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October 9, 2019

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: ***PJM Interconnection, L.L.C.*, Docket Nos. ER18-2068-000 and ER18-2068-001**
Submission of Settlement Agreement and Offer of Settlement

Dear Secretary Bose:

In accordance with the provisions of Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.602, PJM Interconnection, L.L.C. ("PJM"), together with American Electric Power Service Corporation; American Municipal Power, Inc.; Apogee Energy Trading LLC; Boston Energy Trading and Marketing LLC; Buckeye Power, Inc.; DC Energy, LLC; Direct Energy Business, LLC; Direct Energy Business Marketing, LLC; Dominion Energy Services, Inc.;[1] Duke Energy Kentucky, Inc.; Duke Energy Ohio, Inc.; East Kentucky Power Cooperative, Inc.; EDF Trading North America, LLC; EDF Energy Services, LLC; EDP Renewables North America LLC; Elliott Bay Energy Trading, LLC; Exelon Corporation; FirstEnergy Service Company;[2] LS Power Associates, L.P.; Mercuria Energy America, Inc.; Mercuria SJAK Trading, LLC; NextEra Energy Marketing, LLC; NRG Power Marketing LLC; the PJM Industrial Customer Coalition; the PSEG Companies;[3] and Southern Maryland Electric Cooperative, Inc. (collectively with PJM, the "Settling Parties," and each a "Settling Party"), submits a Settlement Agreement and Offer of

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1 Dominion Energy Services, Inc. has executed the accompanying Settlement Agreement and Offer of Settlement on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia and Dominion Energy Generation Marketing, Inc.

2 FirstEnergy Service Company has executed the accompanying Settlement Agreement and Offer of Settlement on behalf of its affiliates The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, Pennsylvania Electric Company, Jersey Central Power & Light Company, Metropolitan Edison Company, The Toledo Edison Company, West Penn Power Company, The Potomac Edison Company, and Monongahela Power Company.

3 The PSEG Companies are Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources and Trade, LLC.

Settlement ("Settlement") in this proceeding. The Settlement represents a resolution of all issues in the above-captioned subdockets of the proceeding.

I. SUBMISSION OF OFFER OF SETTLEMENT

The issues pending in the captioned subdockets of this proceeding were set for paper hearing and settlement judge procedures by the Commission's June 5, 2019 "Order Establishing Paper Hearing and Settlement Judge Procedures," *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,209 (2019). The ordered Settlement Judge procedures have been conducted by Chief Administrative Law Judge Carmen A. Cintron and Administrative Law Judge Suzanne Krolikowski. The Settling Parties request that the Secretary transmit this letter, the Settlement, and the documents attached thereto, to both Settlement Judges.

This submission includes:

1. An Explanatory Statement describing the terms of the Settlement as required by Rule 602(c)(1)(ii), 18 C.F.R. § 385.602(c)(1)(ii);

2. The Settlement; and

3. A certificate of service.

The Settling Parties respectfully request that the Commission accept the Settlement, without modification or condition, and allow it to become effective in accordance with its terms. The Settlement is the product of good faith and arms-length negotiations among the participants in this proceeding, resolves all substantive issues in the referenced subdockets of the proceeding, and is in the public interest. A copy of this filing is being served on all participants in the referenced proceeding. In accordance with Rule 602(f), 18 C.F.R. § 385.602(f), recipients of this letter are advised that initial comments on the Settlement are due twenty days from the date of filing, making comments on the Settlement due October 29, 2019, and reply comments are due ten days thereafter, *i.e.*, on November 8, 2019 (unless reply comments are waived as requested in Part III below). Pursuant to Rule 602(f)(3), 18 C.F.R. § 385.602(f)(3), any failure to file a comment constitutes a waiver of all objections to the Settlement.

II. REQUEST FOR WAIVER OF REGULATIONS NECESSARY TO EFFECTUATE SETTLEMENT

Section 11.12 of the Settlement states that "[t]he Commission's approval of this Settlement shall constitute the requisite grant of any waivers of any regulations as may be deemed necessary to permit the implementation of the provisions of this Settlement in accordance with its terms." Accordingly, the Settling Parties respectfully request waiver of the Commission's Regulations to the extent necessary to allow the Settlement to become effective in accordance with its terms.

III. REQUEST FOR WAIVER OF REPLY COMMENTS

Pursuant to Commission Rules 212 and 602(f)(2), 18 C.F.R. §§ 385.212 and 385.602(f)(2), the Settling Parties request that, if no initial comments adverse to the Settlement are filed, the Settlement Judges waive the reply comment provisions of Rule 602(f)(2)—including the opportunity to submit reply comments and the period of thirty days after filing of the Settlement allotted for submittal of reply comments—and act based on the Settlement as filed and any initial comments received. Waiver of the reply comment period in the event no adverse comments are filed will ensure administrative efficiency by allowing the Settlement Judges to certify the unopposed Settlement to the Commission as soon as possible.

Respectfully submitted,

/s/ Paul M. Flynn

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	)	Docket Nos. ER18-2068-000
	)	and ER18-2068-001

EXPLANATORY STATEMENT

To: Settlement Judges Carmen A. Cintron and Suzanne Krolikowski:

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.602, PJM Interconnection, L.L.C. ("PJM"), together with American Electric Power Service Corporation; American Municipal Power, Inc.; Apogee Energy Trading LLC ("Apogee"); Boston Energy Trading and Marketing LLC ("BETM"); Buckeye Power, Inc.; DC Energy, LLC; Direct Energy Business, LLC; Direct Energy Business Marketing, LLC; Dominion Energy Services, Inc.;[1] Duke Energy Kentucky, Inc.; Duke Energy Ohio, Inc.; East Kentucky Power Cooperative, Inc.; EDF Trading North America, LLC; EDF Energy Services, LLC; EDP Renewables North America LLC; Elliott Bay Energy Trading, LLC ("Elliott Bay"); Exelon Corporation; FirstEnergy Service Company;[2] LS Power Associates, L.P. ("LS Power"); Mercuria Energy America, Inc.; Mercuria SJAK Trading, LLC; NextEra Energy Marketing, LLC; NRG Power Marketing LLC; the PJM Industrial Customer Coalition; the

[1] Dominion Energy Services, Inc. has executed the accompanying Settlement Agreement and Offer of Settlement on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia and Dominion Energy Generation Marketing, Inc.

[2] FirstEnergy Service Company has executed the accompanying Settlement Agreement and offer of Settlement on behalf of its affiliates The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, Pennsylvania Electric Company, Jersey Central Power & Light Company, Metropolitan Edison Company, The Toledo Edison Company, West Penn Power Company, The Potomac Edison Company, and Monongahela Power Company.

PSEG Companies;[3] and Southern Maryland Electric Cooperative, Inc. (collectively with PJM, the "Settling Parties," and each a "Settling Party"), submit this Explanatory Statement to accompany the Settlement Agreement and Offer of Settlement ("Settlement") included in this filing package. The Settlement resolves all pending issues in Docket Nos. ER18-2068-000 and ER18-2068-001.

In the accompanying transmittal letter, the Settling Parties request the granting of any waivers that may be necessary to allow the Settlement to become effective in accordance with its terms. If no comments in opposition to the Settlement are timely filed, the Settling Parties also request waiver of reply comments on the Settlement pursuant to Rules 212 and 602(f)(2) of the Commission's Rules, 18 C.F.R. §§ 385.212 and 385.602(f)(2).

This Explanatory Statement summarizes the Settlement but is not intended to modify or alter any provision of the Settlement. To the extent any description of the Settlement set forth in this Explanatory Statement differs from the terms of the Settlement itself, the terms of the Settlement shall control. The Settling Parties respectfully request that the Commission accept the Settlement, without modification or condition, and allow it to become effective in accordance with its terms.

I. THE SETTLEMENT SHOULD BE APPROVED

The Settlement resolves all issues still pending before the Commission in this proceeding, including all issues concerning the PJM waiver request[4] that initiated this proceeding, and

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[3] The PSEG Companies are Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources and Trade, LLC.

[4] Request of PJM Interconnection, L.L.C. for Waiver Effective July 27, 2018, Docket No. ER18-2068-000 (July 26, 2018) ("Waiver Request").

all pending issues from the Commission's January 30, 2019 and June 5, 2019 orders[5] on that Waiver Request. The Settlement is the product of intensive good faith and arms-length negotiations among the participants to this proceeding, resolves all substantive issues in the referenced subdockets of the proceeding, and is in the public interest. Accordingly, the Settling Parties support the Settlement as an integrated package to resolve all pending issues herein. The Settling Parties are also authorized to state that the Delaware Division of the Public Advocate and the Office of People's Counsel for the District of Columbia do not oppose the Settlement. Settling Parties further note that no participant involved in the settlement process has advised the Settling Parties that it will oppose the Settlement.

II. BACKGROUND

On June 21, 2018, PJM declared GreenHat Energy, LLC ("GreenHat") to be in payment default of its financial obligations.[6] PJM initiated procedures to close out and liquidate GreenHat's Financial Transmission Right ("FTR") portfolio in accordance with PJM's then-effective Open Access Transmission Tariff ("Tariff"), Attachment K-Appendix,[7] section 7.3.9.[8]

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5 *PJM Interconnection, L.L.C.*, 166 FERC ¶ 61,072 (2019) ("Waiver Order"), *order establishing paper hearing & settlement judge procedures*, 167 FERC ¶ 61,209 (2019) ("Paper Hearing/Settlement Order").

6 Paper Hearing/Settlement Order at P 3.

7 This Explanatory Statement refers to Tariff, Attachment K-Appendix for all provisions that are contained in both Tariff, Attachment K-Appendix and Operating Agreement, Schedule 1.

8 Paper Hearing/Settlement Order at P 3. The then-effective provisions of Tariff, Attachment K-Appendix, section 7.3.9, provided in relevant part that:

- "[PJM] shall close out the defaulting Member's positions as of the date of its default, by unilaterally accelerating and terminating all forward [FTRs] positions;" and "shall post on its website all salient information relating to the closed out portfolio of [FTRs]." Tariff, Attachment K-Appendix, section 7.3.9(a), (b).
- "All current planning period [FTR] positions within the defaulting Members' [FTR] portfolio will be offered for sale in the next available monthly balance of planning period [FTRs] auction at an offer price designed to maximize the likelihood of liquidation of those positions." *Id.*, Attachment K-Appendix, section 7.3.9(c).

On June 22, 2018, PJM provided notice of the default to PJM Members.[9] At that time, PJM also posted on its website details of the GreenHat FTR portfolio. PJM explained that GreenHat's FTR portfolio was substantial, consisting of numerous FTRs for the 2018/2019, 2019/2020, and 2020/2021 Planning Periods.[10] On July 16, 2018, PJM opened bidding and began the July 2018 FTR Auction ("July Auction"),[11] as required by the then-effective liquidation process in Tariff, Attachment K-Appendix, section 7.3.9.[12] PJM, however, determined that it should not complete the July Auction. The July Auction was a Planning Period Balance Auction, meaning that it addressed FTRs that would be effective in the first calendar month following the auction (*i.e*., the "prompt month," which in this case was August 2018) or in any of the remaining months of the 2018/2019 Planning Period (which ended on May 31, 2019).

PJM stated that it closely monitored the auction and observed what it considered to be market illiquidity and large risk premiums in the FTR auction for the positions that

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- "The [FTR] positions comprising the defaulting Member's portfolio that are liquidated in a [FTRs] auction should avoid setting the price in the auction at the bid prices with which they were initially submitted. In the event that any of the closed out [FTRs] would set market based on the auction's preliminary solution, then only one-half of each [FTRs] position will be offered for sale and the auction will be re-executed. In the event that any [FTRs] position that has been closed out once again sets price, then all [FTRs] scheduled to be liquidated will be removed from the affected auction and the auction will be re-executed excluding the closed out [FTR] positions. [FTR] positions that are not liquidated will then be offered in the next available auction or specially scheduled auction, as appropriate." *Id.*, Attachment K-Appendix, section 7.3.9(e).
- "The liquidation of the defaulting Members' [FTRs] portfolio pursuant to the foregoing procedures shall result in a final liquidated settlement amount. The final liquidated settlement amount will be included in calculating a Default Allocation Assessment as described in Section 15.1.2A(I) of the PJM Operating Agreement." *Id.*, Attachment K-Appendix, section 7.3.9(f).

9 Paper Hearing/Settlement Order at P 4.

10 *Id.* at P 4.

11 This Explanatory Statement refers to the relevant FTR auctions by the name of the calendar month in which the auction is conducted.

12 Paper Hearing/Settlement Order at P 4.

might be liquidated.[13] PJM stated that, based on the offers and bids that had been received in 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 many PJM Members.[14]

On July 26, 2018, PJM initiated this proceeding by filing a request, pursuant to section 205 of the Federal Power Act, to waive then-effective Tariff, Attachment K-Appendix, section 7.3.9 to permit PJM 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 2018/2019 Planning Period FTR portfolio effective in each such auction's prompt month (*i.e.*, the first calendar month addressed by each auction).[15] PJM argued that the waiver was necessary to ensure an orderly and efficient liquidation of GreenHat's large FTR portfolio in a manner that minimized distortion of the FTR markets.[16]

PJM filed the Waiver Request before PJM's deadline for posting results of the July Auction, and PJM conducted the remainder of the July Auction on the assumption that the Waiver Request would be granted. In other words, PJM offered only the prompt-month (August 2018) GreenHat FTR positions for liquidation in the July Auction, and did not offer for liquidation GreenHat's FTR positions effective during the later months of the 2018/2019 Planning Period.

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13 *Id.*

14 *Id.*

15 Waiver Request at 1.

16 *Id.*

On August 16, 2018, Apogee filed a protest urging the Commission to reject the Waiver Request as an unwarranted intervention into the FTR market.[17] Apogee stated that, as of August 1, 2018, it held 237 million MWh of FTRs, purchased at an absolute cost of $144 million and a net cost of $61 million; that it had posted $64 million of cash collateral to PJM to support these positions; that its FTR portfolio included positions liquidating from August 2018 to May 2021; and that resolution of PJM's request for waiver would have a material impact on Apogee.[18] Apogee argued that PJM's proposal to change the manner in which the July Auction is conducted "has and will cause economic harm to Apogee and likely other market participants."[19] Numerous other parties filed comments in support of the Waiver Request.[20]

On January 30, 2019, the Commission denied the Waiver Request, concluding that PJM did not demonstrate that the Waiver Request satisfied the Commission's waiver criteria.[21] The Waiver Order found that

> [t]he record demonstrates that participants submitted bids in the July monthly FTR auction relying on the liquidation process that existed at the time PJM conducted the auction. Disrupting those settled expectations is likely to cause harm to third parties, even if doing so

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17 Apogee Energy Trading LLC's Opposition to PJM Interconnection, L.L.C.'s Request for Waiver, Docket No. ER18-2068-000 ("Apogee Protest").

18 Apogee Protest at 2.

19 *Id*. at 10.

20 *E.g.*, Comments of Exelon Corporation and Direct Energy, Docket No. ER18-2068-000 (Aug. 16, 2018); Comments of the Joint Supporters in Support of PJM's Request for a Waiver Effective July 27, 2018, Docket No. ER18-2068-000 (Aug. 16, 2018) (the Joint Supporters are comprised of the PJM Industrial Customer Coalition, the Delaware Division of the Public Advocate, the Pennsylvania Office of Consumer Advocate, and the Office of the People's Counsel for the District of Columbia); Comments of the PSEG Companies, Docket No. ER18-2068-000 (Aug. 16, 2018); Comments of American Municipal Power, Inc. in Support of Waiver Request of PJM Interconnection, L.L.C., Docket No. ER18-2068-000 (Aug. 16, 2018); Comments of Duke Energy Corporation, Docket No. ER18-2068-000 (Aug. 16, 2018); Comments of the Independent Market Monitor for PJM, Docket No. ER18-2068-000 (Aug. 16, 2018).

21 Waiver Order at PP 33-34.

> might produce [an] otherwise more efficient outcome, as PJM contends the waiver request would.[22]

The Waiver Order stated that to the extent PJM liquidated only the August GreenHat positions and settled the September through January positions, it was "required to reconcile any such actions by reinstating the original July [A]uction results, or taking steps that are necessary to comply with the effective Tariff language when the July 2018 auction was conducted, and by unwinding settlements" for the September through January positions that should have been liquidated.[23]

On February 26, 2019, PJM filed a request for rehearing, or in the alternative, motion for clarification of the Waiver Order.[24] In the PJM Motion for Clarification, PJM asserted that inserting the GreenHat FTRs into the July Auction at their various paths and quantities could change the FTR capabilities and cleared FTRs on other paths; potentially oversubscribe some FTR paths, creating retroactive violations of the Simultaneous Feasibility Test; and potentially push subsequent month auction results into retroactive Simultaneous Feasibility Test violations.[25] PJM asked the Commission to provide clarification on these and related questions before PJM implemented the directives of the Waiver Order.[26]

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22 *Id*. at P 34 (footnote omitted).

23 *Id.* at P 35.

24 Request of PJM Interconnection, L.L.C. for Rehearing or, in the Alternative, Motion for Clarification of Commission Order, Docket No. ER18-2068-001 (Feb. 26, 2019) ("PJM Motion for Clarification"). On February 21, 2019, PJM had filed a motion for stay of the Waiver Order pending an order on PJM's then-anticipated request for rehearing and clarification ("Motion for Stay").

25 PJM Motion for Clarification at 25.

26 *Id.* at 5-7, 25-30.

On February 28 and March 1, 2019, multiple parties filed requests for rehearing of the Waiver Order, *i.e*., Indicated PJM Parties;[27] Elliott Bay;[28] LS Power and Calpine;[29] and PJM Market Participants.[30]

On March 11, 2019, Apogee filed an answer in opposition to the PJM Motion for Clarification, asking the Commission to deny the motion as unsupported by the record and direct PJM to complete clearing the July Auction in accordance with PJM's then-effective Tariff rules.[31] On the same day, the Joint State Commissions, consisting of the Delaware Public Service Commission, the Pennsylvania Public Utility Commission, and the Public Service Commission of the District of Columbia, filed comments in support of the PJM Motion for Clarification and Motion for Stay.[32] On March 13, 2019, Elliott Bay filed an answer to the PJM Motion for Clarification, requesting that, if the Commission did not

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27 Rehearing Request and Comments in Support of Request for Stay of the Indicated PJM Parties, Docket No. ER18-2068-001 (Feb, 28, 2019). Indicated PJM Parties consist of Exelon Corporation, Buckeye Power, Inc., Direct Energy Business Marketing, LLC and Direct Energy Business, LLC, Virginia Electric and Power Company d/b/a Dominion Energy Virginia and Dominion Energy Generating Marketing, 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, 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.

28 Request for Rehearing of Elliott Bay Energy Trading, LLC, Docket No. ER18-2068-001 (Mar. 1, 2019).

29 Request for Rehearing of LS Power Associates, L.P. and Calpine Corporation, Docket No. ER18-2068-001 (Mar. 1, 2019).

30 Request of the PJM Market Participants for Rehearing and Clarification, and Answer in Support of Motion for Stay, Docket Nos. ER18-2068-000, -001 (Mar. 1, 2019). 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, Pennsylvania Office of Consumer Advocate, New Jersey Division of Rate Counsel, and the Maryland Office of People's Counsel. The PJM Market Participants stated that they adopted the arguments made in the PJM Motion for Clarification.

31 Apogee Energy Trading LLC's Answer in Opposition to Motion for Clarification, Docket No. ER18-2068-000 (Mar. 11, 2019) ("Apogee Answer").

32 Comments of the Joint State Commissions in Support of PJM Interconnection's Motion for Stay and Request for Rehearing/Motion for Clarification, Docket No. ER18-2068-000 (Mar. 11, 2019).

grant rehearing of the Waiver Order, it direct a process to provide for the development of a more complete record on the issues raised in the PJM Motion for Clarification.[33]

On June 5, 2019, the Commission issued an order establishing paper hearing and settlement judge procedures regarding the PJM Motion for Clarification, finding that "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 . . . that should be addressed in a paper hearing where all parties will have an opportunity to present written evidence and argument."[34] However, the Commission also "encourage[d] the parties to make every effort to settle their disputes;" and, to that end, "[held] the paper hearing in abeyance to give the parties the opportunity to settle."[35] Moreover, the Commission clarified that the scope of settlement was not limited to the PJM Motion for Clarification, "and the parties [we]re encouraged to address all disputes arising out of this proceeding."[36]

On June 11, 2019, Chief Administrative Law Judge Carmen A. Cintron designated herself and Administrative Law Judge Suzanne Krolikowski to serve as settlement judges, and designated dispute resolution specialist Joshua M. Hurwitz to serve as settlement facilitator.[37] Settling Parties, other parties to the proceeding, and Commission Trial Staff participated in settlement conferences (both in-person and via group conference calls) in June, July, August, September, and October of 2019. Various Settling Parties or caucuses

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33 Answer of Elliott Bay Energy Trading, LLC, Docket No. ER18-2068-001 (Mar. 13, 2019).

34 Paper Hearing/Settlement Order at P 27.

35 *Id.* at P 28.

36 *Id.*

37 *PJM Interconnection, L.L.C.*, Order of Chief Judge Designating Settlement Judges and Designating Dispute Resolution Facilitator, Docket Nos. ER18-2068-000, -001, at P 2 (June 11, 2019).

also engaged in informal settlement discussions throughout the settlement negotiation period. The Settling Parties reached a settlement in principle in August 2019. The Settlement submitted with this filing memorializes and gives effect to the terms of the settlement in principle.

III. DESCRIPTION OF THE SETTLEMENT

Article I of the Settlement summarizes the background and procedural history of this case. Article II defines key terms used in the Settlement. Article III defines the scope of the Settlement.

Articles IV, V, VI, and VII set forth the Settlement's principal substantive terms and conditions, as follows.

Article IV – No Re-Running or Resettling of FTR Auctions

Article IV provides that the Settlement resolves the issues in this proceeding concerning liquidation of the GreenHat FTRs[38] in the July Auction without any requirement for PJM to re-run or resettle the July Auction or any subsequent FTR Auction for the 2018/2019 Planning Period, or to change the clearing results of any auction in such Planning Period. Article IV clarifies that PJM will prepare a simulated clearing of the July Auction under certain agreed assumptions, but that simulated clearing will be only for the purpose of determining the payments to be made under Article VI of the Settlement. Article IV also clarifies that such simulated clearing does not preclude any charge or credit calculated under the Settlement from being associated, for accounting purposes, with the July Auction.

[38] Capitalized terms used, but not defined, in this Explanatory Statement have the meanings provided in the Settlement, or in the Tariff or Operating Agreement.

Article V – Credits to Apogee and BETM

Article V provides for specified credits to the participants in the July Auction that have presented claims of economic harm from the manner in which PJM conducted that auction. There are two such auction participants: Apogee and BETM. Apogee is an intervenor in this proceeding, and formally asked the Commission to deny both the Waiver Request and the PJM Motion for Clarification, in part based on the asserted harm to Apogee from the manner in which PJM conducted the July Auction.[39] During the settlement discussions, Apogee described analyses it had performed of the impact of PJM's conduct of the July Auction and the harm Apogee believes it suffered as a result. BETM—also an intervenor in this proceeding—similarly participated actively in the settlement discussions, and also described analyses it had performed of the impact of PJM's conduct of the July Auction and the harm BETM believes it suffered as a result. No other participant in the July Auction protested the Waiver Request or presented, on the record or during settlement discussions, information about analyses of asserted economic harm resulting from PJM's conduct of the July Auction.

PJM does not agree with the economic harm analyses presented by either Apogee or BETM, and shared during settlement discussions PJM's estimates of the impact on Apogee and BETM of re-running or resettling the July Auction with the GreenHat FTRs included. Apogee and BETM disagree with PJM's economic impact estimates for each entity shared during settlement discussions. The Settlement resolves these different estimates of economic harm on terms acceptable to all the Settling Parties—who, it should be noted, include parties representative of the diverse interests of various PJM market

39 Apogee Answer at 4-6; Apogee Protest at 2-10.

participant sectors—and does so in a manner that these diverse parties find preferable to the uncertainty of a litigated outcome. The diverse set of Settling Parties and those participants supporting or not opposing the settlement includes Load-Serving Entities, generation owners/operators, FTR trading firms, and consumer advocates.

Many of the Settling Parties, as well as supporting and non-opposing participants, are either PJM Members that, under the Operating Agreement, are obligated to bear the costs (through a Default Allocation Assessment) that result when a PJM Member defaults on its financial obligations in the PJM market,[40] or represent the interests of the ultimate consumers which will bear such costs. Such Default Allocation Assessment exposure arises in this proceeding because re-running or resettling the July Auction to include liquidating in that auction additional GreenHat FTRs (as arguably directed by the Waiver Order) would increase the cost of liquidating the GreenHat FTRs and thereby increase the dollar amount of GreenHat's default. The Default Allocation Assessment would be borne in turn by these payor Settling Parties (and from any other PJM Member to the extent of its Default Allocation Assessment).[41]

In simplest terms, the "payor" parties that participated in the settlement discussions judged that their interests and those of other similarly situated PJM Market Participants were better served by agreeing to the specified settlement credits to Apogee and BETM (and, pursuant to Article VI of the Settlement, any other July Auction Participant that advances a similar claim of economic harm) in order to avoid exposure to the potentially

40 Operating Agreement, section 15.2.2.

41 Aside from this Default Allocation Assessment exposure, Members also have exposure to any change in value of the FTR positions they held at the time of the July Auction that would arise out of liquidating the GreenHat FTRs.

greater Default Allocation Assessments that would result if PJM were ordered to liquidate additional GreenHat FTRs in a re-running of the July Auction.

That basic context of potential payments and potential obligations allows this complex and challenging proceeding to be viewed, in some respects, as comparable to a much simpler dispute over the amount due under a contract, with one party arguing for a lower value and the other party arguing for a higher value. The opposing litigants in such a case can settle the matter by compromising on a value somewhere between their respective claims. When sophisticated parties reach such a settlement, the resulting compromise value can be expected to reflect the parties' efforts to protect their respective interests, based on their separate assessments of adverse litigation outcomes, the cost of litigation, impacts on market viability, and the value of preserving settled market outcomes.[42]

Such is the case here. Rather than engage in complex and extended litigation about each method, practice, and assumption that might be used to re-run or resettle the July Auction, Apogee, BETM, and the payor Settling Parties explored whether they could reach agreement on payment levels, informed by the differing estimates of economic harm by PJM and Apogee, and by PJM and BETM. Through the efforts of the negotiating parties' representatives, the Settlement Judges and the settlement facilitator, that effort at compromise ultimately was successful, and the Settlement represents the product of those efforts.

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42 *See, e.g.*, *Trans Bay Cable LLC*, 165 FERC ¶ 61,106, at P 18 (2018) ("Trans Bay Cable's settlement is a black box settlement and the Commission does not require parties to justify individual elements in a black box settlement. The settlement was entered into by sophisticated parties that each bore the [relevant] risk . . . .") (footnote omitted); *see also Devon Power LLC*, 137 FERC ¶ 61,073, at P 6 (2011) ("[T]he Commission must presume 'that contract rates freely negotiated between sophisticated parties meet the just and reasonable standard.'" (citing *NRG Power Mktg. v. Me. Pub. Utils. Comm'n*, 558 U.S. 165, 173 (2010))).

Based in part on information about potential increased costs from liquidating additional GreenHat FTRs related to the 2018/2019 Planning Period, the Settling Parties support the Settlement, including the compromise payments provided for in the Settlement, as fair and reasonable. As noted, those payments are integral to an overall package that allows payors in PJM to avoid the risk of the additional Default Allocation Assessments that might result if the proceeding were litigated to conclusion. Furthermore, PJM and the many diverse Settling Parties that are FTR market participants also see substantial value from resolving the considerable uncertainty regarding possible resettling of the July Auction, and regarding the disruptive secondary effects any such resettlement could have on subsequent FTR auctions in the 2018/2019 Planning Period. PJM and other Settling Parties have been concerned that such disruptions in settled FTR auctions, were they to occur, might seriously undermine the market's confidence in future FTR auction results. PJM and many Settling Parties also attach considerable value to the Settlement's removal of a cloud over the July Auction and subsequent FTR auctions in the same Planning Period, and in avoiding the possibility of disruption to such auction results.

In consideration of the foregoing factors, section 5.1 of the Settlement provides for a credit of five million dollars ($5,000,000) to Apogee and seven million five hundred thousand dollars ($7,500,000) to BETM, in the form of credits in those amounts to Apogee and BETM, respectively, in their first monthly billing statement from PJM that is issued at least fifteen calendar days after the Settlement Effective Date established under Article IX of the Settlement.

In consideration of those credits, Apogee and BETM each release and relinquish any claims they may have in connection with economic harm they claim to have suffered due to the manner in which PJM addressed the GreenHat FTRs in the July Auction.

Specifically, section 5.2 of the Settlement provides that the credit to Apogee shall constitute full and final satisfaction and resolution of all claims or demands Apogee raised or could have raised in this proceeding concerning the rules, manner, process, or procedure PJM employed to liquidate, or allegedly should have used to liquidate, any or all GreenHat FTRs in any auction for the 2018/2019 Planning Period. Section 5.2 of the Settlement adds that Apogee agrees to: (a) relinquish all other claims of harm or demands for compensation or damages arising or resulting from the manner in which PJM addressed liquidation of the GreenHat FTRs in any auction for the 2018/2019 Planning Period; (b) withdraw any challenges to the rules, manner, process, or procedure in or by which PJM addressed liquidation of the GreenHat FTRs in any auction for the 2018/2019 Planning Period; (c) not initiate or pursue any challenges to the rules, manner, process, or procedure in or by which PJM addressed liquidation of the GreenHat FTRs in any auction for the 2018/2019 Planning Period; and (d) remain subject to the Default Allocation Assessment calculation set out in section 7.1 of the Settlement.

BETM similarly agrees, as reflected in Settlement section 5.3, that the specified credit to BETM constitutes full and final satisfaction and resolution of all claims or demands BETM raised or could have raised in this proceeding regarding PJM's treatment of the GreenHat FTRs in any auction for the 2018/2019 Planning Period; to relinquish any such claims, withdraw any such challenges, and not initiate or pursue any such challenges; and remain subject to the Settlement's Default Allocation Assessment.

Section 5.4 provides that neither Apogee nor BETM is permitted to submit a claim against the Payee Fund, which is the Settlement mechanism for payments to *other* July Auction Participants (*i.e*., those that have not previously come forward with a claim) for their economic harm. The Payee Fund is addressed in Settlement Article VI, as discussed below.

Finally, section 5.5 confirms that nothing in the Settlement relieves either Apogee or BETM of any liability for Default Allocation Assessments they may be assessed under Article VII of the Settlement. As PJM Members, both Apogee and BETM are subject to Default Allocation Assessments in accordance with the allocation rules in Operating Agreement, section 15.2.2. As such, they will be allocated their share of the increased GreenHat default costs resulting from implementation of the Settlement, including PJM's credits under the Settlement to Apogee and BETM themselves. In other words, the credits to Apogee and BETM prescribed by section 5.1 are before—not after—any payments required *from* Apogee and BETM for their share of the payments pursuant to the Default Allocation Assessment provisions of the Operating Agreement.

<u>Article VI – Payments to Claimants</u>

Article VI of the Settlement provides for payments to other July Auction Participants that assert a claim of Economic Harm from the manner in which PJM addressed liquidation of the GreenHat FTRs in the July Auction. As noted above, other than Apogee and BETM, no other participant in the July Auction protested the Waiver Request or presented, on the record or during settlement discussions, estimated claims of economic harm from PJM's conduct of the July Auction. That no other claimants have yet come forward does not necessarily imply there are no other claimants; however, the Settling Parties assess that it is unlikely that there are large claims outstanding from parties that have not yet claimed Economic Harm and that will now choose to do so. That assessment is based on the facts that:

- Only one party—Apogee—opposed (and described the economic harm associated with) the Waiver Request;
- All other parties that took a substantive position in response to the Waiver Request expressed support for it;
- Only one party—Apogee—requested denial of the PJM Motion for Clarification;
- In the settlement discussions, only Apogee and BETM presented quantifications of economic harm from PJM's conduct of the July Auction;
- Since all Members are subject to Default Allocation Assessments or other obligations by which they bear the cost of claims, even some Members that might have incurred economic harm from PJM's conduct of the July Auction might, on balance, choose not to present a Claim; and
- The Settlement (which includes Article VI as one of its elements) is broadly supported or unopposed, and no participant involved in the settlement process has advised the Settling Parties that it will oppose the Settlement.

Accordingly, Article VI provides an overall dollar amount for payment of Claims from other July Auction Participants; establishes a process for parties to submit Claims; prescribes a mechanism for PJM to estimate each new Claimant's Economic Harm; and provides for apportionment of the available funds if necessary, based on each Claimant's relative Economic Harm. Article VI also makes clear that each party submitting a Claim relinquishes any right to pursue or initiate such claims in any other fashion; and describes the consequences when PJM calculates that a Claimant was *benefitted* by PJM's conduct of the July Auction.

Specifically, section 6.1 provides that any July Auction Participant that asserts it was harmed by the manner in which PJM addressed liquidation of the GreenHat FTRs in the July Auction may submit a Claim against the Payee Fund.

Section 6.2 requires PJM to give notice, within five (5) business days after the Commission approves the Settlement, of the thirty (30) calendar day period for July

Auction Participants to submit Claims to PJM (*i.e.*, the "Claim Period"). Claims must be submitted within the Claim Period and in the manner specified in PJM's notice.[43] Any such Claim shall be limited to harm claimed to have been suffered by a July Auction Participant due to the manner in which PJM addressed liquidation of the GreenHat FTRs in the July Auction. Because PJM will calculate the amount of the Claimant's Economic Harm, the Settlement makes clear that the Claimant shall not include any quantification or estimate of its harm.

Section 6.3 provides that, by submitting a Claim, each Claimant acknowledges that its Claim could result in either a charge or a credit to the Claimant, and that the Claimant is not permitted to withdraw a Claim that PJM determines results in a charge to such Claimant. Thus, submission of Claims is entirely voluntary, but Claims are treated neutrally and equally once submitted, such that PJM is bound to credit Claimants that are determined to have suffered Economic Harm, and PJM is bound to charge Claimants that are found to have realized an economic benefit (as further described below) from the manner in which PJM addressed liquidation of the GreenHat FTRs in the July Auction.

Section 6.4 provides that, by submitting a Claim, a Claimant agrees to (a) relinquish all other claims of harm or demands for compensation or damages arising from the rules, manner, process, or procedure in or by which PJM addressed liquidation of the GreenHat FTRs in any auction for the 2018/2019 Planning Period; (b) withdraw any challenges to the rules, manner, process, or procedure in or by in which PJM addressed liquidation of the GreenHat FTRs in any auction for the 2018/2019 Planning Period; (c) not initiate or pursue

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[43] PJM will prepare and post on its website, and otherwise make available to possible Claimants, a standard form (conforming to the terms in the Settlement) for submission of Claims.

any challenges to the rules, manner, process, or procedure in or by which PJM addressed liquidation of the GreenHat FTRs in any auction for the 2018/2019 Planning Period; and (d) remain subject to the Default Allocation Assessment calculation set out in section 7.1 of the Settlement. This section helps provide certainty against the future assertion of claims of economic harm from the manner in which PJM addressed the GreenHat FTRs in the July Auction.

Section 6.5 summarizes that, following its receipt of all timely Claims, PJM shall:

(a) calculate the Economic Harm to each Claimant and the aggregate Economic Harm to all Claimants, based on a simulated clearing of the July Auction;

(b) establish a Payee Fund, funded through Default Allocation Assessments (determined under certain defined assumptions), in the amount of the aggregate Economic Harm, but not to exceed five million dollars ($5,000,000);

(c) disburse amounts from the Payee Fund to each Claimant in an amount no greater than such Claimant's Economic Harm, and, if necessary, on a reduced proportionate basis if the aggregate Economic Harm to all Claimants exceeds the Payee Fund Amount; and

(d) establish that certain Claims will result in a charge to the Claimant, and prescribe the disposition of revenues from such charges.

Section 6.6 provides that PJM will calculate Economic Harm to each Claimant as the difference between (i) the net profit or net loss to such Claimant based on the auction cost and the day-ahead settlement values of all FTR positions obtained by such Claimant from the July Auction as cleared in July 2018, and (ii) the net profit or net loss to such Claimant based on the auction cost and day-ahead settlement values that would have occurred for all FTR positions such Claimant would have obtained under the simulated alternative clearing of the July Auction, so long as such difference would be a net charge to the Claimant. If the difference is a net credit, that Claimant will not be considered to have incurred Economic Harm and will be subject to a charge as described in section 6.9 of the Settlement.

For such purpose, the simulated alternative clearing of the July Auction shall assume:

(a) liquidation in the July Auction of GreenHat FTRs that would have been effective in any month during the period from September 2018 through May 2019;

(b) if any of the GreenHat FTRs offered for liquidation would set price on any FTR path for any monthly or multi-month period addressed in the July Auction, then the simulated auction is re-run after removing fifty percent of the total defaulted GreenHat FTR positions, regardless of path or period;[44] and

(c) otherwise applicable Tariff rules concerning (i) violations of the Simultaneous Feasibility Test,[45] (ii) prohibitions on selling FTRs not owned by an auction participant,[46] (iii) requirements for auction participants, under certain circumstances, to post additional credit based on tentative clearing results,[47] and (iv) FTR forfeitures,[48] shall not be applied.

The agreement not to apply the Tariff rules listed above is a key benefit of the "black box" approach to settling this case. If PJM actually re-ran the auction, the referenced rules could cause cascading deviations from actual settlement results in other auctions conducted for the 2018/2019 Planning Period, likely creating additional Tariff violations, further disrupting the market, and undermining Market Participants' faith in the finality of the FTR auctions. Such cascading impacts are avoided under the Settlement, as the Settlement only "re-runs" auctions through a market simulation for the sole purpose of estimating

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44 Apogee's and BETM's acceptance of this calculation assumption for the narrow purpose of the Settlement provision shall in no way be taken as acceptance of or agreement to any interpretation of the now-superseded Tariff, Attachment K-Appendix, section 7.3.9(e).

45 *See* Tariff, Attachment K-Appendix, section 7.5.

46 *See* Tariff, Attachment K-Appendix, section 7.1.1(a) ("[A]ny holder of a Financial Transmission Right for the period covered by an auction may offer such Financial Transmission Right for sale in such auction.").

47 *See* Tariff, Attachment Q, section IV.C.6.

48 *See* Tariff, Attachment K-Appendix, section 5.2.1.

Economic Harm for Claimants on the Payee Fund (*i.e.*, Claimants that have not previously presented quantified economic harm from PJM's conduct of the July Auction).

Section 6.7 sets the Payee Fund Amount equal to the lesser of: (a) the total Economic Harm amounts calculated for all Claimants; or (b) five million dollars ($5,000,000) consistent with section 6.5, and as explained above. Section 6.7 also directs PJM to fund the Payee Fund Amount through the assessment of Default Allocation Assessments as provided in Article VII of the Settlement.

Section 6.8 provides that each Claimant determined to have suffered Economic Harm will receive a credit from the Payee Fund in an amount equal to the lesser of: (a) such Claimant's Economic Harm as calculated by PJM under section 6.6 of the Settlement if the Payee Fund Amount is sufficient to pay one hundred percent of the Economic Harm of all Claimants; and (b) if the Payee Fund Amount is not sufficient to pay one hundred percent of the Economic Harm of all Claimants, the product of (i) the Payee Fund Amount multiplied by (ii) a fraction, the numerator of which is the Economic Harm calculated for such Claimant and the denominator of which is the aggregate of the Economic Harm calculated for all Claimants. The Settlement clarifies that only the value of the Economic Harm to Claimants that is a positive number (*i.e.*, would be a net charge to such Claimants) shall be included in that pro-ration calculation. This provision sets a reasonable allocation rule in the event valid claims exceed in aggregate the maximum Payee Fund Amount of five million dollars.

Section 6.9 sets forth the procedures to be used when PJM determines a Claimant was benefitted rather than harmed by the manner in which PJM conducted the July Auction. Rather than receive a credit, such a Claimant will be assessed a charge, the proceeds of which will be applied to benefit other Claimants, or to reduce Default Allocation

Assessments, as explained below. This is reasonable because Claimants are asking to be treated as if PJM had sought to liquidate all GreenHat Planning Period Balance FTRs in the July Auction. A Claimant may be worse off or better off under that treatment, and the resulting credits or charges will reflect the actual effect on each particular Claimant.

Specifically, section 6.9 provides that if PJM's calculation of Economic Harm under section 6.6 results in a net credit to a Claimant, that Claimant will be assessed a charge equal to one-half of the net credit so calculated. Any such charges assessed by PJM shall be treated as part of the Payee Fund (and act as an addition to the Payee Fund Amount), and those supplemental amounts in the Payee Fund shall be credited to Claimants calculated to have suffered Economic Harm, provided that total credits to any Claimant may not exceed the Economic Harm calculated for that Claimant.

Section 6.9 further provides that if the aggregate of all amounts paid into the Payee Fund would result, if fully credited to all Claimants, in any Claimant receiving a total credit from the Payee Fund in excess of that Claimant's Economic Harm, then the amount of such excess shall be used to offset (*i.e.*, reduce) the Default Allocation Assessments.

Article VII – Default Allocation Assessments

Article VII provides that PJM will fund through Default Allocation Assessments the credits made to Apogee, BETM, and any new Claimants found to have suffered Economic Harm. This reflects that the payments are a proxy for re-running or resettling the July Auction to liquidate additional GreenHat FTRs, which would have increased the costs of the GreenHat default and thus increased the Default Allocation Assessments charged to the PJM Members subject to such assessments. To eliminate any ambiguity, the Settlement defines the allocation factors used to assign responsibility for the payments as those applicable for the June 21, 2018 GreenHat default, making clear the intent to be consistent with how Default Allocation Assessments have been handled for the rest of the GreenHat default. Moreover, Article VII makes clear that the $10,000 per Member limitation under Operating Agreement, section 15.2.2 on allocations based on the number of Members applies cumulatively for each Member taking account of all Default Allocation Assessments on such Member arising from the June 21, 2018 GreenHat default.

Section 7.4 provides for a reduction in or offset to the Payee Fund in certain circumstances where the default allocation burden on the Members is reasonably reduced. The Settlement identifies two such situations: (a) where the Claims in total are less than five million dollars; and (b) if a Claimant would be credited more than its Economic Harm (as determined by PJM under section 6.5). In either circumstance, the excess amount will be applied on a proportionate basis to reduce the Default Allocation Assessments imposed for the purpose of funding the Payee Fund.

Article VIII – Market Settlements

Article VIII provides that PJM will provide the specified credits to Apogee and BETM, and will charge to PJM Members the Default Allocation Assessments imposed to fund those credits, in the same billing cycle. Similarly, PJM will provide any credits to other Claimants that are determined by PJM to have suffered Economic Harm, and will charge to PJM Members the Default Allocation Assessments imposed to fund those credits, in the same billing cycle. Article VIII adds that entities that receive both credits and assessments under these provisions will receive such items on a single monthly statement, and that assessments will be reflected in PJM settlements in the same manner as previous GreenHat defaults have been billed, *i.e.*, as a "1999 PJM Customer Payment Default."

Articles IX through XI – Effective Date and General Provisions

Article IX provides that the Settlement will become effective on the date of a Commission order approving the Settlement ("Settlement Effective Date"). Article IX further provides that the provisions of the Settlement shall remain in full force and effect until such time as the obligations set forth in the Settlement have been fully discharged.

Article X provides that the Settlement, once approved by the Commission, will be filed through a compliance filing as an attachment to the Tariff and shall function as the filed rate for purposes of the matters specifically addressed in the Settlement pertaining to the July Auction and the 2018/2019 Planning Period.

Article XI includes miscellaneous provisions. Section 11.1 states that neither the Settlement nor the Settling Parties' performance thereunder shall be deemed to be an admission of any fact or any liability.

Section 11.2 provides that the compensation mechanism established by the Settlement is the sole vehicle through which entities claiming to have been injured by the rules, manner, process, or procedure in or by which PJM addressed liquidation of the GreenHat FTRs in any FTR auction for the 2018/2019 Planning Period may be compensated for their injury. Section 11.2 adds that Commission acceptance or approval of the Settlement shall be deemed to close out all FTR transactions associated with or arising from the July Auction, and no Market Participant may assert claims related to that auction outside the process established by the Settlement.

Section 11.3 clarifies that the Settlement constitutes the entire agreement between and among the Settling Parties. Section 11.4 states that the terms and conditions of the Settlement are expressly contingent upon the Commission's approval of the Settlement without modification or condition. Section 11.5 provides that the discussions that produced the Settlement were conducted pursuant to Rules 602 and 606 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.602 and 385.606, and section 11.6 provides that the Settlement is being submitted to the Commission pursuant to Rule 602.

Section 11.7 obligates the Settling Parties to cooperate with and support the filing of the Settlement and efforts to obtain Commission approval of the Settlement. To that end, section 11.7 also provides that no later than sixty (60) days after the Settlement Effective Date, each Settling Party shall move to withdraw any and all requests for rehearing, requests or motions for clarification, and motions or requests for stay such party has pending before the Commission in this proceeding.

Section 11.8 binds all successors and assigns of the Settling Parties to the terms of the Settlement. Section 11.9 clarifies that each Settling Party participated in the preparation of the Settlement and that any ambiguities therefore will not be construed against any particular Settling Party as the drafter of the Settlement. Section 11.10 provides that all persons executing the Settlement are duly authorized to do so. Section 11.11 provides that the Settlement may be executed in one or more counterparts. Section 11.12 states that the Commission's approval of the Settlement shall constitute the requisite grant of any waivers of regulations as may be deemed necessary to implement the Settlement in accordance with its terms. Section 11.13 provides the rules of construction of the Settlement. Section 11.14 clarifies that the title and headings of various articles and sections in the Settlement are for reference purposes only.

Section 11.15 provides that the standard of review for any modifications to the Settlement requested by a Settling Party will be the "public interest" application of the just and reasonable standard of review, as explained in *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 527 (2008) and *NRG Power*

Marketing, LLC v. Maine Public Utilities Commission, 558 U.S. 165 (2010), and that the standard of review for changes sought by anyone other than a Settling Party (including by the Commission acting *sua sponte*) will be the most stringent standard permissible under applicable law.

Section 11.16 states that the Settlement is made upon the express understating that it constitutes a negotiated offer and neither the Settling Parties nor the Commission shall be deemed to have approved, accepted, agreed, or otherwise consented to any underlying matter except as expressly provided in the Settlement. Finally, section 11.17 provides that the terms of the Settlement shall control to the extent there is any inconsistency between the Settlement and the description of the Settlement contained in this Explanatory Statement.

IV. STATEMENTS REQUIRED BY CHIEF ADMINISTRATIVE LAW JUDGE'S NOTICE TO THE PUBLIC

In accordance with the Chief Administrative Law Judge's December 15, 2016 Amended Notice to the Public on Information to Be Provided with Settlement Agreements and Guidance on the Role of Settlement Judges, the Settling Parties respond below to the questions identified by the Chief Administrative Law Judge:

a. Does the Settlement affect other pending cases?

The Settlement is not intended to affect issues raised in any other pending proceeding at the Commission.

b. Does the Settlement involve issues of first impression?

The Settlement does not involve issues of first impression.

c. Does the Settlement depart from Commission precedent?

The Settlement does not depart from Commission precedent.

d. Does the Settlement seek to impose a standard of review other than the ordinary just and reasonable standard with respect to changes to the Settlement that might be sought by either a third party or the Commission acting *sua sponte*?

The standard of review for modifications of the Settlement proposed by any Settling Party will be the "public interest" application of the just and reasonable standard of review, as explained above. The standard of review with respect to changes proposed by any other entity, including the Commission acting *sua sponte*, will be the most stringent standard permissible under applicable law.

V. CONCLUSION

Wherefore, the Settling Parties respectfully request that the Commission issue an order that approves the Settlement without modification or condition and allows the Settlement to become effective in accordance with its terms.

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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

	)	
PJM Interconnection, L.L.C.	)	Docket Nos. ER18-2068-000
	)	and ER18-2068-001

SETTLEMENT AGREEMENT AND OFFER OF SETTLEMENT

This Settlement Agreement and Offer of Settlement ("Settlement") is made pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.602, by and among PJM Interconnection, L.L.C. ("PJM"), together with American Electric Power Service Corporation; American Municipal Power, Inc.; Apogee Energy Trading LLC ("Apogee"); Boston Energy Trading and Marketing LLC ("BETM"); Buckeye Power, Inc.; DC Energy, LLC; Direct Energy Business, LLC; Direct Energy Business Marketing, LLC; Dominion Energy Services, Inc.;[1] Duke Energy Kentucky, Inc.; Duke Energy Ohio, Inc.; East Kentucky Power Cooperative, Inc.; EDF Trading North America, LLC; EDF Energy Services, LLC; EDP Renewables North America LLC; Elliott Bay Energy Trading, LLC (Elliott Bay"); Exelon Corporation; FirstEnergy Service Company;[2] LS Power Associates,

1 Dominion Energy Services, Inc. executes this Settlement on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia and Dominion Energy Generation Marketing, Inc.

2 FirstEnergy Service Company executes this Settlement on behalf of its affiliates The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, Pennsylvania Electric Company, Jersey Central Power & Light Company, Metropolitan Edison Company, The Toledo Edison Company, West Penn Power Company, The Potomac Edison Company, and Monongahela Power Company.

L.P. ("LS Power"); Mercuria Energy America, Inc.; Mercuria SJAK Trading, LLC; NextEra Energy Marketing, LLC; NRG Power Marketing LLC; the PJM Industrial Customer Coalition; the PSEG Companies;[3] and Southern Maryland Electric Cooperative, Inc. (collectively with PJM, the "Settling Parties," and each a "Settling Party"). The Settling Parties enter into this Settlement to resolve all outstanding issues in Docket Nos. ER18-2068-000 and ER18-2068-001.

ARTICLE I
BACKGROUND

On July 26, 2018, PJM initiated this proceeding by filing a request, pursuant to section 205 of the Federal Power Act, to waive then-effective provisions of the PJM Open Access Transmission Tariff ("Tariff"), Attachment K-Appendix, section 7.3.9[4] to permit PJM to sell in the July, August, September, and October 2018 monthly Financial Transmission Rights ("FTR") auctions (as well as the long-term FTR auction conducted in September 2018) only the portion of the 2018/2019 Planning Period Balance FTR positions of a certain defaulting PJM Member (GreenHat Energy, LLC or "GreenHat") effective in the prompt month (*i.e.*, the first calendar month addressed by each auction).[5]

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[3] The PSEG Companies are Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources and Trade, LLC.

[4] All references to Tariff, Attachment K-Appendix herein are intended to also refer to identical provisions in the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement"), Schedule 1.

[5] Request of PJM Interconnection, L.L.C. for Waiver Effective July 27, 2018, Docket No. ER18-2068-000 (July 26, 2018) ("Waiver Request").

On August 16, 2018, Apogee filed a protest in opposition to the Waiver Request.[6] Numerous other parties filed comments in support of the Waiver Request.[7]

On January 30, 2019, the Commission denied the Waiver Request,[8] concluding that PJM did not demonstrate that the Waiver Request satisfied the Commission's waiver criteria.[9] The Waiver Order found that

> [t]he record demonstrates that participants submitted bids in the July monthly FTR auction relying on the liquidation process that existed at the time PJM conducted the auction. Disrupting those settled expectations is likely to cause harm to third parties, even if doing so might produce [an] otherwise more efficient outcome, as PJM contends the waiver request would.[10]

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 [A]uction results, or taking steps that are necessary to comply with the effective Tariff language when the July 2018 auction was

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6 Apogee Energy Trading LLC's Opposition to PJM Interconnection, L.L.C.'s Request for Waiver, Docket No. ER18-2068-000 (Aug. 16, 2018).

7 *See, e.g.*, Comments of Exelon Corporation and Direct Energy, Docket No. ER18-2068-000 (Aug. 16, 2018); Comments of the Joint Supporters in Support of PJM's Request for a Waiver Effective July 27, 2018, Docket No. ER18-2068-000 (Aug. 16, 2018) (the Joint Supporters are comprised of the PJM Industrial Customer Coalition, the Delaware Division of the Public Advocate, the Pennsylvania Office of Consumer Advocate, and the Office of the People's Counsel for the District of Columbia); Comments of the PSEG Companies, Docket No. ER18-2068-000 (Aug. 16, 2018); Comments of American Municipal Power, Inc. in Support of Waiver Request of PJM Interconnection, L.L.C., Docket No. ER18-2068-000 (Aug. 16, 2018); Comments of Duke Energy Corporation, Docket No. ER18-2068-000 (Aug. 16, 2018); Comments of the Independent Market Monitor for PJM, Docket No. ER18-2068-000 (Aug. 16, 2018).

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

9 *Id.* at PP 33-34.

10 *Id*. at P 34 (footnote omitted).

conducted, and by unwinding settlements" for the September-January positions that should have been liquidated.[11]

On February 26, 2019, PJM filed a request for rehearing, or in the alternative, motion for clarification of the Waiver Order.[12] In the PJM Motion for Clarification, PJM asked the Commission to provide clarification on certain questions before PJM implemented the directives of the Waiver Order.[13]

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11 *Id.* at P 35.

12 Request of PJM Interconnection, L.L.C. for Rehearing or, in the Alternative, Motion for Clarification of Commission Order, Docket No. ER18-2068-001 (Feb. 26, 2019) ("PJM Motion for Clarification"). On February 21, 2019, PJM had filed a motion for stay of the Waiver Order pending an order on PJM's then-anticipated request for rehearing and clarification ("Motion for Stay").

13 PJM Motion for Clarification at 5-7, 25-30.

On February 28 and March 1, 2019, multiple parties filed requests for rehearing of the Waiver Order, *i.e.*, Indicated PJM Parties,[14] Elliott Bay;[15] LS Power and Calpine Corporation;[16] and PJM Market Participants.[17]

On March 11, 2019, Apogee filed an answer in opposition to the PJM Motion for Clarification.[18] On the same day, the Joint State Commissions, consisting of the Delaware Public Service Commission, the Pennsylvania Public Utility Commission, and the Public Service Commission of the District of Columbia, filed comments in support of the PJM

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14 Rehearing Request and Comments in Support of Request for Stay of the Indicated PJM Parties, Docket No. ER18-2068-001 (Feb, 28, 2019). Indicated PJM Parties consist of Exelon Corporation, Buckeye Power, Inc., Direct Energy Business Marketing, LLC and Direct Energy Business, LLC, Virginia Electric and Power Company d/b/a Dominion Energy Virginia and Dominion Energy Generating Marketing, 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, 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.

15 Request for Rehearing of Elliott Bay Energy Trading, LLC, Docket No. ER18-2068-001 (Mar. 1, 2019).

16 Request for Rehearing of LS Power Associates, L.P. and Calpine Corporation, Docket No. ER18-2068-001 (Mar. 1, 2019).

17 Request of the PJM Market Participants for Rehearing and Clarification, and Answer in Support of Motion for Stay, Docket Nos. ER18-2068-000, -001 (Mar. 1, 2019). "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, Pennsylvania Office of Consumer Advocate, New Jersey Division of Rate Counsel, and the Maryland Office of People's Counsel. The PJM Market Participants stated that they adopted the arguments made in the PJM Motion for Clarification.

18 Apogee Energy Trading LLC's Answer in Opposition to Motion for Clarification, Docket No. ER18-2068-000 (Mar. 11, 2019).

Motion for Clarification and PJM Motion for Stay.[19] On March 13, 2019, Elliott Bay filed an answer to the PJM Motion for Clarification, requesting that, if the Commission did not grant rehearing of the Waiver Order, it direct a process to provide for the development of a more complete record on the issues raised in the PJM Motion for Clarification.[20]

On June 5, 2019, the Commission issued an order establishing paper hearing and settlement judge procedures regarding the PJM Motion for Clarification, finding that "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 . . . that should be addressed in a paper hearing where all parties will have an opportunity to present written evidence and argument."[21] However, the Commission also "encourage[d] the parties to make every effort to settle their disputes," and, to that end, "[held] the paper hearing in abeyance to give the parties the opportunity to settle."[22] Moreover, the Commission clarified that the scope of settlement was not limited to the PJM Motion for Clarification, "and the parties [we]re encouraged to address all disputes arising out of this proceeding."[23]

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19 Comments of the Joint State Commissions in Support of PJM Interconnection's Motion for Stay and Request for Rehearing/Motion for Clarification, Docket No. ER18-2068-000 (Mar. 11, 2019).

20 Answer of Elliott Bay Energy Trading, LLC, Docket No. ER18-2068-001 (Mar. 13, 2019).

21 *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,209, at P 27 (2019) ("Paper Hearing/Settlement Order").

22 *Id.* at P 28.

23 *Id.*

On June 11, 2019, Chief Administrative Law Judge Carmen A. Cintron designated herself and Administrative Law Judge Suzanne Krolikowski to serve as settlement judges, and designated dispute resolution specialist Joshua M. Hurwitz to serve as settlement facilitator.[24] Settling Parties, other parties to the proceeding, and Commission Trial Staff participated in settlement conferences (both in-person and via group conference calls) in June, July, August, September, and October of 2019. Various Settling Parties or caucuses also engaged in ongoing informal settlement discussions throughout the settlement negotiation period. Settling Parties reached a settlement in principle in August 2019. This Settlement memorializes and gives effect to the terms of the settlement in principle.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Settling Parties, intending to be legally bound, agree as follows:

ARTICLE II
DEFINITIONS

Capitalized terms used in this Settlement that are not defined herein have the meanings provided for such terms in the Tariff or Operating Agreement, as applicable. Capitalized terms not defined in the Tariff or Operating Agreement have the meanings provided elsewhere in this Settlement and in this Article II, as follows.

2.1 Claim: "Claim" refers to a claim for payment for Economic Harm submitted in accordance with Article VI hereof.

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[24] *PJM Interconnection, L.L.C.*, Order of Chief Judge Designating Settlement Judges and Designating Dispute Resolution Facilitator, Docket Nos. ER18-2068-000, -001, at P 2 (June 11, 2019).

2.2 Claimant/Claimants: "Claimant" refers to a July Auction Participant that submits a Claim in accordance with Article VI hereof and "Claimants" refers to all July Auction Participants that have submitted Claims in accordance with Article VI hereof.

2.3 Economic Harm: "Economic Harm" refers to the economic harm, as calculated by PJM in accordance with Article VI hereof, experienced by a Claimant as a direct result of the manner in which PJM addressed liquidation of GreenHat FTRs in the July Auction.

2.4 GreenHat: "GreenHat" refers to GreenHat Energy LLC, a Member that defaulted in 2018 on its financial obligations related to a substantial portfolio of FTRs.

2.5 GreenHat FTRs: "GreenHat FTRs" refers to FTR positions held on the account of GreenHat following GreenHat's default of its financial obligations to PJM.

2.6 July Auction: "July Auction" refers to the Planning Period Balance FTR auction conducted by PJM in July 2018.

2.7 July Auction Participant: "July Auction Participant" refers to a Market Participant that submitted a Buy Bid or Sell Offer in the July Auction.

2.8 Operating Agreement: "Operating Agreement" refers to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C.

2.9 Payee Fund: "Payee Fund" refers to the fund established under Article VI hereof for the payment of Claims.

2.10 Payee Fund Amount: "Payee Fund Amount" is defined in section 6.5 hereof and refers to the dollar amount of funds in the Payee Fund.

2.11: Settlement: "Settlement" refers to this Offer of Settlement and Settlement Agreement.

2.12 Settlement Effective Date: "Settlement Effective Date" refers to the date this Settlement becomes effective, as defined in Article IX hereof.

2.13 Tariff: "Tariff" refers to the PJM Open Access Transmission Tariff.

2.14 2018/2019 Planning Period: "2018/2019 Planning Period" refers to the Planning Period that commenced on June 1, 2018, and ended on May 31, 2019.

ARTICLE III
SCOPE OF SETTLEMENT

The terms provided in this Settlement constitute full and complete resolution of all issues pending before the Commission in Docket Nos. ER18-2068-000 and ER18-2068-001, including but not limited to the Waiver Request, the PJM Motion for Clarification and related answers, the Motion for Stay, and all other pending requests for rehearing and/or clarification (the "Proceedings"). The Commission's approval of this Settlement will resolve all matters and issues in the Proceedings.

ARTICLE IV
NO RE-RUNNING OR RESETTLING OF FTR AUCTIONS

This Settlement resolves all claims, disputes, and controversies raised in the Proceedings concerning liquidation of the defaulted GreenHat FTRs in the July Auction without any requirement for PJM to re-run or resettle such auction or any subsequent FTR auction for the 2018/2019 Planning Period, or to change the clearing results of any such auction; provided, however, that PJM shall prepare a simulated clearing of such auction under the conditions and assumptions specified in sections 6.5 and 6.6 hereof for the sole purpose of determining certain payments to be made in full and final satisfaction of certain Claims arising from such auction as described in Article VI hereof; and provided further that nothing herein shall prevent PJM or any party from treating or accounting for any charge or credit calculated under Article V or Article VI of this Settlement as a charge or credit resulting from or associated with the July Auction.

ARTICLE V
CREDITS TO APOGEE AND BETM

5.1 In the first monthly billing statement issued at least fifteen (15) calendar days after the Settlement Effective Date, PJM shall issue a credit to Apogee in the amount of five million dollars ($5,000,000.00), and shall issue a credit to BETM in the amount of seven million, five hundred thousand dollars ($7,500,000.00).

5.2 The credit provided to Apogee pursuant to section 5.1 hereof shall constitute full and final satisfaction and resolution of all claims or demands Apogee raised or could have raised in the Proceedings concerning the rules, manner, process, or procedure PJM employed to liquidate, or allegedly should have used to liquidate, any or all GreenHat FTRs in any auction for the 2018/2019 Planning Period. In consideration for receiving such credit, Apogee agrees to: (a) relinquish all other claims of harm or demands for compensation or damages arising or resulting from the rules, manner, process, or procedure in or by which PJM addressed liquidation of the GreenHat FTRs in any FTR auction for the 2018/2019 Planning Period; (b) withdraw any challenges to the rules, manner, process, or procedure in or by which PJM addressed liquidation of the GreenHat FTRs in any FTR auction for the 2018/2019 Planning Period; (c) not initiate or pursue any challenges to the rules, manner, process, or procedure in or by which PJM addressed liquidation of the GreenHat FTRs in any FTR auction for the 2018/2019 Planning Period; and (d) remain subject to the Default Allocation Assessment calculation set out in section 7.1 of this Settlement.

5.3 The credit provided to BETM pursuant to section 5.1 hereof shall constitute full and final satisfaction and resolution of all claims or demands BETM raised or could have raised in the Proceedings concerning the rules, manner, process, or procedure PJM employed to liquidate, or allegedly should have used to liquidate, any or all GreenHat FTRs in any auction for the 2018/2019 Planning Period. In consideration for receiving such credit, BETM agrees to: (a) relinquish all other claims of harm or demands for compensation or damages arising or resulting from the rules, manner, process, or procedure in or by which PJM addressed liquidation of the GreenHat FTRs in any FTR auction for the 2018/2019 Planning Period; (b) withdraw any challenges to the rules, manner, process, or procedure in or by which PJM addressed liquidation of the GreenHat FTRs in any FTR auction for the 2018/2019 Planning Period; (c) not initiate or pursue any challenges to the rules, manner, process, or procedure in or by which PJM addressed liquidation of the GreenHat FTRs in any FTR auction for the 2018/2019 Planning Period; and (d) remain subject to the Default Allocation Assessment calculation set out in section 7.1 of this Settlement.

5.4 Notwithstanding any other provision of this Settlement, neither Apogee nor BETM shall be permitted to submit a Claim against the Payee Fund.

5.5 Nothing in this Settlement shall relieve either Apogee or BETM of any liability or responsibility for any Default Allocation Assessment assessed on, respectively, Apogee or BETM, under Article VII hereof and the Operating Agreement, including (without limitation) any Default Allocation Assessment imposed to fund the credits provided for in section 5.1.

ARTICLE VI
PAYMENTS TO CLAIMANTS

6.1 Any other July Auction Participant that asserts it was harmed by the manner in which PJM addressed liquidation of the GreenHat FTRs in the July Auction may submit a Claim against the Payee Fund established under this Article VI in accordance with and subject to the terms, conditions, and limitations prescribed for the Payee Fund by this Article VI.

6.2 No later than five (5) business days after the Settlement Effective Date, PJM shall provide notice of the start of the thirty (30) calendar day period (from the date of such notice) for submission of Claims under this Article VI ("Claim Period"). Any July Auction Participant claiming Economic Harm as a result of the manner in which PJM addressed liquidation of the GreenHat FTRs in the July Auction may submit to PJM, within the Claim Period and in the manner specified in PJM's notice, a Claim for such Economic Harm. Any such Claim shall be limited to harm claimed to have been suffered by a July Auction Participant due to the manner in which PJM addressed liquidation of the GreenHat FTRs in the July Auction. The Claimant shall not quantify or estimate such harm in its Claim. PJM shall not recognize as a valid and effective Claim hereunder any claim that is received by PJM after the end of the Claim Period specified in its notice.

6.3 By submitting a Claim, a Claimant acknowledges that the Claim could result in either a charge or a credit to the Claimant, and that the Claimant is not permitted to withdraw a Claim that PJM determines, in accordance with section 6.9 hereof, results in a charge to such Claimant.

6.4 By submitting a Claim, a Claimant agrees to: (a) relinquish all current and future claims of harm or demands for compensation or damages arising or resulting from the rules, manner, process, or procedure in or by which PJM addressed liquidation of the GreenHat FTRs in any FTR auction for the 2018/2019 Planning Period; (b) withdraw any challenges to the rules, manner, process, or procedure in or by which PJM addressed liquidation of the GreenHat FTRs in any FTR auction for the 2018/2019 Planning Period; (c) not initiate or pursue any challenges to the rules, manner, process, or procedure in or by which PJM addressed liquidation of the GreenHat FTRs in any FTR Auction for the 2018/2019 Planning Period; and (d) remain subject to the Default Allocation Assessment calculation set out in section 7.1 of this Settlement.

6.5 Following receipt of all timely submitted Claims, PJM shall, as more fully described below: (a) calculate the Economic Harm to each Claimant and the aggregate Economic Harm to all Claimants based on a simulated clearing of the July Auction under certain defined conditions and assumptions; (b) establish a Payee Fund, funded through Default Allocation Assessments (determined under certain defined assumptions), in the amount of such aggregate Economic Harm, but not to exceed five million dollars ("Payee Fund Amount"); (c) disburse amounts from the Payee Fund to each Claimant in an amount no greater than such Claimant's Economic Harm (which may be zero) as calculated by PJM, and if necessary, make payments on a reduced proportionate basis, defined below, if the aggregate Economic Harm to all Claimants exceeds the Payee Fund Amount; and (d) assess charges on Claimants that, according to PJM's calculation, were benefitted rather than harmed, and appropriately apply the revenues from such charges.

6.6 **Calculation of Economic Harm.** Economic Harm to each Claimant shall be, as calculated by PJM, the difference for a Claimant between (i) the net profit or net loss to such Claimant based on the July Auction cost and day-ahead settlement values of all FTR positions obtained by such Claimant from the July Auction as cleared in July 2018, and (ii) the net profit or net loss to such Claimant based on the July Auction cost and day-ahead settlement values that would have occurred for all FTR positions such Claimant would have obtained under a simulated alternative clearing of the July Auction, if such difference is a net charge. For such purpose, the simulated alternative clearing of the July Auction shall assume: (a) liquidation in the July Auction of the GreenHat FTRs that would have been effective in any month during the period from September 2018 through May 2019; (b) if any of the GreenHat FTRs offered for liquidation would set price on any FTR path for any monthly or multi-month period addressed in the July Auction, then the simulated auction is re-run after removing fifty percent of the total defaulted GreenHat FTRs, regardless of path or period; and (c) otherwise applicable Tariff rules concerning (1) violations of the Simultaneous Feasibility Test,[25] (2) prohibitions on selling FTRs not owned by an auction participant,[26] (3) requirements for auction participants, under certain circumstances, to post additional credit based on tentative clearing results;[27] and (4) the FTR forfeiture rule,[28] shall not be applied. The outcome of PJM's calculation of the Economic Harm to each Claimant and the aggregate Economic Harm to all Claimants, as well as data, modeling and analysis utilized by PJM in its calculations, shall be confidential and not disclosed to any Party or Claimant; provided however, that PJM shall disclose to each Claimant the amount of the Economic Harm calculated by PJM for that Claimant.

6.7 Calculation of Payee Fund Amount. The Payee Fund Amount shall be the lesser of: (a) the sum of the Economic Harm amounts calculated for all Claimants; or (b) five million dollars ($5,000,000.00). PJM shall fund the Payee Fund Amount through the assessment of Default Allocation Assessments as provided in Article VII hereof.

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25 *See* Tariff, Attachment K-Appendix, section 7.5.

26 *See* Tariff, Attachment K-Appendix, section 7.1.1(a) ("[A]ny holder of a Financial Transmission Right for the period covered by an auction may offer such Financial Transmission Right for sale in such auction.").

27 *See* Tariff, Attachment Q, section IV.C.6.

28 *See* Tariff, Attachment K-Appendix, section 5.2.1.

6.8 Payments to Claimants from the Payee Fund. Each Claimant determined to have suffered Economic Harm will be credited from the Payee Fund in an amount equal to the lesser of: (a) such Claimant's Economic Harm as calculated by PJM under section 6.6 hereof if the Payee Fund Amount is sufficient to pay one hundred percent of the Economic Harm of all Claimants, and (b) if the Payee Fund Amount is not sufficient to pay one hundred percent of the Economic Harm of all Claimants, the product of (i) the Payee Fund Amount multiplied by (ii) a fraction, the numerator of which is the Economic Harm calculated for such Claimant and the denominator of which is the aggregate of the Economic Harm calculated for all Claimants. For purposes of the foregoing calculation, only the value of the Economic Harm to Claimants that is a positive number (*i.e.*, would be a net charge to such Claimants) shall be included.

6.9 Charges to Claimants, and Disposition of Any Such Charges. If the calculation prescribed by section 6.6 hereof results in a net credit to a Claimant, such Claimant will be assessed a charge equal to one-half of the net credit so calculated. Any such charges assessed by PJM shall be treated as part of the Payee Fund and be an addition to the Payee Fund Amount. Such supplemental amounts in the Payee Fund shall be credited, under the same rules as prescribed by section 6.8 hereof, to Claimants calculated to have Economic Harm, provided that total credits to any Claimant (including both credits under section 6.8 hereof and credits under this section 6.9) may not exceed the Economic Harm calculated by PJM for that Claimant. If the aggregate of all amounts paid into the Payee Fund hereunder would result, if fully credited to all Claimants, in any Claimant receiving a total credit from the Payee Fund in excess of such Claimant's Economic Harm, then the amount of such excess shall be used to offset the Default Allocation Assessments provided for in Article VII hereof.

ARTICLE VII
DEFAULT ALLOCATION ASSESSMENTS

7.1 Apogee/BETM Credits and Associated Assessments. In the same billing cycle in which credits are provided to Apogee and BETM under section 5.1 hereof, PJM shall assess the amounts credited as Default Allocation Assessments determined in accordance with Operating Agreement, section 15.2.2, and using values for "N," "A," and "Z" for each Member, as specified in that section, calculated as provided by section 15.2.2 for the June 21, 2018 GreenHat default, and reflecting that the $10,000 per Member limitation under such section on allocations based on the number of Members applies cumulatively for each Member taking account of all Default Allocation Assessments on such Member arising from the June 21, 2018 GreenHat default. Both Apogee and BETM shall be included as Members for purposes of the calculations set out in this section 7.1.

7.2 Claimant Credits and Associated Assessments. In the same billing cycle in which credits are provided to Claimants under section 6.8 hereof, PJM shall fund the Payee Fund Amount determined under Article VI through Default Allocation Assessments determined in accordance with Operating Agreement, section 15.2.2, and using values for "N," "A," and "Z" for each Member, as specified in that section, calculated as provided by section 15.2.2 for the June 21, 2018 GreenHat default, and reflecting that the $10,000 per Member limitation under such section on allocations based on the number of Members applies cumulatively for each Member taking account of all Default Allocation Assessments on such Member arising from the June 21, 2018 GreenHat default. Claimants shall be included as Members for purposes of the calculations set out in this section 7.2. The total Payee Fund Amount assessed hereunder shall in no event exceed the sum of five million dollars.

7.3. Amounts assessed under sections 7.1 and 7.2 will be reflected in the applicable monthly billing statement in the same manner as previous GreenHat defaults have been billed, *i.e.*, as a “1999 PJM Customer Payment Default.”

7.4 If the amounts to be credited to Claimants under Article VI are less than the Payee Fund Amount, the amounts assessed under section 7.2 hereof shall be credited to each Member so assessed in proportion to each Member’s share of the Default Allocation Assessments provided hereunder. In addition, if disbursement of the full amount charged to Claimants pursuant to section 6.9 hereof would result in any Claimant being credited in excess of its calculated Economic Harm, the excess amount shall be applied to reduce the Default Allocation Assessments to each Member in proportion to each Member’s share of the Default Allocation Assessments provided hereunder.

ARTICLE VIII
MARKET SETTLEMENTS

As set forth above, PJM will provide credits under section 5.1 and Default Allocation Assessments under section 7.1 in the same billing cycle. PJM also will provide credits under sections 6.8 and 6.9 and Default Allocation Assessments under section 7.2 in the same billing cycle. Entities that receive both credits and Default Allocation Assessments under such provisions will receive such items on a single monthly statement. Default Allocation Assessments will be reflected in PJM settlements in the same manner as previous GreenHat defaults have been billed, *i.e.*, as a “1999 PJM Customer Payment Default.”

ARTICLE IX
EFFECTIVE DATE

This Settlement will become effective on the date of a Commission order approving this Settlement. The provisions of this Settlement shall remain in full force and effect until such time as all obligations set forth in this Settlement have been fully discharged.

ARTICLE X
SETTLEMENT AS ATTACHMENT TO TARIFF

This Settlement, once approved by the Commission, will be filed through a compliance filing as an attachment to the Tariff and shall function as the filed rate for purposes of the matters specifically addressed herein pertaining to the July Auction and the 2018/2019 Planning Period.

ARTICLE XI
MISCELLANEOUS PROVISIONS

11.1 No Admissions or Precedent; Exceptions. This entire Settlement, and the Settling Parties' performance of their obligations hereunder, are the result of the settlement and compromise of all the claims and actions expressly addressed in this Settlement, and neither this Settlement nor the Settling Parties' performance hereunder shall be deemed to be an admission of any fact or of any liability. It is specifically understood and agreed that this Settlement represents a negotiated settlement in the public interest with respect to the matters agreed to herein for the sole purpose of the settlement of such matters agreed to herein, and the Settling Parties shall not be prejudiced or bound thereby in any proceeding, except as specifically provided for herein. The Settling Parties offer this Settlement solely for the purpose of compromising on the matters at issue in Docket Nos. ER18-2068-000 and ER18-2068-001. The Settling Parties shall not be deemed to have approved, accepted, agreed, or consented to any concept, theory, or principle underlying or supposed to underlie any of the matters provided for herein. Further, this Settlement cannot be used, and no part hereof shall be used, to advance, support, or resist a position taken before the Commission or the courts by any Settling Party except as otherwise provided herein. This Settlement does not modify, amend, or change the Tariff or Operating Agreement in any manner other than as set forth herein and solely for the purposes set forth herein.

11.2 The compensation mechanism established by this Settlement is the sole vehicle through which entities claiming to have been harmed by the rules, manner, process, or procedure in or by which PJM addressed liquidation of the GreenHat FTRs in any FTR auction for the 2018/2019 Planning Period may be compensated for their harm. Commission acceptance or approval of this Settlement shall be deemed to close out all FTR transactions associated with or arising from the July Auction, and no Market Participant may assert claims related to that auction outside the process established by this Settlement.

11.3 **Entire Agreement.** This Settlement constitutes the entire agreement between and among the Settling Parties and no other agreement with regard to the matters addressed in this Settlement shall be binding on the Settling Parties except by written amendment to this Settlement and, to the extent required, approval by the Commission. This Settlement is an integrated package. None of the terms of this Settlement is agreed to, acquiesced in, or non-opposed without each of the other terms. The various provisions of this Settlement are not severable and shall not become operative unless and until the Commission issues an order accepting or approving this Settlement as to all its terms and conditions without modification or condition. Except for the terms and conditions enumerated in this Settlement, the Settling Parties acknowledge and agree that the Settling Parties have not made any other promises, warranties, or representations to each other or any other participant in the Proceedings referenced herein regarding any aspect of the settlement of the matters addressed in this Settlement. Each Settling Party acknowledges that it has read this Settlement and executed it without relying upon any other promise, warranty, or representation, written or otherwise, of the other Settling Parties or any other participant in the Proceedings. Each Settling Party acknowledges that no other participant in the Proceedings has made any such promise, warranty, or representation.

11.4 Modification or Condition of Settlement. The terms and conditions of this Settlement are expressly contingent upon approval or acceptance by the Commission of this Settlement without modification or condition. If the Commission by order conditions its approval or acceptance of this Settlement or requires its modification, this Settlement shall be deemed withdrawn, shall not be considered to be part of the record in the Proceedings, shall not become effective, and shall be null and void, unless the Settling Parties, within ten (10) business days (subject to extension by mutual agreement of all the Settling Parties) of issuance of the Commission order approving or accepting this Settlement subject to condition or modification either: (a) accept the Commission's modifications and conditions; or (b) agree to modify this Settlement to address or obviate the Commission's concerns. In the event clause (b) in the preceding sentence is applicable, the Settlement Effective Date shall not occur until the Commission has approved this Settlement as so modified.

11.5 Settlement Discussions. The discussions that have produced this Settlement have been conducted on the explicit understanding, pursuant to Rules 602 and 606 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.602 and 385.606, that all settlement communications and discussions shall be privileged and confidential, shall be without prejudice to the position of any Settling Party or participant making such communications or participating in any such discussions, and are not to be used in any manner in connection with the Proceedings, any other proceeding, or otherwise, except to the extent necessary to enforce the terms of this Settlement or to construe the meaning of the terms used herein.

11.6 Not Admissible as Evidence. This Settlement is submitted pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602, and shall not be admissible in evidence or made a part of the record in any proceeding except as necessary to implement or enforce this Settlement.

11.7 Further Assurances. Following execution of this Settlement, each Settling Party shall cooperate with and support, and shall not take any action inconsistent with: (a) the filing of this Settlement with the Commission; and (b) efforts to obtain Commission approval or acceptance of this Settlement. Consistent therewith, none of the Settling Parties shall seek rehearing of an order approving or accepting this Settlement without modification or condition. Without limiting the generality of the foregoing, no later than sixty (60) days after the Settlement Effective Date, each Settling Party shall move to withdraw any and all requests for rehearing, requests or motions for clarification, and motions or requests for stay such party has pending before the Commission in the Proceedings.

11.8 Successors and Assigns. This Settlement, once effective, is binding upon and for the benefit of the Settling Parties and their successors and assigns.

11.9 Ambiguities Neutrally Construed. This Settlement is the result of negotiations among Settling Parties, and has been reviewed by each Settling Party and its respective counsel. Accordingly, this Settlement shall be deemed to be the product of each Settling Party, and no ambiguity shall be construed in favor of or against any Settling Party.

11.10 Authorizations. Each person executing this Settlement represents and warrants that he or she is duly authorized and empowered to act on behalf of, and to sign for, the Settling Party for whom he or she has signed.

11.11 Counterparts. This Settlement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

11.12 Requisite Waivers. The Commission's approval of this Settlement shall constitute the requisite grant of any waivers of any regulations as may be deemed necessary to permit the implementation of the provisions of this Settlement in accordance with its terms.

11.13 Rules of Construction. Except as otherwise expressly provided for in this Settlement, the rules of interpretation and construction set forth below shall apply to this Settlement:

11.13.1 All defined terms in the singular shall have the same meaning when used in the plural and vice versa.

11.13.2. References to "includes," "including," and similar phrases, shall mean "including without limitation."

11.13.3 Unless otherwise indicated, references to "Sections" or "Articles" refer to sections or articles in this Settlement.

11.14 Headings. The titles and headings of the various articles and sections in this Settlement are for reference purposes only. They are not to be construed or taken into account in interpreting this Settlement, and they do not qualify, modify, or explain the effects of this Settlement.

11.15 Standard of Review. This Settlement may be amended only by the agreement or non-opposition of all Settling Parties. The standard of review for any modifications to this Settlement requested by a Settling Party, without the agreement or non-opposition of all other Settling Parties, shall be the "public interest" application of the just and reasonable standard of review, as explained in *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 527 (2008) and *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165 (2010). The standard of review for any modifications to this Settlement requested by any other party, non-party, or the Commission acting *sua sponte*, shall be the most stringent standard permissible under applicable law.

11.16 No Settled Practice. This Settlement is made upon the express understanding that it constitutes a negotiated offer of settlement to resolve the issues presented in the underlying hearing in the Proceedings. Neither the Settling Parties nor the Commission shall be deemed to have approved, accepted, agreed, or otherwise consented to any ratemaking principle or methodology or to any tariff interpretation or modification or to any other factor or concept underlying or supposed to underlie any of the matters herein, except as expressly provided in this Settlement. The Commission's approval of this Settlement shall not constitute precedent nor be used to prejudice any otherwise available rights or arguments of any party in a future proceeding, other than to enforce the terms of the Settlement, and shall not be used as evidence that a particular method is a "long standing practice" as that term is used in *Columbia Gas Transmission Corp. v. FERC*, 628 F.2d 578 (D.C. Cir. 1979), or a "settled practice" as that term is used in *Public Service Commission of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980).

11.17 Settlement Terms Govern. To the extent there is any inconsistency between this Settlement and the description of this Settlement in the Explanatory Statement submitted in support hereof, the terms of this Settlement shall control.

WHEREFORE, the Settling Parties have caused their duly authorized representatives to execute this Settlement.

Respectfully submitted,

American Electric Power Service Corporation

By: ________________________
Name: John C. Crespo
Title: Deputy General Counsel, Regulatory & Nuclear

Counterpart Signature Page to October 9, 2019 Settlement Agreement and Offer of Settlement in PJM Interconnection, L.L.C., FERC Docket Nos. ER18-2068-000 and ER18-2068-001

Pursuant to section 11.11 of the Settlement Agreement, "[t]his Settlement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument."

WHEREFORE, the Settling Parties have caused their duly authorized representatives to execute this Settlement.

Respectfully submitted,

American Municipal Power, Inc.

By: Marc S. Gerken
Name: Marc S. Gerken
Title: President and CEO

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Respectfully submitted,

Apogee Energy Trading LLC

Gregory K. Lawrence
Greenberg Traurig, LLP
2101 L Street, N.W., Suite 1000 Washington, DC 20037
Tel: 202-641-2293
lawrenceg@gtlaw.com
Counsel for Apogee Energy Trading LLC

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Respectfully submitted,

Boston Energy Trading and Marketing LLC

By: Reem Fahey
Name: Reem Fahey
Title: President

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Respectfully submitted,

Buckeye Power, Inc.

By: ______________________
Name: Marvin T. Griff
Title: Counsel

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Respectfully submitted,

DC Energy, LLC

By: ____________________
Name: Andrew J. Stevens
Title: Managing Director

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Respectfully submitted,

Direct Energy Business, LLC
Direct Energy Business Marketing, LLC

By: ____________________
Name: Vafa Mohtashami
Title: Vice President, Power Trading
RTC

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Respectfully submitted,

Dominion Energy Services, Inc. on behalf of
Virginia Electric and Power Company d/b/a Dominion Energy Virginia and
Dominion Energy Generation Marketing, Inc.

By: ______________________
Name: Wesley Walker
Title: Assistant General Counsel

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Respectfully submitted,

Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.

By: ______________________
Name: Don Wathen Jr.
Title: Director – Rates & Regulatory Strategy (Ohio & Kentucky)
Duke Energy Ohio
Duke Energy Kentucky

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Respectfully submitted,

East Kentucky Power Cooperative, Inc.

By: Anthony S. Campbell
Name: Anthony S. Campbell
Title: President and CEO

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Respectfully submitted,

EDP Renewables North America LLC

By: ______________________
Name: Steve Irvin
Title: Executive Vice President, Western and Central Regions and Mexico

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Respectfully submitted,

EDF Trading North America, LLC
EDF Energy Services, LLC

By: Jason Cox (TH)
Name: Jason Cox
Title: Director, Regulatory Affairs

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Respectfully submitted,

Elliott Bay Energy Trading, LLC
By: Elliott Bay Energy, LLC, its sole member

By: ______________________
Name: Brian Lonergan
Title: Managing Member

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Respectfully submitted,

Exelon Corporation

By: Carrie Hill Allen
Name: Carrie Hill Allen
Title: Vice President & Deputy General Counsel

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Respectfully submitted,

FirstEnergy Service Company, on behalf of its affiliates The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, Pennsylvania Electric Company, Jersey Central Power & Light Company, Metropolitan Edison Company, The Toledo Edison Company, West Penn Power Company, The Potomac Edison Company and Monongahela Power Company

By: Evan Dean
Name: Evan K. Dean
Title: Attorney

FirstEnergy Service Company
76 South Main Street
A-GO-15
Akron, OH 44308
Tel: (330) 761-4307
edean@firstenergycorp.com

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Respectfully submitted,

LS Power Associates, L.P.

By: ______________________
Name: Neil L. Levy
Title: Counsel for LS Power Associates, L.P.

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Respectfully submitted,

Mercuria Energy America, Inc.
Mercuria SJAK Trading, LLC

By: Cody Moore
Name: Cody Moore
Title: President

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Respectfully submitted,

NextEra Energy Marketing, LLC

By: Mark Maisto

Name: Mark Maisto

Title: President

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Respectfully submitted,

NRG Power Marketing LLC

By: Cortney Slager
Name: Cortney Slager
Title: NRG Energy, Inc.
Assistant General Counsel

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Respectfully submitted,

PJM Industrial Customer Coalition

By: ____________________
Name: Robert A. Weishaar, Jr.
Title: Counsel

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Respectfully submitted,

PJM Interconnection, L.L.C.

By: ____________________
Name: Frederick S. (Stu) Bresler, III
Title: Senior Vice President, Market Services

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Respectfully submitted,

Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC, collectively, the "PSEG Companies"

By: ______________________
Name: Tamara L. Linde
Title: Executive Vice President & General Counsel

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Respectfully submitted,

Southern Maryland Electric Cooperative, Inc.
[Settling Party Name]

By: Mark A. MacDougall
Name: Mark A. MacDougall
Title: Senior Vice President and General Counsel

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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 9th day of October 2019.

/s/ Paul M. Flynn
Paul M. Flynn
Wright & Talisman, P.C.
1200 G Street, N.W., Suite 600
Washington, D.C. 20005

Attorney for
PJM Interconnection, L.L.C.