UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Eagle Creek Reusens Hydro, LLC	)	Docket Nos. ER21-2832-000, -002
Great Falls Hydroelectric Company	)	ER21-2833-000, -002
	)	(not consolidated)

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 September 3, 2021, by Eagle Creek Reusens Hydro, LLC ("ECRH") and Great Falls Hydroelectric Company ("GFHC").

ECRH proposes on a black box basis an annual total revenue requirement for reactive capability of $52.787.00, or $5,278.70 per MW-Year, or $14.46 per MW-Day for the 10 MW facility, on a nameplate capacity basis. On an equivalent capacity basis using the 95.00 percent ELCC derating factor for hydro with non pumped storage, the Offer proposed ARR is $5,556.53 per MW-year, $15.22 per MW-day, or 44.6 percent of the $34.13 clearing price in the last PJM capacity market auction for the Rest of RTO LDA. The 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 ECRH is below the class average, the proposed cost of reactive per MW of capacity increases and the degree of excess increases,

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").

potentially significantly. The facts about the actual ELCC derating factor and the actual CIR value can be established at hearing.

The proposed ARR for the ECRH Facility is significantly higher than the average rate paid for reactive power in PJM. 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 2.5 times, or more than 2.5 times, the average PJM price of reactive for reactive from ECRH. Reactive is a homogeneous product which should have the same price for all sellers. This result has not been explained or supported by ECRH in their filing or their black box Offer. This disparity is inconsistent with competitive markets.

GFHC proposes on a black box basis an annual total revenue requirement for reactive capability of $40,334.00, or $3,683.47 per MW-Year, or $10.09 per MW-Day for the 10.95 MW facility, on a nameplate capacity basis. On an equivalent capacity basis using the 42 percent ELCC derating factor for hydro intermittent, the Offer proposed ARR is $8,770.17 per MW-year, $24.03 per MW-day, or 48.6 percent of the $49.49 clearing price in the last PJM capacity market auction for the MAAC LDA. The 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 GFHC is below the class average, the proposed cost of reactive per MW of capacity increases and the degree of excess increases, potentially significantly. The facts about the actual ELCC derating factor and the actual CIR value can be established at hearing.

The proposed ARR for the GFHC Facility is significantly higher than the average rate paid for reactive power in PJM. 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 4.0 times, or more than 4.0 times, the average PJM price of reactive for reactive from GFHC. Reactive is a homogeneous product which should have the same price for all sellers. This result has not been explained or supported by GFHC in their filing or their black box Offer. This disparity is inconsistent with competitive markets.

The facts relevant to whether the levels of the rates proposed by ECRH and GFHC are 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 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.

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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 *Eagle Creek Reusens Hydro, LLC et al.*, 177 FERC ¶ 61,077 at P 12 (2021).

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.

Article 13 of the Offer's proposed settlement provides: "The Settlement establishes no principles and no precedent with respect to any issue in these proceedings." If the Offer is approved, it will unavoidably establish a benchmark rate level for facilities like the ECRH and GFHC facilities. 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. 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: August 15, 2022

[8] 18 CFR § 385.602(f)(4).

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 15th day of August, 2022.

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Attachment
Exhibit Nos. IMM-0001–0003

Bowring Affidavit
and Supporting Exhibits