

On February 1, 2022, PJM submitted its filing in compliance with Order No. 2222 (“February 1st Filing”).³ ⁴ The Market Monitor filed comments on April 1, 2022 (“April 1st Comments”). The purpose of Order No. 2222 is to enhance competition by facilitating entry into the wholesale markets for small distributed energy resources (“DER”).⁵ Efforts to exempt DER from market power mitigation and to ignore the market power of Electric Distribution Companies (“EDCs”) would undermine the purpose of Order No. 2222 by eroding the fundamental purpose of the wholesale markets, to bring the benefits of competition to consumers.

In order to achieve the goals of Order No. 2222, the market power mitigation rules must continue to apply to all market sellers. New market power mitigation rules are needed for EDCs participating as DER aggregators in order to address vertical market power issues.

This answer should be accepted because it clarifies the issues and contributes to a complete record, thereby facilitating the decision making process.

I. ANSWER

A core issue in these proceedings is whether and how market power will be mitigated in the wholesale markets with the participation of resources interconnected to the distribution system. The issue is not the current market power mitigation rules in the capacity market that address structural market power in the capacity market. In Order No. 2222, the Commission determined that those market power mitigation rules were outside the scope of

³ 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”).

⁴ See *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 2222, 172 FERC ¶ 61,247 (2020) (“Order No. 2222”), *order on reh’g*, Order No. 2222-A, 174 FERC ¶ 61,197 (2021), *order on reh’g*, Order No. 2222-B, 175 FERC ¶ 61,227 (2021).

⁵ *Id.* at P 1-2.

the proceeding.⁶ But there are broader market power issues that remain in scope. Some commenters argue that there should be no market power mitigation for DER aggregations because there is no evidence that they will have market power or because the Commission does not have jurisdiction. Ensuring competitive markets is a core goal of the Commission in implementing regulation through competition, and Order No. 2222 in particular.⁷ DER aggregators like all other market sellers should be required to have market based rates approved by the Commission and subject to Commission defined rules that define and prevent market power through market power mitigation.⁸

AEMA argues (at 14–18) that DER aggregators should be found to not have market power because they are small. PJM market power mitigation rules appropriately do not provide exemptions for any suppliers, regardless of size. No such exemption should be created here.⁹ The PJM test for structural market power appropriately includes all sellers, without exception. If the AEMA is correct, the PJM tests for market power will show that the relevant resources do not have market power and that the resources will behave competitively. If the AEMA is not correct, the PJM tests for market power will show that the

⁶ See Order No. 2222 at PP 362–363; OA Schedule 1 § 6.4.

⁷ See Federal Power Act, § 205, 206 & 222. 16 U.S.C. § 824d, 824e & 824v; see, e.g., *Public Util. Dist. No. 1 v. Dynegy Power Mktg., Inc.*, 384 F.3d 756, 760 (2004); Order No. 2222 at P 1.

⁸ See, e.g., *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252 (2007) (“Order No. 697”), *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g and clarification*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh’g and clarification*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g and clarification*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g and clarification*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *order on clarification*, 131 FERC ¶ 61,021, *reh’g denied*, 134 FERC ¶ 61,046 (2010), *reh’g denied*, 143 FERC ¶ 61,126 (2013).

⁹ AEMA mistakenly asserts (at 15) that “virtually all facilities are presumed to have market power.” A reading of the relevant portions of the State of the Market Report would have informed AEMA that their assertion is demonstrably incorrect. See for example: *Monitoring Analytics, L.L.C.*, 2021 State of the Market Report for PJM, Vol. II, Section 3: Energy Market.

relevant resources do have market power and that the resources will be required to behave competitively through market power mitigation. But the only way to know if market power exists and must be mitigated is to apply the structural test.

In addition, AEMA does not explain why it is reasonable to assume that all DER aggregators are small, or explain exactly what the definition of small is, or even argue that only small aggregators should be included in this policy. Among other things, AEMA appears to ignore the fact that market power is defined at the parent company level and that a small aggregator or small resource may be owned by a larger company.

Duquesne argues (at 3-4) that it should be found to not even be a competitor in its DER aggregation program because its revenues from wholesale market participation offset its customers' rates. Regardless of its rate structure and source of profits, Duquesne's DER aggregations, like those of other EDCs that become DER aggregators, will compete in the wholesale market with other DER aggregations and should be subject to the same rules.¹⁰ The PJM Market Rules, especially market power mitigation rules, do not treat resources differently based on the business model of their parent companies.

Indicated Utilities claim (at 6-31) that the Commission and PJM cannot impose restrictions on the preregistration process, the dispatch override process, or the dispute resolution process for EDCs that participate in the wholesale market as DER aggregators because the Commission lacks jurisdiction. The Commission does not have jurisdiction over the distribution system, but it does have jurisdiction over wholesale market participants. EDCs that participate as DER aggregators become wholesale market participants, and their activities in the registration and dispatch override process can affect wholesale market outcomes to their benefit as DER aggregators through vertical market power. The Commission has jurisdiction to condition participation by DER aggregators on their obligation to be subject to rules that mitigate market power in the wholesale power market,

¹⁰ Order No. 2222 at P 27.

including vertical market power. For example, PJM could use the model of the Reliability Assurance Agreement (“RAA”). The RAA requires Load Serving Entities who execute it to meet resource adequacy requirements under PJM market rules, but does not expand the Commission’s jurisdiction to cover retail sales. Similarly, the rules could require EDCs that participate as DER aggregators to meet requirements, including market power mitigation, established by the Commission in order to achieve the goals set forth in Order No. 2222.

Protecting the wholesale markets from market power is within the Commission’s jurisdiction. But it is not clear what market power mitigation rules will apply to DER aggregators with structural market power that will participate in the wholesale markets. This is an issue for EDC aggregators with vertical market power due to their control of the distribution system. This is an issue for independent aggregators that may have local or aggregate horizontal market power due to joint ownership with traditional resources or through accumulation of market share in the DER market.

I. 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

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).

which provides a more complete record. Accordingly, the Market Monitor respectfully requests that this answer be permitted.

II. CONCLUSION

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

Respectfully submitted,



Jeffrey W. Mayes

Joseph E. Bowring
Independent Market Monitor for PJM
President
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8051
joseph.bowring@monitoringanalytics.com

General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com

Catherine A. Tyler
Deputy Market Monitor
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8050
catherine.tyler@monitoringanalytics.com

Kyungjin Yoo
Analyst
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Eagleville, Pennsylvania 19403
(610) 271-8050

Dated: May 19, 2022

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 19th day of May, 2022.



Jeffrey W. Mayes

General Counsel

Monitoring Analytics, LLC

2621 Van Buren Avenue, Suite 160

Eagleville, Pennsylvania 19403

(610) 271-8053

jeffrey.mayes@monitoringanalytics.com