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September 29, 2023

Via Electronic Filing

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: PJM Interconnection, LLC, ER23-2975-000
Offer of Settlement in the Winter Storm Elliott Complaints: Essential Power OPP, LLC v. PJM Interconnection, L.L.C., Docket No. EL23-53-000; Aurora Generation, LLC v. PJM Interconnection, L.L.C., Docket No. EL23-54-000; Coalition of PJM Capacity Resources v. PJM Interconnection, L.L.C., Docket No. EL23-55-000; Talen Energy Marketing, LLC v. PJM Interconnection, L.L.C., Docket No. EL23-56-000; Lee County Generating Station, LLC v. PJM Interconnection, L.L.C., Docket No. EL23-57-000; SunEnergy1, LLC v. PJM Interconnection, L.L.C., Docket No. EL23-58-000; Lincoln Generating Facility, LLC v. PJM Interconnection, L.L.C., Docket No. EL23-59-000; Parkway Generating Keys Energy Center LLC v. PJM Interconnection, L.L.C., Docket No. EL23-60-000; Old Dominion Electric Cooperative v. PJM Interconnection, L.L.C., Docket No. EL23-61-000; Energy Harbor LLC v. PJM Interconnection, L.L.C., Docket No. EL23-63-000; Calpine Corporation v. PJM Interconnection, L.L.C., Docket No. EL23-66-000; Invenergy Nelson LLC v. PJM Interconnection, L.L.C., Docket No. EL23-67-000; East Kentucky Power Cooperative, Inc. v. PJM Interconnection, L.L.C., Docket No. EL23-74-000; CPV Maryland, LLC, and Competitive Power Venture Holdings, LP v. PJM Interconnection, L.L.C., Docket No. EL23-75-000; Parkway Generation Operating LLC et al. v. PJM Interconnection, L.L.C., Docket No. EL23-77-000 (Not Consolidated)
Request for Commission Action by December 29, 2023

Dear Secretary Bose:

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ the Settling Parties² respectfully submit the enclosed Offer of Settlement (“Settlement”) for approval in the above-captioned dockets.

¹ 18 C.F.R. § 385.602.

² The Settling Parties include all but one complainant in these proceedings and are listed in Exhibit A to the Settlement. The sole non-settling party complainant does not oppose this Settlement. See Exhibit B (list of Non-Opposing Parties – Complainants).

I. DESCRIPTION OF THIS FILING³

This Settlement resolves comprehensively fifteen complaints filed against PJM Interconnection, L.L.C. (“PJM”) relating to Winter Storm Elliott. The overwhelming number of active parties in the case – including all complainants – support or do not oppose the Settlement. The 81 Settling Parties include PJM, all but one of the complainants in these proceedings, most of the intervenors who protested the complaints, and a number of other interested parties. PJM does not admit to any violation of the PJM Open Access Transmission Tariff (“Tariff”) or any other wrongdoing as part of this Settlement, which releases all claims against PJM arising out of Winter Storm Elliott, except as specified in this Settlement. The Settlement does not propose any modification to the PJM Tariff. The Settlement resolves the Winter Storm Elliott Complaints on a purely financial, negotiated basis by applying a 31.7 percent reduction in the total Non-Performance Charges (“NPCs”) assessed, with certain limited exceptions, and preserves two discrete questions for Commission decision. These Winter Storm Elliott complaints had the potential to become the next “mega-litigation” along the lines of the California Energy Crisis litigation or the Seams Elimination Cost/Charge Adjustment/Assignment litigation; instead, the Settling Parties have achieved a negotiated resolution that avoids years (or, in the case of the California Energy Crisis, decades) of litigation, and now present that resolution to the Commission for approval.

II. DOCUMENTS ENCLOSED

The Settling Parties respectfully request that the enclosed materials be transmitted to the Commission for its consideration and approval.⁴ This filing consists of the following:

- A. This transmittal letter;
- B. Offer of Settlement;
- C. Explanatory Statement; and
- D. Supporting Affidavits, which are exhibits to the Explanatory Statement. The Settling Parties include five supporting affidavits representing the perspectives of PJM, the complainants, intervenors adverse to the complainants, and load serving entities, as follows:
 1. Affidavit of Michael R. Borgatti;
 2. Affidavit of Michael E. Bryson;

³ This Transmittal Letter summarizes the Settlement and does not alter any provision of the Settlement. To the extent any language in this Transmittal Letter differs from language in the Settlement, the Settlement controls.

⁴ Rule 602(b)(2)(ii) directs the filing of an Offer of Settlement with the Secretary and the Secretary transmits the offer to the Commission where no hearing has been ordered and the cases remain pending before the Commission. 18 C.F.R. § 385.602(b)(2)(ii).

3. Affidavit of Steven T. Naumann, P.E.;
4. Affidavit of William B. Berg; and
5. Affidavit of John S. Rohrbach.

III. COMMENT PERIOD AND REQUEST FOR COMMISSION ACTION BY DECEMBER 29, 2023

In accordance with Rule 602(d)(2), notice is hereby given to all participants in this proceeding, as well as all other persons required to receive notice by Rule 602(d)(1), that initial comments on the Settlement are due October 19, 2023 and reply comments are due October 30, 2023 unless other dates are provided by the Commission. *See* 18 C.F.R. §§ 385.602(d)(1)–385.602(d)(2). The Settling Parties respectfully request that the Commission not extend the period of time for comments or reply comments beyond these dates, which reflect the default deadlines under Rule 602(f)(2), due to the importance of Commission approval this year.

The Settling Parties respectfully request that the Commission approve the Settlement without modification or condition no later than December 29, 2023. Timely commercial certainty is a core objective of the Settlement and that objective would be significantly undermined if the Commission does not approve the Settlement by the end of this calendar year. An order from the Commission will also provide an important foundation for PJM and its stakeholders to reallocate their resources toward other matters, including reforms based on the lessons learned during the Winter Storm Elliott Event.

IV. WAIVERS

While the Settling Parties know of no required waivers, the Settling Parties respectfully request that the Commission grant any waivers of its regulations, policy, or precedent that the Commission may deem necessary to accept this Settlement as proposed herein.

V. SERVICE

Copies of the Settlement will be electronically served on all parties in the above-captioned proceedings and all persons required to be served with the documents included in this filing. In addition, PJM has served a copy of this filing on all PJM members and on all state utility regulatory commissions in the PJM Region by posting this filing electronically. In accordance with the Commission's regulations,⁵ PJM will post a copy of this filing to the FERC filings section of its internet site, located at the following link: <https://www.pjm.com/library/filing-order> with a specific link to the newly-filed document, and will send an e-mail on the same date as this filing to all PJM members and all state utility regulatory commissions in the PJM Region⁶ alerting them that this filing has been made by PJM

⁵ *See* 18 C.F.R. §§ 35.2(e), 385.2010(f)(3).

⁶ PJM already maintains, updates, and regularly uses e-mail lists for all PJM members and affected state commissions.

and is available by following such link. PJM also serves the parties listed on the Commission's official service lists for the captioned dockets. If the document is not immediately available by using the referenced link, the document will be available through the referenced link within 24 hours of the filing. Also, a copy of this filing will be available on FERC's eLibrary website located at the following link: <http://www.ferc.gov/docs-filing/elibrary.aspx> in accordance with the Commission's regulations and Order No. 714.⁷

VI. CONCLUSION

The Commission should approve the Settlement by December 29, 2023, as requested.

Respectfully submitted,

/s/ Mark J. Stanisz

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On Behalf of All Settling Parties*

Enclosures

⁷ *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008) at ¶ 78, *final rule*, Order No. 714-A, 147 FERC ¶ 61,115 (2014).

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

Essential Power OPP, LLC, <i>et al.</i>)	
v.	)	Docket No. EL23-53-000
PJM Interconnection, L.L.C.)	
Aurora Generation, LLC, <i>et al.</i>)	
v.	)	Docket No. EL23-54-000
PJM Interconnection, L.L.C.)	
Coalition of PJM Capacity Resources)	
v.	)	Docket No. EL23-55-000
PJM Interconnection, L.L.C.)	
Talen Energy Marketing, LLC)	
v.	)	Docket No. EL23-56-000
PJM Interconnection, L.L.C.)	
Lee County Generating Station, LLC)	
v.	)	Docket No. EL23-57-000
PJM Interconnection, L.L.C.)	
SunEnergy1, LLC)	
v.	)	Docket No. EL23-58-000
PJM Interconnection, L.L.C.)	
Lincoln Generating Facility, LLC)	
v.	)	Docket No. EL23-59-000
PJM Interconnection, L.L.C.)	
Parkway Generating Keys Energy Center LLC)	
v.	)	Docket No. EL23-60-000
PJM Interconnection, L.L.C.)	
Old Dominion Electric Cooperative)	
v.	)	Docket No. EL23-61-000
PJM Interconnection, L.L.C.)	
Energy Harbor LLC)	
v.	)	Docket No. EL23-63-000
PJM Interconnection, L.L.C.)	

Calpine Corporation)	
v.	)	Docket No. EL23-66-000
PJM Interconnection, L.L.C.)	
Invenergy Nelson LLC)	
v.	)	Docket No. EL23-67-000
PJM Interconnection, L.L.C.)	
East Kentucky Power Cooperative, Inc.)	
v.	)	Docket No. EL23-74-000
PJM Interconnection, L.L.C.)	
CPV Maryland, LLC, and Competitive Power Ventures Holdings, LP)	
v.	)	Docket No. EL23-75-000
PJM Interconnection, L.L.C.)	
Parkway Generation Operating LLC, Parkway Generation Sewaren Urban Renewal Entity LLC)	
v.	)	Docket No. EL23-77-000
PJM Interconnection, L.L.C.	)	(Not Consolidated)
PJM Interconnection, L.L.C.	)	Docket No. ER23-_____

OFFER OF SETTLEMENT

September 29, 2023

In the interest of resolving by settlement as promptly as possible the claims raised in the captioned complaints regarding the operational decisions of PJM Interconnection, L.L.C. (“PJM”) during Winter Storm Elliott¹ and PJM’s implementation of the PJM Open Access Transmission Tariff (“Tariff”) and Amended and Restated Operating Agreement (“Operating Agreement”), North American Electric Reliability Corporation (“NERC”) requirements, and PJM Manuals, taking into account the totality of circumstances,

¹ Winter Storm Elliott refers to a large winter storm that passed through the PJM Region between December 23 and December 25, 2022. *See Winter Storm Elliott Info*, PJM Interconnection, L.L.C., <https://pjm.com/markets-and-operations/winter-storm-elliott> (last visited Sept. 27, 2023) (collecting PJM’s public statements addressing Winter Storm Elliott’s impact on PJM’s operations and markets).

including but not limited to the impact on some Market Participants arising from the number of Performance Assessment Intervals² (“PAIs”) triggered by declarations of Emergency Action by PJM during Winter Storm Elliott, the costs and risks associated with lengthy and contentious litigation, and the benefits of certainty with respect to the financial impact of Winter Storm Elliott on Market Participants, PJM, the settling complainants in the captioned proceedings (“Winter Storm Elliott Complaints”), and other supporting parties (collectively, the “Settling Parties”)³ agree to the terms and conditions set forth in this global Offer of Settlement (“Settlement”) to be filed with the Federal Energy Regulatory Commission (“Commission”) pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.602, to resolve all issues in the captioned proceedings, except as provided in Section 4.3 hereof. The terms and conditions of this Settlement comprise an interrelated package that reflects negotiated compromises among the Settling Parties to achieve an agreed resolution, thereby avoiding the time, expense and uncertainty of protracted litigation. The Settlement is subject in every particular respect to the conditions set forth herein, and is made with the understanding that each term is material and integral to the Settlement as a whole. The terms and conditions are as follows:

ARTICLE 1 BACKGROUND

1.1 Winter Storm Elliott and Financial Consequences. Winter Storm Elliott was an extraordinary event that presented substantial performance challenges for PJM

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Tariff or Operating Agreement.

³ Settling Parties are identified at Exhibit A and parties that have authorized Settling Parties to represent they do not oppose the Settlement Agreement (“Non-Opposing Parties”) are identified at Exhibit B. Although one Complainant is not a Settling Party, that Complainant does not oppose this Settlement. *See* Exhibit B (list of Non-Opposing Parties – Complainants).

generators and, in turn, operational challenges for PJM. Among other things, Winter Storm Elliott required PJM to take multiple Emergency Actions on December 23 and 24, 2022 that triggered PAIs. Notwithstanding these exceptional challenges, PJM maintained reliability throughout the PJM region, did not shed load, and helped prevent or mitigate load shedding in neighboring balancing areas. To maintain reliability, PJM initiated Emergency Actions from 17:30 through 23:00 on December 23, 2022 and from 04:25 through 22:00 on December 24, 2022 (“Winter Storm Elliott Event”). A number of Capacity Resources, including the Capacity Resources of complainants in the captioned dockets, did not fulfill their capacity commitments to PJM during these PAIs. When such shortfalls occur, the Tariff requires PJM to assess Non-Performance Charges, and award corresponding credits to Capacity Resources that exceeded their obligations.

Under PJM’s Capacity Performance construct, the financial consequences on Capacity Market Sellers who were unable to perform during Winter Storm Elliott are significant.⁴ The financial consequences for Market Participants that did not clear the capacity market or receive capacity revenues in the first instance, yet performed when needed and ultimately provided PJM with critical supply and therefore are eligible for Performance Payments, are also significant. The Non-Performance Charges assessed for PAIs during the Winter Storm Elliott Event are extremely large—ultimately totaling nearly \$1.8 billion following PJM’s initial post-event analysis and excusal of certain non-performance in accordance with the Tariff, Attachment DD.⁵

⁴ See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015) (“CP Order”), *order on reh’g & compliance*, 155 FERC ¶ 61,157, at P 110 (2016) (“CP Rehearing Order”), *aff’d sub nom. Advanced Energy Mgmt. All. v. FERC*, 860 F.3d 656 (D.C. Cir. 2017).

⁵ See *Winter Storm Elliott: Event Analysis and Recommendation Report*, PJM Interconnection, L.L.C. (July 17, 2023), <https://pjm.com/-/media/library/reports-notice/special-reports/2023/20230717-winter-storm->

1.2 Procedural Background of the Winter Storm Elliott Complaints.

Between March 31 and June 16, 2023, Capacity Market Sellers filed the Winter Storm Elliott Complaints, 15 complaints seeking financial relief from the Non-Performance Charges assessed by PJM during the Winter Storm Elliott Event.⁶ In the view of many complainants, the magnitude of Non-Performance Charges assessed by PJM during the Winter Storm Elliott Event resulted from operational decisions by PJM that misinterpreted or misapplied PJM's Tariff and Manuals, including specifically PJM's declaration and maintenance of certain Emergency Actions. Several complaints broadly invoked Federal Power Act section 206⁷ with respect to all similarly situated Capacity Market Sellers facing

elliott-event-analysis-and-recommendation-report.ashx; Tariff, Attachment DD, section 10A(c)-(d) (describing review process).

⁶ *Parkway Generation Operating LLC v. PJM Interconnection, L.L.C.*, Complaint of Parkway Generation Operating LLF and Parkway Generation Sewaren Urban Renewal Entity LLC, Docket No. EL23-77-000 (June 16, 2023); *CPV Maryland LLC v. PJM Interconnection, L.L.C.*, Complaint of CPV Maryland LLC and Competitive Power Ventures Holdings, LP, Docket No. EL23-75-000 (June 7, 2023) (“CPV Maryland Complaint”); *East Kentucky Power Cooperative, Inc. v. PJM Interconnection, L.L.C.*, Complaint of East Kentucky Power Cooperative, Inc., Docket No. EL23-74-000 (May 31, 2023) (“EKPC Complaint”); *Invenergy Nelson LLC v. PJM Interconnection, L.L.C.*, Complaint of Invenergy Nelson LLC and Request for Fast Track Processing, Docket No. EL23-67-000 (May 12, 2023); *Calpine Corporation v. PJM Interconnection, L.L.C.*, Complaint of Calpine Corporation, Docket No. EL23-66-000 (May 10, 2023); *Energy Harbor LLC v. PJM Interconnection, L.L.C.*, Complaint of Energy Harbor LLC, Docket No. EL23-63-000 (Apr. 27, 2023) (“EL23-63 Complaint”); *Old Dominion Electric Cooperative v. PJM Interconnection, L.L.C.*, Complaint of Old Dominion Electric Cooperative for Relief from Unjust and Unreasonable Capacity Resource Non-Performance Charges, Docket No. EL23-61-000 (Apr. 14, 2023); *Parkway Generation Keys Energy Center LLC v. PJM Interconnection, L.L.C.*, Complaint of Parkway Generation Keys Energy Center LLC, Docket No. EL23-60-000 (Apr. 6, 2023); *Lincoln Generating Facility, LLC v. PJM Interconnection, L.L.C.*, Complaint Requesting Fast Track Processing and Shortened Answer Period of Lincoln Generating Facility, LLC, Docket No. EL23-59-000 (Apr. 6, 2023); *SunEnergy1, LLC v. PJM Interconnection, L.L.C.*, Complaint of SunEnergy1, LLC, Docket No. EL23-58-000 (Apr. 5, 2023); *Lee County Generating Station, LLC v. PJM Interconnection, L.L.C.*, Complaint Requesting Fast Track Processing of Lee County Generating Station, LLC, Docket No. EL23-57-000 (Apr. 5, 2023); *Talen Energy Marketing, LLC v. PJM Interconnection, L.L.C.*, Complaint of Talen Energy Marketing, LLC, Docket No. EL23-56-000 (Apr. 5, 2023); *Coalition of PJM Capacity Resources v. PJM Interconnection, L.L.C.*, Complaint of the Coalition of PJM Capacity Resources, Docket No. EL23-55-000 (Apr. 4, 2023) (“Coalition Complaint”); *Aurora Generation, LLC v. PJM Interconnection, L.L.C.*, Complaint Requesting Fast Track Processing and Shortened Answer Period, and Request for Interim Order Suspending Billing and Payment Provisions, Docket No. EL23-54-000 (Apr. 4, 2023); *Essential Power OPP, LLC v. PJM Interconnection, L.L.C.*, Complaint of Nautilus Entities, Docket No. EL23-53-000 (Mar. 31, 2023).

⁷ 16 U.S.C. § 824e.

Non-Performance Charges.⁸ Other complaints focused on unit-specific issues. PJM answered nearly all of the Winter Storm Elliott Complaints and contends that it took lawful and appropriate actions during the Winter Storm Elliott Event to preserve system reliability in accordance with Good Utility Practice and with PJM's obligations under the Tariff, Operating Agreement, Manuals, and NERC reliability standards.

1.3 Procedural Background of the Settlement. On April 14, 2023, PJM filed a Motion requesting the Commission to establish a global settlement judge procedure encompassing all of the Winter Storm Elliot Complaint proceedings.⁹ On June 5, 2023, the Commission established settlement judge procedures.¹⁰ On June 13, 2023, the Chief Administrative Law Judge designated the Honorable Judge Matthew Vlissides Jr. as the settlement judge in these proceedings.¹¹ Between June 26, 2023 and August 31, 2023, the participants convened for eight in-person settlement conferences. On August 31, 2023, a majority of the participants reached a settlement in principle. Accordingly, the Chief Administrative Judge Law issued an Order Terminating Settlement Judge Procedures on September 5, 2023.¹² This Settlement resolves all allegations lodged before the Commission in the Winter Storm Elliott Complaints against PJM, including that PJM declared and maintained Emergency Actions when there was no ongoing emergency, nor any imminent threat of an emergency, in the PJM region. PJM does not admit to any

⁸ See, e.g., Coalition Complaint at 51-52; EKPC Complaint at 2; CPV Maryland Complaint at 24, 26.

⁹ *Essential Power OPP, LLC v. PJM Interconnection, L.L.C.*, Motion of PJM Interconnection, L.L.C. for Establishment of Settlement Judge Procedures, Docket Nos. EL23-53-000, et al. (Apr. 14, 2023).

¹⁰ *Essential Power OPP, LLC v. PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,163, at P 1, ordering para. (A) (2023).

¹¹ *Essential Power OPP, LLC v. PJM Interconnection, L.L.C.*, Order of Chief Judge Designating Settlement Judge, Docket Nos. EL23-53-000, et al. (June 13, 2023).

¹² *Essential Power OPP, LLC v. PJM Interconnection, L.L.C.*, Order Terminating Settlement Judge Procedures, Docket Nos. EL23-53-000, et al. (Sept. 5, 2023).

violation of the Tariff or any other wrongdoing as part of this Settlement, which releases all claims against PJM arising out of Winter Storm Elliott, except as specified in this Settlement.

**ARTICLE 2
SETTLEMENT EFFECTIVE DATE**

This Settlement shall be effective on (a) the date the Commission issues an order approving this Settlement without modification or condition, or (b) such alternative date that is agreed to by the Settling Parties pursuant to Article 9 in the event this Settlement is not approved or accepted by the Commission without material modification or condition (“Effective Date”). With the exception of Sections 6.1 and 7.1, this Settlement shall bind the Settling Parties as of the Effective Date. Sections 6.1 and 7.1 shall be binding on the Settling Parties as of the date this Settlement is last executed.

**ARTICLE 3
REDUCTION IN ASSESSED NON-PERFORMANCE CHARGES
AND IMPACT ON PERFORMANCE PAYMENTS**

3.1 Reduction in Assessed Non-Performance Charges. PJM will reduce total assessed Non-Performance Charges incurred during PJM’s declared PAIs in connection with the Winter Storm Elliott Event by 31.7 percent (“Settlement Reduction Percentage”). PJM will implement the reduction of assessed Non-Performance Charges by applying the Settlement Reduction Percentage to each Capacity Market Seller’s total assessed Non-Performance Charges to reduce each Capacity Market Seller’s Non-Performance Charges assessment (such reduced amount, a “Settlement Assessment”). Interest associated with Non-Performance Charges for parties that elected to pay Non-Performance Charges over a nine-month period will be calculated on the Settlement Assessment amount and consistent with the methodology in Tariff, Attachment DD, section 10A(j).

3.2 The impact of Section 3.1 on the amount of Performance Payments payable to Market Participants eligible to receive them (“Performance Payment Recipients”) will be reflected in accordance with the provisions of Tariff, Attachment DD, section 10A(g).

3.3 Application of the Settlement Reduction Percentage to the Non-Performance Charges assessed on an individual Capacity Market Seller pursuant to Section 3.1 is conditioned upon such Capacity Market Seller paying or having paid its full Settlement Assessment amount plus applicable interest. If a Capacity Market Seller defaults on, or otherwise fails to pay or have paid, its full Settlement Assessment plus applicable interest (except as otherwise provided in Sections 4.1 and 4.2 of this Settlement), such Capacity Market Seller shall continue to owe to PJM the full Non-Performance Charge amount originally assessed, without application of the Settlement Reduction Percentage.

3.4 Consistent with Section 5.1 below, PJM may invoice true-up amounts to all affected Market Participants in order to apply the Settlement Reduction Percentage to those Capacity Market Sellers that have already paid 100 percent of their originally assessed Non-Performance Charges.

3.5 PJM may address the amounts specified in Section 4.2 and subsection 4.3.1 by holding back those amounts (“Article 4 Holdback”) until the conditions of that section and subsection are met and thereafter returning such amounts as Performance Payments or Non-Performance Charge Refunds, as applicable.

ARTICLE 4 RESOLUTION OF SPECIFIC COMPLAINTS

4.1 Resolution of Docket No. EL23-56-000. In full resolution of the Winter Storm Elliott Complaint in Docket No. EL23-56-000 and any claim that the Settling

Complainant in that docket might make in connection with Non-Performance Charges associated with the Winter Storm Elliott Event, after reducing the assessed Non-Performance charges of Talen Energy Marketing, LLC (“Talen”) in accordance with Section 3.1 and subsection 5.3.1, PJM shall credit Talen in the amount of \$7.5 million.

4.2 Resolution of Docket Nos. EL23-54-000 and EL23-57-000. This section sets forth additional terms for full resolution of any claim that Lee County Generating Station, LLC (“Lee County”) might make in connection with Non-Performance Charges arising from the Winter Storm Elliott Event. After reducing the assessed Non-Performance Charges of Lee County in accordance with Section 3.1 and subsection 5.3.1, PJM shall credit Lee County in the amount of \$4.4 million. In addition, PJM shall be authorized by Commission approval of this Settlement to extend collection of Lee County’s then-remaining unpaid Non-Performance Charges and interest accrued thereon at the rate of 7.5 percent so as not to deplete collateral held by PJM on Lee County’s behalf to support Lee County’s export transactions to customers located in the Midcontinent Independent System Operator, Inc. (“MISO”) region prior to the end of the 2023-2024 Delivery Year.

PJM and Lee County agree that they shall promptly file a request with the Commission to further extend Lee County’s payment obligations under the EL23-57-002 waiver¹³ until the Settlement Effective Date; provided however, that if the Settlement Effective Date has not occurred by June 1, 2024, then PJM shall on June 1, 2024, apply any collateral then held by PJM in support of Lee County’s Non-Performance Charges and MISO export transactions as a credit against Lee County’s Non-Performance Charges and interest accrued thereon.

¹³ See *Essential Power OPP, LLC v. PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,193 (2023).

4.3 Reserved Questions.

4.3.1 Docket No. EL23-63-000. Notwithstanding the provisions in Article 8, the Settling Parties request that the Commission decide the merits of the claims set forth in the complaint filed by Energy Harbor LLC (“Energy Harbor”) in Docket No. EL23-63-000 (the “EL23-63 Complaint”) on the basis of the record as it exists at the time of the filing of this Settlement.

4.3.1.1 For the avoidance of doubt, PJM shall apply the Settlement Reduction Percentage to the Non-Performance Charges assessed to Energy Harbor in connection with the Winter Storm Elliott Event, including the Non-Performance Charges at issue in the EL23-63 Complaint (the total amount of which, including adjustments made after the EL23-63 Complaint was filed, is \$11,019,473.20).

4.3.1.2 The assessed Non-Performance Charges at issue in the EL23-63 Complaint reduced by the Settlement Reduction Percentage are equal to \$7,526,300.20 (“EL23-63 Complaint Claim Amount”). PJM shall hold back the EL23-63 Complaint Claim Amount from distribution as a Performance Payment until the Commission issues an order on the EL23-63 Complaint. PJM shall disburse the EL23-63 Complaint Claim Amount, which shall not be subject to interest charges, in accordance with the Commission’s order on the EL23-63 Complaint in the next monthly billing cycle following the issuance of such order; provided, however, that, if the invoices for the next monthly billing cycle are scheduled to be issued within five (5) days of the date of the Commission’s order, PJM may disburse the

EL23-63 Complaint Claim Amount within two (2) monthly billing cycles following the issuance of such order.

4.3.2. Docket No. EL23-74-000. Notwithstanding the provisions in Article 8, this Settlement preserves East Kentucky Power Cooperative, Inc.’s (“EKPC”) right to pursue its claim requesting modification of the Non-Performance Charge rate and Non-Performance Charge stop loss provisions in the Tariff, beginning in the 2023/2024 Delivery Year, as argued in EKPC’s Winter Storm Elliott Complaint filed in Docket No. EL23-74-000 on May 31, 2023. All other claims and issues contained in EKPC’s Winter Storm Elliott Complaint shall be released upon Commission approval of this Settlement.

**ARTICLE 5
NON-PERFORMANCE CHARGE REFUNDS,
PERFORMANCE PAYMENT REFUNDS, AND REVENUE NEUTRALITY**

5.1 Calculation of Refunds Due. If a Capacity Market Seller’s Settlement Assessment, including, as applicable, the credited amounts set forth in Section 4.1 and Section 4.2, and the EL23-63 Complaint Claim Amount set forth in subsection 4.3.1 (“Article 4 Amounts”), is less than the amount already paid by the Capacity Market Seller to PJM for Non-Performance Charges as of the Effective Date, as defined in Article 2, a refund will be due from PJM to the Capacity Market Seller in the amount of the difference between the Non-Performance Charges the Capacity Market Seller has paid and the Capacity Market Seller’s Settlement Assessment, plus (as applicable) the Article 4 Amounts (a “Non-Performance Charge Refund”). If a Performance Payment Recipient’s Performance Payments received as of the Effective Date are greater than the Performance Payments owed to the Performance Payment Recipient after PJM applies the Settlement Reduction Percentage to determine total Settlement Assessments, credits the Article 4

Amounts, and determines (a) the portion of the total Settlement Assessments owing to the Performance Payment Recipient in accordance with Section 3.2 of this Settlement, and (b) the portion of the Article 4 Amounts attributable to the Performance Payment Recipient (the net of (a) and (b) equals “Settlement Performance Payments”), a refund will be due from the Performance Payment Recipient to PJM in the amount of the difference between the Performance Payments the Performance Payment Recipient has received from PJM as of the Effective Date and the Settlement Performance Payments determined for that Performance Payment Recipient (a “Performance Payment Refund”). For the avoidance of doubt, the Settling Parties agree that there shall be no interest accrued or owed on Non-Performance Charge Refunds or Performance Payment Refunds.

5.2 Revenue Neutrality. Neither PJM nor PJM Settlement, Inc. (“PJM Settlement”) shall pay out or retain (other than the Article 4 Holdback provided for in Section 3.5 or as a holdback based on PJM’s assessment that certain amounts may not be recoverable) more than the total amount of Non-Performance Charges plus any applicable interest that is collected pursuant to (a) this Settlement or (b) any bankruptcy proceeding that determines the amount of Non-Performance Charges an entity subject to Non-Performance Charges must pay, regardless of whether the bankrupt entity is a party to this Settlement.

5.2.1 Only revenues collected from the assessment of Non-Performance Charges and Performance Payment Refunds, less any amounts refunded as Non-Performance Charge Refunds, shall be distributed as Performance Payments, and neither PJM nor PJM Settlement shall be required to distribute to any entity Performance Payments to the extent such distribution would cause total Performance Payments to exceed total Non-Performance Charges collected under

this Settlement. To the extent PJM is required to collect Performance Payment Refunds to implement this Settlement, PJM is responsible for distributing Non-Performance Charge Refunds only from the amounts actually collected by any means, including but not limited to amounts collected by off-set, withholding, application of posted collateral, legal action, or any other means of collection, as Performance Payment Refunds.

5.2.2 Nothing in this Settlement changes the obligations of PJM under the Operating Agreement, including the obligation to pursue collections through such actions as it reasonably deems appropriate, including but not limited to means and methods described in the preceding subsection 5.2.1.¹⁴

5.3 Implementation of this Settlement Agreement.

5.3.1 If the Commission approves this Settlement, PJM shall, by the next monthly invoice that is issued at least sixty (60) days following the Effective Date:

5.3.1.1 Apply and invoice the Settlement's reduction in assessed Non-Performance Charges and corresponding impacts on Performance Payments by (a) invoicing all remaining assessed Non-Performance Charges owed by any Capacity Market Seller that is not eligible to have its Non-Performance Charges reduced by the Settlement Reduction Percentage; (b) applying the Settlement Reduction Percentage to the total amount of assessed Non-Performance Charges owed by eligible Capacity Market Sellers, in accordance with Section 3.1 hereof; and (c) adjusting the interest accrued on Non-Performance Charges to date and reflecting the

¹⁴ See Operating Agreement, Section 15.2.1.

adjustment in the Settlement Assessments, which will include revised interest charges based on the reduced Non-Performance Charges calculated over a six month period and levelized over nine months.

5.3.1.2 Apply and invoice the Article 4 Amounts by (a) reducing the amount owed by the Settling Complainant in Docket No. EL23-56-000 by the amount specified in Section 4.1 of this Settlement; (b) reducing the amount owed by Lee County, a Settling Complainant in Docket Nos. EL23-54-000 and EL23-57 by the amount specified in Section 4.2 of this Settlement; and (c) reducing the Performance Payments owed to Performance Payment Recipients by their Performance Payment megawatt ratio share of the Article 4 Amounts.

5.3.1.3 Implement the Article 4 Holdback.

5.3.1.4 Calculate and invoice the Non-Performance Charges and Performance Payments associated with the Winter Storm Elliott Event based on the net of subsections 5.3.1.1, 5.3.1.2, and 5.3.1.3.

5.3.1.5 Calculate, invoice, and collect or pay, as applicable, Non-Performance Charge Refunds or Performance Payment Refunds as specified in subsections 5.1 and 5.2.

5.3.2 In the event the Commission rejects this Settlement, PJM shall, within thirty-five (35) days following the issuance of the Commission order rejecting this Settlement and for each of the next two (2) monthly invoices following, (a) invoice and collect Non-Performance Charges and interest charges that had been deferred while this Settlement was pending before the Commission, in the same amounts that would have been collected absent such deferral plus

interest accrued at an annual rate of 6.31 percent, and (b) resume distribution of the Performance Payments associated with the deferred Non-Performance Charges.

ARTICLE 6
REVIEW OF CREDIT REQUIREMENTS AND RETURN OF COLLATERAL

6.1 Promptly following the filing of this Settlement with the Commission, PJM shall undertake a re-evaluation, consistent with the Tariff, including Tariff, Attachment Q, of the credit of each Market Participant owing a Non-Performance Charge or Performance Payment Refund in connection with Winter Storm Elliott. This re-evaluation shall take into account the effect of the Settlement Reduction Percentage on amounts owed, among other indicia of creditworthiness. For any Capacity Market Seller that has paid all Non-Performance Charges related to Winter Storm Elliott that have been invoiced as of the date this Settlement is filed, PJM shall return collateral held in connection with Winter Storm Elliott Non-Performance Charges that is: (a) an amount in excess of one-third of the amount that would be due if the Settlement does not become effective so long as such return is consistent with the Tariff, including Tariff, Attachment Q or (b) in some other amount that is consistent with the Tariff, including Tariff, Attachment Q.

ARTICLE 7
NON-PAYMENT AND BANKRUPTCY

7.1 As provided in Section 3.3, if a Capacity Market Seller defaults on, or otherwise fails to pay when due, its full Settlement Assessment plus applicable interest (except as otherwise provided in Sections 4.1 and 4.2 of this Settlement), such Capacity Market Seller shall continue to owe to PJM the full Non-Performance Charge amount originally assessed, without application of the Settlement Reduction Percentage. At any time after the date this Settlement Agreement is filed with the Commission, any Capacity Market Seller that defaults on payment of its assessed Non-Performance Charges or its

Settlement Assessment, or any Market Participant that defaults on payment of its Performance Payment Refunds, including any Capacity Market Seller or Market Participant that fails to pay such amount(s) when due as a result of insolvency or because the Capacity Market Seller or Market Participant has become a debtor in a case under the U.S. Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, shall, as applicable: (a) continue to owe and be required to pay any Non-Performance Charges it was assessed at the full amount, without application of the Settlement Reduction Percentage, less any amount paid prior to default, plus any interest due; or (b) be obligated to remit to PJM the amount of any Performance Payment Refunds invoiced in full, less any amount already remitted to PJM by that Market Participant. Implementation of this Settlement, including this Article 7, shall be effectuated under the terms of the Tariff, including PJM's broad rights of setoff and recoupment under the Tariff and applicable law, and PJM is fully authorized to pursue such rights with respect to Non-Performance Charges and Performance Payment Refunds.

7.2 In any bankruptcy proceeding that includes a debtor that owes Non-Performance Charges or Performance Payment Refunds associated with the Winter Storm Elliott Event, PJM will submit a claim in no amount other than the full Non-Performance Charges assessed to the Capacity Market Seller involved in such bankruptcy proceeding, without application of the Settlement Reduction Percentage, less any amount already paid to PJM by that Capacity Market Seller, or the full Performance Payment Refunds invoiced, less any amount already remitted to PJM by that Market Participant, as applicable, without first seeking Commission approval; provided, however, that nothing herein limits or restricts PJM's ability to enter into offers of compromise or settlement of a claim submitted in such bankruptcy proceeding, to the extent that PJM reasonably deems appropriate.

7.3 This Settlement does not apply to the bankruptcy proceedings initiated prior to the filing date of this Settlement, including those of debtors Lincoln Power, L.L.C, et al., jointly administered under Case No. 23-10382 (Bankr. D. Del.); EFS Parlin Holdings, LLC, Case No. 23-10539 (Bankr. D. Del.); and Heritage Power, LLC, et al., jointly administered under Case No. 23-90032 (Bankr. S.D. Tex.).

**ARTICLE 8
FULL AND FINAL RESOLUTION OF CLAIMS; RELEASES**

8.1 Upon and subject to Commission approval of this Settlement, PJM's satisfaction of all its obligations under this Settlement shall constitute a full and final resolution, and shall trigger the release by all Market Participants, of all claims against PJM and PJM Settlement arising from the Winter Storm Elliott Event, including but not limited to Non-Performance Charges and associated Performance Payments, by any entity, whether such claims are the subject of pending complaints or not, as well as the termination with prejudice of all claims and matters raised in the Winter Storm Elliott Complaints, except as specified in Section 4.3 of this Settlement. For purposes of this Section 8.1, PJM's satisfaction of its obligations under this Settlement is complete upon PJM's issuance of the invoices required by subsection 5.3.1. The resolution and release of claims against PJM and PJM Settlement is applicable to PJM and PJM Settlement only and is contingent upon PJM's satisfaction of all obligations under this Settlement, and this Article 8 does not limit enforcement of the terms of this Settlement or diminish PJM's obligation to diligently pursue collection of amounts owed under this Settlement. Notwithstanding the foregoing, for the avoidance of doubt, this Settlement shall not limit any separate enforcement action against any entity arising from the Winter Storm Elliott Event by the Commission, NERC, or a Regional Entity.

**ARTICLE 9
MODIFICATION OR CONDITION OF SETTLEMENT**

9.1 The terms and conditions of this Settlement are expressly contingent upon approval by the Commission of this Settlement without material modification or condition. If the Commission by order conditions its approval of this Settlement in a material manner or requires material modification to this Settlement, this Settlement shall be deemed withdrawn, shall not be considered to be part of the record in these proceedings, shall not become effective, and shall be null and void, unless the Settling Parties, within ten (10) business days (subject to extension by mutual agreement of all the signatories) of issuance of the Commission order approving this Settlement subject to condition or modification either: (a) accept the Commission's modifications and conditions or (b) agree to modify this Settlement to address or obviate the Commission's concerns. In the event clause (b) of the preceding sentence is applicable, the Effective Date (as defined in Article 2) shall not occur until the Commission has approved this Settlement as so modified.

**ARTICLE 10
MISCELLANEOUS PROVISIONS**

10.1 No Admissions or Precedent. This entire Settlement and the Settling Parties' performance of their obligations hereunder are the result of the settlement and compromise of all the claims and actions expressly addressed in this Settlement, and neither this Settlement nor PJM's or any other Settling Party's performance hereunder shall be deemed to be an admission of any fact or of any liability. This Settlement shall be binding only with respect to the subject matter of this Settlement and shall not bind any Settling Party to apply the principles or provisions of this Settlement to any other agreement, arrangement, or proceeding. This Settlement establishes no principles and no precedent with respect to any issue in the captioned proceedings. The approval of this

Settlement by the Commission shall not in any respect constitute a determination by the Commission as to the merits of any allegation or contention made, or defense asserted, in the Winter Storm Elliott Complaints or made concerning the Winter Storm Elliott Event.

10.2 No Settled Practice. The Settling Parties have entered into this Settlement upon the express understanding that it constitutes a negotiated offer of settlement to resolve the issues presented in the Winter Storm Elliott Complaints. Neither the Settling Parties nor the Commission shall be deemed to have approved, accepted, agreed, or otherwise consented to any ratemaking principle or methodology or to any Tariff interpretation or modification or to any other factor or concept underlying or supposed to underlie any of the matters herein, unless expressly provided in this Settlement. The Commission's approval of this Settlement shall not constitute precedent nor be used to prejudice any otherwise available rights or arguments of any party in a future proceeding (including but not limited to proceedings before the Commission or other regulatory bodies, proceedings in a court, or in PJM stakeholder proceedings), other than to enforce the terms of this Settlement, and shall not be used as evidence that a particular method is a "long standing practice" as that term is used in *Columbia Gas Transmission Corp. v. FERC*, 628 F.2d 578 (D.C. Cir. 1979), or a "settled practice" as that term is used in *Public Service Commission of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980).

10.3 Sections 205 and 206 of the Federal Power Act. Nothing contained in this Settlement shall be construed as affecting the right of any party unilaterally to make an application to the Commission to modify prospectively, in whole or in part, the Tariff

or Operating Agreement pursuant to Federal Power Act sections 205 and 206,¹⁵ or to oppose any filing made or action taken under Federal Power Act sections 205 and 206.

10.4 Standard of Review. The standard of review for any proposed changes to the terms of this Settlement unilaterally sought by a Settling Party shall be the “public interest” standard of review commonly referred to as the “*Mobile Sierra*” standard of review.¹⁶ The standard of review for any modifications to this Settlement proposed by any other person or entity, including any modifications resulting from the Commission acting *sua sponte*, will be the most stringent standard permitted by law.

10.5 Cooperation in Defense of Settlement. Following execution of this Settlement, each Settling Party shall cooperate with and support, and shall not take any action inconsistent with: (a) the filing of this Settlement with the Commission; and (b) efforts to obtain Commission approval or acceptance of this Settlement without modification or condition. Consistent therewith, no Settling Party shall seek rehearing of an order approving or accepting the Settlement without modification or condition. Notwithstanding the foregoing, no Settling Party shall be required to disclose to another Settling Party confidential or privileged information or to make or submit any filing with the Commission in connection with a petition for review of a Commission order other than as specified herein.

10.6 Non-Severability. The various provisions of this Settlement are not severable.

¹⁵ 16 U.S.C. §§ 824d, 824e.

¹⁶ See *NRG Power Mktg., LLC v. Maine Pub. Utils. Comm’n*, 558 U.S. 165 (2010); *Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527 (2008); *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

10.7 Settlement Privilege. The discussions that have produced this Settlement have been conducted on the explicit understanding, pursuant to Rules 602 and 606 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.602 and 385.606, that all settlement communications and discussions shall be privileged and confidential, shall be without prejudice to the position of any party or participant making such communications or participating in any such discussions, and are not to be used in any manner in connection with the captioned proceedings, any proceeding referenced herein, any other proceeding, or otherwise, except to the extent necessary to enforce the terms of this Settlement or to construe the meaning of the terms used herein.

10.8 Abeyance of Certain Winter Storm Elliott Complaints. After the filing of this Settlement, the Settling Parties will file a joint motion with the Commission to hold in abeyance until the Commission issues an order on this Settlement any Winter Storm Elliott Complaint that is not subject to the Commission's statement in its June 5, 2023 order issued in Docket Nos. EL23-53-000, et al., that it will abstain from addressing the merits while settlement negotiations are ongoing.

10.9 Entire Agreement. This Settlement, including any exhibits or attachments, constitutes the entire agreement with regard to the matters addressed in the captioned proceedings and implies no right, duties or other restrictions not expressly set forth herein. No other agreement with regard to these matters shall be binding on the Settling Parties except by written amendment. The terms of this Settlement may only be submitted as an integrated whole, and it is understood that each provision of this Settlement is in consideration and support of all the other provisions, and expressly conditioned upon approval by the Commission as provided for herein. Except for the terms and conditions enumerated herein, the Settling Parties acknowledge and agree that they have not made

any other promises, warranties, or representations to each other regarding any aspect of the resolution of the matters addressed in this Settlement. Each Settling Party acknowledges that it has read this Settlement and executed it without relying upon any other promise, warranty, or representation, written or otherwise, of any other party.

10.10 Waiver. No provision of this Settlement may be waived if such waiver would cause financial injury to any other party to this Settlement, unless the injured party consents in writing.¹⁷ No provision of this Settlement may be waived except through a writing signed by an authorized representative of the waiving party. Waiver of any one provision of this Settlement shall not be deemed to waive any other provision.

10.11 Successors and Assigns. This Settlement is binding upon and for the benefit of the Settling Parties and their successors and assigns.

10.12 Ambiguities Neutrally Construed. This Settlement is the result of negotiations among the Settling Parties and has been reviewed by each Settling Party and its respective counsel. Accordingly, this Settlement shall be deemed to be the product of each Settling Party, and no ambiguity shall be construed in favor of or against any Settling Party.

10.13 Authorizations. Each person executing this Settlement represents and warrants that he or she is duly authorized and empowered to act on behalf of, and to sign for, the Settling Party for whom he or she has signed.

10.14 Requisite Waivers. The Commission's approval of this Settlement shall constitute the requisite grant of any waivers of any regulations as may be necessary to permit the implementation of the provisions of this Settlement by its terms.

¹⁷ See *CPV Fairview, LLC*, 174 FERC ¶ 61,029, at P 12 (2021); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 7 (2016).

10.15 Rules of Construction. Except as otherwise expressly provided for in this Settlement, the rules of interpretation and construction set forth below shall apply to this Settlement:

10.15.1 All defined terms in the singular shall have the same meaning when used in the plural and vice versa;

10.15.2 References to “includes,” “including,” and similar phrases, shall mean “including without limitation.”

10.15.3 Unless otherwise indicated, references to “Sections” or “Articles” refer to sections or articles in this Settlement.

10.16 Headings. The titles and headings of the various sections in this Settlement are for reference purposes only. They are not to be construed or considered in interpreting this Settlement, and they do not qualify, modify, or explain the effects of this Settlement.

10.17 Counterparts. This Settlement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

WHEREFORE, the Settling Parties have caused their duly authorized representatives to execute and attest to this Settlement.

By: /s/ Michael Bryson

Date: September 29, 2023
Michael Bryson
Senior Vice President, Operations
on behalf of
PJM Interconnection, L.L.C.

By: /s/ Debra L. Raggio

Date: September 29, 2023
Debra L. Raggio
Senior Vice President-Regulatory and
External Affairs Counsel
on behalf of Montour, LLC

By: /s/ Debra L. Raggio

Date: September 29, 2023
Debra L. Raggio
Senior Vice President-Regulatory and
External Affairs Counsel
on behalf of Brunner Island, LLC

By: /s/ Debra L. Raggio

Date: September 29, 2023
Debra L. Raggio
Senior Vice President-Regulatory and
External Affairs Counsel
on behalf of H.A. Wagner LLC

By: /s/ Debra L. Raggio

Date: September 29, 2023
Debra L. Raggio
Senior Vice President-Regulatory and
External Affairs Counsel
on behalf of Camden Plant Holding,
L.L.C.

By: /s/ Debra L. Raggio

Date: September 29, 2023
Debra L. Raggio
Senior Vice President-Regulatory and
External Affairs Counsel
on behalf of MC Project Company LLC

By: /s/ Debra L. Raggio

Date: September 29, 2023
Debra L. Raggio
Senior Vice President-Regulatory and
External Affairs Counsel
on behalf of Talen Energy Marketing,
LLC

By: /s/ Brooksany Barrowes

Date: September 29, 2023
Brooksany Barrowes
Attorney at Kirkland & Ellis LLP
on behalf of Ad Hoc Committee of
Certain Noteholders of Talen Energy
Corp.

By: /s/ Kenny Habul

Date: September 29, 2023
Kenny Habul
CEO
on behalf of SunEnergy1, LLC

By: /s/ Charles Davis

Date: September 29, 2023
Charles Davis
President
on behalf of South Field Energy LLC

By: /s/ Scott Harlan

Date: September 29, 2023
Scott Harlan
Authorized Representative
on behalf of Lee County Generation Station, LLC

By: /s/ Thomas P. Miller
Date: September 29, 2023
Thomas P. Miller
President
on behalf of Red Oak Power, LLC

By: /s/ David Freysinger

Date: September 29, 2023
David Freysinger
President
on behalf of GenOn Power Generation,
LLC f/k/a Orion Power Holdings, LLC

By: /s/ George M. Knapp

Date: September 29, 2023
George M. Knapp
Vice President
On behalf of Essential Power OPP, LLC

By: /s/George M. Knapp

Date: September 29, 2023
George M. Knapp
Vice President
On behalf of Essential Power Rock
Springs, LLC

By: /s/George M. Knapp

Date: September 29, 2023
George M. Knapp
Vice President
On behalf of Lakewood Cogeneration,
L.P.

By: /s/ Marjorie Philips

Date: September 29, 2023
Marjorie Philips
SVP, Wholesale Market Policy, LS
Power
on behalf of Aurora Generation, LLC,
LSP University Park, LLC, Rockford
Power, LLC, Rockford Power II, LLC,
and University Park Energy, LLC

By: /s/ Nils Swenson

Date: September 29, 2023
Nils Swenson
General Manager
on behalf of Clean Energy Future -
Lordstown, LLC

By: /s/ Clifford S. Sikora

Date: September 29, 2023
Clifford S. Sikora
General Counsel & Head of Regulatory
Affairs Earthrise Energy, PBC
on behalf of Lincoln Generating Facility,
LLC

By: /s/ William Lee Davis

Date: September 29, 2023
William Lee Davis
Chief Executive Officer
on behalf of Lightstone
Marketing LLC

By: /s/ David Freysinger

Date: September 29, 2023
David Freysinger
President
on behalf of Lanyard Power Holdings,
LLC

By: /s/ Steve Dowdy

Date: September 29, 2023
Steve Dowdy
Vice President
on behalf of Invenergy Nelson LLC

By: /s/ William R. Garth

Date: September 29, 2023
William R. Garth
Authorized Representative
on behalf of Indeck Niles, LLC

By: /s/ Garrick Venteicher

Date: September 29, 2023
Garrick Venteicher
President and Chief Executive Officer
on behalf of Hickory Run Energy, LLC

By: /s/ Jeffrey Delgado

Date: September 29, 2023
Jeffrey Delgado
Managing Director, Lotus Infrastructure,
LLC
on behalf of Garrison Energy Center
LLC, Fairless Energy, L.L.C.,
Vermillion Power, L.L.C., and Hazleton
Generation LLC

By: /s/ Paul Peterson

Date: September 29, 2023
Paul Peterson
President & Chief Executive Officer
on behalf of Elwood Energy, LLC, and
Jackson
Generation, LLC

By: /s/ Daniel E. Frank

Date: September 29, 2023
Daniel E. Frank
Attorney-at-Law
on behalf of East Kentucky Power
Cooperative, Inc.

By: /s/ Jonathan C. Odell

Date: September 29, 2023
Jonathan C. Odell
Senior Vice President and General
Counsel
on behalf of CPV Power Holdings, LP*
By: CPV Group GP LLC, its general
partner

* The CPV entity that is a party to the complaints
in Docket Nos. EL23-55 and EL23-75 is
mistakenly listed as Competitive Power Ventures
Holdings, LP. The correct entity name is CPV
Power Holdings, LP.

By: /s/ Dominic DiBari

Date: September 29, 2023
Dominic DiBari
Asset Manager Representative
on behalf of CPV Maryland, LLC

By: /s/ Rob Berntsen

Date: September 29, 2023
Rob Berntsen
Senior Vice President/General Counsel
on behalf of Cordova Energy
Company

By: /s/ Thad Miller

Date: September 29, 2023
Thad Miller
Chief Legal Officer
on behalf of Calpine Corporation

By: /s/ Mark Kubow

Date: September 29, 2023
Mark Kubow
President
on behalf of Big Sandy Peaker Plant,
LLC

By: /s/ Mark Kubow

Date: September 29, 2023
Mark Kubow
President
on behalf of Wolf Hills Energy, LLC

By: /s/ Daniel R. Revers

Date: September 29, 2023
Daniel R. Revers
President
on behalf of Parkway Generation
Operating LLC

By: /s/ Daniel R. Revers

Date: September 29, 2023
Daniel R. Revers
President
on behalf of Parkway Generating Keys
Energy Center LLC

By: /s/ Daniel R. Revers

Date: September 29, 2023
Daniel R. Revers
President
on behalf of Parkway Generation
Sewaren Urban Renewal
Entity LLC

By: /s/ Sandra Rizzo

Date: September 29, 2023
Sandra Rizzo
Arnold & Porter
On behalf of the Vitol Parties (Vitol Inc.,
Vitoal PA Wind Marketing LLC, Vitol
Solar I LLC, and Vitol Wind I LLC)

By: /s/ Glen Thomas

Date: September 29, 2023
Glen Thomas
President
on behalf of The PJM Power Provides
Group (P3)

By: /s/ Robert Weishaar

Date: September 28, 2023
Robert A. Weishaar
Counsel
on behalf of PJM Industrial Customer
Coalition

By: /s/ Brett White

Date: September 29, 2023
Brett White
Vice President, Regulatory Affairs
on behalf of Pine Gate Renewables, LLC

By: /s/ Neil Levy

Date: September 29, 2023
Neil L. Levy
Partner, McDermott Will & Emery LLP
on behalf of REV Renewables, LLC

By: /s/ Rick C. Giannantonio

Date: September 29, 2023
Rick C. Giannantonio
General Counsel
on behalf of Energy Harbor LLC

By: /s/ Joe Hall

Date: September 29, 2023
Joseph C. Hall
Partner, Eversheds-Sutherland (US),
LLP
on behalf of Shell Energy North
America (US), L.P.

By: /s/ Mark A. MacDougall

Date: September 29, 2023
Mark A. MacDougall
Senior Vice President External Affairs
and General Counsel
on behalf of Southern Maryland Electric
Cooperative, Inc.

By: /s/ Abhishek Josh Ghosh

Abhishek Josh Ghosh
Associate Director
on behalf of Cypress Creek Renewables,
LLC

By: /s/ David O. Dardis

Date: September 29, 2023
David O. Dardis
Executive Vice President and Chief
Legal Office
on behalf of Constellation Energy
Generation, LLC

By: /s/ Lisa G. McAlister

Date: September 29, 2023
Lisa G. McAlister
Senior Vice President & General
Counsel for Regulatory Affairs
Gerit F. Hull
Deputy General Counsel for
Regulatory Affairs
American Municipal Power, Inc.
1111 Schrock Road, Suite 100
Columbus, OH 43229
(614) 540-1111
lmcAlister@amppartners.org
ghull@amppartners.org

By: /s/ William A. Wexler

Date: September 29, 2023
William A. Wexler
Chief Executive Officer
on behalf of Homer City Generation, L.P.

By: /s/ Randall Osteen

Date: September 29, 2023
Randall Osteen
General Counsel
on behalf of Forked River Power LLC

By: /s/ Brian E. Curci

Date: September 29, 2023
Brian E. Curci
Executive Vice President and General
Counsel
Counsel for Midwest Generation LLC

By: /s/ Brian E. Curci
Date: September 29, 2023
Brian E. Curci
Executive Vice President and General
Counsel
Counsel for NRG Energy, Inc.

By: /s/ Scott Harlan
Date: September 29, 2023
Scott Harlan
Authorized Representative
on behalf of Tait Electric Generating Station,
LLC

By: /s/ Patrick O'Loughlin
Date: September 29, 2023
Patrick O'Loughlin
President and CEO
on behalf of Buckeye Power, Inc.

By: /s/ Scott Harlan
Date: September 29, 2023
Scott Harlan
Authorized Representative
on behalf of Yankee Street, LLC

By: s/ Troy Fodor
Date: September 29, 2023
Troy Fodor
Vice President & General Counsel
on behalf of Illinois Municipal Electric
Agency

By: /s/ Scott Harlan
Date: September 29, 2023
Scott Harlan
Authorized Representative
on behalf of Montpelier Generating Station,
LLC

By: /s/ James B. Blackburn
Date: September 29, 2023
James B. Blackburn
Latham & Watkins LLP
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004
202.637.2200
Counsel for Harts Mill Solar, LLC

By: /s/ Scott Harlan
Date: September 29, 2023
Scott Harlan
Authorized Representative
on behalf of O. H. Hutchings CT, LLC

By: /s/ Sherri Li
Date: September 29, 2023
Sherri Li
Vice President & Assistant Secretary
on behalf of Harts Mill Solar, LLC

By: /s/ Scott Harlan
Date: September 29, 2023
Scott Harlan
Authorized Representative
on behalf of Monument Generating Station,
LLC

By: /s/ Scott Harlan

Date: September 29, 2023
Scott Harlan
Authorized Representative
on behalf of Sidney, LLC

By: /s/ Scott Harlan

Date: September 29, 2023
Scott Harlan
Authorized Representative
on behalf of Eagle Point Power Generation,
LLC

By: /s/ Thomas L. Rudebusch

Date: September 29, 2023
Thomas L. Rudebusch
Attorney
on behalf of Delaware Municipal Electric Corporation,
Inc.

By: /s/ David Carroll

Date: September 29, 2023
David Carroll
President, ENGIE North America Inc.
on behalf of
Bluestone Farm Solar, LLC; ENGIE Solidago Solar LLC;
Hawtree Creek Farm Solar, LLC; Powells Creek Farm Solar,
LLC; Salt City Solar LLC; Sunnybrook Farm Solar, LLC;
Whitehorn Solar LLC

EXHIBIT A
SETTLING PARTIES

SETTLING PARTIES

PJM Interconnection, L.L.C.

SETTLING PARTIES - COMPLAINANTS

Ad Hoc Committee of Certain Noteholders of Talen Energy Corp.*
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 Power Holdings, LP¹⁸*
East Kentucky Power Cooperative, Inc.
Elwood Energy LLC
Energy Harbor 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*

¹⁸ The CPV entity that is a party to the complaints in Docket Nos. EL23-55 and EL23-75 is mistakenly listed as Competitive Power Ventures Holdings, LP in those dockets. The correct entity name is CPV Power Holdings, LP.

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.

SETTLING PARTIES - INTERVENORS

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
ENGIE Solidago Solar, LLC
Fairless Energy, L.L.C.
Forked River Power LLC
Garrison Energy Center LLC
Harts Mill Solar, LLC
Hawtree Creek Farm Solar, LLC
Hazleton Generation LLC
Homer City Generation, L.P.
Illinois Municipal Electric Agency
Indeck Niles, LLC
LS Power Development, 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
Pine Gate Renewables, LLC
PJM Industrial Customer Coalition
PJM Power Providers Group (P3)
Powells Creek Farm Solar, LLC
REV Renewables, LLC
Salt City Solar LLC
Shell Energy North America (US), L.P.
Sidney, LLC
Southern Maryland Electric Cooperative, Inc.
Sunnybrook Farm Solar, LLC
Tait Electric Generating Station, LLC
Vermillion Power, L.L.C.
Vitol Inc.
Vitol PA Wind Marketing LLC
Vitol Solar I LLC
Vitol Wind I LLC
Whitehorn Solar LLC
Wolf Hills Energy, LLC
Yankee Street, LLC

EXHIBIT B

NON-OPPOSING PARTIES

NON-OPPOSING PARTIES - COMPLAINANTS

Old Dominion Electric Cooperative

NON-OPPOSING PARTIES - INTERVENORS

AES Clean Energy Development, LLC
American Electric Power Service Corporation
Avangrid Renewables
Blooming Grove Wind Energy Center LLC
Boston Energy Trading and Marketing LLC
Dominion Energy Services
Duke Energy Business Services LLC; Duke Energy Ohio, Inc.; and Duke Energy
Kentucky, Inc.
EDP Renewables North America LLC
Leeward Renewable Energy, LLC
Marcus Hook Energy, L.P.
Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for
PJM Interconnection, L.L.C.
Northern Virginia Electric Cooperative
Onward Energy
RWE Clean Energy Wholesale Services, Inc.
Solar Energy Industries Association
Tenaska, Inc.
Vistra Corporation

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

Essential Power OPP, LLC, <i>et al.</i>)	
v.	)	Docket No. EL23-53-000
PJM Interconnection, L.L.C.)	
Aurora Generation, LLC, <i>et al.</i>)	
v.	)	Docket No. EL23-54-000
PJM Interconnection, L.L.C.)	
Coalition of PJM Capacity Resources)	
v.	)	Docket No. EL23-55-000
PJM Interconnection, L.L.C.)	
Talen Energy Marketing, LLC)	
v.	)	Docket No. EL23-56-000
PJM Interconnection, L.L.C.)	
Lee County Generating Station, LLC)	
v.	)	Docket No. EL23-57-000
PJM Interconnection, L.L.C.)	
SunEnergy1, LLC)	
v.	)	Docket No. EL23-58-000
PJM Interconnection, L.L.C.)	
Lincoln Generating Facility, LLC)	
v.	)	Docket No. EL23-59-000
PJM Interconnection, L.L.C.)	
Parkway Generating Keys Energy Center LLC)	
v.	)	Docket No. EL23-60-000
PJM Interconnection, L.L.C.)	
Old Dominion Electric Cooperative)	
v.	)	Docket No. EL23-61-000
PJM Interconnection, L.L.C.)	
Energy Harbor LLC)	
v.	)	Docket No. EL23-63-000
PJM Interconnection, L.L.C.)	

Calpine Corporation)	
v.	)	Docket No. EL23-66-000
PJM Interconnection, L.L.C.)	
Invenergy Nelson LLC)	
v.	)	Docket No. EL23-67-000
PJM Interconnection, L.L.C.)	
East Kentucky Power Cooperative, Inc.)	
v.	)	Docket No. EL23-74-000
PJM Interconnection, L.L.C.)	
CPV Maryland, LLC, and Competitive Power Ventures Holdings, LP)	
v.	)	Docket No. EL23-75-000
PJM Interconnection, L.L.C.)	
Parkway Generation Operating LLC, Parkway Generation Sewaren Urban Renewal Entity LLC)	
v.	)	Docket No. EL23-77-000
PJM Interconnection, L.L.C.	)	(Not Consolidated)
PJM Interconnection, L.L.C.	)	Docket No. ER23-_____

**OFFER OF SETTLEMENT AND EXPLANATORY STATEMENT OF PJM
INTERCONNECTION, L.L.C. AND THE SETTLING PARTIES**

Pursuant to Rule 602 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure,¹ PJM Interconnection, L.L.C. (“PJM”) submits this Explanatory Statement to the accompanying Offer of Settlement (“Settlement”). The Settlement is joined by 81 Settling Complainants and Settling Intervenors listed in Exhibit A to the Settlement (collectively with PJM, the “Settling Parties” and each a “Settling Party”). Except as specified below, the Settlement resolves all outstanding issues in Docket Nos. EL23-53-000, EL23-54-000, EL23-55-000, EL23-56-000, EL23-57-000, EL23-58-000, EL23-59-000, EL23-60-000, EL23-61-000, EL23-63-000, EL23-66-000, EL23-67-000, EL23-74-000, EL23-75-000, and

¹ 18 C.F.R. § 385.602 (2023).

EL23-77-000 (collectively, the “Winter Storm Elliott Complaints”). The Non-Opposing Complainant and the Non-Opposing Intervenors who have confirmed they neither join nor oppose the Settlement are listed in Exhibit B to the Settlement.

This Settlement resolves all allegations lodged before the Commission in the Winter Storm Elliott Complaints against PJM, including but not limited to allegations that PJM erroneously declared and maintained Emergency Actions² because there was neither an ongoing emergency, nor any imminent threat of an emergency, in the PJM region. PJM does not admit to any violation of the PJM Tariff or any other wrongdoing as part of this Settlement, which releases all claims against PJM arising out of Winter Storm Elliott, except as specified below. The Settlement does not propose any modification to the Tariff. It resolves the Winter Storm Elliott Complaints on a purely financial, negotiated basis by applying a 31.7% reduction in the total Non-Performance Charges (“NPCs”) assessed on all Capacity Market Sellers, with certain limited exceptions, and preserves two discrete questions for Commission decision. This approach reflects the Settling Parties’ estimate of the burdens of litigation and benefits of repose, based on the totality of the circumstances.

As explained below, the Commission may approve this Settlement if it finds that it has jurisdiction to adjudicate the Winter Storm Elliott Complaints and that the Settlement package as a whole presents a just, reasonable, and nondiscriminatory result based on the Settling Parties voluntary, arm’s-length negotiations with one another.³ The Commission’s *Trailblazer*⁴

² Unless otherwise indicated, capitalized terms in this Explanatory Statement have the meanings set forth in the Settlement, the PJM Open Access Transmission Tariff (“Tariff”), or PJM Operating Agreement.

³ See 18 C.F.R. § 385.602(h). The Commission’s authority to approve contested settlements as a just and reasonable resolution of disputes is well-settled. See, e.g., *NRG Power Mktg., LLC v. Me. Pub. Utils. Comm’n*, 558 U.S. 165 (2010); *Mobil Oil Corp. v. FPC*, 417 U.S. 283, 313-14 (1974) (recognizing that the Commission may accept contested settlements where

precedent establishes the framework for approving a settlement that some parties may contest (“Contesting Parties”).

The Settling Parties respectfully request that the Commission approve the Settlement without modification or condition no later than December 29, 2023. Timely commercial certainty is a core objective of the Settlement and that objective would be significantly undermined if the Commission does not approve the Settlement by the end of this calendar year. An order from the Commission will also provide an important foundation for PJM and its stakeholders to reallocate their resources toward other matters, including reforms based on the lessons learned from the Winter Storm Elliott Event.

This Explanatory Statement summarizes the Settlement and does not alter any provision of the Settlement. To the extent any language in this Explanatory Statement differs from language in the Settlement, the Settlement controls.

I. BACKGROUND

A. The Winter Storm Elliott Event and Its Effects

Winter Storm Elliott was an extraordinary event that presented substantial performance challenges for many PJM generators and operational challenges for PJM. Notwithstanding these exceptional challenges, PJM maintained reliability throughout the PJM region, did not shed load, and helped prevent or mitigate load shedding in neighboring balancing areas. To maintain

there is a “lack of unanimity”) (citing *Placid Oil Co. v. FPC*, 483 F.2d 880, 893 (5th Cir. 1973)); *Cities of Lexington v. FPC*, 295 F.2d 109, 121 (4th Cir. 1961).

⁴ *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345, at 62,339 (1998) (*Trailblazer I*), order on reh’g, 87 FERC ¶ 61,110 (*Trailblazer II*), reh’g denied, 88 FERC ¶ 61,168 (1999); see, e.g., *PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,168, at P 38 (2018), reh’g denied, 169 FERC ¶ 61,238 (2019), reh’g dismissed, 171 FERC ¶ 61,161 (2020), rev’d in part & remanded sub nom. *Long Island Power Auth. v. FERC*, 27 F.4th 705 (D.C. Cir. 2022), order on remand, *PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,064 (2023).

reliability, PJM initiated Emergency Actions from 17:30 through 23:00 on December 23, 2022, and from 04:25 through 22:00 on December 24, 2022 (the “Winter Storm Elliott Event”).

Under PJM’s Capacity Performance construct, the financial consequences for Capacity Market Sellers that underperformed their capacity commitment during Winter Storm Elliott are significant.⁵ The financial consequences for Market Participants that did not clear the capacity market or receive capacity revenues in the first instance, yet provided PJM with critical supply when needed and are thus eligible for Performance Payments, are also significant. The NPCs assessed for Performance Assessment Intervals (“PAIs”) during the Winter Storm Elliott Event are extremely large—ultimately totaling nearly \$1.8 billion following PJM’s initial post-event analysis and excusal of certain non-performance under Tariff Attachment DD.⁶ These financial consequences were far more significant than any resulting from historical events.⁷ Several

⁵ See *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (Capacity Performance Order), *order denying clarification, granting reh’g in part, granting complaint in part & directing compliance filing*, 152 FERC ¶ 61,064 (2015) (“July 22 Order”), *order on reh’g & compliance*, 155 FERC ¶ 61,157 (2016) (Capacity Performance Rehearing and Compliance Order), *order on reh’g & compliance*, 155 FERC ¶ 61,260 (2016), *pet’n for rev. denied sub nom. Advanced Energy Mgmt. Alliance v. FERC*, 860 F.3d 656 (D.C. Cir. 2017), *order on compliance*, Docket No. ER15-623-009 (delegated letter order issued Oct. 11, 2017), *order denying reh’g*, 162 FERC ¶ 61,047 (2018) (collectively, the “Capacity Performance Orders”).

⁶ See PJM Interconnection, L.L.C., Winter Storm Elliott, Event Analysis and Recommendation Report (July 17, 2023), <https://pjm.com/-/media/library/reports-notices/special-reports/2023/20230717-winter-storm-elliott-event-analysis-and-recommendation-report.ashx>; PJM Tariff, Attach. DD, § 10A(c)-(d) (describing review process).

⁷ The first PAI event that resulted in NPCs occurred in October 2019, resulting in a total NPCs of \$8.2 million dollars assessed across 53 resources. The next event occurred from June 14-16, 2022 and resulted in NPCs totaling \$1.1 million dollars. PAIs occurred in October of 2022, but no NPC figures have been posted. See PJM Market Implementation Committee, *PAI Settlements*, at 11 (Mar. 2022), at <https://www.pjm.com/-/media/committees-groups/committees/mic/2020/20200415/20200415-item-08b-performance-assessment-event-settlement-paper-october-2019.ashx>; Monitoring Analytics, LLC, *State of the Market Report for PJM (Q3 2022)*, at 404 (Nov. 10, 2022), https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2022/2022q3-som-pjm.pdf. A month before Winter Storm Elliott occurred, the D.C. Circuit held oral argument on review of Commission orders that significantly reduced the expected number of PAIs upon which capacity offers are based because PJM had not

commenters have observed that the magnitude of these charges has diminished investors' confidence in the PJM capacity market,⁸ thus threatening the ability of the PJM market to attract and retain necessary capital to support resources needed to serve load.⁹

B. The Winter Storm Elliott Complaints

During the second quarter of 2023, Capacity Market Sellers filed fifteen complaints seeking financial relief from the NPCs assessed by PJM during the Winter Storm Elliott Event. Many Complainants contend that the magnitude of NPCs assessed by PJM during Winter Storm Elliott resulted from operational decisions by PJM that misinterpreted or misapplied PJM's Tariff and Manuals, including specifically PJM's declaration and maintenance of certain

experienced a significant capacity emergency since the Polar Vortex in 2014. *See Indep. Mkt. Monitor for PJM v. PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,137 (2021), *order on reh'g*, 178 FERC ¶ 61,121 (2022), *aff'd sub nom. Vistra Corp. v. FERC*, No. 21-1214, 2023 WL 5209555, at *6 (D.C. Cir. Aug. 15, 2023) (“In March 2021, the Commission agreed 360 PAI was ‘no longer just and reasonable for PJM to use’ because the record showed much lower PAI year after year.”).

⁸ The impact on investor confidence was described in the Commission's PJM Capacity Market Forum held on June 15, 2023. *See, e.g., PJM Capacity Market Forum Technical Conference*, Docket No. AD23-7-000, Tr. at 16:12-13 (June 15, 2023) (Manu Asthana, President and CEO, PJM Interconnection, L.L.C.) (“[F]rankly, policy choices are chilling investment in new dispatchable generation, and that's not just in PJM. In fact, none of these trends are just in PJM.”); *id.* at 71:15-22 (Marji Philips, Senior Vice President, Wholesale Market Policy, LS Power) (“At PJM we're . . . hanging on, but we're starving, and all it takes is a storm Elliott, where the capacity revenues are such a mismatch with what our exposure is, what we can offer into the market that if any of us have a catastrophic failure we're not going to invest, and that's where you're going to see the retirements.”); *id.* at 82:10-83:7 (Glen Thomas, President, PJM Power Providers Group) (discussing various reasons, including market uncertainty, that PJM is “struggling” with its “ability to attract merchant capital”); Post-Technical Conference Comments of Citadel Advisors LLC, Docket No. AD23-7-000, at 1 (Aug. 14, 2023) (arguing that recent extreme weather events demonstrate that a “one-size-fits-all” approach to non-performance in PJM has “disproportionately severe effects that can destabilize markets, drive power generators into distress, and disincentivize investment because they fail to account for the absolute impossibility of performance under specific weather, technical, or market circumstances”).

⁹ In recognition of these market impacts, PJM proposed and the Commission accepted prospective modifications to the Capacity Performance rules to clearly specify, and thus limit, the reserve conditions under which NPCs will be assessed effective July 30, 2023. *See PJM Interconnection L.L.C.*, 184 FERC ¶ 61,058 (2023) (*PAI Trigger Order*).

Emergency Actions. Several complaints broadly invoked Federal Power Act (“FPA”) section 206¹⁰ with respect to all similarly situated Capacity Market Sellers facing NPCs.¹¹ Other complaints focused on unit-specific issues. PJM contends that it took lawful and appropriate actions during the Winter Storm Elliott Event to preserve system reliability in accordance with Good Utility Practice and with PJM’s obligations under the PJM Tariff, PJM Operating Agreement, PJM Manuals, and North American Electric Reliability Corporation (“NERC”) reliability standards. Various intervenors agreed, including those eligible for Performance Payments and subject to Non-Performance Charges.

The Winter Storm Elliott Complaints present the Commission with a wide variety of market-wide and unit-specific legal and equitable arguments that claim Capacity Market Sellers should be collectively or individually relieved, in whole or in part, from NPCs assessed during the Winter Storm Elliott Event. For example, some complaints argue that Capacity Market Sellers should be universally excused from NPCs during any period when PJM made exports to neighboring systems,¹² or collectively excused if transmission congestion would have prevented non-operating units from delivering energy to other regions within PJM,¹³ or broadly mitigated

¹⁰ 16 U.S.C. § 824e.

¹¹ *See, e.g.*, Coalition of PJM Capacity Resources, Complaint of the Coalition of PJM Capacity Resources, Docket No. EL23-55-000, at 51-52 (Apr. 4, 2023) (“Coalition Complaint”); East Kentucky Power Coop., Inc., Complaint of East Kentucky Power Coop., Inc., Docket No. EL23-74-000, at 2 (May 31, 2023); CPV Maryland, LLC and Competitive Power Ventures Holdings, L.P., Complaint, Docket No. EL23-75-000, at 24, 26 (June 7, 2023).

¹² *See, e.g.*, Essential Power OPP, LLC, *et al.*, Complaint of Nautilus Entities, Docket No. EL23-53-000, at 42-45 (Mar. 30, 2023) (“Nautilus Complaint”); Aurora Generation, LLC *et al.*, Complaint Requesting Fast Track Processing and Shortened Answer Period and Request for Interim Order Suspending Billing and Payment Provisions, Docket No. EL23-54-000, at 21-30 (Apr. 4, 2023) (“ComEd Zone Complaint”); Coalition Complaint at 30.

¹³ *See, e.g.*, ComEd Zone Complaint at 28, 33; Essential Power OPP, LLC *et al.*, Supplemental Complaint of Nautilus Entities, Docket No. EL23-53-000, at 7-9 (June 23, 2023) (“Nautilus Supplemental Complaint”).

based on asserted deficiencies in weather or load forecasts.¹⁴ Other parties argue that the charges assessed against specific resources should be excused because of an inability to purchase fuel,¹⁵ or because of a miscommunication or misunderstanding about a specific resource's operating parameters or availability for dispatch,¹⁶ or due to the accounting applied to a resource's capacity obligation.¹⁷ Many of the Winter Storm Elliott Complaints, PJM's answers to those Complaints, and the pleadings filed by several intervenors to the Winter Storm Elliott Complaints were supported by affidavits.

PJM, Complainants, and other Capacity Market Sellers and Market Participants each face individualized litigation risk and associated litigation burdens. Complicating the parties' analysis, many Capacity Market Sellers have both been assessed NPCs and are also eligible to receive a share of Performance Payments, which cannot exceed the amount of NPCs that PJM collects.¹⁸ Furthermore, NPC assessments are not uniform across all Winter Storm Elliott Event PAIs, but instead vary significantly with each Capacity Market Seller's level of underperformance during specific PAIs. Market Participants must also consider the risk of non-payment of NPCs, or non-refund of Performance Payments, by certain financially distressed parties.

¹⁴ *See, e.g.*, Nautilus Complaint at 38-41; Coalition Complaint at 45.

¹⁵ *See, e.g.*, Nautilus Complaint at 23-28.

¹⁶ *See, e.g.*, Talen Energy Marketing, LLC, Complaint of Talen Energy Marketing, LLC, Docket No. EL23-56-000, at 15-18 (Apr. 5, 2023).

¹⁷ *See, e.g.*, Energy Harbor LLC, Complaint of Energy Harbor LLC Against PJM Interconnection, L.L.C., Docket No. EL23-63-000 at 16-18 (Apr. 27, 2023); Parkway Generation Operating LLC and Parkway Generation Sewaren Urban Renewal Entity LLC, Complaint of Parkway Generation Operating LLC and Parkway Generation Sewaren Urban Renewal Entity LLC, Docket No. EL23-77-000, at 14 (June 16, 2023).

¹⁸ *See* PJM Tariff, Attach. DD, § 10A(g).

Moreover, litigation would likely be extremely complex and protracted, involving more than a dozen complaints and potentially scores of active parties, extending for years.¹⁹ Settlement allows Market Participants to achieve financial certainty at a known and almost universally-supported level in the near term. This Settlement reflects an arm’s-length negotiated

¹⁹ Several FERC proceedings—the California refund case, PJM’s Opinion No. 494 litigation, and the SECA proceeding—which share similar characteristics to the litigation at issue here in terms of complexity, number of affected participants, and dollars at issue, have extended for many years. See, e.g., *Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308 (2005), *reh’g denied*, 115 FERC ¶ 61,156, *initial decision sub nom. PJM Interconnection, L.L.C.*, 116 FERC ¶ 63,007 (2006) (addressing cost allocations of new transmission facilities), *rev’d in part*, 119 FERC ¶ 61,063 (2007), *reh’g denied*, 122 FERC P 61,082 (2008), *pet’n for rev. denied in part sub nom. Ill. Commerce Comm’n v. FERC*, 576 F.3d 470 (7th Cir. 2009), *order on remand, PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230 (2012), *reh’g denied*, 142 FERC ¶ 61,216 (2013), *granting pet’ns for rev. sub nom. Ill. Commerce Comm’n v. FERC*, 756 F.3d 556 (7th Cir. 2014), *order on contested settlement, PJM Interconnection*, 163 FERC ¶ 61,168, *reh’g denied*, 169 FERC ¶ 61,238, *reh’g dismissed*, 171 FERC ¶ 61,161, *rev’d in part and remanded sub nom. Long Island Power Auth.*, 27 F.4th 705, *order on remand, PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,064; *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168 (2004), *clarified at* 111 FERC ¶ 61,409 (2005) (*Clarified Order*), *initial decision*, 116 FERC ¶ 63,030 (2006) (addressing Seams Elimination Cost/Charge Adjustment/Assignment (SECA) charges), *aff’d on reh’g in part, rev’d in part*, 131 FERC ¶ 61,173 (2010) (*Order on Initial Decision*), *reh’g of Clarified Order denied*, 131 FERC ¶ 61,174 (2010), *reh’g of Order on Initial Decision denied*, 136 FERC ¶ 61,244 (2011), *pet’n for rev. denied in part, dismissed in part sub nom. Constellation Energy Commodities Grp., Inc. v. FERC*, 602 F. App’x 536 (D.C. Cir. 2015); *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,251 (addressing “hold harmless” requirements for loop flows and congestion), *order on reh’gs*, 108 FERC 61,143, *reh’g denied*, 109 FERC P 61,166, *order approving contested settlement sub nom. PJM Interconnection, L.L.C.*, 109 FERC ¶ 61,228 (2004), *order approving uncontested settlements*, 110 FERC ¶ 61,015 (2005); *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Serv. Into Mkts. Operated by the Cal. Indep. Sys. Operator & the Cal. Power Exch.*, 95 FERC ¶ 61,115, *granting reh’g in part*, 95 FERC ¶ 61,418, *granting reh’g in part*, 97 FERC ¶ 61,275 (2001), *pet’n for rev. granted sub nom. Bonneville Power Admin. v. FERC*, 422 F.3d 908 (9th Cir. 2005), *remanded sub nom. San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Serv. Into Mkts. Operated by the Cal. Indep. Sys. Operator & the Cal. Power Exch.*, 121 FERC ¶ 61,067 (Remand Order), *clarified*, 121 FERC ¶ 61,188 (2007) (Clarification Order), *reh’g Remand Order in part*, 125 FERC ¶ 61,214 (2008), *reh’g of Clarification Order denied*, 127 FERC ¶ 61,191 (2009), *reh’g of Remand Order denied*, 138 FERC ¶ 61,091 (2012), *pet’n for rev. of Remand Order denied sub nom., City of Redding v. FERC*, 693 F.3d 828 (9th Cir. 2012), *initial decision on remand, San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Serv. Into Mkts. Operated by the Cal. Indep. Sys. Operator & the Cal. Power Exch.*, 142 FERC ¶ 63,011 (2013), *aff’d in part & vacated in part*, 149 FERC ¶ 61,116 (2014), *pet’n for rev. denied sub nom. Exelon Generation Co., LLC v. FERC*, 657 F. App’x 672 (9th Cir. 2016).

resolution that will provide certainty to the market as a whole and avoid the burdens and risks of administrative litigation. It enjoys broad support among PJM and Market Participants of all types.

C. Alternative Benchmarks to Evaluate the Zone of Reasonableness for Settlement

Participants in the settlement proceedings established by the Commission entered negotiations with the intent to avoid individualized settlement agreements and to achieve broad agreement on a principled, transparent, and non-discriminatory basis.

An important threshold question is whether settlement should be based on an interval-by-interval analysis premised on the various theories presented by the Winter Storm Elliott Complaints, or instead should uniformly reduce NPCs across the entire Winter Storm Elliott Event. The interval-by-interval approach presents three disadvantages. First, the net position of Market Participants often varies significantly depending upon which PAIs would be eliminated, changing net Performance Payment recipients into net NPC payors, and vice versa. Second, an interval-by-interval approach may not appropriately reward Market Participants who performed during certain portions of the Winter Storm Elliott Event in response to PJM's Emergency Actions—whether by bringing other generation units on line, procuring scarce gas, returning to service units that had been out of service or offline, or by scheduling power imports. Third, an interval-by-interval approach would require negotiation of the merits of each individual Winter Storm Elliott Complaint, making settlement much more complex. Accordingly, to avoid litigating individual resource performance on a PAI-by-PAI basis for each party across 277 PAIs, the parties have agreed on a settlement package that broadly resolves the Winter Storm Elliott Complaints through a market-wide reduction of NPCs assessed on Market Participants.

Although the Settling Parties have agreed to a market-wide uniform NPC reduction, hypothetical interval-based methodologies for reducing NPC assessments confirm the reasonableness of the proposed market-wide reduction. These interval-based methodologies are based on Complainants' arguments that their generation was not actually needed under PJM Tariff Attachment DD, section 10A, and therefore the associated NPCs cannot be sustained, because (1) PJM's real-time emergency action decisions were not necessary to preserve reliability during a significant portion of the Winter Storm Elliott Event and thus not consistent with the Tariff and other governing documents, and (2) such decisions significantly increased the financial consequences on underperforming Capacity Market Sellers.²⁰

One potential interval-based approach reflects the concern that Capacity Market Sellers should not be assessed NPCs when PJM exported power to neighboring Balancing Authorities in certain circumstances. For example, one approach would reduce NPCs when PJM made non-firm exports to neighboring Balancing Authorities unless the non-firm exports were emergency exports. That approach would eliminate 58.3% of assessed NPCs.

A second potential interval-based approach would focus on the theory that there should have been an earlier termination point for the Emergency Actions in PJM. Proponents of this theory argue that emergency conditions in PJM ended when PJM had adequate reserves to meet its Extended Primary Reserve Requirement at 12:10 on December 24, notwithstanding the existence of other emergency indicators and the need to prepare for the evening peak. That would reduce total assessed NPCs by 37.3%. Another variant of this event-shortening approach

²⁰ See, e.g., Nautilus Complaint at 44, 49-50, 52 (arguing the units were not needed because of congestion and the quantity of Synchronized and Thirty-Minute Reserves in the system); *id.* at 42-45 (arguing that units were not needed if PJM was making exports); Coalition Complaint at 30 (same); ComEd Zone Complaint at 21-30 (same); *id.* at 28, 33 (arguing that units were not needed due to transmission congestion); Nautilus Supplemental Complaint at 7-9 (same).

would point to termination of PJM's Voltage Reduction Warning²¹ at 18:15 on December 24 or the termination of its Voltage Reduction Alert²² at 18:34 on December 24, which would reduce NPCs by 13.1% or 11.8%, respectively. Alternatively, another approach would point to 13:00 on December 24, 2022, when PJM ceased making emergency exports to neighboring Balancing Authorities, indicating that the Eastern Interconnection had begun to stabilize. Excusing non-performance from that point forward would result in a 33.8% reduction in total assessed NPCs.

A third potential methodology would treat the new PAI framework accepted by the Commission in Docket No. ER23-1996-000²³ as the basis for what would have been reasonable for PJM to do during Winter Storm Elliott. This approach would reduce NPCs assessed for all PAIs during the Winter Storm Elliott Event by approximately 71% under the Primary Reserve Requirement accepted by the Commission, or by approximately 44% under the Extended Primary Reserve Requirement preferred by PJM in that docket.

Of course, none of these theories is assured of success on the merits if they were litigated. Each faces litigation risk, including that there would be no reduction in NPCs if certain defenses prevailed. For example, regarding the first approach, PJM could argue (among other things), and the Commission or a reviewing court could find, that PJM has an affirmative duty under its Tariff, Operating Agreement, NERC reliability standards, and PJM Manuals to support neighboring Balancing Authorities that have been forced to shed firm load to the extent PJM is

²¹ A Voltage Reduction Warning occurs when actual Synchronized or Spinning Reserves are less than the Synchronized (or Spinning) Reserve requirement.

²² A Voltage Reduction Alert occurs when operating reserves are less than the Synchronized (or Spinning) Reserve requirement.

²³ See *PAI Trigger Order*, 184 FERC ¶ 61,058 at PP 33-34.

able to provide that support without shedding PJM’s own load.²⁴ Regarding the second approach, PJM could argue (among other things), and the Commission or a reviewing court could find, that PJM acted reasonably in maintaining the duration of the emergency,²⁵ and that, under the filed-rate doctrine, the declaration of an emergency event by PJM cannot be “undone” after the fact. And, regarding the third approach, PJM could argue (among other things), and the Commission or a reviewing court could find, that it is unlawful for the Commission to impose the new PAI trigger methodology retroactively without the parties’ consent.²⁶

These approaches, which would involve NPC reductions ranging from 0% to 71%, are not mutually exclusive and do not take into account other party-specific theories, including theories based on allegations regarding a unit’s availability. Therefore, there is a broad zone of reasonableness for a package settlement that disposes of all claims. This Settlement reduces the NPCs assessed by 31.7%, provides near-universal resolution to the Winter Storm Elliott Complaints, and falls squarely within that zone of reasonableness.

²⁴ See Tariff Attach. K, § 1.6.2; OA, Sch. 1, § 1.6.2; NERC Standard IRO-014-3 – Coordination Among Reliability Coordinators, <https://www.nerc.com/pa/Stand/Technical%20Rationale%20fro%20Reliability%20Standards/IRO-014-3.pdf>; PJM Manual 13: Emergency Operations (Nov. 3, 2022), § 1.1, <https://www.pjm.com/~media/documents/manuals/m13.ashx>. References to all PJM Manuals herein are to the versions in effect during Winter Storm Elliott.

²⁵ See, e.g., Tariff § 1 (defining Good Utility Practice); OA § 1 (same), OA Attach. K-App’x, § 1.7.15 (granting PJM authority to “direct or coordinate corrective action, whether or not specified in the PJM Manuals, as necessary to alleviate unusual conditions that threaten the integrity or reliability of the PJM Region”); PJM Manual 13 § 2.3.2 (Real-Time Emergency Procedures (Warnings and Actions)) (allowing PJM to take actions “it determines are consistent with Good Utility Practice and are necessary to maintain the operational integrity of the PJM RTO and the Eastern Interconnection”).

²⁶ See, e.g., *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 826, 829 (D.C. Cir. 2021) (quoting *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1226, 1230 (D.C. Cir. 2018)).

II. THE SETTLEMENT IS CONSISTENT WITH THE PUBLIC INTEREST, PROVIDES A JUST AND REASONABLE RESOLUTION OF THE WINTER STORM ELLIOTT COMPLAINTS, AND IS SUPPORTED BY SUBSTANTIAL EVIDENCE

The Settlement provides a just, reasonable, and nondiscriminatory resolution of the Winter Storm Elliott Complaints by applying a 31.7% reduction in total assessed NPCs to all Capacity Market Sellers, with certain limited exceptions. This approach generally preserves a Market Participant's net position as either a net Performance Payment recipient or a net NPC payor. This approach will allow the Settling Parties to avoid the risks and burdens of divisive and time-consuming litigation, enabling PJM and PJM stakeholders to move on from Winter Storm Elliott and focus on consideration of reforms to apply going forward.

The Settlement releases all claims against PJM arising out of the Winter Storm Elliott Event, with the exception of two questions set aside for the Commission to resolve. PJM does not admit to any Tariff violation or any other wrongdoing in the Settlement, and it is not necessary or appropriate for the Commission to make any such finding.²⁷ The Settlement proposes no change to the Tariff provisions contained in Attachment DD, Section 10A that detail the allocation of assessed NPCs and Performance Payments.²⁸

This Settlement is supported by substantial record evidence in the form of affidavits sponsored by Settling Parties with a broad range of interests, confirming that the Settlement is a just, reasonable, and non-discriminatory resolution of the Winter Storm Elliott Complaints. Moreover, this Settlement satisfies the standard for Commission approval of contested settlements, as set forth in the Commission's regulations²⁹ and its *Trailblazer* precedent.³⁰ After

²⁷ Aff. of Steven T. Naumann, Ex. 3 at P 9.

²⁸ *Id.* P 7.

²⁹ 18 C.F.R. § 385.602(h)(1)(i).

a threshold determination that a contested settlement is consistent with the public interest,³¹ *Trailblazer* provides four approaches that the Commission may use to approve a contested settlement.³² The Commission may:

- (1) address contesting parties' arguments on the merits and approve the Settlement on the basis that each Contesting Party's arguments lacks merit;³³
- (2) approve the Settlement as a package on the basis that the Settlement's overall result is just and reasonable even if some of contesting parties' objections have merit;³⁴
- (3) approve the Settlement where the Commission (a) determines that a Contesting Party's interest is sufficiently attenuated that the Settlement can be analyzed under the fair and reasonable standard applicable to uncontested settlements, and (b) satisfies its obligation to make an independent finding that the Settlement benefits the directly affected Settling Parties;³⁵ or
- (4) sever the Contesting Parties and approve the Settlement as uncontested for the Settling Parties.³⁶

The Commission has broad authority to approve the Settlement so long as it will result in a just and reasonable resolution.³⁷ The Settling Parties respectfully submit that the Settlement satisfies

³⁰ *Trailblazer I*, 85 FERC ¶ 61,345, at 62,339.

³¹ *See id.* at 62,341 (“When presented with a settlement, the first issue for the Commission is whether the settlement presents an acceptable outcome for the case that is consistent with the public interests protected by the Commission.”).

³² *See, e.g., id.* at 62,342; *Tri-State Generation & Transmission Ass’n Inc.*, 181 FERC ¶ 61,255, at PP 68-73 (2022) (*Tri-State Generation I*), *modified on reh’g*, 183 FERC ¶ 61,054 (2023) (*Tri-State Generation II*); *Sw. Power Pool Inc.*, 174 FERC ¶ 61,116, at P 34 (*Sw. Power Pool I*), *reh’g denied*, 175 FERC ¶ 61,235 (2021) (*Sw. Power Pool II*); *PJM Interconnection*, 163 FERC ¶ 61,168, at P 38 n.52.

³³ *Trailblazer I*, 85 FERC ¶ 61,345 at 62,342.

³⁴ *Id.*

³⁵ *Id.* at 62,343.

³⁶ *Id.* at 62,344.

³⁷ *Devon Power LLC*, 115 FERC ¶ 61,340 at P 58 (citing *New Orleans Pub. Serv., Inc. v. FERC*, 659 F.2d 509, 511-12 (5th Cir. 1981)), *reh’g denied*, 117 FERC ¶ 61,133 (2006), *reh’g denied in part & granted in part sub nom. Me. Pub. Utils. Comm’n v. FERC*, 520 F.3d 464 (D.C. Cir. 2008), *rev’d in part, NRG Power Mktg., LLC v. Me. Pub. Utils. Comm’n*, 558 U.S. 165

the second *Trailblazer* approach and provides a just and reasonable result despite any objections.³⁸ The Commission should approve the Settlement on that basis. Additionally, as discussed below regarding the first *Trailblazer* approach, the Settlement reserves two claims for the Commission to decide on the merits.³⁹

A. The Settlement is in the Public Interest

As a threshold matter, the Settlement is consistent with the public interest and provides an acceptable resolution of the Winter Storm Elliott Complaints. The Commission and reviewing courts have recognized that resolving complex controversies, even those achieved through contested settlements, serves the public interest regardless of limited opposition to the end result.⁴⁰ In those rare cases where the Commission or courts invoke the public interest as the basis for rejecting a settlement, the settlements have “affect[ed] the ability of participants in the market to compete on even terms” or had an anticompetitive effect on terms of service.⁴¹ Here,

(2010), *remanded sub nom. Me. Pub. Utils. Comm’n v. FERC*, 625 F.3d 754 (D.C. Cir. 2010), *remanded sub nom. Devon Power LLC*, 134 FERC ¶ 61,208, *reh’g denied*, 137 FERC ¶ 61,073 (2011), *pet’n for rev. denied sub nom. New Eng. Power Generators Ass’n, Inc.*, 707 F.3d 364 (D.C. Cir. 2013).

³⁸ See Naumann Aff. at P 3 (“For the reasons stated below, I believe that the Settlement provides a just and reasonable resolution to the Winter Storm Elliott Complaints.”); *id.* P 12 (“In sum, the Settlement strikes a just and reasonable resolution of the Complaints.”); Aff. of John S. Rohrbach, Ex. 5 at P 7 (“[T]he Settlement is just and reasonable because it results in timely resolution of Winter Storm Elliott complaints and supports the long-term health of the PJM market at a critical juncture.”); Aff. of William B. Berg, Ex. 4 at P 16 (stating that, “on its face, the Settlement Agreement is just and reasonable and not unduly discriminatory or preferential”).

³⁹ See *infra* at 19 and Settlement §§ 4.3.1 and 4.3.2. Both of these claims have been fully briefed in their respective dockets under the Commission’s Rules.

⁴⁰ *Trailblazer I*, 85 FERC ¶ 61,345 at 62,340 (citing *Pa. Gas and Water Co. v. FPC*, 463 F.2d 1242, 1246 (D.C. Cir. 1972)).

⁴¹ *Id.* at 62,341 (collecting cases).

however, the Settlement makes no changes to the Tariff,⁴² and the modification to liability for assessed NPCs is applied on a non-discriminatory basis to all similarly situated parties.⁴³

The Settlement is consistent with the public interest. First, the Settlement does not change the PJM Tariff, which is the filed rate. Rather, the Settlement provides a negotiated resolution of the Complainants' various claims, including that their underperforming resources were not actually "needed" under Tariff Attachment DD, section 10A(d), and that PJM improperly exercised its discretion in managing the Winter Storm Elliott Event and in implementing its Tariff and related Governing Documents. The Settlement thus disposes of disputed issues regarding the interpretation and implementation of the filed rate that can be resolved in a contested settlement consistent with the public interest.⁴⁴ Further, the financial relief the Settlement provides only applies to a locked-in two-day period in the past. The Settlement does not provide an independent vehicle for additional future relief, in contrast to the new PAI trigger mechanism that PJM filed and the Commission accepted in Docket No. ER23-1996-000, which is intended to govern declaration of future Emergency Actions.⁴⁵

Next, continuing litigation of the Winter Storm Elliott Complaints has the potential to disrupt the Settling Parties' operations, reduce reliability, and create cash flow problems and credit risks for Capacity Market Sellers.⁴⁶ As the respondent to fifteen separate complaints,

⁴² Naumann Aff. at P 7.

⁴³ *Trailblazer I*, 85 FERC ¶ 61,345 at 62,341.

⁴⁴ *See id.* at 62,340, 62,341.

⁴⁵ *See PAI Trigger Order*, 184 FERC ¶ 61,058 at P 1.

⁴⁶ *See* Naumann Aff. at P 10 ("Settling the complaints is good for the PJM market now and in the future. . . . Continued litigation of the Winter Storm Elliot Complaints would likely chill decisions on investments in PJM. Markets abhor uncertainty and the prospect of unknown financial conditions that could drag on for years or even decades.") (citations omitted); Aff. of Michael E. Bryson, Ex. 2 at P 6 ("[T]here is legitimate concern that adversarial litigation on such matters can undermine the confidence of PJM operators, as well as PJM Member operators, in

further litigation by PJM would divert the attention of PJM’s critical control room personnel, other operations staff, and officers toward discovery, depositions, and other litigation activities rather than maintaining PJM’s operational functions.⁴⁷ Other Settling Parties and any Contesting Parties will face similar challenges and uncertainties.⁴⁸ The litigation could also exacerbate the credit risk currently experienced by some Capacity Market Sellers, who face cash flow problems as a result of the assessed NPCs.⁴⁹ If any of these Capacity Market Sellers pose an “unreasonable credit risk” to PJM, the Tariff may require them to provide additional collateral or

the midst of the next major emergency that requires prompt and decisive actions to preserve reliability.”); Rohrbach Aff. at P 8 (“[C]ontinued litigation of Winter Storm Elliott complaints would chill signals for new resource investment at a time when PJM does not have any margin for error. . . . Simply stated, the Settlement resolves litigation uncertainties and allows PJM and its stakeholders to focus on a transition like no other in PJM’s history.”); *accord e.g.*, Berg Aff. at P 20; Aff. of Michael R. Borgatti, Ex. 1 at 10:9-18.

⁴⁷ See Bryson Aff. at PP 8-9; *id.* P 9 (noting that, before litigation, PJM’s operations staff, unit operators, and stakeholders will already be dedicating “significant time and attention” to implementing the Commission’s and NERC’s recommendations stemming from their inquiry into the Winter Storm Elliott Event); Rohrbach Aff. at P 18 (“Approving the Settlement will allow the PJM stakeholders to turn their attention to addressing the myriad pressing issues facing PJM. Resolving many of these issues will take considerable time and attention, as some of the issues are projected to take months, if not years, to address.”); Berg Aff. at P 18 (“If one or more of these proceedings were to reach discovery, PJM would need to devote significant resources to responding to data requests and would need to make its grid operators available for depositions. In light of the breadth of the claims, it is very likely that some operators would have to be deposed multiple times in the various cases.”).

⁴⁸ See Bryson Aff. at P 6.

⁴⁹ See, e.g., Borgatti Aff. at 7:3-4 (“We have witnessed several Market Participants enter bankruptcy following PJM’s initial assessment of NPCs. . . .”); *id.* at 7:10-12 (“Some Market Participants question whether the risks associated with non-performance are so great that future investment and continued operations should be re-evaluated in light of the severe risks associated with non-performance.”); *id.* at 8:1-5; Rohrbach Aff. at P 8 (“[C]ontinued litigation of Winter Storm Elliott complaints would chill signals for new resource investment at time when PJM does not have any margin for error.”); *id.* P 9 (“[I]n the aftermath of Winter Storm Elliott, over 4,000 MW of PJM generation sought Chapter 11 bankruptcy protection in connection with PJM’s assessment of Winter Storm Elliott Non-Performance Charges. The settlement enhances PJM market stability by reducing the risk of additional defaults in which PJM and members eligible for Winter Storm Elliott Performance Payments may receive little or no recovery.”); *accord id.* P 27.

cease participating in PJM markets.⁵⁰ Moreover, the terms of the Settlement are consistent with competitive market principles and do not unfairly adjust Tariff terms to favor or disfavor any Settling Party or Contesting Party.⁵¹ Thus, the Settlement takes a large step toward stabilizing at-risk generators, consistent with the public interest. To the extent the Settlement does not resolve other capacity market issues experienced during Winter Storm Elliott, PJM is actively pursuing additional changes to its capacity market rules in collaboration with its stakeholders.

B. The Settlement Satisfies the *Trailblazer* Standard for Commission Approval of Contested Settlements

1. *Trailblazer* Approach I

Under the first *Trailblazer* approach, the Commission may address the merits of the Contesting Parties' objections, and, if each objection "lacks merit," the Commission may approve the Settlement on that basis.⁵² Similarly, the Commission may reject a settlement if the record "does not contain substantial evidence that would permit the Commission to make a merits decision."⁵³

The first *Trailblazer* approach is not an appropriate methodology to resolve certain Winter Storm Elliott Complaints that could require further factual development for the

⁵⁰ See PJM Tariff, Attach. Q § D.

⁵¹ See *Trailblazer I*, 85 FERC ¶ 61,345, at 62,341; see also Berg Aff. at P 16 (stating that the Settlement "ensures the net positions of market participants are preserved").

⁵² *Id.* at 62,342.

⁵³ *Great Lakes Gas Transmission Ltd. P'ship*, 153 FERC ¶ 61,053 at P 53 (2015) (rejecting a proposed settlement under the first *Trailblazer* approach because no evidence was offered in the record to show that the proposed pass through of costs was just and reasonable); see, e.g., *Sw. Power Pool I*, 174 FERC ¶ 61,116 at P 32-33 (rejecting the first *Trailblazer* approach on the basis that the cost shifting at issue was not addressed by the settlement, and thus, the record was insufficient to make a merits determination); *id.* P 42 (rejecting the first *Trailblazer* approach as to cost shifting for lack of record evidence); *Tri-State Generation*, 181 FERC ¶ 61,255 at P 69 (rejecting a proposed black box settlement under the first *Trailblazer* approach because there was insufficient supporting information in the record).

Commission to resolve in the absence of the Settlement and in the event of hearing procedures.⁵⁴ The two carved-out claims raised in the Winter Storm Elliott Complaints do not undermine the first *Trailblazer* approach analysis because they can be resolved without significant impact on the Settling Parties or the fundamental elements of the Settlement Agreement. The Settlement reserves for Commission resolution the claim of East Kentucky Power Cooperative, Inc. (“EKPC”) regarding prospective modification of the NPC rate and NPC stop loss provisions in the Tariff, with a requested effective date of June 1, 2023, i.e., the start of the 2023/2024 Delivery Year.⁵⁵ Resolution of this issue does not affect assessed NPCs. In addition, the Settlement reserves a discrete legal issue raised by Energy Harbor LLC in Docket No. EL23-63 concerning the treatment of capacity obligations for a multi-unit generation resource when two units are under partial forced outages and one unit is on a planned maintenance outage, and the resource’s capacity commitment is less than the resource’s full installed capacity. The Settling Parties agree that the Commission should decide the merits of that claim based on the record as it exists at the time the Settlement is filed.⁵⁶

2. *Trailblazer* Approach II

The Settlement is just and reasonable and should be approved under the second *Trailblazer* approach. The second *Trailblazer* approach permits the Commission to approve the Settlement when it determines that (1) “the overall result of the Settlement is just and

⁵⁴ See, e.g., Nautilus Supplemental Complaint at 7-9 (raising the question whether transmission congestion would have prevented non-operating units from delivering energy to other regions within PJM); ComEd Zone Complaint at 28, 33 (same); Nautilus Complaint at 38-41 (raising questions regarding deficiencies in PJM’s weather or load forecasts); Coalition Complaint at 45 (same).

⁵⁵ See Settlement § 4.3.2. The Settlement resolves all other issues raised by EKPC’s complaint in Docket No. EL23-74-000. See *id.*

⁵⁶ See *id.* § 4.3.1.

reasonable”⁵⁷ after independently evaluating the costs and benefits “of approving the settlement versus continued litigation;”⁵⁸ and (2) “the contesting party would be in no worse position under the terms of the settlement than if the case were litigated.”⁵⁹ These conclusions must be based on substantial evidence.⁶⁰ Although the second *Trailblazer* approach “may involve some analysis of the specific issues raised” by the Settlement,⁶¹ the Commission does not need to make a merits decision on whether each element of the Settlement is just and reasonable as long as the evidence

⁵⁷ *Trailblazer I*, 85 FERC ¶ 61,345, at 62,342.

⁵⁸ *Id.*

⁵⁹ *Trailblazer II*, 87 FERC ¶ 61,110 at 61,439; *see, e.g., Sw. Power Pool, Inc.*, 161 FERC ¶ 63,013, at PP 272-74 (2017) (Report of Contested Settlement) (concluding that the contesting parties would not be in a worse position under the settlement because their claims were speculative, and it was not clear that litigation would put them in the same or better position); *Great Lakes Gas*, 153 FERC ¶ 61,053, at P 57; *El Paso Nat. Gas. Co.*, 132 FERC ¶ 61,139, at P 101 (2010) (“The 2006 Settlement provides a reasonable resolution to these issues and received wide-spread support, even though no party obtained everything it wanted. By arguing that it would be better off litigating all of these issues anew in the hope of a better result, Phelps Dodge disregards all of the beneficial trade-offs and peace-saving benefits of the 2006 Settlement.”), *order on reh’g*, 133 FERC ¶ 61,116 (2010), *pet’n for rev. denied sub nom. Freeport-McMoRan Corp. v. FERC*, 669 F.3d 302 (2012); *GenOn Power Midwest, LP*, 149 FERC ¶ 61,218, at PP 33-36 (2014) (concluding that the contesting parties would be no worse off under the settlement on the basis that the settlement rate was substantially below the initial rate and after “[b]alancing the benefits of the settlement against the costs and potential effect of continued litigation”) (citation omitted).

⁶⁰ *See, e.g., Devon Power*, 115 FERC ¶ 61,340, at P 68 (“First, we find that the record in this proceeding is sufficient to allow us to make a determination that as a package, the settlement is just and reasonable. The record includes, among other items, both written submissions and oral argument testimony concerning various approaches to designing New England’s capacity market, data regarding current and projected capacity prices in New England, price projections under both the settlement and various LICAP demand curve proposals, and information regarding the current and projected need to develop new infrastructure in New England.”).

⁶¹ *PJM Interconnection*, 163 FERC ¶ 61,168 at P 38 (“[T]he Commission does not need to render a merits decision on whether each element of a settlement package is just and reasonable, so long as the overall package falls within a broad ambit of various rates which may be just and reasonable.”).

supports a determination that the Settlement is an overall just and reasonable resolution.⁶² The Settlement meets this standard.

First, PJM and the overwhelming number of Market Participants—including the Complainants, intervenors who are net NPC payors, intervenors who have zero assessed NPCs, and intervenors who are net Performance Payment recipients—either support the Settlement or do not oppose it.⁶³ The large number of Settling Parties and near-unanimity among those Market Participants who participated in the settlement discussions in support of or non-opposition to the Settlement confirms that the Settlement as a whole falls within the range of reasonableness. That conclusion is underscored by the fact that numerous Market Participants who support or do not oppose the Settlement represent divergent interests in these proceedings (e.g., NPC payors, Performance Payment recipients, PJM, and the PJM Independent Market Monitor (“IMM”). Therefore, there are necessarily parties supporting the Settlement that are similarly situated to parties that may contest it.

This case is thus unlike other situations where the Commission or courts have rejected settlements under the second *Trailblazer* approach. For example, the Commission rejected a settlement between local distribution companies and a gas pipeline that (1) was contested by an end-use customer and (2) in which there was reason to doubt that the settling parties and the contesting parties had similar interests and that the settlement would have an anti-competitive or

⁶² *Id.*; see, e.g., *Trailblazer I*, 85 FERC ¶ 61,345, at 62,342-43; *NRG Power Mktg.*, 558 U.S. 165; *Mobil Oil Corp.*, 417 U.S. at 313-14; *Cities of Lexington*, 295 F.2d at 121; *GenOn Power*, 149 FERC ¶ 61,218 at P 33 (“Under the second *Trailblazer* approach, even if some individual aspects of a settlement may be problematic, the Commission may still approve a contested settlement as a package if the overall result of the settlement is just and reasonable.”).

⁶³ The Settling Parties and other parties are listed according to their positions at the conclusion of the Settlement. See *Laclede Gas Co. v. FERC*, 997 F.2d 936, 946 (D.C. Cir. 1993) (recognizing that the Commission “may accord some weight to the fact that the bulk of [pipeline’s] customers either supported or elected not to oppose the settlement offer”).

discriminatory effect on contesting parties.⁶⁴ Here, however, the overwhelming support for the Settlement by parties similarly situated to any contesting parties is powerful evidence that the Settlement is a just and reasonable resolution, and the Commission may place significant weight on that near-unanimity of support and non-opposition.⁶⁵

Second, in the context of a large, multi-party settlement with nearly unanimous support or non-opposition from all impacted groups, and where the proposed settlement is non-discriminatory, the Commission and reviewing courts have been appropriately wary of giving parties a “heckler’s veto” that can be used to extract discriminatory concessions.⁶⁶ That is

⁶⁴ See, e.g., *id.* at 936 (cited in *Trailblazer*) (rejecting contested settlement because “the history of the settlement negotiations suggests that some of the parties supporting the settlement might have done so to obtain concessions on issues” of “little value to” the contesting party, and because settling [local distribution companies (“LDCs”)] with guaranteed cost recovery may have different incentives than end-user customers); *NorAm Gas Transmission Co. v. FERC*, 148 F.3d 1158, 1164 (D.C. Cir. 1998) (cited in *Trailblazer*) (rejecting contested settlement under because the Commission showed “deliberate indifference to” concerns raised about the “competitive effects” of the settlement); *Tejas Power Corp. v. FERC*, 908 F.2d 998, 1003-1004 (D.C. Cir. 1990) (cited in *Trailblazer*) (rejecting contested settlement because “neither the Commission nor [the court] may merely assume . . . that the LDCs’ protection of their own interests . . . will inure to the benefit of consumers” and holding that the Commission “must . . . address the question of whether the LDCs’ interests are sufficiently likely to be congruent with those of ultimate consumers that it may rely upon the LDCs’ agreement as dispositive of the consumers’ interests, notwithstanding the claim of some large and sophisticated consumers to the contrary.”); *All. Pipeline L.P.*, 157 FERC ¶ 61,204 at P 53 (2016) (rejecting settlement under *Trailblazer* prong 2 in light of “serious issues concerning the potential preferential and discriminatory nature of . . . the settlement”).

⁶⁵ See, e.g., *Devon Power*, 115 FERC ¶ 61,340 at P 73 (noting that, while the “level of support for the Settlement Agreement is not dispositive, the Commission can give weight to the broad-based support the Settlement Agreement received” and commenting that the settlement having the support of 107 of 115 parties in the proceeding was “quite extraordinary and . . . noteworthy”) (alteration in original); *El Paso Nat. Gas. Co.*, 132 FERC ¶ 61,139 at P 101 (“The 2006 Settlement provides a reasonable resolution to these issues and received wide-spread support, even though no party obtained everything it wanted. By arguing that it would be better off litigating all of these issues anew in the hope of a better result, Phelps Dodge disregards all of the beneficial trade-offs and peace-saving benefits of the 2006 Settlement.”).

⁶⁶ See, e.g., *Mobil Oil Corp.*, 417 U.S. at 313-14; *Placid Oil Co. v. FPC*, 483 F.2d 880, 893 (5th Cir. 1973); *Cities of Lexington*, 295 F.2d at 121 (“There is nothing in the Administrative Procedure Act which expressly requires unanimous consent of all the participating parties to an

exactly the situation here: the settlement has nearly unanimous support or non-opposition from all sectors affected by it, including net NPC payors and net Performance Payment recipients, PJM, and the PJM IMM. The Settlement treats all net Performance Payment recipients the same. Where feasible, the Commission uses severance to prevent a non-consenting party from holding a settlement hostage.⁶⁷ Here, however, severance of Contesting Parties is not possible: for example, if Contesting Parties who are net Performance Payment recipients were permitted to separately litigate their entitlement to additional Performance Payments, and to the extent that litigation focused on PJM's actions during the particular PAIs in which the Contesting Parties over-performed, such litigation would be incompatible with the Settlement's market-wide reduction in NPCs and might well destroy any benefit of the Settlement for certain Complainants and PJM.⁶⁸ In this situation, it is reasonable and consistent with the Commission's policy favoring settlement to approve the settlement over any Contesting Parties' objections.⁶⁹ The

agreement of settlement; and to read such a contention into the statute in view of the countless state agencies, municipalities, and consumers who may be interested in an administrative proceeding would effectually destroy the settlement provision. In this instance the kind of interest which [the contesting party] entered the proceeding to represent was protected by the participation and consent of other parties in like situation. Their consent to the settlement was sufficient basis for the Commission's approval.”).

⁶⁷ See, e.g., *Nw. Pipeline Corp.*, 31 FERC ¶ 61,263, 61,516 (1985) (severing where failing to do so “would also be creating a situation where one participant could hold hostage to its position other willing-to-compromise participants”).

⁶⁸ See *Berg Aff.* at P 22 (“[S]evering any party—either an over- or under-performing supplier—to allow that party to litigate their entitlement to performance payments for the intervals during which they over-performed could dramatically affect the balance of the agreement. Indeed, such severance could potentially destroy the value of settlement for some settling under-performers.”).

⁶⁹ See, e.g., *El Paso*, 132 FERC ¶ 61,139 at PP 89, 92 (approving settlement under the second Trailblazer approach where the settlement “provides substantial benefits to all . . . shippers” and “[r]ejecting the . . . settlement in its entirety is not a reasonable option. While this would provide [the contesting party] with the opportunity for a hearing, it would also eliminate the extensive benefits the [settlement] provides to the settling parties and disregard the wishes of every other . . . shipper who supported” the settlement).

reduction to Performance Payments will be applied uniformly to all Market Participants and each Market Participant's position as either a net Performance Payment recipient or net NPC payor will be unchanged.

Third, any claim that a party could achieve a better outcome in litigation is entirely speculative. As described above, there are complexities in assessing litigation risk. Further, there is substantial benefit in the fact that the Settlement resolves a package of complaints raising numerous and non-mutually exclusive theories of relief, which avoids the inevitability of protracted, complex, and costly litigation if one or more of the cases were to proceed.⁷⁰ The “no worse off” standard does not require settling parties to show that contesting parties are no worse off than they would be if they ultimately litigated their claims and prevailed; if that were the standard, no settlement would ever survive the second *Trailblazer* approach. Instead, the Commission takes account of risk, the avoidance of litigation costs, and the benefits of repose. Here, those benefits include benefits to the entire PJM region—including any Contesting Parties—by allowing PJM's operators to focus on their jobs, which ensure reliability, rather than being distracted by data requests, depositions, and testimony, and by allowing PJM's stakeholders to focus on future capacity market reforms rather than contentious disagreements about the past.⁷¹ These benefits may not be reducible to a specific quantifiable cost-benefit analysis, but they are concrete and significant.⁷²

⁷⁰ See, e.g., *Sw. Power Pool*, 161 FERC ¶ 63,013, at P 272 (“[T]he Commission should approve the Settlement because the substantial, concrete benefits under the Settlement vastly outweigh any speculative benefit that may result from litigation”); *El Paso*, 132 FERC ¶ 61,139 at P 101 (“[T]he benefit Phelps Dodge alleges will occur from litigating this case is too speculative to undermine the conclusion that it would be no worse off under the 2006 Settlement than if it were free to litigate further”).

⁷¹ See, e.g., *Bryson Aff.* at P 8 (“The Settlement avoids protracted litigation that would divert the attention of PJM's critical control room personnel, operations management, and other operations-related personnel away from the safe and reliable operation of the PJM system and

The Commission may also find that it is highly speculative that any Contesting Party could achieve a better result through litigation than a 31.7% reduction in assessed NPCs.⁷³ The Winter Storm Elliott Complaints raise several issues of Tariff interpretation that the Commission has not previously addressed, including whether a unit that fails to perform during an Emergency Action is “otherwise . . . needed” under various conditions enumerated in the Tariff.⁷⁴ If the Commission rejected the Settlement and the Complainants *prevail* on one or more of these issues, then a substantial majority of assessed NPCs could be eliminated outright. However, any Contesting Parties asserting that certain complaints have less merit than others would be forced to litigate every complaint—not just the ones they may deem to be without merit—in the event

towards depositions, affidavits, and other discovery and litigation activities.”); *accord id.* P 8; *see also* U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations at 147 (Apr. 2004) (“Timely and sufficient action to shed load on August 14 would have prevented the spread of the blackout beyond northern Ohio. NERC has directed all the regional councils in all areas of North America to review the applicability of plans for under-voltage load shedding, and to support the development of such capabilities where they would be beneficial. However, organizations and individual operators may hesitate to initiate such actions in appropriate circumstances without assurances that they will not be subject to liability suits or other forms of retaliation, provided their action is pursuant to previously approved guidelines.”).

⁷² *See, e.g., El Paso*, 132 FERC ¶ 61,139 at P 101 (approving a settlement under the second *Trailblazer* approach in part because of its “beneficial trade-offs and peace-saving benefits”); *Devon Power*, 115 FERC ¶ 61,340 at P 72 (emphasizing that the settlement provided incentives to attract new infrastructure as justification for its approval).

⁷³ *See Borgatti Aff.* at 5:8-10 (quoting *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 at P 164 (2015)) (noting that it is “an important element of PJM’s [Capacity Performance construct] to put at risk full capacity auction revenues if a resource completely fails to perform during Performance Assessment Hours”); *id.* at 11:2-12 (acknowledging that Complainants face the risk that the Commission could dismiss or deny all or a significant portion of their claims).

⁷⁴ PJM Tariff, Attach. DD, § 10A(d) (“Such a resource shall be considered in the calculation of a Performance Shortfall if it otherwise was needed and would have been scheduled by the Office of the Interconnection to perform, but was not scheduled to operate, or was scheduled down, solely due to: (i) any operating parameter limitations submitted in the resource’s offer, or (ii) the seller’s submission of a market-based offer higher than its cost-based.”).

the Commission rejected the Settlement.⁷⁵ “The Commission need only find that the overall package, resulting from the give and take of the bargaining which led to the settlement,” is reasonable.⁷⁶

Additionally, even if Contesting Parties prevailed, that victory may drive some net NPC payors into insolvency,⁷⁷ which would not only harm the payor, but would also decrease the Performance Payments available to eligible Market Participants, including any Contesting Parties that are net Performance Payment recipients.⁷⁸ In addition, some net NPC payors may be driven into premature retirement at a time when the system is undergoing a critical transition.

What is more, under the Settlement, any Contesting Parties that have incurred NPCs will benefit from the same 31.7% reduction in NPCs assessed. Without the Settlement, depending on what theory of relief is accepted, any Contesting Parties that are net Performance Payment recipients face the prospect of losing Performance Payments in case-by-case adjudication, while remaining responsible for *all* of the NPCs originally assessed on them.

The conclusion that any Contesting Parties are not made worse off by the Settlement is underscored once the direct costs of litigation are considered. Here, litigation would be protracted, complex, and costly.⁷⁹ It would involve dozens of parties, and highly fact-intensive

⁷⁵ See, e.g., *El Paso*, 132 FERC ¶ 61,139 at P 91 (if settlement were rejected or contesting party severed, “it would be required to litigate the entire spectrum of issues in this proceeding, and not just the issues it chooses”).

⁷⁶ *Trailblazer I*, 85 FERC ¶ 61,345 at 62,343.

⁷⁷ See *Borgatti Aff.* at 8:1-5 (“If the Winter Storm Elliott [NPCs] were left unaddressed and led to additional bankruptcies, retirements, or foregone investment in the region, the degree of liquidity in the market would decline as investor confidence wanes. The Settlement does not eliminate these concerns, but it does alleviate them by providing a measure of relief in the magnitude of NPCs.”).

⁷⁸ See *Tariff* § 10A(g).

⁷⁹ See *Naumann Aff.* at P 10; *Bryson Aff.* at P 8.

claims. The Settlement has been crafted to reach a reduction in total assessed NPCs that will maximize the benefits received by the Settling Parties and mitigate the costs of fully litigating each of the fifteen Winter Storm Elliott Complaints.⁸⁰ The Commission has previously approved contested settlements where ongoing litigation would be costly and would create uncertainties throughout the RTO, as continuing litigation would here.⁸¹ Avoiding the costs of litigation will help to secure PJM’s current generation capacity by avoiding potential credit defaults or insolvency that could diminish investor confidence and increase the costs of capital throughout the market.⁸² Avoiding these risks will benefit PJM, individual generators, and customers throughout the PJM region.⁸³

⁸⁰ See Bryson Aff. at P 5 (“The Settlement’s principal benefit is that, if approved by the Commission, it will resolve the fifteen separate complaints. . . .”); Rohrbach Aff. at P 7 (quoted *supra* note 38).

⁸¹ See, e.g., *PJM Interconnection, L.L.C.*, 170 FERC ¶ 61,258, at P 44 (2020); *Duke Energy Trading & Mktg., L.L.C.*, 126 FERC ¶ 61,234, PP 37-38 (2009) (“[T]he Settlement Agreement will promote certainty with respect to these particularly contentious proceedings. . . . Many of the Settling Parties have divergent interests from one another; yet, they came together to agree on a number of compromises that will allow the Settling Parties to cease litigation and gain certainty going forward. The Settling Parties recognizes that there was a value to avoiding potentially costly and resource-intensive litigation before this Commission and before the courts.”); cf. *Kern River Gas Transmission Co.*, 126 FERC ¶ 61,034, P 164 (2009) (rejecting contested settlement under Trailblazer II where “it does not appear that the Settlement will result in a significant reduction in litigation” because “the record is virtually complete” and “the Commission has made merits findings at this point on all issues that are necessary”).

⁸² See *Citadel FNGE Ltd. v. FERC*, 77 F.4th 842, 864 (D.C. Cir. July 21, 2023) (upholding FERC’s explanation that it may adjust rates “when they are operating contrary to investor expectations by producing anomalous results, contrary to their purpose and design”); see also Naumann Aff. at P 10 (quoted *supra* note 46); Rohrbach Aff. at P 8; Borgatti Aff. at 8:1-4, 12-16; 9:3-6, 12-15.

⁸³ See *PJM Interconnection, L.L.C.*, 170 FERC ¶ 61,258, at P 44 (“The Settlement supports grid reliability by facilitating the continued operation of short-duration resources on the PJM system, which reduces the potential for sharp market disruptions.”) (citations omitted).

3. *Trailblazer* Approach III

The third *Trailblazer* approach specifies that the Commission may approve the Settlement if it (1) determines that the Contesting Parties' interest is sufficiently attenuated that the Settlement can be analyzed under the fair and reasonable standard applicable to uncontested settlements, and (2) satisfies its obligation to make an independent finding that the Settlement benefits the directly affected settling parties.⁸⁴ Additionally, the Contesting Parties must have "another forum in which to raise [their] contentions."⁸⁵

The third *Trailblazer* approach would not apply here if the Settlement is contested. Each Winter Storm Elliott Complaint presents issues that are directly relevant to the Settlement. To the extent the Settlement is opposed, the Settling Parties anticipate that the Contesting Parties will have "a direct interest" in this proceeding and will be affected by the Settlement.⁸⁶ Therefore, the third *Trailblazer* approach is inapplicable.

4. *Trailblazer* Approach IV

Finally, the Commission has the option to "approve a settlement as to the non-contesting parties, while allowing the contesting parties to litigate their claims, or sever any contesting issue."⁸⁷ The fourth *Trailblazer* approach is appropriate where the Commission finds that "the Settlement is fair, reasonable, and in the public interest" for the Settling Parties, and where

⁸⁴ *Trailblazer I*, 85 FERC ¶ 61,345 at 62,343.

⁸⁵ *Tri-State Generation II*, 183 FERC ¶ 61,054, at P 14 (citing *Great Lakes Gas*, 153 FERC ¶ 61,053 at P 59).

⁸⁶ *Sw. Power Pool I*, 174 FERC ¶ 61,235 at P 44 (finding that where certain contesting parties would be affected by the settlement, the Commission could not approve the settlement under the third *Trailblazer* approach).

⁸⁷ *Sw. Power Pool II*, 175 FERC ¶ 61,235 at P 18 (citing *Trailblazer*, 85 FERC P 61,345, at 62,344).

severing a contesting party will protect its separate interests.⁸⁸ However, severing parties is an “option of last resort.”⁸⁹

This *Trailblazer* approach is inapplicable because the Settlement does not propose to force any party to be severed.⁹⁰ On the contrary, the Settlement reflects a broad agreement to reserve two claims raised by Complainants for independent determination by the Commission on the merits based on the pleadings submitted in their respective dockets.⁹¹ Thus, severance is unnecessary and, as discussed above, the Settlement can be approved as a just and reasonable result for all Market Participants, including any Contesting Parties, under the second *Trailblazer* approach.

C. The Settlement Addresses Unique Issues Raised in Four Specific Dockets in a Just and Reasonable Manner

In addition to the global financial settlement provision to resolve all Winter Storm Elliott Complaints, the Settlement includes additional terms to address specific issues raised in four of the Winter Storm Elliott Complaints. First, in Docket No. EL23-56, the Settlement includes a negotiated \$7.5 million credit that reduces (but does not eliminate) the Complainant’s assessed NPCs to resolve the unique claims and circumstances presented in that case.⁹² Second, the Settlement provides individualized payment arrangements for Lee County Generating Station,

⁸⁸ *Great Lakes Gas*, 153 FERC ¶ 61,053, at P 61.

⁸⁹ *Nw. Pipeline Corp.*, 81 FERC ¶ 61,242, at 62,041 (1997), *reh’g denied*, 83 FERC ¶ 61,001 (1998); *see Trailblazer I*, 85 FERC ¶ 61,345 at 62,344 (citing *Koch Gateway Pipeline Co.*, 74 FERC ¶ 61,088, 61,271 (1996)).

⁹⁰ *See Berg*. Aff. at P 22 (quoted *supra* note 68).

⁹¹ *See supra* at 19 (discussing the reservation of specific claims raised by EKPC and Energy Harbor).

⁹² *See Settlement* § 4.1.

LLC (“Lee County”), the complainant in Docket No. EL23-57,⁹³ whose particular financial needs were earlier addressed in a waiver request that the Commission granted on July 13, 2023.⁹⁴ Third, as discussed above, the Settlement reserves the central question presented by Energy Harbor, the complaint in Docket No. EL23-63, for the Commission to resolve on the merits based on the existing record.⁹⁵ That complaint presents a discrete legal issue concerning the interaction between forced outages and planned maintenance outages for the purpose of assessing NPCs that the Settling Parties agree the Commission should resolve to provide clarity to all Market Participants. Fourth and finally, the Settlement similarly reserves a question presented by EKPC, the complainant in Docket No. EL23-74, regarding the modification of the NPC rate and NPC stop loss provisions in the Tariff with respect to the 2023/2024 Delivery Year.⁹⁶ That question is reserved because, unlike the other issues raised in the Winter Storm Elliott Complaints, it does not impact any Capacity Market Sellers’ financial liability for NPCs previously assessed in connection with the Winter Storm Elliott Event.

D. The Settlement is Supported by Substantial Evidence

The record evidence submitted in connection with the Winter Storm Elliott Complaints is voluminous. The Winter Storm Elliott Complaints and responsive pleadings include numerous affidavits setting forth the bases for the parties’ claims and defenses. The Settlement is likewise supported by substantial evidence in the form of five affidavits sponsored by Settling Parties that explain why the Settlement is a just, reasonable, and non-discriminatory resolution of the Winter Storm Elliott Complaints. These include one affidavit on behalf of Lincoln Generating Facility,

⁹³ *See id.* §§ 4.2.1-4.2.4.

⁹⁴ *See Lee Cty. Generating Station, LLC v. PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,029 (2023).

⁹⁵ *See Settlement* § 4.3.1.

⁹⁶ *See id.* § 4.3.2.

LLC, a representative Complainant and net NPC payor; two affidavits on behalf of the respondent, PJM; one affidavit on behalf of Constellation, a representative intervenor and net Performance Payment recipient; and one affidavit on behalf of Southern Maryland Electric Cooperative, Inc., a representative intervenor and net Performance Payment recipient.⁹⁷

Exhibit 1 is the Affidavit of Michael R. Borgatti, which supports the Settlement from the Complainants' perspective.⁹⁸ Mr. Borgatti states that the Settlement represents a reasonable compromise and is a just and reasonable resolution of the Winter Storm Elliott Complaints.⁹⁹ Mr. Borgatti concludes that the Settlement (1) will not act as a performance disincentive for PJM generators,¹⁰⁰ (2) appropriately relieves Complainants of the magnitude of the assessed NPCs,¹⁰¹ (3) will have a positive effect on the market and investments,¹⁰² (4) applies a 31.7% reduction in NPCs that is nondiscriminatory,¹⁰³ and (5) avoids the significant costs and burdens that would arise from further litigation.¹⁰⁴ In sum, Mr. Borgatti concludes that the 31.7% reduction in assessed NPCs is a "reasonable compromise among all the Settling Parties and a reasonable outcome for all Market Participants."¹⁰⁵

⁹⁷ The opinions expressed in each affidavit are solely those of the witness and its sponsor and should not be attributed to any other witness or Settling Party.

⁹⁸ Lincoln Generating Facility, LLC is both an individual Complainant in Docket No. EL23-59-000 and a member of the Commonwealth Edison Zone Generators' Complaint at EL23-54-000.

⁹⁹ *See, e.g.*, Borgatti Aff. at 3:7-9, 10:20-21.

¹⁰⁰ *See id.* at 4:6, 4:16-17.

¹⁰¹ *See id.* at 7:6-15.

¹⁰² *See id.* at 7:16-9:17.

¹⁰³ *See id.* at 9:18-10:7.

¹⁰⁴ *See id.* at 10:8-18.

¹⁰⁵ *Id.* at 10:20-21.

Exhibit 2 presents the Affidavit of Michael E. Bryson, Senior Vice President of Operations for PJM. Mr. Bryson summarizes the benefits the Settlement provides to the PJM market from a reliability standpoint. As he states, the principal benefit of the Settlement is that, if approved by the Commission, it would resolve the Winter Storm Elliott Complaints, which present numerous challenges to the way PJM implements and interprets its Tariff, Operating Agreement, and PJM Manuals during emergencies.¹⁰⁶ In his view, PJM satisfied the requirements of Good Utility Practice and exercised reasonable judgment in light of the facts known at the time of the Winter Storm Elliott Event.¹⁰⁷ Further, Mr. Bryson contends that litigating the Winter Storm Elliott Complaints would impose heavy burdens on PJM operators, as well as the owners and operators of resources and other Market Participants, and that these burdens could endure for many years.¹⁰⁸ The Settlement avoids these litigation costs, burdens, and distractions from operational focus.¹⁰⁹ Mr. Bryson further observes that adversarial litigation on such matters can undermine the confidence of PJM operators, as well as PJM Member operators, who need the flexibility to take prompt and decisive actions to preserve reliability, and by releasing Complainants' claims and avoiding litigation, the Settlement preserves PJM's and PJM Member operators' confidence to exercise necessary judgment during future emergencies.¹¹⁰ Finally, Mr. Bryson testifies that the Settlement provides important incentives

¹⁰⁶ Bryson Aff. at P 5.

¹⁰⁷ *See id.* P 7.

¹⁰⁸ *See id.* PP 6, 8-9.

¹⁰⁹ *See id.* P 8.

¹¹⁰ *See id.* PP 6-7.

for Market Participants to help the PJM market meet its resource adequacy needs by demonstrating the financial consequences of nonperformance and the benefits of performance.¹¹¹

Exhibit 3 presents the Affidavit of Steven T. Naumann, former Vice President Transmission and NERC Policy for Exelon Business Services Company. Mr. Naumann, explains that the Settlement presents a just and reasonable resolution of the Winter Storm Elliott Complaints.¹¹² Mr. Naumann demonstrates that the Settlement supports reliability by (1) imposing serious financial consequences or financial benefits on generators depending on whether a generator exceeds or underperforms in relation to its capacity obligations and (2) reaffirming the need for PJM to have flexibility in making real-time emergency decisions.¹¹³ Mr. Naumann also concludes that the Settlement benefits the PJM market by avoiding the uncertainty and serious costs, including chilled investment, that continuing litigation would cause.¹¹⁴ Finally, Mr. Naumann explains that, consistent with the principles underlying the Capacity Performance construct, the Settlement imposes substantial negative financial consequences on resources that failed to perform during Winter Storm Elliott and appropriately compensates generators who took on additional costs to support the system during Winter Storm Elliott without providing an excessive reward.¹¹⁵

Exhibit 4 presents the Affidavit of Constellation witness William B. Berg. He states that Constellation—which is a net receiver of Performance Payments during Winter Storm Elliott—

¹¹¹ *See id.* PP 10-11.

¹¹² *See* Naumann Aff. at P 3 (“I believe that the Settlement provides a just and reasonable resolution to the Winter Storm Elliott Complaints.”); *id.* P 12 (“In sum, the Settlement strikes a just and reasonable resolution of the Complaints.”).

¹¹³ *See id.* PP 5-8.

¹¹⁴ *See id.* P 10.

¹¹⁵ *See id.* at PP 11-12.

has determined in its business judgment that the Settlement is in its interest for multiple reasons.¹¹⁶ Initially, Mr. Berg highlights that the Settlement will reduce the expense and burden of litigation on all parties.¹¹⁷ Mr. Berg points out that complex, multi-party matters can result in lengthy and burdensome litigation spanning many years.¹¹⁸ Relatedly, Mr. Berg observes the Settlement enables PJM to avoid the distraction of extensive discovery—both written and oral—that would mire operations staff to the detriment of all PJM stakeholders.¹¹⁹ Mr. Berg also explains that the Settlement will benefit over- and under-performing parties alike by preventing the Performance Payments earned or NPCs paid from remaining in limbo while litigation is pending, potentially for years.¹²⁰ With respect to the merits, Mr. Berg states that although Constellation is confident in its positions, it believes that the Settlement provides a reasonable basis to remove from contention the various issues raised by the Winter Storm Elliott Complaints.¹²¹ Finally, Mr. Berg notes that because of the mechanics used by the Tariff to assess NPCs and award Performance Payments, the Settlement must be enacted market-wide to protect the value of the parties' bargain.¹²²

In Exhibit 5, Southern Maryland Electric Cooperative, Inc. affiant John S. Rohrbach opines that from a public power perspective, the Settlement is just and reasonable because it results in timely resolution of Winter Storm Elliott Complaints, and supports the PJM market's

¹¹⁶ See Berg Aff. at PP 15-23.

¹¹⁷ *Id.* P 17.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* P 20.

¹²¹ *Id.* P 21.

¹²² *Id.* P 22.

long-term health.¹²³ Mr. Rohrbach opines that continued litigation of the Winter Storm Elliott Complaints would chill new resource investment that is needed in PJM.¹²⁴ According to Mr. Rohrbach, by avoiding this pitfall, the Settlement will allow PJM and its stakeholders to focus resources on prospective reforms to PJM's energy market and capacity construct and PJM's transition to renewable and non-thermal generation.¹²⁵ Mr. Rohrbach also states that the Settlement will mitigate the risk of defaults and other disruption to the PJM market.¹²⁶

III. DESCRIPTION OF THE SETTLEMENT

Article 1 of the Settlement provides the background of the Winter Storm Elliott Event and its financial consequences. This Article also describes the procedural background of the Winter Storm Elliott Complaints and the Settlement proceedings.

Article 2 sets the Effective Date of the Settlement as either (1) the date the Commission issues an order approving the Settlement without modification or condition, or (2) an alternative date that is agreed to by the Settling Parties in the event the Settlement is not approved or accepted without material modification or condition.

Section 3.1 applies a 31.7% reduction in total assessed NPCs incurred in connection with the Winter Storm Elliott Event (the "Settlement Reduction Percentage") to all Capacity Market Sellers. PJM will apply the Settlement Reduction Percentage to each Capacity Market Seller's total assessed NPCs. This application of the Settlement Reduction Percentage will be used to reduce each Capacity Market Seller's total assessed NPCs to their new Settlement Assessment. Section 3.2 provides that any impact on Market Participant Performance Payments caused by the

¹²³ Rohrbach Aff. at PP 6-7.

¹²⁴ *Id.* PP 8-9.

¹²⁵ *Id.* PP 15-25.

¹²⁶ *Id.* PP 9, 27-28.

reduction of assessed NPCs will be reflected under the provisions of the PJM Tariff Attachment DD, section 10A(g). Under Section 3.3, application of the Settlement Reduction Percentage to the assessed NPCs of an individual Capacity Market Seller is conditioned on the Capacity Market Seller paying or having paid its full Settlement Assessment amount plus interest. If a Capacity Market Seller fails to pay the full Settlement Assessment and accrued interest, the Capacity Market Seller will owe the full NPC amount originally assessed. Per Section 3.4, PJM may invoice true-up amounts to all affected Market Participants in order to apply the Settlement Reduction Percentage to those Capacity Market Sellers that have already paid the entire amount of their original NPC assessment. Section 3.5 provides that PJM may address the amounts specified in Section 4.2 and subsection 4.3.1 by holding back those amounts until the conditions of that section and subsection are met and thereafter returning those amounts as Performance Payments or Non-Performance Charge Refunds, as applicable.

Section 4.1 provides for resolution of the Winter Storm Elliott Complaint in Docket No. EL23-56-000 and any other claim that the Complainant in that docket might make related to the Winter Storm Elliott Event NPCs. After reducing the assessed NPCs of Talen Energy Marketing, LLC (“Talen”) under Section 3.1 and subsection 5.3.1, PJM will credit Talen \$7.5 million.

Section 4.2 sets forth additional terms for full resolution of Lee County’s claims relating to NPCs arising from the Winter Storm Elliott Event. After reducing the assessed NPCs of Lee County in accordance with Section 3.1 and subsection 5.3.1, PJM will credit Lee County in the amount of \$4.4 million. PJM will be authorized by Commission approval of this Settlement to extend collection of Lee County’s then-remaining unpaid NPCs and interest accrued thereon at the rate of 7.5% so as not to deplete collateral held by PJM on Lee County’s behalf to support

Lee County's export transactions to customers located in the Midcontinent Independent System Operator, Inc. ("MISO") region prior to the end of the 2023-2024 Delivery Year. PJM and Lee County agree that they will promptly file a request with the Commission to extend Lee County's payment obligations under the EL23-57-002 waiver until the Effective Date. If the Effective Date has not occurred by June 1, 2024, then PJM will, on June 1, 2024, apply any collateral then held by PJM in support of Lee County's NPCs and MISO export transactions as a credit against Lee County's NPCs and accrued interest.

Subsection 4.3.1 provides that Settling Parties request the Commission to decide the merits of the claims set forth in Energy Harbor's Winter Storm Elliott Complaint in Docket No. EL23-63-000 (the "EL23-63 Complaint") on the record as it exists at the time of the filing of the Settlement. PJM will apply the Settlement Reduction Percentage to the NPCs assessed to Energy Harbor, including the NPCs at issue in the EL23-63 Complaint. The assessed NPCs at issue in the EL23-63 Complaint reduced by the Settlement Reduction Percentage are equal to \$7,526,300.20 (the "EL23-63 Complaint Claim Amount"). PJM will hold back the EL23-63 Complaint Claim Amount from distribution as a Performance Payment until the Commission issues an order on the EL23-63 Complaint, which will not be subject to interest charges. Upon issuance of a Commission order on the EL23-63 Complaint, PJM will disburse the EL23-63 Complaint Claim Amount in accordance with the Commission order in the next monthly billing cycle or, if the invoices for the next monthly billing cycle are scheduled to be issued within five days of the date of the Commission's order, within two monthly billing cycles.

Subsection 4.3.2 preserves EKPC's right to pursue its claim, in Docket No. EL23-74-000, requesting modification of the NPC rate and NPC stop loss provisions in the PJM Tariff

beginning in the 2023/2024 Delivery Year. All other claims and issues in EKPC's Winter Storm Elliott Complaint will be released upon Commission approval of the Settlement.

Section 5.1 provides that if a Capacity Market Seller's Settlement Assessment plus the credited amounts in Article 4, if applicable, is less than the amount already paid by the Capacity Market Seller to PJM for NPCs at the Effective Date, a refund will be due from PJM (a "Non-Performance Charge Refund"). Likewise, if a Payment Recipient's Performance Payments received are greater than the Performance Payments owed to the Payment Recipient after PJM applies the Settlement Reduction Percentage and the reduction amounts in Article 4, a refund will be due from the Payment Recipient to PJM (a "Performance Payment Refund"). The Settling Parties also agree that no interest will accrue or be owed on Non-Performance Charge Refunds or Performance Payment Refunds.

Section 5.2 confirms that neither PJM nor PJM Settlement, Inc. ("PJM Settlement") will pay out or retain (other than certain holdbacks) more than the total amount of NPCs (plus any applicable interest) collected pursuant to the Settlement or pursuant to any bankruptcy proceeding that determines the amount of NPCs an entity must pay. Only revenues collected from the assessment of NPCs and Performance Payment Refunds, less any amounts refunded as Non-Performance Charge Refunds will be distributed as Performance Payments, and neither PJM nor PJM Settlement will be required to distribute Performance Payments to any entity in an amount that would cause total Performance Payments to exceed total NPCs. To the extent PJM is required to collect Performance Payment Refunds to implement the Settlement, PJM is responsible for distributing Non-Performance Charge Refunds only from the amounts actually collected by any means, including but not limited to amounts collected by off-set, withholding, application of posted collateral, legal action, or any other means of collection, as Performance

Payment Refunds. Nothing in the Settlement changes PJM's obligations under the Operating Agreement.

Section 5.3 describes the process and schedule for implementation of the Settlement through application of the Settlement Reduction Percentage, invoicing, and crediting if the Commission accepts the Settlement. It also describes the Settling Parties' agreed plan for resuming payment of NPCs and Performance Payments if the Commission rejects the Settlement.

Article 6 explains that, promptly after the filing of the Settlement, PJM will undertake a re-evaluation of the credit of each Market Participant owing a Non-Performance Charge or Performance Payment Refund in connection with Winter Storm Elliott. Further, for any Capacity Market Seller that has paid all invoiced NPCs related to the Winter Storm Elliott Event as of the date of the Settlement's filing, PJM will return collateral held in connection with Winter Storm Elliott NPCs that is (1) an amount in excess of one-third of the amount that would be due if the Settlement does not become effective so long as such return is consistent with the Tariff, including Tariff Attachment Q, or (2) in some other amount consistent with the Tariff, including Tariff Attachment Q.

Section 7.1 provides that if a Capacity Market Seller defaults, or otherwise fails to pay when due, its full Settlement Assessment plus interest (except as otherwise provided), that Capacity Market Seller will continue to owe to PJM the full NPC amount originally assessed, without application of the Settlement Reduction Percentage. Any Capacity Market Seller that defaults on payment of its assessed NPCs or its Settlement Assessment, or any Market Participant that defaults on payment of its Performance Payment Refunds at any time after the date of the Settlement's filing, including any Capacity Market Seller or Market Participant that

fails to pay such amounts when due as a result of insolvency or because the Capacity Market Seller has become a debtor in a case under the U.S. Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, will (1) continue to owe and be required to pay any NPCs it was assessed at the full amount, without application of the Settlement Reduction Percentage, less any amount paid prior to default, plus any interest due, or (2) be obligated to remit to PJM the amount of any Performance Payment Refunds invoiced in full, less any amount already remitted to PJM by that Market Participant.

Section 7.2 states that in any bankruptcy proceeding that includes a debtor owing NPCs or Performance Payment Refunds, PJM will submit a claim in no amount other than the full NPCs assessed to that Capacity Market Seller less any amount already paid to PJM, or the full Performance Payment Refunds invoiced, less any amount already remitted to PJM by that Market Participant, without needing to seek Commission approval. Section 7.3 also explicitly provides that the Settlement does not apply to the bankruptcy proceedings initiated prior to the filing of the Settlement, including those of debtors Lincoln Power, LLC, *et al.* jointly administered under Case No. 23-10382 (Bankr. D. Del.), EFS Parlin Holdings, LLC, Case No. 23-10539 (Bankr. D. Del.), and Heritage Power, LLC, *et al.*, jointly administered under Case No. 23-90032 (Bankr. S.D. Tex.).

Article 8 provides that, subject to the Commission's approval of the Settlement, PJM's satisfaction of its Settlement obligations will constitute the full and final resolution, and will trigger the release by all Market Participants, of all claims against PJM and PJM Settlement arising from the Winter Storm Elliott Event. All claims and matters raised in the Winter Storm Elliott Complaints will be terminated, except as detailed in Section 4.3 of the Settlement.

Article 9 establishes that the Settlement's terms and conditions are contingent upon the Commission's approval or acceptance of the Settlement without material modification or condition. If the Commission conditions its approval or acceptance of the Settlement or requires material modification, the Settlement will be deemed withdrawn, will not be considered to be part of the record in these proceedings, will not become effective, and will be null and void, unless the Settling Parties, within ten business days (subject to extension by mutual agreement) of issuance of the Commission order approving or accepting the Settlement subject to condition or modification either (1) accept the Commission's modifications and conditions or (2) agree to modify the Settlement to address or obviate the Commission's concerns.

Section 10.1 provides that (1) neither the Settlement nor any Settling Party's performance under the Settlement will be deemed an admission of any fact or liability, (2) the Settlement will not bind any Settling Party to apply the principles of the Settlement to any other agreement, arrangement, or proceeding, (3) the Settlement establishes no principles and no precedent with respect to any issue in the captioned proceedings, and (4) the Commission's approval of the Settlement will not constitute a determination by the Commission as to the merits of any allegation or contention made, or defense asserted, in the Winter Storm Elliott Complaints or concerning the Winter Storm Elliott Event. Section 10.2 similarly provides that the Settling Parties and the Commission will not be deemed to have approved, accepted, agreed, or consented to any ratemaking principle or methodology or any Tariff interpretation or modification. The Commission's approval of the Settlement will not constitute precedent, will not prejudice any otherwise available rights or arguments of any party in a future proceeding (other than to enforce the terms of the Settlement), and will not be used as evidence that a particular method is a "long standing practice" or "settled practice."

Section 10.3 provides that nothing in the Settlement will be construed as affecting any Settling Party's right to unilaterally make an application to the Commission to modify prospectively the Tariff or Operating Agreement pursuant to FPA sections 205 and 206, or to oppose any filing made or action taken under FPA sections 205 and 206. Section 10.4 sets the "public interest" standard of review, commonly referred to as the "*Mobile Sierra*" standard of review, as the standard of review for any changes to the Settlement proposed by a Settling Party and the most stringent standard permitted by law for any changes to the Settlement proposed by any other person or entity.¹²⁷

Section 10.5 states that each Settling Party will cooperate with and support, and will not take any action inconsistent with (1) the filing of the Settlement, and (2) efforts to obtain Commission approval or acceptance of the Settlement without modification or condition. As a result, no Settling Party will seek rehearing of the Commission's decision to approve or accept the Settlement without modification or condition. Section 10.6 establishes that the provisions of the Settlement are not severable.

Under Section 10.7, all settlement communications and discussions are (1) privileged and confidential, (2) without prejudice to the position of any party or participant making those communications or participating in any such discussions, and (3) not to be used in connection with the captioned proceedings or any other proceeding, except to the extent necessary to enforce the terms of the Settlement or to construe the Settlement, pursuant to Rules 602 and 606 of the Commission's Rules of Practice and Procedure.¹²⁸

¹²⁷ See *NRG Power Mktg.*, 558 U.S. 165; *Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527 (2008); *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956).

¹²⁸ 18 C.F.R. §§ 385.602, 385.606.

Section 10.8 stipulates that after the Settlement's filing, the Settling Parties will file a joint motion to the Commission to hold in abeyance, until the Commission issues an order on the Settlement, any Winter Storm Elliott Complaint that is not subject to the Commission's statement in its June 5, 2023 order issued in Docket Nos. EL23-53-000, et al., that it will abstain from addressing the merits while settlement negotiations are ongoing.

Section 10.9 provides that the Settlement constitutes the entire agreement with regard to the matters addressed in the captioned proceedings and implies no right, duties, or other restrictions not expressly set forth in the Settlement. Under Section 10.10, no provision of the Settlement may be waived if waiver would cause financial injury to any other Settling Party, unless the injured Settling Party consents in writing. No provision of the Settlement can be waived except through a signed writing by an authorized representative of the waiving party. Section 10.11 makes the Settlement binding on and for the benefit of the Settling Parties and their successors and assigns.

Section 10.12 establishes that the Settlement is the product of each Settling Party, and no ambiguity will be construed in favor of or against any Settling Party. Section 10.13 provides that each person executing the Settlement is duly authorized and empowered to act on behalf of, and to sign for, the Settling Party to whom he or she has signed. Section 10.14 provides that the Commission's approval of the Settlement will constitute the requisite grant of any waivers of any regulations necessary to permit the implementation of the Settlement.

Section 10.15 sets forth the Settlement's rules of interpretation and construction. Under Section 10.16, the title and headings of the sections of the Settlement are for reference purposes only and are not to be construed or considered in interpreting the Settlement. Finally, Section 10.17 provides that the Settlement may be executed in one or more counterparts.

IV. POLICY AND OTHER ISSUES ARISING UNDER THE SETTLEMENT

Consistent with Commission policy, PJM addresses policy and other issues arising under the Settlement.

A. Does the Settlement Affect Other Pending Cases?

The Settlement does not affect other pending cases.

B. Does the Settlement Involve Issues of First Impression?

As discussed above,¹²⁹ the complaint by Energy Harbor in Docket No. EL23-63 presents a question of first impression regarding the interaction between forced outages and planned maintenance outages for the purpose of assessing NPCs. The Settlement reserves that question for the Commission to resolve on the existing record to provide clarity to all Market Participants.

C. Does the Settlement Depart from Commission Precedent?

The Settlement does not depart from Commission precedent. It comports with the Commission's approval of prior contested market-wide settlements where the Commission found that a settlement broadly supported by a supermajority of Market Participants constituted a just and reasonable resolution for the market as a whole, notwithstanding objections from a small minority of dissatisfied intervenors.¹³⁰

¹²⁹ *See supra* at 19, 30.

¹³⁰ *See, e.g., supra* note 65 (listing cases).

D. Does the Settlement Seek to Impose a Standard of Review Other than the Ordinary Just and Reasonable Standard with Respect to Any Changes to the Settlement that Might be Sought by Either a Third Party or the Commission Acting *Sua Sponte*?

Yes. Section 10.4 of the Settlement sets the standard of review for any proposed changes to the Settlement unilaterally sought by a party to the Settlement to be the “public interest” standard of review commonly referred to as the “*Mobile Sierra*” standard of review.¹³¹

V. CONCLUSION

For the reasons set forth above, the Settling Parties respectfully request that the Commission issue an order approving the Settlement without change or condition no later than December 29, 2023.

¹³¹ See *NRG Power Mktg.*, 558 U.S. 165; *Morgan Stanley*, 554 U.S. 527; *Mobile Gas*, 350 U.S. 332; *Sierra Pac. Power*, 350 U.S. 348.

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EXHIBIT 1

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MICHAEL R. BORGATTI**

September 29, 2023

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

Essential Power OPP, LLC, <i>et al.</i>)	
v.	)	Docket No. EL23-53-000
PJM Interconnection, L.L.C.)	
Aurora Generation, LLC, <i>et al.</i>)	
v.	)	Docket No. EL23-54-000
PJM Interconnection, L.L.C.)	
Coalition of PJM Capacity Resources)	
v.	)	Docket No. EL23-55-000
PJM Interconnection, L.L.C.)	
Talen Energy Marketing, LLC)	
v.	)	Docket No. EL23-56-000
PJM Interconnection, L.L.C.)	
Lee County Generating Station, LLC)	
v.	)	Docket No. EL23-57-000
PJM Interconnection, L.L.C.)	
SunEnergy1, LLC)	
v.	)	Docket No. EL23-58-000
PJM Interconnection, L.L.C.)	
Lincoln Generating Facility, LLC)	
v.	)	Docket No. EL23-59-000
PJM Interconnection, L.L.C.)	
Parkway Generating Keys Energy Center LLC)	
v.	)	Docket No. EL23-60-000
PJM Interconnection, L.L.C.)	
Old Dominion Electric Cooperative)	
v.	)	Docket No. EL23-61-000
PJM Interconnection, L.L.C.)	
Energy Harbor LLC)	
v.	)	Docket No. EL23-63-000
PJM Interconnection, L.L.C.)	

Calpine Corporation)	
v.	)	Docket No. EL23-66-000
PJM Interconnection, L.L.C.)	
Invenergy Nelson LLC)	
v.	)	Docket No. EL23-67-000
PJM Interconnection, L.L.C.)	
East Kentucky Power Cooperative, Inc.)	
v.	)	Docket No. EL23-74-000
PJM Interconnection, L.L.C.)	
CPV Maryland, LLC, and Competitive Power Ventures Holdings, LP)	
v.	)	Docket No. EL23-75-000
PJM Interconnection, L.L.C.)	
Parkway Generation Operating LLC, Parkway Generation Sewaren Urban Renewal Entity LLC)	
v.	)	Docket No. EL23-77-000
PJM Interconnection, L.L.C.	)	(Not Consolidated)
PJM Interconnection, L.L.C.	)	Docket No. ER23-_____

TESTIMONY OF MICHAEL R. BORGATTI

ON BEHALF OF

LINCOLN GENERATING FACILITY, LLC

A Complainant Supporter of the Settlement

Filed: September 29, 2023

1 **INTRODUCTION**

2 1. My name is Michael R. Borgatti. My business address is 417 Denison Street,
3 Highland Park, NJ 08904.

4 2. I am Vice President of RTO Services and Regulatory Affairs at Gabel Associates,
5 Inc., an energy, environmental, and public utility consulting firm.

6 3. I address regional transmission organizations' ("RTOs") operations, procedures, and
7 markets. I am an expert on the complex technical processes of RTOs and have been a leader in
8 developing RTO rules related to energy, capacity, and other structural issues. I translate the
9 technical complexities of RTOs into the business plans of my clients and aid them in evaluating
10 the risks, costs, and revenue associated with tariff changes. I also work on project development
11 and risk analysis, including generation interconnection, merchant transmission, and credit issues.
12 My clients include approximately 50 GW of thermal and renewable generation in PJM
13 Interconnection, L.L.C. ("PJM"), demand response and energy efficiency providers, load serving
14 entities, and financial marketers.

15 4. I actively participated in the PJM stakeholder process, and FERC dockets that
16 established PJM's Capacity Performance. Following the Commission's approval of the program
17 in 2015, members of my firm and I developed an investment-grade Monte Carlo simulation model
18 that quantifies a probability that a capacity supplier could incur certain levels of Non-Performance
19 Charges ("NPCs") in a statistically significant way. We have used this model and a tool calibrated
20 to ISO New England Inc.'s ("ISO-NE") similar Pay for Performance regime to quantify NPC risk
21 for dozens of suppliers, including thermal generators, renewable resources, battery storage, and
22 district energy systems. I also used these tools and my deep understanding of PJM's Capacity
23 Performance rules and procedures to support a large international insurance company's efforts to

1 develop products that capacity suppliers can purchase to mitigate their NPC risk. I have also
2 helped numerous Market Participants' capacity offer strategies, including negotiating appropriate
3 Capacity Performance Quantifiable Risk levels in sell offers with the Independent Market Monitor
4 ("IMM") and PJM.

5 5. PJM experienced relatively few Capacity Performance emergencies before Winter
6 Storm Elliot. However, I was directly responsible for evaluating and validating NPC and
7 Performance Payments assessed during the Performance Assessment Event that occurred in
8 October 2019. This storm was the first material Capacity Performance emergency since PJM
9 implemented the construct.

10 6. I submitted testimony on behalf of Lincoln Generating Facility, LLC ("Lincoln"), a
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12 Federal Energy Regulatory Commission ("Commission") in Docket No. EL23-59-000. Lincoln's
13 complaint was one of the dockets designated for settlement talks, along with twelve other
14 complaints related to Winter Storm Elliott (in addition to two other complaints filed after the global
15 settlement talks were ordered). Additionally, Lincoln is a member of a group of generators who
16 lodged a complaint in Docket No. EL23-54-000, commonly referred to as the "ComEd Zone
17 Generators" because the group of generators are all located in the Commonwealth Edison
18 Company transmission zone within PJM. This coalition complaint was one of two coalition
19 complaints that were among the complaints designated for settlement talks by the Commission. I
20 did not submit testimony in the ComEd Zone Generators' complaint in Docket No. EL23-54-000,
21 but I did help prepare the complaint and am quite familiar with the arguments and supporting
22 expert testimony advanced in that docket.

1 **PURPOSE OF TESTIMONY**

2 7. My testimony supports the Offer of Settlement and Settlement Agreement
3 (“Settlement”) (i) being filed by and supported by PJM, (ii) supported by all of the Winter Storm
4 Elliott Complainants who are net NPC payors, (iii) supported by nearly all of the companies who
5 were active parties in the several dockets who are net Performance Payment recipients in the
6 Winter Storm Elliott proceedings; and (iv) supported by several other intervenors in the dockets
7 (collectively, “Settling Parties”). My testimony supports the Settling Parties’ position that the
8 Settlement represents a reasonable compromise and is a just and reasonable resolution of the
9 Winter Storm Elliott complaints.

10 8. PJM’s Open Access Transmission Tariff (“Tariff”) provides that all Capacity
11 Performance resources are subject to NPCs if they fail to deliver energy and/or reserves up to
12 PJM’s Expected Performance during certain emergency conditions. PJM distributes these NPCs
13 as Performance Payments to entities with Bonus Performance (i.e., delivered energy and/or
14 reserves above their expected level). Several companies assessed significant NPCs filed
15 complaints arguing that the NPCs assessed by PJM were unjust and unreasonable or unlawful for
16 various reasons. The Commission designated these complaints for comprehensive settlement
17 negotiations. I actively participated in these omnibus Winter Storm Elliott settlement talks during
18 June, July, and August 2023. The Settlement, which my testimony now supports, resolves almost
19 all outstanding issues in the Winter Storm Elliott complaints.

20 **SETTLEMENT MATERIAL TERMS**

21 The Settlement reduces the NPCs by 31.7 percent for all Market Participants across the board and
22 in a non-discriminatory manner. Because overperforming resources receive *pro rata* allocations
23 of these NPCs, the Settlement also reduces Performances Payments by the same amount. Other

1 material terms of the Settlement, such as claims that were advanced within the Winter Storm Elliott
2 complaints, are being released pursuant to the Settlement. My testimony does not address these
3 matters and instead demonstrates that the 31.7 percent reduction in NPCs is just and reasonable.

4 **SUMMARY OF TESTIMONY**

5 My testimony discusses the following points in support of the Settlement:

- 6 1. The Settlement does not undermine incentives for generators to perform when called
7 upon.
- 8 2. The impact of the NPCs associated with Winter Storm Elliott.
- 9 3. The PJM market and the impact of NPCs.
- 10 4. Investment decisions and the future of the PJM capacity market.
- 11 5. The non-discriminatory nature of the 31.7 percent reduction in NPCs.
- 12 6. The reduction in burdens for all parties associated with settlement versus litigation.
- 13 7. The 31.7 percent reduction represents a reasonable compromise.

14 **INCENTIVES TO PERFORM AND THE IMPACT OF THE WINTER STORM ELLIOTT** 15 **PENALTIES**

16 Taking the first two points together because they are interrelated, I can definitively state that the
17 Settlement does not diminish capacity suppliers' incentive to perform when called upon. PJM
18 levied about \$1.796 billion in NPCs during just 22 hours during Winter Storm Elliot, equaling
19 about 46 percent of the total capacity credits PJM will pay to all suppliers that cleared the Base
20 Residual Auction (“BRA”) for the 2022/23 Delivery Year. For perspective, PJM’s market-wide
21 NPC assessment during Winter Storm Elliott is about \$170 million more than the total civil
22 penalties, revenue disgorgements, and other payments that FERC’s Office of Enforcement has

1 collected since 2007.¹ The 31.7 percent Settlement adjustment reduces the market-wide NPC
2 assessment by about \$570 million to approximately \$1.226 billion or nearly one-third of the total
3 capacity revenues paid to suppliers that cleared the 2022/23 BRA. As adjusted by the Settlement,
4 the market-wide NPC assessment equates to \$23.25/MW-day on a unitized basis, nearly half of
5 the BRA clearing price for the unconstrained region in PJM. The reduced NPCs contemplated by
6 the Settlement would represent a substantial penalty for resources that underperformed during
7 Winter Storm Elliott and a meaningful upside for resources that made up for their shortfall.
8 The Settlement is also consistent with the Commission's view that “an important element of PJM’s
9 overall proposal is to put at risk full capacity auction revenues if a resource completely fails to
10 perform during Performance Assessment Hours.”² Per the Settlement, the NPC assessment for a
11 hypothetical 1,000 MW capacity resource that was unavailable throughout Winter Storm Elliott is
12 about \$39 million or 94.4% of the total capacity revenues it would receive by clearing the BRA in
13 the next three Delivery Years combined. The resource would need to earn \$107.76 MW-day more
14 in future capacity revenues to make up for lost revenues, which far exceeds clearing prices
15 throughout most of PJM over the past three auction cycles.

¹ This is based on aggregating all of the civil penalties and disgorgements from the Commission’s enforcement page, which can be found here: <https://www.ferc.gov/civil-penalties>.

² *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at P 164 (2015), *on reh’g*, 152 FERC ¶ 61,064 (2015), *on reh’g*, 155 FERC ¶ 61,157, *on reh’g sub nom. Advanced Energy Mgmt. Alliance Coalition*, 155 FERC ¶ 61,260 (2016), *aff’d sub nom. Advanced Energy Mgmt. Alliance v. FERC*, 860 F.3d 656 (D.C. Cir. 2017), *on reh’g*, 162 FERC ¶ 61,047 (2018).

Annual Capacity Revenues for a Hypothetical 1,000 MW UCAP Capacity Commitment in the Unconstrained Region of PJM		
Delivery Year	RTO BRA Clearing Price (\$/MW-day)	Annual Capacity Revenues (\$)
2022/23	50.00	18,250,000
2023/24	34.13	12,457,450
2025/25	28.92	10,555,800
Total		41,263,250
Proxy Capacity Resource Gross NPC Assessment		38,933,525
NPC Assessment % of Gross Capacity Revenues		94.4%

1

2 Retaining the gross NPC assessment before applying the Settlement adjustment would result in
3 penalties exceeding the hypothetical resource’s capacity revenues by more than \$16 million over
4 this period. Therefore, the Settlement is consistent with the Commission’s view that exposing
5 suppliers to NPC assessments that correctly exceed capacity revenue potential incents adequate
6 performance during emergencies.

7 While the NPCs assessed to suppliers will be reduced by 31.7 percent, that reduction must be
8 viewed in the context of the fact that Winter Storm Elliott was essentially a “black swan event”
9 for many of the PJM generators in that approximately \$1.8 billion in NPCs were assessed in the
10 aggregate for a two-day event in which no load shedding occurred within the PJM region. I am
11 very familiar with the PJM market, the generator community, and the genesis of the PJM Capacity
12 Performance regime. In my expert opinion, Winter Storm Elliot was an outlier event that most
13 suppliers, PJM, and the IMM correctly viewed as unlikely. As I mentioned earlier in my testimony,
14 the storm triggered capacity emergencies during 22 hours of an event that lasted less than two
15 days. By comparison, the Polar Vortex represents the worst winter weather event to impact PJM,
16 causing 30 hours of capacity emergencies over a much longer period. For many generators, even

1 with the reduction in NPCs under the Settlement, capacity revenue for an entire year, or in some
2 cases, for more than an entire year, were wiped out by the Winter Storm Elliott NPCs. Further,
3 we have witnessed several Market Participants enter bankruptcy following PJM's initial
4 assessment of NPCs, including Heritage Power, LLC; Elgin Energy Center, LLC; Rocky Road
5 Power, LLC; and EFS Parlin Holdings, LLC.

6 If anything, the sheer magnitude of the NPCs assessed increased Market Participants' focus on the
7 lack of adequate options to manage exposure to the financial harm that these types of exogenous
8 events can cause. These concerns are particularly acute for many investors who view PJM's
9 current low capacity revenue environment as non-compensatory with the NPC risk they face.
10 Some Market Participants question whether the risks associated with non-performance are so
11 significant that future investment and continued operations should be re-evaluated in light of the
12 severe risks associated with non-performance. The Settlement provides an appropriate measure
13 of relief to mitigate Market Participants' concerns over the continuing viability of PJM's Capacity
14 Performance Construct while continuing to meaningfully compensate suppliers that
15 overperformed during the storm.

16 **THE PJM MARKET AND THE IMPACT OF NPCs**

17 The PJM capacity and energy markets rely on robust competition through a market with a high
18 degree of liquidity. The reliability of the PJM region relies on adequate generation to supply the
19 region's needs. While the theory behind Capacity Performance may be sound, i.e., it is appropriate
20 to incent generator performance through a system of NPCs on the one hand and Performance
21 Payments on the other, a system where the penalties are so severe that suppliers are driven out of
22 the market serves no useful purpose, and on the contrary, undermines PJM's ability to operate a
23 well-functioning market while maintaining reliability. The Settlement is reasonable in providing

1 relief from the unprecedented NPC assessments. If the Winter Storm Elliott penalties were left
2 unaddressed and led to additional bankruptcies, retirements, or foregone investments in the region,
3 the degree of liquidity in the market would decline as investor confidence wanes. The Settlement
4 does not eliminate these concerns, but it does alleviate them by providing a measure of relief in
5 the magnitude of NPCs.

6 **INVESTMENT DECISIONS**

7 This outcome could acutely impact PJM reliability when the region faces many systemic resource
8 adequacy challenges. PJM recently opined that as much as 40 GW or 21 percent of the existing
9 capacity fleet could retire by 2030 due to various factors, including market economics and local
10 energy policies.³ At the same time, PJM is forecasting as much as 21 GW of new load growth
11 over the next 15 years, primarily driven by data center deployment in certain parts of its footprint.⁴
12 PJM's markets must sustain sufficient existing resources and incentivize new investments in
13 resource adequacy to offset these countervailing factors. Efforts like this Settlement can help
14 stabilize investor confidence in PJM's markets and allow Market Participants to refocus on the
15 difficult task of effectively navigating the energy transition. They are necessary steps to ensure
16 PJM remains reliable going forward.

17 As a consultant to several generators, it is my expert opinion that the level of NPC exposure plays
18 a role in the decision to invest in the PJM market, especially when several other options, including
19 investment in Midcontinent Independent System Operator, Inc. or other neighboring regions
20 without a Capacity Performance regime, exist alongside PJM. Since Winter Storm Elliot, I have

³ *Energy Transition in PJM: Resource Retirements, Replacements & Risks*, PJM (Feb. 24, 2023), available at <https://www.pjm.com/-/media/library/reports-notice/special-reports/2023/energy-transition-in-pjm-resource-retirements-replacements-and-risks.ashx#:~:text=The%20analysis%20shows%20that%2040,GW%20of%20potential%20economic%20retirement.>

⁴ *PJM Load Forecast Report*, PJM (Jan. 2023), available at <https://www.pjm.com/-/media/library/reports-notice/load-forecast/2023-load-report.ashx>.

1 observed an increasing level of interest from Market Participants considering ways to exit PJM's
2 markets entirely, whether by exporting resources to neighboring regions, retiring legacy assets, or
3 considering becoming an energy-only resource. Lessening the burden associated with the Winter
4 Storm Elliott penalties impacts the investment calculus for many suppliers while preserving the
5 revenue potential from Performance Payments to resources like onshore wind that performed well
6 during the event.

7 Future investment decisions will also be made against the backdrop of the Performance
8 Assessment Interval ("PAI") triggers filing acceptance in Docket No. ER23-1996, which
9 reasonably can be expected to lower the risk of another severe NPC event to some extent because
10 it tightens the criteria that lead to the triggering of PAIs and the concomitant imposition of NPCs.

11 While the Settlement and the PAI triggers filing are not linked in any way, both changes to the
12 Capacity Performance construct must be considered moving forward. The Settlement's reasonable
13 reduction in NPCs coupled with a tariff change that lessens the likelihood that a massive amount
14 of NPCs could be assessed to Capacity Resources following another severe event like Winter
15 Storm Elliott represents pro-investment factors for decision-makers moving forward. These two
16 events do not address all of the issues holding back additional investment in the PJM market, but
17 they are certainly two positive developments.

18 **NON-DISCRIMINATORY NATURE OF THE SETTLEMENT**

19 I am not a practicing attorney, and I am not offering a legal conclusion. That being said, from the
20 perspective of a PJM market expert and one who advises generators every day, the fact that the
21 31.7 percent reduction applies to ALL Market Participants and not just Complainants or not just
22 those who may be net NPC payors, for instance, means that the Settlement is non-discriminatory.
23 In other words, even the net Performance Payment Market Participants will benefit from the NPC

1 reduction to the extent they were assessed NPCs following Winter Storm Elliott. Even entities
2 that are not supportive of the Settlement will receive the benefit of the reduction in NPCs. Thus,
3 just taking the plain meaning of “non-discriminatory,” it is evident, at least from the market’s
4 perspective, that the NPC reduction is truly non-discriminatory, applies across-the-board, and acts
5 to simply lessen the impact of the Winter Storm Elliott NPC regime in general. This lessening of
6 impact on an across-the-board basis will positively impact the PJM market and should not be
7 overlooked.

8 **ELIMINATION OF LITIGATION BURDENS AND EXPENSE**

9 The Settlement provides significant value to all parties, whether the net Performance Payment
10 recipient, net NPC payor, or PJM itself. If litigation were to proceed, it would undoubtedly involve
11 a costly and protracted set of proceedings. Fifteen dockets involving numerous issues, some broad,
12 many picayune to particular capacity suppliers, involving numerous expert witnesses (including
13 myself) and potentially depositions and other discovery requests on PJM operational personnel
14 would undoubtedly take years to fully resolve. All the while, the attention of the participants to
15 that litigation, including many critical generators and PJM itself, could be distracted from
16 optimizing performance prospectively while remaining focused on Winter Storm Elliott. The
17 millions of dollars in avoided litigation expense, coupled with an organizational focus on going
18 forward performance and investment, provides significant region-wide and PJM market benefits.

19 **REASONABLE COMPROMISE**

20 The 31.7 percent reduction in NPCs represents a reasonable compromise among all the Settling
21 Parties and a reasonable outcome for all Market Participants. Virtually all litigation creates at least
22 some risk. On the one hand, Complainants raised significant issues in the numerous complaints
23 that I reviewed, raising significant issues pertaining to PJM’s handling of Winter Storm Elliott that

1 raised not just questions of operational discretion, but also issues associated with the proper
2 administration of its Tariff and the rates contained therein. Aside from the generic and broad issues
3 raised by the two coalitions and some of the other complaints, numerous complaints raised detailed
4 factual issues (including the case in which I testified, Docket No. EL23-59-000). All of these
5 issues taken together, while hotly and vigorously contested by PJM and others, create a measure
6 of risk that at least some of the NPCs would be eliminated. On the other hand, PJM and several
7 net Performance Payment recipients answered all of the complaints and would undoubtedly
8 provide a vigorous defense if the cases proceed to litigation. These defenses have already included
9 summary motions to dismiss, which remain pending before the Commission. Thus, Complainants
10 face the risk that all or a significant portion of their claims pending before the Commission could
11 be dismissed or denied. Accordingly, settlement as a general proposition eliminates litigation risk
12 and provides certainty of outcome.

13 Regarding the supportability of the 31.7 percent reduction number, I have reviewed the data
14 associated with Winter Storm Elliott and conducted significant analysis with said data. I believe
15 the 31.7 percent reduction represents a conservative outcome in the face of several scenarios that
16 could have supported a higher number. For instance, the Settling Parties could have taken the PAI
17 triggers filing criteria, which requires a shortage of the Primary Reserve requirement in addition
18 to an Emergency Action to trigger a PAI during which NPCs are assessed to Capacity Resources
19 that do not perform at their expected level, and not applied it retroactively, but rather used it as a
20 basis for settlement. Similarly, the Settling Parties could have evaluated the impact on NPCs when
21 PAIs are eliminated during any interval in which PJM is not experiencing a shortage of the
22 Extended Reserve Requirement and used that as a basis for settlement. Applying those criteria for
23 settlement purposes would have eliminated a significant number of PAIs, which would have, in

1 turn, eliminated NPC dollar amounts, which in percentage terms, would have been higher than the
2 31.7 percent reduction figure.

3 Similarly, as I mentioned above, I supported the ComEd Zone Generators in developing their
4 complaint against PJM filed in Docket No. EL23-54-000. In that complaint, the ComEd Zone
5 Generators raised several questions about whether PJM can or should assess NPCs during periods
6 when PJM was allowing any exports to flow to neighboring regions, when emergency conditions
7 in a particular zone were arguably not present due to low energy prices, or if transmission
8 congestion would have prevented generators from being scheduled to deliver energy to other zones
9 in PJM. These criteria could also form the basis for settlement and further reduce NPCs for some
10 Capacity Resources. However, taking into account the value provided by the certainty of a
11 settlement outcome, the elimination of litigation risk, and the elimination of litigation expense, the
12 31.7 percent figure, while conservative, is supportable because it balances the issues raised in the
13 various complaints against the certainty of the Settlement and avoidance of protracted litigation.
14 This concludes my testimony.

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

VERIFICATION

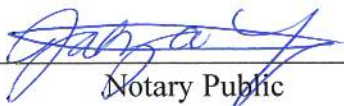
I, Michael R. Borgatti, being first duly sworn, state that I am the witness identified in the foregoing testimony, and that the statements of fact in this testimony are true and correct to the best of my knowledge, information, and belief.



Michael R. Borgatti
Vice President of RTO Services &
Regulatory Affairs
Gabel Associates, Inc.

Subscribed and Sworn to before me

This 28 day of September, 2023.



Notary Public

Commonwealth of Pennsylvania
Jahzara Lambert - Notary Public
Delaware County
My Commission Expires Nov 22, 2025
Commission Number 1411166

My Commission expires: NOV 22, 2025

EXHIBIT 2

**AFFIDAVIT OF
MICHAEL E. BRYSON**

September 29, 2023

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

Essential Power OPP, LLC, <i>et al.</i>)	
v.	)	Docket No. EL23-53-000
PJM Interconnection, L.L.C.)	
Aurora Generation, LLC, <i>et al.</i>)	
v.	)	Docket No. EL23-54-000
PJM Interconnection, L.L.C.)	
Coalition of PJM Capacity Resources)	
v.	)	Docket No. EL23-55-000
PJM Interconnection, L.L.C.)	
Talen Energy Marketing, LLC)	
v.	)	Docket No. EL23-56-000
PJM Interconnection, L.L.C.)	
Lee County Generating Station, LLC)	
v.	)	Docket No. EL23-57-000
PJM Interconnection, L.L.C.)	
SunEnergy1, LLC)	
v.	)	Docket No. EL23-58-000
PJM Interconnection, L.L.C.)	
Lincoln Generating Facility, LLC)	
v.	)	Docket No. EL23-59-000
PJM Interconnection, L.L.C.)	
Parkway Generating Keys Energy Center LLC)	
v.	)	Docket No. EL23-60-000
PJM Interconnection, L.L.C.)	
Old Dominion Electric Cooperative)	
v.	)	Docket No. EL23-61-000
PJM Interconnection, L.L.C.)	
Energy Harbor LLC)	
v.	)	Docket No. EL23-63-000
PJM Interconnection, L.L.C.)	

Calpine Corporation)	
v.	)	Docket No. EL23-66-000
PJM Interconnection, L.L.C.)	
Invenergy Nelson LLC)	
v.	)	Docket No. EL23-67-000
PJM Interconnection, L.L.C.)	
East Kentucky Power Cooperative, Inc.)	
v.	)	Docket No. EL23-74-000
PJM Interconnection, L.L.C.)	
CPV Maryland, LLC, and Competitive Power Ventures Holdings, LP)	
v.	)	Docket No. EL23-75-000
PJM Interconnection, L.L.C.)	
Parkway Generation Operating LLC, Parkway Generation Sewaren Urban Renewal Entity LLC)	
v.	)	Docket No. EL23-77-000
PJM Interconnection, L.L.C.)	
PJM Interconnection, L.L.C.	)	Docket No. ER23-____ (Not Consolidated)

**AFFIDAVIT OF MICHAEL E. BRYSON
ON BEHALF OF PJM INTERCONNECTION, L.L.C.**

1. My name is Michael E. Bryson, and my business address is 2750 Monroe Blvd, Audobon, PA 19403. I am the Senior Vice President of Operations for PJM Interconnection, L.L.C. (“PJM”). I previously submitted an affidavit on behalf of PJM in support of answers (as Exhibit 6 to each of those answers) that PJM submitted in May, 2023 to the complaints in Docket Nos. EL23-53-000, EL23-54-000, and EL23-55-000 (“May Affidavit”).¹ My employment history, experience, and credentials are described in the May Affidavit.²
2. I am submitting this Affidavit on behalf of PJM in support of the Offer of Settlement and Settlement Agreement (“Settlement”) filed in the Federal Energy Regulatory Commission (“Commission”) dockets listed in the caption above.

¹ *Essential Power OPP, LLC v. PJM Interconnection, L.L.C.*, Answer, Motion to Dismiss or Summarily Dispose Complaint, and Request for Confidential Treatment of PJM Interconnection, L.L.C., Docket Nos. EL23-53-000, et al., at Exhibit 6 (Affidavit of Michael E. Bryson on Behalf of PJM Interconnection, L.L.C.) (May 30, 2023).

² See May Affidavit ¶¶ 2-4.

3. The Settlement, if approved by the Commission, would resolve³ all complaints concerning PJM's assessment of Non-Performance Charges⁴ arising from resource performance issues from 17:30 through 23:00 on December 23, 2022, and from 04:25 through 22:00 on December 24, 2022, when the PJM Region (and neighboring regions) were in the grip of the severe winter weather conditions known as Winter Storm Elliott. In this affidavit, I refer to the impacts of Winter Storm Elliott on the PJM Region during the referenced times as the Winter Storm Elliott Event.
4. In this affidavit, I explain certain important benefits of the Settlement, which support the Commission's approval of the Settlement. In addition, to provide helpful context for the Commission's evaluation of the Settlement, I explain that while PJM's decisions during the Winter Storm Elliott Event regarding the timing and duration of Emergency Action declarations were reasonable, prudent, and consistent with PJM's various obligations and requirements⁵ based on facts known at the time, allegations in the complaints contend that PJM should have exercised its broad operational discretion to manage Winter Storm Elliott's impacts on the PJM Region differently than PJM actually did, resulting in lower Non-Performance Charges. I present the results of PJM analyses of how the differing approaches indicated in the complaints would have affected the assessed Non-Performance Charges resulting from the Winter Storm Elliott Event.

Important Benefits of the Settlement

5. The Settlement's principal benefit is that, if approved by the Commission, it will resolve the fifteen separate complaints, captioned above, challenging PJM's assessment of Non-Performance Charges arising from Winter Storm Elliott. Those complaints include numerous challenges to the manner in which PJM implemented its Tariff authority to manage the impacts of Winter Storm Elliott, assertions that PJM's implementation violated its Tariff or Manuals, and challenges to PJM's interpretation of the Tariff, Operating Agreement, and Manuals.
6. Importantly, all claims that PJM did not act appropriately are resolved by the Settlement. Thus, the Settlement avoids adversarial litigation regarding PJM's operational actions that preserved reliability, avoided load shedding in the PJM Region, and helped reduce load shedding in neighboring regions. While PJM is committed to review of its management of emergencies, there is legitimate concern that adversarial litigation on such matters can undermine the confidence of PJM operators, as well as PJM Member operators, in the midst of the next major emergency that requires prompt and decisive actions to preserve

³ The Settlement includes procedures to reserve two severable issues in two of the complaints for Commission decision.

⁴ Unless otherwise indicated, capitalized terms in this Affidavit have the meanings set forth in PJM's Open Access Transmission Tariff ("Tariff") or Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement").

⁵ By this, I am referring to PJM's obligations under the Tariff, Operating Agreement, PJM manuals ("Manuals") and the reliability standards of the North American Electric Reliability Corporation ("NERC").

reliability. System operators must be free to take action and respond to conditions based on their understanding of the conditions at the time of an emergency. Thus, the Settlement helps support the operational needs of the PJM system.

7. The Settlement accords with the fact that PJM satisfied the requirements of Good Utility Practice, exercised reasonable judgment in light of the facts known at the time of the Winter Storm Elliott Event, and made decisions that were consistent with reliability, safety, and the need for actions to maintain service to firm load. In particular, PJM's decisions during the Winter Storm Elliott Event regarding the timing and duration of Emergency Action declarations were reasonable based on facts known at the time. That does not mean, however, that PJM cannot take into account the complaints' challenges regarding PJM's Emergency Action declarations to help inform a fair resolution, by settlement, of those complaints. The analyses I describe below thus help identify a reasonable zone in which to resolve the Winter Storm Elliott complaints.
8. The Settlement avoids protracted litigation that would divert the attention of PJM's critical control room personnel, operations management, and other operations-related personnel away from the safe and reliable operation of the PJM system and towards depositions, affidavits, and other discovery and litigation activities. Litigating these issues could take years to resolve given the potential for appeals, remands, and re-appeals. Moreover, this concern is not limited to diversion of PJM's personnel. Effective grid management also depends critically on the direct engagement of Member company resource operators. Those operations personnel, with highly specialized expertise, have "hands on" the facilities on which reliable grid operations depend. Importantly, those resource operators also would be drawn into the burdens and distractions of years of retrospective discovery and litigation over two days in December 2022.
9. Highlighting the challenges of protracted litigation on this topic, and resulting burdens on PJM and Member company operational personnel, the staffs of the Commission and NERC just last week released their key findings and eleven recommendations stemming from their inquiry into grid operations during Winter Storm Elliott.⁶ Recommendations Nos. 1, 2, and 3⁷ will require significant time and attention from unit operators and PJM operations staff, and Recommendations Nos. 8, 9, and 10⁸ similarly will require significant time and attention from PJM staff and/or from PJM and its stakeholders. Key PJM staff likewise will be occupied in the near term with addressing recommendations of PJM's own July 2023 Winter Storm Elliott Event Analysis and Recommendation Report to undertake the

⁶ See North American Electric Reliability Corporation, *December 2022 Winter Storm Elliott Grid Operations: Key Findings and Recommendations*, Federal Energy Regulatory Commission, (Sept. 21, 2023), <https://www.ferc.gov/news-events/news/presentation-ferc-nerc-regional-entity-joint-inquiry-winter-storm-elliott> ("FERC-NERC WSE Report").

⁷ FERC-NERC WSE Report at 17.

⁸ FERC-NERC WSE Report at 20.

critical task of implementing lessons learned from the Winter Storm Elliott Event to further bolster system reliability.⁹

10. The Settlement also fully preserves the important performance incentives that were the animating force behind PJM's Capacity Performance reforms. The Settlement reduces assessed Non-Performance Charges by roughly 32%. Notwithstanding that reduction, the Non-Performance Charges unquestionably provide a powerful incentive for Capacity Resources to meet their obligations and for all resources to help the PJM Region meet its resource adequacy needs. Under the Settlement, the resulting total assessed Non-Performance Charges for Winter Storm Elliott are approximately 1.2 billion dollars, which still represents approximately 55% of the capacity revenues received in the aggregate by all under-performing resources for the entire 2022-2023 Delivery Year—and many resources will still pay Non-Performance Charges far in excess of their 2022-2023 capacity revenues.
11. In my opinion, a Capacity Resource has a very strong incentive to fulfill its capacity commitment when it stands to lose over half of its full-year capacity revenues as a result of non-performance during, as in this instance, an event lasting approximately 23 hours in total. By the same token, a resource that, by over-performing, can claim a share of Non-Performance Charge revenues at that very elevated level has a strong incentive to be in a position to help the region meet its resource adequacy needs when conditions are critical.

PJM's Implementation of Its Tariff Authority to Manage Emergencies

12. As I explained in my earlier affidavits in these cases,¹⁰ PJM took appropriate actions during Winter Storm Elliott to preserve PJM system reliability, avoid load shedding in the PJM Region, and prevent or mitigate load-shedding in neighboring Balancing Authority Areas in accordance with Good Utility Practice and PJM's obligations under the Tariff, Operating Agreement, PJM Manuals, and NERC requirements.
13. PJM necessarily considers many factors when implementing its Tariff authority to manage emergencies, such as invoking Emergency Actions. Different decisions could have led to significantly different outcomes for assessment of Non-Performance Charges.
14. For example, many considerations go into a decision of when to declare an *end* to a Tariff-defined emergency condition. There is no single best answer to that question, and it can involve not only an assessment of current conditions, but also prudent concerns about the possibility that conditions could worsen in the near term. One important factor, emphasized by multiple complaints here,¹¹ when considering when to exit an emergency

⁹ *Winter Storm Elliott: Event Analysis and Recommendation Report*, PJM Interconnection, L.L.C., at 2-3 (July 17, 2023). <https://pjm.com/-/media/library/reports-notices/special-reports/2023/20230717-winter-storm-elliott-event-analysis-and-recommendation-report.ashx>.

¹⁰ See, e.g., May Affidavit ¶¶ 6, 7, 13, 18, 19, 34, and 38.

¹¹ See, e.g., *Essential Power OPP, LLC v. PJM Interconnection, L.L.C.*, Complaint of Nautilus Entities, Docket No. EL23-53-000, at 44, 49-50, 52 (Mar. 31, 2023) (arguing the units

is whether or not the area of concern is in a reserve shortage. The status of PJM's reserves is an appropriate factor that (among other considerations) reasonably influenced when to decide that, for example, a Maximum Generation Emergency could be ended.

15. To help illustrate the financial impact of the complaints' asserted scenario of earlier exit from an Emergency Action on December 24, 2022,¹² PJM staff, under my direction, analyzed the results on the overall level of Non-Performance Charges if PJM had declared an end to the emergency on December 24, 2022 at 13:00 EPT, instead of 22:00 EPT. In that scenario, aggregate Non-Performance Charges would have been approximately 34% lower than the aggregate Non-Performance Charges PJM actually assessed during the Winter Storm Elliott Event. While many factors enter into a decision to end an Emergency Action, I note that PJM had adequate reserves to meet its Extended Primary Reserve Requirement at 12:10 EPT on December 24.
16. PJM staff also prepared, under my direction, illustrations of the impact on Non-Performance Charges if PJM had declared Emergency Actions only for the period when PJM was below its Primary Reserve Requirement, or only when PJM was below its Extended Primary Reserve Requirement. Those scenarios would have resulted in reductions of assessed Non-Performance Charges of approximately 71% and approximately 44%, respectively.
17. In addition, PJM staff prepared, under my direction, illustrations of the impact on Non-Performance Charges if PJM had declared an end to the emergency on December 24, 2023 at either the time when PJM terminated its Voltage Reduction Warning, which occurred at 18:15 on that day, or when PJM terminated its Voltage Reduction Alert, which occurred at 18:34 on that day. For reference, a Voltage Reduction Warning is issued when actual Synchronized (or Spinning) Reserves are less than the Synchronized (or Spinning) Reserves requirement; and a Voltage Reduction Alert is issued when operating reserves are less than the Synchronized (or Spinning) Reserve requirement. These scenarios would have reduced the assessed Non-Performance Charges by approximately 13% and approximately 12%, respectively.
18. I emphasize that preparation of those analyses in no way indicates PJM agreement with any of those scenarios, or changes my opinion, stated at length in my prior affidavits in these proceedings, that PJM's management of the Winter Storm Elliott Event, including PJM's declarations of Emergency Actions, were prudent, consistent with Good Utility

were not needed because of congestion and the quantity of Synchronized and Thirty-Minute Reserves in the system); *id.* at 42-45 (arguing that units were not needed if PJM was making exports); *Coalition of PJM Capacity Resources v. PJM Interconnection, L.L.C.*, Complaint of the Coalition of PJM Capacity Resources, Docket No. EL23-55-000, at 30 (Apr. 4, 2023) (same); *Aurora Generation, LLC v. PJM Interconnection, L.L.C.*, Complaint Requesting Fast Track Processing and Shortened Answer Period, and Request for Interim Order Suspending Billing and Payment Provisions, Docket No. EL23-54-000, at 21-30 (Apr. 4, 2023) (same).

¹² See *supra*, note 10.

Practice, and reasonable based on facts known at the time. Rather, these types of scenarios suggest the types of arguments PJM would have faced from full-blown litigation of the complaints being resolved here, and underscore that the Settlement resolution of these proceedings is reasonable.

19. In sum, the Settlement is an appropriate compromise of the complaints' challenges to PJM's implementation of its Tariff, including claims regarding the duration of the Emergency Action, and represents a reasonable resolution of all claims in these proceedings.
20. This concludes my affidavit.

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

Essential Power OPP, LLC, <i>et al.</i>)	
v.	)	Docket No. EL23-53-000
PJM Interconnection, L.L.C.)	
Aurora Generation, LLC, <i>et al.</i>)	
v.	)	Docket No. EL23-54-000
PJM Interconnection, L.L.C.)	
Coalition of PJM Capacity Resources)	
v.	)	Docket No. EL23-55-000
PJM Interconnection, L.L.C.)	
Talen Energy Marketing, LLC)	
v.	)	Docket No. EL23-56-000
PJM Interconnection, L.L.C.)	
Lee County Generating Station, LLC)	
v.	)	Docket No. EL23-57-000
PJM Interconnection, L.L.C.)	
SunEnergy1, LLC)	
v.	)	Docket No. EL23-58-000
PJM Interconnection, L.L.C.)	
Lincoln Generating Facility, LLC)	
v.	)	Docket No. EL23-59-000
PJM Interconnection, L.L.C.)	
Parkway Generating Keys Energy Center LLC)	
v.	)	Docket No. EL23-60-000
PJM Interconnection, L.L.C.)	
Old Dominion Electric Cooperative)	
v.	)	Docket No. EL23-61-000
PJM Interconnection, L.L.C.)	
Energy Harbor LLC)	
v.	)	Docket No. EL23-63-000
PJM Interconnection, L.L.C.)	

Calpine Corporation)	
v.	)	Docket No. EL23-66-000
PJM Interconnection, L.L.C.)	
Invenergy Nelson LLC)	
v.	)	Docket No. EL23-67-000
PJM Interconnection, L.L.C.)	
East Kentucky Power Cooperative, Inc.)	
v.	)	Docket No. EL23-74-000
PJM Interconnection, L.L.C.)	
CPV Maryland, LLC, and Competitive Power Ventures Holdings, LP)	
v.	)	Docket No. EL23-75-000
PJM Interconnection, L.L.C.)	
Parkway Generation Operating LLC, Parkway Generation Sewaren Urban Renewal Entity LLC)	
v.	)	Docket No. EL23-77-000
PJM Interconnection, L.L.C.	)	(Not Consolidated)
PJM Interconnection, L.L.C.	)	Docket No. ER23-____

**Affidavit of
Michael E. Bryson**

I, Michael E. Bryson, pursuant to 28 U.S.C. § 1746, state, under penalty of perjury, that I am the Michael E. Bryson referred to in the foregoing document entitled, "Affidavit of Michael E. Bryson on behalf of PJM Interconnection, L.L.C.," that I have read the same and am familiar with the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge, information and belief.

Michael E. Bryson

Michael E. Bryson

EXHIBIT 3

**AFFIDAVIT OF
STEVEN T. NAUMANN, P.E.**

September 29, 2023

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

Essential Power OPP, LLC, <i>et al.</i>)	
v.	)	Docket No. EL23-53-000
PJM Interconnection, L.L.C.)	
Aurora Generation, LLC, <i>et al.</i>)	
v.	)	Docket No. EL23-54-000
PJM Interconnection, L.L.C.)	
Coalition of PJM Capacity Resources)	
v.	)	Docket No. EL23-55-000
PJM Interconnection, L.L.C.)	
Talen Energy Marketing, LLC)	
v.	)	Docket No. EL23-56-000
PJM Interconnection, L.L.C.)	
Lee County Generating Station, LLC)	
v.	)	Docket No. EL23-57-000
PJM Interconnection, L.L.C.)	
SunEnergy1, LLC)	
v.	)	Docket No. EL23-58-000
PJM Interconnection, L.L.C.)	
Lincoln Generating Facility, LLC)	
v.	)	Docket No. EL23-59-000
PJM Interconnection, L.L.C.)	
Parkway Generating Keys Energy Center LLC)	
v.	)	Docket No. EL23-60-000
PJM Interconnection, L.L.C.)	
Old Dominion Electric Cooperative)	
v.	)	Docket No. EL23-61-000
PJM Interconnection, L.L.C.)	
Energy Harbor LLC)	
v.	)	Docket No. EL23-63-000
PJM Interconnection, L.L.C.)	

Calpine Corporation)	
v.	)	Docket No. EL23-66-000
PJM Interconnection, L.L.C.)	
Invenergy Nelson LLC)	
v.	)	Docket No. EL23-67-000
PJM Interconnection, L.L.C.)	
East Kentucky Power Cooperative, Inc.)	
v.	)	Docket No. EL23-74-000
PJM Interconnection, L.L.C.)	
CPV Maryland, LLC, and Competitive Power Ventures Holdings, LP)	
v.	)	Docket No. EL23-75-000
PJM Interconnection, L.L.C.)	
Parkway Generation Operating LLC, Parkway Generation Sewaren Urban Renewal Entity LLC)	
v.	)	Docket No. EL23-77-000
PJM Interconnection, L.L.C.)	
PJM Interconnection, L.L.C.	)	Docket No. ER23-____ (Not Consolidated)

**AFFIDAVIT OF STEVEN T. NAUMANN, P.E.
ON BEHALF OF PJM INTERCONNECTION, L.L.C.**

1. My name is Steven T. Naumann. I previously submitted affidavits on behalf of PJM Interconnection, L.L.C. (“PJM”) in several of these dockets. My qualifications were included as Exhibit 7 to PJM’s Errata to Answer filed on June 20, 2023 in Docket Nos. EL23-53-000, EL23-54-000 and EL23-55-000.
2. I am submitting this Affidavit on behalf of PJM in support of the Settlement Agreement (“Settlement”) that, with minor exceptions, resolves all outstanding issues in these dockets (“Winter Storm Elliott Complaints”).
3. For the reasons stated below, I believe that the Settlement provides a just and reasonable resolution to the Winter Storm Elliott Complaints. I base my conclusion on over 40 years of experience working for an electric utility, as well as participating in settlement negotiations involving a large number of parties in litigation of PJM issues.¹

¹ See, e.g., *PJM Interconnection, L.L.C.*, Docket No. EL05-121 (cost allocation of new transmission facilities); *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket Nos. ER05-6, *et al* (Seams Elimination Cost/Charge Adjustment/Assignment (SECA) charges); *PJM*

The Settlement Supports Reliability of the PJM System

4. The Settlement is a financial settlement only. It does not purport to settle any issues concerning PJM operations, which PJM contends, and I agree, were in accordance with Good Utility Practice and with PJM’s obligations under the PJM Open Access Transmission Tariff, PJM Operating Agreement, PJM Manuals, and North American Electric Reliability Corp. (“NERC”) reliability standards.
5. The Settlement supports the reliability of the PJM system by maintaining significant financial consequences for non-performance during emergency periods and significant rewards for resources that exceeded their obligations to PJM during emergency periods.²
6. The Settlement recognizes that despite the extraordinary circumstances presented by the Winter Storm Elliott Event,³ PJM maintained reliability throughout the PJM region, avoided shedding load,⁴ and helped prevent or mitigate load shedding in neighboring Balancing Authorities.⁵
7. The Settlement imposes no changes to the Tariff that would limit PJM’s real time decision-making in future extraordinary events. To the extent the Winter Storm Elliott Complaints allege that PJM should have made different decisions in real time, the Settlement resolves those allegations without constraining PJM’s real time decision-making going forward.
8. This approach is consistent with the fact that PJM exercised Good Utility Practice, i.e., PJM exercised reasonable judgment in light of the facts known at the time that it made decisions and that such decisions were consistent with reliability, safety, and expedition.⁶

Interconnection, L.L.C. & Midwest Indep. Transmission Sys. Operator, Inc., 110 FERC ¶ 61,015 (2005) (“hold harmless” for loop flows and congestion). The extensive procedural history of those proceedings is detailed *infra* at note 9.

² See, e.g., PJM Capacity Market Forum, Joint Comments of the Illinois Commerce Commission and the New Jersey Board of Public Utilities, at 18 (Docket No. AD23-7-000, filed Aug. 14, 2023) (“Without [Non-Performance Charges] and [Performance Payments], market incentives for performance diminish and the reliability component of the RPM that consumers pay for year-round is stripped of some value. Without a market mechanism to punish non-performance, consumers are left paying for reliability with no guarantee that they will receive it and there is no risk to capacity suppliers for failing to fulfill their capacity obligations.”).

³ See FERC, NERC, and Regional Entity Joint Staff Inquiry, “December 2022 Winter Storm Elliott Grid Operations: Key Findings and Recommendations” at 2 (Sept 21, 2023) (unprecedented generation outages coincided with winter peak loads), <https://www.ferc.gov/news-events/news/presentation-ferc-nerc-regional-entity-joint-inquiry-winter-storm-elliott>.

⁴ *Id.* at 2 (PJM declared Energy Emergencies but did not shed load).

⁵ *Id.* at 6 (showing PJM’s net exports to support neighboring Balancing Authorities).

⁶ PJM OATT, § 1, Definitions, Definitions G – H.

Thus, the Settlement upholds the flexibility that system operators must have to maintain reliability in an emergency.

9. PJM does not admit any Tariff violations or other wrongdoing as part of this Settlement, and it is not necessary or appropriate for the Commission to make any such finding to approve of the Settlement. Rather, the review of PJM's operating actions has been documented in the FERC-NERC-Regional Entity report on the operations of the BPS during Winter Storm Elliott.⁷

The Settlement Is Good for the PJM Market

10. Settling the complaints is good for the PJM market now and in the future. Without a settlement, parties face long and difficult litigation, with major financial risks both for entities facing Non-Performance Charges and entities due to receive Performance Payments. Continued litigation of the Winter Storm Elliot Complaints would likely chill decisions on investments in PJM.⁸ Markets abhor uncertainty and the prospect of unknown financial conditions that could drag on for years or even decades.⁹

⁷ See FERC & NERC, Elliott Report: Complete Electricity Standards, Implement Gas Reliability Rules (Sept. 21, 2023), report%20release%20092123.pdf.

⁸ See *Essential Power OPP, LLC, et al. v. PJM Interconnection, L.L.C.*, Comments of Calpine Corp. in Support of Settlement Procedures at 2 (filed Apr. 24, 2023) (“Resolving these complex disputes through protracted litigation before the Commission and courts threatens to negatively affect the PJM market for years to come, potentially altering investment decisions that are critical to regional resource adequacy.”).

⁹ See, e.g., *Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308 (2005), *reh'g denied*, 115 FERC ¶ 61,156, *initial decision sub nom. PJM Interconnection, L.L.C.*, 116 FERC ¶ 63,007 (2006) (addressing cost allocations of new transmission facilities), *rev'd in part*, 119 FERC ¶ 61,063 (2007), *reh'g denied*, 122 FERC ¶ 61,082 (2008), *pet'n for rev. denied in part sub nom. Ill. Commerce Comm'n v. FERC*, 576 F.3d 470 (7th Cir. 2009), *order on remand, PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,230 (2012), *reh'g denied*, 142 FERC ¶ 61,216 (2013), *granting pet'ns for rev. sub nom. Ill. Commerce Comm'n v. FERC*, 756 F.3d 556 (7th Cir. 2014), *order on contested settlement, PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,168 (2018), *reh'g denied*, 169 FERC ¶ 61,238 (2019), *reh'g dismissed*, 171 FERC ¶ 61,161 (2020), *rev'd in part and remanded sub nom. Long Island Power Auth. v. FERC*, 27 F.4th 705 (D.C. Cir. 2022), *order on remand, PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,064 (2023); *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168 (2004), *clarified at* 111 FERC ¶ 61,409 (2005) (*Clarified Order*), *initial decision*, 116 FERC ¶ 63,030 (2006) (addressing Seams Elimination Cost/Charge Adjustment/Assignment (SECA) charges), *aff'd on reh'g in part, rev'd in part*, 131 FERC ¶ 61,173 (2010) (*Order on Initial Decision*), *reh'g of Clarified Order denied*, 131 FERC ¶ 61,174 (2010), *reh'g of Order on Initial Decision denied*, 136 FERC ¶ 61,244 (2011), *pet'n for rev. denied in part, dismissed in part sub nom. Constellation Energy Commodities Grp., Inc. v. FERC*, 602 F. App'x 536 (D.C. Cir. 2015); *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,251 (addressing “hold harmless” requirements for loop flows and congestion), *order on reh'gs*, 108 FERC ¶ 61,143, *reh'g denied*, 109 FERC ¶ 61,166, *order approving contested settlement sub nom.*

11. The Settlement recognizes that the negative financial consequences of non-performance were substantially greater than many anticipated at the time they evaluated the risk.¹⁰ While market participants can reevaluate risks based on Winter Storm Elliott and other events in future auctions going forward, the financial relief provided by the Settlement takes those previous expectations into account.¹¹
12. The Settlement also supports decisions of generators to take necessary and appropriate actions, such as purchasing expensive fuel during an emergency, without having to worry about negative financial consequences of litigation based on hindsight.¹² Without such assurances, generators might not take such actions, which would undermine a capacity market design that depends on such actions.¹³ The Settlement appropriately compensates and rewards generators for the additional costs they undertook to preserve system reliability. The Settlement also materially reduces Performance Payments, averting any claim that the “end result” of the Settlement is an unreasonable or inequitable windfall for certain Market Participants.¹⁴ In sum, the Settlement strikes a just and reasonable resolution of the Complaints.

PJM Interconnection, L.L.C., 109 FERC ¶ 61,228 (2004), *order approving uncontested settlements*, 110 FERC ¶ 61,015 (2005).

¹⁰ See *Indep. Market Monitor for PJM v. PJM Interconnection, L.L.C.*, 174 FERC ¶ 61,212 at P 65 (2021) (“Based on the record demonstrating consistently low PAI each year, we find that 360 PAI exceeds market participants’ reasonable, actual expectations of the number of PAI the system will experience in a given year.”) (March 2021 Order); *Indep. Market Monitor for PJM v. PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,137 (2021) (Danly, Comm’r, dissenting) at P 2 (default offer cap at issue “assumes a higher number of triggering performance intervals than ever occurs in real life”) (subsequent history omitted). The Base Residual Auction for Delivery Year 2022/2023 occurred in May 2021, after the Commission issued the March 2021 Order.

¹¹ Cf. , e.g., *Citadel FNGE Ltd. v. FERC*, 77 F.4th 842, 864 (D.C. Cir. 2023) (upholding FERC’s explanation that it may adjust rates “when they are operating contrary to investor expectations by producing anomalous results, contrary to their purpose and design”).

¹² Cf. , e.g., *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1230 (D.C. Cir. 2018) (affirming the Commission’s denial of fuel cost recovery in excess of the market-wide cost cap in effect during the Polar Vortex).

¹³ See *Essential Power OPP, LLC, et al. v. PJM Interconnection, L.L.C.*, Comments of Vistra Corp. at 27-28 (filed May 26, 2023) (suggesting that capacity resources could factor into risk assessments that Non-Performance Charges and Performance Payments are “illusory”); *Protest of Constellation Energy Generation, LLC*, at 19 (filed May 26, 2023) (questioning whether generator owners will purchase expensive fuel if litigation could alleviate Non-Performance Charges).

¹⁴ See *Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1176 (D.C. Cir. 1987) (discussing the “end result” test announced in *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 602 (1944) (“Under the statutory standard of ‘just and reasonable’ it is the result reached not the method employed which is controlling. . . . It is not theory but the impact of the rate order which counts.

13. This concludes my affidavit.

VERIFICATION

I, Steven T. Naumann, pursuant to 28 U.S.C § 1746, state, under penalty of perjury, that I am the Steven T. Naumann referred to in the foregoing document entitled “Affidavit of Steven T. Naumann, P.E. on Behalf of PJM Interconnection, L.L.C.,” that I have read the same and am familiar with the contents thereof, and that the facts set forth therein are true and correct to the best of my knowledge, information and belief.

/s/ Steven T. Naumann

If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end.” (citations omitted); *id.* at 1177 (“The Supreme Court has repeatedly reaffirmed the “end result” standard of *Hope Natural Gas.*”) (citing *FPC v. Memphis Light, Gas & Water Div.*, 411 U.S. 458, 474 (1973); *Colo. Interstate Gas Co. v. FPC*, 324 U.S. 581, 605 (1945); *In Permian Basin Area Rate Cases*, 390 U.S. 747, 792 (1968)).

EXHIBIT 4

**AFFIDAVIT OF
WILLIAM B. BERG**

September 29, 2023

I. Introduction, Qualifications, and Summary of Conclusions

1. My name is William B. Berg. My business address is 200 Exelon Way, Kennett Square PA, 19348. I am Vice President of Wholesale Market Development for Constellation Energy Corporation (“Constellation” or the “Company”).

2. In my current role, I manage Constellation’s wholesale policy development in all competitive wholesale electricity markets in which the Company is engaged (PJM Interconnection, L.L.C. (“PJM”); ISO New England Inc.; Electric Reliability Council of Texas; Southwest Power Pool; Midcontinent Independent System Operator, Inc.; and New York Independent System Operator, Inc.). In this role, I work closely with various groups across Constellation to understand the Company’s needs. I also participate in strategic decisions regarding whether to retire or make capital investments in generation units.

3. I have worked in the electric power industry for over 30 years. During that time, I have developed an understanding of market dynamics in regulated and deregulated markets. I have served in my current position as Vice President of Wholesale Market Development at Constellation since February 2022, and held the same position at Exelon Corporation from July 2014 until the Constellation spinoff in February 2022. Prior to that, from 2005 to 2014, I held positions of increasing responsibility at Exelon and performed many of the same functions I perform in my current role, except with respect to a smaller geographic area. Before joining Exelon, from 2001 to 2004, I worked for Reliant Energy and was responsible for wholesale market development for the PJM region. Throughout my time with Constellation, Exelon, and Reliant, I have consistently worked closely with various commercial units to understand the business needs of the companies to ensure alignment with competitive market development.

4. I hold a Bachelor of Arts in Business Administration with a Minor in Economics from Lenoir-Rhyne University and a Master of Arts in Applied Economics from the University of Central Florida, College of Business.

5. Below, I describe the basis for Constellation's support for PJM's proposed offer of settlement (the "Settlement Agreement") to resolve the complaints challenging PJM's assessment of capacity non-performance performance charges during Winter Storm Elliott. I begin by briefly describing Constellation and Constellation's interest in the outcome of these proceedings. Then, I summarize the Winter Storm Elliott litigation and explain Constellation's support for the proposed Settlement Agreement. I conclude that FERC should approve the settlement as just and reasonable.

II. Constellation's PJM Fleet and Performance During Winter Storm Elliott

6. Constellation is the nation's largest producer of clean, carbon-free energy, and a leading supplier of energy products and services for homes and businesses across the United States. Constellation's fleet consists of more than 20,000 megawatts (MW) of capacity within PJM, located across the PJM footprint, and more than 32,000 MW of capacity nationwide.

7. Constellation is an active participant in PJM's capacity markets. For example, for the 2022/23 Delivery Year, 73 of Constellation's individual PJM units (located at 21 generation facilities and comprising the majority of Constellation's PJM fleet) obtained capacity commitments.

8. During December 2022, Winter Storm Elliott blanketed the eastern half of the United States, causing an extreme cold weather event in the PJM region. Overall, Constellation's generation fleet (both resources that had a PJM capacity obligation as well as those that did not) performed very well during the Maximum Generation Emergency periods on December 23 and 24. Many of Constellation's generation units that had capacity obligations in PJM substantially

over-performed relative to their expected performance levels, and several Constellation units that did not have capacity obligations performed very well during the emergency periods, too.¹

9. Constellation's PJM fleet, however, did not perform flawlessly during Winter Storm Elliott. For example, Constellation's Eddystone Generation Units 3 and 4 did not receive day-ahead awards for December 23 or December 24 but were called on by PJM to operate in real-time on December 24. Constellation incurred significant non-performance charges for these units, which exceeded their 2022/23 capacity revenues. Nevertheless, based on its overall strong operations during the storm, on net, Constellation is entitled to significant capacity performance payments.

III. Winter Storm Elliott Litigation and Proposed Settlement

10. In 15 complaints, capacity resource owners have sought relief from capacity non-performance charges assessed by PJM under Attachment DD § 10A of PJM's tariff for under-performance during Winter Storm Elliott. These complaints are wide-ranging in nature and scope. For example, some complainants make broad challenges to PJM's operational decisions leading up to and during the emergency, including the sufficiency of PJM's load forecast; the adequacy of notice provided to units; the duration that PJM maintained its maximum generation emergency action; and PJM's support for adjacent balancing area. Other complaints allege that individual units should be excused for fact-specific reasons, including that a unit was available but not dispatched. According to PJM, the overall non-performance charges and performance payments amount to \$1.8 billion. Based on Constellation's review of the service lists, there are more than 100 parties participating in the various dockets.

¹ These units were not capacity resources either because they did not clear the market (including because they were subject to the uncompetitive bid requirements of the then-effective Minimum Offer Price Rule) or were intermittent resources that did not participate.

11. Even though no case has been set for hearing, the nature, scope, and scale of the complaints has already generated an enormous amount of litigation. Parties—including Constellation—have vigorously defended their interests at every step of this proceeding, including by filing motions to dismiss, answers, protests, and successive answers. The parties have also contested ancillary issues, including proposed waivers and settlement judge procedures. Numerous parties, including Constellation, have retained experts.

12. Over Constellation’s objection, the Commission set the proceedings for settlement judge procedures on June 5, 2023. *Essential Power OPP v. PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,163 (2023). The Commission indicated that “a settlement judge may assist the parties in reaching a satisfactory resolution of the issues raised in these proceedings.” *Id.* at P 17. The Commission further noted that “providing parties the opportunity to enter into a mutually acceptable settlement of highly contested and complex issues is superior to years of ongoing litigation which, as PJM notes, could be disruptive to the market.” *Id.*

13. After his appointment by the Chief Administrative Law Judge, Judge Vlissides convened numerous settlement conferences. Constellation participated in these proceedings in good faith. Following extensive and contentious negotiations, nearly all the parties—including under-performing resource owners, over-performing resource owners, and PJM—agreed to a mutually satisfactory settlement in principle. The Independent Market Monitor indicated that it would not oppose.

14. The proposed Settlement Agreement, explained in greater detail by PJM, is structured as a black box settlement and will resolve all claims, allowing Market Participants and PJM to move forward without the uncertainty and costs that would result from continued litigation. Principally, the Settlement Agreement operates by applying a 31.7% reduction to nonperformance charges for

under-performing resources and a corresponding reduction in performance payments for over-performing resources. This structure ensures that no party receives either an outsized benefit or detriment relative to original PJM billings. The Settlement Agreement also includes several additional terms applicable to certain under-performing suppliers, which were negotiated as part of the global settlement and reflect individual considerations based on those parties' specific situations.

IV. The Proposed Settlement is Just and Reasonable

15. The Commission should determine that the proposed Settlement Agreement is a just and reasonable compromise that will benefit all parties by eliminating the need for costly litigation and associated market uncertainty that could last many years. This is true for six reasons.

16. First, on its face, the Settlement Agreement is just and reasonable and not unduly discriminatory or preferential. The Settlement Agreement applies an across-the-board reduction to the parties' net non-performance charges and performance payments, with limited deviations for specific complainants that address individual circumstances. To the extent that any under-performing resource is treated differently in the settlement, it reflects considerations unique to that party. All over-performing resources are treated the same. The settlement ensures the net positions of market participants are preserved; all net over-performers will continue to be net over-performers and retain performance payments.

17. Second, the Settlement Agreement will benefit PJM and all parties by eliminating the expense and burden of litigation on all parties, which the Commission emphasized in its June 5, 2023 order establishing settlement judge procedures. The nature, scope, and scale of the complaints all but ensures that the proceeding would continue for many years, which would necessarily lead the parties to incur tens of millions of dollars in legal fees. In hearing procedures, parties would be entitled to significant discovery going both directions. In addition, given the fact-

specific nature of many of the claims and the number of participants (including the diversity of their interests), the eventual hearings themselves would likely be lengthy and contentious. Further, the eventual outcome of a Commission order on initial decision would likely be appealed. To confirm the risk of complex litigation continuing for extended periods and imposing extraordinary costs on the Commission and participants, the Commission need only consider the multi-decade pendency of the California Power Crisis litigation. Similarly, litigation arising from electricity market issues in Winter Storm Uri remains ongoing in Texas nearly three years after the storm and is not close to final resolution. For these reasons, to the extent the Commission does not approve the Settlement Agreement, the litigation is likely to continue for many years.

18. Third, and relatedly, the Settlement Agreement will reduce the burden on PJM as it seeks to operate the grid safely and efficiently. If one or more of these proceedings were to reach discovery, PJM would need to devote significant resources to responding to data requests and would need to make its grid operators available for depositions. In light of the breadth of the claims, it is very likely that some operators would have to be deposed multiple times in the various cases. All of this work would necessarily distract PJM's staff, potentially over the course of years. It benefits all suppliers for PJM to be able to operate the system without the distraction of protracted litigation.

19. Reducing the burden on PJM is particularly important given the market changes that the Commission has already accepted and further work underway. On July 28, 2023, in direct response to the experience during Winter Storm Elliott, the Commission accepted PJM's proposal to heighten the threshold for imposing non-performance- charges. *See PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,058. In addition, PJM is currently nearing the end of its *Critical Issue Fast Path* stakeholder process to review broader changes to the capacity market. With these efforts,

continued litigation over PJM's response to Winter Storm Elliott will have little-to-no forward-looking benefit to PJM, suppliers, or other stakeholders.

20. Fourth, the Settlement Agreement reduces uncertainty for market participants during a time of significant industry transition. Thermal units throughout PJM are currently faced with the choice of whether to retire or continue operations. That decision is made more complicated if significant sums remain subject to litigation. Indeed, if these matters were litigated, there may be no final decision on the merits for many years. The Settlement Agreement avoids leaving significant sums in limbo, potentially subject to refund and interest while the litigation continues.

21. Fifth, although Constellation is confident in its litigation positions, including that many of the Complainants' claims are barred by the filed rate doctrine, Constellation acknowledges that other parties take a different view on the facts and law. Constellation also notes that, as in any multi-party and multi-issue case, some claims appear stronger than others. The purpose of a black box settlement is to balance various factors, including the parties' overall views of their litigation risk and expected costs, to reach an outcome that is mutually acceptable without the need to litigate every issue. In Constellation's business judgment, the proposed Settlement Agreement accomplishes this goal.

22. Finally, the nature of the claims and complexity of the non-performance charges make it essential that the Commission approve a market-wide settlement. Non-performance charges are collected and performance payments are made on an interval-by-interval basis; but the settlement applies an across-the-board reduction to avoid the need to litigate the facts with respect to any particular interval or under-performer. As a result, severing any party—either an over- or under-performing supplier—to allow that party to litigate their entitlement to performance payments for the intervals during which they over-performed could dramatically affect the balance of the

agreement. Indeed, such severance could potentially destroy the value of settlement for some settling under-performers. The parties negotiated a global, black box settlement to ensure that all parties had certainty on effect of the settlement. This was essential to reaching agreement; any changes to the settlement structure or economics could result in parties withdrawing their support.

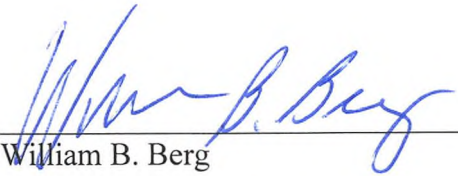
V. Conclusion

23. For the reasons discussed above, the Commission should approve the proposed Settlement Agreement, which is just and reasonable and not unduly prejudicial or discriminatory. The proposed Settlement Agreement reaches a fair outcome to the litigation, will avoid years of costly and contentious litigation, and will remove the accompanying uncertainty, allowing PJM and its stakeholders to look forward to managing the energy transition, rather than litigating the past.

ATTESTATION

District of Columbia)


I, William B. Berg, swear that the above and foregoing is true and correct to the best of my information, knowledge, and belief.



William B. Berg

SWORN AND SUBSCRIBED BEFORE ME

This 29 day of September 2023



Notary Public

My Commission Expires:

JERALONZA A. SCHOOLS
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires October 14, 2026

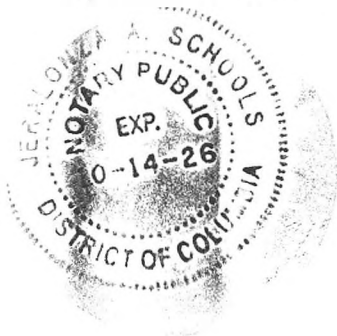


EXHIBIT 5

**AFFIDAVIT OF
JOHN S. ROHRBACH**

SEPTEMBER 29, 2023

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

Essential Power OPP, LLC, <i>et al.</i>)	
v.	)	Docket No. EL23-53-000
PJM Interconnection, L.L.C.)	
Aurora Generation, LLC, <i>et al.</i>)	
v.	)	Docket No. EL23-54-000
PJM Interconnection, L.L.C.)	
Coalition of PJM Capacity Resources)	
v.	)	Docket No. EL23-55-000
PJM Interconnection, L.L.C.)	
Talen Energy Marketing, LLC)	
v.	)	Docket No. EL23-56-000
PJM Interconnection, L.L.C.)	
Lee County Generating Station, LLC)	
v.	)	Docket No. EL23-57-000
PJM Interconnection, L.L.C.)	
SunEnergy1, LLC)	
v.	)	Docket No. EL23-58-000
PJM Interconnection, L.L.C.)	
Lincoln Generating Facility, LLC)	
v.	)	Docket No. EL23-59-000
PJM Interconnection, L.L.C.)	
Parkway Generating Keys Energy Center LLC)	
v.	)	Docket No. EL23-60-000
PJM Interconnection, L.L.C.)	
Old Dominion Electric Cooperative)	
v.	)	Docket No. EL23-61-000
PJM Interconnection, L.L.C.)	
Energy Harbor LLC)	
v.	)	Docket No. EL23-63-000
PJM Interconnection, L.L.C.)	

Calpine Corporation)	
v.	)	Docket No. EL23-66-000
PJM Interconnection, L.L.C.)	
Invenergy Nelson LLC)	
v.	)	Docket No. EL23-67-000
PJM Interconnection, L.L.C.)	
East Kentucky Power Cooperative, Inc.)	
v.	)	Docket No. EL23-74-000
PJM Interconnection, L.L.C.)	
CPV Maryland, LLC, and Competitive Power Ventures Holdings, LP)	
v.	)	Docket No. EL23-75-000
PJM Interconnection, L.L.C.)	
Parkway Generation Operating LLC, Parkway Generation Sewaren Urban Renewal Entity LLC)	
v.	)	Docket No. EL23-77-000
PJM Interconnection, L.L.C.)	
PJM Interconnection, L.L.C.	)	Docket No. ER23-_____

(Not Consolidated)

**AFFIDAVIT IN SUPPORT OF SETTLEMENT OF
JOHN S. ROHRBACH ON BEHALF OF
SOUTHERN MARYLAND ELECTRIC COOPERATIVE, INC.**

A. Introduction.

1. My name is John Rohrbach. I hold the position of Executive Director, Regulatory Strategy at the Alliance for Cooperative Energy Services Power Marketing LLC (“ACES”). I represented ACES’ Member Southern Maryland Electric Cooperative, Inc. (“SMECO”) in the settlement judge proceedings that the Settlement Offer (“Settlement”) submitted by PJM Interconnection, L.L.C. (“PJM”) on September 29, 2023 in the above-captioned dockets addresses. My qualifications are described below.

2. SMECO is a cooperative, non-profit membership corporation incorporated under the Electric Cooperative Act of Maryland. SMECO operates over 9,100 line miles to serve over 175,000 consumers located in the Maryland counties of Calvert, Charles, St. Mary’s, and Prince George’s. SMECO is a PJM load serving entity (“LSE”). SMECO’s foremost concern is

ensuring that PJM-administered markets continue to provide reliable service to their customer-owners at affordable rates, as those markets have done in recent years. This fiduciary focus spans the integrity, design, and performance of all of PJM’s markets and products including the Reliability Pricing Model (“RPM”) capacity construct.

3. During Winter Storm Elliott on December 23 and 24, 2022, PJM implemented several Emergency Actions to maintain system reliability¹ that triggered 277 Performance Assessment Intervals (“PAIs”) over a twenty-three-hour period of emergency procedures.² The Non-Performance Charges assessed by PJM in connection with these PAIs total approximately \$1.8 billion.³
4. In March 2023, PJM began billing resource owners whose units experienced performance shortfalls during Winter Storm Elliott for the associated Non-Performance Charges. Between March 31 and June 16, 2023, a number of resource owners filed the fifteen complaints in the proceedings captioned above seeking relief from the Non-Performance Charges (the “Winter Storm Elliott Complaints”).
5. In an order issued on June 5, 2023, the Federal Energy Regulatory Commission (“FERC”) established settlement judge procedures to address the Winter Storm Elliott Complaints. SMECO actively participated in the settlement judge procedures that culminated with the Settlement submitted by PJM on September 29, 2023.
6. SMECO requested that I submit this Affidavit to ensure the decisional record reflects the perspective of a public power entity with load interests in PJM. I reviewed the Settlement from that perspective and conclude that it resolves the issues raised by the Winter Storm Elliott Complaints in a just and reasonable manner.
7. First, the Settlement is just and reasonable because it results in timely resolution of Winter Storm Elliott complaints and supports the long-term health of the PJM market at a critical juncture. Specifically, PJM is on the cusp of, if not already in, uncharted waters as a market

¹ PJM Interconnection, L.L.C., *Winter Storm Elliott, Event Analysis and Recommendation Report* at 28-32 (July 17, 2023), <https://pjm.com/-/media/library/reports-notice/special-reports/2023/20230717-winter-storm-elliott-event-analysis-and-recommendation-report.ashx>.

² *Id.* at 98.

³ See PJM Risk Management Committee, September Informational Posting, Item 2b, <https://www.pjm.com/-/media/committees-groups/committees/rmc/2023/20230919/20230919-informational-only---02b---initial-vs-final-bonus-holdback-and-cumulative-billing.ashx>.

and RTO. The expected loss of up to 50,000 MW⁴ of mostly thermal generation resources by the end of the decade, a trend that just began with the retirement of just under 8,000 MW at the start of the current 2023/2024 RPM Delivery Year, when coupled with an anemic baseload generation replacement rate that I describe below, places PJM at a crossroad. Key features of PJM’s markets – including PJM’s RPM capacity market and PJM’s reserve products markets – are on track for review and potential reforms. As such, continued Winter Storm Elliott litigation – which could drag on for years – would divert focus on these vital efforts.

8. Moreover, in my view, based on over two decades of regulatory/commercial experience in the PJM market, continued litigation of Winter Storm Elliott complaints would chill signals for new resource investment at time when PJM does not have any margin for error. Specifically, as the PJM 2023 “Resource Retirements, Replacements and Risks” report (“4R Report”) explains, there is a near term possibility that PJM’s reserve margin could fall to single-digit levels.⁵ Simply stated, the Settlement resolves litigation uncertainties and allows PJM and its stakeholders to focus on a transition like no other in PJM’s history.
9. Second, in the aftermath of Winter Storm Elliott, over 4,000 MW of PJM generation sought Chapter 11 bankruptcy protection in connection with PJM’s assessment of Winter Storm Elliott Non-Performance Charges. The Settlement enhances PJM market stability by reducing the risk of additional defaults in which PJM and members eligible for Winter Storm Elliott Performance Payments may receive little or no recovery.
10. These two fundamental rationales supporting the Settlement – avoiding disruption and enhancing market stability – are discussed in detail below.

B. Qualifications.

11. I have been actively involved in the evolution of FERC-regulated competitive power markets for over three decades. I currently provide commercially focused PJM subject matter expertise, advocacy, and coalition management in the PJM stakeholder process, and targeted advisory services related to market compliance, power supply planning, buy-side PPA counsel, and cost-

⁴ The PJM Independent Market Monitor noted during the June 14, 2023 Capacity Market Forum that “[w]hile 2007 was a key inflection point, we’re clearly at another one. . . . We see 50,000 megawatts of 14 retirements coming. We don’t see where reliable firm energy is going to come from to replace that. . . .” *PJM Capacity Market Forum Technical Conference*, Docket No. AD23-7-000, Tr. at 21:11-15 (June 15, 2023) (emphasis added).

⁵ See PJM Interconnection, L.L.C., *Energy Transition in PJM: Resource Retirements, Replacements and Risks* (Feb. 23, 2023) (“4R Report”), <https://www.pjm.com/-/media/library/reports-notices/special-reports/2023/energy-transition-in-pjm-resource-retirements-replacements-and-risks.ashx>.

of-service ratemaking. I am an expert in the PJM energy market and the RPM capacity construct, including the Capacity Performance (“CP”) rules in PJM’s Tariff, Attachment DD, section 10A. I have submitted testimony before the Commission and submitted an expert report in U.S. District Court on RPM market issues.

12. I have submitted expert testimony and affidavits in approximately twenty-five electric power and interstate natural gas pipeline regulatory proceedings and disputes at the Commission, in U.S. District Court, and in state venues. Immediately prior to my current position, I was Managing Director of Capacity Markets at ACES. Before joining ACES in 2012, I held positions at: CenterPoint Energy, an electric utility; GenOn Energy and predecessor independent power producer companies; consultancies including Black & Veatch Management Consulting; and state utility regulatory commissions. At the Pennsylvania Public Utility Commission, I served as an advisor to two Commissioners, Nora Brownell and John Hanger. I began my career at the New Jersey Board of Public Utilities as a research economist in 1985.

13. I received a Bachelor of Arts in Economics and Political Science from Rutgers University in 1982 and a Bachelor of Science in Accounting from Florida Southern College in 2003. I also received a Master of Science in Public Management and Policy from the Heinz College at Carnegie Mellon University in 1984 and a Master of Science in Taxation from the College of Business Administration at the University of Central Florida in 2010. In 2006, I earned the NYMEX Energy Risk Management graduate finance certificate from the Gutierrez Energy Management Institute at the University of Houston’s C.T. Bauer College of Business.

C. Settlement Quantification.

14. The settlement provides for a 31.7% reduction in Winter Storm Elliott PAI charges. Given PJM’s final Winter Storm Elliott PAI charge amount of approximately \$1.8 billion,⁶ the settlement results in a reduction of more than \$569 million in Non-Performance Charges.

D. The Settlement Allows a Forward Focus on Necessary PJM Market Reforms.

15. When operated on its regular tariff schedule, PJM’s base residual auction clears on a three-year forward basis, providing transparent capacity price signals to support infrastructure investment and retirement. Specifically, “[t]he goal of RPM is to align capacity pricing with

⁶ See PJM Risk Management Committee, September Informational Posting, Item 2b, *supra* note 3.

system reliability requirements and to provide transparent information to all market participants far enough in advance for actionable response to the information.”⁷

16. However, PJM now faces unprecedented resource retirements, including the loss of as much as 50,000 MW of dispatchable resources by the end of the decade.⁸ PJM’s 4R Report indicates that the current pace of new entry will be insufficient to keep up with expected retirements and demand growth (primarily large data centers and electrification) by 2030.⁹ To address these issues, the PJM Board of Managers initiated the Critical Issue Fast Path–Resource Adequacy (“CIFP-RA”) stakeholder process in February 2023.
17. I continue to monitor the PJM new services/generator interconnection queue and I concur that the pace and scope of new entry is not sufficient to alleviate these concerns. For example, the IMM’s second quarter 2023 State of the Market Report shows that 9,191 MW of combined cycle generation is in the PJM queue, including 3,950 MW with a “suspended” queue status. However, only 16.4% of combined cycle units in the queue reach commercial fruition, for a total expected new entry of 1,507 MW.¹⁰ For natural gas combustion turbines (“CT”), there are 3,829 MW in the queue as of June 30, 2023, but with a historical commercial completion rate of 46.1%, this results in expected CT new entry of only 1,765 MW. And, these completion rate statistics are historical, but history may not be a good predictor of future new entry, particularly given that generation queue process times today are longer compared to past periods. This may further diminish project completion rates.
18. Approving the Settlement will allow the PJM stakeholders to turn their attention to addressing the myriad pressing issues facing PJM. Resolving many of these issues will take considerable time and attention, as some of the issues are projected to take months, if not years, to address. Absent timely resolution of the Winter Storm Elliott Complaints, stakeholders’ finite resources

⁷ PJM Manual 18: PJM Capacity Market (July 26, 2023), § 1.1, <https://www.pjm.com/-/media/documents/manuals/m18.ashx>.

⁸ According to the PJM Independent Market Monitor (“IMM”), “more than 50,000 MW of capacity are at risk of retirement, including announced retirements, retirements as a result of state and federal environmental regulations, and retirements for economic reasons. The retiring capacity consists primarily of coal steam plants and CTs.” Monitoring Analytics, LLC, *State of the Market Report for PJM* at 1 (Aug. 10, 2023) (“Q2 2023 SOM”), https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2023/2023q2-som-pjm.pdf.

⁹ 4R Report, *supra* note 5, at 2.

¹⁰ See Q2 2023 SOM, *supra* note 8, tbls. 12-17 & 12-24.

would be diverted from the necessary modifications to address the identified issues that currently exist within PJM's markets.¹¹

19. PJM has identified in its 4R Report four "trends" that present reliability risks due to potentially insufficient levels of resource adequacy. These are:

- The growth rate of electricity demand is likely to continue to increase from electrification coupled with the proliferation of high-demand data centers in the region.
- Thermal generators are retiring at a rapid pace due to government and private sector policies as well as economics.
- Retirements are at risk of outpacing the construction of new resources, due to a combination of industry forces, including siting and supply chain, whose long-term impacts are not fully known.
- PJM's interconnection queue is composed primarily of intermittent and limited-duration resources. Given the operating characteristics of these resources, we need multiple megawatts of these resources to replace 1 MW of thermal generation.¹²

20. The 4R Report notes that given retirements and a tepid rate of new generation investment, demand may exceed resource supply by the end of the current decade. As PJM's 4R Report states:

Combining the resource exit, entry and increases in demand, summarized in Figure 7 [Figure 1 below], the study identified some areas of concern. Approximately 40 GW PJM's fossil fuel fleet resources may be pressured to retire as load grows into the 2026/2027 Delivery Year. At current low rates of renewable entry, the projected reserve margin would be 15%, as shown in Table 1 [Figure 2 below]. The projected total capacity from generating resources would not meet projected peak loads, thus requiring the deployment of demand response. By the 2028/2029 Delivery Year and beyond, at Low New Entry scenario levels, projected reserve margins would be 8%, as projected demand response may be insufficient to cover peak demand expectations, unless new entry progresses at a levels exhibited in the High New Entry scenario. This will require the ability to maintain

¹¹ See, e.g., *PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,058, at PP 8, 43 (2023) (noting the broad set of unfiled RPM changes approved by the PJM Members Committee, and the ongoing CIFP-RA stakeholder process and related October 1, 2023 FERC filing anticipated by PJM). On September 27, 2023, the PJM Board of Managers announced that PJM would be filing, by October 13, 2023, its CIFP-RA reforms. See Letter from Mark Takahashi, Chair, PJM Board of Managers (Sept. 27, 2023) ("PJM Board of Managers Letter"), <https://www.pjm.com/-/media/about-pjm/who-we-are/public-disclosures/20230927-pjm-board-letter-re-its-decision-within-the-cifp-ra.ashx>.

¹² *Id.* at 1.

needed existing resources, as well as quickly incentivize and integrate new entry.¹³

Figure 1: PJM 4R Report’s “Balance Sheet”

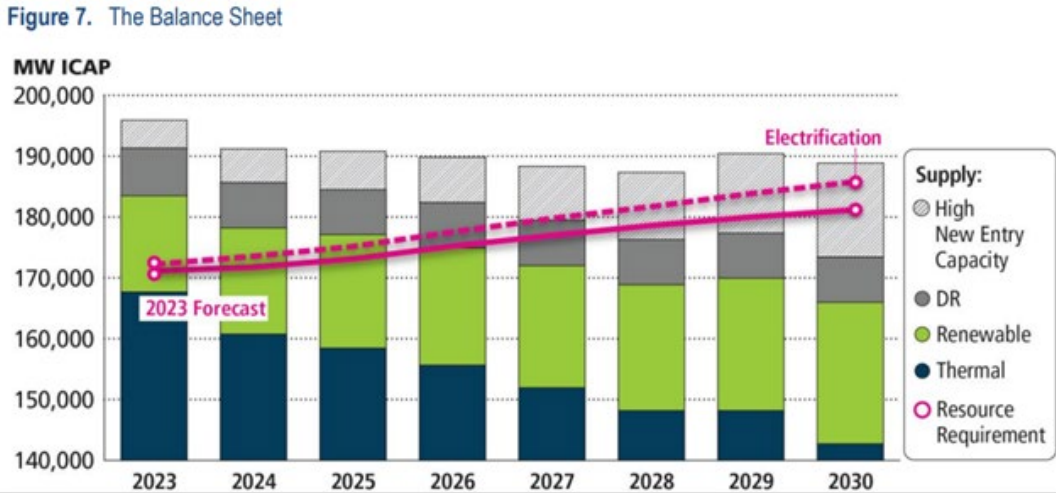


Figure 2: PJM 4R Report’s Reserve Margin Projections

Table 1. Reserve Margin Projections Under Study Scenarios

Reserve Margin	2023	2024	2025	2026	2027	2028	2029	2030
Low New Entry								
2023 Load Forecast	23%	19%	17%	15%	11%	8%	8%	5%
Electrification	22%	18%	16%	13%	10%	7%	6%	3%
High New Entry								
2023 Load Forecast	26%	23%	21%	19%	17%	16%	17%	15%
Electrification	25%	22%	20%	18%	15%	14%	14%	12%

21. Additionally, a proposed U.S. Environmental Protection Agency (“EPA”) rule establishing greenhouse gas (“GHG”) emissions standards for fossil fuel-fired electric generating units contributes to PJM’s challenges. Specifically, joint comments filed by PJM with the Electric Reliability Council of Texas, Midcontinent Independent System Operator and Southwest Power Pool raise concerns that the EPA’s proposed GHG rules could risk grid reliability:

The Joint ISOs/RTOs have long been at the forefront of renewable energy integration but have seen an increasing trend of retirements of dispatchable generation, which provides critical attributes that are needed to support the reliable operation of the grid. Although each region is working to facilitate a substantial increase in renewable generation, the challenges and risks to grid reliability associated with a diminishing amount of dispatchable

¹³ 4R Report, *supra* note 5, at page 16.

generating capacity could be severely exacerbated if the Proposed Rule is adopted.¹⁴

22. The above challenges demonstrate that there is a real need for improvements to the PJM markets and RPM capacity construct to address the transition period ahead. These important PJM-region issues require the immediate attention of PJM's stakeholders, who have finite resources they are able to devote to this and other matters. The Settlement resolves the Winter Storm Elliott Complaints expeditiously in a way that permits stakeholders to roll up their sleeves and get to work on other PJM issues. These are serious matters that must be addressed so consumers have assurances that the lights will stay on, and electricity will be affordable. The longer it takes to address the Winter Storm Elliott Complaints, the less time will be available to protect consumer interests via a robust stakeholder process.
23. One example of an issue PJM has identified as needing stakeholder attention is the design and performance of PJM's reserve product markets. At the September 2023 PJM Markets and Reliability Committee meeting, members approved a Reserve Certainty Issue Charge. The accompanying Reserve Certainty Problem Statement explains that PJM has identified three horizons for reliability concerns: immediate, near-term, and upcoming. The problem statement indicates that PJM believes action is required to address concerns in both the immediate and upcoming time horizons in the following areas:
- Reserve Certainty
 - Fuel procurement and compensation lessons learned from Winter Storm Elliott
 - Energy Assurance
 - Load Following/Dispatchability¹⁵
24. The PJM Reserve Certainty Problem Statement indicates that the “rise in uncertainty and volatility is compounded by the growing concern over the amount of thermal generation retirements that are anticipated, particularly given that the Intermittent Resources that are replacing thermal resources are not comparable in terms of flexibility and dispatchability as identified in the [4R Report].”¹⁶ However, as noted the Problem Statement's work timeline shown in Figure 3 below, certain longer-term reserves market issues cannot be completed for

¹⁴ Joint Comments of Electric Reliability Council of Texas, Inc., Midcontinent Independent System Operator, Inc., PJM Interconnection, L.L.C. and Southwest Power Pool, Inc., Docket No. EPA-HQ-OAR-2023-0072, (Aug. 8, 2023), <https://www.pjm.com/-/media/documents/other-fed-state/20230808-comments-of-joint-isos-rtos-docket-epa-hq-oar-2023-0072.ashx>.

¹⁵ PJM Interconnection, L.L.C., Reserve Certainty Problem Statement, <https://www.pjm.com/-/media/committees-groups/committees/mrc/2023/20230920/20230920-item-02a---1-reserve-certainty-problem-statement.ashx>.

¹⁶ *Id.*

upwards of twenty-seven months before a filing requesting approval from FERC is made, consideration of which could add another two months before reforms can be implemented.

Figure 3: PJM Reserves Market Reform Work Timeline

Topic	Design Timeline	System Need Timeline
Reserve Resource Performance and Penalty Structure	Start: Immediately Timeline: 6-9 months	Immediate
Reserve Offer structure appropriately aligned for resource fuel procurement	Start: Immediately Timeline: 6-9 months	Immediate
Reserve deployment	Start: Immediately Timeline: 6-9 months	Immediate
Reserve quantities procurement reflects system needs	Start: Immediately Timeline: 9-18 months	Immediate & Longer-term
Reserve product participation requirements	Start: Delayed 6-9 months Timeline: 12-18 months	Longer-term
Incenting Resource flexibility that the system needs	Start: Delayed 6-9 months Timeline: 12-18 months	Longer term

25. As Figure 3 above shows, PJM stakeholder work on PJM reserve market reforms may extend into 2026. However, in the context of the resource adequacy challenges that PJM has identified (as summarized above), 2026 is when PJM notes that its installed reserve margin could approach 15% and when “projected total capacity from generating resources would not meet project peak loads, thus requiring the deployment of demand response.”¹⁷ Thus, stakeholder focus is required on multiple PJM markets. As the PJM Board of Managers noted in its September 27, 2023 notice announcing its direction on CIFP-RA reforms, PJM needs “to make necessary enhancements to the capacity market through this action but . . . additional changes to PJM’s market are necessary to ensure prices align with the evolving reliability needs.”¹⁸ Accordingly, resolution of the Winter Storm Elliott Complaints via this Settlement will permit PJM, PJM member and stakeholder work to commence on these vital market and resource adequacy matters without diversion to continued litigation.

E. The Settlement Mitigates Risk of Additional Market Disruption.

26. PJM began billing Non-Performance Charges to resources that experienced performance shortfalls during Winter Storm Elliott with the March 2023 invoice cycle. Capacity Resources facing Non-Performance Charges had the option¹⁹ to pay these charges either (1) over a three-month period (beginning with the March 2023 invoices payable in April 2023, and ending with

¹⁷ 4R Report, *supra* note 5, at 16.

¹⁸ PJM Board of Managers Letter, *supra* note 11, at 2.

¹⁹ Tariff, Attachment DD, § 10A(j).

the May 2023 invoices payable in June 2023), or (2) over a nine-month period (beginning with the March 2023 invoices payable in April 2023, and ending with the November 2023 invoices payable in December 2023).²⁰

27. However, in the aftermath of Winter Storm Elliott, four PJM market participants representing approximately 4,140 MW of capacity resources²¹ sought Chapter 11 bankruptcy protection. Specifically, Elgin and Rocky Road,²² Heritage Power²³ and EFS Parlin²⁴ defaulted on a collective \$71 million in net Winter Storm Elliott Non-Performance Charges. As shown in Table 1, the “penalty rate” on which these Chapter 11 defaults occurred is approximately \$18,141 per MW.

Table 1: Winter Storm Elliott Defaults

<i>Entity or Line Item</i>	<i>Winter Storm Elliott PAI Default</i>	<i>Source</i>
Rocky Road	\$18,005,954.14	PJM/Rocky Road
Elgin	\$24,771,707.40	PJM/Elgin
Heritage Power	\$23,902,471.71	Heritage filing
EFS Parlin	\$4,070,295.00	Parlin filing
Total PAI Default:	\$70,750,428.25	From above
MW:	Approx. 3,900 MW UCAP	Filings & PJM data.
PAI Default/MW:	\$18,141	Total PAI/MW

28. These results suggest that if the Winter Storm Elliott Non-Performance Charges are assessed in full in the absence of the Settlement reducing such charges, the PJM market would face the prospect of additional market dislocation and less than full collection of these charges. In such a scenario, PJM and its members would be at risk of less than 100% recovery of non-collateralized amounts owed. That is an unfavorable outcome and would not be consistent with the public interest.

²⁰ *PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,001, at P 10 & n.29 (2023).

²¹ Approximately 3,900 MW on an unforced basis using an assumed 6% forced outage rate.

²² *See In re Lincoln Power, L.L.C., et al.*, Motion of Debtors for Entry of an Order (I) Approving the Settlement with PJM Interconnection, L.L.C. and PJM Settlement, Inc., and (II) Granting Related Relief at 12, Case No. 23-10382, (Bankr. D. Del. May 3, 2023), <https://www.pjm.com/-/media/documents/other-fed-state/20230503-23-10382.ashx>.

²³ PJM Settlement, Inc., Proof of Claim at 4, Case No. 23-90038 (Bankr. S.D. Tex.), <https://document.epiq11.com/document/getdocumentbycode?docId=4174608&projectCode=HTO&source=DM>.

²⁴ EFS Parlin’s April 28, 2023 Chapter 11 bankruptcy submittal lists PJM as having a \$4,070,295.00 unsecured claim. *See* EFS Parlin Holdings, LLC Voluntary Petition for Non-Individuals Filing Bankruptcy at 9, Case No. 23-10539 (Bankr. D. Del.), <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=9994FF27-77B2-CC79-8876-87E237A00000>.

F. Conclusion

29. Based on my experience as an active participant in PJM's stakeholder processes, there is significant value in avoiding diversion of PJM members' attention diverted to extensive, protracted Winter Storm Elliott litigation and instead allowing resources to be focused on prospective changes and reforms to PJM's energy market and capacity construct, which should restore investor confidence as PJM heads into uncharted waters. These benefits of the Settlement support a finding by the Commission that the Settlement is just and reasonable.
30. This concludes my affidavit.

VERIFICATION OF AFFIDAVIT

Pursuant to 18 C.F.R. § 385.2005(b)(3), I verify under penalty of perjury that the foregoing Affidavit is true and correct.

Executed September 29, 2023.

By: /s/ John S. Rohrbach
John S. Rohrbach