

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

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| |) | |
| Calpine Corporation, Dynegy Inc., Eastern |) | |
| Generation, LLC, Homer City Generation, |) | Docket No. EL16-49-000 |
| L.P., NRG Power Marketing LLC, GenOn |) | |
| Energy Management, LLC, Carroll County |) | |
| Energy LLC, C.P. Crane LLC, Essential Power, |) | |
| LLC, Essential Power OPP, LLC, Essential |) | |
| Power Rock Springs, LLC, Lakewood |) | |
| Cogeneration, L.P., GDF SUEZ Energy |) | |
| Marketing NA, Inc., Oregon Clean Energy, |) | |
| LLC and Panda Power Generation |) | |
| Infrastructure Fund, LLC |) | |
| v. |) | |
| PJM Interconnection, L.L.C. |) | |
| |) | |

ANSWER OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rules 212 and 213 of the Commission’s Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM² (“Market Monitor”), submits this answer in support of the amended complaint filed on January 9, 2017, by the Electric Power Supply Association (“EPSA”), et al. (“Amended Complaint”), and in opposition to the motion of the Dayton Power and Light Company, et al. to dismiss, etc. filed in this proceeding on January 24, 2017 (“January 24th Motion to

¹ 18 CFR §§ 385.212 & 385.213 (2016).

² Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”) or the PJM Operating Agreement (“OA”).

Dismiss").³ The Amended Complaint supplements the Complaint Requesting Fast Track Processing filed by EPSA, et al. on March 21, 2016, initiating this proceeding ("March 21st Complaint"). The Amended Complaint amplifies the concerns about the threat to competitive markets posed by subsidies designed to forestall retirements of uneconomic and uncompetitive generating units raised in the March 21st Complaint by providing an additional example of the problem and creates new urgency to craft a comprehensive rule to address this issue. The Amended Complaint should be accepted and processed within the timeframe requested.

I. ANSWER

The Amended Complaint adds an additional significant example of the identified problem that further justifies granting the complaint and reforming PJM's Minimum Offer Price Rule.⁴

The Market Monitor agrees with EPSA et al. that the ZEC legislation in Illinois constitutes the same kind of threat to the operation of the PJM markets as was posed by the Ohio Public Utility Commission ("OPUC") proceedings identified in the March 21st Complaint and continues to be posed in the OPUC's subsidies proceeding involving the Dayton Power and Light Company (Case No. 16-0395).⁵ The Market Monitor agrees with EPSA et al.'s explanation in the Amended Complaint of the nature of the threat to PJM

³ Motion of the Dayton Power and Light Company, East Kentucky Power Cooperative, Inc. and FirstEnergy Service Company to Dismiss Complaint, to Oppose Acceptance of Motion to Amend Complaint and to Dismiss Amendment to the Complaint and Request for Expedited Action, EL16-49-000 (January 24, 2017).

⁴ OATT Attachment DD § 5.14(h)(Minimum Offer Price Rule for Certain Generation Capacity Resources).

⁵ Illinois 99th Gen. Assemb., S.B. 2814 (Dec. 7, 2016).

markets (at 11–16), which relies in part upon prior statements of the Market Monitor in this and other proceedings.⁶

The January 24th Motion to Dismiss relies primarily on the claim that the Illinois ZEC Legislation is driven by policy concerns that differ from those in Ohio. But the Ohio proceedings and the ZEC proceeding all originate from the fact that competitive markets result in the exit of uneconomic and uncompetitive generating units. Regardless of the specific rationales, the proposed solution for all such generating units is to provide out of market subsidies in order to retain such units. The proposed solution in all cases ignores the opportunity cost of subsidizing uneconomic units, which is the displacement of units that would otherwise be economic. These subsidies were all requested by the owners of uneconomic generating units for specific generating units. These subsidies were not requested to accomplish broader social goals. Broader social goals can all be met with market based mechanisms available to all market participants on a competitive basis and without discrimination.

The Amended Complaint should be accepted because it would establish a refund date applicable to Exelon Corporation, the beneficiary of the ZEC Legislation.⁷ Section 206(b) allows for a refund date starting up to five months after filing the complaint. In order to remove potential ambiguity about the application of the refund date, the refund should be established no later than the commencement of the Base Residual Auction, which is scheduled to occur May 9, 2017. A refund date will not be sufficient, however. If a unit subject to ZEC Legislation clears the auction and is subsequently found to have been improperly included, the Base Residual Auction would need to be rerun without such unit to ensure competitive results.

⁶ Amended Complaint at 4–6, 13–14.

⁷ Federal Power Act § 206(b), 16 USC § 824e(b).

Neither the March 21st Complaint nor the Amended Complaint are moot for the reasons in the Market Monitor’s answer filed June 8, 2016 (“June 8th Answer”), to the motion to dismiss to the March 21st Complaint filed in this proceeding May 6, 2016.⁸ On the contrary, similar threats to competitive markets and the potentially precedential nature of these actions enhance the urgency of creating an effective rule to maintain competitive markets by modifying market rules to address these subsidies. Fortunately, this can be accomplished quickly by expanding the coverage of an existing rule that already reflects stakeholder compromises. Because the arguments raised by the Market Monitor in its June 8th Answer apply with equal force to the January 24th Motion to Dismiss (incorporated here by reference), the Motion should be denied.

The Amended Complaint does not include every current example of the use of subsidies to forestall retirement of financially distressed assets. The ZEC program adopted in New York is another example and was the basis for the Illinois ZEC program and could be the basis for more such programs.⁹ Competition in the markets could be replaced by competition to receive subsidies.

The Market Monitor continues to differ with EPSA et al. on how to best protect PJM markets. The best approach is to reform the existing Minimum Offer Price Rule, which applies only to subsidies for new gas fired combined cycle units, to a modified form applicable to subsidies for all existing units. For the reasons provided in its comments filed in this proceeding April 11, 2016 (“April 11th Comments”), the Market Monitor continues to

⁸ Answer and Motion for Leave to Answer of the Independent Market Monitor for PJM, EL16-49-000 (June 8, 2016).

⁹ Brief of Amicus Curiae Monitoring Analytics, LLC, acting in its Capacity as the Independent Market Monitor for PJM, in Support of Plaintiffs, Case No. 1:16-cv-08164-VEC (USDC SDNY January 6, 2017).

advocate the adoption of its specific tariff language to reform the Minimum Offer Price Rule.¹⁰

PJM markets have no protection against this emergent threat. Accurate signals for entry and exit are necessary for well functioning markets. Competitive investors rely on accurate signals to make decisions. The current MOPR only addresses subsidies for new entry. The cited subsidies demonstrate that the markets need protection against subsidized, noncompetitive offers from existing as well as new resources. The MOPR should be expanded to address subsidies for existing units, and this proceeding provides an opportunity to address this issue expeditiously. This complaint will not become moot unless and until the MOPR is reformed.

Action is needed in this proceeding to correct the MOPR immediately. The Amended Complaint should be accepted into the record, the Motion to Dismiss should be denied, and the Market Monitor's revised Minimum Offer Price Rule proposed in its April 11th Comments should be accepted as the best means to defend the PJM markets from threat posed by subsidies intended to forestall retirement of financially distressed assets.

¹⁰ Comments of the Independent Market Monitor for PJM, EL16-49-000 (April 11, 2016) at 8–11.

II. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this answer as the Commission resolves the issues raised in this proceeding.

Respectfully submitted,



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Dated: January 30, 2017

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 30th day of January, 2017.



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