

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

Moxie Freedom LLC

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Docket No. ER20-2276-000

PROTEST 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 (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),³ submits this protest to the triennial filing in support of market based rates authorization submitted by Moxie Freedom LLC on June 30, 2020, in this proceeding. The protest is limited to the extent that such market based rated authorization applies or may apply to sales of energy or capacity in PJM markets.

Market based rates are approved for PJM sellers under the presumption of effective PJM market monitoring and market power mitigation rules. The current PJM Market Rules

¹ 18 CFR § 385.211 (2019).

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 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*, 155 FERC ¶ 61,188, Order No. 861-A (May 19, 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”).

for market power mitigation are insufficient to support such authorizations. Unless and until the deficiencies in PJM's market power mitigation rules are corrected, the Commission should authorize participation in the PJM capacity market at market based rates only on the condition that market sellers offer their resources in the PJM Capacity Market at or below the competitive capacity offer. The competitive capacity offer is one that is derived consistent with the mathematics of the PJM capacity performance design. Currently, such offers are equal to the Avoidable Cost Rate adjusted for expected Capacity Performance penalties and bonuses. Unless and until the deficiencies in PJM's market power mitigation rules are corrected, the Commission should authorize participation in the PJM energy market at market based rates only on the condition that market sellers offer their units in the PJM energy market at or below the defined cost-based offer, and that market sellers submit operating parameters that are at least as flexible as the defined unit specific parameter limits in the PJM energy market.

I. COMMENTS

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

Subsequent to Order No. 861, market sellers in PJM 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.⁴ Order No.

⁴ Order No. 861 at P 22 ("The public and the Commission will continue to have access to a Seller's ownership information, vertical market power analysis, asset appendix, and EQRs, as well as to the market monitors' reports. For example, PJM IMM notes that its quarterly State of the Market reports contain a comprehensive listing of market power concerns. Anyone may use this information in support of a challenge to a Seller's market-based rate authority. The Commission would then consider this and other information to determine whether the Seller may obtain or retain market-based rate authority. In addition, contrary to Public Citizen's argument that "once [market-based rate] authority is granted, [the Commission] is unlikely to take it away," the standard for obtaining and retaining market-based rate authority is the same. The Commission can and does institute FPA section 206 proceedings when potential market power concerns arise.").

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 for PJM and in the complaint filed by the Market Monitor regarding the capacity market seller offer cap.⁵

Order No. 861 also requires a demonstration that sellers have market power in the relevant markets.⁶ Order No. 861 recognizes that the intervenors may not have provided indicative screens.⁷ The Market Monitor has not included indicative screens. The Market Monitor's approach to the market power analysis of individual market participants uses actual dispatch, offer and availability data to define the relevant markets rather than the defined indicative screens. The Market Monitor does not recommend that the Commission request indicative screens from sellers. 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. Accordingly, it would serve no useful purpose for the Commission to request indicative screen information.

B. The PJM Capacity Market Is Not Competitive Due to Inadequate Market Power Mitigation.

The Market Monitor has provided ample evidence that the PJM Capacity Market is not competitive due to inadequate market power mitigation. The Market Monitor explained its findings regarding the Market Seller Offer Cap and provided evidence of

⁵ See Docket No. EL19-47-000.

⁶ Order No. 861 at P 26.

⁷ *Id.* at P 27.

noncompetitive behavior in its report analyzing the 2021/2022 RPM Base Residual Auction.⁸ In its subsequent State of the Market Reports, the Market Monitor described the issues and found that the PJM Capacity Market is not competitive.⁹ On February 21, 2019, the Market Monitor filed a complaint explaining that the Market Seller Offer Cap is overstated, allowing market power to be exercised by some sellers.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 Capacity Market.

C. The PJM Energy Market Results Are Generally Competitive, but Market Power Mitigation Is Inadequate in Many Circumstances.

The Market Monitor has provided ample evidence of the inadequacies of PJM energy market power mitigation in its State of the Market Reports.¹¹ Some sellers that fail the structural market power test, the Three Pivotal Supplier test (“TPS test”), are able to set prices with a substantial markup over their cost-based offer.¹² 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.¹³ 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.

⁸ See Monitoring Analytics, LLC, *Analysis of the 2021/2022 RPM Base Residual Auction: Revised* (August 24, 2018), included as Attachment A.

⁹⁹ See Monitoring Analytics, LLC, *2020 Quarterly State of the Market Report for PJM: January through June*, Section 5: Capacity Market, included as Attachment B.

¹⁰ Complaint of the Independent Market Monitor for PJM, Docket No. EL19-47-000 (February 21, 2019).

¹¹ See Monitoring Analytics, LLC, *2020 Quarterly State of the Market Report for PJM: January through June*, Section 3: Energy Market, included as Attachment C.

¹² *Id.* at Table 3-110.

¹³ *Id.* at Table 3-16 and Table 3-17.

D. Cost-based Offers and Parameter Limits Should Be Required Until Market Power Mitigation Is Adequate in PJM.

Based on the evidence provided by the Market Monitor, market based authorization for PJM market sellers in this proceeding should only permit offers in the PJM Capacity Market at or below the competitive capacity offer. The competitive capacity offer is one that is derived consistent with the mathematics of the PJM capacity performance design.¹⁴ Currently, such offers are equal to the Avoidable Cost Rate adjusted for expected Capacity Performance penalties and bonuses.¹⁵ Market based rate authorization should permit only offers at or below cost-based offers in the PJM energy market, and should permit only offers including operating parameters that are at least as flexible as the defined unit specific parameter limits in the PJM energy market.^{16 17}

This approach is similar to the approach taken by the Commission in its 2016 authorization of market based rates for Arizona Public Service Co., where the Commission found the California ISO's market power mitigation insufficient to address market power

¹⁴ The competitive offer should also be consistent with any minimum offer price rule approved by the Commission.

¹⁵ See Attachment A to the Complaint of the Independent Market Monitor for PJM, Docket No. EL19-47-000 (February 21, 2019).

¹⁶ See OA Schedule 2.

¹⁷ See OA Schedule 1 § 6.6.

concerns in the Energy Imbalance Market.¹⁸ In that case the Commission restricted participation to cost-based offers as defined in the tariff.¹⁹

Such restrictions should be removed only when the market power mitigation rules in the PJM Capacity Market and the PJM energy market are modified consistent with the explicit recommendations of the Market Monitor.²⁰

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.²¹ Under this defined process, flaws in the PJM Market Rules for market power mitigation can be addressed and restrictions on individual market based rates authorizations can be lifted, consistent with the public interest.

¹⁸ *Arizona Public Service Co.*, 156 FERC ¶ 61,148 at P 26 (2016) (“[W]e authorize APS’s participation in the EIM at market-based rates on the condition that it offer its units that are participating in the EIM at or below each unit’s Default Energy Bid, as detailed below. Such a condition should reduce the potential adverse effects on the market should withholding occur.”); *see also Nevada Power Company*, 153 FERC ¶ 61,206 (2015), *order on reh’g*, 155 FERC ¶ 61,186 (2016) (market-based rates authorization for EIM conditioned on seller offering their units that are participating in the EIM at or below each unit’s Default Energy Bid”).

¹⁹ *Id.* at P 39.

²⁰ *See* Monitoring Analytics, LLC, *2020 Quarterly State of the Market Report for PJM: January through June*, Section 2: Recommendations, included as Attachment D.

²¹ *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).

II. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this protest.

Respectfully submitted,



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Dated: August 31, 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 31th day of August, 2020.



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