



Monitoring Analytics

October 11, 2011

Jon Wellinghoff
Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Douglas R.M. Nazarian
Chairman
Maryland Public Service Commission
William Donald Schaefer Tower
6 St. Paul Street
Baltimore, MD 21202

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Re: FERC Docket No. EC11-83-000 and Maryland PSC Case No. 9271

Dear Chairman Wellinghoff and Chairman Nazarian:

Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM ("Market Monitor"), has filed my testimony before the Federal Energy Regulatory Commission ("FERC") and the Maryland Public Service Commission ("MPSC") in the form of reports on the competitive effects of the merger. These reports present the results of the Market Monitor's analysis of the potential effects on the PJM wholesale markets of the proposed merger between Exelon Corp. and Constellation Energy (collectively, the "Applicants") reflecting the actual operation of the PJM energy, capacity and ancillary services markets. Since filing that testimony, the Market Monitor has engaged in discussions with the Applicants regarding various structural and behavioral remedies that, when combined with the asset divestiture proposal made by the Applicants, would satisfy the Market Monitor's concerns regarding the merger. This letter includes as an Attachment Settlement Terms and Conditions to which the Market Monitor and the Applicants have agreed ("Settlement").

The Market Monitor defers to the FERC and the MPSC on whether the proposed merger, as conditioned here, meets the applicable statutory standards. To the extent that final approval of this merger by either the FERC or the MPSC does not include the conditions in the Settlement, the Market Monitor reserves its opportunity to raise objections in any forum.

The commitments made by the Applicants in the Settlement, if binding on the Applicants, would alleviate the Market Monitor's concerns about the effects of the merger on PJM markets. Based on the information that the Applicants will provide to the Market Monitor pursuant to the Settlement and the information available to the Market Monitor under the PJM market rules, the Market Monitor will have the information needed to monitor

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compliance by the Applicants with the terms of the Settlement. If the order(s) issued by either the FERC or the MPSC, or both, approving the proposed merger are conditioned upon compliance by the Applicants with the Settlement, then the Market Monitor will not object to the merger.

Applicants have reviewed this letter and have authorized me to state that they will accept the attached conditions, and that they agree that these conditions are reasonable and fair.

I am pleased that the Applicants and the Market Monitor have been able to work constructively to achieve a Settlement that balances the Market Monitor's concerns about competitive conditions in PJM and the Applicants' wish to merge.

Sincerely,



Joseph E. Bowring

The Independent Market Monitor for PJM

cc: FERC and MPSC Commissioners
All Parties to FERC and MPSC Proceedings

The following are the terms and conditions of the agreement (the “Settlement”) between the Independent Market Monitor for PJM (“IMM”), and Exelon Corporation (“Exelon”) and Constellation Energy Group (“Constellation”) (together referred to as “NewCo”), which Settlement satisfies the IMM’s concerns regarding the proposed merger of Constellation and Exelon, such that if the order(s) issued by either the Federal Energy Regulatory Commission (“FERC”) or the Maryland Public Service Commission (“MPSC”), or both, approving the proposed merger are conditioned upon compliance by NewCo with the terms and conditions of the Settlement, then the IMM will not object to the merger.

1. STRUCTURAL COMMITMENTS

NewCo commits to divest the following units: Brandon Shores, CP Crane and HA Wagner (the “Divested Units”), and further commits not to sell the Divested Units to any of the purchasers listed below which, based on the May 20, 2011 testimony of witness Joe Pace in the FERC proceeding, own three percent or more of the installed capacity in the overall PJM market, in the PJM MAAC sub-market, or in the PJM 5004/05 sub-market. On this basis, NewCo is precluded from selling the Divested Units to American Electric Power Company; First Energy Corp.; GenOn Energy, Inc.; Edison International, Dominion Resources, Inc.; Public Service Enterprise Group Incorporated; Calpine Corp.; and PPL Corporation or to any of their directly or indirectly held subsidiaries.

2. BEHAVIORAL COMMITMENTS

Sections 2(a), 2(b) and 2(c) below apply to generating units owned or controlled by NewCo, and which are either in PJM or selling into PJM.

a. Capacity/Retirements

- i. Subject to the provision below in Section 2(a)v regarding uprates, for all of its generating units NewCo will calculate its RPM auction Market Seller Offer Caps, as that term is defined in Attachment DD of the PJM Tariff, using the methodologies set forth in Attachment DD of the PJM Tariff. NewCo will calculate the Avoidable Project Investment Recovery Rate (“APIR”) using actual NewCo-approved capital and outage spend budgets, updated at the time of each auction to reflect the current best information. With respect to all non-APIR elements, NewCo will use the most recent full year actual expenses, adjusted using the most recent Handy-Whitman Index inflation factors posted on the Monitoring Analytics website for the relevant delivery year. These estimates will be updated at the time of subsequent RPM incremental auctions as more current calendar year data becomes available.
- ii. Absent catastrophic failure or significant regulatory changes which make continued operation of the unit uneconomic, NewCo will not give notice to retire a unit unless, (1) it has offered such unit into the most recent base residual RPM auction at the Market Seller Offer Cap as determined in accordance with Section 2(a)(i), and (2) the unit does not clear in that auction.
- iii. Absent catastrophic failure or significant regulatory changes which make continued operation of the unit uneconomic, NewCo will provide to PJM and the IMM 18 months written notice before retiring any generating unit owned by NewCo; provided, however, that if after such announcement, PJM determines that there are no reliability issues associated with the retirement of the unit which would cause PJM to request that NewCo

enter into a reliability must run agreement, then NewCo may, at its option and in its sole discretion, accelerate the retirement date. The IMM agrees that the provisions of this Section 2(a)(iii) shall not apply to one Exelon generating unit which did not clear in the two most recent base residual auctions and which has been identified to the IMM.

- iv. As expeditiously as possible after NewCo announces the decision to retire any generating unit owned by NewCo, NewCo will provide the IMM with NewCo's economic analysis supporting the retirement decision.
- v. Should NewCo wish to uprate a unit, and the uprate would not materially change the operational characteristics of the unit, such uprate will be subject to the PJM Market Seller Offer Caps, as defined in Attachment DD for existing units. Should NewCo wish to uprate a unit, and the uprate would materially change the operational characteristics of the unit (e.g., uprating a simple cycle combustive turbine unit to a combined cycle unit), at least six months before offering the uprated capacity in an RPM base residual auction, NewCo will provide to the IMM NewCo's proposed offer for the amount of MW associated with the uprate. NewCo's offer will reflect NewCo's view of the future likely energy and ancillary services revenue offset, estimated actual costs, and required return on investment, of the proposed uprate. Such offer will be subject to the PJM Market Seller Offer Caps, as defined in Attachment DD. If the IMM does not approve the offer, NewCo will have no obligation to offer the proposed uprate into a PJM capacity auction; provided, however, that NewCo will have the right to seek approval from FERC, and if FERC grants its approval, NewCo may submit the proposed offer in PJM capacity auctions notwithstanding the lack of IMM approval.

b. Energy Market Offers

- i. Subject to the provisions of Section 2(b)(ii) below, for all non-nuclear units owned or controlled by NewCo, NewCo's post-merger market-based offers will be consistent with the physical capabilities of the units – e.g., actual unit minimum and maximum (no block loading), ramp rates and minimum run times.
- ii. With respect to each non-nuclear unit owned or controlled by NewCo, NewCo will continue to set notification and start up times such that the total amount of time between notice and synchronization to the grid is a function only of the physical capability of each unit. NewCo will not adjust the notification and/or start-up time for any unit based on any factor other than the physical capability of the unit without prior review and approval of the IMM. NewCo also will comply with any new PJM rules applicable to unit notification and start-up time to the extent that such rules are more stringent than the provisions of this Settlement.
- iii. For all peakers owned or controlled by NewCo, in addition to its obligations set forth in the previous Sections 2(b)(i) and 2(b)(ii), NewCo's maximum market-based offers as of the date of the closing of the merger and for the term of this Settlement will be developed as follows: (1) unit costs determined daily in accordance with the PJM Cost Development Guidelines as set forth in PJM Manual No. 15, plus (2) the higher of ten percent of such costs or the applicable percentage of cost permitted under the PJM Tariff to the extent a unit is a frequently mitigated unit, plus (3) an adder not to exceed \$1.00/MWh.

- iv. No unit or part of a unit will be offered as “Max Emergency” for more than one week except as necessary to comply with environmental restrictions or if otherwise approved by the IMM.
- v. Each nuclear unit for which NewCo has the authority to determine offers will be self-scheduled/must run at Economic Maximum (“Ecomax”) unless reduced in response to negative prices, physical limitations of the unit, or transmission limitations.
- vi. Conowingo Generation will be scheduled by PJM.

c. Ancillary Services Offers

For regulation and synchronized reserve ancillary services from units owned by NewCo on the date of the merger, NewCo will continue to offer the same units and quantities historically offered into these markets. For the Day-Ahead Scheduling Reserves (“DASR”) market, NewCo’s market-based offers for nuclear units will be zero dollars, it being understood that NewCo will not forego opportunity costs as provided in the DASR market design.

d. Applicable Term

The term applicable to the behavioral commitments set forth in this Section 2 will be ten years from the date of the closing of the merger; provided that, at any time during such term, if NewCo believes that there is an extraordinary change in circumstances that calls into question whether certain of the commitments made by NewCo in Section 2 should still be required, then NewCo will work in good faith with the IMM to develop an appropriate and mutually agreeable amendment to this Settlement. Examples of such changes are elimination of the RPM capacity market or elimination of a single market clearing price energy market structure. Should NewCo and the IMM be unable to agree to such an amendment, NewCo can file with FERC in Docket No. EC11-83-000 requesting authorization to implement changes to this Settlement.