

140 FERC ¶ 61,080
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

GenOn Power Midwest, LP

Docket No. ER12-1901-000

ORDER ACCEPTING AND SUSPENDING TARIFF FILING, SUBJECT TO
REFUND AND ESTABLISHING HEARING AND SETTLEMENT PROCEDURES

(Issued July 30, 2012)

1. On May 31, 2012, GenOn Power Midwest, LP (GenOn) filed a proposed Reliability Must-Run Rate Schedule (RMR Rate Schedule).¹ The RMR Rate Schedule will govern the operation of two generating units, one generating unit in southeastern Pennsylvania and one generating unit in northeast Ohio, that PJM Interconnection, L.L.C. (PJM) has determined will be needed past the date of their planned deactivation to maintain transmission system reliability pending the completion of scheduled upgrades to the transmission system. In this order, the Commission grants waiver and accepts and suspends the proposed RMR Rate Schedule for a nominal period, to be effective on June 1, 2012, as requested, subject to refund, and sets the proposed RMR Rate Schedule for hearing and establishes settlement judge procedures.

I. Background

2. The deactivation of generating units in the PJM region is governed by Part V of the PJM Open Access Transmission Tariff (PJM Tariff).² 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. 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

¹ GenOn Power Midwest, LP, RMR Agreement, Electric Rate Schedule FERC No. 3 (0.0.0).

² PJM Tariff, Part V, *Generator Deactivation*.

reliability concerns and provide an estimate of the period of time needed to construct needed transmission upgrades.³

3. 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 chooses to continue to operate the unit, it is entitled to file a cost-of-service recovery rate with the Commission in order to recover the entire cost of operating the unit beyond its proposed deactivation date.⁴

II. RMR Rate Schedule Filing

4. On February 29, 2012, GenOn provided notice to PJM of its intention to deactivate Elrama Unit Nos. 1, 2, 3, and 4; and Niles Unit Nos. 1 and 2, effective June 1, 2012.⁵ GenOn states that these units are uneconomic due to the combined effect of market conditions and the significant capital and operating costs caused by their age. In addition, GenOn anticipates that future cash flows will be negative for these units because they will require costly project investment to maintain their operability and to comply with existing and anticipated environmental regulations. Moreover, the Elrama Units 1-4 failed to clear in the PJM capacity auctions to supply capacity since the 2012/2013 delivery year, while the Niles Units 1 and 2 failed to clear in the PJM capacity auctions to supply capacity for the 2014/2015 and 2015/2016 delivery years. GenOn states that it has replaced the Elrama and Niles obligations for the 2012-2013 delivery year, leaving only the 2013-2014 obligations for Niles Units 1 and 2 outstanding. GenOn further states that consistent with section 4.6.8 of PJM Manual 18, GenOn is unable to replace these obligations until after the unit-specific Equivalent Forced Outage Rates for

³ *Id.* § 113.

⁴ *Id.* §§ 113.2, 119.

⁵ The Elrama Station consists of four coal-fired boiler units with a total capacity of approximately 460 MW. Units 1, 2, and 3 have individual capacity ratings of 93 MW, 93 MW, and 103 MW, respectively. Unit 4 has a summer installed capacity rating of 171 MW. The 242 MW Niles Station, consists of two coal-fired boiler units, the 109 MW Niles Unit 1 and the 108 MW Niles Unit 2, and a 25 MW oil-fired combustion turbine. Elrama Units 1, 2 and 3 will be mothballed as of June 1, 2012, with retirement scheduled for March 1, 2014. Niles Unit 2 will be retired as of June 1, 2012. GenOn May 31, 2012 Filing (GenOn Filing), Exhibit No. GPM-1 at 4.

the 2013-2014 delivery year are “locked in” on November 30th of the year prior to the delivery year.⁶

5. PJM conducted a deactivation study and determined that Elrama Unit No. 4 and Niles Unit No. 1 (the RMR Units) would be needed past their planned deactivation date to manage localized reliability issues pending completion of transmission system upgrades.⁷ On May 3, 2012, PJM notified GenOn that the proposed retirement of the RMR Units could have an adverse effect on reliability without upgrades to the transmission system and, therefore, would be needed for reliability purposes from June 1, 2012 through September 30, 2012.⁸

6. GenOn notified PJM that it would continue to operate the RMR Units as needed to maintain system reliability pending the completion of necessary transmission system upgrades, provided that GenOn obtained an acceptable reliability must run agreement.

7. GenOn states that its proposed RMR Rate Schedule will allow GenOn to recover the entire cost of operating the RMR Units until they are deactivated. Under the RMR Rate Schedule, GenOn will recover its costs of operating the RMR Units through a three-part Cost-of-Service Recovery Rate composed of: (1) a Monthly Fixed-Cost Charge established through a traditional cost-of-service analysis; (2) a project investment tracker mechanism to recover GenOn’s actual project investment costs; and (3) a variable cost reimbursement mechanism to recover GenOn’s variable fuel, emissions, chemicals, coal combustion by-products disposal, and auxiliary power costs.

8. GenOn proposes a Cost-of-Service Recovery Rate that includes a monthly fixed-cost charge for each of the RMR Units, using a traditional cost-of-service analysis, that is based on annual revenue requirements of \$13,779,473 for Elrama Unit No. 4 and \$8,414,081 for Niles Unit No. 1, respectively. Any net revenues that the RMR Units earn from being offered into PJM markets in accordance with the proposed RMR Rate Schedule, including the operating limits explained below, will be netted against GenOn’s proposed RMR Rate Schedule’s Monthly Fixed-Cost Charge.

⁶ GenOn Filing at 4 n.9.

⁷ Elrama Unit Nos. 1 – 3 will be mothballed as of June 1, 2012, with retirement scheduled for March 1, 2014, and Niles Unit No. 2 will be retired as of June 1, 2012.

⁸ GenOn Filing at 4. PJM originally notified GenOn on March 30, 2012, that its preliminary deactivation analysis showed that its proposed deactivations could adversely impact reliability and at least some of the six units would be needed for reliability until June 1, 2014. *Id.* at Attachment B.

9. GenOn states that the second component of its Cost-of-Service Recovery Rate, a project investment tracker, will recover GenOn's project investments that have, are, or may later become necessary to maintain the reliable operation of the RMR Units.⁹ GenOn states that under the project investment tracker mechanism, GenOn will be reimbursed for its costs of project investment on an amortized basis over the remaining term of the RMR Rate Schedule, plus a carrying charge. The RMR Rate Schedule establishes a mechanism by which GenOn will submit informational filings to PJM and the Commission with respect to project investment beyond the currently-identified inventory of project investment if the need for other project investment arises in the future during the term of the RMR Rate Schedule.

10. GenOn states that the third component of its Cost-of-Service Recovery Rate, a cost reimbursement mechanism, allows for GenOn's recovery of variable fuel, emissions, chemicals, incremental insurance, and auxiliary power costs. Under its variable expense recovery mechanism, GenOn states that it will be reimbursed its actual costs, which GenOn will provide to PJM through the submission of invoices with appropriate supporting data.

11. Section 3.4 of the RMR Rate Schedule also provides that the RMR Units will be subject to pre-determined limits on the offer parameters for their cost-based schedules. GenOn states that it will not be obligated to operate the RMR Units in response to a PJM dispatch notice that would cause it to violate its operating limitations (i.e., any operating limitation as set forth in section 3.4 of the RMR Rate Schedule, or any environmental restrictions or operating permit limitations). Further, GenOn states that the RMR Rate Schedule provides that GenOn will not be obligated to offer the RMR Units into the PJM-administered capacity market. However, GenOn states that the RMR Units will be (1) offered based on GenOn's cost-based schedule into the Day-Ahead Energy Market and the balancing market re-offer period, (2) will be made available for dispatch on its cost-based schedule in the Real-Time Energy Market, and (3) will provide reactive power consistent with the respective unit's capability and voltage schedules under the respective

⁹ GenOn estimates that to keep the RMR Units operating safely and reliably from their planned June 1, 2012 deactivation date until September 30, 2012, as requested by PJM would require \$2,997,500.00 in project investment. GenOn Filing, Attachment A at article V, § 5.2, G (Project Investments include Boiler Inspection and Repairs and Infrastructure Maintenance).

interconnection agreements.¹⁰ Additionally, Niles Unit No. 1 may be offered based on the cost-based schedule into the Regulation and Synchronized Reserve markets.¹¹

12. Section 2.3 of the RMR Rate Schedule states that either PJM or GenOn may terminate this agreement with 90 days' notice. Further, if PJM wishes to extend the term of this rate schedule for one or both of the RMR Units beyond September 30, 2012, PJM shall provide 90 days' notice to GenOn prior to the date upon which this rate schedule would otherwise terminate.

13. GenOn requests waiver of the Commission's prior notice requirements to allow the proposed RMR Rate Schedule to go into effect June 1, 2012.¹² GenOn states that having received notice from PJM as to the need for the RMR Units on March 30, 2012, development of the RMR Rate Schedule and associated discussions with PJM and the PJM Market Monitor prevented GenOn from complying with the Commission's 60 day prior notice requirement. Given the timing of PJM's notice of the reliability need, GenOn submits that good cause exists for waiver of the Commission's prior notice requirements.

III. Notice, Interventions and Protests

14. Notice of GenOn Generation's filing was published in the *Federal Register*, 77 Fed. Reg. 34,373 (2012), with interventions and protests due by June 21, 2012.

15. Timely interventions were filed by Monitoring Analytics, LLC, as the Independent Market Monitor for PJM (PJM Market Monitor), Municipal Power, Inc., PJM, the New Jersey Board of Public Utilities (NJ BPU), Southern Maryland Electric Cooperative, Inc.,

¹⁰ GenOn states that Niles Unit Nos. 1 and 2 are currently compensated for reactive service pursuant to GenOn Midwest's Electric Rate Schedule FERC No. 2 under Schedule 2 of the PJM Tariff. Section 5.6 of the RMR Rate Schedule provides for a revenue credit in connection with such reactive compensation from Nile Unit Nos. 1 and 2 to eliminate the double recovery of revenues. Accordingly, GenOn states that it will be filing in June to amend Rate Schedule 2 to eliminate compensation for reactive service from Niles Units 1 and 2. GenOn filed an amended Rate Schedule 2 on June 21, 2012 in Docket No. ER12-2080-000.

¹¹ GenOn states that Elrama Unit No. 4 is unable to offer these services due to technical limitations.

¹² 18 C.F.R. § 35.3(a)(1) (2012).

Industrial Customers,¹³ North Carolina Electric Membership Corporation (NCEMC), Rockland Electric Company, and Duquesne Light Company. The Public Service Commission of Maryland and American Electric Power Service Corporation filed untimely motions to intervene on June 26, 2012 and June 29, 2012, respectively. On July 20, 2012, the Office of the Ohio Consumer Counsel (OCC) filed a motion to intervene out of time.

16. Protests were filed by the NJ BPU, PJM Market Monitor, Industrial Customers, the Joint Protestors¹⁴ and the OCC. On July 6, 2012, GenOn filed an answer to the protests. On July 20, 2012, the PJM Market Monitor filed an answer and motion for leave to answer GenOn's answer. On July 23, 2012, the Joint Respondents filed a motion for leave to answer and answer to GenOn's answer.¹⁵

A. Protests

17. Protestors raise concerns with GenOn's proposed cost-of-service and question whether the figures put forth by GenOn in its filing are justified. The PJM Market Monitor states that GenOn's proposed RMR Rate schedule is not just and reasonable as it does not meet the standards for RMR agreements established in Part V of PJM's Tariff. The PJM Market Monitor argues that under Part V of the PJM Tariff, a generation owner with an RMR agreement may request a cost-of-service rate to recover the costs of operating the unit.¹⁶ However, the PJM Market Monitor contends that GenOn has instead filed a traditional cost-of-service rate filing, which will allow it to recover a return on an investment it wrote off in 2010. The PJM Market Monitor states that this is not permitted either on a traditional cost-of-service basis or a market basis. In addition, the PJM Market Monitor argues that GenOn has significant market power since PJM needs it to continue operating, and therefore, GenOn should not be allowed to exploit the need for RMR service to extract a windfall. As a result, the PJM Market Monitor states no

¹³ The Industrial Customers consist of Industrial Energy Users—Ohio, Duquesne Industrial Intervenors, PJM Industrial Customer Coalition, West Penn Power Industrial Intervenors and Penelec Industrial Customer Alliance.

¹⁴ The Joint Protestors are Old Dominion Electric Cooperative, American Municipal Power, Inc., Rockland Electric Company, and Southern Maryland Electric Cooperative, Inc.

¹⁵ The Joint Respondents are the Industrial Customers, the Joint Protestors, NJ BPU and NCEMC.

¹⁶ See PJM Tariff, Part V, § 113.2.

hearing is necessary and the Commission should reject GenOn's proposal, directing GenOn to provide the RMR service consistent with Part V of the PJM Tariff.¹⁷

18. The PJM Market Monitor further argues that GenOn has included costs in the RMR Rate Schedule which it failed to recover from the market, primarily a return on the investments which were already written off, as well as some incremental investments. The PJM Market Monitor requests that the Commission decide the issues on the merits and reject GenOn's filing, rather than setting the issue for hearing.¹⁸

19. The NJ BPU asserts that GenOn's proposed return on equity is "grossly misaligned" with current market conditions, and the Commission should reject its attempts to recover any return on previously-written off assets. The NJ BPU argues that the RMR agreement is virtually risk-free, so GenOn should not recover an above-market return for it. The NJ BPU requests that the Commission reject the proposed depreciation and return on equity inputs to which it objects, as well as the resulting proposed Monthly Fixed Charge. The NJ BPU states that GenOn should either recalculate its proposed rates using actual going forward costs or, in the alternative, opt for the deactivation avoidable cost credit allowed under the PJM Tariff.

20. The Industrial Customers ask the Commission to set GenOn's RMR Rate Schedule for hearing, raising several issues of concern. First, they assert that GenOn has calculated its monthly charge based on a fully embedded cost-of-service, even though GenOn already wrote off these units. Since PJM's Tariff allows the generation owner to recover the cost of operating the units for the extended period until deactivation, the Industrial Customers assert that GenOn should not use a fully embedded cost-of-service and should not include assets it already wrote off. Second, if GenOn is allowed to use a

¹⁷ The PJM Market Monitor clarifies that while in this instance a hearing is not required, if GenOn chose to file a new proposal that reflects "a just and reasonable cost recovery approach, a hearing to scrutinize the cost components would be appropriate." PJM Market Monitor Protest at 2-3.

¹⁸ The PJM Market Monitor points out that the Commission has twice recognized that the proposed recovery of depreciation expense in cost-of-service filings that could not be recovered prior to the decision to retire a unit raised an issue requiring resolution and set the issue for hearing, but both instances resulted in a settlement which did not provide the Commission the opportunity to resolve the issue on the merits. PJM Market Monitor Protest at 6 *citing Exelon Generation Co., LLC*, 132 FERC ¶ 61,219, at P 24 (2010) (*Exelon*); *PSEG Energy Resources & Trade, LLC, PSEG Fossil LLC*, 111 FERC ¶ 61,121, at P 23 (2005) (*PSEG*).

fully embedded cost-of-service, the Industrial Customers assert that GenOn should be required to use an updated, and lower, cost of capital than the return on equity it currently proposes to use. Finally, the Industrial Customers assert that GenOn has not identified how the RMR costs will be recovered, or what classes of customers or zones will pay for these costs.

21. The Joint Protestors also question whether it is appropriate for GenOn to recover costs on a fully embedded cost-of-service when it has not shown that those are the actual costs of operating the unit. The Joint Protestors note that the Commission set for hearing Exelon's RMR rate schedule that GenOn used as its model,¹⁹ and ask that GenOn's agreement similarly be set for hearing so that parties could explore the cost-of-service issues raised by the filing, particularly: (1) GenOn's proposed depreciation of the units even though it already wrote them off; and (2) the rate of return, including the return on equity, proposed by GenOn. The Joint Protestors note that GenOn has market power in the instant situation where PJM needs it to continue operating, and PJM's interest is system reliability rather than getting the lowest cost for customers.

22. The OCC supports the protests of the PJM Market Monitor and the Industrial Customers, requesting that the Commission adopt the PJM Market Monitor's recommendation and reject GenOn's filing.

B. Answers

1. GenOn

23. In its answer, GenOn argues that none of the protestors have raised an issue of material fact that warrants further exploration or justified a request for the Commission to reject GenOn's proposed RMR Rate Schedule, or otherwise set the proposed revenue requirement for hearing. GenOn states that if the Commission does not agree with GenOn's asserting that there is no basis for setting GenOn's proposed RMR Rate Schedule for hearing, the Commission should only set for hearing those issues that meet its precedent in *Ocean State Power II* and *Ocean State Power* as well as those that are not otherwise resolved on the record in this proceeding.²⁰ GenOn argues that in *Ocean State* the Commission based its decision to limit the ordered hearing to only one issue "on the absence of any specifically articulated intervenor argument."²¹ Further, GenOn states

¹⁹ *Exelon*, 132 FERC ¶ 61,219.

²⁰ *Ocean State Power II and Ocean State Power*, 71 FERC ¶ 61,179, at 61,657, *order on reh'g*, 72 FERC ¶ 61,041 (1995) (*Ocean State*).

²¹ GenOn Answer at 16.

that the Commission made clear in *Ocean State* that “intervenors cannot expect to obtain a hearing simply on the basis of unadorned concerns they ‘may’ have or unidentified problems that ‘may’ be present.”²²

24. Additionally, while GenOn states that its use of proxy return on equities is just and reasonable, GenOn states that in the interest of resolving concerns raised by protestors regarding the proposed return on equity in a timely manner and to avoid further proceedings, GenOn is willing to adjust the return on equity for both RMR Units to 11.3 percent (ROE Offer). GenOn notes that its ROE Offer is consistent with the lower of the return on equities developed for the companies that merged to form GenOn’s indirect parent company GenOn Energy (i.e., GenOn Energy, Inc. (formerly known as RRI Energy) and GenOn Energy Holdings Inc. (formerly known as Mirant) with ROEs of 15.6 percent and 11.3 percent, respectively) in the Brattle Group report entitled “Cost of New Entry Estimates for Combustion Turbine and Combined Cycle Plants in PJM” (CONE Study). PJM submitted the CONE Study, together with an Affidavit of Dr. Samuel A. Newell, a Principal of the Brattle Group in PJM’s December 1, 2011 filing in Docket No. ER12-513-000 amending the PJM Tariff to revise certain pricing features with respect to its capacity market auction rules.²³ GenOn requests that the Commission accept GenOn’s proposed RMR Rate Schedule, effective June 1, 2012, subject to a compliance filing to incorporate the ROE Offer, without suspension or further proceedings.

2. PJM Market Monitor

25. The PJM Market Monitor states that GenOn asserts in its answer, for the first time, that its proposed RMR Rate Schedule complies with section 119 of the PJM Tariff. However, the PJM Market Monitor argues that section 119 limits recovery to the costs of operating the unit during the period of the RMR service, and GenOn’s filing fails to comply with this requirement. The PJM Market Monitor argues that a core issue in this proceeding is whether any past investment is properly recoverable by a Generation Owner in a rate filed pursuant to section 119 of PJM’s Tariff.

²² *Id.* at 16-17.

²³ *Id.* at 14-15, n.48 (citing PJM Interconnection, L.L.C. Filing at Attachment D and Exhibit 2 to Attachment D, Docket No. ER12-513-000 (filed Dec. 1, 2011)); *see PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,062 (2012) (*PJM IV*). GenOn asserts that no issues with respect to the ROEs in the CONE Study are identified in *PJM IV*.

26. The PJM Market Monitor acknowledges that the PJM Tariff permits Generation Owners the opportunity to obtain cost or offer determinations based on their units' specific facts and circumstances, rather than limiting them to preset default values and formulas that may not fit those facts and circumstances. However, the PJM Market Monitor states that these provisions are not an invitation to request an approach to defining the revenue requirement which is not based on the PJM Tariff.

27. The PJM Market Monitor asserts that issues associated with GenOn's operating costs could be set for hearing or alternatively, deferred until GenOn resubmits a filing consistent with section 119. The PJM Market Monitor further argues that either approach would avoid mixing the fundamental issue of whether recovery of embedded costs is permissible under section 119, with a more detailed and technical analysis of the levels of operating costs. Finally, the PJM Market Monitor states that given the potential for more filings pursuant to section 119, guidance from the Commission is needed to resolve the issue of whether past investment costs are properly included in such a filing.

3. Joint Respondents

28. The Joint Respondents also assert that GenOn's filing is not consistent with section 119 of PJM's Tariff since the plain language of that section looks at costs prospectively, rather than retrospectively. According to the Joint Respondents, GenOn's proposed recovery of the fully embedded costs of its RMR units, on top of the incremental fixed and variable costs during the RMR term, violates the Commission's principle of least-cost RMR compensation. Joint Respondents ask the Commission to reaffirm its policy, under section 119 of PJM's Tariff, of allowing only recovery of the minimum level of costs needed to ensure short-term reliability.

IV. Discussion

A. Procedural Matters

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²⁴ the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Given the early stage of the proceeding, the parties' interest and the lack of undue prejudice or delay, we find good cause to grant the unopposed, untimely motions to intervene of the Public Service Commission of Maryland, American Electric Power Service Corporation, and the OCC.

²⁴ 18 C.F.R. § 385.214 (2012).

30. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,²⁵ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of GenOn, the PJM Market Monitor, and the Joint Respondents because they have provided information assisting us in our decision-making process.

B. Commission Determination

31. The RMR Rate Schedule was filed by GenOn in accordance with the deactivation provisions of the PJM Tariff. Section 119 of the PJM Tariff states that the Cost-of-Service Recovery Rate allows the unit owner to recover the "entire cost of operating the generating unit until such time as the generating unit is deactivated."²⁶ GenOn proposes a Cost-of-Service Recovery Rate for each RMR Unit that is developed using traditional cost-of-service methods. GenOn also proposes to include in its Cost-of-Service Recovery Rate the expenditures for reliability projects (Project Investments) required to provide reliable service, but which due to their useful lives would normally be capitalized.

32. The Commission finds that the Cost-of-Service Recovery Rate raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement procedures ordered below. For example, GenOn's proposed cost-of-service formula includes estimated levels of depreciation expense for the RMR Units even though GenOn had stopped recording depreciation on these units in 2010 because the units were fully depreciated.²⁷ While we are accepting GenOn's proposed Rate Schedule, all elements of the cost of service formula, including the proposed Project Investment costs, are subject to hearing and settlement procedures.

33. The Commission's preliminary analysis therefore indicates that the proposed rate in the GenOn RMR Rate Schedule has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, the Commission grants waiver and accepts and suspends, for a nominal period, the RMR Rate Schedule, subject to refund, to become effective June 1, 2012, as requested, and establishes hearing and settlement judge procedures.

²⁵ 18 C.F.R. § 385.213(a)(2) (2012).

²⁶ PJM Tariff, Part V § 119.

²⁷ GenOn Filing, Exhibit No. GPM-1 at 9.

34. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²⁸ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.²⁹ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

35. Finally, we do not find it appropriate to offer guidance at this time on whether past investment costs should be included in the Cost-of-Service Recovery Rate, as requested by the PJM Market Monitor. We note, however, that section 119 of the PJM Tariff does not confine a generation owner's Cost-of-Service Recovery rate to any specific cost components. Rather, section 119 of the PJM Tariff provides that a generation owner may "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." Thus, we find that this issue is more appropriately addressed in hearing and settlement procedures on a case-by-case basis.

The Commission orders:

(A) GenOn Power Midwest, LP, RMR Agreement, Electric Rate Schedule FERC No. 3, is hereby accepted for filing and suspended for a nominal period, to become effective on June 1, 2012, subject to refund.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and

²⁸ 18 C.F.R. § 385.603 (2012).

²⁹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of GenOn's proposed Electric Rate Schedule FERC No. 3. As discussed in the body of this order, the hearing will be held in abeyance to give the parties time to conduct settlement judge negotiations.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), the Chief Administrative Law Judge is hereby authorized to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone within five (5) days of the date of this order.

(D) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If the settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.