UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Indeck Niles, LLC	)	Docket Nos. ER22-907-000,
	)	EL22-35-000
	)	
	)	

COMMENTS OF
THE INDEPENDENT MARKET MONITOR FOR PJM
IN OPPOSITION TO OFFER OF SETTLEMENT

Pursuant to Rule 602(f) 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.[2] ("PJM"), submits this reply in opposition to the joint offer of settlement ("Offer") filed in this proceeding on July 11, 2023, by Indeck Niles, LLC ("Indeck Niles").

Indeck Niles proposes on a black box basis an annual total revenue requirement for reactive capability of $4,300,000.08, or $3,662.69 per MW-Year, or $10.03 per MW-Day for the 1,174 MW facility, on a nameplate capacity basis. Indeck Niles is proposing that customers pay a price for the reactive ancillary service from Indeck Niles equal to almost twice (1.91 times) the price that customers pay for capacity in the PJM Capacity Market. That result would be unreasonable and excessive and inconsistent with a competitive market. Reactive is an ancillary service. The fact that the Offer would provide reactive revenues equal to more than one third of the market price for entire capacity of this resource is evidence that the basis for the proposal is incorrect and inconsistent with the basic PJM market design.[3]

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1 18 CFR § 385.602(f) (2022).

2 Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff ("OATT").

3 The Offer is equal to 34.7 percent of the $28.92 per MW-day clearing price in the last PJM capacity market auction (BRA for the 2024/2025 Delivery Year) for the Rest of RTO LDA where the plant is located.

The proposed ARR for the Indeck Niles facility is significantly higher than the average rate paid for reactive power in PJM. The average revenue requirement for reactive capability in PJM was $1,914 per MW-year in 2022.[4] No justification has been provided for why customers should pay 1.91 times, or almost two times, the average PJM price of reactive for reactive from Indeck Niles, on an installed MW basis. There is no reasonable basis for such a wide disparity in cost for the same service. Reactive is a homogeneous product which should have the same price for all sellers. This result has not been explained or supported by Indeck Niles in their filing or their black box Offer. This disparity is inconsistent with competitive markets.

The facts relevant to whether the level of the rate proposed by Indeck Niles is appropriate should be established at hearing. The first issue that should be examined at hearing is why PJM customers should pay any revenue requirement to Indeck Niles under Schedule 2. In the recent *Midcontinent Independent System Operator, Inc. (MISO)* case, the Commission approved MISO's FPA § 205 filing revising the MISO Tariff Schedule 2 to eliminate all charges under Schedule 2 for the provision of reactive power within the standard power factor range.[5] The decision found "the provision of reactive power within the standard power factor range is, in the first instance, an obligation of the interconnecting generator and good utility practice," and there is, thus, no obligation to provide separate compensation for reactive capability.[6] The Commission explained that its holding reaffirms its policies stated, e.g., in Order No. 2003.[7] It is also consistent with the approach long used in other RTOs, including CAISO and SPP.[8] The Commission rejected arguments that reactive payments should be continued "because generators have come to rely on the compensation

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4 *See* 2022 State of the Market Report for PJM, Vol. 2 (March 9, 2023) at 619–620, Table 10-78.

5 182 FERC ¶ 61,033 (2023).

6 *Id*. at P 53.

7 *Id*.

8 *Id*. at PP 56–57.

for Reactive Service in order for the generators to remain financially viable."[9] The Market Monitor has argued this position in the *Fern Solar* hearing, where its brief on exceptions to the initial decision is pending before the Commission.[10]

The Commission may approve a contested offer of settlement only based on its merits.[11] A contested settlement may be approved on its merits under one of the four approaches set forth in *Trailblazer Pipeline Company*.[12] None of the approaches under *Trailblazer Pipeline Company* can be relied on for approval of the Offer. The Offer does not resolve the issues raised in the order setting this matter for hearing.[13] There is no record supporting the revenue requirement as just and reasonable, including as a "package." The Market Monitor represents the public interest in efficient and competitive markets. The settlement cannot be analyzed under the fair and reasonable standard applicable to uncontested settlements because the public interest in efficient and competitive markets is a central issue in this proceeding. There is no possibility of severing the issues in the manner contemplated under the *Trailblazer Pipeline Company* approaches.

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9 *Id*. at P 54.

10 *See Fern Solar LLC*, Docket No. ER20-2186, et al.

11 18 CFR § 385.602(h)(1) ("If the Commission determines that any offer of settlement is contested in whole or in part, by any party, the Commission may decide the merits of the contested settlement issues, if the record contains substantial evidence upon which to base a reasoned decision or the Commission determines there is no genuine issue of material fact.").

12 The four approaches for approving a settlement under *Trailblazer Pipeline Company* include: (i) addressing the contentions of the contesting party on the merits when there is any adequate record; (ii) approving a contested settlement as a package on the ground that the overall result of the settlement is just and reasonable; (iii) determining that the contesting party's interest is sufficiently attenuated such that the settlement can be analyzed under the fair and reasonable standard applicable to uncontested settlements when the settlement benefits the directly affected settling parties; or (iv) preserving the settlement for the consenting parties while allowing contesting parties to obtain a litigated result on the merits. *See Trailblazer Pipeline Company*, 85 FERC ¶ 61,345 (1998).

13 *Indeck Niles, LLC*, 178 FERC ¶ 61,227 at PP 12–13 (2022).

Although the Commission encourages settlements, that policy is not a license to resolve cases at all costs.[14] An offer of settlement, as in this case, that is unfair, unreasonable, or against the public interest must be rejected.[15] Instead, this case should proceed to hearing so that the record can be developed and issues of material fact and law can be resolved on the merits.

Article 15 of the Offer's proposed settlement provides: "This Settlement establishes no principles and no precedent with respect to any issue in these proceedings." If the Offer is approved, it will unavoidably establish a benchmark rate level for facilities like the Indeck Niles facility. The public interest is better served by resolution of the issues raised in this proceeding on the basis of a full evidentiary record and reasoned analysis.

In the attached affidavit of Dr. Joseph E. Bowring ("Affidavit"), included pursuant to Rule 602(f)(4), Dr. Bowring explains why the requested revenue requirement is excessive.[16]

The issues raised in this proceeding have significant cost implications going forward. Failing to resolve these issues means that customers must make payments to the facilities and similar facilities at levels exceeding the competitive and reasonable level for the facilities. Resolution of these issues should not be deferred. There is significantly greater administrative efficiency if new issues are resolved now, rather than after years of baseless and arbitrary settlements.

In the Affidavit, Dr. Bowring explains why the level of the annual revenue requirement is excessive. The issue of an appropriate rate level under Schedule 2 needs resolution on the merits in this case and for future cases. The Market Monitor opposes the Offer. The Offer should be rejected. Further, settlement discussions in the proceeding should be terminated, and the issues raised in this proceeding should be decided on the merits.

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[14] *See, e.g.*, *Arkla Energy Resources*, 49 FERC ¶ 61,051, 61,217 (1989); *Transwestern Pipeline Co.*, 9 FERC ¶ 61,075, at 61,166 (1979).

[15] 496 F.3d at 701.

[16] 18 CFR § 385.602(f)(4).

Respectfully submitted,

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Dated: July 31, 2023

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 31st day of July, 2023.

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Attachment
Exhibit Nos. IMM-0001–0004

Bowring Affidavit
and Supporting Exhibits