

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

Panda Hummel Station LLC)	Docket Nos. ER19-391-003
Hummel Station, LLC)	ER19-391-005
)	
)	

To: The Honorable Patricia M. French
Presiding Administrative Law
Judge

**REPLY BRIEF OF THE
INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Order No. 1, issued in this proceeding August 25, 2022, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),¹ submits this reply brief. This reply brief responds to the briefs submitted on September 9, 2022, by Hummel Station, LLC (“Hummel Station”) and Commission Trial Staff (“Staff”).

I. ARGUMENT

The Market Monitor stated on brief its position that issues of fact exist in this case only to the extent that the company asserts the existence of specific costs that are not recovered or recoverable in PJM markets. The Market Monitor’s position is that no such specific costs exist. The Market Monitor’s position is that a purely legal basis for a revenue requirement of \$2,199 per MW-Year under Schedule 2 does exist.

¹ Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”), the PJM Operating Agreement (“OA”) or the PJM Reliability Assurance Agreement (“RAA”).

The Market Monitor does not advocate any further action by the Presiding Judge while this matter is pending before the Commission.²

If the Presiding Judge determines to certify the offer of settlement, it should be certified as a contested settlement because the Market Monitor timely filed comments in opposition, contesting the settlement as matter of law and fact. The Market Monitor included an affidavit supporting its position that, based on the facts in the record, the level of the offer is excessive. The offer of settlement can also be shown to be excessive purely as a matter of law.

Hummel Station and Staff raise various arguments for why the objections based in law and fact by the Market Monitor should be ignored. None of these arguments are relevant to the issues raised by the Market Monitor contesting the offer of settlement. That Hummel Station and Staff prefer to mischaracterize the Market Monitor's position as based on policy issues not appropriately raised in this proceeding rather than address the Market Monitor's position directly, does not mean that the settlement is uncontested.

The settlement is contested based on the following issues of law and fact:

First, the Market Monitor argues that no costs eligible for inclusion in a revenue requirement under Schedule 2 have been identified in the settlement offer or in the record of this proceeding. There is thus no basis in the record supporting a revenue requirement greater than zero, including one agreed to by a subset of the participants in this proceeding on a black box basis. Whether specific costs have been identified is a question of fact.

Second, the Market Monitor argues that the inclusion of costs in a revenue requirement under Schedule 2 that are recoverable in PJM markets constitutes over recovery. The proponent of the revenue requirement must show that a cost is not

² See 18 CFR § 385.602(b)(2)(ii).

recoverable in PJM markets in order to include it in a rate under Schedule 2. Generation resources participate in PJM markets, and investment in such resources is recoverable in PJM markets. This argument concerns the proper interpretation and application of Schedule 2 as it exists. Over recovery of costs is not permitted as matter of law.³

Third, the Market Monitor argues as matter of law and fact that the *AEP* Method does not operate to identify specific costs for providing reactive power. The *AEP* Method was not designed to identify specific costs for providing reactive power and does not operate to identify specific costs for providing reactive power.

Application of the *AEP* Method is not a substitute for the identification of the specific costs for providing reactive supply capability that are not otherwise recoverable through PJM markets.⁴ On the contrary, the theory behind the *AEP*

³ See, e.g., *United Airlines, Inc. v. FERC*, 827 F.3d 122, 134 (D.C. Cir. 2016) (“[B]ecause FERC failed to demonstrate that there is no double-recovery . . . we hold that FERC acted arbitrarily or capriciously.”).

⁴ See *American Electric Power Service Corporation*, Opinion No. 440, 88 FERC ¶ 61,141 (1999), *withdrawal of reh’g granted*, 92 FERC ¶ 61,001 (2000) (“*AEP*”). In *AEP*, the company proposed a method to allocate the costs of its generation fleet between a cost of service generation account and a cost of service transmission account such that duplicative recovery of the same costs was avoided. See *AEP* at 61,456 (“*AEP* explained that since generator/exciters and an allocated portion of accessory electric equipment produce active and reactive power, “it was necessary to arrive at an allocation factor to segregate the reactive (VAr) production function from the active power (Watt) production function.”); see also *Fern Solar LLC*, Order Denying Motion for Partial Summary Disposition and Motion to Strike, 180 FERC ¶ 63,024 at P 15 (2022) (“The *AEP* method came into being because one of its creators, *AEP*’s Bernard Pasternack, needed to allocate costs between two cost-based services, generation and transmission. *AEP*’s utility subsidiaries were unbundling regulated transmission service from regulated generation service, making each service available for sale separately. Since each of these regulated services would need its own cost-of-service rate, Mr. Pasternack faced a classic cost allocation problem—how to determine which pieces of equipment serve a transmission function and which serve a generation function; and where some pieces of equipment served both functions, how to allocate their costs between the two functions. But because the price-basis for

Method supports the Market Monitor’s position.⁵ Under the *AEP* Method it is assumed that the same costs are incurred to produce real power and reactive power.⁶ The goal of the *AEP* Method was to allocate costs between generation and transmission account without duplication. The same goal, including the avoidance of duplication, should apply when attempting to use the *AEP* Method in PJM markets to divide costs between costs recoverable in markets and costs recoverable in a standalone cost of service rate for reactive. No cost recoverable in PJM markets should be included in a revenue requirement under Schedule 2.

The Market Monitor argues as a matter of law and fact that the offered black box revenue requirement includes costs recoverable in PJM markets and is therefore unlawful. This case is about the interpretation and application of Schedule 2 in response to a request by a resource for a revenue requirement. The Market Monitor raises issues about how to interpret and apply Schedule 2 to evaluate that request. The issues raised by the Market Monitor are not attenuated and cannot be severed.

The Market Monitor has raised the same issues in a pending notice of inquiry, and the Commission has acknowledged the issues.⁷ That does not mean that the

both services was traditional cost of service set by the same regulatory jurisdiction, there was no possibility of duplicative recovery.”); *see also* NOI at P 9 (“In Opinion No. 440, [footnote omitted] the Commission approved a method presented by [AEP], a vertically integrated utility, for allocating the costs of generator equipment between real power capability and reactive power capability, as well as the related operations and maintenance costs.”).

⁵ *Id.*

⁶ *Id.*

⁷ *See Reactive Power Capability Compensation*, Notice of Inquiry, 177 FERC ¶ 61,118 at PP 18, 26, 27, 28(j) and 28(s) (2021) (“NOI”) (summarizing the IMM’s arguments and asking “Is the existing AEP Methodology appropriate to allocate the costs associated with reactive power revenue requirements of non-synchronous resources? If not, why and can changes be made to the existing AEP Methodology to establish just and reasonable reactive power revenue requirements for non-synchronous

issues raised in this case are policy issues rather than issues of law and fact specific to this case. The issues raised in this case are core to how Schedule 2 is properly interpreted and applied and are within the narrower scope of this proceeding. The scope of the notice of inquiry is broader than PJM markets and how to interpret and apply Schedule 2.

In this case, the Market Monitor seeks no changes to Schedule 2 or any other PJM market rule. Neither Hummel Station nor Staff need to agree with the Market Monitor's position in order to recognize that the issues are properly raised in this proceeding. Neither Hummel Station nor Staff have raised any argument in law, fact or logic to refute the Market Monitor's claims that no costs specific to the provision of reactive supply capability have been identified and that the black box settlement revenue requirement would mean over recovery.

The offer of settlement is contested on issues of law and fact. Even if the settlement were contested solely as a matter of law, nothing in Rule 602 prevents contesting a settlement because it is unlawful.⁸ Rule 602 requires an affidavit in support of arguments against a settlement based on disputed facts.⁹ This does not mean that a settlement cannot be contested solely because it is unlawful.

The Market Monitor's arguments are specific to this case and core to this case, and cannot be avoided by mischaracterizing them as policy disputes. The failure of Hummel Station and Staff to provide counter arguments does not mean that there are no contested issues. If the offer of settlement is certified to the Commission, it should be certified as a contested offer settlement because it is contested.

resources?" and "Do resources in PJM that receive reactive power capability compensation above \$2,199/MW-year effectively receive double-recovery as alleged by the PJM Market Monitor?").

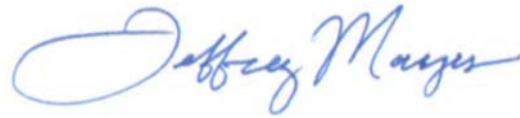
⁸ 18 CFR § 385.602.

⁹ *Id.*

II. CONCLUSION

The Market Monitor respectfully requests that the Presiding Judge afford due consideration to the arguments in this brief.

Respectfully submitted,



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Dated: September 16, 2022

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 Eagleville, Pennsylvania,
this 16th day of September, 2022.



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