

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

PJM Interconnection, L.L.C.

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ER16-372-005

**MOTION FOR CLARIFICATION, OR, IN THE ALTERNATIVE, REHEARING
OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rules 212 and 713 of the Commission's Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM² ("Market Monitor"), submits this motion for clarification and/or request for rehearing of certain holdings included in the order issued in this proceeding April 29, 2019 ("April 29th Order").³

To the extent that the issue cannot be resolved through clarification, the April 29th Order specifically erred in:

- i. explicitly defining the start date of a participant's exposure to penalties only based on notification of PJM's and the Market Monitor's agreement regarding applicability of penalties, and not on notification received from PJM, from the Market Monitor, or from other sources including the Commission;
- ii. failing to require consolidation of provisions creating obligations for the Market Monitor in the centralized market monitoring tariff provisions (OATT

¹ 18 CFR §§ 385.212 and 385.713 (2018).

² Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff ("OATT"), the PJM Operating Agreement ("OA") or the PJM Reliability Assurance Agreement ("RAA").

³ *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,084 (2019).

Attachment M and Attachment M–Appendix) consistent with the directive in Order No. 719; and

- iii. failing to remove the requirement to refer disputes between PJM and the Market related to fuel cost policies to the Office of Enforcement, consistent with the Commission’s February 2017 Order.

The Market Monitor requests clarification, or, in the alternative, rehearing on each of these issues.

I. MOTION FOR CLARIFICATION/REQUEST FOR REHEARING

A. Penalties Should Commence Upon Notice from Either PJM or the Market Monitor Or Any Source.

The April 29th Order states (at P 32):

Under PJM’s proposal, PJM would begin applying the penalty the day after the Market Seller was placed on notice of the infraction by PJM or the IMM and the Market Seller would still be disciplined for its past violation through a referral and/or self-report to the Commission’s Office of Enforcement. We agree with PJM and find it appropriate that the penalty be applied after a Market Seller has received notification of an infraction, since the purpose of the penalty structure is to incentivize compliance for accurate cost-based offers and Fuel Cost Policies, and not to retroactively penalize a Market Seller.

The Commission states here that penalties begin to apply when the market seller is given a notice of its infraction by PJM or the Market Monitor. The Market Monitor agrees with and supports the Commission’s compliance directive.

The problem is the approval of tariff language that does not implement the Commission’s directive. The language of Section 5.1(a) of Schedule 2 to the OA approved in the April 29th Order determines penalties based on “the number of days since PJM first notified the Market Seller of PJM’s and the Market Monitoring Unit’s agreement regarding

applicability of the penalty.”⁴ Because the revised Schedule 2 does not explicitly state that a penalty can be assessed based on PJM’s notice of the infraction or on the Market Monitor’s notification of the infraction, and specifies only notification of PJM’s and the Market Monitor’s agreement regarding applicability, the language is not consistent with the Commission’s stated intent. The Market Monitor requests clarification that PJM will assess a penalty starting from the date and time of notification from PJM or the Market Monitor or other source, including the Commission.

B. Order No. 719 Requires Consolidation of Market Monitoring Unit Provisions in the Tariff in Attachment M.

The April 29th Order states (at P 43):

Regarding the IMM’s argument that the Commission should require PJM to include a statement in section II. A of Attachment M-Appendix of the Operating Agreement and Schedule 2 that the IMM will provide timely input to PJM and the Market Seller regarding the compliance of the Fuel Cost Policy, we find that PJM’s proposed language added to section 2.3.1.1 of Manual 15, which was endorsed by stakeholders on March 27, 2017, provides the requested change.

The rules governing market monitoring are all located in the tariff in Attachment M and Attachment M-Appendix of the OATT. It is important for effective and efficient market monitoring that all rules concerning the Market Monitor’s duties and obligations under the tariff be specified in one place in the tariff. The Commission in Order No. 719 provided: “We ... direct RTOs and ISOs to include in their tariffs, and centralize in one section, all of their MMU provisions.”⁵ The provisions indicated in the April 29th Order, which impose obligations on the Market Monitor, are only included in the PJM manuals. The manuals are not part of the market monitoring rules consolidated at Attachment M and Attachment M-

⁴ See PJM Compliance Filing, EL16-372-003 (July 31, 2017).

⁵ *Wholesale Competition in Regions with Organized Markets*, Order No. 719, 125 FERC ¶ 61,071 (2008), *order on reh’g*, Order No. 719-A, 128 FERC ¶ 61,059 at P 392 (2009).

Appendix. The PJM manuals are not part of the PJM tariff, and may be unilaterally modified by PJM.⁶ The indicated approach violates the directive in Order No. 719. PJM should on rehearing be directed to include the indicated provision in Attachment M-Appendix to the OATT.

C. Addressing Fuel Cost Policy Violations.

The April 29th Order includes (at P 54) the following finding and compliance directive:

In the February 2017 Order, the Commission directed PJM to remove its proposed Tariff revisions that would refer disputes between PJM and the IMM relating to PJM's approval of a generator's Fuel Cost Policy to the Commission's Office of Enforcement. While we agree with PJM that the Commission did not require PJM to remove the reference to "FERC Office of Enforcement for resolution and determination whether the applicable penalties should be assessed," we note that the expression "for resolution and determination whether the applicable penalties should be assessed" is not found in section I.1, Attachment M, Article IV, of the PJM Tariff. Therefore, we require PJM to delete that clause, so that section 5.1(d), Schedule 2, of the Operating Agreement reads as follows:

If upon review of a Market Seller's cost-based offer PJM and the Market Monitoring Unit disagree about whether the offer is in compliance with the Market Seller's PJM-approved Fuel Cost Policy, PJM and/or the Market Monitoring Unit may confidentially refer the matter to FERC Office of Enforcement ~~for resolution and determination~~

⁶ See OA § 10.4(iii). PJM explains its practice and position on its website: "It has been PJM's practice to bring revisions to the Manuals through the stakeholder process for endorsement of revisions, but PJM retains the right and responsibility to make changes to the Manuals as necessary, should stakeholder endorsement not be attainable," <<https://pjm.com/library/manuals.aspx>>.

~~whether the applicable penalties should be assessed.~~⁷

The Market Monitor requests clarification that compliance with the Commission's directive requires removal of the referral to the Office of Enforcement. As the Commission explain in the February 2017 Order:

Resolution of such disputes between an RTO and its market monitor is not the role of the Office of Enforcement. Instead, such disputes are the province of the Commission and its Administrative Law Judges to address in response to a complaint when appropriate, or for its Administrative Dispute Resolution process to resolve outside of formal processes.⁸

Based on the explicit language of the Commission's February 27th Order, there is no reason to involve the Office of Enforcement in disputes over proper tariff administration. Disputes over the approval of fuel cost policies and disputes concerning the application of penalties pursuant to fuel cost policies should be resolved using the same process.

PJM should instead be directed to include the following language in Section 5.1(d) of Schedule 2 to the OA and in Attachment M-Appendix to the OATT, which is consistent with the Commission's determination:

If upon review of a Market Seller's cost-based offer PJM and the Market Monitoring Unit disagree about whether the offer is in compliance with the Market Seller's PJM-approved Fuel Cost Policy, PJM and/or the Market Monitoring Unit may **file a complaint or take other appropriate regulatory action** ~~confidentially refer the matter to FERC Office of Enforcement for resolution and determination whether the applicable penalties should be assessed.~~

⁷ Given the required changes in *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,030 at P 67, section 5.1 of Schedule 2 should now be section 6.1.

⁸ See *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,133 at P 86 (2017) ("February 2017 Order").

II. CONCLUSION

For the reasons provided above, the Market Monitor respectfully requests that the Commission grant rehearing.

Respectfully submitted,



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Dated: May 30, 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 30th day of May, 2019.



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