

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Independent Market Monitor for PJM	)	Docket No. EL24-113-000
	)	
v.	)	
	)	
Indicated Energy Efficiency Sellers	)	
	)	

**REPLY COMMENTS OF THE  
INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rule 602(f)(2) of the Commission’s Rules and Regulations,<sup>1</sup> Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),<sup>2</sup> submits this reply to the comments filed October 22, 2024, by Affirmed Energy LLC (“Affirmed”) and by Enerwise Global Technologies, LLC d/b/a CPower (“CPower”) on the partial offer of settlement filed in this proceeding on September 30, 2024 (“Partial Settlement”).<sup>3</sup> The Partial Settlement resolves for the Settling Parties the issues raised in the Complaint filed May 31, 2024 (“Complaint”), by the Market Monitor.

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<sup>1</sup> 18 CFR § 385.602(f)(2) (2024).

<sup>2</sup> Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”).

<sup>3</sup> The Partial Settlement is between the Market Monitor and the utility respondents, including Exelon Corporation on behalf of its affiliates Atlantic City Electric Company, Baltimore Gas and Electric Company, Commonwealth Edison Company, Delmarva Power & Light Company, Potomac Electric Power Company, and PECO Energy Company (“Exelon Utilities”); FirstEnergy Service Company, on behalf of FirstEnergy Corp. and its affiliates FirstEnergy Pennsylvania Electric Company, Jersey Central Power & Light Company and The Potomac Edison Company; Public Service Electric and Gas Company; Southern Maryland Electric Cooperative, Inc.; and Rockland Electric Company (collectively, “State Regulated Utility Respondents”) that resolves all issues in dispute in this proceeding between the Market Monitor and the State Regulated Utility Respondents (“Settling Parties”).

The Complaint states (at 1–2) that “It is unjust and unreasonable to require PJM customers to pay a total of \$128 million in the BRA alone for EE MW that have not been demonstrated to meet the requirements to be paid.”

The Partial Settlement provides that “the Market Monitor will not object to PJM discontinuing its review of the PIMV Reports of the State Regulated Utility Respondents for the 2024/2025 Delivery Year.” The Partial Settlement explains (at Art. II, § 2.0):

The current circumstances include, without limitation, the Market Monitor’s expectation that the Commission will approve PJM’s filing in Docket No. ER24-2995-000 that would confirm that removal of EE from PJM’s capacity market construct. In addition, the Market Monitor believes that there are benefits to narrowing the scope of the complaint proceeding to review of Respondents not subject to the oversight and protection afforded by RERRAs.”

Neither Affirmed nor CPower specifically or clearly oppose the Partial Settlement, but, rather continue to argue against the Complaint. Affirmed (at 2–4) argues that the Tariff does not set forth different compliance requirements for utility versus non-utility programs, but differences in compliance requirements are not the basis for the settlement. The basis for the settlement is the additional oversight and protection of the RERRAs and the associated attestations. The basis for the settlement, the reliance on the attestations, is unchallenged. The Partial Settlement should be treated by the Commission as uncontested and approved.

If nevertheless, the Complaint is deemed contested, then it should be approved under the standards set forth in *Trailblazer*.<sup>4</sup>

CPower also argues that some of its activities relevant to the Complaint are covered or should be covered by the Partial Settlement because they are covered by the logic of the Partial Settlement. The Market Monitor does not object to discussing this issue with CPower. Regardless, this argument by CPower is not a valid basis for contesting the Partial Settlement.

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<sup>4</sup> See, e.g., *See Trailblazer Pipeline Company*, 85 FERC ¶ 61,345 (1998) (*Trailblazer*).

## I. ARGUMENT

### A. The Partial Settlement Is Uncontested and Should Be Approved.

Although styled as comments on the Partial Settlement, Affirmed and CPower largely repeat their arguments against the Complaint and not the Partial Settlement. Neither Affirmed nor CPower specifically or clearly oppose the Partial Settlement. Instead Affirmed and CPower use the comment period established for consideration of the Partial Settlement as an opportunity to repeat their arguments against the Complaint. A settlement should not be deemed contested based on arguments directed against the Complaint. Only arguments clearly directed against approval of the settlement should be considered in evaluating the settlement. The Partial Settlement should be treated by the Commission as uncontested and approved.

### B. The Partial Settlement Should Be Approved Even If It Is Deemed Contested.

The Partial Settlement should be approved even if it is deemed contested. A contested offer of settlement may be approved under one of the four approaches set forth in *Trailblazer Pipeline Company*.<sup>5</sup> Each of the four of approaches under *Trailblazer Pipeline Company* provide a separate basis for approval of the Partial Settlement.

The first and second *Trailblazer* approaches provide a basis to approve the Partial Settlement, if it is deemed contested.

The first two *Trailblazer* approaches provide for evaluation of whether a settlement is just and reasonable on the merits.<sup>6</sup> Neither Affirmed nor CPower argue against the merits of the settlement either based on its individual elements or considered as a package. Their

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<sup>5</sup> 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, e.g.*, 85 FERC ¶ 61,345 at 62,342–62,345 (1998).

<sup>6</sup> *Id.*

arguments are instead directed against the Complaint. Arguments against the Complaint are not relevant to the merits of the Partial Settlement.

The Partial Settlement is just and reasonable because it defers to the RERRAs where the RERRAs provide additional oversight and protection. The attestations confirm that additional oversight and protection exists.

The third and fourth *Trailblazer* approaches provide a strong basis to approve the Partial Settlement, if it is deemed contested.

The third *Trailblazer* approach considers whether 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.<sup>7</sup> The interests of respondents not party to the Partial Settlement are not harmed by the Partial Settlement. The Partial Settlement provides no determination on the merits of the Complaint. The Complaint applies to each respondents' individual post installation measurement and verification ("PIMV") report. The Partial Settlement benefits the Settling Parties because it allows a resolution of this proceeding based on the attestations affirming state regulatory review. The Partial Settlement avoids litigation deemed unnecessary by the Settling Parties.

Neither Affirmed nor CPower explained how approval of Partial Settlement would harm their interests. Neither Affirmed nor CPower have shown anything other than what is at best a highly attenuated interest in the terms of the Partial Settlement. The Partial Settlement has no impact on consideration of Affirmed's and CPower's PIMV reports. If approved, the Partial Settlement will provide for more efficient and expeditious consideration of Affirmed's and CPower's PIMV reports. The Partial Settlement should be approved under the third approach in *Trailblazer*.

The fourth *Trailblazer* approach considers whether a settlement can be preserved for the consenting parties while allowing contesting parties to obtain a litigated result on the

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<sup>7</sup> *Id.*

merits.<sup>8</sup> Approving the Partial Settlement would have no impact on the ability of Affirmed or CPower to litigate their case.

CPower also argues that some of its activities relevant to the Complaint are covered or should be covered by the Partial Settlement because they are covered by the logic of the Partial Settlement. The Market Monitor does not object to discussing this issue with CPower. Regardless, this argument by CPower is not a valid basis for contesting the Partial Settlement.

The Partial Settlement should be approved under the fourth *Trailblazer* approach.

## II. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this pleading as the Commission considers whether to approve the Partial Settlement.

Respectfully submitted,



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Dated: October 30, 2024

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<sup>8</sup> *Id.*

## 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 30<sup>th</sup> day of October, 2024.



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