

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

PJM Interconnection, L.L.C.)
) Docket No. ER16-372-005
)

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 for PJM (“Market Monitor”), submits these comments on the amended compliance filing submitted in the above captioned proceeding by PJM Interconnection, L.L.C. (“PJM”) on July 31, 2017 (“July 31st Filing”).² The July 31st Filing includes changes to PJM’s previously filed and accepted language in Operating Agreement Schedule 2 defining the level of penalties for inaccurate cost-based offers. The proposed changes would significantly weaken the incentive for Market Sellers to submit accurate cost-based offers and, if it had been in effect, would have reduced the level of currently applicable penalties from \$771,202 to \$66,591. The changes are also outside the scope of compliance with the Commission’s February 3, 2017, order in this proceeding.³ Accordingly, the July 31st Filing should be rejected as improperly filed, or, if not rejected, should not be approved for lack of merit.

¹ 18 CFR § 385.211 (2017).

² Terms capitalized but not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”), PJM Operating Agreement (“OA”) or PJM Reliability Assurance Agreement (“RAA”).

³ *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,133 (2017) (“February 3 Order”).

I. COMMENTS

A. Penalties for Inaccurate Cost-Based Offers Apply to All Cost-Based Offers.

In the PJM Energy Market, a cost-based offer schedule is submitted daily, and after November 1, 2107, that schedule may include hourly differentiated values and intraday updates. The Market Seller bears the responsibility to accurately calculate its allowable costs, in accordance with Schedule 2 of the Operating Agreement or the Cost Development Guidelines in Manual 15.⁴ It bears this responsibility every day.

In its June 17, 2016, Order (at P 63), the Commission required PJM to “include in its Tariff and Operating Agreement...a penalty structure that will be applicable in the event that PJM or the IMM determines that a resource has submitted a cost-based offer that does not comply with Schedule 2 of the Operating Agreement or the Cost Development Guidelines in Manual 15.”⁵

In its August 2016 Filing, PJM complied with the June 2016 Order by including a penalty structure applicable to each and every day a Market Seller submits an inaccurate cost-based offer. The relevant language proposed for Schedule 2(l) stated:

[T]he Market Seller shall be subject to the following penalty summed for each hour that the offer applied:

$$\frac{\sum Penalty_{dh} = \min(d, 15) \times LMP_h \times MW_h}{20}$$

where:

d is the greater of one and the number of days since PJM first notified the Market Seller of PJM’s and the Market Monitoring Unit’s agreement regarding applicability of the penalty

h is the applicable hour of the day for which the offer applies

⁴ See OA Schedule 1 § 6.4.2(d).

⁵ *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,282 (2016) (“June 2016 Order”).

LMP_h is the real-time LMP at the applicable pricing location for the resource for the hour

MW_h is the available capacity of the resource for the hour

The penalty is not zero prior to notification. The variable d changes after notification, but the value is always greater than or equal to one.

The summation “over all hours the offer applied” makes no mention of the timing of Market Seller notification.⁶ The provisions result in a penalty for all days for which PJM or the Market Monitor identified an inaccurate cost-based offer. PJM stated this in the August 2016 filing letter, saying that the penalty is “cumulative for each hour of each Operating Day that the Market Participant submits a non-compliant cost-based offer,” and “escalates based on how many days (d) the Market Seller has known that it is submitting offers that are not in compliance.”⁷ The escalation changes after notification to the Market Seller. The applicability of the penalty does not.

In its September 2016 Protest, the Market Monitor challenged the proposed penalty structure, demonstrating how it would not adequately deter the submission of inaccurate, high, cost-based offers.⁸ The Market Monitor also noted its opposition to PJM further reducing the penalty by limiting the days of applicability prior to notification.⁹

⁶ For a more precise mathematical expression of the penalty formula, *see* Protest of the Independent Market Monitor for PJM, Docket No. ER16-372 (September 16, 2016) at Attachment A.

⁷ PJM Compliance Filing, Docket No. ER16-372 (August 16, 2016) at 31–32.

⁸ *See* Protest of the Independent Market Monitor for PJM, Docket No. ER16-372 (September 16, 2016) at 44–47.

⁹ *See* Protest of the Independent Market Monitor for PJM, Docket No. ER16-372 (September 16, 2016) at n.59.

In its October 2016 Filing, PJM argued in support of a penalty implementation inconsistent with its August 2016 filed penalty provisions.¹⁰ PJM argued that penalties should not apply to dates prior to PJM notification to the Market Seller. In a footnote, PJM stated:

In the September 13, 2016 meeting of PJM's Markets Implementation Committee, the IMM noted that PJM's proposed language defining the variable "d", the number of applicable days in the proposed penalty calculation, did not make this concept entirely clear. If the Commission agrees that any revisions are needed to the definition of variable "d" to clarify that the penalty will apply beginning the day after a Market Seller is notified, PJM requests that the Commission order such revisions in a future compliance filing.

The Market Monitor noted on September 13, 2016, that PJM's interpretation is not consistent with the filed, and since approved, language.

In the February 2017 Order, the Commission did not accept PJM's appeal to change the formulation and applicability of the penalty, approving the language as filed in August 2016. The Commission reiterated that "the proposed penalty is cumulative for each hour of each Operating Day that a Market Seller submits a noncompliant cost-based offer."¹¹ To fail to apply penalties to inaccurate cost-based offers to dates prior to notification requires a substantive change to the approved language, not a clarification.

The July 31, 2017, Filing does not provide clarification. It proposes substantive changes to the penalty applicability. PJM now proposes that, in the usual case where the Market Seller corrects the cost-based offer prior to PJM notification, the penalty applies only to a single day. The proposed change is inconsistent with the filed and approved August 2016 language. The proposed change is inconsistent with PJM's incorrect interpretation in

¹⁰ See Answer of PJM Interconnection, L.L.C. to Protests and Comments, Docket No. ER16-372 (October 7, 2016) at 32-33.

¹¹ February 2017 Order at P78.

the October 2016 Filing. The approved and correct penalty language requires penalties for all identified inaccurate cost-based offers for every day on which they were submitted.

B. Penalties for All Inaccurate Cost-based Offers are Necessary to Provide Incentives for Accurate Cost-based Offers.

PJM argued in its October 2016 Filing that the Commission's Office of Enforcement is the proper authority to penalize inaccurate cost-based offers. In addressing PJM's proposal to not penalize inaccurate cost-based offers prior to PJM notification, PJM stated at 33:

[T]he Market Seller would still be disciplined for its past violation through a referral and/or self-report to the Commission's Office of Enforcement, which routinely addresses disciplinary actions against Market Sellers that make minor, good-faith errors when following Commission approved rules. Further, if such past errors were not made in good faith, even though the penalty would not apply, the offending Market Seller would be referred to the Commission which could then take appropriate, punitive action. Relying on the Commission's well established authority for disciplining past indiscretions, and a combination of that authority and application of PJM's proposed penalty for future infractions, is a more flexible and reasonable enforcement regime compared to the IMM's proposal.

Based on PJM's suggestions, nearly every case of an inaccurate cost-based offer would require a referral and/or self-report to cover the days, between submission of the inaccurate offer and PJM notification, that PJM did not apply a penalty. Nearly all cases include multiple days prior to notification. The Market Monitor can only detect inaccurate cost-based offers after the Market Seller submits them, and PJM can only notify the Market Seller at a later date.

The point of clear market rules is that market participants understand the requirements and the potential consequences of violating the rules. It would be counterproductive to refer a large number of cases related to penalties to the Commission's Office of Enforcement when there is no clear PJM rule about the applicability of penalties for the Office of Enforcement to enforce. The large volume of referrals would be ineffective

in achieving the desired result, which is to provide an incentive for Market Sellers to submit accurate offers. Accurate cost-based offers prevent the exercise of market power. The result of PJM's proposal would be an arbitrary application of penalties that would differ by Market Seller depending on the timing of PJM's notifications, in addition to permitting the exercise of market power during the period prior to notification. PJM's proposal is unfair to all the other Market Sellers who ensure that their offers comply with the market rules. PJM's proposal would weaken the incentive for Market Sellers to submit accurate cost-based offers in the PJM Energy Market, which are essential for market power mitigation to be effective.

There is an inherent lag between the time when the Market Monitor first detects an issue with a cost-based offer and the time when PJM notifies the Market Seller of the penalty. The Market Monitor's notification to the Market Seller lets the Market Seller know there is an issue, but no penalty would apply until PJM notified the Market Seller. Failure to penalize days prior to PJM notification gives Market Sellers an incentive to strategically delay responses to the Market Monitor's inquiries to validate costs. During a period when LMPs are high, a Market Seller could delay response to the Market Monitor's inquiries and delay correction of the cost-based offer. The Market Monitor would not be able to resolve the issue until a later time when LMPs are lower. Upon resolution of the issue with the Market Monitor, PJM notification could occur, and the single day penalty would be reduced. Such an outcome would clearly undermine the Commission's intent in ordering PJM to penalize inaccurate cost-based offers.

It is a fundamental principle in PJM markets that Market Sellers are responsible for their own offers. Market Sellers enter offers. PJM does not enter offers for Market Sellers. The IMM does not enter offers for Market Sellers. PJM's proposed approach would remove an important element of this responsibility for offers from Market Sellers and make penalties for inaccurate offers depend on the timing of PJM action rather than the Sellers' actions.

C. The July 31 Filing Improperly Seeks to Lower the Level of Currently Applicable Penalties.

The penalty provisions accepted by the Commission in the February 2017 Order (at PP 78–82) became effective on May 15, 2017. The Market Monitor and PJM have identified a number of Market Sellers submitting cost-based offers that do not comply with the applicable Fuel Cost Policy. In most cases, the Market Seller submitted an inaccurate cost-based offer each day beginning May 15, 2017, until contacted by the Market Monitor or PJM. As of August 9, 2017, the Market Monitor calculates the total applicable penalties to be \$771,202. PJM’s proposed changes to the current penalty calculation would instead result in total penalties of \$66,591. Regardless of the disposition of the July 31st Filing, the approved tariff language requires PJM to issue \$771,202 in penalties for the inaccurate cost-based offers identified prior to the July 31st Filing.

PJM characterizes its submittal as a compliance filing, but it is not a compliance filing. The Commission has not required or requested this filing. PJM has already submitted a filing in compliance with the relevant portion of the June 2016 Order, and the Commission has approved that filing.¹² Table 1 demonstrates why this filing is procedurally improper:

¹² June 2016 Order at P 63; February 2017 Order at PP 78–82.

Table 1. Timeline of PJM filings re penalties

June 17, 2016	FERC issues order directing changes to proposed provisions for calculating penalties.
August 16, 2016	PJM submits compliance filing proposing penalties for provision for calculating penalties.
Sept. 16, 2016	Market Monitor protests proposed penalty provisions.
Oct. 6, 2016	PJM answers protest.
February 3, 2017	FERC issues order approving PJM compliance filing, including penalties for provisions for calculating penalties.
March 5, 2017	Deadline for filing a request for rehearing of the February 3 rd order.
March 6, 2017	PJM submits filing in compliance with additional directives in the February 3 rd Order.
May 15, 2017	Provisions for calculating penalties become effective.
May 15–present	Participants incur penalties.
July 31, 2017	PJM files “amended compliance filing” proposing altered provisions for calculating penalties.

The issue concerning how to calculate penalties is closed in this docket.

If PJM wants to change these provisions, it must file pursuant to Section 205 of the Federal Power Act. Changes to Schedule 2 of the OA require a supermajority vote of PJM stakeholders.¹³ No stakeholder process concerning this issue has been initiated. Even if PJM

¹³ OA § 18.6(a).

eventually secures the necessary stakeholder authorization to submit a Section 205 filing, it would only become effective prospectively.¹⁴

Accordingly, the July 31st Filing should be rejected and PJM should be directed to calculate penalties in accordance with the effective rules.

D. PJM's Proposed Changes to the Offer Parameter Flexibility Rules Are Not Within the Scope of Compliance and Should Also Be Rejected.

PJM also filed proposed updates in the July 31st Filing to sections 1.10.9A and 1.10.9B of Schedule 1 to the Operating Agreement, which concern offer parameter flexibility. PJM characterizes these updates as clarifying changes to amend the March 6th Compliance Filing. The March 6th Compliance Filing was submitted to address additional compliance directives included in the February 3rd Order. The February 3rd Order accepted Sections 1.10.9A and 1.10.9B of the Operating Agreement, with only two revisions ordered.^{15 16} The first revision was unrelated to offer parameters, and the second revision was specifically related to Minimum Run Time. Both of these were addressed in the March 6th Compliance Filing. The proposed updates are improperly filed and should also be rejected.

Table 2 demonstrates why this filing is procedurally improper:

¹⁴ See, e.g., *Columbia Gas Transmission Corporation v. FERC*, 831 F.2d 1135 (D.C. Cir. 1987); *Columbia Gas Transmission Corporation v. FERC*, 844 F.2d 879 (D.C. Cir. 1987); *Columbia Gas Transmission Corporation v. FERC*, 895 F.2d 791 (D.C. Cir. 1990).

¹⁵ February 2017 Order at P 87 and P 112.

¹⁶ March 2017 Compliance Filing at 15–18.

Table 2. Timeline of PJM filings re parameters

June 17, 2016	FERC issues order directing changes to proposed provisions for real time offer update rules and offer parameter flexibility.
August 16, 2016	PJM submits compliance filing with tariff language defining offer update rules and parameter flexibility rules.
February 3, 2017	FERC issues order approving PJM compliance filing, including rules for offer parameter flexibility, with two revisions to OA Sections 1.10.9A and 1.10.9B.
March 5, 2017	Deadline for filing a request for rehearing of the February 3 rd order.
March 6, 2017	PJM submits filing in compliance with additional directives in the February 3 rd Order.
July 31, 2017	PJM files “amended compliance filing” proposing clarifying changes for offer parameters unrelated to the updates in March 6 th Compliance Filing.

Even if the Commission considers the proposals, they should be rejected for lack of merit. PJM’s proposed OA updates are not clear, and do not improve the current language in the indicated sections. If PJM would like to clarify the rules on offer parameter flexibility, it can clarify the rules in the PJM Manuals or in a filing under Section 205 with stakeholder approval.

II. CONCLUSION

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

Respectfully submitted,



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Dated: August 11, 2017

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 August, 2017.



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