

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

AmerenEnergy Resources Generating	)	Docket No. EL13-76-000
Company v. Midcontinent Independent	)	
System Operator, Inc.	)	
	)	
Midcontinent Independent System Operator,	)	Docket No. ER13-1962-000
Inc.	)	(not consolidated)
	)	

**COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rule 211 of the Commission’s Rules and Regulations,<sup>1</sup> Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (“PJM Market Monitor”),<sup>2</sup> submits these comments on both the complaint filed by AmerenEnergy Resources Generating Company (“Ameren”) objecting to the compensation provided in its unexecuted System Support Resources (“SSR”) Agreement with the Midcontinent Independent System Operator (“MISO”) on July 5, 2013, and the SSR Agreement itself filed by MISO on July 11, 2013, in the above referenced proceedings (not consolidated).<sup>3</sup> The PJM Market Monitor’s comments are limited to the correction of Ameren’s misstatements about the PJM market rules that are similar to MISO’s SSR rules, and of Ameren’s mischaracterization of the precedent set in certain cases involving Reliability Must Run (“RMR”) tariffs in PJM.

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<sup>1</sup> 18 CFR § 385.211 (2010).

<sup>2</sup> 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 (“OATT”).

<sup>3</sup> Ameren indicates (at 4) that it will motion to consolidate the proceedings.

## I. COMMENTS

### A. The PJM RMR Rules Limit Recovery for RMR Service to Operating Costs, Excluding Recovery of Embedded Costs.

The Part V of the PJM OATT provides two means for a generator to recover the costs of providing RMR service. Section 114–115 of the Part V of the OATT provides that a generator may calculate its costs using the Avoidable Cost Rate formula. Section 119 of Part V of the OATT provides that a generator may file with the Commission to recover “the entire cost of operating the generating unit until such time as the generating unit is deactivated.” Section 119 of Part V does not require a generating unit to provide RMR service according to the formula rate specified in section 114–115, but section 119 does limit recovery to operating costs and does not allow the recovery of investment costs other than new investment made for the sole purpose of providing RMR service. PJM’s RMR rules have the flexibility to accommodate the particular circumstances of RMR service providers, but the RMR rules do not allow a generator to recover investment costs made prior to the RMR period.

PJM authorized the PJM Market Monitor to state on the record in Docket No. ER12-1901 that PJM’s reading was consistent with the PJM Market Monitor’s view.<sup>4</sup> The PJM Market Monitor’s and PJM’s reading of that provision contradicts Ameren’s reading of Part V of the PJM OATT.

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<sup>4</sup> See Reply Comments of the Independent Market Monitor for PJM, Docket No. ER12-1901-000 (June 7, 2013) at 7–8 (“Although PJM has specifically refrained from taking a position on either of the offers of settlement submitted in this proceeding, at the Market Monitor’s request, PJM has authorized the Market Monitor to state that the Market Monitor’s reading of section 119 of Part V of the PJM Tariff is consistent with PJM’s interpretation of this section as communicated to the parties and to the settlement judge during settlement discussions.[footnote omitted] Specifically, the Market Monitor reads section 119 to limit recovery to operating costs and to not allow the recovery of investment costs other than new investment made for the sole purpose of providing RMR service.”).

Accordingly, Ameren should not cite to the PJM OATT in support of its reading of MISO's tariff provision that limited recovery of SSR costs to "going forward costs." There does not appear to be any difference between the limitation of RMR cost recovery to "the costs of operating the unit" until deactivation in Part V of the PJM OATT and the limitation on SSR cost recovery to "going forward costs" in Attachment Y of the MISO Tariff. Neither the PJM tariff nor the MISO tariff permit recovery of investments made prior to the decision to deactivate.

This is consistent with the approach to regulation through competitive markets that prevails in both PJM and MISO. A key characteristic of competitive markets is that investors and not customers are at risk for investments in generating assets. Allowing generation owners to exercise the market power that they possess when they are needed to provide RMR or SSR services and to improperly transfer some portion of their investment risk to customers is not consistent with regulation through competitive markets. A consistent regulatory regime should apply to wholesale electricity markets. The rules should not permit utility rate filings under section 205 to change the regulatory paradigm. The request for full cost of service recovery is an attempt to change the regulatory paradigm applicable to these RMR assets.

**B. PJM RMR Cases Do Not Support Ameren's Position.**

In support of its position, Ameren cites to PJM RMR cases, *GenOn Power Midwest LP* and *Exelon Generating Company, LLC*.<sup>5</sup>

Competing settlements in the *GenOn* case are pending before the Commission. Neither settlement, if accepted, supports Ameren's position. The Market Monitor, with the

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<sup>5</sup> *GenOn Power Midwest, LP*, pending in Docket No. ER12-1901-000; *Exelon Generating Company, LLC*, 135 FERC ¶ 61,190 (2011).

support of state commissions and ratepayer advocates,<sup>6</sup> has filed a settlement that would explicitly prohibit GenOn from including embedded costs in the RMR service cost recovery.<sup>7</sup> The Market Monitor has argued that the PJM OATT limits RMR cost recovery to the “entire of cost of operating the generating until such time as the generating unit is deactivated.”<sup>8</sup> The Market Monitor has also argued that regulators should maintain a consistent regulatory paradigm, in this case, regulation through competition, and not enable participants to change the prevailing paradigm as it suits them.<sup>9</sup> A fundamental rationale for electric industry restructuring is that investors, not their customers, bear the risk of investment in generating assets.<sup>10</sup> Policy regarding RMR cost recovery should be consistent with the Commission’s general approach to regulating the organized wholesale markets. The arguments that the Market Monitor has raised in *GenOn Power Midwest, LP* apply with equal force in this proceeding.

The other settlement pending in *GenOn Power Midwest, LP* is a black box settlement, meaning that GenOn and other parties have agreed to a dollar settlement value, but have not agreed to any rationale that explains that value.<sup>11</sup> Nevertheless, the value to which the parties have agreed is instructive. GenOn filed to recover approximately \$25.2 million for

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<sup>6</sup> The Maryland Public Service Commission, the New Jersey Board of Public Utilities, the Ohio Consumers Council and the Pennsylvania Office of Consumer Advocate.

<sup>7</sup> IMM Settlement Agreement and Offer of Settlement, Docket No. ER12-1901-000 (February 28, 2013) (“IMM Settlement Offer”).

<sup>8</sup> OATT § 119.

<sup>9</sup> IMM Settlement Offer at 2–4.

<sup>10</sup> *Id.*

<sup>11</sup> GenOn et al. Settlement Agreement and Offer of Settlement, Docket No. ER12-1901-000 (May 8, 2013) at 10 (“The Settling Parties submit that, by virtue of the “black box” nature of the settlement, none of the issues settled in this proceeding raise policy implications, or require the Commission to re-examine or change any existing policy or procedure.”) (“GenOn Settlement Offer”).

two units providing RMR service, which included embedded costs.<sup>12</sup> The parties agreed to a black box value of \$13.2 million.<sup>13</sup> GenOn offered testimony suggesting (but not proving) that in that \$13.2 million GenOn was recovering \$659,020 above its operating costs.<sup>14</sup> The \$659,020 is a 5.25 percent adder to operating costs, which is less than the ten percent adder included in the PJM tariff formula that would apply to the avoided costs of providing RMR service in PJM for one year or less.<sup>15</sup> The black box settlement, if approved, does not support the assertion that RMR service providers in PJM have a substantive basis for recovery of embedded costs.

The settlement that was approved in *Exelon Generating Company, LP* provided for Exelon to recover an agreed black box amount of \$82 million, significantly less than the \$125.1 million amount that Exelon had sought.<sup>16</sup> Contrary to Ameren's claim, this black box settlement does not establish a precedent for recovery of embedded costs.

The attempt to recover fixed costs through RMR contracts is equivalent to investors attempting to transfer the costs of failed investments to customers when the RTO/ISO needs to keep a unit in service past its retirement target for transmission system reliability.<sup>17</sup> Suppliers of RMR service have market power in those circumstances. The application of the tariff prohibition against the recovery of fixed costs through RMR contracts is a direct way to prevent the exercise of market power while ensuring that the generator is treated fairly.

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<sup>12</sup> GenOn RMR Tariff Filing, Docket No. ER12-1901-000 (, 2012) at 4.

<sup>13</sup> GenOn Settlement Offer at 4.

<sup>14</sup> Comments of GenOn Power Midwest, LP in Opposition to the Settlement Agreement and Offer of Settlement of the Independent Market Monitor and in Support of the Settlement Agreement and Offer of Settlement of the Settling Parties, Docket No. ER12-1901-001 (May 28, 2013) at 11–12.

<sup>15</sup> *Id.* at 12.

<sup>16</sup> 135 FERC ¶ 61,190 at P 5.

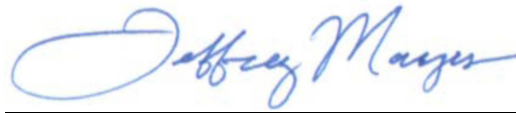
<sup>17</sup> OATT § 113.1.

Whatever confusion may have existed in this past as the industry moved from a cost-of-service regulatory paradigm to a competition regulatory paradigm, the argument that embedded costs are “going forward costs” has no merit and should be rejected.

## II. CONCLUSION

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

Respectfully submitted,



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Dated: July 31, 2013

**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 31<sup>st</sup> day of July, 2013.



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