

whether it mitigates market power as necessary to support the requirement for PJM market sellers to sell energy at market based rates.

I. ANSWER

The Market Monitor regards Vistra's arguments that resources with market power should be allowed to operate inflexibly to avoid maintenance costs and wear and tear as further evidence that resources with market power in PJM profit from the ability to avoid parameter mitigation. The Market Monitor does not disregard the arguments, as Vistra suggests (at 2-3). The incentives, and the ability to pursue the incentives, that Vistra characterizes as "valid commercial and engineering considerations" may arise from a position of market power. The exercise of market power is not defined by a choice that excludes all commercial and operational considerations. Rather, market power results in commercial and operational options that are not available to sellers that do not possess market power. Avoiding maintenance and avoiding wear and tear are options that may be available to sellers with market power, while other sellers must perform more frequent maintenance and incur the wear and tear associated with operating flexibly in order to remain competitive. Therefore, resources with market power and capacity commitments should be required to operate flexibly, especially under the conditions defined by Schedule 1, Sections 6.6 (a) and (b) of the Operating Agreement. In order to implement this requirement, the language in these sections stating that parameter limited offers "shall be considered" should be replaced with a requirement that flexible parameters be used whenever a unit fails the TPS test and whenever the system is facing emergency conditions, or a requirement that flexible parameters be used in all offers at all times.

This does not mean that PJM will necessarily require frequent cycling of combined cycle units or other units. (Even combined cycles that offer flexibly run as baseload units if cycling is not economic when the cost of gas-fired units is less than the cost of coal-fired units.) Rectifying the parameter mitigation rules and processes will provide flexibility to the market and ensure that market power does not interfere with competitive outcomes.

The fundamental question is whether the PJM tariff adheres to the Commission's requirements for sellers with market based rate authority as defined by Order No. 697. The question is not whether the tariff "works as intended," as defined by *Vistra* or PJM. The requirement is that PJM, operating according to its tariff, mitigate the potential exercise of market power. Committing resources with market power using parameters that are not explicitly restricted by the market power mitigation process, which does occur as the Market Monitor's evidence has shown, does not meet the test. The test is not PJM's lower production cost algorithm; the test is not the market seller's intent; and the test is not a change in revenues based on the behavior. The Commission has clearly articulated its position that the test is the existence of structural market power. In its order on rehearing approving the CAISO market rules in 2007 (at P 490) the Commission states:

Williams essentially argues that no mitigation should occur unless market power is actually exercised. In fact, however, it is the possession of market power (and, therefore, the potential to exercise it), not the actual exercise of market power, that triggers the need for mitigation.[n.482: *See, e.g., AEP Power Marketing, Inc.*, 108 FERC ¶ 61,026, at P 130 (2004) ("[W]here a market-based rate applicant is found to have market power, it is incumbent upon the Commission to either reject such rates or to ensure that adequate mitigation measures are in place to ensure that the rates are just and reasonable") (citing *Heartland Energy Serv., Inc.*, 68 FERC ¶ 61,223, at 62,060 (1994); *Louisville Gas & Elec. Co.*, 62 FERC ¶ 61,016, at 61,143-44 (1993)).] The Commission's granting of market based rate authority is premised on the market participant's demonstration that it lacks the ability to exercise market power or, alternatively, that there are adequate safeguards in place to address any potential exercise of market power.[n.483: *See, e.g., Consumers Energy Co. v. FERC*, 367 F.3d 915, 923 (D.C. Cir. 2004) ("The Commission approves applications to sell electric energy at market-based rates only if the seller and its affiliates do not have, or adequately have mitigated, market power in the generation and transmission of such energy, and cannot erect other barriers to entry by potential competitors") (citing *La. Energy & Power Auth. v. FERC*, 141 F.3d 364, 365 (D.C. Cir. 1998); see also *Market Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities Notice of Proposed Rulemaking*, 71 Fed. Reg. 33,102 (June 7, 2006), FERC Stats. & Regs. ¶ 32,602, at P 5 (2006).] Market power

mitigation exists to guard against the potential exercise of market power, and is required whenever a market participant is found to have market power.[n.484: *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018, at 61,055 (2004) (stating that the Commission does not believe it has the legal basis to approve market-based rates if the applicant has not mitigated its ability to exercise market power).] Therefore, once it is determined that an entity has market power, adequate mitigation of the potential to exercise market power becomes essential.⁴

Vistra presents an inaccurate description of the nature of market power and of the purpose of market power mitigation. The evidence cited by the Commission demonstrates that PJM is not mitigating the potential exercise of market power. This is the issue at hand. None of the arguments in this docket by the generators and PJM have denied these basic facts. The record supports a finding that PJM's market power mitigation in the energy market is inadequate to protect against the potential exercise of market power and needs to be modified to protect against the potential exercise of market power.

II. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this answer as it resolves the issues raised in this proceeding.

Respectfully submitted,



Jeffrey W. Mayes

Joseph E. Bowring
Independent Market Monitor for PJM
President
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8051
joseph.bowring@monitoringanalytics.com

General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com

⁴ *California Independent System Operator Corporation*, 119 FERC ¶ 61,076 at P 490 (2007).

Catherine A. Tyler
Deputy Market Monitor
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8050
catherine.tyler@monitoringanalytics.com

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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 16th day of December, 2021.



Jeffrey W. Mayes

General Counsel

Monitoring Analytics, LLC

2621 Van Buren Avenue, Suite 160

Eagleville, Pennsylvania 19403

(610) 271-8053

jeffrey.mayes@monitoringanalytics.com