

149 FERC ¶ 61,218
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

GenOn Power Midwest, LP

Docket Nos. ER12-1901-000
ER12-1901-001

ORDER APPROVING CONTESTED SETTLEMENT AGREEMENT

(Issued December 8, 2014)

1. On February 28, 2013, Monitoring Analytics, LLC, in its capacity as the Independent Market Monitor (Market Monitor) for PJM Interconnection, L.L.C. (PJM), filed a unilateral Settlement Agreement and Offer of Settlement (Market Monitor Settlement). On May 8, 2013, GenOn Power Midwest, LP (GenOn) filed a Settlement Agreement and Offer of Settlement (GenOn Settlement) on behalf of the Settling Parties,¹ establishing a revised Reliability Must-Run (RMR) Rate Schedule (Revised RMR Rate Schedule).²
2. In this order, the Commission approves the GenOn Settlement and the Revised RMR Rate Schedule and rejects the Market Monitor Settlement.

¹ The Settling Parties consist of: Gen On, Duquesne Light Company, Duquesne Light Energy, LLC, FirstEnergy Solutions Corp., Duquesne Industrial Intervenors, PJM Industrial Customer Coalition, West Penn Power Industrial Intervenors, and Old Dominion Electric Cooperative.

² NRG Power Midwest LP, Cost-Based Rate Schedules, [RMR Agreement, Electric Rate Schedule FERC No. 3, 1.0.0](#). On December 13, 2012, in Docket No. EC12-134-000, the Commission approved a merger application for NRG Energy, Inc. (NRG Energy) and GenOn Energy, Inc. (GenOn Energy) (and their public utility subsidiaries) in which NRG Energy acquired and combined GenOn Energy. *See NRG Energy, Inc. and GenOn Energy, Inc.*, 141 FERC ¶ 61,207 (2012).

I. Background

3. The deactivation of generating units in the PJM region is governed by Part V of the PJM Open Access Transmission Tariff (PJM Tariff).³ According to these provisions, a generation owner must provide PJM with notice of its intent to deactivate a unit at least 90 days prior to the unit's proposed deactivation date.⁴ On notice of intent to deactivate a unit PJM will then study the transmission system to determine if the proposed deactivation could adversely affect system reliability, and will then notify the generation owner within 30 days of the specific reliability concerns and provide an estimate of the period of time needed to construct needed transmission upgrades.

4. The generation owner has a right to deactivate a generating unit, following timely notification to PJM, even if PJM determines that there are reliability concerns. However, the generation owner may elect to continue to operate the unit past its planned deactivation date to maintain system reliability pending the completion of necessary transmission system upgrades. If the generation owner agrees to remain in operation for reliability reasons, PJM's Tariff provides two methods of compensation. Specifically, a generator could either file with the Commission to receive compensation under a default compensation mechanism,⁵ or for a cost-of-service rate in order to recover the cost of operating the unit beyond its proposed deactivation date.⁶

5. On May 31, 2012, GenOn filed a proposed RMR Rate Schedule to govern the operation of two generating units, one generating unit in southeastern Pennsylvania (Elrama Unit 4), and one generating unit in northeast Ohio (Niles Unit 1) (collectively, the RMR Units) that PJM determined would be needed past the date of their planned deactivation to maintain transmission system reliability pending the completion of

³ PJM, Intra-PJM Tariffs, OATT, Part V, *Generator Deactivation*.

⁴ PJM, Intra-PJM Tariffs, OATT, Part V § 113.

⁵ The default compensation mechanism is a formula rate that consists of the unit's going-forward costs and, where appropriate an adder for project investment. *See* PJM, Intra-PJM Tariffs, OATT, Part V § 114 (Deactivation Avoidable Cost Credit); § 115 (Deactivation Avoidable Cost Rate).

⁶ The Tariff allows a generation owner with a generating unit proposed for deactivation that continues operating beyond its proposed deactivation date to recover the entire cost of operating the generating unit until such time at the generating unit is deactivated. *See* PJM, Intra-PJM Tariffs, OATT, Part V § 119 (Cost of Service Recovery Rate).

scheduled upgrades to the transmission system.⁷ On July 30, 2012, the Commission accepted and suspended the RMR Rate Schedule to be effective June 1, 2012, subject to refund, and establishing hearing and settlement procedures.⁸

6. As previously noted, the Market Monitor Settlement was filed on February 28, 2013, and on May 8, 2013, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure,⁹ GenOn filed the GenOn Settlement.¹⁰ GenOn states that the Settling Parties are authorized to state that the GenOn Settlement is not opposed by American Electric Power Service Corporation, American Municipal Power, Inc., Dayton Power and Light Company, North Carolina Electric Membership Corporation, and Southern Maryland Electric Cooperative, Inc.

7. On July 5, 2013, the Administrative Law Judge issued a Report of Contested Settlement (ALJ Report), notifying the Commission that the settlement agreements are contested and are before the Commission for its consideration.¹¹

II. Proposed Settlements

A. GenOn Settlement

8. The GenOn Settlement sets forth the Revised RMR Rate Schedule, which revises the terms, conditions, and rates under which GenOn was compensated for the operation of the RMR Units that PJM determined were needed past the date of their planned June 1, 2012 deactivation date, until September 30, 2012 (Locked-In RMR Term), to maintain transmission system reliability pending the completion of scheduled upgrades to the transmission system. The GenOn Settlement reflects a negotiated black box settlement rate of \$13,200,000 for the Locked-In RMR Term, which is a reduction from the initial \$23,982,098 that GenOn filed for RMR service from PJM under the originally proposed RMR Rate Schedule.

⁷ NRG Power Midwest LP, Cost-Based Rate Schedules, [RMR Agreement, Electric Rate Schedule FERC No. 3, 0.0.0](#)

⁸ *GenOn Power Midwest, LP*, 140 FERC ¶ 61,080 (2012) (July 30, 2012 Order).

⁹ 18 C.F.R. § 385.602 (2014).

¹⁰ The GenOn Settlement contains the Revised RMR Rate Schedule as Settlement Attachment A.

¹¹ *GenOn Power Midwest, LP*, 144 FERC ¶ 63,001 (2013).

9. As a result, the GenOn Settlement stipulates that GenOn shall refund to PJM the difference plus interest calculated under 18 C.F.R. § 35.19a (2014). The GenOn Settlement also states that the Settling Parties expect that PJM will distribute the refund payment to the same customers that paid amounts invoiced under the RMR Rate Schedule in the same proportion as each customer paid.

10. The GenOn Settlement states that the standard of review for changes to any rate, charge, classification, term or condition of the rate schedule, whether proposed by PJM, any party with standing under section 206 of the Federal Power Act, or the Commission acting *sua sponte*, shall solely be the most stringent standard of review permissible under law.¹² The GenOn Settlement further states that it will become effective the date of a Commission Order approving the GenOn Settlement “without conditions or modifications unacceptable to any Settling Party.”¹³ Finally, the Revised RMR Rate Schedule, with an effective date of June 1, 2012, is included as Attachment A to the GenOn Settlement and shall supersede the original RMR Rate Schedule.¹⁴

B. Market Monitor Settlement

11. The Market Monitor Settlement sets forth a rate methodology for the recovery of going-forward costs only.¹⁵ The Market Monitor Settlement does not specify the level of operating costs that GenOn can recover; it specifies only the “theory and criteria for recovery,”¹⁶ and provides that GenOn may not include a return on or of embedded costs,

¹² GenOn Settlement at P 16 (Standard of Review) (citing *United Gas Pipe Line Company v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); and *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 527 (2008); and *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165 (2010)). See also Revised RMR Rate Schedule, Article V, § 5.1 (Standard of Review).

¹³ GenOn Settlement at P 21 (Approval).

¹⁴ GenOn Settlement at P 8.

¹⁵ Section 2 of the Market Monitor Settlement precludes recovery of any costs other than “RMR Service Avoidable Costs,” which are calculated as the sum of Operating Costs (net of Actual Net Revenues), RMR Project Investment, and an Incentive Rate Adjustment, as those terms are defined in the Market Monitor Settlement.

¹⁶ Market Monitor Settlement, § 1 (Definitions).

except for costs that GenOn identified as necessary for it to provide RMR service after it committed to provide such service.

12. The Market Monitor Settlement sets forth several requirements regarding costs recoverable under its proposed settlement agreement, including: (1) actual costs must be used, (2) project investment and operating costs must be net of fair market residual value as of September 30, 2012, and (3) the costs are subject to an audit by an independent accounting firm. In lieu of a return on equity calculated using traditional cost-of-service principles, the Market Monitor Settlement entitles GenOn to a 10 percent incentive adjustment adder applied to the sum of net avoidable expenses and project investment incurred during the RMR period, which the Market Monitor argues is consistent with the level of incentive that GenOn would have received had it elected to recover its costs under the formula rate in section 114.

13. The Market Monitor Settlement proposes that the standard of review for changes proposed by the Settling Parties or by the Commission, whether acting *sua sponte* or on a complaint filed by a Settling Party, shall be the just and reasonable standard, while modifications unilaterally proposed by a non-Settling Party shall be subject to the public interest standard of review. The settlement states that it will be effective the date that it is accepted by the Commission in a final order.

III. Comments

14. Comments in support of the GenOn Settlement and in opposition of the Market Monitor Settlement were filed by Commission Trial Staff (Trial Staff) and GenOn.¹⁷

15. Comments in opposition of the GenOn Settlement and in support of the Market Monitor Settlement were filed by Market Monitor, Ohio Consumer Counsel, Maryland Public Service Commission (Maryland Commission), and New Jersey Board of Public Utilities (New Jersey Board).

¹⁷ The ALJ Report extended the comment period for the Market Monitor Settlement to permit comments on the two settlement agreements to be filed together.

16. Reply comments were filed by GenOn, Market Monitor,¹⁸ Pennsylvania Office of Consumer Advocate (Pennsylvania Consumer Advocate), and Trial Staff. On June 12, 2013, Settlement Customers filed a motion for leave to file supplemental reply comments.¹⁹

A. Comments on the GenOn Settlement

17. GenOn states that the GenOn Settlement is just and reasonable and in the public interest, and includes expert testimony of Mr. John D. Stewart, which, GenOn asserts, provides the additional analysis necessary to facilitate the Commission's acceptance of the contested GenOn Settlement as such.²⁰ GenOn notes that the Stewart Affidavit provides several calculations which support the GenOn Settlement by calculating the revenue requirement to address the key issue of the return of and return on net plant, which is the issue reflected in the Market Monitor Settlement and the comments of New Jersey Board. First, GenOn states that the Stewart Affidavit calculates that the cost-of-service recovery rate based on the actual project investments, variable costs, and revenue credits for the Locked-in RMR Term was \$23,982,100, and that the rate of \$13,200,000 in the GenOn Settlement is substantially below this calculated rate.²¹ Second, while GenOn maintains that section 119 of the PJM Tariff provides for a fully embedded cost-of-service, the Stewart Affidavit provided the cost-of-service recovery rate with no return of, or return on, net plant and determined that this would result in a cost-of-service recovery rate of \$12,540,098.²² Third, the Stewart Affidavit discusses the litigation risk regarding the return of and return on net plant and calculates a cost-of-service recovery rate of \$18,261,540, which is the midpoint between the Filed Cost of Service Recovery Rate and the Adjusted Cost of Service Recovery Rate.²³

¹⁸ Market Monitor filed a correction to its Reply Comments.

¹⁹ For the purpose of this filing, Settlement Customers are: Duquesne Light Company, Duquesne Industrial Intervenors, PJM Industrial Customer Coalition, West Penn Power Industrial Intervenors, and Old Dominion Electric Cooperative.

²⁰ GenOn May 28, 2013 Comments at 9-13; Affidavit of John D. Stewart (Stewart Affidavit).

²¹ GenOn May 28, 2013 Comments at 11; Stewart Affidavit at Attachment B.

²² GenOn May 28, 2013 Comments at 11-12; Stewart Affidavit at Attachment C. This figure is referred to as the "Adjusted Cost of Service Recovery Rate." *See Id.*

²³ GenOn May 28, 2013 Comments at 11-12; Stewart Affidavit at Attachment D.

18. Trial Staff states that the GenOn Settlement should be approved because it: (1) would resolve all issues set for hearing by reducing the revenue collected to \$13,200,000 and giving transmission users \$10,782,098.15 in refunds; (2) is supported or unopposed by all Parties obligated by or financially impacted by it; and (3) appears to be fair, reasonable, and in the public interest.²⁴

19. Market Monitor opposes the GenOn Settlement for several reasons. First, Market Monitor states that there is no evidence that the \$13,200,000 cost to be recovered reflects GenOn's actual operating costs to provide RMR service.²⁵ Market Monitor asserts that the \$13,200,000 cost to be recovered per the GenOn Settlement does not survive an analysis based on its substantive merits as required by the standards set forth in the *Trailblazer* line of decisions.²⁶ Second, Market Monitor states that it opposes the GenOn Settlement because there is no evidence that the GenOn Settlement complies with applicable provisions of the PJM Tariff.²⁷ Finally, the Market Monitor opposes the GenOn Settlement because, Market Monitor asserts, it does not resolve the issues of fact set for hearing in the Commission's January 30, 2013 Order.²⁸

20. Maryland Commission argues that RMR cost recovery should expressly *not* be allowed for recovery of embedded costs or costs of fully depreciated plants.²⁹ Maryland Commission contends that, because the GenOn Settlement is presented as a black box, the methodology has not been explained in order to determine whether embedded costs on depreciated plant have been excluded. Ohio Consumer Counsel states that the black box nature of the GenOn Settlement makes it difficult, if not impossible, for the Commission to make an independent finding "supported by substantial evidence on the record as a whole" that the GenOn Settlement will establish "just and reasonable rates" or

²⁴ Trial Staff May 28, 2013 Comments at 1, 6-7.

²⁵ Market Monitor May 28, 2013 Comments at 1.

²⁶ *Id.* at 2, 7-9 (citing *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,082 (1998) (*Trailblazer I*); *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345 at 62,341 (*Trailblazer II*), *order on reh'g*, 87 FERC ¶ 61,110 (*Trailblazer III*), *aff'd*, 88 FERC ¶ 61,168; *see also Pub. Utils. Comm'n of Cal. v. El Paso Natural Gas Co.*, 105 FERC ¶ 61,201 at P 44 (2003), *reh'g denied*, 106 FERC ¶ 61,315 (2004)).

²⁷ Market Monitor May 28, 2013 Comments at 1, 9.

²⁸ *Id.* at 1, 10.

²⁹ *Id.* at 3 (emphasis original).

serve the public interest.³⁰ Ohio Consumer Counsel states that the GenOn Settlement provides no transparency as to the costs to be recovered because it gives no indication how the \$13,200,000 amount or the types of costs included in this amount were developed.³¹

B. Comments on the Market Monitor Settlement

21. Market Monitor states that the Market Monitor Settlement does not state the value at which the parties settled but presents a streamlined process whereby GenOn may submit an audited statement of the actual expenditures that it incurred in order to provide RMR service.³² Market Monitor contends that the Market Monitor Settlement is consistent with the requirements of Section 119 of the PJM Tariff. Market Monitor contends that Section 119 allows only for recovery of avoidable incremental expenses and investment, less net operating revenues during the period of RMR service.³³

22. New Jersey Board requests that the Commission adopt the Market Monitor Settlement as a just and reasonable resolution of the outstanding rate recovery matters at issue in the proceeding.³⁴ New Jersey Board asserts that the Market Monitor Settlement terms would resolve New Jersey Board's objections to GenOn's proposed rate recovery for the RMR Units consistent with the PJM Tariff.³⁵ New Jersey Board states that it continues to believe that recovery of any embedded costs incurred prior to the commitment of providing RMR service is prohibited by the PJM Tariff and should be explicitly prohibited in the determination of the subject RMR rate recovery.³⁶ New

³⁰ Ohio Consumer Counsel May 28, 2013 Comments at 4- (citing *Trailblazer Pipeline Co.*, 87 FERC ¶ 61,110, at n.24 (1999) (citing *Mobil Oil Corp. v. FPC*, 417 U.S. 283, 314 (1974) (Even where the Commission reviews the contested settlement as a package, it must nonetheless reach a determination that the overall result of the package is just and reasonable). *Id.* at 61,439).

³¹ Ohio Consumer Counsel May 28, 2013 Comments at 5.

³² Market Monitor May 28, 2013 Comments at 2.

³³ *Id.* at 3.

³⁴ New Jersey Board March 1, 2013 Comments at 1.

³⁵ *Id.* at 2.

³⁶ *Id.* at 3.

Jersey Board states that the Market Monitor Settlement excludes the recovery of embedded costs incurred prior to the commencement of the Locked-In RMR Term, including the embedded costs written down by GenOn in 2010 for which the company sought rate recovery in its original filing.³⁷ New Jersey Board further states that the Market Monitor Settlement also limits rate recovery to avoidable net operating expenses to provide service, consistent with New Jersey Board's position that PJM's Tariff imposes such limits.³⁸

23. Maryland Commission agrees with Market Monitor and New Jersey Board that the Market Monitor Settlement provides for a just and reasonable recovery of the costs of providing RMR service.³⁹ Maryland Commission agrees with the methodology described in the Market Monitor Settlement that provides that "a generator that provides RMR service should recover all of its avoidable expenses in order to provide RMR service."⁴⁰ Second, Maryland Commission states that it agrees with the fact that the Market Monitor Settlement provides that GenOn be allowed to recover costs of incremental project investment needed to provide RMR service.⁴¹

24. Ohio Consumer Counsel asserts that the Market Monitor Settlement provides greater transparency and protection for consumers and therefore better satisfied the public interest criteria that the Commission must consider in its decision to approve a settlement offer.⁴² Ohio Consumer Counsel states the Market Monitor Settlement explicitly sets out the specific types of costs to be recovered and prohibits GenOn from recovering a return on or of embedded investment in the RMR Units.⁴³

³⁷ *Id.* at 4 (citing Market Monitor Settlement at Article 1 (Definitions), § 1.13 (RMR Project Investment) and Article 2, 2.1.2 (RMR Project Investment)).

³⁸ New Jersey Board March 1, 2013 Comments at 4 (citing Market Monitor Settlement at Article 1 (Definitions), § 1.1 (Actual Net Revenues), 1.10 (Operating Costs), 1.15 (RMR Service Avoidable Costs), and Article 2, § 2.1.1 (Operating Cost)).

³⁹ Maryland Commission May 28, 2013 Comments at 4.

⁴⁰ *Id.* at 3 (quoting Market Monitor Settlement, Explanatory Statement at 3).

⁴¹ *Id.*

⁴² Ohio Consumer Counsel May 28, 2013 Comments at 4.

⁴³ *Id.* at 5-6.

25. GenOn opposes the Market Monitor Settlement because it amounts to an untimely request for rehearing of the same issues the Market Monitor raised in its protest and answer framed as a unilateral settlement. GenOn states that the Market Monitor Settlement must be rejected as unjust and unreasonable and not in the public interest under each of the four *Trailblazer* approaches.⁴⁴ Trial Staff states that the Market Monitor Settlement should be rejected because it does not resolve the level of revenues to be recovered as it does not specify the amount of revenue to be collected but rather puts forward “theory and criteria for recovery.”⁴⁵

C. Reply Comments

26. Market Monitor states that despite GenOn’s comments and the Stewart Affidavit, the GenOn Settlement continues to lack substantial evidence and, as a result, Market Monitor asserts, the GenOn Settlement cannot be evaluated on the merits and should be rejected.⁴⁶ Market Monitor asserts that the Market Monitor Settlement was properly submitted in accordance with the Commission’s regulations. Market Monitor states that GenOn is alone in its arguments that the Market Monitor Settlement was improperly submitted or that it does not substantively provide for a just and reasonable outcome to this proceeding.⁴⁷

27. Pennsylvania Consumer Advocate states that the Market Monitor Settlement is in the public interest, best protects the interests of Pennsylvania consumers, and should be adopted by the Commission.⁴⁸ Pennsylvania Consumer Advocate submits that the only settlement proposal that will ensure that embedded costs will not be recovered is the Market Monitor Settlement. Pennsylvania Consumer Advocate submits that GenOn has not submitted anything in the record of this proceeding to demonstrate that the black box settlement resolves the issues and objections in this proceeding in a just and reasonable manner. Pennsylvania Consumer Advocate states that, in contrast, the Market Monitor Settlement provides a transparent resolution of the issues in this proceeding.⁴⁹

⁴⁴ GenOn May 28, 2013 Comments at 17-25.

⁴⁵ Trial Staff May 28, 2013 Comments at 1, 7-8.

⁴⁶ Market Monitor Reply Comments at 2-4.

⁴⁷ *Id.* at 9.

⁴⁸ Pennsylvania Consumer Advocate Reply Comments at 2.

⁴⁹ *Id.* at 4-5.

28. GenOn states that its comments and the Stewart Affidavit set forth sufficient detail for the Commission to approve the GenOn Settlement as just and reasonable.⁵⁰ GenOn asserts that, ultimately, the Market Monitor confuses the scope of a hearing with the scope of Commission action on a settlement; whereas a hearing process is to resolve issues of fact set for hearing, the determination that must be made in this instance is whether a settlement, and more specifically, whether the revenue requirement is just and reasonable and in the public interest.⁵¹ GenOn reiterates the reasons raised in its comments for which the Market Monitor Settlement should be rejected outright.

29. Trial Staff states that the Market Monitor's comments rely on a flawed foundation and on an unsupported legal conclusion by claiming that the Market Monitor Settlement is consistent with the principle as well as the language of section 119 of the PJM Tariff.⁵² Trial Staff further states that the Market Monitor fails to support its claim that the goal of PJM's Tariff language is to compensate an RMR generator based on its incremental costs.⁵³ Trial Staff asserts that "the goal of Part V [of PJM's Tariff] is to induce generators to continue providing service for reliability's sake when they would otherwise deactivate," and points to the Commission's statement in its order which approved two different types of rates.⁵⁴ Trial Staff states that claims by the Market Monitor that it is impossible in this proceeding to conduct a review under Approach Nos. 1 and 2 of *Trailblazer II* is mooted by GenOn providing cost data necessary for such review in its comments.⁵⁵

30. Settlement Customers do not agree with Trial Staff's suggestion that the Commission must address the scope of permissible cost recovery under Part V, section 119 of the PJM Tariff to approve the GenOn Settlement.⁵⁶ Settlement Customers state that Trial Staff's interpretation of the PJM Tariff is unnecessary and contrary to the

⁵⁰ GenOn Reply Comments at 5.

⁵¹ *Id.* at 6-7.

⁵² Trial Staff Reply Comments at 2, 4-7.

⁵³ *Id.* at 4-7.

⁵⁴ *Id.* at 2 (citing *PJM Interconnection, LLC*, 110 FERC ¶ 61,053, at P 147 (2005)).

⁵⁵ *Id.* at 7.

⁵⁶ Settlement Customers Supplemental Reply Comments at 1-2.

structure of the GenOn Settlement and the intent of the Settling Parties.⁵⁷ GenOn and the Settlement Customers propose to settle the matter at issue in this proceeding in a way that provides a just and reasonable outcome without the need to specifically resolve the competing interpretations of section 119.⁵⁸ Therefore, Settlement Customers state that the Commission should approve the GenOn Settlement and reject the Market Monitor Settlement without reaching the merits of the permissible scope of cost recovery under section 119 of the PJM Tariff.⁵⁹

IV. Discussion

31. We approve the GenOn Settlement and accept the Revised RMR Rate Schedule as establishing just and reasonable rates. As discussed below, we find that the GenOn Settlement results in just and reasonable rates under our *Trailblazer* approach for reviewing contested settlements.⁶⁰ In making this finding, we reject the Market Monitor Settlement.⁶¹

32. *Trailblazer* provides four approaches to reviewing contested settlements. The four approaches laid out in *Trailblazer* are: (1) the Commission renders a binding merits decision on each contested issue, (2) the Commission approves the settlement based on a finding that the overall settlement as a package is just and reasonable, (3) the Commission determines that the benefits of the settlement outweigh the nature of the objections and the interests of the contesting party are too attenuated, and (4) the

⁵⁷ *Id.* at 2.

⁵⁸ *Id.* at 5.

⁵⁹ *Id.* at 5-6.

⁶⁰ See *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at P 85 (2006) (when choosing between competing just and reasonable options, the Commission has previously stated that it will accept the proposal of a utility if it is just and reasonable, rather than other competing just and reasonable proposals, ...). See also *ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 49 (2005).

⁶¹ We note that, while Maryland Commission, New Jersey Board, Pennsylvania Consumer Advocate, Ohio Consumer Counsel, and Market Monitor filed comments opposing the GenOn Settlement, no party contesting the GenOn Settlement filed an affidavit detailing any genuine issue of material fact as required by 18 C.F.R. § 385.602(f)(4)(2014).

Commission approves the settlement as uncontested for the consenting parties, and severs the contesting parties to allow them to litigate the issues raised.⁶²

33. We find analysis under the second *Trailblazer* approach applicable to the circumstances of this proceeding. Under the second *Trailblazer* approach, even if some individual aspects of a settlement may be problematic, the Commission may still approve a contested settlement as a package if the overall result of the settlement is just and reasonable.⁶³ Under this approach, the Commission need not render a merits decision on whether each element of the settlement package is just and reasonable, so long as the overall package falls within a broad ambit of various rates which may be just and reasonable.⁶⁴ The Commission clarified that this approach “focuses on the end result of the overall settlement, and involves a balancing of the benefits of the settlement against the costs and potential effect of continued litigation.”⁶⁵ The Commission must also include a finding under this approach that the contesting party would be in no worse position under the settlement than if the case were litigated.⁶⁶

34. The objection of the Market Monitor and the other parties focus principally on the question of the appropriate standard to be used for must run units. However, GenOn has provided the Stewart Affidavit calculating the cost-of-service recovery rate with no return of, or return on, net plant and determined that this would result in a cost-of-service recovery rate of \$12,540,098.⁶⁷ Market Monitor contends that even if the cost-of-service recovery rate of \$12,540,098 is correct, the settlement rate of \$13,200,000 still exceeds the maximum value allowed by the cost-of-service recovery rate provision of the PJM Tariff. However, the PJM OATT, while providing that a generator may choose going forward costs as a default option,⁶⁸ does not restrict a generator to going forward costs.

⁶² See *Trailblazer II*, 85 FERC ¶ 61,345 at 62,342-45.

⁶³ *Trailblazer II*, 85 FERC ¶ 61,345 at 62,342-43.

⁶⁴ *Id.*

⁶⁵ *Trailblazer III*, 87 FERC ¶ 61,110 at 61,439.

⁶⁶ *Id.*

⁶⁷ GenOn May 28, 2013 Comments at 11-12; Stewart Affidavit at Attachment C.

⁶⁸ PJM Interconnection, L.L.C., Intra-PJM Tariffs, 114, OATT 114 Deactivation Avoidable Cost Credit (0.0.0), <http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=1731&sid=67050>.

The OATT permits the generator also to file with the Commission a cost of service rate to recover the entire cost of operating the generating unit until such time as the generating unit is deactivated.⁶⁹ The Commission has previously found that the going forward cost mechanism is not the exclusive form of compensation and that that “[a] generator may file for cost-of-service rates with the Commission and seek a rate which would provide for the recovery of fixed costs, including return on and of capital.”⁷⁰

35. The objections also note the lack of cost support for what is a “black box” settlement. Specifically, the Market Monitor contends that the GenOn Settlement does not include any information about the costs on which the \$13,200,000 settlement rate is based. The Commission “routinely approves black box settlements and, in doing so, does not require settling parties to justify individual elements of a settlement package.”⁷¹ In approving black box settlements, the Commission must ensure that it produces a just and reasonable outcome to the proceeding for all parties, including contesting parties.⁷²

36. We find the GenOn Settlement factually is supported by the Stewart Affidavit, and is within the range of just and reasonable outcomes. The settlement rate of \$13,200,000 is substantially below the initially calculated cost-of-service recovery rate of \$23,982,100 for the Locked-in RMR Term. Moreover, the Stewart Affidavit calculated the rate that would apply with no return of, or return on, net plant and determined that this would result in a cost-of-service recovery rate of \$12,540,098,⁷³ which supports the rate of \$13,200,000 in the settlement. Because the cost-of-service recovery rate with no return of or return on net plant supports the settlement rate, we find that the contesting parties

⁶⁹ PJM Interconnection, L.L.C., Intra-PJM Tariffs, 119, OATT 119 Cost of Service Recovery Rate (1.0.0), <http://etariff.ferc.gov/TariffSectionDetails.aspx?tid=1731&sid=88033>.

⁷⁰ See *PJM Interconnection, L.L.C.*, 112 FERC ¶ 61,031, at P 18 (2005).

⁷¹ *El Paso Natural Gas Co.*, 132 FERC ¶ 61,139, at P 82 (2010) (*El Paso*) (Black box settlements “are the outcome of arms-length negotiations rather than the strict applications of formulas or policy,” and “parties to black box settlements agree to rates without identification or attribution of costs or adjustments for any particular component of those rates.”).

⁷² The Commission has previously found that because such a settlement is negotiated as a whole, no one issue should be looked at in isolation. *El Paso*, 132 FERC ¶ 61,139 at P 85.

⁷³ GenOn May 28, 2013 Comments at 11-12; Stewart Affidavit at Attachment C.

would be in no worse position under the settlement than if the case were litigated. Balancing the benefits of the settlement against the costs and potential effect of continued litigation, we find that the overall result of the settlement is just and reasonable. Accordingly, we find that consistent with Commission precedent, we can approve the settlement.

The Commission orders:

(A) The GenOn Settlement is hereby approved, as discussed in the body of this order.

(B) The Revised RMR Rate Schedule is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.