UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	)	Docket No. ER18-86-000

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

Pursuant to Rules 212 and 213 of the Commission's Rules and Regulations, Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM ("Market Monitor"), submits this answer in support of the request for hearing and clarification of the order issued in this proceeding on January 12, 2018, filed by PJM Interconnection, L.L.C. on February 9, 2018.[1] [2] [3] PJM's argument for rehearing should be granted. PJM's filing was not "patently deficient" and should not have been rejected without consideration on the merits.[4] The existing record supports approval on the merits.

In the event that rehearing is denied, the Market Monitor supports PJM's request for clarification. Clarification that PJM can refile the same proposal is needed, along with an explanation of the additional information, if any, needed to assist the decision making process.

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1 18 CFR §§ 385.212 & 385.213 (2017).

2 Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff ("OATT") or the PJM Operating Agreement ("OA").

3 *See PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,019 (2018) ("January 12th Order").

4 *See* PJM at 5.

The Market Monitor believes that PJM's proposed rules will allow the continued use of virtual Up To Congestion Transactions ("UTCs") in PJM's market while mitigating their harm to the competitiveness and efficiency of PJM's markets. In the absence of PJM's proposed rules, UTCs should be eliminated from the PJM market.

I. ANSWER

A. Rehearing Should Be Granted.

PJM states (at 10–11):

> … [T]he Commission's rejection of PJM's uplift allocation proposal was based entirely on unexplained and largely ambiguous findings that PJM had not 'persuaded' the Commission that cleared UTCs impact the market in a manner identical to that of cleared INCs and DECs.[footnote omitted] The Commission merely theorized 'the possibility' that INCs and DECs 'may not clear [the market]' in precisely the same manner, [footnote omitted] and that PJM's allocation of uplift costs to UTCs had not been quantified in a way that demonstrated the amount of uplift caused by UTCs was commensurate with the level of allocated costs. [footnote omitted]

The Market Monitor agrees. The record includes information sufficient to support a finding that PJM's proposed market rule allocates uplift in a manner that is just and reasonable and not discriminatory.

PJM states (at 11) that the Commission's "theoretical concerns are not merely unsupported, they are contradicted by the facts." As PJM showed in the October 17 Filing, once a UTC clears, it impacts the market in the same way as a paired INC and DEC. [footnote omitted] (at 11).

The IMM agrees that UTCs, unlike paired INCs/DECs, do not clear an injection and a withdrawal unless both clear. This fact is irrelevant to the impacts on operations and the proper assignment of uplift. This difference does explain how UTCs differ from other market transactions, does explain why UTCs unfairly benefit financial market participants at the expense of other participants, does explain why PJM stakeholders rejected the

identical spread bidding product in 2009 and does explain why a supermajority support properly assigning uplift to UTCs in this proceeding.[5]

Contrary to the January 12 Order (at P 44), there is no risk of 'allocat[ing] uplift to a UTC twice.' Once they are cleared, the source position of a UTC has the same market impact as an INC position at that point, and the sink position of the UTC has the same impact as a DEC position at that point. Generators and load, both physical transactions and INCs/DECs, receive an allocation of uplift at each point of injection or withdrawal at a location on the system. UTCs include both an injection and a withdrawal, each at different locations on the system each with different system impacts. Injections and withdrawals in the Day Ahead Energy Market have identical impact regardless of the nature of associated transaction.

Deeming the UTC to be one 'transaction' (as the January 12 Order, at P 44, seems to do) does not change that economic reality. PJM's proposed rule allocates uplift to the injection component of the UTC and to the separate withdrawal component of the UTC. A generator and an INC have only one component, an injection. A load and DEC have only one component, a withdrawal. A generator and a customer in a bilateral transaction are responsible for an allocation of uplift at both the point of injection and withdrawal. A paired INC and DEC are responsible for an allocation of uplift at both the point of injection and withdrawal. Allocation of uplift for each point of injection and withdrawal separately is appropriate because each action imposes separate and equivalent costs on the operation of the system. Information included in the record of this proceeding establishes this fact.[6]

Currently, the rules allocate no uplift to UTCs, even though the injections and withdrawals by UTCs affect the markets in same way as other injections and withdrawals

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[5] Meeting of the PJM Markets Implementation Committee (MIC), September 10, 2009; PJM filing, ER18-86-000 (Oct. 17, 2017) at 14.

that do pay uplift. No evidence supporting a zero allocation of uplift to UTCs as just and reasonable and nondiscriminatory under Section 205 of the Federal Power Act has ever been provided.

The issue of uplift allocation was deemed out of scope of the order recognizing the "evolution" of UTCs into the market rules.[7] The history of the origins of UTCs accounts for why the PJM market rules lack basic terms and conditions necessary to treat UTCs, consistent with other injections and withdrawals, in a just, reasonable and nondiscriminatory manner, and why PJM's corrective action, supported by a supermajority of PJM stakeholders, filed in this proceeding is long overdue.

UTCs and all rates associated with UTCs are exposed to challenge under the filed rate doctrine, if market participants should ever decide to pursue such potentially disruptive claims.[8] The transition of UTCs from a physical scheduling product to Virtual UTCs appeared in the PJM market design without being first approved by stakeholders, included in a Section 205 filing by PJM or receiving review and approval by the Commission. PJM implemented virtual UTCs without authorizing tariff provisions as early as 2000, apparently relying on certain rules applicable exclusively to physical Bilateral Transactions, known as "up to congestion" transactions.[9] The exact date is unclear because,

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7 *Id*. at PP 19, 29.

8 *See*, *e.g.*, Maislin Industries, US, Inc. v. Primary Steel, Inc., 497 U.S. 116 (1990).

9 PJM explained in its 2013 filing (Docket No. ER13-1456-000 at 11-12 (June 10, 2013)): "Despite the long-standing historical use of these products, neither has been clearly defined in the Tariff or Operating Agreement. For this reason, PJM proposes to incorporate a definition of an Up-to Congestion Transaction, further define a "Virtual Transaction" as inclusive of an Up-to Congestion Transaction, and distinguish an Up-to Congestion Transaction from a Decrement Bid and Increment Offer." PJM's proposal did not define or clarify virtual UTCs, it created them. The provisions that PJM modified explicitly included, by definition, only transactions that "contemplate the physical transfer of energy." *See* OA Schedule 1 §§ 1.10.1A(c), 1.7.10. Rules for physical "up to" transactions had been included in the rules since June 1, 2000. *See PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,121 at P 3 (2013). *Id.* When UTCs based on virtual transactions were first used is unclear.

unlike physical sales and INCs/DECs (which were developed by PJM stakeholders, filed under Section 205 and reviewed and approved by the Commission), there is no original "effective date" for virtual UTCs. On two occasions, most recently in 2009, PJM stakeholders explicitly voted against a proposal to formally include a spread bidding product in the market rules, primarily because the proposal did not properly allocate uplift to such product.[10] Rule changes to up to congestion transactions in 2010 removed scheduling point limitations and the requirement to purchase associated transmission service. These rule changes significantly reduced the cost of UTCs and significantly increased the volume of virtual UTCs, even though the tariff's express limitation of such transactions to those that "contemplate the physical transfer of energy" remained.[11] The virtual UTCs defined in 2013 operate exactly like the spread bidding product that had been rejected by PJM members for the reason that there was no agreement on assigning uplift to these transactions. The Commission acknowledged virtual UTCs as a fait accompli in orders issued in 2013, as long as thirteen years after virtual UTCs may have first appeared in PJM markets.[12]

As a consequence of UTC's extra legal origins, there has never been a proper and complete regulatory review of UTCs and how they fit in the markets, including the proper allocation of uplift. The uplift allocation rules specifically apply to physical transactions and

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Id. at P 5. PJM's proposal was approved as a clarification, when, in fact, it operated to add a distinct new product to the PJM market rules. This new product was the same virtual product, referred to as "spread bidding," that PJM stakeholders refused to authorize PJM to include in the rules in 2009. The Commission approved the clarification, but never considered whether the new virtual product and the terms and conditions for the use of such product were just, reasonable and nondiscriminatory.

10 Meeting of the PJM Markets Implementation Committee (MIC), September 10, 2009.

11 *See* 2011 State of the Market Report for PJM, Vol. II (March 15, 2012) at 212–215.

12 *See* 144 FERC ¶ 61,121 at P 19; *see also*, *PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,039 (2017).

INCs/DECs because those types of transactions were included in the tariff through lawful processes. The rules did not and could not allocate uplift to virtual UTCs during the period from 2000 to 2013 because UTCs did not actually appear in the filed rules.

B. If Rehearing Is Denied.

If rehearing is denied, clarification is needed. PJM states (at 14):

> PJM seeks clarification that such order does not preclude PJM in the future from submitting, and the Commission approving, an uplift allocation proposal that is the same as, or substantially similar to, the proposal presented in PJM's October 17 Filing.

Such clarification is necessary in order to ensure that PJM's proposed just and reasonable and nondiscriminatory approach to allocating uplift to UTCs can be included in the PJM market rules. If PJM cannot include UTCs in the markets in a form that limits their established harmful impacts on market efficiency, then UTCs should be eliminated from the PJM market design. Removal of UTCs would enhance the competitiveness and efficiency of PJM markets. Removal of UTCs would reduce the exposure of PJM markets to manipulation.

II. MOTION FOR LEAVE TO ANSWER

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answers 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.[13] In this answer, the Market Monitor provides the

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[13] *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); *N.Y. Independent System Operator, Inc.*, 121 FERC ¶61,112 at P 4 (2007) (answer to protest accepted because it provided information that assisted the Commission in its decision-making process).

Commission with information useful to the Commission's decision-making process and which provides a more complete record. Accordingly, the Market Monitor respectfully requests that this answer be permitted.

III. CONCLUSION

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

Respectfully submitted,

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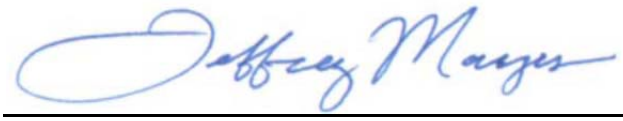
Dated: February 16, 2018

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 16th day of February, 2018.



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