

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

))
PSEG Energy Resources & Trade LLC) Docket No. ER22-351-000
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**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 June 13, 2022, by PSEG Energy Resources & Trade LLC (“PSEG”). PSEG proposes on a black box basis an annual total revenue requirement for Reactive Capability from its Hope Creek (1,291 MW), Peach Bottom (1,438 MW) and Salem (1,343 MW) nuclear power stations of \$13,750,000, or \$3,376.72 per MW-Year, or \$9.25 per MW-Day for the combined 4,072 MW facilities.³ The offered rate schedules break out the revenue requirements for Hope Creek as \$3,300,000, or \$2,556.16 per MW-Year, or \$7.00 per MW-Day; for Peach Bottom as \$4,150,000, or \$2,885.95 per MW-Year, or \$ 7.91 per MW-Day; and Salem as \$6,300,000, or \$4,690.00 per MW-Year, or \$12.85 per MW-Day.

The proposed combined ARR is \$9.25 per MW-day, or 18.7 percent of the clearing price in the last PJM capacity market auction for the MAAC LDA. In effect PSEG is proposing

¹ 18 CFR § 385.602(f) (2021).

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

³ PSEG owns 100 percent of the Hope Creek plant, 50 percent of the Peach Bottom plant, and 57.41 percent of the Salem plant. The MW are PSEG’s share of each plant.

that customers pay an 18.7 percent premium over the full price of capacity. That result would be unreasonable and excessive and inconsistent with a competitive market.

The Commission may approve a contested offer of settlement only based on its merits.⁴ A contested settlement may be approved on its merits under one of the four approaches set forth in *Trailblazer Pipeline Company*.⁵ 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.⁶ 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.⁷ An offer of settlement, as in this case, that is unfair, unreasonable,

⁴ 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.”)

⁵ 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).

⁶ *PSEG Energy Resources & Trade LLC*, 178 FERC ¶ 61,004 at P 19 (2022).

⁷ *See, e.g., Arkla Energy Resources*, 49 FERC ¶ 61,051, 61,217 (1989); *Transwestern Pipeline Co.*, 9 FERC ¶ 61,075, at 61,166 (1979).

or against the public interest must be rejected.⁸ 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 3.2 of the Offer's proposed settlement provides: "The Commission's approval of this Offer of Settlement shall not constitute a determination by the Commission as to the merits of any allegation or contention that was made or that could have been made in this proceeding." If the Offer is approved, it will unavoidably indicate that facilities like PSEG's can receive compensation for reactive capability under Schedule 2 based on a filing using the *AEP* Method, and it would further establish a benchmark rate level. 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.⁹

The issues raised in this proceeding have significant cost implications going forward. Failing to resolve these issues means that customers must make payments to PSEG's 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.

⁸ 496 F.3d at 701.

⁹ 18 CFR § 385.602(f)(4).

Respectfully submitted,



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Dated: July 1, 2022

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 1st day of July, 2022.



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Attachment
Exhibit Nos. IMM-0001–0003

Bowring Affidavit
and Supporting Exhibits