

**BEFORE  
THE OHIO POWER SITING BOARD**

In The Matter of the Application of Scioto )  
Farms Solar Project, LLC for a Certificate of ) Case No. 21-868-EL-BGN  
Environmental Compatibility and Public Need. )

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**APPLICANT SCIOTO FARMS SOLAR, LLC’S NOTICE OF ORDER  
IN RELATED PROCEEDING**

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Scioto Farms Solar Project, LLC (“Scioto Farms Solar”) respectfully gives notice to the Ohio Power Siting Board (“OPSB”) of the September 8, 2023 Order Denying Waiver Request and Accepting Notice of Cancellation (“Order”) issued by the U.S. Federal Energy Regulatory Commission (“FERC”) in Docket Nos. ER23-2375-000 and ER23-2458-000 (the “FERC Proceeding”), which is attached hereto as Exhibit A.

In the FERC Proceeding, Scioto Farms Solar sought a waiver of the procedural deadline in section 212.4(c) of the PJM Interconnection, LLC Open Access Transmission Tariff. In the Order, FERC denied said waiver request. Scioto Farms Solar intends to seek reconsideration of the Order and waiver denial in the FERC Proceeding.

Scioto Farms Solar recognizes that an Interconnection Services Agreement is a precondition to commencing construction of its Application (“Application”) for a Certificate of Environmental Compatibility and Public Necessity (“Certificate”) before this Board is approved. However, as Scioto Farms Solar is still actively seeking relief from the Order, there is no present barrier to—and this Board should therefore continue in the normal course with—issuing a decision on Scioto Farms Solar’s Application.

Scioto Farms Solar respectfully requests that its Application be granted and that a Certificate be issued.

Respectfully submitted on behalf of  
**SCIOTO FARMS SOLAR PROJECT, LLC**



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## **CERTIFICATE OF SERVICE**

The OPSB's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to these cases. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below this 22<sup>nd</sup> day of September 2023 via email.



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184 FERC ¶ 61,153  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;  
James P. Danly, Allison Clements,  
and Mark C. Christie.

Scioto Farms Solar Project, LLC

Docket Nos. ER23-2375-000

PJM Interconnection, L.L.C.

ER23-2458-000

ORDER DENYING WAIVER REQUEST  
AND ACCEPTING NOTICE OF CANCELLATION

(Issued September 8, 2023)

1. On July 10, 2023, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,<sup>1</sup> Scioto Farms Solar Project, LLC (Scioto Farms) submitted a request for waiver of the procedural deadline in section 212.4(c) of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff). Scioto Farms seeks waiver of this provision to allow PJM to accept Scioto Farms' late deferred security payment and allow Scioto Farms to retain its queue position and the executed Interconnection Service Agreement among PJM, Scioto Farms, and AEP Ohio Transmission Company (AEP) for Scioto Farms' generating facility (Scioto Farms ISA).
2. On July 21, 2023, PJM filed a notice of cancellation of the Scioto Farms ISA (ISA Cancellation), designated as Service Agreement No. 6835, due to Scioto Farms missing the deferred security deadline.
3. As discussed below, we deny Scioto Farms' waiver request. We also accept the ISA Cancellation, effective June 21, 2023, as requested.

**I. Background**

4. Under section 212.4(c) of the PJM Tariff, an interconnection customer may request to defer providing security until no later than 120 days after the interconnection customer executes the interconnection service agreement.<sup>2</sup> Under section 212.4(d) of the PJM Tariff, if an interconnection customer fails to timely provide the security prescribed

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<sup>1</sup> 18 C.F.R. § 385.207(a)(5) (2022).

<sup>2</sup> PJM, Intra-PJM Tariffs, OATT, § 212.4(c) (Deferred Security) (3.0.0).

in section 212.4, the interconnection request “shall be deemed terminated and withdrawn.”<sup>3</sup>

## II. Waiver Request

5. Scioto Farms states that, in the first quarter of 2018, it submitted an interconnection request to PJM to interconnect a 110 MW solar generating facility to be located in Pickaway County, Ohio (Facility), which will be interconnected to transmission facilities owned by AEP and operated by PJM. Scioto Farms states that PJM assigned the Facility Queue Position AD2-162, and the Facility entered into PJM’s interconnection queue in the first quarter of 2018.<sup>4</sup>

6. Scioto Farms states that, on December 23, 2022, PJM provided the results of its Facilities Study to Scioto Farms along with a draft interconnection service agreement. Scioto Farms states that the Facilities Study specified that Scioto Farms would be required to pay security in the amount of \$3,907,441. Scioto Farms states that, on February 21, 2023, it signed the interconnection service agreement and, electing to pay deferred security pursuant to section 212.4(c) of the PJM Tariff, wired \$200,000 to PJM on February 23, 2023. Scioto Farms notes that it was aware, per communications with PJM, that the remaining security would be required by June 21, 2023.<sup>5</sup>

7. Scioto Farms explains that it is owned upstream by Naturgy Renovables, S.L. Unipersonal, a Spanish company.<sup>6</sup> Scioto Farms states that, therefore, CaixaBank, a Spanish bank serves as Scioto Farms’ ultimate guarantor. Scioto Farms explains that CaixaBank worked through the New York bank of BNP Paribas to issue the letter of credit to PJM on Scioto Farms’ behalf.

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<sup>3</sup> *Id.* § 212.4(d) (Withdrawal) (3.0.0). Under certain circumstances after such withdrawal or termination, PJM is required to reevaluate the need for facilities and upgrades indicated by the facilities study and re-determine cost responsibility for other customers for the necessary facilities and upgrades, and amend those customers’ interconnection service agreements. *Id.*

<sup>4</sup> Scioto Farms, Waiver Request, Docket No. ER23-2375-000, at 3 (filed July 10, 2023). Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in the PJM Tariff.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

8. Scioto Farms asserts that, due to the interbank nature of the letter of credit between CaixaBank and BNP Paribas, those parties took unexpected additional time to negotiate the interbank guarantee and associated indemnification.<sup>7</sup>

9. Scioto Farms asserts that, on June 21, 2023, CaixaBank attempted to transmit a necessary SWIFTbank code to BNP Paribas in order to timely meet the deadline with PJM. However, Scioto Farms explains that due to technical issues, transmission of the code was unexpectedly delayed until June 22, 2023. Scioto Farms states that, on July 5, 2023, PJM emailed Scioto Farms to inform Scioto Farms that because the security had not been received by June 21, 2023, PJM would need to terminate the Scioto Farms ISA.

10. Scioto Farms requests waiver of the procedural deadline in section 212.4(c) of the PJM Tariff. Scioto Farms argues that its waiver request satisfies the Commission's criteria for granting waiver.

11. First, Scioto Farms argues that the waiver request is made in good faith.<sup>8</sup> Scioto Farms states that, since its Facility was assigned its queue position, Scioto Farms has complied with each step of the Tariff-based process. Scioto Farms states that at no point has it indicated any interest in terminating or abandoning its queue position for its Facility. Scioto Farms adds that it has engaged in regular communications with PJM and AEP to further development of its Facility. Scioto Farms explains that it posted its letter of credit to PJM on June 22, 2023, one day after the deadline, as a result of technical difficulties that its bank experienced.

12. Second, Scioto Farms contends that its waiver is limited in scope because it is requesting a one-time waiver of the procedural deadline specified in section 212.4(c) of the PJM Tariff. Scioto Farms states that the waiver is limited to one instance and seeks a one-day modification of the procedural deadline set forth in the PJM Tariff.

13. Third, Scioto Farms asserts that waiver will remedy a concrete problem. Scioto Farms states that it needs to maintain its queue position for the Facility in order to ensure that it can meet the deadline for commercial operation. Scioto Farms states that, absent waiver, PJM will terminate the Facility's queue position "and Scioto Farms will have to go back to square one."<sup>9</sup>

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<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.* at 5.

<sup>9</sup> *Id.*

14. Fourth, Scioto Farms contends that the waiver request will not have any undesirable consequences or harm third parties.<sup>10</sup> Scioto Farms asserts that the payment of deferred security on June 22, 2023 has had no consequence as compared to if payment been made on June 21, 2023. Scioto Farms states that it believes that a one-day delay in receipt of payment of deferred security has not affected PJM's ability to move forward with the interconnection process for the Facility or other projects in the PJM queue. Scioto Farms points out that, by contrast, without the waiver, its Facility will lose its queue position and development and completion of the Facility will be set back for several years.

### **III. ISA Cancellation**

15. PJM states that Scioto Farms missed the June 21, 2023 deadline set forth in section 5.0 of the Scioto Farms ISA and section 212.4 of the PJM Tariff, and, accordingly, PJM requests waiver of the Commission's 60-day prior notice requirement to allow an effective date of June 21, 2023 for the ISA Cancellation.<sup>11</sup>

### **IV. Notices and Responsive Pleadings**

16. Notice of Scioto Farms' waiver request was published in the *Federal Register*, 88 Fed. Reg. 46,152 (July 19, 2023), with interventions and protests due on or before July 31, 2023. PJM filed a timely motion to intervene and protest. On August 11, 2023, Scioto Farms filed a motion for leave to answer and answer.

17. Notice of the ISA Cancellation was published in the *Federal Register*, 88 Fed. Reg. 48,834 (July 28, 2023), with interventions and protests due on or before August 11, 2023. None was filed.

#### **A. PJM's Protest**

18. PJM states that Scioto Farms' waiver request should be denied because Scioto Farms failed to provide the deferred security by June 21, 2023.<sup>12</sup> PJM states that the PJM Tariff requirements are clear and unambiguous: failure to timely provide security results in the termination and withdrawal of the interconnection request.<sup>13</sup>

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<sup>10</sup> *Id.* at 5-6.

<sup>11</sup> PJM, Notice of Cancellation, Docket No. ER23-2458-000, at 1-2 (filed July 21, 2023).

<sup>12</sup> PJM, Protest, Docket No. ER23-2375-000, at 4 (filed July 31, 2023) (PJM Protest).

<sup>13</sup> *Id.* at 4 (referencing PJM, Intra-PJM Tariffs, OATT, § 212.4 (Retaining Priority and Security) (3.0.0)).

19. PJM also states that granting waiver requests is not in the public interest because it undermines PJM's ability to efficiently and effectively manage its interconnection queue. PJM further states that active management of its interconnection queue and compliance with PJM Tariff deadlines is paramount now that PJM has transitioned, as of July 10, 2023, to a "first-ready, first-served" interconnection process approach.<sup>14</sup> PJM explains that a key component of its new interconnection process is the incorporation of stricter timelines that enable PJM to more efficiently and effectively manage the interconnection queue.<sup>15</sup>

20. PJM asserts that Scioto Farms' waiver request fails to meet the Commission criteria for granting waiver. PJM states that Scioto Farms should have taken the steps to ensure the deposit was provided on a timely basis.<sup>16</sup> PJM asserts that the time taken by the developer to file a waiver request coupled with the time taken for submission of responsive pleadings results in turning a one-day waiver request into what could be a significant delay in the processing of interconnection requests if the project has to be reinstated.<sup>17</sup> PJM states that this would be unfair to other generators who have either managed to provide their deferred security on time or lost their queue position because of their failure to do so.

#### **B. Scioto Farms' Answer**

21. Scioto Farms reiterates that it was not a lack of diligence in preparing the letter of credit that resulted in its delayed issuance, but a technical issue triggered by a SWIFT code error between banks.<sup>18</sup> Scioto Farms also states that, due to the last minute mishap, it was impossible for it to seek a proactive waiver.<sup>19</sup> Furthermore, Scioto Farms contends that, contrary to PJM's claims, granting the waiver request will not undermine PJM's ability to administer its interconnection queue because Scioto Farms is being processed under PJM's historical generation interconnection queue process.<sup>20</sup> Scioto Farms avers

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<sup>14</sup> *Id.* (citing *PJM Interconnection, L.L.C.*, 181 FERC ¶ 61,162 (2022), *reh'g denied*, 182 FERC ¶ 62,055, *order on reh'g*, 184 FERC ¶ 61,162 (2023)).

<sup>15</sup> *Id.* at 4-5.

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.* at 7.

<sup>18</sup> Scioto Farms Answer at 5-6.

<sup>19</sup> *Id.* at 6.

<sup>20</sup> *Id.* at 7.



that PJM does not address the other elements of the waiver request, namely, the limited in scope and concrete problem criteria.<sup>21</sup>

22. Scioto Farms also contends that PJM’s general policy arguments do not support denial of the waiver request. According to Scioto Farms, PJM’s strict application of the deadline is contrary to Commission precedent, and the Commission should reject PJM’s attempt to retroactively apply queue reform Tariff provisions to a project that predates Order No. 2023<sup>22</sup> to support denial of the waiver request.

## V. Discussion

### A. Procedural Matters

23. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2022), PJM’s timely, unopposed motion to intervene serves to make it a party to the proceeding in which it was filed.

24. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2022), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Scioto Farms’ answer because it has provided information that assisted us in our decision-making process.

### B. Substantive Matters

25. We find that Scioto Farms’ July 10, 2023 request for waiver of section 212.4(c) of the PJM Tariff to extend the June 21, 2023 deadline for submitting its deferred security to PJM is retroactive in nature and is prohibited by the filed rate doctrine.<sup>23</sup> Accordingly, we deny Scioto Farms’ waiver request. Because we are denying Scioto Farms’ waiver request on the basis that it is prohibited by the filed rate doctrine, we need not address whether Scioto Farms’ request would satisfy the criteria used by the Commission to evaluate waiver requests.

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<sup>21</sup> *Id.* at 8.

<sup>22</sup> *Id.*

<sup>23</sup> See *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 824-25 (D.C. Cir. 2021) (“Once a tariff is filed, the Commission has no statutory authority to provide equitable exceptions or retroactive modifications to the tariff.”); *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1230 (D.C. Cir. 2018) (“The filed rate doctrine and the rule against retroactive ratemaking leave the Commission no discretion to waive the operation of a filed rate or to retroactively change or adjust a rate for good cause or for any other equitable considerations.”).

26. Additionally, we accept PJM's ISA Cancellation effective June 21, 2023. We find good cause to grant PJM's request for waiver of the Commission's 60-day prior notice requirement.<sup>24</sup>

27. Section 212.4(d) of the PJM Tariff authorizes PJM to "terminate and withdraw" an interconnection request if an interconnection customer fails to timely provide the security prescribed in section 212.4.<sup>25</sup> Additionally, section 5.0 of the Scioto Farms ISA states that, "[s]hould Interconnection Customer fail to provide security at the time the Interconnection Customer executes this ISA, or, if deferred, by the end of the 120-day period, this ISA shall be terminated."<sup>26</sup> Scioto Farms acknowledges that it provided the security deposit to PJM late on June 22, 2023. As such, we find that PJM's request to cancel the Scioto Farms ISA is permitted under the terms of the Scioto Farms ISA and the PJM Tariff. Accordingly, we accept PJM's ISA Cancellation effective June 21, 2023.

The Commission orders:

(A) Scioto Farms' waiver request is hereby denied, as discussed in the body of this order.

(B) PJM's ISA Cancellation is hereby accepted, effective June 21, 2023, as discussed in the body of this order.

By the Commission.

( S E A L )

Debbie-Anne A. Reese,  
Deputy Secretary.

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<sup>24</sup> See 18 C.F.R. § 35.15 (2022) ("For good cause shown, the Commission may by order provide that the notice of cancellation or termination shall be effective as of a date prior to the date of filing or prior to the date the filing would become effective in accordance with these rules.").

<sup>25</sup> PJM, Intra-PJM Tariffs, OATT, § 212.4(d) (Withdrawal) (3.0.0).

<sup>26</sup> Scioto Farms ISA, § 5.0.

**This foregoing document was electronically filed with the Public Utilities  
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**in**

**Case No(s). 21-0868-EL-BGN**

Summary: Notice of Scioto Farms Solar, LLC's of Order in Related Proceeding  
electronically filed by Teresa Orahoad on behalf of Sommer Sheely.