



than address the substance of Seller's submission, the IMM raises issues that are outside the scope of this proceeding. The IMM protest is identical to what it has filed in numerous other market-based rate filings pending before the Commission.<sup>4</sup>

Seller mischaracterizes its own application. Seller did not show that it lacks market power in PJM markets.

What Seller did was state, as do most if not all sellers in PJM, that it is relying the PJM market power mitigation as the basis for requesting authorization to charge market based rates. Whether such reliance is properly placed, and what to do about it when it is misplaced, are the only real issues in this proceeding.

The Market Monitor proposes that the Commission grant Seller's request for market based rates on conditions that Seller submit competitive offers in the energy market and in the capacity market. Competitive offers in the energy market are cost-based offers with operating parameters that are at least as flexible as the defined unit specific parameter limits in the PJM energy market.<sup>5</sup> <sup>6</sup> Competitive offers in the capacity market, defined consistent with the mathematics of the PJM capacity performance design and the actual number of PAI, are equal to the Avoidable Cost Rate adjusted for expected Capacity Performance penalties and bonuses.<sup>7</sup> The evidence offered that PJM market power

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<sup>4</sup> Seller incorporates by reference (at 2) arguments made by certain other sellers, including: Moxie Freedom, LLC, Motion to Dismiss with Prejudice or, in the Alternative, Motion for Leave to Answer and Answer, Docket No. ER20-2276-000 (Sept. 14, 2020); Calpine Bethlehem, LLC, et al., Motion to Intervene Out-of-Time, Motion for Leave to Answer, and Answer of PJM Power Providers Group and Electric Power Supply Association, Docket No. ER10-2151-000 (Sept. 15, 2020). The Market Monitor incorporates by reference its response to those arguments: Answer and Motion for Leave to Answer of the Independent Market Monitor for PJM, Docket Nos. ER20-2276-000, et al. (September 29, 2020).

<sup>5</sup> See OA Schedule 2.

<sup>6</sup> See OA Schedule 1 § 6.6.

<sup>7</sup> See Attachment A to the Complaint of the Independent Market Monitor for PJM, Docket No. EL19-47-000 (February 21, 2019).

mitigation cannot properly be relied upon in its current state is unrefuted. The responses do not and cannot identify any harmful impact to granting the relief requested in the Protests.

The Market Monitor has made the same proposal in similarly situated proceedings.

Seller also points (at 3) to a long term contract with a 15 year term and claims that it has “no uncommitted capacity and thus has no market power.” The long term contract irrelevant. Seller’s application relies on market power mitigation in PJM and the term of such authorization is not limited. The long term contract does indicate that the condition requested by the Market Monitor can be expected to have no impact on the Seller for 15 years, allowing more than ample time to potentially address the issues with PJM’s market power mitigation and lift the condition.

The Protest is properly filed. The relief requested in the Protest is appropriately limited, proportional to the problems identified and supported by strong evidence. Sellers’ response is off point and fails to refute the substance of the Protest or demonstrate that the requested relief is not needed. The market based rates authorization should be conditioned as requested in the Protest.

## **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, however, where an answer clarifies the issues or assists in creating a complete record.<sup>8</sup> In

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<sup>8</sup> 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).

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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Dated: October 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 29<sup>th</sup> day of October, 2020.



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