

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

Lee County Generating	)	
Station, LLC,	)	
Complainant,	)	
	)	Docket No. EL23-57-00_
v.	)	
	)	
PJM Interconnection, L.L.C.,	)	
Respondent.	)	

**JOINT REQUEST OF PJM INTERCONNECTION, L.L.C. AND LEE COUNTY  
GENERATING STATION, LLC FOR FURTHER WAIVER OF TARIFF  
PROVISIONS**

PJM Interconnection, L.L.C. (“PJM”) and Lee County Generating Station, LLC (“Lee County”) (collectively, “Joint Movants”) hereby request a limited tariff waiver to address a very narrow, but very concrete concern: while the Commission has generally suspended payment of Non-Performance Charges<sup>1</sup> arising from Winter Storm Elliott<sup>2</sup> pending the Commission’s consideration of a proposed settlement in this and similar complaint proceedings,<sup>3</sup> that relief *does not extend* to three PJM invoices issued to Lee County that (if the Commission has not yet approved the settlement<sup>4</sup>) will come due in the first three months of 2024.

---

<sup>1</sup> Terms capitalized and not otherwise defined herein have the meanings set forth for them in the Amended and Restated Operating Agreement Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”) or the PJM Open Access Transmission Tariff (“Tariff”).

<sup>2</sup> 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 Nov. 17, 2023) (collecting PJM’s public statements addressing Winter Storm Elliott’s impact on PJM’s operations and markets).

<sup>3</sup> *See PJM Interconnection L.L.C.*, 184 FERC ¶ 61,193 (2023) (“September Waiver Order”).

<sup>4</sup> The referenced settlement (“Settlement Filing”) was submitted by PJM, Lee County, and 80 other supporting parties on September 29, 2023, 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, EL23-77-000, and ER23-2975-000. *Essential Power OPP, LLC v. PJM Interconnection, L.L.C.*, Offer of Settlement in the Winter Storm Elliott Complaints, Docket

The caveat noted in the preceding parenthetical bears emphasis. In the Settlement Filing, PJM, Lee County, and the other supporting parties asked the Commission to approve the Offer of Settlement by December 29, 2023. If the Commission approves the Offer of Settlement by that date, the terms of the settlement would then control and this waiver request will become moot. This is because the settlement authorizes PJM “to extend collection” of Lee County’s unpaid Non-Performance Charges and interest “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.”<sup>5</sup>

But if the Commission does not approve the Offer of Settlement by December 29, 2023, then Lee County, alone among all parties that elected to extend payment of Non-Performance Charges, will have to pay millions of dollars at the currently assessed levels. The potential adverse impacts of those payment obligations would extend beyond Lee County, given that Lee County has continuing liquidity challenges.<sup>6</sup> A default by Lee County could reduce Performance Payments to other parties,<sup>7</sup> lead to cross-defaults on other Lee County obligations, and reduce current contracted capacity commitments (“MISO Contracts”) benefitting customers in the MISO region.

---

Nos. EL23-53-000 et al. (Sept. 29, 2023). The complaints that initiated these fifteen unconsolidated dockets are referred to herein as the “WSE Complaints.” The settlement package included an “Offer of Settlement” that embodied the proposed terms of the Settlement.

<sup>5</sup> Offer of Settlement at Art. 4.2.

<sup>6</sup> See *Essential Power OPP, LLC v. PJM Interconnection, L.L.C.*, Docket No. EL23-53-000, et al., Comments in Support of Settlement of Lee County Generating Station, LLC, et al., at 5-6 (Oct. 19, 2023) (describing the relief provided under the Settlement as “necessary in order to best position Lee County to remain solvent and continue to provide critical reliability services to both PJM and MISO”).

<sup>7</sup> See Tariff, Attachment DD, section 10A(g) (Performance Payments based on collected Non-Performance Charge revenues).

Accordingly, Joint Movants request, pursuant to Rules 207 and 212 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure,<sup>8</sup> a limited waiver of Tariff, section 7.1A and Operating Agreement, section 14B.2 in order to defer Lee County’s obligation to pay PJM’s June, July, and August 2023 invoices until the earlier of the Settlement Effective Date (at which time the terms of the settlement control), or May 31, 2024. If granted, the requested relief will protect Lee County’s ability to meet its PJM and MISO supply obligations through the end of the current delivery year in both PJM and MISO.

The requested waiver is in the best interest of consumers in the MISO and PJM regions, as it will allow Lee County to continue to meet its capacity obligations in both regions, without interruption. As described below, Lee County provides critical reliability services to both PJM and MISO that could be interrupted or stopped altogether upon a Lee County payment default.

As demonstrated below, the requested waiver complies with the Commission’s requirements. The requested waiver also is consistent with Commission precedent granting comparable waivers to maintain the status quo in the face of a possible Market Participant default.<sup>9</sup> This waiver request is a good faith request for targeted, limited relief to address a concrete problem, which will not harm any third party.

Accordingly, absent prior approval of the Offer of Settlement, the Joint Movants respectfully request that the Commission act on this waiver request as soon as possible and

---

<sup>8</sup> 18 C.F.R. §§ 385.207 and 385.212.

<sup>9</sup> See, e.g., September Waiver Order; *Lee Cty. Generating Station, LLC v. PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,029, at P 17 (2023) (“July Waiver Order”); *PJM Interconnection L.L.C.*, 135 FERC ¶ 61,069 (2011).

no later than December 29, 2023, given that payment on the first invoice at issue would be due on January 12, 2024.

## **I. BACKGROUND**

Lee County, the complainant herein, is a wholly owned subsidiary of GridFlex Generation, LLC (“GridFlex”). Lee County owns an eight-unit gas-fired electric generation station located in Dixon, Illinois. Units 1, 2, and 3 are committed as a Capacity Resource in the PJM Region. Units 4 through 8 are committed to provide capacity to loads in the MISO region. Lee County’s affiliates Tait Electric Generating Station, LLC (“Tait”) and Montpelier Generating Station, LLC (“Montpelier”) are also wholly owned subsidiaries of GridFlex, owning natural-gas fired generating resources that are located, respectively, in Montgomery County, Ohio and Wells County, Indiana and that are committed as Capacity Resources in the PJM Region. All three of these GridFlex subsidiaries are jointly financed by GridFlex.<sup>10</sup>

On June 28, 2023, Joint Movants entered a stipulation to defer Lee County’s obligations to pay Non-Performance Charges, such that the payments that would otherwise become due and payable from Lee County in July, August, September, October, November, and December 2023, would instead be due and payable in January, February, March, April, May, and June 2024, respectively (“Stipulation”). The Stipulation provided for interest on the deferred amounts at the quarterly rate published by the Commission in effect as of the time of deferral (June 30, 2023), i.e., 7.5%.

---

<sup>10</sup>As such, a default by Lee County could have cross-default impacts on each of Tait and Montpelier – risking the ongoing viability of these generation facilities beyond simply Lee County, with related impacts on PJM reliability.

Also on June 28, 2023, PJM and Lee County jointly filed with the Commission in this proceeding a request for waiver of Tariff, section 7.1A and Operating Agreement, section 14B.2 so as to permit PJM and Lee County to implement the terms of the Stipulation. The Commission granted the waiver on July 13, 2023.<sup>11</sup>

On September 8, 2023, PJM and 69 other parties to the WSE Complaint proceedings requested a limited, prospective waiver of Tariff provisions to allow PJM to defer collecting “remaining *unbilled* Non-Performance Charges associated with Winter Storm Elliott,” and disbursing revenue from those charges as Performance Payments, until PJM can implement the billing consequences of the Commission’s approval or rejection of the Settlement.<sup>12</sup> The waiver request was expressly contingent on the parties filing the Settlement with the Commission, which they did on September 29, 2023. The Commission granted the requested waiver on September 25, 2023, in the September Waiver Order.

However, because the September Waiver Request sought to defer collection of “unbilled” Non-Performance Charges, PJM believes that it did not apply to three invoices PJM had issued to Lee County before the September Waiver Order was issued. Specifically, in accordance with the July Waiver Order, PJM issued invoices to Lee County for Non-Performance Charges in July, August, and September 2023 that will become due and payable by Lee County in January, February and March 2024, respectively. Lee County’s remaining three invoices for Non-Performance Charges, which were to be issued in October, November, and December 2023, were “unbilled” when the Commission issued the

---

<sup>11</sup> See July Waiver Order at P 17.

<sup>12</sup> See *Essential Power OPP, LLC v. PJM Interconnection, L.L.C.*, Joint Motion for Waiver of Tariff Provisions, Expedited Consideration, and Shortened Comment Period, Docket Nos. EL23-53-000, et al., at 1 (Sept. 8, 2023) (emphasis added) (“September Waiver Request”).

September Waiver Order, and therefore, per the September Waiver Order, are deferred pending Commission action on the Settlement.

As a result of the July Waiver Order and the September Waiver Order, absent Commission action on the Offer of Settlement by the requested December 29, 2023 date, Lee County will be required to pay invoices covering approximately one-third of its total assessment for Non-Performance Charges in January, February, and March 2024. Lee County is the *only* Market Participant owing Non-Performance Charges that is in this position; all other Non-Performance Charges are deferred pending the Commission's action on the Settlement.

The parties recognized this gap in connection with the negotiation of the Settlement and agreed on a process to address it. Specifically, Article 4.2 of the Offer of Settlement provides in part:

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 waiver 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.

This filing is the waiver request contemplated by the Offer of Settlement.

## **II. WAIVER REQUEST**

### **A. *The Waiver Will Further Forestall Potential Payment Default by Lee County, and Its Disruptive Effects on Reliability for the PJM and MISO Regions.***

If the Commission does not approve the Offer of Settlement by December 29, 2023, the Joint Movants respectfully request that the Commission provide

a limited waiver of Tariff, section 7.1A<sup>13</sup> and Operating Agreement, section 14B.2<sup>14</sup> to further extend Lee County's payment obligations under the July Waiver Order until the Settlement Effective Date,<sup>15</sup> provided however, that if the Settlement Effective Date has not occurred by May 31, 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.

Grant of the instant requested waiver would not absolve Lee County from any of its obligations to pay the assessed Non-Performance Charges. Lee County, like all Market Participants that were assessed Non-Performance Charges but who PJM believes were covered by the September Waiver Request and September Waiver Order, will still be required to pay its obligations in full, including interest per the Stipulation and the July Waiver Order, subject to modification by the Settlement, on a further deferred basis. Although the deferral of Lee County's payment will not guarantee Lee County's ability to remain solvent, or guarantee that Lee County will be able to make full payment of obligations for Non-Performance Charges, the requested waiver makes it more likely that Lee County will remain solvent and ultimately make payment of the assessed Non-

---

<sup>13</sup> See Tariff, section 7.1A (Payment due "pursuant to a monthly bill shall be due and payable by the Transmission Customer or other entity no later than noon Eastern Prevailing Time on the due date of the first weekly bill issued for activity in the month that the monthly bill is issued.").

<sup>14</sup> See Operating Agreement, section 14B.2(a) (Payment due "pursuant to a monthly bill shall be due and payable by the Member or other entity no later than noon Eastern Prevailing Time on the due date of the first weekly bill issued for activity in the month that the monthly bill is issued.").

<sup>15</sup> As defined in the Offer of Settlement, the Settlement's Effective Date is "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." Offer of Settlement at Art. 2.

Performance Charges.<sup>16</sup> In contrast, a bankruptcy filing by Lee County could result in the discharge of such payment obligations.

Lee County's continued performance under the MISO Contracts (and its ability to provide critical energy and ancillary services to both PJM and MISO) is paramount and makes this situation unique to Lee County. PJM views Lee County's ongoing solvency and ability to make full payment of its obligations as important factors that help justify the waiver relief requested herein.

If Lee County were to default in PJM, it would no longer be able to perform under the MISO Contracts because, among other things, it could lose its firm PJM transmission rights that support Lee County's ability to offer energy into MISO at the interface each day (a critical requirement of the capacity product supplied by Lee County under the MISO Contracts), which could result in Lee County defaulting on these contracts as well. Were default on the MISO Contracts to occur, it could result in a claim by those counterparties against Lee County and reduce, if not eliminate, PJM's opportunity to obtain Lee County payments to PJM derived from the proceeds of the MISO Contracts.

***B. The Waiver Request Meets the Commission's Waiver Standards.***

The requested waiver meets each of the Commission's four criteria for evaluating whether there is good cause to grant a waiver, i.e., (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the

---

<sup>16</sup> See *Essential Power OPP, LLC v. PJM Interconnection, L.L.C.*, Comments in Support of Settlement of Lee County Generating Station, LLC, et al., Docket No. EL23-53-000, et al., at 5-6 (Oct. 19, 2023) (describing the relief provided under the Settlement as "necessary in order to best position Lee County to remain solvent and continue to provide critical reliability services to both PJM and MISO").



waiver does not have undesirable consequences, such as harm to third parties.<sup>17</sup> This waiver request satisfies all four of the Commission's waiver criteria.

*1. The waiver request is submitted in good faith.*

The waiver request is being submitted in good faith. The request is submitted expressly as contemplated by the Offer of Settlement.<sup>18</sup> The request is thus a component of the good faith negotiations which resulted in a Settlement supported by PJM, Lee County, and eighty other parties (and expressly unopposed by 18 additional parties). The request responds to a legitimate concern that Lee County may be unable to pay fully the Non-Performance Charge invoices that would become due and payable in January, February, and March 2024 at levels that give no regard to the pending Settlement's proposed reduction in assessed Non-Performance Charges.

This request is based on PJM's reasonable assessment that it is desirable to reduce the risk of Lee County defaulting on Non-Performance Charge obligations, and thereby reduce the likelihood of ancillary adverse effects, including PJM denial of Lee County's continued firm transmission and export transactions into MISO, Lee County's resulting inability to perform under the MISO Contracts, and potential ensuing disruption to PJM's and MISO's efforts to maintain reliability.<sup>19</sup>

The request's good faith is further evidenced by its modest objective to give these three Lee County invoices the same treatment the Commission approved in the September

---

<sup>17</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016) (citing waiver standards and allowing tariff waiver to implement equitable relief in light of certain tariff provisions); *see also Waiver of Tariff Requirements*, 171 FERC ¶ 61,156, at P 18 (2020) (listing the Commission's current waiver standards).

<sup>18</sup> Offer of Settlement at Art. 4.2.

<sup>19</sup> *See Essential Power OPP, LLC v. PJM Interconnection, L.L.C.*, Comments in Support of Settlement of Lee County Generating Station, LLC, et al., Docket No. EL23-53-000, et al., at 5-6 (Oct. 19, 2023) (describing the relief provided under the Settlement as "necessary in order to best position Lee County to remain solvent and continue to provide critical reliability services to both PJM and MISO").

Waiver for all other remaining outstanding Winter Storm Elliott Non-Performance Charges.

*2. The waiver is of limited scope.*

The requested waiver is narrowly defined. It applies *only* to three Lee County invoices for Non-Performance Charges. It frames the relief afforded as to those Non-Performance Charge payments on the same terms, for the most part, that the Commission approved in the September Waiver for all other remaining Winter Storm Elliott Non-Performance Charges. The only difference from that treatment is *a further narrowing* of the relief. Under the September Waiver, obligations to pay remaining Non-Performance Charges arising from Winter Storm Elliott are deferred until after the Commission acts on the Settlement. This requested waiver applies that same treatment to the three Lee County invoices, but with one caveat: in the unlikely event the Commission has not acted on the Settlement by May 31, 2024, PJM is permitted to apply collateral PJM then holds as a credit against Lee County's Non-Performance Charges and interest accrued thereon. This approach tailors the relief to the most significant public interest concern driving the need for a waiver, i.e., potential disruption to the efforts of both PJM and MISO to maintain reliability during the current 12-month capacity commitment period that ends on May 31, 2024, in both regions.

*3. The waiver addresses a concrete problem.*

The waiver addresses a concrete problem. Currently, Lee County is the only Market Participant with remaining Winter Storm Elliott Non-Performance Charges that will be expected to pay any such charges while the Settlement is pending. Lee County is the only Market Participant facing a specified deadline to pay Non-Performance Charges in an amount without regard to the Settlement's proposed reduced assessment of Non-

Performance Charges. And yet, Lee County continues to face liquidity challenges. The requested waiver addresses that concrete problem.

*4. The waiver does not have undesirable consequences.*

The requested waiver does not have undesirable consequences, such as adverse effects on third parties. The request asks *only* that Lee County be afforded, for these three invoices, the same deferral, on the same terms for the most part, that the Commission granted in the September Waiver for all other remaining Winter Storm Elliott Non-Performance Charges. As noted above, the only difference from that treatment is a further narrowing of the relief. The Commission expressly found that waiver would not harm third parties “because market participants that owe non-performance charges will continue to be obligated to pay penalties to PJM in full, with the deferred balance incurring interest at the Commission’s interest rate, and bonus payment recipients are therefore kept whole.”<sup>20</sup> The Commission made essentially the same finding as to the payment deferrals authorized by the July Waiver Order.<sup>21</sup> The same is true here, inasmuch as the interest protections approved by the July Waiver Order will apply to the further deferrals proposed here.

---

<sup>20</sup> September Waiver Order at P 39 (footnote omitted).

<sup>21</sup> July Waiver Order at P 17.

### III. CONCLUSION

For the foregoing reasons, Joint Movants request that the Commission grant the requested waiver as soon as possible but no later than December 29, 2023.

Respectfully submitted,

/s/ Paul M. Flynn

Paul M. Flynn  
Wendy B. Warren  
Priyanka Vashisht  
Wright & Talisman, P.C.  
1200 G Street, N.W., Suite 600  
Washington, D.C. 20005-3898  
(202) 393-1200 (phone)  
*flynn@wrightlaw.com*  
*warren@wrightlaw.com*  
*vashisht@wrightlaw.com*

Mark J. Stanisz  
Associate General Counsel  
PJM Interconnection, L.L.C.  
2750 Monroe Boulevard  
Audubon, PA 19403  
(267) 987-2021 (phone)  
*mark.stanisz@pjm.com*

Craig Glazer  
Vice President – Federal Government Policy  
PJM Interconnection, L.L.C.  
1200 G Street, NW, Suite 600  
Washington, DC 20005  
202-423-4743 (phone)  
202-393-7741(fax)  
*craig.glazer@pjm.com*

***Counsel for PJM Interconnection, L.L.C.***

Kenneth W. Irvin  
Christopher J. Polito  
Sidley Austin LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
Phone: (202) 736-8256  
*kirvin@sidley.com*  
*cpolito@sidley.com*

Terence T. Healey  
Sidley Austin LLP  
60 State Street, 37th Floor  
Boston, MA 02109  
Phone: (617) 223-0306  
*thealey@sidley.com*

***Counsel for Lee County Generating Station,  
LLC***

November 17, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 17th day of November, 2023.

/s/ Paul M. Flynn

Paul M. Flynn

Wright & Talisman, P.C.

1200 G Street, N.W., Suite 600

Washington, D.C. 20005

(202) 393-1200

*Attorney for*

PJM Interconnection, L.L.C.