UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Essential Power OPP, LLC, et al. v. PJM Interconnection, L.L.C.) Docket No. EL23-53-

Aurora Generation, LLC, et al. v. PJM Interconnection, L.L.C.) Docket No. EL23-54-

Coalition of PJM Capacity Resources v. PJM Interconnection, L.L.C.) Docket No. EL23-55-

Talen Energy Marketing, LLC v. PJM Interconnection, L.L.C.) Docket No. EL23-56-

Lee County Generating Station, LLC v. PJM Interconnection, L.L.C.) Docket No. EL23-57-

SunEnergy1, L.L.C. v. PJM Interconnection, L.L.C.) Docket No. EL23-58-

Lincoln Generating Facility, LLC v. PJM Interconnection, L.L.C.) Docket No. EL23-59-

Parkway Generation Keys Energy-Center LLC v. PJM Interconnection, L.L.C.) Docket No. EL23-60-

Old Dominion Electric Cooperative, Inc. v. PJM Interconnection, L.L.C.) Docket No. EL23-61-

Energy Harbor LLC v. PJM Interconnection, L.L.C.) Docket No. EL23-63-
JOINT MOTION FOR WAIVER OF TARIFF PROVISIONS, EXPEDITED CONSIDERATION, AND SHORTENED COMMENT PERIOD

PJM Interconnection, L.L.C. ("PJM"), together with the Complainants and Intervenors listed in the attached Appendix (collectively, "Joint Movants"), hereby request, pursuant to section 309 of the Federal Power Act ("FPA")\(^1\) and Rules 207 and 212 of the Federal Energy Regulatory Commission’s ("Commission") Rules of Practice and Procedure,\(^2\) a limited, prospective waiver of the PJM Open Access Transmission Tariff ("Tariff"), section 7.1A; Tariff, Attachment DD, section 10A(j); and Amended and Restated Operating Agreement of PJM ("Operating Agreement"), section 14B.2 in order to allow PJM to defer collection of the remaining unbilled Non-Performance Charges\(^3\)

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\(^1\) 16 U.S.C. § 825h.
\(^3\) Terms capitalized and not otherwise defined herein have the meanings set forth for them in the Tariff or the Operating Agreement.
associated with Winter Storm Elliott, and disbursement of the revenue from those Non-Performance Charges to Market Participants that had Bonus Performance during Winter Storm Elliott, upon filing of a settlement agreement in the captioned dockets (“Settlement”), until PJM can implement the billing consequences of the Commission’s approval or rejection of the Settlement.

Judge Matthew J. Vlissides, Jr. stated in his September 1, 2023 final status report, that a majority of the participants in the settlement proceedings in the captioned dockets have indicated that they reached a settlement in principle on August 31, 2023, and anticipate filing the Settlement by late September 2023. The Settlement, if approved by the Commission, will result in a reduced amount of Non-Performance Charges to be paid by Market Participants. Therefore, deferring billing and collection of the remaining Non-Performance Charges and disbursement of Performance Payments, beginning with the September monthly invoice to be issued in October, until PJM can effectuate the billing required to reflect either a Commission approval or rejection of the Settlement, will support the implementation of the Settlement. Indeed, while the terms of the settlement in principle are privileged until the Settlement is filed with the Commission, the settlement in principle is premised on seeking the interim relief requested herein.

As demonstrated below, the requested waiver complies with the Commission’s requirements; it is a good faith request for targeted relief to address a concrete problem, and it will not harm third parties. The Joint Movants respectfully request that the Commission establish a comment period of five days and grant this waiver request no later

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5 See Tariff, Attachment DD, section 10A(g) (prescribing formula to determine Performance Payments to Market Participants with Bonus Performance).
than September 25, 2023, to allow PJM’s Market Settlements staff adequate time to modify the billing statements that will be sent to Market Participants on October 6, 2023, with payment due on October 13, 2023.6 The Joint Movants also request that the Commission make the waiver effective on the earliest lawful date.7

I. BACKGROUND

The Non-Performance Charges levied by PJM arise from the Performance Assessment Intervals (“PAIs”) issued by PJM on December 23 and 24, 2022. PJM initially assessed approximately $1.8 billion dollars in Non-Performance Charges for the Winter Storm Elliott time period8 on roughly 200 Market Participants.9 PJM began billing Non-Performance Charges to Capacity Resources that experienced a Performance Shortfall with the March 2023 statement.10 Capacity Resources assessed Non-Performance Charges had the option11 to pay the Non-Performance Charges (i) over a three-month period (i.e., beginning with the March 2023 statement and ending with the May 2023 statement) or (ii) over a nine-month period (i.e., beginning with the March 2023 statement and ending with the November 2023 statement) with interest calculated for the last six months and then levelized and billed over the nine-month period.12

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7 In furtherance of this request, the Joint Movants also ask the Commission to make the waiver effective on the earliest lawful date and to provide any necessary remedial relief under section 309 of the FPA, 16 U.S.C. § 825h.


10 Id. at 16.

11 See Tariff, Attachment DD, section 10A(j).

12 See PJM Interconnection, L.L.C., 183 FERC ¶ 61,001, at P 10 & n.29 (2023) (accepting these payment options, with use of a 6.31% interest rate for the extended payment option, conditioned on PJM making a
The captioned complaints were filed against PJM challenging the assessment of the Non-Performance Charges triggered during Winter Storm Elliott. On April 14, 2023, PJM filed a motion requesting that the Commission establish global settlement judge procedures for all such then-filed complaint proceedings. On June 5, 2023, the Commission granted PJM’s April 14 Motion and established global settlement judge procedures that encompass almost all of the captioned complaints. On June 13, 2023, the Chief Administrative Law Judge designated Judge Vlissides as the Settlement Judge in the global settlement judge procedures. Settlement participants convened for in-person settlement conferences on June 26, July 11, July 12, July 25, July 26, August 2, August 8, August 9, August 10, August 17, August 22, August 23, August 24, August 29, August 30, and August 31, 2023.

As reported by Judge Vlissides, a majority of the participants in the settlement proceedings have indicated that they reached a settlement in principle at the August 31, 2023 settlement conference. The participants are finalizing the Settlement materials and anticipate filing the Settlement by late September 2023. In light of this compliance filing, which was accepted by letter order, PJM Interconnection, L.L.C., Letter Order, Docket No. ER23-1038-001 (May 24, 2023)).


14 Essential Power OPP, LLC v. PJM Interconnection, L.L.C., 183 FERC ¶ 61,163 (2023) (“June 5 Order”). The only dockets in the caption above that were not included in the global settlement judge procedures ordered by the June 5 Order are Docket Nos. EL23-75 and EL23-77, because the complaints in those dockets were not filed until after the Commission issued the June 5 Order. However, the Complainants in those dockets are joining this Joint Motion because the Settlement will resolve those dockets as well.


16 See Final Status Report at 3.

17 Id.
information, on September 5, 2023, the Acting Chief Administrative Law Judge issued an order terminating the settlement judge procedures.\textsuperscript{18}

II. WAIVER REQUEST

A. The Waiver Will Allow PJM to Suspend the Invoicing and Collection of Non-Performance Charges and Disbursement of Performance Payments Beginning with the September Monthly Bill Scheduled to Be Invoiced on October 6, 2023.

The Joint Movants respectfully request that the Commission provide a limited waiver of Tariff, section 7.1A;\textsuperscript{19} Tariff, Attachment DD, section 10A(j);\textsuperscript{20} and Operating Agreement, section 14B.2\textsuperscript{21} to allow PJM, upon filing of the Settlement, to suspend its invoicing of unpaid Non-Performance Charges, collection of Non-Performance Charges that have not previously been invoiced, and disbursement of Performance Payments to Market Participants, until PJM can implement the billing consequences of the Commission’s approval or rejection of the Settlement. Movants request that, in the event the Commission rejects the Settlement, this deferral period extend until 35 days after the date when the Commission issues an order rejecting the filed Settlement, with the condition that PJM may report to the Commission and request leave for additional time for billing modifications, if necessary. In the event the Settlement is approved, the resumption of billing will be implemented in accordance with the Settlement terms and the Commission’s order. To the

\textsuperscript{18} Essential Power OPP, LLC v. PJM Interconnection, L.L.C., Order Terminating Settlement Judge Procedures, Docket Nos. EL23-53-000, et al., at P 6 (Sept. 5, 2023).

\textsuperscript{19} Tariff, section 7.1A (Payment due “pursuant to a monthly bill shall be due and payable by the Transmission Customer or other entity no later than noon Eastern Prevailing Time on the due date of the first weekly bill issued for activity in the month that the monthly bill is issued.”).

\textsuperscript{20} Tariff, Attachment DD, section 10A(j) (setting forth the timing and process for billing charges and credits for performance during PAIs).

\textsuperscript{21} Operating Agreement, section 14B.2 (Payment due “pursuant to a monthly bill shall be due and payable by the Member or other entity no later than noon Eastern Prevailing Time on the due date of the first weekly bill issued for activity in the month that the monthly bill is issued.”).
extent the Commission determines waiver of additional provisions of the Tariff or Operating Agreement is necessary to effectuate the relief requested in this Motion, the Joint Movants also respectfully request waiver of such provisions.

Unless the Commission grants a waiver of PJM’s governing billing provisions and deferral of the associated payments, PJM will be required by its Tariff and Operating Agreement to continue to issue billing statements, despite the Settlement seeking Commission approval of a lower total amount of Non-Performance Charges for PJM to assess to, and collect from, Market Participants. The continued assessment of these Non-Performance Charges could cause further financial strain on Market Participants that have outstanding charges stemming from Winter Storm Elliott.

Moreover, in light of the substantial Non-Performance Charges already collected and Performance Payments already disbursed, PJM’s further collections and payments would complicate resettlements required upon Commission approval of the Settlement. Any resettlement could be complex and result in PJM not being able to recoup all of the Performance Payments needed to fully repay over-collected Non-Performance Charges. Waiver will preserve the status quo in effect before the filing of the Settlement, and thus will minimize these resettlement complexities and nonpayment risk.

To be clear, granting the requested waiver will not absolve Market Participants from any of their obligations to pay the assessed Non-Performance Charges; all Market Participants assessed Non-Performance Charges will still be required to pay their obligations in full, subject to modification by the Settlement, on a deferred basis. Additionally, in the event the Commission rejects the Settlement, PJM will invoice any unpaid balances based on the full Non-Performance Charge amounts, inclusive of interest incurred to date and any additional interest accrued through the time the Non-Performance
Charges are suspended under this waiver through the resumption of Non-Performance Charge billings.

B. The Waiver Request Complies with Commission Standards.

The Commission has granted waiver of tariff provisions where (1) the applicant has acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.\(^2\)\(^2\) The Joint Movants assert that this waiver request meets all four conditions, as explained below. Granting this waiver request would also be consistent with prior actions the Commission has taken to grant waiver of the Tariff and Operating Agreement, including requests to suspend billing and payment while proceedings were pending at the Commission.\(^2\)\(^3\) In these prior cases, the Commission found, among other things, that (1) the waiver was of limited scope because it applied to a finite period, (2) the waiver addressed a concrete problem because it avoided PJM having to bill and then reverse or revise the billing, and (3) no third party would be harmed given that there would only be a delay in resettlement and rebilling.\(^2\)\(^4\) These same characteristics warrant granting the waiver requested here.


\(^{2}\)\(^3\) See PJM Interconnection, L.L.C., 137 FERC ¶ 61,109 (2011) (granting waiver of the Tariff to suspend rebilling and payment obligations pending a Commission order on a customer’s Complaint regarding adjusted balancing operating reserve charges); see also PJM Interconnection, L.L.C., 137 FERC ¶ 61,184 (2011) (granting waiver of the Tariff to permit PJM to suspend billing and payment obligations, pending the outcome of a Commission proceeding, when customers contested billing adjustments).

\(^{2}\)\(^4\) PJM Interconnection, L.L.C., 137 FERC ¶ 61,109, at PP 11-16; PJM Interconnection, L.L.C., 137 FERC ¶ 61,184, at PP 13-19.
1. **The Joint Movants Have Acted in Good Faith Because Their Waiver Request Is Necessary to Support the Presentation of a Settlement for Commission Approval.**

During the course of settlement negotiations, it has become apparent that in order to implement a Settlement that reduces the dollar amount of Non-Performance Charges assessed to PJM Market Participants for the Winter Storm Elliott period, PJM will need to modify the associated monthly billing statements. As of the date of filing of this Motion, a substantial portion of Non-Performance Charges have been paid, with the remainder to be invoiced in October, November, and December 2023. Accordingly, the Joint Movants submit the instant waiver request so that PJM may modify Market Participants’ billing statements to defer these payments, starting with the billing statements for September 2023, which are scheduled to be issued on October 6, 2023. This waiver request will enable PJM to avoid having to bill and then reverse or revise the billing of Non-Performance Charges, which will provide greater certainty both to Market Participants and to the broader investment community regarding the final financial impact of penalties associated with the events of Winter Storm Elliott.

2. **The Waiver Is of Limited Scope Because It Would Apply Only for the Finite Period of Time Between the Effective Date of an Order Granting the Waiver and the Date PJM Commences Implementation of the Billing Consequences of the Commission’s Action on the Settlement.**

As discussed above, a majority of participants have reached a settlement in principle, and the Joint Movants expect to file the Settlement by late September 2023. In furtherance of that agreement, the one-time waiver requested herein would be effective

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26 *See supra* note 6.
only after the Settlement is filed, and only for the finite period of time between the effective date of an order granting the waiver and the date PJM begins implementing the billing consequences of the Commission’s action (whether approval or rejection) on the Settlement. Moreover, the waiver is limited to the Non-Performance Charges that were triggered during Winter Storm Elliott between December 23 and 24, 2022. Accordingly, the waiver requested herein is limited in scope.

3. **The Waiver Addresses a Concrete Problem.**

Suspending the invoicing and collection of Non-Performance Charges is a necessary step to effectuate the Settlement and addresses a concrete problem for multiple reasons. First, suspending further billing of Non-Performance Charges could help to avoid bankruptcies, defaults, deactivations, and other financial stress for generators on which the region relies. Further, the Commission has already granted a waiver request to permit PJM to defer for six (6) months the remaining Non-Performance Charge payments for the PAIs relating to Winter Storm Elliott for Lee County Generating Station, LLC (“Lee County”).

The Commission’s approval of PJM and Lee County’s joint waiver request was based in part on a stipulation between Lee County and PJM that was intended to allow Lee County to remain solvent so that it could continue to support system reliability in the PJM and the Midcontinent Independent System Operator, Inc. balancing authority areas, and so that Lee County would be able to make the remaining six monthly Non-Performance Charge payments.

Similarly, granting the waiver requested herein would allow PJM to forestall

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28 Id. at P 17 (finding that “the Joint Movants have acted in good faith in taking actions to avoid Lee County defaulting on its Non-Performance Charge payment obligations and avoid the disruption to PJM’s and MISO’s efforts to maintain reliability that may result from such default”).
creating unnecessary financial stress for additional generators, pending the filing of the Settlement and the Commission’s consideration of the same.

Granting the requested waiver is also warranted because it would enable PJM to minimize any resettlements needed if the Settlement is approved. Market Participants will be harmed if billings were to continue, and PJM is not able to recoup certain Performance Payments made to Market Participants that would be needed to repay a portion of the Non-Performance Charges already collected. Ceasing the billings at this time will appropriately and prudently reduce that risk and simplify resettlements needed upon approval of the Settlement.


Granting the Joint Movants’ waiver request will not harm third parties because PJM will collect the full amount of Non-Performance Charges that are owed under the Settlement, if approved by the Commission. At the same time, no party is prejudiced by the suspension of the billing of Non-Performance Charges, including recipients of Performance Payments. In the event the Commission rejects the proposed Settlement, third parties will be protected because PJM will collect any unpaid balances based on the full Non-Performance Charge amounts, inclusive of interest accrued based on the extension of payment terms under Docket No. ER23-1038-000, plus any additional interest accrued from December 15, 202329 through the payment due date for collection of the deferred

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29 December 15, 2023 is the payment due date for the November 2023 billing statement. The interest associated with extending payment of Non-Performance Charges from June 16, 2023 (payment due date for the March 2023 billing statement) through December 15, 2023 (the payment due date for the November 2023 billing statement) has already been calculated and levelized across the monthly non-performance charge payments assessed to market participants that elected the nine-month payment plan.
Non-Performance Charges. Such interest will be accrued at the same 6.31% interest rate (consistent with the rate charged on balances for Market Participants that elected the nine-month billing extension). PJM will then disburse any such additional collection, including accumulated interest, to Performance Payment recipients, such that Market Participants with Bonus Performance are kept whole.\textsuperscript{30} The Commission recently found that this approach of allowing Non-Performance Charge balances to be deferred but to require that they incur interest was sufficient to keep Performance Payment recipients whole.\textsuperscript{31} The Joint Movants request that PJM be authorized to defer collection of additional Non-Performance Charges using this same framework that the Commission recently approved. Accordingly, the requested waiver similarly will have no unintended consequences, including no harm to third parties.

\section*{III. REQUEST FOR EXPEDITED CONSIDERATION, AND SHORTENED COMMENT PERIOD AND EFFECTIVE DATE}

The Joint Movants respectfully request a shortened comment period of five days, and for the Commission to issue an order granting waiver no later than September 25, 2023. The Joint Movants note that the Commission has granted shortened comment periods previously where Commission action was requested in less than 60 days.\textsuperscript{32} Moreover, as

\textsuperscript{30} Should the Commission accept the Settlement, the Settlement will prescribe how to address interest. But that will be a consequence of approving the Settlement, rather than a consequence of approving this waiver request.

\textsuperscript{31} See \textit{Lee Cnty. Generating Station, LLC v. PJM Interconnection, L.L.C.}, 184 FERC ¶ 61,029, at P 17 (“We find that the waiver does not result in undesirable consequences, such as harm to third parties because Lee County continues to be obligated to pay penalties to PJM in full, with the deferred balance incurring interest at the Commission’s interest rate, and bonus payment recipients are therefore kept whole.”).

\textsuperscript{32} See, e.g., \textit{id.} P 15 (noting a five-day comment period for Lee County’s waiver request); \textit{Hollow Rd. Solar LLC}, 174 FERC ¶ 61,023, at P 12 (2021) (noting that a one-day comment period was established for Hollow Road’s waiver request); \textit{PJM Interconnection, L.L.C.}, 170 FERC ¶ 61,279, at P 9 (2020) (noting that interventions and protests were due one day after the waiver request was noticed); \textit{PJM Interconnection, L.L.C.}, 164 FERC ¶ 61,153, at P 10 (2018) (noting that comments would be due on August 23, 2018 (i.e., seven days after the waiver request was noticed)).
discussed above, PJM’s Market Settlements staff will need to modify the September bills for hundreds of Market Participants. The Joint Movants respectfully request that the Commission act on this waiver request on an expedited basis to allow PJM’s Market Settlements staff adequate time to modify the billing statements that will be sent to Market Participants on October 6, 2023, with payment due on October 13, 2023. Granting expedited consideration and issuing an order by September 25, 2023 will ensure that PJM has adequate time to make the changes necessary to ensure that the subsequent billing statements do not include any Non-Performance Charges or Performance Payments from Winter Storm Elliott.

The Joint Movants also respectfully request that the Commission make the waiver effective on the earliest lawful date.\(^\text{33}\)

\(^{33}\) In furtherance of this request, PJM also asks the Commission to make the waiver effective, subject to the filing of a settlement agreement, on the earliest lawful date and provide remedial relief under section 309 of the FPA, 16 U.S.C. § 825h.
IV. CONCLUSION

For the reasons stated herein, the Joint Movants respectfully request that the Commission grant a shortened comment period of five days and issue an order no later than September 25, 2023, granting waiver of the Tariff and Operating Agreement sections discussed above, conditioned upon the filing of a settlement agreement as discussed in this motion, from the earliest lawful date until PJM is in a position to implement the billing consequences of Commission approval or rejection of the forthcoming Settlement.

Respectfully submitted,

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APPENDIX

JOINT MOVANTS

PJM Interconnection, L.L.C.

**Complainants**
Aurora Generation, LLC
Brunner Island, LLC*
Calpine Corporation
Camden Plant Holding, L.L.C.*
Clean Energy Future – Lordstown, LLC*
Competitive Power Ventures Holdings, LP*
CPV Maryland, LLC
East Kentucky Power Cooperative, Inc.
Elwood Energy LLC
Essential Power OPP, LLC
Essential Power Rock Springs, LLC
H.A. Wagner LLC**
Hickory Run Energy, LLC*
Invenergy Nelson, LLC
Jackson Generation, LLC
Lakewood Cogeneration, L.P.
Lanyard Power Holdings, LLC*
Lee County Generating Station, LLC
Lightstone Marketing LLC*
Lincoln Generating Facility, LLC
LSP University Park, LLC
MC Project Company LLC**
Montour, LLC**
Orion Power Holdings, LLC*
Parkway Generation Keys Energy Center LLC
Parkway Generation Operating LLC*
Parkway Generation Sewaren Urban Renewal Entity LLC
Red Oak Power, LLC*
Rockford Power, LLC
Rockford Power II, LLC
South Field Energy LLC
SunEnergy 1, LLC
Talen Energy Marketing, LLC**
University Park Energy, LLC

* Designated complainants filed as part of the Coalition of PJM Capacity Resources in Docket No. EL23-55-000.
* In addition to being part of the Coalition of PJM Capacity Resources, the designated complainants filed a separate complaint in Docket No. EL23-56-000.
Intervenors
American Municipal Power, Inc.
AES Clean Energy Development, LLC
Big Sandy Peaker Plant, LLC
Bluestone Farm Solar, LLC
Buckeye Power, Inc.
Constellation Energy Generation, LLC
Cordova Energy Company
Cypress Creek Renewables, LLC
Eagle Point Power Generation LLC
EDP Renewables
ENGIE Solidago Solar, LLC
Fairless Energy, L.L.C.
Forked River Power LLC
Garrison Energy Center LLC
Hazleton Generation LLC
Homer City Generation L.P.
Indeck Niles, LLC
Midwest Generation, LLC
Montpelier Generating Station, LLC
Monument Generating Station, LLC
Mt. Carmel Cogen Inc.
NRG Business Marketing LLC
O.H. Hutchings CT, LLC
PJM Industrial Customer Coalition
Powells Creek Farm Solar, LLC
REV Renewables, LLC
Salt City Solar LLC
Sidney, LLC
Southern Maryland Electric Cooperative, Inc.
Sunnybrook Farm Solar, LLC
Tait Electric Generating Station, LLC
Vermillion Power, L.L.C.
Whitehorn Solar LLC
Wolf Hills Energy, LLC
Yankee Street, LLC
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on each person designated on the service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 8th day of September 2023.

/s/ Wendy B. Warren
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