

2021, for expedited clarification or, in the alternative, request for rehearing, of the order issued on March 18, 2021, granting the complaint of the Market Monitor, et al. concerning the Market Seller Offer Cap (“MSOC Order”).³

I. ANSWER

A. The Market Seller Offer Cap in the Capacity Market is Not a Safe Harbor.

Power Providers refer (at 3) to the PJM Tariff, Attachment DD, Section 6.4 that states that “the submission of a Sell Offer with an Offer Price at or below the revised Market Seller Offer Cap permitted under this proviso shall not, in and of itself, be deemed an exercise of market power in the RPM market.” Power Providers state (*id.*):

P3 seeks clarification that Capacity Performance Resources can rely on this currently effective Tariff language as a safe harbor while the market awaits the resolution of this proceeding and the development of a new MSOC.

The current MSOC is not a safe harbor. There is no safe harbor for anticompetitive behavior. The Commission has determined that the existing MSOC is unjust and unreasonable.⁴ The Commission has stated that market power can be exercised through offers that are below the current MSOC but above the competitive offer of a capacity resource.⁵

B. Use of the Term Anticompetitive is Appropriate.

In requesting clarification or in the alternative, rehearing, of the MSOC Order, Power Providers are requesting that the exercise of market power in the May auction be ignored

³ *Independent Market Monitor for PJM v. PJM, et al.*, 174 FERC ¶ 61,212 (2021) (“MSOC Order”).

⁴ *Id.* at P 65 (“Therefore, we find that the default offer cap described in the Tariff is incorrectly calibrated such that it may unjustly and unreasonably prevent the appropriate review of offers, thereby allowing potential exercises of market power, and reducing the capacity market’s overall competitiveness.”).

⁵ MSOC Order at P 65.

because Power Providers assert that they do not know what anticompetitive behavior is and therefore will not be able to determine whether their behavior is anticompetitive prior to the submission of offers for the May auction.

Power Providers state:

Simply stated, there is nothing in the FPA or in the Commission's regulations that defines "anticompetitive behavior." Anticompetitive conduct also is not expressly noted as an element of market manipulation, fraud, or any market behavior rule.

Power Providers' statement indicates understanding of the meaning of anticompetitive behavior. Market manipulation, fraud, and violations of market behavior rules are anticompetitive. Violations of market rules intended to support regulation through competition are anticompetitive. The exercise or attempted exercise of market power through economic withholding is anticompetitive.

Commission decisions frequently refer to anticompetitive behavior, conduct or acts.⁶ Such usage is within the ordinary meaning of the term, and occurs in the context of, among other things, the exercise or potential exercise of market power, preferential affiliate transactions or market manipulation. There is nothing unusual about the Commission's usage of the term in the MSOC Order.⁷

The Office of Enforcement uses the term anticompetitive conduct to identify behavior within the scope of the Commission's authority. The Office of Enforcement's annual report for 2020 states (at 6):⁸

⁶ See, e.g., *Oil Pipeline Affiliate Contracts*, 173 FERC ¶ 61,250 at P 3 (2020); *Constellation Mystic Power, LLC*, 172 FERC ¶ 61,044 at P 52 (2020); *Public Citizen, Inc. v. Midcontinent Indep. Sys. Operator*, 170 FERC ¶ 61,227 at P 22 (2020); *Indep. Power Producers of N.Y. v. N.Y. Indep. Sys. Operator*, 170 FERC ¶ 61,118 at P 5 (2020).

⁷ *Id.*

⁸ See Staff of the Office of Enforcement, "2020 Report on Enforcement," Docket No. AD07-13-014, which can be accessed at <<https://www.ferc.gov/sites/default/files/2020-11/2020%20Annual%20Report%20on%20Enforcement.pdf>>.

Similarly, anticompetitive conduct and conduct that threatens market transparency undermine confidence in the energy markets and harm consumers and competitors. Such conduct might also involve the violation of rules designed to limit market power or to ensure the efficient operation of regulated markets.

Power Providers ignore the Commission's responsibility to ensure just and reasonable rates and the Commission's reliance on competition to meet that responsibility.⁹ Capacity prices that are the result of the exercise of market power result in unjust and unreasonable rates.

The MSOC Order deters anticompetitive behavior in the upcoming PJM base residual auction by reminding market participants of the Commission's authority.

Power Providers state that they are uncertain about what anticompetitive behavior is. While the Market Monitor does not and cannot speak for the Commission, the Market Monitor is available to respond to questions from any seller of capacity about how the Market Monitor views the competitiveness of specific offers for the upcoming May auction.

The Market Monitor reviews the offers in each capacity market auction in detail and analyzes the market clearing process to determine the impact of offers on the final locational clearing prices. The auction offers are due during the week from May 19, 2021, to May 25, 2021, and PJM clears the auction during the week from May 26, 2021, to June 2, 2021. The Market Monitor reviews the offers as they are submitted and separately calculates the locational clearing prices. As the Market Monitor has made clear, if the Market Monitor observes the exercise of market power in the May Base Residual Auction for 2022/2023 that results in a clearing price above the competitive level, the Market Monitor will file a complaint with the Commission requesting review of such offers prior to the publication of the final locational clearing prices.

⁹ See, e.g., *Participation of Distributed Energy Res. Aggregations in Markets Operated by Regionals Transmission Org. & Indep. Sys. Operators*, Order No. 2222, 172 FERC ¶ 61,247 at P 3 (2020).

Power Providers' request for expedited clarification, or in the alternative, rehearing, should be denied.

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 a request for rehearing 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., *Calif. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,004 at P 13 (2011) (accepting answer to rehearing request that provided information that assisted Commission's decision-making); *Aquila Merchant Servs., Inc.*, 127 FERC ¶ 61,218 at P 28 (2009) (accepting answers to requests for rehearing "because they have provided information that assisted us in our decision-making process"); see also *N. Natural Gas Co.*, 137 FERC ¶ 61,202 at P 10 (2011) (accepting answer to rehearing request because it clarifies the record, and will expedite resolution of issues).

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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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 19th day of April, 2021.



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