UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

GenOn Power Midwest, LP	)	Docket No. ER12-1901-000

PROTEST OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 of the Commission's Rules and Regulations,[1] Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM ("Market Monitor"),[2] submits these comments on the Reliability Must-Run Rate Schedule ("RMR") submitted by GenOn Power Midwest, LP ("GenOn") on May 31, 2012 ("May 31st Filing). GenOn has filed for a rate to provide reliability must-run ("RMR") service that includes significant capital costs and other costs that could not be recovered if Niles Generating Station Unit No. 1 ("Niles Unit 1") and Elrama Generating Station Unit No. 4 ("Elrama Unit 4") retired as GenOn proposed. The Market Monitor appreciates GenOn's willingness to provide RMR service, consistent with good utility practice and GenOn's and PJM's reliability obligations. GenOn has not, however, proposed just and reasonable compensation for that service and its filing should be rejected. GenOn should be directed to provide the RMR service pursuant to and consistent with Part V of the OATT.

Although GenOn claims that it modeled its filing on one recently submitted by Exelon pursuant to Part V of the PJM Open Access Transmission Tariff, the GenOn filing is

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1 18 CFR § 385.211 (2010).

2 PJM Interconnection, L.L.C. is a FERC-approved Regional Transmission Organization. Capitalized terms used herein and not otherwise defined have the meaning provide in the PJM Open Access Transmission Tariff ("OATT").

not pursuant to Part V of the OATT. GenOn's filing does not meet the standard Part V establishes for PJM Generation Owners seeking recovery of RMR service costs directly from the Commission. Part V provides that Generation Owners "may file with the Commission a cost of service rate to recover the entire cost of *operating* the generating unit until such time as the generating unit is deactivated" (emphasis added).

Instead, GenOn has instead filed what it purports to be a traditional utility cost of service rate filing, pursuant to Section 205 of the Federal Power Act.

If GenOn's filing were accepted, GenOn would recover a return on and of an investment that GenOn had already written off in its entirety in 2010. GenOn is not entitled to such recovery either on a traditional cost of service basis or on a market basis. The regulatory regime in PJM is based on competition. It would be unjust and unreasonable to permit a Generation Owner to enjoy the benefits of a competitive market and then, when market conditions no longer serve its interests, to file for cost of service recovery. The issue is compounded when the assets have already been entirely written off. The market result is that these units are no longer competitively viable. GenOn reached that conclusion in 2010. Yet GenOn is pursuing a windfall in this filing because PJM requires that the units remain in service for four months longer than the June 1, 2012, date which GenOn specified on March 30, 2012, as its desired retirement date. The PJM requirement for these units gives the owner of the units market power. The purpose of the RMR tariff provisions is to ensure that generation owners' costs are covered and that customers are protected from the exercise of market power.

No fact finding hearing is required in order for the Commission to reject GenOn's filing based on the flawed theory of its approach. If GenOn chooses to file a new submittal

following a just and reasonable cost recovery approach, a hearing to scrutinize the cost components would be appropriate.

I. COMMENTS

A. GenOn Should Be Required to Recover the Costs of RMR Service in a Manner Consistent with Regulation Through Competition and the Theory of Recovery Set Form in Part V of the OATT.

PJM ensures supply adequate to meet reliability standards through a regulatory regime based on competitive markets. In a competitive market, suppliers bear all the risks associated with their assets and receive higher returns associated with efficiency gains and single market clearing prices. This is in contrast to the traditional cost of service regime which was replaced by markets. Under the cost of service approach, suppliers are assured recovery of prudent investments but are limited to a regulated rate of return.

The goal of payments for RMR service, like the payment of operating reserve credits, is to ensure that the generation owner is not harmed by the requirement to remain in service for a short period in order to ensure the reliability of the system while protecting customers against the market power created by this reliability requirement. RMR service was not designed to and should not afford an opportunity for Generation Owners to receive a windfall which was not available in the market.

Generation Owners should receive just and reasonable compensation for providing RMR service, as is provided for under the OATT. When PJM requires RMR service, the Generation Owner recovers all costs associated with providing RMR service. If additional investment is required, suppliers of the service should receive a return on and of any additional investment required.

GenOn has acted consistent with its responsibilities in agreeing to provide RMR service. This is not a reason to overlook the market power that GenOn possesses in these circumstances. PJM has no alternatives to keeping these units in service until it has implemented the transmission upgrades necessary to accommodate the proposed retirements. Any real or perceived ability for a Generation Owner to decide not to provide RMR service does not mean that PJM should be forced to acquire RMR service on unjust and unreasonable terms.

GenOn should receive full compensation for its going forward costs, it should receive a return on and of any additional investment that is approved under the OATT because it is necessary for it to provide RMR. It is appropriate to pay GenOn the incentive adjustment factor allowed under the PJM rules.[3] The Commission determined that compensation on this basis is just and reasonable when it approved the formula rates specified in Part V. The rules also permit Generation Owners an opportunity to demonstrate to the Commission that there are specific reasons why the formula rate set forth in Part V does not fully compensate it for its going forward costs. A Generation Owner following the PJM rules is not permitted to exploit the need from RMR service to extract a windfall.

The regulatory paradigm based on competition should continue to apply to competitive assets needed for an additional period of RMR service. Allowing suppliers to change the applicable regulatory paradigm whenever it serves suppliers' interests deprives the public of some or all of the benefits of either regulatory approach. This result does not

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[3] OATT § 114.

meet the just and reasonable standard under section 205 of the Federal Power Act even if the Commission does not find that the terms of the PJM OATT directly apply.

B. GenOn's Filing Includes Significant Costs That GenOn Failed to Recover from the Market.

GenOn explains that it seeks payment for RMR service based on traditional cost of service principles. GenOn Witness Stewart explains:

> The Company wrote off the book value of the Elrama and Niles Stations in 2010 to reflect the loss of economic value associated with uncompetitive generation assets. Thus, no depreciation expense was booked in 2011 and only a partial expense was booked in 2010.[4]
>
> GenOn Midwest has operated the Stations in the competitive generation market since initially acquiring them from Orion Power Holdings in 2002. GenOn Midwest's decision to write-off the book value of the Stations was based on economic considerations given expected market conditions. These are the same economic considerations that led to the Company's decision to deactivate the Elrama and Niles Stations. Nevertheless, it is appropriate to recover in rates a reasonable estimate of the costs associated with the RMR Units based upon traditional cost of service concepts if GenOn Midwest is to continue to operate the RMR Units under the RMR Rate Schedule. Under traditional cost of service ratemaking, a utility is entitled to a return on, and a return of, its net plant investments through a rate of return ("ROR") and depreciation, respectively. As a result, there is no basis under cost of service regulation for writing-off regulated assets.[5]

Consistent with this approach, GenOn seeks recovery of $2,103,520 per month of return on and of capital for Niles Unit 1 and $3,444,868 million per month of return on and

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[4] GenOn GPM-1 (Direct Testimony of John. D. Stewart) at 9 *l*.18–21.

[5] GenOn GPM-1 (Direct Testimony of John. D. Stewart) at 10 *l*.4–14.

of capital for El Rama Unit 4. These fixed-cost charges consist primarily of return on and of the assets that were previously written of by GenOn, which should not be recovered, but also include some incremental investment, which should be recovered.

Ratepayers were not at risk for GenOn's investment in these units and did not guarantee that GenOn would recover this investment. PJM's need for RMR service does not change this assignment of risks. PJM's need for RMR service is not a basis to make recoverable what was unrecoverable. GenOn's explanation demonstrates why it is unjust and unreasonable to permit Generation Owners to change the applicable regulatory paradigm as it suits them.

In addition to the return on and of capital issues, GenOn has generally proposed that it would collect the incremental costs associated with operating the units, including incremental investments, subject to true up. But that is not the case for fixed operating and maintenance expense, where GenOn appears to be proposing to recover costs based on estimates without a true up. All of the costs recoverable for providing this RMR service should be subject to true up, regardless of whether they are higher or lower than the initial estimates. That is the only way to ensure that both GenOn and the customers are treated fairly.

The Commission has twice recognized that the proposed recovery of depreciation expense in cost of service filings that could not be recovered prior to the decision to retire a unit raised an issue requiring resolution and set the issue for hearing.[6] Both cases were

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[6] *See*, *Exelon Generation Company, LLC*, 132 FERC ¶ 61,219 at P 24 (2010); PSEG *Energy Resources & Trade, LLC, PSEG Fossil LLC*, 111 FERC ¶61,121 at P 23 (2005) ("[I]t is not clear from the proposed cost of service whether PSEG is proposing to write down such existing assets at a faster rate, i.e. over the period when these units are needed for reliability, than would otherwise have occurred if

resolved via settlements without affording the Commission the opportunity to resolve the issue on the merits.

Because PJM and other organized markets are experiencing and may continue to experience significant changes in the composition of the generation fleet, the issues in this case may be expected to recur. The issues raised here are ripe for resolution.

II. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to these comments as the Commission resolves the issues raised in this proceeding.

Respectfully submitted,

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the units would continue to operate for the remainder of a reasonable amortization period. PSEG was indeed prepared to deactivate and therefore to not recover any more of its prior investment. It is not clear how the Cost of Service Recovery Rate accounts for these issues and whether the proposed depreciation rates are just and reasonable. Therefore, we find that this issue should be investigated at hearing."); *letter order accepting uncontested settlement*, 113 FERC ¶61,213 (2005).

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 21st day of June, 2012.

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