

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

PJM Interconnection, L.L.C. <i>et al.</i>)	Docket No. EL25-49-000
)	
)	
Large Loads Co-Located at Generating Facilities)	Docket No. AD24-11-000
)	
Constellation Energy Generation, LLC)	Docket No. EL25-20-000
Complainant,)	(Consolidated)
v.)	
PJM Interconnection, L.L.C.)	
Respondent.)	

**JOINT COMMENTS AND MOTION TO STAY PROCEEDINGS AND REQUEST TO
ESTABLISH SETTLEMENT JUDGE PROCEDURES OF
THE ELECTRIC POWER SUPPLY ASSOCIATION, THE PJM POWER PROVIDERS
GROUP, CALPINE CORPORATION, COGENTRIX ENERGY POWER
MANAGEMENT, LLC, CONSTELLATION ENERGY GENERATION, LLC AND LS
POWER DEVELOPMENT, LLC**

Pursuant to Rules 212 and 603 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission,¹ the Electric Power Supply Association;² the PJM Power Providers Group;³ Calpine Corporation; Cogentrix Energy Power Management, LLC; Constellation Energy Generation, LLC; and LS Power Development, LLC (collectively the “Joint Parties”) respectfully

¹ 18 C.F.R. §§ 385.212, 385.603.

² The Electric Power Supply Association (“EPSA”) is the national trade association representing competitive power suppliers in the U.S. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue. EPSA filed a timely document-less Motion to Intervene in this proceeding on November 25, 2024.

³ The PJM Power Providers Group (“P3”) is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM Interconnection, L.L.C. (“PJM”) region. Combined, P3 members own over 88,000 MWs of generation assets and produce enough power to supply over 63 million homes in the PJM region covering 13 states and the District of Columbia. These comments represent the position of P3 as an organization but not necessarily the views of any particular member with respect to any issue.

request that the Commission find the PJM Open Access Transmission Tariff (“PJM Tariff”) to be unjust, unreasonable and unduly discriminatory and preferential given its unclear and inadequate provisions supporting the co-location of load with generating resources. Joint Parties also request that the Commission stay these consolidated proceedings for 90 days and establish settlement judge procedures to provide an opportunity for parties to develop a replacement rate to address the issues raised in these consolidated proceedings. Specifically, the PJM Tariff lacks provisions addressing with sufficient clarity or consistency the rates, terms or conditions of service that apply to co-location, and no party has meaningfully demonstrated otherwise.⁴ As a result, the Commission should issue a finding as expeditiously as possible that the PJM Tariff is unjust and unreasonable and unduly discriminatory and preferential. In addition to making this finding, the Commission should appoint a settlement facilitator and/or settlement judge to actively engage, through publicly-noticed settlement conferences, with PJM, the Transmission Owners, and any other interested intervenors in a concerted, focused, and good faith effort to resolve this proceeding within a 90 day period. The Commission should direct parties to this settlement process to identify an acceptable replacement rate that reasonably establishes the services, if any, used by co-located loads, and allocates any costs to such loads (or the generator serving them) consistent with cost causation principles.

⁴ See, e.g., PJM Interconnection, L.L.C., Answer, Docket Nos. EL25-49-000 *et al.* at 4, 5, 8, 32, 33, 55 (filed Mar. 24, 2025) (while PJM argues that the PJM Tariff “remains just and reasonable,” it provides no meaningful evidence or other support for this argument, repeatedly requesting guidance from the Commission instead) (“PJM Answer”).

I. PJM’S TARIFF IS UNJUST, UNREASONABLE AND UNDULY DISCRIMINATORY AND PREFERENTIAL

The Commission explained in its Co-Location Show Cause Order that the PJM Tariff appears unjust, unreasonable and unduly discriminatory and preferential for numerous reasons.⁵ The Joint Parties do not disagree with these preliminary Commission findings. As explained above, the Commission should now conclusively find the PJM Tariff to be unjust, unreasonable and unduly discriminatory and preferential, and the Commission can make such a finding for these prime reasons:

1. It lacks clarity in the way it applies to a variety of co-location arrangements;
2. This lack of clarity has enabled the Indicated Transmission Owners and PJM to take the position that the PJM Tariff precludes options other than full Network Integration Transmission Service (“NITS”) billed on a gross load basis (or other than a few “preferred” NITS-based options) for every load in the PJM footprint regardless of configuration. Adopting this position, as urged by the Indicated Transmission owners, further renders the PJM Tariff unjust and unreasonable, and unduly discriminatory and preferential by:
 - a. imposing a one-size-fits-all solution on customers that are not similarly-situated;

⁵ See, e.g., *PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,115, at P 74 (2025) (“Co-Location Show Cause Order”) (finding the PJM Tariff may lack provisions addressing with sufficient clarity the rates, terms, and conditions of service for co-location arrangements); *id.* P 78 (finding the PJM Tariff may fail to provide a process that ensures co-location arrangements pay for the benefits they receive from the transmission system consistent with the cost causation principle); *id.* P 82 (finding the PJM Tariff lacked provisions governing the use and sale of ancillary services and black start services); *id.* P 83 (finding the PJM Tariff lacked rules necessary to provide PJM with sufficient information to perform appropriate analysis to ensure reliable system operations given the characteristics of co-location arrangements).

- b. such a one-size-fits-all solution as urged by the Indicated Transmission Owners encourages economically inefficient outcomes and mutes the signal for efficient siting, leading to potentially costly, time-consuming and avoidable transmission build-out; and
- c. such a one-size-fits-all, NITS-only approach for co-location intrudes upon the jurisdiction of the states to decide what options should be available for co-located load.

As described above, no party responding to the Co-Location Show Cause Order has demonstrated that the PJM Tariff is just, reasonable and not unduly discriminatory or preferential, or even made a meaningful effort to do so. As such, the Commission should issue a decision in the Co-Location Show Cause proceeding that the PJM Tariff is indeed unjust, unreasonable and unduly discriminatory and preferential. Based on the extensive record in this proceeding, the Commission has more than sufficient evidence to support such a finding, can issue an order expeditiously and should do so.⁶

II. MOTION TO STAY PROCEEDINGS AND REQUEST TO ESTABLISH SETTLEMENT JUDGE PROCEDURES

After finding that the current PJM Tariff is unjust and unreasonable and unduly discriminatory and preferential, the Commission should defer to the parties in this proceeding to develop a new replacement rate through a Commission-supported settlement process.⁷ Such a

⁶ As discussed, the Joint Parties believe the Commission should and can find that the PJM Tariff is unjust, unreasonable, and unduly discriminatory and preferential based on the record and set the matter for the settlement proceeding described below. Such a predicate finding will helpfully motivate settlement conversations. Nonetheless, should the Commission prefer not to make such a conclusive finding that the PJM Tariff is unjust and unreasonable and unduly discriminatory and preferential at this time, it should still set the matter for the settlement proceedings described herein to develop a replacement rate as if it had made such a finding.

⁷ The Commission has successfully provided guidance and a forum for interested parties to resolve differences and settle complicated issues related to PJM in the past. *See, e.g., PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,079 (2006).

directive from the Commission is consistent with the responses filed by PJM and the Indicated TOs, which appear to anticipate the opportunity for settlement discussions.⁸ Thus, Joint Parties request that the Commission stay the Co-Location Show Cause proceeding for a limited period of 90 days and establish settlement judge proceedings as expeditiously as possible.

The guidance provided by the Commission through an unjust and unreasonable and unduly discriminatory and preferential finding will provide a clear signal for the parties to engage in meaningful discussions towards resolving their concerns. The short duration of the discussions (which is consistent with prior settlement proceedings ordered by the Commission that resulted in Commission-accepted resolution)⁹ will ensure that a co-location replacement rate in PJM can be resolved quickly – either the parties will do so through the settlement process or the matter will be returned to the Commission to resolve on its own. To the extent the parties (or a significant subset of them) agree on a replacement rate, that can be submitted in the record in the Co-Location Show Cause proceeding for the Commission to consider in determining the just and reasonable replacement rate. Granting the requested settlement judge proceedings would facilitate such a resolution. If no such resolution is reached in the allotted time, then the Commission can proceed with the Co-Location Show Cause proceeding to establish a replacement rate of its own design.

⁸ See, e.g., PJM Answer at 5 (explaining that “Each new [PJM] option outlined herein is conceptual and would benefit from continued input from stakeholders, Commission guidance, and a deadline for submission of any such proposals either in the context of a section 205 filing or in this docket.”). See also, Indicated PJM Transmission Owners, Answer, Docket Nos. EL25-49-000 *et al.* at 13 (filed Mar. 24, 2025) (explaining that “Indicated [Transmission Owners] remain open to and **anticipate the potential for further discussion regarding possible changes to tariffs**”) (emphasis added).

⁹ See, e.g., *Essential Power OPP, LLC v. PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,163, at PP 19-20 (2023) (establishing 60-day settlement procedures, with an option to extend an additional 30 days, to address complaints stemming from Winter Storm Elliott); *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,209, at PP 28-29 (2019) (establishing 90-day settlement procedures in the Greenhat matter).

The Commission has repeatedly acknowledged the benefits of settlement.¹⁰ The Commission also has successfully granted motions for immediate appointment of a settlement judge or facilitator in prior proceedings involving PJM¹¹ and other entities.¹² Joint Parties' request here is consistent with the Commission's regulations which specify that an available and independent "complaint resolution path," is for the Commission to "order the appointment of a settlement judge."¹³

Moreover, several parties have already called for the use of settlement procedures, or some other form of alternative dispute resolution, in one or more of these consolidated proceedings.¹⁴ At a minimum, an attempt to settle these disputes is clearly worth the effort. There is value to a

¹⁰ See, e.g., *Certification of Uncontested Settlements by Settlement Judges*, Order No. 883, 179 FERC ¶ 61,130, at P 2 (2022) ("The Commission has long recognized the importance of settlements among the participants to litigated proceedings as a tool to efficiently and expeditiously resolve those contested proceedings set for trial-type evidentiary hearing, as well as other contested proceedings." (footnote omitted)); *Ariz. Pub. Serv. Co.*, 97 FERC ¶ 61,315, at 62,449 (2001) ("[I]t has been Commission policy to promote voluntary settlements as an important tool in the administration of our jurisdictional responsibilities."); *Tex. Gas Transmission Corp.*, 28 FERC ¶ 61,372, at 61,665-66 (1984) (encouraging settlements, as they can play an important part in resolving issues without prolonged and contentious litigation); cf. *Tex. E. Transmission Corp. v. FPC*, 306 F.2d 345, 347-48 (5th Cir. 1962) ("For Commission approved voluntary settlements are an important and desirable mechanism as the Commission undertakes the staggering burden of dealing with the ceaseless flow of the ever-more complicated problems.... Consequently settlements should be encouraged, not discouraged." (footnotes omitted)).

¹¹ See, e.g., *Energy Storage Ass'n v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,157 (2018) (granting joint motion for appointment of settlement judge in ongoing complaint proceedings); *PJM Interconnection, L.L.C.*, 113 FERC ¶ 61,227 (2005) (granting PJM's motion for immediate appointment of a settlement judge in a contested rate case).

¹² See, e.g., *Sw. Power Pool, Inc.*, 143 FERC ¶ 61,219 (2013) (granting motion for immediate appointment of a settlement judge in a proceeding concerning the integration of grandfathered agreements into a newly implemented regional market structure).

¹³ See 18 C.F.R. § 385.206(g)(1).

¹⁴ See Constellation Energy Generation, LLC, Complaint, Docket No. EL25-20-000, at 2-3 (filed Nov 22, 2024); Comments of Calpine Corporation in Support of Complaint, Docket No. EL25-20-000, at 1 (filed Dec. 12, 2024); Comments of the Electric Power Supply Association and the PJM Power Providers Group, Docket No. EL25-20-000, at 2 (filed Dec. 12, 2024); Protest of Old Dominion Electric Cooperative, Docket No. EL25-20-000, at 7 (filed Dec. 12, 2024); Motion for Leave to Answer and Answer of Talen Energy Corporation to PJM Interconnection, L.L.C. Answer and Motion to Dismiss, Docket No. EL25-20-000, at 1 (filed Dec. 23, 2024); Post-Conference Comments of the Electric Power Supply Association, Docket No. AD24-11-000, at 7 (filed Dec. 9, 2024); Post-Conference Comments of Constellation Energy Generation, LLC, Docket No. AD24-11-000, at 4, 6 (filed Dec. 9, 2024); Comments of Calpine Corporation, Docket No. AD24-11-000, at 3 (filed Dec. 9, 2024).

prompt resolution of these heavily contested co-location issues to ensure that the United States does not fall behind in the Artificial Intelligence revolution.

The Commission need not set a case for evidentiary hearing to establish settlement judge procedures. The Commission's Settlement Judge rule¹⁵ applies to any proceeding set for an evidentiary hearing under part 385, subpart E¹⁶ “and *to any other proceeding* in which the Commission has ordered the appointment of a settlement judge.”¹⁷ The Commission accordingly has established settlement judge procedures in other high-profile matters that were not set for a subpart E evidentiary hearing.¹⁸ Rule 603 broadly contemplates that “[t]he Commission, may, on motion or otherwise, order the Chief Administrative Law Judge to appoint a settlement judge.”¹⁹ The Commission may act upon such a motion without awaiting an answer,²⁰ and decisions concerning appointments of settlement judges are not subject to review.²¹

¹⁵ See 18 C.F.R. § 385.603.

¹⁶ 18 C.F.R. part 385, subpart E.

¹⁷ 18 C.F.R. § 385.603(a) (emphasis added).

¹⁸ See, e.g., *Essential Power OPP, LLC v. PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,163 (establishing settlement judge procedures to resolve multiple complaints regarding penalty assessments during Winter Storm Elliott); *Constellation Mystic Power, LLC*, 179 FERC ¶ 61,081, at P 26 (2022) (appointing a Settlement Judge to help resolve a dispute regarding the capital structure and cost of debt that should be used in an agreement); *Pac. Gas & Elec. Co.*, 177 FERC ¶ 61,213 (2021) (appointing a Settlement Judge to help resolve a dispute among multiple parties regarding the amount of interconnection service that should be reflected in an agreement); *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,209, at PP 27-28 (appointing a Settlement Judge to help resolve disputes over “multiple complexities” surrounding possible changes to Financial Transmission Right auction rules to ameliorate auction impacts of large Market Participant default); *Allegheny Elec. Coop., Inc. v. PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,257 (2008) at P 7 & n.8 (discussing appointment of John S. Moot, Commission Chief of Staff, as “facilitator in the settlement proceedings” to resolve issues with respect to the role and independence of the external market monitor with respect to PJM) (citing *Allegheny Elec. Coop.*, 121 FERC ¶ 61,021 (2007)).

¹⁹ 18 C.F.R. § 385.603(d).

²⁰ 18 C.F.R. § 385.603(c)(3).

²¹ 18 C.F.R. § 385.603(i).

The Joint Parties also request that the settlement judge proceedings be limited in time to 90 days to foster prompt resolution. The Joint Parties also move for a 90-day stay of further action on this complaint pending the outcome of settlement judge proceedings.

Respectfully submitted,

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Date: April 22, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have on this 22nd day of April, 2025, caused to be served a copy of the foregoing upon all parties on the service lists in these proceedings in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2024).

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