

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

Jackson Generation, LLC)
) Docket Nos. ER22-1089-000, EL22-48-000
)

**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 offer of settlement (“Offer”) filed in this proceeding on March 27, 2023, by Jackson Generation, LLC (“Jackson”).

Jackson proposes on a black box basis an annual total revenue requirement for reactive capability of \$ \$3,500,000.04, or \$2,716.13 per MW-Year, or \$7.44 per MW-Day for the 1,288.6 MW facility, on a nameplate capacity basis.

The Offer proposed annual revenue requirement (ARR) is excessive by PJM market metrics, including the clearing price in the capacity market, the reactive revenue offset included in the capacity demand curve, and the average rate paid for reactive power in PJM.

The proposed black box ARR for the Jackson Facility is \$7.44 per MW-Day, or 25.73 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. The plant is located in the ComEd LDA which cleared at the Rest of RTO price in the most recent base residual capacity auction for the 2024/2025 Delivery Year.

Jackson is proposing that customers pay a price for the reactive ancillary service from Jackson that is 25 percent of the price that customers pay for the full capacity from Jackson in

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”).

the PJM Capacity Market. Reactive is an ancillary service while the capacity market is one of the two basic markets operated by PJM. That result would be unreasonable and excessive and inconsistent with a competitive market and inconsistent with the basic PJM market design.

The proposed Offer ARR of \$2,716.13 per MW-Year exceeds the \$2,199 per MW-year level of the reactive revenue offset included in the PJM capacity market demand curve by 23.52 percent. The ARR should be capped at \$2,199 per MW-Year, or \$6.02 per MW-Day. The proposed black box ARR would require customers to pay \$666,368.64 more per year than if the \$2,199 per MW-Year value were used. Jackson's proposal is inconsistent with the basic PJM market design.

The proposed ARR for the Jackson facility is significantly higher than the average rate paid for reactive power in PJM. The proposed Offer ARR of \$2,716.13 per MW-Year exceeds the \$1,914 per MW-Year average revenue requirement for reactive capability in PJM in 2022 by 41.91 percent.³ The proposed black box ARR would require customers to pay \$1,033,619.64 more per year than if the \$1,914 per MW-Year value were used. No justification has been provided for why customers should pay more than a million dollars per year above the average PJM price of reactive, for reactive from Jackson. 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 Jackson 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 Black Rock 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 Black Rock 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

³ See 2022 State of the Market Report for PJM, Vol. 2 (March 9, 2023) at 619–620, Table 10-78.

eliminate all charges under Schedule 2 for the provision of reactive power within the standard power factor range.⁴ 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.⁵ The Commission explained that its holding reaffirms its policies stated, e.g., in Order No. 2003.⁶ It is also consistent with the approach long used in other RTOs, including CAISO and SPP.⁷ The Commission rejected arguments that reactive payments should be continued “because generators have come to rely on the compensation for Reactive Service in order for the generators to remain financially viable.”⁸ The IMM has argued this position on brief in the *Fern Solar* hearing, where in the initial decision, the Presiding Judge agreed that the Market Monitor’s “theory of unreasonableness stands un rebutted” but determined that the Market Monitor did not meet the burden to “document a specific unreasonable result.”⁹ The Presiding Judge stated (at P 937): “I stress that each of the IMM’s points deserves serious consideration, by the full Commission, now.” The Market Monitor should not, on the basis of an offer of settlement that does not have even a pretense of logical or evidentiary support, be denied the opportunity to demonstrate that it can meet its burden in this case.

The Commission may approve a contested offer of settlement only based on its merits.¹⁰ A contested settlement may be approved on its merits under one of the four

⁴ 182 FERC ¶ 61,033 (2023).

⁵ *Id.* at P 53.

⁶ *Id.*

⁷ *Id.* at PP 56–57/

⁸ *Id.* at P 54.

⁹ *See Fern Solar LLC*, 183 FERC ¶ 63,004 at PP 936–937 (2023).

¹⁰ 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

approaches set forth in *Trailblazer Pipeline Company*.¹¹ 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.¹² 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.

Although the Commission encourages settlements, that policy is not a license to resolve cases at all costs.¹³ An offer of settlement, as in this case, that is unfair, unreasonable, or against the public interest must be rejected.¹⁴ 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 Black

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.”)

¹¹ 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).

¹² *Jackson Generation, LLC*, 179 FERC ¶ 61,060 at PP 11–12 (2022).

¹³ See, e.g., *Arkla Energy Resources*, 49 FERC ¶ 61,051, 61,217 (1989); *Transwestern Pipeline Co.*, 9 FERC ¶ 61,075, at 61,166 (1979).

¹⁴ 496 F.3d at 701.

Rock 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.¹⁵

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.

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.

Respectfully submitted,



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Dated: April 17, 2023

¹⁵ 18 CFR § 385.602(f)(4).

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 17th day of April, 2023.



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Attachment
Exhibit Nos. IMM-0001–0004

Bowring Affidavit
and Supporting Exhibits