

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

<b>PJM Interconnection, L.L.C.</b>	)	<b>Docket No.</b>	<b>EL21-91-003</b>
	)		<b>ER21-1635-009</b>
	)		

**JOINT MOTION FOR WAIVER OF THE INITIAL DECISION PURSUANT TO  
RULES 602(H)(2)(iii)(A) AND 710(D)**

**To: The Honorable Joel deJesus  
Presiding Administrative Law Judge**

Pursuant to Rule 602(h)(2)(iii)(A) and Rule 710(d) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),<sup>1</sup> PJM Interconnection, L.L.C. (“PJM”), on behalf of the Settling Parties,<sup>2</sup> has consulted with all participants<sup>3</sup> and respectfully and timely<sup>4</sup> files this motion (the “Rule 710(d) Motion”). Monitoring Analytics, LLC, in its capacity as the Independent Market Monitor (“IMM”) for PJM, is the only participant that indicated it opposes this Rule 710(d) Motion despite the fact that the IMM has waived all objections to the Offer of Settlement (“Settlement”)

---

<sup>1</sup> 18 C.F.R. §§ 385.602(h)(2)(iii)(A), 385.710(d), 385.212, 385.504(b)(8).

<sup>2</sup> The Settling Parties include American Municipal Power, Inc., Dynegy Marketing and Trade, LLC and Vistra Corp., Hazleton Generation LLC, J-POWER USA Development Co., Ltd., LS Power Development, LLC, PJM, and PJM Industrial Customer Coalition.

<sup>3</sup> For the reasons set forth in this footnote, in accordance with section 3 of the Uniform Hearing Rules, the Settling Parties represent that all relief sought in the Rule 710(d) Motion is supported by Commission Trial Staff and not opposed by any of the other parties other than the IMM. On September 11, 2024, PJM emailed all members of the Service List to confirm no opposition to the relief sought in this Motion. PJM can represent that no party other than the IMM expressed opposition by the requested 5:00 p.m. time for comment on September 12, 2024, which was the time by which PJM indicated silence would be interpreted as non-opposition. On September 12, 2024, Trial Staff authorized PJM to state that it supports this Rule 710(d) Motion. To avoid any doubt, Maryland Office of People’s Counsel, Office of the People’s Counsel for the District of Columbia, and the Delaware Division of the Public Advocate take no position on this Motion at this time.

<sup>4</sup> 18 C.F.R. § 385.710(c)(1) (“Any written motion under this section may be filed at any time, but not later than the fifth day following the close of the hearing”); 18 C.F.R. § 385.710(d) (“A motion may be oral or written, and may be made whenever appropriate for the consideration of the presiding officer.”).

filed on August 14, 2024<sup>5</sup> as explained in the concurrently filed Reply Comments of PJM (“PJM Reply Comments”)<sup>6</sup> and as briefly discussed below.

For the reasons set forth in the August 14 Filing and the PJM Reply Comments submitted concurrently with the filing of this Rule 710(d) Motion, the Presiding Judge should: (1) certify the Settlement to the Commission as uncontested, or (2) find that the Settlement may be certified under Rule 602(h)(2)(ii) because there is no genuine issue of material fact. Nevertheless, while this Rule 710(d) Motion should be deemed moot given these two separate and independently available certification routes, in an abundance of caution, the Settling Parties re-submit this Rule 710(d) Motion consistent with the Presiding Judge’s guidance in the August 30, 2024 order.<sup>7</sup>

This Rule 710(d) Motion requests that the Presiding Judge enter an order waiving the initial decision so as to permit certification of the Settlement under Rule 602(h)(2)(iii) should the Presiding Judge find that the Settlement cannot be certified under Rule 602(h)(2)(ii).<sup>8</sup> As demonstrated herein, there is good cause to waive the initial decision in light of the substantial evidence contained in the August 14 Filing, and the comments on the Settlement, including the materials attached thereto and referenced therein (collectively, the “Settlement Record”). Waiver of the initial decision is in the interests of the parties and the public interest and is consistent with the Commission’s policy of

---

<sup>5</sup> *PJM Interconnection, L.L.C.*, Offer of Settlement of PJM Interconnection, L.L.C., Docket No. ER21-1635-009 (Aug. 14, 2024) (“August 14 Filing”).

<sup>6</sup> *PJM Interconnection, L.L.C.*, Reply Comments of PJM Interconnection, L.L.C., Docket Nos. ER21-1635-009 & EL21-91-003 at Section IA (Sept. 13, 2024) (“PJM Reply Comments”).

<sup>7</sup> *PJM Interconnection, L.L.C.*, Order Denying Without Prejudice Motion to Waive the Initial Decision, Docket No. EL21-91-003 (Aug. 30, 2024).

<sup>8</sup> 18 C.F.R. §§ 602(h)(2)(ii)-(iii).

encouraging parties to reach settlements for the expeditious resolution of contested issues, which is an aim the Commission and the Presiding Judge have repeatedly encouraged the parties to pursue in this proceeding.<sup>9</sup>

The Settling Parties previously filed a motion to waive the initial decision on August 14, 2024 concurrent with the filing of the Settlement.<sup>10</sup> The prior motion argued that the Presiding Judge had authority to extend or toll (to the extent necessary) the 30-day period under Rule 710(d) to allow the Presiding Judge sufficient time to consider the full Settlement Record.<sup>11</sup> Nonetheless, the Presiding Judge denied the motion without prejudice as premature on grounds that: (1) it was unclear whether the Settlement would be contested until September 3, 2024; and (2) were the Settlement to be contested, the Presiding Judge would not have the opportunity to consider the full Settlement Record before the September 13, 2024 deadline for the Presiding Judge to act on the motion, which

---

<sup>9</sup> See, e.g., *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,194, at P 33 (2023) (“While we are setting these matters for a trial-type evidentiary hearing, we encourage efforts to reach settlement . . . .”); see also *PJM Interconnection, L.L.C.*, 186 FERC ¶ 63,019, at P 73 (2024) (“I recognize that the Commission has a longstanding policy of promoting settlements as a way of providing rate certainty, reducing litigation costs, and facilitating reasonable compromise in resolving complex issues.”); *id.* at P 135 (“Nothing . . . precludes the participants from re-submitting the Settlement with the additional substantial evidence needed to . . . approve the Settlement under an appropriate *Trailblazer* approach.”); *PJM Interconnection, L.L.C.*, Order Scheduling Prehearing Conference, Docket No. EL21-91-003 (Aug. 1, 2024) (Presiding Judge scheduling prehearing conference to discuss, among other things, “the prospects of settling this case”); Tr. 258:21 – 259:20, 260:22 – 261:16, Aug. 14, 2024.

<sup>10</sup> *PJM Interconnection, L.L.C.*, Joint Motion for Waiver of the Initial Decision Pursuant to Rules 602(H)(2)(iii)(A) and 710(d) and, to the Extent Necessary, Joint Motion to Extend or Toll the Rule 710(d) Time Periods, Docket No. EL21-91-003 (Aug. 14, 2024) (“August 2024 Joint Motion for Waiver”).

<sup>11</sup> Rule 710(d) provides that a motion for waiver of an initial decision is denied unless it is granted within 30 days. The Settling Parties submitted that the Presiding Judge has the authority to toll the Rule 710(d) period under Rule 504(b)(15), which allows the Presiding Judge to “[m]odify any time period [that] . . . is in the interest of justice and will result in no undue prejudice to any participant,” and that in any event the Chief Administrative Law Judge has such authority under 18 C.F.R. § 375.304(b)(1)(v). August 2023 Joint Motion for Waiver at 2 n.5.

was also the due date for reply comments on the Settlement.<sup>12</sup> The Presiding Judge recommended that the Settling Parties re-file their motion after September 3, 2024, and to consider waiting to do so until the September 13, 2024 deadline for submitting reply comments.<sup>13</sup>

## **I. MOTION AND ARGUMENT**

The Settling Parties file this Rule 710(d) Motion out of an abundance of caution. As further demonstrated in the PJM Reply Comments, the Settlement should be certified as uncontested. To the extent it is not, the Settlement Record demonstrates that there is no genuine issue of material fact that would preclude certification of a contested settlement under Rule 602(h)(2)(ii). Nevertheless, the Settling Parties are filing this Rule 710(d) Motion to provide the Presiding Judge with a third, independent path to certify the Settlement under Rule 602(h)(2)(iii). Rule 602(h)(2)(iii) permits certification if the Presiding Judge finds: (A) omission of the initial decision is appropriate under Rule 710(d); and (B) “the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues.”<sup>14</sup>

There is good cause to waive the initial decision because the substantive and procedural requirements of Rule 710(d) are met here. The Commission has recognized that the relevant question when evaluating whether waiver of the initial decision is appropriate “is whether the record contains substantial evidence upon which the

---

<sup>12</sup> *PJM Interconnection, L.L.C.*, Order Denying Without Prejudice Motion to Waive the Initial Decision, Docket No. EL21-91-003, at PP 5-6 (Aug. 30, 2024).

<sup>13</sup> *Id.* at P 8.

<sup>14</sup> *See id.* at P 2 n.8. *See also* 18 C.F.R. § 385.602(h)(2)(iii).

Commission can base a reasoned decision[.]”<sup>15</sup> The Commission has agreed that a presiding judge’s omission of an initial decision was appropriate even in circumstances where there was express opposition to the request.<sup>16</sup> Here, waiver of the initial decision will provide yet a third independent avenue to ensure that the Commission may expeditiously review the Settlement, which proposes reduced rates effective January 1, 2024, and will thus provide immediate rate relief to customers. By contrast, before the Chief Judge’s September 13, 2024 order suspending the procedural schedule in this case,<sup>17</sup> requiring this case to proceed through the scheduled hearing is anticipated to only result in an initial decision on March 18, 2025,<sup>18</sup> meaning that the record would only go to the Commission near the middle of 2025.<sup>19</sup> With the procedural schedule now suspended, it is likely these dates would be further extended.

As explained in the Explanatory Statement and as amplified in the PJM Reply Comments, the Settlement Record provides substantial evidence sufficient to allow the Commission to render a reasoned decision on the merits of any contested issues in the Settlement.<sup>20</sup> The Settlement is accompanied by five affidavits demonstrating that the Settlement is just and reasonable. Notwithstanding the IMM’s untimely filing waiving all

---

<sup>15</sup> See *Pac. Gas Transmission Co.*, 76 FERC ¶ 61,246, at 62,263-64 (1996).

<sup>16</sup> See *id.*

<sup>17</sup> *PJM Interconnection, L.L.C.*, Order of Chief Judge Suspending the Procedural Schedule, Docket No. EL21-91-003 (Sept. 13, 2024).

<sup>18</sup> *PJM Interconnection, L.L.C.*, Order Adopting Revised Procedural Schedule, Docket No. EL21-91-003, at 3 (Apr. 25, 2024).

<sup>19</sup> See 18 C.F.R. §§ 385.711(a)(i)-(ii) (providing that briefs on exceptions are due not more than 30 days after service of the initial decision and that briefs opposing exceptions are due 20 days thereafter).

<sup>20</sup> To the extent necessary, the Settling Parties incorporate by reference the Settlement Record to allow the Presiding Judge to rule on this Rule 710(d) Motion.

objections to the Settlement,<sup>21</sup> even if the IMM’s untimely views are considered on the merits and somehow found to raise a genuine issue of material fact, the IMM’s objections to the Settlement do not and cannot erase the substantial evidence in the Settlement Record. The substantial evidence standard requires only “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>22</sup> At the August 14, 2024 pre-hearing conference in this proceeding, the Presiding Judge noted that there already appeared to be substantial evidence in the record to support a settlement.<sup>23</sup> Notably, these observations were made prior to the Settling Parties submitting the Settlement and accompanying affidavits. As of today, participants will also have filed or had the opportunity to file initial and reply comments regarding the Settlement.

Rule 710(d) requires responses to the Rule 710(b)<sup>24</sup> inquiries, and the Settling Parties offer their responses to each of these inquiries in turn below. These responses fortify the grounds for finding good cause for granting this Rule 710(d) Motion.

**(1) Whether any participant waives any procedural right.**

***Response:***

Through this Rule 710(d) Motion, no Settling Party waives any procedural rights and the Settling Parties do not seek to waive any procedural rights of other participants. Omission of the initial decision will not cause any party to be deprived of due process in litigating the merits of the Settlement. All participants had the opportunity to raise any objections that they may have to the Settlement by filing comments. All participants either

---

<sup>21</sup> See 18 C.F.R. §§385.602(f)(2)-(3).

<sup>22</sup> *Murray Energy Corp. v. FERC*, 629 F.3d 231, 235 (D.C. Cir. 2011) (quoting *Colo. Interstate Gas Co. v. FERC*, 599 F.3d 698, 704 (D.C. Cir. 2010)).

<sup>23</sup> Tr. 259:5-20, Aug. 14, 2024.

<sup>24</sup> 18 C.F.R. § 385.710(b).

support or should be deemed to not oppose the Settlement. Although a single participant—the IMM—attempted to object to the Settlement, that participant waived all substantive and procedural objections to the Settlement because the participant filed untimely comments in the incorrect docket.<sup>25</sup>

All participants have also had an opportunity to conduct discovery and submit pre-filed testimony in this proceeding. Moreover, this Rule 710(d) Motion only requests waiver of the initial decision to permit certification of the Settlement; to the extent that the Settlement is not certified to the Commission or ultimately approved by the Commission, all participants will continue to have all procedural rights with respect to these proceedings.

**(2) Whether all participants concur in the request to waive the initial decision.**

***Response:***

All Settling Parties concur in the request to waive the initial decision if necessary in order to permit certification of the Settlement. Trial Staff supports the relief sought in this Rule 710(d) Motion. As indicated above, PJM has contacted all active participants and all persons on the service list, and only the IMM has stated its opposition to this Rule 710(d) Motion.<sup>26</sup>

---

<sup>25</sup> According to the Commission’s eLibrary website, the IMM’s filings opposing the Settlement were “first received” on September 4 at 2:47:37 pm, and were docketed in eLibrary on September 4, 2024, well past the deadline of 5:00 P.M. ET on September 3. Pursuant to Rule 602(f)(2) and (3), all objections to the Settlement should be deemed waived if not filed timely. The basis for this waiver and the uncontested nature of the Settlement is explained in more detail in the concurrently submitted PJM Reply Comments at Section IA.

<sup>26</sup> See *supra* note 3.

**(3) The reasons that waiver of the initial decision is in the interest of parties and the public interest.**

***Response:***

Waiver of the initial decision to permit certification of the Settlement is in the interest of the parties and the public interest. Despite any disagreements that may remain among the Settling Parties on the underlying merits of this case, the Settling Parties agree that the Settlement Record equips the Presiding Judge to certify the Settlement to the Commission and transmit the Settlement Record to expedite Commission resolution of any contested issues regarding the Settlement.

If the Presiding Judge waives the initial decision and certifies the Settlement, the participants who until today were continuing to expend time and resources to litigate this matter would not see a resumption in the procedural schedule which would trigger the need to prepare or engage in some or all of the following: dispositive motions and other pre-hearing submissions, weeks of live hearings, post-hearing submissions, and pre-initial decision briefing. The Presiding Judge, similarly, would not have to review or rule on any of these matters, preside over weeks of live hearings, or prepare an initial decision that is expected approximately seven months after the Settlement is expected to be submitted. Thus, certification of the Settlement will provide considerable administrative efficiency and leverage the substantial Settlement Record.

Additional administrative efficiencies will be realized at the Commission because the Settlement Record will not be transmitted in a vacuum. It will include at least the timely comments and substantial evidence supporting the Settlement and any certification order by the Presiding Judge to orient and assist the Commission in resolving any issues relating to the Settlement. The Settlement Record and a certification order will thus



facilitate the Commission's ability to act on the Settlement. And if the Commission determines additional fact finding on the Settlement is necessary (though the Settling Parties do not anticipate that will be the case), the Commission is empowered to order additional proceedings as necessary.<sup>27</sup>

Waiver of the initial decision will realize the above-listed efficiencies, and it will also be consistent with the Commission's policy of encouraging parties to seek the benefits of the settlement process for the expeditious resolution of contested issues – something the Commission and the Presiding Judge have repeatedly encouraged the parties to do in this matter, including very recently.<sup>28</sup>

The Settling Parties assert that waiving the initial decision here will facilitate an expeditious resolution of this matter on a timeframe the IMM has previously advocated for in this proceeding. Even without the benefit of the Settlement Record – and putting aside the substantive disagreements between the IMM and the Settling Parties regarding the previously-filed settlement – the IMM has repeatedly acknowledged that prompt resolution of this matter is in the public interest.<sup>29</sup> Although the Settling Parties do not endorse all that the IMM has said in its prior filings, the Settling Parties agree that waiving the initial decision here to the extent necessary to certify the Settlement will enable the most expeditious route to a prompt Commission resolution of this proceeding that is in the public interest and for the benefit of customers.

---

<sup>27</sup> See *Alliance Pipeline L.P.*, 157 FERC ¶ 61,204 (2016); *Wyo. Interstate Co.*, 85 FERC ¶ 61,183 (1998).

<sup>28</sup> See *supra* note 8.

<sup>29</sup> *PJM Interconnection, L.L.C.*, Motion to Permit Interlocutory Appeal of the Independent Market Monitor for PJM, Docket Nos. EL21-91-003 & ER21-1635-005, at 2-4 (Apr. 1, 2024); *PJM Interconnection, L.L.C.*, Motion to Permit Interlocutory Appeal of the Independent Market Monitor for PJM, Docket Nos. EL21-91-003, et al., at 2-4 (Mar. 28, 2024).

- (4) Whether any participant desires an opportunity for filing briefs; and**  
**(5) Whether any participant desires an opportunity for oral argument before the presiding officer, the Commission, or an individual Commissioner.**

*Response:*

The IMM may desire an opportunity for filing briefs or for oral argument. However, the Settling Parties assert that briefs and oral argument are unnecessary with respect to this Rule 710(d) Motion and the Settlement except as otherwise stated herein.

In accordance with Rule 602, the Settling Parties and other participants have developed and submitted the Settlement Record, which includes the Settlement itself and accompanying submissions, and timely comments on the Settlement pursuant to Rule 602(f), and materials referenced therein. If certified to the Commission, all participants will retain their rights to seek leave to file additional pleadings with the Commission relating to the Settlement to the extent necessary to aid the Commission's decision-making at the appropriate time. And as noted above, if for some unexpected reason the Commission determines additional fact finding is necessary (though the Settling Parties do not believe that will be the case), the Commission is vested with authority to act as it deems necessary if it finds additional evidence, briefing or other action is further warranted to continue moving this matter forward, including through further proceedings.

## II. CONCLUSION

Wherefore, for the foregoing reasons, the Settling Parties respectfully request that the Presiding Judge waive the initial decision to the extent necessary to permit certification of the Settlement as requested herein.

Respectfully submitted,

/s/ Mark J. Stanisz  
Steve Pincus  
Managing Counsel, Sr. Director  
Mark J. Stanisz  
Associate General Counsel  
PJM Interconnection, L.L.C.  
2750 Monroe Blvd.  
Audubon, PA 19403  
610-666-8800 (phone)  
steve.pincus@pjm.com  
mark.stanisz@pjm.com

Wendy B. Warren  
Ruth M. Porter  
Wright & Talisman, P.C.  
1200 G Street, NW, Suite 600  
Washington, D.C. 20005  
(202) 393-1200  
warren@wrightlaw.com  
porter@wrightlaw.com

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

Jessica Miller  
VISTRA CORP.  
1005 Congress Ave., Suite 750  
Austin, TX 78701  
Tel: (512) 349-6402  
jessica.miller@vistracorp.com

/s/ Stephen J. Hug  
Stephen J. Hug  
Emily Mallen  
Ben N. Reiter  
Mona Adabi  
AKIN GUMP STRAUSS HAUER &  
FELD LLP  
2001 K Street, N.W.  
Washington, D.C. 20006  
Tel: (202) 887-4084  
shug@akingump.com  
emallen@akingump.com  
breiter@akingump.com  
madabi@akingump.com

*Counsel for Vistra Corp. and Dynegy Marketing and Trade, LLC*

/s/ Neil L. Levy

Neil L. Levy  
Stephanie S. Lim  
MCDERMOTT WILL & EMERY LLP  
The McDermott Building  
500 North Capitol Street, NW  
Washington, DC 20001  
nlevy@mwe.com  
slim@mwe.com

***Counsel for LS Power Development, LLC***

Lisa G. McAlister  
Senior Vice President & General Counsel  
Gerit F. Hull  
Deputy General Counsel for Regulatory Affairs  
American Municipal Power, Inc.  
1111 Schrock Rd.  
Columbus, OH 43229  
(614) 540-0852  
ghull@amppartners.org

/s/ Kenneth R. Stark

Kenneth R. Stark  
Susan E. Bruce  
McNees Wallace & Nurick LLC  
100 Pine Street  
Harrisburg, PA 17101  
(717) 237-5378  
kstark@mcneeslaw.com  
sbruce@mcneeslaw.com

/s/ Neil L. Levy

Neil L. Levy  
Stephanie S. Lim  
MCDERMOTT WILL & EMERY LLP  
The McDermott Building  
500 North Capitol Street, NW  
Washington, DC 20001  
nlevy@mwe.com  
slim@mwe.com

***Counsel for J-POWER USA  
Development Co., Ltd.***

/s/ Jason T. Gray

Jason T. Gray  
Duncan & Allen LLP  
1730 Rhode Island Avenue, NW  
Suite 700  
Washington, D.C. 20036  
(202) 842-8197  
jtg@duncanallen.com

***Counsel for American Municipal Power, Inc.***

Robert A. Weishaar, Jr.  
McNees Wallace & Nurick LLC  
1200 G Street, NW  
Suite 800  
Washington, DC 20005  
(202) 898-5700  
bweishaar@mcneeslaw.com

***Counsel for the PJM Industrial Coalition***

/s/ Jonathan W. Gottlieb

Jonathan W. Gottlieb

Allison E. S. Salvia

Eversheds Sutherland (US) LLP

700 Sixth Street, NW, Ste. 700

Washington, DC 20001

(202) 383-0866 (phone)

(202) 637-3593 (facsimile)

jonathangottlieb@eversheds-

sutherland.com

allisonsalvia@eversheds-sutherland.com

***Counsel for Hazleton Generation LLC***

September 13, 2024

**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 13th day of September, 2024.

/s/ Ruth M. Porter  
Ruth M. Porter  
Wright & Talisman, P.C.  
1200 G Street, N.W., Suite 600  
Washington, DC 20005-3898  
(202) 393-1200

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