UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Constellation Energy Corporation Constellation Energy Generation, LLC Calpine Corporation on behalf of its Public Utility Subsidiaries	)))))))	Docket No. EC25-43-000

COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 of the Commission's Rules and Regulations,[1] and the partial settlement agreement filed in this proceeding on July 3, 2025 ("Settlement Agreement"), 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. This matter concerns Applicants' petition for approval of a proposed transaction pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations ("Transaction"). The Transaction is Constellation Energy Generation, LLC's ("Constellation") purchase of Calpine Corporation from its owners Energy Capital Partners, L.L.C. ("ECP") and Bridgepoint Group, PLC ("Bridgepoint").

The Settlement Agreement between Constellation and the Market Monitor includes terms and conditions that address many of the issues raised by the Market Monitor in

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1 18 CFR § 385.211 (2024).

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").

comments filed March 25, 2025 ("Comments").[3] However, one significant issue was not addressed. That issue is the explicit limitation on what entities can purchase the divested Calpine assets in order to ensure that structural market power in PJM is not made worse by Constellation's plan to divest resources to meet the Commission's merger guidelines.[4] The Settlement explicitly leaves this issue for resolution by the Commission. This is a central issue in many significant mergers in the power markets. If the assets are divested to an entity larger than or comparable in size to the merged entity, the result could be to exacerbate rather than mitigate structural market power. If structural market power is made worse as a result of the transaction, the transaction does not meet the required standard because it cannot be found to be consistent with the public interest. Proposed mitigation that does not operate to reduce market power does not serve its purpose. Proposed mitigation that does not reduce market power cannot be relied upon to support approval of the merger consistent with the public interest.[5] Addressing only the market power of the acquiring company, Constellation in this case, does not adequately protect competitive markets.

The Market Monitor recommended and continues to recommend that buyers with a three percent or greater share of the resources in the PJM market should not be allowed to

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3 See Comments of the Independent Market Monitor for PJM, Docket No. EC25-43 (March 25, 2025).

4 *See Revised Filing Requirements under Part 33 of the Commission's Regulations*, Order No. 642, 93 FERC ¶ 61,164 (2000) *mimeo* at 4–5; *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001); U.S. Dept. of Justice & Federal Trade Commission, "Horizontal Merger Guidelines" (1992), as revised (1997). DOJ and FTC modified their guidelines in 2010, increasing their HHI and market share thresholds and expanding the criteria used to define the relevant market. U.S. Dept. of Justice & Federal Trade Commission, "Horizontal Merger Guidelines" (August 19, 2010). FERC considered whether to revise its policies to follow the DOJ and FTC 2010 modifications, but decided, after notice and inquiry, to retain the 1992 Guidelines. 138 FERC ¶61,109.

5 *See* Federal Power Act § 203, 16 U.S.C. § 824b(a)(4).

purchase any of the divested assets. [6] Section 1 of the Settlement Agreement specifies that "Dominion Energy, Inc. and American Electric Power Company, Inc., or any of their subsidiaries" are ineligible. Section 1 states, in addition: "This agreement is without prejudice to the IMM seeking additional restrictions on divestiture purchasers." The Market Monitor continues to request that the Commission place additional limits on the purchasers of the divested assets in this case, in order to help ensure that structural market power is not made worse as a result of the divestitures. The Settlement Agreement provides a start by eliminating two potential purchasers, but a determination from the Commission is needed to ensure that the divestiture component of the proposed mitigation serves its purpose to address market power and ensure that the approval of the transaction is consistent with the public interest.

In these comments, the Market Monitor asks that the Commission determine that additional entities having three percent or greater market share, defined as the entity's owned PJM installed capacity as a percent of total PJM installed capacity, be prohibited from purchasing any of the divested resources. In addition to Dominion Resources, Inc. ("Dominion") and American Electric Power, Inc. ("AEP"), these entities include: Vistra Energy Corp. ("Vistra"), ArcLight Capital Partners ("ArcLight"), Talen Energy Corporation ("Talen"), and LS Power Equity Partners ("LS Power"). The Market Monitor also includes NRG Energy, Inc. ("NRG") given that NRG has filed for approval to purchase a large portion of LS Power's fleet, including its demand response business, Enerwise Global Technologies, LLC dba CPower ("CPower").[7] NRG will significantly exceed the three percent threshold if that purchase is completed.

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6 *See* Comments of the Independent Market Monitor for PJM, Docket No. EC25-43 (March 25, 2025) at 3.

7 *See* Comments of the Independent Market Monitor for PJM, Docket No. EC525-102 (July 3, 2025).

In the Settlement Agreement, the Market Monitor and Constellation have agreed that the Commission should decide this issue. Any order approving the Transaction as consistent with the public interest should be approved only on condition that Constellation be prohibited from divesting assets to market sellers having three percent or greater market share to mitigate the effects of the Transaction.

I. COMMENTS

A. The Proposed Divestiture Consists of Large Resources with Significant Effects on the PJM Markets.

Constellation and Calpine are two significant owners of generation in PJM with contrasting positions in the PJM market. Constellation owns a large fleet of baseload nuclear generation and large hydroelectric resources, along with several peaking units in critical load pockets. Calpine owns a fleet of combined cycle natural gas plants, a gas steam plant, and peaking units. Combined cycle plants are the most frequently marginal resources in the PJM energy market and are the largest source of flexible generation in the PJM market.[8] Purchasing the Calpine combined cycles would provide Constellation with a fleet that spans the entire PJM supply curve, with the pricing power of the Calpine combined cycles added to an already strong incentive to exercise pricing power in Constellation's baseload resources. Table 1 lists the Calpine resources to be purchased and to be divested by Constellation.

[8] See Monitoring Analytics, L.L.C., 2025 Quarterly State of the Market Report for PJM: January through March, Section 3: Energy Market at Table 3-69.

Table 1 Calpine units: to be retained by Constellation and to be divested [9]

	Unit Name	Control Zone	Summer Rating (MW)	Fuel	Technology
Calpine Units Subject to Divestiture	Bethlehem Energy Center	PPL	1,134	Natural Gas	CC
	Edge Moor Energy Center	DPL	707	Natural Gas	Steam
	Hay Road Energy Center	DPL	1,136	Dual Fuel	CC
	York Energy Center Unit 1	PECO	569	Dual Fuel	CC
Total			3,546		
Calpine Units Retained by Constellation	Bayview Energy Center	DPL	13	Dual Fuel	CT
	Christiana Energy Center	DPL	50	Dual Fuel	CT
	Crisfield Energy Center	DPL	10	Dual Fuel	CT
	Cumberland Energy Center	ACEC	187	Dual Fuel	CT
	Delaware City Energy Center	DPL	18	Dual Fuel	CT
	Sherman Avenue Energy Center	ACEC	87	Dual Fuel	CT
	Tasley Energy Center	DPL	30	Dual Fuel	CT
	Vineland Solar Energy Center	ACEC	4	Solar	Solar
	West Energy Center	DPL	15	Oil	CT
	York Energy Center Unit 2	PECO	835	Natural Gas	CC
	Zion Energy Center	ComEd	546	Natural Gas	CT
Total			1,795		
Total Divestiture and Retained			5,341		

Constellation proposes the divestiture in order to address the fact that the purchase of the Calpine resources causes failures in Constellation's application of the Delivered Price Test market power screens.[10] The screen failures occur in the PJM East and 5004/5005 energy submarkets and in the capacity market EMAAC Local Deliverability Area ("LDA").[11] The January 24th Filing shows that the divestiture of the resources to a new entity with no other assets would resolve the Constellation defined screen failures.[12]

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9 List of resources and summer ratings based on Applicants' January 24, 2025 filing. This includes resources under long term contract to other entities.

10 *See* Application for Authorization Under Section 203 of the Federal Power Act and Requests for Confidential Treatment and Limited Waivers of Certain Filing Requirements, Docket No. EC25-43-000 (January 24, 2025) ("January 24th Filing") at 23–27.

11 *See id.* at 11.

12 *See id.* at 25.

However, the Market Monitor's analysis finds that the HHI change using actual market data for the 2025/2026 Base Residual Auction exceeds the Commission's thresholds for the EMAAC LDA even with divestiture to a new entity.[13] The January 24th Filing makes no commitment to divest to a new entity.

Ultimately, the Market Monitor's proposed limit on the purchasers of the divested assets is fully consistent with Constellation's own analysis and in fact, is weaker than the condition assumed in Constellation's analysis. Constellation's filing states that the proposed divestiture passes Constellation's calculated screens if the divested assets are sold to a buyer with no other PJM assets. While the Market Monitor does not agree with Constellation's screens, Constellation's implied criterion for a buyer is thus a zero market share rather than the Market Monitor's three percent market share.

The divestitures are critical to limiting the increase in market power in the PJM markets that result from the Transaction. The effectiveness of the divestitures in limiting the increase in market power in the PJM markets depends on the purchaser(s) of the resources. The sale of the resources to another large owner in PJM would result in a failure to decrease market power or even result in an increase in market power. The only way to ensure the effectiveness of the divestiture is to limit the sale of the assets to owners smaller than Calpine. Even with this limitation, an increase in structural market power, in either the aggregate or local markets, may result from the divestiture.

B. Potential Purchasers Must Be Limited to Smaller Owners.

Constellation and Calpine have proposed to divest 3,546 MW of the Calpine resources after the completion of the Transaction.[14] The divestiture does not ensure that structural market power in PJM will not increase. The ability of a divestiture to mitigate

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13 *See* Comments of the Independent Market Monitor for PJM, Attachment: Market Power Report, Docket No. EC25-43-000 (March 25, 2025) at Table 7.

14 *See* January 24th Filing at 24.

market power depends entirely upon which entity or entities purchase the divested assets. To achieve the desired reduction of market power, the purchaser of the resources cannot be one of the largest pivotal suppliers in the PJM market. The Market Monitor recommends that the purchasers not include any owner of more than three percent of PJM installed capacity. The three percent threshold is defined by the size and market share of Calpine. Logically, eliminating Calpine as a competitor and splitting its fleet among one or more larger owners will increase structural market power in the PJM market. To offset the increase in market power due to the Transaction, the divesture must result in the sale to a smaller owner. This means divestiture to an owner with less than three percent of capacity in PJM.

Table 1 shows the ten largest owners of capacity in the PJM market as of June 1, 2025. Bridgepoint Capital Group PLC, the current owner of Calpine, is the eighth largest, with a 2.3 percent market share. The seven largest owners should be prohibited from purchasing the Calpine divestitures. They are all larger than Bridgepoint.

Table 2 Ten largest owners of capacity the PJM market: June 1, 2025 [15]

Parent Company	ICAP (MW)	Percent of Total ICAP	Rank
Dominion Resources, Inc.	22,063	12.2%	1
Constellation Energy Generation, LLC	19,431	10.8%	2
American Electric Power Company, Inc.	15,068	8.3%	3
Vistra Energy Corp.	12,235	6.8%	4
ArcLight Capital Partners, LLC	11,510	6.4%	5
Talen Energy Corporation	10,004	5.5%	6
LS Power Equity Partners, L.P.	9,681	5.4%	7
Bridgepoint Group PLC	4,240	2.3%	8
Rockland Capital Energy Investments, LLC	4,220	2.3%	9
Public Service Enterprise Group Incorporated	3,799	2.1%	10

15 ICAP MW based on PJM capacity market clearing and Fixed Resource Requirement ("FRR") data. Capacity under long term contract to other entities is not included.

In the March 3, 2012, order approving the conditions for the Exelon – Constellation merger, the Commission relied, *inter alia*, upon a condition that no buyer with more than three percent share in PJM capacity would purchase the divested generation as assurance that the transaction would not harm the PJM market.[16] At that time, the three percent cutoff corresponded to the eight largest owners of capacity in PJM, who were listed in the settlement agreement between Exelon and the Market Monitor.[17] Three percent currently corresponds to a cutoff between the market share of Calpine, with parent company Bridgepoint, and the seven largest owners of PJM capacity. Thus, the logic for using the three percent cutoff is even stronger for this Transaction. The Market Monitor has similarly listed the owners of more than three percent of PJM installed capacity in this filing. To divest to one of the current seven largest owners in PJM would be to eliminate Calpine by splitting its capacity between two larger owners, Constellation and one of the other seven largest owners. Additionally, all of these owners have local market power in the PJM markets. The Transaction and a subsequent divestiture transaction to an owner larger than or the same size as Calpine could only increase market power in PJM. This outcome is not consistent with the public interest, as it conflicts with the goal of mitigating any increase of market power resulting from this Transaction and conflicts with the larger goal of enhancing competition in the market.

Several of the seven largest owners in PJM have other pending transactions that would increase market power in PJM. ArcLight has filed for approval to purchase the 463.6 MW Middletown CC.[18] Vistra Corp. has filed for approval to purchase 1,735 MW of Lotus

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16 See Exelon Corporation, Constellation Energy Group, Inc., 138 FERC ¶ 61,167 at P 93 (2012).

17 *See* Exelon Corp./Constellation Energy Group Inc. Merger Settlement Agreement, Docket No. EC11-83-000 (October 11, 2011).

18 *See* Joint Application for Authorization Under Section 203 of the Federal Power Act and Requests for Expedited Action and Confidential Treatment, Docket No. EC25-106-000 (June 17, 2025).

resources in PJM.[19] AEP has filed for approval to purchase the 1,061.5 MW Oregon Clean Energy Center.[20] NRG has filed for approval to purchase several LS Power assets.[21] The Commission evaluates each of these transactions on a standalone basis, and there is no analysis of the combined increase in market concentration. Each transaction increases market concentration, but by less than the Commission's thresholds. The Commission has no threshold for the overall market concentration that may result from the series of transactions. For this reason, reliance on the eventual 203 application for the purchase of the divested Calpine assets is not sufficient. That transaction would also be evaluated on a standalone basis, but it is not a standalone transaction. The divestiture is part of the Transaction. Therefore, it is necessary to limit the potential purchasers and condition the Transaction on finding purchasers that prevent a further increase in market concentration in PJM.

The current market conditions in which any proposed divestiture would occur are also important. PJM's Capacity Market is extremely tight.[22] The result is that structural market power is enhanced because all capacity market sellers are pivotal.[23] The demand for capacity is highly inelastic as a result of the must buy obligation for all load serving entities.

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19 *See* Application for Authorization of Transaction Under Section 203 of the Federal Power Act and Requests for Confidential Treatment and Waivers of Certain Filing Requirements, Docket No. EC25-097-000 (June 6, 2025).

20 *See* Joint Application for Authorization of Transaction Under Section 203 of the Federal Power Act and Requests for Waivers of Filing Requirements and Confidential Treatment, Docket No. EC25-84-000 (April 30, 2025).

21 *See* Joint Application for Approval Under Section 203 of the Federal Power Act and Request for Confidential Treatment, Docket No. EC25-102-000 (June 12, 2025).

22 *See* Monitoring Analytics, L.L.C., Analysis of the 2025/2026 Base Residual Auction: Part G (June 3, 2025) at 1.

23 *See* Monitoring Analytics, L.L.C., Analysis of the 2025/2026 Base Residual Auction: Part A (September 24, 2024) at 3–4.

The relative rates of growth of the demand for capacity and the supply of new capacity mean that the capacity market is likely to remain extremely tight for the foreseeable future.[24] Given the structure of shortage pricing in the capacity market, these market conditions and PJM's market rules have resulted and will continue to result in very high capacity market prices by PJM capacity market historical standards. Market power is endemic in the PJM Capacity Market, and recent changes to the market rules undermine market power mitigation.[25] The market conditions and structural market power increase the potential impact of market power on customers under the current market structure.[26]

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,

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24 *See* Monitoring Analytics, L.L.C., Analysis of the 2025/2026 Base Residual Auction: Part G (June 3, 2025). *See* Post Technical Conference Comments of the Independent Market Monitor for PJM, Docket No. AD25-7 (July 7, 2025).

25 *See* Monitoring Analytics, L.L.C., Quarterly State of the Market Report for PJM: January through March 2025, Section 5: Capacity Market at 330.

26 *See* reports analyzing the 2025/2026 PJM Base Residual Auction. Monitoring Analytics, L.L.C., *Analysis of the 2025/2026 Base Residual Auction*, Parts A through G,, <https://www.monitoringanalytics.com/reports/Reports/2024.shtml> *and* <https://www.monitoringanalytics.com/reports/Reports/2025.shtml>.

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Dated: July 10, 2025

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 10th day of July, 2025.

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