

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

Energy Harbor Corp. on behalf of certain	)	
public utility subsidiaries	)	
	)	Docket No. EC23-74-000
	)	
Vistra Corp. on behalf of certain public	)	
subsidiaries	)	
	)	

**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,<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 answer submitted by Energy Harbor Corp. and Vistra Corp. (“Vistra Vision”), on July 10, 2023, to the Market Monitor’s comments in this proceeding filed, June 23, 2023 (as corrected, July 6 & 19, 2023) (“IMM Comments”). The IMM Comments anticipated and responded to the arguments raised in Vistra Vision’s answer. This answer supplements the response to two arguments in Vistra Vision’s answer in order to eliminate or reduce confusion and to create a complete record. Vistra Vision argues that the Market Monitor’s concerns are generic and not specific to this proceeding. Vistra Vision argues that binding transmission constraints for which both the current Vistra assets and the Energy Harbor nuclear units provide relief are not relevant because the transmission constraints are not in the same transmission owner’s

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<sup>1</sup> 18 CFR §§ 385.212 & 385.213 (2022).

<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”).

zone as the physical assets. Both arguments are incorrect. The fact that the issues identified by the Market Monitor related to the market power of Vistra Vision may also have broader application does not in any way affect their relevance to this proceeding. In a broad network market like PJM, the artificial boundaries of transmission zones are irrelevant to the definition of local markets created by transmission constraints.

## I. ANSWER

Vistra Vision argues (at 34): “The IMM raises concerns that are generic in nature and cannot be appropriately addressed in a proceeding seeking Commission authorization for a specific proposed transaction as required under Section 203 of the FPA.” The scope of Section 203 is not limited to issues unique to the merging parties or the transaction. Section 203 broadly states “the Commission shall approve the proposed disposition, consolidation, acquisition, or change in control, if it finds that the proposed transaction will be consistent with the public interest.”<sup>3</sup> The Vistra / Energy Harbor transaction, if approved, will enhance the incentive of the applicants to exercise market power by exploiting market design flaws, flaws that are undisputed in this proceeding, by creating a new larger entity with greater market power. The undisputed facts are that Vistra has market power in local markets in PJM, as determined by the Three Pivotal Supplier Test, that the Energy Harbor transaction will increase Vistra’s incentive to exercise market power, and that Vistra has the ability to exercise market power by offering in ways that evade the application of the market power mitigation rules in PJM. The increased incentive to exploit the identified market design flaws is specific to the proposed transaction. The Commission is not required to ignore Vistra Vision’s market power simply because the same issues exist for other entities that do not submit an application under Section 203. To whatever extent the transaction results in the increased potential to exercise market power or create harm due to the exercise of market

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<sup>3</sup> See 16 U.S.C. § 824b(a)(4).

power, its approval is not consistent with the public interest unless and until the issue is addressed. The Commission's responsibility in this case is to ensure that the public interest is protected under Section 203.

Vistra Vision argues (at 3) that "many of the IMM's concerns relate to PJM zones where the Proposed Transaction does not involve any overlap of generation at all." This assertion ignores the electrical facts of the power grid. The geographic location of generating units does not determine where energy from those units will affect constraints on the transmission system. For example, the constraint most frequently binding and responsible for the most congestion costs in PJM in the first six months of 2023 was the Nottingham constraint in PECO. Table 1 and Table 2 show the Nottingham constraint's congestion hours and congestion costs along with the rest of the top 25 constraints in PJM for the first six months of 2022 and 2023. While the Nottingham series reactor is physically connected to the transmission grid in the PECO Zone, the sources of constraint relief lie to the west of PECO. Figure 1 shows the locations of the top 10 constraints by total congestion costs on a contour map of the real-time load-weighted average congestion LMP ("CLMP") in the first six months of 2023. The CLMP is negative where generation loads the constraints and positive where generation relieves the constraint. The map shows PECO and its neighboring zones in blue, green, and light yellow, indicating that generation in those zones loads constraints. The southern and western PJM zones, in dark yellow, orange, red, and purple, are the locations of generation that relieves the constraints. The Nottingham constraint, while in PECO, creates a local market in the southern and western PJM zones.

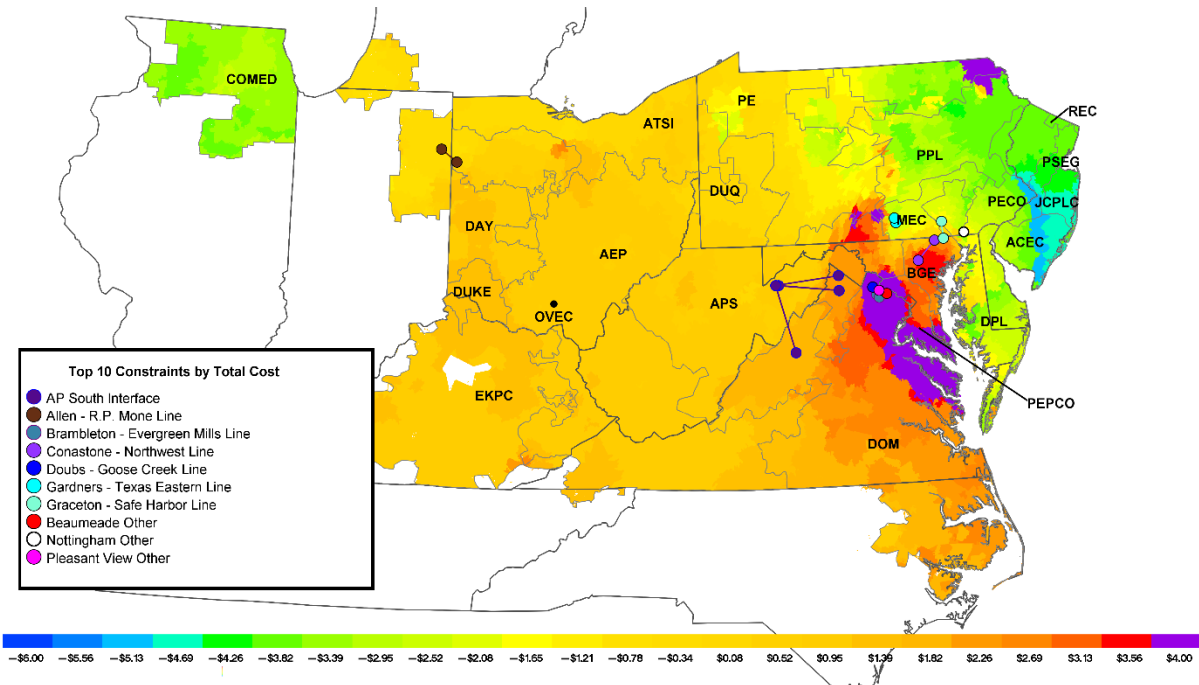
**Table 1 Top 25 constraints: January through June, 2022 and 2023**

No.	Constraint	Type	Congestion Event Hours (Jan - Jun)									Percent of Annual Hours					
			Day-Ahead			Real-Time			Day-Ahead			Real-Time					
			2022	2023	Change	2022	2023	Change	2022	2023	Change	2022	2023	Change			
1	Nottingham	Other	2,269	3,495	1,226	1,579	1,999	420	52.2%	80%	28%	36%	46%	10%			
2	Graceton - Safe Harbor	Line	224	1,465	1,241	152	514	362	5%	34%	29%	3%	12%	8%			
3	Easton - Emuni	Line	679	1,475	796	0	0	0	16%	34%	18%	0%	0%	0%			
4	Allen - R.P. Mone	Line	285	1,252	967	108	88	(20)	7%	29%	22%	2%	2%	(0%)			
5	Weedman - Mahomet	Flowgate	0	622	622	0	648	648	0%	14%	14%	0%	15%	15%			
6	Sayreville - Sayreville	Line	7	1,260	1,253	0	0	0	0%	29%	29%	0%	0%	0%			
7	Chicago Ave - Praxair	Flowgate	729	616	(113)	500	492	(8)	17%	14%	(3%)	12%	11%	(0%)			
8	Gardners - Texas Eastern	Line	515	954	439	72	138	66	12%	22%	10%	2%	3%	2%			
9	Mountain	Transformer	876	1,009	133	0	0	0	20%	23%	3%	0%	0%	0%			
10	Lenox - North Meshoppen	Line	1,000	480	(520)	1,097	498	(599)	23%	11%	(12%)	25%	11%	(14%)			
11	DoeX530	Transformer	428	953	525	0	0	0	10%	22%	12%	0%	0%	0%			
12	Mahomet - OCB	Flowgate	0	447	447	0	435	435	0%	10%	10%	0%	10%	10%			
13	Garrett - Garrett Tap	Line	262	870	608	0	0	0	6%	20%	14%	0%	0%	0%			
14	Turkey Hill - Hilgard	Flowgate	0	412	412	0	366	366	0%	9%	9%	0%	8%	8%			
15	Ramapo (ConEd) - S Mahwah (RECO)	Line	645	746	101	0	0	0	15%	17%	2%	0%	0%	0%			
16	Prest - Tibb	Flowgate	1,458	268	(1,190)	1,237	360	(877)	34%	6%	(27%)	28%	8%	(20%)			
17	Fremont - Fremont	Line	128	568	440	0	0	0	3%	13%	10%	0%	0%	0%			
18	Haumesser Road - Steward	Line	1,046	386	(660)	236	161	(75)	24%	9%	(15%)	5%	4%	(2%)			
19	Maple - Chrysler	Flowgate	0	290	290	0	252	252	0%	7%	7%	0%	6%	6%			
20	Pipe Creek - Mullin Fisher Body Tap	Line	0	525	525	0	0	0	0%	12%	12%	0%	0%	0%			
21	Turkey Hill - Mascoutah	Flowgate	122	281	159	85	236	151	3%	6%	4%	2%	5%	3%			
22	Doubs - Goose Creek	Line	0	505	505	2	0	(2)	0%	12%	12%	0%	0%	(0%)			
23	Monroe - Vineland	Line	61	487	426	0	1	1	1%	11%	10%	0%	0%	0%			
24	Clubhouse	Transformer	15	454	439	20	1	(19)	0%	10%	10%	0%	0%	(0%)			
25	Bergen - Hudson	Line	320	398	78	0	0	0	7%	9%	2%	0%	0%	0%			

**Table 2 Top 25 constraints affecting congestion costs: January through June, 2023**

No.	Constraint	Type	Location	CLMP Credits and Charges (Millions)										Congestion Costs	Percent of Total PJM Congestion Costs
				Day-Ahead				Balancing							
				Implicit Withdrawal Charges	Implicit Injection Credits	Explicit Charges	Total	Implicit Withdrawal Charges	Implicit Injection Credits	Explicit Charges	Total				
1	Nottingham	Other	PECO	\$100.5	\$0.4	\$14.9	\$115.0	\$12.0	\$11.0	(\$9.0)	(\$8.0)	\$107.0	27.0%		
2	Graceton - Safe Harbor	Line	BGE	\$23.0	(\$3.0)	\$3.7	\$29.6	\$1.7	\$0.9	(\$1.4)	(\$0.5)	\$29.1	7.3%		
3	Beaumeade	Other	DOM	\$1.5	(\$0.4)	\$0.9	\$2.8	\$1.9	\$2.1	(\$23.1)	(\$23.3)	(\$20.4)	(5.2%)		
4	Allen - R.P. Mone	Line	AEP	(\$4.7)	(\$17.9)	\$2.4	\$15.6	(\$0.6)	(\$0.7)	(\$0.0)	\$0.1	\$15.7	4.0%		
5	Conastone - Northwest	Line	BGE	\$9.8	(\$5.3)	\$0.8	\$15.9	\$0.7	\$1.3	(\$0.2)	(\$0.8)	\$15.1	3.8%		
6	Pleasant View	Other	DOM	\$0.3	(\$0.1)	\$0.0	\$0.4	\$0.8	\$5.2	(\$10.4)	(\$14.8)	(\$14.4)	(3.6%)		
7	AP South	Interface	500	\$5.7	(\$8.1)	\$0.9	\$14.8	\$0.2	\$0.7	(\$0.2)	(\$0.7)	\$14.0	3.5%		
8	Brambleton - Evergreen Mills	Line	DOM	\$14.6	(\$21.8)	\$1.3	\$37.8	\$2.8	\$2.2	(\$24.3)	(\$23.8)	\$14.0	3.5%		
9	Gardners - Texas Eastern	Line	MEC	(\$5.6)	(\$19.8)	\$0.0	\$14.2	\$0.1	\$0.3	(\$0.4)	(\$0.6)	\$13.7	3.4%		
10	Doubs - Goose Creek	Line	APS	\$7.9	\$2.5	\$5.5	\$11.0	\$0.0	\$0.0	\$0.0	\$0.0	\$11.0	2.8%		
11	Bedington - Black Oak	Interface	500	\$2.9	(\$6.8)	\$0.4	\$10.1	\$0.0	\$0.0	\$0.0	\$0.0	\$10.1	2.6%		
12	Conastone - Peach Bottom	Line	500	\$8.2	(\$1.0)	\$1.4	\$10.5	\$1.0	\$0.5	(\$1.1)	(\$0.6)	\$9.9	2.5%		
13	Mahomet - OCB	Flowgate	MISO	(\$5.5)	(\$13.4)	\$1.0	\$9.0	(\$0.1)	(\$1.7)	(\$2.3)	(\$0.7)	\$8.2	2.1%		
14	Charlottesville - Proffit D.P.	Line	DOM	\$2.8	(\$5.0)	\$1.2	\$9.1	(\$0.3)	(\$0.0)	(\$0.8)	(\$1.2)	\$7.9	2.0%		
15	Fremont - Fremont	Line	AEP	(\$1.7)	(\$7.5)	\$1.1	\$7.0	\$0.0	\$0.0	\$0.0	\$0.0	\$7.0	1.8%		
16	Weedman - Mahomet	Flowgate	MISO	(\$3.9)	(\$11.6)	\$0.9	\$8.7	(\$0.3)	(\$1.7)	(\$3.7)	(\$2.3)	\$6.3	1.6%		
17	Chicago Ave - Praxair	Flowgate	MISO	(\$5.0)	(\$10.6)	\$1.5	\$7.1	(\$0.8)	(\$0.9)	(\$13.1)	(\$13.0)	(\$5.9)	(1.5%)		
18	Pipe Creek - Mullin Fisher Body	Line	AEP	(\$4.7)	(\$8.1)	\$2.1	\$5.6	\$0.0	\$0.0	\$0.0	\$0.0	\$5.6	1.4%		
19	Lenox - North Meshoppen	Line	PE	\$1.2	(\$6.0)	(\$0.1)	\$7.0	\$0.6	\$2.0	(\$0.3)	(\$1.7)	\$5.3	1.3%		
20	Collins	Transformer	COMED	(\$0.8)	(\$2.9)	\$3.1	\$5.3	\$0.0	\$0.0	\$0.0	\$0.0	\$5.3	1.3%		
21	Brambleton - Poland Road	Line	DOM	\$1.7	(\$3.8)	(\$0.3)	\$5.2	\$0.0	\$0.0	\$0.0	\$0.0	\$5.2	1.3%		
22	Maple - Chrysler	Flowgate	MISO	\$0.3	(\$1.3)	\$0.0	\$1.7	(\$1.6)	\$0.9	(\$4.3)	(\$6.7)	(\$5.0)	(1.3%)		
23	East Lima - Haviland	Line	AEP	(\$8.6)	(\$12.7)	\$0.6	\$4.7	(\$0.0)	(\$0.4)	(\$0.2)	\$0.2	\$4.9	1.2%		
24	AEP - DOM	Interface	500	\$1.7	(\$2.9)	\$0.3	\$4.9	\$0.0	\$0.0	\$0.0	\$0.0	\$4.9	1.2%		
25	Tanners Creek - Dearborn	Flowgate	MISO	(\$3.1)	(\$7.6)	\$0.4	\$4.9	\$0.0	\$0.0	\$0.0	\$0.0	\$4.9	1.2%		
Top 25 Total				\$138.6	(\$174.9)	\$44.3	\$357.8	\$18.2	\$21.7	(\$94.9)	(\$98.3)	\$259.5	65.5%		
All Other Constraints				\$24.7	(\$126.2)	\$30.5	\$181.4	(\$7.4)	\$6.8	(\$30.2)	(\$44.4)	\$137.0	34.5%		
Total				\$163.3	(\$301.1)	\$74.8	\$539.2	\$10.7	\$28.4	(\$125.0)	(\$142.7)	\$396.5	100.0%		

Figure 1 Location of the top 10 constraints by total congestion costs: January through June, 2023



The Market Monitor’s analysis demonstrates that the proposed transaction creates local markets defined by transmission constraints that include both Vistra generation and the Energy Harbor nuclear units. This demonstration is precisely the purpose of the Market Monitor’s analysis. On the high voltage transmission system, geographic proximity and transmission zones do not define markets with overlapping supply by the merging entities. If both owners control generation that relieves a transmission constraint, regardless of transmission zone, both owners overlap in the market for energy to relieve that constraint. The owners are competing now and the purchase will eliminate that competition. Ignoring that reality is not in the public interest and should not be ignored under Section 203 or due to decisions in previous cases that made the same error.

The transaction should not be approved under Section 203 without addressing the issues demonstrated in the Market Monitor’s analysis. The issues can be addressed by including conditions on the merger that simply prohibit anticompetitive behavior that should never be permitted.

## 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.<sup>4</sup> 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.

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<sup>4</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).

### 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,



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Dated: August 14, 2023

## 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 14<sup>th</sup> day of August, 2023.



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