

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

LS Power Development)	
	)	Docket Nos. ER10-1618-018; ER10-
	)	1631-020; ER10-1854-020; ER10-1892-
	)	023; ER10-2678-021; ER10-2729-015;
	)	ER10-2739-036; ER10-2744-021; ER11-
	)	3320-020; ER11-3321-013; ER13-2316-
	)	018; ER14-19-019; ER14-1219-015; ER14-
	)	2548-011; ER16-1652-023; ER16-1732-
	)	014; ER16-2405-014; ER16-2406-015;
	)	ER17-989-013; ER17-990-013; ER17-992-
	)	013; ER17-993-013; ER17-1946-013;
	)	ER17-1947-007; ER17-1948-007; ER18-
	)	95-010; ER20-660-010; ER20-1440-006;
	)	ER21-202-002; ER21-1133-003; ER22-
	)	425-003; ER22-1241-002
)	
Appalachian Power Company	)	Docket Nos. ER11-47; ER12-1540; ER12-
	)	1541; ER12-1542; ER12-1544; ER17-
	)	1931; ER17-1930; ER17-1932; ER14-594;
	)	ER20-649; ER14-868; ER14-867; ER19-
	)	606; ER20-200; ER21-2555; ER21-2556;
	)	ER16-323
)	
Avangrid Renewables, LLC	)	Docket Nos. ER11-2112-011; ER10-
	)	2828-007; ER16-2285-005; ER10-3002-
	)	007; ER10-3004-008; ER19-2361-000;
	)	ER19-2361-002; ER10-3010-007; ER12-
	)	96-010; ER10-3031-007
)	
Brookfield Energy Marketing	)	Docket Nos. ER14-1964-015; ER16-287-
	)	010; ER12-161-026; ER20-2028-001;
	)	ER20-1447-005; ER10-2917-024; ER10-
	)	2922-024; ER11-2383-020.
)	
Duke Utilities	)	Docket Nos. ER16-355-004; ER16-141-
	)	006; ER15-255-005; ER10-2032-010;
	)	ER10-2033-009; ER12-2313-007; ER10-

	)	1330-009; ER19-2343-003; ER17-2336-
	)	007
)	
Elgin Energy Center	)	Docket Nos. ER14-152-012; ER13-1143-
	)	009; ER13-1144-009; ER10-2196-008;
	)	ER20-2452-004; ER20-2453-005; ER20-
	)	844-003; ER20-528-003; ER10-2740-016
)	
Exelon Entities	)	Docket Nos. ER10-2997-007; ER10-
	)	2172-030; ER10-1048-027; ER10-3018-
	)	007; ER10-1143-026; ER10-3030-007
)	
FirstEnergy Utilities	)	Docket Nos. ER10-2727-006; ER10-
	)	1451-008; ER10-1467-009; ER10-1469-
	)	009; ER10-1473-008; ER10-1474-008;
	)	ER10-1478-010; ER10-2687-008; ER10-
	)	2688-011; ER10-2689-011; ER10-2728-
	)	010; ER11-3907-002
)	
Transalta Northeast	)	Docket Nos. ER10-2806-007; ER18-1984-
	)	003;
)	
Duquesne Light Company	)	Docket Nos. ER10-1910-027; ER10-
	)	1911-027,
)	
	)	(not consolidated)

COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 of the Commission’s Rules and Regulations,¹ and Order No. 861,² Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor

¹ 18 CFR § 385.211 (2022).

² See *Refinements to Horizontal Market Power Analysis for Sellers in Certain Regional Transmission Organization and Independent System Operator Markets*, 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

("Market Monitor") for PJM Interconnection, L.L.C. ("PJM"),³ submits these comments on the triennial filings in support of market based rates authorization submitted by applicants in each of the above referenced proceedings (not consolidated) in December 2022. These comments are limited to the extent that such market based rates authorization applies or may apply to sales of energy in PJM markets.

Market based rates are approved for PJM sellers under the presumption of effective market monitoring and market power mitigation rules in PJM. The current PJM Market Rules for market power mitigation are insufficient to support such authorizations.

I. COMMENTS

A. Applicants Rely on a Rebuttable Presumption of Adequate Market Power Mitigation.

Under the Commission's Rules, market sellers in PJM may rely on the market power mitigation rules in the PJM Market Rules in asserting that their participation in the PJM markets at market based rates does not raise horizontal market power concerns instead of filing the results of indicative screens.⁴

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*, 170 FERC ¶ 61,106, Order No. 861-A (February 20, 2020); *see also Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 816, 153 FERC ¶ 61337 (2015) ("Order No. 816"), *order on rehearing*, Order No. 816-A, 155 FERC ¶ 61,188 (2016).

³ 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").

⁴ *See* 18 CFR § 35.37(c)(5) ("In lieu of submitting the indicative market power screens, Sellers studying RTO or ISO markets that operate RTO/ISO-administered energy and ancillary services markets, but not capacity markets, may state that they are relying on Commission-approved market monitoring and mitigation to address potential horizontal market power that Sellers may have in energy and ancillary services. However, Sellers studying such RTOs/ISOs would need to

Order No. 861 requires that a successful challenge to the approval of market-based rates include two demonstrations: that sellers have market power in the relevant markets; and that such market power is not adequately mitigated by the RTO market rules.⁵ While the second demonstration may be made, in some cases, using market monitors' reports, the first is more complex.⁶ The Commission recognized that intervenors may "not have indicative screen information which would otherwise have established a presumption of market power one way or the other." In that case, "the Commission retains authority to require the Seller to submit indicative screens or other evidence to help evaluate whether the Seller has market power."⁷

But there is no reason for the Commission to request indicative screen information from either intervenors or suppliers. Analysis of PJM markets shows that all PJM sellers have the potential to have and exercise local market power at any time based on transmission constraints that may arise in the PJM market for a variety of reasons. Without adequate market power mitigation, passing indicative market power screens does not provide customers protection from the effects of market power on prices.

B. The PJM Energy Market Results Are Generally Competitive, but the Implementation of Market Power Mitigation Rules Is Inadequate.

The Market Monitor has provided ample evidence of the inadequacies of the implementation of market power mitigation in the PJM Energy Market in the State of the

submit indicative market power screens if they wish to obtain market-based rate authority for wholesale sales of capacity in these markets.")..

⁵ Order No. 861 at P 25-27.

⁶ Order No. 861 (at P 21) recognizes that an intervenor may challenge the presumption that market power mitigation is sufficient by presenting evidence, including that provided in the market monitors' reports. Such evidence is contained in the Market Monitor's State of the Market Reports.

⁷ *Id.* at P 27.

Market Reports.⁸ Some sellers that fail the structural market power test, the Three Pivotal Supplier test (“TPS test”), and are therefore subject to market power mitigation, are able to set prices with a substantial markup over their cost-based offers.⁹ Some sellers that fail the TPS test are able to operate, set prices, and collect uplift payments with operating parameters that are less flexible than their defined parameter limits included in cost-based offers.¹⁰ Based on the evidence provided, the Market Monitor rebuts the presumption that market power mitigation is adequate to support market based rates in the PJM Energy Market.

C. Commission Action is Required for Effective Market Power Mitigation in PJM.

The Market Monitor recommends, in accordance with the applicable policies on market based rate authorizations, that “a separate section 206 proceeding to investigate whether the existing RTO/ISO mitigation continues to be just and reasonable” be instituted.¹¹ In such a proceeding, the flaws in the PJM Market Rules for market power mitigation can be addressed.

On June 17, 2021, the Commission issued a show cause order in Docket No. EL21-78 inviting comments on: “(1) whether PJM’s existing Tariff remains just and reasonable and not unduly discriminatory or preferential; and (2) if not, what changes to PJM’s Tariff should be implemented as a replacement rate.”¹² Since that time, PJM has not taken steps to address the issues identified with its parameter mitigation process. Revisions to the market power

⁸ See Monitoring Analytics, LLC, *2022 State of the Market Report for PJM: January through September*, Section 3: Energy Market, included as Attachment C.

⁹ *Id.* at Figure 3-65 and Table 3-143.

¹⁰ *Id.* at Table 3-16 and Table 3-17.

¹¹ Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities, Order No. 697-A, 123 FERC ¶ 61,055 at P 5 (April 21, 2008).

¹² *PJM Interconnection, L.L.C.*, 175 FERC ¶ 61,231 at P 21 (2021).

mitigation process that PJM uses to offer cap resources and to select parameters when a resource fails the Three Pivotal Supplier test are required to remove the ability for sellers to exercise market power in the PJM Energy Market. No further order has issued in Docket No. EL21-78.

II. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to these comments.

Respectfully submitted,



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Dated: February 13, 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 13th day of February, 2023.



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