UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C.	)	Docket No. ER20-83-000

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

Pursuant to Rules 212, 213 and 214 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"), submits this answer to the pleading submitted by H-P Energy Resources LLC on November 12, 2019 ("H-P"), moving for rejection of the Market Monitor's comments filed November 7, 2019 ("November 7th Comments") and answering such comments. H-P's arguments for rejecting the November 7th Comments have no merit, but, to whatever extent it is necessary, the Market Monitor moves to intervene out of time. The Market Monitor does not oppose H-P's motion to intervene. On the contrary, H-P's arguments provide an opportunity to further develop the record explaining why the use of Incremental Auction Revenue Rights ("IARRs") to compensate competitive transmission projects is not viable from a developer's perspective, discriminates against the holders of Auction Revenue Rights ("ARRs") and operates contrary to the core market design objectives for ARRs. Accordingly, the Market Monitor moves for leave to answer H-P's comments.

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1 18 CFR §§ 385.212, 385.213 & 385.214 (2019).

I. ANSWER

A. Long Standing Practice Does Not Excuse Failure to Address Market Design Flaws When They Are Identified.

H-P states (at 3) that "[t]wenty years ago, in 1999, PJM went through a stakeholder process and received unanimous Members Committee support for the IARR construct that it filed with the Commission in 1999, and which the Commission accepted with no opposition in 2000."[2] H-P states (at 4) that "no PJM Member … has advocated the elimination of the IARR construct to the Commission." H-P goes on to argue (at 6) that "[n]othing in the Comments addresses any of the 20 year history of stakeholder support, adoption in every RTO in this country, and the many Commission Orders mandating the IARR construct that the Market Monitor would summarily eliminate."

Long standing practice and a lack of prior objections do not preclude changes when warranted or when an issue is better understood. Lack of opposition to the IARR process is hardly surprising because the process has been largely unused. TranSource was an exception, and TranSource's experience attempting to build a project under the existing process revealed that the rules for compensating competitive projects through IARRs are not viable and cannot be made viable. Now is the best time to correct the error to prevent future harm.

The current IARR process and resulting IARR reward structure were approved under the premise that any IARR rights granted for a transmission upgrade would not infringe on any existing rights. In Order No. 681 (at P 215), the Commission stated that parties that fund upgrades and expansions to acquire IARRs "are not entitled to obtain

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[2] Citing PJM Filing, Docket No. ER00-941-000 (December 29, 1999); *PJM Interconnection, L.L.C.*, 90 FERC ¶ 61,334 (2000).

transmission rights to existing transmission capacity held by others."[3] Since PJM's compliance filing with Order No. 681 it has been presumed that PJM's simultaneous feasibility process for granting IARRs was consistent with this directive and any IARRs granted by PJM's approved process would not infringe on any existing rights.[4] This presumption is false.

The entire basis for the lengthy litigation that culminated in this proceeding was a lack of transparency in the actual process of modeling and awarding IARR requests through a simultaneous feasibility study. The actual process for awarding IARRs in PJM has been unclear since 1999 and was not clarified in any practical and public way until Opinion No. 566.[5] The basis for PJM's compliance filing is the work that the Market Monitor and PJM conducted over several months to define a documented, transparent process for performing IARR analysis. In the process of clarifying and documenting PJM's IARR process, the effect of the incompatible interaction among IARRs, the ARR/FTR construct and PJM's administrative goal of guaranteeing full funding of FTRs on pre-existing ARR rights held by load became clear. IARRs, awarded wholly as guaranteed Stage 1A rights within the ARR/FTR construct, are guaranteed at the expense of a portion of existing ARR rights.

Protecting the rights of ARR holders should be a core goal. Competitive transmission projects can be compensated in other ways that do not infringe upon ARR rights. The superficial appeal of using IARRs to compensate competitive transmission projects does not justify the unjust, unreasonable and unduly discriminatory results that become evident after a detailed review of how these rules actually operate.

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[3] *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, 116 FERC ¶ 61,077 (2006).

[4] PJM Filing, Docket No. ER06-1218-000 (July 3, 2006).

[5] *TranSource, LLC v. PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,119 (2019).

Contrary to H-Ps assertions about prior objections, the Market Monitor has recommended that the direct customer request approach for creating and allocating IARRs should be eliminated from PJM's tariff since 2018.[6]

B. There Are No IARR Driven Projects in Queue.

H-P argues (at 6) that "[t]he claim that the construct 'serves no useful purpose because it is unlikely to identify viable projects' is undercut by projects described to the Commission involving IARR awards." H-P failed to identify even one project that was a competitive transmission project based on IARR revenues. H-P also failed to note the insignificant total level of IARR projects over the 20 years of the PJM market.

H-P confuses IARRs awarded to projects that were built for a defined purpose and that were economically viable on a standalone basis (reliability or generation interconnection) that qualified for an IARR award as an ancillary matter, and IARRs awarded to projects that were designed for the primary purpose of claiming IARRs and being fully compensated by the IARRs awarded to the project. The total MW of IARRs is quite low. It appears that most or all of these IARRs qualified as ancillary benefits of viable projects rather than being the primary source of revenue.

The rewriting of the IARR process revealed that the process previously in place could not be applied in any reasonable way. There have been very few if any IARRs granted to competitive transmission providers in the 20 year history of the provision.

C. The Process Creates Confusion.

H-P claims (at 6) that the Market Monitor's statement that '[i]ncluding the process in the tariff creates confusion….' is "unsubstantiated and is belied by its existence and expansion in the PJM Tariff for 20 years without any evident confusion." TranSource's

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[6] *See, e.g., 2018 State of the Market Report for PJM*, Vol. 1 (March 14, 2019) at 14 ("The MMU recommends that the direct customer request approach for creating and allocating IARR should be eliminated from PJM's tariff.").

experience is strong evidence of the existence and the costs of confusion. It is confusing when rules seem to offer a meaningful opportunity to compete, but do not. There is no basis for the assertion that, under the rules, economically viable projects based solely on IARRs are possible, yet that is what the current rules imply.

The Market Monitor believes that the record generated in this proceeding more than fully substantiates the assertion that the IARR process as defined in the tariff was and is confusing. The settlement order was due to the Commission recognizing the confusion caused by the existing tariff and requiring that the process be clarified.

The fact that H-P can cite to zero competitive transmission projects that have received IARRs is evidence that the process is confusing and unworkable.

Even as clarified, the existence of the tariff provision that contemplates granting IARRs in cases where the IARR revenue is the sole or primary basis for the project assumes, without any basis, that the IARRs awarded would justify the capital investment. In order for a transmission project to result in IARRs, the project must create simultaneously feasible incremental market flow capability in PJM's ARR market model, over and above all system capability being used by existing allocated ARRs and/or the system capability that would be used by granting any prorated outstanding ARR requests, in the ARR market model. The market model, which includes flows from all system capability being used by existing allocated ARRs and/or system capability that would be used by granting any prorated outstanding ARR requests, has little if any residual capacity available and a significant number of binding, limiting constraints that would need to be relieved in order to make IARRs available. Based on the Market Monitor's evaluation of actual data involved in this case, the market model used to allocate ARRs is fully subscribed. Given the current allocation of existing ARRs relative to system capability, the upgrades needed to produce IARRs under this approach are prohibitively expensive and impractical and would be very unlikely, on their own, to justify a merchant project.

While PJM's process is now more transparent, that transparency reveals that identifying a viable project is effectively impossible. Maintaining an inherently nonviable

IARR process will continue to create unnecessary confusion and adds nothing to the development of competitive transmission.

D. Standalone IARRs Are Compensated and Guaranteed at the Expense of Pre-existing ARR Rights.

H-P argues (at 6) that IARRs cannot be compensated and guaranteed at the expense of ARR rights because the IARR project construct "compensates IARR project sponsors for the incremental system capability that the sponsors create and pay for sponsors for the incremental system capability that the sponsors create and pay for."

H-P's arguments depends on the false assumption that the simultaneous feasibility requirement guarantees that any IARR rights granted by a qualifying project will not be guaranteed at the expense of other pre-existing rights. H-P's assumption is not correct. What matters is how IARRs, awarded as Stage 1A rights, would actually interact with the process of allocating annual and long term ARRs in PJM's market.

Granting Stage 1A status to IARRs represents preferential treatment of IARR rights relative to the set of existing ARR rights belonging to load. Only a subset of the ARR rights paid for by load and allocated to load are treated as Stage 1A rights. Stage 1A rights are given absolute priority in PJM's annual allocation process, over and above later stage requests to claim existing system congestion rights by PJM load. This means that when the annual market model used to allocate existing ARR rights in a given year cannot simultaneously support all Stage 1A ARR requests, the system model is modified to make the Stage 1A ARR requests feasible. When this occurs, the result is a model that will, absent any other adjustments, result in an over allocation of congestion rights relative to expected congestion. The resulting market model artificially supports all the Stage 1A ARR requests and artificially reduces the amount of remaining later tier ARR requests from other rights holders. This means that the Stage 1A ARRs, including all IARRs, are sustained at the expense of other preexisting congestion rights, and for IARRs in violation of Order No. 681.

As a result of the actual way the process works, granting IARRs would create new Stage 1A ARRs which by definition will reduce the ARRs available to other ARR holders.

E. The Issue Is Not Changes in Topology Over Time, the Issue Is the Priority Status of IARR over Pre-existing Rights.

H-P argues (at 7) that "[t]he Market Monitor's relatively new objection to the Commission mandated and approved IARR construct in PJM (and other RTOs) appears to arise from the fact that system topology may change over time." H-P argues (*id*.) that "a given upgrade may, from year to year, provide more or less system capability than the IARRs awarded." H-P asserts (at 8) such variation is expected but "Capital investment requires a reasonable level of confidence, as was explicitly recognized in Order No. 681."

H-Ps' assertion is incorrect.

The Market Monitor's objection is based on the fact that IARRs are awarded as Stage 1A rights. Granting Stage 1A status to IARRs creates preferential treatment of IARR rights relative to the existing ARR rights belonging to load.

The network customer with ARR rights pays for network service and access to the entire network. Existing ARR rights are based on capital investments that predate and have been paid for by load. However, the distinctions among the portion of system that can be granted to ARR holders via the Stage 1A ARR rights, Stage 1B ARR rights and Stage 2 rights of a network customer are arbitrary, based on lowest peak load MW (for total source to sink MW that can be requested as Stage 1A rights) and maximum peak load MW (for the total source to sink MW that can be requested as Stage 1B and Stage 2 rights) of the customer. On the other hand, all IARR rights granted from a project are treated as Stage 1A.

The disparate treatment means that a network customer can pay the same network service fee every year, but have a different set of feasible ARRs to offset their congestion every year, while a project owner with an IARR gets the same ARRs to offset their congestion every year. The actual result is that IARR rights, if granted, would be granted at the expense of network service customer rights, in violation of Order No. 681, despite the fact that the IARR was intended to be simultaneously feasible with all existing rights.

F. There Has Been a Change in Circumstance.

H-P argues (at 9) that "[t]he Market Monitor posits no change of circumstances from the inception of IARRs 20 years ago, or from when Order No. 681 was issued and implemented."

H-Ps' assertion is incorrect.

There have been at least three changes in circumstances.

First, ARRs did not exist in 1999 and therefore the impact of IARRs on pre-existing ARR rights could not have been accounted for. ARRs were created in 2003.

Second, due to the work done to make PJM's IARR process more transparent, it has become clear that any IARR rights granted to a qualifying project can only be guaranteed at the expense of other pre-existing ARR rights.

Third, in 2014/2015 PJM stepped up their efforts to guarantee the payment of FTR target allocations. The result was to significantly exacerbate the negative impact of IARRs on existing ARRs. The full implications of PJM's change in how it administered the ARR/FTR market were not realized until the IARR process was documented in detail and the interaction between IARRs and the PJM ARR/FTR Market was better understood. PJM began to guarantee the payment of FTR target allocations by significantly restricting the market model used to allocate ARRs and FTRs.

PJM's reduction in ARR holders' rights caused a cross subsidy between Stage 1A ARRs and other ARR rights. This change in PJM behavior was identified by the Commission as a change in circumstances and used to justify sweeping changes to the ARR/FTR construct.[7]

The increased subsidization of Stage 1A ARRs at the expense of other ARRs exacerbated the crowding out impact of IARRs, which are exclusively Stage 1A ARRS, on

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[7] *See* IMM, et al. v FERC, Case No. 17-1101 (D.C. Cir. June 12, 2017).

ARR holders. Preventing this unduly discriminatory result is part of the reason for the Market Monitor's recommendation that the process for customer request driven IARR be eliminated.

G. IARRs Should Be Eliminated.

H-P argues (at 9) that "the Market Monitor seems to be asking that the ability of customers to request IARRs (and pay for the requisite upgrades) be eliminated, but its objection to the hypothetical ability of IARRs to reduce other ARRs would, if valid, be applicable to all other IARRs such as those awarded to generation interconnection customers and "Responsible Customers" that pay the cost of upgrades which increase system capability." H-P goes on to state (at 9) that "[t]he Market Monitor does not explain why it would be just and reasonable for that value to be denied to such entities that pay for an upgrade which increases system capability."

The Market Monitor recommends that IARRs be eliminated.

H-P is correct that the issues raised by the Market Monitor with regard to the IARRs being guaranteed at the expense of other ARR rights means that IARRs, regardless of source, should be eliminated.

The Market Monitor supports increased competition to provide transmission using market mechanisms. The IARR process is not a viable mechanism for facilitating competitive transmission investments. Continuing to pretend that the IARR process is viable may impede the search for real solutions.

II. MOTION FOR LEAVE TO INTERVENE OUT OF TIME

To the extent that is necessary for the Commission to accept its November 7th Comments, the Market Monitor requests that it be allowed to intervene out of time.

The November 7th Comments are filed under Rule 211, which do not require a motion to intervene.[8] Status as a full party is unnecessary in this case because the Market Monitor does not request any relief or other action in this proceeding, but, instead, recommends that the Commission open an investigation in a new proceeding.[9] Accordingly, the comments can accepted be with granting the Market Monitor party status.

If the Commission determines that it cannot accept the November 7th Comments unless the Market Monitor intervenes in Docket No. ER20-83, then the Market Monitor requests that such intervention be granted.

Attachment M to the OATT requires that the Market Monitor, among other things, monitor "[c]ompliance with the PJM Market Rules," "[a]ctual or potential design flaws in the PJM Market Rules," "[s]tructural problems in the PJM Market that may inhibit a robust and competitive market," "[t]he potential for a Market Participant to exercise market power or violate any of the PJM or FERC Market Rules or the actual exercise of market power or violation of the PJM or FERC Market Rules," "PJM's implementation of the PJM Market Rules or operation of the PJM Markets, as further set forth in Section IV.C" and "[s]uch matters as are necessary to prepare the reports set forth in Section VI."[10] As this proceeding implicates matters within the Market Monitor's purview, it is in the public interest that the Commission grant this motion. Rule 214 provides that the Commission may grant

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[8] *See* 18 CFR § 385.211(a) ("Any person may file a protest to object to any application, complaint, petition, order to show cause, notice of tariff or rate examination, or tariff or rate filing… The filing of a protest does not make the protestant a party to the proceeding").

[9] H-P argues (at 2) that the Market Monitor's pleading "cannot logically be a protest" because it "'does not oppose the October 10th Filing.'" The Commission routinely accept comments that do not oppose or even support a proposal. There is no reason to create an exception to long standing practice just for this case. In fact, there is less reason for an exception, because the point of the comments is to explain the fundamental flaw in the PJM market design in attempting to compensate competitive transmission development through IARRs. The November 7th Comments are decidedly critical, not supportive.

[10] OATT Attachment M §§ II & IV.B.

interventions where "[t]he movant's participation is in the public interest." 18 CFR § 385.214(b)(2)(iii); *see also* 154 FERC ¶ 61,118. 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. The Market Monitor participated in Docket No. EL15-79-000, which directed preceded this compliance proceeding. Accordingly, the Market Monitor moves that the Commission grant it leave to intervene and afford to it full rights as a party to this proceeding.

The Market Monitor respectfully moves to intervene out of time in this proceeding. Rule 214(d) of the Commission's regulations provides that, in acting on any motion to intervene filed out of time, the Commission will consider whether: (i) the movant has good cause for failing to file the motion within the time prescribed; (ii) the granting of the motion will disrupt the proceeding; (iii) the movant's interest is not adequately represented by other parties in the proceeding; (iv) any prejudice to, or additional burdens upon, the existing parties might result from permitting the intervention; and (v) the motion conforms to the regulations set forth in Rule 214(b).

The following factors should weigh in the consideration of this motion to intervene out of time. First, the Market Monitor believed that intervention is not required to file comments and that it was already a party to the ER20-83-000. This proceeding is the compliance phase of Docket No. EL15-79, a proceeding in which the Market Monitor timely intervened and actively participated. Second, the Market Monitor agrees to accept the record as it has developed to the date of the granting of this Motion. Third, the Market Monitor has a unique and substantial interest in this proceeding, which cannot adequately be represented by any other party. Fourth, granting the Market Monitor's motion will neither prejudice nor place additional burdens upon the existing parties to this proceeding. Fifth, the Market Monitor's motion complies with the requirements of Rule 214(b). Good cause thus exists for this motion, and the Market Monitor respectfully requests that the Commission grant its motion to intervene out of time.

III. 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.[11] 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. Accordingly, the Market Monitor respectfully requests that this answer be permitted.

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[11] *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).

IV. CONCLUSION

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

Respectfully submitted,

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Dated: November 26, 2019

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 26th day of November, 2019.

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