

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

Independent Market Monitor for PJM	)	Docket No. EL24-113-000
	)	
v.	)	
	)	
Indicated Energy Efficiency Sellers	)	
	)	

**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 answers submitted by the Indicated Energy Efficiency Sellers in this proceeding, on or around July 22, 2024.<sup>3</sup> The answers fail to show that the Complaint is improperly filed and

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<sup>1</sup> 18 CFR §§ 385.212 & 385.213 (2024).

<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> Answers to Complaint include: CPower’s Answer and Motion to Dismiss or Summarily Dispose of Complaint and Request for Confidential Treatment, Docket No. ERL4-113-000 (July 22, 2024) (“CPower”); Affirmed Energy LLC, Answer to the Complaint of the Independent Market Monitor for PJM, Docket No. EL24-113-000 (July 22, 2024) (“Affirmed”); Public Service Electric and Gas Company, Answer to Complaint, Docket No. EL24-113-000 (July 22, 2024) (“PSEG”); NRG Curtailment Solutions, Inc. Answer to the Complaint of the Independent Market Monitor for PJM, Docket No. EL24-113-000 (July 22, 2024) (“NRGCS”); Answer and Request for Denial of Complaint by Rockland Electric Company, Docket No. EL24-113-000 (July 22, 2024) (“RECO”); Exelon Corporation for itself and on behalf of its affiliate Baltimore Gas and Electric Company; FirstEnergy Service Company on behalf of FirstEnergy Corporation; and Southern Maryland Electric

generally respond to matters outside the scope of this Complaint's narrow focus on the inadequacy of the post installation M&V reports filed for the 2024/2025 Delivery Year. The answers do not refute the Market Monitor's prima facie case that the reports are inadequate to support payment. The Complaint should be granted or set for hearing.

## **I. ANSWER**

### **A. The Motions to Dismiss Should Be Denied.**

A number of the answers include motions to dismiss. These motions are generally irrelevant and request dismissal of a straw person complaint that was not actually filed in this proceeding. The Market Monitor filed a complaint initiating another proceeding in Docket No. EL24-126 arguing that there is no lawful basis for payments for EE, including the EE provided by the Indicated Energy Efficiency Sellers.

This Complaint concerns whether the Indicated Energy Efficiency Sellers filed post installation M&V reports that support their receipt of payments for EE during the 2024/2025 Delivery Year. The Complaint states that the post installation M&V reports fail to provide adequate evidence to demonstrate that the included EE measures meet the requirements to be approved and to receive payment, and, therefore, it is unjust and unreasonable to require PJM customers to pay them a total of \$130.8 million.<sup>4</sup> The best way to resolve the Complaint, which concerns information that the post installation M&V reports fail to include, is to set the matter for hearing. A hearing with compulsory discovery would allow the Market Monitor to obtain from the Indicated EE Sellers information responding the Market Monitor's requests during the review of the reports that sellers refused to provide. A hearing would allow an administrative law judge to make determinations on whether each report provides

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Cooperative, Inc., Answer to Complaint, Docket No. EL24-113-000 (July 22, 2023) ("State Regulated Utilities").

<sup>4</sup> The value provided here is updated from the \$128 million value provided in the Complaint (at 1).

the information required to support any payment for EE in PJM region during the 2024/2025 Delivery Year.

The Complaint does not seek to change any market rule, order approving a rule or any RPM auction result, retroactively or prospectively.<sup>5</sup> The Complaint does not collaterally attack any prior order. The Complaint does not seek review of the M&V Plans submitted in 2022 for the 2024/25 Delivery Year.<sup>6</sup> No stakeholder process or group is, can or should be involved in the preparation or review of post installation M&V reports.<sup>7</sup> Arguments about these matters fall outside the narrow scope of this Complaint and should be rejected for that reason.

Indicated EE Sellers assert that the Complaint should be dismissed because it did not include supporting, post installation M&V reports.<sup>8</sup> Each of the Indicated EE Sellers prepared its own post installation M&V report and has the requested information without the need to receive it back from the Market Monitor. Indicated EE Sellers refused to provide information responding to the Market Monitor's requests during the review of the reports, and the Market Monitor cannot provide information that it does not have in support of the Complaint. A hearing with compulsory discovery is needed to obtain such information.

The Complaint did not include copies of the confidential post installation M&V reports because they contain confidential information, information that should not be disclosed to competitors. CPower has provided, after the Complaint was filed, a protective agreement that is more stringent than the model protective order that the Market Monitor

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<sup>5</sup> See CPower at 32, 33–38; PSEG at 19–20; State Regulated Entities at 26–32.

<sup>6</sup> See CPower at 34, 39–41; State Regulated Entities at 26–32.

<sup>7</sup> See CPower at 41–42; PSEG at 21; RECO at 5–6.

<sup>8</sup> See CPower at 2–5; PSEG at 16–17; State Regulated Entities at 24–25.

filed with the Complaint. The Market Monitor intends to rely on the CPower Protective Agreement, unless directed otherwise by the Commission.

The Complaint meets its burden of proof to show that the indicated practice, failing to provide reports that demonstrate the actual installation of EE in the PJM region during the 2024/2025 Delivery Year, is unjust and unreasonable.<sup>9</sup> The Complaint provides information showing that the post installation M&V reports do not show that the Indicated EE Sellers have provided EE or anything of value to PJM customers in exchange for more than \$130.8 million. The rules require the preparation and submittal of reports that show that energy efficiency has actually been provided in PJM. The Complaint explains how the reports filed by the Indicated EE Sellers are deficient. This Complaint does not raise the issue of whether such energy efficiency meets the definition of Energy Efficiency in the filed Tariff. That issue is not within the scope of this Complaint.

The Market Monitor recommends that the Complaint be set for hearing. No later than August 9, 2024, the Market Monitor will provide the confidential post installation M&V reports to the Commission. There is a large quantity of supporting documentation that is unnecessary to determine whether the reports are inadequate and will not be provided, unless the Commission directs otherwise. The Market Monitor will provide these reports only to intervening parties subject to the protective agreement filed by CPower, or as otherwise directed by the Commission. Because sellers have no valid reason to access information from their competitors, the Market Monitor requests that sellers refrain from requesting post installation M&V reports for other sellers. Sellers should recognize their mutual interest in protecting from disclosure to each other the information included in the post installation M&V reports.

The motions to dismiss should be denied. The issues actually raised in the Complaint should be addressed in a hearing that protects the public interest and is fair to all parties.

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<sup>9</sup> See CPower at 44–26.

## **B. The Complaint Complies with Section 206 of the Federal Power Act.**

Indicated EE Sellers allege various deficiencies in the Complaint. Contrary to PSEG arguments (at 10–11) and State Regulated Entities (at 35–37), Section 206 permits complaints based on practices that are unjust and unreasonable. This Complaint is not about the rate. This Complaint concerns whether the Indicated EE Sellers have shown, as the rules require, that they have actually installed EE in the PJM Region during the 2024/2025 Delivery Year and are entitled to receive from PJM customers more than \$130.8 million.

Contrary to PSEG’s argument (at 11–12) and State Regulated Entities’ argument (at 32–35), Section 206 does not require that PJM be named in the Complaint, particularly when neither PJM’s actions nor relief from PJM is within the scope of the Complaint. PJM does not, cannot, and did not prepare the post installation M&V reports.

Contrary to PSEG’s argument (at 12–13), the Market Monitor does not claim the authority to reject the post installation M&V reports, and, for that reason, has filed this Complaint with the Commission explaining the deficiencies in the reports and requesting that the Commission grant appropriate relief.

Contrary to PSEG’s argument at 13–14, the Market Monitor’s ability to file complaints with the Commission under Section 206 is well established.<sup>10</sup>

Contrary to PSEG’s argument (at 6–7) this proposal is not a circumvention of the stakeholder process as alleged by PSEG, but instead is consistent with the ongoing administration of the market monitoring function in PJM in accordance with OATT Attachment M, §IV to investigate violations of FERC or PJM Market Rules.

The Complaint is properly filed pursuant to Section 206, and it should be decided on its merit.

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<sup>10</sup> See, e.g., *Independent Market Monitor for PJM v. PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,059 (2016); *Independent Market Monitor for PJM v. PJM Interconnection, L.L.C.*, 174 FERC ¶ 61,212 (2021), *order on reh’g*, 178 FERC ¶ 61,121 (2022).

## **C. Answers to the Complaint.**

### **1. CPower Fails to Provide a Reasonable Answer to the Complaint.**

With two exceptions, CPower (*passim*) answers a complaint that is not the Complaint filed in this proceeding. In the first exception, noting the Market Monitor's concern that CPower fails to provide "direct exclusive contract[s]" with end use customers, CPower responds (at 53) that "[t]here is no requirement for a 'direct' contract, and the IMM offers no evidence that the capacity transfer is not for 'all' the capacity rights (and thus exclusive) as the above typical obligation requires." CPower offers no alternative evidence that it has obtained rights of any kind from end users. Although the Section 206 burden in this proceeding belongs to the Market Monitor, that burden is a showing that CPower's post installation M & V report is deficient and does not provide a basis to receive payment. CPower has the burden in its report to show that it has provided energy efficiency in PJM during the delivery year.

In the other exception, CPower (at 55–58) defends with nonsensical arguments its reliance on Technical Reference Manuals ("TRMs") that are not relevant to PJM or the delivery year. CPower asks why conditions in a non PJM state are not as relevant to PJM as are conditions in PJM states. CPower compares its reliance on outdated information on current technology used as a baseline for measuring savings to the courts' reliance on longstanding legal decisions. CPower fails to explain how its reliance on irrelevant TRMs demonstrates that it has installed EE in PJM for the 2024/2025 Delivery Year.

### **2. Affirmed Energy Fails to Provide a Reasonable Answer to the Complaint.**

Affirmed concedes (at 4) that "contracting directly with end use customers may be one method for an energy efficiency program to operate, there is no indication in the tariff that it is the only permissible method." Affirmed states (at 6): "Under the tariff, an EER provider must own or have contractual rights to the energy efficiency resource, i.e., the load reductions from the energy efficiency products."

Affirmed states that it “acquires express, exclusive right and title to all environmental attributes (including capacity reductions) associated with energy saving characteristics of energy efficiency products through direct contracts with the manufacturers and retailers who own those rights, referred to as its ‘Program Partners.’” Affirmed states that it “has fully disclosed to PJM the nature and details of its contractual right to EERs, including by routinely sharing sample agreements with Program Partners.”

The Market Monitor does not agree that Affirmed has established contractual rights to the capacity value of items sold at retail. The purpose of the hearing is to bring all the relevant facts to light and let the Commission decide.

Affirmed claims (at 6) that it is not required to have a direct contractual relationship with end users, yet Affirmed insists that they are selling Capacity Resources. A Capacity Market Seller is defined as “a Member that owns, or has the contractual authority to control the output or load reduction capability of, a Capacity Resource, that has not transferred such authority to another entity, and that offers such resource in the Base Residual Auction or an Incremental Auction.”<sup>11</sup> The definition of Capacity Market Seller requires control of a resource by ownership or contract.

Even if somehow the Indicated EE Suppliers were not required to have direct contractual commitments from end users, they would still need to show that they have indirect commitments. Affirmed claims to operate through retailers, but it has not shown that those retailers have any commitments or exclusive rights to anything from end users.

Affirmed has not shown that end use customers have any commitments to anyone and are aware of any such commitments (i) to install equipment, (ii) to install equipment in the PJM Region, (iii) to install equipment during the 2024/2024 Delivery Year, (iv) to replace less efficient equipment and to provide measurements of any efficiency gains or (v) to verify

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<sup>11</sup> OATT § 1.

performance to anyone. Affirmed has not shown that any particular EE could not be sold multiple times into the capacity market using its approach.

Affirmed also argues (at 6–9) that it is not required to show “causation,” stating (at 7) “Nothing in the tariff reflects any ‘causation’ requirement.” Affirmed’s argument relies on PJM stating that there is no such “causation” requirement in its tariff and asserts that the Market Monitor’s views of the tariff would “neither be feasible nor cost-effective.”<sup>12</sup> Affirmed fails to acknowledge that PJM has not only been advocating for a causation requirement in its proposals during PJM’s current stakeholder process, but offers several ways in which a causation requirement could be accomplished.<sup>13</sup> PJM further posits that “if the EE Provider does not cause the EE to be purchased and installed then it does not qualify” and “that an EE Provider should not be permitted to simply claim EE that naturally occurs (e.g.: purchase receipts from store or contractor).” PJM asks in its proposal before the Markets & Reliability Committee meeting on July 24, 2024, “Why should consumers pay for something that would have occurred anyway?”<sup>14</sup>

### **3. PSEG Fails to Provide a Reasonable Answer to the Complaint.**

PSEG resists (at 16–19) the Market Monitor’s argument that the post installation M&V reports “do not contain the information indicated in PJM Manual 18B.” PSEG argues that Manual 18B’s “[d]ocumentation of all post-installation verification activities,” does not mean the report must “adequately demonstrate exactly where the measures were installed.”

PSEG does not explain how measurement and verification of the EE is possible without verifying the location and duration of the amount of EE installed. Verification

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<sup>12</sup> PJM at 10.

<sup>13</sup> See “EE Resource Evaluation PJM Proposal,” Markets & Reliability Committee <<https://pjm.com/-/media/committees-groups/committees/mrc/2024/20240724/20240724-item-08e---ee-resource-evaluation-pjm-proposal---presentation.ashx>> (July 24, 2024).

<sup>14</sup> *Id.*



activities are a necessary predicate to the “documentation of all post-installation verification activities.” PJM likewise recognizes the importance and feasibility of this requirement in its proposal during PJM’s current stakeholder process. At the July 24, 2024, Markets & Reliability Committee meeting, PJM advocated that “Installations (including upstream, midstream and downstream) ... must be verified at each end use customer site to ensure the equipment was installed and operational in the associated PJM LDA.”<sup>15</sup> PJM continued, stating that the “EE Provider [must] provide end use customer specific information (or other information as approved by PJM) for all installations if requested by PJM.” PJM noted the importance of this in that, “Upstream and midstream must be able to demonstrate that savings were not claimed by downstream EE Provider.”<sup>16</sup>

#### **4. RECO Fails to Provide a Reasonable Answer to the Complaint.**

RECO argues (at 4) that it has “satisfied its requirements under the PJM tariff and the IMM has not met its burden of demonstrating otherwise,” and, further, that “the IMM fails to state any specific requirement that RECO failed to comply with.” The Complaint does not allege a tariff violation, but, rather, explains that RECO has not submitted a post installation M&V report pursuant the RAA Schedule 6 § L.6 and the OATT Attachment DD-1 § L.6 that would entitle it to receive payment. RECO does not argue otherwise.

#### **5. State Regulated Utilities Fail to Provide a Reasonable Answer to the Complaint.**

State Regulated Entities argue (at 8) that the Complaint “ignores state law underpinning and validating the EE participation by utilities in PJM’s capacity market as well as fails to draw this critical distinction between PJM EE market participation by state-regulated utilities as opposed to third-party EE providers.” State Regulated Entities must

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

meet the requirement to submit post installation M&V reports that support the receipt of payment.

State Regulated Entities argue (at 39) that the Complaint improperly names “Exelon” and “FirstEnergy” as respondents because they are holding companies, and not licensees, transmitting utilities, or public utilities. The Complaint names representatives Noah Norman, Jim Fay and Cristy Ludrosky as representatives of the Indicated EE Sellers. Noah Norman is the designated sponsor of the post installation M&V reports submitted for Atlantic City Electric Company, Pepco and Delmarva Power. Jim Fay is the designated sponsor of the post installation M&V report for Commonwealth Edison Company. Cristy Ludrosky is the designated sponsor of the post installation M&V reports submitted for Jersey Central Power and Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, Potomac Edison Company and West Penn Power Company. The Complaint should be deemed to name each affiliate of Exelon and FirstEnergy that submitted the post installation M&V Report and, if the report was adequate to justify payment, that would receive payment. To the extent necessary, this answer should be deemed to amend the Complaint with regard to the indicated Exelon and FirstEnergy affiliates.

#### **6. NRG Fails to Provide a Reasonable Response to the Complaint.**

NRG argues (at 2–3) that it is unclear whether the Complaint names NRGCS. The Market Monitor confirms that the NRGCS submitted the post installation M&V Reports subject to this Complaint. Neal Fitch was included as the NRGCS representative because he is the Members Committee representative for NRG. Mr. Fitch also responded to questions submitted by the Market Monitor about the post installation M&V report submitted by NRGCS. To the extent necessary, this answer should be deemed to amend the Complaint to name NRGCS.

## 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 protests, answers, or requests for rehearing 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>17</sup> 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, to the extent necessary, 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,



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<sup>17</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 protest accepted because it provided information that assisted the Commission in its decision-making process).

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Dated: August 6, 2024

## 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 6<sup>th</sup> day of August, 2024.



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