

Black Start CRF Rate Show Cause Proceeding Order Establishing Hearing and Settlement Judge Procedures

Operating Committee
Steven Pincus
April 13, 2023

- On March 24, 2023, FERC issued an Order Establishing Hearing and Settlement Judge Procedures in the Black Start Service Capital Recovery Factor (CRF) rate proceeding, Docket No. EL21-91-000 (March 24 Order).
- The hearing and settlement procedures are to determine whether, as a result of changes from the Tax Cuts and Jobs Act of 2017 (TCJA), CRF values in the Capital Cost Recovery Rate for Black Start Units (BSUs) selected prior to June 6, 2021, are unjust and unreasonable.

- On April 7, 2021, PJM filed to revisions to the Capital Cost Recovery Rate and the commitment period for BSUs that make capital investments *after* June 6, 2021. For BSUs selected after June 6, 2021, the CRF value is determined according to a formula; however, for BSUs selected prior to June 6, 2021, CRF values continue to be based on a table.
- On August 10, 2021, FERC (i) accepted PJM's Tariff revisions effective June 6, 2021, as requested; and (ii) instituted a FPA section 206 show cause proceeding to determine whether the CRF values for existing BSUs remain just and reasonable because the TCJA lowered the federal corporate income tax rate from a maximum 35% to a flat 21% rate effective January 1, 2018.
 - FERC established a refund effective date based on the date of publication on notice in the *Federal Register* – i.e. Aug. 17, 2021.

- On October 12, 2021, PJM filed a response to the Show Cause Order.
- PJM argued that the *Memphis* clause in Tariff, Part I, section 9, permits PJM to make prospective changes to its Tariff rates, terms, conditions, and charges.
- PJM also argued that FERC should, under the just and reasonable standard, not change the CRF values due to the BSUs' reliance interest and the concern with that maintaining the same rates and conditions of service is needed to retain the necessary amounts of Black Start Service,

- FERC agreed that the CRF values contained in the Tariff apply to all BSUs selected prior to June 6, 2021. “Accordingly, (FERC) reject(s) the contention that PJM’s acceptance of offers made in response to various RFPs issued by PJM created binding contracts subject to the *Mobile-Sierra* doctrine.”
- Nonetheless, because the IMM introduced sufficient evidence that existing CRF values may include a 35% tax rate, there is a disputed issue of material fact as to whether changes to the tax rate render the existing CRF values unjust and unreasonable which warrants setting the justness and reasonableness of the existing CRF values for hearing and settlement judge procedures.

- On March 31, 2023, Judge Patricia E. Hurt was appointed as the settlement judge.
- Within 60 days of March 31, 2023, the settlement judge shall file a report on the status of the settlement discussions and every 60 days thereafter if settlement discussions continue.
- If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge shall within 45 days of the date of the presiding judge's designation, convene a prehearing conference for the purpose of establishing a procedural schedule.
- FERC will render a decision within eight months of the date of filing of briefs opposing exceptions to an Initial Decision.

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