

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

NRG East Generation Holdings LLC)	Docket No. EC25-102-000
)	
NRG Demand Response Holdings LLC)	
)	
Lightning Power, LLC, on behalf of its Public Utility Subsidiaries)	
)	
Enerwise Global Technologies, LLC dba CPower)	
)	

**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,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor (“Market Monitor”) for PJM Interconnection, L.L.C. (“PJM”),² submits this answer to the answer submitted by NRG East Generation Holdings LLC, et al. (collectively “Applicants”), on August 7, 2025 (“August 7th Answer”), to the Market Monitor’s comments in this proceeding filed, July 3, 2025 (“IMM Comments”).³ Applicants include a Supplemental Affidavit of Dr. John R. Morris (“Supplemental Morris Affidavit”). Neither the August 7th

¹ 18 CFR §§ 385.212 & 385.213 (2025).

² 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”).

³ Comments of the Independent Market Monitor for PJM, Docket No. EC25-102, (July 3, 2025).

Answer nor the Supplemental Morris Affidavit provides any valid reason for not including the conditions recommended by the Market Monitor in any order approving the proposed transaction. NRG Applicants should not be permitted to exercise market power, and the transaction should not be approved without reasonable measures to protect the public interest in competition and competitive market outcomes.⁴

I. ANSWER

A. The August 7th Answer Does Not Address Local Market Power or Market Power in Demand Response in the PJM Market.

The August 7th Answer does not contest the Market Monitor's findings that NRG's structural market power as determined by the Three Pivotal Supplier test will be increased as a result of the acquisition. The Market Monitor identified constraints for which NRG has market power that would be increased by the acquisition of assets from LS Power. NRG's acquisition of the LS assets will create new opportunities for NRG to exercise market power in the PJM markets. The August 7th Answer does not contest the Market Monitor's well documented conclusion that the current PJM market power mitigation provisions do not provide sufficient protection for consumers from the exercise of local market power. The current market design is the framework within which NRG seeks to obtain approval of the transaction. The August 7th Answer misunderstands and misstates the impact of the acquisition on concentration and market power in demand response. Applicants must show that the acquisition is consistent with the public interest given that it results in increased local market power, significantly increases the ownership concentration of demand response, and potential harm from the exercise of market power. The August 7th Answer does not disagree

⁴ "NRG Applicants" or "NRG," who would become the owners if the transaction is approved, include NRG East Generation Holdings LLC and NRG Demand Response Holdings LLC, both subsidiaries of NRG Energy, Inc.

with this point but rather asks the Commission to ignore it. The transaction should not be approved without the conditions required to protect the public interest.

B. Applicants Must Show That the Transaction Is Consistent with the Public Interest.

Applicants argue (at 3–5) that the Market Monitor misreads the applicable standard in Section 203 of the Federal Power Act, which states the Commission “shall approve” a proposed transaction if it is “consistent with the public interest.”⁵ The Applicants must provide record support for a finding that a transaction is consistent with the public interest. Showing that a transaction has net positive benefits for competition would provide evidentiary support for the consistent with the public interest finding. Showing that a transaction does not harm competition is the minimum. No transaction can be approved under the applicable standard if it harms the public interest.

The Federal Power Act does not state a standard of compatibility.⁶ Applicants’ argument replacing “consistent” with “compatible” contradicts the plain wording of Section 203. If the drafters wanted to include the loose standard that “compatible” connotes, they would have used that word. By using “consistent,” Section 203 does not permit approval of transactions that harm the public interest. If the harm is manageable, then conditions needed to manage the harm can be included in an order. Harm should not be ignored under the guise of “compatibility.”

The Market Monitor’s application of the standard is appropriate. The Market Monitor has identified harm to competition if the transaction is approved, and has offered conditions that address the harm proportionately. Applicants have not explained how the conditions

⁵ 16 U.S.C. § 824b(a)(4).

⁶ Cf. Merriam Webster defines “consistent” as “marked by harmony, regularity, or steady continuity: free from variation or contradiction” (<https://www.merriam-webster.com/dictionary/consistent>); Merriam Webster defines “compatible” as “capable of existing together in harmony” (<https://www.merriam-webster.com/dictionary/compatible>).

prevent any behavior that they could appropriately engage in. The transaction should not be approved as consistent with the public interest without including the conditions proposed by the Market Monitor.

C. The Market Monitor's Pivotal Supplier Analysis is Relevant and Informative.

The Commission has stated that it does not require the pivotal supplier analysis as a condition for approving transactions under Section 203. The Commission has not stated that the Market Monitor's analysis is irrelevant or uninformative. In this case, the Market Monitor's analysis indicates two areas of concern. The Transaction creates new opportunities and/or enhances existing opportunities for NRG to raise energy market prices (LMP) to the benefit of its generation through economic or physical withholding because PJM needs NRG's supply to manage transmission constraints. The Transaction creates new opportunities for NRG to raise capacity market prices, and energy market prices on peak days, by significantly increasing ownership concentration in PJM demand response resources. Both areas of concern are relevant to the Transaction.

Applicants criticize the Market Monitor's evaluation of the Three Pivotal Supplier ("TPS") test, stating (at 8) that PJM has a remedy in place for market power demonstrated by the TPS test. The Market Monitor explains (at 8--10 of Attachment) that the remedy in place in the PJM tariff for local market power is not effective. PJM's dispatch of a unit to the lower of its cost or price offer, as Applicants describe (at 8), fails to mitigate market power in many cases, because the process is easily evaded through the manipulation of offer curves and offer parameters. Applicants fail to address this basic point. The Transaction results in additional local market power for NRG, local market power that did not previously exist for LS Power, and the PJM tariff cannot be relied upon to mitigate that market power.

The Market Monitor uses data directly from the PJM markets. Applicants made no effort to use available data from PJM, including detailed model data, detailed congestion data and detailed constraint data to perform a market power analysis based on the way locational markets actually work in PJM. In reality, Applicants' complaint is that the rote repetition of

a method (Attachment A) developed prior to the establishment of PJM markets is not simply accepted at face value, and that analysis based on the realities of a dynamic locational price model demonstrates the weaknesses of that approach. If Applicants want to avoid regulatory uncertainty, they should explain why their proposed acquisition improves the competitiveness of markets and propose common sense market power mitigation rules to govern their own behavior post transaction.

If Applicants had made the effort to go beyond their rote approach to the analysis, it would have been clear that the Transaction increases local market power for NRG through the purchase of LS Power assets that relieve the same constraints in the PJM market as NRG's existing generation. In addition, it would have been clear that the Transaction results in a dramatic increase in the concentration of ownership of demand response resources in the PJM market and therefore increases market power for resources that, uniquely among asset classes in PJM, have no applicable market power mitigation rules or must offer obligations in the capacity or energy markets.

D. Curtailment Service Providers are Market Participants, Not Pass Through Entities.

Applicants claim (at 9) that demand response Curtailment Service Providers ("CSPs") are merely intermediaries between PJM and demand response resources. Applicants are simply and demonstrably wrong. This is an incorrect and misleading characterization of how demand response works in the PJM markets. CSPs are market participants that control market strategy, control market offers, and hold the responsibility for demand response performance in the PJM markets. The PJM OATT defines the CSP as a PJM member and market participant:

'Curtailment Service Provider' or 'CSP' shall mean a Member or a Special Member, which action [sic] on behalf of itself or one or more other Members or non-Members, participates in the PJM Interchange Energy Market, Ancillary Services markets, and/or Reliability Pricing Model by causing a reduction in demand.

The OATT defines the CSP as the market participant compensated for providing demand response:

‘Pre-Emergency Load Response Program’ shall be the program by which Curtailment Service Providers may be compensated by PJM for Demand Resources that will reduce load when dispatched by PJM during pre-emergency conditions, and is described in Operating Agreement, Schedule 1, section 8...

‘Emergency Load Response Program’ shall mean the program by which Curtailment Service Providers may be compensated by PJM for Demand Resources that will reduce load when dispatched by PJM during emergency conditions, and is described in Operating Agreement, Schedule 1, section 8....

The PJM website further describes CSPs as the responsible entity, who also identifies the demand response resources and implements the demand response programs:

A Curtailment Service Provider (CSP) is the entity responsible for demand response activity for electricity consumers in the PJM wholesale markets. A CSP may be a company that solely focuses on a customer’s demand response capabilities, a local electricity utility, an energy service company or other type of company that offers these services. The CSP identifies demand response opportunities for customers and implements the necessary equipment, operational processes and/or systems to enable demand response both at the customer’s facility and directly into the appropriate wholesale market. This requires the CSP to have appropriate operational infrastructure and a full understanding of all the wholesale market rules and operational procedures.⁷

This fact sheet also notes, “PJM does not interact directly with electricity consumers.”

PJM’s energy market manual, Manual 11, Section 10, describes the rules for demand response resources. It states that the purpose of its demand response procedural rules “is to enable Demand Resources under the direction and control of CSPs to participate in the

⁷ See “Retail Electricity Consumer Opportunities for Demand Response in PJM’s Wholesale Markets,” PJM fact sheet, accessed August 20, 2025 <<https://www.pjm.com/-/media/DotCom/markets-ops/dsr/end-use-customer-fact-sheet.pdf>>.

various PJM markets. CSPs are Members or Special Members of PJM that participate in the PJM Markets by causing Demand Resources to reduce demand.”⁸ Lastly, PJM’s emergency manual, Manual 13 repeatedly states that “Member Curtailment Service Providers implement load management reductions as requested by PJM dispatchers.”⁹ CSPs are not mere pass through entities. The CSP is the market participant and the entity controlling the demand response market strategy.

E. Demand Response Curtailment Service Providers Have and Can Exercise Market Power.

When CSPs participate in the PJM Capacity Market, they are not required to have actual physical demand response resources contractually committed or even identified to provide the capacity. Instead, CSPs provide only plans for potential demand response. The CSPs do not need to identify actual demand response resources until the beginning of the delivery year. From the capacity market perspective, PJM only considers the CSPs, who determine the amount of demand response to offer and the price at which to offer it. The CSPs have total control over the offer strategy and the benefits of that offer strategy. Market power in the capacity market for demand response participants is properly identified based on the CSP as the relevant entity for evaluating market shares and pivotal suppliers. The CSP is the only entity that can exercise market power in the capacity market using demand response resources.

When pre-emergency and emergency demand response resources are dispatched by PJM, the CSP is the entity that dispatches the demand response resources. The CSP determines which of its demand response resources are available to curtail as a result of PJM instructions. The CSP controls the strike price used for compensation by PJM for curtailment. It is also the responsibility of the CSP to determine if its demand response resources are

⁸ PJM Manual 11: Energy & Ancillary Service Market Operations, Rev. 135, § 10.1. (July 23, 2025).

⁹ PJM Manual 13: Emergency Operations, Rev. 95 (Feb. 20, 2025) § 2.3.2.

capable of providing the amount of capacity cleared in the market. Any exercise of market power using the strike price or failure to dispatch demand response resources is the responsibility of the CSP.

The Market Monitor's behavioral recommendations that NRG make a commitment to offer competitively and to make its demand response capacity available to the energy market on a daily basis are reasonable and essential given the significant increase in the concentration of ownership of demand response resources that would result from the Transaction if approved.

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.¹⁰ 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, the Market Monitor respectfully requests that this answer be permitted.

¹⁰ 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).

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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Dated: August 27, 2025

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 27th day of August, 2025.



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