

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.

Docket No. EL21-91-003

ORDER CONFIRMING BENCH RULINGS

(Issued September 26, 2024)

1. On September 25, 2024, I convened a conference to hear argument on several issues related to the settlements filed in this proceeding.¹ This Order confirms the bench rulings I made during that conference.
2. On September 13, 2024, PJM, on behalf of the Settling Parties, filed a joint motion² to waive the initial decision in this proceeding. At the conference on September 25, 2024, IMM confirmed that it remained opposed to the 710(d) Motion.³ Because Rule 710(d) only allows me 30 days from the filing of the 710(d) Motion to consider it,⁴ I DENY WITHOUT PREJUDICE the 710(d) Motion so that the relevant participants may file a new motion under Rules 602(h)(2)(iii)(A) and 710(d) to allow me time to consider the new motion and both the PJM Settlement and the IMM Settlement.⁵

¹ On September 14, 2024, PJM Interconnection, LLC (PJM), on behalf of itself and American Municipal Power, Inc., Dynegy Marketing and Trade, LLC, Vistra Corp., Hazleton Generation LLC, J-POWER USA Development Co., Ltd., LS Power Development, LLC, PJM, and PJM Industrial Customer Coalition (collectively, with PJM, Settling Parties) submitted an offer of settlement in Docket No. ER21-1635-009 (Accession No. 202040814-5139) (PJM Settlement). On September 20, 2024, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (IMM) filed a separate offer of settlement in Docket Nos. EL21-91-003, EL21-91-000 and ER21-1635-000 (IMM Settlement).

² Joint Motion for Waiver of the Initial Decision Pursuant to Rules 602(h)(2)(iii)(A) and 710(d), at 1 (Sept. 13, 2024) (710(d) Motion).

³ Tr. 290:17-19 (Mayes).

⁴ 17 C.F.R. § 385.710(d) (2023).

⁵ See Tr. 290:20-24 (Presiding Judge). As I noted at the conference, if all the parties “concur on” or “join in” any new motion under Rules 602(h)(2)(iii)(A) and 710(d), I must grant it. Tr. 274:18-276:1 (Presiding Judge). Since a number of

3. At the conference, I observed that after the IMM filed the IMM Settlement in multiple dockets, the IMM sent an email to various participants and my team on September 23, 2024 indicating when the Commission accepted and posted the filing and when participants should file comments on the IMM Settlement, but the IMM failed to also file updates in all related dockets as required by Chief Judge's notice to the public on procedures governing Rule 602 filings.⁶ Accordingly, I DIRECT the IMM to file their settlement update in Docket Nos. EL21-91-003 and ER21-1635-010.⁷

4. Because the IMM erroneously filed rebuttal testimony Exhibit IMM-0022 CUI PRIV-HC (Accession No. 20240912-5191) with a critical energy infrastructure information designation instead of a privileged designation, and submitted that file encrypted with a password,⁸ I DIRECT the IMM to contact the Office of the Secretary to correct this designation and to remove the password protection.

5. Consistent with my prior orders directing participants to submit workpapers associated with various exhibits and to allow me, if necessary, to reference such

participants have indicated that they intend to contest the newly filed IMM Settlement (*see* Tr. 280:21-22, 281:10-11 (Stanisz, Hug)) and since waiver of the initial decision is a prerequisite to my certifying a contested settlement, I would encourage all parties to file such a motion jointly and leave no ambiguity as to whether any party does not "join in" or "concur on" that motion.

⁶ Tr. 276:2-12 (Presiding Judge).; Notice to the Public, Procedures Governing Rule 602 Settlement Filings, at P 4 (Oct. 13, 2017) (Cintron, C.J.) ("In those instances when a settlement relates to more than one docket or the filing of a settlement generates a new root docket number, the filer is required to include all dockets in its filing description in eFiling and file an update in all the related dockets. This update must reference the docket in which the settlement was filed and the settlement's eLibrary accession number. This procedure also must be followed when filing motions for interim implementation of settlement rates that implicate more than one docket.") (footnote omitted).

⁷ Although the IMM filed the IMM Settlement in Docket Nos. EL21-91-000, EL21-91-003, and EL21-1635-000, the Commission Secretary has corrected the subdocket designations for the IMM Settlement since the oral argument. Going forward, parties should file their initial and reply comments on the IMM Settlement in Docket Nos. EL21-91-003 and ER21-1635-010.

⁸ Tr. 308:13-309:2 (Presiding Judge, Mayes).

workpapers when I decide whether or not to certify the PJM Settlement and the IMM Settlement,⁹ I DIRECT :

- a. IMM to file, with appropriate labelling and privilege designations, the workpapers underlying Exhibit IMM-0022 CUI PRIV-HC and the workpapers underlying Attachment T to the IMM Settlement;¹⁰ and
- b. PJM to file, with appropriate labelling and privilege designations, the workpapers underlying Exhibit PJM-0009 and the workpapers underlying the Revenue and Cost Study submitted in the PJM Settlement as Exhibit 2 to the Affidavit of Glen Boyle.¹¹

6. Although I discussed with the participants the motion related to the IMM's untimely comments on the PJM Settlement and related answers,¹² I take no action on that motion in this Order, nor do I decide here whether I will certify the PJM Settlement or the IMM Settlement.

SO ORDERED.

Joel deJesus
Presiding Administrative Law Judge

⁹ Order Confirming Bench Rulings and Adopting Revised Procedural Schedule, at P 3 (Aug. 15, 2024); Order Denying Without Prejudice Motion to Waive Initial Decision, at n.25 (Aug. 30, 2024).

¹⁰ Tr. 309:11-312:24 (Presiding Judge, Mayes).

¹¹ Tr. 409:7-412:16 (Presiding Judge, Stanisz, Janicke, Mayes).

¹² Motion [of the IMM] to Deem Comments Opposing Settlement Timely Filed or to Accept it One Day Out of Time (Sept. 16, 2024); Answer of PJM Interconnection, L.L.C. to Motion to Deem Comments Opposing Settlement Timely Filed or to Accept it One Day Out of Time (Sept. 23, 2024), Answer of Indicated Suppliers Opposing Motion of the Independent Market Monitor to Accept Untimely Comments (Sept. 23, 2024); Answer of Commission Trial Staff in Opposition to Motion to Deem Comments Timely Filed or Accept Comments Out of Time (Sept. 23, 2024).