

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

PJM Interconnection, L.L.C.	) ) )	Docket No. ER24-374-000
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**PROTEST OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rule 211 of the Commission’s Rules and Regulations<sup>1</sup> Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),<sup>2</sup> submits this protest to the filing submitted by PJM Interconnection, L.L.C. (“PJM”) on November 9, 2023 (“November 9<sup>th</sup> Filing”). The primary change proposed in the November 9<sup>th</sup> Filing is to require that parties to bilateral transactions provide PJM with a set of undefined economic data points and any associated contract(s).

The November 9<sup>th</sup> Filing is internally inconsistent and unenforceable. The filing asserts a requirement to state that the bilateral seller has no continuing interest in the FTR, but the tariff requires exactly such an ongoing interest. The filing references a requirement to provide primary economic terms of bilateral contracts but the tariff does not define them.<sup>3</sup> The filing letter references a requirement to provide the actual bilateral price but the proposed changes to the tariff do not require that. The filing references PJM’s consent to a

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<sup>1</sup> 18 CFR § 385.211 (2023).

<sup>2</sup> 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”).

<sup>3</sup> See proposed revised OA Schedule 1 § 5.2.2(d)(vii).

bilateral contract but does not define the explicit criteria for consent, or even a list of general criteria other than a reference to a creditworthiness requirement which is not changed in this filing.<sup>4</sup>

The November 9<sup>th</sup> Filing has not been shown to be just and reasonable and should be rejected.

PJM's filing ignores the real issue, which is that the November 9<sup>th</sup> Filing provides for the perpetuation of rules allowing a nontransparent bilateral FTR market. PJM's FTR market is the most transparent of all PJM markets. The bilateral FTR market provides a PJM facilitated mechanism that undermines transparency for market participants and for loads whose congestion revenues fund FTRs. PJM never explains why there should be an explicitly nontransparent bilateral FTR market or how it enhances efficiency or competition. PJM states that its proposal is better than the status quo but never asserts that the result is good, or good for transparency, or good for competition, or good for the FTR market. PJM should eliminate the bilateral FTR market before it increases in volume and significance. The rules proposed in the November 9<sup>th</sup> Filing undermine transparency and are inconsistent with PJM's open and transparent FTR market. The source of the problem is the existence of a bilateral market outside of and invisible to PJM's FTR market.

The November 9<sup>th</sup> Filing presents an opportunity to investigate under Section 206 of the Federal Power Act whether the bilateral FTR market undermines the transparency and efficiency of the PJM FTR market, fails to serve the public interest, and is unjust and unreasonable.

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<sup>4</sup> See proposed revised OA Schedule 1 § 5.2.2(d)(iii).

## I. PROTEST

### A. Background

PJM's Market Rules currently allow market participants to trade existing FTRs bilaterally.<sup>5</sup> Under the current rules, when offering an existing FTR for sale, a potential seller uses the PJM FTR Center as a bulletin board to identify and post the FTR they wish to sell.<sup>6</sup> The offer to sell provides the name of the seller and the details of the FTR being sold: the FTR source, sink, the period of the bilateral, the original clearing price of the FTR, the class (peak/off peak/24 hour), whether the FTR is an option, the MW, and the asking price (\$/MW).<sup>7</sup> The asking price is meaningless for determining the actual transaction price. The details of the offered FTRs are confirmed by PJM before the offer is posted. If a buyer and seller agree to a transaction, the FTR is removed from the bulletin board, and the proposed transaction is sent to PJM for approval, subject to credit requirements being met by the buyer.

### B. November 9<sup>th</sup> Filing

PJM states in the November 9<sup>th</sup> Filing (at 2) that the filing is just and reasonable because the proposed changes provide PJM with more information to manage the risks that affect the FTR market.

The November 9<sup>th</sup> Filing proposes that participants be required to provide the actual selling price of the FTR in a bilateral and provide the underlying contract document specifying the terms of the bilateral. There is no requirement to provide information on the ultimate owner of either buyer or seller or other corporate affiliate relationships.

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<sup>5</sup> See OA Schedule 1 § 5.2.2(d).

<sup>6</sup> See PJM Website, FTR Center, which can be accessed at: <https://www.pjm.com/markets-and-operations/etools/ftr-center>; see PJM Manual 04: Financial Transmission Rights, Rev. 32 (July 26, 2023) § 7 at 48–49.

<sup>7</sup> See PJM, FTR Center Users Guide (Rev. February 26, 2016) at 38–45.

The November 9<sup>th</sup> Filing is internally inconsistent and unenforceable. The filing asserts a requirement to state that the bilateral seller has no continuing interest in the FTR, but the tariff requires exactly such an ongoing interest. The filing references a requirement to provide primary economic terms of bilateral contracts but the tariff does not define them.<sup>8</sup> The filing letter references a requirement to provide the actual bilateral price but the proposed changes to the tariff do not require that. The filing references PJM's consent to a bilateral contract but does not define the explicit criteria for consent, or even a list of general criteria other than a reference to a creditworthiness requirement which is not changed in this filing.

The November 9<sup>th</sup> Filing has not been shown to be just and reasonable and should be rejected.

**C. The November 9<sup>th</sup> Filing Allows for a Continuing Interest in the FTR By Seller After Bilateral Sale.**

PJM's proposed language (at 2) would purportedly require that the seller in a FTR bilateral agreement confirm that it retains no "continuing or lingering interest" in the underlying FTR being sold.<sup>9</sup> PJM's Market Rules, even after the proposed changes, would not achieve the goal of eliminating "continuing or lingering interest" in the underlying FTR being sold.

In a footnote to the transmittal letter (at 5 n.11), but not in the tariff, PJM provides a list of arrangements that it states could be potentially prohibited under the proposed requirement to eliminate any lingering or continuing interests under the proposed tariff language.

PJM's tariff language does not include the term "lingering." While PJM's proposed tariff language does state that the seller must confirm that the seller has no continuing

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<sup>8</sup> See proposed revised OA Schedule 1 § 5.2.2(d)(vii).

<sup>9</sup> See proposed revised OA Schedule 1 § 5.2.2(d)(ii).

interest in the FTRs following their transfer, there is no tariff definition of continuing interest. A list of possible prohibitions listed only in a footnote to PJM's pleading is not sufficient to establish the specific arrangements that PJM will prohibit with its proposed provisions. This lack of clarity creates uncertainty and risk. This lack of clarity alone makes the proposal unjust and unreasonable.

Further, Schedule 1 to the OA itself creates a continuing interest for the seller, contradicting one of the stated reasons for PJM's filing. That continuing interest makes the application of the FTR forfeiture rule ambiguous as does the failure to require explicit statement of all company and personnel affiliations of the buyer. PJM's proposed tariff revisions retain the current provisions creating a continuing interest in the FTR by the bilateral seller:

Section 5.2.2(d)(iv).

A seller under such a bilateral agreement shall guarantee and indemnify the Office of the Interconnection, PJMSettlement, and the Members for the purchaser's obligation to pay any charges associated with the transferred Financial Transmission Right and for which payment is not made to PJMSettlement by the purchaser under such a bilateral agreement.

And section 5.2.2(d)(v):

All payments and related charges associated with such a bilateral agreement shall be arranged between the parties to such bilateral agreement and shall not be billed or settled by PJMSettlement or the Office of the Interconnection. The LLC, PJMSettlement, and the Members will not assume financial responsibility for the failure of a party to perform obligations owed to the other party under such a bilateral agreement reported to the Office of the Interconnection under this Attachment K – Appendix and Operating Agreement, Schedule 1, Section 5.2.2(d).

And section 5.2.2(d)(vi):

All claims regarding a default of a purchaser to a seller under such a bilateral agreement shall be resolved solely between the purchaser and the seller.

This defined inconsistency between the proposed revised tariff language and the existing tariff provisions that require a seller to guarantee and indemnify PJM and its Members against any charges not paid by the buyer of the FTR, means that PJM has not shown the proposed tariff to be just and reasonable.

#### **D. Additional Issues**

The filing references a requirement to provide primary economic terms of bilateral contracts but the tariff does not define them.<sup>10</sup> The filing letter references a requirement to provide the actual bilateral price but the proposed changes to the tariff do not require that. The filing references PJM's consent to a bilateral contract but does not define the explicit criteria for consent, or even a list of general criteria other than a reference to a creditworthiness requirement which is not changed in this filing.<sup>11</sup>

#### **E. Effect on FTR Market Efficiency and Price Transparency.**

PJM states (at 2) that its proposed revisions to the Market Rules governing FTR bilateral trading will provide PJM with greater awareness of bilateral trading in the PJM FTR markets relative to PJM's current tariff provisions.

The November 9<sup>th</sup> Filing undermines market transparency for all FTR market participants. The proposed revisions would not improve market transparency. The information would be provided solely to PJM and not to the market. Transparency for PJM alone is not market transparency. Nothing in PJM's proposal would prevent the wider use of bilateral trading that could undermine PJM FTR markets.

PJM has not explained why maintaining an explicitly nontransparent bilateral FTR market makes the PJM FTR market more effective, more efficient or more competitive. Given that PJM has a transparent, centralized FTR clearing market, PJM never explains why

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<sup>10</sup> See proposed revised OA Schedule 1 at 5.2.2 (d)(vii).

<sup>11</sup> See proposed revised OA Schedule 1 at 5.2.2 (d)(iii).

PJM would want to facilitate or even permit bilateral FTR transactions that are confidential and therefore not transparent. The relevant definition of transparency is transparency to market participants and to all PJM stakeholders and to load and to regulators and to the public, and not solely to the central clearinghouse. PJM's FTR market is the most transparent of all PJM markets. The FTR market exists in order to return to load the congestion revenues paid by load in excess of revenues paid to generators in an LMP system. The facilitation of confidential bilateral transactions undercuts that transparency and therefore the efficiency of the FTR market. The facilitation of confidential bilateral transactions does nothing to advance or improve the basic function of FTR markets

Bilateral FTR trading outside of PJM's transparent FTR market is inefficient, inconsistent with the basic structure and purpose of the PJM FTR market, and creates unnecessary credit risk. There is no reason to have a bilateral market outside of and invisible to PJM's FTR market.

The Market Monitor recommends that bilateral FTR transactions be eliminated and that all FTR transactions take place in the FTR market, in order to provide full transparency, effective price discovery, and to minimize risk to market participants and PJM members.

The November 9<sup>th</sup> Filing presents an opportunity to investigate under Section 206 of the Federal Power Act whether the bilateral FTR market undermines the transparency and efficiency of the PJM FTR market, fails to serve the public interest, and is unjust and unreasonable.

## **II. CONCLUSION**

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

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Dated: November 30, 2023

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 30<sup>th</sup> day of November, 2023.



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