

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

RTO Energy Trading, LLC )  
 ) Docket No. EL15-38-000  
 )

**ANSWER AND MOTION FOR LEAVE TO ANSWER  
OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rules 212 and 213 of the Commission’s Rules and Regulations,<sup>1</sup> Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (“Market Monitor”), submits this answer to, and moves for leave to answer, the answer filed in this proceeding by RTO Energy Trading (“RET”) on March 12, 2015. RET raises a number of arguments that have mostly been addressed in the Market Monitor’s protest submitted February 25, 2015, and in the confidential non-public attachment to that protest. In this pleading, the Market Monitor provides additional response to RET’s arguments and submits an attachment with additional confidential non-public analysis based on more current data that will further assist the Commission in evaluating the issues raised in this proceeding.

RET has not supported a case for weakening the protection afforded by the FTR Forfeiture Rule. The confidential non-public analysis demonstrates that the FTR Forfeiture Rule is properly applied to RET and a related entity.<sup>2</sup> Such analysis demonstrates why the public cannot rely on the procedural safeguards that RET proposes as a replacement for the FTR Forfeiture Rule.

\_\_\_\_\_

<sup>1</sup> 18 CFR §§ 385.212 & 213 (2014).

<sup>2</sup> See PJM Operating Agreement Schedule 1 § 5.2.1(b).

**I. ANSWER**

Contrary to RET's statement (at 2) that its petition "applies generally to the PJM Tariff," this petition is about whether the FTR Forfeiture Rule properly applies to RET and the FTR positions held by an entity with whom RET has common beneficial ownership. RET claims that its trades affecting those positions should be exempt from the rule, either by interpreting the scope of the rule more narrowly than it is now applied or by relying on certain procedural steps that RET proposes as a substitute for application of the rule. RET has not shown that it is just and reasonable, non-discriminatory or in the public interest to exempt it from the FTR Forfeiture Rule, to weaken the rule generally, or to rely on RET's proposed procedural steps as substitute for the rule. Analyses of recent trading activity provided by the Market Monitor as confidential non-public Attachments demonstrate exactly the opposite.

RET argues (at 3), "There is no ambiguity in the PJM Tariff regarding the meaning of an FTR holder and that the FTR holder is a specific entity and not its ultimate beneficial owners." The term FTR holder is used in the FTR Forfeiture Rule and nowhere else in the tariff, despite the availability of defined terms such as "Market Participant," "Member" or "Affiliate." The term is needed because the coverage must be broad and flexible enough to prevent the use of virtual trading to manipulate the value of FTR positions. The FTR Forfeiture Rule cannot serve its purpose if the rule can be evaded simply by creating task specific subsidiaries.

RET states (at 4), "Neither PJM nor the Commission is currently set up to document and monitor non-controlling ultimate beneficial owners of market participants in a consistent fashion." The Market Monitor does not understand the basis for RET's somewhat remarkable assertion concerning PJM's and the Commission's capabilities. Information on beneficial ownership is used to apply the FTR Forfeiture Rule. RET has not shown that the rule is improperly applied. RET has not shown that weakening the rule is the proper regulatory response to the asserted inconsistent application of the rule. If it is determined

that any of PJM, the Market Monitor or the Commission are not set up to document and monitor beneficial ownership with acceptable consistency, then the solution is to improve and broaden access to ownership information. The solution would not be to weaken or eliminate the FTR Forfeiture Rule.

The Market Monitor agrees that more and better information could improve the application of the FTR Forfeiture Rule. The Market Monitor has been working with PJM to improve the maintenance of current, accurate and complete information on the ownership and control of all participants in PJM markets. Quality information on ownership and control is important for monitoring the markets, ensuring compliance with the tariff rules and applying mitigation, including application of the FTR Forfeiture Rule. More can and should be done to ensure that the information used is current, accurate and complete. Because the information is held by participants, improvements will require enhanced cooperation from participants.

RET claims (at 5) that implementing the FTR Forfeiture Rule in the manner the Market Monitor describes would require market participants “to significantly change how they do business because common ultimate beneficial ownership among market participants is pervasive.” RET argues (*id.*) that tariff changes and system changes would be needed. The Market Monitor does not understand the basis for RET’s unsupported assertions. RET is the party petitioning for changes to the status quo and is responsible to support its case. RET is making an unsupported argument that a major loophole should be created in the FTR Forfeiture Rule. Under such a loophole any PJM market participant could create a related company in order to violate the rule without consequences. Effective application of the FTR Forfeiture Rule should continue. Application of the rule should be made more effective. The rule should not be weakened or eliminated.

RET argues at some length (at 5–7), “non-affiliated PJM market participants would need to coordinate trading by considering each other’s positions, or else risk being subject to forfeiture for trading conducted by non-affiliated market participants.”

RET's argument is backwards. The problem, as illustrated by this case, is that market participants with common beneficial ownership would have a license to violate the FTR Forfeiture Rule by coordinating positions, and strong incentives to do so, if they were exempt from the rule. RET would have the Commission ignore this obvious incentive problem while asserting that related entities should not be responsible for managing their positions consistent with a well functioning market.

Nodal virtual trading in PJM markets is not a right, and to the extent that such trading interferes with a well functioning market, such trading must be subject to clear rules or, if there are no clear rules, eliminated.

RET claims that the Market Monitor assumes (at 8), "all virtual energy traders automatically have an incentive to benefit the FTR interests held by another entity that has some common ultimate beneficial owners." The assumption is a good one. As RET frames it, it is irrefutable. RET claims (at 8-9) to have "no incentive to benefit other market participants." As a theoretical claim, it is incorrect. As a factual claim, it is demonstrably false based on RET's market behavior.

There is no need to decide any theoretical question in this proceeding. The confidential non-public analysis included in the Market Monitor's February 25<sup>th</sup> protest and the confidential non-public analysis included as an attachment to this pleading show that the FTR Forfeiture Rule has been properly applied and there is no reason to create an exception under the facts provided by RET and the Market Monitor. On the contrary, the facts show that the application of the rule should not change as it is applied to RET or otherwise be weakened. The rule, if implemented consistent with the Market Monitor's position, has worked to prevent market participants from using virtual positions to advantage their FTR positions and that is precisely the purpose of the rule.

## **II. MOTION FOR LEAVE TO ANSWER**

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answers to answers or protests unless otherwise ordered by the decisional authority.

The Commission has made exceptions, however, where an answer clarifies the issues or assists in creating a complete record.<sup>3</sup> In this answer, the Market Monitor provides the Commission with information useful to the Commission’s decision-making process and which provides a more complete record. Accordingly, the Market Monitor respectfully requests that this answer be permitted.

### III. CONCLUSION

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

Respectfully submitted,



---

Jeffrey W. Mayes

Joseph E. Bowring  
Independent Market Monitor for PJM  
President  
Monitoring Analytics, LLC  
2621 Van Buren Avenue, Suite 160  
Valley Forge Corporate Center  
Eagleville, Pennsylvania 19403  
(610) 271-8051  
[joseph.bowring@monitoringanalytics.com](mailto:joseph.bowring@monitoringanalytics.com)

General Counsel  
Monitoring Analytics, LLC  
2621 Van Buren Avenue, Suite 160  
Valley Forge Corporate Center  
Eagleville, Pennsylvania 19403  
(610) 271-8053  
[jeffrey.mayes@monitoringanalytics.com](mailto:jeffrey.mayes@monitoringanalytics.com)

---

<sup>3</sup> See, e.g., *PJM Interconnection, L.L.C.*, 119 FERC ¶61,318 at P 36 (2007) (accepted answer to answer that “provided information that assisted ... decision-making process”); *California Independent System Operator Corporation*, 110 FERC ¶ 61,007 (2005) (answer to answer permitted to assist Commission in decision-making process); *New Power Company v. PJM Interconnection, L.L.C.*, 98 FERC ¶ 61,208 (2002) (answer accepted to provide new factual and legal material to assist the Commission in decision-making process); *N.Y. Indep. Sys. Operator, Inc.*, 121 FERC ¶61,112 at P 4 (2007) (answer to protest accepted because it provided information that assisted the Commission in its decision-making process).

Howard J. Haas  
Chief Economist  
Monitoring Analytics, LLC  
2621 Van Buren Avenue, Suite 160  
Valley Forge Corporate Center  
Eagleville, Pennsylvania 19403  
(610) 271-8054  
*howard.haas@monitoringanalytics.com*

Dated: April 23, 2015

# **Attachment**

**(Redacted in Public Version)**



## 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 23<sup>rd</sup> day of April, 2015.



---

Jeffrey W. Mayes

General Counsel

Monitoring Analytics, LLC

2621 Van Buren Avenue, Suite 160

Valley Forge Corporate Center

Eagleville, Pennsylvania 19403

(610) 271-8053

*jeffrey.mayes@monitoringanalytics.com*