UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Newark Energy Center, LLC	)	Docket No. ER24-1927-000
	)	ER15-1706-005
	)	EL23-76-001
	)	

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 offer of settlement ("Offer") filed in this proceeding on May 2, 2024, by Newark Energy Center, LLC ("NEC").

NEC proposes on a black box basis an annual total revenue requirement (ARR) for reactive capability of $1,950,000, or $2,582.78 per MW-year, or $7.08 per MW-day for the 755 MW facility, on an ICAP basis. There is no record in this case that supports the proposed ARR. As a result, the settlement rate cannot be evaluated based on record evidence provided to support a revised rate. The proceeding involves an investigation ordered by the Commission as a result of an informational filing reporting a change in ownership. This case was set for hearing after an impasse was declared in the settlement judge proceeding, but the black box settlement rate was negotiated prior to the first prehearing conference. The current rate became effective September 21, 2015.[3]

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1 18 CFR § 385.602(f) (2023).

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

3 *See Newark Energy Center, LLC*, Delegated Letter Order, Docket No. ER15-1706-004 (October 4, 2016), as corrected by an errata notice issued October 6, 2016, correcting the effective date.

The proposed ARR for the NEC facility is significantly higher than the average rate paid for reactive power in PJM. The average revenue requirement for reactive capability in PJM was $1,927 per MW-year in 2023. No supporting rationale or justification has been provided for why customers should pay 1.34 times the average PJM price of reactive for reactive from NEC. There is no reasonable basis for the proposed disparity in cost for the same service. Reactive is a homogeneous product which should have the same price for all sellers. This result has not been explained or supported by NEC 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 NEC are appropriate should be established at hearing. The first issue that should be examined at hearing is why PJM customers should pay any revenue requirement to NEC under Schedule 2. In the recent *Midcontinent Independent System Operator, Inc. (MISO)* case, the Commission approved MISO's FPA § 205 filing revising the MISO Tariff Schedule 2 to eliminate all charges under Schedule 2 for the provision of reactive power within the standard power factor range.[4] The decision found "the provision of reactive power within the standard power factor range is, in the first instance, an obligation of the interconnecting generator and good utility practice," and there is, thus, no obligation to provide separate compensation for reactive capability.[5] The Commission explained that its holding reaffirms its stated policies, e.g., in Order No. 2003.[6] It is also consistent with the approach long used in other RTOs, including CAISO and SPP.[7] The Commission rejected arguments that reactive payments should be continued "because generators have come to rely on the compensation for Reactive Service in order for the generators to remain financially viable."[8] The Market Monitor has argued this position in

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4 182 FERC ¶ 61,033 (2023).

5 *Id*. at P 53.

6 *Id*.

7 *Id*. at PP 56–57.

8 *Id*. at P 54.

the *Fern Solar* hearing, where its brief on exceptions to the initial decision is pending before the Commission.[9]

The Commission may approve a contested offer of settlement only based on its merits.[10] A contested settlement may be approved on its merits under one of the four approaches set forth in *Trailblazer Pipeline Company*.[11] 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, even though an investigation of whether the current rate remains just and reasonable was the purpose of this Section 206 proceeding.[12] 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

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9 *See Fern Solar LLC*, Docket No. ER20-2186, et al.

10 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.").

11 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).

12 *Newark Energy Center, LLC*, 184 FERC ¶ 61,037 at P 12 (2023) ("[W]e find that the informational filing raises concerns about the continued justness and reasonableness of NEC's Rate Schedule. First, there appears to be degradation in the reactive power output capability of the NEC Facility based upon the reactive power test data supplied by NEC.[footnote omitted] Second, because the federal corporate income tax rate has been reduced to 21%, absent a change to NEC's Rate Schedule, which is a stated rate, NEC's Rate Schedule may not accurately reflect its cost of service.[footnote omitted] Accordingly, we institute proceedings pursuant to section 206 of the FPA in Docket No. EL23-76-000 to determine whether NEC's Rate Schedule remains just and reasonable.").

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.[13] An offer of settlement, as in this case, that is unfair, unreasonable, or against the public interest must be rejected.[14] 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 11 of the Offer's proposed settlement provides: "The Offer of Settlement is not intended to establish precedent with respect to any issue in this proceeding." If the Offer is approved, it will unavoidably establish a benchmark rate level for facilities like the NEC 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 requirements are excessive and unsupported.[15]

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

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

[14] 496 F.3d at 701.

[15] 18 CFR § 385.602(f)(4).

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: May 22, 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 22nd day of May, 2024.

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Attachment
Exhibit Nos. IMM-0001–0003

Bowring Affidavit
and Supporting Exhibits