

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

PJM Interconnection, L.L.C.

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Docket No. ER23-1996-000

COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 of the Commission’s Rules and Regulations, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”), submits these comments responding to the filing submitted by PJM Interconnection, L.L.C. (“PJM”) on May 30, 2023 (“May 30th Filing”).^{1 2} The May 30th Filing proposes to more clearly define the criteria for defining Performance Assessment Intervals (“PAIs”). The May 30th Filing fails to address the excessive penalty rate that is assessed under the current rules.

The Market Monitor supports the proposed criteria for defining PAIs because the proposed criteria incorporate a more precise focus on the actual intent of PAI. The revision to the definition of PAIs proposed in the May 30th Filing should be approved. However, the scope of this proceeding should be expanded to address PJM’s omission of revisions to address the excessive PAI penalty rate.

An investigation of the PAI penalty rate should be opened in this proceeding, including the establishment of a refund date. The experience during Winter Storm Elliott

¹ 18 CFR § 385.211 (2022).

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”).

corroborates that the PAI penalty rate is excessive. There are multiple pending complaints on assessed PAI penalties.³ The filed rate doctrine prohibits retroactive changes to the tariff. The filed rate doctrine does not require or excuse the failure to correct the flawed rules prospectively. The reduced penalty rate could be applied to the 2023/2024 and the 2024/2025 Delivery Years while remaining consistent with the filed rate doctrine.

At the Special Members Committee–CP Penalty Rate stakeholder meeting convened May 11, 2023, stakeholders approved the revised PAI definition included in the May 30th Filing and also approved a provision reducing the penalty rate and the stop loss.⁴ The second provision would replace the existing penalty rate, equal to the Net Cost of New Entry divided by 30, with a penalty rate equal to the Base Residual Auction clearing price divided by thirty. The provision would replace the current arbitrary penalty level with a penalty directly tied to the market value of capacity, the capacity market clearing price.

PJM unilaterally decided not to include the penalty rate reduction provision of the reform package approved by stakeholders in the May 30th Filing. PJM’s explanations for failing to file both parts of the package are not convincing, and the Commission should open a Section 206 proceeding to determine whether the current penalty rate is just and reasonable.⁵ PJM now has 14 complaints pending against it that seek to reduce or eliminate

³ See Dockets Nos. EL23-53-000, et al.

⁴ See PJM Website for information on the meeting, the vote and the revisions that were passed, <<https://www.pjm.com/committees-and-groups/committees/mc>>.

⁵ PJM explains (at 22): “PJM is exercising its exclusive section 205 filing rights under the PJM Tariff and exercising its discretion not to submit the proposed revisions related to lowering the Non-Performance Charge and associated stop loss in this filing. PJM has reservations with lowering the Non-Performance Charge and associated stop loss when no additional changes are being proposed to the Capacity Performance construct at this time. Specifically, reducing the Non-Performance Charge and associated stop loss without any accompanying enhancements to Capacity Resource qualification or performance requirements does not provide sufficient incentives for resources to perform during a PAI and ultimately risks reliability to the PJM system. Furthermore, PJM is concerned that, unlike revising the definition of Emergency Action, lowering the Non-Performance

PAI penalties assessed during Winter Storm Elliott.⁶ PJM has defended its actions related to determining the existence of PAI and associated PAI penalty assessments.⁷ Yet PJM implicitly agreed that PAI penalties are too high when it proposed to immediately begin settlement judge proceedings.⁸ PJM does not attempt to reconcile its unilateral determination to not file PAI penalty rate reductions approved by stakeholders with its participation in settlement discussions that can succeed only on the basis of reduced PAI penalty levels. Total penalty payments are a function both of the number of PAI and the PAI penalty rate. There is no reason to focus solely on the number of PAI and not on the PAI penalty rate.

Timely action is needed to address excessive PAI penalty levels, including both the definition of PAI and the PAI penalty rate. PJM's failure to include the penalty rate reduction should be addressed in this proceeding. Issuance of a show cause order in this proceeding would create a vehicle through which to pursue changes to the penalty rate. The establishment of a refund date would protect market participants while corrective action is under consideration.

Charge and associated stop loss at this juncture may violate the filed rate doctrine and not pass muster under the settled expectations test.”

⁶ See Dockets Nos. EL23-53-000 et al.

⁷ *Id.*

⁸ See *PJM Interconnection, L.L.C.*, 183 FERC ¶ 61,163 (2023).

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

Respectfully submitted,



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Dated: June 22, 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 22nd day of June, 2023.



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