

**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

**ANSWER AND MOTION FOR LEAVE TO ANSWER
OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rules 212 and 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 and motion for leave to answer the answer submitted by the applicants³ (“Applicants”) on April 8, 2025 (“April 8th Answer”) regarding Constellation’s proposed purchase of Calpine. The April 8th Answer responds to the comments of the Market Monitor filed in this proceeding on March 25, 2025 (“IMM Comments”), as well as other interveners’ comments and protests. 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 in the above proceedings (“Transaction”). The Transaction will result in increased market power in the PJM market. Neither the initial 203 application nor the April 8th Answer provide

¹ 18 CFR §§ 385.212 & 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”).

³ Applicants include Constellation Energy Corporation; Constellation Energy Generation, LLC, and Calpine Corporation on behalf of itself and each of its subsidiaries that is or will be a public utility.

assurance that Constellation's increased market power will not adversely impact the PJM market.

I. ANSWER

A. Market Power Analysis is Not Limited to the Delivered Price Test.

Applicants argue (at 5-6) in support of the Delivered Price Test ("DPT") as the only required analysis of market power for the Transaction. The Commission has considered other analysis in prior proceedings.⁴ The Delivered Price Test analysis does not capture the local nature of market power in an LMP market. In an LMP market, not every MW has the same effect on market price within a submarket. Submarkets are created by transmission constraints, and every generators' effect on a given transmission constraint varies based on the electrical topology of the transmission system. The correct metric for measuring the relevant supply and therefore local market power is the distribution factor ("dfax") times the MW controlled by the owner, (dfax x MW). The dfax measures the amount of MW from a resource that affects a specific transmission constraint. The DPT incorrectly treats all sources of supply in a submarket created by a transmission constraint as being equivalent supply in that submarket rather than recognizing the impact of distribution factors in defining relevant supply.

A transmission constraint with flows at its limit affects prices on both sides of the constraint. There is a high priced side and a low priced side. Market power can be exercised on both sides of the constraint. A supplier withholding output can raise the price above the

⁴ See, e.g., PPL Corporation, RJS Power Holdings LLC, 149 FERC ¶ 61,260 (2014); NRG Energy Holdings, Inc., Edison Mission Energy, 146 FERC ¶ 61,196 (2014); Exelon Corporation, Constellation Energy Group, Inc., 138 FERC ¶ 61,167 (2012); see also Analysis of Horizontal Market Power under the Federal Power Act, 138 FERC ¶ 61,109 (2012) ("We reiterate, however, that the Commission may consider arguments that a proposed transaction raises competitive concerns that have not been captured by the Competitive Analysis Screen. Likewise, while applicants must continue to provide a Competitive Analysis Screen, we will also consider any alternative methods or factors, if adequately supported.").

competitive level on either side of the constraint. A supplier can also uneconomically produce more output than the competitive level on one side of the constraint to raise prices on the other side of the constraint. By ignoring one side of the constraint, the DPT cannot capture the full extent of market power in an LMP market.

Even in a market that includes many MW on the low priced side of a constraint, a generator with a large dfax to that constraint can affect the price in the entire low price side submarket. The DPT ignores this situation because it ignores control of supply on the low price side of the constraint and it ignores the dfax of that supply to the constraint.

B. The PJM Tariff Does Not Provide Sufficient Safeguards.

Applicants argue (at 7-8) that the PJM tariff provides sufficient safeguards to prevent the exercise of market power. Specifically, Applicants assert that must offer requirements have effective performance penalties and enforcement consequences. Applicants are incorrect. The energy market must offer requirement fails to effectively enforce the requirement for capacity resources to offer their full installed capacity amount in the energy market each day.⁵ This is a particular issue for hydroelectric and storage resources, of which Constellation has 1,600 MW. The PJM tariff has no verification process and no defined consequences for failure to adhere to the energy market must offer requirement. The capacity market must offer requirement has been strengthened to cover all resources types except demand response.⁶ The capacity market must offer requirement has defined consequences that exclude resources from future auctions for failing to offer, but this consequence simply extends the withholding into future auctions rather than alleviating the exercise of market power. For either market requirement, Applicants' suggestion (at 8) to rely on the lengthy enforcement process to prevent exercises of market power is not the preferred solution for

⁵ See Monitoring Analytics, L.L.C., *2024 Annual State of the Market Report for PJM*, Vol. 2 (March 13, 2025), Section 3: Energy Market at 134 and 155–157.

⁶ See *PJM Interconnection, L.L.C.*, 190 FERC ¶ 61,117 (February 20, 2025).

noncompliance. Market power should be mitigated *ex ante*, and that is the purpose of this proceeding.

Recent changes in the Market Seller Offer Cap that allow resources to offer the Capacity Performance Quantifiable Risk (CPQR) with no offset for energy and ancillary service market revenues further complicate the withholding issue.⁷ CPQR is not a well defined cost. PJM's criteria for determining the accuracy of a Market Seller's CPQR is subjective. PJM does not independently calculate a resource's CPQR. Further complicating the issue is the Market Seller's ability to divide the CPQR offer into different segments.⁸ This will allow a Market Seller to submit offers with high price tail blocks in the capacity market given that CPQR for segments are even less well defined than a single CPQR for a resource.

In its March 25th Comments, the Market Monitor explains (at 4–5) the numerous limitations of PJM's local market power mitigation in the energy market. Generators can easily construct offers to avoid offer capping.⁹ There is no offer capping of generators with market power on the low price side of constraints, and there is no market power mitigation for the aggregate energy market.¹⁰

C. Co-located Load is a Market Power Concern Relevant to the Transaction.

The April 8th Comments are dismissive of the Public Citizen, Inc., PennFuture, and the Clean Air Council's ("PPC") concerns regarding the co-location of large loads at generator sites. The PPC has cause for concern, because co-location effectively withholds generation from the PJM market and raises costs to customers. In 2023, Constellation proposed a process

⁷ 190 FERC ¶61,117 at 99 (February 20, 2025).

⁸ *Id.* at 123.

⁹ See Monitoring Analytics, L.L.C., *2024 Annual State of the Market Report for PJM*, Vol. 2 (March 13, 2025), Section 3: Energy Market at 232–236.

¹⁰ See *id.* at 225–226.

by which nuclear generation capacity would be sold twice, to both the PJM market and to onsite load, and subsequently economically withheld in the energy market.¹¹ The Market Monitor recommends that Constellation agree not to pursue any co-location arrangements involving existing generation units until FERC policy on co-location is clearly established and rules implementing the policy have been approved. The Market Monitor recommends that Constellation explicitly state all of the co-located load arrangements that Constellation has submitted to PJM for study or that Constellation plans to submit. The Market Monitor recommends that Constellation clarify Constellation's co-location plans for the acquired Calpine resources.

D. The Market Monitor's Behavioral Conditions are Needed.

Due to the limitations of PJM's tariff in preventing exercises of market power and the lack of rules to prevent withholding and other issues related to co-located load, the Transaction requires further commitments to protect the competitiveness of the PJM markets. The April 8th Comments argue (at 10-14) that the Commission should reject the Market Monitor's proposed behavioral restrictions, because they do not apply to other market participants. Constellation is the largest owner of generating capacity in PJM, and the Transaction eliminates, in Calpine, a significant source of competition in the market and a significant voice in the PJM stakeholder process. This Transaction is unlike other 203 transactions in PJM. There should be no expectation that this Transaction should be treated like any other. The Commission accepted behavioral commitments in the prior Exelon-

¹¹ See Complaint Requesting Fast Track Processing of Constellation Energy Generation LLC, Docket No. EL25-20-000 (November 22, 2024); *see also*, CEG/Brookfield Collocation Presentation (August 9, 2023), which can be accessed at: <<https://www.pjm.com/-/media/DotCom/committees-groups/committees/mic/2023/20230809/20230809-item-02---info-only---constellation-brookfield-co-location-configuration-presentation.pdf>>, at 8.

Constellation 203 proceeding, and it should require updates to those commitments based on this Transaction.¹²

E. ECP Influence is Possible with Less Than Ten Percent Ownership.

Although the Applicants confirm (at 19) that there is no contract that gives ECP influence on the decision making of Constellation or its public utilities subsidiaries after the close of the Transaction, they also state that ECP will hold Constellation's voting securities. There is only one shareholder who holds greater than ten percent of Constellation's voting securities, the Vanguard Group ("Vanguard").¹³ Vanguard is the largest shareholder of Constellation, holding 11.7 percent of Constellation's outstanding common stock and the second largest shareholder holds 9.1 percent. In addition, Vanguard's ownership in Constellation is acquired through the Commission's blanket authorization.¹⁴ It is possible that ECP would become the second largest shareholder after Vanguard, whose voting power is restricted and monitored by the Commission's regulation, and the largest shareholder with unrestricted voting power. Even though the current threshold for affiliation is ten percent, given the market power concern raised by ECP's ability to influence Constellation's decision making, ECP should be required to report its ownership share in Constellation on a quarterly basis. The best structural option would be to not allow ECP to own any part of Constellation following the transaction.

II. MOTION FOR LEAVE TO ANSWER

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answers to answers or protests unless otherwise ordered by the decisional authority.

¹² See *Exelon Corporation, Constellation Energy Group, Inc.*, 138 FERC ¶ 61,167 at PP 82–85, 94 (2012).

¹³ SEC Form DEF 14A (Proxy Statement) filed on March 19, 2025.

¹⁴ Blanket authorization pursuant to section 203(a)(2) of the Federal Power Act ("FPA"), as amended by the Energy Policy Act of 2005 ("EP Act 2005"), and 18 C.F.R. Part 33.

The Commission has made exceptions, however, where an answer clarifies the issues or assists in creating a complete record.¹⁵ In this answer, the Market Monitor provides the Commission with information useful to the Commission's decision making process and which provides a more complete record. Accordingly, the Market Monitor respectfully requests that this answer be permitted.

¹⁵ See, e.g., PJM Interconnection, L.L.C., 119 FERC ¶61,318 at P 36 (2007) (*accepted answer to answer that "provided information that assisted ... decision-making process"*); California Independent System Operator Corporation, 110 FERC ¶ 61,007 (2005) (answer to answer permitted to assist Commission in decision-making process); New Power Company v. PJM Interconnection, L.L.C., 98 FERC ¶ 61,208 (2002) (answer accepted to provide new factual and legal material to assist the Commission in decision-making process); N.Y. Independent System Operator, Inc., 121 FERC ¶61,112 at P 4 (2007) (answer to protest accepted because it provided information that assisted the Commission in its decision-making process).

III. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this answer as the Commission resolves the issues raised in this proceeding.

Respectfully submitted,



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Dated: April 23, 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 23rd day of April, 2025.



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