

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

Independent Market Monitor for PJM	)	
	)	
v.	)	Docket No. EL23-50-000
	)	
PJM Interconnection, L.L.C.	)	
	)	

**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,<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 this answer to the answer filed by PJM, the comments filed by certain indicated PJM Members (“Indicated Members”)<sup>3</sup> and the protest filed by certain trade associations (“Trade Associations”)<sup>4</sup> on

---

<sup>1</sup> 18 CFR §§ 385.212 & 385.213 (2022).

<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> Indicated Members include: The Dayton Power and Light Company d/b/a AES Ohio; Dominion Energy Services, Inc. on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia; Duquesne Light Company; Energy Trading Institute; Exelon Corporation, on behalf of its subsidiaries Atlantic City Electric Company, Baltimore Gas and Electric Company, Commonwealth Edison Company, Delmarva Power & Light Company, PECO Electric Company, and Potomac Electric Power Company; PPL Electric Utilities Corporation; and UGI Utilities, Inc.

<sup>4</sup> Trade Associations include: Advanced Energy United, the American Clean Power Association, the American Council on Renewable Energy, the Electric Power Supply Association, the National Hydropower Association, the Nuclear Energy Institute, the PJM Power Providers Group, and Solar Energy Industries Association.

April 17, 2023. None of arguments of PJM, Indicated Members or Trade Associations are relevant to the identified violation and the relief requested. The Complaint exposes a plain violation of the OATT and seeks the Commission's assistance to enforce its terms. The requested relief should be granted.

## I. ANSWER

### A. The Liaison Committee Is a Stakeholder Committee, but Such Status Is Not Relevant to the Complaint.

PJM asserts (at 8):

The Liaison Committee is not, and has never been, a stakeholder working group or committee as contemplated in Tariff, Attachment M." PJM further states (at 9): "The Liaison Committee Charter thus results from a direct agreement between the Members and Board.[footnote omitted] In contrast to stakeholder committee charters that obligate the committee to follow the directives of a supervising committee,[footnote omitted] the Liaison Committee's mission and activities are not subject to direction from any stakeholder committee.

That the Liaison Committee has some characteristics that may differ from some other stakeholder committees does not demonstrate that the Liaison Committee is not a stakeholder committee. None of the arguments show that the Liaison Committee is anything other than a stakeholder committee. The Liaison Committee is a noticed and organized meeting of stakeholders. In practice, PJM administers participation in the Liaison Committee on its website along with other PJM stakeholder committees.<sup>5</sup>

PJM's reliance on its unduly narrow definition of a stakeholder committee is misplaced and irrelevant to the Complaint. Section IV.G is not limited to "committees." Section IV.G is drafted broadly to include "stakeholder working groups, committees or other PJM stakeholder processes." The broad wording is consistent with its purpose to protect the

---

<sup>5</sup> See PJM, Committees: <<https://www.pjm.com/committees-and-groups/committees>>.

Market Monitor's access to the PJM stakeholder process. Nothing in the expansive wording limits "stakeholder processes" to committees, or to committees that are supervised by other committees or to committees that make decisions through voting. The wording anticipates the possibility that there could be an attempt to exclude the market monitoring function from stakeholder meetings. The behavior that is the subject of this complaint shows that the protection afforded under Attachment M is needed and must be enforced.

**B. The Exclusion of the Market Monitor Because It Is Not a Member Is Not a Valid Defense, It is the Violation.**

PJM states (at 2): "[T]he intended function of the Liaison Committee is similar to a shareholder meeting, open *only* to shareholders, to give feedback to and hear from the Board that they elect" [emphasis in original]. PJM further states (at 5): "Because the Liaison Committee Charter approved by the Members Committee specifies the provisions for membership, it is the PJM Members, not PJM, who determine who may attend Liaison Committee meetings." Indicated Members (at 4) and Trade Associations make similar arguments (at 5-7).

The exclusion of the Market Monitor from the Liaison Committee because the Market Monitor is not a Member is the violation identified in the Complaint, not an excuse for the violation. When provisions of a stakeholder committee charter conflict with the tariff, such provisions are invalid and unenforceable. The Complaint includes communications between certain Members and PJM staff demonstrating that PJM acted at the behest of the Members to exclude the Market Monitor from the Liaison Committee. Compliance with Section IV.G requires PJM to facilitate the Market Monitor's participation in Liaison Committee meetings as it does for other stakeholders. PJM should have rejected the Members' request to enforce the Liaison Committee charter in order to avoid violating the OATT.

**C. The Complaint's Reading of Section IV.G Is Reasonable and Correct.**

PJM states (at 4): "[A] broad-brush interpretation of the IMM's authority under Tariff, Attachment M would lead by extension to an unbounded opportunity for the IMM to attend

every meeting involving not just the Board, but meetings of PJM staff on any subject.” This argument is a red herring. The language in Section IV.G of Attachment M is broadly worded, but it does not support PJM’s argument that granting the Complaint would mean that the Market Monitor may determine that it can attend “meetings of PJM staff on any subject.”

PJM states (at 4):

The Tariff clearly establishes limits to this open-ended reading by requiring that there be a showing that the IMM’s attendance is “*appropriate*” or “*necessary*” to perform its prescribed functions. The Market Monitor has made no such showing in this case given that the Liaison Committee is simply a communication vehicle and not a forum with voting rights to advance potential changes to any Governing Documents [emphasis in original].

Section IV.G assigns the determination of appropriate or necessary to the Market Monitor. PJM’s second guessing the Market Monitor’s determination is not defense against PJM’s tariff violation. Compliance with the tariff requires PJM to respect the Market Monitor’s determinations on attendance at stakeholder meetings. If PJM believes that the Market Monitor has unreasonably exercised its discretion, then it should file a complaint with the Commission.

**D. Arguments that the Market Monitor’s Participation in the Liaison Committee Meeting Is Not Necessary and Appropriate Are Irrelevant and Incorrect.**

PJM argues (at 8) and Indicated Members argues (at 2–3) that there are “no votes taken” or “market actions ... taken in the LC.” PJM and Indicated Members ignore the obvious potential for the Liaison Committee to affect Board decisions, including decisions that affect the markets. A cursory review of agendas at the Liaison Committee shows the topics always include PJM markets and sometimes include the market monitoring function.<sup>6</sup>

---

<sup>6</sup> See PJM, Committees, Liaison Committee <<https://www.pjm.com/committees-and-groups/committees/lc>>.

The Board has significant authority over PJM regulatory filings, including filings that do not require a PJM stakeholder process or majority vote, per PJM governance rules.<sup>7</sup>

Indicated Members assert (at 2): “Expression of the views of individual Members views or comments are prohibited at the LC. Put another way, there is no individual Member lobbying at the LC.” Indicated Members assertions are not credible. Individual members can influence collective communications. Whether it is direct individual lobbying is beside the point. Collective lobbying is also a concern. The independence of an RTO means that the RTO “must have a decision making process that is independent of control by any market participant or class of participants.”<sup>8</sup> It is reasonable for the Market Monitor to hear communications without regard to whether or not they are from individual Members.

PJM argues (at 8, 10) and Indicated Members argue (at 7) that the Market Monitor has alternative means to communicate with the Board. Alternative means for the Market Monitor to communicate with the Board are irrelevant. Section IV.G does not include an exception to enforcement based on the existence of alternative stakeholder processes.

Trade Associations argue (at 8): “Even if the Market Monitor were permitted to attend the meetings, it would not be permitted to ‘state its independent views’ as it would only be attending in ‘listen-only’ mode.” Trade Associations’ argument has no merit. Section IV.G does not limit the Market Monitor’s participation to “‘listen only’ mode.” On the contrary, Section IV.G provides for the Market Monitor to participate on the same terms as any other stakeholder. An order granting the relief requested in the Complaint should clarify that Liaison Committee rules cannot unfairly interfere with the Market Monitor’s participation.

---

<sup>7</sup> See OA § 7.7. Section 7.7(vi) provides that the Board may: “Petition FERC to modify any provision of this Agreement or any Schedule or practice hereunder that the PJM Board believes to be unjust, unreasonable, or unduly discriminatory under section 206 of the Federal Power Act, subject to the right of any Member or the Members to intervene in any resulting proceedings;”

<sup>8</sup> 18 CFR § 35.34(j)(1)(ii).

Trade Associations argue (at 10): “While the Market Monitor does not participate in person during the Liaison Committee meetings, the agendas and related information for the Liaison Committee are posted and publicly available.” Trade Associations’ argument has no merit. Posted agendas and minutes do not provide sufficient detail to allow the Market Monitor a fair opportunity to assess the information communicated to the Board or the Board’s response, or allow any opportunity for a timely response. If the Trade Association’s argument were correct, and reading the material were equivalent to attending the meetings, then Trade Associations should have no issue with the Market Monitor attending the meetings.

**E. The Complaint Is Properly Motivated.**

Indicated Members assert (at 3, 7):

Were the IMM present, information exchange may be stifled and Members may hesitate to openly exchange information with the Board on topics where there is disagreement with the IMM. This includes considerations related to the performance of the IMM and the terms and conditions of its retention—conversations that the IMM appears particularly interested in joining. The Commission should not countenance this attempt by the IMM to attend, much less be an active participant in, meetings at which review of its employment is being conducted.

Trade Associations allege (at 10) a “chilling effect.”

Indicated Members and Trade Associations implication that fear of the Market Monitor’s reaction to potential criticism is not consistent with the representation that individual Members do not communicate to the Board because all communications are collective. Members collectively or individually should be prepared to stand behind their communications to the Board. Stakeholder processes should be transparent.

The Market Monitor is interested in all the topics discussed at the Liaison Committee, including Market Monitoring related topics. PJM Members have no authority to “conduct reviews” of the Market Monitor’s employment.

The Members also have the option of submitting confidential complaints to the PJM Board/Stakeholder IMM Liaison, since 2019, for those who do not want to state their issues at the Liaison Committee.<sup>9</sup>

Indicated Members argue (at 3): “it is consistent with the practice of the PJM Board of Managers to meet privately with certain groups, as it already does with the IMM and with state agencies, where other PJM stakeholders are excluded from observation or participation.” The Market Monitor does not participate in any stakeholder committee that excludes other stakeholders contrary to explicit protections from such exclusion in the tariff. The Market Monitor meets privately with the Board to discuss confidential matters that by nature, and under the applicable tariff rules, cannot be discussed with other stakeholders present.<sup>10</sup> The Board’s activities outside of the Liaison Committee are not relevant to whether Section IV.G should be enforced.

Indicated Members argue (at 6): “The timing of this complaint is also problematic. One of the publicly posted topics of LC review is the terms and conditions of future IMM contracts and potential issuance of a request for proposals of IMM candidates; it would be a significant conflict of interest to have the IMM participate in such deliberations.” Indicated Members point (at 6) to Recital in the Market Monitoring Services Agreement, which states:

PJM, through the PJM Board, having considered the information provided by IMM, the qualifications presented by IMM, and IMM’s history in providing market monitoring services to PJM, has concluded that IMM has demonstrated strong technical proficiency to provide the services sought, and accordingly, desires to engage IMM, pursuant to the terms and conditions of this Agreement...

---

<sup>9</sup> See PJM, Independent Market Monitor: <<https://www.pjm.com/about-pjm/who-we-are/pjm-board/independent-market-monitor>>.

<sup>10</sup> See OATT Attachment M–Appendix § I.

Impugning the motives of the Market Monitor does not constitute an argument. Invented motives are irrelevant.

Indicated Members argue (at 6) that the above passage “presumes an evaluation of IMM services and qualification presented as compared to other parties well suited to provide such services” and complain that “an evaluation of other vendors has not been conducted in 16 years.” Indicated Members (at 6) allege: “At the very mention of such a discussion, and after nearly five years of closed LC meetings,[footnote omitted] the IMM chose to file this Complaint in an attempt to silence that discussion.” In addition, Indicated Members argue (at 6): “the IMM took the time to file this complaint instead of focusing on other pressing issues PJM is facing, including concerns about the functioning of the capacity market and other issues stemming from Winter Storm Elliott.”

Indicated Members do not explain why the Market Monitor should not be present for arguments criticizing its performance or arguing about the terms and conditions of the market monitoring function. Hearing such communications would be a reasonable use of the Market Monitor’s time and would not compromise its focus on capacity market reform and “issues stemming from Winter Storm Elliot.”

The timing of the Complaint is largely motivated by the complaint recently filed by the Public Service Commission of West Virginia in Docket No. EL23-45. Each complaint is rooted in the violation of different tariff provisions, but both reveal an attempt to convert the Liaison Committee into a forum for improper ex parte communications. Filing the Complaint provides an opportunity for an efficient and consistent enforcement of tariff violations related to participation in Liaison Committee meetings. Indicated Members’ arguments that the Complaint is improperly motivated have no merit and should be rejected.

**F. The Complaint Seeks Enforcement of the Existing Rules.**

Indicated Members (at 2–3, 7–8) assert that “the IMM seeks a Commission order to permit its participation in the LC” and “is seeking to rewrite the very terms of the PJM Market Monitoring Plan that the IMM accepted when it executed its contract with PJM.” Trade



Associations (at 3–4) argue: “the Complaint does not advance an argument that the Market Monitor’s exclusion from the Liaison Committee creates unjust or unreasonable rates, undue discrimination or preference, or even a risk of violating these statutory requirements.” The Complaint does not make such arguments and does not need to. Although the Market Monitor’s position is consistent with Commission policies on the independence of RTOs, the market monitoring functions and transparency, no new rule or explanation of the policy is required to grant the relief sought in the Complaint. The Complaint seeks enforcement of the existing requirements of Section IV.G of Attachment M.

#### **G. The Commission Can Enforce Section IV.G.**

Indicated Members argue (at 2, 8–9), “granting the IMM’s request would be beyond the purview of the Commission’s own oversight authority, given that it is an internal governance matter of PJM.” Trade Associations argues (at 4, 9–10): “the Commission has disclaimed jurisdiction over aspects of RTO/ISO proceedings that do not directly affect rates, terms and conditions of service,” and that the Market Monitor “fails to recognize that the Liaison Committee exists in response to the goals of Order Nos. 2000 and 719 [footnote omitted].” Trade Associations explain (at 10):

Order No. 2000 established an ongoing obligation for RTOs to operate independent of any market participant or class of market.[footnote omitted] Order No. 719 built on this obligation by requiring RTOs to ensure their boards of directors are responsive to the needs of customers and stakeholders.[footnote omitted] Taken together, these orders require RTOs to ensure that stakeholders have the tools to convey and receive information relevant to their concerns.[footnote omitted]

It is odd to argue that rules related to Order No. 2000 and Order No. 719, which include basic statements of Commission policy for RTOs, are matters excluded from the Commission’s jurisdiction. RTOs are creatures of the Commission. The Commission has jurisdiction over PJM based on its status as an RTO.

The Commission has jurisdiction over the OATT, which concerns the terms and conditions of wholesale energy sales and transmission service. The Commission has jurisdiction over the rules affecting the market monitoring function, which it created and requires for RTOs. Section IV.G of the Attachment M is one component of the Commission's framework for RTO regulation.

Cases relied upon by Indicated Member and Trade Associations concern matters that go beyond the regulation of RTOs and instead concern regulation of corporations.<sup>11</sup> Those cases have no relevance to this Complaint.

The Commission exercised its authority when it approved Section IV.G to the OATT. Nothing prevents the Commission from enforcing the terms and conditions of the OATT. Granting the relief sought in the Complaint does not interfere with the goal "to ensure [an RTO's] goals are responsive to the needs of customers and stakeholders." On the contrary, granting relief is consistent with those goals. The Commission can and should determine that it has the authority to enforce the terms and conditions of the OATT, and grant the relief requested.

## 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.<sup>12</sup> In this answer, the Market Monitor provides the

---

<sup>11</sup> See Trade Associations at 4 nn.13–14.

<sup>12</sup> 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

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,



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*

Dated: May 2, 2023

---

protest accepted because it provided information that assisted the Commission in its decision-making process).

**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 2<sup>nd</sup> day of May, 2023.



---

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