

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.)
) Docket Nos. ER09-1063-000, -003
)

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

Pursuant to Rules 212 and 213 of the Commission’s Rules and Regulations, 18 CFR §§ 385.212 & 385.213 (2009), Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (“Market Monitor”),¹ moves for leave to answer and answers the Answer of PJM Interconnection, L.L.C. to Comments and Protests filed in the above captioned proceeding on May 4, 2010 (“May 4th Answer”). The May 4th Answer repeats arguments that the RPM offer data released by PJM on March 22, 2010 was sufficiently aggregated and masked, and the Market Monitor has demonstrated in prior pleadings that the data released was neither aggregated nor masked sufficiently to prevent identification of individual, unit-specific offers of Capacity Market Sellers. However, for the first time, the May 4th Answer raises (at 8–9) additional arguments that Order No. 719 justifies PJM’s actions because it “*expressly permits* the release of individual bid data, i.e.

¹ PJM Interconnection, L.L.C. is a FERC-approved Regional Transmission Organization. Capitalized terms used herein and not otherwise defined have the meaning provide in the PJM Open Access Transmission Tariff or the PJM Operating Agreement.

data far more market participant-specific than the data that PJM released” (emphasis in original).² The Market Monitor here responds to this new issue.

I. ANSWER

The May 4th Answer argues (at 8) that “attacks on the release of ten month old aggregated data is simply an improper collateral attack on the Commission’s ruling in Order 719 allowing the release of individual bid data after four months.” This new defense citing Order No. 719 is misguided in at least two respects. Order No. 719 does not expressly require the release of individual bid data, only that the data that are being released be released earlier.³ “Data” can be presented in unit-specific tabular form, as has been done in the energy market, or as a non unit-specific curve, which has been done in the RPM capacity market. Release in the form of a curve is appropriate where there is, as in the RPM market, a recognized need to protect data that is market and/or commercially sensitive.⁴ To whatever extent Order No. 719 implicitly contemplates the release of individual, unit-specific offer data, it does so only for the energy markets and not capacity markets. The standards applied to capacity markets should be different

² *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶31,281 (2008) (“Order No. 719”), *order on reh’g*, Order No. 719-A, FERC Stats. & Regs. ¶31,292 (2009), *reh’g denied*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

³ *See Id.* at PP 420–424, codified at 18 CFR § 35.28(g)(4).

⁴ Order No. 719 at PP 423.

based on the different characteristics of the capacity markets, and different standards have been applied in practice until the recent posting.

The claim in the May 4th Answer that Order No. 719 “*expressly permits* the release of individual bid data” (emphasis in original) is unsupported by the text of Order No. 719.⁵ Order No. 719 does not prohibit the release of individual, unit-specific data either, and this may be what the Commission contemplates at this stage of its developing policy in this area, but nowhere in the Commission’s discussion of offer and bid data does the Commission expressly state that the data in question must be individual and unit-specific. Order No. 719 does expressly retain the “masking of identities,” and points out (at P 423) that the possibility “that sophisticated market participants may be able to infer identities of those submitting offers and bids does not resolve confidentiality concerns; if anything it argues for more protection, not less.” The Commission has left sufficient room for further refinement regarding the nature of the data that it requires to be disclosed. Released data, complying with Order No. 719, could be reasonably limited to supply and demand curves that do not reveal individual and unit-specific information and still satisfy the Commission’s objectives for data disclosure.

⁵ The May 4th Order cites paragraph 229 of Order No. 719, but this is apparently in error, as this paragraph addresses scarcity pricing, not data release.

Historically, PJM has released individual, masked, unit-specific bid data for the entire energy market after six months, now reduced to four. Historically, PJM has released supply curve graphs for the RPM capacity market shortly after RPM auctions but never released individual unit-specific RPM data prior to the recent release.⁶ As the Market Monitor established in prior pleadings, the supply curve graphs are not unit-specific data and if they were there would have been no reason for PJM to release the capacity market data in question.⁷ Order No. 719 required only that PJM reduce its release lag for energy market data from six months to four. The Commission determined that a four-month lag was appropriate (rather than three) because it agreed that “[b]y releasing data with a three-month lag period, PJM would be allowing information to be provided within the same seasonal period such that these parties could potentially ascertain the bidding behavior of their rivals and exploit market power” and “that a potential collusion concern exists within the PJM region.”⁸

⁶ See *PJM Interconnection, L.L.C.*, 86 FERC ¶61,247, *mimeo* at 13 (1999) (“1999 Order”) (“[W]ith respect to the Plan’s confidentiality requirement for bid and related data, we note that the commercial sensitivity of such data decreases over time. Consistent with an earlier order concerning the New York Independent System Operator, we direct PJM to make available to the public, bid and other data after 6 months.[n.31: See *Central Hudson Electric & Gas Corporation, et al.*, 86 FERC ¶61,062 at __ (1999).] The purpose of such disclosure is to allow interested parties to monitor market activities, including the possibility that market participants have engaged in anti-competitive actions.”).

⁷ If the same unit-specific information were contained in the supply graphs, there would be no need to have “sophisticated tools” or special expertise to extract it.

⁸ *PJM Interconnection, L.L.C.*, 129 FERC ¶61,250 at P 201 (2009).

The new argument raised in the May 4th Answer about what Order No. 719 requires is also flawed because it ignores fundamental differences between the energy and capacity markets. The logic presented in Order No. 719 was explicitly and solely about energy market data. Order No. 719 did not require PJM to release individual, unit-specific RPM data, nor does it even address the issue. The issues about the appropriate lag are very different with the capacity market where Base Residual Auctions are run only once per year. The appropriate lag for the release of any unit-specific data for the entire market should be until at least after the next Base Residual Auction is run. The preferable lag would be until after the final Incremental Auction for the same Delivery Year is run. In addition, the energy market data discussed in Order No. 719 was for the entire PJM market while the capacity market data released by PJM was for smaller Locational Delivery Areas (“LDAs”). The smaller LDAs permit the easier identification of suppliers. No RPM unit-specific data should be released on an LDA basis.

There is also a close relationship between RPM offer data and costs. The nature of a unit’s specific cost-based offer reveals information with persistent commercial sensitivity, the unit’s going forward or avoidable costs. Although the offers are net of energy and ancillary services revenues, such revenues can be estimated from public market data. Unlike short run marginal cost data, which is revealed in the energy offers, the cost data in the capacity market offers has much longer lasting relevance and thus a much longer lasting impact on competition.

Order No. 719 does not address the release of capacity market data. The Commission's order initially establishing the six month release lag predates the implementation of RPM. PJM has historically treated data from RPM differently, without regard to the policy set forth in the 1999 Order,⁹ releasing offer curve graphs shortly after each auction but never releasing individual, unit-specific RPM offer data.

Order No. 719 discusses the issue of an appropriate lag for data release solely with respect to the energy markets. Order No. 719 summarizes the issue (at P 6) as "reducing the time period before *energy market* bid and offer data are released to the public" (emphasis added). When the Commission states (at P 422), "We assume the data to be released would consist not only of physical offers and bids but demand and virtual offer and bids as well," the Commission implies that the data at issue is energy market data, as there are no virtual offers and bids in the capacity market. The data at issue here does not relate to the energy markets. This information concerns RPM auctions to which tighter standards should apply and which should be based on an explicit decision of the Commission.

Order No. 719 does not supersede the requirements included in Section 18.17 of the PJM Operating Agreement that protect from disclosure the confidential information of Members. Unit specific offers, especially where offers are capped on the basis of net

⁹ See *infra* p. 3 at footnote no. 3.

avoidable costs, constitute commercially sensitive data that a Member could expect would be protected under this provision. No time limit, four months or otherwise, applies to the release of confidential Member information.

Consequently, the Commission should reject the new argument in the May 4th Answer that Order No. 719 expressly permits the release of individual, unit-specific RPM offer data without regard to the particular characteristics of the applicable market after a period of four months elapses. To the extent that the release of individual, unit specific offer data of any kind is implicitly contemplated by Order No. 719, the Commission should affirm that this policy exclusively applies to energy market data and not to capacity market data.

PJM reminds the Commission (at 13 n.31) that PJM's "forbearance" on release of this commercially sensitive data will end "on or about November 14, 2010" if the Commission does not issue an order in this matter.¹⁰ This statement of intention contradicts PJM's earlier claim that the motion to cease and desist filed by the Market Monitor on March 24, 2010 is moot.¹¹ Consequently, it is important that the Commission provide relief on this issue as soon as practical and prior to PJM's November 14th deadline.

¹⁰ Supplemental Answer of PJM Interconnection, L.L.C. Rendering Moot Motion to Cease and Desist of PJM's Independent Market Monitor in ER09-1063-000, et al. at 2 (April 6, 2010).

¹¹ *Id. passim.*

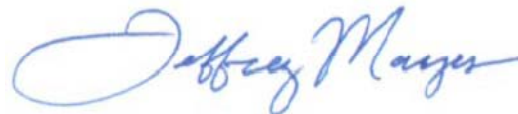
II. MOTION FOR LEAVE TO ANSWER

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answer to answers or protests 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.¹² 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. Therefore, this answer should be permitted.

III. CONCLUSION

The Market Monitor respectfully requests that the Commission grant this motion for leave to answer and afford its answer due consideration as it resolves the issues raised in this proceeding.

Respectfully submitted,



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¹² See, e.g., *PJM Interconnection, L.L.C.*, 119 FERC ¶61,318 at P 36 (2007) (accepted answer to answer that "provided information that assisted ... decision-making process"); *California Independent System Operator Corporation*, 110 FERC ¶61,007 (2005) (answer to answer permitted to assist Commission in decision-making process); *New Power Company v. PJM Interconnection, L.L.C.*, 98 FERC ¶ 61,208 (2002) (answer accepted to provide new factual and legal material to assist the Commission in decision-making process).

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Dated: May 28, 2010

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 28th day of May, 2010.



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