UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Refinements to Horizontal Market Power Analysis for Sellers in Certain Regional Transmission Organization and Independent System Operator Markets	)	Docket No. RM19-2-000

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 May 7, 2019. PJM argues that the Market Monitor presented proposals that would interfere with PJM administration of the market rules. The Market Monitor's comments have nothing to do with administration of the PJM market rules. The Market Monitor's comments concern the development of the market rules included in rate filing proposals.

Under the approach recommended by the Market Monitor, PJM would continue to file rule changes, but the role of the Office of the Interconnection, i.e. PJM management, and of stakeholders in the development of proposals revising the market monitoring plan and

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1 18 CFR §§ 385.212 & 385.213 (2018).

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").

market power mitigation rules would be clearly defined. Nothing in PJM's governance rules grants independent authority to PJM management to file Sections 205 or 206 proposals.[3] Such filings on behalf of PJM require stakeholder or Board approval.[4] Nothing in the Market Monitor's proposal would change the requirement for the Board to approve RTO filings. Stakeholders should not be involved in creating or modifying the rules for the market monitoring plan and market power mitigation because stakeholders have obvious conflicts of interest. Permitting stakeholders whose behavior would be constrained by the market monitoring plan and market power mitigation rules to create and/or to modify such rules is not consistent with the requirement that the RTO be independent.

The issue concerns how the RTO should develop proposals concerning the market monitoring plan and market power mitigation rules. The Market Monitor's proposal is that PJM management should continue to file Section 205 and Section 206 filings as authorized by the Board, with the exception of proposals affecting the market monitoring plan and market power mitigation rules. In that case, only 206 filings authorized by the Board would be permitted in order to ensure that the higher standards pertaining to 206 filings would apply to changes to the market monitoring plan and market power mitigation rules.

I. ANSWER

This proceeding concerns the Commission's rules and policies concerning the granting of market-based rate authority to market participants. Authority to charge market-based rates depends upon a finding that the participant has no market power or that relevant market power is effectively mitigated. Because PJM power markets are not structurally competitive, a market monitoring plan and market power mitigation rules are

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[3] *See* OA § 10.4.

[4] *See* OA §§ 7.7 (vi) & (vii), 10.4(xiii).

required.[5] Because participants cannot demonstrate a lack of market power, effective market power mitigation rules are required. Because participants have a conflict of interest in the determination of market power mitigation rules, they cannot be properly allowed to determine market power mitigation rules.

PJM misunderstands the nature and role of market power mitigation when it argues (at 3) that the Market Monitor raises issues outside of the scope of this proceeding. The Market Monitor's comments are within the proper scope of this proceeding because the comments concern how adequate rules concerning the market monitoring plan and market power mitigation rules can be established in competitive wholesale markets and in PJM. The Market Monitor's proposal is not about changing the Federal Power Act, as PJM suggests. The Market Monitor's proposal is about improving the RTO governance documents, the OA and OATT in PJM's case, that determine how the Act is interpreted and applied in the organized wholesale markets. Because market-based rate authorizations depend on the market monitoring plan and market power mitigation rules, the standards that determine whether the market monitoring plan and market power mitigation rules are just and reasonable, and how such rules are evaluated, are an essential part of determining the conditions under which market-based rates should be approved.

The filed tariffs responsible for just and reasonable rates in the competitive markets comprise more than just RTO rate filings. RTO tariffs interact with the tariffs of market sellers. Market sellers' tariffs are predicated on effective market monitoring plans and market power mitigation rules in the RTO tariff. This proceeding necessarily concerns the interaction of sellers' market-based rates authorizations and RTO tariffs. Market-based rates authorizations cannot properly be found just and reasonable if the RTOs' market monitoring plans and market power mitigation rules do not adequately address market power.

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[5] *See, e.g., 2018 State of the Market for PJM*, Vol. 1 (March 14, 2018) at 5–9.

PJM argues that the Market Monitor proposes an arrangement inconsistent with Section 205 of the Federal Power Act. PJM mischaracterizes the Market Monitor's position (at 4) as "a collateral attack on Commission orders that clearly state the RTO is the sole administrator of its own open access tariff." PJM confuses the administration and implementation of rules, with the development of rules filed with the Commission. The Market Monitor's point concerns the development of rules.

PJM does not solely or independently determine the content of its rate filings. PJM's ability to file rules is not comparable to control over the content of tariff filings exercised by traditional public utilities. PJM cannot file market rule changes to its Operating Agreement under Section 205 without supermajority stakeholder approval.[6] PJM's ability to file the market power mitigation rules under Section 205 requires support from a supermajority of stakeholders. The supermajority requirement creates a veto power over market power mitigation rules exercisable by groups of stakeholders, including market participants subject to market power mitigation. Under current practices, market participants have significant influence over the mitigation rules on which market-based rates authorizations are based. Market participants can prevent PJM from strengthening market power mitigation rules in a 205 filing. This control creates an obvious conflict of interest. The public cannot reasonably rely on PJM market power mitigation rules to be effective under such circumstances.[7]

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6 *See* OA §§ 8.8(ii), 18.6.

7 *See Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 at PP 372–373 (2008) ("Order No. 719"), *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009), *reh'g denied*, Order No. 719-B, 129 FERC ¶ 61,252 (2009) ("Many commenters, however, raise substantial concerns over removing MMUs from mitigation, including the following: (1) there is a greater conflict of interest for the RTO or ISO to administer mitigation, as it has a vested interest in keeping its market participants happy, especially the larger players who can threaten to leave the RTO or ISO if they choose; (2) the MMU serves as a useful buffer between the RTO or ISO and the market participants, performing what is often viewed as a hostile act; (3) there is an inherent tension between mitigation and the RTO or ISO goal of promoting new

PJM has authority under the OA to file changes to the market monitoring plan and the market power mitigation rules in the OATT without stakeholder approval. PJM does require Board approval to make such filings, and may also be limited under the Commission's market monitoring rules and policies.[8] PJM's authority to file changes to the OATT without stakeholder approval does not mean that PJM cannot use the stakeholder process to modify the OATT under Section 205. PJM's authority to file changes to the OATT without stakeholder approval does not eliminate stakeholder influence over such filings. PJM's authority to file changes to the OATT under Section 205 means that the Commission applies a weaker standard to PJM's proposals that could inappropriately include changes to the Market Monitoring Plan, under which PJM itself is monitored.[9]

To better serve the public interest, PJM should be directed to revise the OA to modify PJM's filing authority. Such provision would require PJM, with Board approval, to file proposals concerning the market monitoring plan and market power mitigation rules under Section 206.

With PJM Board approval, PJM can file under Section 206 to obtain desired rule changes to the OA. Unlike 205 filings, PJM's 206 proposals enjoy no special deference. Under Section 206, PJM must first prove its own rules are unjust and unreasonable before its proposal can be considered. If PJM meets the burden to show its own rules are unjust

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markets; (4) the MMU is better equipped by training and market access to detect the need for mitigation; (5) removing the MMU from mitigation would distance it from the market insights it needs to perform its monitoring functions; (6) if removed from tariff administration, the MMU would not have access to the mitigation settlement process and thus could not adequately monitor the RTO's or ISO's mitigation performance; (7) there would be much duplication of costs, since the MMU would have to retain most of its mitigation capabilities in order to monitor the RTO's or ISO's conduct of mitigation; (8) there would be extensive transition costs and software licensing concerns; and (9) there is no empirical evidence of an existing problem with the MMUs performing mitigation. We find many of the objections raised by commenters meritorious. ").

8 *See, e.g.*, 18 CFR § 35.28.

9 *See PJM Interconnection, L.L.C.*, 116 FERC ¶ 61,038 (2006).

and unreasonable, then the Commission could approve PJM's proposal, approve an alternative proposal of another party, including the Market Monitor, or develop its own solution. A Section 206 process is desirable because it affords the Commission an opportunity to put the best rule in place. PJM has initiated 206 complaints regarding its own OA because it does not have 205 filing authority over its Operating Agreement. The process has in some cases allowed PJM to move forward with proposals and, in other cases, given the Commission the option to reject or modify PJM proposals.

The Market Monitor's proposal reasonably builds upon PJM's established practice of relying on Section 206 in circumstances where stakeholders cannot agree. The Market Monitor's proposal constitutes a modest improvement to current practices that would protect RTO independence, protect market monitoring independence, improve the standard of review for the market monitoring plan, improve the standard of review for market power mitigation rules, and better serve the public interest.

Realizing the goals of regulation through competition requires greater attention to creating effective market monitoring plans and market power mitigation rules. Markets cannot operate efficiently if the market rules do not require competitive offers to set price. The tolerance for error under these conditions is significantly less than the tolerance for error when the issue is to establish a cost of service rate acceptable to buyers and sellers, as it is for traditional utility ratemaking. This proceeding represents an opportunity to improve regulation through competition. The public expects and deserves a well regulated industry, consistent with the fundamental goals of the Federal Power Act. It is important to reconsider obsolete standards and procedures to the extent that they impede the goals of regulation through competition.

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 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.[10] 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.

[10] *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: May 22, 2019

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 22nd day of May, 2019.

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