

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

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| PJM Interconnection, L.L.C. |) | Docket Nos. ER08-858-000, |
| |) | ER08-867-000 |
| New York Independent System Operator, Inc. |) | and EL02-23-000 |
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**MOTION TO INTERVENE OUT-OF-TIME AND COMMENTS OF
THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rules 211, 212 and 214 of the Commission’s Rules and Regulations, 18 CFR § 385.211, 385.212 & 385.214 (2009), Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (“Market Monitor”),¹ submits this motion to intervene out-of-time and comments on the issues set for briefing by the order issued in this proceeding dated February 19, 2010 (“February 19th Order”).² In that order, the Commission asked that the parties comment on certain aspects of the arrangement intended to resolve this proceeding in the settlement filed on February 23, 2009, by PJM Interconnection, LLC (PJM) on behalf of the Settling Parties to resolve issues surrounding two grandfathered

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 (“PJM OATT”).

² *PJM Interconnection, L.L.C., et al.*, 130 FERC ¶61,126 (“The parties need to address whether these contracts are sufficiently firm to be rolled over under Order No. 888; whether, if they are eligible for rollover, Con Ed is eligible only for OATT service, or whether the circumstances here warrant a non-conforming agreement; and whether and what effect these agreements have on the rights of and prices paid by other parties, including the effect of the flow changes in the JOA on the Locational Marginal Prices in both PJM and NYISO and the effect of these provisions on the ability of other parties to transact business.”).

transmission service agreements between Con Ed and PSE&G (“Grandfathered TSAs”) and the proposed roll-over of the agreements under the PJM OATT.³

The Market Monitor has concerns about management of the seam between PJM and NYISO and has, in other related proceedings, encouraged the Commission to require that PJM and NYISO, administrators of two significant and advanced organized wholesale markets, adopt practices equal or superior to the current best practices in seams management. There are significant efficiencies to be gained by both the PJM and NYISO regions in implementing the most efficient approach possible to seams management, as well an opportunity to reduce opportunities for gaming and to promote longstanding Commission policies favoring the development of open access and competitive markets.⁴

The terms of the settlement filed in this proceeding directly implicate the same concerns. In order to achieve the Commission’s goals for efficient and large scale, organized wholesale power markets, it is important to wind down and eliminate all legacy preferential transmission arrangements inconsistent with that goal, including at the

³ The Settling Parties are the New York Independent System Operator, Inc. (“NYISO”), Consolidated Edison Company of New York (“Con Ed”), Public Service Electric & Gas Company (“PSE&G”), PSE&G Energy Resources & Trading LLC and the New Jersey Board of Public Utilities. *Settlement and Offer of Settlement*, Docket Nos. ER08-858-000, ER08-867-000 and EL02-23-000 (Feb. 23, 2009) (Settlement).

⁴ See, e.g., *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶¶31,036 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶¶31,048, *order on reh’g*, Order No. 888-B, 81 FERC ¶61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

NYISO/PJM seam. It is critical that competition and open access drive investment decisions in these regions.⁵

Certain elements of the filed settlement run counter to the purpose of markets that use locational marginal pricing, which is to accommodate pricing to the physics of system power flows and to provide for the redispatch of generation to meet load.

I. COMMENTS

The February 19th Order seeks comment (at P 24) on three questions: (i) “whether [the Grandfathered TSAs] are sufficiently firm to be rolled over under Order No. 888;” (ii) “whether, if they are eligible for rollover, Con Ed is eligible only for OATT service, or whether the circumstances here warrant a non-conforming agreement;” and (iii) “whether and what effect these agreements have on the rights of and prices paid by other parties, including the effect of the flow changes in the JOA on the Locational Marginal Prices in both PJM and NYISO and the effect of these provisions on the ability of other parties to transact business.” The Market Monitor takes no position on whether the service is firm, and confines its comments to the latter two issues.

A. The Settling Parties Fail to Demonstrate Any Circumstances That May Now Exist Warranting a Non-Conforming Agreement Under the Current Approach to Seams Management, Nor Do They Attempt to Explain How Such Circumstances Would Continue to Exist Under the Reforms to Be Implemented Through the Broader Regional Markets Initiative

PJM supports the settlement primarily because if it is required to offer service to Con Ed consistent with open access principles, PJM will not, due to the manner in which the PJM/NYISO seam is currently managed, be able to provide any transmission service at all

⁵ See Order No. 888 *mimeo* at 85.

when the agreements terminate approximately two years from now.⁶ Instead, PJM would have to manage the effects of uncompensated loop flows that would result from NYISO's dispatch of upstate resources to serve New York City's load.

PJM's logic depends on the assumption that these are the only two choices available. The choice is not between the settlement and uncompensated loop flow. Rather than continuing to manage interchange pricing between the two systems using a single price point, PJM and the NYISO should implement a Congestion Management Protocol that would facilitate redispatch and joint management of congestion at the interfaces between the systems. Negotiations intended to reform seams management among PJM, NYISO and other market areas currently are underway in the the Broader Regional Markets initiative.⁷ The Market Monitor has argued in that proceeding that the Commission should require the Broader Regional Markets to develop a congestion management protocol equal or superior to the approach successfully implemented by PJM and the Midwest Independent System Operator, Inc. ("Midwest ISO") since April 1, 2005.⁸ The Market Monitor has endorsed June 2011 as reasonable deadline, and the schedule proposed by the Broader Regional Markets Group contemplates the implementation of a congestion management protocol among PJM, NYISO and Midwest ISO by the third quarter of 2011.⁹

⁶ Initial Brief of PJM Interconnection, L.L.C. in Docket No. ER08-858-000, et al. at 9-11 (April 21, 2010) ("PJM Brief").

⁷ See Docket No. ER08-1281-000.

⁸ Motion to Intervene and Comments of the Independent Market Monitor for PJM in Docket No. ER08-1281-004 at 5 (February 2, 2010).

⁹ *Id.* at 6; New York Independent System Operator, Inc.'s Report on Broader Regional Markets; Long-Term Solutions to Lake Erie Loop Flow; Docket No. ER08-1281-004 at 19 (January 10, 2010)._

The Market Monitor recommends that the Commission deny indefinite renewal of Grandfathered TSAs, which as NRG and FERC trial staff have pointed out, is or may be at odds with the Commission's open access policies,¹⁰ and at the same time refuse to permit the emergence of significant uncompensated loop flows. During the two years prior to the expiration of the agreement, the Commission should require PJM and NYISO to negotiate, under FERC supervision, and begin implementation of a congestion management protocol that would manage the seam in a manner equal or superior to the approach that has already been implemented between PJM and the Midwest Independent System Operator, Inc..

Under a congestion management protocol, the interfaces at the RTOs are efficiently priced through jointly managed redispatch. There is no need to continue a dated approach in the form of through and "back in" (as opposed to "out") transmission service to address loop flows.

There is no reason why the Broader Regional Markets initiative cannot result in a congestion management protocol that would appropriately price the services covered by the Grandfathered TSAs without discriminating against any other party. This proceeding provides to the Commission another opportunity to provide guidance about the Commission's expectations related to the management of broader regional markets.

Rather than extending in perpetuity an inefficient arrangement, the Commission could instead take this opportunity to advance its restructuring for competition goals and reinforce NYISO's and PJM's existing Broader Regional Markets process to improve their

¹⁰ See, e.g., Initial Brief in Response to Order Establishing Additional Procedures of the NRG Companies in Docket No. ER08-858-000, et al. at 8-10 (April 21, 2010); Reply Comments of the Commission Trial Staff on Offer of Settlement in Docket No. ER08-858-000 at 7 (March 25, 2009).

seams management. The Market Monitor recommends that the Commission allow the grandfathered agreements to expire, or grant a short extension, and require that PJM and NYISO implement at that time a congestion management protocol that meets or exceeds best industry practices.

B. The Settling Parties Have Failed to Show That Continuation of the Grandfathered TSAs Will Neither Interfere with the Efficient Calculation of Locational Marginal Prices in both PJM and NYISO, and at Their Interface, Nor Harm the Ability of Parties to Efficiently Transact Business.

PJM argues that continuing the Grandfathered TSAs will leave PJM and NYISO no worse off than they are today.¹¹ This argument assumes that the Commission is prepared to tolerate indefinitely PJM's and NYISO's current, limited approach to seams management. This argument ignores the impacts on competitive suppliers.¹²

The Settling Parties have not demonstrated that continuing the Grandfathered TSAs under the current approach to seams management has no discriminatory impacts. The real issue is whether continuation of the Grandfathered TSAs would interfere with the efficient calculation of locational marginal prices or efficient business transactions under the congestion management protocol approach to be implemented in the Broader Regional Markets initiative, and, even more importantly, whether continuing the Grandfathered TSAs would delay or prevent the implementation of improved seams management. To date the Settling Parties have failed to brief these issues.

¹¹ PJM Brief at 11–14.

¹² PJM's OASIS does not offer the service provided under the Grandfathered TSAs to all comers. Section 1.1 of PJM's guide, "Regional Transmission and Energy Scheduling Practices," does not include NYIS-PJM-NYIS as a valid path, and, if NYIS-PJM-NYIS is not a valid path, then a valid transmission reservation for that path is not generally available. *See Id.* at 32.

II. MOTION TO INTERVENE

The PJM Tariff requires that the Market Monitor, among other things, monitor “actual or potential design flaws in the PJM Market Rules,” “structural problems in the PJM Markets that may inhibit a robust and competitive market” and “the potential for a Market Participant to ... violate ... FERC Market Rules,” including specifically “market behavior rules and the prohibition against energy market manipulation codified by the Commission in its Rules and Regulations at 18 CFR §§ 1c.2 and 35.37, respectively.”¹³ Issues raised in this proceeding implicate these responsibilities.

The Market Monitor has actively followed and provided comments on the process and proceeding underway to promote the creation of broader regional markets, and this matter directly implicates the potential for that process to improve the efficiency with which the PJM/NYISO seam can be managed.¹⁴ Consequently, this proceeding implicates matters within the Market Monitor’s purview, and it is in the public interest that the Commission grants this motion. Rule 214 provides that the Commission may grant interventions where “[t]he movant’s participation is in the public interest.”¹⁵ The Market Monitor has the exclusive duty to perform the market monitoring function for PJM, and no other party can adequately represent it in this proceeding. Accordingly, the Market Monitor moves that the Commission grant it leave to intervene out-of-time and afford to it full rights as a party to this proceeding.

¹³ OATT Attachment M §§ II & IV.B.2–4.

¹⁴ *See, e.g.*, Docket No. ER08-1281-004.

¹⁵ 18 CFR § 214(b)(2)(iii).

Good cause exists to grant this motion out-of-time. The Market Monitor was housed as a division of PJM when this phase of the proceeding commenced in April, 2008, but, as of August 1, 2008, it became a fully independent entity. Moreover, the issues in this proceeding have morphed from backwards looking concerns to accommodate the conclusion of pre-restructuring wheeling contracts from the 1970s to a proposal that could limit the orderly development of the organized wholesale electric markets. The Market Monitor accepts the record of the proceedings as it developed prior to this filing, and has no interest in addressing any issues in this proceeding other than those concerning which the Commission has solicited comments and are currently pending. Consequently, permitting the Market Monitor to intervene will not be disruptive to the proceeding or impose a hardship on or prejudice any party.

III. COMMUNICATIONS

Pursuant to 18 CFR § 385.203(b)(3), the Market Monitor designates the following persons as those to receive all notices and communications with respect to this proceeding:

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CONCLUSION

The Market Monitor respectfully requests that the Commission grant this motion to intervene out-of-time and afford its comments due consideration as it considers the issues raised in this proceeding.

Respectfully submitted,



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Dated: May 11, 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 11th day of May, 2010.



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