s refusal to negotiate extensions of the subsequent milestones under the Welcome Solar ISAs violates Commission policy and precedent.⁷⁰ The Commission has repeatedly affirmed PJM’s discretion in extending milestone dates, particularly when extension of such milestone dates could lead to inefficiencies that extend the interconnection queue backlog.⁷¹ With respect to Welcome Solar’s requests for milestone extensions, PJM rightly concluded that engaging in such negotiations would not be fruitful given Welcome Solar’s failure to cure its Breaches. Simply put, because Welcome Solar was in Default under all three of the Welcome Solar ISAs, there was no opportunity for PJM to extend Welcome Solar’s future milestone dates. Devoting time and personnel to this futile exercise would contravene PJM’s commitments to efficiency and transparency in processing interconnection requests, which are wholly consistent with Commission precedent and policy. The Commission should accept the Notices of Cancellation and reject the relief sought in the Protest.

⁷⁰ Protest at 28-31.

⁷¹ See *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,089, at P 43 (finding that PJM reasonably exercised its discretion in declining to extend milestones for interconnection project that “appears speculative at this juncture”).

D. Termination of the Welcome Solar ISAs Is Just and Reasonable, and the Commission Should Accept the Notice of Cancellation Filings.

Welcome Solar claims that PJM's filing of the Notices of Cancellation was unjust, unreasonable, unduly discriminatory and not in the public interest.⁷² Welcome Solar's initial argument that PJM failed to meet the requirements of the Welcome Solar ISAs and the Tariff for termination⁷³ is simply wrong as explained above. Additionally, the answer being filed today, along with the Docket No. EL24-73 Answer and the Notices of Cancellation, fully justify and explain the basis for terminating the agreements, and demonstrate that the terminations are just and reasonable.

Welcome Solar also claims that termination of the Welcome Solar ISAs would undermine the public interest and have a chilling effect on investors and developers.⁷⁴ However, it is clear that the Welcome Solar Projects have failed to meet the milestones and allowing them to remain in the interconnection queue would be unfair to other developers who meet their milestones, make adequate efforts to cure their Breaches, or that withdraw or have their ISAs terminated due to breach. Moreover, as noted above, having non-ready projects remain in the interconnection queue can allow such projects to take up Transmission System headroom that could be used by more viable projects.

⁷² Protest at 31-32.

⁷³ *Id.* at 31.

⁷⁴ *Id.* at 32.

III. CONCLUSION

For the reasons set forth in this answer, the Commission should accept the Notices of Cancellation to be effective on the dates requested, and reject the relief requested in the Protest.

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February 29, 2024

Attachment A

**Answer of
PJM Interconnection, L.L.C.
(Feb. 28, 2024)**

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

Welcome Solar, LLC)	
Welcome Solar II, LLC)	
Welcome Solar III, LLC)	
Complainants,)	Docket No. EL24-73-000
)	
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” 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 filing notices of cancellation⁴ of three Interconnection Service Agreements (“ISAs”) associated with queue positions AE1-079, AE1-237, and AE2-343.⁵ Therefore, the Commission should deny the Complaint.

¹ 18 C.F.R. § 385.213.

² 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) (“Complaint”). In its February 16, 2024 Notice of Filings, the Commission set an expedited date of February 28, 2024, for answers to the Complaint.

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

⁴ See Notice of Cancellation of Service Agreement No. 6475; Queue No. AE1-079, Docket No. ER24-994-000 (Jan. 24, 2024); Notice of Cancellation of Service Agreement No. 6454; Queue No. AE1-237, Docket No. ER24-995-000 (Jan. 25, 2024); Notice of Cancellation of Service Agreement No. 6239; Queue No. AE2-343, Docket No. ER24-1001-000 (Jan. 25, 2024).

⁵ *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.*,

The bedrock of PJM’s interconnection process is efficient and diligent processing of the interconnection queue.⁶ In order to process the queue efficiently, it is imperative that developers meet the milestones set forth in their ISAs. When they do not, their delays slow down the processing of projects behind them, occupying valuable headroom on the Transmission System that potentially could be used for other, more viable projects.⁷

Welcome Solar’s failure to cure the Breaches of its three ISAs⁸ is precisely the kind of slowdown the milestone requirements are designed to avoid. PJM relied on the representations Welcome Solar made in its March 7, 2023 letters with respect to its “satisfaction” of the milestones to date, and the work it needed to do *in the near term*, to cure the respective Breaches (“March 2023 Cure Letters”).⁹ Specifically, PJM relied on its understanding, based on Welcome Solar’s representations, that Welcome Solar had committed to continue working to fully cure the Breaches, which required *at a minimum* for Welcome Solar to (i) procure all major equipment required for the projects; and (ii) execute engineering, procurement and construction (“EPC”) contracts for each of the projects and conduct substantial construction pursuant to those contracts.¹⁰

Amendment to Service Agreement No. 6239; Queue Position No. AE2-343, Docket No. ER23-1126-000 (Feb. 16, 2023).

⁶ See, e.g., *PJM Interconnection, L.L.C.*, 181 FERC ¶ 61,162, at P 7 (2022) (recognizing PJM’s prioritization of efficiency in the interconnection queue process).

⁷ See *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,089, at P 34 (2022) (accepting cancellation of service agreement for delayed project occupying substantial transmission system headroom).

⁸ Welcome Solar owns three solar generation projects in the PJM Region, associated with queue positions AE1-079, AE1-237, and AE2-343.

⁹ Complaint, Exhibit J.

¹⁰ Affidavit of Jeffrey M. Gray (Attachment A) ¶ 22 (“Gray Aff.”).

Rather than complete those cures *expeditiously*, as Welcome Solar knew it was obligated to do, Welcome Solar instead entered suspension under false pretenses, apparently with no intention of continuing to work to fully satisfy its obligations to cure. Once Welcome Solar exited suspension, PJM learned that Welcome Solar never in fact cured its Breaches resulting in Default under all three Welcome Solar ISAs.¹¹ When it became clear that Welcome Solar did not fulfill its obligations, PJM rightly determined that the Welcome Solar ISAs should be terminated in accordance with the Tariff and the terms of the Welcome Solar ISAs.¹²

Despite its numerous excuses and attempts to conflate its milestone obligations with dollars spent, the fact remains that Welcome Solar failed to cure the Breaches and remains in Breach of the Welcome Solar ISAs. As such, the Welcome Solar ISAs are in Default, and PJM properly filed notices of cancellation in accordance with the Tariff and the terms of the Welcome Solar ISAs. By failing to counter this conclusion, Welcome Solar has failed to meet its burden under FPA section 206,¹³ and, thus, the Commission should deny the Complaint.

I. BACKGROUND

On February 14, 2024, Welcome Solar filed the Complaint under FPA section 206, alleging that PJM violated both the plain language of the Welcome Solar ISAs and applicable provisions of the Tariff by filing notices of cancellation of the Welcome Solar ISAs with the Commission.¹⁴ Welcome Solar further alleges that filing the notices of

¹¹ See *infra* section I.D.

¹² See Tariff, Attachment O, Appendix 2, section 16.1.3; Welcome Solar ISAs, Appendix 2, section 16.1.3.

¹³ 16 U.S.C. § 824e.

¹⁴ Complaint at 2.

cancellation was unjust and unreasonable, and PJM’s refusal to engage in discussion of revised milestones for the Welcome Solar ISAs violates Commission policy and precedent.¹⁵ The Welcome Solar ISAs, each of which were filed with and accepted by the Commission,¹⁶ provide the terms and conditions under which the Welcome Solar Projects may interconnect to the PJM Transmission System. Each of the ISAs include project specific milestones that Welcome Solar, as Interconnection Customer, must “demonstrate . . . to [PJM’s] reasonable satisfaction” by the dates specified.¹⁷

Each of the Welcome Solar ISAs includes the following milestones: “Site Permits”; “Acquisition of Major Electrical Equipment”; and “Substantial Site Work Completed” (collectively “Applicable Milestone Provisions”). As detailed below and in the affidavit of Jeffrey M. Gray attached to this answer,¹⁸ PJM determined Welcome Solar was in Breach of these milestones and notified Welcome Solar of its Breach by letter on February 8, 2023.

¹⁵ Complaint at 2.

¹⁶ *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).

¹⁷ Welcome Solar ISAs, section 6.6.

¹⁸ Gray Aff. ¶ 10.

A. Applicable Milestone Provisions.

1. Site Permits.

Each of the Welcome Solar ISAs includes a milestone providing that on or before the date provided for in the ISA, “Interconnection Customer must demonstrate that it has obtained any necessary local, county, and state site permits.”¹⁹ Two of the Welcome Solar Projects were to have completed this milestone on or before December 31, 2022.²⁰

2. Acquisition of Major Electrical Equipment.

The “acquisition of major electrical equipment” milestone requires that on or before the date provided for in the ISA, “Interconnection Customer must demonstrate that it has acquired all major electrical equipment.”²¹ In order to satisfy this milestone, Interconnection Customer must demonstrate that “it has signed a memorandum of understanding for the acquisition of generating units (including wind turbines and solar inverters) and other major electrical equipment.”²² Two of the Welcome Solar ISAs require completion of this milestone on or before July 31, 2022, with the third project obligated to complete the milestone by April 30, 2022.²³

3. Substantial Site Work Completed.

This milestone requires that on or before the date provided for in the ISA, “Interconnection Customer must demonstrate completion of at least 20% of project site

¹⁹ Welcome Solar ISA, section 6.1; Welcome Solar II ISA, section 6.2; Welcome Solar III ISA, section 6.2.

²⁰ Welcome Solar ISA, section 6.1; Welcome Solar II ISA, section 6.2.

²¹ Welcome Solar ISA, section 6.1; Welcome Solar II ISA, section 6.1.

²² Welcome Solar III ISA, section 6.3; *see also* System Planning Division, *PJM Manual 14C: Interconnection Facilities, and Network Upgrade Construction*, PJM Interconnection, L.L.C., § 1.1.1 (July 26, 2023), <https://pjm.com/~media/documents/manuals/m14c.ashx>.

²³ Welcome Solar ISA, section 6.2; Welcome Solar II ISA, section 6.1; Welcome Solar III ISA, section 6.3.

construction.”²⁴ PJM defines “Substantial Site Work” as “[m]ajor site construction activities which are initiated with the site preparation and are typically considered complete with the end of civil construction activities.”²⁵ Thus, in order to complete 20% of project site construction, Interconnection Customer must have engaged in at least some major site construction activities (i.e., broken ground on the project).

In order for a project developer to engage in substantial site work, industry practice requires engagement with a contractor under an EPC contract to oversee design, procurement, and construction.²⁶ As the Commission has recognized, EPC contracts are a critical condition precedent to initiating construction of generation facilities.²⁷ All three of the Welcome Solar ISAs require completion of this milestone on or before December 9, 2022.²⁸

B. Breach and Default Provisions Under the Tariff and the Welcome Solar ISAs.

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

²⁴ Welcome Solar ISA and Welcome Solar II ISA, section 6.3; Welcome Solar III ISA, section 6.1.

²⁵ Manual 14C, § 2.2.6 (emphasis added).

²⁶ See, e.g., *PJM CONE 2026/2027 Report*, PJM Interconnection, L.L.C. (Apr. 21, 2022), <https://pjm.com/-/media/committees-groups/committees/mic/2022/20220422-special/brattle-pjm-cone-2026-27-report---final.ashx> (evaluating capital costs to build new generating plants, including EPC contracts).

²⁷ See, e.g., *Bayou Galion Solar Project, LLC*, 185 FERC ¶ 61,139 (2023) (finding that waiver of generator interconnection agreement commercial operation milestone date was proper due to delays in execution of EPC contract outside of generator’s control).

²⁸ See Welcome Solar ISA and Welcome Solar II ISA, section 6.3; Welcome Solar III ISA, section 6.1.

and upgrades and be deemed a termination and withdrawal of the Interconnection Request.”²⁹

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 any material term or condition of the . . . [ISA].”³⁰ 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.”³¹ 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.*”³²

Appendix 2, Section 16.1.3 provides for the termination of the ISA upon Default of Interconnection Customer by providing Interconnection Customer with prior written notice of termination.³³ For purposes of the Welcome Solar ISAs, “Default” means “failure of a Breaching Party to cure its Breach in accordance with the applicable

²⁹ Tariff § 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.*

³⁰ See Tariff, Attachment O, section 15.1; Welcome Solar ISAs, Appendix 2, section 15.1. All references in this section I.B to Appendix 2 shall refer to both Tariff, Attachment O, Appendix 2 and Appendix 2 of the Welcome Solar ISAs.

³¹ Welcome Solar ISAs, Appendix 2, section 15.3.

³² Welcome Solar ISAs, Appendix 2, section 15.4.1 (emphasis added).

³³ Welcome Solar ISAs, Appendix 2, section 16.1.3.

provisions of an [ISA].”³⁴ In accordance with the Tariff and Commission regulations, termination does not become effective until a notice of termination has been filed with and accepted by the Commission.³⁵

C. Breach of the Welcome Solar ISAs and Welcome Solar’s Efforts to Cure.

In January 2023, in the course of discussions with Welcome Solar regarding extension of future milestones in the Welcome Solar ISAs, PJM determined that Welcome Solar had missed the site permits, acquisition of major electrical equipment, and substantial site work milestone dates set forth in its respective ISAs.³⁶ Counsel for PJM and Welcome Solar’s parent company, AB CarVal Investors, L.P. (“AB CarVal”), discussed the missed milestones and Welcome Solar’s request to renegotiate its future milestones via telephone conference on January 26, 2023. Counsel for Welcome Solar did not appear to have any information concerning the milestones that had been missed.

On February 2, 2023, PJM counsel recommended that PJM prepare draft Breach notices to Welcome Solar and to discuss the Breach and cure process for the Welcome Solar ISAs with AB CarVal.³⁷ PJM issued the Breach notices to Welcome Solar on February 8, 2023. That same day, counsel for AB CarVal, on behalf of Welcome Solar indicated that Welcome Solar believed it may be able to cure the Breaches. Counsel for PJM indicated during that conversation that Welcome Solar *first* must cure the milestone dates they already had missed to establish good standing, and *then* may be able to enter

³⁴ Welcome Solar ISAs, Appendix 1; *see also* Tariff, Definitions – C – D (definition of “Default”).

³⁵ Welcome Solar ISAs, Appendix 2, section 16.3; 18 C.F.R. ¶ 35.15(a).

³⁶ Gray Aff. ¶ 5.

³⁷ Gray Aff. ¶ 9.

suspension in order to delay subsequent milestones.³⁸

On March 7, 2023, counsel for Welcome Solar sent a letter representing that it had cured the Breaches for each of the Welcome Solar ISAs (i.e., the March 2023 Cure Letters).³⁹ Notably, the March 2023 Cure Letters represented for each of the Welcome Solar ISAs that:

- all necessary local, county and state permits required for the project, except for certain immaterial, ordinary course matters and renewals, have been obtained;
- all major electrical equipment, including transformers, modules, inverters, racking, piles, and MV/HV cable for the Project, has been acquired; and
- the 20% threshold for substantial site completion has been met, based on advanced progress in permitting, procurement, design, and *contracted onsite construction activities*.⁴⁰

The March 2023 Cure Letters specifically stated that Welcome Solar’s Limited Notice to Proceed (“LNTP”) with Mill Creek Renewables “includes civil construction activities, as allowed under current project permits, that is expected to occur *within the next few weeks*. As is typical for construction in this region, work over the winter months was minimal due to local weather conditions and is expected to accelerate in the coming months.” The March 2023 Cure Letters also stated that Welcome Solar “has commenced EPC contract negotiations with Mill Creek Renewables and a Final Notice to Proceed is anticipated to be issued *no later than May 2023*.”⁴¹

Following receipt of the March 2023 Cure Letters, counsel for PJM contacted counsel for Welcome Solar by phone to discuss the completion of the ongoing cure

³⁸ Gray Aff. ¶ 10.

³⁹ See Complaint, Exhibit J.

⁴⁰ Complaint, Exhibit J (emphasis added).

⁴¹ Complaint, Exhibit J (emphasis added).

activities as described in the March 2023 Cure Letters and the Welcome Solar Projects' eligibility for suspension *once the cure activities are completed*.⁴² During that conversation, counsel for Welcome Solar indicated that Welcome Solar would diligently pursue and complete within a few weeks the Cure activities described in the March 2023 Cure Letters.⁴³ Counsel for PJM reiterated that good standing was a condition precedent for entering suspension.⁴⁴

On March 10, 2023, counsel for Welcome Solar indicated by email that Welcome Solar “will likely exercise [their] suspension right for up to one year,” and will have a more detailed project timeline after they meet with their EPC contractor the following week.⁴⁵ Counsel for PJM responded that same day by email, stating:

With reliance on the information you provided on March 7, 2023, PJM confirms that Welcome Solar, LLC, Welcome Solar II, LLC, and Welcome Solar III, LLC (the “Welcome Projects”) have cured their respective Breaches as set forth in the PJM Breach notices dated February 8, 2023. The Welcome Projects should continue to diligently pursue ongoing cure actions to completion, as applicable. Please continue to coordinate with the PJM and FirstEnergy project managers on the project schedule and the remaining milestones.

On April 28, 2023, Welcome Solar sent notices of suspension for each of the Welcome Solar Projects.⁴⁶

⁴² Gray Aff. ¶ 13.

⁴³ Gray Aff. ¶ 13.

⁴⁴ Gray Aff. ¶ 13.

⁴⁵ Complaint, Exhibit M.

⁴⁶ Complaint, Exhibit N.

D. PJM’s Response to Ongoing Breach of the Welcome Solar ISAs.

On October 3, 2023, Welcome Solar provided formal notice that it had exited suspension for each of its three projects. On November 27, 2023, following several calls with Welcome Solar regarding the status of its projects, PJM determined that Welcome Solar did not appear to have pursued further action to cure the Breaches as represented in the March 2023 Cure Letters and immediately sought clarity on the status of the Welcome Solar ISAs and of the cure activities.

On December 21, 2023, Welcome Solar provided PJM with an unsigned letter dated December 19, 2023, with updates on the Welcome Solar ISAs.⁴⁷ The letter did not address the outstanding cure activities. On January 18, 2024, counsel for PJM and Welcome Solar held a conference call to discuss the status of the Welcome Solar ISAs. PJM indicated that Welcome Solar had failed to complete the cure activities in the second quarter of 2023 as they represented in the March 2023 Cure Letters, and as a result, PJM may be left with little option but to invoke the Default and termination provisions of the Welcome Solar ISAs.⁴⁸

PJM then reviewed documents provided by Welcome Solar to date, which showed that: (1) the LNTP for Welcome Solar was issued on April 25, 2023, not on March 7, 2023, as previously represented; (2) Welcome Solar could not possibly have completed the Acquisition of Major Electrical Equipment milestone by March 7, 2023, because the modules, inverters, racking, and cabling were to be procured by the EPC contractor and they had not yet executed the EPC contract by that date (and apparently

⁴⁷ Gray Aff. ¶ 19.

⁴⁸ Gray Aff. ¶ 21.

still have not executed an EPC contract); and (3) Welcome Solar could not possibly have completed the Substantial Site Work Completed milestone by March 7, 2023, or even shortly thereafter, because the civil construction activities necessary to meet that milestone were to be undertaken by the EPC contractor and they had not yet executed the EPC contract by that date (and apparently still have not executed an EPC contract).⁴⁹ Based on these facts, PJM concluded that Welcome Solar had not actually cured, in March 2023, the Breaches of the Welcome Solar ISAs identified by PJM in February 2023, and that Welcome Solar had improperly entered suspension without completing its prerequisite cure requirements. Accordingly, on January 25, 2024, PJM filed and served notices of cancellation of the three Welcome Solar ISAs.

II. ANSWER TO COMPLAINT

Despite Welcome Solar's insistence to the contrary,⁵⁰ PJM's actions in response to Welcome Solar's failure to cure the Breaches of the Welcome Solar ISAs were wholly consistent with requirements of the Tariff and the Welcome Solar ISAs. Welcome Solar fails to meet its burden under section 206 of the FPA to demonstrate otherwise and the Commission therefore should deny the Complaint.

A. Welcome Solar Failed to Cure Breach of the Applicable Milestone Provisions in the Welcome Solar ISAs, Resulting in Default.

As an initial matter, the record before the Commission clearly indicates that Welcome Solar failed, in fact, to cure its Breaches of the Welcome Solar ISAs. Welcome Solar argues that that "[to] the extent that any of the purported Breaches identified . . . were not actually cured, such Breaches were clearly incapable of being cured within 30

⁴⁹ Gray Aff. ¶ 22.

⁵⁰ Complaint at 21-31.

days because such delays were due primarily to global supply chain interruptions.”⁵¹ As explained below, even if Welcome Solar’s representations are true with respect to Acquisition of Major Electrical Equipment, they are wholly inconsistent with the representations it made to PJM in its March 2023 Cure Letters, and with representations made as recently as January 2024. Moreover, with respect to Substantial Site Work Completed, any global supply chain delays are irrelevant to satisfying a crucial condition precedent: executing an EPC contract.

1. *Welcome Solar’s support for acquisition of major electrical equipment includes contradictory and inconsistent statements.*

Welcome Solar asserts that the March 2023 Cure Letters “demonstrat[e] that Welcome Solar had secured all major electrical equipment.”⁵² But upon close inspection, the March 2023 Cure Letters are not only internally inconsistent with respect to this milestone, they fail to square with subsequent evidence that purportedly supports its completion.

The March 2023 Cure Letters provide that Welcome Solar “*has acquired* all major electrical equipment. We have *successfully procured* transformers, modules, inverters, racking, piles, and MV/HV cable for the project.”⁵³ Welcome Solar then lists the types of equipment it has purportedly acquired and/or procured, along with the responsible procuring entity. With the exception of the transformers, the “procuring entity” listed by Welcome Solar is “EPC,” which presumably refers to its EPC

⁵¹ Complaint at 27.

⁵² Complaint at 23.

⁵³ Complaint, Exhibit J (emphasis added).

contractor.⁵⁴ However, as discussed below and in Mr. Gray’s affidavit, Welcome Solar had not yet executed an EPC contract as of March 2023, and, to date, has *never* executed an EPC contract for any of the Welcome Solar Projects.⁵⁵ Nor did Welcome Solar provide evidence of a Memorandum of Understanding with any entity regarding procurement of major electrical equipment, as required to satisfy the milestone.⁵⁶ As such, Welcome Solar’s assertion in the March 2023 Cure Letters that it “has acquired” or “successfully procured” any of the items to be procured by the EPC contractor is *at best* misleading.

Welcome Solar’s assertions in the March 2023 Cure Letters regarding acquisition and procurement of major electrical equipment are further contradicted by evidence from Welcome Solar provided in January 2024. For example, Welcome Solar’s January 19, 2024 correspondence regarding cures of its Breaches included attached meeting minutes from a January 9, 2024 call with PJM indicating that, with respect to AE1-079 (Welcome Solar, LLC), “no materials have been ordered.”⁵⁷ Welcome Solar’s project notes also indicated that permitting for the Welcome Solar ISAs was not yet complete.⁵⁸

2. *Welcome Solar failed to secure an EPC contract, a prerequisite to satisfaction of substantial site work completion.*

Contrary to the assertions in the Complaint, Welcome Solar understood it needed to execute an EPC contract and to break ground in order to satisfy completion of 20% of

⁵⁴ Gray Aff. ¶ 22.

⁵⁵ Gray Aff. ¶ 22.

⁵⁶ *See supra* note 22.

⁵⁷ A copy of the meeting minutes accompanying Welcome Solar’s January 2024 correspondence is attached hereto as Attachment B.

⁵⁸ *See id.*

substantial site work. In fact, Welcome Solar’s communications with PJM regarding the Breaches make clear that Welcome Solar understood the EPC contract, and full notice to proceed, were essential requirements for satisfaction of the substantial site work completed milestone, yet Welcome Solar continued to hedge on completion of that requirement even while the Welcome Solar Projects were in suspension.

The March 2023 Cure Letters provide that Welcome Solar has executed an LNTP with Mill Creek Renewables allowing for civil construction activities to commence “*in the next few weeks,*” and that Welcome Solar has “commenced EPC contract negotiations with Mill Creek Renewables and a Final Notice to Proceed is anticipated to be issued *no later than May 2023.*”⁵⁹ Assuming these statements were accurate and the Welcome Solar Entities already had issued a LNTP to the EPC contractor they had selected, starting civil construction activities “within the next few weeks” when the weather improved would have been a simple matter. Further, if Welcome Solar had issued a LNTP to Mill Creek Renewables, as represented, finalizing EPC contract negotiations leading to a Final Notice to Proceed no later than May 2023 should have been a simple matter.⁶⁰ Yet Welcome Solar indicated in September 2023 that, despite the projects being in suspension for six months, the EPC contract “will be executed 10/2023.”⁶¹ Indeed, Welcome Solar’s own project notes indicate that as late as January 2024, the EPC contract was not yet finalized, while the LNTP had been voided, amended, and replaced multiple times.⁶²

⁵⁹ Complaint, Exhibit J (emphasis added).

⁶⁰ Gray Aff. ¶ 14.

⁶¹ Complaint, Exhibit O.

⁶² Gray Aff. ¶ 22.

As explained in Mr. Gray’s affidavit, Welcome Solar understood that execution of the EPC contract was an essential component of satisfaction of the substantial site work milestone.⁶³ Welcome Solar attempts to dismiss the importance of the EPC contract as “certain construction activities [that] had not commenced precisely in the manner described in the [March 2023 Cure Letters].”⁶⁴ But simply put, Welcome Solar cannot “construct” much of anything without an EPC contract in place, and its repeated assertions that the EPC contract was on the cusp of being executed demonstrate efforts to stall that are wholly unrelated to any global supply chain issues affecting construction of the project.

3. *The March 2023 Cure Letters do not absolve Welcome Solar of further action to cure its Breaches.*

Welcome Solar argues that PJM “expressly agreed in writing that the Breaches . . . were cured by conveying as such in written notice”⁶⁵ and urges the Commission to end its inquiry there. But Welcome Solar’s reading of the Notices of Cure ignores two critical limitations that preserve PJM’s right to terminate the Welcome Solar ISAs in the event of Default. First, PJM explicitly tied its acceptance of the Notices of Cure to the information provided in the March 2023 Cure Letters.⁶⁶ As outlined above, those letters contain multiple contradictory and inconsistent statements, rendering them largely unreliable for purposes of curing the Breaches.

⁶³ Gray Aff. ¶ 15.

⁶⁴ Complaint at 19.

⁶⁵ Complaint at 24.

⁶⁶ Complaint, Exhibit K.

Second, PJM’s acceptance of the March 2023 Cure Letters specifically provides that “[t]he Welcome Projects should continue to diligently pursue ongoing cure actions to completion, as applicable.”⁶⁷ As demonstrated above, Welcome Solar understood that cure was a condition precedent to entering suspension, yet took no meaningful action prior to, during, or even following suspension to complete the cure of its Breaches. Welcome Solar’s request that the Commission narrowly read the Notices of Cure and PJM’s acceptance of the March 2023 Cure Letters would unreasonably prevent PJM from reserving its right to terminate service agreements in Default where, as here, representations of cure made by the defaulting party are inaccurate or misleading. Welcome Solar’s overly narrow interpretation of the Notices of Cure should therefore be disregarded.

B. Notices of Cancellation of the Welcome Solar ISAs Were Issued in Accordance with the Tariff.

Welcome Solar claims that PJM was required to provide a new notice of Breach, and a subsequent opportunity to cure, before issuing the notices of cancellation.⁶⁸ To the contrary, nothing in the Tariff or the Welcome Solar ISAs provides for PJM to issue a second notice of Breach, or permit a second cure period, when an Interconnection Customer fails to cure in the first instance and entered suspension under false pretenses. Tariff, Attachment O, Appendix 2 provides that a party that commits a Breach “and does not take steps to cure the Breach . . . is in Default.”⁶⁹ Once Default occurs, PJM may

⁶⁷ Complaint, Exhibit K (emphasis added).

⁶⁸ Complaint at 26.

⁶⁹ Welcome Solar ISAs, Appendix 2, section 15.4.

terminate the ISA “by providing Interconnection Customer . . . prior written notice of termination.”⁷⁰

Unlike the precedent cited in the Complaint,⁷¹ here there is no “new Breach” at issue. Welcome Solar simply did not take steps to cure the Breaches identified in the Notices of Breach, and upon discovery of that failure, PJM issued the notices of cancellation. The notices of cancellation filed with the Commission constitute the “prior written notice” contemplated under the Tariff and Welcome Solar ISAs, and Welcome Solar is an active participant in those ongoing proceedings.⁷² PJM therefore met its obligations under the Tariff and Welcome Solar ISAs with respect to termination, and the Commission should deny the Complaint as groundless.

C. Welcome Solar’s Default Preempted Any Discussion of Milestone Extensions.

Finally, Welcome Solar argues that PJM’s refusal to negotiate extensions of the subsequent milestones under the Welcome Solar ISAs violates Commission policy and precedent.⁷³ The Commission has repeatedly affirmed PJM’s discretion in extending milestone dates, particularly when extension of such milestones could lead to inefficiencies that extend the interconnection queue backlog.⁷⁴ With respect to Welcome Solar’s requests for milestone extensions, PJM rightly concluded that engaging in such negotiations would not be fruitful given Welcome Solar’s failure to cure its Breaches.

⁷⁰ Welcome Solar ISAs, Appendix 2, section 16.1.3.

⁷¹ Complaint at 25.

⁷² See *PJM Interconnection, L.L.C.*, Protest of Welcome Solar, LLC, Welcome Solar II, LLC, and Welcome Solar III, LLC, Docket Nos. ER24-994-000, et al. (Feb. 14, 2024).

⁷³ See Complaint at 28.

⁷⁴ See *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,089, at P 43 (finding that PJM reasonably exercised its discretion in declining to extend milestones for interconnection project that “appears speculative at this juncture”).

Simply put, because Welcome Solar was in Default under all three of the Welcome Solar ISAs, there was no opportunity for PJM to extend Welcome Solar's future milestone dates. Devoting time and personnel to this futile exercise would contravene PJM's commitments to efficiency and transparency in processing interconnection requests, which are wholly consistent with Commission precedent and policy. The Complaint should therefore be denied.

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,⁷⁵ 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:⁷⁶

Craig Glazer
Vice President–Federal Government Policy
PJM Interconnection, L.L.C.
1200 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 423-4743 (phone)
(202) 393-7741 (fax)

Wendy B. Warren
Elizabeth P. Trinkle
Wright & Talisman, P.C.
1200 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 393-1200 (phone)
(202) 393-1240 (fax)

⁷⁵ 18 C.F.R. § 385.213(c)(2)(i).

⁷⁶ 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.

craig.glazer@pjm.com

warren@wrightlaw.com
trinkle@wrightlaw.com

Christopher Holt
Associate General Counsel
PJM Interconnection, L.L.C.
2750 Monroe Blvd
Audubon, PA 19403-2497
(610) 666-2368 (phone)
christopher.holt@pjm.com

VI. CONCLUSION

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

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Respectfully submitted,

/s/ Elizabeth P. Trinkle
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*Attorneys for
PJM Interconnection, L.L.C.*

February 28, 2024

Attachment A

**Affidavit of Jeffrey M. Gray
on Behalf of PJM Interconnection,
L.L.C.**

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

Welcome Solar, LLC)	
Welcome Solar II, LLC)	
Welcome Solar III, LLC)	
Complainants,)	Docket No. EL24-73-000
)	
v.)	
)	
PJM Interconnection, L.L.C.)	
Respondent.)	

**AFFIDAVIT OF JEFFREY M. GRAY
ON BEHALF OF PJM INTERCONNECTION, L.L.C.**

1. My name is Jeffrey M. Gray. I am counsel to PJM Interconnection, L.L.C. (“PJM”), where I have been engaged since April 2012. In August 2018 I began working with a team of engineers and analysts, project managers, and members of the PJM legal department, supporting service agreements associated with the PJM interconnection process and ensuring the agreements are consistent with the PJM Open Access Transmission Tariff (“Tariff”).¹ The purpose of my affidavit is to respond to certain issues raised in the Complaint and Request for Fast Track Processing of Welcome Solar, LLC, Welcome Solar II, LLC, and Welcome Solar III, LLC (collectively, “Welcome Solar”) filed on February 14, 2024 (“Complaint”). In the Complaint, Welcome Solar claims that PJM violated the Welcome Solar Interconnection Service Agreements (“ISAs”) and its Tariff by filing notices of cancellation of the Welcome Solar ISAs.

¹ Capitalized terms used herein that are not otherwise defined shall have the meanings given to them in the Tariff.

2. I have worked as an energy attorney since 2004, in both inside and outside counsel roles, with an emphasis on the electricity sector. Previously, I held technical and business positions in the energy industry. I hold a PhD, JD, and MBA from the University at Buffalo, and a BS in Industrial Engineering from Texas A&M University.
3. PJM, as a Regional Transmission Organization, ensures the reliability of the high-voltage electric power system serving 65 million people in all or parts of 13 states and the District of Columbia. PJM coordinates and directs the operation of the region's transmission grid, which includes 88,115 miles of transmission lines, administers a competitive wholesale electricity market, and plans regional transmission expansion improvements to maintain grid reliability and relieve congestion. PJM's regional grid and market operations produce annual savings of \$3.2 billion to \$4 billion. PJM, under the terms of its Tariff, has the responsibility for planning the expansion and enhancement of the PJM Transmission System on a regional basis.
4. Welcome Solar is the Interconnection Customer for three solar generation projects in the PJM Region, with queue positions AE1-079, AE1-237, and AE2-343 ("Welcome Solar Projects"). They are wholly owned by a fund controlled by AB CarVal Investors, L.P. ("AB CarVal"), an investment advisor registered with the United States Securities Exchange Commission under the Investment Advisors Act of 1940. PJM filed ISAs for the Welcome Solar Projects in Docket No. ER22-2112-000, accepted by the Commission on July 27, 2022 (Welcome Solar, LLC); Docket No. ER22-1908-000, accepted by the Commission on July 12, 2022

(Welcome Solar II, LLC); and Docket No. ER22-617-000, accepted by the Commission on February 10, 2022 (Welcome Solar III, LLC).

Dealing with the Welcome Solar Entities Before Suspension

5. The agreements and projects at issue in the Complaint were brought to my attention on January 13, 2023, by Mr. Nathan Roberts, the PJM project manager to whom the Welcome Solar Projects recently had been reassigned. Mr. Roberts informed me that Welcome Solar had missed certain milestone dates agreed upon in their ISAs, and their new owner as of September 2022, AB CarVal, wanted to renegotiate those milestone dates. After Mr. Roberts informed me of the request to renegotiate milestone dates, I reviewed the background of the Welcome Solar ISAs and discussed it with Mr. Roberts. We determined that Welcome Solar had missed milestone dates for site permits, acquisition of major electrical equipment, and substantial site work completed in the Welcome Solar ISAs.²
6. Over the coming days I discussed with Mr. Roberts the possibility of suspension or a claim of Force Majeure by Welcome Solar, and also brought Mr. Christopher Holt, Associate General Counsel for PJM, into the discussions. As PJM did not Breach Welcome Solar when they first missed certain milestone dates in the Welcome Solar ISAs, I asked Mr. Roberts to put me in touch with Welcome Solar's counsel so that I could gain a better understanding of the history of the projects, their purchase by AB CarVal, and next steps that could be taken. Mr. Roberts

² Specifically, the ISA associated with PJM Queue No. AE1-079 had missed milestones in sections 6.1, 6.2 and 6.3; the ISA associated with PJM Queue No. AE1-237 had missed milestones in sections 6.1, 6.2 and 6.3; and the ISA associated with PJM Queue No. AE2-343 had missed milestones in sections 6.1 and 6.3.

provided me with the email address of Mr. Alexander Smorzewski, counsel for AB CarVal (and on behalf of Welcome Solar).

7. On January 24, 2023, I sent an email to Mr. Smorzewski asking for a conference call with Mr. Holt and me. He responded promptly and we arranged to have a call on January 26, 2023.
8. On January 26, 2023, Mr. Holt and I had our conference call with Mr. Smorzewski about the missed milestones and Welcome Solar's request to renegotiate the milestone dates. We discussed the ISA Breach process. Mr. Smorzewski seemed engaged and responsive but did not appear to have any information concerning the milestones that had been missed.
9. During the remainder of January 2023, we further coordinated within PJM to understand the status of the Welcome Solar ISAs and how to proceed regarding the missed milestones. On February 2, 2023, I recommended that PJM prepare draft Breach notices to Welcome Solar and, assuming PJM elected to proceed, discuss with Mr. Smorzewski the Breach and cure process for the Welcome Solar ISAs.
10. I tried to reach Mr. Smorzewski by phone on February 8, 2023, leaving a voicemail message to let him know that Breach notices were coming. I then sent the Breach notices to Welcome Solar. That same day, Mr. Smorzewski called me back and stated that Welcome Solar believed it may be able to cure the Breaches for the previously missed milestones. However, Mr. Smorzewski expressed concern about the upcoming July 14, 2023 delivery of major electrical equipment milestone for the Welcome Solar ISAs. Mr. Smorzewski stated that Welcome Solar would not be able to timely meet that milestone. I told him that Welcome Solar first must cure the milestone dates they already had missed to establish good

standing, and then they may be able to suspend in order to extend the July 14, 2023 milestone and later milestones.

11. On March 7, 2023, Mr. Smorzewski sent a letter for each of the Welcome Solar ISAs representing that Welcome Solar had cured the respective Breaches (“March 2023 Cure Letters”). Notably, the March 2023 Cure Letters represented for each of the Welcome Solar ISAs that:

- all necessary local, county and state permits required for the project, except for certain immaterial, ordinary course matters and renewals, have been obtained;
- all major electrical equipment, including transformers, modules, inverters, racking, piles, and MV/HV cable for the Project, has been acquired; and
- the 20% threshold for substantial site completion has been met, based on advanced progress in permitting, procurement, design, and contracted onsite construction activities.

12. The March 2023 Cure Letters specifically stated that Welcome Solar’s Limited Notice to Proceed (“LNTP”) with Mill Creek Renewables “includes civil construction activities, as allowed under current project permits, that is expected to occur within the next few weeks. As is typical for construction in this region, work over the winter months was minimal due to local weather conditions and is expected to accelerate in the coming months.” The March 2023 Cure Letters also stated that Welcome Solar “has commenced [Engineering, Procurement, and Construction (“EPC”)] contract negotiations with Mill Creek Renewables and a Final Notice to Proceed is anticipated to be issued no later than May 2023.”

13. After internal discussion at PJM concerning the information in the March 2023 Cure Letters, I called Mr. Smorzewski on March 9, 2023, to discuss the completion of the ongoing cure activities as described in the March 2023 Cure Letters and Welcome Solar’s eligibility for suspension when the cure activities

were completed. Mr. Smorzewski indicated to me during that call that Welcome Solar would diligently pursue and complete within a few weeks the cure activities described in the March 2023 Cure Letters, and then likely would suspend in order to extend the upcoming July 14, 2023 milestone in each of the Welcome Solar ISAs. I reiterated that good standing (i.e., cure of the Breaches) would need to be achieved in order for Welcome Solar to be eligible for suspension.

14. If the statements made in the March 2023 Cure Letters were accurate, and Welcome Solar already had issued a LNTP to the EPC contractor they had selected, then starting civil construction activities “within the next few weeks” when the weather improved should have been straightforward. Further, if Welcome Solar already had issued a LNTP to Mill Creek Renewables, as represented, then finalizing EPC contract negotiations leading to a Final Notice to Proceed no later than May 2023 should have been straightforward. Finally, completing the cure process as the March 2023 Cure Letters represented and then entering suspension prior to the July 14, 2023 delivery of major electrical equipment milestone date would have positioned Welcome Solar to take delivery of equipment and resume construction activities upon exiting suspension. But, as PJM later discovered, none of that happened.
15. On March 10, 2023, Mr. Smorzewski emailed me to indicate that Welcome Solar “will likely exercise [their] suspension right for up to one year,” and will have a more detailed project timeline after they meet with their EPC contractor the following week. I responded to him that same day by email, stating:

With reliance on the information you provided on March 7, 2023, PJM confirms that Welcome Solar, LLC, Welcome Solar II, LLC, and Welcome Solar III, LLC (the “Welcome Projects”) have cured

their respective Breaches as set forth in the PJM Breach notices dated February 8, 2023. The Welcome Projects should continue to diligently pursue ongoing cure actions to completion, as applicable. Please continue to coordinate with the PJM and FirstEnergy project managers on the project schedule and the remaining milestones.

Welcome Solar in Suspension

16. On April 28, 2023, Mr. Smorzewski sent to PJM notices of suspension for each of the Welcome Solar Projects.
17. On October 3, 2023, Welcome Solar provided formal notice that all three Welcome Solar Projects had exited suspension.

Dealing with the Welcome Solar Entities After They Exited Suspension

18. On November 27, 2023, Mr. Roberts informed Mr. Holt and me that Welcome Solar did not appear to have cured the Breaches as represented in the March 2023 Cure Letters. I drafted an email, which Mr. Roberts sent to Welcome Solar, seeking clarity on the status of the Welcome Solar ISAs and of the cure activities.
19. On December 21, 2023, AB CarVal provided to Mr. Roberts an unsigned letter dated December 19, 2023, with updates on the Welcome Solar Projects. The letter did not address the outstanding cure activities, and some of the letter's content was inconsistent with Welcome Solar's previous representations regarding those cure activities.
20. On January 10, 2024, I sent an email to Mr. Smorzewski, but the email bounced back as undeliverable. I then sent an email to Mr. Derek Daly, AB CarVal's Director of Clean Energy Investments, who had signed the March 2023 Cure Letters. Mr. Daly apparently forwarded my email to AB CarVal's counsel, Ms. Colleen Ryan, who responded to my email indicating that she could be available to

talk. I responded to Ms. Ryan on January 17, 2024, indicating PJM's is availability for a call the following day.

21. On January 18, 2024, Mr. Holt, Ms. Ryan, and I had a conference call to discuss the status of the Welcome Solar ISAs. We pointed out to Ms. Ryan that Welcome Solar had failed to complete the cure activities in the second quarter of 2023 as they represented in the March 2023 Cure Letters. We further stated that PJM may have little choice but to invoke the Default and termination provisions of the Welcome Solar ISAs.
22. We then reviewed documents provided by Welcome Solar to date, including documents attached to a letter from Ms. Ryan dated January 19, 2024. Our review showed that: (1) the initial version of the LNTP for Welcome Solar, LLC was issued on April 25, 2023, not on March 7, 2023 as Welcome Solar previously had represented, and all three LNTPs – as voided, amended, and restated multiple times—still indicated that no final EPC contract had been executed; (2) Welcome Solar could not have completed the acquisition of major electrical equipment milestone by March 7, 2023, because the modules, inverters, racking, and cabling were to be procured by the EPC contractor and they had not yet executed the EPC contract by that date (and apparently still have not executed an EPC contract); and (3) Welcome Solar could not have completed the substantial site work completed milestone by March 7, 2023, or shortly thereafter, because the civil construction activities necessary to meet that milestone were to be undertaken by the EPC contractor, and they had not yet executed the EPC contract by that date (and apparently still have not executed an EPC contract). Based on these and other facts,

we concluded that Welcome Solar had not actually cured, in March 2023, the Breaches of the Welcome Solar ISAs identified by PJM in February 2023.

23. Accordingly, on January 25, 2024, PJM filed and served Notices of Cancellation of the Welcome Solar ISAs in Docket Nos. ER24-994-000, ER24-995-000, and ER24-1001-000.
24. This concludes my affidavit.

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

Welcome Solar, LLC)	
Welcome Solar II, LLC)	
Welcome Solar III, LLC)	
Complainants,)	Docket No. EL24-73-000
)	
v.)	
)	
PJM Interconnection, L.L.C.)	
Respondent.)	

VERIFICATION

I, Jeffrey M. Gray, pursuant to 28 U.S.C. § 1746, state, under penalty of perjury, that I am the Jeffrey M. Gray referred to in the foregoing “Affidavit of Jeffrey M. Gray on Behalf of PJM Interconnection, L.L.C.,” that I have read the same and am familiar with the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge, information, and belief.

/s/ Jeffrey M. Gray
Jeffrey M. Gray

Executed on: 2/28/2024

Attachment B

Welcome Solar AE1-079 Construction Call Meeting Minutes

**AE1-079 Maysville-Sharon 69kV Welcome Solar 1
Construction Call – Minutes**

Order Number - 17625975

OPPM: PP-20-181113-082202

Project previously went into suspension – 4.28.23-9.28.2023

Construction Roster

Name	Company	Email
	PJM	
Nathan Roberts	Interconnection Projects	Nathan.Roberts@pjm.com
Louis Culp	Interconnection Projects	Louis.Culp@pjm.com
	FirstEnergy/Penn Power	
Vita Moore	FERC & Wholesale Connection Support	vsmoore@firstenergycorp.com
Marty Crum	Construction Project Manager	mscrum@firstenergycorp.com
	Engineering Services Supr	
	Project Design-PA	
	Engineering Services-PA	
Jeff Janosek	Metering Engineering	janosekj@firstenergycorp.com
Frederick Weiss	Protection	fweiss@firstenergycorp.com
	SCADA Design	
Mark Fowler	Real Estate	fowlerm@firstenergycorp.com
Patrick White	Real Estate	pdwhite@firstenergycorp.com
Mike Robison	Planning	mrobison@firstenergycorp.com
	Vegetation	
Carrie Mokora	Supv FERC & Wholesale Connection Support	cwokaty@firstenergycorp.com
	Developer	
	Developer- AB CarVal Investors/Welcome Solar I	
	Camelot Energy Group/Owner's Engineer	
Juan Escobar	Project Engineer	juan.escobar@camelotenergygroup.com
Ashley Fletcher	Director of Owner's Engineering	Ashley.Fletcher@camelotenergygroup.com
Shawn Shaw	Founder, CEO	Shawn.shaw@camelotenergygroup.com
	CarVal Energy Group/Owner's Engineer	
Emma Bankier	Associate, Investment Operations	Emma.Bankier@abcarval.com
Julie Kranz	Vice President	Julie.Kranz@abcarval.com
Drew Venkatraman	Director	drew.venkatraman@abcarval.com
	Bodec Engineering/HV-Substation Engineer	
Zachary Pintado	Senior Substation Design Engineer	zpintado@bodecinc.com
Joey Yoklavich	Technical Service Manager	joeyyok@bodecinc.com
Scott Bruno	PE, CEO	sbruno@bodecinc.com

AE1-079 Maysville-Sharon 69kV Welcome Solar 1

Construction Call – Minutes

Project Description: 19.9MW solar/storage generating facility with 13.5MW of this output being recognized by PJM as Capacity. The project will also require non-direct connection upgrades at Maysville and Sharon substation.

ISA PROJECT SPECIFICATIONS

- Project Name: Maysville-Sharon 69 kV
- MFO: 19.90 MW
- CIR: 13.5 MW (Solar: 11.9MW | Storage: 1.6)
- Description: 20 MW solar
- EMS Model Status: Not Modeled
- Invoicing Status: TBD Waiting on Facility Refresh
- Option to Build: No
- Co-Op: Penn Power
- POI: GPS Coordinates: 41.3825,-80.4283° West Salem Township, Mercer County, Pennsylvania Install one (1) span of 69 kV line from the tap at Maysville- Sharon 69 kV (Y301) line near structure 62 to the point of change of ownership with the Interconnection Customer. (approx. 1.25 miles from Maysville substation)
- Jurisdiction: FERC

Milestones

Description	Initial	Developer request	Status
20% Site Completion			
Major Equipment Delivery	7/14/2023	7/14/2024	TBD waiting Facility study refresh
Site Permits	12/31/2022		
Backfeed	6/31/2023	9/2024	Tentative May 2025
FE Inservice Date			
Commercial Operation	12/31/2023	12/31/2024	
PJM As-built	One Month after COD		

AE1-079 Maysville-Sharon 69kV Welcome Solar 1 Construction Call – Minutes

1.9.2024 Minutes

- Juan-EPC is close to completing, 90% design is close to be completed. Reconfiguring the layout and the line design permit is lagging. Construction scheduled can be shared with the tentative May 2025 backfeed date. Making changes on Q point. Estimate for mobilization is closer to March/April. Land development and NPDES storm water permit is with the conservation. Change is to the solar modules. Permits to be completed Feb/March.
- Marty-project was not started prior to it going into suspension. The engineering firm has not been assigned yet, no materials have been ordered, concerned on lead time for switches. He will continue to work on this assignment. Will then schedule the engineering calls with the entire team.
- Nathan is to provide an amended contract once the facility refresh is received will provide an update on rev metering with the owner to own.

12.12.2023 Minutes

- Drew Venkatraman - EPC agreement, 90% design, site control none needed, construction schedule waiting for confirmation of backfeed date and when to order equipment.
- Drew-95/5 draft certificate submitted- waiting for review from Vita. Site drawings were submitted.
- Drew-COI to be sent out soon
- Marty-GPD is not the engineer for this project. Welcome solar I
- Marty is just getting started for the engineering firm and project team. The Scada control line switches 70 weeks lead time.
- Justin Woodard- will get the drawings/easements from developer.
- Mike asked about construction schedule Juan will provide this information.
- Justin Woodard will hold a call with FE real estate.
- Jeff Janosek- as with Welcome solar I rev is owned by ATSI at customer collector substation. Would like all to be consisted with owner to own the rev metering. (will need to review the agreements) this can be done with a phone line. Will forward documents once have EPC contacts.
- Nathan will review the agreements to update the rev metering.
- FE will have a separate call to discuss and have reoccurring meetings with developer to hold construction calls with FE planning/engineering teams will start at the beginning of the year.

11.14.2023 Minutes

- Project has now been released from FE Portfolio to execution. SAP work order numbers have been assigned. PM has followed up with Engineering for status of PO to 3rd party Engineering firm that will be doing the design.
- Scada controlled line switches are the longest lead time, ~70 weeks. After Engineering firm has been on-boarded, a PO will be placed for this equipment and delivery date will be confirmed.
- Currently targeting May 2025 backfeed date – PM to confirm after equipment delivery dates are finalized.

AE1-079 Maysville-Sharon 69kV Welcome Solar 1

Construction Call – Minutes

ADMINISTRATIVE

- Reference the **PJM Queue Number** and the **Project name** on all email correspondence.
- **Primary Contacts** should be copied on all project related emails.
 - FE Construction Project Manager: **Marty Crum**
 - FE FERC & Wholesale Support: **Vita Moore**
 - Welcome Solar 1 Lead: **TBD**
 - PJM Project Coordinator: **Nathan Roberts**

CONSTRUCTION RESPONSIBILITY

IIINTERCONNECTION CUSTOMER

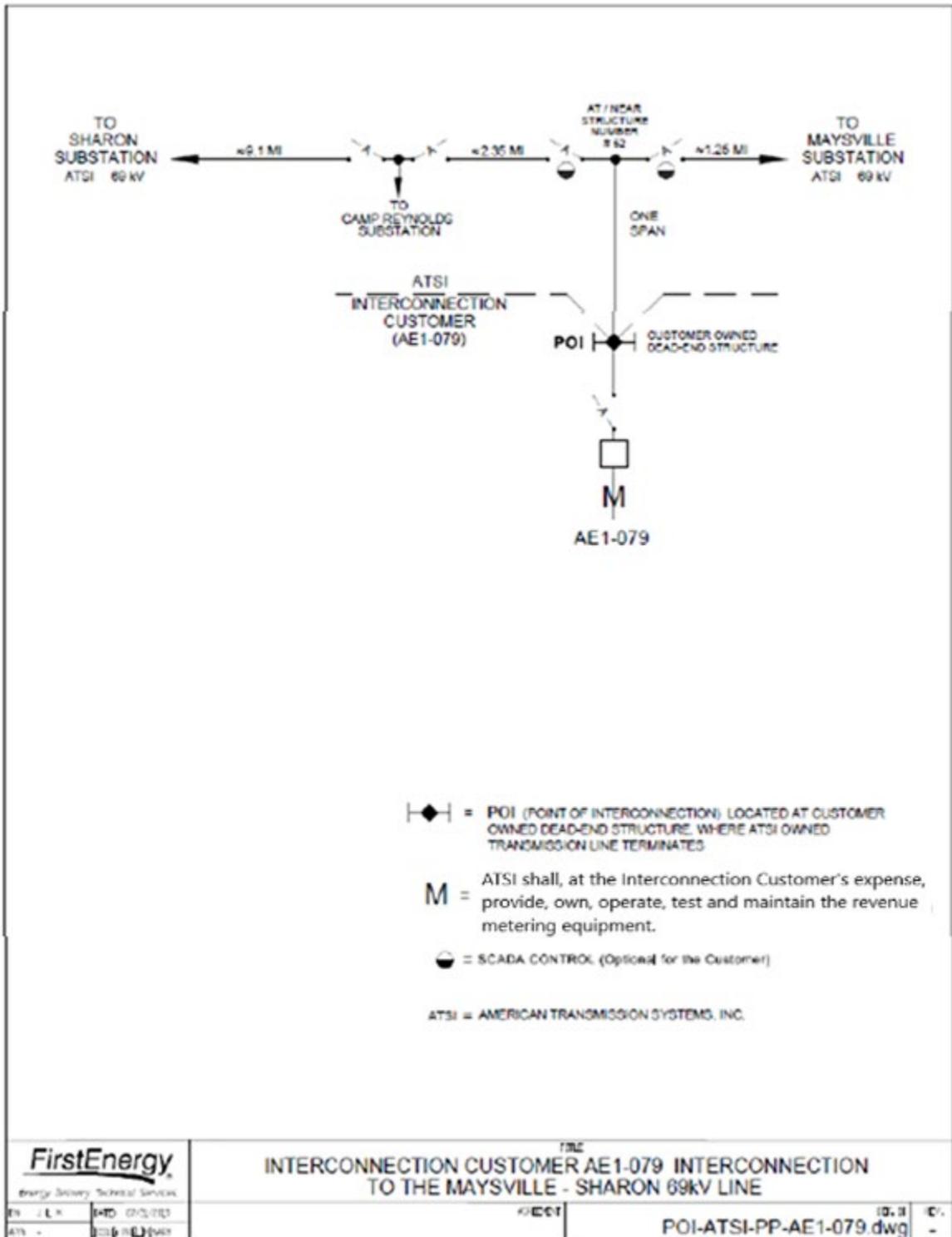
What is the Generator facility name? Welcome 1

Construction responsibility: CUSTOMER INTERCONNECTION FACILITIES Interconnection Customer shall construct and, unless otherwise indicated, shall own, the following Interconnection Facilities: All Attachment Facilities from the Point of Interconnection to the generator leads, which consist of the following: 1. One (1) 69-34.5 kV, 25 MVA main step up transformer. 2. One (1) 69kV circuit breaker; and 3. One (1) 69kV generator lead line from the generation substation to the Point of Interconnection with ATSI.

- **Construction Plans:**
 - **Is there an EPC for the Project?** Juan-has contract in line finalizing w/in 1 month
 - Contractors: Juan to provide in team roster.
 - Status of Engineering Design? –
 - Site plans/drawings: 90% design stage- has questions to present- will provide
 - **ROW/Easements /Permits** – in process has building and elec pending- EPC to obtain
 - FE standard ROW provided by customer
 - Construction Schedule? – will provide 2024 timeline to be updated in the future
- **Developer Discussion Points:**
 - Back feed date -TBD once facility refresh is received and major equipment is ordered.
 - Review metering -
 - Review DTT configuration
 - Review single line diagram
 - **Removing the battery**
 - **The IC facilities one-line shows (2) generic 2500kW AC-coupled BESS skids. BESS is being removed from the scope**
- **EMS Model Status:**
 - To be modeled in the winter, summer:

**AE1-079 Maysville-Sharon 69kV Welcome Solar 1
Construction Call – Minutes**

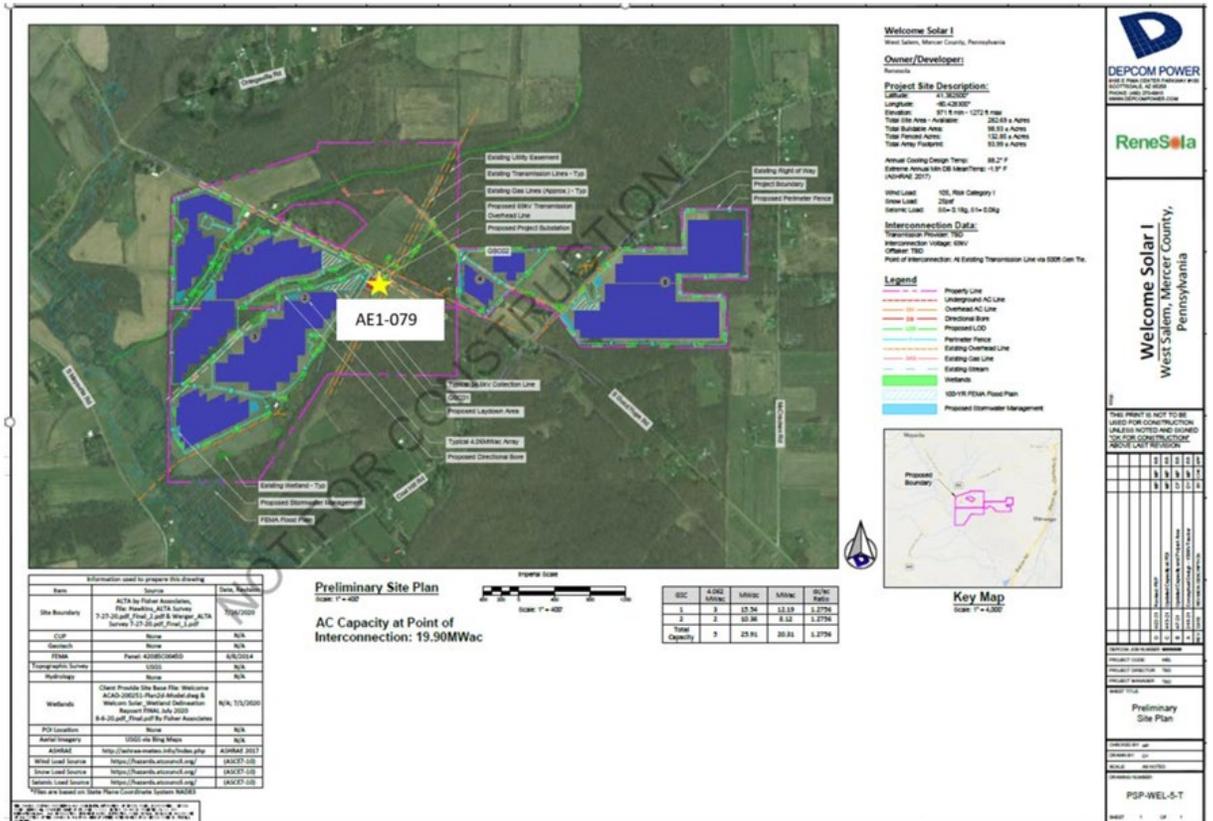
– Single line –



- **Market setup:**
 - Third party marketer?
 - Telemetry Setup:
- TRANSMISSION OWNER**

AE1-079 Maysville-Sharon 69kV Welcome Solar 1 Construction Call – Minutes

- Construction Schedule:
- Engineering design -
- Relay setting at sub -
- Revenue metering -
- Drawing - requested
- Site plan – requested update



FirstEnergy Requirements:

- Proof of Insurance:
 - Emailed to IC: 1.9.2024 Emma Bankier in progress
- 95/5 Certificate:
 - Emailed to IC: 12.18.2023 draft approved awaiting final with no public funds statement
- Station Service Agreement
 - SS Questions Emailed to IC: 1.9.2024 FE received under review

Direct Connection Network Upgrades:

1. AE1-079 Supervisory Control and Data Acquisition (SCADA)/Fiber Communication: Installation of 700 MHz radio system (70% penetration of FE territory) to support the SCADA switch replacements. (PJM Network Upgrade Number n7933)

Non-Direct Connection Network Upgrades:

1. Maysville- Sharon 69 kV Line Switches: At Maysville-Sharon 69 kV (Y-301) line structure 62, install two (2) SCADA controlled disconnect switches, one each on either side of the tap. Includes project management, environmental, forestry, real estate, and right of way. (PJM Network Upgrade Number n7926)

**AE1-079 Maysville-Sharon 69kV Welcome Solar 1
Construction Call – Minutes**

2. Maysville 69 kV Substation Modifications: Update Relay settings. (PJM Network Upgrade Number n7927)
3. Sharon 69 kV Substation Modifications: Update Relay settings. (PJM Network Upgrade Number n7928)
4. Masury 69 kV Substation Modifications: Update Relay settings. (PJM Network Upgrade Number n7929)
5. Cedar Street 69 kV Substation Modifications: Update Relay settings. (PJM Network Upgrade Number n7930)
6. McDowell Street 69 kV Substation Modifications: Update Relay settings. (PJM Network Upgrade Number n7931)
7. McDowell Street 69 kV Substation Modifications: Update Relay settings. (PJM Network Upgrade Number n7932)

CUSTOMER INTERCONNECTION FACILITIES

Interconnection Customer shall construct and, unless otherwise indicated, shall own, the following Interconnection Facilities: All Attachment Facilities from the Point of Interconnection to the generator leads, which consist of the following:

1. One (1) 69-34.5 kV, 25 MVA main step up transformer.
2. One (1) 69kV circuit breaker; and
3. One (1) 69kV generator lead line from the generation substation to the Point of Interconnection with ATSI.

Other work:

AE1-079 Customer Substation

- o Review nameplates, drawings, and add to the HV circuit diag

Reference:

[AE1-079 - POI-Coordination- attachments](#)

Invoicing:

- Will invoice once facility refresh is completed.

References:

RFI spreadsheet



AE1-079 FE_Bodec
RFI .xlsx

Next Meeting Schedule: tbd

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 28th day of February 2024.

/s/ Elizabeth P. Trinkle

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

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 29th day of February 2024.

/s/ David S. Berman
Attorney for PJM Interconnection, L.L.C.