UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 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 these comments responding to the filing submitted by PJM Interconnection, L.L.C. ("PJM") on August 18, 2023 ("August 18th Filing"). The August 18th Filing proposes 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. In competitive markets, all costs, including the cost of regulatory compliance, are appropriately assigned to sellers and should not be reassigned to customers through noncompetitive cost of service rates. In competitive markets, private investors appropriately bear all the risks of doing business, including the risks of regulatory changes. PJM has never suggested that private investors return unexpected profits to customers. PJM has never suggested that other much larger costs of regulatory compliance incurred by

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1 18 CFR § 385.211 (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").

generation owners should be collected through cost of service rates. PJM should not simply reassign some costs to customers using a cost of service mechanism.

The August 18th Filing proposes rules that have not been shown to be just and reasonable. The August 18th Filing proposes rules that are demonstrably not just and reasonable. PJM's asserted legal basis for its proposed rule change is invalid. PJM's asserted legal basis misunderstands the difference between transmission and generation. PJM cites to rules that are explicitly applicable only to transmission investments. PJM inexplicably and incorrectly proposes to treat these generator costs as transmission costs and collect them through transmission rates. In addition to that fatal flaw, the PJM filing would establish 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 August 18th Filing should be rejected.

I. COMMENTS

A. The Asserted Legal Basis for the August 18th Filing Is Invalid and Ignores PJM's Competitive Market Design.

The NERC CIP version 5 Cyber Security Standards have, effective February 3, 2014, included a method for identifying and protecting Bulk Electric System Cyber Assets.[3] The CIP version 5 Standards "identify and categorize BES Cyber Systems using a new methodology based on whether a BES Cyber System has a Low, Medium, or High Impact on the reliable operation of the bulk electric system."[4] Once categorized, "a responsible entity must comply with the associated requirements of the CIP version 5 Standards that

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[3] *Version 5 Critical Infrastructure Protection Reliability Standards*, Order No. 791, 145 FERC ¶ 61,160, at PP 41, 87 (2013), *order on clarification and reh'g*, Order No. 791-A, 146 FERC ¶ 61,188 (2014) (approved revised methodology for categorizing Bulk Electric System Cyber Assets that incorporated mandatory protections for all high, medium, and low impact Bulk Electric System Cyber Assets.).

[4] Order No. 791 at P 2.

apply to the impact category."[5] Owners of high and medium impact assets were required to achieve compliance by April 1, 2016, and owners of low impact assets were required to comply by April 1, 2017.[6]

PJM in its role as Reliability Coordinator meets its obligation to implement the NERC CIP Cyber Security Standards by applying certain criteria to identify and categorize each of their Bulk Electric System Cyber Systems as low, medium, or high impact.[7] Each year PJM implements a method for identifying any "medium impact" BES Cyber Systems associated with generation units "critical to the derivation of Interconnection Reliability Operating Limits (IROLs) and their associated contingencies."[8] PJM states (at 4) that it informally refers to such units as "IROL Critical Resources," and that it notifies generation owners when it identifies their assets as IROL Critical Resources.

NERC CIP Cyber Security Standards designate as "medium impact" any BES Cyber Systems associated with "Generation at a single plant location or Transmission Facilities at a single station or substation location that are identified by its Reliability Coordinator, Planning Coordinator, or Transmission Planner as critical to the derivation of Interconnection Reliability Operating Limits (IROLs) and their associated contingencies."[9]

PJM notes (at 4 n.16) that "units designated as 'medium impact' and critical to the derivation of IROLs may change from year to year, in light [of] transmission upgrades, unit retirements, and other changes to PJM's system topology." IROLs are reactive transfer interfaces. The existence and role of reactive interfaces are dynamic. This means that

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5 *Id*.

6 *See* Order No. 791-A, 146 FERC ¶ 61,188 at PP 11–12.

7 *See* NERC Reliability Standard CIP-002-5.1a, Attachment 1 (Impact Rating Criteria).

8 *See* August 18th Filing, citing NERC Reliability Standard CIP-002-5.1a, Attachment 1 § 2.6.

9 NERC Reliability Standard CIP-002-5.1a (Impact Rating Criteria/Medium Impact Rating (M)), Attachment 1 § 2.6.

additional generating resources in PJM could be designated as a "medium impact." PJM never explains why it ignores low impact facilities or whether PJM believes that its logic could be later extended to low impact facilities.

The owners of IROL Critical Resources must comply with medium impact NERC CIP Cyber Security Standards. Compliance may require incurring costs for cyber security upgrades.

PJM states (at 8–9): In 2005, Congress added section 219 to the FPA, which among other things directs the Commission to establish regulations that will "allow recovery of . . . all prudently incurred costs necessary to comply with mandatory [R]eliability [S]tandards issued pursuant to section 215."[10] PJM states that "[a]ll rates approved under the rules adopted pursuant to this section, including any revisions to the rules, are subject to the requirements of sections 824d and 824e of this title . . ."[11]

PJM has not provided a valid legal basis for the August 18th Filing. PJM's reliance on Section 219, Transmission infrastructure investment, is misplaced because, as the name of this provision makes clear, it is applicable only to transmission. Section 219 clearly states that its purpose is to "promot[e] capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy."[12] Section 219 says nothing about investment in generation facilities. The Commission's implementing

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[10] 16 U.S.C. § 824s(b)(4)(A). PJM also cites to the Commission's implementing rules at 18 CFR § 35.35(f) ("The Commission will approve recovery of prudently-incurred costs necessary to comply with the mandatory reliability standards pursuant to section 215 of the Federal Power Act, provided that the proposed rates are just and reasonable and not unduly discriminatory or preferential"), and to Order No. 672, *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, 114 FERC ¶ 61,104 at P 259 (2006) ("Pursuant to section 1241 of EPAct, the Commission will allow recovery of all costs prudently incurred to comply with the Reliability Standards.").

[11] August 18th Filing at 9, citing 16 U.S.C. § 824s(d).

[12] 16 U.S.C. § 824(b)(1).

regulations also state the purpose is "transmission infrastructure investment."[13] The regulations refer to "transmission facilities" throughout, and never to "generation facilities."[14]

PJM never attempts to explain how its rules, which provide for the recovery of costs of investment and operation of generation facilities have any proper basis in Section 219 and its implementing regulations. PJM refers (at 8-9, nn.22, 24) to provisions that provide for the recovery of "prudent" investment, but never shows that these provisions have any relevance to generation facilities.

Section 219 makes sense when its application is limited to its stated purpose: transmission infrastructure investment. The costs of transmission investment in PJM continue to be recovered through cost of service rates. PJM's reliance on Section 219 is not justified because the assets are generation resources that participate in competitive markets and that do not have cost of service rates in PJM.

PJM's key statements of the basis for its filing reads:

> Importantly, FPA section 219 also *explicitly* states that "[a]ll rates approved under the rules adopted pursuant to this section, including any revisions to the rules, are subject to the requirements of sections 824d and 824e of this title . . ." [emphasis in the original]

That rates must be established under FPA Section 205 and 206 is hardly remarkable. It is remarkable that the August 18th Filing has not demonstrated that the rates it proposes have anything to do with the purpose of Section 219. PJM also ignores that generators have already filed market based rates under FPA Section 205 and 206, and makes no attempt to reconcile its proposal to the existing rates.

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13 *See* 18 CFR § 35.35 (Transmission infrastructure investment).

14 *Id., passim.*

Sellers, including generation owners, participate in the competitive wholesale energy markets operated by PJM pursuant to market based rate schedules approved pursuant to FPA Section 205 (16 U.S.C. § 824d). PJM's market rules are generally approved pursuant to FPA Section 205 and 206 (16 U.S.C. §§ 824d, 824e). Entirely different principles apply to market based rates compared to cost of service rates. Regulation through competition determines just and reasonable prices based on competition. In the PJM market design, sellers have an opportunity to recover costs and earn profits based on the fundamentals of supply and demand, not based on pre determined revenue requirements based on cost of service regulation.

None of the authorities relied on in the August 18th Filing provide any basis for PJM to discard in whole or in part regulation through competition, or to add rules requiring customers to pay the owners of generation resources cost of service rates in addition to market based rates.

The August 18th Filing has not been shown to be just and reasonable. The proposed rules are not just and reasonable. The proposed rules conflict with the fundamental principles for ensuring just and reasonable rates in the PJM market design. PJM has not provided a valid legal basis for its proposal. PJM has not shown that it is just and reasonable to transfer risks appropriately assigned to sellers in its market design to customers.

B. No Principle Limits the August 18th Filing.

The August 18th Filing proposes rules that would require PJM customers to pay generation owners for costs incurred by generation owners in order to meet their obligations under NERC CIP Cyber Security Standards. The August 18th Filing indicates (at 5) that currently only a small number of resources have been identified as eligible to receive such cost of service payments. No principle, however, limits PJM from expanding the number of resources eligible. PJM could argue, under the logic of the August 18th Filing, that the costs associated with NERC cyber security or other requirements for low impact

resources must be paid for by customers under cost of service rates. PJM could argue, under the logic of the August 18th Filing, that the costs associated with future NERC cyber security or other requirements must be paid for by customers under cost of service rates, even if they extend to all PJM generation resources, as is likely to occur at some point. More importantly, nothing limits future filings seeking to provide cost of service recovery for any identifiable cost applicable to resources in any identifiable circumstances. Approval of the August 18th Filing would create a precedent for future filings based on purported needs to cover any cost required to meet reliability standards, environmental standards or other standards. While any application of the cost of service approach for competitive generation resources is inappropriate, PJM fails to identify any limiting principle to their approach. The August 18th Filing opens the door to additional piecemeal filings that will result in cost of service rates displacing the operation of well functioning and competitive markets.

PJM generators incur unexpected costs on a regular basis. That is a condition of being an investor in a competitive market. PJM generators also receive the benefit of unexpected market revenues on a regular basis. PJM did not file to permit cost of service adders when coal units were collectively required to add billions of dollars of environmental equipment to meet the MATS requirements. PJM has not filed to permit cost of service adders for any of the myriad investments that generators make in reliability on a regular basis.

C. Additional Issues

PJM attempts (at 7) to minimize the costs of their proposal and to maximize the apparent role of the Market Monitor in reviewing costs. Defining the costs and creating a purely advisory Market Monitor review role are not substitutes for the simple rejection of this proposal.

PJM fails to explain why, if the cost is so small, PJM is filing a proposal that is inconsistent with competitive markets to cover those costs. PJM cites to Order No. 791 but fails to note that the Commission explicitly considered (at P 245) the cost impact of the

revised CIP regulations in Order No. 791 and determined that while there was an impact on some small entities, that the costs were relatively small and did not require a full RFA assessment.

PJM does not distinguish between competitive generators and FRR generators already subject to cost of service regulation and regulatory recovery of costs per the rules governing state regulation.

PJM does not explain why it waited from its first implementation of Order No. 791 in 2015 until now to make this filing. The delay undercuts PJM implied argument that the August 18th Filing is somehow required by the FPA.

II. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this pleading as the Commission resolves the issues raised in this proceeding.

Respectfully submitted,

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Dated: September 8, 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 8th day of September, 2023.

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