

**In the United States Court of Appeals
for the District of Columbia Circuit**

Case No. 24-1164

INDEPENDENT MARKET MONITOR FOR PJM
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION
Respondent.

ON PETITION FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION

PROOF REPLY BRIEF OF PETITIONER
INDEPENDENT MARKET MONITOR FOR PJM

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April 3, 2025

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GLOSSARY

Addendum	The addendum providing facts in support of the Market Monitor’s argument for standing, including the Declaration of Dr. Joseph E. Bowring (the Market Monitor for PJM and the President of Monitoring Analytics, LLC) and supporting attachments. The Addendum also includes, for the convenience of the Court, Tariff regulations cited in the IMM Brief and the IMM Reply Brief.
Board	PJM Board of Managers
Complaint	The complaint pursuant to Section 206 of the Federal Power Act filed by the Market Monitor against PJM on March 24, 2024, in FERC Docket No. EL23-50 (JA ____)
FERC or Commission	Respondent Federal Energy Regulatory Commission
FERC Brief	Brief of Respondent FERC, Case No. 24-1165 (February 28, 2025), ECF No. 2103316
Intervenors’ Brief	Brief of Intervenors for Respondent, Case No. 24-1165 (March 13, 2025), ECF No. 2105689. Intervenors include: The Dayton Power and Light Company d/b/a AES Ohio; Dominion Energy Services, Inc.; Exelon Corporation; and PPL Electric Utilities Corporation
IMM Brief	Brief of Petitioner Independent Market Monitor for PJM, including the Addendum, Case No. 24-1164 (Dec. 16, 2024), ECF No. 2089738
IMM Reply Brief	This Reply Brief of Petitioner Independent Market Monitor for PJM, including the Addendum, Case No. 24-1164 (April 3, 2025), ECF No. ____

March 1 st Order	<i>Independent Market Monitor v. PJM Interconnection, L.L.C., et al.</i> , 186 FERC ¶ 61,163 (2024) (JA ____)
Market Monitor	Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (and also Dr. Joseph E. Bowring, when referring to an individual). The Market Monitor is also known as the “Market Monitoring Unit,” “MMU” and the Independent Market Monitor “IMM”
MMSA	The Market Monitoring Services Agreement, tariff filed and approved by FERC pursuant to which Monitoring Analytics, LLC, provides market monitoring services to PJM
PJM	PJM Interconnection, L.L.C.
Rehearing Order	<i>Independent Market Monitor v. PJM Interconnection, L.L.C., et al.</i> , 187 FERC ¶ 62,070 (2024) (JA ____)
Section IV.G	Tariff, Attachment M § IV.G
Tariff	PJM Open Access Transmission Tariff, including Attachment M (PJM Market Monitoring Plan), the rules for the PJM market monitoring function performed by the Market Monitor

SUMMARY OF THE ARGUMENT

Section IV.G of Attachment M to the Tariff provides:

The Market Monitoring Unit may, as it deems appropriate or necessary to perform its functions under this Plan, participate (consistent with the rules applicable to all PJM stakeholders) in stakeholder working groups, committees or other PJM stakeholder processes.

The PJM Liaison Committee is a PJM “committee,” and a “PJM stakeholder process.”¹ In 2018, PJM began excluding the Market Monitor from Liaison Committee meetings. The Market Monitor filed the Complaint, which FERC denied in the March 1st Order and the Rehearing Order. Commissioner Christie dissented.

The Market Monitor has standing because it has suffered an invasion of a legally protected interest,² the substantive Tariff defined right to participate in Liaison Committee meetings. The Market Monitor has suffered a concrete and particularized injury because FERC’s failure to enforce the Tariff harms the Market Monitor’s organizational interest and significantly hinders its ability to perform its mission.³

¹ See Addendum (PJM Manual 34).

² See, e.g., *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

³ *Id.*

The petition should be granted and the March 1st Order and the Rehearing Order set aside because FERC has failed to enforce a Tariff regulation intended to protect the Market Monitor from exclusion from PJM committees and stakeholder processes, such as the Liaison Committee, and the Market Monitor has been and continues to be unlawfully excluded from Liaison Committee meetings. The Tariff regulation protecting the Market Monitor from the exact invasion of the Market Monitor's rights that has occurred should be enforced.

STANDING

I. THE MARKET MONITOR HAS STANDING BECAUSE FAILURE TO ENFORCE A TARIFF REGULATION DESIGNED TO PROTECT THE MARKET MONITOR RESULTS IN INJURY IN FACT.

A. The Market Monitor Has Standing Based on the Invasion of a Legally Protected Interest.

This case concerns whether Section IV.G of the Tariff must be enforced as written. Lifting language from *ODEC v. FERC*, 892 F.3d 1223 at 1234 (2918), out of context, FERC ignores Section IV.G and asserts that the Market Monitor is “without any ‘law that vests it with independent legal rights.’”⁴ Section VI.G of Attachment M to the Tariff is law.⁵ FERC errs in its reliance on *ODEC*, because

⁴ FERC Brief at 24–25.

⁵ See, e.g., *Lowden v. Simonds-Shields-Lonsdale Grain Co.*, 306 U.S. 516, 520 (1939); *AT&T Corp. v. City of New York*, 83 F.3d 549, 552 (2d Cir. 1996) (“federal tariffs have the force of law and are not simply contractual”);

ODEC did not involve Section IV.G or the enforcement of any provision protecting the Market Monitor.

The Court does not need to affirm the policy choice that Section IV.G represents or to determine whether Section IV.G is needed. FERC approved inclusion of Section IV.G in the Tariff. The question to be decided here is whether the law must be enforced. The fact that the Market Monitor describes the nature of the injury and explains why the injury is concrete and particularized does not mean that the law itself requires justification. Standing is appropriate in this case because a law protecting the Market Monitor from exactly the injury that has occurred has not been enforced. If the interest recognized under the law is invaded, then the Market Monitor has standing to seek enforcement of the law.

B. The Market Monitor Has Standing to Defend Its Tariff Protected Right to Information.

Contrary to FERC's and Intervenors' attempts to play down the injury suffered by the Market Monitor,⁶ the Supreme Court recognizes that failure to enforce rules protecting access to information inflicts injury sufficient to confer

Bernstein Bros. Pipe & Machinery Co. v. Denver & R.G.W.R. Co., 193 F.2d 441, 444 (10th Cir. 1951) (“[F]ederal tariffs are the law, not mere contracts.”).

⁶ FERC Brief at 19–22; Intervenors' Brief at 14.

standing. *Public Citizen v. U.S. Dept. of Justice*, 491 U.S. 440 (1989). Informational injuries have long satisfied the injury requirement of Article III.⁷ When a party has a legal right to information, such as the rights granted by Section IV.G, the failure to receive that information constitutes “injury in fact” to provide standing. *FEC v. Akins*, 524 U.S. 11, 21 (1998).

The refusal to permit the Market Monitor to access the Liaison Committee closely matches the injury suffered by Public Citizen when it was denied “access to the ABA Committee's meetings and records in order to monitor its workings and participate more effectively in the judicial selection process,” contrary to the Federal Advisory Committee Act’s charter and notice requirements. 491 U.S. at 388. The Supreme Court explained:

We reject these arguments [against standing]. Appellee does not, and cannot, dispute that appellants are attempting to compel the Justice Department and the ABA Committee to comply with FACA's charter and notice requirements... Appellant WLF has specifically requested, and been refused, the names of candidates under consideration by the ABA Committee, reports and minutes of the Committee's meetings, and advance notice of future meetings. ... [R]efusal to permit appellants to scrutinize the ABA Committee's activities to the extent

⁷ See 491 U.S. at 449, citing *Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749 (1989); *Department of Justice v. Julian*, 486 U.S. 1 (1988); *United States v. Weber Aircraft Corp.*, 465 U.S. 792 (1984); *FBI v. Abramson*, 456 U.S. 615 (1982); *Department of Air Force v. Rose*, 425 U.S. 352 (1976).

FACA allows constitutes a sufficiently distinct injury to provide standing to sue. Our decisions interpreting the Freedom of Information Act have never suggested that those requesting information under it need show more than that they sought and were denied specific agency records. ... There is no reason for a different rule here.

Id. at 449. Section IV.G explicitly grants the Market Monitor the right to participate in “stakeholder working groups, committees or other PJM stakeholder processes” in order to access the information and communications exchanged during those meetings “as it deems appropriate or necessary to perform its functions.” The Market Monitor’s exclusion from the Liaison Committee meetings in violation of the Tariff, and FERC’s failure to enforce the Tariff, invaded that legally protected interest. The injury in fact that the Market Monitor has suffered is the inability to attend those meetings and obtain such information. The Tariff seeks to prevent exactly such injury.

There is no reason to doubt that the discussions and information exchanged during the Liaison Committee meetings would help the Market Monitor’s performance of its functions mandated by the Tariff. The Tariff makes the Market Monitor responsible for monitoring the matters addressed by the Liaison Committee meetings, stating: “The objectives of this PJM Market Monitoring Plan are to maintain an independent Market Monitoring Unit that will objectively monitor, investigate, evaluate and report on the PJM Markets, including, but not limited to,

structural, design or operational flaws in the PJM Markets or the exercise of market power or manipulation in the PJM Markets.”⁸ The Tariff specifies functions including, but not limited to, “the competitiveness of PJM Markets,” “[t]he potential for a Market Participant to exercise market power,” “compliance with the PJM Market Rules,” and “operation of the PJM Markets.”⁹ The Market Monitor has the function and responsibility to “evaluate and monitor existing and proposed PJM Market Rules, PJM Tariff provisions, and the design of the PJM Markets.”¹⁰

The Section IV.D of the Tariff, Attachment M, further explains the Market Monitor’s role in market design:

The Market Monitoring Unit may initiate and propose, through the appropriate stakeholder processes, changes to the design of such markets, as well as changes to the PJM Market Rules and PJM Tariff. In support of this function, the Market Monitoring Unit may engage in discussions with stakeholders, State Commissions, PJM Management, or the PJM Board; participate in PJM stakeholder meetings or working groups regarding market design matters; publish proposals, reports or studies on such market design issues; and make filings with the Commission on market design issues. The Market Monitoring Unit may also recommend changes to the PJM Market Rules and PJM Tariff provisions to the staff of the

⁸ Addendum (Tariff, Attachment M § I).

⁹ Addendum (Tariff, Attachment M, § IV.A&B).

¹⁰ Addendum (Tariff, Attachment M § IV.D).

Commission's Office of Energy Market Regulation, State Commissions, and the PJM Board.

This section makes clear that the Market Monitor “may engage in discussions” with both stakeholders and the Board, and, repeating Section IV.G, states the Market Monitor “may participate in PJM stakeholder meetings or workings groups regarding market design matters.”

The Liaison Committee meetings include the Board and representatives of all sectors, transmission owners, generation owners, electric distributors, end use customers, and other suppliers. The public agendas show that market design issues dominate the discussions.¹¹

The sworn Declaration of Dr. Joseph E. Bowring, the Market Monitor for PJM and the President of Monitoring Analytics, LLC, confirms that:

Excluding the Market Monitor from the Liaison Committee meetings significantly hinders its ability to perform its mission. The closed Liaison Committee meetings create the opportunity for Members to advocate proposed changes to the market design that may be inconsistent with competition and market efficiency, which the Market Monitor cannot monitor or respond to without participation in those meetings.¹²

¹¹ Addendum (Declaration of Dr. Joseph E. Bowring ¶ 15).

¹² Addendum (Declaration of Dr. Joseph E. Bowring ¶ 14).

The Market Monitor’s ability to perform and meet its responsibilities is significantly impaired if the Market Monitor is excluded from any stakeholder process, such as the Liaison Committee meetings, where information about market design and the market monitoring function is exchanged in order to influence decisions of the Board.

FERC’s various excuses for failing to enforce Section IV.G are unavailing. That the “Market Monitor has access to the PJM Board and to market-related data” and to PJM fora other than the Liaison Committee are irrelevant to the enforcement of Section IV.G.¹³ Nor are the Market Monitor’s “tools for obtaining further information and data (from PJM and from market participants)” relevant to whether standing exists.¹⁴ *Akins* and *Public Citizen* support the principle that the denial of information to which the plaintiff is entitled by law establishes injury in fact. Alleged alternatives do not nullify the injury.¹⁵ The Market Monitor has explained why

¹³ FERC Brief at 20.

¹⁴ *Id.* at 21.

¹⁵ *See Comm. on the Judiciary, U.S. House of Representatives v. McGahn*, 968 F.3d 755, 766 (D.C. Cir. 2020) (en banc); *Zivotofsky v. Secretary of State*, 444 F.3d 614, 617 (D.C. Cir. 2006) (“Anyone whose request for specific information has been denied has standing to bring an action; the requester’s circumstances—why he wants the information, what he plans to do with it, what harm he suffered from the failure to disclose—are irrelevant to his standing.”); *Public Citizen v. FTC*, 869 F.2d 1541, 1548 n.13 (D.C. Cir. 1989) (“Persons

FERC's alleged alternatives fail to provide the same information that would be obtained through the Market Monitor's participation in Liaison Committee meetings.¹⁶

FERC also fails to appreciate that the alleged alternatives are created under the same Tariff that includes protection for the Market Monitor under Section IV.G. If the Market Monitor cannot invoke the protection afforded under Section IV.G, then the Market Monitor cannot rely on the enforcement of any Tariff provision.

FERC also attempts to improperly shoehorn into this case language in *ODEC* stating that "that [Market] Monitor is not a contractual party to ... the Tariff."¹⁷ The Tariff does not take the form of an agreement. The Tariff consists of rules for operating the markets, including associated rules for the market monitoring function. The Tariff includes the rules for retaining and terminating the entity performing the market monitoring function and assigns administration of these rules exclusively to the Board.¹⁸ The Market Monitoring Services Agreement ("MMSA") takes the form

seeking to vindicate a right to information have standing even if the information is available to them through other channels").

¹⁶ IMM Brief at 13–15, 18.

¹⁷ FERC Brief at 19, citing *ODEC*, 892 F.3d at 1233.

¹⁸ Addendum (Tariff, Attachment M § III).

of an agreement and is also a tariff filed with and approved by the FERC.¹⁹ The MMSA implements the Tariff's requirement for market monitoring by retaining Monitoring Analytics to perform the market monitoring function. The MMSA is inextricably linked to the Tariff. The language cited by FERC from *ODEC* has no relevance to the issues raised in this case.

The cases cited by FERC and the Intervenor are distinguishable as they do not involve the Market Monitor's right to attend a meeting to access information that is legally protected by the Tariff.²⁰ Furthermore, neither FERC nor the Intervenor provide any assurance that key information necessary for the Market Monitor to perform its mission is never discussed or disclosed during the Liaison Committee meetings.²¹ Neither FERC nor supporting Intervenor identify what information is shared during the Liaison Committee meetings and do not assert that such information is not relevant to the Market Monitor's mission. Neither FERC nor

¹⁹ See, e.g., *PJM Interconnection, L.L.C.*, Delegated Letter Order, FERC Docket No. ER25-807-000 (February 11, 2025).

²⁰ See, e.g., *Lowden v. Simonds-Shields-Lonsdale Grain Co.*, 306 U.S. 516, 520 (1939); *AT&T Corp. v. City of New York*, 83 F.3d 549, 552 (2d Cir. 1996) ("federal tariffs have the force of law and are not simply contractual"); *Bernstein Bros. Pipe & Machinery Co. v. Denver & R.G.W.R. Co.*, 193 F.2d 441, 444 (10th Cir. 1951) ("[F]ederal tariffs are the law, not mere contracts.").

²¹ Under *Loper Bright* and *de novo* review (at 391–392), the Court determines the best meaning of the Tariff language. The Market Monitor has made a strong affirmative case for the best interpretation; FERC and Intervenor have not.

supporting Intervenor explain why PJM, the Board and the PJM stakeholders take the Liaison Committee meetings so seriously if nothing of consequence happens at the meetings. The rejection of the Market Monitor's request to attend the Liaison Committee meetings to monitor the exchange of information to which the Market Monitor is entitled under the Tariff is a concrete, particularized, and individualized injury, within the meaning of Article III.

II. FERC MISSTATES THE APPLICABLE STANDARD OF REVIEW.

FERC argues that “the Administrative Procedure Act’s narrow arbitrary and capricious standard” should apply.²² FERC insists that so long as the March 1st Order and the Rehearing Order are not “arbitrary or capricious, or lacking in substantial evidence,” the Court should not “alter the Commission’s judgment.”²³ FERC misstates the applicable standard of review. FERC’s statement of the applicable law and how it should be applied is incorrect, obsolete and should be disregarded.

Section 706 of the Administrative Procedure Act provides that “[t]o the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.” The

²² Brief of Respondent FERC at 25–26, ECF No. 2103316.

²³ *Id.*

provision further specifies that “[t]he reviewing court shall ... hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or *otherwise not in accordance with law*” [emphasis added]. Here the Court is asked primarily to determine whether the FERC acted “in accordance with the law,” and only secondarily, if at all, whether its actions were “arbitrary and capricious.”²⁴

FERC ignores the recent landmark case on Court deference to agencies, *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), and seeks indirectly to rely on *Chevron* style deference by citing to pre *Chevron* cases. Even the prior deference accorded under *Chevron* was only applied after it was first determined that the law

²⁴ Tariff interpretation is a question of law appropriately decided by a reviewing court. *See, e.g., Durbin Paper Stock Co. v. Interstate Com. Comm’n*, 585 F.2d 543 n.4 (D.C. Cir. 1978) (Construction of a tariff presents “a question of law, not differing in character from those presented when the construction of any other document is in dispute.”); *W. P. Brown & Sons Lumber Co. v. Louisville & N.R. Co.*, 299 U.S. 393, 397 (1937) (“The meaning of the words is clear. There is no ambiguity. The construction of these railroad tariffs presents, therefore, a question of law, not differing in character from those presented when the construction of any other document is in dispute... We so hold despite the construction given to the rule by the Commission.”); *Pa. R.R. Co. v. Int’l Coal Mining Co.*, 230 U.S. 184, 197 (1913) (“The tariff, so long as it was of force, was, in this respect, to be treated as though it had been a statute.”); *Ariz. Elec. Power Coop., Inc. v. FERC*, 631 F.2d 811, 815 (D.C. Cir. 1980); *Bos. Edison Co. v. FERC*, 856 F.2d 361, 372 (1st Cir. 1988).

was ambiguous and required interpretation. The law to be applied in this case is not ambiguous and should be enforced as written.

Loper Bright holds that under the APA, courts must decide legal questions, such as the “single, best meaning” of a tariff provision, using a *de novo* standard of review. 603 U.S. at 392, 400. *Loper Bright* explains (at 853–854):

In addition to prescribing procedures for agency action, the APA delineates the basic contours of judicial review of such action. As relevant here, Section 706 directs that ‘[t]o the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.’ 5 U.S.C. § 706. It further requires courts to ‘hold unlawful and set aside agency action, findings, and conclusions found to be ... not in accordance with law.’ § 706(2)(A).

FERC’s assertion that this Court should apply a deferential, arbitrary and capricious standard or substantial evidence standard to deciding the question of law in this case is contrary to *Loper Bright* and the APA.²⁵ *Loper Bright* explains (at 391–392) that the APA “codifies for agency cases the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment.” *Loper Bright* further explains (*id.*) that the APA “specifies that courts, not agencies, will decide ‘all relevant questions of

²⁵ Brief of Respondent FERC at 25–27, ECF No. 2103316.

law’ arising on review of agency action” [emphasis in original]. *Loper Bright* finds (*id.*) that the APA “prescribes no deferential standard for courts to employ in answering those legal questions.”

ARGUMENT

III. SECTION IV.G SHOULD BE ENFORCED AS WRITTEN.

The question of law in this case is whether the words of the Tariff protecting the ability of the Market Monitor to participate in meetings of PJM’s Liaison Committee should be enforced. Section IV.G states:

The Market Monitoring Unit may, as it deems appropriate or necessary to perform its functions under this Plan, participate (consistent with the rules applicable to all PJM stakeholders) in stakeholder working groups, committees or other PJM stakeholder processes.

It is undisputed that the scope of the Tariff term “stakeholder processes” is broad. According to FERC, “stakeholders” are “electric customers and others with an interest in PJM’s markets.”²⁶ A purpose of the “stakeholder processes” is to “communicate the customer’s or other stakeholder’s views” to the Board.²⁷ Because the Liaison Committee serves the identified function, FERC here concedes the critical point that the Liaison Committee is part of the PJM stakeholder process.

²⁶ FERC Brief at 8.

²⁷ FERC Brief at 8–9, citing 18 CFR § 35.28(g)(6)(i).

Nevertheless, FERC and Intervenors only attempted defense on the merits is an argument that the Liaison Committee is not a PJM committee or a PJM stakeholder process within the scope of Section IV.G. FERC and Intervenors have no explanation for why PJM's Manual 34 (PJM Stakeholder Process) includes the Liaison Committee along with other PJM committees and stakeholder processes and explicitly includes the Liaison Committee in a list of "Stakeholder Groups."²⁸ The Market Monitor has never argued that the stakeholder process includes any informal meeting among PJM stakeholders. PJM Manual 34 identifies by name, including the Liaison Committee by name, PJM committees and stakeholders processes that are formally constituted and have noticed meetings with predetermined agendas.

FERC includes a chart from PJM Manual 34 in order to show how "PJM illustrates the high-level structure of its stakeholder process."²⁹ The chart shows that the "structure" of "stakeholder processes" includes the Liaison Committee.³⁰ The same chart illustrates the merits of the Market Monitor's concern. The chart shows the Board at the apex of decision making in PJM. The chart shows how the certain

²⁸ Addendum (PJM Manual 34 at 143).

²⁹ FERC Brief at 9–10, citing Addendum (PJM Manual 34 at 26 (Exhibit 1)).

³⁰ *Id.*

senior committees feed into decision making by the Board, and shows how the Liaison Committee also feeds into decision making by the Board.

The Board makes decisions on implementing PJM's market design,³¹ which refers to the extensive framework of rules that govern PJM's operation of the markets and Market Participants' transactions in those markets. PJM market design is intended to accurately reflect economic and competitive principles. A faulty market design can facilitate market manipulation and the exercise of market power. Stakeholders may present self serving arguments to the Board that are inconsistent with economic and competitive principles. The Market Monitor's role is to provide an alternative and objective source of information.³² The Market Monitor can only perform this role if it is aware of the arguments being presented to the Board and can respond in detail. Members seeking to prevent the Market Monitor's participation in the Liaison Committee are interfering with the Market Monitor's performance of this role.³³ Enforcement of Section IV.G is necessary to avoid creating an unmonitored channel of communications influencing Board decisions.

Commissioner Christie noted in his dissent on the March 1st Order:

³¹ Addendum (Tariff, Operating Agreement § 10.4).

³² Addendum (Tariff, Attachment M § I).

³³ Addendum (MC Letter, Oct. 1, 2018).

[T]oday's Order ... wrongly insists that because the Liaison Committee does not identify, review, or make any decisions concerning the PJM tariffs or markets it cannot be a stakeholder process and therefore the IMM has no right to attend.[footnote omitted] This explanation offers no basis at all for the majority's finding here. First, the IMM's discretion to attend PJM events is not just as to a stakeholder process, but as to 'stakeholder working groups, committees or other PJM stakeholder processes' – a very broad array of events to say the least.[footnote omitted] Second, I think we can all agree that a process is series of actions leading to an end result.[footnote omitted] So the fact that one step in a Board decision-making process may involve meeting with the Liaison Committee, which Committee does not make any decisions, is of no consequence. It is a process.[n.15: Indeed, as the IMM points out: '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. 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.' ...] Third, the idea that the Liaison Committee does not identify or review any issues related to, inter alia, the PJM tariff or markets seems non-sensical to say the least and would undoubtedly be a surprise to those members of the Liaison Committee who undoubtedly believe that they are addressing and identifying issues of consequence to the PJM tariff and markets to the PJM Board. Moreover, it is contrary to the evidence presented by the IMM.[n.16: ... In short then, not only has the IMM met its burden of proof under section 206, but this Order's arguments to the contrary are nothing short of unsatisfying.]

Commissioner Christie's dissent deserves weight not only because he is the current Chairman of the Commission, but because he was for many years an active

participant in the Organization of PJM States, Inc. which is active in the PJM stakeholder process, he has direct familiarity with the PJM stakeholder process and its terms of art, and he understands the plain meaning of Section IV.G.

The words of a tariff are strictly applied. *AT&T v. Cent. Off. Tel., Inc.*, 524 U.S. 214, 223 (1998). “Deviation from it is not permitted upon any pretext.” *Id.* at 222 (quoting *Louisville & Nashville R. Co. v. Maxwell*, 237 U.S. 94, 97 (1915)). When interpreting a tariff, documents and statements made outside of the tariff cannot add to or modify the tariff. *W. P. Brown & Sons Lumber Co. v. Louisville & N.R. Co.*, 299 U.S. at 398.

FERC and Intervenors try to read language into the Tariff limiting PJM committees and stakeholder processes to mean only PJM committees or stakeholders where voting occurs. FERC adds words, such as “decision making,” that do not appear in the Section IV.G.³⁴

In addition to being irrelevant, the position of FERC and the Intervenors is simply incorrect. The language in Manual 34 contradicts the position that the Liaison Committee does not include decision making. “[D]iscussion at a Liaison Committee” is explicitly identified as a means to achieve “final resolution” of issues

³⁴ FERC Brief at 28–29; Intervenors’ Brief at 14–16.

in the stakeholder process.³⁵ Contrary to Intervenor's argument that the Market Monitor does not need to attend Liaison Committee meetings because it has "access to many others," Section IV.G does not include such limiting language.³⁶

An interpretation that Section IV.G is limited to stakeholder processes with voting would be absurd. Neither the Cost Development Subcommittee nor the Market Monitoring Unit Advisory Committee, *inter alia*, include any voting. Only a subset of committees and other stakeholder processes include voting, and only senior committees include votes that are binding. More importantly, the Market Monitor does not vote in any committee or stakeholder process. Section IV.G cannot have the purpose of protecting the Market Monitor's voting rights. Interpretation of Section IV.G should not have an absurd result.

The Tariff should be enforced as written. Even if the Court does not agree that Section IV.G is unambiguous and determines that Section IV.G requires interpretation, it should adopt the best interpretation. A tariff provision, like a statute, has "a single, best meaning," and it is exclusively a judicial function for the courts to "use every tool at their disposal to determine the best reading." *Loper Bright* at

³⁵ Addendum (PJM Manual 34 §§ 8.6.6 at 70–71, 12.2 (identifying the Liaison Committee's role in minority rights protection)).

³⁶ Intervenor's Brief at 14.

400. “It therefore makes no sense to speak of a ‘permissible’ interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is best. In the business of [tariff] interpretation, if it is not the best, it is not permissible.” *Id.* “[E]ven when an ambiguity happens to implicate a technical matter... Congress expects courts to do their ordinary job of interpreting.” *Id.* at 402–403.

CONCLUSION

The Market Monitor should be permitted to participate in meetings of the Liaison Committee. It is inconsistent with the independence of PJM, the independence of the Board and the independence of the Market Monitor to exclude the Market Monitor from any stakeholder process. The March 1st Order should be set aside and FERC should be directed to enforce Section IV.G of Attachment M to the Tariff.

Respectfully submitted,



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April 3, 2025

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Independent Market Monitor for PJM,

Petitioner

v.

Federal Energy Regulatory Commission,

Respondent

No. 24-1164

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 32(a)(7)(B) and 32(g)(1) of the Federal Rules of Appellate Procedure, the undersigned certifies that the foregoing brief complies with the applicable type-volume limitations. The brief was prepared using a proportionally spaced type (Times New Roman, 14 point) and contains 4,550 words, not including the cover page, corporate disclosure statement, tables of contents and authorities, the glossary, the certificates of counsel, the signature block, and proof of service. This certificate was prepared in reliance on the word count function of the word processing system (Microsoft Word 2016) used to prepare the brief.

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April 2025, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system and unregistered participants will be served via U.S. Mail.

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