

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

Oregon Clean Energy, LLC Indiana Michigan Power Company AEP Oregon, LLC)))))	Docket No. EC25-84-000
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COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 of the Commission’s Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),² submits these comments responding to the filing submitted by Indiana Michigan Power Company (“I&M”), AEP Oregon, LLC (“AEP Oregon”), and Oregon Clean Energy, LLC (“OCE”) (referred to collectively with I&M and AEP Oregon as the “Applicants”) on April 30, 2025 (“April 30th Filing”) requesting approval of a proposed transaction under Section 203 of the Federal Power Acts. The Applicants request approval of American Electric Power Company Inc. (“AEP”)’s purchase of OCE, which owns a 1,061.5 MW natural gas combined cycle plant in Ohio, which is part of the PJM market. The Applicants’ market power analysis shows only a small increase in HHI due to the transaction. The Applicants fail to recognize the weakness of the HHI test compared to pivotal supplier tests as a market power metric. As a result, the Applicants’ market power analysis does not accurately reflect the fact that AEP currently has market power in the PJM

¹ 18 CFR § 385.211 (2024).

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”).

Capacity Market and in the PJM energy market and that this transaction will increase that market power, albeit by a relatively small amount. The fact that the transaction does not fail the Commission's HHI threshold does not ensure that the transaction does not increase market power.

The Applicants have not asserted that this transaction enhances competition or market efficiency. The Applicants have not explained why the transaction is consistent with the public interest.³

The Market Monitor does not oppose the transaction subject to the proposed behavioral conditions that would protect the market from market power and help ensure competitive behavior.

The broader question for the Commission's merger policy is whether transactions that result in incremental increases in market power in the PJM Capacity Market, or any PJM market, should be approved given the fact that the PJM Capacity Market is already characterized by endemic market power. A related question is whether Commission merger policy should identify, even in broad terms, the worst case end case structure for PJM's competitive markets that could be used to evaluate specific transactions.

I. COMMENTS

AEP is at times a pivotal supplier in the aggregate PJM energy market and local energy markets. AEP is a pivotal supplier in the PJM Capacity Market. Any sale of capacity from a competitor to AEP increases that market power. Given that the Commission must evaluate merger and acquisition requests on a transaction by transaction basis, a market seller can grow through serial acquisitions, none of which appear to violate merger metric thresholds, but which, when evaluated together, would violate one or more such metric thresholds. AEP

³ See 16 U.S.C. § 824b ("the Commission shall approve the proposed disposition, consolidation, acquisition, or change in control, if it finds that the proposed transaction will be consistent with the public interest").

is the third largest owner of capacity in PJM, with 14,630 MW of capacity and 15,453 MW after the transaction.⁴ The Commission's merger guidelines do not describe an end state market structure, or a maximum size or market share for a single company that is consistent with a competitive market.

Notwithstanding the HHI level, a supplier may have the ability to raise market prices above the competitive level. If reliably meeting the PJM system load requires energy from a single supplier, that supplier is singly pivotal and has monopoly power in the aggregate energy market. If a small number of suppliers are jointly required to reliably meet the PJM system load, those suppliers are jointly pivotal and have oligopoly power. The number of pivotal suppliers in the energy market is a more precise measure of structural market power than the HHI. The same is true in the capacity market. If the capacity of a single supplier is needed to clear the capacity market, that supplier is pivotal. The HHI is not a definitive measure of structural market power. The capacity market illustrates the mismatch between the HHI metric and the pivotal supplier metric. The identification of jointly pivotal suppliers as a source of market power does not require an assumption that the suppliers collude. There are multiple mechanisms that would permit the exercise of market power when there are limited suppliers providing relief to a constraint. FERC Order No. 697 also recognizes this explicitly in the discussion of HHI and pivotal suppliers. FERC's definition of highly concentrated markets, based on an HHI greater than 1800, includes between five and six owners with equal market shares.

The current market power mitigation rules for the PJM energy market rely on the assumption that the aggregate market includes sufficient competing sellers to ensure competitive market outcomes. With sufficient competition, any attempt to economically or physically withhold generation would not result in higher market prices, because another

⁴ Applicants at 137.

supplier would replace the generation at a similar price. This assumption requires that the total demand for energy can be met without the supply from any individual supplier or without the supply from a small group of suppliers. This assumption is not always correct. There are pivotal suppliers in the aggregate energy market.⁵

The Market Monitor's market power analysis shows a similar change in the capacity HHI based on the transaction as the Applicants. Table 1 shows that HHI increases by 7, from 536 to 543, for the PJM RTO as a whole. This HHI is based on the ownership of capacity resources including FRR resources based on ICAP MW. This does not mean that the transaction raises no market power concerns. AEP is a pivotal supplier in the PJM Capacity Market.

The analysis of AEP's role in the PJM Capacity Market is complicated by AEP's participation directly in the PJM Capacity Market and AEP's indirect participation in the PJM Capacity Market as an FRR entity. As of June 1, 2025, AEP had 2,711.4 MW in the capacity market and 12,356.2 MW as FRR. If AEP includes the acquired resource in its FRR portfolio, the resource would not participate directly in the PJM Capacity Market. The OCE resource does currently participate directly in the PJM Capacity Market. The transaction could reduce the supply of capacity in the PJM Capacity Market. AEP is a pivotal supplier in the PJM Capacity Market, even accounting only for its direct participation. FRR resources are part of the broader PJM Capacity Market. FRR entities may return to the PJM Capacity Market, as demonstrated by Dominion's recent shift from FRR status to capacity market status.

The standard market power metrics, HHI and pivotal supplier metrics, are based on market clearing results. The standard metrics cannot capture the impact of FRR resources on the capacity market because FRR resources are not offered directly in the capacity market and FRR resources do not clear in the capacity market.

⁵ Monitoring Analytics, L.L.C., *2025 State of the Market Report for PJM: January through March*, Section 3: Energy Market, at 236-237.

The overall context of this proposed transaction is also important. PJM's Capacity Market is extremely tight and likely to remain extremely tight for the foreseeable future resulting in prices that are extremely high by PJM capacity market historical standards which increases the potential impact of market power.⁶

The AEP Zone has cleared as part of the Rest of RTO LDA since the inception of the RPM capacity market design in 2007. The size of the Rest of RTO varies depending on which LDAs are modeled in capacity market auctions by PJM.⁷

Table 1 HHI Change due to Transaction, PJM RTO

Date	RPM Market	Preacquisition HHI	Postacquisition HHI	Change in HHI
1-Jun-25	RTO	536	543	7

PJM markets are dynamic. It is logically possible that any LDA or group of LDAs can clear separately under the PJM capacity market rules. For example, if large data center load growth occurred disproportionately in Ohio, it is possible that a very different pattern of capacity clearing could occur. Considering only the Rest of RTO including the ATSI LDA, where the AEP and OCE resources are located, the transaction would increase the HHI by 65, from 954 to 1019, as shown in Table 2. This HHI is based on the ownership of capacity resources including FRR resources based on ICAP MW.

Table 2 HHI, Rest of RTO and ATSI LDAs

Date	RPM Market	Preacquisition HHI	Postacquisition HHI	Change in HHI
1-Jun-25	Rest of RTO	954	1019	65

Market power mitigation in PJM is not sufficient to address all exercises of market power. As a result, the Commission cannot ensure that this transaction will have no adverse effects on competition in the PJM markets.

⁶ See Monitoring Analytics, L.L.C., *Analysis of the 2025/2026 Base Residual Auction*, Parts A through G, <<https://www.monitoringanalytics.com/reports/Reports/2024.shtml>> and <<https://www.monitoringanalytics.com/reports/Reports/2025.shtml>>.

⁷ See Monitoring Analytics, L.L.C., *2025 State of the Market Report for PJM: January through March*, Section 5: Capacity, at Figure 5-6.

In order to ensure that market power is not exercised as a result of the transaction, if the transaction is approved, the Market Monitor recommends the following behavioral conditions:

1. A commitment, for all resources owned or controlled by AEP, to develop cost-based offers using a fuel cost policy that passes the Market Monitor's review and to limit price-based offers to a markup no greater than \$1 per MWh, will prevent the exercise of aggregate market power in the energy market.
2. A commitment, for all resources owned or controlled by AEP, to refrain from using crossing price and cost-based energy market offer curves (markup switching) will ensure that a price-based offer curve with a high markup will not be chosen by PJM's least cost offer determination when a resource has local market power as determined by the TPS test.⁸
3. A commitment, for all resources owned or controlled by AEP, to submit only operating parameters based on physical limits, as defined in the PJM tariff, in the energy market will ensure that AEP cannot use market power to operate inflexibly during weather alerts, emergencies, and periods when its units fail the TPS test.
4. A commitment, for all resources owned or controlled by AEP, to only give notice of retirement if the unit is expected to be uneconomic, because projected avoidable costs exceed projected net revenues, after accounting for identified risks
5. A commitment, for all supply owned or controlled by AEP, to submit capacity market offers that do not exceed the net avoidable cost rate, which is the current Market Seller Offer Cap, will help ensure that capacity market offers are competitive, even if the PJM market rules change.

⁸ This restriction is necessary for effective market power mitigation until PJM implements its Commission approved solution in Docket ER24-2905.

6. A commitment, for all supply owned or controlled by AEP, to offer the full ICAP MW equivalent of all their cleared UCAP capacity MW in the day-ahead and real-time energy markets every day.
7. A commitment to not remove resources from the PJM market to serve co-located load behind the generator's meter unless explicitly permitted by Commission policy.

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.

Respectfully submitted,



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Dated: June 30, 2025

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 30th day of June, 2025.



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