

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

Essential Power OPP, LLC, <i>et al.</i>)	
v.	)	Docket No. EL23-53-002
PJM Interconnection, L.L.C.)	
Aurora Generation, LLC, <i>et al.</i>)	
v.	)	Docket No. EL23-54-002
PJM Interconnection, L.L.C.)	
Coalition of PJM Capacity Resources)	
v.	)	Docket No. EL23-55-002
PJM Interconnection, L.L.C.)	
Talen Energy Marketing, LLC)	
v.	)	Docket No. EL23-56-002
PJM Interconnection, L.L.C.)	
Lee County Generating Station, LLC)	
v.	)	Docket No. EL23-57-004
PJM Interconnection, L.L.C.)	
SunEnergy1, LLC)	
v.	)	Docket No. EL23-58-002
PJM Interconnection, L.L.C.)	
Lincoln Generating Facility, LLC)	
v.	)	Docket No. EL23-59-002
PJM Interconnection, L.L.C.)	
Parkway Generating Keys Energy Center LLC)	
v.	)	Docket No. EL23-60-002
PJM Interconnection, L.L.C.)	
Old Dominion Electric Cooperative)	
v.	)	Docket No. EL23-61-002
PJM Interconnection, L.L.C.)	
Energy Harbor LLC)	
v.	)	Docket No. EL23-63-002
PJM Interconnection, L.L.C.)	

Calpine Corporation)	
v.	)	Docket No. EL23-66-002
PJM Interconnection, L.L.C.)	
Invenergy Nelson LLC)	
v.	)	Docket No. EL23-67-002
PJM Interconnection, L.L.C.)	
East Kentucky Power Cooperative, Inc.)	
v.	)	Docket No. EL23-74-002
PJM Interconnection, L.L.C.)	
CPV Maryland, LLC, and Competitive Power Ventures Holdings, LP)	
v.	)	Docket No. EL23-75-002
PJM Interconnection, L.L.C.)	
Parkway Generation Operating LLC, Parkway Generation Sewaren Urban Renewal Entity LLC)	
v.	)	Docket No. EL23-77-002
PJM Interconnection, L.L.C.)	
PJM Interconnection, L.L.C.	)	Docket No. ER23-2975-000

(Not Consolidated)

**INITIAL COMMENTS IN SUPPORT OF SETTLEMENT OF
AMERICAN MUNICIPAL POWER, INC.**

Pursuant to Rule 602(f) of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure,¹ American Municipal Power, Inc. ("AMP") submits these Initial Comments in support of the Offer of Settlement ("Settlement") that PJM Interconnection, L.L.C. ("PJM") and the "Settling Parties"² submitted on September 29, 2023 in the above-captioned proceedings. These Initial

¹ 18 C.F.R. § 602(f).

² See Settlement at 2 & Exhibit A (identifying the Settling Parties).

Comments support a finding that the Settlement constitutes a just and reasonable resolution of the issues raised in the “Winter Storm Elliott Complaints.”³ Consequently, consistent with the Commission’s strong policy in favor of settlements,⁴ AMP respectfully requests that the Commission issue an order approving the Settlement, without modification, under the second *Trailblazer* approach.⁵ In support thereof, AMP states as follows:

I. COMMENTS IN SUPPORT

Winter Storm Elliott was an extraordinary event that presented substantial performance challenges for generators in the PJM footprint. From December 23 to 24, 2022, PJM implemented several Emergency Actions that triggered Performance Assessment Intervals. In the wake of this event, PJM assessed unprecedented levels of Non-Performance Charges against generators that failed to perform during certain Performance Assessment Intervals. The Non-Performance Charges assessed were substantial—*i.e.*, \$1,795,788,553.07.

Between March 31 and June 16, 2023, market sellers in PJM filed fifteen complaints (*i.e.*, the “Winter Storm Elliott Complaints”), seeking financial relief from the Non-Performance Charges assessed by PJM. On June 5, 2023, the Commission issued

³ See Offer of Settlement and Explanatory Statement at 1-2 (defining the Winter Storm Elliott Complaints as the complaints submitted in Docket Nos. EL23-53-000, EL 23-54-000, EL23-55-000, EL23-56-000, EL23-57-000, EL23-58-000, EL23-59-000, EL23-60-000, EL23-61-000, EL23-63-000, EL23-66-000, EL23-67-000, EL23-74-000, EL23-75-000, and EL23-77-000).

⁴ See, *e.g.*, *Sw. Power Pool, Inc.*, 160 FERC ¶ 61,026, at P 8 (2017) (“Commission policy favors settlements”); *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs.*, 122 FERC ¶ 61,009, at P 13 (2008) (citations omitted) (“The Commission strongly favors settlements, particularly in cases that are highly contested and complex.”); *State of Maine*, 91 FERC ¶ 61,213, at 61,772 (2000) (The Commission’s “strong support of settlements militates in favor of giving these parties certainty, and letting them receive the full benefits of their bargain.”).

⁵ See Section I, *infra*, discussing the *Trailblazer* precedent.

an order setting the Winter Storm Elliott Complaints for settlement judge procedures.⁶ Interested parties engaged in settlement discussions, attempting to negotiate resolution of the issues raised by the complaints. Though the participants were not able to reach a unanimous settlement, they were able to craft an agreement that enjoys broad support from stakeholders representing diverse interests. PJM submitted that Settlement to the Commission and AMP signed on in support.

As the Settlement explains, the Commission reviews contested settlements under the standards set forth in its *Trailblazer* decisions.⁷ Of particular relevance here, the second *Trailblazer* approach permits the Commission to approve a contested settlement when the Commission determines that the settlement package produces an overall result that is just and reasonable.⁸ Significantly, the Commission can approve contested settlements even if the contesting parties raise meritorious objections.⁹ PJM concludes that the Settlement should be approved under *Trailblazer's* second approach.

AMP agrees with PJM. The Rohrbach Affidavit included in PJM's September 29 filing provides further support for that conclusion. Complementing the materials provided by PJM and other Settling Parties, the Rohrbach Affidavit addresses the Settlement's benefits from the perspective of a public-power entity and a Load-Serving Entity in PJM. In Section D of his affidavit, Mr. Rohrbach explains that the Settlement resolves litigation that would divert PJM and member resources from focusing on prospective changes and reforms to PJM's energy market and capacity construct that are needed to accommodate

⁶ *Essential Power OPP, LLC v. PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,163 (2023).

⁷ *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345, at 62,339 (1998), *order on reh'g*, 87 FERC ¶ 61,110, *reh'g denied*, 88 FERC ¶ 61,168 (1999).

⁸ *Trailblazer*, 85 FERC ¶ 61,345 at 62,342.

⁹ *Id.*

the transition to renewable and non-thermal generation. In Section E, Mr. Rohrbach explains that the Settlement provides timely resolution of the Winter Storm Elliott Complaints and, therefore, avoids negative impacts to investor confidence that are likely to increase costs to load. The information contained in the Rohrbach Affidavit, coupled with the materials submitted by PJM and other Settling Parties, supports a finding that the Settlement is just and reasonable under *Trailblazer's* second approach.

II. CONCLUSION

Wherefore, American Municipal Power, Inc. submits these Initial Comments and respectfully requests that the Commission issue an order approving, without modification, the September 29, 2023 Settlement in these proceedings.

Respectfully submitted,

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Dated: October 3, 2023

CERTIFICATE OF SERVICE

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

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Dated at Columbus, Ohio, this 3rd day of October, 2023.

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