UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Wildwood Lessee, LLC	)))	Docket Nos. ER22-763-000

COMMENTS OF THE
INDEPENDENT MARKET MONITOR FOR PJM
IN OPPOSITION TO OFFER OF SETTLEMENT

Pursuant to Rule 602(f) 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.[2] ("PJM"), submits this reply in opposition to the joint offer of settlement ("Offer") filed in this proceeding on December 14, 2022, by Wildwood Lessee, LLC ("Wildwood").

Wildwood proposes on a black box basis an annual total revenue requirement for reactive capability of $193,200, or $3,220 per MW-Year, or $8.82 per MW-Day for the 60 MW facility, on a nameplate capacity basis. On an equivalent capacity basis using the class average 54.0 percent ELCC derating factor for tracking solar, the Offer proposed ARR is $5,962.96 per MW-year, $16.34 per MW-day, or 47.9 percent of the $34.13 per MW-day clearing price in the last PJM capacity market auction for the Rest of RTO LDA. In effect, Wildwood is proposing that customers pay a price for the reactive ancillary service from Wildwood equal to almost half, 47.9 percent, of the price that customers pay for the capacity from Wildwood in the PJM Capacity Market. That result would be unreasonable and excessive and inconsistent with a competitive market. The Offer level, based on the class average ELCC, is excessive, has no evidentiary support and should not be accepted. But the actual excess could be larger than calculated based on the class average derating factor of the resource. To the extent that the actual unit specific ELCC for Wildwood is below the class average, the proposed cost of

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1 18 CFR § 385.602(f) (2022).

2 Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff ("OATT").

reactive per MW of capacity would increase and the degree of excess would increase. The opposite would be true if the actual ELCC were greater than the class average. The facts about the actual ELCC derating factor and the actual CIR value can be established at hearing.

The proposed ARR for the Wildwood facility is significantly higher than the average rate paid for reactive power in PJM. The average revenue requirement for reactive capability in PJM is about $2,000 per MW-year. There is no reasonable basis for such a wide disparity in cost for the same service. No justification has been provided for why customers should pay 1.6 times the average PJM price of reactive for reactive from Wildwood. Reactive is a homogeneous product which should have the same price for all sellers. This result has not been explained or supported by Wildwood in their filing or their black box Offer. This disparity is inconsistent with competitive markets.

The facts relevant to whether the level of the rate proposed by Wildwood is appropriate should be established at hearing.

The Commission may approve a contested offer of settlement only based on its merits.[3] A contested settlement may be approved on its merits under one of the four approaches set forth in *Trailblazer Pipeline Company*.[4] None of the approaches under *Trailblazer Pipeline Company* can be relied on for approval of the Offer. The Offer does not resolve the issues raised in the order setting this matter for hearing.[5] There is no record supporting the

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[3] 18 CFR § 385.602(h)(1) ("If the Commission determines that any offer of settlement is contested in whole or in part, by any party, the Commission may decide the merits of the contested settlement issues, if the record contains substantial evidence upon which to base a reasoned decision or the Commission determines there is no genuine issue of material fact.")

[4] The four approaches for approving a settlement under *Trailblazer Pipeline Company* include: (i) addressing the contentions of the contesting party on the merits when there is any adequate record; (ii) approving a contested settlement as a package on the ground that the overall result of the settlement is just and reasonable; (iii) determining that the contesting party's interest is sufficiently attenuated such that the settlement can be analyzed under the fair and reasonable standard applicable to uncontested settlements when the settlement benefits the directly affected settling parties; or (iv) preserving the settlement for the consenting parties while allowing contesting parties to obtain a litigated result on the merits. *See Trailblazer Pipeline Company*, 85 FERC ¶ 61,345 (1998).

[5] *Wildwood Lessee, LLC*, 178 FERC ¶ 61,156 at PP 21–22 (2022).

revenue requirement as just and reasonable, including as a "package." The Market Monitor represents the public interest in efficient and competitive markets. The settlement cannot be analyzed under the fair and reasonable standard applicable to uncontested settlements because the public interest in efficient and competitive markets is a central issue in this proceeding. There is no possibility of severing the issues in the manner contemplated under the *Trailblazer Pipeline Company* approaches.

Although the Commission encourages settlements, that policy is not a license to resolve cases at all costs.[6] An offer of settlement, as in this case, that is unfair, unreasonable, or against the public interest must be rejected.[7] Instead, this case should proceed to hearing so that the record can be developed and issues of material fact and law can be resolved on the merits.

Article 3.2 of the Offer's proposed settlement provides: "Wildwood tenders this Settlement solely for the purpose of resolving on a 'black box' basis through settlement the matters set for hearing by the Commission in Docket Nos. ER22-763 and does not establish any principle or precedent with respect to any issue in this proceeding or any other proceeding." If the Offer is approved, it will unavoidably establish a benchmark rate level for facilities like the Wildwood facility. The public interest is better served by resolution of the issues raised in this proceeding on the basis of a full evidentiary record and reasoned analysis.

In the attached affidavit of Dr. Joseph E. Bowring ("Affidavit"), included pursuant to Rule 602(f)(4), Dr. Bowring explains why the requested revenue requirement is excessive.[8]

The issues raised in this proceeding have significant cost implications going forward. Failing to resolve these issues means that customers must make payments to the facilities and similar facilities at levels exceeding the competitive and reasonable level for the facilities.

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6 *See, e.g.*, *Arkla Energy Resources*, 49 FERC ¶ 61,051, 61,217 (1989); *Transwestern Pipeline Co.*, 9 FERC ¶ 61,075, at 61,166 (1979).

7 496 F.3d at 701.

8 18 CFR § 385.602(f)(4).

Resolution of these issues should not be deferred. There is significantly greater administrative efficiency if new issues are resolved now, rather than after years of baseless and arbitrary settlements.

In the Affidavit, Dr. Bowring explains why the level of the annual revenue requirement is excessive. The issue of an appropriate rate level under Schedule 2 needs resolution on the merits in this case and for future cases. The Market Monitor opposes the Offer. The Offer should be rejected. Further, settlement discussions in the proceeding should be terminated, and the issues raised in this proceeding should be decided on the merits.

Respectfully submitted,

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Dated: December 20, 2022

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 20th day of December, 2022.

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Attachment
Exhibit Nos. IMM-0001–0005

Bowring Affidavit
and Supporting Exhibits