

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

PJM Interconnection, L.L.C.

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ER16-372-002

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

Pursuant to Rule 213 of the Commission’s Rules and Regulations, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (“Market Monitor”), submits this brief answer to the answer filed by PJM Interconnection, L.L.C. on November 10, 2016, in response to the Market Monitor’s answer filed October 26, 2016 (“November 10th Answer”).^{1 2} For the most part, PJM’s answer reiterates prior arguments. What is significant about the November 10th Answer is its tacit admission that PJM’s proposal is not consistent with the current specifications of roles in the PJM tariff. PJM now requests (at footnotes 18 and 19) that existing tariff provisions be changed to the extent they are not consistent with PJM’s current view of the Market Monitor and PJM roles in reviewing offers for market power. It is PJM that is attempting to relitigate the resolved matter of the Market Monitor and PJM roles with respect to market power.

¹ 18 CFR § 385.213 (2016).

² Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”) or the PJM Operating Agreement (“OA”).

I. ANSWER

A. Brief Responses to PJM's November 10th Answer

1. PJM Needs a Compliance Review of Fuel Cost Policies.

PJM asserts the current PJM process for fuel cost policy review is inadequate. PJM wants to be able to quickly approve all fuel cost policies in order to be compliant with the Commission's order in Docket ER16-76.³

While it may be that PJM's review process for tariff compliance is inadequate for PJM's purpose, it does not mean that the Market Monitor's review process for market power concerns is inadequate for its purpose. PJM continues to confuse its approval responsibilities with the obligation of the Market Monitor to review fuel cost policies for market power.

The Market Monitor agrees that PJM has the right and the obligation to approve fuel cost policies based on PJM's correctly defined tariff compliance criteria, regardless of the Market Monitor's concerns about market power.

2. PJM Misunderstands Inputs to Prospective Mitigation.

PJM confuses the concepts of inputs to prospective mitigation with input to PJM. Inputs to prospective mitigation include reference levels as addressed in Order No. 719.⁴

³ *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,289 (2015).

⁴ See Wholesale Competition in Regions with Organized Electric Markets, Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 375 (2008) ("Order No. 719"), order on reh'g, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009), reh'g denied, Order No. 719-B, 129 FERC ¶ 61,252 (2009) ("We also determine that the MMU may provide the inputs required by the RTO or ISO to conduct prospective mitigation, including determining reference levels, identifying system constraints, cost calculations and the like. This will enable the RTO or ISO to utilize the considerable expertise and software capabilities developed by their MMUs, and reduce wasteful duplication.") and P 378 ("We also direct that the tariffs of RTOs and ISOs clearly state which functions are to be performed by MMUs, and which by the RTO or ISO. This separation of functions will serve to eliminate RTO or ISO influence over the MMUs, and remove the concern that MMU assistance in mitigation makes it subordinate to the RTO or ISO.").

Input to PJM is advice to PJM. Reference levels are specific, quantified offer levels or methods of calculating offer levels. A fuel cost policy is an input to prospective mitigation.

PJM also misunderstands the difference between inputs to prospective mitigation and prospective mitigation. The Market Monitor can provide an input to prospective mitigation, for example a fuel cost policy that does not incorporate market power. The Market Monitor does not apply mitigation and has never proposed to apply mitigation. PJM applies prospective mitigation by applying the three pivotal supplier test. PJM does not review the inputs to prospective mitigation, which are the cost-based offers. This is analogous to the ACR process in which the Market Monitor and participants reach agreement on a cost-based offer (market seller offer cap), participants enter their cost-based offer and take responsibility for that offer, and PJM applies mitigation (three pivotal supplier test) as appropriate. If the Market Monitor and a participant cannot agree, the participant can enter its cost-based offer and the Market Monitor can file a complaint with the Commission.

The Market Monitor agrees that the Market Monitor is not a public utility. The Market Monitor does not need to be a public utility in order to do its job as an independent market monitor as defined in the PJM tariff, including the review of inputs to prospective mitigation described in Order No. 719.

3. PJM's Role as Market Administrator is Significant.

PJM asserts that PJM must automatically agree with fuel cost policies accepted by the Market Monitor. PJM misstates the current process. The process is that if the Market Monitor and a participant come to an agreement, PJM automatically agrees. PJM ignores the fact that if the Market Monitor does not come to agreement with a Market Seller, PJM has the sole authority to approve or not approve the policy based on PJM's standards of review, which explicitly do not include market power. Administering the market rules is clearly a critical role and, unlike the Market Monitor's market power reviews, has an

immediate and direct regulatory consequence. When PJM approves a fuel cost policy as compliant with the tariff, it is approved.

4. PJM Seeks to Provide Safe Harbor Fuel Cost Policies.

PJM continues to assert that PJM's proposed safe harbor is not really a safe harbor. PJM continues to ignore the distinction between market power rules incorporated in RTO tariffs and FERC's market manipulation rules. PJM asserts (at 7) that the point of having fuel cost policies is that an approved fuel cost policy should provide certainty that market power issues will not be raised if the policy is followed.⁵ That is the definition of a safe harbor. It is a safe harbor from market rules on market power but not from the Commission's market manipulation rules.

The problem is that PJM's role is not to review for market power issues and therefore not to provide a safe harbor for market power issues. However, if the Market Monitor agrees with the participant on a fuel cost policy, that fuel cost policy, if followed, would result in a safe harbor from action by the Market Monitor related to market power.

B. Core Issue Raised by PJM

PJM clarifies (at 4-5) that its fundamental issue with the current process is that the current process does not allow PJM to review the Market Monitor's position on market power that the Market Monitor communicates to participants. PJM states that "the IMM seeks to perpetuate the current process, under which PJM's 'approval' is *an automatic result* of the IMM coming to agreement with a Market Seller over a Fuel Cost Policy. Thus, from a practical standpoint, the entity deciding whether a Fuel Cost Policy gets approved would be the IMM.^{18''}

⁵ There can be no partial safe harbor from market rules on market power. Either an approved policy provides certainty that there will be no market power issues or it does not. In the absence of certainty, market power issues can be raised.

PJM acknowledges for the first time in this proceeding that PJM’s proposal related to fuel cost policies is not consistent with the current division of responsibilities between PJM and the Market Monitor for the review of cost-based offers. PJM now requests that existing tariff provisions be changed to the extent they are not consistent with PJM’s current view of the Market Monitor and PJM roles related to fuel cost policies (at footnotes 18 and 19).⁶

PJM (at footnote 18) refers to the current process as a “flawed paradigm,” because it requires the Market Monitor to independently review inputs to prospective mitigation. PJM requests that the Commission order PJM to modify the process consistent with PJM’s current views.

PJM views Section 12A of the OATT as similarly flawed if it requires the Market Monitor’s independent market power review. PJM (at footnote 19) requests that the Commission order PJM to modify Section 12A as necessary in order to make Section 12A consistent with PJM’s current views.

PJM proposes to change the point and purpose of the current process as defined by Order 719 and Section 12A. The Market Monitor must be permitted, without interference from PJM, to independently determine its position on market power issues, to independently communicate them to market participants, and to independently seek to support those positions with the Commission if necessary. PJM’s role is not to monitor the Market Monitor, nor is it to protect Market Sellers from the Market Monitor’s adoption and communication of positions on market power that Market Sellers do not like. PJM’s role is not to protect participants from Commission enforcement actions that concern participants’ market behavior. Market Sellers have recourse to the Commission. The Market Monitor does not have authority to approve fuel cost policies. Market Sellers have the unique right to submit any offer they choose in PJM markets, regardless of market power concerns raised by the Market Monitor.

⁶ November 10th Answer at 5 n.18, 6 n.19.

PJM's statements about Order No. 719 and Section 12A constitute a tacit admission that its proposal does not comply with the definition of roles in the PJM tariff. These statements contradict PJM's prior statements that it is the Market Monitor who is attempting to relitigate the resolved matter of the Market Monitor and PJM roles with respect to market power.⁷

C. PJM's Assertions About the Current Review Process

PJM argues that the algorithmic, verifiable, and systematic standard is unclear. It does not state in what way it is unclear. The standard has been resisted by PJM and some Market Sellers at least in part because it holds Market Sellers accountable to follow a clear and well specified fuel cost policy. PJM's resistance to the standard has contributed to this unnecessarily protracted discussion.

PJM asserts that the Market Monitor's process is not working and is unworkable. Both assertions are incorrect. The fact that the Market Monitor has made substantial progress and continues to make progress is evidence that the process is working and workable. The Market Monitor has now accepted fuel cost policies for more than half of PJM's generating units.

The Market Monitor recognizes that the review process has been lengthy in some cases as both the Market Monitor and Market Sellers have learned a lot during the process. Good fuel cost policies are essential to a competitive PJM market. The Market Monitor should not be expected to rush to a determination on fuel cost policies when there are market power concerns, and PJM should not have the authority to explicitly or implicitly override the Market Monitor's determinations related to market power.

PJM has also contributed to slowing the process with some Market Sellers by adding uncertainty to the process and by proposing a review option that would circumvent the

⁷ See Answer of PJM Interconnection, L.L.C. to Protests and Comments, ER16-372-002 (Oct. 7, 2016) at 6-10.

Market Monitor. Of the remaining fuel cost policies on which there is not yet agreement between the Market Monitor and the Market Seller, 64 percent of the units are owned by the ten largest companies. A significant number of those companies have stopped actively discussing their fuel cost policies with the Market Monitor, due in significant part to the uncertainty created by PJM.

It is not clear exactly what PJM means by a working and workable process. PJM itself has not reviewed most fuel cost policies in detail. In the past month, PJM has begun to review the fuel cost policies of a few companies for issues relevant to the potential exercise of market power, consistent with PJM's proposed approach in this proceeding.

PJM's preliminary approach is inconsistent with the approach to market power taken by the Market Monitor and raises market power concerns. PJM has indicated to Market Sellers that it would accept the use of specific fuel cost policy language that the Market Monitor has explicitly identified as raising market power concerns. PJM would accept fuel cost policies including unverifiable fuel cost adjustments that are not specified in the fuel cost policy.⁸ PJM has also directed the removal of language that had already been mutually agreed upon by the Market Monitor and the Market Seller. For example, PJM has directed removal of the term "short run marginal cost" from fuel cost policies.

A key objective of Order No. 719 was to avoid this kind of conflict and duplication of effort.⁹ If PJM avoided review of market power issues, as required by Section 12A of the OATT, this conflict and duplication of effort would not occur.

⁸ For further discussion, see Answer and Motion for Leave to Answer of the Independent Market Monitor for PJM, Docket No. ER16-372 (October 26, 2016) at 8–10.

⁹ See Order No. 719 at P 375 ("We also determine that the MMU may provide the inputs required by the RTO or ISO to conduct prospective mitigation, including determining reference levels, identifying system constraints, cost calculations and the like. This will enable the RTO or ISO to utilize the considerable expertise and software capabilities developed by their MMUs, and reduce wasteful duplication.") and P 378 ("We also direct that the tariffs of RTOs and ISOs clearly state which functions are to be performed by MMUs, and which by the RTO or ISO. This separation of

If PJM is concerned about approving all proposed fuel cost policies quickly, PJM should approve outstanding fuel cost policies as compliant with the tariff but not reach conclusions related to market power. The Market Monitor will continue to work with Market Sellers to address remaining market power issues.

PJM's proposed provisions concerning the fuel cost policy review process are inconsistent with the tariff, would overturn established practice, and should not be accepted. The Market Monitor's proposed provisions concerning the fuel cost policy review process, which are consistent with the tariff and established practice, should be accepted.

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.¹⁰ 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.

functions will serve to eliminate RTO or ISO influence over the MMUs, and remove the concern that MMU assistance in mitigation makes it subordinate to the RTO or ISO.”).

¹⁰ 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. Independent System 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).

III. CONCLUSION

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

Respectfully submitted,



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Dated: November 29, 2016

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 29th day of November, 2016.



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