

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

Independent Market Monitor for PJM)	
)	
v.)	Docket No. EL17-___-000
)	
PJM Interconnection, L.L.C.)	
)	

**COMPLAINT AND REQUEST FOR FAST TRACK TREATMENT
OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rule 206 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 files this Complaint and Request for Fast Track Treatment against PJM Interconnection, L.L.C., in connection with PJM’s determination to grant a Competitive Entry Exemption from the Minimum Offer Price Rule (“MOPR”) to a participant ineligible for such an exemption under the applicable rule.³ This complaint seeks issuance of an order directing PJM to rescind its incorrect determination to grant a Competitive Entry Exemption pursuant to Section 5.17(h)(7) of Attachment DD to the OATT.

¹ 18 CFR § 385.206 (2016).

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”).

³ See OATT Attachment DD § 5.14(h)(7).

I. COMPLAINT

PJM has determined to grant a Competitive Entry Exemption from the MOPR to a market participant. The participant is named here as “Genco” in order to avoid disclosure of market sensitive information.⁴ The Market Monitor disagrees with PJM’s determination because it is contrary to the requirement that a participant show that it is a “purely merchant resource.”⁵

Genco is a non-regulated generation company wholly owned by a parent company (“Parent”) that also wholly owns a regulated vertically integrated electric utility (“Utility”). Genco applied for a Competitive Entry Exemption for a Generation Capacity Resource (“Resource”) that it intends to offer in an upcoming RPM Auction (“Auction”). PJM and the Market Monitor reviewed the application under the process defined in the OATT.⁶

Genco applied to PJM for a Competitive Entry Exemption under the MOPR rules.⁷ The Market Monitor informed Genco and PJM that Genco was not eligible for a Competitive Entry Exemption. PJM nevertheless granted a Competitive Entry Exemption to Genco.

⁴ Identification of confidential terms “Genco,” “Parent,” “Utility,” “Resource” and “Auction” is provided in Attachment A. Because the complaint concerns the straightforward and general application of the law to facts, it can be understood without knowledge of the confidential details. The Market Monitor recommends that Attachment A remain nonpublic at least until the issuance of an order on complaint.

⁵ See *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 at P 54 (2013) (“The economics of a merchant resource, however, differ markedly from a resource built pursuant to a state contract. Because a purely merchant generator places its own capital at risk when it invests in a new resource, any such resource will have a strong incentive to bid its true costs into the auction, and it will clear the market only when it is cost effective.”), *order denying reh’g*, 153 FERC ¶ 61,066 (2015); OATT Attachment DD § 5.14(h)(7).

⁶ See OATT Attachment DD § 5.14(h)(9), Attachment M–Appendix § II.D.

⁷ The MOPR also permits Genco to apply for a Unit-Specific Exemption. OATT Attachment DD § 5.14(h)(6)&(8). Unless exempted, MOPR requires that Genco offer its Resource no lower than the MOPR Floor Offer Price. OATT Attachment DD § 5.14(h)(2).

It makes no difference material to the MOPR whether Genco or its Utility affiliate owns the Resource, yet PJM's determination depends solely on that distinction. If the determination is permitted to stand, it would create a significant loophole in the MOPR that would render the MOPR ineffective under similar conditions. Under PJM's approach, an affiliate of a utility with revenues based on cost of service regulation would be treated as if it were in the same competitive position as a standalone merchant generator. That is clearly not correct and that distinction is an important part of the reason for the MOPR.

The MOPR provides essential protection against the exercise of market power and essential protection for competitive market participants who invest in new generating facilities without the backing of a regulated utility or other nonmarket support.

In its order approving the Competitive Entry Exemption, the Commission explains:

[W]e find it reasonable for an RTO to propose tariff provisions to ensure that subsidized entry supported at the state level does not have the effect of disrupting the competitive price signals that PJM's wholesale capacity market protocols are designed to produce and on which PJM's market participants, region-wide, rely to attract sufficient capacity.⁸

In its rehearing order, the Commission states:

The economic justification for a competitive entry exemption is grounded in competitive market design principles where merchant, at-risk investment is disciplined by market forces.⁹

The current MOPR rule relies primarily upon carefully defined exemptions to the rule, including self supply, competitive entry and unit-specific review. To receive a Competitive Entry Exemption, a unit must demonstrate that it receives no subsidies, either

⁸ See *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090 at P 54 (2013), *order denying reh'g*, 153 FERC ¶ 61,066 (2015); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,022, *order denying reh'g*, 137 FERC ¶ 61,145 at PP 89–90 (2011).

⁹ See 153 FERC ¶ 61,066 at P 32.

directly or indirectly. Such demonstration is subject only to certain carefully defined exceptions that do not apply here.

A Competitive Entry Exemption allows a unit to avoid the requirement to offer no lower than the generally applicable MOPR Floor Offer Price and no lower than a level established based on a unit-specific cost review.¹⁰ A unit that qualifies for the Competitive Entry Exemption is permitted to offer at any level it chooses in the capacity market because in the absence of any direct or indirect subsidies it can be reasonably relied upon to behave competitively because the owners of the unit bear the entire risk of recovering their investment in the market.¹¹

The Commission explicitly intended the Competitive Entry Exemption to apply to “purely merchant” resources.¹² By “purely,” the Commission means “one hundred percent.”¹³ The Commission explicitly intended to protect merchant resources from price suppressing offers that reflect the “state cost-of-service rates ... financing model.”¹⁴ If any

¹⁰ See 143 FERC ¶ 61,090 at P 58 (“[W]e reiterate that failing to qualify for this exemption does not mean that a resource cannot participate in RPM or that it will automatically be mitigated to the full cost of new entry. We find only that such a resource may not receive a categorical exemption from the MOPR. Any such resource will still have the ability to have its individual net costs reviewed through the unit-specific review process”).

¹¹ See 143 FERC ¶ 61,090 at P 57 (“NRG argues that a purely merchant resource should not be permitted to suppress market clearing prices any more than a resource built pursuant to a state contract. The economics of a merchant resource, however, differ markedly from a resource built pursuant to a state contract. Because a purely merchant generator places its own capital at risk when it invests in a new resource, any such resource will have a strong incentive to bid its true costs into the auction, and it will clear the market only when it is cost effective.”).

¹² *Id.*

¹³ 153 FERC ¶ 61,066 at P 32 (“A resource can obtain a competitive entry exemption in either of two ways. [footnote omitted] The first is to show that one hundred percent of the revenues such investment earns must be derived by meeting market demand for energy, capacity, and ancillary services; and that no revenues are earned by non-by-passable charges to ratepayers.”)

¹⁴ 153 FERC ¶ 61,066 at P 35 (“We also do not find undue discrimination between restructured and traditionally-regulated states based on the differences between the eligibility requirements for the competitive entry exemption and the self-supply exemption. Both the competitive entry and self-

level of direct or indirect subsidies is ignored, such reliance is misplaced, the discipline afforded by the market and the assumption of risk is absent, competitive participants are inappropriately disadvantaged, and the competition based market design is undermined.

In order to demonstrate eligibility for the Exemption, Section 5.14(h)(7) provides in full:

A Capacity Market Seller may qualify a MOPR Screened Generation Resource for a Competitive Entry Exemption in any RPM Auction for any Delivery Year if the Capacity Market Seller demonstrates that the MOPR Screened Generation Resource satisfies all of the following criteria:

- i) No costs of the MOPR Screened Generation Resource are recovered from customers either directly or indirectly through a non-bypassable charge, except in the event that Sections 5.14(h)(7)(ii) and (iii), to the extent either or both are applicable to such resource, are satisfied.
- ii) No costs of the MOPR Screened Generation Resource are supported through any contracts having a term of one year or more obtained in any state-sponsored or state-mandated procurement processes that are not Competitive and Non-Discriminatory. The Office of the Interconnection and the Market Monitoring Unit may deem a procurement process to be “Competitive and Non-Discriminatory” only if: (A) both new and existing resources may satisfy the requirements of the procurement; (B) the requirements of the procurement are fully objective and transparent; (C) the procurement terms do not restrict the type of capacity resources that may participate in and satisfy the requirements of the procurement; (D) the procurement terms do not include selection criteria that could

supply exemptions are tailored to ensure that merchant resources that have no incentive to artificially suppress capacity prices are able to offer into the capacity auction at prices that are not subject to mitigation. In traditionally-regulated states, a large majority of load is typically satisfied by generation owned by the load serving entity and recovered through state cost of service rates. Because of this financing model, the competitive entry exemption is not applicable to resources developed through that model. PJM, therefore, appropriately developed the self-supply exemption to determine under this financing model whether an investment in new generation is consistent with a competitive market.”).

give preference to new resources; and (E) the procurement terms do not use indirect means to discriminate against existing capacity, such as geographic constraints inconsistent with LDA import capabilities, unit technology or unit fuel requirements or unit heat-rate requirements, identity or nature of seller requirements, or requirements for new construction.

- iii) The Capacity Market Seller does not have any formal or informal agreements or arrangements to seek, recover, accept or receive any (A) material payments, concessions, rebates, or subsidies directly or indirectly from any governmental entity connected with the construction, or clearing in any RPM Auction, of the MOPR Screened Generation Resource, or (B) other material support through contracts having a term of one year or more obtained in any state-sponsored or state-mandated procurement processes, connected to the construction, or clearing in any RPM Auction, of the MOPR Screened Generation Resource. These restrictions shall not include (C) payments (including payments in lieu of taxes), concessions, rebates, subsidies, or incentives designed to incent, or participation in a program, contract or other arrangement that utilizes criteria designed to incent or promote, general industrial development in an area; (D) payments, concessions, rebates, subsidies or incentives designed to incent, or participation in a program, contract or other arrangements from a county or other local governmental authority using eligibility or selection criteria designed to incent, siting facilities in that county or locality rather than another county or locality; or (E) federal government production tax credits, investment tax credits, and similar tax advantages or incentives that are available to generators without regard to the geographic location of the generation.
- iv) The Capacity Market Seller shall submit a sworn, notarized certification of a duly authorized officer, certifying that the officer has personal knowledge of, or has engaged in a diligent inquiry to determine, the facts and circumstances supporting the Capacity Market Seller's decision to submit a Sell Offer into the RPM Auction for the MOPR Screened Generation Resource and seek an exemption from the MOPR Floor Offer Price for such resource, and, to the best of his/her knowledge and belief: (A) the information supplied to the Market Monitoring Unit and the Office of Interconnection to support its exemption is true and correct and the resource is being

constructed or contracted for purposes of competitive entry by the Capacity Market Seller; (B) the Capacity Market Seller has disclosed all material facts relevant to the request for the exemption; and (C) the exemption request satisfies the criteria for the exemption.

The Competitive Entry Exemption request by Genco fails the core test: “No costs of the MOPR Screened Generation Resource are recovered from customers either directly or *indirectly* through a non-bypassable charge.”

Genco does not procure financing for its investment in capacity resources from the capital markets, based on its own financial profile. Genco instead receives financing entirely from the Parent. The cost of capital to the Parent and the availability of capital to the Parent are based on the Parent’s ownership of the Utility which receives revenues under regulated cost of service rates and not under market rates, and which comprises most of the Parent’s electric generation revenues. The investment in the Resource at issue in this proceeding was financed with funds provided by the Parent. The investment in the Resource at issue in this proceeding was not financed by the Genco in the capital markets based on Genco’s attributes.

Genco’s standalone cost of capital is higher than the regulated Utility’s cost of capital because Genco is smaller and because Genco is riskier because it does not have regulated revenues to cover all its costs, including the cost of capital. The Genco cost that is indirectly recovered through a non-bypassable charge is the difference between the Genco’s cost of capital and the Utility’s cost of capital. But for the fact that Genco is a subsidiary of the Utility, Genco’s cost of capital would be higher and its offer of the unit into the PJM capacity market would be correspondingly higher.

In order for Genco to qualify for a Competitive Entry Exemption, Genco would have to be treated the same as a standalone merchant generating company that must raise funds from the capital markets based on its expected performance in the PJM competitive markets. Genco has a cost of capital advantage as a result of being the Utility’s subsidiary which means that it is not in the same position as a standalone merchant generating

company and does not qualify for a Competitive Entry Exemption. In fact, Genco is the poster child for a unit that does not qualify for such an Exemption. This request by the Genco is the equivalent of the Utility requesting a Competitive Entry Exemption.

The stakes in this case are high. This generation is clearly not merchant generation, is clearly not competitive generation and represents exactly the type of subsidized generation that the MOPR was intended to address.¹⁵

A recent decision of the United States Court of Appeals for the District of Columbia Circuit magnifies the importance of the decision.¹⁶ One possible outcome of the remand ordered in that case is the elimination of the Unit-Specific Exemption from the MOPR. This would enhance the need for an effective MOPR and correct application of categorical exemptions to the MOPR, including, in particular, the Competitive Entry Exemption. Eligibility for the Self Supply Exemption is limited by the participant's supply portfolio relative to its load obligation. The Competitive Entry Exemption is limited only by a rigorous and correct application of the rule excluding eligibility for participants directly or indirectly receiving subsidies. If the requested application of the Competitive Entry Exemption were approved, it would provide an easy way to avoid the defined limits on the Self-Supply Exemption that applies to regulated utilities and to the Utility in this case.

¹⁵ See 135 FERC ¶ 61,022 at P 16 ("A capacity market will not be able to produce the needed investment to serve load and reliability if a subset of suppliers is allowed to bid noncompetitively to suppress market clearing prices....The lower prices that would result under ...[the] proposal [to eliminate the MOPR] would undermine the market's ability to attract needed investment over time. Although capacity prices might be lower in the short run, in the long run, such a strategy will not attract sufficient private investment to maintain reliability...The MOPR does not punish load, but maintains a role for private investment so that investment risk will not be shifted to captive customers over time."), quoting *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157, at P 90-91 (2009).

¹⁶ See *NRG Power Marketing, LLC, et al. v. FERC*, Slip. Op. Case No. 15-1452 (July 7, 2017). The D.C. Circuit has remanded to the Commission its decision directing PJM to retain the Unit-Specific Exemption in addition to the criteria-based exemptions included in PJM's Section 205 filing. The Commission could reject the filing, which would eliminate Competitive Entry Exemptions and render this proceeding moot or it could remove the requirement to include a Unit-Specific Exemption, which would mean total reliance on the criteria-based exemptions.

Accordingly, the Market Monitor requests that PJM be directed to rescind its incorrect determination to grant Genco a Competitive Entry Exemption pursuant Section 5.17(h)(7) of Attachment DD to the OATT.

II. REQUEST FOR FAST TRACK PROCESSING

The Market Monitor respectfully requests Fast Track processing under Rule 206(h), so that the Commission can act on this Complaint and direct PJM to rescind its determination on Genco's eligibility for a Competitive Entry Exemption before a noncompetitive offer is submitted in any RPM Auction.¹⁷ The Market Monitor further requests that all procedural deadlines be appropriately shortened consistent with Fast Track processing.

III. RULE 206 REQUIREMENTS

A. Rule 206(b)(1): Action or Inaction Alleged To Violate Statutory Standards or Regulatory Requirements

A description of the action violating regulatory requirements is set forth in Section I.

B. Rule 206(b)(2): Legal Bases for Complaint

The legal bases for this Complaint are set forth in detail in Section I.

C. Rules 206(b)(3) and 206(b)(4): Issues Presented as They Relate to the Complainant and Quantification of Financial Impact on Complainant

A description of the potential impact is provided in Section I.

D. Rule 206(b)(5): Nonfinancial Impacts on Complainant

A description of the potential nonfinancial impact is provided in Section I.

E. Rule 206(b)(6): Related Proceedings

Complainant is not aware of any other pending proceedings that are directly related to the issues raised in this Complaint.

¹⁷ 18 CFR § 285.206(h).

F. Rule 206(b)(7): Specific Relief Requested

The complaints requests issuance of an order directing PJM to rescind its incorrect determination to grant to Genco a Competitive Entry Exemption pursuant Section 5.17(h)(7) of Attachment DD to the OATT.

G. Rule 206(b)(8): Documents that Support the Complaint

This pleading and its attachments support the complaint.

H. Rule 206(b)(9): Dispute Resolution

The Market Monitor has not contacted the Enforcement Hotline or Dispute Resolution Service or made use of the tariff-based dispute resolution mechanisms. Such mechanisms are neither intended nor appropriate for resolving disputes of this nature.

I. Rule 206(b)(10): Form of Notice

A form of notice suitable for publication in the Federal Register is included as an Attachment B.

J. Rule 206(c): Service on Respondent

The Market Monitor certifies that copies of this Complaint were served by email and overnight mail on Respondent.

IV. COMMUNICATIONS

All communications with respect to this pleading and in connection with this proceeding should be addressed to the following:

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V. CONCLUSION

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

Respectfully submitted,



Jeffrey W. Mayes

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Dated: July 21, 2017

¹⁸ Designated to receive service.

¹⁹ Designated to receive service.

Attachment B

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Independent Market Monitor for PJM

v.

PJM Interconnection, L.L.C.

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Docket No. EL17-____-000

NOTICE OF COMPLAINT
(____, 2017)

Take notice that on July 20, 2017, pursuant to section 206 of the Rules and Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR § 385.206 (2016), Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (Complainant) filed a formal complaint against PJM Interconnection, L.L.C. (Respondent) requesting that the Commission direct Respondent to rescind its incorrect determination to grant a Competitive Entry Exemption pursuant Section 5.14(h)(7) of Attachment DD to the PJM Open Access Transmission Tariff.

The Complainant states that copies of the complaint were served on representatives of the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR §§ 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent’s answer and all interventions, or protests must be filed on or before the comment date. The Respondent’s answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, DC. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on __, 2017.

Kimberly D. Bose,
Secretary