

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

Longview Power, LLC	)	Docket No. ER10-1556-000, -009
	)	
NRG Power Marketing LLC; Indian River Power, LLC; Midwest Generation, LLC; NRG Chalk Point CT LLC; Vienna Power, LLC	)	Docket Nos. ER10-2265-000, -017; ER10-3223-000, -009; ER10-2355-000, -010; ER16-10-000, -003; ER10-2947-000, -015
	)	
Talen Energy Marketing, LLC; Brandon Shores LLC; Brunner Island, LLC; Camden Plant Holding, L.L.C.; Elmwood Park Power, LLC; H.A. Wagner LLC; LMBE Project Company LLC; Martins Creek LLC; Montour, LLC; Newark Bay Cogeneration Partnership, L.L.P.; Pedricktown Cogeneration Company LP; Susquehanna Nuclear, LLC; York Generation Company LLC	)	Docket Nos. ER15-2013-000, -011; ER12-2510-000, -010; ER15-2014--000, -007; ER10-2435-000, -018; ER10-2442-000, -015; ER12-2512-000, -010; ER19-481-000,-003; ER15-2018-000, -006; ER15-2022-000, -006; ER10-2444-000, -017; ER10-2446-000,-013; ER15-2026-000, -006; ER10-2449-000, -015;
	)	
Commonwealth Chesapeake Company, LLC; Hickory Run Energy, LLC	)	Docket Nos. ER10-3078-000, -005; ER19-2564-000, -001
	)	
Wheelabrator Baltimore, L.P.; Wheelabrator Falls Inc.; Wheelabrator Frackville Energy Company Inc.	)	Docket No. ER13-1485-000, -011; ER14-1777-000, -010; ER10-3237-000, -011
	)	
LQA, LLC; Tenaska Pennsylvania Partners, LLC; Tenaska Power Services Co.; Tenaska Virginia Partners, L.P.	)	Docket Nos. ER16-733-000, -007, ER18-1960-000, -003; ER10-1632-000, -018, ER10-1626-000, -012
	)	
Kestrel Acquisition, LLC	)	Docket Nos. ER18-1106-000, -002
	)	

Moxie Freedom LLC	)	Docket No. ER20-2276-000
	)	
TAQA Gen X LLC; Red Oak Power, LLC	)	Docket Nos. ER11-4393-000, -008;
	)	ER14-477-000, -002
	)	
Battery Utility of Ohio, LLC	)	Docket No. ER13-1667-000, -005
	)	

**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 comments filed by PJM on September 29, 2020 (“September 29<sup>th</sup> Comments”). These proceedings concern the Market Monitor’s protests concerning the triennial reports by nontransmission owners who have generation in PJM, filed on August 28, August 31 and September 22, 2020 (“Protests”). These proceedings concern applications to charge market based rates (“MBR”) and the terms of the resulting seller rate schedules. The September 29<sup>th</sup> Comments mischaracterize the Market Monitor’s position and asserts the sufficiency of market power mitigation without any supporting evidence. This answer should be accepted in order to ensure a complete and accurate record and to facilitate the decision making process.

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<sup>1</sup> 18 CFR §§ 385.212 & 385.213 (2020).

<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”).

## I. ANSWER

### A. PJM Market Power Mitigation is Not Sufficient to Support Market Based Rates without Conditions.

The September 29<sup>th</sup> Comments assert (at 3) that “the Market Monitor’s challenges to PJM’s market rules are misplaced” in the triennial review of market based rates. The Market Monitor’s challenges to the rebuttable presumption of effective market power mitigation are not misplaced. Order No. 861 defines the PJM market power mitigation rules as the foundation for market based rates in PJM, placing a heightened responsibility on the Commission, PJM, and the Market Monitor to ensure the efficacy of the market power mitigation rules.<sup>3</sup> For that reason, the rebuttable presumption that PJM market power mitigation is sufficient to support market based rates is properly the core issue of the triennial review proceedings.

The stated purpose of the September 29<sup>th</sup> Comments (at 3) is to address “assertions that PJM’s capacity and energy market rules are inadequate.” PJM does not provide any evaluation of whether the capacity and energy market rules are adequate to support market based rates authorizations. PJM does not address the evidence or provide any counter evidence.

In the case of the capacity market, the September 29<sup>th</sup> Comments refer to the arguments pending in Docket No. EL19-47 but it ignores PJM’s failure to address the outstanding issues with the offer cap in the capacity market. In its complaint initiating that proceeding, the Market Monitor explains that the Market Monitor Seller Cap (“MSOC”) used in the PJM Capacity Market is too high because the number of Performance

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<sup>3</sup> See *Refinements to Horizontal Market Power Analysis for Sellers in Certain Regional Transmission Organization and Independent System Operator Markets*, Order No. 861, 168 FERC ¶ 61,040 at P 21 (July 18, 2019) (“Order No. 861”); *order on reh’g*, Order No. 861-A; 170 FERC ¶ 61,106 (2020).

Assessment Intervals (“PAI”) used in setting the MSOC is demonstrably incorrect.<sup>4</sup> The Market Monitor has also explained that PJM has failed to fulfill the Commission’s requirement that it reassess and revise the number of PAI in subsequent reports.<sup>5</sup> No party in that case has shown otherwise. Structural market power exists in the PJM Capacity Market, and an overstated offer cap allows that market power to affect prices. Market based rates authorizations should not be granted without including conditions that take these facts into account. If the condition sought by the Market Monitor is included in seller rate schedules, then the issue of market power mitigation is satisfactorily resolved in these proceedings whatever the outcome of Docket No. EL19-47.

The September 29<sup>th</sup> Comments (at 5) cite the Market Monitor’s referral process as a backstop for preventing market power abuse and market manipulation, particularly in the capacity market, but the referral process is not a substitute for effective market rules. The referral process does not ensure that prices are competitive. The referral process cannot work without effective market rules. The referral process is not a substitute for effective market power mitigation rules in the evaluation of market based rates authorizations.

The September 29<sup>th</sup> Comments’ defense of PJM’s energy market power mitigation amounts to no more than an assertion that the existing rules have been filed and approved. The Comments do not refute the facts that sellers with market power set prices with substantial markups and inappropriately collect uplift based on inflexible operating parameters. The September 29<sup>th</sup> Comments are correct (at 5-6) that the Market Monitor does

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<sup>4</sup> See Complaint of the Independent Market Monitor for PJM, Docket No. EL19-47 (February 21, 2019).

<sup>5</sup> See Comments of the Independent Market Monitor for PJM, Docket No. ER15-623 and EL15-29 (December 13, 2019). As the Market Monitor explained: “PJM has reported zero, six and 18 PAI for the three delivery years since the implementation of the capacity performance design. Clearly the assumption of 360 PAI per delivery year is wrong. Yet, PJM indicates no plans to change the assumption regarding the expected number of PAI. PJM’s filing does not respond to the Commission’s requirement to provide updates on the use of 30 hours for this parameter.”

not challenge the Three Pivotal Supplier (“TPS”) test as the correct test for identifying structural market power. Market power is identified using the TPS test. Market power mitigation is implemented through offer capping. The issues lie in the process for offer capping resources that fail the TPS test. In the energy market, the offer capping process is easily avoided. Choosing the submitted offer schedule with the lowest estimated production cost or dispatch cost does not protect consumers when the entire dispatch cost is not included, when market conditions change, and when sellers with market power dictate inefficient combinations of pricing and physical operating parameters in the available offer schedules.<sup>6</sup> Despite the protestations in the September 29<sup>th</sup> Comments that the rules are working, there was no response to the direct evidence that the rules are not working. No Commission proceeding has attempted to address these issues. When the Market Monitor has raised these issues in prior proceedings, they have been dismissed as out of scope.<sup>7</sup> When proposed in the PJM stakeholder process, they have been rejected.<sup>8</sup>

The September 29<sup>th</sup> Comments assert that the Market Monitor’s arguments have been rejected by the Commission, but they have not. PJM has asserted, and the Commission has accepted, in the specific cases where the Market Monitor has raised these issues that the Market Monitor’s issues about each rule are out of scope. As a result, the issues have not been evaluated on the merits.

What matters in these MBR proceedings is whether sufficient evidence is in the record of these proceedings to determine whether the market power mitigation rules, without the need for any other condition in market based rate schedules, are adequate to

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<sup>6</sup> See OA Schedule 1 § 6.4.1.

<sup>7</sup> See *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,282 at P 53 (2016); *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,010 at P 26 (April 3, 2020).

<sup>8</sup> See Updated Proposal Matrix, Generator Offer Flexibility Senior Task Force (November 12, 2015) at row 11, <<https://www.pjm.com/committees-and-groups/closed-groups/gofstf.aspx>>.

prevent the exercise of market power. Past decisions approving individual mitigation rules that were filed and considered only narrowly do not preclude this question.

**B. The State of the Market Reports Provide Comprehensive and Detailed Evidence.**

The Market Monitor reports comprehensively on whether the mitigation rules are adequate in detailed analysis in its State of the Market Reports. The relevant sections from the state of the market reports are included in the record of these proceedings. The evidence, which remains unrefuted, is sufficient to show that market based rates authorizations should not be unconditional.

The September 29<sup>th</sup> Comments assert (at 6) that the State of the Market Reports do not support the Market Monitor's position on MBR applications:

To the extent the Market Monitor is arguing that the existing market power mitigation rules in the energy market are not working, such assertion is belied by the Market Monitor's own recent "conclu[sion] that the PJM energy market results were competitive in the first six months of 2020." [footnote omitted]

PJM misunderstands. PJM mischaracterizes and selectively cites the Market Monitor's findings. The market sellers similarly point to the State of the Market Reports to support their MBR applications. The same State of the Market Reports repeatedly explain that market sellers have the ability to and do exercise market power as a result of specific, unaddressed issues in the offer capping process for local market power. The State of the Market Reports provide data on the frequency with which this occurs. An overall assessment that the energy market is competitive does not contradict the fact that market power is exercised under certain circumstances and in specific locations. The PJM energy market results were competitive in the first six months of 2020. Local market power was exercised in the first six months of 2020. Both statements are correct and entirely consistent.

The Market Monitor also found, in the same report, that the capacity market is not competitive.<sup>9 10</sup>

**C. PJM’s Role Is Not to Defend Market Sellers or to Implement their Market Based Rates Tariffs.**

Order No. 861 concludes that the Commission has not delegated its authority over market based rates to PJM in permitting generation owners to rely on the market power mitigation rules to support their market based rate authority.<sup>11</sup> Therefore, the assertions by PJM in the September 29<sup>th</sup> Comments (at 5 and 8) that the capacity market is competitive and that the energy market is sufficiently protected from the exercise of market power do not justify unconditional approval of market based rates. The evidence in the State of the Market Reports shows that market sellers in PJM can and do set prices above competitive levels. It is disappointing that PJM continues to defend the flawed implementation of market power mitigation rules rather than addressing them directly. The solutions are straightforward and clear and could be easily implemented with PJM’s constructive participation.

The September 29<sup>th</sup> Comments ask (at 9) that PJM “not be asked to oversee disparate rules and treatment of similarly situated market sellers, with some operating under the PJM

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<sup>9</sup> See Analysis of the 2021/2022 RPM Base Residual Auction: Revised (August 24, 2018) <[http://www.monitoringanalytics.com/reports/Reports/2018/IMM\\_Analysis\\_of\\_the\\_20212022\\_RPM\\_BRA\\_Revised\\_20180824.pdf](http://www.monitoringanalytics.com/reports/Reports/2018/IMM_Analysis_of_the_20212022_RPM_BRA_Revised_20180824.pdf)>.

<sup>10</sup> See the 2020 Quarterly State of the Market Report for PJM: January through June (August 13, 2020).

<sup>11</sup> Order No. 861 at P 30 (“We agree that it is the Commission, and not the market monitors or the RTOs/ISOs, that bears responsibility for ensuring that rates are just and reasonable under the FPA. Under the proposal, which we adopt in this final rule, it is the Commission—and not the RTO/ISO or its associated market monitor—that determines whether an entity can obtain or retain market-based rate authority. In performing mitigation, the RTO/ISO or market monitor does not usurp the Commission’s role or act as its surrogate but rather implements Commission-approved tariff provisions. Thus, the Commission is the entity determining whether granting a Seller market-based rate authority would result in just and reasonable rates.”).

market rules, and others operating under the Market Monitor’s proposed conditions.” PJM is not being asked or required to take any action. Nonetheless, it would be productive if PJM recognized the long identified and uncontradicted flaws in PJM’s application of the market power mitigation rules. Market power evaluations are outside PJM’s tariff defined role.<sup>12</sup> The Market Monitor has not requested and does not recommend that PJM be asked to oversee compliance with market based rates authorizations.

The September 29<sup>th</sup> Comments (at 9) also presume that the proposed conditions on market based rates authority would constitute a change to PJM market rules. The September 29<sup>th</sup> Comments are incorrect. The proposed conditions lie fully within the PJM market rules and sellers have the ability to comply without any assistance from PJM. The September 29<sup>th</sup> Comments assert incorrectly that PJM would be inserted into a compliance process that lies solely with the market sellers. In fact, PJM’s Operating Agreement clearly states:

Market Participants shall have exclusive responsibility for preparing and submitting their offers on the basis of accurate information and in compliance with the FERC Market Rules, inclusive of the level of any applicable offer cap, and in no event shall PJM be held liable for the consequences of or make any retroactive adjustment to any clearing price on the basis of any offer submitted on the basis of inaccurate or non-compliant information.<sup>13</sup>

As the September 29<sup>th</sup> Comments indicate, the triennial review process does not affect all PJM market sellers simultaneously. This fact is beyond the control of PJM, the Market Monitor, and market sellers. The timing of the review process is not a valid excuse for failing to address the flaws in PJM’s application of market power mitigation rules.

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<sup>12</sup> OATT § 12A.

<sup>13</sup> PJM OA Schedule 1 § 6.4.2(d).



## II. MOTION FOR LEAVE TO ANSWER

In most cases this pleading responds to answers. 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.<sup>14</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>14</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 these proceedings.

Respectfully submitted,



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Dated: October 14, 2020

## 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 October, 2020.



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