

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

Duty of Candor )  
 ) Docket No. RM22-20-000  
 )

**COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to the Notice of Proposed Rulemaking issued in the proceeding on July 28, 2022 (“NOPR”),<sup>1</sup> Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),<sup>2</sup> submits these comments. The NOPR proposes to add a requirement that all entities communicating with the Commission or other specified organizations related to a matter subject to the jurisdiction of the Commission submit accurate and factual information and not submit false or misleading information or omit material information.<sup>3</sup>

The Market Monitor supports the goal of ensuring accurate communications in matters subject to the jurisdiction of the Commission. The current rule, restricted to Sellers, is too narrow and does not cover all market participants. A duty of candor should be applied to all entities with a direct financial interest in jurisdictional markets. Applying the rule beyond such entities would impose an undue burden on communications with no offsetting material benefit.

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<sup>1</sup> *Duty of Candor*, Notice of Proposed Rulemaking, 180 FERC ¶ 61,052 (“NOPR”).

<sup>2</sup> 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”).

<sup>3</sup> *Id.* at P 1.

## I. COMMENTS

### A. The Duty of Candor Should Apply to All Market Participants.

The proposed duty of candor, to be codified as 18 CFR § 1d.1 a new rule (“Rule 1d.1”), provides:

Any entity must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, jurisdictional transmission or transportation providers, or the Electric Reliability Organization and its associated Regional Entities, where such communication relates to a matter subject to the jurisdiction of the Commission, unless the entity exercises due diligence to prevent such occurrences.

Current Market Behavior Rule 3, 18 CFR § 35.41(b), provides:

**Communications.** A Seller must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences.

A comparison of the language in the two provisions highlights the differences:

**Any entity** must provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with the Commission, Commission-approved market monitors, Commission-approved regional transmission organizations, Commission-approved independent system operators, jurisdictional transmission **or transportation** providers, **or the Electric Reliability Organization and its associated Regional Entities, where such communication relates to a matter subject to the jurisdiction of the Commission,** unless **the entity** exercises due diligence to prevent such occurrences.

The differences are: the expansion of the applicability of the rule from Seller to any entity; the inclusion of additional organizations as recipients of communications to which the duty of candor applies; and the qualification that the communication relates to a matter subject to the jurisdiction of the Commission.

A Seller is defined in the Commission's rule to mean: "any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act."<sup>4</sup>

The definition of Seller does not include all market participants. Market participants that would be covered by the proposed rule that are not currently covered include: buyers; virtual traders; FTR traders; and curtailment service providers or other providers of demand response services, because such entities are excused from having to obtain market based rates authorization. Additional market participants that would be covered by the proposed rule that are not currently covered include: transmission owners; electric distribution companies; and fuel suppliers.

Broadening the applicability of the rule from Seller to any entity with a direct financial interest in the market is appropriate. There is no reason to exempt any market participant with activities subject to the jurisdiction of the Commission. Candor should be required of all market participants with a direct financial interest in the RTO markets and operations regardless of whether they are required to obtain market based rate authorization.

Expanding the scope of the duty of candor to include entities with no direct financial interest in the markets may deter useful communications with small entities and nonprofit entities with little or no offsetting material benefit. The proposed duty of candor rule would create a broad scope of potential rule violations with the potential to divert resources from market violations involving market participants.

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<sup>4</sup> 18 CFR § 35.36(a)(1).

The Market Monitor recommends that the proposed duty of candor be limited so that it excludes entities interested in Commission matters but without direct financial interests in wholesale energy sales, related sales or transmission or distribution service.

## II. 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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