

The Market Monitor argued that the “substance of the second settlement is identical to the first settlement but adds affidavits.”³ Movants assert that the affidavits provide “substantial evidence” supporting the same CRF values that were previously filed as a black box settlement. The affidavits do not provide any evidence to support the settlement. Assertions that the CRF values are not a formula rate are not evidence. Assertions that the depreciation provisions of the tax code can be ignored are not only not evidence, the assertions are clearly incorrect and inconsistent with the tariff formula that defines the CRF.

As a factual matter, the Movants’ proposed CRF rates are incorrect for five basic reasons in response to which the affidavits provide assertions but not evidence.⁴ The proposed settlement CRF values do not correctly include the bonus depreciation elements of the tax code and the proposed settlement CRF values are not consistent with the tariff formula for calculating the CRF rates as a result. That tariff formula includes the depreciation provisions of the tax code. The proposed settlement CRFs will result in a wide disparity in the actual achieved returns on equity across units ranging from 12.8 percent to 59.8 percent.⁵ The capital recovery period is not correct. The settlement CRF calculations should reflect the remaining capital recovery period, which in some cases, is less than one year. The capital investment amount is not correct. The capital investment amount should reflect capital already recovered under the existing CRF rates. The settlement CRF values are calculated using the weighted average cost of capital (WACC) model which assumes a constant debt to equity ratio during the capital recovery period. The original CRF values were calculated using a flow to equity (FTE) model. The FTE model accurately reflects the cash flows that

³ Market Monitor Answer at 2.

⁴ See Comments of the Independent Market Monitor for PJM in Opposition to Offer of Settlement, Exhibit IMM-0001 Bowring Affidavit, 13-11, EL21-91-000,-003 (February 2, 2024).

⁵ Mr. Kimbrough’s analysis of rates of return is incorrect. *See* Offer of Settlement, Docket No. EL21-91-003, Attachment D, Kimbrough Affidavit on behalf of the Indicated Suppliers at 8, (August 14, 2024).

occur during capital recovery when repayments greatly exceed the amount necessary to cover the debt payments. The FTE model should be used to revise the CRF values.

Movants state, without apparent irony, (at 4) that the “the IMM vastly understates the expenditure of resources involved in resolving this proceeding through litigation.” The Market Monitor made no prediction of the resources that will be expended by Movants in their effort to over collect payments under Schedule 6A or the additional costs imposed on others as a result. The Market Monitor argues only that the effort *required* to complete the record, resolve the issue in this proceeding and determine a just and reasonable rate is modest. The Market Monitor has repeatedly urged a speedy resolution of the issues, including a settlement among all the parties or a decision based on the merits.⁶ It is the Movants that have repeatedly delayed a resolution of the issue based on the merits. Movants’ efforts to unnecessarily raise the costs and burdens of litigation are not a proper basis to grant the Motion. Acceptance of the Movants’ motion would further delay a final decision in this matter.

This proceeding requires only a factual determination of whether the calculation of the CRF values included federal tax code provisions, and, if so, how to replace the incorrect tax rate and depreciation provisions with the correct tax rate and depreciation provisions that resulted from the passage of TCJA. If the CRF values included tax rates and tax depreciation rules in the calculation, there is no way to calculate an accurate CRF value other than to use the correct tax rate and depreciation provisions.

By proposing that the CRF values must be reduced to create a just and reasonable rate, Movants’ offer of settlement concedes the factual issue in this case. However, the offer of settlement fails to propose correctly calculated CRF values based on the tax code changes in the TCJA. The formula rate cannot be accurate if it is not based on the actual tax code. The

⁶ See, e.g., Market Monitor, et. al., Motion for Paper Hearing or, in the Alternative, Revised Time Standards for Hearing, and Request for Expedited Ruling of the Indicated Parties, EL21-91-000, et al. (September 1, 2023).

offer of settlement cannot be just and reasonable if it does not use the tariff CRF formula with the tax code inputs defined by the current tax laws.

The Movants' strategy in this proceeding is to obfuscate and confuse the simple problem and the simple solution needed to resolve the issue raised in the Commission's prior orders, delay the process and thereby avoid a just outcome. Movants financially benefit from every day of delay. It would be contrary to the public interest to grant the Motion. No good cause exists to support the Motion.

The Market Monitor respectfully requests that Your Honors afford due consideration to this answer and deny the Motion.

Respectfully submitted,



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Dated: August 29, 2024

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 29th day of August, 2024.



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