

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

Independent Market Monitor for PJM	)	Docket No. EL19-47-000
v.	)	
PJM Interconnection, L.L.C.	)	
	)	
Office of the People’s Counsel for District of Columbia	)	Docket No. EL19-63-000
Delaware Division of the Public Advocate	)	
Citizens Utility Board	)	
Indiana Office of Utility Consumer Counselor	)	
Maryland Office of People’s Counsel	)	
Pennsylvania Office of Consumer Advocate	)	
West Virginia Consumer Advocate Division	)	
PJM Industrial Customer Coalition	)	
v.	)	
PJM Interconnection, L.L.C.	)	(not consolidated)
	)	

**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”), submits this answer to the reply briefs submitted by the Joint Consumer Advocates (“JCA”), the Indicated Suppliers,

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

and Exelon/PSEG in this proceeding on June 9, 2021.<sup>2 3 4</sup> The JCA did not file an initial brief with a proposal in this proceeding, and instead filed a reply brief with a proposal for a default market seller offer cap (MSOC). This pleading also responds to the answers filed by PJM on June 22, 2021 (“PJM Answer”) and Exelon on June 24, 2021 (“Exelon Answer”).

The Market Monitor requests that this answer be accepted because it will contribute to development of a complete record and facilitate the decision making process. In addition, this is the first opportunity to respond to the JCA’s proposal in this proceeding. The Market Monitor also responds to the replies of the Indicated Suppliers and Exelon/PSEG (collectively “generators”) to correct the record in this proceeding.

## I. ANSWER

### A. Generators Repeat Incorrect Arguments.

Indicated Suppliers’ arguments against the Market Monitor’s Net Avoidable Cost Rate (Net ACR) based Market Seller Offer Cap (MSOC) are unsupported. Indicated Suppliers’ arguments are not aligned with generators’ actual offer behavior in the past capacity auctions. Generators continue to argue on paper that their expectations of actual Performance Assessment Hours (PAH) are significantly higher (11.5 – 15 PAH for Indicated Suppliers, 20 PAH for Exelon/PSEG) than their real expectations of close to zero PAH that are reflected in the actual offers in the capacity auctions.<sup>5</sup>

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<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”).

<sup>3</sup> See “Reply Brief of The Joint Consumer Advocates,” Docket No. EL19-7 and EL19-63 (June 9, 2021).

<sup>4</sup> See “Reply Brief of The Indicated Suppliers,” Docket No. EL19-47 and EL19-63 (June 9, 2021) (“Indicated Suppliers Reply”). See “Reply Brief of Exelon Corporation and the PSEG Companies,” Docket No. EL19-47 and EL19-63 (June 9, 2021) (“Exelon/PSEG Reply”).

<sup>5</sup> See “Reply Affidavit of Roy J. Shanker, Ph.D.,” Docket No. EL19-47 and EL19-63 (June 9, 2021) “Shanker Reply Affidavit,” at 6 – 7.

Contrary to the Indicated Suppliers' assertion (Shanker Reply Affidavit at 10), there has been an open discussion on estimating expected PAI. PJM conducted a public stakeholder process in which all PJM stakeholders, including the Indicated Suppliers and their witness, actively participated.<sup>6</sup> PJM continued to submit annual informational reports to the Commission, publicly showing zero or close to zero PAI, with no proposal to update the rules in response. The current complaint exists because that open discussion on estimating PAI failed to recognize and update the estimated PAI to a value that reflects reality. That failure continued to create a risk for the exercise of market power in the capacity market. The public record of the PJM stakeholder process and PJM's informational filings to the Commission are evidence that Indicated Suppliers' allegations of a lack of open discussion on estimating the expected PAI are incorrect.

### **1. Risks**

Generators offer contradictory arguments on the risks faced by market sellers. On one hand, generators argue that the nonperformance charge rate (penalty rate) has to be increased because the current nonperformance charge rate is not high enough to incent performance in the energy market.<sup>7</sup> Generators argue that nonperforming resources do not face enough risks with the current nonperformance charge rate in PJM. On the other hand, generators also argue that suppliers face extreme risks for nonperformance in the energy market.<sup>8 9</sup> The risks due to nonperformance faced by suppliers cannot be too high and too

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<sup>6</sup> The stakeholder meeting materials on this issue can be accessed at <https://www.pjm.com/committees-and-groups/issue-tracking/issue-tracking-details.aspx?Issue=fb3e8268-79e5-4cdc-b900-ae42fd0d3bbe>.

<sup>7</sup> See "Affidavit of Roy J. Shanker, Ph.D.," for Indicated Suppliers, Docket No. EL19-47 and EL19-63, (May 3, 2021) ("Shanker May 3<sup>rd</sup> Affidavit") at 12; See Exelon/PSEG Reply at 5.

<sup>8</sup> Indicated Suppliers Reply at 8 – 9, Exelon/PSEG Reply at 13 – 14.

<sup>9</sup> These risks are referred to as Liquidated Damages risk ("LD Risk"), defined as the risk associated with buying back energy or purchasing replacement energy, at potentially higher real-time prices because of unplanned outages after selling it in forward markets at lower prices.

low at the same time. The Commission recognized previously that the capacity market and the energy market work together to ensure that resources have the opportunity to earn revenues to cover at least their going forward costs.<sup>10</sup> Similarly, both the energy market and capacity market provide incentives and opportunities for resources to earn revenues in excess of costs. Generators' arguments that the capacity market offers should include additional energy market risks have been rejected by the Commission in the past, and should be dismissed again.<sup>11</sup>

Indicated Suppliers misrepresent the Market Monitor's position on the calculation of Capacity Performance Quantifiable Risk (CPQR) component. The Market Monitor has reviewed suppliers' estimates of CPQR in the past, and recognizes that there can be different expectations for different resources. Contrary to the Indicated Suppliers' assertion, the "willingness of the IMM to entertain different estimates of H for different parties" is not problematic. The Market Monitor does recognize that different market sellers have different expectations, given the unique characteristics of each resource and the different views among suppliers.<sup>12</sup> This is consistent with the locational distribution of emergency actions in PJM and is a relevant input to the evaluation of risk by each resource owner. The Market Monitor analyzes the assumptions used in calculating these risks to ensure that CPQR reasonably reflects actual risks and is not used to exercise market power. The review process is reasonable, and market sellers may request review by the Commission if the Market Monitor and the market seller cannot reach agreement.

Indicated Suppliers also misrepresent how risk is dealt with in a market. If suppliers are allowed to include in offers only the tail end of the worst case scenarios, risk is

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<sup>10</sup> 171 FERC ¶ 61,153 (May 21, 2020) ("ORDC Order") at 309.

<sup>11</sup> *PJM Interconnection, L.L.C., et al.*, 155 FERC ¶ 61,157 at P 203 (2016).

<sup>12</sup> Shanker Reply Affidavit at 10, 36.

inappropriately shifted to customers, who have no control over the management of these risks.

The best counter to the hypothetical arguments of generators is the fact that actual offers generally do not include the proposed illogical and asymmetrical approach to risk.

## 2. Excuses

Indicated Suppliers misrepresent the Market Monitor's position on the treatment of excuses for nonperformance under the Capacity Performance rules. Indicated Suppliers state (at 7 – 8) incorrectly that the Market Monitor's "fix is not to have PJM reduce the number of excuses for non-performance." Contrary to the Indicated Suppliers' assertions, the Market Monitor has repeatedly advocated and continues to advocate a "no excuses" approach to Capacity Performance.<sup>13</sup> Given that PJM's implementation is far from a "no excuses" approach, it is illogical to continue to assume that the bonus payment rate is equal to the nonperformance charge rate (penalty rate). All of the arguments presented by the Indicated Suppliers, Exelon/PSEG and their expert witnesses supporting the default MSOC of Net CONE times B depend on the assumption that the bonus payment rate is equal to the penalty rate. The fact that the assumption is demonstrably incorrect means that the arguments are wrong. Even if one were to hypothetically accurately predict the number of PAI in a given delivery year, and use it to calculate the nonperformance charge rate, PJM's excuse of nonperforming resources, and the resultant lack of opportunity for energy only resources to earn bonus revenues, makes the current default MSOC an overestimate. The generators' proposals to keep the default MSOC at Net CONE times B is unreasonable and illogical regardless of the estimated number of expected PAI.

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<sup>13</sup> See "Answer and Motion for Leave to Answer of The Independent Market Monitor for PJM," Docket No. ER15-623, EL15-29 (February 27, 2015) at 8.

### 3. More Excuses

The claims of administrative burden and overmitigation are unsupported and incorrect. The Commission dismissed these arguments in its March 18<sup>th</sup> Order.<sup>14</sup> The PJM Capacity Market is structurally far from the assumptions associated with a perfectly competitive market and requires effective market power mitigation. The most recent Base Residual Auction (BRA) for the 2022/2023 Delivery Year provides additional evidence that market power mitigation is not working as intended, and will not work under any of the proposals from other parties in this proceeding. The default MSOC that would have resulted from every other proposal, other than the Market Monitor's Net ACR proposal, would fail to resolve the issue identified by the Commission in the March 18<sup>th</sup> Order and fail to ensure that the marginal offers that set clearing prices are reviewed for market power.<sup>15</sup>

### 4. Must Offer Requirement

The Indicated Suppliers use misleading and incomplete arguments regarding the treatment of intermittent and 'traditional' resources to argue for the elimination of the must offer requirement in capacity and energy markets.<sup>16</sup> In a structurally noncompetitive market, a must offer rule is required in order to prevent physical withholding. Indicated Suppliers argue that if the Commission acts to limit the ability to exercise market power in the capacity market through economic withholding, the Commission should then allow physical withholding in both the capacity and energy markets. These arguments should be rejected. Physical withholding is just another way to exercise market power. The treatment

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<sup>14</sup> 174 FERC ¶ 61,212 (March 18, 2021) ("March 18<sup>th</sup> Order") at P 69.

<sup>15</sup> *Id.* at P 65.

<sup>16</sup> Indicated Suppliers Reply at 18 – 21.

of intermittent resources, and the valuation of their capacity contribution is an important topic, and the Commission is addressing it in parallel proceedings.<sup>17</sup>

**B. The JCA Proposal is Arbitrary and Not Market Based.**

The JCA proposal for the default MSOC is simply to use 90 percent of the simple three year historical average of the Rest of RTO clearing prices from the BRAs. The goal of the JCA proposal is to “more accurately predict the next auction price than PJM’s proposal.”<sup>18</sup> Both the JCA and PJM have the wrong objective. The goal is not to predict the outcome of the next auction. If a simple rule of thumb were an adequate predictor, all market participants and analysts would get the prices right. But no one does. From consultants to sophisticated Wall Street analysts, the predictions are routinely wrong and wrong by large amounts. Markets produce results based on the competitive dynamics that exist at the time of the actual market clearing. Those dynamics are based on current and forward looking appraisals of costs and revenues and have nothing to do with the last three auctions. The Commission approved elimination of the three year historical net revenue calculation in favor of forward looking net revenues for precisely that reason.<sup>19</sup> Locational differences are another essential part of the PJM capacity market dynamics. The PJM capacity market design is locational because supply and demand conditions and therefore competitive clearing prices vary significantly by area and LDA. Auction results demonstrate that fact. For example, use of an historical RTO clearing price could significantly understate the competitive offers of high cost resources in constrained LDAs. Similarly, use of an historical RTO clearing price could significantly overstate the competitive market price for the Rest of RTO or for individual LDAs.

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<sup>17</sup> See, e.g., Docket Nos. ER21-278 & ER21-2043 (PJM’s proposed Effective Load Carrying Capability (ELCC) construct).

<sup>18</sup> JCA at 4.

<sup>19</sup> 171 FERC ¶ 61,153 (May, 2020) at 311.

JCA witness Wilson offers compelling critiques of the proposals submitted by PJM and generators in this proceeding.<sup>20</sup> The description of the differences between the capacity auctions in PJM and ISO New England is particularly relevant, and shows how PJM's proposal to simply use ISO New England's calculation of the dynamic de-list bid threshold (DDBT) for the default MSOC in PJM is misguided.<sup>21</sup> JCA witness Wilson also correctly recognizes (at 61) that the potential harm caused by market power under the high MSOC advocated by PJM and the generators is greater than the administrative burdens of unit specific reviews.

Despite making these points, the JCA offers a proposal that suffers from the same shortfalls as the PJM proposal, albeit using a different estimate of the clearing price. Instead of using economic and market principles, the JCA proposal substitutes a simple rule of thumb. The JCA proposal assumes, without support or supporting argument or even discussion, that the clearing prices in the three previous BRAs were competitive. The JCA proposal assumes that there have been no fundamental changes in the supply and demand fundamentals since the prior three auctions. This is demonstrably incorrect. These assumptions are unsupported, and the resulting default MSOC has no relationship to the outcome of a competitive, locational capacity market and cannot be relied upon to protect PJM customers from the exercise of market power in the capacity market.

The JCA's response to the Market Monitor's proposed approach is simplistic and incorrect. The fact that correct market seller offer caps are unit specific, with a default option, is how markets work and should surprise no one. That approach works throughout PJM markets. The JCA asserted but failed to explain why the Market Monitor's proposal

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<sup>20</sup> See "Affidavit of James F. Wilson in Support of The Reply Brief of The Joint Consumer Advocates," Docket Nos EL19-47-001 and EL19-63-001 (June 9, 2021) ("Wilson affidavit") at 43, 46.

<sup>21</sup> *Id* at 53 – 57.



could not be implemented.<sup>22</sup> The ACR calculations and approach have been in the tariff for years. In addition, if the intent of the JCA proposal is to understate the competitive price and thus require the Market Monitor to review some unknown number of offers based on unit specific ACR, the JCA fails to explain why this is administratively feasible but the Market Monitor's proposal is not. The JCA has no information about the administrative feasibility of offer reviews and did not request any related information from the Market Monitor. It is the Market Monitor's position that the review under the Market Monitor's proposal is administratively feasible. It should not be a surprise that unit specific review requires administrative oversight. That is the point. Simply assuming a number well in excess of the competitive price, as is currently the case, requires only minimal oversight, but permits the exercise of market power. The small increase in administrative effort is reasonable in light of the fact that market power raised the cost to customers in the 2021/2022 BRA by more than one billion dollars.<sup>23</sup>

The Rest of RTO clearing price in the BRA is a function of inputs that are specific to the year of the auction and to the delivery year that the BRA clears for, including changes to supply and demand fundamentals, and the impact of any exercise of market power. The Market Monitor explained previously and the Commission agreed that it cannot be assumed that the historical clearing prices in the BRA under Capacity Performance were competitive. The Market Monitor concluded that the 2021/2022 BRA was not competitive.<sup>24</sup>

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<sup>22</sup> The JCA filing stated (at 4): "The IMM proposal, primarily to reinstate a Net Avoidable Cost Rate approach, is conceptually sound, but requires significant administrative oversight and lacks the specifics to be adopted "as is"."

<sup>23</sup> See Market Monitor, *Analysis of the 2021/2022 RPM Base Residual Auction: Revised* ("2021/2022 BRA Report") (August 24, 2018), which can be accessed at: <[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>24</sup> 2021/2022 BRA Report

The JCA refers to the three year simple average of the Rest of RTO clearing price as “Empirical Net CONE.” But Net CONE is not the definition of a competitive offer. A competitive offer in the capacity market is Net ACR. In fact, most offers in the capacity market have reflected Net ACR, although some did not.

Apart from using the wrong metric, the JCA’s estimate is not Net CONE. The Net CONE consists of two components, the Gross CONE and the net energy and ancillary services revenues. Gross CONE is calculated based on the detailed cost components associated with developing and building a new combustion turbine in the PJM market.<sup>25</sup> The energy and ancillary service revenues are based on a forward looking calculation based on the best available market information on energy prices and fuel costs.<sup>26</sup> The JCA calculation bears no resemblance to Net CONE.

If the capacity market had been competitive in all three years, the clearing price would have reflected the marginal units’ Net ACR and not their Net CONE.

### **C. PJM and Generators’ Support for the JCA Proposal**

PJM continues to argue that its proposal for the default MSOC remains just and reasonable, despite the fact that the results of the most recent Base Residual Auction for the 2022/2023 Delivery Year demonstrate that the proposal was dramatically inconsistent with the actual market results.<sup>27</sup> In the PJM Answer, PJM argues that the JCA proposal is the second best alternative, even though, or perhaps because, it suffers from the same drawbacks as PJM’s proposal.

Both PJM and the JCA proposals rely on historical prices, both proposals rely on the assumption of competitive behavior, and both proposals completely ignore fundamental

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<sup>25</sup> See, e.g., Docket No. ER19-105.

<sup>26</sup> See 173 FERC ¶ 61,134 (2020).

<sup>27</sup> See “Reply Brief of The Independent Market Monitor For PJM,” Docket Nos EL19-47 & EL19-63 (June 9, 2021) (“IMM Reply Brief”) at 5.

changes to the supply and demand for capacity in each auction relative to the previous auctions. Neither the PJM proposal nor the JCA proposal would meet the Commission's objective of ensuring that marginal offers in the capacity market are reviewed for market power. The results of the 2022/2023 BRA make that clear. The Commission should dismiss PJM's attempts to simply propose rule of thumb estimates for default MSOC that have no basis in the actual market facts.

Exelon also argues that in the event the Commission entertains the JCA proposal, it should inflate the value calculated by the JCA proposal before accepting it.<sup>28</sup> Exelon's proposed adjustments to the JCA proposal have no logical or economic support, and are designed to increase the level of the default offer cap closer to Exelon's proposal. Exelon's proposed adjustments to the JCA proposal make the JCA proposal worse and should be rejected.

## 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.<sup>29</sup> In this answer, the Market Monitor provides the Commission with information useful to the Commission's decision making process and

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<sup>28</sup> See "Motion For Leave To Answer And Answer of Exelon Corporation," Docket Nos EL19-47 & EL19-63 (June 24, 2021) ("Exelon Answer").

<sup>29</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).

which provides a more complete record. Accordingly, the Market Monitor respectfully requests that this answer be permitted.

### 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: June 25, 2021

## 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 25<sup>th</sup> day of June, 2021.



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