UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

	)	
PJM Interconnection, L.L.C.	)	Docket No. ER21-1635-001
	)	

COMMENTS 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 ("Market Monitor") for PJM Interconnection, L.L.C. ("PJM"),[2] submits these comments on the filing submitted by PJM on June 11, 2021 ("Deficiency Response") in response to the deficiency notice issued in this proceeding on May 21, 2021 ("Deficiency Notice").

I. COMMENTS

A. CRF for Black Start Units

The Tax Cuts and Jobs Act, passed on December 22, 2017, changed the federal corporate tax rate to 21 percent and modified the tax depreciation provisions.[3] The new federal corporate tax rate became effective on January 1, 2018. The new depreciation rules, known as bonus depreciation, are applicable to capital investments placed in service after September 27, 2017.

---

1 18 CFR § 385.211 (2020).

2 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").

3 Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2096, Stat. 2105 (2017).

The capital recovery factor (CRF) issue applies to: existing black start units that are not eligible for bonus depreciation; existing black start units that are eligible for bonus depreciation; and new black start units. The correctly calculated CRF for each black start unit depends on the category to which it belongs. The Market Monitor's approach distinguishes among black start units based on their specific circumstances. PJM's assumption that the Market Monitor's approach would treat all black start units identically is incorrect.

In contrast, PJM's approach would treat units paying the same corporate tax rate differently and would therefore create unduly discriminatory preferences among black start units.

The Market Monitor's approach would include the same formula for all black start CRF calculations, but with inputs that depend on the black start units' specific circumstances. The basic financial CRF calculation is the same for any application. The CRF formula, as proposed by the Market Monitor, would be used for all black start units. Including the CRF formula in the tariff provides a clear and unambiguous rule for the calculation of the capital cost recovery rate.[4] The updated tariff language should simply state that each black start unit is subject to the current, applicable tax code.

PJM's response to question 1 misunderstands the role of risk and expectations in the use of CRFs. The CRF is a rate, multiplied by the relevant investment, which defines the annual payment needed to provide a return on and of capital for the investment over a defined time period. The CRF accounts for risk and expectations through the financial assumptions about the capital structure, the return on equity and the interest rate on debt. The payment that results from multiplying the CRF by the relevant investment is a before tax levelized annual payment. By definition, the revenue that remains after taxes provides

4 Answer and Motion for Leave to Answer of the Independent Market Monitor for PJM, Docket No. ER21-1635-000 (May 20, 2021) at 2.

100 percent of the cost of capital, including the return on equity and the cost of debt. This cost of capital is the basis for the investors' expectations about the return they will receive. Contrary to PJM, the calculation of the CRF incorporating the correct tax provisions is the only way to provide returns consistent with the legitimate expectations of black start investors. Providing black start investors with a windfall based on overcharging for taxes would result in exceeding the expectations of black start investors and exceeding the expectations of customers about payments for black start service. Black start investors did not invest with the expectation of windfall profits from a change in the tax law. It is only through changes in the financial assumptions in the CRF calculation that the risk expectations, the expected rate of return on equity and the expected debt cost would be altered.[5] The Market Monitor did not propose changes to the financial assumptions for the CRF calculation.

In support of their decision to not reflect the new tax law in the determination of the CRFs for existing black start service providers, PJM argues that a different treatment for existing versus new black start service providers is justifiable because there are legitimate, factual differences between existing and new black start service providers.[6] The only assertedly "legitimate, factual differences" to which PJM refers are different expectations and understandings about risk and return.[7] But the CRF values as applied to all black start units, and as would be applied under the Market Monitor's method, incorporate exactly the same cost of capital and therefore exactly the same risk and return expectations. There are

---

5 The financial assumptions are the capital structure, the return on equity and the interest rate on debt.

6 Deficiency Response at 3.

7 PJM's entire explanation (at 3): "Therefore, given that the new units and existing units are not similarly situated due to the different expectations and understandings each group had at the time they entered into a Black Start Service commitment, maintaining different rate structures (i.e., retaining the existing just and reasonable rate for existing Black Start Units and implementing a different just and reasonable rate for new Black Start Units going forward) is just and reasonable."

no legitimate, factual differences in expectations among black start resource owners based on the calculation of the CRF. There is no legitimate, factual basis for permitting some black start units to receive a windfall based on requiring customers to overpay for the taxes incurred by the black start units.

B. CRF For Existing Black Start Units Not Eligible for Bonus Depreciation.

For existing black start units with capital investments placed in service on or before September 27, 2017, the CRFs should be retroactively updated to reflect the change in the applicable federal corporate tax rate. Bonus depreciation is not applicable because the investments were not eligible for bonus depreciation. Including the actual tax rate in the CRF is not in conflict with PJM's stated goal of "respecting the expectations Black Start Service providers had at the time they evaluated the risks and rewards of providing Black Start Service and voluntarily committed their units to Black Start Service."[8] PJM's proposal is not consistent with its own position. Black start service providers had no expectation of a windfall resulting from a decrease in the tax rates. Yet PJM's approach would provide that windfall. PJM should be equally concerned about the expectations of customers that they not pay the cost of taxes not actually incurred. Continuing to allow the use of the CRFs based on a federal corporate tax rate of 35 percent has resulted and will continue to result in customers overpaying for black start service. Failure to correct this oversight retroactively from the time the tax laws changed would result in a significant windfall at the expense of customers.

C. CRF for Existing Black Start Units Eligible for Bonus Depreciation.

For existing black start units with capital investments placed in service after September 27, 2017, the CRFs should retroactively reflect the change in the tax rate and the

[8] Deficiency Response at 2.

applicable bonus depreciation level. [9] Continuing to allow the use of CRFs based on a federal corporate tax rate of 35 percent and the old depreciation schedule for affected units has resulted and will continue to result in customers overpaying for black start service. Failure to correct this oversight retroactively from the time the tax laws changed would result in a significant windfall at the expense of customers.

D. CRF for New Black Start Units

For new black start units with capital investments supporting black start service, the CRFs should reflect the applicable corporate tax rate and the applicable bonus depreciation level.

E. Applicability of CRF Formula to All Black Start Units

The correct CRF for any black start unit is computed using the formula for the CRF and the inputs that are applicable to the black start unit. The formula produces exactly the same result as the correctly applied financial model. There are currently two relevant categories of black start units that determine the correct inputs to the CRF formula. These two categories are defined by the time at which the black start asset went into service and the applicable depreciation treatment. The tax provisions applicable to each year in which black start service is provided should apply to all black start units. The CRF formula allows calculation of the correct CRF rate by year. In the future, the correctly applicable tax provisions should be incorporated through changes to the values of the inputs to the formula if and when such provisions change.

---

[9] Bonus depreciation is 100 percent for capital investments placed in service after September 27, 2017 and before January 1, 2023. Bonus depreciation is 80 percent for capital investments placed in service after December 31, 2022 and before January 1, 2024, and the bonus depreciation level is reduced by 20 percent for each subsequent year through 2026. Capital investments placed in service after December 31, 2026 are not eligible for bonus depreciation.

II. CONCLUSION

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

Respectfully submitted,

Jeffrey W. Mayes

General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com

Joseph E. Bowring
Independent Market Monitor for PJM
President
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8051
joseph.bowring@monitoringanalytics.com

John Hyatt
Senior Economist
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8050
john.hyatt@monitoringanalytics.com

Dated: July 2, 2021

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 2nd day of July, 2021.

Jeffrey W. Mayes
General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com