

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

PJM Interconnection, L.L.C.

)

Docket Nos. ER21-1635-000
EL21-91-003

**MOTION FOR REESTABLISHMENT OF SETTLEMENT JUDGE PROCEDURES AND
SHORTENED TIME PERIOD TO ANSWER, AND REQUEST FOR PRESIDING JUDGE
CONCURRENCE**

**To: Honorable Andrew Satten
Chief Administrative Law Judge**

**Honorable Joel deJesus
Presiding Administrative Law Judge**

Pursuant to Rules 212 and 603 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”),¹ the Settling Parties² hereby request that the Chief Administrative Law Judge appoint a settlement judge to assist with their ongoing efforts to resolve this proceeding through a negotiated settlement. There is good cause to approve this motion. As is evident by the Settling Parties’ prior settlement submitted on January 31, 2024,³ which was broadly supported or not opposed by Commission Trial Staff and various state commission and public advocate parties, there is a strong interest and momentum in favor of settling this proceeding. The Presiding Judge also has encouraged the re-submission of a

¹ 18 C.F.R. §§ 385.212 and 385.603.

² The Settling Parties include American Municipal Power, Inc., Dynegy Marketing and Trade, LLC, Hazleton Generation LLC, J-POWER USA Development Co., Ltd., LS Power Development, LLC, Old Dominion Electric Cooperative, PJM Interconnection, L.L.C. (“PJM”), PJM Industrial Customer Coalition, and Vistra Corp.

³ *PJM Interconnection, L.L.C.*, Docket No. EL21-91-003, Motion to Implement Interim Settlement Rates, Request to Waive Answer Period, and Request for Expedited Treatment (filed Jan. 31, 2024) (hereinafter, the “First Settlement”).

settlement.⁴ Settlement would achieve immediate benefits, including rate reduction, rate certainty, and the preservation of the parties', the Commission's, and the court's resources by avoiding the distraction and costs of litigation, and preventing further diversion of resources and attention away from other pressing market concerns. With the initiation of formal settlement judge procedures, the Settling Parties are confident that the participants either will be able to achieve an uncontested settlement or will have a more fulsome opportunity to advance arguments and develop evidentiary support that would allow the Commission to approve a contested settlement. Facilitating additional settlement discussions also will create a path for PJM to retain the use of the interim settlement rates while efforts at settlement remain ongoing.⁵ If a settlement judge is appointed, PJM anticipates filing a motion seeking authority to continue the use of the settlement rates on an interim basis that would, if granted, avoid reinstatement of the pre-settlement rates.

The Settling Parties further request that Your Honor shorten the answer period to this motion to five business days in accordance with Rule 213(d)(1) of the Commission's Rules of Practice and Procedure.⁶ Prior to filing this motion, the Settling Parties contacted all persons on the service list on April 26, 2024, in accordance with the Duty to Confer found in Section 3 of the Commission's Uniform Hearing Rules. One party, Monitoring Analytics, LLC, acting as the Independent Market Monitor for PJM ("IMM"), indicated to the Settling Parties that it opposes this Motion, and that it also opposes the appointment of a settlement judge. The IMM's position aligns with statements made by the IMM at the April 24, 2024 pre-hearing conference, prior to which various members of the Settling Parties had contacted the IMM directly to obtain

⁴ See, e.g., *PJM Interconnection, L.L.C.*, 186 FERC ¶ 63,019, at P135 (2024) ("Denial Order"); *PJM Interconnection, L.L.C.*, Docket Nos. EL21-91-003, et al., Order Denying Reconsideration and Denying Permission for Interlocutory Appeals, at P7 (Mar. 29, 2024) ("Reconsideration Order").

⁵ *PJM Interconnection, L.L.C.*, Docket Nos. EL21-91-003, et al., Settlement Agreement (Jan. 31, 2024).

⁶ 18 C.F.R. § 285.213(d)(1).

concurrence on the appointment of a settlement judge. As of the date of this filing, no other party has indicated that they oppose this Motion or the appointment of a settlement judge.

Despite the IMM's opposition, a shortening of the answer period is still requested in order to expedite the Chief Judge's ability to rule on this Motion so that the parties can promptly resume formal settlement judge procedures sufficiently in advance of looming hearing deadlines, the first of which calls for direct testimony submissions on June 5, 2024.⁷

I. BACKGROUND

The roots of this proceeding date back to April 7, 2021 when PJM proposed revisions to Schedule 6A of its Open Access Transmission Tariff ("Tariff") pursuant to section 205 of the Federal Power Act ("FPA") to implement a formula-based rate for generators that PJM selects to provide Black Start Service⁸ in competitive solicitations held after the proposed effective date of June 6, 2021.⁹ The Commission accepted PJM's proposed revisions to Schedule 6A of its Tariff effective June 6, 2021,¹⁰ but initiated this proceeding pursuant to FPA section 206 to investigate whether PJM's existing rates in Schedule 6A for units selected to provide Black Start Service prior to the June 6, 2021 effective date for the formula rate remain just and reasonable.¹¹ In particular, the Commission sought to investigate whether PJM's existing rates for units providing Black Start Service, "which are based on a federal corporate income tax rate that pre-dates the Tax Cuts and Jobs Act of 2017 ["TCJA"]], remain just and reasonable."¹² The show-cause order initiated a

⁷ *PJM Interconnection, L.L.C.*, Docket Nos. EL21-91-003, Order Adopting Revised Procedural Schedule (issued Apr. 25, 2024).

⁸ Capitalized terms used, but not defined, in this motion have the meaning set forth in the PJM Tariff.

⁹ *PJM Interconnection, L.L.C.*, Docket No. ER21-1635-000, Schedule 6A, Black Start Revisions of PJM Interconnection, L.L.C. (Apr. 7, 2021), *as amended*, *PJM Interconnection, L.L.C.*, Docket No. ER21-1635-001, Submission of Response to Deficiency Letter of PJM Interconnection, L.L.C. (June 11, 2021).

¹⁰ *PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,080, at P 1 (2021).

¹¹ *Id.* at P 2.

¹² *Id.* at PP 1-2.

statutory 15-month refund period. However, while the refund period expired on November 17, 2022, the Commission did not initiate formal settlement or hearing proceedings until March 24, 2023.¹³

Judge Patricia Hurt oversaw formal settlement procedures before the parties moved to a litigation posture in August 2023. However, with the assistance of Commission Trial Staff, the Settling Parties continued to seek a negotiated resolution of this proceeding after formal hearing procedures were initiated. A settlement in principle was reached in early January 2024. On January 10, 2024, Commission Trial Staff filed a motion to suspend the procedural schedule and shorten the answer period,¹⁴ which was granted on January 16, 2024.¹⁵ PJM then filed the First Settlement on January 31, 2024 to ensure that interim settlement rates would be able to take effect as of January 1, 2024.¹⁶ In addition to having the Settling Parties as its signatories, the First Settlement was supported or not opposed by Commission Trial Staff, the Maryland Office of People's Counsel, the Office of the People's Counsel for the District of Columbia, the Public Utilities Commission of Ohio Office of the Federal Energy Advocate, and the Delaware Division of the Public Advocate. The IMM, who has no financial interest in the outcome of this proceeding, was the only opposing party.¹⁷ Ultimately, the Presiding Administrative Law Judge ("Presiding Judge")

¹³ *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,194 (2023) ("Hearing Order"), *order on reh'g*, 184 FERC ¶ 61,077 (2023) ("Rehearing Order").

¹⁴ *PJM Interconnection, L.L.C.*, Docket No. EL21-91-003, Motion of Commission Trial Staff to Suspend Procedural Schedule and Shorten Answer Period (filed Jan. 10, 2024).

¹⁵ *PJM Interconnection, L.L.C.*, Docket No. EL21-91-003, Order of Chief Judge Suspending Procedural Schedule (issued Jan. 16, 2024).

¹⁶ *PJM Interconnection, L.L.C.*, Docket No. EL21-91-003, Motion to Implement Interim Settlement Rates, Request to Waive Answer Period, and Request for Expedited Treatment (filed Jan. 31, 2024).

¹⁷ Despite opposing the First Settlement, the IMM has also been clear that it prefers the Commission to resolve this proceeding without engaging in hearing procedures. *See PJM Interconnection, L.L.C.*, Docket No. EL21-91-003, Motion to Permit Interlocutory Appeal of the Independent Market Monitor for PJM at 3 (filed Apr. 1, 2024) (providing, "the better approach is to return this simple matter to the Commission now, where the Commission can provide the immediate disposition that is needed.").

determined that he could not certify the settlement without additional evidentiary support, and requests for interlocutory appeal were denied by the Presiding Judge¹⁸ and the Motions Commissioner.¹⁹

On April 16, 2024, the Chief Judge reinitiated hearing procedures in an order terminating the suspension and establishing procedural time standards.²⁰ A prehearing conference was held on April 24, 2024²¹ during which time the Settling Parties reiterated their interest in settlement and previewed the filing of this motion.

II. MOTION

In accordance with Rule 603(c)(1), the Settling Parties request the appointment of a settlement judge in order to provide additional opportunities to reach a negotiated settlement. The Settling Parties seek the concurrence of the Presiding Judge pursuant to Rule 603(e).²² Through appointment of a settlement judge, the parties will be able to engage in off-the-record communications unavailable to the Presiding Judge that may be useful to further settlement.²³ Such discussion, if successful, will allow the parties to resolve this proceeding without need to expend additional party or Commission resources. Crucially, a settlement judge will be able to “identify what the matters at issue may be...in a manner that is understandable and useful.”²⁴

¹⁸ *PJM Interconnection, L.L.C.*, 186 FERC ¶ 63,019 (2024) (“Denial Order”); *PJM Interconnection, L.L.C.*, Docket Nos. EL21-91-003, et al., Order Denying Reconsideration and Denying Permission for Interlocutory Appeals (Mar. 29, 2024) (“Reconsideration Order”).

¹⁹ *PJM Interconnection, L.L.C.*, Docket Nos. EL21-91-003, et al., Notice of Determination by the Chairman re PJM Interconnection, L.L.C. (issued Apr. 8, 2024); Notice of Determination by the Chairman re PJM Interconnection, L.L.C. (issued Apr. 12, 2024).

²⁰ *PJM Interconnection, L.L.C.*, Docket Nos. EL21-91-003, Order of Chief Judge Terminating Suspension and Establishing Procedural Time Standards re PJM Interconnection, L.L.C. (issued Apr. 16, 2024).

²¹ *PJM Interconnection, L.L.C.*, Docket Nos. EL21-91-003, Order Adopting Revised Procedural Schedule (issued Apr. 25, 2024).

²² 18 C.F.R. § 385.603(e).

²³ *Am. Elec. Power Co., Inc.*, 100 FERC ¶ 61,346, at P 41 (2002) (citing 18 C.F.R. § 385.2201(c)(3)).

²⁴ *ANR Pipeline Co.*, 152 FERC ¶ 63,003 at PP 136-37 (2015).

For these reasons, the Settling Parties maintain that a settlement judge's appointment is prudent despite the IMM's opposition. The Commission and the Presiding Judge have specifically encouraged the parties to engage in settlement dialogue rather than proceed to hearing.²⁵ And the Chief Judge regularly grants requests to appoint a Settlement Judge when there is a prospect of settlement. As evidenced by the First Settlement and the fact that all but one party supports or does not oppose this motion, there is broad support among the participants to resolve this proceeding through settlement rather than through litigation.

The Settling Parties acknowledge that the Presiding Judge declined to certify the First Settlement on grounds that it was unsupported by substantial evidence. Additional time to work towards settlement with the assistance of a settlement judge will give the Settling Parties an opportunity either to obtain an uncontested settlement, or to ensure that additional argument and evidence can be provided to supplement a contested settlement should such support be deemed necessary.²⁶

²⁵ See note 4, *supra*; Hearing Order at P 33 (“While we are setting these matters for a trial-type evidentiary hearing, we encourage efforts to reach settlement before hearing procedures commence.”); *PJM Interconnection, L.L.C.*, Docket No. EL21-91-003, Pre-hearing Conference Transcript at 84:18-22 (Oct. 5, 2023) (“I’m okay if you settle at any time, so the Commission clearly favors settlements, and I’m happy to pass on a message to the Chief Judge if you all want to take time out of the schedule to settle, or want redesignation of Judge Hurt, or some other settlement.”).

²⁶ See Reconsideration Order at P 7.

III. CONCLUSION

For the foregoing reasons, the Settling Parties respectfully request that the Chief Administrative Law Judge appoint a settlement judge to provide a forum whereby resolution of the issues set for hearing may be discussed.

Respectfully submitted,

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April 29, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on the Chief Judge, the Presiding Judge, and all persons on the Commission's service list in Docket Nos. EL21-91-003 and ER21-1635-005.

Dated at Washington, D.C., this 29th day of April 2024.

/s/ Stephen J. Hug
Stephen J. Hug