

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

PJM Interconnection, L.L.C. )  
 ) ER16-372-003, -004 & -005  
 )

**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, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (“Market Monitor”), submits this answer to the request for rehearing filed by PJM Interconnection, L.L.C. on May 24, 2019, of the order issued in this proceeding April 29, 2019.<sup>1 2 3</sup> In the request for rehearing PJM raises the same arguments it made previously in this matter for its position that the Market Monitor is not authorized to file complaints against PJM. PJM’s arguments have no merit. The April 29<sup>th</sup> Order is correctly decided. The request for rehearing should be denied.

**I. ANSWER**

**A. The April 29<sup>th</sup> Order Reasonably Determined that the PJM Tariff Authorizes the Market Monitor to File Complaints.**

The Commission held (at P 72) “that Attachment M permits the IMM to file a complaint against PJM regarding a Market Seller’s Fuel Cost Policy.”

The Commission explained (at PP 73–74):

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<sup>1</sup> 18 CFR §§ 385.212 & 385.213 (2018).

<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> *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,084 (2019) (“April 29<sup>th</sup> Order”).

Attachment M provides that “the Market Monitoring Unit shall review all proposed sell offers for a determination of whether they raise market power concerns” and “determine whether the level of offer or cost inputs raises market power concerns.”[n.4: PJM Tariff, Attachment M, Article IV, section E-1.] The Fuel Cost Policy is closely related to the responsibilities that Attachment M explicitly assigns to the IMM because the Fuel Cost Policy is integral to the determination of whether generators have submitted reasonable cost-based offers in the event market power mitigation is required.

Attachment M further provides that ‘[i]n the event that a market participant determines to use an offer or cost input at a level or value that the Market Monitoring Unit has found to involve a potential exercise of market power, the Market Monitoring Unit may file a petition or initiate other regulatory proceedings addressing the issue.’ Filing a complaint on the Fuel Cost Policy with the Commission is a method of initiating a regulatory proceeding that falls within the language of this provision. [Emphasis in original].

The Commission also explained (at P 74 n.131):

Attachment M, Section D-1, describes a similar responsibility in another circumstance: ‘If the Market Monitoring Unit detects a compliance issue and determines that there is an issue about the proper and lawful application of a rule, and the Market Monitoring Unit makes a preliminary determination that no misconduct is evident and the issue involves a difference about the appropriate calculation of the level of an input, the Market Monitoring Unit may file a petition or initiate other regulatory proceedings addressing the issue. The Market Monitoring Unit may, where it deems appropriate, submit a confidential Referral and initiate a public regulatory proceeding concerning the same underlying matter.’

PJM argues that the Commission makes an “unsubstantiated leap that also found the Market Monitor is authorized to file complaints against PJM.” The Commission’s logic is well substantiated (at P 74): “Filing a complaint on the Fuel Cost Policy with the Commission is a method of initiating a regulatory proceeding that falls within the language of this provision.” PJM does not and cannot refute this statement. The cited provisions place no explicit or implicit restriction against whom the Market Monitor may file complaints.

PJM also argues (at 4–5, 10–11) that Order No. 719, by including provisions for confidential referrals of market misconduct and market design flaws somehow intended to uniquely deny or limit access by MMUs to the regulatory process. PJM fails to show any provision of the rules that establishes or indicates consideration of any such rule or policy. To the contrary, Order No. 719 was intended to protect and enhance the market monitoring function.<sup>4</sup>

The Commission’s interpretation of the cited tariff language is reasonable, consistent with the plain meaning of the tariff language, consistent with Order No. 719 and consistent with the proper scope of the market monitoring function. PJM shows no defect in the Commission’s logic, either as a matter of tariff interpretation or as a matter of policy that promotes the public interest. Rehearing should be denied.

**B. No Holding in the April 29<sup>th</sup> Order Relies on PJM’s Position.**

PJM claims that the decision relies upon a misinterpretation of PJM’s position. PJM claims (at 7–8) that it did not concede that the Market Monitor may file complaints against PJM “in certain circumstances.” PJM’s position on matters beyond the scope of the holding in the April 29<sup>th</sup> Order is not relevant.

The Commission’s logic reflects careful consideration of the language in the OATT. The April 29<sup>th</sup> Order’s discussion of PJM’s position (at P 75) is dicta and is not a basis for the core holding that provisions of Attachment M explicitly authorize the Market Monitor’s complaint in this case. The Commission states (at P 72): “we need not reach that issue here [of whether limits on the Market Monitor’s ability to file complaints is implied] because we

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<sup>4</sup> Order No. 719 at P 310 (“In this section of the Final Rule, the Commission makes reforms to enhance the market monitoring function and thereby improve the performance and transparency of organized RTO and ISO markets. The two principal areas addressed are the independence and functions of the MMU, and information sharing. The Final Rule requires tariff provisions that will remove the MMU from the direct supervision of RTO or ISO management, and requires, in most instances, that the MMU report directly to the RTO or ISO board of directors.”).

are unpersuaded by PJM's narrow reading of Attachment M." The Commission supports its conclusion citing precedent in a prior case: "The Market Monitor is not precluded from filing a complaint, pursuant to section 206 of the Federal Power Act, which demonstrates how the JDA renders the DEP-PJM JOA unjust and unreasonable."<sup>5</sup> The April 29<sup>th</sup> Order does not rely upon any statement of PJM's position.

### **C. Market Monitor Complaints Pose No Conflict for the PJM Board.**

The April 29<sup>th</sup> Order rejected (at P 75) PJM's argument that Market Monitor complaints create a conflict of interest for the Board. The Commission explained: "We are unpersuaded by PJM's argument, as it is unclear why only complaints that fall outside of the Tariff's explicit grant of rights to the IMM would be problematic with respect to the PJM Board's ability to fulfill its responsibilities." The April 29<sup>th</sup> Order correctly held (at P 75) that PJM supports no legal theory of conflicts of interest. PJM fails to explain a conflict of interest particular to the Board's relationship with the Market Monitor. PJM fails to explain a conflict of interest or any other conflict. The Board has no responsibility for the Market Monitor's positions. The Board requires the Market Monitor to operate independently regardless of whether the Market Monitor agrees or disagrees with management.<sup>6</sup>

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<sup>5</sup> April 29<sup>th</sup> Order at P 71 n.129, citing *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,195 at P 22 (2014).

<sup>6</sup> See OATT Attachment M § III.C; Market Monitoring Services Agreement By And Between PJM Interconnection, L.L.C. And Monitoring Analytics, LLC ("MMSA") § 27 ("Maintaining independence. In order for the PJM Board to ensure IMM is adequately performing the functions and responsibilities under the Agreement, the PJM Board will review and evaluate whether IMM is providing the Services in an independent manner, without improper influence from PJM management, PJM staff, market participants, state commissions, or other stakeholders. The PJM Board expects IMM to keep it, the Commission, stakeholders and the public fully informed and that IMM will express its professional opinions, consistent with its independence, even where such positions differ from the positions of PJM management, PJM staff, market participants, state commissions, or other stakeholders.").

The April 29<sup>th</sup> Order appropriately rejected PJM's unsubstantiated and illogical allegation of a conflict of interest. No rationale justifies special and unreasonable limitations on the Market Monitor's independence. Rehearing should be denied.

## 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 a request for rehearing 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>7</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 answer as the Commission resolves the issues raised in this proceeding.

Respectfully submitted,



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President

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<sup>7</sup> See, e.g., *Calif. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,004 at P 13 (2011) (accepting answer to rehearing request that provided information that assisted Commission's decision-making); *Aquila Merchant Servs., Inc.*, 127 FERC ¶ 61,218 at P 28 (2009) (accepting answers to requests for rehearing "because they have provided information that assisted us in our decision-making process"); see also *N. Natural Gas Co.*, 137 FERC ¶ 61,202 at P 10 (2011) (accepting answer to rehearing request because it clarifies the record, and will expedite resolution of issues).

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Dated: June 10, 2019

## 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 10<sup>th</sup> day of June, 2019.



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