UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	)	Docket No. ER23-2649-000

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 answer submitted by PJM on September 25, 2023 ("September 25th Answer"), to the Market Monitor's comments in this proceeding filed September 8, 2023 ("IMM Comments").

The IMM Comments urged rejection of PJM's filing of August 18, 2023, which proposed rules that would require PJM customers to pay generation owners, through transmission rates, for costs incurred by generation owners in order to meet their obligations under NERC CIP Cyber Security Standards ("August 18th Filing"). The Market Monitor objected that the August 18th Filing harms competitive markets because all costs and risks and rewards of their participation in PJM markets are appropriately assigned to generation owners and should not be reassigned to customers through noncompetitive cost of service rates. The Market Monitor further argued that PJM's asserted legal basis for its proposed rule change is invalid because the asserted basis is explicitly applicable only to transmission

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1 18 CFR §§ 385.212 & 385.213 (2023).

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").

investments. The Market Monitor argued that the August 18th Filing, if approved, would create an inappropriate precedent for creating out of market cost of service payments to generators that is inconsistent with the fundamental logic of PJM's competitive power markets.

The September 25th Answer fails to respond to the concerns raised in the IMM Comments about the harm to competition and the lack of a valid legal basis for the August 18th Filing. PJM's broad arguments confirm the validity of the Market Monitor's concerns that approval of the August 18th Filing would create a harmful precedent.

In addition, PJM (September 25th Answer at 5) appears to recognize that existing market mechanisms provide the opportunity for generation owners to include the referenced costs in their energy and capacity market offers but asserts that the cost of service approach is justified because it is difficult to use the market mechanisms. The Market Monitor agrees that existing market mechanisms do provide the opportunity for generation owners to include the referenced costs in their energy and capacity market offers. For that reason along, the proposed cost of service mechanism and the harmful precedents it would create are unnecessary.

The August 18th Filing should be rejected because it has not been shown to be just and reasonable.

I. ANSWER

A. Arguments that the August 18th Filing Harms Competitive Markets Are Unrefuted.

The Market Monitor objected that the August 18th Filing harms competitive markets because all the costs and risks and rewards of their participation in PJM competitive wholesale power markets are appropriately assigned to generators and should not be reassigned to customers through noncompetitive cost of service rates. PJM responds (at 3) that it "respectfully disagrees with this reasoning." PJM then fails to respond to the Market Monitor's reasoning. PJM does not explain how, consistent with competition principles, the

August 18th Filing can appropriately reassigns costs and risks to customers through noncompetitive cost of service rates. PJM instead cites (at 2–3) to precedent in ISO New England's tariff. PJM cites (at 3–5) to the recovery of costs for black start service in Schedule 6A to the OATT and for reactive capability under Schedule 2 to the OATT. In other words, PJM recognizes that the August 18th Filing is inconsistent with competitive market principles but supports the approach regardless.

PJM's reference to adding CIP costs to the black start rates is not on point because the black start rate was already a FERC defined cost of service rate. The CIP costs were not added to a competitive market.

The September 25th Answer also notes (at 4–5) that in PJM, reactive rates are currently defined to be cost of service rates. But the reactive rate approach in PJM and elsewhere is under review by the Commission and in the PJM stakeholder process precisely because it is not consistent with a competitive market and because the cost of service basis is questionable.[3]

PJM never attempts to show that the proposed rules are consistent with competition. PJM fails to explain why its proposed rules are consistent with competition.

PJM has not defined a principle or a limiting principle that applies or would apply to future issues related to costs imposed on PJM competitive generators by regulatory agencies. PJM has not indicated whether its approach would be applicable were NERC to apply the same CIP standards to all generators in PJM. PJM has not explained why its approach distinguishes between enforceable mandates from NERC and from the EPA, for example.

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[3] *See Reactive Power Capability Compensation*, Notice of Inquiry, 177 FERC ¶ 61,118 (2021); *Midcontinent Independent System Operator, Inc.*, 182 FERC ¶ 61,033 at P 52 (January 27, 2023); the Reactive Power Compensation Task Force, which can be accessed at: <*https://www.pjm.com/committees-and-groups/task-forces/rpctf*>.

PJM has not explained why it is not discriminatory to allow the recovery of CIP costs for the selected IROL generators but not for those generators who, on their own initiative, decide to upgrade their security provisions to be comparable to the CIP requirements.

B. Existing Market Mechanisms Address the Issues

PJM states (at 5):

> … it is difficult for many Generation Owners to know in advance if their unit will be designated as an IROL Critical Resource, and adjust their market activity accordingly to account for any requisite investments. This is precisely the regulatory paradigm where a non-market cost-of service mechanism would be appropriate, and Commission acceptance of PJM's current proposal would not in any way preclude PJM and its stakeholders from submitting market-focused mechanisms to address these specific costs in a future FPA section 205 filing.

PJM's logic is badly flawed. PJM appears to be asserting that regulatory uncertainty makes cost of service recovery the right rule for markets. That argument proves too much. Markets deal with uncertainty every day, both from regulatory actions and market dynamics. If uncertainty were adequate to require the use of cost of service rates, there would be no wholesale power markets. In fact, markets are an effective and efficient way to deal with uncertainty.

PJM appears to concede that there are market mechanisms for generation owners to address their CIP costs, by stating that it is "difficult" for generation owners to "adjust their market activity accordingly to account for any requisite investments." In fact, there are such market mechanisms and it is no more difficult for generators to use those mechanisms for CIP costs than any other costs. To the extent that investments are required, the costs of the investments can be included in the APIR component of capacity market offers. To the extent that variable maintenance costs are required, the costs can be included in energy market offers.

PJM has not demonstrated the need for the proposed cost of service mechanism in the PJM markets. PJM has not demonstrated that existing market mechanisms are not adequate

for generators to include costs in offers or to be compensated through inframarginal market rents. It is not enough to assert, without support, that it is "difficult" for generation owners to address the identified costs in existing market mechanisms.

PJM also appears to agree that market mechanisms work by stating that the cost of service approach "… would not in any way preclude PJM and its stakeholders from submitting market-focused mechanisms to address these specific costs in a future FPA section 205 filing." If market mechanisms work, why is PJM offering a nonmarket mechanism rather than relying on markets. In fact, the existing market mechanisms work and there is no need for PJM's proposed changes or for a future filing.

C. Arguments that the August 18th Filing Has No Valid Legal Basis Are Unrefuted.

The Market Monitor further argued that PJM's asserted legal basis for its proposed rule change is invalid because that basis is explicitly applicable only to transmission investments. The September 25th Answer (at 5–7) does not attempt to show any basis in Section 219 of the Federal Power Act or its implementing rules for recovery of generation costs.

PJM cites to cost recovery permitted in ISO New England, but PJM does not explain the statutory basis for ISO New England filing.[4] The order in *ISO New England* does not address any of the arguments raised by the Market Monitor. The contested issue in the ISO New England case is the arbitrary treatment of costs incurred by generators before and after the new rule. Treating generators differently based on exactly when the same type of costs are incurred distorts competition and is unduly discriminatory. The answer is to avoid mixing competition and piecemeal cost of service rates. The *ISO New England* case illustrates why allowing piecemeal cost of service recovery of costs is fundamentally inconsistent with market based regulation.

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[4] September 25th Answer at 5–7, citing *ISO New England Inc.*, 171 FERC ¶ 61,160 (2020), *order on reh'g*, 172 FERC ¶ 61,251, *affirmed*, Cogentrix v. FERC, Case No. 20-1389 (January 28, 2022 No. 20-1389).

A significant structural feature of regulation in PJM is that energy is regulated through competitive markets and transmission remains regulated through traditional cost of service. The competition and cost of service approaches to regulation have important differences. Principles and rules applicable to the regulation of transmission cannot be applied to the regulation of generation. The August 18th Filing does not explain how its proposed recovery of certain costs through a cost of service rates is justified under Section 219.

D. Arguments that the August 18th Filing Creates a Harmful Precedent Are Confirmed.

The Market Monitor argued that the August 18th Filing, if approved, would create an inappropriate precedent for creating out of market cost of service payments to generators that is inconsistent with the fundamental logic of PJM's competitive power markets.

PJM does not attempt to defend the substance of its proposed rules. PJM's entire justification relies on rules in one other ISO market and on unrelated services. PJM's arguments demonstrate the validity of concerns that approval of the faulty rules included in the August 18th Filing will lead to additional faulty rules detrimental to PJM's competitive market design. Omission of any substantive justification for its proposal means that it provides no limiting principle. PJM shows no interest in whether the rules that it is proposing have any logical basis in the PJM competitive market design even though PJM exists in order to provide competitive markets. Acceptance of the August 18th Filing will lead to the further piecemeal identification of costs for nonmarket recovery and further harm to the public interest in market based regulation. The August 18th Filing should be rejected.

II. MOTION FOR LEAVE TO ANSWER

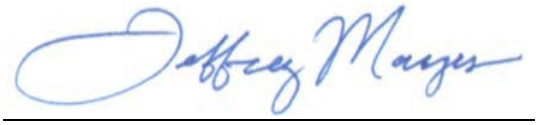
The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answers to requests for rehearing unless otherwise ordered by the decisional authority. The Commission has made exceptions, however, where an answer clarifies the

issues or assists in creating a complete record.[5] 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,



Jeffrey W. Mayes

Joseph E. Bowring
Independent Market Monitor for PJM
President
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8051
joseph.bowring@monitoringanalytics.com

General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com

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[5] *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).

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 10th day of October, 2023.

Jeffrey W. Mayes
General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com