

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

)	
Black Oak Energy, L.L.C.)	
EPIC Merchant Energy, L.P. and)	Docket No. EL08-14-010
SESCO Enterprises, L.L.C.)	
)	
v.)	
)	
PJM Interconnection, L.L.C.)	
)	

**MOTION FOR LEAVE TO ANSWER AND ANSWER
OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rules 212 and 213 of the Commission’s Rules and Regulations, 18 CFR § 385.212 & 385.213 (2008), Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (“Market Monitor”),¹ moves for leave to answer and answers the *Answer of Financial Marketers in Opposition to Motion to Intervene Out-of-Time of the Independent Market Monitor for PJM* in the above captioned proceeding.

I. MOTION FOR LEAVE TO ANSWER

This answer is necessary to resolve confusion raised by the Financial Marketers’ answer regarding the Market Monitor’s position, and to provide for a more complete record that will facilitate the Commission’s decision making process. The Commission has found good cause exists to accept an answer when the answer helps the Commission understand the issues, clarifies certain errors and misstatements, responds to new arguments or

¹ 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”).

provides useful and relevant information that will assist the Commission in its decision-making process.² For these reasons, the Market Monitor requests that the Commission waive the rule against answers to answers and accept this pleading.³

II. ANSWER

At this phase of the proceeding, the remaining issue is whether requiring the return of already-paid refunds will have an effect, if any, on the operations of the PJM market.⁴ The Commission requests briefing on how its policy on recoupment of refunds may impact the markets. The Market Monitor is responsible for observation and comment on standards and procedures that have the ability to impact a robust, competitive and nondiscriminatory electric power market.⁵ Therefore, the discussion of whether the Commission's recoupment policy will have an effect, if any, on the market falls within the Market Monitor's purview.

The Market Monitor should have an opportunity to address this matter because it is a novel issue that has not been previously addressed in this proceeding. The Market Monitor has stated that it accepts the current record and will not attempt to litigate issues

² See, e.g., *Columbia Gas Transmission Corporation*, 110 FERC ¶61,063 at P 4 n.3 (2005) (accepted **answers to answer** that "allow a better understanding of the issues"); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶61,017 at 61,036 (2000) (accepted answer to answer found "helpful in the development of the record"); *Revision Of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under the Natural Gas Act*, Order No. 603-A, 88 FERC ¶61,297 mimeo at 7 (1999) (accepted answer to answer "[t]o achieve a complete and accurate record"); *SFPP, L.P.*, 127 FERC ¶61,312 at P 17 (2009) (accepted answer "further elucidating the issues"); *Tesoro Refining and Marketing Company v. SFPP, L.P.*, 118 FERC ¶61,092 (2007) (accepted answer because counterparty "raised some new arguments"); *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").

³ 18 CFR § 385.213(a)(2).

⁴ See Order Establishing Briefing Schedule, 146 FERC ¶ 61,099, (February 20, 2014).

⁵ See *et al*, PJM OATT, Attachment M, §IV;
<http://www.monitoringanalytics.com/company/about.shtml>

that have been previously decided. This statement alleviates any valid concerns about the impact of permitting the Market Monitor to intervene at this stage in the proceeding.

Intervention allows the movant to explain its concerns and draw attention to the consequences of a proposed action by bringing pertinent information and analysis to FERC's attention.⁶ The Commission has granted late interventions in circumstances where there is value in hearing from a broader spectrum of interests on a particular issue.⁷ For instance, in *Golden Spread Electric Cooperative*, the Commission allowed a party to intervene for the purpose of receiving and considering its comments on a limited issue arising from a prior order, acknowledging that the appearance of a party with so limited an involvement would cause no harm to the other parties.⁸ FERC has even granted motions to intervene out-of-time where good cause was not expressly set forth when the intervening party represented novel interests and introduced new arguments which enhanced the Commission's examination of the issues.⁹

The Commission has also granted late intervention in the midst of a settlement negotiation to enable the party to participate in a specific limited matter.¹⁰ Recently, the Commission allowed the Midwest ISO's Market Monitor's late intervention and comments over a year and a half into proceedings when the Market Monitor was "substantially in

⁶ See *Minnesota Power & Light Co.*, 22 FERC ¶61,315 (1983); *Southern Co. Services*, 22 FERC ¶ 61,340 (1983).

⁷ See *Golden Spread Elec. Coop., Inc. v. Southwestern Public Serv. Co.*, Order Granting Late Intervention, Rescinding Prior Order and Directing Continued Protected Status of Certain Documents, Docket Nos. EL05-19 et al. (July 29, 2005).

⁸ *Id.* at 2.

⁹ See *Columbia Gas Transmission Corporation*, Order Setting Application for Hearing, Establishing Procedures and Accepting Petitions to Intervene, Docket No. CP82-204-000 (July 20, 1982).

¹⁰ See *Venice Gathering Sys., L.L.C.*, Order Granting Intervention Out of Time, Docket No. RP01-196 et al. (June 29, 2001).

agreement with the position taken in the proceeding.”¹¹ Unpersuaded by an argument that a movant may raise issues beyond the scope of the proceeding, the Commission granted intervention in *NewCorp Resources Electric Cooperative Inc.*, deeming it irrelevant to a determination of whether movant should be admitted as a party to the proceeding.¹²

Financial Marketers have not explained why the Market Monitor should not be allowed to participate at this stage of the proceeding in which the Commission has asked to be briefed on the impact on markets of its policy on recoupment of refunds. Accordingly, the Market Monitor’s motion to intervene should be granted.

¹¹ See *Ameren Services Co. v. Midwest Indep. Transmission Sys. Operator*, Motion to Intervene Out of Time and Comments of the Midwest ISO’s Independent Market Monitor, Docket Nos. EL07-86 et al. (March 27, 2008).

¹² See *NewCorp Resources Electric Cooperative Inc.*, 109 FERC ¶61,103 (2004).

III. CONCLUSION

Market Monitor respectfully requests that the Commission accept this answer and afford it due consideration as it resolves whether to grant the Market Monitor's motion to intervene in this proceeding.

Respectfully submitted,

/s/ Maeve C. Tibbetts

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Dated: March 28, 2014

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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 28th day of March, 2014.

/s/ Maeve C. Tibbetts

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