

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

)	
Essential Power OPP, LLC,)	
Essential Power Rock Springs, LLC,)	
Lakewood Cogeneration, L.P.)	
)	
v.	)	Docket No. EL23-53-000
)	
PJM Interconnection, L.L.C.)	
)	
)	
Aurora Generation, LLC)	
Elwood Energy LLC)	
Jackson Generation, LLC)	
Lee County Generating Station, LLC)	
Lincoln Generating Facility, LLC	)	Docket No. EL23-54-000
LSP University Park, LLC)	
Rockford Power, LLC)	
Rockford Power II, LLC)	
University Park Energy, LLC)	
)	
v.)	
)	
PJM Interconnection, L.L.C.)	
)	
)	
Coalition of PJM Capacity Resources)	
)	
v.	)	Docket No. EL23-55-000
)	
PJM Interconnection, L.L.C.)	
)	
)	
Talen Energy Marketing, LLC)	
)	
v.	)	Docket No. EL23-56-000
)	

PJM Interconnection, L.L.C.)	
)	
Lee County Generating Station, LLC)	
)	
v.	)	Docket No. EL23-57-000
)	
PJM Interconnection, L.L.C.)	
)	
SunEnergy1, LLC)	
)	
v.	)	Docket No. EL23-58-000
)	
PJM Interconnection, L.L.C.)	
)	
Lincoln Generating Facility, LLC)	
)	
v.	)	Docket No. EL23-59-000
)	
PJM Interconnection, L.L.C.)	
)	
Parkway Generation Keys Energy Center LLC)	
)	
v.	)	Docket No. EL23-60-000
)	
PJM Interconnection, L.L.C.)	
)	
Old Dominion Electric Cooperative)	
)	
v.	)	Docket No. EL23-61-000
)	
PJM Interconnection, L.L.C.)	
)	

Energy Harbor LLC)	
)	
v.	)	Docket No. EL23-63-000
)	
PJM Interconnection, L.L.C.)	
)	
)	
Calpine Corporation)	
)	
v.	)	Docket No. EL23-66-000
)	
PJM Interconnection, L.L.C.)	
)	
)	
Invenergy Nelson LLC)	
)	
v.	)	Docket No. EL23-67-000
)	
PJM Interconnection, L.L.C.)	
)	
)	
	)	(not consolidated)
)	
)	

**ANSWER AND MOTION FOR LEAVE TO ANSWER,
AND MOTION FOR SUMMARY DISMISSAL,
OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rules 212 and 213 of the Commission’s Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor

¹ 18 CFR §§ 385.212 & 385.213 (2022).

(“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),² submits this answers to the responses submitted by PJM in each of the above proceedings on May 26, 2023,³ on June 2, 2023,⁴ and on June 9, 2023.⁵

² 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”).

³ See Answer, Motion to Dismiss or Summarily Dispose Complaint, and Request for Confidential Treatment of PJM Interconnection, L.L.C., *Nautilus Entities v. PJM*, Docket No. EL23-53-000 (May 26, 2023) (“The Complaint fails to state a cognizable claim because Complainants’ request for relief is foreclosed by the filed rate doctrine ...”) (“PJM Answer to Nautilus Entities”); Answer, Motion to Dismiss or Summarily Dispose Complaint, and Request for Confidential Treatment of PJM Interconnection, L.L.C., *ComEd Generators v. PJM*, Docket No. EL23-54-000 (May 26, 2023) (“The Complaint fails to state a cognizable claim because Complainants’ request for relief is foreclosed by the filed rate doctrine...”); Answer, Motion to Dismiss or Summarily Dispose Complaint, and Request for Confidential Treatment of PJM Interconnection, L.L.C., *Coalition v. PJM*, Docket No. EL23-55-000 (May 26, 2023) (“The Complaint fails to state a cognizable claim because Complainants’ request for relief is foreclosed by the filed rate doctrine...”); Answer of PJM Interconnection, L.L.C., *Talen v. PJM*, Docket No. EL23-56-000 (May 26, 2023) (“long notification plus startup times included in the Talen Generators’ operating parameters were the sole reason PJM did not dispatch the Talen Generators.”); Answer of PJM Interconnection, L.L.C., *Lee County v. PJM*, Docket No. EL23-57-000 (May 26, 2023) (“at no time were Lee County’s units available, with gas flowing, and ready to generate”); Answer of PJM Interconnection, L.L.C., *SunEnergy1 v PJM*, Docket No. EL23-58-000 (May 26, 2023) (“That SunEnergy1 does not like the Tariff provisions as they apply to solar resources does not justify waiving the Non-Performance Charge provisions”); Answer of PJM Interconnection, L.L.C., *Lincoln v. PJM*, Docket No. EL23-59-000 (May 26, 2023) (“at no time were the Lincoln units ready to generate, with gas flowing”); and Answer of PJM Interconnection, L.L.C., *Parkway v. PJM*, Docket No. EL23-60-000 (May 26, 2023) (“Keys was unavailable because it made the economic choice not to procure fuel and to shut down on the morning of December 23”).

⁴ Answer and Conditional Motion to Dismiss of PJM Interconnection, L.L.C., *ODEC v. PJM*, Docket No. EL23-61-000 (June 2, 2023) (“The Complaint makes broad allegations that PJM acted in an unjust and unreasonable manner but does not provide any evidence as to how PJM’s actions were unjust and unreasonable specific to ODEC’s capacity resources.”); Answer of PJM Interconnection, L.L.C., *Energy Harbor v. PJM*, Docket No. EL23-63-000 (June 2, 2023) (The Commission should deny “Energy Harbor’s argument ... that the mere existence of a Generator Maintenance Outage ... should excuse its capacity obligations even when there is a Performance Shortfall due to a Generator”).

⁵ Answer of PJM Interconnection, L.L.C., *Calpine v. PJM*, Docket No. EL23-66-000 (June 9, 2023) (“Calpine seeks to reduce or eliminate its exposure to Non-Performance Charges by asking the Commission to undo PJM’s declarations of Emergency Actions triggering Performance Assessment Intervals,” but the provisions for excuses are tightly defined and limited and second guessing PJM actions is inappropriate); and Answer of PJM Interconnection, L.L.C., *Invenergy v. PJM*, Docket No.

None of the complaints show that they are entitled to the relief requested, even if the alleged facts were accepted. The Market Monitor moves for dismissal of all of the above captioned complaints, including those for which PJM requested summary disposition and those for which PJM requested dismissal.

I. ANSWER

A. PJM's Motion to Dismiss Should Be Granted.

The Commission has summarized these proceedings:

Winter Storm Elliott struck the PJM region from December 23-25, 2022, causing severely cold weather.[footnote omitted] PJM implemented emergency procedures, which triggered Performance Assessment Intervals, on December 23 and 24. In each of the above-captioned cases, complainants object to the assessment of penalties for shortfalls in their capacity resources' performance during these Performance Assessment Intervals. The complaints raise a host of issues including, for example, claims that PJM violated its Tariff and that PJM's Tariff may be unjust and unreasonable.⁶

Some of the complaints allege that PJM violated its market rules during Winter Storm Elliott by, for example, declaring an emergency when none existed or should have existed, but do not allege violation of the rules requiring PJM to assess nonperformance penalties under the applicable criteria.⁷ Accordingly, those complaints provide no basis to excuse or reduce the penalties assessed, which is the relief requested. In its responses, PJM argued that

EL23-67-000 (June 9, 2023) ("Beyond these sweeping and inaccurate claims concerning PJM's actions, Invenergy does not explain why the Non-Performance Charges assessed to its specific Capacity Resource should be excused under the limited exceptions set forth in PJM Tariff, Attachment DD, section 10A(d).").

⁶ SJP Order at P 2.

⁷ See Docket Nos. EL23-53-000, EL23-54-000 and EL23-55-000.

there is no basis for second guessing PJM dispatcher decisions that led to the PAI. PJM moved for summary disposition of such complaints.⁸

The Market Monitor agrees with PJM that PJM dispatchers had broad discretion to take emergency actions, including emergency actions that triggered PAIs. That conclusion is regardless of the fact that the Market Monitor agrees that the definition of emergency actions that triggered PAIs under the rules were too broad.

Other complaints argue that PJM violated the tariff when it did not excuse the assessed penalties.⁹ The complainants allege that, given the existence of PAIs, PJM assessed penalties in violation of the tariff because the penalties should have been excused for a variety of reasons. The complaints allege flawed actions by PJM operators in scheduling or dispatching specific resources, including allegations that some operator actions violated the rules. In these cases, the complainants do not establish the basis in the tariff. At most, the allegations would demonstrate questions about PJM's judgment. PJM denies that the alleged errors violated the tariff, and represented allowable operator discretion, particularly under the prevailing circumstances.

PJM argues that the complaints should be denied because the complaints do not meet the specific and tightly defined provisions of the tariff for excusing penalties. PJM requests that these complaints be denied, but PJM does not include a motion for summary dismissal.

PJM operational judgments are not a basis for an excuse provided in the filed tariff. PJM declared an emergency, some generators did not provide power when needed, and no excuse defined in the filed tariff applied. The penalty assessments were required. The

⁸ PJM moved for summary disposition in Docket Nos. EL23-53-000, EL23-54-000 and EL23-55-000. Constellation Energy Generation separately filed a motion to dismiss in Docket Nos. EL23-53-000, EL23-54-000, EL23-55-000, EL23-57-000, EL23-58-000, EL23-59-000 and EL23-61-000. *See* Constellation Energy Generation, LLC's Motion to Dismiss Capacity Performance Complaints, Docket No. EL23-53-000 (May 1, 2023).

⁹ *See* Docket No. EL23-56-000, EL23-57-000, EL23-58-000, EL23-59-000, EL23-60-000, EL23-61-000, EL23-63-000, EL23-66-000, and EL23-67-000.

complaints should be dismissed as matter of law, and the Market Monitor so moves. The Market Monitor believes the record is sufficient to decide the complaints by interpreting and applying the applicable tariff rules (OATT Attachment DD § 10A), but it does not object to additional briefing if it is determined to be necessary. No fact finding hearing is required to resolve these matters.

Although the fact patterns and arguments vary, the Market Monitor does not agree that any of the complaints make the case that PJM assessed a penalty in violation of the tariff rules for assessing penalties. In each proceeding the filed rate doctrine bars the requested relief, no hearing to make factual determinations is needed, and summary disposition should be granted, even in those cases where PJM did not move for summary disposition. The rules in effect on December 23–25, 2023, provided PJM operators great discretion in implementation of the emergency procedures that triggered the PAIs and, given the existence of PAIs, required PJM to assess nonperformance penalties.¹⁰

Under the filed rate doctrine PJM is required to implement the rate on file as of December 23–25, 2023. The filed rate doctrine turns upon the effective filed rate for service at the time service is provided. The filed rate includes the effective terms and conditions, such as the provisions assessing penalties at issues in this case, that were effective for the December 23–25 period.

The filed rate doctrine is not suspended even where implementation of the effective rules may seem harsh or unfair. If stakeholders believed that the rules were flawed, the time to change them was prior to Winter Storm Elliott.

As former Commission Chair Kelliher argued recently in another case considering the filed rate applies even if harsh consequences result:

The courts have uniformly held the filed rate doctrine is a ‘nearly impenetrable shield’ that does not yield ‘no matter how compelling the equities might be.’[n.40: ODEC, 892 F.3d at 1230.] The Supreme

¹⁰ See OATT Attachment DD § 10A (Charges for Non-Performance and Credits for Performance).

Court has required ‘strict adherence to the filed rate ... despite its harsh consequences.’[n.41: *Maislin Indus., U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 132 (1990).] The U.S. Court of Appeals for the District of Columbia Circuit has held the Commission has ‘no discretion to waive the operation of a filed rate or to retroactively change or adjust a rate for good cause *or for any other equitable considerations.*’[n.42: ODEC, 892 F.3d at 1230 (emphasis added).] The same court observed that ‘[o]nce a tariff is filed, the Commission has no statutory authority to provide equitable exceptions or retroactive modifications to the tariff.’[n.43: *Oklahoma Gas & Elec. Co.*, 11 F.4th at 824-25.]¹¹

The Market Monitor agrees that potentially harsh consequences do not determine whether the filed doctrine applies.¹² The rate effective as of December 23–25, 2023, must apply under the filed rate doctrine.

The Market Monitor agrees that the rules were not reasonable and that harsh penalties and a vague definition of the PAI triggers were not reasonable components of the PJM capacity market design.

Despite PJM’s motions to dismiss or deny the complaints, PJM requested settlement judge proceedings that were established at PJM’s request.¹³ Any relief provided should be determined through the settlement judge proceedings, provided that any such relief is consistent and fair to all market participants.¹⁴

¹¹ Protest of the PJM Power Providers Group, Docket Nos. ER23-729-000, EL23-19-000 (January 20, 2023), Attachment A (Affidavit of Hon. Joseph T. Kelliher) at para. 15.

¹² In the proceeding where Witness Kelliher’s affidavit was filed, the Market Monitor disagrees with Witness Kelliher’s position that the filed rate doctrine applies. The basis for disagreement is not the harsh result. The Market Monitor disagreed because (i) no service had been provided under an effective filed rate and (ii) no price was posted and established under any filed rate. *See* Comments of the Independent Market Monitor for PJM, Docket No. ER23-729-000, EL23-19-000 (January 20, 2023). In this case, penalties were incurred under the effective rules as of December 23–25, 2023.

¹³ *See* PJM’s Answer to Nautilus Entities at 90; *Essential Power OPP, LLC, et al. v. PJM Interconnection, L.L.C., et al.*, 183 FERC ¶ 61,163 (2023) (“SJP Order”).

¹⁴ *See* Comments of the Independent Market Monitor for PJM, Docket No. EL23-53-000 (June 12, 2023).

Upon the selection of a settlement judge the parties will have 60 days, and potentially 90 days, to reach a settlement. In addition to the complainants and PJM, parties who are net beneficiaries of the filed rules because they will receive bonus payments based on the penalty assessments are expected be part of the discussions. The Market Monitor would not oppose a principled, consistent and fair settlement. The Market Monitor would oppose a settlement that fails to apply principles to all participants in these cases.¹⁵

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 requests 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.¹⁶ 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 this proceeding.

¹⁵ See Comments of the Independent Market Monitor for PJM, Docket No. EL23-53-000 (June 12, 2023).

¹⁶ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,241 at P 16 (2009) ("We will accept the answers and responses to the requests for rehearing because they provide information that assisted us in our decision making process."); *ISO New Eng., Inc.*, 120 FERC ¶ 61,087 at P 30 (2007) ("We will accept the parties' answers to the petitions for rehearing . . . because they have provided information that assisted us in our decision-making process."); *KN Wattenberg Transmission LLC*, 94 FERC ¶ 61,189 at 61,671 (2001) (finding good cause to accept an answer to a request for rehearing to ensure a complete record).

Respectfully submitted,



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Dated: June 13, 2023

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 13th day of June, 2023.



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