

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

PJM Interconnection, L.L.C.)))	Docket No. EL21-91-003
-----------------------------	-------------	------------------------

ANSWER OF THE INDEPENDENT MARKET MONITOR FOR PJM

To: The Honorable Judge Andrew Satten
Acting Chief Administrative Law Judge

The Honorable Joel deJesus
Presiding Administrative Law Judge

Pursuant to Rules 213 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 this answer to the motion submitted by American Municipal Power, Inc., Dynegy Marketing and Trade, LLC and Vistra Corp., Hazleton Generation LLC, J-POWER USA Development Co., Ltd., LS Power Development, LLC, PJM Interconnection, L.L.C. (“PJM”), and PJM Industrial Customer Coalition (“Settling Parties”) on August 14, 2024 (“Motion”), requesting an order under Rule 710(d) that would waive an initial decision “so as to permit certification of the Settlement under Rule 602(h)(2)(iii)” and to extend or toll the 30 day time period for considering the record regarding the Offer. The Settling Parties also filed a second offer of settlement on August 14,

¹ 18 CFR § 385.213 (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”).

2024. The substance of the second settlement offer is identical to the first settlement offer but adds affidavits.

Settling Parties (at 3) claim granting the Motion: “will expedite the resolution of the contested issues in the most efficient manner,” and “is consistent with the Commission’s policy of encouraging parties to reach settlement.”³ Settling Parties have not shown how delay will facilitate resolution of the issue raised in the show cause order initiating this proceeding. That failure is a strong basis for denial of the Motion.^{4 5} Contrary to the Settling Parties’ claims, granting the Motion would slow resolution of the issue in this proceeding and create inefficiencies and reduce the obligation to repay the overcollections of those generation owners who propose the delays. Although the Commission encourages settlements, that policy is not a license to resolve cases at any cost and over the objections of some parties.⁶

No good cause exists to grant the motion. The decisional framework that the offer of settlement and its associated motions seek to create is one that avoids a decision on the merits

³ 18 CFR § 385.710(d).

⁴ See *PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,080 at PP 46–47 (2021).

⁵ See *Tri-State Generation & Transmission Association*, 176 FERC ¶ 61,105, 61585 (2021) (“We deny Tri-State’s motion to hold the proceeding in abeyance. While we acknowledge Tri-State’s intent to submit an FPA section 205 filing to propose a new CTP methodology and new CTP procedures, we share commenters’ concerns that holding this proceeding in abeyance while the Commission considers that forthcoming filing might further delay resolution of the concerns identified in the Show Cause Order.”); *Chevron Prods. Co.*, 154 FERC ¶ 61,231 at PP 6–7 (2016) (where the Commission denied a request for abeyance because the abeyance would delay recourse; there are no outstanding policy issues currently subject to litigation warranting delay; and the factual issues presented in the proceeding are distinct from those in other pending litigation); *Ingenco Wholesale Power, L.L.C.*, 177 FERC ¶ 63,022 at P 11 (2021) (denying request for abeyance because it was not appropriate at the stage in the settlement proceeding).

⁶ See, e.g., *Arkla Energy Resources*, 49 FERC ¶ 61,051, 61,217 (1989); *Transwestern Pipeline Co.*, 9 FERC ¶ 61,075, at 61,166 (1979).

and deprives the Commission of the ability to determine the appropriate relief. The framework seeks to avoid a decision on the complete record of this proceeding.

There is no reason why the second offer of settlement cannot be considered and rejected within the 30 day time period specified in Rule 710(d). There is no reason why the second offer of settlement cannot be considered and rejected prior to the March 18, 2025, deadline to issue an initial decision. This is the second filing of the same revised CRF table and the same effective date. The second offer of settlement adds affidavits that ignore the core issue in this proceeding and fail to add any substantive or relevant information. There is no reason why the second offer of settlement should not be rejected consistent with the order rejecting the first.⁷

Even if the second offer of settlement is not rejected within 30 days, there is no reason why consideration of the offer and settlement and finalization of the hearing process cannot occur in parallel. Suspending the procedural schedule is unnecessary. The period of suspension will result in substantial delay, contrary to the public interest.⁸

Such delay would compromise the ability of the Commission to grant meaningful relief, if, after the hearing concludes, the Commission agrees with the Market Monitor's position. The Market Monitor's preferred proposal for relief does not fully protect consumers from over charges by suppliers who have recovered or nearly recovered the investment that the rate is designed to recover. The suspension of the procedural schedule in order to consider the prior offer of settlement wasted significant resources and resulted in significant delay. The prior suspension resulted in the delay of the deadline for an initial decision by over four

⁷ See *Louisiana PSC v. Entergy Corp.*, 149 FERC ¶ 61,245, 62483 (2014), citing, *California Independent System Operator Corp.*, 134 FERC ¶ 61,132 at P 52 & n.85 (2011) ("[T]he Commission has broad discretion to structure its proceedings so as to resolve a controversy in the way it best sees fit."); *Ameren Energy Generating Co.*, 108 FERC P 61,081 at P 23 (2004).

⁸ See *Northern Natural Gas Company*, 131 FERC ¶ 61,209 at P 11 (2010) (where the Commission denied a request for an abeyance because "nothing in [the] record supports a finding that the public interest would be served by ordering these proceedings held in abeyance").

months. Consideration of the Movants' offer of settlement wastes additional time and resources that would be better used in preparation for a hearing.

Much of the investment in resources needed to obtain a resolution of this proceeding based on the merits has been expended. The principle step remaining is the vetting of filed testimony at hearing. Any further delays reduce the potential for customers to recover overpayments based on the incorrectly calculated CRFs. Further delay reduces the obligation to repay the overcollections of those generation owners who propose the delays. Delays in this case are not neutral but directly favor the financial interests of the generation owners who propose the delays and financially harm PJM customers.

By order issued March 24, 2023, the Commission set the following issue for hearing and settlement judge proceedings:

[T]he determination of whether, as a result of changes from the TCJA, the existing CRF values result in a Capital Cost Recovery Rate for generating units that were selected to provide Black Start Service prior to June 6, 2021 that is unjust and unreasonable. While the record does not contain conclusive evidence that the existing CRF values include a 35% tax rate, the Market Monitor has introduced sufficient evidence that those values may include a 35% tax rate, raising a disputed issue of material fact as to whether changes to the tax rate render the existing CRF values unjust and unreasonable. The import of the tax rate in the determination of the CRF value is a material fact that cannot be determined based on the existing record, which warrants setting the justness and reasonableness of the existing CRF values for hearing and settlement judge procedures.⁹

The issue set for hearing is a question of fact concerning evidence showing how the CRF values included in a table in Paragraph 18 of Schedule 6A to the OATT were calculated. The issue is whether the CRF included a tax rate, such that when the tax rate changed with

⁹ *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,194 at P 32.

the implementation of the Tax Cut and Jobs Act (“TCJA”), the CRF values needed to be updated.

The Market Monitor is uniquely positioned to provide such evidence because the Market Monitor calculated the CRF values. The Market Monitor filed direct testimony on June 5, 2024, and will soon file rebuttal testimony consistent with the schedule for this proceeding. The record is already adequate to support a decision on the merits and a determination of appropriate relief. There is no reason to resolve this case based on an arbitrary offer of settlement (second settlement offer) in place of a reasoned decision (Initial Decision). The Initial Decision should not be waived.

The Market Monitor respectfully requests that Your Honors afford due consideration to this answer and deny the Motion.

Respectfully submitted,



Jeffrey W. Mayes

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

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

Dated: August 23, 2024

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 23rd day of August, 2024.



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