

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

PJM Interconnection, L.L.C.

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Docket No. ER11-2875-002

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

Pursuant to Rule 211 of the Commission’s Rules and Regulations, 18 CFR § 385.211 (2010), Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM<sup>1</sup> (“Market Monitor”), submits this protest to the filing in this proceeding by PJM Interconnection, L.L.C. (“PJM”) on May 12, 2011 (“May 12<sup>th</sup> Filing”) in response to the Commission’s order of April 12, 2011 in the above referenced proceeding (“April 12<sup>th</sup> Order”). The April 12<sup>th</sup> Order conditionally approved revisions to the Minimum Offer Price Rule (“MOPR”), a provision of the Reliability Pricing Model (“RPM”) intended to protect PJM’s capacity market from the monopsony exercise of market power. The May 12<sup>th</sup> Filing proposes tariff language implementing the substance and process for reviews of individual offers that goes beyond the scope defined in the April 12<sup>th</sup> Order. PJM’s proposed language would establish both a substantive and procedural approach to the review of individual offers contrary to the stated intent of the April 12<sup>th</sup> Order and inconsistent with the applicable rules and precedent.

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<sup>1</sup> Capitalized terms herein are not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”).

If approved, the May 12<sup>th</sup> Filing would significantly weaken the objective standard approved by the Commission for the review of individual offers from participants that fail the initial default test for monopsony market power but who provide evidence that their offer does not raise market power concerns. The May 12<sup>th</sup> Filing also proposes a review process that is inconsistent with the review process proposed by PJM and approved by the Commission in compliance with Order No. 719.<sup>2</sup>

In its April 12<sup>th</sup> Order, the Commission approved a review process modeled on the review process approved in compliance with Order No. 719.<sup>3</sup> PJM does not explain why it proposes a review process inconsistent with that precedent, inconsistent with the rules established in Order No. 719 concerning the review of inputs to prospective mitigation, and inconsistent with the April 12<sup>th</sup> Order.

The Market Monitor submits as an Attachment proposed revisions that correct these deficiencies in the April 12<sup>th</sup> Filing, but otherwise preserve the elements of the April 12<sup>th</sup> Filing that are consistent with and fall within the scope of what the Commission directed.

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<sup>2</sup> See *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶¶31,281 at PP 370–79 (2008) (“Order No. 719”), *order on reh’g*, Order No. 719-A, FERC Stats. & Regs. ¶¶31,292 (2009), *reh’g denied*, Order No. 719-B, 129 FERC ¶ 61,252 (2009); *see also*, *PJM Interconnection, L.L.C.*, 129 FERC ¶¶61,250 (2008) (“719 Compliance Order”).

<sup>3</sup> Both the Market Monitor and the PJM Power Providers advocated such a process in earlier pleadings. *See* Comments of the Independent Market Monitor for PJM in Docket No. EL11-20 at 13–17 (March 4, 2011) (“March 4<sup>th</sup> Comments”); Compliant filed by the PJM Power Providers Group in Docket No. EL11-20 at 34–36 (February 1, 2011).

## I. PROTEST

### **A. The Proposal in the May 12<sup>th</sup> Filing Alters the Core Substantive Standard for MOPR Review That a Resource Demonstrate the Economic Viability of Its Sell Offer Based Solely on Revenues from PJM-Administered Markets and Should Be Rejected.**

A core holding of the Commission's May 12<sup>th</sup> Order was that a resource must demonstrate the economic viability of its Sell Offer based solely on revenues from PJM-administered markets. The Commission approved (at P 122) the following standard for review of a participant's specific costs when applying the MOPR:

In conducting an individualized generation review, PJM proposes that: a sell offer would be permissible when such offer is consistent with the competitive, cost-based, fixed, nominal levelized, net cost of new entry were the resource to rely solely on revenues from PJM-administered markets. We find that this standard is appropriate for reviewing such cost estimates and that PJM must include this language in its revised tariff.

PJM included this standard in its initial filing.<sup>4</sup> PJM also included in its initial filing (at 14–16) an alternative standard regarding state mandates that the Commission ordered (at PP 139–140) PJM to eliminate on compliance. Once the state mandate language is eliminated as PJM proposes in the May 12<sup>th</sup> Filing, PJM would be in full compliance with the Commission's directive in the April 12<sup>th</sup> Order. None of the additional revisions to the substantive standard that PJM includes in the subsection (5) of the proposed revised MOPR in the May 12<sup>th</sup> Filing are required by the April 12<sup>th</sup> Order.

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<sup>4</sup> PJM filing initiating Docket No. ER11-2875 at Attachment A & B (February 11, 2011).

Nevertheless, the May 12<sup>th</sup> Filing includes a second standard at section (h)(5)(iii) that contradicts and confuses the Commission-approved standard. This additional revision provides:

A Sell Offer evaluated hereunder shall be permitted if the information provided reasonably demonstrates that the Sell Offer's competitive, cost based, fixed, nominal levelized, net cost of new entry is below the minimum offer level prescribed by subsection (4), based on competitive cost advantages relative to the costs estimated for subsection (4), including, without limitation, competitive cost advantages resulting from the Capacity Market Seller's business model, financial condition, tax status, access to capital or other similar conditions affecting the applicant's costs, or based on net revenues that are reasonably demonstrated hereunder to be higher than estimated for subsection (4). Capacity Market Sellers shall be asked to demonstrate that claimed cost advantages or sources of net revenue that are irregular or anomalous, that do not reflect arm's-length transactions, or that are not in the ordinary course of the Capacity Market Seller's business are consistent with the standards of this subsection. Failure to adequately support such costs or revenues so as to enable the Office of the Interconnection to make the determination required in this section will result in denial of an exception hereunder by the Office of the Interconnection.

The additional language filed by PJM is not required by and does not fall within the scope of compliance with the April 12<sup>th</sup> Order. The Commission routinely rejects proposals outside the scope of its compliance directives regardless of merit.<sup>5</sup>

In this case, the proposed additional standard of review also lacks merit. Some of the additional revisions are obscure, and others appear to directly contradict the Commission-

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<sup>5</sup> See, e.g., *E.ON U.S. LLC*, 134 FERC ¶61,167 at P 43 (2011); *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶61,186 at PP 34, 40, 45, 48 (2010); *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶61,070 at PP 77-78 (2011); *PJM Interconnection, L.L.C.*, 117 FERC ¶61,331 (2006).

approved standard by permitting consideration of revenues from sources other than PJM-administered markets. This new standard appears to directly contradict the Commission's required standard, appears to directly contradict the purpose of the MOPR and appears to permit the behaviors that PJM opposed in its initial filing (at 20–21). The best possible interpretation is that this additional standard reduces the clarity of the Commission-approved standard and introduces subjective and inconsistent standards of review. Accordingly, this language should be rejected.

**B. Institution in a Future Proceeding of a Competitive Procurement Process, Including Both Existing and New Supply, Could Meet the Legitimate Concerns Raised in This Proceeding Concerning the Ability to Self Supply That Is Consistent with the MOPR as Revised in the April 12<sup>th</sup> Order.**

The Market Monitor is aware of concerns raised by a number of parties about the impact of the revised MOPR on the ability of LSEs to arrange for self supply. The Market Monitor recommended in its March 4<sup>th</sup> Comments (at 4–5) an additional process that could alleviate these concerns through provision for a competitive procurement process entirely consistent with the MOPR:

If the self supply is acquired under a competitive and non-discriminatory procurement process, it could be offered in the RPM auction without a MOPR limit. A procurement process would be discriminatory, for example, if it accepted offers solely from new units and not from existing units. No RPM rules should inhibit competitive responses to market signals. Market entities including public power agencies and LSEs may wish to enter into long term contracts for physical supply, or to buy or build under a range of options not incorporated in the one year RPM auctions. If the market entity conducts a verifiably open, competitive, non-discriminatory process for acquiring such a contract, the resultant contract with the lowest cost supplier would pass MOPR under the exception process. If the self build option were similarly demonstrated to be the least cost option using a competitive process, even if it were funded using the standard regulatory rate base rate of return approach, then it would also pass MOPR under

the exception process. Supply procured under either approach could be offered into RPM auctions without a lower bound. Lowest cost could be defined using a net present value criterion as well as current expectations of future energy market revenues.

Self supply, when it is based on a discriminatory acquisition process, would be subject to the MOPR. For example, if the acquisition process restricted participation to only new units, the process would be discriminatory and any associated offers would be subject to making an offer at no less than the minimum price specified in the MOPR.

This proposal has not yet been addressed by the Commission and is not part of the compliance stage of this proceeding. However, this approach would meet the legitimate concerns raised by LSEs in a manner entirely consistent with the April 12<sup>th</sup> Order, and the Market Monitor continues to support developing such a rule in the PJM stakeholder process or pursuant to an additional compliance directive in this proceeding. This approach, which offers a simple, clear, workable and consistent solution, is superior to the conflicting and vague revisions proposed in the May 12<sup>th</sup> Filing that appear to undermine the directives in the April 12<sup>th</sup> Order.

**C. The Review Process Proposed in the May 12<sup>th</sup> Filing Is Materially Different from the Review Process Required in the April 12<sup>th</sup> Order and the Standards Established on PJM's Compliance with Order No. 719 and Should Be Rejected.**

Citing the process and justifications for review of inputs to prospective mitigation and the Commission's recent experience with MOPR cost review, the Commission directed (at 121) that PJM provide for an individual cost review process consistent with the process developed on compliance with Order No. 719:

We find that first having the opportunity to justify offers with the IMM, and then with PJM, will allow for a less burdensome process than the one proposed by PJM for cost justification purposes. We therefore direct PJM to file, within 30 days of the date of this order, a compliance filing containing revisions to its tariff that allow for a process in which a market participant may

first submit its proposed offer with full documentation to the IMM for review. The process must also allow the market participant to have the opportunity to receive a determination from PJM if the IMM's findings are adverse to its interests.

Both the Market Monitor and Power Providers requested application of the process approved in Order No. 719 to the MOPR.<sup>6</sup> This process would provide for an orderly, accurate and efficient review of an individual project's particular costs, which may differ from the generally applicable default level.

The May 12<sup>th</sup> Filing, however, does not propose an Order No. 719 cost review process. Instead it proposes a new process that provides for concurrent review by the Market Monitor and PJM,<sup>7</sup> and seems to provide for PJM review of Market Monitor determinations regarding the potential exercise of market power in addition to PJM's responsibility to administer the PJM market rules to determine, subject only to Commission review, whether to accept an offer that may set price in its markets. The May 12<sup>th</sup> Filing also fails to explicitly set forth the Commission's potential involvement in the process if called upon to settle disputes.

The individualized cost review process defined by the Commission in the April 12<sup>th</sup> Order does not involve PJM's performing a duplicative review of Market Monitor's

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<sup>6</sup> Comments of the Independent Market Monitor for PJM in Docket No. EL11-20 at 13-15 (March 4, 2011); Complaint and Request for Clarification Requesting Fast Track Processing of PJM Power Provider Group in Docket No. EL11-20 at 13-14 (February 1, 2011).

<sup>7</sup> Order No. 719 (at P 375) describes a process intended to avoid a wasteful duplication of functions: "We also determine that the MMU may provide the inputs required by the RTO or ISO to conduct prospective mitigation, including determining reference levels, identifying system constraints, cost calculations and the like. This will enable the RTO or ISO to utilize the considerable expertise and software capabilities developed by their MMUs, and reduce wasteful duplication."

determinations. PJM's reviews the participant's offer and applies its standards, which in the case of RPM, are set forth in Section 5.8 of Attachment DD to the OATT.

The Order No. 719 process provides for an initial review by the Market Monitor.<sup>8</sup> The Market Monitor reviews cost levels to determine whether they could result in an exercise of market power, manipulation and to determine consistency with the PJM market rules.<sup>9</sup> The predominant focus is market power, and the Market Monitor provides, ex ante, its determination of whether an offer raises concerns about the potential exercise of market power based on documentation provided by the market participant. The Market Monitor's determination, even if it is against the market participant's interest, does not prevent the market participant from submitting its initial offer or prevent PJM from accepting such offer. If a market participant receives an adverse determination from the Market Monitor (and has not obtained Commission approval on its own initiative), the participant may still submit the offer to PJM at the level it chooses. PJM may accept or reject the offer on the basis of the PJM market rules.<sup>10</sup> PJM explained on compliance with Order No. 719 that its

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<sup>8</sup> See 719 Compliance Order at P 150 ("While Order No. 719 permits the MMU to provide inputs into this calculation, it requires that the RTO make the final determination regarding offers and rates.").

<sup>9</sup> OATT Attachment M § IV.B provides: "The Market Monitoring Unit shall be responsible for monitoring the following: 1. Compliance with the PJM Market Rules. 2. Actual or potential design flaws in the PJM Market Rules. 3. Structural problems in the PJM Markets that may inhibit a robust and competitive market. 4. The potential for a Market Participant to exercise market power or violate any of the PJM or FERC Market Rules or the actual exercise of market power or violation of the PJM or FERC Market Rules. 5. PJM's implementation of the PJM Market Rules or operation of the PJM Markets, as further set forth in Section IV.C. 6. Such matters as are necessary to prepare the reports set forth in Section VI."

<sup>10</sup> See OATT Attachment DD § 5.8(h) ("The Office of the Interconnection shall have final authority to determine whether to accept a Sell Offer in accordance with the terms of the Tariff and the PJM Manuals.").



review does not include a review of whether an offer implicates market power.<sup>11</sup> Consistent with that view, there is no reason for PJM to duplicate the Market Monitor's review in this case, or even to consider the Market Monitor's review, as it determines whether or not an offer submitted for its review is consistent with the PJM market rules.

As the Commission determined on PJM's compliance with Order No. 719, a determination of the Market Monitor on market power issues must not interfere with PJM's administration of the market rules or have any impact on the formation of PJM rates.<sup>12</sup> No determination of the Market Monitor would impact PJM's tariff administration or PJM rates. Such a determination has influence only if the Commission agrees with and adopts it and then implements it by order.

The tariff rules should explicitly and clearly set forth the prospect of a Market Monitor filing with the Commission in the event that the Market Monitor identifies a market power issue with an offer that is submitted by a participant and accepted by PJM, as

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<sup>11</sup> See Motion for Leave to Answer and Answer of PJM Interconnection, L.L.C. to Protests and Comments in Docket No. ER09-1063 at 7-8 (July 28, 2009) ("PJM reiterates that it is not seeking to substitute its market power decisions for those of the IMM or exercise control over the IMM's determinations. Any decision PJM may make to reject an input proposed by the IMM will not be based on PJM rendering opinions on questions of market power. Rather, and as previously noted, such decisions will rest on whether PJM believes it and the relevant market participants are acting in a manner consistent with PJM's Tariff and related business rules."); see also 719 Compliance Order at P 136.

<sup>12</sup> See 719 Compliance Order at P 150 ("The current tariff section therefore vests final authority in the MMU to determine the EFORD for a generator, which is used to determine the sell offer a mitigated generator may submit. This provision therefore is at odds with Order No. 719 because it involves the MMU in tariff administration, by influencing a necessary determination establishing the offer a seller may bid and ultimately processed by PJM to clear the market. It also directly involves the MMU in prospective mitigation, since the EFORD determines the mitigated rate the seller may bid into the market. While Order No. 719 permits the MMU to provide inputs into this calculation, it requires that the RTO make the final determination regarding offers and rates.").

does the language applicable to the Market Monitor's role in the review of other inputs to prospective mitigation.<sup>13</sup> Acknowledging this stage in the process is critical for transparency and clarifying participant expectations, regardless of whether it reiterates rights accorded to all persons under section 206 of the Federal Power Act. Market participants should not regard PJM's acceptance of their offer as in any way indicative of how the Commission would resolve issues brought to the Commission's attention relating to the potential exercise of market power.

Accordingly, the Market Monitor provides in an Attachment language to include in section 5.14(h)(5) of Attachment DD to the OATT that sets forth the review process in the manner directed by the Commission. The language, as indicated in the Attachment, closely tracks language already approved by the Commission on PJM's compliance with Order No. 719.

The Commission provided in Order No. 719 that the provisions setting forth the MMU's duties should be included in one place in the tariff.<sup>14</sup> PJM chose to consolidate the MMU's duties in Attachment M-Appendix to the OATT.<sup>15</sup> However, PJM did not include the role created by the Commission April 12<sup>th</sup> Order in Attachment M-Appendix. Accordingly, the Market Monitor provides language revising the Attachment M-Appendix that sets forth the MMU's role in the review process, including, as required in the April 12<sup>th</sup> Order (at PP 188-123), the applicable standard of review and a listing of the documentation

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<sup>13</sup> See, e.g., OATT Attachment DD § 6.4.

<sup>14</sup> Order No. 719 at P 378; 18 CFR § 35.28(g)(3)(ii)(F).

<sup>15</sup> 719 Compliance Order at PP 147-148.

required from participants. The revisions proposed by the Market Monitor implement the Commission's directives in a manner consistent with the review process set forth in Order No. 719 and should be approved by the Commission.

## II. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this protest as it resolves the issues raised in this proceeding.

Respectfully submitted,



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Dated: June 2, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Eagleville, Pennsylvania,  
this 2<sup>nd</sup> day of June, 2011.



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**ATTACHMENT**

## MOPR Resource Specific Review Process

### Replace Attachment DD § 6.5(h)(5) with the following:

Revisions Proposed by the Market Monitor	Explanation of Source/Reason for Proposed Revisions
<p>(5) If a potential Capacity Market Seller desires to submit a Sell Offer at a price below the threshold established under subsection (1) for a Planned Generation Capacity Resource, such Capacity Market Seller shall initiate and participate in the following review process:</p>	<p>New introductory text.</p>
<p>(a) Two months before the RPM Auction commences, the potential Capacity Market Seller must provide to the Market Monitoring Unit data and documentation required under Section II.F of the Attachment M–Appendix to establish the level of the minimum offer price applicable to the Sell Offer for each Planned Generation Capacity Resource. The Capacity Market Seller must promptly address any concerns identified by the Market Monitoring Unit regarding the data and documentation provided, review any proposed minimum offer price, and attempt to reach agreement with the Market Monitoring Unit on the level of the minimum offer price on the basis of the standard set forth in Attachment M–Appendix § II.F.</p>	<p>The excerpt below shows how the 719 review process has been adapted to the MOPR from the currently effective 719 review process used for RPM's Market Seller Offer Caps at Attachment DD § 6.4(d):</p> <p>(a) <u>Two months before the RPM Auction commences</u> <del>the</del> potential Capacity Market Seller must timely provide to the Market Monitoring Unit data and documentation required under <u>Section II.F of the Attachment M–Appendix section 6.6</u> to establish the level of the <u>Market Seller Offer Cap minimum offer price</u> applicable to <u>the Sell Offer for each Planned Generation Capacity Resource</u>. The Capacity Market Seller must promptly address any concerns identified by the Market Monitoring Unit regarding the data and documentation provided, review <del>the any</del> proposed <u>minimum offer price</u> <del>Market Seller Offer Cap</del>, and attempt to reach agreement with the Market Monitoring Unit on the level of the <u>minimum offer price on the basis of the standard set forth in Attachment M–Appendix § II.F</u> <del>Market Seller Offer Cap</del>.</p>
<p>(b) In the event that a Capacity Market Seller and the Market Monitoring Unit cannot agree on the level of a minimum offer price, the Office of the Interconnection shall make its own determination of the level of the minimum offer price based on the requirements of the Tariff and the PJM Manuals. Should the Market Monitoring Unit inform the Commission of its concerns and request a determination, on an expedited basis,</p>	<p>The excerpt below shows how the 719 review process has been adapted to the MOPR from the currently effective 719 review process used for RPM's Market Seller Offer Caps at Attachment DD § 6.4(d):</p> <p>(b) In the event that a Capacity Market Seller and the Market Monitoring Unit cannot agree on the level of a <u>minimum offer price</u> <del>Market Seller Offer Cap</del>, the Office of the Interconnection shall make its own determination of the level of the <u>minimum offer price</u> <del>Market Seller Offer Cap</del> based on the requirements of the Tariff and the PJM Manuals. <del>If the Capacity Market Seller submits a Sell</del></p>

Revisions Proposed by the Market Monitor

Explanation of Source/Reason for Proposed Revisions

directing a Capacity Market Seller to submit a Sell Offer consistent with the Market Monitoring Unit's determination, or for other appropriate relief, PJM may postpone clearing the auction pending FERC's decision on the matter.

~~Offer that the Office of the Interconnection determines would result in an increase of greater than five percent in any Zonal Capacity Price determined through such auction compared to the Office of the Interconnection's determination of the level of the Market Seller Offer Cap, the Office of the Interconnection shall apply to FERC for an order, on an expedited basis, directing such Capacity Market Seller to submit a Sell Offer consistent with the Market Monitoring Unit's determination, or for other appropriate relief, and PJM shall postpone clearing the auction pending FERC's decision on the matter. Should the Market Monitoring Unit exercise its powers to inform the Commission ~~staff~~ of its concerns and request a determination, on an expedited basis, directing a Capacity Market Seller to submit a Sell Offer consistent with the Market Monitoring Unit's determination, or for other appropriate relief, pursuant to section II.E of Attachment M – Appendix, PJM may postpone clearing the auction pending FERC's decision on the matter.~~

**Replace OATT Attachment M–Appendix §II.F with the following:**

Revisions Proposed by the Market Monitor

Explanation of Source/Reason for Proposed Revisions

Upon request from a Capacity Market Seller, the Market Monitoring Unit shall participate in the review process set forth in this Section and Section 6.5 of Attachment DD.

New introductory text.

Revisions Proposed by the Market Monitor

Explanation of Source/Reason for Proposed Revisions

Such Capacity Market Seller shall initially provide no later than two months prior to the commencement of the relevant RPM Auction data, documentation and detailed support including, but not limited to, the following: description of unit; location; proposed gross revenue requirements; pro forma economic model in Excel format including target IRR; EPC award documents or EPC RFP; EPC capital cost; all other direct and indirect capital costs; annual fixed operation and maintenance expenses; required environmental permits; loan agreements; sources and costs of equity capital; bilateral agreements for the sale of energy or capacity; net heat rate and net capacity by ambient temperature range; variable operating and maintenance expense; net market revenues and all related inputs; all components of hot, cold and warm start costs.

The listing is required in the MOPR Order at P 121: "To provide certainty to market participants, we will further require these proposed tariff provisions to include an explanation of the information resources that will need to be submitted to the IMM for this determination and the objective standards by which such submittals will be evaluated."

In reviewing a Sell Offer for the potential to exercise market power, the Market Monitoring Unit shall apply the following standard: whether such Sell Offer is consistent with the competitive, cost-based, fixed, nominal levelized, net cost of new entry were the resource to rely solely on revenues from PJM-administered markets.

This captures verbatim the standard established in the MOPR Order at P 122.



Revisions Proposed by the Market Monitor

Explanation of Source/Reason for Proposed Revisions

The Market Monitoring Unit shall make an initial determination or indicate that it cannot make a determination based on the information received no later than one month prior to the RPM Auction and so inform the Capacity Market Seller and the Office of the Interconnection. If the Capacity Market Seller does not agree with the Market Monitoring Unit's determination, the Market Monitoring Unit and Capacity Market Seller shall continue to attempt to reach a mutually acceptable agreement. If such agreement cannot be reached and (i) the Capacity Market Seller submits and PJM determines to accept in the course of administering the market rules an offer that the Market Monitoring Unit considers inconsistent with the applicable standard or insufficiently documented, (ii) the Commission has not approved the level of the Sell Offer at the Capacity Market Seller's request and (iii) such Sell Offer has the potential to impact the clearing price, the Market Monitoring Unit shall petition the Commission to resolve the matter on an expedited basis.

This process provides for initial review by the MMU.

The Market Participant can submit and PJM can accept an offer that the MMU has determined not consistent with the MOPR.

The MMU may petition the Commission for review of offer, and must do so if the specified conditions are met.