

would not have been filed but for the pressure resulting from nonrefundable charges. The settlement was not about the merits of this case.

The Market Monitor provides an approach for relief that is forward looking and does not require refunds. However, the ability to afford relief depends on the period left for each rate before the recovery of the investment is complete and the rate terminates. Rates for a number of black start providers will terminate before there is an opportunity to obtain full relief.

The Market Monitor also provides an alternative approach for relief that would recognize that CRF values are inputs to formula rates and should be treated consistent with the applicable precedent.⁵ This question of law has been presented to the Commission, but it has not been addressed on the merits, and it may not be addressed on the merits.⁶

The Market Monitor seeks interlocutory appeal of the determination of the Presiding Judge that “neither I nor the Commission should grant the IMM’s request to resolve summarily the issues set for hearing based on the current paper record,” and that “the IMM’s request for the Commission to resolve this matter on the paper record in the comments is procedurally infirm.”⁷

The Market Monitor appreciates that the Presiding Judge has been willing to afford serious attention to the issues raised in this case and has confidence that an initial decision in this case would thoughtfully and properly resolve the issues raised in this case. However, under the circumstances, meaningful resolution for customers requires immediate action. An initial decision that correctly decides every factual and legal question presented will not do

⁵ See Comments of the Independent Market Monitor for PJM, Docket No. ER21-1635-000 (April 28, 2021); Answer and Motion for Leave to Answer of the Independent Market Monitor for PJM, Docket No. ER21-1635-000 (May 19, 2021); Request for Rehearing of the Independent Market Monitor for PJM, Docket No. ER21-1635-001 et al. (September 9, 2021).

⁶ *Id.*; Notice of Denial of Rehearing by Operation of Law, Docket No. ER21-1635-001 et al. (October 12, 2021).

⁷ March 13th Order at PP 129–130.

justice to customers to the extent that customers are still required to overpay for black start service and black start service providers retain an unjust windfall simply as a result of the passage of time. Every day that passes results in nonrefundable charges to customers and that compromises the ability to obtain a resolution that serves the public interest and avoids irreparable harm. Even a perfect initial decision would likely be challenged, and, after potentially significant additional delay, be decided by the Commission. The better approach is to return this simple matter to the Commission now, where the Commission can provide the immediate disposition that is needed.

The CRF values included as an input to the formula rates in Schedule 6A are based in significant part on the level of federal tax obligations, including both the federal corporate income tax rate and the applicable depreciation factors. Federal tax rates changed January 1, 2018, and bonus depreciation allowing 100 percent depreciation of capital expenditures was made effective on September 27, 2017. The result was a significant reduction in federal tax obligations and, as a result, a significant reduction in the correctly calculated CRF values. For over six years, action has been needed to (i) acknowledge that the CRF values inputs are based in part on federal tax obligations; (ii) determine that the CRF values must therefore be revised to reflect the objective change in federal tax obligations; and (iii) determine that the CRF values must be adjusted so that black start service providers accurately recover their specific capital investments through the formula designed for that purpose and included in Schedule 6A, but no more and no less.

The Market Monitor disagrees with the Presiding Judge (at P 130) that there are “substantive deficiencies in the IMM’s evidence.” The evidence provided by the Market Monitor is overwhelming in support of the core and relevant fact that the CRF values were calculated based on the then prevailing federal tax rates. A fair administrative process does not require accommodating bad faith misdirection, confusion and delay, to the unjust and unreasonable detriment of PJM customers.

The Market Monitor has provided sufficient information in its pleadings for the Commission to determine appropriate relief. If necessary, a just and reasonable approach for relief for PJM customers can be determined through paper hearing procedures.

When the objectively defined inputs to formula rates change, the formula must be revised immediately. There is no reasonable counter argument. That it would take four years to correct an arithmetic error to the significant detriment of customers is appalling. Four years ago, PJM should have moved to address the issue immediately. PJM's failure has already significantly compromised the ability to ensure a complete, just and reasonable outcome under the law. There is no reason for continued delay.

The Market Monitor respectfully requests that the Presiding Judge grant or deny this motion to permit interlocutory appeal as soon as possible.

Respectfully submitted,



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Dated: March 28, 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 28th day of March, 2024.



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