

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

**PJM Interconnection, L.L.C.**

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**Docket No. EL21-91-003**

**REPLY COMMENTS OF PJM INTERCONNECTION, L.L.C.**

Pursuant to Rule 602(f) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),<sup>1</sup> PJM Interconnection, L.L.C. (“PJM”) submits these reply comments on the Offer of Settlement (“Settlement”)<sup>2</sup> in response to the comments in opposition to the settlement of Monitoring Analytics, LLC, in its capacity as the Independent Market Monitor (“IMM”).<sup>3</sup> Because the IMM fails to raise a genuine issue of material fact with respect to the Settlement, the Presiding Judge should certify the Settlement to the Commission. Moreover, the Commission should approve the Settlement pursuant to *Trailblazer Pipeline Co.*<sup>4</sup> as consistent with the public interest.

**I. BACKGROUND**

As explained in the Settlement, this proceeding concerns the Capital Recovery Factor (“CRF”) rate for certain Black Start Units selected prior to June 6, 2021.<sup>5</sup> In 2021, the Commission permitted PJM to revise Schedule 6A of its Open Access Transmission

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<sup>1</sup> 18 C.F.R. § 385.602(f).

<sup>2</sup> *PJM Interconnection, L.L.C.*, Settlement Agreement and Offer of Settlement of PJM Interconnection, L.L.C., Docket Nos. ER21-1635-005 & EL21-91-003 (Jan. 31, 2024).

<sup>3</sup> Comments of the Independent Market Monitor for PJM in Opposition to Offer of Settlement, Docket No. EL21-91-003 (Feb. 20, 2024) (“IMM Comments”).

<sup>4</sup> *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345 (1998) (“*Trailblazer*”), *order on reh’g*, 87 FERC ¶ 61,110 (1999).

<sup>5</sup> See Settlement, Art. I §§ 1.1-1.2.

Tariff effective June 6, 2021, to provide a formula-based rate option for Black Start Service on a going-forward basis,<sup>6</sup> but initiated this proceeding to investigate PJM’s existing CRF rates in Schedule 6A.<sup>7</sup> In particular, the Commission sought to determine whether the existing rates for Black Start Units “which are based on a federal corporate income tax rate that pre-dates the Tax Cuts and Jobs Act of 2017 (TCJA), remain just and reasonable.”<sup>8</sup> The Commission directed PJM to either “(1) propose revisions to its Black Start Service rates to reflect changes in the federal corporate income tax rate and describe the methodology used for making those revisions; or (2) show cause why it should not be required to do so.”<sup>9</sup>

After initial settlement discussions stalled and the matter was set for hearing,<sup>10</sup> PJM and the other active participants (with the exception of the IMM) came to an agreement to resolve all of the matters set for hearing in this proceeding. Thus, PJM filed the Settlement on January 31, 2024. Importantly, the Settlement is supported or not opposed by participants in this proceeding representing both generation and load interests. Specially, the Settlement is joined by American Municipal Power, Inc., Dynegy Marketing and Trade, LLC, Hazelton Generation, LLC, J-POWER USA Development Co., Ltd., LS Power Development, LLC, Old Dominion Electric Cooperative, PJM Industrial Customer Coalition, and Vistra Corp. (together with PJM, the “Settling Parties”). In addition to the

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<sup>6</sup> *PJM Interconnection, L.L.C.*, 176 FERC ¶ 61,080, at P 1 (2021).

<sup>7</sup> *Id.* at P 2.

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

<sup>9</sup> *Id.*

<sup>10</sup> *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,194, *order on reh’g*, 184 FERC ¶ 61,077 (2023).

Settling Parties, Maryland Office of People’s Counsel, Office of the People’s Counsel for the District of Columbia, the Public Utilities Commission of Ohio Office of the Federal Energy Advocate, and the Delaware Division of the Public Advocate do not oppose the Settlement.

On February 20, 2024, the IMM filed comments and an affidavit in opposition to the Settlement. According to the IMM’s affidavit “[t]he updated CRFs were incorrectly calculated using the correct components of the CRF formula in Schedule 6A . . . but with the incorrect input values.”<sup>11</sup> The IMM acknowledges that “[t]he federal income tax rate is the only parameter that was updated to calculate the proposed settlement CRFs.”<sup>12</sup> In other words, the IMM’s analysis shows that the proposed Settlement CRF was re-calculated using the same methodology and inputs, except for an updated corporate tax rate of 21%.<sup>13</sup> Nonetheless, the IMM argues that the settlement should be rejected due to a litany of other alleged issues with the calculation inputs, including the bonus depreciation rate,<sup>14</sup> the return on equity,<sup>15</sup> the capital recovery period,<sup>16</sup> the capital investment amount,<sup>17</sup> and use of a weighted average cost of capital model instead of a flow to equity model.<sup>18</sup>

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<sup>11</sup> IMM Comments, Ex. No. IMM-0001 Affidavit of Joseph E. Bowring on Behalf of the Independent Market Monitor for PJM at 12:30-32.

<sup>12</sup> *Id.* at 13:1-2.

<sup>13</sup> *See id.* at 13:7-8.

<sup>14</sup> *Id.* at 13:11-22.

<sup>15</sup> *Id.* at 14:3-15.

<sup>16</sup> *Id.* at 15:1-3.

<sup>17</sup> *Id.* at 15:4-12.

<sup>18</sup> *Id.* at 15:13-20.

## II. REPLY COMMENTS

### A. The IMM Has Not Raised a Genuine Issue of Material Fact.

Although the IMM argues that various inputs to the CRF were improperly calculated, the IMM fails to raise a genuine issue of material fact because the IMM agrees that the Settlement properly calculates the CRF with respect to the corporate tax rate. The Presiding Judge can certify the Settlement to the Commission under Rule 602(h)(2)(ii) to the extent there is no genuine issue of material fact.<sup>19</sup> The only questions the Commission set for hearing in this proceeding were whether the CRF was calculated using the pre-TCJA tax rate and whether the CRF remained just and reasonable in light of the TCJA's reduction in the corporate tax rate.<sup>20</sup> The IMM's own affidavit agrees that the Settlement resolves those issues by proposing a CRF that has been updated to reflect the current corporate tax rate.<sup>21</sup> The remainder of the alleged flaws with the CRF inputs (i.e., the return on equity, bonus depreciation, etc.) are beyond the scope of this proceeding.<sup>22</sup> Therefore, the Presiding Judge can certify the Settlement pursuant to Rule 602(h)(2)(ii).

### B. The Commission Should Approve the Settlement Under *Trailblazer*.

The Commission should approve the Settlement under the second *Trailblazer* approach because it provides a just and reasonable overall result. The Commission may “approve a contested settlement as a package on the ground that the overall result of the

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<sup>19</sup> 18 C.F.R. § 385.602(h)(2)(ii).

<sup>20</sup> *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,194, at P 32.

<sup>21</sup> See IMM Comments, Ex. No. IMM-0001 at 13:1-2 (“The federal income tax rate is the only parameter that was updated to calculate the proposed settlement CRFs.”).

<sup>22</sup> *PJM Interconnection, L.L.C.*, 181 FERC ¶ 61,181, at P 29 (2022) (approving contested settlement after finding various concerns about the settlement to be beyond the scope of the proceeding).

settlement is just and reasonable.”<sup>23</sup> This requires a demonstration that the objecting party is “no worse off” under the settlement than it would be if the case were litigated.<sup>24</sup> That is the case here. The IMM will not be harmed by the Commission’s approval of the Settlement. The IMM’s stated interest in this proceeding is to “represent[] the public interest in efficient and competitive markets.”<sup>25</sup> The IMM, however, does not pay the CRF rates and therefore cannot be harmed by the Commission’s approval of the Settlement. Therefore, the objecting party will be no worse off as a result of the Commission’s approval of the Settlement.

In addition, the Settlement produces a just and reasonable overall result. Indeed, the IMM’s opposition underscores the justness and reasonableness of the Settlement. According to the IMM’s affidavit, the CRF values proposed in the Settlement represent CRF values that have been updated to reflect the changes in the corporate tax rate that resulted from the TCJA.<sup>26</sup> Therefore, the Settlement resolves all of the issues in this proceeding while avoiding additional protracted litigation. As the IMM noted, the refund protection in this proceeding expired on November 17, 2022.<sup>27</sup> Thus, approval of the Settlement would result in a reduction of the CRF effective January 1, 2024, while avoiding additional procedures. This result is just and reasonable.

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<sup>23</sup> *Trailblazer*, 85 FERC ¶ 61,345, at 62,342.

<sup>24</sup> *PJM Interconnection, L.L.C.* 181 FERC ¶ 61,181, at PP 24, 29.

<sup>25</sup> IMM Comments at 3.

<sup>26</sup> *Id.*, Ex. No. IMM-0001 at 13:1-2 (“The federal income tax rate is the only parameter that was updated to calculate the proposed settlement CRFs.”).

<sup>27</sup> IMM Comments at 1.

### III. CONCLUSION

For the foregoing reasons, PJM respectfully requests that the Presiding Judge certify the Settlement pursuant to Rule 602(h)(2)(ii) and the Commission approve the Settlement.

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Respectfully submitted,

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March 1, 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 Washington, D.C., this 1st day of March 2024.

*/s/ Ruth M. Porter*  
Ruth M. Porter