

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

Independent Market Monitor for PJM)	
v.)	Docket No. EL17-82-000
PJM Interconnection, L.L.C.)	
)	

**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,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (“Market Monitor”), submits this answer to the answer filed by PJM Interconnection, L.L.C. (“PJM”) on August 21, 2017, and to the protest filed by Dominion Energy Companies (“Dominion”) on August 21, 2017, in response to the complaint filed by the Market Monitor on July 20, 2017. The Market Monitor also responds to comments filed by the PJM Power Providers Group (“Power Providers”) filed on the same date.

¹ 18 CFR § 385.212 & 213 (2017).

I. ANSWER

A. PJM's Motion to Dismiss Has No Merit and Should Be Rejected.

PJM moves (at 1–3) to dismiss the complaint, claiming that the Market Monitor is not authorized “to file a complaint *against* PJM” [emphasis in original]. PJM’s motion has no merit and should be denied.²

1. The Federal Power Act and the Commission Rules Authorize the Market Monitor to File a Complaint Like Any Other Person.

The Federal Power Act (“FPA”) and the Commission’s Rules and Regulations authorize “any person” to file complaints seeking Commission action against “any other person.”³ The Market Monitor, including acting in its official capacity as the Independent Market Monitor for PJM, meets the definition of a person to file complaints.⁴ No provision

² The Market Monitor has also addressed PJM attacks on the independence of the Market Monitor and other market monitoring units in recent pleadings: Answer and Motion for Leave to Answer of the Independent Market Monitor for PJM, Docket No. ER16-372-004 (April 26, 2017); Answer and Motion for Leave to Answer of the Independent Market Monitor for PJM, Docket No. ER16-372-004 (March 10, 2017).

³ Rule 206 states: “Any person may file a complaint seeking Commission action against any other person alleged to be in contravention or violation of any statute, rule, order, or other law administered by the Commission, or for any other alleged wrong over which the Commission may have jurisdiction.” 18 CFR § 385.206; *see also* Order No. 225, 47 Fed. Reg. 19022 (May 3, 1982), as amended by Order No. 647, 69 Fed. Reg. 32439 (June 10, 2004); Order No. 663, 70 Fed. Reg. 55725 (Sept. 23, 2005); 71 Fed. Reg. 14642 (Mar. 23, 2006); Order No. 714, 73 Fed. Reg. 57538 (Oct. 3, 2008)). Section 306 of the Federal Power Act confers a statutory right that “any person ... may apply to the Commission by petition which shall briefly state the facts, whereupon a statement of the complaint thus made shall be forwarded by the Commission to such ... public utility, who shall be called upon to satisfy the complaint or to answer the same.” 16 U.S.C. § 825e.

⁴ Rule 105(d) defines a “person:” “[P]erson means an individual, partnership, corporation, association, joint stock company, public trust, an organized group of persons, whether incorporated or not, a receiver or trustee of the foregoing, a municipality, including a city, county, or any other political subdivision of a State, a State, the District of Columbia, any territory of the United States or any agency of any of the foregoing, any agency, authority, or instrumentality of the United States (other than the Commission), or any corporation which is owned directly or indirectly by the United States, or any officer, agent, or employee of any of the foregoing acting as such in the course of his or her official duty.” Both Monitoring Analytics, LLC and the Market

of the FPA exempts any public utility, including any Regional Transmission Organization (“RTO”) from having a complaint filed against it by any person, including persons responsible for market monitoring. No Commission rule creates any such exemption.

2. The Tariff Does Not Limit the Ability of the Market Monitor to File Complaints.

PJM claims (at 1–2), “the Tariff authorizes the IMM to file a complaint in its capacity as the PJM IMM only in very limited circumstances, and only as directed against outside parties and not the RTO.”⁵ The tariff contains no such limitations.⁶ The provision cited by PJM concerns reviews of participants’ offers and does not justify reading into the tariff a limitation on the ability to file complaints in other contexts, such as this case. Neither the market monitoring provisions of the OATT, nor any other PJM tariff provision or Commission rule, deprive the Market Monitor of the statutory rights conferred by the FPA. The complaint filed here is well within the scope of the responsibility assigned to the Market Monitor in the tariff to monitor “PJM’s implementation of the PJM Market Rules.”⁷ The tariff requires the Market Monitor to “monitor compliance with the PJM Market Rules” and for it “take action on compliance issues.”⁸ In addition, Section IV.J of the Attachment M provides for the Market Monitor to “make appropriate filings with Authorized Government Agencies [which is defined to include the Commission] to address ... compliance, market power or other issues and seek appropriate action...”

Monitor separately meet the definition of a person. The Market Monitor constitutes “an organized group of persons, whether incorporated or not.” 18 CFR § 385.102(d).

⁵ PJM cites to Section IV.E-1 of the Attachment M to the OATT. The header for this provision identifies its purpose: “Market Monitoring Unit Market Power Review.”

⁶ *See id.*

⁷ See OATT Attachment M § IV.B.5, C & D-1.

⁸ *See* OATT Attachment M § IV. D-1.

3. PJM Is the Proper Respondent.

PJM states (at 2), “Perhaps PJM is the subject of this complaint because the IMM has concluded that confidentiality concerns prevent identifying Genco.” The Market Monitor has in the past filed a complaint against an unnamed participant in an RPM auction.⁹ In circumstances where the Market Monitor determined that a complaint was necessary concerning the level of an offer, the Market Monitor would direct the complaint at the participant.

In addition, Dominion was served the complaint and made its own determination to reveal that it and its affiliates are Genco (Dominion Energy Marketing, Inc.); Parent (Dominion Energy); and Utility (Dominion Energy Virginia).

The tariff section cited by PJM (OATT Attachment M § IV.E-1) provides for complaints against market participants because market participants are solely responsible for the level of their offers.¹⁰ This case concerns review of eligibility for an exemption from the MOPR which requires a default offer floor or a unit specific offer floor. The case is not about the level of the offer; it concerns whether a participant is exempt from the MOPR.

If a participant with no exemption from MOPR submits an offer at a level with which the Market Monitor disagrees, the Market Monitor would seek a Commission order requiring an offer at a competitive level. Because PJM has no responsibility for

⁹ See Complaint and Request for Fast Track Treatment and Shortened Comment Period of the Independent Market Monitor for PJM, EL12-63-000 (May 1, 2012).

¹⁰ OATT § 12A (“A market participant may submit any offer or bid that it chooses or make a decision not to offer a committed resource, provided that the Office of the Interconnection determines that: (i) the market participant has participated in the review process conducted by the Market Monitoring Unit (without regard to whether an agreement is obtained) if required by the Tariff; (ii) offer is no higher, in the case of seller market power, or lower, in the case of buyer side market power, than the level to which the market participant has committed or agreed in the course of its participation in such review process; and (iii) the offer is compliant with the Tariff and PJM Manuals. The market participant assumes exclusive responsibility for any adverse findings at the Commission related to its offer.”).

determinations on market power, PJM is not the proper subject of a complaint when the level of an offer is at issue.

This case does not concern the level of an offer. At present, the level of any offer that Dominion may submit in the 2019/2020 First Incremental Auction, which commences September 11, 2017, is unknown. A finding that a participant is eligible for a Competitive Entry Exemption means that because such a participant has demonstrated that it receives no subsidies of any kind, directly or indirectly, the public can be confident that any offer submitted will not be below the competitive level. A Competitive Energy Exemption allows a participant to avoid a direct review of the level of its offer. It is essential that such exemptions are granted only to participants that are truly eligible. Participants who could have incentives to offer at levels that are not competitive should not receive an exemption.

This case concerns PJM's administrative determination on eligibility for an exemption from the otherwise applicable MOPR rules. A participant receiving a Competitive Entry Exemption is entitled to a presumption that its behavior is competitive. Such a participant avoids the default MOPR Offer Price Floor and avoids the need to obtain another exemption, most notably unit-specific cost review.

Dominion should not have applied for an exemption for which it is so obviously unqualified. Dominion could have instead applied for a unit specific review of its offer. Both the current rules, which were approved by an order now subject to remand, and the superseded and now possibly reinstated prior rules, provide for unit specific cost review.¹¹ Only the current rules include provisions for a Competitive Entry Exemption. PJM has determined that the Competitive Entry Exemption remains a valid option in spite of the

¹¹ NRG Power Marketing, LLC, et al. v. FERC, Slip. Op. Case No. 15-1452 (July 7, 2017) ("Remand Order").

Remand Order.¹² PJM has the responsibility for administering the rules for operating the market in its tariff. Under these circumstances PJM and not Dominion is properly named in the complaint.

As PJM aptly states (at 5): "At issue is whether PJM misapplied its Tariff in granting a Competitive Entry Exemption." PJM claims (*id.*): "PJM correctly applied the Tariff in granting the exemption request." PJM is best situated to defend that assertion.

4. The Market Monitor Is the Only Entity Authorized and Able to Monitor PJM's Tariff Administration.

This case illustrates why it is necessary for market monitoring units to have the ability to file complaints against Regional Transmission Organizations/Independent System Operators (RTOs/ISOs). Because market monitoring units have unique access to RTO/ISO data and market participant offer data, they are uniquely able to identify issues such as those involved in this case and bring them to the attention of the Commission. No other entity, including those with a strong interest in effective administration of the MOPR, was aware of or could have been aware of the actions taken by PJM.

PJM's answer demonstrates its failure to appreciate the importance of the MOPR and how the exemptions from the MOPR are supposed to operate. PJM states (at 7): "the IMM seems to believe that to be eligible for the Competitive Entry Exemption, the market participant must show it is a 'purely merchant resource.'" There is no "seeming" about it. That is the purpose of the rule: to ensure competitive outcomes in PJM markets.¹³ If a

¹² PJM explicitly confirmed its position that the provisions in the tariff allowing for a Competitive Entry Exemption should remain valid in spite of the Remand Order in an email dated July 31, 2017. PJM's answer filed August 21, 2017, implicitly confirms that position.

¹³ See *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 at PP 57–58 (2013) ("The economics of a merchant resource, however, differ markedly from a resource built pursuant to a state contract. Because a purely merchant generator places its own capital at risk when it invests in a new resource, any such resource will have a strong incentive to bid its true costs into the auction, and it will clear the market only when it is cost effective... We find only that such a resource may not receive a categorical exemption from the MOPR. Any such resource will still have the ability to have its

participant can demonstrate that it is a purely merchant resource then it is exempted from the MOPR.¹⁴ A purely merchant resource is a competitive market participant that does not benefit from nonbypassable charges, including utility rates under cost of service regulation. The availability of a Competitive Entry Exemption presents an opportunity to avoid unnecessary administrative process for participants who behave competitively because they are responsible for 100 percent of their own costs and bear 100 percent of the risks of failure. The rule is not designed to allow participants to circumvent mitigation when they are not responsible for 100 percent of their own costs and do not bear 100 percent of the risks of failure.

The intent of the language defining the standards for the MOPR exemptions was to provide a streamlined administrative approach to competitive merchant resources, not a loophole that undercuts effective mitigation. The Commission explicitly relied upon that rationale when it approved Competitive Entry Exemption.¹⁵

PJM suggests (at 2–3) that the Market Monitor should file a referral. PJM does not explain its preference for having its actions reviewed by the Office of Enforcement. There are good reasons for the Market Monitor’s course of action. A referral is not a viable alternative. First, the Market Monitor has not accused PJM or Dominion of misconduct, even though it strongly disagrees with PJM’s decision to approve a Competitive Entry Exemption in these circumstances and with Dominion’s decision to apply. Second, a quick

individual net costs reviewed through the unit-specific review process, as discussed below at section VI.C of this order.”), *order denying reh’g*, 153 FERC ¶ 61,066 (2015); OATT Attachment DD § 5.14(h)(7).

¹⁴ If a participant receiving an exemption submits an offer under circumstances sufficient to overcome the presumption of competitiveness, including but not limited to material changes to the facts relied upon in granting the exemption, the Market Monitor may take action, including a referral or a complaint.

¹⁵ See 143 FERC ¶ 61,090 at PP 53–62.

decision is needed in order to ensure that the rules protecting the RPM Auctions from the exercise of market power are properly administered and that the market results are not unnecessarily delayed. Third, the public, including third party entities with an interest in the outcome of this case (e.g. Dominion, Exelon, Power Providers and Calpine), should have notice and opportunity to be heard. A confidential referral of PJM would not afford such opportunity. Because a complaint avoids the implication that PJM has engaged in misconduct, includes procedures for speedy resolution and provides notice and opportunity to be heard, it is the best means to address the issue raised.

B. Dominion Does Not Need a Competitive Entry Exemption to Submit an Offer.

That Dominion is ineligible for a Competitive Energy Exemption does not prevent Dominion from submitting an offer in RPM Auctions. Dominion could offer the resource at the MOPR Floor Offer Price, the tariff defined default level.¹⁶

Dominion subsidiaries are not required to use the default offer because they are eligible for a unit specific cost review regardless of whether the current or the prior rules are effective after the Remand Order. As long as participants have the option to develop a unit specific offer floor, the harm from the lack of a reasonable default offer floor is eliminated.

Dominion raises a number of irrelevant arguments. The MOPR concerns mitigation rules having nothing to do with the Public Utility Holding Company Act or requiring changes in or alternation of Dominion's public utility holding structure.¹⁷

C. Dominion's Corporate Structure

Dominion's assertions about its corporate structure are not clear. Dominion's 2016 10-K states:

¹⁶ See OATT Attachment DD § 5.14(h)(3).

¹⁷ See Dominion at 4-5.

Dominion manages its daily operations through three primary operating segments: DVP, Dominion Generation and Dominion Energy. (page 10)

The Dominion Generation Operating Segment of Virginia Power includes the generation operations of the Virginia Power regulated electric utility and its related energy supply operations. Virginia Power's utility generation operations primarily serve the supply requirements for the DVP segment's utility customers. The Dominion Generation Operating Segment of Dominion includes Virginia Power's generation facilities and its related energy supply operations as well as the generation operations of Dominion's merchant fleet and energy marketing and price risk management activities for these assets. (page 12)

Dominion incorrectly identifies Genco. Attachment A lists the company segments identified by the Market Monitor.

Dominion Energy Marketing, Inc. is owned by Dominion Energy and is an affiliate of the regulated utility.

D. The Complaint Presumes that Competitive Entry Exemptions Remain Valid.

Power Providers state, "Although not specifically stated in NRG, it is consistent with precedent, the spirit and terms of the court's decision, and with what PJM stated in its December 2012 Compliance Filing that the 2011 MOPR Reforms are the currently-effective rules governing MOPR." Under Power Providers theory, the Competitive Entry Exemption no longer exists, Dominion could not have applied for such exemption and PJM could not have accepted the Competitive Entry Exemption at issue here. If true, this theory would mean that this complaint is moot, and Dominion must offer no lower than the default MOPR Floor Offer Price in the 2019/2020 First Incremental Auction, which commences September 11, 2017, and would need to obtain unit specific cost review in order to submit offers lower than the default in future auctions.¹⁸

¹⁸ Dominion could have applied for unit specific review of its offer under the reinstated rules, but the deadline has passed. *See* OATT § 5.14(h)(8)&(9).

The Market Monitor takes no position at this time on whether the complaint is moot under the Power Providers theory. The Market Monitor filed the complaint in spite of the possibility that it is moot for two reasons.

First, the Court did not specify the effect of its action prior to the Commission taking up the MOPR reforms on remand. It is possible the Court did not intend to require any immediate change until the Commission acts on remand or its issues a mandate. In that case, the Competitive Entry Exemption would remain valid for the 2019/2020 First Incremental Auction.

Second, PJM has informed the Market Monitor that it does not consider the Competitive Entry Exemption invalid under the Remand Order and would accept an offer that relies on such exemption.¹⁹ As long as PJM proceeds to administer the tariff in this manner, the complaint is not moot. Indeed, the complaint presents an opportunity for the Commission to determine that the Competitive Entry Exemption is invalid and the complaint is therefore moot prior to the 2019/2020 First Incremental Auction.

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.²⁰ In this answer, the Market Monitor provides the

¹⁹ See *infra* footnote 12.

²⁰ See, e.g., *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); *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).

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
Eagleville, Pennsylvania 19403
(610) 271-8051
joseph.bowring@monitoringanalytics.com

General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com

Dated: August 30, 2017

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 30th day of August, 2017.



Jeffrey W. Mayes

General Counsel

Monitoring Analytics, LLC

2621 Van Buren Avenue, Suite 160

Eagleville, Pennsylvania 19403

(610) 271-8053

jeffrey.mayes@monitoringanalytics.com

Attachment A

Genco	<p>Dominion Energy Marketing, Inc.</p> <p>On December 31, 2016, Dominion Energy Marketing, Inc. owned 1,704 MW of installed capacity in the PJM footprint, and 4,693 MW nationwide.</p>
Parent	Dominion Energy (formerly Dominion Resources, Inc.)
Utility	<p>Virginia Electric & Power Company (d.b.a. Dominion Energy Virginia)</p> <p>On December 31, 2016, Dominion Energy Virginia owned 21,655 MW of installed capacity in the PJM footprint.²¹</p>
Resource	Fairless Power Station is a combined cycle, natural gas powered facility with a total capacity of 1,180 MW. The MOPR exemption request is for a 47.0 MW uprate.
Auction	2019/2020 First Incremental Auction, which commences September 11, 2017.

²¹ Information on utility and merchant generation MW totals was obtained from, “Dominion Energy Inc. Form 10-K,” <http://investors.dom.com/phoenix.zhtml?c=110481&p=irol-sec> (published February 28, 2017).