

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

Essential Power OPP, LLC, <i>et al.</i>	)	
v.	)	Docket No. EL23-53-001
PJM Interconnection, L.L.C.	)	
Aurora Generation, LLC, <i>et al.</i>	)	
v.	)	Docket No. EL23-54-001
PJM Interconnection, L.L.C.	)	
Coalition of PJM Capacity Resources	)	
v.	)	Docket No. EL23-55-001
PJM Interconnection, L.L.C.	)	
Talen Energy Marketing, LLC	)	
v.	)	Docket No. EL23-56-001
PJM Interconnection, L.L.C.	)	
Lee County Generation Station, LLC	)	
v.	)	Docket No. EL23-57-003
PJM Interconnection, L.L.C.	)	
SunEnergy1, L.L.C.	)	
v.	)	Docket No. EL23-58-001
PJM Interconnection, L.L.C.	)	
Lincoln Generating Facility, LLC	)	
v.	)	Docket No. EL23-59-001
PJM Interconnection, L.L.C.	)	
Parkway Generation Keys Energy Center LLC	)	
v.	)	Docket No. EL23-60-001
PJM Interconnection, L.L.C.	)	
Old Dominion Electric Cooperative, Inc.	)	
v.	)	Docket No. EL23-61-001
PJM Interconnection, L.L.C.	)	
Energy Harbor LLC	)	
v.	)	Docket No. EL23-63-001
PJM Interconnection, L.L.C.	)	

Calpine Corporation	)	
v.	)	Docket No. EL23-66-001
PJM Interconnection, L.L.C.	)	
Invenergy Nelson LLC	)	
v.	)	Docket No. EL23-67-001
PJM Interconnection, L.L.C.	)	
East Kentucky Power Cooperative, Inc.	)	
v.	)	Docket No. EL23-74-001
PJM Interconnection, L.L.C.	)	
CPV Maryland, LLC, <i>et al.</i>	)	
v.	)	Docket No. EL23-75-001
PJM Interconnection, L.L.C.	)	
Parkway Generation Operating LLC, <i>et al.</i>	)	
v.	)	Docket No. EL23-77-001
PJM Interconnection, L.L.C.	)	

(not consolidated)

**MOTION FOR LEAVE TO ANSWER AND ANSWER  
OF THE INDICATED JOINT MOVANTS**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),<sup>1</sup> PJM Interconnection, L.L.C. (“PJM”), together with the Complainants and Intervenors listed in the attached Appendix (collectively, “Answering Movants”), hereby submit this Motion for Leave to Answer and Answer (“Answer”) in response to the Answer of the PSEG Companies (“PSEG”)<sup>2</sup> and Enel North America, Inc. (“Enel”) in Opposition to Joint Motion for Waiver filed on September 15, 2023 (“PSEG/Enel Answer”). The PSEG/Enel Answer misstates the relief requested for waiver of the PJM Open Access Transmission Tariff (“Tariff”), as presented in the September 8, 2023 Joint Motion for Waiver of

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<sup>1</sup> 18 C.F.R. §§ 385.212, 385.213 (2022).

<sup>2</sup> The PSEG Companies include Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC.

Tariff Provisions, Expedited Consideration, and Shortened Comment Period (“Joint Motion”).<sup>3</sup> Answering Movants submit this Answer to correct the record and rebut any misunderstanding that might otherwise remain. Further, Answering Movants have been authorized to represent in this Answer that the Independent Market Monitor does not oppose waiver under the Joint Motion. The relief requested in the Joint Motion, and the information presented therein, satisfy Commission precedent for waiver of the specified Tariff provisions, subject to the express condition of a settlement filing, for the limited purpose and time frame proposed. Accordingly, and for the reasons discussed below, the Commission should issue an order by September 25, 2023, granting the relief requested in the Joint Motion.

## I. MOTION FOR LEAVE TO ANSWER

The Commission has discretion to accept responses to answers and has routinely done so for good cause shown where accepting the response would either lead to a more complete or accurate record, improve the Commission’s understanding of the issues, clarify disputed or erroneous matters, or help the Commission in its decision-making.<sup>4</sup> Good cause exists for the Commission to accept this Answer because it clarifies the misstatements and mischaracterizations in the PSEG/Enel Answer, provides information that is not otherwise in the record, and will assist the Commission in deciding the issues presented in the Joint Motion.<sup>5</sup>

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<sup>3</sup> Joint Motion for Waiver of Tariff Provisions, Expedited Consideration, and Shortened Comment Period of Joint Movants, Docket Nos. EL23-53-001, *et al.* (filed Sept. 8, 2023).

<sup>4</sup> 18 C.F.R. § 385.213(a)(2); *see, e.g., PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,133, at P 12 (2017) (accepting answers to protests because they provided information that assisted in the Commission’s decision-making process); *KO Transmission Co.*, 156 FERC ¶ 61,147, at n. 5 (2016) (accepting an answer to a protest because it provided a better understanding of the issues and ensured a complete record); *TransColorado Gas Transmission Co.*, 111 FERC ¶ 61,208, at P 4 (2005) (accepting an answer to a protest because it clarified the issues).

<sup>5</sup> *See, e.g., Gulf S. Pipeline Co., LP*, 145 FERC ¶ 61,236, at P 35 (2013) (“We will accept the answers identified above because they . . . provide information that has assisted in our decision-making process.”), *reh’g denied*, 154 FERC ¶ 61,219 (2016); *Pioneer Transmission, LLC v. N. Ind. Pub. Serv. Co.*, 140 FERC ¶ 61,057, at P 94 (2012); *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”); *Sw. Power Pool, Inc.*, 89 FERC ¶ 61,284, at 61,888

## II. ANSWER

The waiver requested in the Joint Motion meets the requirements of Commission precedent because it: (1) was submitted in good faith, (2) is of limited scope, (3) addresses a concrete problem, and (4) does not have undesirable consequences, such as harming third parties. PSEG and Enel's claims to the contrary should be rejected. To the extent that PSEG and Enel object to any terms of a yet-to-be-filed settlement, those misguided arguments are premature and do not provide any basis for the Commission to reject the Joint Movants' request for waiver. Most significantly, the requested waiver *will not* excuse payment of any Non-Performance Charges, and *will not* provide a basis for non-payment of any Performance Payments. Rather, the waiver will simply pause collection and payment of a limited portion of a specific charge type, with interest to ensure that parties are not harmed, while the Commission considers the merits of a forthcoming Settlement that is expected to be filed by the end of this month. Granting this relief will benefit PJM and PJM Market Participants because it will minimize the burdens of re-billing, including potential refunds, and also minimize the risk of non-recoupment of refunds. Accordingly, the waiver requested is consistent with Commission precedent, and good cause has been shown for the Commission to grant the requested waiver.

### A. **The Joint Movants Have Acted in Good Faith in Requesting Waiver Because Waiver Is Necessary to Effectuate the Forthcoming Settlement**

PSEG and Enel claim that the Joint Motion “fails to satisfy the good faith requirement”—a standard reserved for deceptive pleadings or other misconduct—because it “is premised on implementing a settlement that has not yet been filed” and because, in their view, “the waiver would create the very need to reverse or revise billings that the Joint Movants claim they are

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(1999) (accepting answers that “provide information that furthers our understanding of this proceeding”), *order on reh'g*, 98 FERC ¶ 61,038 (2002).

seeking to avoid.”<sup>6</sup> These claims ignore the plain terms of the requested waiver and also feign ignorance of the terms of the still-confidential Settlement in principle, despite the fact that all the parties to the settlement talks, including PSEG and Enel, have access to a term sheet with its key terms.

First, without reference to the provisions of the Settlement in principle, the face of the Joint Motion itself shows that the PSEG/Enel Answer is misguided. The Joint Motion explains that the requested waiver was submitted prior to filing the Settlement to allow for Commission action on the waiver request in time for PJM to modify the bills that would be issued on October 6, 2023.<sup>7</sup> The Joint Motion explicitly states that “the settlement in principle is premised on seeking the interim relief requested” in the waiver.<sup>8</sup> The Joint Motion further states that the waiver *would not be effective unless and until the Settlement is filed*.<sup>9</sup> Therefore, PSEG and Enel’s concerns with pausing the billing of Non-Performance Charges “if no such settlement is filed” have no merit; if the Settlement is not filed, the waiver will not become effective and the billing and disbursement of Non-Performance Charges will not be suspended. The Joint Motion needed to be submitted upon reaching a settlement in principle, without waiting for the Settlement to be filed, in order to reasonably request Commission action before the October PJM billing and collection cycle, which includes billing for Non-Performance Charges. As stated in the Joint Motion, the Settlement is expected to be filed by the end of this month, before that next monthly billing cycle.

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<sup>6</sup> PSEG/Enel Answer at 7–8.

<sup>7</sup> Joint Motion at 4, 6, 9, 13.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 6 (requesting a limited waiver to take effect “upon filing of the Settlement”), 13 n.33 (requesting that the Commission “make the waiver effective, *subject to the filing of a settlement agreement*, on the earliest lawful date”) (emphasis added).

Second, the Joint Motion explained why the requested waiver is necessary to support the presentation of the Settlement and to avoid unnecessary resettlement complications by preserving the status quo, regardless of whether the Commission accepts or rejects the Settlement.<sup>10</sup> The specific terms of the settlement in principle are confidential until a Settlement is filed, but it is clear that granting the waiver would not create new non-payment risks or resettlement complications either way. The contrary arguments by PSEG and Enel miss the mark in both directions. If the Commission were to reject the Settlement, then PJM will resume invoicing unpaid balances based on the full Non-Performance Charge amounts, inclusive of interest already incurred *and* interest that will accrue while the invoicing of Non-Performance Charges is suspended.<sup>11</sup> This outcome would not involve the complexity of refunds or require PJM to recoup payments that were already disbursed to Market Participants.

By contrast, if the Commission were to accept a Settlement that reduces Non-Performance Charges, the suspension of collections and disbursements requested in the Joint Motion avoids, at a minimum, the creation of an additional recoupment step for Performance Payments in addition to avoiding any unnecessary collection of Non-Performance Charges.

The Affidavit of Lathrop Craig, President, PSEG Energy Resources & Trade LLC and Senior Vice President and Chief Commercial Officer of Public Service Enterprise Group, Inc., further claims that granting waiver would create repayment risk because Market Participants that elected the nine-month payment option will have paid 66.7 percent of their Non-Performance Charges, while PJM will have paid out 76.3 percent of the Performance Payments due to Market

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<sup>10</sup> The Joint Motion's request is comparable to the recent waiver granted to Constellation Mystic River, LLC in Docket No. ER23-1159-000 to support the filing of an anticipated offer of settlement and settlement agreement. *See Constellation Mystic Power, LLC*, 182 FERC ¶ 61,181 (2023) (granting waiver to defer the deadline for an informational posting to true-up rates under the Mystic Cost of Service Agreement).

<sup>11</sup> Joint Motion at 11–12 (explaining that the waiver will not cause harm because the collection of owed Non-Performance Charges will be paused, not canceled, and deferred Non-Performance Charges will be paid with interest).

Participants with Bonus Performance.<sup>12</sup> However, PSEG and Enel provide no support for their assumption that PJM has paid out 76.3 percent of each net bonus recipient's Performance Payment.<sup>13</sup> Accordingly, the Commission should reject the PSEG/Enel Answer's erroneous arguments that granting the requested waiver would create resettlement risks.

PSEG and Enel also argue that the Commission should reject the requested waiver because PJM has already changed its billing rules to mitigate the risk of member defaults when PJM permitted Market Participants to elect to have Non-Performance Charges invoiced in nine monthly bills, subject to interest on the final six months, rather than in three monthly bills.<sup>14</sup> This argument is irrelevant to the pending waiver request. The recent Tariff change that PSEG and Enel criticize has already been accepted by the Commission as just and reasonable, and well may have helped mitigate the risk of defaults, but it does not address the risks associated with recovering over-collected Non-Performance Charges once they have been disbursed to Market Participants as Performance Payments, if that is the outcome of the Commission's review of a forthcoming Settlement. The Commission therefore should find that the Joint Motion's requested waiver is made in good faith, because it is necessary to support and effectuate the forthcoming Settlement.

**B. The Waiver Is of Limited Scope Because It Is a One-Time Waiver for a Finite Period and Only Applies to Non-Performance Charges Arising From Winter Storm Elliott**

The requested waiver is limited in scope because it is a one-time waiver that would only be effective after the Settlement is filed, and it would only be effective until the date PJM begins implementing the billing consequences of the Commission's action on the Settlement. The waiver

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<sup>12</sup> Aff. of Lathrop Craig ¶¶ 10–11.

<sup>13</sup> Mr. Craig presumably arrived at this number by referring to the fact that only 23.7 percent of *total* Non-Performance Charges have not yet been invoiced, but does not provide any references to materials from PJM or otherwise that substantiate this calculation.

<sup>14</sup> PSEG/Enel Answer at 8–9.

is limited to Non-Performance Charges incurred during Winter Storm Elliott (i.e., between December 23 and 24, 2022). Accordingly, the waiver request is appropriately limited in scope to the subject of the forthcoming Settlement filing.

The PSEG/Enel Answer distinguishes the pending waiver request from the recent approval of a single-party waiver of Winter Storm Elliott-related non-performances. But the Commission does not require waivers to be targeted to single generators. To the contrary, the Commission has granted waiver of Regional Transmission Organization (“RTO”) tariff provisions affecting numerous Market Participants and on a market-wide basis on numerous occasions.<sup>15</sup> Furthermore, the suspension of Non-Performance Charge billings does not apply to all Market Participants but rather applies only to Market Participants who are assessed Non-Performance Charges that were triggered during the events of Winter Storm Elliott and who elected to have the Non-Performance Charges invoiced over a nine-month period rather than over three months. The requested waiver therefore is consistent with prior waivers granted to RTOs.

The waiver also is for a finite period of time, contrary to PSEG and Enel’s contention. The Joint Movants specifically request a waiver that would be effective until PJM implements the billing consequences of Commission action on the Settlement. If the Commission approves the Settlement, then PJM will implement billing in accordance with the terms of the Settlement and the Commission’s order as soon as they are able to do so. If the Commission rejects the Settlement, then PJM will resume the billing of Non-Performance Charges on the stated timeline (35 days after

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<sup>15</sup> See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 160 FERC ¶ 61,067, at P 24 (2017) (granting waiver notwithstanding that the remedy would result in resettlement for all affected market participants); *New York Indep. Sys. Operator Inc.*, 110 FERC ¶ 61,092, at P 10 (2005) (unpublished letter order) (granting waiver of tariff provisions that allocate certain costs to transmission customers using hourly or daily load ratio shares); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,109 (2021) (granting waiver of the Tariff to suspend rebilling and payment obligations of two PJM customers); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,184 (2011) (granting waiver of the Tariff to permit PJM to suspend billing and payment obligations for multiple customers contesting billing adjustments).



the date of the Commission order, subject to PJM requesting leave for—and receiving Commission authorization for—additional time for billing modifications, if necessary). These are not indefinite time periods, as PSEG and Enel suggest. Although the end date of the waiver depends on Commission action on the Settlement, the Commission has previously granted waivers pending Commission action on a filing, even when there was no statutory deadline applicable to the Commission’s action.<sup>16</sup> In addition, while PSEG and Enel cite to several cases involving contested settlements, presumably to argue that Commission action on a contested settlement could be delayed, the longest time period between filing of the settlement and Commission action among the cited cases was 630 days,<sup>17</sup> and the Commission has granted tariff waivers for longer durations of time.<sup>18</sup>

PSEG and Enel reiterate their concern that “there is no hard and fast deadline or commitment” for the filing of the Settlement.<sup>19</sup> However, as explained above, the waiver would become effective only once the Settlement is filed. If the Settlement is not filed, then the waiver would not become effective, and the billing of Non-Performance Charges would not be suspended. Moreover, the Settlement is expected to be filed by the end of this month.

PSEG and Enel are also in error when they claim that the waiver “would change the outcome of an already-concluded event and undermine Market Participants’ confidence in future

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<sup>16</sup> See *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,109 (2021) (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 Commission action on a Petition, when customers contested billing adjustments).

<sup>17</sup> See PSEG/Enel Answer at 10 & n.28 (citing *Tri-State Generation & Transmission Ass’n*, 181 FERC ¶ 61,255 (2022); *Az. Pub. Serv. Co.*, 181 FERC ¶ 61,223 (2022); *PJM Interconnection, L.L.C.*, 181 FERC ¶ 61,181 (2022); *Fla. Gas Transmission Co.*, 179 FERC ¶ 61,172 (2022); *Panda Stonewall LLC*, 174 FERC ¶ 61,266 (2021); *Sw. Power Pool, Inc.*, 174 FERC ¶ 61,116 (2021)).

<sup>18</sup> See, e.g., *Great Plains Windpark Legacy, LLC*, 183 FERC ¶ 61,164 (2023) (granting waiver of a tariff provision to allow an extension of the commercial operations deadline by 1006 days).

<sup>19</sup> PSEG/Enel Answer at 10.

proceedings.”<sup>20</sup> Granting the waiver requested in the Joint Motion will not change any amount due by or to any party in connection with Non-Performance Charges arising from Winter Storm Elliott; rather, it will simply pause the invoicing of those amounts while the Commission considers the merits of the Settlement. PSEG and Enel’s objections to the still-confidential terms of a forthcoming Settlement do not provide any basis for rejecting the Joint Motion.

**C. The Waiver Addresses a Concrete Problem by Mitigating the Risk that PJM Cannot Recoup Over-Collected and Disbursed Non-Performance Charges**

As stated above, the waiver addresses a concrete problem by mitigating the need for refunds or resettlement, with the associated risks, that could result if the Commission approves a Settlement in the captioned dockets. PSEG and Enel mischaracterize the Joint Motion by criticizing the failure to include evidence of generators that may enter bankruptcy absent waiver.<sup>21</sup> This charge misstates the Joint Movants’ burden. It logically follows that suspending the invoicing and collection of Non-Performance Charges will avoid financial stress that could arise if invoicing and collection were to continue.<sup>22</sup> Further, as stated in the Joint Motion, the waiver is necessary to carry out the terms of the impending Settlement and to minimize the burdens of re-settlement or refunds. If PJM continues to invoice Non-Performance Charges and disburse the amounts collected to Market Participants as Performance Payments, then PJM will have to recoup the disbursed payments to repay the Non-Performance Charges that were over-collected. If PJM cannot recoup those payments, then Market Participants will be harmed and the reduction

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<sup>20</sup> *Id.* at 12 (emphasis omitted). In support, PSEG and Enel cite to a Commission order denying a request for waiver where the Commission found that PJM was effectively changing the results of an auction that had already commenced. *See PJM Interconnection, L.L.C.*, 166 FERC ¶ 61,072, at P 33 (2019).

<sup>21</sup> PSEG/Enel Answer at 13–14.

<sup>22</sup> *See Xcel Energy Servs. Inc. v. FERC*, 41 F.4th 548, 560-61 (D.C. Cir. 2022) (“It is ‘perfectly legitimate for the Commission to base its findings on basic economic theory[.]’”) (quoting *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 531 (D.C. Cir. 2010)).

contemplated by the Settlement could be undermined. This concrete problem would be minimized if the collection and disbursement of Non-Performance Charges are suspended, as requested in the Joint Motion.

Such suspension would not result in resettlements if the requested waivers are granted and the Commission rejects the Settlement.<sup>23</sup> While PSEG and Enel characterize the result under this scenario as a resettlement, PJM in fact would simply resume collection and disbursement of Non-Performance Charges, including with interest already accrued in addition to the interest that accrues during the waiver period. As explained above, this does not involve the complex undertaking of PJM seeking to collect money that has already been disbursed to Market Participants. Accordingly, the Commission should find that the requested waiver addresses a concrete problem.

**D. The Waiver Does Not Result in Undesirable Consequences Because Market Participants Will Be Kept Whole by Interest that Accrues on the Deferred Payments**

Put simply, the requested waiver will not result in undesirable consequences, including harm to third parties, because the collection and disbursement of Non-Performance Charges will be paused, not cancelled. Moreover, in the event the Commission rejects the proposed Settlement, third parties will be kept whole 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 through the payment due date for collection of the deferred Non-Performance Charges. The Commission has long held that third parties are protected when deferred payments accrue interest.<sup>24</sup>

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<sup>23</sup> PSEG/Enel Answer at 14.

<sup>24</sup> See, e.g., *Lee Cnty. Generating Station, LLC v. PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,029, at P 17 (2023) (“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

PSEG and Enel argue that the Joint Motion would have undesirable consequences because it would discriminate against Market Participants who elected to pay their Non-Performance Charges over three months rather than have them invoiced over nine months.<sup>25</sup> But that was a voluntary decision made by those Market Participants. PSEG and Enel cannot make a claim of undue discrimination and preference based on the consequences of Market Participants' voluntary choices to pay their Non-Performance Charges in a shorter period of time.

PSEG and Enel also assert that the Joint Motion would harm Market Participants owed Performance Payments because Market Participants who owe Non-Performance Charges are not required to post collateral while the deferred payments accrue.<sup>26</sup> That assertion is incorrect. The Joint Motion does not seek waiver of Attachment Q to the Tariff, which contains the rules and requirements for creditworthiness and PJM's ability to require Market Participants to post collateral. Attachment Q will continue to apply to all Market Participants, including the Market Participants whose Non-Performance Charge payment obligations would be deferred if the Joint Motion is granted. Accordingly, PJM's ability to issue a Collateral Call for any Market Participant that PJM determines poses an unreasonable credit risk will not be affected if the requested waiver is granted.<sup>27</sup> The Commission should not entertain this attempt by PSEG and Enel to create issues where none exist.

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the Commission's interest rate, and bonus payment recipients are therefore kept whole."); *see also Ameren Corp.*, 140 FERC ¶ 61,213, at P 8 (2012) (affirming decision to grant utility extension of time to make refunds because the utility was obligated to provide refunds with interest); *Mid-Continent Area Power Pool*, 88 FERC ¶ 61,157, at 61,532 (1999) (finding that customers would not be harmed by an extension because any amounts would continue to accrue interest until the amounts owed are paid); *Distigas of Mass. Corp.*, 27 FERC ¶ 61,027, at 61,048 (1984) (noting that customers are protected by the company's obligation to pay interest on refunds).

<sup>25</sup> PSEG/Enel Answer at 15; Affidavit of Lathrop Craig ¶¶ 6–13.

<sup>26</sup> PSEG/Enel Answer at 6 (citing Aff. of Lathrop Craig ¶ 8).

<sup>27</sup> *See* Tariff, Attach. Q, § II.D.

Finally, PSEG and Enel further argue that granting the waiver would disrupt their settled expectations and business planning. However, there have already been two changes to Non-Performance Charge collection timelines (which put PSEG and Enel on notice that they could be changed through waivers), and PSEG and Enel did not object to either of the prior changes on the ground that they disrupted any “settled expectations.” PSEG and Enel cannot have a settled expectation to the timing of when they receive any specific dollar value of Performance Payments because the Tariff only allows PSEG and Enel to receive their respective shares of Non-Performance Charges that PJM actually collects.<sup>28</sup> Any concerns PSEG and Enel may have about fair treatment are addressed by the fact that, following resolution of the Settlement, any remaining unpaid Non-Performance Charge amounts will be collected inclusive of interest accrued based on the extension of payment terms under Docket No. ER23-1038-000, plus any additional interest accrued through the payment due date for collection of the deferred Non-Performance Charges. The Commission has previously found that charging interest on deferred payments addresses any settled expectations of Market Participants.<sup>29</sup> The Commission should therefore reject PSEG and Enel’s arguments that the requested waiver will have undesirable consequences pending the Commission’s consideration of the forthcoming Settlement.

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<sup>28</sup> *See id.*, Attach. DD, § 10A(g).

<sup>29</sup> *PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,001 (2023).

### III. CONCLUSION

WHEREFORE, Answering Movants respectfully request that the Commission grant this Motion for Leave to Answer and accept this Answer, reject the arguments made in the PSEG/Enel Answer, and issue an order granting the relief requested in the Joint Motion no later than September 25, 2023.

Respectfully Submitted,

/s/ John Lee Shepherd, Jr.

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**APPENDIX**  
**ANSWERING 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**

AES Clean Energy Development, LLC  
American Municipal Power, Inc.  
Big Sandy Peaker Plant, LLC  
Bluestone Farm Solar, LLC  
Buckeye Power, Inc.  
Constellation Energy Generation, LLC  
Cordova Energy Company  
Cypress Creek Renewables, LLC  
Delaware Municipal Electric Corporation, Inc.  
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 upon each person designated on the official service lists compiled by the Secretary in these proceedings.

Dated at Washington, D.C., this 19th day of September 2023.

Respectfully Submitted,

/s/ Blake Grow

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