



1200 G Street, N.W., Suite 600
Washington, D.C. 20005-3898
Phone: 202.393.1200
Fax: 202.393.1240
wrightlaw.com

March 29, 2024

Honorable Debbie-Anne A. Reese, Acting Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 20426

Re: *PJM Interconnection, L.L.C.*, Docket Nos. ER24-994-000, ER24-995-000, ER24-1001-000
Response to Deficiency Letter

Dear Acting Secretary Reese:

PJM Interconnection, L.L.C. (“PJM”) submits for filing this response to the letter dated March 22, 2024, in the referenced dockets, requesting additional information.¹

I. BACKGROUND

Welcome Solar is party to three generation Interconnection Service Agreements (“ISAs”) with PJM, associated with queue positions AE1-079 (“Welcome Solar I”), AE1-237 (“Welcome Solar II”), and AE2-343 (“Welcome Solar III”) (collectively, the “Welcome Solar ISAs”). The Welcome Solar ISAs were filed with and accepted by the Federal Energy Regulatory Commission (“Commission”),² and provide the terms and conditions under which Welcome Solar’s three solar generation facilities may interconnect to the PJM Transmission System. 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”).

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, 2023.³ Welcome Solar responded to those letters and PJM relied on the representations in Welcome Solar’s March 7, 2023 letters with respect to its satisfaction of the milestones to

¹ *PJM Interconnection, L.L.C.*, Deficiency Letter, Docket Nos. ER24-994-000, et al. (Mar. 22, 2024) (“March 22 Letter”).

² *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).

³ See Attachment A to this response, the February 7, 2023 Notices of Breach for queue positions AE1-079, AE1-237, and AE2-343 (“Breach Notices”).

date, and the work it needed to do in the near term, prior to suspending future milestones, to cure the respective breaches (“March 2023 Cure Letters”).⁴ 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 as indicated, which required *at a minimum* that Welcome Solar (i) procure major electrical equipment required for the projects; and (ii) conduct substantial site work pursuant to negotiated engineering, procurement, and construction (“EPC”) contracts for the projects and notices to proceed under those EPC contracts.⁵

Welcome Solar claimed in March 2023 to have cured its breaches and further claimed it was continuing with its ongoing cure activities, and PJM relied on Welcome Solar’s representations. However, PJM learned in November 2023 that Welcome Solar had not cured the breaches and completed its ongoing activities as represented. Based on this failure to cure, PJM filed the January 24, 2024 Welcome Solar I Notice of Cancellation, and filed the Welcome Solar II and Welcome Solar III Notices of Cancellation on January 25, 2024.⁶ PJM requested an effective date of 61 days from the date of filing for each of the Notices of Cancellation.⁷

⁴ *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., at Exhibit J (Feb. 14, 2024) (“Protest”).

⁵ See Answer of PJM Interconnection, L.L.C., Docket No. EL24-73-000 (Feb. 28, 2024) (“Docket No. EL24-73 Answer”); *id.*, Affidavit of Jeffrey M. Gray (Attachment A) ¶ 22. PJM further discusses its understanding in its Motion for Leave to Answer and Answer in Docket No. EL24-73-000, which is being filed concurrently with this response. See Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C., Docket No. EL24-73-000 (Mar. 29, 2024).

⁶ Notice of Cancellation of Service Agreement No. 6475; Queue No. AE1-079, Docket No. ER24-994-000, at 2 (Jan. 24, 2024) (“Welcome Solar I Notice of Cancellation”); Notice of Cancellation of Service Agreement No. 6454; Queue No. AE1-237, Docket No. ER24-995-000, at 2 (Jan. 25, 2024) (“Welcome Solar II Notice of Cancellation”); Notice of Cancellation of Service Agreement No. 6239; Queue No. AE2-343, Docket No. ER24-1001-000, at 2 (Jan. 25, 2024) (“Welcome Solar III Notice of Cancellation”) (collectively, “Notices of Cancellation”). Capitalized terms not defined herein have the meaning set forth in the PJM Open Access Transmission Tariff (“Tariff”).

⁷ Notices of Cancellation at 2.

II. RESPONSES TO THE MARCH 22 LETTER’S SPECIFIC QUESTIONS⁸

- 1. PJM states that in January 2023, it determined that Welcome Solar had missed several requirements including the acquisition of site permits and major electrical equipment, as well as failure to complete substantial site work milestone dates set forth in its respective ISAs. Please identify the specific provisions of the ISAs that Welcome Solar is in breach of. Explain the criteria PJM applied in evaluating Welcome Solar’s breaches. Identify any applicable agreement, tariff, or manual provisions that guided PJM’s determination.**

Response:

As shown in Attachment A to this response, the February 8, 2023 Notices of Breach for queue positions AE1-079, AE1-237, and AE2-343 (“Breach Notices”) included the project-specific milestones set forth in the Welcome Solar ISAs for which Welcome Solar had failed to demonstrate timely completion. Specifically, the Breach Notices identified failure to meet the following milestones:

PJM Queue Position No. AE1-079

ISA Milestone	Required Completion Date
6.1 Site permits	December 31, 2022
6.2 Acquisition of major electrical equipment	July 31, 2022
6.3 Substantial Site work completed	December 9, 2022

PJM Queue Position No. AE1-237

ISA Milestone	Required Completion Date
6.1 Acquisition of major electrical equipment	July 31, 2022
6.2 Site permits	December 31, 2022
6.3 Substantial Site work completed	December 9, 2022

⁸ For simplicity, this response omits the internal citations contained in the deficiency letter.

PJM Queue Position No. AE2-343⁹

ISA Milestone	Required Completion Date
6.1 Substantial Site work completed	December 9, 2022
6.2 Acquisition of major electrical equipment	April 30, 2022

In evaluating Welcome Solar’s satisfaction of each of these milestones, PJM applied Tariff, section 212.5, which provides, among other things, that in order to proceed with an ISA the Interconnection Customer must demonstrate that it has “obtained any necessary local, county, and state site permits” and has “signed a memorandum of understanding for the acquisition of major electrical equipment.”¹⁰ Tariff, section 212.5 further provides that “Transmission Provider . . . may include other reasonable milestone dates in the Interconnection Service Agreement for the construction of the Interconnection Customer’s generation project that, if not met, shall relieve the Transmission Provider 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.”¹¹ PJM also applied the criteria set forth in Manual 14C, section 1.1.1, in determining that Welcome Solar was in breach of the above-specified milestones.¹² These criteria include, in relevant part, Interconnection Customer’s demonstration that it has: (1) obtained any necessary local, county, and state site permits; (2) signed a memorandum of understanding for the acquisition of generating units and other major electrical equipment; and (3) completed 20% of site work.¹³

⁹ The ISA associated with PJM Queue Position No. AE2-343 includes a milestone for site permits of April 7, 2023. As such, unlike with PJM Queue Position Nos. AE1-079 and AE1-237, Welcome Solar was not in Breach of this milestone at the time of the February 8, 2023 Breach Notices.

¹⁰ Tariff, section 212.5.

¹¹ *Id.*

¹² *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>.

¹³ *See id.*

2. **PJM explains that on March 7, 2023, Welcome Solar sent a letter representing that it had cured the breaches for each of the Welcome Solar ISAs. On March 10, 2023, PJM issued a notice stating that the breaches were cured. However, PJM states that “the record before the Commission clearly indicates that Welcome Solar failed, in fact, to cure its breaches of the Welcome Solar ISAs.” In your response please address the following:**
 - a. **Explain the criteria PJM applied in evaluating the cure of Welcome Solar’s breaches. Please identify any applicable tariff or manual provisions that support PJM’s position.**
 - b. **Identify with specificity any permits that Welcome Solar failed to obtain and provide any relevant documents or evidence as support.**

Response:

As explained in its February 29, 2024 answer,¹⁴ PJM relied upon the representations made in the March 2023 Cure Letters in evaluating Welcome Solar’s cure of the identified breaches. Specifically, PJM relied on Welcome Solar’s representation that it had executed a Limited Notice to Proceed (“LNTP”) with Mill Creek Renewables allowing for civil construction activities to commence “*within 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*.”¹⁵ Similarly, PJM relied on Welcome Solar’s representation in the March 2023 Cure Letters that it had “*acquired all major electrical equipment*” and “*successfully procured transformers, modules, inverters, racking, piles, and MV/HV cable for the Project*.”¹⁶ Finally, PJM relied on Welcome Solar’s representation that it had “obtained all necessary local, county, and state permits required” for its projects.¹⁷

Relying on these representations, and subject to the condition that “[*t*]he Welcome Projects should continue to diligently pursue ongoing cure actions to completion, as applicable,”¹⁸ PJM concluded in March 2023 that Welcome Solar’s actions to that point, coupled with its immediately forthcoming actions as outlined in the March 2023 Cure Letters, were sufficient to meet the criteria in Manual 14C, section 1.1.1 for satisfaction of the breached milestones. However, in November 2023, upon discovering that Welcome

¹⁴ *PJM Interconnection, L.L.C.*, Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C., Docket Nos. ER24-994-000, et al. (Feb. 29, 2024) (“February 29 Answer”).

¹⁵ Protest, Exhibit J (emphasis added).

¹⁶ *Id.* (emphasis added).

¹⁷ *Id.*

¹⁸ *Id.*, Exhibit K (E-mail from Jeffrey Gray, PJM, to Alexander Smorzewski, AB CarVal Investors, L.P. (Mar. 10, 2023, 01:37 EST)). See also *pro forma* ISA and Welcome Solar ISAs, Appendix 2, section 15.4.1(b) (“[I]f the Breach cannot be cured within thirty (30) days, [the breaching party] may commence in good faith all steps that are reasonable and appropriate to cure the Breach within such thirty day period and thereafter diligently pursue such action to completion.”).

Solar had failed to take steps to complete the cure activities as represented in the March 2023 Cure Letters, PJM investigated the discrepancies and ultimately issued the Notices of Cancellation in accordance with the Tariff.

Welcome Solar's necessary local, county, and state permits were not an issue. Welcome Solar attested in the March 2023 Cure Letters that they had "obtained all necessary local, county and state permits required for the project" and PJM is unaware of any changes to Welcome Solar's satisfaction of the permitting milestones.

- 3. PJM states that Welcome Solar committed to continue working to fully cure the breaches, which required at a minimum that Welcome Solar complete the following milestones (i) obtain necessary site permits; (ii) acquire all major electrical equipment required for the projects; and (iii) complete substantial site work for each of the projects. PJM asserts that, to satisfy the completion of the substantial site work milestone, Welcome Solar was to have executed an engineering, procurement, and construction (EPC) contract. The record suggests that Welcome Solar provided PJM with executed copies of the Limited Notice To Proceed (LNTP) Agreements as an attachment to the March 7 Breach Response Letters. Please explain why and how PJM determined that the March 7 LNTP Agreements were insufficient for Welcome Solar to satisfy the substantial sitework completed milestone. In your answer please address the following:**
 - a. Explain why executing an EPC contract is necessary to meet the milestones of substantial sitework completed. Identify any relevant tariff or manual provisions that stipulate this requirement.**
 - b. PJM explains that EPC contracts are a critical condition precedent to initiating construction of generation facilities. Please clarify whether it is PJM's general position that all Interconnection Customers must execute a Final Notice to Proceed with an EPC contractor in order to satisfy the substantial sitework completion milestone. Please also clarify whether it is PJM's position that parties should be entering into a final arrangement with an EPC contractor even if it anticipates needing to negotiate new milestone dates.**

Response:

A fully executed EPC contract is not required in order to satisfy the substantial site work milestone. As previously explained, however, 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."¹⁹ Thus, in order to complete 20% of project site construction, the Interconnection Customer must have engaged in at least some major site construction activities (i.e., broken ground on the

¹⁹ Manual 14C, § 2.2.6 (emphasis added).

project). The March 2023 Cure Letters claimed Welcome Solar had contracted for specific civil construction activities on the project sites that were “expected to occur within the next few weeks.”

The LNTP upon which Welcome Solar relied in the March 2023 Cure Letters is sufficient to show a potential start of site work, but insufficient to demonstrate completion of substantial site work.²⁰ Specifically, Attachment 1 to the LNTP included in the March 2023 Cure Letters defines the scope of work to include internal engineering review; placement of orders for various equipment; procurement of subcontractors and payment of related deposits; and “continue[d] site preparation work.”²¹ Attachment 1 further defines “site preparation work” to include a site preparation survey; the “start of the required installation of erosion controls;” and “start work for the installation of site entrances and laydown area.”²² Thus, at most, the LNTP permits the EPC contractor to “start work” on discrete, preliminary pieces of site work. Further, to PJM’s knowledge, Welcome Solar still has not completed even those preliminary activities, much less substantial activities that would comprise 20% of the site work.

It is PJM’s general position that all Interconnection Customers must engage in “[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 As noted in the February 29 Answer, this requirement generally includes breaking ground on the site. Also, these activities generally occur under some form of EPC contract. PJM does not take a position on whether a party should be entering into a final arrangement with an EPC contractor even if it anticipates needing to negotiate new milestone dates. Under the Tariff, ISA milestone extensions are limited to “delays not caused by the Interconnection Customer.”²⁴ Thus, in the first instance, in order to meet the test for a milestone extension, an Interconnection Customer should act prudently and in accordance with good utility practice to meet its milestone commitments through the exercise of due diligence.

²⁰ Indeed, Welcome Solar understood in the March 2023 Cure Letters that more was needed to complete substantial site work given its representation that it had “commenced EPC contract negotiations with Mill Creek Renewables and a Final Notice to Proceed is anticipated to be issued no later than May 2023.” Protest, Exhibit J.

²¹ See Motion for Leave to Answer and Answer of Welcome Solar, LLC, Welcome Solar II, LLC, and Welcome Solar III, LLC, Docket Nos. ER24-994-000, et al., at Exhibit Z, Attachment 1 (Mar. 13, 2024).

²² See *id.*

²³ See *supra* note 19.

²⁴ See Tariff, section 212.5; see also *PJM Interconnection, L.L.C.*, 178 FERC ¶ 61,089, at P 43 (2022) (finding that PJM reasonably exercised its discretion in declining to extend milestones for an interconnection project that “appears speculative at this juncture”).

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III. REQUESTED EFFECTIVE DATE

PJM requests that whatever action the Commission ultimately takes in this proceeding will not affect the March 25, 2024, and March 26, 2024 effective dates originally requested for cancellation of the Welcome Solar ISAs.

IV. SERVICE

As directed in the March 22 Letter, a copy of this filing will be electronically delivered to Travis LaHue. Copies of this filing will also be served on all parties on the Commission's service list established in the proceeding, as well as the affected state regulatory commissions within the PJM Region.

V. CONCLUSION

PJM respectfully submits that the information provided in this response letter and in the February 29 Answer provide a sufficient basis to accept the Notices of Cancellation effective March 25, 2024 (for the Docket No. ER24-994-000 filing) and March 26, 2024 (for the Docket Nos. ER24-995-000 and ER24-1001-000 filings). Please contact any of the undersigned if you require additional information.

Respectfully submitted,

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)
craig.glazer@pjm.com

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

/s/ Elizabeth P. Trinkle
Wendy B. Warren
Elizabeth P. Trinkle
David S. Berman
Wright & Talisman, P.C.
1200 G Street, N.W., Suite 600
Washington, D.C. 20005
(202) 393-1200 (phone)
(202) 393-1240 (fax)
warren@wrightlaw.com
trinkle@wrightlaw.com
berman@wrightlaw.com

Attorneys for
PJM Interconnection, L.L.C.

March 29, 2024

Attachment A

February 8, 2023 Breach Notices



February 7, 2023

Via courier/email to emma.bankier@carval.com and alexander.smorczewski@carval.com

Welcome Solar, LLC
c/o Renewables Development II, LLC
c/o AB CarVal Investors, L.P.
461 Fifth Avenue, 25th Floor
New York, NY 10017

Re: Notice of Breach of Interconnection Service Agreement among PJM Interconnection, L.L.C., Welcome Solar, LLC, and American Transmission Systems, Inc.; Service Agreement No. 6475; Queue Position No. AE1-079

To whom it may concern:

PJM Interconnection, L.L.C. (“PJM”) hereby notifies you that Welcome Solar, LLC (“Welcome Solar”) is in breach of the above-referenced Interconnection Service Agreement (“ISA”) for PJM queue position number AE1-079.¹

Welcome Solar has failed to demonstrate timely completion of project milestones specified in the ISA, as follows:

ISA Milestone	Required Completion Date
6.1 Site permits	December 31, 2022
6.2 Acquisition of major electrical equipment	July 31, 2022
6.3 Substantial Site work completed	December 9, 2022

If, within thirty (30) days of your receipt of this letter, Welcome Solar does not cure the above-described breach, Welcome Solar will be in default of the ISA and PJM will file a notice of cancellation of the ISA with the Commission.

¹ PJM filed the ISA with the Federal Energy Regulatory Commission (“Commission”) in Docket No. ER22-2112-000, effective May 13, 2022.

By copy of this letter, PJM is notifying American Transmission Systems, Inc. of the breach. Should you have any questions, you may contact the undersigned.

Sincerely,

/s/ Jeffrey M. Gray

Jeffrey M. Gray
Gray PLLC
P.O. Box 620323
Middleton, WI 53562-0323
(608) 628-3800
jeffrey.gray@pjm.com

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

cc (via e-mail):

ReneSola Power Holdings LLC

Bradley Davis bradley.davis@renesolapower.com

American Transmission Systems, Inc.

Mike Thorn mthorn@firstenergycorp.com
Amanda Parker aparker@firstenergycorp.com
Tricia Hartzell thartzell@firstenergycorp.com

PJM

Nathan Roberts



February 7, 2023

Via courier/email to emma.bankier@carval.com and alexander.smorczewski@carval.com

Welcome Solar II, LLC
c/o Renewables Development II, LLC
c/o AB CarVal Investors, L.P.
461 Fifth Avenue, 25th Floor
New York, NY 10017

Re: Notice of Breach of Interconnection Service Agreement among PJM Interconnection, L.L.C., Welcome Solar II, LLC, and American Transmission Systems, Inc.; Service Agreement No. 6454; Queue Position No. AE1-237

To whom it may concern:

PJM Interconnection, L.L.C. (“PJM”) hereby notifies you that Welcome Solar II, LLC (“Welcome II”) is in breach of the above-referenced Interconnection Service Agreement (“ISA”) for PJM queue position number AE1-237.¹

Welcome II has failed to demonstrate timely completion of project milestones specified in the ISA, as follows:

ISA Milestone	Required Completion Date
6.1 Acquisition of major electrical equipment	July 31, 2022
6.2 Site permits	December 31, 2022
6.3 Substantial Site work completed	December 9, 2022

If, within thirty (30) days of your receipt of this letter, Welcome II does not cure the above-described breach, Welcome II will be in default of the ISA and PJM will file a notice of cancellation of the ISA with the Commission.

¹ PJM filed the ISA with the Federal Energy Regulatory Commission (“Commission”) in Docket No. ER22-1908-000, effective April 19, 2022.

By copy of this letter, PJM is notifying American Transmission Systems, Inc. of the breach. Should you have any questions, you may contact the undersigned.

Sincerely,

/s/ Jeffrey M. Gray

Jeffrey M. Gray
Gray PLLC
P.O. Box 620323
Middleton, WI 53562-0323
(608) 628-3800
jeffrey.gray@pjm.com

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

cc (via e-mail):

ReneSola Power Holdings LLC

Bradley Davis bradley.davis@renesolapower.com

American Transmission Systems, Inc.

Mike Thorn mthorn@firstenergycorp.com
Amanda Parker aparker@firstenergycorp.com
Tricia Hartzell thartzell@firstenergycorp.com

PJM

Nathan Roberts



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

February 7, 2023

Via courier/email to emma.bankier@carval.com and alexander.smorczewski@carval.com

Welcome Solar III, LLC
c/o Renewables Development II, LLC
c/o AB CarVal Investors, L.P.
461 Fifth Avenue, 25th Floor
New York, NY 10017

Re: Notice of Breach of Interconnection Service Agreement among PJM Interconnection, L.L.C., Welcome Solar III, LLC, and American Transmission Systems, Inc.; Service Agreement No. 6239; Queue Position No. AE2-343

To whom it may concern:

PJM Interconnection, L.L.C. (“PJM”) hereby notifies you that Welcome Solar III, LLC (“Welcome III”), f/k/a ReneSola Power Holdings LLC, is in breach of the above-referenced Interconnection Service Agreement (“ISA”) for PJM queue position number AE2-343.¹

Welcome III has failed to demonstrate timely completion of project milestones specified in the ISA, as follows:

ISA Milestone	Required Completion Date
6.1 Substantial Site work completed	December 9, 2022
6.3 Acquisition of major electrical equipment	April 30, 2022

If, within thirty (30) days of your receipt of this letter, Welcome III does not cure the above-described breach, Welcome III will be in default of the ISA and PJM will file a notice of cancellation of the ISA with the Commission.

¹ PJM filed the ISA, as amended, with the Federal Energy Regulatory Commission (“Commission”) in Docket No. ER22-617-000, effective November 11, 2021.

By copy of this letter, PJM is notifying American Transmission Systems, Inc. of the breach. Should you have any questions, you may contact the undersigned.

Sincerely,

/s/ Jeffrey M. Gray

Jeffrey M. Gray
Gray PLLC
P.O. Box 620323
Middleton, WI 53562-0323
(608) 628-3800
jeffrey.gray@pjm.com

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

cc (via e-mail):

ReneSola Power Holdings LLC

Bradley Davis bradley.davis@renesolapower.com

American Transmission Systems, Inc.

Mike Thorn mthorn@firstenergycorp.com
Amanda Parker aparker@firstenergycorp.com
Tricia Hartzell thartzell@firstenergycorp.com

PJM

Nathan Roberts

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 March 2024.

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