



settlement offer, filed on the same day as their procedural motions, prior to the hearing. The substance of the second settlement is identical to the first settlement but adds affidavits.

In considering whether good cause for an abeyance exists in prior cases, the Chief Judge has considered whether administrative efficiency would be furthered, whether the request for abeyance is opposed, and the extent to which the requested abeyance provides for a defined versus indefinite period.<sup>3</sup> The Motion fails all three tests. An abeyance would hinder, not further, administrative efficiency. The Motion is opposed. The abeyance period is indefinite.

That Movants have not shown how delay will facilitate resolution of the issue raised in the show cause order initiating this proceeding is a strong basis for denial of the Motion.<sup>4</sup>

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<sup>3</sup> See *San Diego Gas & Electric Co.*, 144 FERC ¶ 63,022 at P 4 (2013) (“[T]he Chief Judge finds that ... administrative efficiency would not be served by holding [a] case in abeyance.”); *Allegheny Ridge Wind Farm, LLC*, Order of Chief Judge Holding Hearing Proceeding in Abeyance, Docket No. ER19-229-003 (January 8, 2021) at P 3; *Endeavor Wind II, LLC*, Order of Chief Judge Terminating Settlement Judge Procedures and Holding Hearing Procedures in Temporary Abeyance, Docket No. ER22-2942-000, et al. (issued May 17, 2023) at P 7 (finding “good cause is not present to impose an indefinite abeyance period” in the context of a pending rehearing order because the outcome of that order is “speculative”).

<sup>4</sup> See *PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,080 at PP 46–47 (2021).

<sup>5</sup> Although the Commission encourages settlements, that policy is not a license to resolve cases at any cost and over the objections of some parties.<sup>6</sup>

There is no reason to assume that this matter can be resolved through a contested settlement. This is the second offer of settlement and this is the second motion to suspend the procedural schedule. The substance of the second settlement offer is identical to the first settlement offer but adds affidavits and includes the same effective date as the first offer. The suspension of the procedural schedule in order to consider the prior offer of settlement wasted significant resources and resulted in significant delay and resulted in a reduction of the obligation to repay the overcollections of those generation owners who propose the delays. The prior suspension resulted in the delay of the deadline for an initial decision by over four months. Consideration of the Movants' offer of settlement wastes additional time and resources that would be better used in preparation for a hearing.

Much of the investment in resources needed to obtain a resolution of this proceeding based on the merits has been expended. The principle step remaining is the vetting of filed testimony at hearing.

Suspending the procedural schedule is unnecessary. There is no reason why consideration of the offer of settlement and finalization of the hearing process cannot occur in parallel. Suspending the procedural schedule would delay the outcome of the hearing.

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<sup>5</sup> See *Tri-State Generation & Transmission Association*, 176 FERC ¶ 61,105, 61585 (2021) (“We deny Tri-State’s motion to hold the proceeding in abeyance. While we acknowledge Tri-State’s intent to submit an FPA section 205 filing to propose a new CTP methodology and new CTP procedures, we share commenters’ concerns that holding this proceeding in abeyance while the Commission considers that forthcoming filing might further delay resolution of the concerns identified in the Show Cause Order.”); *Chevron Prods. Co.*, 154 FERC ¶ 61,231 at PP 6–7 (2016) (where the Commission denied a request for abeyance because the abeyance would delay recourse; there are no outstanding policy issues currently subject to litigation warranting delay; and the factual issues presented in the proceeding are distinct from those in other pending litigation); *Ingenco Wholesale Power, L.L.C.*, 177 FERC ¶ 63,022 at P 11 (2021) (denying request for abeyance because it was not appropriate at the stage in the settlement proceeding).

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

Such delay would also compromise the ability of the Commission to grant meaningful relief, if, after the hearing concludes, the Commission agrees with the Market Monitor's position.

By order issued March 24, 2023, the Commission set the following issue for hearing and settlement judge proceedings:

[T]he determination of whether, as a result of changes from the TCJA, the existing CRF values result in a Capital Cost Recovery Rate for generating units that were selected to provide Black Start Service prior to June 6, 2021 that is unjust and unreasonable. While the record does not contain conclusive evidence that the existing CRF values include a 35% tax rate, the Market Monitor has introduced sufficient evidence that those values may include a 35% tax rate, raising a disputed issue of material fact as to whether changes to the tax rate render the existing CRF values unjust and unreasonable. The import of the tax rate in the determination of the CRF value is a material fact that cannot be determined based on the existing record, which warrants setting the justness and reasonableness of the existing CRF values for hearing and settlement judge procedures.<sup>7</sup>

The issue set for hearing is a question of fact concerning evidence showing how the CRF values included in a table in Paragraph 18 of Schedule 6A to the OATT were calculated. The issue is whether the CRF included a tax rate, such that when the tax rate changed with the implementation of the Tax Cut and Jobs Act ("TCJA"), the CRF values needed to be updated.

The Market Monitor is uniquely positioned to provide such evidence because the Market Monitor calculated the CRF values. The Market Monitor filed direct testimony on June 5, 2024, and will soon file rebuttal testimony in accordance with the procedural schedule. The factual record will soon be complete, but for a hearing. There is no reason for additional and unnecessary delay.

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<sup>7</sup> *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,194 at P 32.

Every day that the hearing is delayed complicates the ability of the Commission to provide meaningful relief, in the form of a just and reasonable recovery of capital investment. The Market Monitor should have the opportunity to establish a fact necessary to support the relief that the Market Monitor requests and to argue on brief the legal merits of its case within a reasonable time frame. Any further delays reduce the potential for customers to recover overpayments based on the incorrectly calculated CRFs. Further delay reduces the obligation to repay the overcollections of those generation owners who propose the delays. Delays in this case are not neutral but directly favor the generation owners who propose the delays.

There is no reason why the hearing cannot proceed and an evaluation of a proposed settlement cannot proceed simultaneously.

The Motion should be denied.

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 23, 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 23<sup>rd</sup> day of August, 2024.



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