

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

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|------------------------------------|---|-------------------------|
| Independent Market Monitor for PJM |) | Docket Nos. EL23-50-000 |
| |) | |
| v. |) | |
| |) | |
| PJM Interconnection, L.L.C. |) | |
| |) | |

**REQUEST FOR REHEARING OF THE
INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rule 713 of the Commission’s Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM² (“Market Monitor”), submits this request for rehearing of the order issued in this proceeding March 1, 2024 (“March 1st Order”). The March 1st Order denies a complaint filed March 24, 2023, by the Market Monitor requesting that the Commission enforce the PJM rules protecting the Market Monitor’s ability to participate in the PJM stakeholder process where the Market Monitors deems it appropriate or necessary, in this case, Liaison Committee meetings, (“Complaint”). The March 1st Order denied the Complaint based on an unreasonable, arbitrary and capricious interpretation of the applicable rules. Rehearing should be granted, and the relief requested in the Complaint should be provided.

¹ 18 CFR § 385.713 (2023).

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”).

I. REQUEST FOR REHEARING

In the Complaint, the Market Monitor requested that the Commission rely on the plain language of Section IV.G of Attachment M to the OATT (“Section IV.G”) to protect its ability to participate in Liaison Committee meetings:

The Market Monitoring Unit may, as it deems appropriate or necessary to perform its functions under this Plan, participate (consistent with the rules applicable to all PJM stakeholders) in stakeholder working groups, committees or other PJM stakeholder processes.

The purpose of the phrase “or other PJM stakeholder processes” in Section IV.G is to avoid a narrow interpretation of stakeholder working groups and stakeholder committees. It is a blanket authorization for the Market Monitoring Unit to participate in all PJM stakeholder processes. Nothing limits the language to stakeholder processes that directly involve making decisions.

The March 1st Order explains its rejection of the Complaint in three sentences (P 85).

The Commission has previously explained that ‘[t]he stakeholder process is used to identify, review, and make decisions regarding proposed revisions to PJM’s governing documents, processes, market and reliability design and operations.’[footnote omitted] Moreover, the Commission has consistently discussed stakeholder processes as elements of a decision making process.[footnote omitted] The Liaison Committee is not, on its face, an element of the decision making process regarding proposed revisions to tariff provisions, governing documents, processes, or market design and operations.[footnote omitted]

The reference is to “identify, review and make decisions” and not solely to “make decisions.” The Commission has not found that every element of the stakeholder process must make decisions. The Liaison Committee is clearly an element of the broader PJM Board and stakeholder process that includes the identification of issues and the review of issues. There is no question that the Liaison Committee identifies issues and reviews issues. As Commissioner Christie stated (Dissent at P 10): “I think we can all agree that a process is

series of actions leading to an end result.” There is no basis for the Commission’s conclusion that the Liaison Committee is not included in “other PJM processes.”

PJM provides a definition of and goals for the stakeholder process in Manual 34 (PJM Stakeholder Process) that is consistent with the Complaint and is more detailed than the language from the 2016 Order and other cited orders:

The stakeholder process is the method used by the Members, PJM and other stakeholders to carry out the responsibilities and powers of the Members Committee. This process also recognizes the responsibilities and powers of the Board of Managers, the Office of the Interconnection, the Independent Market Monitor and certain other stakeholders as discussed herein.

The goal of the stakeholder process is to efficiently, effectively and fairly identify, review and make decisions regarding proposed revisions to PJM’s governing documents, processes, market and reliability design and operations. The tools provided herein assist in that process by promoting a greater understanding of issues, collaborative problem solving and consensus building. Ideally, all stakeholders will participate in the process beginning at the lowest level stakeholder group. In doing so, the most comprehensive solutions will be generated, and the inefficiency of re-reviewing material or failed proposals at higher level Stakeholder Groups will be avoided. However, if new information becomes known later in the process, all stakeholders shall retain the right to raise such information or provide alternate proposals in light of previously reviewed material as long as such proposals address the design components.³

While Manuals do not override the tariff, Manual 34 is clear that the stakeholder process includes: the identification of issues; the review of issues; and the understanding of issues. Manual 34 recognizes the importance of participation in lower level stakeholder groups, even though these groups do not make decisions. Manual 34 defines the stakeholder process as a holistic process, not limited to the role of any individual

³ See PJM Manual 34 (PJM Stakeholder Process), Rev. 19 (November 15, 2023) at 19.

committee. The manual emphasizes (*id.*): “This process also recognizes the responsibilities and powers of the Board of Managers [and] the Independent Market Monitor.”

Commissioner Christie explains (*id.*):

[T]he idea that the Liaison Committee does not identify or review any issues related to, *inter alia*, the PJM tariff or markets seems non-sensical to say the least and would undoubtedly be a surprise to those members of the Liaison Committee who undoubtedly believe that they are addressing and identifying issues of consequence to the PJM tariff and markets to the PJM Board.

Section IV.G protects the ability of the Market Monitor to determine the committees or other stakeholder processes in which it participates. Section IV.G explicitly assigns to the Market Monitor the ability to determine the stakeholder processes where its attendance is “appropriate or necessary.” Nothing in the March 1st Order provides a reasonable basis for rejecting the Market Monitor’s decision.

The balance of the March 1st Order on the Market Monitor’s Complaint raises questions about the reasons for the Market Monitor’s decision to attend the Liaison Committee and does not address the Market Monitor’s ability to attend. While the Market Monitor does not agree with the assertions in the March 1st Order, the assertions are not relevant.

Rehearing of the March 1st Order should be granted, and the relief requested in the Complaint should be provided.

II. STATEMENT OF ISSUES

As required by Commission Rule 713(c)(1)&(c)(2),⁴ the Market Monitor specifies and requests rehearing of the following errors in the March 1st Order that result in the order

⁴ 18 CFR § 385.713.

being arbitrary, capricious, and otherwise not in accordance with law:⁵ The reasons cited by the Commission as the basis for rejecting the Complaint are unreasonable, arbitrary and capricious, and otherwise fail to support rejection of the Complaint.

III. CONCLUSION

For the reasons provided above, the Market Monitor respectfully requests that the Commission grant rehearing.

⁵ See, e.g., 5 USC § 706(2)(E) (“The reviewing court shall ... hold unlawful and set aside ... findings ... found to be ... unsupported by substantial evidence”); *Motor Vehicle Mfrs. Ass’n. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. U.S.*, 371 U.S. 156, 168 (1962) (“Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”); *Illinois Commerce Comm’n*, 576 F.3d 470, 477 (7th Cir. 2009) (explaining that a reviewing court cannot “uphold a regulatory decision that is not supported by substantial evidence on the record as a whole”); *Pacific Gas & Elec. Co. v. FERC*, 373 F.3d 1315, 1319 (D.C. Cir. 2004) (“PG&E”); *Missouri Pub. Serv. Comm’n v. FERC*, 337 F.3d 1066, 1072–75 (D.C. Cir. 2003) (vacating and remanding Commission orders because it found, among other things, that the Commission had failed to articulate the actual reasons for its decision, and the reasons it did cite were “speculative,” unsupported by record evidence, and did not support its decision). See also 5 USC § 557(c) (the Commission is charged with addressing “all the material issues of fact, law, or discretion presented on the record”); 5 U.S.C. § 706(2)(A). *Nw. Env’tl. Def. Ctr. v. Bonneville Power Admin.*, 477 F.3d 668, 687–88 (9th Cir. 2007) (“[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.”) (internal quotation marks and citation omitted); *Atchison, Topeka & Santa Fe Ry. v. Wichita Bd. of Trade*, 412 U.S. 800, 808, 93 S.Ct. 2367, 37 L.Ed.2d 350 (1973) (“Atchison”) (“Whatever the ground for the [agency’s] departure from prior norms, . . . it must be clearly set forth so that the reviewing court may understand the basis of the agency’s action and so may judge the consistency of that action with the agency’s mandate.”); *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009) (explaining that a reviewing court cannot “uphold a regulatory decision that is not supported by substantial evidence on the record as a whole”); *Ass’n of Oil Pipelines v. FERC*, 83 F.3d 1424, 1431 (D.C. Cir. 1996) (the Commission’s orders must articulate “a rational connection between the facts found and the choice made”) (citations omitted); *Ne. Util. Serv. Co. v. FERC*, 993 F.2d 937, 944 (1st Cir. 1993) (reasoned decision making requires “a reasoned explanation supported by a stated connection between the facts found and the choice made”) (citation omitted).

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Respectfully submitted,



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Dated: March 29, 2024

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 29th day of March, 2024.



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