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VIA EFILING

February 28, 2013

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: *Genon Power Midwest, LP*, Docket No. ER12-1901-000

Dear Secretary Bose:

Pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR § 385.602 (2012), Monitoring Analytics, LLC acting in its capacity of the Independent Market Monitor for PJM ("IMM"), submits the enclosed Settlement Agreement and Offer of Settlement ("Settlement") and accompanying materials resolving all matters relating to the above-captions proceeding.

This submission includes the following materials:

- This letter of transmittal;
- An Explanatory Statement in support of the Settlement (Appendix A);
- The Settlement (Appendix B);
- A draft form of letter order (Appendix C); and
- A certificate of service certifying that the Settlement documents, including this transmittal letter, were served in accordance with the requirements of Rules 2010 and 602(d) of the Commission's Rules of Practice and Procedure (Appendix D).

In accordance with Rule 602(f), 18 C.F.R. § 385.602(f) (2012), the Settling Parties advise the recipients of this letter that initial comments on the Settlement are due no later than **February March 20, 2013**, and reply comments are due no later than March 30, 2013. Pursuant to Rule 602(f)(3), 18 C.F.R. § 385.602(f)(3) (2012), any failure to file a comment constitutes a waiver of all objections to the Settlement.

The Market Monitor has served the parties listed on the Commission's official service list for Docket Nos. ER12-1901-000; posted the Settlement on its website, located at

http://www.monitoringanalytics.com; and sent a email notice to PJM members and PJM state commissions.

Sincerely,

Jeffrey Mayes
General Counsel
Monitoring Analytics, LLC
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APPENDIX A

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

GenOn Power Midwest, LP	)	Docket No. ER12-1901-000

EXPLANATORY STATEMENT
IN SUPPORT OF SETTLEMENT AGREEMENT

Monitoring Analytics, acting in its capacity as the Independent Market Monitor for PJM ("IMM"), submits this Explanatory Statement pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or the "Commission"),[1] in support of the Settlement Agreement ("Settlement").

The Settlement is submitted as an Offer of Settlement to be binding upon all other parties to the pending proceeding upon Commission approval of the Settlement. If approved by the Commission, the Settlement will resolve the issues set for hearing and settlement in this proceeding.[2]

I. BACKGROUND

When an owner notifies PJM that it intends to deactivate a unit, PJM may request and the owner may agree to provide continued service in order to allow PJM to address reliability issues on the system that the deactivation at the indicated time would create. Part V of the PJM Open Access Transmission Tariff ("PJM OATT") provides that generating units that provide reliability-must-run ("RMR") service for PJM may receive compensation under a formula specified in sections 114–115 of the PJM OATT or file to collect "the entire

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1 18 CFR § 385.602 (2012).

2 *GenOn Power Midwest, LP*, 140 FERC ¶ 61,080 (July 30, 2012) ("July 30th Order").

cost of service of operating the generating unit" under section 119 of the PJM OATT. The formula rate allows an incentive adder based on the term of service. The formula rate caps recovery of new project investment needed to provide RMR service (APIR) at $2 million. Part V allows only for recovery of avoidable incremental expenses and investment, less net operating revenues during the period of RMR service. Part V does not permit the recovery of costs that would have been incurred if the unit deactivated and never provided RMR service.

On February 19, 2012, GenOn notified PJM that it intended to retire the Niles Generating Station Unit 1 ("Niles") and the Elrama Generating Station Unit 4 ("Elrama") as of May 31, 2012. Notice occurred 92 days prior to the requested date of deactivation, two days in excess of the 90 days required.[3] At the time of notice, neither unit had depreciation expense on its books because GenOn "wrote off the book value in 2010 to reflect the loss of economic value associated with uncompetitive generation assets."[4] GenOn would have retired the units on May 31, 2012, but for PJM's request that for reliability reasons, the units remain in service for the summer period from June 1 through September 30. GenOn agreed to provide RMR service and filed to receive compensation under section 119 of the PJM OATT.

GenOn proposed to recover for RMR service during the four-month period approximately $10.4 million for Niles and $14 million for Elrama. The request anticipated approximately $1.1 million project investment for Niles and $1.9 million for Elrama. GenOn also proposed to recover the embedded costs that it had written off in 2010.

The Market Monitor filed comments on June 12, 2012, arguing that such recovery was unjust and unreasonable under section 205 of the Federal Power Act because GenOn

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3 *See* OATT § 113.1.

4 *See* GenOn RMR filing, Docket No. ER12-1901-000 (May 31, 2012), Exhibit No. GPM-1 (Direct Testimony of John D. Stewart) at 16.

was attempting shift to ratepayers significant costs associated with investment risk assigned to GenOn under the prevailing regulation through competition model by filing recovery under the different and superseded traditional cost of service model. The Market Monitor objected to the sudden change of regulatory paradigm simply because PJM needed GenOn's unit for four months of RMR service. PJM needed the unit because the 92 days notice prior to the summer period that GenOn provided was not sufficient for PJM to put in the place transmission system upgrades needed to accommodate the deactivation. The Market Monitor assumed the GenOn was not filing to recover its costs under section 119 of the PJM OATT because that section allowed only for the recovery of operating costs.

GenOn clarified in its answer filed July 6, 2012, that it was claiming recovery under section 119. The Market Monitor filed an answer July 20, 2012, objecting that section 119 does not permit the recovery of embedded costs regardless of what GenOn may or may not recover under section 205 of the Federal Power Act. The July 30th Order set the matter for hearing and settlement procedures. The parties, including parties intervening after the July 30th Order, have been engaged in settlement discussion since that time. GenOn completed its RMR service on September 30, 2012.

II. TERMS OF SETTLEMENT

A. Treatment of Avoided Operating Costs for RMR Service

Article 2 of the Settlement provides for the Company to recover all of its avoidable costs for providing RMR service net of revenues received from PJM markets during the period of RMR service. The Company must provide documentation and certification from an independent auditor. The Settlement does not attempt to specify the level of operating costs that the Company can recover; it specifies only the theory and criteria for recovery. The Settlement explicitly provides (at sections 1.10 and 2.2) that the Company may not include a return on or of embedded costs, including any costs incurred prior to the proposed deactivation date excepting only costs that the Company identified as necessary for it to provide RMR service, after it committed to provide such service. The Company is

not required under the Settlement to defend the prudence of documented going forward costs for providing RMR service. For example, the Company does not need to explain why maintaining three staff at a plant is reasonable against contrary claims that two would suffice.

This is just and reasonable because a generator providing RMR service should recover all of its avoidable expenses in order to provide RMR service. Unlike a traditional cost of service filing under the regulatory paradigm that was operative prior to the regulation through competition approach adopted in the late 1990s, the company should not be required to assume the risk of under recovery of costs incurred to provide RMR service under a rate for service provided after the date that is has given notice in accordance with any applicable tariff of its intent to deactivate.

B. Treatment of Incremental Project Investment Costs

Section 2.1.2 of the Settlement provides for the Company to recover its incremental project investment need to provide RMR service. Project investment costs do not include investment costs incurred prior to the proposed deactivation date, excepting only where an investment occurred after the Company had committed to provide RMR service and such investment was made solely in order to permit the Company to provide RMR Service after the proposed deactivation date.

C. Application of Ten Percent Incentive Factor

Section 2.1.3 of the Settlement provides for the application of an incentive adjustment rate to net operating costs and incremental project investment costs, equal to ten percent. Ten percent is at a higher level than a level appropriate to the specific risks applicable to the Company in this proceeding, including the relatively short four-month summer period during which RMR service was required. Ten percent, however, is consistent with the level of incentive that the formula rate in section 114 of the PJM OATT would have applied to service lasting a year or less, and this level of incentive would have been available to the Company had it elected to recover its RMR service costs under the

generally applicable formula rather that file for recovery on a unit specific basis. Accordingly, ten percent is a reasonable basis for Settlement.

D. Resolution of Issues

Section 2.3 of the Settlement provides that, upon the satisfaction of all conditions to the effectiveness of this Settlement, the Settlement and the Protocols Settlement shall operate as a full and final settlement, release, discharge, accord and satisfaction of all the disputes, claims, demands, liabilities, rights, and/or obligations related to or arising out of the issues raised by the Settling Parties in this proceeding.

E. Effective Date and Conditions

Article 3 of the Settlement states that the Settlement shall take effect on the date it is accepted by the Commission in a Final Order or, if the Commission accepts this Settlement subject to condition or modification, on the date that all Settling Parties have notified the other Settling Parties that any such condition or modification is acceptable}. For purposes of the Settlement, an order shall be deemed to be a "Final Order" as of the date rehearing is denied by the Commission, or if rehearing is not sought, the date on which the right to seek Commission rehearing expires.

F. Modifications to Settlement; Standard of Review

Article 4 of the Settlement states that the terms of the Settlement shall be subject to change solely by written amendment executed by the Settling Parties. The standard of review for any modification to the Settlement, whether set forth in a written amendment executed by the Settling Parties or pursuant to the Commission's exercise of its authority under section 206 of the federal Power Act, whether acting *sua sponte* or on a complaint filed by a Settling Party, shall be the "just and reasonable" standard. The standard of review for any modifications to the Settlement unilaterally proposed by a non-Settling Party shall be the public interest standard of review.

G. Miscellaneous

Article 5 of the Settlement contains a number of standard provisions.

Section 5.1 states that the discussions among the Settling Parties have been conducted with the explicit understanding and agreement, pursuant to Rule 602(e) of the Commission's Rules of Practice and Procedure, that all offers of settlement and discussions relating thereto are and shall be privileged, shall be without prejudice to the positions of any Settling Party or participant presenting any such offer or participating in any such discussion, and are not to be used in any manner in connection with this proceeding or otherwise (except as may be proper in a proceeding involving the interpretation and enforcement of the terms of the Settlement).

Section 5.2 states that section headings are used in the Settlement solely for convenience of reference, and shall not be used to interpret or modify the terms of the Settlement.

III. POLICY CONSIDERATIONS OF THE SETTLEMENT

The Chief Administrative Law Judge has released a public notice that specifies questions that an Explanatory Statement submitted in support of a proposed settlement agreement should address.[5] The questions, and specific responses applicable to the Settlement, are as follows:

A. What are the issues underlying the settlement and what are the major implications?

Whether a generating unit providing RMR service under Part V of the PJM OATT may include the recovery of costs, most notably embedded costs, in a filing to the FERC submitted under section 119, even though section 119 specifically limits such recovery to the "entire cost of operating the generating unit."

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[5] Errata, Notice to the Public, Information to be Provided with Settlement Agreements (October 23, 2003).

B. Whether any of the issues raise policy implications.

This proceeding concerns whether the Commission will permit recovery on or of embedded costs in filings to recover RMR costs in spite of the explicit and contrary limitation in Part V of the PJM OATT.

C. Whether any other pending cases may be affected.

Other than the filings in the captioned docket, no other pending cases will be affected by the Settlement.

D. Whether the settlement involves issues of first impression, or if there are any previous reversals on the issues involved.

The Settlement does not involve any issues of first impression or reversals, but, rather, provides for the correct implementation of Part V of the PJM OATT.

E. Whether the proceeding is subject to the just and reasonable standard or whether there is Mobile-Sierra language making it the standard, i.e. the applicable standards of review.

The Settlement is subject to the "just and reasonable" standard of review. Article 4 of the Settlement sets forth the Settling Parties' intent with respect to the standard of review that would apply to proposed changes to the Settlement. The standard of review for any modification to the Settlement, whether set forth in a written amendment executed by the Settling Parties or pursuant to the Commission's exercise of its authority under section 206 of the Federal Power Act, whether acting *sua sponte* or on a complaint filed by a Settling Party, shall be the "just and reasonable" standard. The standard of review for any modifications to the Settlement unilaterally proposed by a non-Settling Party shall be the public interest standard of review.

IV. CONCLUSION

The Settlement resolves all issues set for hearing and settlement in the July 30th Order. The Settlement also is consistent with the Commission's policies encouraging settlements. Further, the Settlement is fair, reasonable and in both the public interest and

the Settling Parties' interests in resolving this proceeding without protracted litigation. Accordingly, the Commission should approve the Settlement.

Respectfully submitted:

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APPENDIX B

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

GenOn Power Midwest, LP	)	Docket No. ER12-1901-000

SETTLEMENT AGREEMENT AND OFFER OF SETTLEMENT

This Settlement Agreement ("Settlement"), submitted to the Federal Energy Regulatory Commission for approval as an Offer of Settlement pursuant to Rule 602 of the Commission's Rules of Practice and Procedure,[6] is entered into as of December 21, 2012 by Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM. The Settlement is submitted as an Offer of Settlement to be binding upon all other parties upon Commission approval of the Settlement. If approved by the Commission, the Settlement will resolve the issues set for hearing and settlement in this proceeding.[7]

Subject to the conditions set forth in this Settlement, and with the understanding that each term of this Settlement is in consideration and support of every other term, the parties shall agree as follows:

1. Definitions.

As used in this Settlement, the following terms shall have the meanings set forth below:

1.1 The term **"Actual Net Revenues"** shall mean all revenues received by the Company from PJM markets and unit-specific bilateral contracts net of marginal cost of service recoverable under cost-based offers to sell energy

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6 18 CFR § 385.602 (2012).

7 *GenOn Power Midwest, LP*, 140 FERC ¶ 61,080 (July 30, 2012) ("July 30th Order").

from operating capacity, not less than zero, attributable to Niles Generating Station Unit 1 and the Elrama Generating Station Unit 4 during the RMR Service period.

1.2 The term **"Affiliate"** shall mean another entity, at any time since April 30, 2012, which controls the Company, is controlled by the Company or is under common control with the Company, where "control" has the meaning provided in the FERC regulations at 18 CFR § 358.3(c) (2012).

1.3 The term **"Company"** shall mean GenOn Power Midwest, LP and any successor entity.

1.4 The term **"Deactivation"** shall mean have the meaning specified in section 1.7C of the PJM OATT.

1.5 The **"Deactivation Date"** shall mean May 31, 2012, the date that the Company notified PJM that the Company would retire Niles Generating Station Unit 1 and the Elrama Generating Station Unit 4.

1.6 The term **"Documented"** shall mean a receipt or other evidence consistent with generally accepted accounting principles confirming the existence of an expenditure, its nature and its level. Such evidence must be sufficient to demonstrate that the cost is an incremental cost needed to provide RMR Service, that the cost reflects or has been adjusted to reflect an arm's length transaction at fair market value, and that the cost, if an allocation, has been allocated in manner consistent with generally accepted accounting principles and good utility practice.

1.7 The term **"FERC"** or **"Commission"** shall mean the U.S. Federal Energy Regulatory Commission.

1.8 The term **"Final Order"** shall mean an order of the FERC denying rehearing of an order approving the Settlement, or if rehearing is not sought, the date

on which the right to seek Commission rehearing of an order approving the Settlement expires.

1.9 The term **"Independent Accounting Firm"** shall mean a nationally recognized accounting firm that the Settling Parties agree has no conflict of interest in providing an accurate and reliable audit, in accordance with generally accepted accounting principles, as required under the Settlement.

1.10 The term **"Operating Costs"** shall mean, consistent with the usage of such term in sections 115 and 119 of the PJM OATT, avoidable incremental expenses directly required for the operation of a generating unit proposed for Deactivation that a Generation Owner would not incur if such generating unit deactivated on its proposed Deactivation Date rather than continuing to operate beyond its proposed Deactivation Date. Operating Costs shall be net of the fair market residual value of any good procured at the conclusion of the RMR period on September 30, 2012. Operating Costs do not include expenses incurred prior to the Deactivation Date, excepting where an expense was incurred after the Company had notified PJM that it would provide RMR Service, April 30, 2012, and such expense was incurred in order to permit the Company to provide RMR Service after the Deactivation Date.

1.11 The term **"PJM"** shall mean PJM Interconnection, L.L.C.

1.12 The term **"PJM OATT"** shall mean the PJM Open Access Transmission Tariff effective as of the date of a Final Order.

1.13 The term **"RMR Project Investment"** shall mean the amount of project investment required to enable a generating unit proposed for Deactivation to continue operating beyond its proposed Deactivation Date and shall not include any project investment incurred prior to the proposed Deactivation Date, excepting only where an investment was incurred after the Company notified PJM that it would provide RMR Service, April 30, 2012, and such

investment was made after April 30, 2012, solely in order to permit the Company to provide RMR Service after the Deactivation Date. RMR Project Investment shall be net of the fair market residual value of any such investment prior at the conclusion of the RMR period on September 30, 2012.

1.14 The term **"RMR Service"** shall mean the reliability-must-run service provided to PJM under Part V of the PJM OATT by the Niles Generating Station Unit 1 and the Elrama Generating Station Unit 4 during the period from June 1, 2012 through September 30, 2012.

1.15 The term **"RMR Service Avoidable Costs"** shall mean the sum of the (i) Operating Costs that the Company is entitled to recover, net of Actual Net Revenues, specified in section 2.1.1, (ii) the RMR Project Investment specified in section 2.1.2, if any, and (iii) the incentive adjustment rate specified in section 2.1.3.

2. Recovery of RMR Service Avoidable Costs.

2.1 The Settling Parties agree to compensate the Company for its RMR Service based on the calculation, documentation and certification of the Company's RMR Service Avoidable Costs as defined in Article 1 and as provided for in this Article 2. Components for the calculation of RMR Service Avoidable Costs shall include the following:

2.1.1 Operating Cost. The Company shall be entitled to collect the sum total, net of Actual Net Revenues, of each Operating Cost incurred by the Company for providing RMR Service, provided that such Operating Cost: (i) is Documented; (ii) reflects either the cost of an arm's length transaction with an entity that is not an Affiliate or reflects the reset at fair market value if the transaction is with an Affiliate; (iii) reflects, if such cost is an allocation, an allocation consistent with good utility practice and generally accepted

accounting principles; (iv) is subject to an audit performed by an Independent Accounting Firm, and certified by such Independent Accounting Firm; and (v) is identified and included in an informational filing in FERC Docket No. ER12-1901 no later than 180 days after this Settlement is Final. Such informational filing shall include a certified report of the audit indicated in (iv) above.

2.1.2. RMR Project Investment. The Company shall be entitled to incur any RMR Project Investment that (i) is Documented; (ii) reflects either the cost of an arm's length transaction with an entity that is not an Affiliate or reflects the reset at fair market value if the transaction is with an Affiliate; (iii) reflects, if such cost is an allocation, an allocation consistent with good utility practice and generally accepted accounting principles; (iv) is subject to an audit performed by an Independent Accounting Firm, and certified by such Independent Accounting Firm; and (v) is identified and included in an informational filing in FERC Docket No. ER12-1901 no later than 180 days after this Settlement is Final. Such informational filing shall include a certified report of the audit indicated in (iv) above. Any RMR Project Investment shall be subject to the provisions of section 118 of the PJM OATT regarding refund of project investment reimbursement.

2.1.3 Incentive Adjustment Rate. The Company shall be entitled to the application of an incentive adjustment rate of ten percent times the sum total of the (i) Operating Costs, less Net Actual Revenues, specified in section 2.1.1, and the RMR Project Investment, if any, specified in section 2.1.2, that the Company is entitled to receive under

section 2.1.1, consistent with the incentive adder specified in section of 114 of the PJM OATT.

2.2 This Article 2 specifically excludes the recovery of any costs other than RMR Service Avoided Costs as defined in section 1.15, including, without limitation, return on or of embedded costs.

2.3 Resolution of Issues. Upon the satisfaction of all conditions to the effectiveness of this Settlement, this Settlement shall operate as a full and final settlement, release, discharge, accord and satisfaction of all the disputes, claims, demands, liabilities, rights, and/or obligations related to or arising out of the issues raised by the Settling Parties in this proceeding.

3. Effective Date and Conditions

3.1 Effective Date. This Settlement shall take effect on the date the Settlement is accepted by the Commission in a Final Order.

3.2 No party shall be bound by any part of this Settlement unless it becomes effective in the manner provided by sections 3.1.

4. Modifications to Settlement; Standard of Review.

The terms of this Settlement shall be subject to change solely by written amendment executed by the Settling Parties. The standard of review for any modification to this Settlement, whether set forth in a written amendment executed by the Settling Parties or pursuant to the Commission's exercise of its authority under section 206 of the Federal Power Act, whether acting *sua sponte* or on a complaint filed by a Settling Party, shall be the "just and reasonable" standard. The standard of review for any modifications to this Settlement unilaterally proposed by a non-Settling Party shall be the public interest standard of review.

5. Miscellaneous.

5.1 The discussions among the Settling Parties have been conducted with the explicit understanding and agreement, pursuant to Rule 602(e) of the

Commission's Rules of Practice and Procedure, that all offers of settlement and discussions relating thereto are and shall be privileged, shall be without prejudice to the positions of any Settling Party or participant presenting any such offer or participating in any such discussion, and are not to be used in any manner in connection with this proceeding or otherwise (except as may be proper in a proceeding involving the interpretation and enforcement of the terms of this Settlement).

5.2 Section headings are used in this Settlement solely for convenience of reference and shall not be used to interpret or modify the terms of this Settlement.

* * * * *

IN WITNESS WHEREOF, this Settlement is entered into as of the date first written above by and between the Settling Parties through their authorized representatives, who represent that they are fully authorized to do so on behalf of their principals.

Jeffrey W. Mayes
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APPENDIX C

DRAFT ORDER APPROVING SETTLEMENT

[DATE]

Dear Mr. Mayes:

On February 28, 2013, you filed, on behalf of Monitoring Analytics, LLC, acting in its capacity as the Market Monitor for PJM, a Settlement Agreement and Offer of Settlement and accompanying materials ("Settlement") pursuant to Rule 602 of the Commission's Rules of Practice and Procedure resolving the outstanding issues in the above-referenced docket. Initial comments in support of the Settlement were filed by [INSERT PARTY] on [INSERT DATE].

The Settlement is in the public interest and is hereby approved. The documents submitted with the Settlement are accepted for filing and made effective as provided therein. The Offer of Settlement is hereby accepted and made applicable to and binding upon all parties to these proceedings. The Commission's acceptance of the Settlement does not constitute approval or precedent regarding any principle or issue in these proceedings. The Commission retains the right to investigate the rates, terms and conditions under the applicable standards set forth in the Settlement.

By Direction of the Commission,

[SEAL]

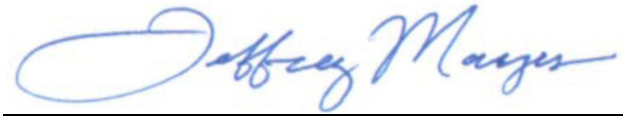
Kimberly D. Bose
Secretary

APPENDIX D

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 February, 2013.



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