

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

XO Energy LLC, together with XO Energy MA, LP and XO Energy MA2, LP	)	
v.	)	Docket No. EL20-41-000
	)	
PJM Interconnection, L.L.C.	)	
	)	

**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 (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),<sup>2</sup> submits this answer to the motions for consolidation made by American Electric Power Service Corporation (“AEP”) and made by Exelon Corporation (“Exelon”) and NextEra Energy Marketing, LLC (“NextEra”) on June 1, 2020, in this proceeding. AEP and Exelon and NextEra seek to consolidate this proceeding, which concerns a complaint filed by XO Energy, LLC, et al., seeking to eliminate the FTR Forfeiture Rule (“Complaint”), with PJM’s filing in compliance (“Compliance Filing”) with a 2017 order directing PJM to implement the FTR Forfeiture Rule (“Forfeiture Rule

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<sup>1</sup> 18 CFR §§ 385.212 & 385.213 (2019).

<sup>2</sup> 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”).

Directive”).<sup>3</sup> The Complaint and the Compliance Filing do not involve common issues of law or fact.

Exelon and NextEra also seek consolidation of the Complaint proceeding with the Forfeiture Rule Directive proceeding. The Complaint and the Forfeiture Rule Directive do involve common issues of law or fact, but the Forfeiture Rule Directive has issued and decided the matters of law or fact in that proceeding. No party sought rehearing of the Forfeiture Rule Directive. That the Complaint raises the same issues of law and fact that the Forfeiture Rule Directive decides is why the Complaint should be rejected as an improperly filed collateral attack on the Forfeiture Rule Directive.<sup>4</sup> The common issues of law and fact make consolidation prejudicial to the Market Monitor, because no party should be required to continually relitigate settled matters. In addition, none of proceedings proposed for consolidation has been set for hearing, which is a prerequisite for consolidation. The motions to consolidate should be denied.

## I. ANSWER

AEP argues (at 3) that the Complaint and the Compliance Filing should be consolidated. AEP states (*id.*) that “[t]he PJM Compliance Filing and XO Complaint address the same FTR Forfeiture Rule” and that “[c]onsolidation of these proceedings would allow for the development of a single, comprehensive record, avoid redundancies and promote administrative efficiency.”

Exelon and NextEra make similar arguments (at 17–18), and also seek (at 17) consolidation of the Complaint proceeding with the Forfeiture Rule Directive proceeding.

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<sup>3</sup> Complaint of XO Energy, LLC, Docket No. EL20-41-000 (April 8, 2020) (“Complaint”); PJM Compliance Filing, Docket No. ER17-1433-000 (April 18, 2017) (“Compliance Filing”); *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,038 (2017) (“Forfeiture Rule Directive”).

<sup>4</sup> See Protest and Motion for Rejection of the Independent Market Monitor for PJM, Docket No EL20-41-000 (June 1, 2020).

Exelon and NextEra explain (at 17) that the Complaint and Forfeiture Rule Directive proceedings “raise[] common issues of law and fact.”

AEP (at 3) and Exelon and NextEra all assert (at 18) that consolidation of the proceedings at this time would not prejudice any party.

The Commission “consolidates matters for hearing only if there are common issues of fact or law, and consolidation will ultimately result in greater administrative efficiency.”<sup>5</sup> The Commission consolidates proceedings only when they are set for hearing.<sup>6</sup> The case cited by Exelon and NextEra in support of their motion (at 17 & n.45) explicitly relies upon the existence of hearing and settlement judge proceedings.<sup>7</sup> None of the dockets that AEP and Exelon and NextEra seek to consolidate are set for hearing. For this reason alone, the motions to consolidate should be denied.

The Complaint and the Compliance Filing proceedings involve distinct issues of fact and law and thus administrative efficiency would not be served by consolidating the proceedings.<sup>8</sup> The Compliance Filing proceeding concerns only whether PJM complied with

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<sup>5</sup> *South Carolina Electric & Gas Co.*, 132 FERC ¶ 61,043, at P 23 (2010) (granting consolidation where the parties agreed to consolidate proceedings and the proceeding concerned only one component of a public utility’s formula rate, namely, depreciation rates), citing *S. Cal. Edison Co.*, 129 FERC ¶ 61,304, at P 26 (2009) (denying motion to consolidate where limited issues being set for hearing and settlement procedures raised separate and this docket

<sup>6</sup> *See Dynegy Inc., et al.*, 150 FERC ¶ 61,231 at P 18 (2015). (“We conclude that consolidating this proceeding with Docket No. EC14-141-000 is not appropriate because there are no issues relating to the Proposed Transaction that are being set for a trial-type evidentiary hearing.”).

<sup>7</sup> *See Cal. PUC v. Pac. Gas & Elec. Co.*, 163 FERC ¶ 61,113 at P 23 (2018) (“Because the Complaint raises common issues of law and fact that are already the subject of the ongoing hearing and settlement judge procedures established in Docket No. ER17-2154-000, and for administrative efficiency, we grant Complainants’ request to consolidate the proceedings...”).

<sup>8</sup> *See, e.g., Public Serv. Co.*, 166 FERC ¶ 61,156 at P 38 (2019) (“In general, the Commission consolidates proceedings only if a trial-type evidentiary hearing is required and there are common issues of law and fact... [C]onsolidating the two proceedings would not further administrative efficiency.”)

the Commission's directives.<sup>9</sup> The Complaint seeks to reverse the Forfeiture Rule Directive and does not concern compliance with such directive. No common issues of law or fact exist to support consolidation of the Complaint and Compliance Filing proceedings.

The Complaint and the Forfeiture Rule Directive proceedings do have common issues of law and fact. The commonality of law and fact supports termination of the Complaint proceeding, not consolidation. Exelon and NextEra's argument that there exist common issues of law or fact in the Complaint and the Forfeiture Rule Directive proceedings effectively concedes that the Complaint constitutes a collateral attack on the Forfeiture Rule Directive. The Market Monitor has argued that the Complaint should be rejected because it improperly seeks to relitigate the Forfeiture Rule Directive.<sup>10</sup>

The Market Monitor should not be forced to continually relitigate matters that have been decided. Consolidation of the proceedings is prejudicial to the Market Monitor. Continual relitigation of the same issues does not promote administrative efficiency. Collateral estoppel doctrine exists to ensure fairness and administrative efficiency.

The motions to consolidate should be denied.

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<sup>9</sup> See, e.g., *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,049 at P 36 (2019).

<sup>10</sup> See Protest and Motion for Rejection of the Independent Market Monitor for PJM, Docket No EL20-41-000 (June 1, 2020).

## II. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this answer and deny the motions to consolidate.

Respectfully submitted,



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Dated: June 5, 2020

**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 5<sup>th</sup> day of June, 2020.



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