UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Exelon Generation Company, LLC	)	Docket No. ER10-1418-000

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

Pursuant to Rules 212 and 213 of the Commission's Rules and Regulations, 18 CFR §§ 385.212 & 385.213 (2010), Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM ("Market Monitor"),[1] moves for leave to answer and answers the Answer of Exelon Generation Company, LLC ("Exelon") filed on July 29, 2010 (July 29th Answer), regarding the Reliability Must-Run Rate Schedule ("RMR") submitted by Exelon Generation Company, LLC ("Exelon") on June 10, 2010 ("June 10th Filing) to recover costs associated with two units, Cromby Unit No. 2 and Eddystone Unit No. 2 ("RMR Units"), that it has set for deactivation. Contrary to Exelon's assertions in the July 29th Answer that it is up to intervenors or the Commission to point out the deficiencies in its RMR proposal, it is, in the first instance, Exelon's responsibility to meet its burden of proof to demonstrate the justness and reasonableness of the rates it proposes. This Exelon fails to do, particularly regarding its proposed treatment of depreciated costs. Instead of requesting that the Commission reject this filing, which concerns generation units identified by PJM as

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[1] PJM Interconnection, L.L.C. is a FERC-approved Regional Transmission Organization. Capitalized terms used herein and not otherwise defined have the meaning provide in the PJM Open Access Transmission Tariff.

needed for reliability, the Market Monitor requests a technical conference that would allow the Commission to expeditiously and fully vet this proposal.

I. COMMENTS

In the July 29th Answer, Exelon claims (at 4–5 & n.10) that the Market Monitor does not "point out any legal or factual deficiency in the evidence tendered by Exelon Generation in support of its rate filing," that the Commission should accept the "the sworn, uncontroverted testimony and calculations of well-known experts," and that its witness, Alan C. Heintz, explains that "the RMR Units' asset value to be depreciated, the period of time over which the assets will be depreciated, and the derivation of annual and monthly depreciation expense."

Witness Heintz states that he calculated "depreciation expense based on the remaining life of the units." He further explains that he divided the total depreciation value by 36 months for Eddystone 2 and 24 months for Cromby 2, to arrive at the depreciation expense per month."[2] Witness Heintz does not explain, however, why 36 months and 24 months constitute the "remaining life of the units." These monthly amounts are consistent with PJM's indication of its need for the respective units for reliability purposes,[3] but this has nothing to do with the remaining useful life of the facilities for ratemaking accounting purposes.

It would be a most happy coincidence for Exelon if PJM's continued need for the facilities perfectly matched the remaining life of the facilities. If this was the case, Exelon

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[2] June 10th Filing, EXG-1 at para. 22.

[3] *See Id*. at 4; EXG-2 at 13, lines 13–15.

could have clarified this point in the July 29th Answer. Instead, Exelon stands by its initial inadequate testimony.

Exelon is properly at risk for the recovery of its investment in Eddystone 2 and Cromby 2 in competitive markets over these units' useful life.[4] PJM's reliability needs do not confer a just and reasonable basis to transfer this obsolescence risk to PJM's ratepayers. It is essential that Exelon explain or correct its calculation of depreciated value. A technical conference is an efficient way to permit this. In an earlier RMR involving PJM, the Commission found troubling essentially the same proposal to fully recover depreciated costs during an RMR period and set the issue for further investigation at hearing. The Commission ultimately did not visit the issue because the matter settled.[5]

Exelon's treatment of depreciated costs lends good cause for the Commission to seek more detailed explanation of other aspects of the Exelon's proposal that lack support sufficient for meaningful evaluation. It is the filing public utility's duty in the first instance to demonstrate that its proposed rates are just and reasonable, and only then does the

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[4] *See, e.g., ISO New England, Inc.*, 128 FERC ¶61,266 at P 44 (2009) ("… resources are provided the opportunity to recover their costs, they are not guaranteed that they will recover those costs").

[5] *See PSEG Energy Resources & Trade, LLC, PSEG Fossil LLC*, 111 FERC ¶61,121 at P 23 (2005) ("[I]t is not clear from the proposed cost of service whether PSEG is proposing to write down such existing assets at a faster rate, i.e. over the period when these units are needed for reliability, than would otherwise have occurred if the units would continue to operate for the remainder of a reasonable amortization period. PSEG was indeed prepared to deactivate and therefore to not recover any more of its prior investment. It is not clear how the Cost of Service Recovery Rate accounts for these issues and whether the proposed depreciation rates are just and reasonable. Therefore, we find that this issue should be investigated at hearing."); *letter order accepting uncontested settlement*, 113 FERC ¶61,213 (2005).

burden shift to others to controvert that demonstration.[6] The Commission is not required to accept testimony on the basis of the credentials of the offering witness or his or her willingness to swear to the accuracy of plainly deficient statements.

If Exelon wanted to avoid additional process, it should have tendered a complete explanation of how it calculated the RMR rates or provided supplemental information in its July 29th Answer. Because it failed to do so, it is necessary for the Commission to explore the substance of what Exelon has proposed either in the technical conference or at hearing. Although the Commission has set RMR rate cases for hearing before an administrative law judge,[7] the Market Monitor continues to believe that a technical conference may allow adequate opportunity to scrutinize the June 10th Filing while minimizing the burden posed on the Commission, Exelon and the parties. Accordingly, the Commission should take at least this modest step. At the conclusion of the technical conference, the parties determine whether to request and/or the Commission may determine whether to set the matter for hearing.

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6 The Commission's regulations require the proponent of an initial rate to provide "[a] summary statement of all cost … computations involved in arriving at the derivation of the level of the rate, in sufficient detail to justify the rate… In all cases, the Secretary is authorized to require the submission of the complete costs studies as part of the filing and each filing public utility shall submit the same upon request by the Secretary in such form as he shall direct." 18 CFR § 35.12(b)(2)(i). This filing, however, is better characterized as a proposed rate increase because the point of the RMR is to permit the proponent to charge cost-based rates, in order to preserve system reliability, higher than the rates resulting under a market-based rate schedule. The burden to justify rates increases falls squarely on the filing utility. 18 CFR § 35.13(e)(3); 16 U.S.C. § 824d(e) (2000); *see also Midwest Independent Transmission System Operator, Inc., at al.*, 131 FERC ¶61,174 at P 57 (2010) ("The moving party has the burden to demonstrate that its proposal is just and reasonable; whether filed under section 205 or section 206, a moving party's filing would be equally subject to a requirement that its filing meets a just and reasonable standard because both statutory provisions ultimately rely on that same standard.").

7 *See, e.g.,* 111 FERC ¶61,121 at P 23; 18 CFR § 35.13(e)(2).

II. MOTION FOR LEAVE TO ANSWER

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answer to answers or protests unless otherwise ordered by the decisional authority. The Commission has made exceptions, however, where an answer clarifies the issues or assists in creating a complete record.[8] 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. Therefore, this answer should be permitted.

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[8] *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).

III. CONCLUSION

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

Respectfully submitted,

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Dated: August 13, 2010

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 13th day of August, 2010.

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