UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

	)	
Panda Stonewall LLC	)	Docket No. ER17-1821-002
	)	

ANSWER OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rules 213 of the Commission's Rules and Regulations,[1] and pursuant to the directions of the presiding judge in the prehearing conference convene April 13, 2018, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM[2] ("Market Monitor"), submits this answer to the opposition filed by Panda Stonewall, LLC ("Panda") to the Market Monitor's motion to intervene out of time filed April 13, 2018, and to the comments and directives in the prehearing conference related to the Market Monitor's motion.

I. ANSWER

A. No Prejudice to Any Party Would Result from Allowing the Market Monitor to Intervene Before the Hearing Phase Commences.

Panda's arguments that granting the Market Monitor's motion to intervene would be prejudicial to it are misplaced and should be rejected.

Panda claims (at 7) that "the settlement proceedings served to narrow and clarify the precise issues that will be addressed in the hearing proceedings." The other parties to the

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1 18 CFR § 385.213 (2017).

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").

proceeding do not agree.[3] The record includes no partial settlement or other limitation on the scope of the hearing. The proper scope of the hearing continues to be defined by the hearing order issued July 27, 2017, which "directs that a public hearing shall be held concerning the justness and reasonableness of Panda's proposed tariff revisions."[4] The Market Monitor is not aware of any formal understanding in the record refining or defining the scope of issues more narrowly than the hearing order, but, if such formal understanding does exist, then the Market Monitor would have accepted it when the Market Monitor agreed "to accept the record as it has developed to the date of the granting of this Motion."[5]

B. Panda Does Not Lack Knowledge of the Market Monitor's Position on Reactive Power Matters.

Panda claims that it is prejudiced because it does not know the Market Monitor's position on the issues raised in this proceeding.[6] The Presiding Judge has directed the Market Monitor "to provide a clear statement under Rule 214(b)(1) of the position the market monitor is taking on the basis of fact [and] law that position."[7]

Unique among the parties, the Market Monitor routinely and publicly reports its position on market design issues, and an explanation of the Market Monitor's position on reactive rate matters is included in its 2017 State of the Market Report for PJM.[8] The reactive rate filing in the proceeding comes under Schedule 2 to the OATT, which is part of the PJM

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3 Tr. at 29:19–30:22; 31:25–32:5; 33:18–34:10; 37:14–25.

4 *Panda Stonewall, LLC*, 160 FERC ¶ 62,096 (2017), letter order at 3.

5 (doc-less) Out-of-Time Motion to Intervene of the Independent Market Monitor for PJM under ER17-1821-000, et. al. (April 9, 2018).

6 Panda at 7–8; Tr. at 21:18–25.

7 Tr. at 40:1–6.

8 2017 State of the Market Report for PJM, Vol. I (March 8, 2018) at 495–500.

market design and part of the PJM Market Rules that the Market Monitor monitors.[9] The development of the Market Monitors' position has been included in public filings in proceeding on reactive matters.[10]

The Market Monitor participated in two settlement proceedings in 2016, establishing reactive rates for units owned by Panda during which the Market Monitor communicated its position on how reactive rates should be calculated directly to Panda.[11]

The Market Monitor shares the Commission's concern that Panda has not supported its rate as just and reasonable, and that Panda must meet the burden prior to any burden placed on trial staff or other parties to disprove any rate component. This matter has been set for hearing in part because, "Panda Stonewall's proposed tariff revisions raise issues of material fact that cannot be resolved based on the existing record."[12] The Market Monitor agrees that Panda should fully meet its burden to support every component of its proposed rate.[13] Because discovery will be needed to determine Panda's support for its rate in the first instance, the normal rights accorded to parties are necessary for meaningful participation in this proceeding. Panda's suggestion to assign a special status for the Market Monitor where

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9 OATT Attachment § IV.

10 *See, e.g.*, Comments of the Independent Market Monitor for PJM, Docket No. AD16-17-000 (July 29, 2016); Response of the Independent Market Monitor for PJM to August 18, 2016 Offer of Settlement under EL16-57, et al. (September 7, 2016).

11 Docket Nos. EL16-90-000 and EL16-103-000.

12 160 FERC ¶ 62,096 at 2.

13 *See Wabash Valley Power Association, Inc.*, 154 FERC ¶ 61,246 at P 23 (2016) ("The Commission has received a number of cost-based reactive power tariff filings that have included apparent errors in the application of the AEP methodology and that have not been supported by the required cost information," citing *, e.g.*, *PSEG Energy Resources & Trade, LLC*, 152 FERC ¶ 61,113 (2015); *Newark Energy Center, LLC*, 152 FERC ¶ 61,188 (2015); *Garrison Energy Center, LLC*, 153 FERC ¶ 61,241 (2015); *Scrubgrass Generating Company, L.P.*, 152 FERC ¶ 61,220 (2015).).

it would have less than equal rights during the hearing phase has no merit and would prevent the Market Monitor's full and effective participation.[14]

The Market Monitor has particular concern that power factors used to calculate reactive rates accurately reflect the units' used and useful capability based on the facts of the units' interconnection to the PJM system and the value of such capability to PJM system operator and the customers who pay for reactive power. The Commission has identified this issue in its *Wabash Valley* decision, where it stated: "to support the reactive power allocator used in the *AEP* methodology, reactive power revenue requirement filings must include reactive power test reports."[15] The policy in *Wabash Valley* should be clarified and expanded to ensure accurate and just and reasonable rates.

The Market Monitor is concerned about the treatment of losses. The Commission has observed that losses are not fixed costs properly included in reactive rates, but has nevertheless indicated that it would consider allowing the inclusion of losses in such rates.[16] To the extent that losses are included, losses that are recovered under the PJM market rules should not be recovered a second time in reactive capability rates.[17]

The Market Monitor is concerned that reactive rates should include terms and conditions that coordinate with other PJM market rules, including rules relating to developing unit specific cost caps, and otherwise facilitate monitoring of market participant behavior. The Market Monitor has a particular interest in effective market monitoring.

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14 Tr. at 26:16–27:12.

15 154 FERC ¶ 61,246 at P 28.

16 *Dynegy Midwest Generation, Inc.*, Opinion No. 498, 121 FERC ¶ 61,025 at P 71 (2007), *order on reh'g*, 125 FERC ¶ 61,280 (2008) ("While the AEP methodology is limited to fixed cost recovery, if an applicant could demonstrate that it incurs variable costs associated with heating losses, we would consider such recovery."); 154 FERC ¶ 61,246 at PP 24–25.

17 *See* OA Schedule 1 § 3.2.3.

The Market Monitor's public statements and the statement provided in this pleading exceed the minimum requirements of Rule 214(b)(1).[18] Rule 214(b)(1) does not require the movant to actually have a position or to make representations beyond its knowledge.[19] Like any other party to a proceeding set for hearing, the Market Monitor should be permitted to engage in a period of discovery to refine its position on the issues specifically identified in this pleading, on issues raised by other parties and on additional issues revealed by participation in discovery.

C. Failure to Timely File on the Basis of General Notice Is Not a Dispositive Argument Against Intervention.

The Market Monitor has explained why it did not timely intervene in its motion filed April 9, 2018. The required information on the reason is one of five factors that rules require a participant seeking to intervene to address. The Commission can consider and weigh all five factors. The rules do not designate and precedent does not show that any single factor is dispositive. All five factors should be weighed in this case. Where granting a late motion does not prejudice any party, the concerns for notice and opportunity to be heard and the need for the Commission to make an informed decision in the public interest should take precedence over perceived lack of compelling justification for delay.

The length of time after the intervention date is not relevant to a showing of prejudice in this case. The timing favors granting intervention. Several weeks earlier, before settlement judge proceedings had decisively concluded, an allegation of potential unfairness could have had some weight. It is precisely because the first stage of the proceeding is now complete and a new judge has been designated that no prejudice to any party exists.

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[18] 18 CFR § 385.214(b)(1) ("Any motion to intervene must state, *to the extent known*, the position taken by the movant and the basis in fact and law for that position" [emphasis added].).

[19] *Id*.

D. No Precedent Requires Denial of the Market Monitor's Motion.

The presiding judge requested comment on the applicability of certain precedent to the Market Monitor's motion to intervene.[20] The indicated precedent supports or does not weigh against granting intervention out of time.

One of two petitions for intervention submitted out of time was denied during an earlier phase of this proceeding. The denied movant, Moxie Energy ("Moxie"), is not similarly situated to the Market Monitor in terms of its organizational nature and purpose, the scope its interests before the Commission or the resources available to it.[21] The presiding judge has noted the basis for the Moxie Energy decision was the movant's having "pointed out no good cause rationale, not even just a weak one."[22] The movant also failed to the address the question of whether its interests already were adequately represented.[23]

In *Tennessee Gas Pipeline Company*, 161 FERC ¶ 61,046 *,reh'g denied*, 157 FERC 61,254 (2016), *reh'g denied and dismissed*, 162 FERC ¶ 61,167 (2018), the Commission granted intervention to Sierra Club and other environmental groups nearly a year after the hearing commenced, rejecting opposition from the pipeline that the Sierra Club had offered no reason for not having timely intervened. The Commission went on to considerthe merits of motions for hearing and consolidation from the Sierra Club that would have changed the nature of the proceeding going forward and could have imposed significant additional costs on all parties. In this case, the Market Monitor methodically addressed all of the regulatory requirements to support good cause and has requested no change in the process established in the hearing order or the scope of the hearing order. In *Tennessee Gas*, the

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20 Tr. at 17:24–18:3; 39:2–10.

21 In 2017, the Commission's eLibrary shows this case as only case in which Moxie Energy sought to intervene. The Market Monitor sought intervention 61 times that year.

22 Tr. at 23:3–5.

23 Tr. at 23:6–9.

parties had been involved in the relevant stage of the proceeding for over a year, while the relevant phase of this proceeding had not commenced.

In *West Texas LPG Pipeline Limited Partnership*, 162 FERC 61,252 (2018), the Commission permitted late intervention when the party claimed it missed the intervention deadline due to "administrative oversight" and there was minimal prejudice to the parties. The Commission stated that "administrative oversight" was not the most convincing of reasons, noting that window for intervention been extended 30 days, but found no prejudice because intervention was filed in the early stages of the proceeding. *West Texas* shows that consideration of whether any prejudice results may outweigh other factors, including the explanation for delay. In this case there is no prejudice, not even minimal prejudice, because the relevant phase of the proceeding had not commenced when the Market Monitor moved to intervene.

In *DTE Midstream Appalachia, LLC*, 162 FERC ¶ 61,238 (2018), the Commission accepted a late filed intervention by an environmental group that had claimed that it had not seen the notice of the application even though the Commission did not find the excuse "persuasive." *DTE Midstream* shows that the excuse factor is not dispositive. In this case there is no prejudice, not even minimal prejudice, because the relevant phase of the proceeding had not commenced when intervention was sought.

The precedents discussed above concerns natural gas cases. The Commission rules for gas cases require actual notice to customers and state commissions.[24] State commissions, like the Market Monitor, intervene in cases to protect the public interest and have defined responsibilities related to utility rates. The Market Monitor has interests distinct from those of state commissions, but the Market Monitor is more similarly situated to state commissions than it is to competitors or private environmental groups. The Market Monitor should not have to rely solely on general notice of proceedings affecting PJM markets. The

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[24] *See* 18 CFR § 154.208.

Market Monitor has requested service of reactive filings from PJM Members, including Panda. Schedule 2 of the Open Access Transmission Tariff requires actual service of reactive rate filings to PJM Interconnection, L.L.C. The requirement was not expanded as it should have been when the Market Monitor became an entity separate from PJM in 2008.

E. Allowing the Intervention Under the Circumstances of this Proceeding Serves the Public Interest and Risks Establishing No Harmful Precedent.

Granting the Market Monitor's intervention serves the public interest and does not create any harmful precedent.

First, the Market Monitor is one of a handful of similarly situated entities. Market monitors are creatures of Commission policy that are directed to assist the Commission on matters related to RTO market design. Market Monitors represent the public interest in competitive organized wholesale markets. Allowing Market Monitors and similarly situated entities to intervene late in proceedings when justified opens no floodgate and does not implicate any Commission policy more significant than the benefits of including such entities.

Second, the Market Monitor's motion is supported by a showing of no prejudice as a result of the current stage of the proceeding. All aspects of a hearing were held in abeyance for a period while settlement discussions occurred under the auspices of a settlement judge. Those discussions are complete, as confirmed by an order issued March 30, 2018. The Market Monitor's intervention occurred prior to the prehearing conference that is the first step to organize the proceeding going forward. Allowing intervention during that 14 day period does not create an unbounded right to intervene earlier or later in the proceeding. Allowing intervention during the limited period between closure of settlement judge proceedings and the commencement of a hearing would harm no legitimate interest and would facilitate the decision making process. There is no reason not to create a window of opportunity for new intervenors at this stage of the proceeding. Allowing intervention when there is no offsetting risk of prejudice would serve the public interest in ensuring

notice and opportunity to be heard. Allowing such intervention would provide additional motivation for parties to settle cases rather than continuing to hearing.

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,

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Dated: April 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 20th day of April, 2018.

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