



the submission of competitive offers. The Market Monitor does not oppose granting authorization to Hill Top to charge market based rates, provided that reasonable conditions are included to protect the public interest.

**I. ANSWER**

**A. The Market Monitor Provided Market Power Analysis Specific to the Seller.**

Hill Top’s answer relies on the Commission’s December 9, 2020, order regarding the market based rates application for Albemarle Beach Solar, in which the Commission denies the Market Monitor’s request for conditions on the applicant’s market based rates authority based on the fact that the Market Monitor did not include evidence of market power specific to the seller.<sup>4</sup> The reasons for rejecting the Market Monitor’s requests in that docket are copied in Hill Top’s answer (at 9–10) and depend entirely on the fact that the Market Monitor did not provide market power evidence specific to the seller in that case. In Hill Top’s case, the Market Monitor did provide market power evidence specific to the seller. Hill Top’s claims (at 12–13) that the gist of the Market Monitor’s argument is generic, that all sellers have the potential to exercise market power, and that the Market Monitor’s market power analysis is a side dish, are false and misleading. The Market Monitor provided specific analysis of the market conditions at Hill Top’s interconnection point and of Hill Top’s affiliates.

[Begin CUI-PRIV] [REDACTED]

[REDACTED]

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<sup>4</sup> See 173 FERC ¶ 61,215.

<sup>5</sup> *Hummel Generation, LLC, et al.*, 138 FERC ¶ 61,024 (2020).

[REDACTED]

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<sup>6</sup> *Id.* at P 48.

<sup>7</sup> See 2020 Quarterly State of the Market Report for PJM: January through September (November 12, 2020) at 206-210.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [End CUI-PRIV]

**B. Conditioning Hill Top’s Market Based Rate Authority on the Submission of Competitive Offers Promotes Competitive Markets.**

The purpose of the Market Monitor seeking conditions on Hill Top’s market based rate approval is to prevent the exercise of market power in the PJM markets. It is not, as stated by Hill Top (at 3), to prevent competition by creating barriers to entry. The Market Monitor has not argued for the rejection of Hill Top’s market based rates authority.

The fact that the insufficiency of PJM’s market power mitigation applies to other entities does not mean that the issues are out of scope in this proceeding, as suggested by Hill Top (at 4). This proceeding is about Hill Top and only about Hill Top. Issues cannot be ignored in this case because they exist in other cases. The Market Monitor’s broader arguments and recommendations to improve PJM market power mitigation can and should be addressed in other proceedings. In the meantime, there is no reason to allow Hill Top the ability to exercise market power under the current mitigation process. The Commission rejected the Market Monitor’s protests in other dockets based on the fact that the Market Monitor did not provide “any evidence related to Sellers’ market power.” That is not the case in this proceeding.

Until the Commission or PJM closes the loopholes in PJM market power mitigation, the condition that Hill Top be required to submit only competitive offers should apply. Competitive offers in the energy market are cost-based offers with operating parameters that are at least as flexible as the defined unit specific parameter limits in the PJM energy

market. Competitive offers in the capacity market, defined consistent with the mathematics of the PJM capacity performance design and the actual number of Performance Assessment Intervals, are equal to the Avoidable Cost Rate adjusted for expected Capacity Performance penalties and bonuses. The evidence, provided by the Market Monitor, that PJM market power mitigation cannot be properly relied upon as the basis for unconditional market based rate authorization is unrefuted. The response does not and cannot identify any harmful impact to granting the relief requested in the Protest. The Market Monitors' proposal promotes competition and competitive market outcomes.

**C. It Is the Market Monitor's Role to Inform the Commission of the Market Power Conditions in the PJM market.**

Hill Top incorrectly characterizes the Market Monitor's role (at 3 of Attachment). It is the Market Monitor's role to "objectively monitor, investigate, evaluate and report on the PJM Markets, including, but not limited to, structural, design or operational flaws in the PJM Markets or the exercise of market power or manipulation in the PJM Markets."<sup>8</sup> This responsibility includes informing the Commission in all relevant proceedings of the effectiveness of the market power mitigation and the existence of structural market power. The Market Monitor's role in market based rates proceedings is to rebut the presumption that the market power mitigation is sufficient to prevent the exercise of market power and to recommend conditions that will nonetheless allow the seller to competitively participate in the PJM markets.

**D. The Protective Order Protects Competition.**

Hill Top argues (at 6) that the analysis in Attachment E "cannot be reviewed by an expert." The actual limitation applies to experts who are energy marketers, supervising energy marketers or are supporting an energy marketing function.<sup>9</sup> There are many

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<sup>8</sup> OATT Attachment M § I.

<sup>9</sup> Attachment F § 7.

qualified experts available to Hill Top not subject to such limitation. Including such limitation is reasonable. The goal of the Market Monitor's protective order and confidential submission of the market power analysis is to protect the competitiveness of the PJM markets. Confidentiality prevents the dissemination of information that would facilitate collusion or give any party an unfair advantage. The limitation is necessary to ensure that experts will not serve as a conduit for the use of confidential market information that should not be available to anyone involved in making decisions about how a seller participates in the PJM markets.

## 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>10</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.

## 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.

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<sup>10</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).

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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 18<sup>th</sup> day of February, 2021.



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