

Moxie Freedom LLC)	Docket No. ER20-2276-000
)	
TAQA Gen X LLC; Red Oak Power, LLC)	Docket Nos. ER11-4393-000, -008;
)	ER14-477-000, -002
)	
Battery Utility of Ohio, LLC)	Docket No. ER13-1667-000, -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,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),² submits this answer to the answers or responsive motions submitted on or around September 14, 2020, by nontransmission owners who have units in PJM, hold market based rates authorizations and filed triennial reports in the above proceedings. On August 28, August 31 and September 22, 2020, the Market Monitor filed protests in each such proceeding (“Protests”) providing evidence that the current PJM market rules for market power mitigation are insufficient to support market based authorizations and recommending that, unless and until the implementation of PJM’s market power mitigation rules is corrected, the market based rates authorization for participation in the PJM Capacity Market and PJM energy markets should be only on condition that sellers offer their resources at or below cost-based

¹ 18 CFR §§ 385.212 & 385.213 (2020).

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”).

offers. The responses largely constitute attempts to divert attention from the central issue: that the current PJM market power mitigation cannot be relied upon to protect the public interest in competitive markets to create just and reasonable rates, and a requirement to submit cost-based offers is needed unless and until corrections can be implemented. Order No. 861 anticipated the possibility for such circumstances and explicitly outlined the process that the Market Monitor is following.³ The relief requested in the Protests should be granted. The problems with PJM market power mitigation that have been identified in the record can and should be addressed in other proceedings.

I. ANSWER

A. The Arguments Against the Procedure Followed by the Market Monitor Have No Merit and Should Be Rejected.

1. The Protests Are Proper and Are Filed in Good Faith.

The responses avoid the issue of whether the market power mitigation is adequate to support continued unconditional market-based based rates authorizations in PJM. The responses avoid addressing the requested relief, which would limit offers to cost-based offers. Mostly, the responses point to other actions that the Market Monitor could or should take, such as filing complaints against the PJM market rules. Others try to downplay the Market Monitor's concerns as matters of preference.

³ See *Refinements to Horizontal Market Power Analysis for Sellers in Certain Regional Transmission Organization and Independent System Operator Markets*, Order No. 861, 168 FERC ¶ 61,040 at P 21 (July 18, 2019) (“Any objections to a Seller’s market-based rate authority can and should occur as a direct response to an initial application, a change in status filing, a triennial update, or in a proceeding instituted under FPA section 206. The Commission will consider all relevant information in the record when determining whether the Seller can obtain or retain market-based rate authority. This will continue to occur notwithstanding the existence of Commission-approved monitoring and mitigation.”) (“Order No. 861”); *order on reh’g*, Order No. 861-A; 170 FERC ¶ 61,106 (2020).

The Market Monitor has filed complaints where appropriate to address market power mitigation implementation flaws, including a complaint that, if granted, would address market power in the capacity market.⁴ The Market Monitor may file additional complaints.

Many of the responses suggest that effective PJM market power mitigation is not the sellers' concern. PJM and its governing Members, including sellers, should view effective market power mitigation as an essential part of PJM markets. If these proceedings serve to encourage correction of the inadequate market power mitigation rules, then the public interest will be well served. If these proceedings do not spur reform, the relief requested in the Protests is sufficient.

Contrary to the misrepresentations in the responses, the Protests are not directed at the PJM market design. The Protests do not request any changes to the PJM market rules. The Protests entirely concern the terms and conditions for authorization to charge market-based rates. The PJM market rules are relevant to this proceeding only because, as currently implemented, it is unjust and unreasonable to authorize market based rates for offers in the PJM energy and capacity market that are not cost-based.

There is, thus, no collateral attack on any PJM market rule. The Protests do not operate as complaints because the Protests do not argue that any PJM market rule is unjust and unreasonable, do not have to prove any PJM market rule is unjust and unreasonable to support the requested relief, and do not propose any replacement rules. The issue raised in the Protests is whether the current mitigation rules can be relied upon to continue market based rates authorizations unconditionally.

The Commission may decide in response to the Protests to exercise the option that it indicated in Order No. 861 to initiate an inquiry under Section 206 into whether the PJM market power mitigation rules require reform. The Commission could then correct the

⁴ See Docket No. EL19-47-000.

flaws identified in the Section 206 proceeding and remove the conditions on market based rates authorizations in PJM. Until the Commission takes those steps, cost-based offer conditions would be sufficient to protect the public against the potential exercise of market power. The Three Pivotal Supplier test identifies the presence of structural market power that requires cost-based offers.⁵ When market power mitigation rules are not implemented effectively, a requirement for cost-based offers should apply.

The most curious argument against the Protests is the claim that the Protests are collateral attacks on Order No. 861. The Protests follow exactly the process explicitly set forth in Order No. 861.⁶

The Protests are properly filed. The relief requested in the Protests is appropriately limited, proportional to the problems identified and supported by strong evidence. The responses are off point and fail to refute the substance of the Protests or demonstrate that the requested relief is not needed. The market based rates authorizations should be conditioned as requested in the Protests.

2. The Process Created by the Commission and Followed by the Market Monitor Is Not Unduly Discriminatory.

In Order No. 816, in Order No. 861, and in earlier orders and decisions, the process to obtain and standards for obtaining market based rates authorizations on a triennial cycle were established. The process does not present the opportunity to address the market-based rates authorizations of all PJM sellers at the same time. Use of the process does not make the Market Monitor's protests discriminatory. If the respondents seek changes to improve

⁵ Cf. OA Schedule 1 § 6.4.1(a) ("If, at any time, it is determined by the Office of the Interconnection ... that any generation resource may be dispatched out of economic merit order to maintain system reliability as a result of limits on transmission capability, the offer prices for energy from such resource shall be capped as specified below..."), § 6.4.1(e) ("Offer price caps under section 6.4 of this Schedule shall be suspended...").

⁶ See Order No. 861 at P 21.

the process for approving or continuing market based rates authorizations, they should file Section 206 complaints.

In June 2020, under the process set forth in the applicable rules, the Market Monitor timely intervened and submitted the Protests in proceedings where nontransmission owners in the Northeast filed triennial reports. The Market Monitor attempted to and believes it succeeded in identifying and filing protests in every such proceeding involving the owner of a generating unit(s) in the PJM region. For so long as the PJM mitigation rules remain inadequate, the Market Monitor will attempt to identify and file similar protests in proceedings involving initial applications for market based rate authorizations. Triennial reports for transmission owners in the Northeast are not due until December 2022. The Market Monitor will intervene in such proceedings, and will, if necessary, file similar protests under the established schedule.

Submittals of protests like the Market Monitor's were explicitly anticipated in Order No. 861. Such anticipation is not necessary to show that the Protests are properly filed, but they do show that fair and nondiscriminatory notice existed about the process. Any objections to the process should properly have been raised when the process was established, not now. Assertions that the Protests are discriminatory are unfounded and should be disregarded.

3. The Record Provided by the Market Monitor Supports the Relief Requested.

A number of parties claim that the Market Monitor must prove the existence of market power or must file a Section 206 complaint against the sellers in which the Market Monitor would bear the burden of proof. The Market Monitor has followed exactly the process set forth in Order No. 861 concerning triennial review filings. The Protests are limited. The Protests are limited to the PJM energy and capacity markets. The Protests are limited to a request for a condition to market based rates authorizations. There is no request for revocation of such authorizations.

PJM markets have structural market power. Such market power can only be addressed through market power mitigation. If the rules for market power mitigation are inadequate, there is the potential to receive rates above competitive levels. This can happen if any seller exercises market power in PJM markets. All sellers receive the clearing price whether or not they individually exercised market power.

Several sellers claim to have a small market share in the PJM market. Such claims are irrelevant. Both small and large sellers have market power at times, depending upon the prevailing system conditions. Any seller may exercise market power when opportunities arise. The PJM Market Rules do not exempt small sellers from market power mitigation.

4. The Responses Identify No Harmful Impact to the PJM Markets If the Relief Requested Is Granted.

The Market Monitor proposes that the condition requiring cost-based offers be lifted when the PJM market rules include mitigation that the public can rely on to address market power. Some responses claim that the Market Monitor's standards for market power mitigation are perfectionist and subjective.

The Market Monitor is specifically tasked with evaluating the competitiveness of the PJM markets and communicating its evaluations to the public and to the Commission. The goal of the Market Monitor and of the Commission is competitive markets, no more and no less. Perfection is not required. None of the responses that raised concerns about perfection explain how any of the proposed solutions are unreasonable.

In the proceedings relevant to the Protests, market based rates authorizations should be conditioned on the submittal of cost-based offers. The evidence offered that the PJM mitigation rules cannot properly be relied upon in their current state is unrefuted. The responses do not and cannot identify any harmful impact to granting the relief requested in the Protests.

5. No Conditional Limitation to Cost Based Offers Is Needed for Sellers Lacking Authorization to Make Sales in the PJM Energy Market or PJM Capacity Market.

Certain sellers indicate that they make no sales into PJM markets.⁷ In one case, the seller's market based rates authorization does not include PJM markets.⁸ The Market Monitor agrees that in this one case, its inclusion among the Protests was inadvertent. A notice of withdrawal of the protest in that case was filed September 17, 2020, in Docket No. ER16-2278-000, -003.

In the remaining proceedings, the sellers' rate schedules include authorizations to make sales in PJM markets.⁹ The scope of the Protests is limited to sales in the PJM energy market and capacity market. The relief requested is limited to a condition limiting the seller to cost-based offers in the PJM energy market and PJM capacity market for so long as such limitation is needed. No other authorizations are affected. A seller who never makes sales affected by the proposed condition will never be affected by the condition.

II. MOTION FOR LEAVE TO ANSWER

In most cases this pleading responds to answers. The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answers to answers or protests unless otherwise ordered by the decisional authority. The Commission has made exceptions,

⁷ See Motion for Leave to Answer and Answer of TAQA Gen X LLC, Red Oak Power, LLC, and Bayonne Energy Center, LLC, Docket Nos. ER11-4393-008, ER14-477-002 & ER11-3460-012 (September 15, 2020) ("TAQA et al.") at 3; Cube Yadkin Generation LLC, Motion to Dismiss with Prejudice or, in the Alternative, Motion for Leave to Answer and Answer, Docket No. ER16-2278-003 (September 15, 2020) at 2-3.

⁸ TAQA et al. at 3, citing *Bayonne Energy Center, LLC*, 136 FERC ¶ 61,019 (2011).

⁹ See TAQA et al. at 5 & n.21; Petition of Cube Yadkin Generation LLC for Order Accepting Market-Based Rate Tariff for Filing and Granting Waivers and Blanket Approvals, Docket No. ER16-2278-000 (July 25, 2016), Market Based Rates Tariff § 1.

however, where an answer clarifies the issues or assists in creating a complete record.¹⁰ 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 these proceedings.

Respectfully submitted,



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¹⁰ See, e.g., *PJM Interconnection, L.L.C.*, 119 FERC ¶61,318 at P 36 (2007) (accepted answer to answer that "provided information that assisted ... decision-making process"); *California Independent System Operator Corporation*, 110 FERC ¶ 61,007 (2005) (answer to answer permitted to assist Commission in decision-making process); *New Power Company v. PJM Interconnection, L.L.C.*, 98 FERC ¶ 61,208 (2002) (answer accepted to provide new factual and legal material to assist the Commission in decision-making process); *N.Y. Independent System Operator, Inc.*, 121 FERC ¶61,112 at P 4 (2007) (answer to protest accepted because it provided information that assisted the Commission in its decision-making process).

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Dated: September 29, 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 29th day of September, 2020.



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