

remove confusion about the Market Monitor's position and the purpose of the MOPR in the PJM market design.

A MOPR that fails to protect competitive pricing in PJM must be rejected. A MOPR defined by a subjectively determined intent to exercise market power as proposed by PJM, is worse than inadequate. PJM's definition of market power is incorrect. Market power is structural, the exercise of market power is behavioral and both are defined by observable facts. The Commission's market based rate policies and the RTO's market power mitigation rules are defined by market structure and market behavior, not intent. PJM's proposed definition and associated process for demonstrating market power would interfere with the existing rules addressing market power and market manipulation and make it almost impossible to demonstrate buyer side market power in cases where it exists. PJM's approach to buyer side market power is convoluted, unnecessarily complicated, unenforceable and incorrect. Given that PJM proposes to eliminate the only two sources of buyer side market power from consideration under its MOPR, there is no reason to have this definition in the tariff at all.

PJM's proposal should be rejected. An investigation should be established under Section 206 in order to create a durable and effective rule that serves the public interest, including the interests of the states.

I. ANSWER

A. Market Monitor Proposal

Relying on the repeated assertion that PJM must meet only what PJM defines to be a weak 205 standard, PJM ignores the Market Monitor's proposal. PJM (12-13) and Exelon and PSEG (28-29) never address the fact that the Market Monitor's proposal retains effective, enforceable and clearly defined market power rules and correctly defines a competitive offer and creates an exemption for uneconomic, emerging technologies. PJM has not demonstrated or asserted, directly or through Dr. Cramton, that the Market Monitor's approach would have any negative consequences for competitive market

outcomes. PJM has not explained why the Market Monitor's proposal is not a more efficient and effective way to reach PJM's stated goals. PJM never responded to the integrated Market Monitor proposal at all, preferring to address individual parts separately and failing to recognize how the proposal would actually work. The Market Monitor's clear market rules would not interfere with the ability of the states to pursue individual state goals related to states' choices of specific technologies.

B. Definition of Buyer Side Market Power and Review Process

Contrary to PJM's claim that none have rebutted the unsupported assertion that PJM's approach to MOPR appropriately protects against buyer side market power (PJM at 3), the Market Monitor did rebut that assertion.³ PJM's proposed approach does not appropriately protect against buyer side market power.

PJM misunderstands the Market Monitor's approach. For example, PJM cites (at 6–7) *Jackson* as a case in which correctly defined MOPR rules should not have applied. The Market Monitor agrees that competitive offers should not be subject to MOPR, as clearly stated in the Market Monitor's initial filing and stated repeatedly over the course of years of MOPR reviews.⁴ PJM confuses the correct application of the existing rules, which the Market Monitor supported against PJM's objections during the MOPR review process, with an improved rule, which the Market Monitor supports. The definition of competitive offers should also explicitly include offers that may depend on revenues from bilateral sales to entities that use the renewable attributes to meet the goals of the purchasing company but not to meet state mandates.

PJM (at 12–13) and Exelon and PSEG (at 28–29) object to the fact that a competitive offer is a competitive offer, regardless of whether the focus is supplier side or buyer side

³ See IMM Protest at 8–16.

⁴ See IMM Protest at 19.

market power. The objections are surprising. It would be extraordinary if the definition of a competitive offer were different, depending on the point of view of the objective analyst. Defining a competitive offer neither removes discretion from market sellers nor makes the market a purely administrative construct nor results in over mitigation. A slightly more careful reading of the definition of ACR would reveal the discretion available to sellers in establishing net ACR values. Defining a competitive offer does remove the ability of market sellers to have the discretion to exercise market power. The Commission's goal is regulation through competition and not laissez faire. PJM cannot and does not point to a single example of how the Market Monitor's approach would result in over mitigation. PJM did not define over mitigation.

Ironically, given PJM's accusations of over mitigation, Exelon and PSEG at (28–29) argue that the Market Monitor's proposal would actually under mitigate and would be unduly discriminatory because "using Net ACR as the floor price for new resources, including new renewable resources, would effectively exempt new renewables from the MOPR, as the Net ACR for renewable resources is always zero." Exelon and PSEG are objecting to the demonstrable fact that net ACR is frequently zero for renewable resources and therefore that the competitive offer for such resources is zero. Exelon and PSEG, despite themselves, make the important point that renewables are competitive and that even if they fail the MOPR screen as a result of receiving subsidies, renewables will clear the market if the correct definition of competitive offer is applied. Exelon and PSEG are objecting to the fact that the Market Monitor's proposed approach to MOPR would result in increased competition for Exelon and PSEG assets from renewables and result in a competitive market outcome.

Exelon and PSEG also object (at 28–29) that an exemption for "specific emerging technolog[ies]" that receive state support and "would not otherwise be competitive" unfairly excludes nuclear. Exelon and PSEG can hardly be asserting that nuclear technology, as embodied in their plants, is an emerging technology. It is clear that nuclear

units will clear in capacity market auctions if the correct definition of a competitive offer is applied and the owners of those assets choose to have the assets clear in the auctions.

The point of the Market Monitor's proposed approach to MOPR, missed by PJM and Exelon and PSEG, is that, under the Market Monitor's proposal, all currently subsidized resources are expected to clear in capacity market auctions, with the sole exception of offshore wind which is exempted. But that does not mean, as asserted by PJM and its supporters, that there should be no rules governing market power, because no one has perfect foresight about efforts to exercise market power that may be forthcoming.

PJM continues to repeat that the incentive to exercise market power must be a core part of the definition of market power. But PJM does not explain this departure from standard practice in identifying market power. Both incentive and intent can be impossible to know. Market sellers have complex positions including financial positions, bilateral positions and positions in markets not subject to PJM or FERC jurisdiction. The business of market sellers is to make profitable market transactions. Market sellers do not carefully evaluate whether or not market power is the underlying source of their ability to profit from a specific market offer. A market seller can exercise market power without recognizing that market power forms the basis for the underlying incentives. This is not an accident. It is a lack of awareness. PJM's perspective defines market power as a psychological choice rather than a structural economic reality that shapes the incentives of a profit maximizing market seller and affects the behavior of a profit maximizing market seller. It is an incorrect approach to defining market power.

PJM (at 33–35) and Exelon and PSEG (at 25) defend PJM's proposed review process based primarily on its length while ignoring the barriers and hurdles built in. Exelon and PSEG also argue (*id.*) that it is enough that PJM's proposal is "open and transparent," and that the Market Monitor's concerns that PJM proposed buyer-side market power review is untenable, burdensome and "would impede a timely review" can be ignored. The process is not open and transparent. Exelon and PSEG argue (*id.*) that the process is needed "to assure that the market seller has reasonable notice of a claim against it and a reasonable

opportunity to offer information in support of its activity to PJM and the IMM before the application of mitigation.” While that notice makes sense, Exelon and PSEG fail to address the key point that the process impedes a timely and effective review by the Market Monitor. The process must be workable for all. PJM’s proposed process fails that test.

PJM’s response on the unworkable nature of the process and the barriers it would create to actually finding market power further supports the Market Monitor’s position. PJM provides (at 33) a vague nonresponse referencing ex ante knowledge of what resources are “generally uneconomic” because it is known what type of resource that “generally would not clear” in the capacity market and ends with the suggestion that the Market Monitor make a referral to the FERC Office of Enforcement. Referrals are an important tool but would clearly not address the need for timely determination of market power prior to a capacity market auction.

The review process proposed by PJM is simply not workable in part because buyer side market power is inadequately and incorrectly defined and in part because the proposed process itself creates insurmountable barriers to the required investigations.

PJM’s proposed process would create confusion about the rules and process applicable to market power and would divert the MOPR from its actual purpose, the protection of just and reasonable prices based on regulation through competition.

C. Demand Side Resources

PJM’s assertion (at 17) that the “small scale and general low-cost economics” of demand resources and energy efficiency resources “precludes them from submitting an uneconomic offer that could constitute a potential exercise of Buyer-Side Market Power” is incorrect and completely unsupported. Demand resources and energy efficiency resources make up a significant portion of the cleared UCAP and clearly affect the clearing price.⁵ The

⁵ Demand resources and energy efficiency resources accounted for 9.4 percent of the cleared UCAP in the 2022/2023 RPM Base Residual Auction. See “RPM Base Residual Auction Results”, PJM

ownership of demand side resources is highly concentrated and demand side offers are not small scale or low cost. Excusing these resources from MOPR based on PJM's unsupported assumption that they cannot or will not exercise market power is a failure to take a comprehensive approach to market power mitigation. As long as demand resources and energy efficiency resources participate on the supply side of the market, they should be subject to the same market power mitigation rules that are applied to generators.

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.⁶ 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.

Interconnection, L.L.C. at 2, which can be accessed at: <<https://pjm.com/-/media/markets-ops/rpm/rpm-auction-info/2022-2023/2022-2023-base-residual-auction-report.ashx>>.

⁶ 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).

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: September 22, 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 22nd day of September, 2021.



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