

167 FERC ¶ 61,209
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

PJM Interconnection, L.L.C

Docket Nos. ER18-2068-001
ER18-2068-000

ORDER ESTABLISHING PAPER HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued June 5, 2019)

1. On January 30, 2019, the Commission denied PJM Interconnection, L.L.C.'s (PJM) request, pursuant to section 205 of the Federal Power Act (FPA),¹ for a waiver of certain Financial Transmission Rights (FTR) liquidation rules in the PJM Open Access Transmission Tariff (Tariff), Attachment K-Appendix, Section 7.3.9, and the identical provisions of Amended and Restated Operating Agreement of PJM (Operating Agreement), Schedule 1, Section 7.3.9.² Several parties filed rehearing requests of the Commission's Waiver Order. In its rehearing request, PJM included an alternative motion for clarification of the Waiver Order.³

2. In this order, we establish paper hearing and settlement judge procedures regarding the PJM Motion for Clarification. However, we will hold the paper hearing in abeyance for ninety (90) days pending the conclusion of settlement judge procedures.

I. Background

3. On June 21, 2018, PJM declared GreenHat Energy, LLC (GreenHat) to be in payment default of its financial obligations. PJM initiated procedures to close out and liquidate GreenHat's FTR portfolio in accordance with then-effective Tariff, Attachment

¹ 16 U.S.C. § 824d (2012).

² *PJM Interconnection, L.L.C.*, 166 FERC ¶ 61,072 (2019) (Waiver Order).

³ PJM February 26, 2019 Request for Rehearing (PJM Rehearing Request), or, in the Alternative, Motion for Clarification of Commission Order (PJM Motion for Clarification).

K-Appendix, Section 7.3.9. Then-effective Section 7.3.9 of Attachment K-Appendix required PJM, when a member default was declared, to close out and liquidate the defaulting member's FTR portfolio by, among other requirements: (1) "offer[ing] for sale all current Planning Period FTR positions within the defaulting member's portfolio in the next available monthly balance of Planning Period FTR auction at an offer price designed to maximize the likelihood of liquidation of those positions;"⁴ (2) offering any FTR positions that do not settle until the next or subsequent Planning Periods into the next available FTR auction where such positions would be expected to clear, and in that auction, offering the entire FTR portfolio of the defaulting member at an offer price designed to maximize the likelihood of liquidation of those positions;⁵ (3) where, based on the auction's preliminary solution, any of the closed-out FTR positions would set the market price, offering for sale only one-half of each FTR position and re-execute the auction, and then offering the FTR positions that were not liquidated in the next auction;⁶ and (4) treating the liquidation of the defaulting member's FTR portfolio "pursuant to the foregoing procedures" as the "final liquidated settlement amount" that is included in calculating a Default Allocation Assessment.⁷

4. On June 22, 2018, notice of the default pending liquidation was provided to PJM members. At that time, PJM also posted on its website details of the GreenHat FTR portfolio. PJM explained that GreenHat's FTR portfolio is substantial, consisting of numerous FTRs for the 2018/2019, 2019/2020, and 2020/2021 Planning Periods. After providing PJM members with notice of GreenHat's default and posting the details of GreenHat's portfolio, on July 16, 2018, PJM opened bidding and began (but did not

⁴ PJM Request for Waiver at 3-4 (citing Tariff, Attachment K-Appendix, Section 7.3.9(c)) (Waiver Request).

⁵ *Id.* at 4 (citing Tariff, Attachment K-Appendix, Section 7.3.9(d)).

⁶ *Id.* (citing Tariff, Attachment K-Appendix, Section 7.3.9(e)). Under this then-effective Tariff section, if offering only one-half of each FTR position in the upcoming auction would still set the price, PJM would not offer the defaulted FTRs for liquidation in that month, with the goal being that FTRs being liquidated may not set the price in the FTR auction.

⁷ *Id.* (citing Tariff, Attachment K-Appendix, Section 7.3.9(f)). The Default Allocation Assessment is allocated to all PJM Members. Operating Agreement, section 15.2.2. Section 7.3.7 of the Tariff provides that within five business days after the close of the bid and offer period for a monthly FTR auction, PJM shall post the winning bidders and the price at which each FTR was awarded.

conclude) the July 2018 monthly FTR auction consistent with the then-effective liquidation process in Section 7.3.9 of Attachment K-Appendix. PJM stated that it closely monitored the auction and observed market illiquidity and large risk premiums in the FTR auction for the positions that might be liquidated. PJM stated that, based on the offers and bids for the July auction, PJM expected that the liquidation of GreenHat's entire FTR portfolio in the manner required by the Tariff would result in significant losses to PJM members.

5. On July 26, 2018, PJM filed, in this docket, pursuant to section 205 of the FPA, a request to waive then-effective Section 7.3.9 to permit it to sell in the July, August, September, and October 2018 monthly FTR auctions (as well as the long-term FTR auction conducted in September 2018) only the portion of GreenHat's FTR 2018/2019 Planning Period portfolio effective in the prompt month (i.e., the first calendar month addressed by each auction).⁸ PJM argued that the waiver was necessary to ensure an orderly and efficient liquidation of the large FTR portfolio of GreenHat in a manner that attempts to minimize distortion to the FTR markets.⁹

II. Waiver Order

6. On January 30, 2019, the Commission issued its order denying PJM's request for waiver of the FTR liquidation rules pertaining to the defaulted GreenHat portfolio.¹⁰ The Waiver Order concluded that PJM did not demonstrate that the Waiver Request satisfied the Commission's waiver criteria.¹¹

7. The Waiver Order stated that to the extent PJM liquidated only the August GreenHat positions and settled the September-January positions, it was "required to reconcile any such actions by reinstating the original July auction results, or taking steps that are necessary to comply with the effective Tariff language when the July 2018

⁸ Waiver Request at 1.

⁹ *Id.*

¹⁰ Waiver Order, 166 FERC ¶ 61,072. Apogee Energy Trading LLC (Apogee) was the only party to protest the Waiver Request.

¹¹ *Id.* PP 33-34. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties. *See, e.g., Northeast Util. Serv. Co.*, 135 FERC ¶ 61,123, at P 10, *order on reh'g*, 136 FERC ¶ 61,123 (2011) (*Northeast Utilities*).

auction was conducted, and by unwinding settlements” for the September-January positions that should have been liquidated (Waiver Order Directive).¹²

III. Pleadings

A. Motion for Stay

8. On February 21, 2019, PJM filed a motion for stay of the Waiver Order Directive pending an order on PJM’s forthcoming rehearing request and motion for clarification. PJM notes that although the Waiver Order did not set a deadline for implementation, PJM requests a stay “given the uncertain path of implementing that order and the ongoing vulnerability of challenge to the status quo.”¹³

B. Motions to Intervene Out-of-Time

9. Following the Waiver Order, motions to intervene out-of-time were filed by: Calpine Corporation (Calpine), Delaware Public Service Commission (Delaware PSC), DTE Energy Trading, Inc. (DTE Energy Trading), Duquesne Light Company (Duquesne), Eastern Generation, LLC (Eastern Generation), Electric Power Supply Association (EPSA),¹⁴ Energy Trading Institute, Illinois Industrial Energy Consumers, Indiana Office of Utility Consumer Counselor, Maryland Office of People’s Counsel, Maryland Public Service Commission (Maryland PSC), New Jersey Division of Rate Counsel (NJ Rate Counsel), Old Dominion Electric Cooperative (Old Dominion), Pennsylvania Office of Consumer Advocate (PA Consumer Advocate), Pennsylvania Public Utility Commission (Pennsylvania PUC), PJM Power Providers Group,¹⁵ Public Service Commission of the District of Columbia (District of Columbia PSC), Retail Energy Supply Association, SESCO Enterprises, LLC (SESCO), Shell Energy North America, L.P. (Shell), Talen PJM Members,¹⁶ and West Virginia Consumer Advocate.

¹² Waiver Order, 166 FERC ¶ 61,072 at P 35.

¹³ Motion for Stay at 1 & n.5.

¹⁴ EPSA filed a Motion to Intervene Out-of-Time and Comments.

¹⁵ PJM Power Providers Group filed a Motion to Intervene Out-of-Time and Comments.

¹⁶ Talen PJM Members include: Talen Energy Marketing, LLC (“TEM”), Brandon Shores LLC, Brunner Island, LLC, Camden Plant Holding, L.L.C., Elmwood Park Power, LLC, H.A. Wagner LLC, Martins Creek, LLC, Montour, LLC, Newark Bay

C. Rehearing Requests

10. On February 26, 2019, PJM filed a request for rehearing, or in the alternative, motion for clarification of the Waiver Order. On February 28, 2019, the Indicated PJM Parties filed a request for rehearing and comments in support of the request for stay.¹⁷ On March 1, 2019, the following parties filed rehearing requests: Elliot Bay Energy Trading, LLC (Elliot Bay);¹⁸ Energy Trading Institute;¹⁹ LS Power Associates, L.P. (LS Power) and Calpine;²⁰ PJM Market Participants;²¹ Retail Energy Supply Association;²²

Cogeneration Partnership, L.P., Pedricktown Cogeneration Company LP, Susquehanna Nuclear, LLC and York Generation Company LLC.

¹⁷ Indicated PJM Parties February 28, 2019 Rehearing Request, and Comments in Support of Request for Stay (Indicated PJM Parties Rehearing Request). Indicated PJM Parties consist of Exelon Corporation, Buckeye Power, Inc., Direct Energy Business Marketing, LLC and Direct Energy Business, LLC (Direct Energy), Virginia Electric and Power Company d/b/a Dominion Energy Virginia and Dominion Energy Generating Marketing, Inc. (Dominion Energy Services, Inc.), DTE Energy Trading, Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., Duke Energy Indiana, LLC, Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC (Duke Energy Corporation), East Kentucky Power Cooperative, Inc., EDP Renewable North America, LLC, Indiana Office of Utility Consumer Counselor, Office of the People's Counsel for the District of Columbia, Old Dominion, PJM Power Providers Group, Southern Maryland Electric Cooperative, Inc., Talen PJM Members, and West Virginia Consumer Advocate.

¹⁸ Elliot Bay March 1, 2019 Request for Rehearing.

¹⁹ Energy Trading Institute March 1, 2019 Request for Rehearing and Motion to Intervene Out-of-Time (Energy Trading Institute Rehearing Request).

²⁰ LS Power and Calpine March 1, 2019 Request for Rehearing.

²¹ PJM Market Participants March 1, 2019 Request for Rehearing and Clarification, and Answer in Support of Motion for Stay. PJM Market Participants consist of PJM Industrial Customer Coalition, American Municipal Power, Inc., the Delaware Division of the Public Advocate, American Electric Power Service Corporation, the Illinois Industrial Energy Consumers, PA Consumer Advocate, NJ Rate Counsel, and the Maryland Office of People's Counsel. The PJM Market Participants adopt the arguments made in the PJM Rehearing Request.

²² Retail Energy Supply Association March 1, 2019 Motion to Intervene Out-of-Time, Rehearing Request, and Motion in Support of Stay (RESA Rehearing Request).

and Shell.²³ In their rehearing requests, PJM Market Participants and Retail Energy Supply Association support PJM's Motion for Stay.

11. On March 11, 2019, the Joint State Commissions, consisting of the Delaware PSC, the Pennsylvania PUC, and the District of Columbia PSC, filed comments in support of the PJM Rehearing Request and PJM's Motion for Stay.

D. Motion for Clarification

12. In its rehearing request, PJM submitted an alternative request for clarification that seeks guidance regarding the Waiver Order Directive.²⁴ Specifically, PJM asserts that inserting the defaulted FTRs into the July auction²⁵ at their various paths and quantities will: (1) change the FTR capabilities and cleared FTRs on other paths; (2) potentially oversubscribe some FTR paths, creating retroactive violations of the Simultaneous Feasibility Test in the July auction; and (3) potentially push subsequent month auction results into retroactive Simultaneous Feasibility Test violations, as a consequence of interactions between the revised July auction results and the later month auction clearing solutions.²⁶ PJM requests that the Commission provide clarification on six different matters to implement the Waiver Order Directive, as described below.

13. First, PJM requests that the Commission confirm that for purposes of implementing the then-existing provisions of Attachment K-Appendix, section 7.3.9(e), if any of the GreenHat FTRs for any month or quarter in the Planning Period Balance sets the price, then 50 percent of all Planning Period Balance GreenHat FTRs are removed from the July auction; and if any of the remaining FTRs in any month or quarter again

²³ Shell March 1, 2019 Motion to Intervene Out-of-Time and Rehearing Request (Shell Rehearing Request).

²⁴ As set forth in footnote 3, we refer to this portion of the PJM Rehearing Request as the PJM Motion for Clarification.

²⁵ We note that in PJM's Rehearing Request, it refers to each monthly FTR auction held during the 2018/2019 Planning Period by the name of the first month that auction addresses. PJM Rehearing Request at n.5. Thus, in its rehearing request, PJM refers to the monthly FTR auction conducted in July 2018 as the August auction. However, this order refers to the monthly FTR auction conducted in July 2018 as the July auction.

²⁶ PJM Motion for Clarification at 25.

sets the price, 100 percent of all Planning Period Balance GreenHat FTRs are removed from the July auction.²⁷

14. Second, PJM requests that the Commission clarify that bids in the July auction submitted from accounts that, based on tentative results, have an FTR Credit Requirement in excess of their FTR Credit Limit at the time the July auction bid window closed, are properly removed from the auction, rather than affording the account holders an unfair option, exercised by choosing either to provide, or not provide, additional collateral, to retroactively negate their awarded FTRs based on the FTRs' known settlement value.²⁸

15. Third, PJM requests that the Commission confirm that the Waiver Order did not direct, and does not require, PJM to re-run or change clearing solutions in any auction subsequent to the July auction, irrespective of any Tariff requirements, including but not limited to Tariff requirements governing Simultaneous Feasibility Test violations, collateral, and FTR ownership.²⁹

16. Fourth, PJM requests that the Commission provide clarification in order to reconcile the Tariff requirement that market participants can sell only FTRs they own (FTR ownership rule). PJM states that, after re-running the July auction, some market participants will no longer own FTRs they thought they did. PJM argues that the FTR ownership rule will be violated to the extent these market participants offered to sell positions that they no longer own in subsequent auctions. PJM states that some of the 1,782 bilateral FTR trades since the July auction may have involved FTRs that would no longer exist after re-running the July auction. PJM therefore proposes that the Commission clarify that PJM should fully annul such FTRs and unwind any PJM market settlements, but not re-run any auctions after the July auction.³⁰

²⁷ *Id.* at 11.

²⁸ *Id.* at 12.

²⁹ *Id.*

³⁰ *Id.* Specifically, PJM requests that the Commission clarify that: (1) a sale into a subsequent FTR auction, or a bilateral sale, of an FTR that, as a result of re-running the July auction, the selling party does not own, should be annulled; (2) PJM should revise the affected party's auction charges or payments to reflect such annulment; (3) PJM should not change the clearing solution of any auction into which such annulled FTR was offered; (4) PJM should unwind any charges or revenues from the annulled FTR to the extent it went to settlement; and (5) the parties to a bilateral sale of an FTR so annulled

17. Fifth, PJM requests that the Commission clarify that PJM has no obligation to attempt to reapply the FTR forfeiture rule for past periods, where revised July auction rules would retroactively award FTRs to energy market traders who could not have engaged in trades to increase the value of FTRs they did not know they owned.³¹

18. Sixth, PJM requests guidance on when to apply the two credit rule changes that are now in effect - i.e., the volumetric minimum and the PROMOD revisions³² - but that were not in full effect during the July auction.³³ PJM requests clarification that market participants will be obligated to comply with the volumetric minimum requirement one business day after the close of the re-run July auction (based upon their portfolio as it then exists recognizing many positions would have gone to settlement or expired). PJM states that the transition period of the PROMOD adjustments is not expired and PJM requests that the Commission clarify that market participants will be obligated to comply fully with those new credit requirements.³⁴

19. On March 11, 2019, Apogee filed an answer in opposition to the PJM Motion for Clarification.³⁵ Apogee asserts that PJM should follow its Tariff as closely as possible by

are responsible for addressing any financial adjustments between those parties warranted by such annulment. *Id.* at 37.

³¹ *Id.* at 12 (citing PJM Manual 6, Section 8.6, Operating Agreement, Schedule 1-Section 5.2.1).

³² The PROMOD revisions limit potential credit exposure from the projected decreased value of certain FTRs when congestion levels are anticipated to change after a major future transmission upgrade is completed. Specifically, these revisions permit PJM to model transmission system changes that exceed certain thresholds for calculating adjusted congestion values and then calculating those adjusted congestion values to be used in the FTR credit calculations for paths whose congestion is projected to be negatively affected by that transmission system change. *PJM Interconnection, L.L.C.*, Docket No. ER18-425-000 (Jan. 19, 2018) (delegated order).

³³ See *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,215 (2018) (accepting revisions to FTR credit requirements in Tariff, Attachment Q, to incorporate volumetric minimum requirement); *PJM Interconnection, L.L.C.*, Docket No. ER18-425-000 (Jan. 19, 2018) (delegated order) (accepting revisions to FTR credit requirements in Tariff, Attachment Q to reflect PROMOD revisions).

³⁴ PJM Motion for Clarification at 12-13.

³⁵ Apogee March 11, 2019 Answer.

completing the July auction to liquidate the GreenHat position to the greatest extent possible at this stage using uncleared bids that do not create Simultaneous Feasibility Test violations.³⁶ Apogee also argues that the PJM Motion for Clarification is potentially discriminatory by favoring one group of PJM members over another in terms of the allocation of the GreenHat default, and by misrepresenting and potentially overstating the impact of the GreenHat default on the PJM market.³⁷

20. On March 13, 2019, Elliot Bay filed an answer to the PJM Motion for Clarification.³⁸ Elliot Bay argues that certain of PJM's proposed implementation steps would violate the filed rate doctrine and the related rule against retroactive ratemaking, and that the PJM Motion for Clarification raises numerous issues of material fact that should be addressed in a technical conference, hearing or stakeholder process.³⁹

21. On March 13, 2019, Indicated PJM Parties filed an answer to PJM's Rehearing Request, or in the alternative, Motion for Clarification.⁴⁰ Indicated PJM Parties assert that the Commission's Waiver Order Directive will fail to put the FTR market back in the same place it would have been but for PJM's Tariff violation and retroactively create new tariff violations.⁴¹

22. On March 20, 2019, PJM filed an answer in response to Apogee's answer.⁴² PJM argues that contrary to Apogee's suggestions, there is nothing simple about re-running an

³⁶ *Id.* at 3, 6-8.

³⁷ *Id.* at 4-6.

³⁸ Elliot Bay March 13, 2019 Answer.

³⁹ *Id.* at 3-6.

⁴⁰ Indicated PJM Parties March 13, 2019 Answer (Indicated PJM Parties Answer).

⁴¹ *Id.* at 3. Indicated PJM Parties also argue that just as in *Southwest Power Pool, Inc.*, 166 FERC ¶ 61,160 (2019), the Commission cannot remedy one tariff violation (there, the failure to implement the revenue crediting process; here, PJM's failure to conduct the July 2018 auction according to the Tariff) by creating another retroactive tariff violation. Indicated PJM Parties Answer at 5.

⁴² PJM March 20, 2019 Answer.

auction and resettling market positions. Further, PJM states that Apogee has not supported its “discrimination theory.”⁴³

IV. Discussion

A. Procedural Matters

23. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure,⁴⁴ we deny the motions for late intervention filed by Calpine, Delaware PSC, District of Columbia PSC, DTE Energy Trading, Duquesne, Eastern Generation, EPSA, Energy Trading Institute, Illinois Industrial Energy Consumers, Indiana Office of Utility Consumer Counselor, Maryland Office of People’s Counsel, Maryland PSC, NJ Rate Counsel, Old Dominion, PA Consumer Advocate, Pennsylvania PUC, PJM Power Providers Group, Retail Energy Supply Association, SESCO, Shell, Talen PJM Members, and West Virginia Consumer Advocate (collectively, Late Intervenors).

24. In ruling on a motion to intervene out-of-time, we apply the criteria set forth in Rule 214(d) of the Commission’s Rules of Practice and Procedure,⁴⁵ and consider, *inter alia*, whether the movant had good cause for failing to file the motion within the time prescribed. Parties seeking to intervene after issuance of a Commission determination in a case bear a heavy burden.⁴⁶ When, as here, late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention.⁴⁷ Late Intervenors have failed to demonstrate the requisite good cause. Generally, Late Intervenors do not claim they did not have notice of the proceeding. Rather, they claim they were not aware of how a denial of the Waiver Request would impact them.⁴⁸ We do

⁴³ *Id.* at 6.

⁴⁴ 18 C.F.R. § 385.214(d) (2018).

⁴⁵ *Id.*

⁴⁶ *See, e.g., Big Rivers Electric Corp. v. Midcontinent Indep. Sys. Operator, Corp.*, 161 FERC ¶ 61,225, at P 12 (2017).

⁴⁷ *See, e.g., PaTu Wind Farm LLC v. Portland General Elec. Co.*, 151 FERC ¶ 61,223, at P 39 (2015); *Columbia Gas Transmission Corp.*, 113 FERC ¶ 61,066, at P 5 (2005).

⁴⁸ *See, e.g., Calpine February 25, 2019 Motion to Intervene Out-of-Time at 5; DTE Energy February 26, 2019 Motion to Intervene Out-of-Time at 3; Eastern*

not find this explanation to be sufficient to meet the higher burden to show good cause for granting intervention following a dispositive order.⁴⁹ Accordingly, we deny Late Intervenors' motions for leave to intervene out-of-time.

25. Apogee, Elliot Bay, and Indicated PJM Parties have filed answers responding to the issues raised in the PJM Motion for Clarification. Because such answers are permitted, we accept them pursuant to Rule 213(a)(3) of the Commission's Rules of Practice and Procedure.⁵⁰

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁵¹ prohibits an answer to an answer unless otherwise ordered by the decisional authority. We accept PJM's answer to Apogee's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

27. The issues raised in the PJM Motion for Clarification and the subsequent answers demonstrate that there are multiple complexities associated with implementing the Waiver Order Directive that should be addressed in a paper hearing where all parties will have an opportunity to present written evidence and argument. Accordingly, we

Generation February 22, 2019 Motion to Intervene Out-of-Time at 4; Energy Trading Institute Rehearing Request at 3; EPSA February 26, 2019 Motion to Intervene Out-of-Time and Comments at 4; Old Dominion February 22, 2019 Motion to Intervene Out-of-Time at 4; PJM Power Providers February 11, 2019 Motion to Intervene Out-of-Time and Comments at 5; RESA Rehearing Request at 3; Shell Rehearing Request at 2; Talen PJM Members February 15, 2019 Motion to Intervene Out-of-Time at 5. While Energy Trading Institute claims it was only recently formed as a 501(c)(6) organization and at the time of this proceeding, its predecessor's entity, the Power Trading Institute, could not have foreseen the extent of the impact arising from the Waiver Order, we likewise do not find this reasoning persuasive.

⁴⁹ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003); see also *Big Rivers Electric Corp. v. Midcontinent Indep. Sys. Operator, Corp.*, 161 FERC ¶ 61,225 at P 12 ("When, as here, late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial").

⁵⁰ 18 C.F.R. § 385.213(a)(3) (2018).

⁵¹ 18 C.F.R. § 385.213(a)(2).

establish paper hearing procedures to supplement the record regarding the PJM Motion for Clarification.⁵²

28. While we are setting these matters for a paper hearing, we encourage the parties to make every effort to settle their disputes before the paper hearing commences. To aid the parties in their settlement efforts, we will hold the paper hearing in abeyance to give the parties the opportunity to settle. Although the paper hearing is limited to PJM's Motion for Clarification, we are not establishing similar limitations on the scope of the settlement discussions and the parties are encouraged to address all disputes arising out of this proceeding. We direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁵³ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding.⁵⁴ The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability. The settlement judge shall report to the Chief Judge and the Commission on the status of settlement discussions within forty-five (45) days of the date of the appointment of the settlement judge, and, if the settlement discussions are ongoing, again within ninety (90) days from the date of appointment of the settlement judge.

29. If, after ninety (90) days, the settlement judge reports that the parties have not reached an agreement in principle, the Chief Judge shall terminate the settlement procedures and the paper hearing shall commence; however, the Chief Judge may grant the parties a one-time extension to continue settlement procedures for up to an additional thirty (30) days. The parties are directed to file briefs on the Motion for Clarification within sixty (60) days of the date the Chief Judge terminates the settlement procedures. Reply briefs are due within ninety (90) days of the termination of settlement procedures.

The Commission orders:

(A) The Commission hereby establishes paper hearing procedures to develop a record regarding the PJM Motion for Clarification, as discussed in the body of this order. This paper hearing will be held in abeyance, pending the conclusion of the settlement judge procedures directed below.

⁵² We note that other pleadings noted above will be addressed in a future order.

⁵³ 18 C.F.R. § 385.603 (2018).

⁵⁴ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603, the Chief Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(C) The settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions within forty-five (45) days of the appointment of the settlement judge, and, if the settlement discussions are ongoing, again within ninety (90) days from the date of appointment of the settlement judge.

(D) If, after ninety (90) days, the settlement judge reports that the parties have not reached an agreement in principle, the Chief Judge shall terminate the settlement judge procedures, as discussed in the body of this order.

(E) The parties are directed to file briefs on the Motion for Clarification within sixty (60) days of the date the Chief Judge terminates the settlement procedures. Reply briefs are due within ninety (90) days of the termination of settlement procedures. Each party's presentation in its initial and reply briefs should separately state the facts and arguments advanced by the party and include any and all exhibits, affidavits and/or prepared testimony upon which the party relies. The statement of facts must also include citations to supporting exhibits, affidavits, and/or prepared testimony. All materials must be verified and subscribed as set forth in 18 C.F.R. § 385.2005 (2018).

By the Commission. Commissioner McNamee is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.