

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

Independent Market Monitor for PJM	)	Docket No. EL17-22-001
v.	)	
American Electric Power Service Corporation	)	
	)	

**ANSWER OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rule 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<sup>2</sup> (“Market Monitor”), submits this answer to the request for clarification or rehearing submitted on July 5, 2018, by American Electric Power Service Corporation (“AEP”). AEP argues for clarification or rehearing of the order issued June 5, 2018, in this proceeding (“June 5<sup>th</sup> Order”).<sup>3</sup> The June 5<sup>th</sup> Order found that “the IMM’s request for cost information falls within the scope of information it may reasonably request to perform its market monitoring functions pursuant to Attachment M” and directed that AEP “produce the information within 15 days of the date of this order.”<sup>4</sup> AEP requests clarification that the June 5<sup>th</sup> Order is “limited to the particular IMM request dated October 28, 2016,” and that “the Order did

---

<sup>1</sup> 18 CFR § 385.213 (2017).

<sup>2</sup> 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”).

<sup>3</sup> *Independent Market Monitor for PJM Interconnection, L.L.C. v. American Electric Power Service Corp.*, 163 FERC ¶ 61,181.

<sup>4</sup> *Id.* at PP 38, 41.

not authorize the IMM to conduct an audit of AEP's costs recorded in Account 553." If the Commission does not grant AEP's unduly limited clarification of the June 5<sup>th</sup> Order, AEP seeks rehearing, claiming (at 7) "that it was erroneous for the Commission to fail to impose reasonable limits on the IMM's authority to request information pursuant to the PJM Tariff, Attachment M." Clarification is unnecessary. The Market Monitor's authority to request information supporting the costs included in the Offer Price Cap is necessary for the execution of the Market Monitoring Plan and AEP's provision of the information is required.<sup>5</sup> Rehearing should be denied.

The June 5<sup>th</sup> Order requires AEP to provide "the data from which AEP calculates the variable operations and maintenance ('VOM') expense component of its cost-based offers." AEP and all other participants should provide such information upon request without the need for burdensome litigation. AEP has provided data, but has not provided a sufficient description of the data for the Market Monitor to assess whether AEP correctly applied the Cost Development Guidelines in calculating the VOM costs included in the Ceredo units' cost-based offers or whether the level of the cost-based offers were otherwise acceptable.<sup>6</sup> AEP should cooperate with the June 5<sup>th</sup> Order and provide the explanation of the data requested by the Market Monitor. All participants should provide such information if requested.

## I. ANSWER

### **A. The Findings in the June 5<sup>th</sup> Order Are Precedent Establishing the Validity for the Same and Similar Requests to All Participants.**

AEP requests clarification (at 7) that the June 5<sup>th</sup> Order is "limited to the particular IMM request dated October 28, 2016." The June 5<sup>th</sup> Order is not so limited. The

---

<sup>5</sup> See PJM OATT, Attachment M – Appendix, Section II.A.2 and PJM OATT, Attachment M, Section V.B.2.

<sup>6</sup> See June 5<sup>th</sup> Order at 39.

Commission's conclusions (at P 39) apply to future requests of the same or similar nature to AEP. The precedent applies to all participants. The Market Monitor should not be required to go through a two year process for each and every information request. The precedent applies to the Market Monitors' follow up questions to AEP, which are plainly within the scope of the specific original request. The Market Monitor and the Commission should not be required to continually litigate the same issues. The Market Monitor cannot perform its function if it cannot get timely responses to information requests and cannot follow up on the responses received.

**B. The Requested Information Concerns an Investigation of Market Behavior Well Within Core Market Monitoring Functions.**

AEP requests clarification (at 7) that the June 5<sup>th</sup> Order "did not authorize the IMM to conduct an audit of AEP's costs recorded in Account 553," or in the alternative, that the Commission grant rehearing, claiming that the Commission erred because it did not place "reasonable limits on the IMM's authority to request information pursuant to the PJM Tariff, Attachment M." Requests for explanation of the data provided by AEP, pursuant to the June 5<sup>th</sup> Order, do not fall outside the scope of the order. The Market Monitor routinely requests explanations of data provided by market participants as part of its responsibilities under Attachment M. Evaluating participant behavior, including offer behavior, is a core market monitoring function. AEP fails to explain how any of the information requested does not pertain to its market behavior. AEP fails to demonstrate any flaw in or valid confusion about the scope of the June 5<sup>th</sup> Order.

**1. AEP Reference to ODEC v. FERC Is Misplaced.**

In challenging the scope of the IMM's authority to investigate how AEP calculated VOM costs, AEP makes frequent reference to *ODEC v. FERC*, slip. op. Case No. 16-1111 (D.C. Cir. June 15, 2018). AEP improperly relies on dicta in *ODEC* to define the proper

scope of the Market Monitor's function and role.<sup>7</sup> Commission rules, policies, approved tariff rules and practice have defined the Market Monitor's role. Specific provisions of the PJM Market Monitoring Plan support the Market Monitor's actions in this case.

*ODEC* concerned whether the Market Monitor met the requirements of Article III of the U.S. Constitution for standing as a matter of right in a case before the D.C. Circuit.<sup>8</sup> The D.C. Circuit and other courts have held that those requirements do not apply to proceedings before federal agencies.<sup>9</sup> *ODEC* explicitly insulates its holding from consideration of whether or how the Market Monitor or MMUs may intervene or participate in proceedings before federal agencies. *ODEC* acknowledges, even in its incorrectly narrow description of the Market Monitor's and an MMU's role, that "its function" includes "regulatory filings." *ODEC* explained (at 18) that the scope of the Market Monitor's and MMUs' functions "are not at stake in this case." *ODEC* does not require the Commission to change its policies on MMUs or RTOs. *ODEC* applies solely to interventions

---

<sup>7</sup> Because the Market Monitor's position in the *ODEC* matter in support of FERC prevailed and the Market Monitor's arguments are included in the record, the determination on standing is not decisive to the outcome of the *ODEC* proceeding.

<sup>8</sup> See F.R.A.P. 15(d); F.R.C.P. 24(b).

<sup>9</sup> See, e.g., *Chamber of Commerce of the United States v. SEC*, 443 F.3d 890, 897 (206) ("administrative agencies, unlike federal courts, are not jurisdictionally constrained by the case-and-controversy limitation in Article III"); *Envirocare, Inc. v. NRC*, 194 F.3d 72, 74 (1999) ("Agencies, of course, are not constrained by Article III of the Constitution; nor are they governed by judicially-created standing doctrines restricting access to the federal courts. The criteria for establishing 'administrative standing' therefore may permissibly be less demanding than the criteria for 'judicial standing,'" citing, e.g., *Pittsburgh & W.Va. Ry. v. United States*, 281 U.S. 479, 486 (1930); *Alexander Sprunt & Son, Inc. v. United States*, 281 U.S. 249 (1930)); see also, *Yates v. Charles County Bd. of Educ.*, 212 F. Supp. 2d 470, 472 (2002) ("it is a "familiar rule that an administrative agency is not bound by Article III or prudential judicial tests of standing"); *Gardner v. FCC*, 234, 530 F.2d 1086, 1090-91 (D.C. Cir. 1976) ("Administrative adjudications ... are not an article III proceeding to which either the "case or controversy" or prudential standing requirements apply; within their legislative mandates, agencies are free to hear actions brought by parties who might be without standing if the same issues happened to be before a federal court," citing *Ecee, Inc. v. Federal Energy Regulatory Com.*, 645 F.2d 339, 349 (1981).

as a matter of right in matters before the D.C. Circuit. *ODEC* says nothing whatever about the proper scope of a review of an offer to determine whether it raises market power concerns. AEP's reliance on *ODEC* is misplaced, and arguments based on such reliance should be rejected.

## **2. AEP Confuses Market Monitoring with an Accounting Audit.**

AEP is attempting to confuse the Market Monitor's follow up questions about the data provided by AEP with an audit. AEP provided data in summary form that did not permit the Market Monitor to understand what the costs were for and therefore did not permit the Market Monitor to evaluate whether the costs were allowable under PJM rules. Responses to the Market Monitor's questions are required in order to permit evaluation of the expenses.

AEP asserts that its data has been audited for accounting purposes. The general purpose of an accounting audit is to determine whether dollars were spent as stated. An accounting audit does not draw conclusions about whether the costs in the FERC account comply with the PJM Cost Development Guidelines. An accounting audit does not draw conclusions about whether a competitive offer level should include the average of those audited costs. An accounting audit does not draw conclusions about whether an offer raises concerns about market power.

AEP has shown nothing improper or unusual about the scope of the Market Monitor's follow up questions. AEP has not shown any material change to facts that are the basis for the finding in June 5<sup>th</sup> Order. AEP's argument should be rejected.

## **3. Market Design Recommendations Do Not Alter Market Behavior Monitoring Responsibilities.**

AEP argues (at 10), "The IMM has admitted that it is interpreting PJM governing documents in a way that would require revisions to the Operating Agreement, and alter market rules. *See Independent Market Monitor for PJM Interconnection, L.L.C.*, Docket No. EL17-22, PJM's Motion to Intervene and Comments (Dec. 16, 2016) (citing IMM ER16-372 Protest at Attachment A)."

The Market Monitor made no such admission. Through an ongoing stakeholder process, PJM, the Market Monitor, and AEP all support revisions to the governing documents with respect to VOM in cost-based offers. The Market Monitor's responsibility to monitor offers for compliance with the existing rules persists regardless of discussions in the stakeholder process or in Commission proceedings.

## II. 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,



---

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: July 20, 2018

## **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 20<sup>th</sup> day of July, 2018.



---

Jeffrey W. Mayes

General Counsel

Monitoring Analytics, LLC

2621 Van Buren Avenue, Suite 160

Eagleville, Pennsylvania 19403

(610) 271-8053

*jeffrey.mayes@monitoringanalytics.com*