

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

PJM Interconnection, L.L.C.	)	
	)	Docket No. EL08-47-004
	)	

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

Pursuant to Rule 211 of the Commission’s Rules and Regulations, 18 CFR § 385.211 (2008), Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (“Market Monitor”),<sup>1</sup> submits this protest to the compliance filing submitted by PJM Interconnection, L.L.C. (“PJM”) in the above captioned proceeding on July 31, 2009, in compliance with the Commission’s order of February 19, 2009.<sup>2</sup> PJM’s filing exceeds, in part, the scope of what the Commission requires for compliance and contains language that is needlessly confusing and vague. The Market Monitor sees significant potential for future controversy over this sensitive issue and is particularly concerned that language critical to the development of cost-based offers submitted in

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<sup>1</sup> PJM Interconnection, L.L.C. is a FERC approved Regional Transmission Organization. Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”) or the PJM Operating Agreement (“OA”).

<sup>2</sup> *PJM Interconnecton, L.L.C.*, 126 FERC ¶61,145 at PP 47–48 (2009) (“February 19<sup>th</sup> Order”), *order on clarification*, 127 FERC. ¶61,145 (May 28, 2009) (“May 28<sup>th</sup> Order”).

PJM's energy markets receive due deliberation and review. The only purpose of such offers is their use in local market power mitigation.

One adverse consequence of PJM's proposed revisions is that they could be interpreted to fulfil PJM's compliance with the February 19<sup>th</sup> Order. The proposed tariff language could be deemed adequate to cover both the environmental phase and the energy phase rather than requiring two filings, one for the first or "environmental" phase and one for the second or "energy" phase. This would mean that the Commission might not have a clear opportunity to review and approve the details of critical aspects of the proposed design in a second phase, even though the Commission appears to have contemplated a second phase compliance filing in the May 28<sup>th</sup> Order (at P 7). The Commission should, therefore, require modification of this PJM compliance filing, as explained below, in order to address the Commission's priority issues in the first phase one and expressly provide for PJM's second phase proposal to be fully vetted in a subsequent filing.

## **I. ARGUMENT**

### **A. The Commission Should Reject the Proposed Revisions to Section 1.10.1A(d) of Schedule 1 of the OA Because They Are Outside of the Scope of Compliance and Serve No Useful Purpose**

Section 1.10.1A(d) of Schedule 1 of the OA reads in the relevant part: "Offers shall be submitted to the Office of the Interconnection in the form specified by the Office of the Interconnection and shall contain the information specified in the Office of the

Interconnection's Offer Data specification, as applicable." Schedule 1 defines "Offer Data" to mean "the scheduling, operations planning, dispatch, new resource, and other data and information necessary to schedule and dispatch generation resources and Demand Resources." Section 1.10.1A(d) of Schedule 1 of the OA lists the fundamental criteria that PJM uses to evaluate offers in the Day-ahead and Real-time Energy Markets. Other provisions of the OA provide more detail about the nature of the Offer Data.

PJM states that this provision creates "unnecessary confusion," and it proposes to clarify this requirement by adding, after "Offer Data specification," the following language: "this Section 1.10.1A(d), Schedule 2 to this Agreement, and the PJM Manuals, as applicable." Unfortunately, this proposal creates more confusion than it eliminates because rather than providing a complete and centrally located specification of the items that constitute Offer Data, it instead adds an open-ended reference to the PJM Manuals, which are voluminous, subject to continual revision and not subject to Commission review. Improvement of this provision would require a complete and centralized codification in the tariff of every item of data that constitutes the Offer Data that sellers are required to include in an offer. PJM's proposed revision only increases the confusion and ambiguity.

It is not necessary, however, for the Commission to evaluate this proposed language on its merits. PJM concedes (at 6) that it "understands that this particular revision is

outside of the scope of the compliance filing required by the Commission's February 19th Order." Because this proposal falls outside of the scope of compliance, and this point is not disputed, the Commission should reject it.<sup>3</sup>

**B. A Number of Proposed Revisions to Schedule 2 of the OA Should Be Rejected As Unduly Ambiguous and Exceeding the Scope of Compliance Found Reasonable by the Commission in the May 28<sup>th</sup> Order.**

PJM proposes to add the following paragraph to section (b) of Schedule 2, and substantially the same language to section (a) of Schedule 2:

For a resource that is subject to operational limitations due to energy or environmental constraints imposed on the resource by Applicable Laws and Regulations (as defined in the PJM Tariff), the Member may include in the calculation of its other incremental operating costs an amount reflecting the resource's unit-specific opportunity costs incurred during the hour(s) in which such resource is expected to be constrained, in

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<sup>3</sup> The Commission's long-standing precedent holds that compliance filings must be limited to the specific directives ordered by the Commission, and the Commission has rejected portions of compliance that do not adhere to this requirement. *See, e.g., Xcel Energy Services*, 125 FERC ¶ 61,284, at P 5 (2008), citing *Pacific Gas and Electric Company*, 109 FERC ¶61,336, at P 5 (2004); *Midwest Independent Transmission System Operator, Inc.*, 99 FERC ¶61,302, at 62,264 (2002); *ISO New England, Inc.*, 91 FERC ¶ 61,016, at 61,060 (2000); *Sierra Pacific PowerCompany*, 80 FERC ¶61,376, at 62,271 (1997); *Delmarva Power & Light Company*, 63 FERC ¶61,321, at 63,160 (1993).

accordance with the procedure prescribed in the PJM Manuals.<sup>4</sup>

PJM's proposal is very broad and not clearly defined.

A significant problem with PJM's proposal is that it applies to "energy or environmental constraints." The Market Monitor has not obtained in the course of the stakeholder process a clear explanation from PJM about what energy constraints exist other than those related to environmental regulations. The Market Monitor is concerned that this phrase opens the door to consideration of all opportunity costs even though the Commission specifically permitted compliance in this phase limited to "energy and environmental constraints."<sup>5</sup> PJM has indicated that it considers an energy constraint as something wholly different from an environmental constraint, even though it has not yet identified it with specificity. PJM has not specifically limited its applicability to run-

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<sup>4</sup> Section (a) of Schedule 2 refers "Market Participants" and section (b) refers to "Members." The reason for this distinction (in the existing text) is not clear.

<sup>5</sup> The Commission emphasized in its February 19<sup>th</sup> Order (at P 28) the need to account for opportunity costs from "energy- and environmentally-limited resources," explaining (at P28 n.34): "An opportunity cost exists if a unit must be run by PJM for a transmission constraint and if that unit has only a significantly limited number of available annual run hours (a hydro unit or a unit with environmental run-time limits)." The Commission discusses an "energy" project as a minor variant to the issue posed by an environmentally-limited resource. The Commission used the phrase "opportunity costs related to energy and environmental limitations" in its May 28<sup>th</sup> Order (at P 7) consistent with this initial understanding. PJM appears to contemplate application of this provision more broadly and distinctly, hence its proposed use of the disjunctive "or" rather than the Commission's conjunctive "and." The Market Monitor is concerned about a rush to implement without due deliberation the kinds of the opportunity costs that the Commission has afforded PJM ample time to address in a second phase. *Id.*

time restrictions on hydro projects that the Commission contemplated,<sup>6</sup> and this issue has not been included in the detailed procedures developed in this first of the two phases permitted by Commission for compliance on the opportunity cost issue. The procedures developed to date for inclusion in the Cost Development Manual address only environmental limitations, consistent with the intended purpose of the first phase filing, and the Market Monitor is not aware of any stakeholder who has raised in the stakeholder process the issue of run-time restrictions for hydro units in the first phase for compliance.<sup>7</sup>

Inclusion of the term “energy,” introduces needless confusion, and worse, could create a basis of entitlement for the inclusion of this vague category of costs in cost development. Inclusion of the proposed language at this time may also limit the Commission’s opportunity to fully review future changes in the area, such as those implemented by means of revisions to PJM’s Cost Development Manual, which is not subject to Commission review. PJM may determine that it can provide for such changes under the “energy” component of the disjunctive description and determine that it need not file additional changes.

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<sup>6</sup> See *supra* footnote 6.

<sup>7</sup> A link to the current version of these procedures can be found at <http://www.pjm.com/committees-and-groups/committees/~media/committees-groups/committees/mrc/20090730/20090730-item-03-manual-15-opportunity-cost-section-8-clean.ashx>.

Although the proposed revision is limited to “constraints” arising from the “Applicable Laws and Regulations” as defined in the PJM Tariff, that definition is quite broad, including “All duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority having jurisdiction over the relevant parties, their respective facilities, and/or the respective services they provide. Moreover, the term “constraints” could be interpreted to describe more than annual restrictions on run times. The Market Monitor proposes to limit “constraints” to mean required limits on annual operations, consistent with the Commission’s description of its concerns.

The Market Monitor is also concerned that the use of the disjunctive “or” creates ambiguity about whether the limitation to regulatory restrictions applies to “energy” in addition to “environmental” constraints.<sup>8</sup> Regardless of whether such ambiguity reflects any parties’ intentions, it should not be allowed to stand and invite future controversy on this critical issue.

PJM and its stakeholders are actively engaged on issues associated with the second phase of considering opportunity costs, potentially including those other than environmental costs, into cost development. These are the proposals that the Market

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<sup>8</sup> OA § 1.2.01.

Monitor understands that the Commission expects to have an opportunity to review in a future filing. In the interim, specific relief is only appropriate for the existing and reasonably defined category of “environmental” constraints. Stakeholders voted on July 31, 2009, on rules to cover environmental costs for inclusion in the Cost Development Manual. The Market Monitor has serious reservations about some of these rules, but hopes to work with stakeholders to improve the proposed process before they must be applied on January 1, 2010.

The Commission should require that PJM delete “energy or” from the proposed revisions. Limiting the scope of this compliance filing consistent with what the Commission found “reasonable” in its order on clarification would ensure that PJM’s second phase proposal on opportunity costs will be subject to full consideration and review by the Commission in a future filing.<sup>9</sup> Indeed, given the limited scope for compliance established in the May 28<sup>th</sup> Order, PJM’s proposal, as filed, exceeds the permissible scope.<sup>10</sup> This requirement would also ensure that “Parties will have an opportunity to comment on that compliance filing,” as the Commission anticipated.<sup>11</sup> An expectation of review by the Commission likely will encourage a more balanced and

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<sup>9</sup> May 28<sup>th</sup> Order at P 7.

<sup>10</sup> *See supra* footnote 3.

<sup>11</sup> May 28<sup>th</sup> Order at P 7.

thorough treatment in the stakeholder process of this critical new feature for calculating costs used as the basis for mitigating structural market power in PJM energy markets.

An additional problem in PJM's proposed language is the unclear basis for assigning opportunity costs to the categories of cost development included in OA Schedule 2. The costs listed in section (b), the "costs of energy supplied to or from the PJM Region," are costs that vary with how the unit is run, while the costs listed in section (a), "costs of operating capacity supplied to or from the PJM Region," are the same regardless of how the unit is run. Opportunity costs could have been added as a separate cost to either section (a) or (b). Inclusion with section (b) is more logical because opportunity costs pertain to how the unit is run. Adding the provision to both sections, however, opens up an opportunity for double counting and requires a useless and difficult allocation of costs between them. PJM has thus far been unable to provide a response to the Market Monitor's inquiry during the limited amount of time available to review the specific tariff language.<sup>12</sup> The Commission should at this time accept modification only to section (b) and withhold approval of the revision to section (a) until PJM can adequately explain the need to include opportunity costs in both sections.

Another problem is the proposal's definition of opportunity costs as "an amount incurred during the hour(s) in which such resource is expected to be constrained." This

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<sup>12</sup> The Market Monitor raised this and other concerns at the July 23, 2009, meeting of the Tariff Advisory Committee and the July 30, 2009, meeting of the Markets and Reliability Committee.

language does not accurately describe the kinds of opportunity costs that PJM seeks to address.

This definition is inaccurate because the opportunity cost is not incurred during a future hour, it is incurred as a result of a unit operating in a current hour with the result that the unit cannot operate in a future hour. The definition is inaccurate because the opportunity cost is not incurred in an hour in which a resource is expected to be constrained, it is incurred as a result of an overall limitation on run hours that constrains the unit for a year. The opportunity cost approach is a method of optimizing the use of the constrained hours within a year.

PJM has thus far been unable to explain the exact purpose or meaning of this language about “hours” when constraints are “expected,” and it has not done so in this filing. The language is inaccurate and should not be accepted as the implementation of the critical concept of opportunity costs. There is no need to consider subjective expectations in defining opportunity costs. To the extent that this proposed language pertains to opportunity costs beyond those types that the Commission contemplated in the May 28<sup>th</sup> Order would be addressed in the first phase, it raises all of the Market

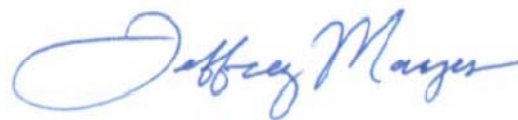
Monitor's concerns about future opportunity for review. Consequently, the Commission should reject the text following "opportunity costs" up to the comma.<sup>13</sup>

The inclusion of opportunity costs in cost development is a complicated and sensitive matter in which there are significant risks for mischief and neglect that could undermine the program for market power mitigation in PJM. The Commission has recognized the need to approach this issue with due deliberation by expressly allowing in the May 28<sup>th</sup> Order (at P 7) a more limited compliance filing at this stage of the proceeding. The prudent course is to revise the tariff at this stage no more than necessary to address the specific and limited issue of environmental constraints imposed by regulatory authorities and afford time to the more broadly conceived process now underway to develop the best possible result.

## II. CONCLUSION

The Market Monitor respectfully requests that the Commission consider this protest as it resolves the issues raised in this proceeding.

Respectfully submitted,



Joseph E. Bowring

Jeffrey W. Mayes

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<sup>13</sup> For the Commission's convenience, the Market Monitor attaches below a redline against PJM's proposed revisions (which appear in bold and, if unchanged, blue) to Schedule 2 discussed above.

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Dated: August 31, 2009

## **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 31<sup>st</sup> day of August, 2009.



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# **Attachment**

## SCHEDULE 2

### COMPONENTS OF COST

(a) Each Market Participant obligated to sell energy from operating capacity on the PJM Interchange Energy Market at cost-based rates shall include the following components or their equivalent in the determination of costs for operating capacity supplied to or from the PJM Region:

- (1) Boilers  
Firing-up cost;  
No-load cost during period of operation;  
Peak-prepared-for maintenance cost;  
Incremental labor cost; and  
Other incremental operating costs.
- (2) Machines  
Starting cost from cold to synchronized operation;  
No-load cost during period of operation;  
Incremental labor cost; and  
Other incremental operating costs.

~~For a resource that is subject to operational limitations due to energy or environmental constraints imposed on the resource by Applicable Laws and Regulations (as defined in the PJM Tariff), the Market Participant may include in the calculation of its other incremental operating costs an amount reflecting the resource's unit-specific opportunity costs incurred during the hour(s) in which such resource is expected to be constrained, in accordance with the procedure prescribed in the PJM Manuals.~~

(b) Each Member obligated to sell energy on the PJM Interchange Energy Market at cost-based rates shall include the following components or their equivalent in the determination of costs for energy supplied to the PJM Region:

- Incremental fuel cost;
- Incremental maintenance cost;
- Incremental labor cost; and
- Other incremental operating costs.

~~For a resource that is subject to operational limitations due to energy or environmental constraints on annual operations required imposed on the resource by Applicable Laws and Regulations (as defined in the PJM Tariff), the Member may add to its cost-based offer include in the calculation of its other incremental operating costs an amount reflecting the resource's unit-specific opportunity costs incurred during the hour(s) in which such resource is expected to be constrained, in accordance with the procedure prescribed in the PJM Manuals.~~

(c) All fuel costs shall employ the marginal fuel price experienced by the Member.

(d) The PJM Board, upon consideration of the advice and recommendations of the Members Committee, shall from time to time define in detail the method of determining the costs entering into the said components, and the Members shall adhere to such definitions in the preparation of

incremental costs used on the Interconnection.