

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

Albemarle Beach Solar, LLC; Mechanicsville Lessee, LLC; AB Lessee, LLC)	Docket Nos. ER20-2845-001; ER20-2846-001; and ER20-2847-001
Harts Mill Solar, LLC)	Docket No. ER20-2881-001
)	(not consolidated)
)	
)	

**MOTION FOR CLARIFICATION
OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rule 212 of the Commission’s Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM² (“Market Monitor”), respectfully moves for clarification of the orders issued December 9, 2020.³ Each proceeding involves an application for new market based rate authorization, including for sales in PJM markets. In each case, the applicant relied upon PJM market power mitigation rules, which apply to all sellers regardless of their size, to support market based rate authorization in lieu of submitting information establishing lack of market power.⁴ The Market Monitor explained that the PJM market power mitigation rules could not be relied

¹ 18 CFR § 385.212 (2020).

² Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”).

³ See *Albemarle Beach Solar, et al.*, 173 FERC ¶ 61,215 (“ABS Order”); *Harts Mill Solar, LLC*, 173 FERC ¶ 61,216 (“Harts Mill Order”).

⁴ *Refinements to Horizontal Mkt. Power Analysis for Sellers in Certain Reg’l Transmission Org. & Indep. Sys. Operator Mkts.*, Order No. 861, 168 FERC ¶ 61,040 at PP 22 (2019), *order on reh’g*, Order No. 861-A, 170 FERC ¶ 61,106 (2020).

upon to prevent the exercise of market power by applicants, regardless of their size. The Market Monitor requested that any grant of market based rate authorization be conditioned on a requirement that sellers “submit competitive offers in the energy market and in the capacity market.”⁵ In both proceedings, an order was issued approving the request for market based rate authorization and rejecting the Market Monitor’s request for conditions raised in its protest based on the rationale that the Market Monitor had “not met its burden to demonstrate that Sellers have market power in the PJM energy and capacity markets.”⁶ The Market Monitor requests clarification of the process and evidence required for a successful rebuttal of the presumption that PJM market power mitigation is sufficient to support an applicant’s market based rate authorization.

I. MOTION

A. Request for Clarification

The orders state:

In order to effectively challenge a seller’s market-based rate authority, a party must demonstrate both that the seller has market power and that the existing mitigation does not adequately mitigate that market power.[citing Order No. 861 at PP 25–27] Thus, in this case, the IMM would need to show that Sellers have market power that is not adequately mitigated by Commission-approved PJM market monitoring and mitigation.⁷

The orders appear to combine the two demonstrations defined in Order No. 861 into a single requirement. The Market Monitor requests clarification that Order No. 861 describes two separate demonstrations and does not require that the two demonstrations be combined.

⁵ ABS Order at P 24; Harts Mill Order at P 24.

⁶ ABS Order at P 32; Harts Mill Order at P 32.

⁷ ABS Order at P 27; Harts Mill Order at P 27.

Regarding the first demonstration, Order No. 861 (at P 27) states that intervenors are not required to file indicative market power screens but that the Commission may request indicative screens from the applicant if intervenors demonstrate that the RTO market power mitigation is insufficient.

The Market Monitor demonstrated that market power mitigation is insufficient. The Commission did not request indicative screens from the applicants. The Market Monitor agrees that, in these cases, indicative screens would not be useful or dispositive.

As incorporated in the RTO market power mitigation rules, in a network based market like PJM, with locational marginal prices that are a function of transmission constraints and generator offers and locational demand, any market seller may have market power at any time depending on changing system conditions. The indicative screens are not sufficiently detailed to show all instances of historic market power and cannot definitively establish that market power will not exist in a dynamic network based, locational market.

But that means that there is an open question about the next steps.

The ABS Order states that “the IMM would need to show that Sellers have market power that is not adequately mitigated by Commission-approved PJM market monitoring and mitigation.”⁸

The Market Monitor requests clarification regarding the type of evidence that the Commission considers necessary to successfully establish that an applicant for market based rates has market power or may have market power in the future. Alternative analyses for evaluating market power have been accepted for consideration in merger cases and should also be accepted in market based rate authorization cases.⁹ Examples of historical evidence could include: failure of the three pivotal supplier test; exercise of

⁸ ABS Order at P 27.

⁹ See *PPL Corporation, RJS Holdings LLC*, 149 FERC ¶ 61,260 (2014).

aggregate market power; or regular commitment by PJM of resources for reliability.¹⁰ Examples of forward looking evidence could include identifying the types of system conditions, including transmission line outages, generator retirements, changes in relative fuel costs, or increases in renewable energy sources, that could create changes in power flows and constraints and the definition of local markets and would therefore create local market power for the applicant.

All PJM market sellers have opportunities to engage in behavior that evades mitigation. It would not be logical to challenge only market based rate applications with a record of specific unmitigated exercises of market power, because to do so would ignore the potential to exercise market power based on constantly changing system conditions.

B. The Commission's Standards

The orders reject the Market Monitor's protests stating that the Market Monitor "dismisses the Commission's standard for assessing market power, asserting that virtually any seller in PJM may have market power due to transmission constraints, no matter how small its market share or whether it is a pivotal supplier without providing any specific evidence of any Sellers' market power."¹¹

The Market Monitor does not dismiss the Commission's standard. The Market Monitor recognizes that the Commission relies on market monitoring and market power mitigation rules in organized markets to implement the Commission's standard. The Market Monitor demonstrates that the market power mitigation rules are not effectively implementing the Commission's standard. The Market Monitor relies on the data sources

¹⁰ Such regular commitment creates market power and is subject to market power mitigation rules.

¹¹ ABS Order at P 28; Harts Mill Order at P 28.

identified in Order No. 861 to do so, including RTO market data and the Market Monitor's State of the Market reports.¹²

The regulation of the organized markets is predicated on the understanding that all sellers potentially have market power in the organized markets and therefore all sellers are subject to market power mitigation rules in the organized markets.¹³

Market monitoring alone does not resolve the potential for exercises of market power. Referrals to the Commission's Office of Enforcement are not a substitute for effective market power mitigation.

In the absence of effectively implemented rules prohibiting the exercise of market power, there will be no action taken to address the exercise of market power. The Market Monitor is simply pointing out that the current market power mitigation rules in PJM are not implemented effectively and therefore cannot be relied on to routinely prevent the exercise of market power. Effectively enforced rules would address all these issues in an effective and transparent manner.¹⁴

Market based rate applications in PJM under Order No. 861 rely solely on PJM market power mitigation to prevent the exercise of market power. Regulation through competition should allow for no exercise of market power in the PJM markets. PJM market power mitigation can be evaded by any PJM market seller. Until the market power mitigation issues are resolved, the Market Monitor seeks conditions on market based rate authority that would prevent the exercise of market power.

¹² See Order No. 861 at PP 18–23.

¹³ See *Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design*, Notice of Proposed Rulemaking, 100 FERC ¶ 61,138 at P 13 (2002) (“Even with good market design rules, current supply and demand conditions make supplies from the market, while permitting prices to reflect true scarcity. The proposed market power mitigation method should be more restrictive at times or places where the exercise of market power is more likely to occur than at times or places where the market is sufficiently competitive.”).

C. Procedural Issues

The orders state, “the theory underlying the IMM Protests would seem to apply to all sellers in PJM, including those that are not part of the protested proceedings.” The orders indicate that because the Market Monitor raised concerns about the PJM mitigation rules in a particular proceeding, the protest is somehow deficient because other sellers “have not been given adequate notice and opportunity to comment on the IMM proposal.” The Market Monitor seeks clarification of whether the procedural concern is that the precedent created by such orders could affect sellers not party to the proceedings.¹⁵ The Market Monitor requests clarification on how the Market Monitor’s approach is inconsistent with the process set forth in Order No. 861 to which the Market Monitor has adhered. Order No. 861 specifically provides for protests in proceedings for market based rate authorizations concerning the adequacy of an RTO’s market power mitigation rules, which are applicable to all sellers.¹⁶ To the extent that the Commission determines to address the broader issues concerning PJM’s market power mitigation rules, the Market Monitor has requested that the Commission initiate a separate proceeding that includes all interested stakeholders. The Market Monitor does not seek any changes to PJM market rules in these proceedings.

The Market Monitor seeks clarification regarding whether the service provided by the Market Monitor was deficient under the rules, and whether there are any special

¹⁵ The positions advocated by the Market Monitor are available in its publicly available state of the market reports and other reports. The evidence relied upon is included in the Market Monitor’s reports.

¹⁶ See Order No. 861 at P 26 (“Regarding the second demonstration, a challenge to existing Commission approved RTO/ISO market monitoring and mitigation would be no different than what the Commission articulated in Order No. 697-A, where it established the rebuttable presumption that Commission-approved market monitoring and mitigation was sufficient to address market power concerns.”).

obligations that the Market Monitor is expected to meet that exceed the generally applicable rules. For its part, the Market Monitor supports expanding the explicit entitlement to receive service in PJM related proceedings to a defined service list including all persons with interests in such proceedings and requesting service.

The Market Monitor intends to continue to participate in proceedings concerning market based rate authorizations because such proceedings are important for ensuring competitive behavior and competitive outcomes in PJM markets. The Market Monitor requests clarification on the process and standards applicable in such proceedings in order to ensure that the Commission's expectations are met and that all procedural steps are followed.

II. CONCLUSION

Accordingly, the Market Monitor respectfully requests that the Commission grant this motion and provide the requested clarification.

Respectfully submitted,



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Dated: January 8, 2021

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 8th day of January, 2021.



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